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## **ENERGY AND ENVIRONMENT UPDATE** **October 16, 2011**

### **Energy and Climate Debate**

As debates over fiscal year 2012 appropriations, the budget deficit, and jobs continue to heat up, energy issues retain an important place in the conversation. The Senate has a full workload in the coming days, while the House will remain in recess until October 24.

Senate Majority Leader Harry Reid (D-NV) revealed plans October 12 to begin combining unfinished spending bills into packages in order to complete debate of and pass fiscal year 2012 appropriations legislation in an increasingly small timeframe. The first package will include the bills for Agriculture, Transportation, Housing and Urban Development, and Commerce-Justice-Science. Speaker of the House John Boehner (R-OH) is negotiating with Senator Reid and Senate Minority Leader Mitch McConnell (R-KY) on the spending levels and, especially cognizant of the short timeframe during which the bills must be passed, is open to a minibus approach to passing legislation through the House as well. The first package will be the first of three similar legislative vehicles, all of which are an attempt to both avoid a federal government shutdown crisis and another year-end omnibus appropriations measure.

The Joint Select Committee on Deficit Reduction continues their deliberations, and Democratic Ranking Members transmitted a series of letters to the Supercommittee October 13 outlining their recommendations on deficit reduction. Four letters pertained to energy issues. House Energy and Commerce Ranking Member Henry Waxman (D-CA) called for \$16 billion in new initiatives, specifically mentioning the Home Star Energy Retrofit Act and the Clean Energy Technology Manufacturing and Export Assistance Act. House Ways and Means Ranking Member Sandy Levin (D-MI) called for an extension and expansion of the 48C Advanced Energy Manufacturing Tax Credit and the Building American Jobs Act and urged the Supercommittee to preserve the Section 199 domestic manufacturing deduction, accelerated depreciation, and the research and development credit. Democratic members of the House Natural Resources Committee suggested that the Supercommittee repeal tax incentives for oil and gas production and called for increased fees and royalty rates for oil and gas production on federal lands. The House Transportation and Infrastructure minority called for surface transportation reauthorization legislation, Federal Aviation Administration reauthorization legislation, and other infrastructure investment along the lines of the American Jobs Act of 2011, while also highlighting the federal government's ability to save up to \$410 million by increasing energy efficiency in federal buildings.

Other energy related letters made their way to the committee last week as well. Republicans on the House Natural Resources Committee urged the committee to endorse legislation allowing increased oil and gas production, both offshore and onshore, as a means of increasing federal tax revenue. The thirty-five House Democrats of the Sustainable Energy & Environment Coalition also sent a letter to the supercommittee requesting federal renewable energy and energy efficiency spending and incentives. The Democrats told the committee that supporting efficiency and renewable energy "is of paramount importance to our nation's competitiveness, job growth, energy and national security, and in addressing the threat of catastrophic climate change." The letter did not prioritize existing tax credits, programs, and R&D efforts, but instead made more general statements advocating "robust investments and incentives supporting domestic innovation, commercialization, manufacturing, and deployment of renewable energy and energy efficiency technologies and resources."

Senator Tom Carper (D-DE) said last week that he plans to meet with all six Senate members of the Select Committee to discuss his proposal to extend investment tax credits for offshore wind farms. Senator Carper introduced a bipartisan proposal with Senator Olympia Snowe (R-ME) in July to extend the tax credits to the first 3,000 MW of offshore wind facilities to go into service.

Though the Senate defeated President Obama's American Jobs Act (S. 1660) October 11, Senate Finance Committee Chairman Max Baucus (D-MT) said last week that he anticipates that many of its provisions will return as separate pieces of legislation in the coming months. Meanwhile, Senate Republicans introduced a jobs bill, the Jobs Through Growth Act, October 13 that would place a moratorium on new federal regulations and impose restrictions on Environmental Protection Agency rules, including a prohibition on using the Clean Air Act to regulate greenhouse gas emissions.

## **Congress**

### CES Legislation Forthcoming

Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) announced last week that he plans to craft legislation this November that would create a national clean energy standard. The bill will be based on an upcoming report Senator Bingaman requested from the Department of Energy's Energy Information Administration that analyzes several versions of a standard. President Obama called for an 80 percent clean energy standard by 2035 in his State of the Union address this year.

### House Delays Boiler MACT

The House passed the EPA Regulatory Relief Act of 2011 (H.R.2250) October 13 after rejecting all 14 Democratic amendments to the bill. The legislation would delay the Boiler MACT rule, maximum achievable control technology standards to reduce mercury and other air toxics emitted by boilers, process heaters, and certain incinerators, for at least eight years and require the Agency to develop more easily attainable standards for industry. Despite attempts to include similar language in various Senate bills, Senate passage of a similar measure is not anticipated, and the White House has threatened a veto in the case that it does.

### Administrators Defend CAFÉ

The House Oversight and Government Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending held a hearing October 12 at which National Highway Transportation Safety Administrator David Strickland and Environmental Protection Agency Assistant Administrator for Air and Radiation Gina McCarthy testified that their offices met with a diverse set of parties as they prepared to propose increasing the corporate average fuel economy standards for cars and light trucks to 54.5 miles per gallon by 2025. Subcommittee Republicans are charging that a meeting with automobile manufacturers violated a transparency law and that the rule is unproductive and intrusive to the market. EPA and NHTSA plan to propose the rule by mid-November, and a final rule is expected by July 31, 2012.

### Salazar Requested

Representative Doc Hastings (R-WA), chairman of the House Natural Resources, sent a letter to Interior Secretary Ken Salazar October 11 asking him again to testify before the committee on any plans the

agency's Bureau of Land Management has to potentially issue regulations on hydraulic fracturing on public lands. The agency has indicated that if it does issue new regulations, it might focus on public disclosure of fracturing fluids, and is currently taking public comments.

#### On-Bill Financing Hearing

A Senate Environment and Public Works Subcommittee held a hearing October 13 entitled Innovative Practices to Create Jobs and Reduce Pollution. The hearing focused primarily on effective financing methods for small businesses and home owners to help them afford energy efficiency upgrades, particularly on-bill financing. Senator Bernie Sanders (I-VT) said during the hearing that he plans to introduce legislation that would promote on-bill financing for energy efficiency and other projects.

#### EPA Funds Questioned

The House Energy and Commerce Subcommittee on Oversight and Investigations held a hearing October 12 in which Chairman Cliff Stearns (R-FL) and Congressman John Sullivan (R-OK) asked Environmental Protection Agency Chief Financial Officer Barbara Bennett to explain the agency's \$13.3 billion unspent, obligated fiscal year 2010 funds. The agency will provide a breakdown of the funds to the subcommittee, but the money was primarily for states, tribes, and local communities to carry out federal mandates.

#### Skepticism over FERC Rule

The House Energy and Commerce Subcommittee on Energy and Power held a hearing October 13 to consider the Federal Energy Regulatory Commission's new Order 1000 to spur the building of interstate electric transmission. FERC Chairman Jon Wellinghoff tried to reassure Subcommittee Republicans and the rule explicitly provides that those who do not benefit from new transmission facilities should not pay through higher taxes, but many remain skeptical that the order does not impose additional burdens for those who do not enjoy the benefits of added renewable generation on the grid.

#### Senators Seek Fresh Keystone XL Environmental Review

On October 14, Senators Bernie Sanders (I-VT), Patrick Leahy (D-VT), and Ron Wyden (D-OR) asked the State Department to begin a fresh environmental review for the proposed Keystone XL pipeline, which if completed will carry tar sands crude from Alberta to the gulf coast. The Senators argued the previous analysis conducted by Cardno Entrix, a Houston-based environmental consulting firm, could be compromised owing to the company's past business relationships with TransCanada Corp., the firm sponsoring the pipeline. The senators pointed out that the Environmental Protection Agency initially found so many potential problems in the Cardno Entrix's draft environmental impact statement the agency ordered a supplemental statement. On August 26, State's final environmental impact assessment found that there was no reason the pipeline should not go ahead as planned, but the final decision on granting the pipeline a permit will take place by the end of the year.

#### Senate Appropriations Draft FY2012 Environment Bill

On October 14, the Senate Appropriations Committee proposed a \$29.3 billion draft fiscal year 2012 Interior, Environment, and Related Agencies appropriations bill. The bill set Environmental Protection Agency spending levels at \$8.62 billion, 4 percent less than the \$8.97 billion requested by the White House and \$61 million less than the \$8.68 billion appropriated for fiscal year 2011, which ended Sept. 30. The bill includes \$30 million for a diesel emissions program, funded at \$49.9 million last year, despite the EPA not requesting any funds. This draft also appropriated \$10.24 billion for the Interior Department (\$287 million less than last year and \$836 less than the requested \$11.1 billion). These levels reflect the agreement reached by the House, Senate, and White House in July on spending levels. The House indefinitely postponed the debate on HR 2854, its version of the bill, which includes numerous policy riders aimed at stripping EPA of regulatory authority.

#### Legislation Introduced

Senator John Barrasso (R-WY) introduced the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011 (S. 1684) October 12. The legislation would provide Indian tribes more tools to develop their energy resources and remove unnecessary barriers to economic development.

Senator Jerry Moran (R-KS) introduced legislation (S. 1702) October 13 to prevent the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines from applying to existing stationary compression and spark ignition reciprocating internal combustion engines operated by certain persons and entities for the purpose of generating electricity or operating water pumps. Congressman Bob Latta (R-OH) introduced companion legislation (H.R. 3185) in the House.

Senator Mark Pryor (D-AR) introduced legislation (S. 1703) to amend the Department of Energy Organization Act to require a Quadrennial Energy Review.

Representative Jim Sensenbrenner (R-WI) introduced legislation (H.R. 3199) to provide a comprehensive assessment of the scientific and technical research on the implications of the use of mid-level ethanol blends.

#### Upcoming Hearings

On October 19, the Subcommittee on Superfund, Toxics, and Environmental Health of the Senate Environment and Public Works Committee will hold an oversight hearing on the brownfields program at the Environmental Protection Agency.

On October 18, a Senate Commerce, Science, and Transportation panel will hold a hearing on pipeline safety.

On October 20, Senate Energy Subcommittee on Water and Power will hold a hearing exploring shale gas production and water resources east of the Mississippi River.

#### **Department of Defense**

##### EI TF Summit Scheduled

The Army Energy Initiatives Task Force will host a summit November 3 to discuss a path forward for the task force as it serves as a central managing office for collaboration with the private sector to invest in cost-effective large-scale renewable energy projects.

#### **Department of Energy**

##### Energy and Water Management Awards Announced

Energy Secretary Steven Chu announced the 29 winners of the 30th annual Federal Energy and Water Management Awards October 13. The awards recognize the commitment by federal agencies to invest in efficiency measures that save money for taxpayers, reduce greenhouse gas emissions, and create a stronger economy. For the past 30 years, winners have saved roughly \$16 billion and 770 trillion Btu of energy; the 2011 winners contributed to 7.9 trillion Btu of energy savings and facilitated savings of more than \$162 million.

##### EE School Guide Released

The Department of Energy released October 12 the second installment in a series of four 50% Advanced Energy Design Guides. The newest guide will help architects, engineers, and contractors design and build highly efficient K-12 school buildings, and the entire series provides a practical approach to designing schools and other major commercial building types that achieve 50% energy savings compared to commonly used commercial energy building codes.

##### FERC Plan Abandoned

Following backlash from state utility commissions, Energy Secretary Steven Chu formally abandoned plans to cede all federal transmission siting authority to the Federal Energy Regulatory Commission October 11. The agency will work closely with FERC in reviewing interstate transmission projects where federal siting authority might be invoked, but will not delegate its responsibilities to conduct triennial congestion studies or designate national interest transmission corridors across the nation.

## **Department of Interior**

### Offshore Wind Lease Forthcoming

Speaking at the American Wind Energy Association's national conference on offshore wind October 12, Department of Interior Secretary Ken Salazar said that the agency could issue its second offshore wind lease in the next few weeks. If approved, the proposal from NRG Bluewater Wind Delaware to lease waters 11 miles east of Dewey Beach would be the first allowed under a new agency initiative to accelerate wind development in the Atlantic Ocean.

## **Environmental Protection Agency**

### Utility MACT Rule Moving Forward

Environmental Protection Agency Deputy Assistant Administrator for Air and Radiation Janet McCabe said at the American Bar Association's Environment, Energy, and Resources Law Summit October 13 that the agency has properly reviewed public comments on its proposed air toxics rule for power plants. The EPA plans to issue a final rule, which would establish maximum achievable control technology standards for power plants and set limits for mercury, other metals, and organic air toxics, November 16 unless it is blocked by a federal court.

### Cross-State Rule Challenged

Power companies, states, municipalities, and industry groups filed another 23 lawsuits challenging the Environmental Protection Agency's Cross-State Air Pollution Rule for power plants by the October 7 deadline. The challengers are asking the U.S. Court of Appeals for the District of Columbia Circuit to overturn the agency's SO<sub>2</sub> and NO<sub>x</sub> emissions limits on power plants. The lawsuits are currently being consolidated, and the court has not yet set a briefing schedule.

### Utility MACT Challenged

The Utility Air Regulatory Group and 25 states petitioned the U.S. District Court for the District of Columbia October 7 to postpone until 2012 the deadline for the Environmental Protection Agency to issue a final rule requiring power plants to control toxic emissions. The agency currently has a November 16 deadline to issue the rule, which will establish maximum achievable control technology standards for power plants, as part of a consent decree with public health and environmental groups.

### Cement Kiln Rule Challenged

Portland Cement Association argued before the U.S. Court of Appeals for the District of Columbia Circuit October 11 that the Environmental Protection Agency improperly double counted cement kilns as sources subject to standards for both air toxics and solid waste combustion. The appeals court's ruling will determine whether the agency can continue to implement the cement kiln regulations.

### Ozone Decision Challenged

The American Lung Association, Environmental Defense Fund, Natural Resources Defense Council, and Appalachian Mountain Club filed a lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit October 11 challenging the Environmental Protection Agency's decision to not adopt more stringent ozone air quality standards. The agency was scheduled to release a final rule setting the primary standard at 0.070 ppm, but President Obama determined September 2 that he did not want to increase regulatory burdens and uncertainty through the rule.

### Mobile Source Model Transition Extended

The Environmental Protection Agency published a notice October 13 stating that it intends to extend by one year the deadline by which states and localities must begin a new mobile source emissions model for transportation conformity determinations. States and local agencies had advised the EPA that they needed more time to transition to the MOVES2010a emissions modeling system.

### Voters Support EPA Power Plant Rules

Ceres released a pole October 12 that found most voters, regardless of political affiliation, support the Environmental Protection Agency in setting air pollution standards. Sixty-seven percent of respondents said they support the EPA's final Cross-State Air Pollution Rule, and 77 percent of voters said they support the utility MACT rule, while only 9 percent said they oppose it.

#### EPA to Revise Biomass Definitions

On October 14, the Environmental Protection Agency announced plans to propose revisions to the nonhazardous secondary materials rule that sets definitions for biomass and other materials, under pressure from industry and members of Congress. The new rule will define which materials burned in combustion units are solid waste and which are fuels, and thus subject to far less stringent emissions standards. In an October 14 letter from EPA Administrator Lisa Jackson to Sen. Olympia Snowe (R-ME) the agency promised to review the rule, after receiving a letter ten days earlier from Snowe and ten other members of Congress asking for the rule to be clarified. EPA said it will unambiguously confirm that agricultural and forest-derived biomass, bagasse, other crop and tree residues, biomass crops, vines, orchard trees, hogged fuel (including wood pallets) sawdust, wood pellets, wood debris from forests, wood debris from urban areas, and if clean, cellulosic biofuels.

### **Federal Energy Regulatory Commission**

#### Reliability Hearing Scheduled

The Federal Energy Regulatory Commission has scheduled a hearing for November 29 to discuss the reliability of the power grid. Critics of the Environmental Protection Agency have made reliability a central theme of their opposition to new pollution regulations for power plants and have pressed the commission to evaluate their concerns.

### **Nuclear Regulatory Commission**

#### Jaczko Favors Safety Precautions

Though in the minority, Nuclear Regulatory Commission Chairman Gregory Jaczko said October 11 that he supports moving ahead without delay on several near-term actions aimed at improving the safety of U.S. nuclear power plants following the Japanese nuclear disaster. The five commissioners will debate among themselves for the next few months as they focus on task force recommendations that were presented to them in July.

### **Miscellaneous**

#### Australian Carbon Price

The Australian House of Representatives approved legislation October 12 that would introduce a national carbon pricing system starting July 1, 2012. The Clean Energy Legislative Package of 18 bills is expected to easily pass the Senate without amendments in November, and will begin with a three-year fixed carbon price phase.

#### EU Ag Reform Proposed

The European Commission proposed a major overhaul of the European Union Common Agriculture Policy October 12 by calling for stricter environmental criteria in order to receive direct payments and a fairer distribution of assistance so that Eastern European countries receive a fairer share of the CAP money. Though not without opposition, the Commission contends that the changes are necessary to enhance the competitiveness of the European agriculture industry, improve food security, and meet environmental goals.

#### EU Integrates Policies

The European Environment Agency published a study October 11 concluding that European Union countries are starting to move beyond classical environmental policies to integrated "resource-efficiency policies" that aim to manage the environmental impact of the economy as a whole. The report, *Resource Efficiency in Europe: Policies and Approaches in 31 EEA Member and Cooperating Countries*, finds that

the advantage of a more integrated approach is that it unites environmental, economic, and social concerns toward one shared goal.

#### WTO Panelists Appointed

The World Trade Organization appointed three panelists October 7 to rule on a complaint filed by Japan against alleged subsidies in a green energy program in Ontario, Canada. Japan and the European Union are challenging domestic content requirements under Ontario's Feed-In-Tariff program, under which electric grid utilities are required to purchase electricity from renewable sources, with above-market prices under long-term purchase contracts.

#### EU to Meet Kyoto Targets

The European Union is on track to meet or beat its Kyoto Protocol emissions reduction targets despite an increase in greenhouse gas emissions in 2010. According to an October 7 report, *Progress towards Achieving the Kyoto Objectives*, overall emissions of the 27 EU countries in 2010 were 15.5 percent below the 1990 level, and most EU countries have a target of 8 percent below the 1990 level. The decline reflected a fall in emissions of 7.1 percent between 2008 and 2009 as a result of the economy. The EU is considering supporting a Kyoto Protocol extension to 2020 if developing countries pledge to begin reducing emissions by then.

#### E-Waste Recycling Faces Barriers

During last week's American Bar Association's Environment, Energy, and Resources Law Summit, the National Solid Waste Management Association said that Congress could quickly pass legislation on e-waste recycling if manufacturers, environmentalists, and retailers could reach agreement on the issue. Solid waste disposal is a state responsibility under the Resource Conservation and Recovery Act and waste-collection methods vary widely.

#### CA Environmental Laws Signed

Amid a flurry of new environmental laws, California Governor Jerry Brown (D) signed legislation October 7-9 to fund California's oil spill prevention and response program, establish recycling facilities at apartment complexes (A.B. 818), and establish a new class of corporation for green businesses (A.B. 361).

#### German Solar Market Slows

Germany's solar industry slowed in 2011, partly due to cuts in government subsidies, but analysts expect the nation's accelerated exit from nuclear energy and industry restructuring to help the sector rebound. The country has 17 GW of the world's 40 GW of capacity.

#### Canadian Efficiency Standards

Natural Resources Canada tightened energy performance standards for seven products and introduced them for five others October 12. New standards were set for compact audio products, televisions and television combination units, and video products; external power supplies; digital television adaptors; electrical boilers; and single-package vertical air conditioners and heat pumps. Standards were enhanced for electric motors, residential gas boilers, residential oil boilers, dry-type transformers, large air conditioners and heat pumps, commercial self-contained refrigerators, and general service incandescent reflector lamps.

#### New Wind Power Content Labels

On October 13, WindMade announced that companies that get a minimum of 25% of their electricity from wind power, or other renewable energy, will be able to advertise the exact percentage of clean energy they use on new labels unveiled by the company. Companies can own their own wind power generation facility, sign a long-term power purchase agreement for wind power, or purchase WindMade-approved renewable energy certificates. Other eligible renewable energy sources are solar, geothermal, tidal and wave power, sustainable hydropower, and sustainable biomass. The U.N. Global Compact, the World Wildlife Fund, the Global Wind Energy Council, the LEGO Group, Bloomberg, and PricewaterhouseCoopers have all endorsed the new labels.