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## **ENERGY AND ENVIRONMENT UPDATE** **October 2, 2011**

### **Energy and Climate Debate**

Following Senate and House passage of a continuing resolution, President Obama signed the short-term funding bill for the federal government last week to eliminate threat of a government shutdown as the new fiscal year began October 1. At the same time, the issue of federal spending in fiscal 2012 remains unclear as the stopgap bill (H.R. 2017) only runs through October 4.

The House will consider a six-week continuing resolution when it returns from recess this week, though it is still unclear whether House Republicans will back the compromise measure. The Senate has already passed the measure (H.R. 2608), which covers federal spending through mid-November. The Senate easily passed the measure last week after Majority Leader Harry Reid (D-NV) announced a deal in which Democrats agreed to drop their demands for more disaster funds to be provided without budget offsets, thereby avoiding a protracted battle with the House over rescinding \$1.6 billion for loan guarantees to promote energy efficiency vehicle and renewable energy.

The House is also scheduled to debate the EPA Regulatory Relief Act (HR 2250) and the Cement Sector Regulatory Relief Act of 2011 (HR 2681), which were each approved by the House Energy and Commerce Committee on September 21. The bills seek to delay implementation of stricter air pollution standards for incinerators, boilers, and cement manufacturing equipment for 15 months. The bills also would expand from two to five years, the amount of time given to companies to comply with the new regulations.

Republicans and industry groups are hoping for an up and down vote on Senator Rand Paul's (R-KY) resolution (SJ Res. 27) that would overturn the Environmental Protection Agency's Cross-State Air Pollution Rule, even though it will most likely fall short of the 60 votes needed for Senate passage. However, if Paul's measure can get at least 50 votes, both the Senate and the House will be on record opposing the Cross-State Air Pollution Rule which might convince the White House to either rescind the rule or accept a delay bundled into the next continuing resolution, which would fund federal operations only through November 18. The Congressional Review Act gives Congress streamlined procedures to vote down federal regulations that will likely have a economically significant impact, so Senator Paul can bypass committee consideration by getting at least 30 senators to support bringing his resolution directly to the floor. Senator Paul already has 30 signatures, and will spend the next three months vigorously lobbying for more. Republicans in the Senate claim the support of Sen. Joe Manchin (D-WV) and believe

Democratic Sens. Bill Nelson (FL), Ben Nelson (NE), Sherrod Brown (OH), Debbie Stabenow (MI), Amy Klobuchar (MN), and Bob Casey (PA), all running for re-election in 2012, may vote to block the cross-state rule.

## **Congress**

### Ethanol Legislation Forthcoming

Representatives Bob Goodlatte (R-VA) and Jim Costa (D-CA) will introduce legislation this month that would reduce the corn-based ethanol portion of the renewable fuel standard when corn supplies fall below a fixed threshold. The Renewables Fuel Standard Flexibility Act would reduce the corn-starch ethanol section of the rule if the ratio of corn ending stocks-to-use were projected at various levels.

### House to investigate Fuel Economy Standards

On September 30, Rep. Darrell Issa (R-CA), chairman of the House Oversight and Government Reform Committee, told Transportation Secretary Ray LaHood in a letter that the Obama administration may have violated the Administrative Procedure Act in negotiating the increase of the corporate average fuel economy (CAFE) standard to 54.5 miles per gallon by 2025 for model year 2017 through 2025 cars and light trucks. On September 27, the administration said the Environmental Protection Agency and National Highway Traffic Safety Administration will propose the rule by mid-November and issue a final rule by July 31, 2012. Rep. Issa wants the Transportation Department to send documents detailing the negotiations to the Oversight Committee by October 11.

### Draft Legislation Removes Green Jobs Fund

On September 29, the House Appropriations Committee released a draft fiscal year 2012 funding bill for Labor, Health and Human Services, and Education which defunded the Labor Department's Green Jobs Innovation Fund, mirroring the Senate Appropriation Committee's bill (S. 1599) that "zeroes out" the training grant program. The Green Jobs Innovation Fund provides competitive grants for worker training in green industry sectors, and has become a target of Republican opposition to clean energy subsidies and skepticism about the DOL's definition and calculation of green jobs.

### Legislation Introduced

Congressman Gregorio Sablan (D-CNMI) introduced legislation (H.R. 3063) September 23 to amend the Low-Income Home Energy Assistance Act of 1981 to provide for an additional allocation of funds to the insular areas.

### Upcoming Hearings

The House Rules committee will consider legislation Monday that would delay for at least 15 months Environmental Protection Agency rules that reduce toxic air pollution from industrial boilers. The boiler MACT rule should easily pass the House this week, but despite recent efforts from Senator Susan Collins (R-ME), similar legislation is not expected to move in the Senate.

The Senate Energy Committee will hold a hearing on October 4 on a new report from the Secretary of Energy Advisory Board's Shale Gas Production Subcommittee.

## **Department of Energy**

### \$4.7 Billion in Solar Loan Guarantees

The Department of Energy announced in the days leading up to September 30, the last day of the 1705 Loan Guarantee Program, that it had finalized \$4.7 billion in loan guarantees for several solar projects. One of the loan guarantees was awarded to the Crescent Dunes Solar Energy Project, a 110 MW solar facility in Nye County, Nevada, which will result in 600 construction jobs and 45 permanent jobs. Also receiving money was a \$1.4 billion loan guarantee for First Solar Inc's Desert Sunlight Project a 550 MW photovoltaic facility in Riverside County, CA. Prologis Inc. received \$1.4 billion to install 752 MW of solar panels on rooftops in and around Washington, DC, and SunPower Corporation received a \$1.2 billion loan guarantee for 250 MW solar generating facility in San Luis Obispo County, CA as well as \$646 million for the 230 MW facility Antelope Valley Solar Ranch in Los Angeles, CA.

### 2 Solar Loan Guarantees Canceled

The Department of Energy canceled loan guarantees for two solar energy projects (SolarCity Corp. and First Solar) recently. The agency had offered SolarCity Corp. a \$275 million conditional loan guarantee in September for a SolarStrong project to install solar panels on military housing at as many as 124 bases across 33 states, doubling the total amount of residential solar installations in the U.S. First Solar had received a \$1.93 billion partial conditional loan guarantee. Both companies were informed that there was insufficient time to process all of the requirements before the September 30 deadline.

### \$10 Million for Efficient Lighting

The Department of Energy announced September 26 the availability of up to \$10 million for energy-saving lighting technologies in the third round of funding directed toward the solid-state lighting research and development program area. The agency will invest in two to four projects to accelerate manufacturing research and development related to solid-state lighting technologies.

### \$3.1 Million for US-Israel Projects

The Department of Energy highlighted a milestone September 26 in U.S.-Israel cooperation of clean energy technology by announcing that the agency and the Ministry of National Infrastructures of Israel have selected four projects to receive \$3.1 million under the 2011 Binational Industrial Research and Development Energy program. The cooperative projects, in California, Pennsylvania, and Washington address energy challenges and opportunities of interest to both countries in the areas of integrated photovoltaics, solar thermal energy, load management systems, and wind energy.

### Quadrennial Review Released

The Department of Energy released its inaugural quadrennial review last week. The Quadrennial Technology Review concludes that the agency's top energy investment priority should be making cars more fuel-efficient, eventually through the electrification of vehicles and modernization of the electric grid to support them. The report finds that the domestic transportation sector's reliance on oil represents one of the most significant economic and national security threats to the country, but the U.S. has underinvested in electric vehicle technologies relative to other technologies.

### \$8.4 Million for Vehicle Efficiency

Secretary Steven Chu announced \$8.4 million September 27 for four projects to improve engine and powertrain efficiency. The projects, in Michigan, Massachusetts, and Wisconsin, will focus on new innovations that achieve breakthrough thermal efficiencies while meeting federal emission standards for passenger and commercial vehicles.

### Business Challenge Announced

The Department of Energy awarded \$2 million for a national university clean energy business challenge to jump start young entrepreneurship September 27. Six regional competitions will take place at the Massachusetts Institute of Technology, University of Maryland, Clean Energy Trust, Rice University, University of Colorado, and California Institute of Technology.

### \$337 Million Solar Loan Guarantee

The Department of Energy finalized a \$337 million loan guarantee for a 150MW solar power project sponsored by Semptra Energy last week. The Mesquite Solar 1 project, an alternating current photovoltaic solar generation facility to be located near Phoenix will use transformerless and liquid cooled inverter technology to improve energy output and reliability and reduce operating costs.

### \$450 Million for Clean Coal

The Department of Energy signed a cooperative agreement with Summit Texas Clean Energy LLC September 28 for the Texas Clean Energy Project. The agency will provide \$450 million in funding from the agency's Clean Coal Power Initiative to support the 400 MW integrated gasification combined-cycle power plant that will capture and store its carbon dioxide emissions. The plant is expected to be completed by the second half of 2014.

## **Environmental Protection Agency**

### IG Faults EPA Peer Review

The Office of the Inspector General released a report September 28 in which it critiqued the way the Environmental Protection Agency reviewed scientific data to support its greenhouse gas regulation findings but concluded overall that the agency met statutory requirements for rulemaking. The report, Procedural Review of EPA's Greenhouse Gas Endangerment Finding Data Quality Processes, said that the agency should have made public its review of a technical support document used in the endangerment finding in accordance with the White House Office of Management and Budget's peer review process. The agency has 90 days to respond to the report, which was requested by Senate Environment and Public Works Ranking Member James Inhofe (R-OK).

### CAFE Rule Delayed

The Obama administration will delay the release of standards that would double the fuel economy of cars and light trucks from the original September 30 deadline to mid-November. President Obama announced the new Corporate Average Fuel Economy standards in July; they would set a fleetwide target of 54.5 miles per gallon by model year 2025. The Environmental Protection Agency and the Department of Transportation's National Highway Traffic Safety Administration were scheduled to formalize the CAFE rules last Friday to coordinate with California rules, but federal officials will require the additional month and a half to finalize the joint rule.

### GHG Reporting More Flexible

The Environmental Protection Agency published two rules in the Federal Register September 27 that will make reporting rules for electronics manufacturers and oil and natural gas companies more flexible. The rules will allow the two industries to use alternate monitoring methods to comply with the mandatory greenhouse gas reporting rule while the agency addresses various petitions from industry groups to reconsider portions of the requirements.

### Refinery Emissions Delay Requested

The American Petroleum Institute and the National Petrochemical and Refiners Association asked the Environmental Protection Agency September 26 to postpone until next December its plans to issue several air pollution and climate change regulations for refineries so that the agency could further analyze additional emissions data. The agency is preparing an integrated rule for refineries that would revise both the new source performance standards under Section 111 of the Clean Air Act and national emissions standards for hazardous air pollutants under Section 112, which set maximum achievable control technology requirements. Under the December 2010 settlement, the agency agreed to propose GHG standards for petroleum refineries by December 15 of this year and to finalize them by November 15, 2012, but it has twice missed a deadline to propose similar limits on power plants.

### Insufficient Fees Collected

The Environmental Protection Agency's Inspector General issued a report September 23 in which it found that the agency is not collecting enough fees from vehicle and engine manufacturers and importers to recover the costs of administering the Motor Vehicle and Engine Compliance Program. The agency spent about \$24.9 million in fiscal year 2010 to administer the program, but collected only \$18.4 million in fees for emissions testing and other compliance activities.

### States Oppose Federal Implementation Plans

Nebraska, Florida, Alabama, Oklahoma, South Carolina, Texas, and Virginia filed a lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit on September 23 claiming that the Environmental Protection Agency inappropriately implemented the Cross-State Air Pollution Rule through federal implementation plans. The states argue that the agency should have let states develop their own plans to meet air quality standards and have asked for a stay of portions of the rule.

### Perry Requests Presidential Action on CSAPR

Texas governor and Republican presidential candidate Rick Perry asked President Obama September 26 to block or delay the Cross-State Air Pollution Rule. Governor Perry requested in a letter to the president

that he use the same executive authority he used when he stopped the Environmental Protection Agency from revising ozone air quality standards.

#### Ozone Quality Rule Will Move Ahead

On September 30, The Environmental Protection Agency released a second draft of an integrated science assessment, evaluating the available science regarding ozone exposure, and the administration reiterated its commitment to moving forward with its next scheduled five-year review of ozone air quality standards after delaying them in September. EPA must review national ambient air quality standards every five years, by order of the Clean Air Act, and EPA expects a final rule in July 2014. The second draft integrated science assessment, following the first draft released in March, found that research suggested a causal relationship between ozone exposures and death. The rule is open for public comment through November 29.

#### EPA Decides to Expand Access to Canadian Canola

On September 29, the Environmental Protection Agency announced that Canadian biofuel and biofuel feedstocks, including canola, will now meet the requirements of the U.S. Renewable Fuels Standard (RFS2) program. The move is expected to significantly expand market access for producers of Canadian canola for biodiesel production in a \$437 million market.

### **Department of the Interior**

#### Department Releases Landscape Conservation Study

On September 30, the Interior Department issued a 15-year strategy to implement the National Landscape Conservation System. The program is responsible for discouraging development on protected lands, especially national monuments, conservation areas, wilderness areas, and the national Wild and Scenic Rivers System.

### **Nuclear Regulatory Commission**

#### NRC Staff Recommends License

The staff of the Nuclear Regulatory Commission said September 27 that there are no major safety or environmental concerns that should prevent commissioners from granting a license to Southern Company to build two new nuclear reactors at an existing two-unit plant in Georgia. The Southern Company and its three partners appeared before the Commission last week to explain why the companies should receive the first license to build new nuclear reactors in the United States in 30 years. A vote on whether to grant the license is not expected until the end of the year or early 2012.

### **Federal Energy Regulatory Commission**

#### States File Suit Over Utility Rates

On September 30, Massachusetts Attorney General Martha Coakley, filing on behalf of Massachusetts, Maine, New Hampshire, Connecticut, and Vermont filed a complaint at the Federal Energy Regulatory Commission seeking to lower the return on equity, or allowed profit, for utilities to 9.2 percent from the current 11.14 percent set in 2006. Coakley called current transmission rates "excessive."

### **Government Accountability Office**

#### Report on Energy Star Released

On September 30, the Government Accountability Office released Providing Opportunities for Additional Review of EPA's Decisions Could Strengthen the Program, a report that concluded retailers "generally had positive views" of the Energy Star program despite concern over ongoing changes. Eighteen of 23 program participants from the manufacturing industry reported being either satisfied or very satisfied with their participation in the voluntary energy efficiency labeling program, as the Energy Star program has proven to be a popular target among Republican lawmakers looking to trim the federal budget. Sen. Jim DeMint (R-SC), Rep. Jim Jordan (R-OH), and other members of the House Republican Study Committee proposed a plan in January 2011 seeking to eliminate the Energy Star program and save \$52 million a

year as a means of reducing the federal deficit by \$2.5 trillion.

## **Miscellaneous**

### Ozone-Related Deaths on the Rise

The Climate-TRAP project presented a study at the European Respiratory Society's Annual Congress in Amsterdam September 27 finding that death rates linked to climate change will increase in several European countries over the next 60 years. Scientists used projections from two GHG emission scenarios, A2 and A1B, and two global climate models, ECHAM4 and HADLEY, to simulate how the various future ozone levels are affected by climate change, and their results predicted that the largest increase, 10 to 14%, in ozone related deaths over the next 50 years would occur in Belgium, France, Spain, and Portugal.

### Free Carbon Allowances for Airlines

The European Commission finalized a method September 26 to assign free carbon allowances to airlines that must participate in the European Union's Emissions Trading System beginning in 2012. The calculation will be used to split 182.6 million carbon allowances among 900 airlines next year, and the amount will drop to 172.5 million allowances in 2013.

### Pollution Results in 1.3 Million Deaths

The World Health Organization released a report September 26 in which it concluded that 1.3 million people die annually due to heavy pollution in urban areas. The air quality data compilation report advised that more than a million lives could be saved each year if authorities made efforts to meet international guidelines on outdoor air pollution.

### WA DOR Adopts Appeal Procedures

The Washington Department of Revenue adopted emergency amendments (Emergency Regulations Section 458-20-273) recently to the rule governing their renewable energy cost recovery program to provide procedures to appeal revocation or denial of certification under the program.

### Wind Industry Rely on Incentives

The Congressional Research Service released a report September 23 finding that the country's wind turbine manufacturing industry is partially dependent on federal and state incentives, including a number that are scheduled to expire soon. The report, *U.S. Wind Turbine Manufacturing: Federal Support for an Emerging Industry*, highlighted the value of the production tax credit, which provides an inflation-adjusted income tax credit of 2.2 cents per kWh for the first 10 years of a project's operation, and will expire at the end of 2012.

### Traffic Costs High

The Texas Transportation Institute issued a study September 27 concluding that Americans spent 4.8 billion hours in stuck in traffic in 2010, costing approximately \$101 billion. According to the 2011 *Urban Mobility Report*, road users purchased an extra 1.9 billion gallons of fuel because of congestion.

### Judicial Streamlining Legislation Signed

California Governor Jerry Brown (D) signed two bills September 27 to streamline the environmental review process for a proposed 72,000 seat football stadium in downtown Los Angeles and other large statewide projects. The legislation (S.B. 292 and A.B. 900) allow legal challenges filed under the California Environmental Quality Act to move directly to a state appeals court, and establish a 175-day start-to-finish review process for the appellate court and subsequent challenges in the state supreme court. S.B. 292 establishes criteria for a green stadium and related carbon neutral facilities, and A.B. 900 gives the governor the authority to certify certain environmentally friendly projects for the expedited judicial review process statewide.

### Investment Opportunities High in Urban Developing Countries

World Bank Sustainable Energy Director Vijay Iyer said September 27 that the greatest opportunities for sustainable energy investment exist in developing countries as projected population growth will increase

energy demand. Eighty-one percent of energy demand over the next two decades is anticipated in cities in developing countries.

#### Plant Closures Accelerated

Progress Energy said September 27 that it is accelerating its previously announced plans to close all of its coal-fired units in North Carolina that do not use scrubbers to control air pollution. The company announced in December 2009 that it would close the 11 units, which represent nearly 1,500 MW of generating capacity, because of increasingly stringent pollution control requirements, and planned to replace the units with cleaner fuel plants as a more cost effective solution than retrofitting them. The increasing gap in the price of natural gas and coal is behind the decision to retire the plants sooner.

#### MA Releases Climate Adaptation Report

The Massachusetts Executive Office of Energy and Environmental Affairs released a blueprint September 27 for addressing the impacts of climate change on the state. The *Massachusetts Climate Change Adaptation Report* includes a sector-by-sector look at how climate change could impact natural resources and habitat, infrastructure, human health and welfare, local economies and governments, and coastal zones and oceans. The report includes an overview of observed and anticipated changes and impacts and a set of guiding principles to follow in addressing those changes. Twelve other states have completed similar adaptation plans.

#### Chinese Emissions Standards Unveiled

China recently announced plans to tighten limits on coal-fired power plant emissions of sulfur dioxide, nitrogen oxides, and coarse particulate matter for the first time since 2003. The revised Power Plant Air Pollutant Emissions Standards will also include monitoring of airborne mercury emissions for the first time, and the rules, which will take effect January 1, 2012, will cost about \$40.6 billion.

#### Fluorinated Gas Controls Boost GHG Efforts

The European Commission released a report September 26 finding that stricter controls on fluorinated gases could provide a cost-effective boost to European Union efforts to reduce GHG emissions 80 percent or more by 2050. Comments will be accepted through December 19.

#### CA Court Denies Delay Bid

The California Supreme Court rejected a bid by environmental justice groups September 28 to halt further implementation of the state's greenhouse gas emissions cap and trade program. A temporary stay would have derailed the California Air Resources Board's effort to meet an October 28 statutory deadline to finalize rules for the multi-sector emissions trading program, which will be slowly phased in beginning January 2012.

#### CA May Suspend Tax Breaks

The California Alternative Energy and Advanced Transportation Financing Authority directed staff at a September 27 meeting to come up with a plan to determine if procedures for reviewing and approving clean energy and advanced transportation manufacturing tax exemptions need to be strengthened. The financing agency is considering suspending sales tax breaks for solar panel makers and other similar firms that were enacted in 2010 through S.B. 71.

#### Rio+20 Should Set RE, EE Goals

The European Parliament adopted a resolution September 29 advising that next year's Rio+20 sustainable development conference results in accountable global targets for renewable energy and energy efficiency. Parliament also called for an agreement to phase out nuclear power, and said that non-European Union countries should adopt the bloc's REACH chemicals law as a model for chemical management.

#### Green Bridge to Launch

The Green Bridge program, an initiative led by Kazakhstan to coordinate policies among European, Asian, and Pacific governments to transition to a green economy, is expected to be launched at the U.N.

Conference on Sustainable Development, Rio+20, next June. The initiative aims to increase the efficiency of sustainability programs amid tight public budgets.

#### No EU Paper for COP

The European Commission will decline to publish a position paper setting out its objectives for the year-end Conference of Parties in South Africa. Breaking with recent practice, the EU cites frustration over the progress of recent COP's, and officials said that they hope this year's U.N. climate change summit results in a plan for reaching a comprehensive and legally binding framework to address global warming as well as a successor to the Kyoto Protocol.

#### Australia Announces Closing of Coal Plants

On September 30, the Australian government announced it will provide funding for the eventual closure of about 2,000 megawatts of lignite-fired generating capacity by mid-2016 or mid-2020. The move comes as part of the government's efforts to introduce a price on carbon and reduce greenhouse gas emissions.

#### Panel Releases Global Change Report

On September 30, the U.S. Global Change Research Program released the U.S. National Global Change Research Plan 2012-2021, a draft 10-year plan for research intended to help the public sector assess and respond to potential risks brought on by climate change. The report is charged with providing the scientific basis for policy decisions on adaptation and mitigation, formulating a sustainable assessment capacity for studying climate change, and broadening the public's understanding of the issue. The 13 member agencies, and partners from industry, state and local governments, and academia, outlined the intended studies and explained how that research may help to mitigate more severe heat waves, storms, floods, fires, crop failures, and water shortages. There is a public comment period until Nov. 29.

#### Report Outlines Climate Impact on Canada and Caribbean

On September 29, after undertaking the first national study of climate change's economic consequences for Canada, the National Round Table on the Environment and the Economy released *Paying the Price: The Economic Impacts of Climate Change for Canada* detailing the negative impacts of climate change on the Canadian and Caribbean economies unless global greenhouse gas emissions are reduced and adaption policies are put in place in individual countries. Enhanced forest fire prevention, pest control, and the planting of tree species resilient to climate change to protect the country's timber supply were among the report's recommendations, along with a prohibition on construction in at-risk areas and air quality measures.

#### UN Report Highlights Threats to Caribbean from Climate Change

On September 28, the United Nations' Economic Commission for Latin America and the Caribbean released *The Economics of Climate Change in the Caribbean*, a report warning that in the absence of immediate and severe action, climate change could cost Caribbean nations up to 5 percent of their annual gross domestic product between now and 2050. After two years of research, covering 14 countries, the report concluded the Caribbean nations are highly vulnerable to climate change due to geography and their small economies.

#### EU Announces Vehicle Efficiency Measures

On September 29, the advocacy group Transport and Environment released a report concluding that cars sold in the European Union are becoming more fuel-efficient, cheaper to run, and less polluting, demonstrating the value of 2008 legislation mandating carbon dioxide emissions from the passenger car fleet cannot average more than 130 g/km by 2015. The report also said that currently, Fiat and Toyota have fleet averages of 130 g/km or less, Peugeot Citroen's average is 131 g/km, Renault's is 136 g/km, and Ford and Suzuki have averages of 137 g/km. Volvo has the lowest emissions however, and has cut its average fleet emissions by 9.3%.