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ENERGY AND ENVIRONMENT UPDATE **October 23, 2011**

Energy and Climate Debate

Amid a continued focus on appropriations and deficit debate and a Presidential announcement on the Iraq war, energy issues garnered hefty space in the public mind last week.

The Joint Select Committee on Deficit Reduction continues its frequent closed-door meetings, and despite concern that the committee is still far from a consensus with just a month before its deadline, there is some indication that with increased involvement from Congressional leadership, the committee may meet its \$1.2 trillion deal. The panel announced last week that it would publically meet about discretionary spending. Additionally, the Gang of Six – Senators Saxby Chambliss (R-GA), Tom Coburn (R-OK), Kent Conrad (D-ND), Mike Crapo (R-ID), Dick Durbin (D-IL), and Mark Warner (D-VA) – briefed the supercommittee members about their \$3.7 trillion deficit-cutting proposal, which includes calls for increased tax revenues that many Republicans find unpalatable and entitlement cuts that are not appealing to may Democrats.

In the meantime, with the current Fiscal Year 2012 continuing resolution in place only to November 18 and appropriations measures still far from complete, it is becoming increasingly likely that another stopgap funding bill will be necessary. Though some progress has been made in the Senate on a minibus, with a series of staggered recesses planned, the House is likely to face increased pressure to move to a single omnibus measure for the entire government, should the two houses hope to avoid another CR. Should an agreement before the middle of November be impossible, another temporary spending measure will be necessary.

Senate Democrats fell short of the 60 votes needed to move forward a \$35 billion jobs bill October 20 as the chamber remains locked in a stalemate with the economy struggling and tens of millions of Americans looking for work. The package funded states and localities to hire and prevent layoffs of teachers and first responders through a 0.5 percent surtax on people earning more than \$1 million annually. The vote underscores the difficulty Congress will have in moving any economic package this year, even as the country continues to struggle with two ongoing crises: reigning in more than \$14 trillion in national debt and creating domestic jobs. While the Senate will be in recess the week of October 24, they will return the week of October 31 to take up myriad issues. Majority Leader Harry Reid (D-NV) announced that the Senate will also take up S. 1660 when it returns, which will be the infrastructure component of President

Obama's jobs package, and will offset the measure with a millionaire surtax. The legislation, to be unveiled in the coming days, will include \$50 billion for road, transit, rail, and aviation investments, as well as \$10 billion for the creation of a national infrastructure bank to provide major projects with credit assistance.

Congress

Fuel Economy Rules Challenged

Congressman Darrell Issa (R-CA) sent letters to Environmental Protection Agency and Department of Transportation officials October 18 asking them to provide legal argument as to why regulation of mobile source greenhouse gas emissions is different from regulating fuel economy through Corporate Average Fuel Economy standards. The letters, addressed to EPA's air Administrator Gina McCarthy, transportation chief Margo Oge, and National Highway Traffic Safety Administrator David Stickland, were sent in response to testimony they gave at an oversight hearing the previous week.

Pipeline Safety Passes Senate

Following Senator Rand Paul's (R-KY) hold lift, the Senate unanimously approved the Pipeline Transportation Safety Improvement Act of 2011 (S. 275) October 17. The legislation, introduced by Senators Jay Rockefeller (D-WV) and Frank Lautenberg (D-NJ), strengthens pipeline safety oversight by the federal government and addresses long-standing safety issues by reauthorizing and strengthening the authority of the Department of Transportation's Pipeline and Hazardous Materials Safety Administration through fiscal year 2015. The following day, the Senate Commerce Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security held a hearing on pipeline safety since the San Bruno, CA accident.

Senate Interior-EPA Spending Plan Unveiled

Senate Interior Appropriations Subcommittee Chairman Jack Reed (D-RI) and ranking member Lisa Murkowski (R-AK) released a draft fiscal year 2012 appropriations bill for the Department of Interior and Environmental Protection Agency last week that leaves out the list of House Republican riders to the same plan that target EPA programs. The legislation, the last of the 12 Senate spending bills to be unveiled and the only one that has not yet received a markup in the committee, funds the two agencies at \$29.3 billion for fiscal year 2012, a \$216 million cut from last year, but more than the House bill. The draft could be included in a future minibus appropriations package.

Carbon Capture Funding in Senate Minibus

On October 21, the Senate approved, by voice vote, S. Amend. 738 offered by Senator Thad Cochran (R-MS) to the Agriculture, Commerce-Justice-Science, Transportation, and Housing and Urban Development appropriations package, which will set aside up to \$2 billion in funding for carbon capture and sequestration projects. The amendment changes an Agriculture Department rural electrification and telecommunications loan program to provide money "for the construction, acquisition, or improvement of fossil-fueled electric generating plants (whether new or existing) that utilize carbon sequestration systems."

Murkowski Defends Loan Guarantee Program

In an October 19 interview, Senator Lisa Murkowski (R-AK), ranking Republican on the Senate Energy and Natural Resources Committee, defended the Department of Energy's loan guarantee program, as some members of Congress have attacked the program. Murkowski still sees "an appropriate role" for government financing in the realm of clean technology research, development, and deployment. Senate Energy Chairman Jeff Bingaman (D-NM), together with Murkowski, is planning a hearing this November on investment in clean energy technologies.

Texas Delegation Applauds Changes to CSAPR

On October 19, thirty-one members of the Texas House delegation applauded the Environmental Protection Agency's proposed changes to the Cross-State Air Pollution Rule as constituting positive first steps in reforming the rule. The letter requested additional rulemakings to address all of the many problems they have with the rule and its implementation.

Legislation Introduced

Senator Roy Blunt (R-MO) introduced legislation (S. 1729) October 18 to amend the Comprehensive Environmental Response Compensation and Liability Act of 1980 to clarify that manure is not considered a hazardous substance, pollutant, or contaminant under the Act.

The same day, New Jersey Representatives Bill Pascrell (D) and Frank LoBiondo (R) introduced the House companion (H.R. 3238) to Senators' Tom Carper (D-DE) and Olympia Snowe (R-ME) offshore wind investment tax credit (S. 1397). The legislation swaps a planned 2012 expiration deadline with a 30 percent investment credit for the first 3,000 MW of offshore wind power installed.

Senators Michael Bennet (D-CO) and Johnny Isakson (R-GA) introduced legislation (S. 1737) October 19 to account for energy costs in mortgage underwriting. The Sensible Accounting to Value Energy Act aims to boost home energy efficiency by directing federal mortgage loan agencies to consider a homeowner's expected energy costs when determining the homeowner's ability to make monthly mortgage payments.

North Dakota Senators Kent Conrad (D) and John Hoeven (R) introduced a companion October 21 to the recently passed House coal ash legislation. The Coal Residuals Reuse and Management Act of 2011 would ban the Environmental Protection Agency from setting binding standards for the disposal of coal ash and other leftovers from coal-fired power plants, instead establishing a nonbinding set of guidelines that states could opt into.

Upcoming Hearings

The House Ways and Means Committee will hold a hearing October 25 on the U.S.-China economic relationship, focusing on trade practices and non-tariff barriers that hinder U.S. companies from competing in the domestic Chinese market.

The House Natural Resources Committee will hold an oversight hearing October 27 entitled "Gulf Coast Recovery: President Obama's BP Compensation Fund, How Is It Working?"

The same day, the Investigations and Oversight Subcommittee and Energy and Environment Subcommittee of the House Science, Space and Technology Committee will hold a joint hearing to review the draft recommendations of the Blue Ribbon Commission on America's Nuclear Future.

Also on the same day, the House Oversight and Government Reform Committee will hold a hearing on the Environmental Protection Agency's Utility Mercury and Air Toxics Standards (MACT) rule.

Administration

Veto Threatened

Office of Management and Budget Director Jacob Lew sent a letter to Senate Appropriation Committee Chairman Daniel Inouye (D-HI) October 21 outlining plans to veto fiscal year 2012 spending legislation that would fund the government below levels specified by the Budget Control act or any legislation containing what the White House deems ideological policy riders. The letter specifically mentions clean energy programs currently under attack by House Republicans.

Department of Commerce

DOC, DOT Collaborate on Buy America

The Departments of Commerce and Transportation announced October 18 a partnership to target federal investments in rail, highway, and airport infrastructure to domestic manufacturers. Under the Department of Commerce's Manufacturing Extension Partnership, the federal government will help domestic suppliers meet Buy America provisions in a bid to boost domestic manufacturing, offering technical assistance for more than 34,000 of the country's suppliers as they tweak their manufacturing capabilities to meet global demand.

Department of Energy

PV for Schools

The Department of Energy released a report October 20 on financing solar photovoltaic systems for school buildings. The report, "Solar Schools Assessment and Implementation Project: Financing Options for Solar Installations on K-12 Schools," details best practices for financing PV systems on the buildings and was produced under the SunShot initiative.

New Exclusions for Environmental Assessments

Effective November 14, the Department of Energy will use 20 new categorical exclusions to meet obligations under the National Environmental Policy Act, allowing the department to avoid environmental assessments or lengthier impact analyses in certain instances. In the permitting of experimental wind turbines, some solar energy systems, biomass power plants, and some electricity transmission projects, the regulatory process will be shorter under the new rules.

Chu Takes Mixed Stance on Shale Gas

On October 18, Energy Secretary Steven Chu told attendees at the International Energy Agency ministerial conference that advances in producing shale gas could have significant potential for meeting global energy demands, but these same advances bring with them serious environmental concerns. DOE has been investing in researching horizontal drilling and the hydraulic fracturing, or fracking, since 1977, and did so until industry took over the bulk of R&D in the 1990's.

Department of Interior

No GHG Regs through ESA

Judge Emmet Sullivan of the U.S. District Court for the District of Columbia Circuit said October 17 that the Department of Interior's Fish and Wildlife Service may not use the Endangered Species Act to regulate greenhouse gas emissions. Environmental groups had filed suit, saying that regulations would be necessary to protect the threatened polar bear.

Solar Zones Plan Forthcoming

The Department of Interior is expected by the end of next week to unveil the latest phase of its plan to identify solar-rich areas in the West to accelerate the development of renewable energy. The agency's release of a draft supplement to its solar energy program will evaluate methods to identify new solar energy zones, provide incentives for developers to site projects in the zones, and suggest a variance process for developers proposing facilities outside of the zones.

BP Plan Approved

The Department of Interior announced October 21 the first approval of a deepwater oil and gas drilling exploration plan submitted by BP since the last year's Gulf of Mexico spill. The approval by the Bureau of Ocean Energy Management marks a milestone for the industry since the company had to meet new federal offshore drilling safety and environmental standards since the disaster. The same day, the Bureau appointed 15 members to its Outer Continental Shelf Advisory Committee, which meets at least once per year to provide advice on environmental assessments.

Environmental Protection Agency

Utility MACT Delayed

The Environmental Protection Agency announced October 21 that it will postpone until December 16 its planned mercury and toxics air standards for coal and oil-fired electric steam generating units, but that it opposes efforts by utilities to delay the rule for one year. The agency filed a brief with the U.S. District Court for the District of Columbia last Friday, in which, with agreement from environmental litigants, it delays its final issuance date of the utility MACT rules one month in order to respond to comments, and in another brief filed with the same court, the agency opposed utilities' petition to delay the rule.

Updated Air Quality Model Unveiled

The Environmental Protection Agency released a new version of its Community Multi-scale Air Quality model October 19 that uses up-to-the-minute meteorology and air chemistry data to determine how weather conditions impact pollution, and how pollution can affect and change weather. Version 5.0 allows scientists to analyze air quality at smaller, finer-resolution settings for individual towns and cities, and model air quality for the entire northern hemisphere.

\$6.6 Million for Black Carbon

The Environmental Protection Agency awarded October 18 more than \$6.6 million in grants to eight universities in support of black carbon research. The agency's Science to Achieve Results Program awarded nine grants to support research to study the role and effects of black carbon, analyzing the impacts of black carbon on air and water quality, investigating the behavior of black carbon aerosols in the atmosphere, and developing innovative tools to look at black carbon deposits on snow.

EPA Rules Challenged

A coalition of industry groups and states argued in the U.S. Court of Appeals for the District of Columbia Circuit October 17 that the Environmental Protection Agency used an absurd construction of the Clean Air Act to make its climate change endangerment finding. The Coalition for Responsible Regulation contends in a brief filed last week that the Tailoring Rule seeks to address the Endangerment Rule, without which there would be no Auto Rule, and that without the Auto Rule, the agency would have no basis to claim that significant revisions to emission standards are necessary. Final briefs are due November 14.

Wastewater Regulations Forthcoming

The Environmental Protection Agency announced October 20 its schedule to develop natural gas wastewater standards. The agency will propose rules to regulate wastewater discharges from coalbed methane by 2014 and from shale gas by 2014; currently, no federal standards exist to regulate the discharges.

\$50 Million for Clean Diesel

The Environmental Protection Agency's Diesel Emissions Reduction Program awarded \$50 million for clean diesel projects October 20. The efforts under the diesel emissions reduction program will replace, retrofit, or repower more than 8,000 older school buses, trucks, locomotives, vessels, and other diesel powered machines.

Proposed Rule on Eight Year Reviews

The Environmental Protection Agency announced that it will publish a proposed rule on October 24, that would allow the agency to forego eight-year reviews of new pollution source performance standards under the Clean Air Act, if current standards are deemed acceptable, no new sources are expected in the next eight years, or more stringent controls exist elsewhere in the Clean Air Act. Fourteen sources would not be subject to reviews under those three criteria, and public comments on the advance notice of proposed rulemaking will be accepted through November 23. The proposed rule is an attempt for EPA to comply with an executive order calling for a streamlined regulatory process.

States File in Favor of CSAPR

On October 19, Connecticut, Delaware, Maryland, Massachusetts, Rhode Island, Vermont, and the District of Columbia filed a motion in the U.S. Court of Appeals for the District of Columbia Circuit seeking permission to intervene in support of the Environmental Protection Agency's Cross-State Air Pollution Rule. The rule, released by EPA on July 7, orders power plants in 27 states to mitigate the movement of sulfur dioxide and nitrogen oxides to downwind states to help those states meet national ambient air quality standards for ozone and fine particulate matter. The rule has been challenged numerous times, all of which were consolidated into EME Homer City Generation LP v. EPA.

GHG Regulations to Provide Needed Certainty

On October 19, Environmental Protection Agency administrator Lisa Jackson told attendees at the United Nations Environment Program conference on global finance that EPA regulations requiring industries to report their annual greenhouse gas emissions will provide certainty for investors interested in clean

energy technologies. The other option is inaction, Jackson continued, which would ultimately have a higher price for insurers, investors, and industry.

Environmental and Health Groups Send EPA Notice to Sue

On October 18, The American Lung Association and National Parks Conservation Association sent a letter to the Environmental Protection Agency announcing their intention to sue the agency for missing its five-year deadline to review air quality standards for particulate matter, as required by the Clean Air Act. The letter said that suit would be filed in 60 days, unless appropriate steps were taken to update the last final rule on particulate matter dating back to October 17, 2006.

Federal Energy Regulatory Commission

FERC Rules in Favor of SPP and MISO Transmission Plans

On October 20, the Federal Energy Regulatory Commission gave final approval to two proposals for financing new electric transmission in the Midwest Independent System Operator (MISO) and the Southwest Power Pool (SPP), both of which hold immense potential for wind generation. A large and influential Michigan-based coalition of electric utilities and industrial companies remain adamantly opposed to the new plan, and has met with House Energy and Commerce Committee Chairman Fred Upton (R-MI) to voice its concern over potential rate increases as a result of the plans.

Nuclear Regulatory Commission

Safety Actions Ordered

The Nuclear Regulatory Commission directed its staff October 20 to begin actions recommended by the Fukushima accident task force that would strengthen U.S. nuclear plants against extreme natural disasters, setting 2016 as the goal for completion of most measures. The commission set also an April 2014 target for a new rule expanding defenses against prolonged loss of alternating-current electric power sources that operate cooling systems for reactors and spent fuel pools.

Small Business Administration

Small Businesses Lead Innovation

Small Business Administration Chief Counsel Winslow Sargeant released a report at the world Green Energy Symposium last week that concludes that U.S. small businesses lead the way on green technology innovation. The report, *Analysis of Small Business Innovation in Green Technologies*, was designed to highlight differences in the patent activity of small and large firms in green technologies and industry.

Personnel

Mark Weatherford, the chief security officer at North American Electric Reliability Corporation was announced October 20 as the deputy undersecretary for cybersecurity at the Department of Homeland Security.

Ron Bloom, President Obama's former manufacturing czar, announced October 16 that he will advise the National Association of Letter Carriers as the 280,000 member-union attempts to strike a new multi-year deal with the Postal Service.

Following three months of gridlock on the nomination, the Senate confirmed, 74-26, John Bryson October 20 to be the 37th Secretary of Commerce. The next day, Bruce Andrews, senior Capitol Hill staffer and veteran attorney who currently serves as General Counsel of the Senate Commerce Committee, was named Secretary Bryson's new chief of staff.

On October 20, the Senate confirmed Mark Wetjen, a former aide to Senate Majority Leader Harry Reid (D-NV) to replace Michael Dunn on the Commodity Futures Trading Commission.

Miscellaneous

Solar Jobs Grow

The Solar Foundation released its Natural Solar Jobs Census 2011 last week. The report finds that one in every four solar energy jobs made in the United States is in California, but that the industry is growing all over the country, at a 6.8 percent growth rate in the last year.

Cap and Trade for CA

The California Air Resources Board unanimously voted October 20 to approve an environmental impact analysis, a management plan for dealing with changes to local air quality, and a cap and trade system for the state. The landmark set of air pollution controls to address climate change is the nation's first state-administered cap and trade program and is intended to help the state achieve its ambitious goals to reduce greenhouse gas emissions.

Chinese Trade Violations Alleged

SolarWorld Industries America led six other companies in forming the Coalition for American Solar Manufacturing October 19, and at the same time filed petitions with the Commerce Department and the U.S. International Trade Commission claiming that China is illegally dumping solar energy products into the U.S. market and receiving massive subsidies from their government that violate World Trade Organization rules and put all other companies around the world at a competitive disadvantage. The petitions, backed by Oregon Senators Ron Wyden (D) and Jeff Merkley (D), ask the Commerce Department to begin its investigation within the next month and have the International Trade Commission file a preliminary determination by the end of the year, and a final determination in about a year. The next day, the Chinese Commerce Ministry rebuked the move, saying that the complaint may harm global economy recovery.

Chinese Consider Environment Taxes

China posted a statement last week that unveils its intent to move forward with environmental tax reform as the State Council studies the introduction of an environmental protection tax. Premier Wen Jiabao said that the government would also support bond issues for companies undertaking environmental projects and provide tax breaks.

MA Clean Energy Jobs Grow

The MassCEC released the 2011 Massachusetts Clean Energy Industry Report last week. The report identified 4,909 clean energy employers that employ more than 64,000 people in the state, a 6.7 increase in jobs from July 2010 to July 2011. The industry is expecting a growth rate of 15.2 percent over the next 12 months. On October 20, the state unseated California, taking the top slot in the nation in an American Council for an Energy-Efficient Economy scorecard that ranks states on energy efficiency efforts.

CDP Improves Metric

The Carbon Disclosure Project announced October 20 that it will begin scoring greenhouse gas emissions reports provided to its Supply Chain initiative. The Carbon Disclosure Project issues questionnaires to hundreds of companies each year, asking management to voluntarily report their annual greenhouse gas emissions.

States to Streamline Electric Vehicle Rules

State officials from 10 Northeastern and mid-Atlantic states announced a new plan October 19 to spur electric vehicle deployment along the East Coast. Using \$1 million in grant money from the Department of Energy, the Northeast Electric Vehicle Network will do a thorough analysis of existing laws, policies, and regulations, and make recommendations to legislators and state agency heads about possible changes to them in order to create uniform standards for the quick deployment of electric charging stations and streamline the permitting process.

Berkeley Finds Warming Earth

The Berkeley Earth Project released findings October 21 that conclude that the earth's surface is warming. Researchers concluded that, on average, global land surface temperatures have risen about 1

degree Celsius since the mid-1950's, on par with the warming trend described by research groups at the National Oceanic and Atmospheric Administration, NASA, and the U.K. Meteorological Office.

UK Makes Wind Cuts

The United Kingdom announced October 21 that it will cut subsidies for onshore and offshore wind power while more than doubling those for wave and tidal energy as it works to save approximately \$2 billion while also meeting its greenhouse gas reduction targets.

Japanese Offset Plan Announced

Japan, the fifth-largest global greenhouse gas emitter, unveiled a plan October 21 to subsidize 14 companies considering foreign emissions offsets as an alternative to the United Nations' carbon trading scheme. The country will distribute \$32 million among 40 groups as part of its plan to test new low-carbon strategies in 18 developing countries.

Brazil to Increase Funding for Wind Generation

On October 19, the Brazilian Development Bank's electric energy department announced that it expects to provide \$2.5 billion in financing for wind generation projects in 2011, up from \$364 million in 2010. The bank has already received loan requests for wind energy projects totaling \$4.5 billion this year, with another \$1.6 billion to be released by year's end, and has already approved and released \$900 million. On August 17-18, the bank's last energy auctions saw 92 energy projects win contracts, of which 78 were for wind energy. Increased investment from American and European wind equipment suppliers has been the catalyst of an average 20 percent annual reduction in the costs of Brazilian wind energy projects.

EU Approves Caterpillar Acquisition

On October 19, the European Commission authorized, with significant reservations about the new company's size, Caterpillar to acquire MWM, a German company that manufactures reciprocating engine generator sets used for decentralized electricity production.

US Oil Industry Spending More on Clean Energy Technology

On October 20, the American Petroleum Institute released *Key Investments in Greenhouse Gas Mitigation Technologies from 2000 Through 2010 by Energy Firms, Other Industry and the Federal Government* finding \$71 billion invested by U.S.-based oil and natural gas companies in clean energy technologies between 2000 and 2010 was more than the federal government's \$43 billion invested during the same period. The investments include substituting cleaner fuels like ethanol, reducing flaring and fugitive emissions, and co-generating heat and power. These investments reduced the industry's greenhouse gas emissions by 55.9 million metric tons of carbon dioxide-equivalent between 2008 and 2009.

Indian Energy Official Calls for Increased Renewable Development

On October 13, India's Minister of Federal Power Sushilkumar Shinde called on India to develop its hydroelectric, solar, and wind energy sources as a means of coping with diminishing coal reserves, which accounts for a full 65% of the country's energy portfolio. Shinde confirmed coal would continue to account for the majority of India's energy production through 2016. Yet as coal production decreases, costly imports will increase, and several Indian states in the country are facing electricity shortfalls due to coal shortages.

State Efficiency Scorecard Released

On October 20, the American Council for an Energy-Efficiency Economy released *The 2011 State Energy Efficiency Scorecard* concluding that state spending on electricity energy efficiency programs totaled \$4.5 billion in 2010, up \$1.1 billion from last year. When combined with natural gas efficiency program spending, the number rises to almost \$5.5 billion, indicating how seriously states take the issue in the absence of Congressional action. Twenty four states have adopted standards for energy efficiency requiring a reduction in energy consumption by utilities, and 29 states have, or are close to having, more progressive energy building codes.

Increased Chinese Demand for Environmental Products

October 20, the Hong Kong Trade Development Council released a report concluding that among higher end middle-class consumers in mainland China, demand for environmentally friendly products is a growing market. Growth is tempered by issues with the certification of such products on the mainland, unlike imported foreign products with established certification regimes.

EIA Report on Emissions

On October 19, the International Energy Agency released a preview of *CO₂ Emissions From Fuel Combustion* concluding that carbon dioxide emissions from developed countries declined 6.5 percent year-on-year in 2009, while emissions in developing countries – led by China and India – rose 3.3 percent in the same period. The full report is to be released right before the United Nations climate summit in Durban, South Africa this November.

Pew Report on the Market for Carbon Solutions

On October 18, the Pew Center on Global Climate Change released *The Business of Innovating: Bringing Low-Carbon Solutions to Market* arguing that low-carbon products and solutions require an understanding of policy. According to the report, commercializing carbon innovation requires an understanding of local, state, federal and global policies, engagement with policymakers, commitment from the company's highest levels; and investment and acquisition partnerships – among other things.