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ENERGY AND ENVIRONMENT UPDATE **October 30, 2011**

Energy and Climate Debate

Though appropriations and deficit reduction served as the central items of debate last week, energy issues garnered close attention, both for their association with appropriations and deficit reduction, and on their own, with particular focus on a clean energy standard and continued fallout from the Solyndra bankruptcy.

Final clearance on a three-bill minibus (H.R. 2112) and a vote on a key element of President Obama's jobs initiative will be the Senate's top priorities when it resumes work October 31. Following passage of an amended Agriculture, Commerce-Justice-Science, and Transportation and Housing and Urban Development minibus, Majority Leader Harry Reid (D-NV) plans to move to the next spending bill minibus that Senate Appropriations Committee Chairman Daniel Inouye (D-HI) has bundled together. The next likely minibus would be taken up later in the week and would include Energy and Water, Financial Services, General Government, and possibly Foreign Operations.

Following recent questions as to whether the House would move forward with an omnibus funding measure or a series of minibus appropriations bills, House Majority Whip Kevin McCarthy (R-CA) said October 25 that the House would take the minibus route. While House Appropriations Interior, Environment, and Related Agencies Subcommittee Chairman Mike Simpson (R-ID) said last week that the fiscal year 2012 appropriations measure for those agencies would not move forward without policy riders that curb the Environmental Protection Agency's authority to regulate greenhouse gas emissions and other similar measures, Democratic Whip Steny Hoyer (D-MD) is leading a letter that nearly all House Democrats are anticipated to sign that calls on Speaker of the House John Boehner (R-OH) to move away from including policy riders, particularly partisan riders, including those aimed at Environmental Protection Agency air rules, in FY2012 appropriations legislation

Since the two chambers are far from reaching an agreement on the twelve fiscal year 2012 spending bills, and the November 18 deadline for the current continuing resolution is looming, Congressional leaders are currently considering a new continuing resolution that would run through the end of January.

The Senate is also expected to take a test vote of another element of President Obama's job initiative. Majority Leader Reid may undertake procedural moves October 31 to set the stage for a cloture vote November 2 on a bill to provide \$60 billion in infrastructure investments. Previous test votes on other elements of the jobs package have demonstrated that the majority leader did not have the necessary

votes to begin debate, and a similar end is anticipated with this vote as well. President Obama unveiled a number of small unilateral executive actions, and it is possible that future executive orders may concern clean energy.

The Joint Select Committee on Deficit Reduction continues its regular meetings as it works to find at least \$1.2 trillion in deficit reduction by November 23. Democrats and Republicans exchanged competing deficit reduction plans October 26, with the biggest partisan split less over spending and more over the willingness to find some solution to the impasse over tax revenues. Senators Sheldon Whitehouse (D-RI), Barbara Boxer (D-CA), Richard Blumenthal (D-CT), Ben Cardin (D-MD), Tom Carper (D-DE), Al Franken (D-MN), Jeff Merkley (D-OR), Bernie Sanders (I-VT), and Jeanne Shaheen (D-NH) sent a letter to the Supercommittee last week urging them to achieve their goal through a combination of federal energy efficiency and clean energy measures, specifically the increased use of energy efficiency in government buildings and increased federal usage of renewable energy as well as the reduction of unnecessary oil and gas subsidies and protection of federal investments in clean energy and energy efficiency programs.

Congress

Diesel Fracking Fluids Increased

House Energy and Commerce Committee ranking member Henry Waxman (D-CA), Oversight and Investigations Subcommittee ranking member Diana DeGette (D-CO), and Natural Resources Committee ranking member Ed Markey (D-MA) sent a letter October 25 to Environmental Protection Agency Administrator Lisa Jackson increasing their initial findings on the use of diesel as hydraulic fracturing fluids. The letter asserts that oil and gas companies injected 32.7 million gallons of diesel into gas wells in 20 states during a five year period; and increase from the 32.2 million gallons in 19 states reported in January.

Pipeline Safety Compromises

House Republicans on the Transportation and Infrastructure and Energy and Commerce Committees are working to iron out differences between two bills that would reauthorize federal pipeline safety programs. There are currently three pieces of legislation aimed at reauthorizing the pipeline safety programs that expired in 2010, two in the House and one in the Senate. House Republicans hope to have a single House bill before the end of the year, as each of the two committees has passed its own version (H.R. 2845 and H.R. 2937) this fall. The Senate unanimously passed S. 275 October 17.

Funding Questioned

House Energy and Commerce Committee Republicans asked the Environmental Protection Agency and the Departments of Commerce, Energy, and Health and Human Services October 24 to explain billions of dollars that remain unspent by the agencies each year. Committee Chairman Fred Upton (R-MI) and Oversight and Investigations Subcommittee Chairman Cliff Stearns (R-FL) have had a number of hearings as part of a planned series on cutting agency spending. The agencies have until November 7 to reply.

Energy Title for Farm Bill

A coalition of roughly 50 trade groups and organizations representing renewable energy, energy efficiency, farm, and forest interests urged the House and Senate Agriculture Committees in a recent letter to include an energy title in any new Farm Bill legislation. The Agriculture Energy Coalition pointed to programs in the Energy Title of the 2008 Farm Bill that have helped to finance thousands of renewable energy projects and energy efficiency improvements at farms, ranches, and businesses across rural America.

House Exempts U.S. Airlines

The House approved legislation (H.R. 2594) October 24 that would prohibit U.S. airlines from participating in the European Union emissions trading scheme, which is scheduled to take effect for airlines this January. The European Union Emissions Trading Scheme Prohibition Act would direct the Transportation secretary to prohibit domestic aircraft operators from participating in the trading scheme and instruct the

Federal Aviation Administration to negotiate or take action to ensure U.S. aviation operators are held harmless from not participating in the scheme.

Oversight Hearing Requested

Senator James Inhofe (R-OK) sent a letter October 26 to Senators Barbara Boxer (D-CA) and Tom Carper (D-DE) asking them to hold within the Senate Environment and Public Works Committee an oversight hearing on President Obama's decision to not adopt more stringent ozone air quality standards.

Energy Tax Repeals Forthcoming

Representative Mike Pompeo (R-KS) released a dear colleague letter in which he outlined plans to introduce a bill this week that would repeal all energy-specific tax subsidies. The repeals would save the government an estimated \$90 billion over 10 years, based on a Congressional Budget Office score. Congressman Pompeo plans to propose making equal deductions in the corporate tax rate so that the repeals are revenue neutral.

Representatives Seek Hearing on Global Warming Report

On October 28, Reps. Henry Waxman (D-CA) and Bobby Rush (D-IL) sent a letter to the House Energy and Commerce Committee requesting that a hearing be held analyzing the Berkeley Earth Surface Temperature Project's work on global warming. The project is led by University of California-Berkeley physics professor Robert Muller, and after analyzing 1.6 billion temperature measurements from more than 39,000 temperature stations the project found an average rise of 1 degree Celsius in world land temperatures since the middle of the 20th century.

Legislation Introduced

Senator Al Franken introduced the Community Wind Act (S. 1741) October 20. The legislation would raise the capacity limit from the current investment tax credit for small-scale wind from 100 KW to 20 MW through the end of 2016.

Congressman Pete Stark (D-CA) introduced legislation (H.R. 3242) October 25 to levy a carbon tax on fossil fuels in order to reduce domestic dependence on foreign oil, spur development on alternative energy, protect consumers from rising energy costs, mitigate climate change, and reduce the deficit. The Save Our Climate Act would raise more than \$2.6 trillion in revenue and reduce carbon emissions by 25 percent over 10 years.

Congressman Jim Sensenbrenner (R-WI) introduced legislation (H.R. 3280) October 27 to amend the Federal Power Act to establish a regional transmission planning process.

The same day, Representative John Campbell (R-CA) introduced legislation (H.R. 3274) to direct the National Highway Traffic Safety Administration to establish a program allowing small volume vehicle manufacturers to produce not more than 1,000 vehicles annually within a regulatory system that addresses the unique safety and financial issues associated with limited production, and to direct the Environmental Protection Agency to allow low volume vehicle manufacturers to rely upon certificate of conformity issued to engines from certified vehicles.

Upcoming Hearings

The House Energy and Commerce Committee's Oversight and Investigations Subcommittee will hold a hearing November 17 at which Energy Secretary Steven Chu will testify about Solyndra.

The House Energy and Commerce Committee's Oversight and Investigations Subcommittee will hold a hearing November 3 to consider a resolution authorizing the issuance of a subpoena for White House internal communications related to the Solyndra loan guarantee. House Republicans have already met with at least seven Energy Department career officials involved with different critical phases of the \$535 million loan guarantee, and additional similar interviews are expected soon.

The House Science, Space, and Technology Committee's Energy and Environment Subcommittee will hold a hearing November 2 on the unintended consequences of motor fuel standards, with testimony from refiners and environmentalists.

Administration

Loan Guarantee Investigation Ordered

The White House ordered a review October 28 of loan guarantees made by the Department of Energy after the Solyndra scandal. Former Treasury official Herb Allison will run the investigation.

Department of Commerce

Chinese Solar Investigation Launched

Following petitions filed October 19 with the International Trade Commission and the Commerce Department by a coalition of solar manufacturers alleging that China is flooding the American market with illegally subsidized and underpriced goods, the ITC is launching a preliminary antidumping and countervailing duty investigation related to the import of crystalline silicon photovoltaic solar panels from China. The investigation will seek to determine whether there is a "reasonable" indication that the domestic solar manufacturing industry has been harmed by subsidized imports, and if the ITC and Commerce Department do find illegal actions, duties could be collected retroactively. The Commission has until December 5 to make a preliminary determination; a positive determination would allow a concurrent Commerce Department investigation to continue.

Department of Energy

CES Analysis Released

The Department of Energy's Energy Information Administration released a study October 24 that finds that a clean energy standard would increase electricity costs nationally by almost 30 percent. The *Analysis of Impacts of a Clean Energy Standard* was requested by House Science, Space, and Technology Committee Chairman Ralph Hall (R-TX). Congressional Democrats objected to the report, saying that the policy proposal submitted by Chairman Hall omitted several factors contained in typical CES proposals in an effort to demonstrate a worst-case scenario, including banking credits, purchasing credits from the government, and a gradual phase-in of targets. Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) plans to release CES legislation in November that will be based on the results of a separate EIA study.

\$60 Million for Concentrated Solar

The Department of Energy announced October 25 a \$60 million investment over three years for applied scientific research to advance cutting-edge concentrating solar power technologies. The SunShot Initiative investments in solar energy research encourage rapid, widespread adoption of solar energy systems across the country, help the U.S. solar power industry overcome technical barriers and reduce costs, boost domestic competitiveness in the worldwide market for solar technologies, and provide support for clean energy jobs. Pre-applications are due November 22, and full applications are due February 7; the agency plans to fund 20 to 22 projects in industry, universities, and national labs.

Vehicle Cost Calculator Unveiled

The Department of Energy's Office of Energy Efficiency and Renewable Energy launched a vehicle cost calculator and accompanying widget October 26. The agency's Alternative Fuels and Advanced Vehicles Data Center helps consumers, fleet managers, and local governments find and compare energy-saving vehicles that can reduce their petroleum consumption, and the calculator allows users to compare emissions and lifetime operating costs of specific vehicle models.

Gas Furnace Efficiency Rules

On October 31, the Department of Energy will publish a final rule requiring a 13 percent efficiency improvement for non-weatherized natural gas furnaces, the most common type in the United States, starting in 2013. The proposed rule comes despite intense opposition from the natural gas industry, which

says the standards will drive consumers to electric furnaces, and will be open to a 110-day comment period. The DOE defended the version of the rule that was issued in June by restating that they found no reason to abandon the final rule given industry opposition.

Department of Defense

Army Goals Achievable through Utility Collaboration

According to an October 26 study by RAND Arroyo Center, the U.S. Army can reduce its energy consumption and meet other energy goals by entering into service contracts with utility companies and collaborating with utilities on renewable energy projects. The *Making the Connection: Beneficial Collaboration Between Army Installations and Energy Utility Companies* also suggests that the Army can reduce energy use and costs by educating personnel about contracts and energy projects. The Army is required to reduce its energy consumption 30 percent by 2015 under the Energy Independence and Security Act of 2007 and increase its use of renewable energy by 7.5 percent by 2013 under the Energy Policy Act of 2005.

Department of Interior

Solar Zones Reduced

After receiving more than 80,000 comments on a draft version of the December 2010 plan, the Department of Interior announced October 27 that it would revise back the number and acreage of planned Solar Energy Zones. The revisions, laid out in the Supplement to the Solar Energy Development Draft Programmatic Environmental Impact Statement, would reduce the number of zones from 24 to 17 and the total acreage available for development from 677,000 acres to about 285,000 acres. The plan is subject to a 90 day comment period, and the agency will release a final version in 2012.

OSM, BLM Merge

Interior Secretary Ken Salazar outlined plans October 26 for moving the Office of Surface Mining to the Bureau of Land Management. The move allows the agency to work more efficiently and allows the two offices to share administrative functions.

Environmental Protection Agency

EPA to Be Sued Over PA Failure

The Clean Air Council released a notice October 24 that it plans to sue the Environmental Protection Agency because it has not determined that Pennsylvania failed to submit a plan to reduce ambient ozone. The notice contends that the agency has a mandatory under the Clean Air Act to make the failure to submit determination for the 2008 ozone standards, and the agency has 60 days to respond to the notice.

CO Opposition Denied

The Environmental Protection Agency denied two administrative petitions last week by a conservation group asking the agency to object to Colorado's issuance of Clean Air Act permits to coal-fired power plants in Boulder County and Denver. Administrator Lisa Jackson found that WildEarth Guardians failed to establish or provide evidence that determinations made by the Colorado Department of Public Health and Environment in issuing permits to the two facilities were unreasonable or inappropriate.

Court Denies Utility MACT Delay

On October 24, the U.S. District Court for the District of Columbia denied an industry groups request to postpone for one year the Environmental Protection Agency's deadline for issuing the utility most achievable control technology standards. At the same time, the court granted a request from the EPA and environmental and health groups to delay the rule, which targets mercury and other air toxics from power plants, for one month until December 16 in order to respond to 960,000 public comments received on the proposed rule.

OMB Reviewing Utility MACT

The White House Office of Management and Budget is reviewing a finding by the Environmental Protection Agency that it is “appropriate and necessary” to regulate mercury and other air toxics emissions from power plants. The agency sent the utility MACT finding to OMB for interagency review October 24, and the finding must be signed by December 16.

Boiler MACT Delayed

The Environmental Protection Agency announced October 24 that it will not propose revised air pollution standards for boilers and incinerators by October 31 as planned. The agency intends to issue the proposed Boiler MACT rule by November 30. The proposed rule is being reviewed by the White House Office of Management and Budget as part of the interagency review process.

NSP Rules Delayed

The Environmental Protection Agency announced October 24 that it will delay a proposed rule for new source performance standards and national emissions standards for hazardous air pollutants for the oil and gas sector. The agency will accept stakeholder feedback for an additional 30 days, until November 30.

Federal Energy Regulatory Commission

FERC Compelled to Study Reliability

The U.S. Chamber of Commerce urged Congress last week to pass legislation to compel the Federal Energy Regulatory Commission to study how several Environmental Protection Agency air pollution rules will impact electricity reliability.

Federal Aviation Administration

FAA Ordered to Review Earlier Cape Wind Environmental Findings

On October 28, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Federal Aviation Administration must review potential hazards of the proposed Cape Wind project off the coast of Massachusetts after failing to follow its own internal procedures in the initial review. On the first review, the FAA issued 130 identical determinations for each wind turbine stating that they “would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft on the operation of air navigation facilities.” That determination was based largely on the fact that the turbines would be less than 500 feet tall, which the court said was an insufficient measure of their overall impact. The ruling further criticized the FAA for failing to analyze potentially negative effects on pilots operating in the area under visual flight rules.

Department of State

Environmentalists Ask for Keystone XL Investigation

On October 28, the Sierra Club, the Natural Resources Defense Council, and Friends of the Earth sent a letter to Harold W. Geisel, deputy inspector general for the State Department, requesting an investigation into whether TransCanada’s proposed Keystone XL crude oil pipeline review violated the National Environmental Policy Act (NEPA) because of biases within the department. The groups also warned the Obama administration that environmentalists would withhold votes and support in the 2012 election.

Personnel

Environmental Protection Agency Chemical Safety Office director Stephen Owens announced last week that he will step down from his post at the end of November.

Miscellaneous

NIST Releases Smart Grid Standards

The National Institute of Standards and Technology published its second round of smart grid technical standards October 25 that build on the initial framework issued in January 2010. The latest proposal, the

“Framework and Roadmap for Smart Grid Interoperability Standards, Release 2.0,” includes an expanded chapter on cybersecurity, a new testing and certification chapter, and an update on the newly formed Smart Grid Interoperability Panel, and the framework is subject to a 30-day public comment period.

Special NE Keystone Session

Nebraska Governor Dave Heineman (R) called for a special session of the state legislature October 24 to consider asserting state authority over the route the Keystone XL pipeline will take through the state. The special session will begin November 1 and will address concerns about the proposed route of the pipeline, which would run from Alberta to Texas and cross the Ogallala Aquifer on its route through Nebraska.

Carbon Budgets for South Africa

South Africa released a white paper October 18 concluding that it expects by October 2013 to issue greenhouse gas budgets for high-emitting sectors of the economy to help the country’s emissions plateau by 2025 and start to decline around 2036. The National Climate Change Response White Paper finds that carbon budgets will be used to establish allowable emissions for companies and economic sectors or subsectors.

US, China Must Joint Kyoto Successor

Speaking in advance of the 17th Conference of Parties to the United Nations Framework Convention on Climate Change, Japanese Minister of the Environment Goshi Hosono said October 21 that the nation remains opposed to an extension of the Kyoto Protocol and insists that the United States and China join any successor agreement to combat climate change. Japan will urge country representatives to declare respective reduction targets and action plans and to have those pledges measured, reported, and verified by multilateral institutions.

Complementary Efforts Proposed

Representatives from the World Resources Institute, the U.N. Environment Program, and others announced a report, *Building the Climate Change Regime: Survey and Analysis of Approaches* October 24, calling for greater ambition in local, national, and international efforts to combat climate change. The report suggests a number of ideas to complement the annual U.N. Conference of Parties with other efforts to boost clean energy use and reduce GHG emissions, including raising climate issues in other bodies such as the Group of 20 economic forum.

Japanese Vehicle Efficiency Increased

Japan’s Ministry of Land, Infrastructure, and Transport finalized targets October 20 to increase average passenger car fuel economy to 47.7 miles per gallon by 2020, an increase of 24.1 percent from 2009 levels.

Solar Market Challenges

The Congressional Research Service released a report October 25 finding that solar panel manufacturers that have received loan guarantees from the Department of Energy will face the same market risks that contributed to Solyndra’s bankruptcy. Those risks include declining solar module prices, competition from new and established solar panel manufacturers, and reductions in subsidies and incentives in European and other international markets. The report, *Solar Projects: DOE Section 1705 Loan Guarantees*, concluded that 82 percent of the \$16.15 billion in loans guaranteed under the 1705 program have been for solar projects, including nearly \$12 billion for solar generation projects.

CA Greenwashing Charged

California Attorney General Kamala Harris filed a lawsuit October 26 in the Superior Court of Orange County charging three companies with falsely claiming their bottles were biodegradable and recyclable. “The AG called the action the first of its kind greenwashing lawsuit. The complaint names as defendants ENSO Plastics LLC, Balance Water Co., and Aquamantra Inc.

Extended Financial Market Oversight for EU

The European Commission published a proposal October 20 in which carbon allowances traded in the European Union would be classified as financial instruments to give them the same level of protection as other financial products. The Commission noted the particular need for more protection in the spot market. Classifying emissions allowances as financial instruments would result in stricter monitoring for fraud or money laundering, and require banks and investment firms to more diligently vet traders.

CA Manufacturing Tax Exemption Resumes

The California Alternative Energy and Advanced Transportation Financing Authority voted unanimously October 25 to resume a sales tax exemption for green manufacturing equipment. The exemption had been on a one month pause prompted by the Solyndra bankruptcy. The Authority will begin taking applications immediately.

EU to Publish Auto Emissions Regulations

On October 28, the European Commission announced it will release proposals, sometime in 2012 or 2013, tightening passenger cars, light vans, and heavy-duty vehicles' carbon dioxide emission limits. Cars and vans will have 5.4 and 8.3 ounces per mile limits respectively under the 2020 limits being discussed.