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## **ENERGY AND ENVIRONMENT UPDATE** **November 13, 2011**

### **Energy and Climate Debate**

With the continuing resolution and supercommittee deadlines looming, energy issues continue to play a significant role in both appropriations and deficit reduction debates.

With the continuing resolution set to expire November 18, House and Senate appropriators hope to finalize a conference agreement on the first minibus (H.R. 2112) so that it may be filed by late November 14 in order to set the stage for floor action in both chambers this week. Besides including three of the fiscal year 2012 bills – Agriculture, Commerce-Science-Justice, and Transportation and Housing and Urban Development – the minibus is expected to include a new continuing resolution ensuring federal funds through December 16.

The Senate plans also to begin work on a second three-bill minibus this Monday and will use most of the week to consider amendments to the package, and invoked cloture on a motion to proceed to the bill (H.R. 2354) November 10. The package incorporates the annual spending bills for Energy and Water, Financial Services, and State and Foreign Operations, all of which were cleared easily by the Senate Appropriations Committee. Debate on H.R. 2354, however, is expected to be more contentious than what was seen during consideration of the first minibus.

The Administration released a Statement of Administration Policy November 10 in which it pointed to, among other things such as funding for the Wall Street reform act, a number of issues within the Energy and Water Development and Related Agencies Appropriations Act of 2012 (H.R. 2354) as issues of priority. For example, within the Department of Energy, the Administration is urging the Senate to provide \$1.95 billion for Energy Efficiency and Renewable Energy programs and at least \$300 million for the Advanced Research Projects Agency-Energy. The Administration commended the Senate bill for including \$200 million for the loan guarantee program, which is estimated to support \$1 billion to \$2 billion in loan guarantees for renewable energy and energy efficiency projects, and urged the Senate to include funds for a new Better Building Pilot Loan Guarantee program, as proposed in the President's fiscal year 2012 budget as well as additional loan volume authority for nuclear power projects.

The floor-bound Energy and Water legislation will closely resemble the measure the Senate Appropriations Committee passed in September. That bill provides \$31.6 billion for agencies, and is almost \$5 billion less than what President Obama requested and \$57 million less than 2011 funding levels.

Meanwhile, the House has planned a vote on a constitutional amendment requiring a balanced U.S. budget, and will also debate a Senate amendment to the bill (H.R. 674) to repeal the 3 percent withholding on payments the government makes to certain vendors.

Despite concern over whether the Joint Select Committee on Deficit Reduction will be able to meet its November 23 deadline to identify \$1.2 trillion in deficit reduction, committee member Representative Chris Van Hollen (D-MD) said last week that the supercommittee will not seek an extension of its deadline. One of the latest committee highlights is that supercommittee Democrats have proposed that the savings from the end of the Iraq and Afghanistan wars be used to pay for a new stimulus package, according to the latest summary of the \$2.3 trillion plan.

Another issue on the end-of-year to do list includes a tax extenders package. Though there will almost certainly be a tax extenders package, it is unclear to which legislative vehicle it will be attached. Over 100 different tax provisions are set to expire, so there is growing support to address the issue soon; House Ways and Means Committee Chairman Dave Camp (R-MI) is even pushing for an extenders bill, and his committee staff and the staff of the Senate Finance Committee have begun drafting legislative language.

## **Congress**

### Air Pollution Nullification Denied

The Senate defeated, 56-41, November 10 the motion to proceed to Senator Rand Paul's (R-KY) resolution (S.J. Res. 27) blocking the Environmental Protection Agency's Cross-State Air Pollution Rule. Six Republicans voted with all but two Democrats to defeat the resolution, and Senators Joe Manchin (D-WV) and Dan Coats (R-IN) took to the Senate floor after the vote, vowing to pursue a compromise approach, their November 9 Fair Compliance Act of 2011 (S. 1833).

### Solyndra Communications

Responding to a subpoena issued by the House Energy and Commerce Committee, the White House turned over 130 pages of internal communications on Solyndra to the House Energy and Commerce Committee November 11. In total, the administration has turned over 185,000 pages of documents, including 100,000 pages from the Department of Energy last week.

### EPW Approves Highway Bill

The Senate Environment and Public Works Committee unanimously approved a two-year bipartisan highway bill (S. 1813) November 9. The move is the first step in a reauthorization process that still hinges on finding \$12 billion in offsets; Senator Max Baucus (D-MT), chairman of the Senate Finance Committee, is working to identify the resources on a bipartisan basis to pay for the bill, but Senate Democrats are opposed to House Speaker John Boehner's (R-OH) plan to introduce an infrastructure jobs bill funded through expanded domestic energy production.

### CARB Docs Sought

House Oversight and Government Reform Chairman Darrell Issa (R-CA) asked the California Air Resources Board for information and documents November 9 related to the agency's role in negotiating national fuel economy and greenhouse gas standards for passenger cars, light-duty trucks, and heavy-duty trucks, or CAFE standards. The request came in a letter giving CARB Chairman Mary Nichols until November 23 to answer a list of questions and turn over a number of documents.

### Legislation Introduced

Representative Russ Carnahan (D-MO) introduced legislation (H.R. 3371) November 4 to produce high-performance Federal buildings through an improved approach to building utilization, design, construction, and operations and maintenance.

Congressman Dave Reichert (R-WA) introduced legislation (H.R. 3374) to extend and modify the credit for new qualified hybrid motor vehicles.

Representative Rick Berg (R-ND) introduced the Regional Haze Federalism Act (H.R. 3379). The legislation would limit the ability of the Environmental Protection Agency to unilaterally override States' management of regional haze and empower states to implement plans that best fit their needs.

Congressman Ed Markey (D-MA) introduced legislation (H.R. 3389) to provide the establishment of Clean Energy Consortia to enhance the Nation's economic, environmental, and energy security by promoting commercial application of clean energy technology.

Representative Chellie Pingree (D-ME) introduced legislation (H.R. 3391) to establish a national mercury monitoring program.

Senator Mark Begich (D-AK) introduced the Alaska Natural Gas Pipeline Improvement Act of 2011 (S. 1812) November 7. The legislation would amend the Alaska Natural Gas Pipeline Act of 2004 to promote the availability of affordable, clean-burning natural gas to domestic markets by streamlining federal regulations and extending key benefits to apply to Alaska-based segments of gasoline that could be connected to the lower 48.

Senator Barbara Boxer (D-CA) introduced legislation (S. 1813) to reauthorize Federal-aid highway and highway safety construction programs.

Senators Lamar Alexander (R-TN) and Mark Pryor (D-AR) introduced (S. 1815) last Monday as an alternative to Senator Rand Paul's (R-KY) efforts to overturn the Environmental Protection Agency's Cross State Air Pollution Rule. Their bipartisan bill will enact the proposed rule into law but give utilities one additional year to implement it.

Two days later, Senators Joe Manchin (D-WV), Dan Coats (R-IN), Bob Corker (R-TN), and Ben Nelson (D-NE) introduced legislation (S. 1833) that would delay the Environmental Protection Agency's Cross-State Air Pollution and Utility MACT rules. The Fair Compliance Act would delay until 2017 the compliance deadline on both rules.

Senators Ron Wyden (D-OR), Susan Collins (R-ME), and Jeff Bingaman (D-NM) introduced the Storage Technology for Renewable and Green Energy Act of 2011 (S. 1845) November 10. The legislation would create a 20 percent investment tax credit for grid-connected storage systems and 30 percent for businesses and houses using the energy on-site.

Senator Bob Menendez (D-NJ) introduced legislation (S. 1858) to amend the Internal Revenue Code of 1986 to provide an investment credit for equipment used to fabricate solar energy property.

Senator Jeff Merkley (D-OR) and Representative Mike Thompson (D-CA) introduced the Klamath Basin Economic Restoration Act (S. 1851). The legislation would implement a comprehensive plan, developed through a multi-year collaborative effort among farmers, ranchers, fishermen, Tribal leaders, and conservationists, to remove four dams on the Klamath River, creating more than 4,600 jobs in the basin while restoring historical wildlife habitat.

#### Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a hearing November 15 to receive testimony on the Department of Energy's Quadrennial Technology Review and consider S. 1703 and S. 1807. Dr. Steven Koonin, undersecretary for science, and Dr. Ernest Moniz, director of MIT Energy Initiative, will testify.

The House Natural Resources Committee will hold an oversight hearing titled "The Future of U.S. Oil and Natural Gas Development on Federal Lands and Waters" on November 16.

The House Transportation and Infrastructure Subcommittee on Water Resources and Environment will hold a hearing the same day on hydraulic fracturing of shale beds.

The House Rules Committee will meet November 16 to mark up the Regulations from the Executive in Need of Scrutiny Act (H.R. 10). The legislation, introduced by Representative Geoff Davis (R-KY), would require a Congressional vote before any regulation from the Executive Branch with an economic impact of more than \$100 million could go into effect.

The House Energy and Commerce's oversight panel hearing with Energy Secretary Steven Chu is scheduled for November 17 and is entitled "The Solyndra Failure: Views from DOE Secretary Chu."

The House Science, Space, and Technology Subcommittee on Energy and Environment will hold a hearing the same day titled Fostering Quality Science at EPA: The Need for Common Sense Reform."

## **Administration**

### OMB Reviewing Utility MACT

The White House Office of Management and Budget is reviewing an Environmental Protection Agency final rule aimed at curbing air toxics emissions from power plants. The agency is under a court ordered deadline to finalize the utility MACT rule by December 16, and the OMB received the final rule for interagency review November 7. At the same time, Senator Jim Inhofe (R-OK), ranking member of the Senate Environment and Public Works Committee, sent a letter to OMB and the EPA seeking information about the agency's assumptions regarding the use of dry sorbent injection systems to comply with the rule.

### OMB Reviewing NSP

On November 7, the White House Office of Management and Budget received a proposed final rule from the Environmental Protection Agency to establish greenhouse gas emissions standards for power plants. The agency must issue final New Source Performance Standards by May 26, 2012, and the OMB review could take up to 90 days.

### OMB Reviewing RFS

The White House Office of Management and Budget received an Environmental Protection Agency final rule November 9 that would set the total amount of renewable fuel required in the nation's motor fuel supply in 2012. The agency is required to finalize the Renewable Fuel Standards by November 30. Under a proposed version of the rule, the amount of renewable fuel required would be increased to 15.2 billion gallons in 2012.

## **Department of Energy**

### APEC Talks

Energy Secretary Steven Chu spoke to leaders of the Asia Pacific Economic Cooperation about energy efficiency appliances on November 13.

### Second Shale Report Released

The Shale Gas Production Subcommittee released a draft report on shale gas production November 10 with recommendations for aggressive regulation by the Environmental Protection Agency to control air and water pollution. The *Second Ninety Day Report* offers specific ideas and numerous generalities on how to implement the 20 recommendations contained in the advisory subcommittee's first August 11 report. The second report places significant emphasis on controlling air emissions and calls for more systematic measurement of water use at every stage of the drilling and production process for extracting natural gas from shale.

### WAPA Project Mishandled

The Department of Energy's Inspector General released a report November 7 in which it determined that the Western Area Power Administration had mishandled its \$152 million in Recovery Act financing to an electric transmission project. The program funding, which will run out in the coming year, is two years behind schedule and \$70 million over budget. House Natural Resources Chairman Doc Hastings (R-WA)

and Water and Power Subcommittee Chairman Tom McClintock (R-CA) sent a letter November 9 to Energy Secretary Chu calling for an end to the WAPA borrowing authority.

#### \$8 Million for Smart Grid

Department of Energy Secretary Steven Chu announced last week that the agency will make available \$8 million in funding for utilities, local governments, and communities to create programs that will enable residential consumers to better manage their electricity usage. Under the Smart Grid Data Access Program, utilities and third-party vendors will partner to develop and implement programs that will make consumer electricity consumption data readily available to customers.

#### REC Report Unveiled

The National Renewable Energy Laboratory released its *2010 U.S. REC Market Status and Trends* report November 7. The report documents the status and trends of U.S. compliance and voluntary markets.

### **Department of State**

#### Keystone XL Delayed

The State Department announced November 10 that it will delay a decision on TransCanada Corporation's request to build a 1,700 mile crude oil pipeline from the Canadian province of Alberta to Texas in order to look for an alternate route through Nebraska. Opposition has been growing over the Keystone XL oil sands pipeline project, especially over its path through a major Nebraskan aquifer. The announcement means that an administration decision will likely not be made until early 2013. The State Department plans to conduct a supplemental environmental review pertaining to rerouting in Nebraska, but will not consider other issues that have been raised by critics of the project. The agency's inspector general has also granted a request to investigate whether the agency violated any laws or regulations in its ongoing review of the permit request.

### **Department of Transportation**

#### Pipeline Safety Regulations

Transportation Secretary Ray LaHood said at an Executive Leadership Safety Summit November 8 that he is working closely with House leaders to ensure passage of pipeline safety legislation by Thanksgiving. The Senate passed its own bill in October, and the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, which authorized federal pipeline safety programs, expired at the end of last September. The House Transportation and Infrastructure and Energy and Commerce Committees, having each passed their own bills, are in the midst of negotiating a single piece of legislation that will go to the House floor. The National Association of Regulatory Utility Commissioners and National Association of Pipeline Safety Reservations released a joint report the same day. The *Providing Increased Public Safety Levels: Compendium of State Pipeline Safety Requirements and Initiatives Compared to Code of Federal Regulations* is a survey of 52 pipeline safety agencies in 50 states, Puerto Rico, and the District of Columbia that found that state agencies almost always have more stringent safety regulations than their federal counterparts.

#### CAFE Standards Forthcoming

The Department of Transportation's National Highway Traffic Safety Administration and the Environmental Protection Agency are expected to publish the official proposal for the Corporate Average Fuel Economy Standards this week. President Obama came to an agreement with automakers this summer to raise auto fuel efficiency standards to 54.5 miles per gallon by 2025, and final adoption of the rules is anticipated by July 2012.

### **Environmental Protection Agency**

#### Energy Star Hospital Update

The Environmental Protection Agency released an update to Energy Star's national energy performance scale methodology for hospitals on November 7. The updated performance scale will help hospitals better

assess their energy performance and make more informed financial and investment decisions; a ten percent energy efficiency improvement would save \$740 million annually in energy bills.

#### 400 Builders Commended

The Environmental Protection Agency recognized November 9 the leading builders across the country that have already committed to meeting the updated and more rigorous requirements for new homes that earn the Energy Star label in 2012. Thus far, over 400 builders have pledged to develop the next generation of Energy Star qualified homes next year, which must be at least 15 percent more efficient than homes built to the 2009 International Energy Conservation Code.

#### Heavy-Duty Truck Standards Challenged

Delta Construction Co., Dalton Trucking Inc., Southern California Contractors Association, and California Dump Truck Owners Association filed a petition for review November 4 in the U.S. Court of Appeals for the District of Columbia Circuit challenging the first greenhouse gas emissions requirements for heavy-duty trucks. The groups are challenging the rule because the Environmental Protection Agency did not send the proposed standards to the agency's Science Advisory Board for review.

#### False RECs

The Environmental Protection Agency ordered 24 oil companies that unknowingly used fake credits to satisfy their 2010 renewable fuel obligations to submit corrected compliance reports by November 21 or face penalties as high as \$37,500 a day. The agency issued notices of violation November 7 to companies that bought false renewable energy credits from the chief executive officer of Clean Green Fuels LLC.

#### Air Pollutant Standards

The Environmental Protection Agency released three proposed rules November 4 revising national emissions standards for hazardous air pollutants for ferroalloys production, mineral wool production, and wool fiberglass manufacturing, and primary aluminum reduction. The same day, the agency finalized two rules, one targeting air toxics from wood furniture manufacturing operations and shipbuilding and ship repair operations and the other targeting primary lead smelting.

### **Personnel**

Energy Department Under Secretary for Science Steve Koonin will leave the agency November 18 to join the Institute for Defense Analyses' Science and Technology Policy Institute.

The Senate Energy and Natural Resources Committee voted November 10 to approve the nomination of Gregory Woods to be general counsel of the Energy Department. The committee also approved the nominations of David Danielson for Assistant Secretary of Energy for Energy Efficiency and Renewable Energy, Charles McConnell for Assistant Secretary of Energy for Fossil Energy.

Gregory Wilson has been named the new head of the National Renewable Energy Laboratory's National Center for Photovoltaics.

### **Miscellaneous**

#### Draft CCS Standard

The International Performance Assessment Center for Geologic Storage of Carbon Dioxide announced November 4 a draft standard for carbon capture and storage that could be a model for international guidelines. The standard, which is available for public review and comment until December 27, will provide guidelines for regulators, industry, and others involved with scientific and commercial carbon capture projects. The standard will be submitted to the Standards Council of Canada and American National Standards Institute in the United States for bilateral recognition and will be proposed as a model to the International Organization for Standardization.

#### Erosion Increasing

The University of Colorado's Institute of Arctic and Alpine Studies and the U.S. Geological Survey released a study recently that found that erosion along the permafrost coast of the Beaufort Sea has increased dramatically in conjunction with declines in sea ice. Researchers found that seawater has eaten away at coastlines in northeast Alaska along the Beaufort Sea at accelerating rates over the study period.

#### Global Energy Outlook

The International Energy Agency released its annual World Energy Outlook last week, finding that primary energy demand could increase by a third between 2010 and 2035. The report found that most of the added demand will come from non-OECD countries. Additionally, the IEA called for stringent, and immediate, global energy infrastructure investment policies and found that average global temperatures could rise 6 degrees Celsius above preindustrial levels by the century's end if countries fail to implement any energy and climate policy changes in the next five year.

#### Australian Carbon Pricing

The Australian Senate voted November 8 to charge companies that emit large amounts of greenhouse gases a price for those emissions starting in July 2012. The carbon price legislation will become law once the governor-general completes the ceremonial step of granting royal assent, at which point facilities that emit 25,000 MT CO<sub>2</sub>e annually will have to purchase units to cover their emissions at a starting carbon price of about \$23.

#### EU Revisits Higher Target

European Union Climate Action Commissioner Connie Hedegaard said November 8 that the European Commission will soon seek to reopen discussions with EU member nations on increasing the bloc's 2020 greenhouse gas emissions reduction target. The Commission will use the opportunity presented by Denmark in taking over the rotating presidency of the EU Council to revisit the debate on raising the target to a 30 percent reduction by 2020 compared to 1990 levels; the EU currently has a binding 20 percent target.

#### EU Climate Financing

European Union finance ministers said November 8 that the EU will report to the upcoming Conference of Parties, the United Nations climate summit in South Africa, that it mobilized \$3.17 billion in fast-start climate financing in 2011. A fast-start funding plan for short-term climate change mitigation and adaptation projects was outlined in the Copenhagen Accord during the 15th Conference of Parties to the 2009 U.N. Framework Convention on Climate Change.

#### EU Transport Emissions

The European Environment Agency released a report November 10 calling for a fundamental shift in transportation and climate policies in order to ensure that emissions of greenhouse gases and other pollutants from the area's transportation sector do not rise in the event of an economic upturn. The report, *Laying the Foundations for Greener Transport* finds that the sector's energy demand fell 4 percent between 2007 and 2009, in large part due to the financial downturn. As transportation demand grows and the economy hopes to improve, modest energy efficiency gains will not sufficiently address rising emissions.

#### States Vary Efficiency Spending

Ceres released a report November 10 that found that utility companies vary widely in the amount of money they spend on energy efficiency programs. The report, *Benchmarking Electric Utility Energy Efficiency Portfolios in the U.S.*, looked at 2009 data submitted by 50 U.S. electric utilities to the Department of Energy's Energy Information Administration and also found that states and utilities are expanding their investments in energy efficiency.

#### Canada Delays EE Standards

Natural Resources Canada announced last week that it will delay implementation of energy efficiency standards for general service light bulbs for two years to provide more time for the development of new technologies and regulations on recycling of mercury in compact fluorescent bulbs. New standards for 75-

and 100-watt bulbs will now go into effect January 1, 2014, and standards for 40- and 60- bulbs will begin December 31, 2014.

#### EU Stands Firm on Airlines

European Climate Commissioner Connie Hedegaard said November 10 that the EU has no Plan B for requiring all airlines flying in and out of EU airspace to participate in its carbon trading scheme. Testifying before the European Parliament's Transport Committee, Ms. Hedegaard said that she expects the original plan to survive its various legal challenges and that the European Union is planning legislation that would impose similar requirements on the maritime sector.

#### CPUC Approves PPA

The California Public Utilities Commission voted 4-1 November 10 to approve a 25 year power purchase agreement from Abengoa's southern California Mojave solar firm. Some CPUC staff recommended not approving it because the cost of the trough-based technology was too high. The project has the backing of a \$1.2 billion Department of Energy loan guarantee.