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## **ENERGY AND ENVIRONMENT UPDATE** **November 27, 2011**

### **Energy and Climate Debate**

Just before leaving for the Thanksgiving holiday, policymakers prepared for the 17th annual Conference of Parties and international energy issues joined deficit reduction and the appropriations debate as the major areas of focus on the national scale.

The Co-chairs of the Joint Select Committee on Deficit Reduction, Representative Jeb Hensarling (R-TX) and Patty Murray (D-WA) released a statement November 21 concluding that it would not be possible to reach any bipartisan agreement before the committee's November 23 deadline to identify \$1.2 trillion in deficit reduction. Numerous Republicans had urged the 12-member panel to reduce Department of Energy budgets for renewable energy, loan guarantees, and innovative research, but while the supercommittee's deficit reduction attempt may have failed, it does not prevent all of those areas, and potentially others, to be downsized as the automatic cuts, which will take place over the next 10 years, go into effect in January 2013. About \$109 will be cut annually through 2021, with half coming from defense and civilian accounts.

In the wake of the supercommittee's failure, the Senate may resume consideration of energy efficiency legislation introduced by Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH). Additionally, issues ranging from the Clean Energy Standard to various energy tax incentives are likely to garner some Congressional attention when lawmakers return after the Thanksgiving holiday. That said, the Senate will immediately resume work on the \$600 billion Department of Defense authorization bill (S. 1867), and its more than 100 amendments. The House will likely consider the Regulatory Flexibility Improvements Act (H.R. 527), introduced by House Judiciary Committee Chairman Lamar Smith (R-TX), requiring all agencies to create small business regulatory panels for the purpose of analyzing the indirect economic costs of their rules. GOP leadership in the House will also bring up the Regulatory Accountability Act of 2011 (H.R. 3010) on December 1 or December 2, that would require the Environmental Protection Agency and other federal agencies to take into account indirectly affected industries and a broader suite of economic impacts from the proposal stage of each rule.

Another principle area of focus will be on the semi-omnibus appropriations legislation when Representatives and Senators return to D.C. this week. Senate leaders had hoped to break the bills into a number of smaller minibuses, while House leaders had favored an omnibus approach. After passing three of the 2012 spending bills along with another continuing resolution that runs through December 16 late week before last, the remaining nine bills are now expected to be rolled together for consideration before the end of the year, with the Defense appropriations bill as the likely vehicle for the package. An extension of the payroll tax credit, a package of expiring tax provisions, unemployment insurance

benefits, and the Medicare reimbursement rate are all possible pieces of legislation to be addressed this week. The extension of the tax provisions by December 31, 2011 – including many vitally important energy subsidies – is being sought by many businesses, but is sometimes done retroactively.

On the international front, the 17th annual Conference of Parties to the U.N. Framework Convention on Climate Change will run November 28-December 9 in Durban, South Africa. Despite tempered expectations from U.N. officials and a virtual standoff between the world's two largest emitters, the United States and China, some delegates contend that progress is still possible at the upcoming climate change summit. Though the chances of a binding agreement or comprehensive framework to succeed the soon to expire Kyoto Protocol are all but impossible, work on financing issues, forestry management, air and maritime transportation emissions regulation, flexibility mechanisms, carrying over emissions credits, and measurement and verification may take place. The United States delegation is expecting little progress in the negotiations, and continues to insist that rapidly developing nations commit to reductions under any global climate deal.

The friction between the U.S. and China stems from a disagreement over how developing and developed countries address greenhouse gas targets. The U.S. supports the approach of the Ad-hoc Working Group on a Long-term Cooperative Action that insists that all countries, including large developing countries like China and India, should be required to take some type of binding action after 2012. China, on the other hand, supports the approach of the Ad-hoc Working Group on the Kyoto Protocol in calling for the three dozen industrialized countries required to reduce emissions under the protocol to take on commitments in the post-2012 period after the protocol's commitments expire.

The Chinese government issued a white paper November 22 reiterating its past positions on international climate change negotiations and the country's efforts to address climate change. In advance of the annual Conference of Parties, which begins November 28 in South Africa, Ministry of Foreign Affairs' special representative on climate change Li Yanduan stated again that the Chinese government supports "common but differentiated responsibilities" for developed and developing countries, as agreed to under the 2007 Bali Roadmap, and suggested that the nation still considers itself a developing country based on per-capita gross domestic product comparisons. At the same time, more than 50 House Democrats sent a letter to Secretary of State Hillary Clinton and Treasury Secretary Timothy Geithner asking that the U.S. take a strong position on emissions reductions during the talks.

Executive Secretary Christiana Figueres said last week that the Durban talks will be an intermediate step toward some kind of binding agreement that will go into effect after the Kyoto Protocol's 2008-2012 compliance period expires.

## **Congress**

### EPA Rates Impact

Representative Fred Upton (R-MI) and several House Energy and Commerce Committee Republicans sent a letter November 22 to Federal Energy Regulatory Chairman Jon Wellinghoff asking whether FERC has evaluated whether the Environmental Protection Agency regulations will impact electricity rates. The letter questioned the effects of the EPA's Cross-State Air Pollution Rule and the utility MACT rule.

### CARB Responds to Oversight Request

On November 23, Mary Nichols, chairwoman of the California Air Resources Board, sent a letter to Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) defending California's prerogative to set its own light duty vehicle emissions standards, even given federal fuel economy standards. Nichols, in responding to an inquiry from Chairman Issa, defended California's role in helping the Obama administration draft the proposed corporate average fuel economy (CAFE) and greenhouse gas emissions regulations.

### CRS Says Farm Bill Renewable Programs Face Uncertain Future

On November 22, the Congressional Research Service released "Renewable Energy Issues and the Farm Bill: Status and Issues" detailing how budgetary constraints might endanger renewable energy

programs from the Food, Conservation, and Energy Act of 2008, unless significant offsetting cuts are found elsewhere. The \$1.1 billion in mandatory funding for energy programs from the 2008 bill expire in fiscal year 2012, including the Biorefinery Assistance Program, the Rural Energy for America Program, and the Biomass Crop Assistance Program. Programs that overlap with Department of Energy programs will also face scrutiny, since, while the programs may differ, the differences often seem minute to someone unfamiliar with the subject.

#### Legislation Introduced

Senator John McCain (R-AZ) introduced legislation November 18 to prohibit the Department of Energy from subordinating its position in energy loan guarantees to outside investors.

Senators Olympia Snowe (R-ME), Jeff Bingaman (D-NM), and Dianne Feinstein (D-CA) introduced legislation (S. 1914) to provide a credit for performance based home energy improvements.

#### Hearings

On November 29, The House Rules Committee has scheduled a meeting to consider a rule for floor consideration of the Regulatory Flexibility Improvements Act (H.R. 527) and the Regulatory Accountability Act of 2011 (H.R. 3010).

On December 1, the House Rules Committee plans to meet to consider a rule for floor debate of H.R. 10, requiring any executive branch rules to have no force or effect unless by a joint resolution of approval of Congress.

On December 2, the House Energy and Commerce Subcommittee on Energy and Power is scheduled to meet on the American energy initiative, with a focus on the Keystone XL Pipeline.

On November 30, the Subcommittee on Energy and Environment of the House Science, Space, and Technology Committee has set a meeting to discuss science issues, with a focus on fostering quality science at the Environmental Protection Agency.

### **Department of Energy**

#### Building Efficiency

The Department of Energy announced November 21 that buildings constructed to meet the 2010 version of an energy efficiency standard may reduce energy use by 18.5% compared with buildings that meet the 2007 standard. The analysis shows that implementing the newer version of Standard 90.1, Energy Standard for Buildings, Except Low-Rise Residential Buildings, will save commercial building owners energy and money, help them meet their sustainability goals, and reduce greenhouse gas emissions.

#### USEC Denied Loan Guarantee

The Department of Energy is declining to approve a \$2 billion loan guarantee for USEC Inc.'s advanced centrifuge project in Ohio, but promising to continue research into the technology. Members of Congress from Ohio continue to push for federal support of the project, which would produce domestic reactor fuel for the nation's nuclear power plants and create as many as 4,000 jobs. However, DOE remains skeptical the new technology will work on a commercial scale.

### **Department of Housing and Urban Development**

#### \$96 Million for Sustainable Communities

The Department of Housing and Urban Development's Sustainable Communities Grants program, a cooperative effort between HUD, the Department of Transportation, and the Environmental Protection Agency, announced November 21 that communities, agencies, and regions across the country will receive almost \$96 million in federal funding under the 2011 program. Twenty-seven Community Challenge Grants and 29 Regional Planning Grants were awarded to help communities improve their economic viability and sustainability and link people with better transportation options.

## **Department of State**

### NE Passes Keystone Legislation

Nebraska Governor Dave Heineman (R) signed two bills November 22 from a special legislative session that will establish a regulatory framework for oil pipeline routes in Nebraska and authorize the state to work with the Department of State to study the environmental impact of a new route for the Keystone XL oil pipeline. The second pipeline bill creates an application process for companies that includes privately funded hearings for Nebraska voters to weigh in on proposed routes for future oil lines that run through the state.

## **Environmental Protection Agency**

### Refinery GHG Limits Delayed

The Environmental Protection Agency confirmed November 21 that it will miss a December 15 deadline to propose greenhouse gas emissions limits for petroleum refineries. Though the agency has a court deadline of December 15 to propose the refinery rule, it has not yet sent it to the White House Office of Management and Budget, and said that it will need more time to prepare its proposed new source performance standards for GHG emissions from refineries under Section 111 of the Clean Air Act, becoming the second GHG rule it has postponed. Earlier this month, the Environmental Protection Agency said it would miss court deadlines to issue New Source Performance Standards for power plants as well, though Administrator Lisa Jackson said last week that they would be released early next year after a review by the White House Office of Management and Budget.

### Fuel Savings Estimated

Environment America released a report November 21 that found that if the Environmental Protection Agency and Department of Transportation's National Highway Traffic Safety Administration proposed 2025 fuel economy standards were in effect today, Americans would save nearly \$260 million in fuel costs over the Thanksgiving weekend. The group found that drivers would consume 75.3 million fewer gallons of oil under the 54.5 mpg fleetwide standards than under today's 26.4 mpg average.

### Nitrogen Oxide Reductions Possible

The Northeast States for Coordinated Air Use Management issued a white paper November 21 that concluded that nitrogen oxide emissions from existing gasoline-powered vehicles would be cut by 25 percent if the Environmental Protection Agency reduces the gasoline sulfur content to an average of 10 parts per million. Current standards limit average sulfur content to 30 ppm.

### Environmental Groups Sue for New Source Pollution Standards

On November 17, WildEarth Guardians, the Sierra Club, the Environmental Integrity Project, and the Center for Biological Diversity filed a complaint in the U.S. District Court for the District of Columbia to force the Environmental Protection Agency to act on a June 2010 petition requesting regulation of emissions of methane and other pollutants from coal mines. Emissions of methane, particulate matter, volatile organic compounds, and nitrogen oxides are targeted in the petition for their negative impacts on air quality.

### Fracking Rule Comments Requested

On November 23, the Environmental Protection Agency announced it will solicit public input on hydraulic fracturing chemical disclosure rules, in response to a petition submitted August 4 by Earthjustice, the Sierra Club, and American Rivers asking the agency to require public disclosure of the chemicals and their potential risks to human health and the environment. This decision follows a November 2 interim response to the petition from EPA that did not grant the environmental coalition's request that all exploration and production chemicals be identified and tested for toxicity.

## **Nuclear Regulatory Commission**

### Nuclear Emergency Preparedness

The Nuclear Regulatory Commission published a final rule November 23 updating emergency preparedness regulations for nuclear power plants and production facilities that aim to prevent. The final rule updates requirements to safeguard nuclear plants from terrorist attacks, will require more testing by the nuclear industry, codifying a number of voluntary measures that have been put in place since September 11, 2001, and will apply to the licensing and certification of new nuclear power plants. The commission will conduct a public meeting on the rule at headquarters November 29 as well as one public meeting in each of the commission's four regions through February.

## **Personnel**

Jim Jones, a longtime member of the Environmental Protection Agency, will become the agency's acting assistant administrator for chemical safety and pollution prevention, effective December 1. He has served the agency for more than two decades and currently serves as the deputy assistant administrator for the air and radiation. Stephen Owens, who currently serves as the assistant administrator for chemical safety and pollution prevention, recently announced his departure, effective November 30.

## **Miscellaneous**

### French Nuke Upgrades

French nuclear safety experts delivered a report to ASN, a nuclear watch group, November 21. The group will offer its conclusions to the government in 2012, but French nuclear safety director Jacques Repussard said that at the country needs to conduct safety tests on its 58 reactors to see how well they stand up to flooding, earthquakes, and operational accidents, and then upgrade the reactors as needed.

### Harvard Study

Researchers from Harvard University's Belfer Center for Science and International Affairs released a study November 22 that urges Congress to double U.S. spending on energy research, development and demonstration from \$5 billion to \$10 billion annually. Despite domestic deficits, the study contends that the U.S. cannot afford to forego long-term investments if it wants to improve its competitiveness in the global market, national security, and reduce greenhouse gas emissions.

### Renewable Energy Becoming Cost Competitive

The International Energy Agency released a report November 23 finding that renewable energy technology is becoming cost competitive and is the fastest growing sector of the energy mix. The report concluded that the sector has grown rapidly in the past five years and now provides nearly 20 percent of the world's power generation.

### European Biofuels Supported

The European Commission defended November 21 that biofuels can positively contribute toward European Union climate and energy objectives despite growing scientific evidence that mandatory biofuels targets pose significant environmental risks. The Commission contended that biofuels can be helpful in reaching climate goals if all issues, including indirect land use change impacts, are properly address, despite a recent study that cites high levels of anticipated biodiversity loss.

### Plant Closure Announced

Dominican Resources announced November 21 that it will permanently close its coal-fired State Line Generating Station in northwest Indiana in early 2012 after determining that the aging facility presented substantial environmental and economic challenges. The plant is one of the oldest in the country, as portions of it were constructed in the 1920s.

### Limit HFCs

The U.N. Environment Program released a report November 21 calling for steps to minimize the use of hydrofluorocarbons. The use of HFCs grew 8 percent per year from 2004 to 2008 as they were used to replace other ozone-depleting substances including chlorofluorocarbons and hydrochlorofluorocarbons under the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, and their global warming potential could rival emissions from the transportation sector by 2050.

### GHGs Up

The World Meteorological Organization released its annual Greenhouse Gas Bulletin November 21, marking 2010 another record year for concentrations of greenhouse gases in the atmosphere. The report found that levels of carbon dioxide, nitrous oxide, and methane all increased last year over the record levels registered in 2009.

### IL Fracking Bill

The Illinois Senate sent a bill (S.B. 664) to the governor November 22 requiring oil exploration companies engaged in hydraulic fracturing to make disclosures to the Illinois Department of Natural Resources. Under the legislation, companies would be required to report the geological names, a geological description, the depth of the formation into which well stimulation fluids are injected, each stimulation fluid identified by additive type, and the chemical compound and Chemical Abstracts Service number for each additive used in the process.

### EU Expands GHG Reporting

On November 23, the European Commission announced revised rules expanding annual greenhouse gas emissions data, to include data on maritime transportation, non-carbon dioxide aviation emissions, as well as land use and land-use change data. Emissions data in all covered sectors – those not covered by the EU Emissions Trading System (ETS) – will have to show a 20 percent decrease from 2005 levels by 2020. If these revised rules are enacted by the European Parliament and the EU Council, they would be uniformly binding across the European Union, but must be adopted before 2013 to give member states time to set climate-related targets through 2020.

### Bombay Stock Exchange Announces Carbon Index

The Bombay Stock Exchange announced it will classify the exchange's 100 largest companies as low- or high-risk, in terms of the cost of carbon imposed by regulations, evolving product demand, sectoral emissions intensity, product- and supply-chain carbon emissions initiatives. The data will come primarily from the Carbon Disclosure Project, a U.K. nonprofit.

### UNEP Report on Temperature Rise

The United Nations Environment Program released a report arguing that by increasing the use of non-fossil sources of energy from 18.5% in 2005 to 28% in 2020; by increasing biomass use from 10.5% to 17% over the same period; and by increasing the use of renewable energy to 9%, it would be possible to stave off a 3.6 degree Fahrenheit rise in the earth's temperature. Electricity production, aviation, transportation, shipping, and construction were all cited as areas that could be more efficient. To implement the study's recommendations would cost between \$25 and \$54 per metric ton of carbon dioxide-equivalent removed from the environment.

### World Bank Climate Data Base

The World Bank launched the Open Data Initiative on Climate Change, giving policymakers and the public access to an immense amount of climate data. The initial data sets will be supplemented in the coming months by more data and analysis.

### Google Cancels Renewable Energy Funding

On November 22, Google Inc. announced the cancellation of the 2007 RE<C (Renewable Energy Cheaper than Coal) initiative aimed at driving down the cost of renewable energy by investing in companies with breakthrough technology, because it has not "had the impact we'd hoped for." After spending more than \$850 million to aide the deployment of renewable energy technologies, the company will now focus solely on energy efficiency at its campus in California and its data centers around the country.

### IEA Renewable Energy Report

On November 23, the International Energy Agency's renewable energy division unveiled "Deploying Renewables 2011" analyzing the cost effectiveness of renewable energy policy in 56 different countries. The report found a 17.8% increase in renewable deployment in the electricity sector between 2004-2009,

but concluded that strong policy support is vital to finding price parity between renewable and fossil fuel technologies. The report also argues that, after energy efficiency, renewables are the most important component of energy policy that can promote energy security and stave off climate change.

#### IEA Renewable Chief Critical of US Renewable Policies

Paolo Frankl, head of the International Energy Agency's renewable energy division, criticized the United States' lack of any long-term federal policy to support renewable energy. Frankl praised state initiatives in Texas and California, but remarked that the only real federal policy was the production tax credit that actually contributed to uncertainty because it is renewed every two years and usually at the last possible moment.

#### CA Ballot Measure Allowed to Proceed

On November 22, the California secretary of state announced that Oscar Alejandro Braun of Half Moon Bay may begin collecting signatures to qualify his proposed ballot measure eliminating California environmental laws and agencies for inclusion in the November 6, 2012 statewide ballot. Braun has 150 days to collect the signatures of 807,615 registered voters, and failed to gather enough signatures in 2010 for the same measure.

#### CARB Calls for Fuel Standard Amendments

On December 16, the California Air Resources Board will consider several amendments to the state's low-carbon fuel standard, designed to reduce greenhouse gas emissions from transportation fuels 10 percent by 2020. Among the amendments, is one offered by private companies that provide electric vehicle services seeking eligibility for credits. Other amendments would allow exempted fuel providers to opt into the program; streamline the certification of new methodologies used to calculate the carbon intensity of fuels; clarify CARB's process for tracking credits and deficits; and simplify various reporting requirements among others.

#### EU Parliament Committee Asks For Tougher Transportation Standards

On November 22, by a vote of 35-5, the European Parliament's transportation committee passed a resolution calling on the European Commission to introduce legislative proposals to reduce carbon dioxide emissions from road transportation by 20 percent and from aviation and shipping by 30 percent compared to a 2010 baseline. In December, the full European Parliament will likely vote on the resolution, though it will not be binding.

#### EU Official Criticizes Kyoto, Reaffirms Commitment

On November 25, the European Union's top official on climate issues, Action Commissioner Connie Hedegaard, said that while the Kyoto Protocol is dated, the EU is still willing to sign up for a second commitment period until a stronger international deal is struck. Hedegaard said assigning green house gas emission reduction obligations for developed countries and not developing countries, is hopelessly dated.

#### OECD Official Estimates on Costs of Climate Change Mitigation

On November 24, Robert Dellink, an economist with the Organization for Economic Cooperation and Development's environment directorate, said mitigating global warming in a way that provides even a small chance of avoiding climate catastrophes could cost between \$15 and \$20 trillion in macroeconomic terms by 2050.

#### EU Bioethanol Investigation

On November 25, the European Commission launched an illegal trade investigation into bioethanol imports from the United States to determine if the U.S. imports of bioethanol are having an illegal adverse impact on EU-based producers, and promised provisional conclusions by August 2012. At the announcement of the investigation, investigators said a preliminary investigation by the European Commission found that there was "prima facie" evidence to support EU bioethanol producers' complaints. The U.S.-based Renewable Fuels Association (RFA) said the claims were without merit, and that the tax incentives cited by European producers expire next month anyway. RFA claims the root problem is the EU tariff schedule classifying E90 blend imports at a lower tariff rate than other ethanol imports.

