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ENERGY AND ENVIRONMENT UPDATE **December 11, 2011**

Energy and Climate Debate

Energy issues continued to take center stage last week as international leaders met to discuss a global climate agreement and Congressional officials continued work on tax extenders and appropriations measures.

The 17th annual Conference of the Parties to the United Nations Framework Convention on Climate Change ended with an agreement to extend the Kyoto Protocol and finalize a replacement agreement by 2020. The talks officially concluded on December 9 in Durban, South Africa, but continued through the weekend, with a deal announced on Sunday. The high-level segment of the climate talks began December 6 amid renewed calls for action and indications that it was more important to achieve a significant conclusion than previously anticipated. Under the current terms, some of the biggest emitters will not have to sign any legally binding emissions targets until 2020, and huge differences between the interests of all parties will need to be overcome in COP-18 next year in Doha, Qatar. Next year's talks will need to address the emissions levels for the second treaty as well as the issue of "assigned amount units", the right to emit more based on past emissions reductions, earned before 2012 may be carried forward. The European Union, led by Poland, will push hard for AAU's to be carried forward. The Reduced Emissions from Deforestation and Degradation (REDD) program will now allow both public and private finance to be used to help discourage deforestation in the developing world.

According to a report released December 6, tackling the global climate challenge could require applying a number of existing treaties and international forums to complement the 1992 U.N. framework convention. Additionally, the Subsidiary Body for Scientific and Technological Advice adopted new forest policy recommendations December 3. The recommendations would require developing nations to use a U.N. methodology to determine their existing forest cover and ensure their forestry programs protect the rights of indigenous populations.

For its own part, U.S. Special Envoy for Climate Change Todd Stern said December 5 that the United States, while committed to reducing national greenhouse gas emissions 17 percent by 2020, has yet to provide a full accounting of how it can reach that target by using existing domestic policies. The U.S. remains adamantly opposed to any deal exempting developing countries from commitments.

In other U.S. news, House and Senate conferees began meeting December 8 to formally begin a final round of talks on the size and details of the year-end omnibus spending package. The current continuing resolution expires December 16, and appropriators are hoping to have their negotiations completed soon

in order to have a final bill ready to unveil early this week. Passage of the spending package is just one of a handful of items the House and Senate must complete before they adjourn for the year. Leaders are also working to negotiate an agreement that would extend the payroll tax holiday, unemployment insurance benefits, a provision to ensure payments for doctors who treat Medicare patients, and final action on a Department of Defense authorization bill. It is still unclear whether Republicans will insist on including riders that target the Environmental Protection Agency's enforcement powers, but if negotiators fail to reach a compromise, the Interior-Environment bill could be dropped from the omnibus, and a continuing resolution would be needed to fund the programs covered by that measure. Leadership in both houses are telling members that weekend sessions might be needed in order to complete the work and close out the First Session of the 112th Congress.

On a related, end of the year note, President Obama vowed during a joint appearance at the White House with Canadian Prime Minister Stephen Harper December 7 to veto any attempt to link the Keystone XL oil pipeline with the payroll tax measure. Additionally, congressional negotiators reached a bipartisan deal the following day to strengthen federal oil and gas pipeline safety rules.

Congress

Path Forward on Energy Legislation

A group of Democratic Senate committee leaders who led regular climate bill strategy sessions last Congress resumed their weekly meetings last week in an effort to push forward energy legislation next year. Senators John Kerry (D-MA), chairman of the Senate Foreign Relations Committee, Barbara Boxer (D-CA), chair of the Senate Environment and Public Works Committee, and Jeff Bingaman (D-NM), chair of the Energy and Natural Resources Committee have been meeting before the Senate's Tuesday caucus lunches to discuss potential bipartisan paths forward on energy legislation in 2012. The Energy Committee passed 61 bills this year, but only a few have cleared the full Senate, and none have been debated on the Senate floor. One possible path forward is a building and manufacturing energy efficiency measure (S. 1000) sponsored by Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) onto which a number of other energy issues could be attached.

Letters Pushed

As Congress prepares to consider tax extenders legislation at the end of the year, Senators and Representatives are preparing a number of letters in support of energy tax programs that will expire at the end of the year unless extended. A group of 88 House Democrats led by Representative Earl Blumenauer (D-OR) sent a letter to Republican and Democratic leaders December 7 urging the extension of the 1603 Treasury Department Grant Program. Senators Maria Cantwell (D-WA), John Kerry (D-MA), Barbara Boxer (D-CA), Sheldon Whitehouse (D-RI), and Mark Udall (CO) sent a letter to Senate leaders at the end of the week recommending an extension of the program as well as other energy measures such as the biodiesel tax incentive, the 48C manufacturing credit, and the wind production tax credit. Senators Chuck Grassley (R-IA) and Tom Harkin (R-IA) are also leading an effort to save the wind-energy production tax credit.

REINS Act Approved

The House voted 241-184 to approve the Regulations from the Executive in Need of Scrutiny (REINS) Act of 2011 (H.R.10) December 7. The legislation would require a vote by Congress before any regulation with an economic impact of more than \$100 million could go into effect. Senator Rand Paul (R-KY) has introduced companion legislation (S.299), though it is unclear whether Senate Democratic leadership will schedule a vote on the bill, and President Obama has threatened to veto the legislation if it reaches his desk.

Interior Appropriations Update

Republicans and Democrats have yet to reach an agreement on whether environmental policy riders would be included in the fiscal year 2012 omnibus spending bill, which will include the Environmental Protection Agency and Interior Department. Until the dispute is resolved, a continuing resolution will likely be needed, with 4% across-the-board cuts to the current fiscal year's budget to each affected agency. EPA is currently operating on 1.5% less than the \$8.68 billion of enacted spending, and the omnibus

could see EPA receive as little as \$8.33 billion. In August, the House passed the Interior, Environment and Related Agencies bill (H.R. 2584) with at least 41 policy riders restricting EPA's ability to regulate greenhouse gases, mountaintop mining, and water quality

Legislation Introduced

Congressman Charlie Rangel (D-NY) introduced legislation (H.R. 3552) December 2 to extend the ethanol duty for three years, benefitting domestic producers and refiners in the Caribbean and Central America. The bill would extend the duty until December 31, 2014.

Senator John Thune (R-SD) introduced legislation (S. 1956) December 7 to prohibit operators of civil aircraft in the United States from participating in the European Union's emissions trading scheme.

Congressman Rick Berg (R-ND) introduced legislation (H.R. 3616) December 8 to provide that the Environmental Protection Agency's National Emission Standard for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines has no force or effect with respect to existing stationary compression and spark ignition reciprocating internal combustion engines operated to generate electricity for emergency or demand response purposes, or for the purpose of operating a water pump.

On December 9, House Republicans passed H.R. 3630 as a payroll tax cut extension that also includes the language of the proposed EPA Regulatory Relief Act (H.R. 2250), which the House passed in October. H.R. 2250 would give industry a 15-month grace-period before the Environmental Protection Agency can enforce revised air pollution standards for boilers and incinerators. Other provisions extend the current year's 100 percent bonus depreciation incentive and hands responsibility for the Keystone XL pipeline from the State Department to the Federal Energy Regulatory Commissions. This bill will face significant opposition in Senate.

Weatherization Letter

On December 7, twenty-three Senators sent a letter to Senators Dianne Feinstein (D-CA) and Lamar Alexander (R-TN), the chairwoman and ranking member of the Senate Appropriations Energy and Water Subcommittee, asking them to maintain fiscal 2011 funding levels for the State Energy Program (SEP) and Weatherization Assistance Program (WAP) while they consider the fiscal year 2012 energy and water appropriations bill which will likely be rolled into an omnibus spending measure (H.R. 2055) currently being negotiated. In the House of Representatives on December 1, a similar letter was signed by 55 lawmakers was sent to the House Appropriations Committee leadership.

Upcoming Hearings

The Senate Finance Subcommittee on Energy will hold a hearing December 14 titled "Alternative Energy Tax Incentives: The Effect of Short-Term Extensions on Alternative Technology Investment, Domestic Manufacturing, and Jobs" to consider expiring and short-term energy tax incentives, focusing on how the start and stop nature of such incentives impact deployment, jobs, and manufacturing. Witnesses will include Dr. Molly Sherlock, energy tax policy specialist, Congressional Research Service; Will Coleman, partner, Mohr Davidow Ventures, Menlo Park, Calif.; Martha Wyrscz, president, Vestas-American Wind Technology, Portland, Ore.; Paul Soanes, president and CEO, Renewable Biofuels, Houston; and Dr. Margo Thorning, senior vice president and chief economist, American Council for Capital Formation, Washington, D.C.

Administration

CEQ Releases Efficiency Guidance

The White House Council on Environmental Quality released for comment draft guidance December 7 outlining principles for fostering efficiency and timeliness in the conduct of environmental reviews by federal agencies. The Council will consider input before finalizing the guidance in 2012.

Green Improvements

The Office of Federal Procurement Policy released a report recently that concluded that federal agencies did a better job of purchasing green products in fiscal years 2008 and 2009. The biennial report, which

monitors agency compliance with requirements to buy recycled and biobased products, is mandated by the Resource Conservation and Recovery Act and the Food, Conservation, and Energy Act of 2008, and found that the administration has taken significant steps to promote green procurement, including issuing Executive Order 13,514, which established efficiency and waste reduction goals for the government.

Department of Defense

Largest Purchase of Advanced Biofuel

The Defense Logistics Agency signed a contract December 5 to purchase 450,000 gallons of advanced biofuel for the Navy, the single largest purchase ever by the government. The biofuels will be mixed with petroleum-based jet fuel or marine diesel fuel and used in a demonstration of the Navy's Green Strike Group as part of the international Rim of the Pacific Exercise in summer 2012. The Navy fleet uses more than 1.26 billion gallons of fuel each year, and the administration agreed to purchase fuel made from a combination of used cooking oil from Dynamic Fuels in Louisiana and algae produced by Solazyme in San Francisco.

Department of Energy

Efficiency Deadlines Missed

The Appliance Standards Awareness Project said last week that mandates for the Department of Energy to issue energy efficiency standards are being undercut by missed deadlines and delays. The agency has already missed statutory or self-imposed deadlines for three products this year: battery chargers, external power supplies, and microwave ovens. Deadlines for five more final rules that are due at the beginning of 2012, for residential clothes washers, walk-in coolers and freezers, metal halide lamp fixtures, and certain kinds of light bulbs, are expected to be missed also.

EnergyPlus Released

The Department of Energy released the latest version of its building energy modeling software December 7. EnergyPlus calculates the energy required to heat, cool, ventilate, and light a building, and is used by architects and engineers to design more efficient buildings by researchers to investigate new building and system designs and by policymakers to develop energy codes and standards.

Possible Majumdar Confirmation this Week

On December 8, Chairman Jeff Bingaman said that he hoped Arun Majumdar, the Obama administration's nominee to be undersecretary of the Energy Department, would be approved by the Senate Committee on Energy and Natural Resources before Congress leaves in mid-December. President Obama announced Majumdar's nomination on November 29, but she has been serving as acting undersecretary since February, following the departure of Acting Undersecretary Cathy Zoi.

Department of Interior

Carbon Storage to Increase

The Interior Department's U.S. Geological Survey released a report December 5 finding that the amount of carbon stored in ecosystems in the Great Plains is expected to increase by 29 to 36 percent by 2050. The report, *Baseline and Projected Future Carbon Storage and Greenhouse Gas Fluxes in the Great Plains Region of the United States* measured how much carbon is stored in grasslands, wetlands, forests, agricultural lands, and other ecosystems in 14 states stretching from eastern Montana to southern Texas and eastern Iowa.

Environmental Protection Agency

Utility MACT Forthcoming

During a December 6 address at Duke University, Environmental Protection Agency Administrator Lisa Jackson said that the agency will finalize regulations requiring power plants to use pollution controls to limit toxic emissions in the next few days. The Utility MACT rule would require coal-fired power plants to adopt maximum achievable control technology to reduce emissions of mercury, acid gases, and other air

pollutants, setting the first national standards on the amount of mercury and other toxic air pollution released from power plants.

Cross-State Rule Defended

The Environmental Protection Agency filed with the U.S. Court of Appeals for the District of Columbia Circuit a defense, saying that critics of the Cross-State Air Pollution Rule have grossly exaggerated claims that the regulation will require significant emissions reductions on January 1. State emissions budgets for 2012 and 2013 are based on emissions controls that already exist or that have been planned, and the agency also said it had appropriately issued federal implementation plans instead of calling for state implementation plans.

Trading Optional

At a December 7 forum, Resources for the Future said that the Environmental Protection Agency could craft an emissions trading program for greenhouse gas emissions from coal-fired power plants using its existing authority under the Clean Air Act. Rather than establishing a CO₂ emissions limit for coal-fired power plants under Section 111 of the Clean Air Act, the agency could set a performance standard that focused on energy efficiency.

MOVES2010a Not Delayed

The Environmental Protection Agency withdrew a direct final rule December 5 that would have extended by one year the deadline for states and localities to begin using a new mobile source emissions model for transportation conformity determinations. Following the October 13 notice, the agency said that it had heard from state and local agencies that they need more time to transition to the MOVES2010a emissions modeling system. Instead, the agency will address the negative comments when it issues the new final rule this March.

Joint NHTSA/EPA Hearings on Fuel Economy Standards

Throughout January, the Environmental Protection Agency and National Highway Traffic Safety Administration have scheduled three public hearings to address public and industry concerns with rules the two agencies proposed on December 1 setting more stringent corporate average fuel economy (CAFE) and greenhouse gas emissions standards for model year 2017 through 2025 cars and light-duty trucks. The rules contain a carbon dioxide emissions limit of 163 grams per mile by 2025 (equivalent to a fuel economy standard of 54.5 miles per gallon with fuel economy technology) as well as an average fuel economy of 56 mpg for passenger cars by 2025, a 4.1% annual increase between 2017 and 2021 and a 4.3% annual increase between 2022 and 2025. Light-duty trucks on the other hand, would have need to reach 40.3 mpg by 2025, a 2.9 percent annual increase between 2017 and 2021 and 4.7% annual increase thereafter.

Court Decision on Cement Rules

On December 9, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Environmental Protection Agency acted improperly when the agency failed to consider a separate rulemaking defining solid waste incinerators when the agency issued national emissions standards for hazardous air pollutants and source performance standards for cement kilns. The ruling was not stayed because EPA expected no significant changes upon the rules reconsideration.

Federal Energy Regulatory Commission

Bonneville Power Wind Access Ruling

Last week, the Federal Energy Regulatory Commission, in response to a petition brought by Iberdrola Renewables Inc., PacifiCorp, NextEra Energy Resources LLC, Invenergy Wind North America LLC, and Horizon Wind Energy LLC ruled that the Bonneville Power Administration violated the Federal Power Act in curtailing access to wind generators in periods of peak hydropower generation. BPA, an agency of the Department of Energy, uses 15,000 miles of transmission lines to market wholesale electricity from 31 federal hydro projects in the Columbia River Basin, and provides almost a third of the Northwest's electric power. BPA has one month to request a rehearing.

Miscellaneous

No Link between Emissions Limits and Vehicle Cost

The European Commission recently published a study that found no evidence that European Union environmental legislation to limit vehicle emissions has increased manufacturers' costs or car prices. The report found that carbon dioxide emissions from cars sold in the EU declined by 15 percent between 2002-2010, while prices dropped 13 percent over the same period.

Carbon War Room to Promote Biofuels

The Carbon War Room launched an initiative December 5 to help airlines reduce greenhouse gas emissions by using high-grade biofuel. Announced on the sidelines of the 17th Conference of Parties to the United Nations Framework Convention on Climate Change, the Renewable Jet Fuels initiative is aimed at helping airlines to evaluate different types of renewable airline fuel by considering 70 criteria including cost, effectiveness, supply, sustainability, and safety.

Expanded Grid Involvement Urged

The Massachusetts Institute of Technology issued a report December 5 that found that a stronger federal role for siting high-voltage transmission lines and for preventing cybersecurity threats are need for the U.S. electric grid. The report, "The Future of the Electric Grid," concludes that federal and state government policies and industry practices need reform to meet the technological challenges facing the electricity industry over the next two decades to 2030. MIT researchers also called for changes in the traditional way electricity is priced, based on usage, in order to remove disincentives for utilities to implement and promote energy-saving technologies.

Stricter Standards for Motorcycles

The European Parliament's Internal Market and Consumer Protection committee voted 28-0 December 5 to broadly back European Commission proposals that would introduce the Euro 3, 4, 5, and 6 standards for two-wheeled vehicles. The limits would apply to emissions of carbon monoxide, hydrocarbons, nitrogen oxides, and particulate matter beginning in 2016.

Canadian Diesel Regulations

Environment Canada finalized amendments to Off-Road Compression-Ignition Engine Emission Regulations December 7 to align Canadian emission standards with those adopted by the U.S. Environmental Protection Agency in 2004. Under the new rules, Canadian manufacturers and importers of off-road diesel engines must meet lower emission limits on volatile organic compounds, nitrogen oxide, particulate matter, and other toxic pollutants by model year 2012.

CARB Clears Hurdle

On December 6, a California Superior Court Judge Ernest Goldsmith in San Francisco approved an expanded environmental analysis of the state's strategy for implementing climate policies, removing one legal block to the state's economy-wide cap and trade program. Judge Goldsmith found that the California Air Resources Board had complied with his May 20 peremptory writ of mandate that required the agency to provide a more thorough review of alternatives to the trading program as part of the Global Warming Solutions Act of 2006 (A.B. 32). CARB is now expected to drop its appeal of the state court decision, and the emissions trading program, launching January 1, will not be enforced during the first year, but the first allocation auctions are scheduled for August 2012.

Shale Gas Potential

HIS Global Insight released a study December 6 that concluded that shale gas development has the potential to support 870,000 jobs in 2015 while growing the domestic economy by \$118 billion and generating \$28.5 billion in tax revenue. The study, commissioned by America's Natural Gas Alliance, is the first comprehensive look at 21 known shale gas plays in North America and the economic impact that would result from their commercial development over the next two decades.

CARB Vehicle Standards

On December 7, the California Air Resources Board (CARB) proposed combining California's zero-emission vehicle program, passenger cars and light-duty trucks emissions regulations, and a clean fuels outlet measure into a single program designed to facilitate the deployment of 1.4 million battery-operated electric, fuel cell, and plug-in hybrid vehicles by 2025. The proposal would establish a declining fleet average emissions standard for 2015-2025 model year cars and light trucks under the auspices of the state's low-emission vehicle standards, or LEV III. Furthermore, vehicle manufacturers would need to both meet a zero-level evaporative emissions limit, and see an increase in the number of miles in which they must guarantee emissions control systems, from 120,000 miles to 150,000 miles.

Chinese Urban Air Quality Concerns

China's Ministry of Environmental Protection released a draft update to Ambient Air Quality Standards and technical requirements for the Ambient Air Quality Index proposing the measurement and publication of small particulate matter. Some cities currently measure SMP data but do not publish it, and the revisions come as public concern grows over government reporting of air quality data in Northeastern China. The rules are open for public comment until December 24.

Maryland Issues Emergency Green Building Regulations

On October 20, the Maryland Energy Administration released emergency regulations amending the green building tax credit. The regulations also update the compliance standards for the 2009 LEED standards and revise the initial credit certificate process. Newly constructed green buildings with green tenant space must have at least a Gold rating in the LEED Rating System LEED 2009 for New Construction and Major Renovations in certain categories. The emergency regulations expire December 31.