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ENERGY AND ENVIRONMENT UPDATE December 16, 2013

ENERGY AND CLIMATE DEBATE

As we've been predicting, tax reform will not happen this year. With 2013 coming to a close, preparations are being made to resurrect the effort in 2014, and comprehensive reform looks as difficult for the coming year as it has been for this year. As a result, Representative Richard Neal (D-MA) said last week that extenders, and particularly energy-related tax extenders, could come up early next year. Senate Finance Chairman Max Baucus (D-MT) has also suggested the same thing. Chairman Baucus is expected to unveil tomorrow his energy tax concept paper, his proposal for reforming the energy section of the tax code.

Members of the House Sustainable Energy and Environment Coalition sent a [letter](#) to the House Ways and Means Committee December 16 calling for key energy tax provisions to be extended since broader tax reform efforts will not be finalized before the end of the year. Their list includes the renewable energy production tax credit, the investment tax credit, the 48C Advanced Energy Manufacturing Tax Credit, efficient home and appliance credits, and hybrid vehicle credits. Congressional tax writers had hoped to avoid an extenders package in favor of addressing the issues as part of a broader tax reform effort, but delays have clean energy advocates concerned. The same day, Senator Ed Markey (D-MA) was joined by 19 of his colleagues in sending a [companion](#) letter to the Senate Finance Committee.

In a December 9 letter, 68 advanced biofuel companies urged Senate Finance and House Ways and Means leadership to prevent certain tax credits from expiring at the end of the year. The groups promoted the Alternative Fuel and Alternative Fuel Mixture Excise Tax Credit, the Biodiesel and Renewable Diesel Fuels Credits, the Second Generation Biofuel Producer Tax Credit, and the Special Depreciation Allowance for Second Generation Biofuel Plant Property.

Before recessing for the holidays, and with the end of the year approaching, the House voted 350-69 to approve the National Defense Authorization Act and 332-94 in favor of the Ryan-Murray budget agreement. Both bills include energy and environment related topics. The NDAA includes compromise language on biofuels procurement while the budget deal increases overall spending

and discretionary levels for agencies such as the Department of Energy. The Senate is focusing on these two bills this week, with passage of the budget imminent and the Defense Authorization Bill expected to be approved, as well as nominations before it also recesses for the holidays. Additionally, Senate Agriculture, Nutrition, and Forestry Committee Chair Debbie Stabenow (D-MI) said late last week that House and Senate agriculture leaders are close to finishing a final framework for the multiyear farm bill reauthorization, with the hope of having it ready to go in January. The current farm bill expired after fiscal year 2012, but Congress negotiated a one-year extension for it into the American Taxpayer Relief Act in January 2013. The House passed a one-month extension on December 12, but Senator Stabenow is hopeful that lawmakers will reach a final agreement before the price of milk is impacted.

The Supreme Court heard oral arguments on the Cross-State Air Pollution Rule last Monday, and details are below.

CONGRESS

House Letter on Nuclear Waste

In a December 11 [letter](#), House Energy and Commerce Chairman Fred Upton (R-MI) and Environment and the Economy Subcommittee Chairman John Shimkus (R-IL) urged Energy Secretary Ernest Moniz to explain how the Department intends on implementing two decisions by the U.S. Court of Appeals for the District of Columbia Circuit on nuclear waste. The court first ruled that the Nuclear Regulatory Commission must restart its Yucca Mountain repository investigation and then ruled that the Department must zero out its nuclear waste fee.

Radioactive Waste Management Plans Sought

Representatives Fred Upton (R-MI) and John Shimkus (R-IL) sent a letter to Energy Secretary Ernest Moniz December 11 requesting details about how the agency plans to respond to recent appeals court rulings on radioactive waste management and disposal fees. They have asked for a response by January 2.

RIN Verification Program to Be Finalized Early 2014

Chris Grunder, director of the Environmental Protection Agency's Office of Transportation and Air Quality, testified before the Senate Environment and Public Works Committee December 11 that the Environmental Protection Agency's proposal to establish a voluntary verification program for renewable fuel credits will be finalized early next year. The program would establish qualifications for third-party auditors, who would determine the validity of renewable identification numbers.

Keystone EIS Delay Requested

House Democrats asked President Obama December 12 to wait to release a final environmental analysis of the Keystone XL pipeline until conflict of interest allegations are resolved. The State Department inspector general is expected to finalize its report in February.

Military Should Encourage Climate Change Action

Speaking at the Defense, National Security, and Climate Change Symposium December 12, Senator Sheldon Whitehouse (D-RI) said that the United States military should advocate for addressing climate change, given their role as one of the most trusted voices in the country. The senator reiterated that failure to address climate change could present risks to our national security, pointing to findings in the 2010 Quadrennial Defense Review.

Yucca Mountain Licensing Should Be Hastened

House Republicans told Nuclear Regulatory Commission members December 12 at an oversight hearing that they should hasten the licensing process for the stalled Yucca Mountain nuclear waste storage site. Chairman Allison Macfarlane told the committee that the commission faces a funding shortage in completing the license review. The next day, the House Energy and Commerce Subcommittee on Energy and Power unveiled its 2014 agenda, citing legislation to reform the Toxic Substances Control Act, to incite the Nuclear Regulatory Commission to complete its review of the Yucca Mountain waste storage site, and to reform Homeland Security's chemical security program as priorities.

Potential Coal Industry Impacts of Financing Changes

Representatives Fred Upton (R-MI) and Ed Whitfield (R-KY) sent a [letter](#) to Treasury Secretary Jacob Lew December 13 asking him to answer for the potential impacts to the coal industry of the agency's recent guidance on ending U.S. support for the public financing of coal-fired power plants overseas. The pair asked the secretary to respond by January 17.

Legislation Introduced

- On December 10, Representatives Fred Upton (R-MI), Henry Waxman (D-CA), Lee Terry (R-NE), Gene Green (D-TX), and Gus Bilirakis (R-FL) introduced H.R. 3683, a bill to amend the Energy Independence and Security Act of 2007 to improve United States-Israel energy cooperation.
- The same day, Representatives Shelley Moore Capito (R-WV), David McKinley (R-WV), Cramer, and Luetkemeyer introduced H.R. 3684, a bill to prohibit Federal funding of foreign travel by the Administrator of the Environmental Protection Agency until the Agency conducts public listening sessions on rulemaking targeting carbon dioxide emissions from existing power plants in each of the 15 States with the highest percentage of electricity generated by coal in 2012.
- On December 11, Representative Jack Kingston (R-GA) introduced H.R. 3702, a bill to delay the effective date of certain rules of the Environmental Protection Agency until a report is submitted and a law is enacted setting the rule's effective date.
- The same day, Representative Jack Kingston (R-GA) introduced H.R. 3703, a bill to provide for the expedited approval of the construction, operation, and maintenance of the Keystone XL pipeline, and for other purposes.
- On December 13, Representative Earl Blumenauer (D-WA) introduced H.R. 3733, the Trade and Environmental Enforcement Act. The bill would increase tariffs on countries with weak environmental enforcement standards.
- The same day, Senators Dianne Feinstein (D-CA) and Tom Coburn (R-OK) introduced the Corn Ethanol Mandate Elimination Act of 2013. The measure would eliminate the corn ethanol requirement of the Renewable Fuel Standards.

Upcoming Hearings

- On December 17, the Senate Energy and Natural Resources Committee will consider the nominations of Janice Schneider to be Assistant Interior Secretary for Land and Minerals Management, Neil Kornze to be the Bureau of Land Management Director, Dr. Marc Kastner to be Director of the Department of Energy Office of Science, and Dr. Ellen Williams to be Director of the Advanced Research Projects Agency-Energy (ARPA-E). It will also vote on the nominations of Steven Croley to be General Counsel for the Department of Energy and Christopher Smith to be the agency's Assistant Secretary for Fossil Energy.

- The same day, the Senate Environment and Public Works Committee will consider Thomas Burke to be Assistant Environmental Protection Agency Administrator for Research and Development; Victoria Wassmer to be the agency's chief financial officer; Rhea Suh to be Assistant Interior Secretary for Fish and Wildlife and Parks; and Roy Williams to be Assistant Commerce Secretary for Economic Development.
- The Senate Energy and Natural Resources Committee will vote on legislation December 19, including a bill aimed at increasing energy cooperation between the U.S. and Israel. The House Energy and Commerce Committee passed a similar measure last week.

ADMINISTRATION

Podesta to be White House Advisor

The New York Times reported December 9 that John Podesta will join the White House as an advisor to the President on climate, health care, and other issues for one year. He will not work on the Keystone XL pipeline. Mr. Podesta is the founder of the Center for American Progress and previously served as Chief of Staff to President Bill Clinton.

USDA, Navy Farm to Fleet Initiative

U.S. Department of Agriculture Secretary Tom Vilsack and Secretary of the Navy Ray Mabus announced in a December 10 press call the creation of the Farm to Fleet Initiative. The project is designed to fuel Navy ships with advanced biofuels.

GHG Regs Required for Oversees Coal Plant Financing

The U.S. Export-Import Bank's board of directors determined December 12 that foreign governments would be required to put GHG reduction regulations in place before domestic companies could secure financing support to build coal-fired power plants abroad. Exceptions will be made for plants in poor countries that use the most efficient coal technology available and where no other alternative is economically feasible.

Public-Private Partnerships Crucial for Success

Panelists at the Defense, National Security and Climate Change Symposium December 12 agreed that public-private partnerships are crucial for federal agencies in meeting renewable energy goals. President Obama called on federal agencies week before last to generate at least 20 percent of their energy from renewable sources by 2020, nearly tripling the 7.5 percent they must currently obtain.

Task Force Holds First Meeting

The Climate Change Task Force met for the first time December 10 to lay out priorities for how the federal government deal with state, local, and tribal leaders address negative impacts of climate change. The task force will meet thrice more before issuing recommendations next November.

DEPARTMENT OF COMMERCE

Arctic Report Card Published

The National Oceanic and Atmospheric Administration released its annual [Arctic Report Card](#) December 12 finding that cooler summer temperatures in parts of the Arctic this year moderated last year's record sea-ice loss and melting in the region, but reiterated that long-term warming trends in the area continue.

March Business Development Mission

Secretary of Commerce Penny Pritzker will lead a senior executive Business Development Mission to the United Arab Emirates, Saudi Arabia, and Qatar March 8-14. The mission will highlight export opportunities for American businesses in leading industry sectors with an emphasis on project management and engineering, renewable energy, smart grid and energy efficiency, and environmental technologies.

DEPARTMENT OF DEFENSE

Normalizing Alternative Fuel Purchases

The Departments of Navy and Agriculture announced December 11 that the Navy would begin regularly purchasing alternative fuels for use in jets and ships in 2014. Under a joint venture, the Navy will purchase JP-5 and F-76 advanced drop-in biofuels blended from ten to fifty percent with conventional fuels starting with this bulk solicitation, with deliveries anticipated in mid-2015.

DEPARTMENT OF ENERGY

\$13M Awarded to Solar Projects

Five solar projects [received](#) \$13 million from the Department of Energy on December 11 as part of the SunShot Initiative. The projects, designed to improve manufacturing efficiency and reduce production costs, are located in CA, CO, GA, PA, and OR. An additional \$14 million will be matched through private cost-share contributions.

SMR Award

The Department of Energy selected NuScale Power LLC to support a project to design, certify, and commercialize small modular nuclear reactors December 12. The agency will invest up to half of the total project cost, to be negotiated between the two, with the project's industry partners matching or exceeding the investment; it has \$452 million for the SMR licensing technical support program.

\$8 Billion for Fossil Energy Loan Guarantees

The Department of Energy began accepting applications December 12 for [\\$8 billion](#) in loan guarantees for advanced fossil energy projects that reduce greenhouse gas emissions. The agency expects to make smaller loan guarantees for a variety of projects related to coal, oil, natural gas, shale gas, coal bed methane, methane hydrates, and efficiency improvements. Initial applications are due by the end of February.

Remaining 48C Money Awarded

The Department of Energy [awarded](#) the remaining \$150 million from the Advanced Energy Manufacturing Tax Credit 48C Program December 12. The credits, awarded to twelve businesses that must place the projects in service by 2017, include \$30 million to Cree Inc. for efficient lighting manufacturing expansion, \$30 million to Corning Inc. for diesel emissions control product manufacturing, and \$30 million to Ford Motor Company for electric vehicle investment.

Electric Motor Test Procedures Amended

The Department of Energy published a [final rule](#) December 13 for electric motor test procedures. The agency clarified the setup requirements needed to facilitate the testing of currently unregulated motors, and adopted new definitions.

Grid Energy Storage Expansion Strategies

The Department of Energy released a [report](#) December 12 finding that in order to expand grid energy storage, government and industry must reduce uncertainty about how the technology is

used and how it can be cost-effective. The report outlined a strategy to increase energy storage by developing cost competitive technologies, validating its reliability and safety, creating a more consistent regulatory environment, and fostering industry acceptance.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Long-Term Climate Protection Efforts Needed

Housing and Urban Development Secretary Shaun Donovan said December 12 that the United States is falling behind its global counterparts in long-term efforts to protect communities from the impacts of climate change. He urged the federal government to encourage more innovation and regional efforts in long-term disaster recovery and resiliency planning.

ENVIRONMENTAL PROTECTION AGENCY

McCarthy in China

Environmental Protection Agency Administrator Gina McCarthy visited China from December 9 to 12. She attended events and meetings on environmental cooperation, fuel desulfurization, and social and business responsibility.

SCOTUS Hears CSAPR Case

The Supreme Court heard [oral arguments](#) December 10 for a consolidated case on the Cross-State Air Pollution Rule. The U.S. Court of Appeals for the District of Columbia Circuit struck down the rule in 2012, and the high court consolidated two cases, both involving EME Homer City Generation. Justice Samuel Alito recused himself.

Appeals Court Hears MATS Case

The U.S. Court of Appeals for the District of Columbia Circuit heard a case on the mercury and air toxics standard on December 10. In response to a case filed by the White Stallion Energy Center LLC, the Environmental Protection Agency argued that the standard was balanced between the too strict industry approach and the not strict enough environmental assertions. The court was asked to consider the costs of the rule, fuel switching as a compliance method, monitoring requirements, and technology requirements.

PA Joins East Coast Petition

Following the December 9 petition by eight east coast governors, Pennsylvania Governor Tom Corbett (R) asked the Environmental Protection Agency December 10 to include nine upwind states to join the Ozone Transport Region. Governor Corbett said he hoped the states of IL, IN, KY, MI, NC, OH, TN, VA, and WV could abide by the same standards as his state. The governors who already petitioned the agency represent CT, DE, MA, MD, NH, NY, RI, and VT.

Brief Filed in Sierra Club v. EPA

The Environmental Protection Agency filed a brief December 11 arguing that the U.S. Court of Appeals for the District of Columbia Circuit lacks jurisdiction to review a memorandum advising regional offices on how to respond to a court decision striking down the Cross-State Air Pollution Rule. The agency asserted that the memo does not constitute a final agency action.

Regional Haze Plans Case

The U.S. Court of Appeals for the District of Columbia Circuit dismissed Arizona's challenge December 11 to a consent decree establishing deadlines for the Environmental Protection Agency to act on regional haze plans. The court ruled that the state's claims were not ripe for review.

Toxic Releases Down 16 Percent in 2012

The Environmental Protection Agency released [2012 Toxics Release Inventory](#) data December 11, finding that electric utilities' toxic releases decreased for the seventh consecutive year, this year by 100 million pounds, 16 percent, or 52 percent from 2002 levels. The annual national analysis that highlights industry, location, and chemical trends will be released in January.

Existing Power Plant Regulations

Joe Goffman, senior counsel to Environmental Protection Agency Assistant Administrator for Air and Radiation Janet McCabe, said December 12 that the president's climate action plan puts states front and center in crafting existing power plant regulations, given that they will primarily be responsible for implementing and enforcing them.

Light-Duty Vehicles Set GHG Reduction Records

The Environmental Protection Agency released an annual report December 12 finding that light-duty vehicles set records for greenhouse gas emission reductions and fuel economy in model year 2012. The report, "[Light-Duty Automotive Technology, Carbon Dioxide Emissions, and Fuel Economy Trends: 1975 Through 2013](#)," concluded that fuel economy has improved 4.3 mpg since model year 2004, and CO₂ emissions have decreased 85 grams per mile during that same period.

McConnell Defends Coal Industry

Senate Minority Leader Mitch McConnell (R-KY) was joined by members of the Kentucky delegation and House Science Committee Chair Lamar Smith (R-TX) in filing an [amicus brief](#) with the Supreme Court December 16 fighting against a narrow portion of the Environmental Protection Agency's greenhouse gas regulations in a sequel case (*Utility Air Regulatory Group v. Environmental Protection Agency*) to the court's 2007 ruling in *Massachusetts v. EPA*. The agency has since used the Tailpipe Rule to trigger regulations on coal-fired power plants and other stationary sources. Oral arguments are set for February 24.

GOVERNMENT ACCOUNTABILITY OFFICE

Corps and Bureau of Reclamation Addressing Climate Vulnerabilities

The Government Accountability Office [found](#) December 13 that the Army Corps of Engineers and the Bureau of Reclamation are working together to provide data and tools to address water resource and infrastructure vulnerabilities to the impacts of climate change. Senator Barbara Boxer (D-CA) and other members of the Senate Environment and Public Works Committee asked the office to review climate change adaptation efforts since 2009.

INTERNATIONAL

Chinese HCFC Quotas Released

China assigned hydrochlorofluorocarbon production quotas to 40 businesses for 2014 and released details on 2013 quotas in compliance with the Montreal Protocol November 25 and December 5, respectively.

Eurostat Resource Efficiency Scorecard Released

The [Eurostat Resource Efficiency Scorecard](#) was released December 6, and data cover a range of topics from resource consumption to soil erosion for all EU countries. Resource productivity, represented as economic output per unit of energy, was another category. The U.K., Luxembourg,

and the Netherlands had the highest resource productivity while Bulgaria, Romania, and Latvia had the lowest.

Attention to Risk Needed

Chief Science Advisers to the European Union and United Kingdom said during the Society of Risk Analysis December 9 that governments need to pay more attention to perceptions of environmental risks and improve their related communications if they want resources and funding to be focused on the most important risks.

EBRD to Shun Coal-Fired Plant Funding

The European Bank for Reconstruction and Development voted December 10 on a new investment strategy that will do away with most assistance for coal-fired power plants, providing funding only in rare and exceptional circumstances. The World Bank and European Investment Bank already have announced plans to shun most coal investments. In November, Britain joined a U.S. initiative to do so.

European Parliament Approves ETS Backloading Plan

The European Parliament [approved](#) the Emissions Trading System Backloading plan December 10. 900 million carbon allowances will be delayed under the plan, which was informally agreed to by Parliament and European Council members in November.

Mexican Congress Approves Oil Investment Proposal

The lower house of the Mexican Congress voted December 12 to open the state-run oil industry to private investment. The proposal was part of President Enrique Pena Nieto's first-year reform effort and must be approved by 17 of the 31 states. The oil industry was nationalized in 1938, and Petroleos Mexicanos has a monopoly.

EU Fails to Cap Biofuels

European Union energy ministers failed to approve a compromise proposal December 12 to limit crop-based biofuels to seven percent of an EU 2020 goal to have renewable energy provide ten percent of all transportation fuels. The proposal came following concerns about the biofuel's negative impact on climate change and food prices.

Sustainable Energy Index Released

The World Economic Forum released the [Global Energy Architecture Performance Index for 2014](#) December 13 of the global transition to more sustainable energy. The top ten countries on the index, mostly members of the European Union and Organization for Economic Cooperation and Development, used low-carbon energy sources for 41 percent of their energy supply, compared to a global average of 28 percent.

Global Climate Investment Index Published

The Asset Owners Disclosure Project released a [report](#) December 13 charging that global asset owners are failing to manage the risks that climate change poses to the value of their portfolios, potentially resulting in smaller returns and lower retirement savings.

STATES

MA Finalizes RGGI Model Rule

Massachusetts [announced](#) December 8 that it had finalized implementation regulations for the Regional Greenhouse Gas Initiative model rule on a 45 percent reduction for the emissions cap. The

state created a cost containment reserve of allowances. CT, ME, and NH have already implemented the rule.

Federal Court on VT Generating Tax

The U.S. Court of Appeals for the Second Circuit unanimously [ruled](#) December 10 that the Vermont Electrical Energy Generating Tax, aimed at facilities that produce over 200 megawatts of power, is a tax. As a result, the federal court is limited in addressing the tax. Entergy had filed a suit against the state, saying the tax violated the Commerce, Equal Protection, and Supremacy Clauses of the U.S. Constitution.

CA Truck Standards Align with Federal Regs

The California Air Resources Board approved [regulations](#) December 12 to reduce CO2 emissions from new medium- and heavy-duty vehicles to match federal 2011 GHG emissions and fuel economy standards. The new standards apply to 2014 through 2019 model year engines, thus reducing statewide emissions 7.2 percent by 2020 and 12.5 percent by 2035.

MISCELLANEOUS

Microsoft Releases Carbon Fee Playbook

Microsoft Corp. released a playbook December 11 to help businesses follow its lead in establishing an internal carbon fee. The fee model can be used to drive efficiency and demonstrate climate responsibility and leadership. The company launched its fee to help achieve a July 2012 pledge to make operations carbon neutral beginning in fiscal year 2013.

LEED Updates Defended

The U.S. Green Building Council defended the latest version of its Leadership in Energy and Environmental Design rating system against criticism from chemical and building products manufacturers December 12. LEED is the most widely recognized and used green building program worldwide, and launched its latest update, LEED v4, November 20.