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ENERGY AND ENVIRONMENT UPDATE **February 26, 2012**

Energy and Climate Debate

With Congress in recess for the Presidents' Day holiday, the Administration made energy issues one of its top priorities last week, reiterating the president's call for an all of the above strategy to energy policy.

Speaking to college students in Miami February 23, President Obama criticized the pro-drilling approach of Republicans and the reluctance of the oil and gas industry to give up \$4 billion a year in tax breaks, which the president has called for zeroing out in his fiscal year 2013 budget request. With the election year heating up, and the administration facing the blame for high gas prices, President Obama last week acknowledged that prices are rising faster and earlier this year than ever before, and that the sticker shock people feel at the pump is another reminder of why developing clean, alternative energy sources is critical.

Taking the opportunity to tour the University of Miami's Industrial Assessment Center, where students are trained as industrial energy efficiency experts to help manufacturers reduce energy costs and which receives funding from the Department of Energy, the president downplayed the possibility of any quick fix, but called again on Congress to pass clean energy tax credits.

As a part of the trip, administration officials announced three new clean energy initiatives involving natural gas, biofuels, and energy efficiency, all of which are detailed below. In the weekly Republican radio address on Saturday, Sen. Kay Bailey Hutchison used the speech as an opportunity to reiterate an emerging Republican narrative linking Obama's energy agenda and high gasoline prices.

In other news, after working on it for two years, Treasury Secretary Timothy Geithner unveiled the administration's proposal for tax reform February 22. Noting that a reworking of the country's tax system will take time, require bipartisanship, and benefit from stakeholder feedback, the proposal calls for the elimination of numerous tax loopholes and subsidies and a reduction of the corporate tax rate to 28 percent; a refocusing of the manufacturing deduction to reduce the effective tax rate on manufacturing to 25 percent while encouraging increased clean energy research and development; the introduction of a new minimum tax for foreign earnings, the simplification of tax filing for small businesses; and ensuring that current tax provisions are fully paid for.

The framework would make permanent the tax credit for the production of renewable electricity in order to provide a strong, consistent incentive to encourage investments in renewable energy technologies like

wind and solar. To date, the United States has provided only a temporary production tax credit for renewable electricity generation, creating an uncertain investment climate, undermining the effectiveness of tax expenditures, and hindering the development of a clean energy sector in the United States, while requiring many firms to invest in inefficient tax planning through tax equity structures so that they can benefit even when they do not have tax liability. The framework would address these issues by making the permanent production tax credit refundable.

Members of Congress will return on Monday after the President's Day recess to take up several key pieces of legislation and hold various energy and budget hearings. The House is backing off its large highway reauthorization bill, while the Senate will resume consideration of a two-year, \$109 billion version of the bill (S. 1813).

Congress

PTC Letter

Senators John Kerry (D-MA), Jerry Moran (R-KS), Mark Udall (D-CO), Michael Bennet (D-CO), John Boozman (R-AR), Tom Harkin (D-IA), Chick Grassley (R-IA), Tim Johnson (D-SD), John Hoeven (R-ND), Scott Brown (R-MA), John Thune (R-SD), and Jon Tester (D-MT), sent a letter to Senator Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) February 23 encouraging swift action on the reauthorization of the wind production tax credit, which expires at the end of the year. The bipartisan group contends that an extension of the PTC should provide for some long term stability to the market while creating a path for how the wind industry can eventually operate independently of such a credit.

Senators Support Vehicle Fuel Standards

A group of 30 senators led by Senate Majority Whip Dick Durbin (D-IL), Senators Debbie Stabenow (D-MI), Carl Levin (D-MI), Richard Blumenthal (D-CT), Dianne Feinstein (D-CA), Frank Lautenberg (D-NJ), Joe Lieberman (I-CT), and Olympia Snowe (R-ME) sent a letter February 17 to Environmental Protection Agency Administrator Lisa Jackson and Transportation Secretary Ray LaHood supporting the two agencies in their efforts to raise federal fuel economy standards to 54.5 miles per gallon by 2025. The agencies proposed rules in December that would establish more stringent CAFE and greenhouse gas emissions standards for model year 2017 through 2025 cars and light-duty trucks; the proposed rules would also set a CO2 emissions limit of 163 grams per mile by 2025, the equivalent of a fuel economy standard of 54.5 mpg if pollutant reductions were achieved via fuel-economy technology. The senators noted that some industry groups, including car manufacturers, have supported the proposal.

Congressmen Oppose NSP

On February 23, over 200 congressmen led by House Energy and Commerce Subcommittee on Energy and Power Chairman Ed Whitfield (R-KY) sent a letter to Jeffrey Zients, acting director of the Office of Management and Budget, charging that the Environmental Protection Agency's pending new source performance standard rule could have a devastating impact on job growth and the economy. The members questioned whether the proposal would comply with President Obama's Executive Order No. 13,563, which requires federal agencies to ensure that all regulations are cost effective. The Environmental Protection Agency agreed in 2010 to issue the power plant rule as part of a court settlement with environmental groups and states, and after missing two court deadlines to propose the rule, the Office of Management and Budget has been reviewing the proposal since November 7 while the agency negotiates with plaintiffs on a new deadline to issue the rule.

Total Cost of EPA Air Toxics Rule Requested

Republicans on the House Energy and Commerce Committee sent a letter February 22 to Jacob Lew, the White House chief of staff, asking the White House to compel the Environmental Protection Agency to provide an estimate of the total cost of its mercury and air toxics standards for power plants. The agency has said the rule as an annual cost of \$9.4 billion, but no total cost estimate has been provided yet. The committee republicans cited a finding that power plants will have to raise \$84 billion between 2012 and 2015 to comply with the mercury rule, which is 30 percent more than the electricity sector's projected baseline capital spending for the period.

Upcoming Hearings

The Energy and Mineral Resources Subcommittee of the House Natural Resources Committee will hold a field hearing February 27 on fracking. The hearing will focus on claims that fracking can contribute to both the production of natural gas and its potential job creation and revenue generation.

Senate Energy and Natural Resources Committee will hold a hearing February 28 to consider the President's fiscal year 2013 proposed budget for the Department of the Interior. Interior Secretary Ken Salazar will testify.

The House Appropriations Commerce, Justice, Science, and Related Agencies Subcommittee will hold a hearing on proposed fiscal year 2013 appropriations for departments, agencies, and programs under its jurisdiction February 28.

The same day, the House Appropriations Interior, Environment, and Related Agencies Subcommittee will hold a hearing on proposed fiscal year 2013 appropriations for departments, agencies, and programs under its jurisdiction. The committee will hold an additional hearing the following day as well.

The House Energy and Commerce Subcommittees on Energy and Power and Environment and Economy will hold a joint hearing on the fiscal year 2013 budget request for the Environmental Protection Agency.

The Oversight and Investigations Subcommittee of the House Energy and Commerce Committee will hold a February 28 hearing titled "Critical Infrastructure Cybersecurity: Assessments of Smart Grid Security."

The House Appropriations Subcommittee on Energy and Water Development will hold a February 28 hearing on the Department of Energy FY2013 budget, with testimony from Secretary Steven Chu.

The House Appropriations Energy and Water Development Subcommittee will hold a hearing on proposed fiscal year 2013 appropriations for energy and water development, with testimony from EPA administrator Lisa Jackson.

The Senate Appropriations Interior, Environment, and Related Agencies Subcommittee will hold a hearing February 29 on proposed fiscal year 2013 appropriations for departments, agencies, and programs under its jurisdiction.

The same day, the House Science, Space, and Technology Committee will hold a hearing on the fiscal 2013 budget request for scientific research and development programs, with testimony scheduled from Secretary of Energy Steven Chu.

The Senate Energy and Natural Resources Committee will hold a hearing March 13 on the "Report of the Independent Consultant's Review with Respect to the Department of Energy Loan and Loan Guarantee Portfolio." Former Treasury Department official Herb Allison, who lead the comprehensive review of the agency's loan guarantee program and wrote the study, and Energy Secretary Steven Chu will testify.

Administration

Biobased Product Purchasing

In line with Executive Order 13514, which requires that 95 percent of new agency contracts use biobased products when available, the White House issued a memorandum of understanding February 21 aimed at increasing such purchases. By this time next year, the Department of Agriculture must double, from 64 categories consisting of 9,000 products, the number of categories of biobased products listed for preferred purchasing by federal agencies in its BioPreferred Program. Within six months, the agency must establish an online process that allows manufacturers to request new product categories and training programs for small biobased product manufacturers and vendors in the BioPreferred Program. The Small Business Association will be responsible for distributing training materials through its business development centers. Additionally, under the Farm Security and Rural Investment Acts of 2002, federal contractors must choose biobased products over other comparable products.

Department of Agriculture

USDA Annual Priorities

Speaking before the Department of Agriculture's Outlook Forum February 23, Agriculture Secretary Tom Vilsack said that growing the domestic biobased products industry and making credit and crop insurance available to farmers are among the agency's top priorities this year.

Department of Defense

DOD RECs

The Department of Defense's Defense Logistics Agency issued a request for proposals February 17, 2012, for 198,000,000 kWh of Renewable Energy Certificates to be delivered to thirteen Federal civilian agencies. These RECs will be used to comply with the Energy Policy Act of 2005 Section 203 renewable energy procurement requirement that each civilian agency consume or purchase 5% of their total electricity usage from renewable power. Each agency has requested a specific number of kWh that must be generated from sources placed in service after January 1, 1999. Submissions are due March 28, 2012 in order to be selected and delivered to the various requesting agencies by May 12, 2012.

Department of Energy

\$10 Million for CCS

The Department of Energy issued a \$10 million funding opportunity focused on developing advanced oxy-combustion technologies for carbon capture and storage that can be applied to new or retrofitted coal-based power plants. Technologies developed under the FOA may also have application to natural gas-fired power plants and industrial boilers. The agency hopes to develop systems that can achieve at least 90 percent CO₂ removal at no more than a 35 percent increase in electricity cost. Applications for cost-shared research and development of pressurized oxy-combustion and chemical looping combustion systems will be accepted through April 17.

\$3 Million for Solar

Energy Secretary Steven Chu announced February 23 \$3 million for research projects that significantly reduce the cost of solar energy. The Bridging Research Interactions through Collaborative Development Grants in Energy funding, through the agency's SunShot Initiative, will enable collaborative research teams from industry, universities, and national laboratories to work together in the agency's research centers to develop solutions to drive down the cost of solar power. Letters of intent are requested by April 25, and full applications are due May 21.

\$44 Million for Alternative Mobile Fuels

President Obama announced new funding February 23 to catalyze breakthrough technologies for natural gas and biofuels in vehicles. Through its Advanced Research Projects Agency—Energy, the Department of Energy will award \$30 million for research that harnesses the nation's abundant supplies of domestic natural gas for vehicles; the new program is called Methane Opportunities for Vehicular Energy. The agency will also make \$14 million available to support research and development into biofuels from algae.

Department of Interior

BLM AZ Plan

The Bureau of Land Management published a notice February 17 identifying swaths of Bureau sites across Arizona that could be suitable for small and utility scale solar and wind power projects. The Arizona plan, which notes a preferred option focusing on areas that are near developed areas, is designed to be a blueprint for the Interior Department in determining what other federal lands might be appropriate for renewable projects. Comments will be accepted on the draft through May 17.

Department of Treasury

Minimums for EE Building Deductions

The Internal Revenue Service released guidance February 23 providing an additional set of energy savings percentages for owners or lessees of energy efficiency commercial buildings seeking certification for their properties to use to qualify for partial tax code Section 179D deduction. Under Notice 2012-22, the applicable energy savings percentages are 25 percent for the interior lighting system, 15 percent for the HVAC and hot water systems, and 10 percent for the building envelope. To receive the partial deduction, systems must reduce total annual energy and power costs with respect to the combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by the specified minimum percentage.

Environmental Protection Agency

Confidential Business Information Determinations

The Environmental Protection Agency repropose a rule February 24 that would treat requests from oil and gas companies to extend their use of alternate emissions reporting methods as confidential business information. At the same time, more than 60 other characteristics of the equipment would not be classified as confidential and could be disclosed. The agency is repropose the confidential business information determinations for the companies because of significant changes to certain data elements since its last proposal. The rule would also defer until 2015 the requirement for oil and gas companies to report some of the inputs used for emissions calculations.

Reporting Requirements Challenged

The American Petroleum Institute and the American Gas Association filed lawsuits February 21 in the U.S. Court of Appeals for the District of Columbia Circuit challenging a December 2011 Environmental Protection Agency rule that requires petroleum and gas drilling operations to report 2011 emissions from wells and storage tanks on a county level and by geologic formation. A number of industry groups have also challenged the underlying mandatory greenhouse gas reporting requirements for oil and gas systems; those suits are being held in abeyance while the agency addresses several petitions from industry groups to reconsider portions of the rule.

Ozone Suits

The U.S. Court of Appeals for the District of Columbia Circuit dismissed a lawsuit February 17 challenging the Environmental Protection Agency's decision not to adopt more stringent ozone air quality standards, saying that it does not have jurisdiction over the agency's decision to abandon plans to establish more protective standards. The court also set a briefing schedule on a long-delayed case challenging ozone standards set in 2008. In 2008, the agency set the primary and secondary ozone national ambient air quality standards at 0.075 parts per million. After President Obama took office, the agency announced that it would reconsider the standards because the agency's science advisers had recommended a more protective primary standard between 0.060 ppm and 0.070 ppm. During the reconsideration, a case that was brought in 2008 to challenge the standards was held in abeyance. In September 2011, the agency was scheduled to release a final rule setting the primary standard at 0.070 ppm, but the president intervened, saying that he did not want to increase regulatory burdens, and the American Lung Association, the Environmental Defense Fund, the Natural Resources Defense Council, and the Appalachian Mountain Club filed a petition for review in October challenging the administration's decision.

Fracking Guidance on Website Altered by Settlement

On February 23, in a settlement between the Environmental Protection Agency and the Independent Petroleum Association of America and the U.S. Oil and Gas Association filed in the U.S. Court of Appeals for the District of Columbia Circuit, the agency agreed to delete language on its website classifying injection wells that use diesel fuel as fracturing additives as "Class II wells" by the agency's Underground Injection Control Program. The suit alleged the online statement was a rulemaking without the public notice and comment required by the Safe Drinking Water Act, and the settlement stipulates that by March 15 the statement must be removed and replaced with a link to another website explaining the new process.

Federal Energy Regulatory Commission

Natural Gas, Electric Grid Coordination

The Federal Energy Regulatory Commission published a proposed rule February 21 that would require more operational information from natural gas pipeline companies in order to improve coordination, and therefore ensure reliability, between the natural gas and electric utility industries. Comments are due within 30 days.

Federal Trade Commission

Window Efficiency Claims Deal

The Federal Trade Commission announced February 22 that proposed settlements in five separate cases will prohibit replacement window sellers from making exaggerated and unsupported claims about the energy efficiency and energy cost savings of their windows. Though many electronic devices carry energy guide labels that indicate measured energy savings, windows do not display efficiency qualifications. The proposed settlement would require companies to possess and rely on scientific evidence before making energy efficiency and cost savings marketing claims and requires each company to substantiate savings claims that include the words "up to" a certain amount of money or achieve energy savings "up to" a certain amount.

EnergyGuide Label Comment Period

On February 24, the Federal Trade Commission requested public comments on changes being considered to the Appliance Labeling Rule, which requires household appliance energy efficiency labels. Under the Energy Policy and Conservation Act, EnergyGuide labels concerning a product's estimated annual operating costs and relative energy consumption ratings must be displayed on clothes washers, dishwashers, refrigerators, freezers, water heaters, room air conditioners, central air conditioners, furnaces, boilers, heat pumps, and pool heaters. The agency is soliciting comments in order to review the rule's benefits and costs.

States

HI RE Systems Eligible for Credits

The Hawaii Department of Taxation advised last week that three taxpayers that were planning to install a renewable energy facility at a public utility location each qualified for the renewable energy technology income tax credit because they were each complete systems. The renewable energy companies will develop, construct, and install their own renewable energy facilities. The department determined that the components of a single renewable energy system were present, and thus each facility is a separate system for purposes of qualifying for the credit.

International

EU Fails to Label Canadian Crude

A European Commission committee failed February 23 to approve a proposal to label crude oil from Canada's oil sands as 22.3 percent more polluting than conventional crude. The committee, consisting of experts from the European Union's 27 member countries, failed to deliver a qualified majority verdict either for or against the proposal. The lack of a decision means the proposal will be referred to the EU Council, which represents the governments of EU member states, and they will vote on the proposal by the end of June.

Technology Transfer Plan

The U.N. Framework Convention on Climate Change's Technology Executive Committee agreed February 17 to set out a work plan later this year on the transfer of climate friendly technologies to developing countries. The committee will unveil its rolling work plan at the next meeting of the UNFCCC subsidiary bodies and ad hoc working groups May 14-25 in Bonn. The technology mechanism seeks to help developing countries hasten and increase their use of environmentally friendly energy production and distribution, transport, industrial production, and other activities through the use of new technologies from rich nations.

29 Countries Oppose Airline Inclusion in EU ETS

The United States, China, Japan, and Russia led a group of 29 countries February 21-22 in formally declaring opposition to the European Union's inclusion of global airlines in its greenhouse gas Emissions Trading System. Officials from the group gathered in Moscow last week to agree to a package of measures to respond to the rules, vowing to challenge it in the International Civil Aviation Organization. The group plans to meet this summer in Saudi Arabia to continue discussions.

EU ETS Airline Regs Profitable

The Center for American Progress and Climate Advisers released an analysis last week concluding that the European Union's inclusion of airlines into its Emissions Trading System will increase airline profits. The report, *Is the Sky Falling for Airline Profits in the European Union?*, considers the EU's recent insistence on applying a fee, based on greenhouse gas emissions, not only to EU-based airlines but also to all flights entering or leaving the European Union and to the emissions along the full length of each flight. The report found that EU airlines will profit more than non-EU airlines because they have more flights covered by the new policy, and that traditional hub and spoke airlines will profit more than other types because they have more operations covered by the policy.

US Rio+20 Goals

Assistant Secretary of Energy for Policy and International Affairs David Sandalow said February 22 that the United States will highlight the role of science and technical innovation in driving global sustainability efforts at the Rio+20 conference in Brazil this June. The U.S. also hopes to highlight the need to protect intellectual property and the need for transparency and good governance in advancing sustainability.

Gold Standard Opens Certification Scheme to Public Comment

On February 24, the Gold Standard Foundation, a Swiss carbon credit certifying organization established by the World Wildlife Fund, announced version 2.2 will be open for public comment until March 12, and in-place by late May. The last round of revisions took place last November, in an on-going effort to ensure that the organization's standards for certifying renewable energy and energy efficiency projects as carbon offsets actually contribute to the mitigation of carbon emissions.

Miscellaneous

Sustainable Meetings Standards Issued

Global standards development organization ASTM International issued February 16 a set of standards to help organizers plan and manage environmentally sustainable events and meetings. The standards cover eight categories: destinations, exhibits, transportation, audio visual and production, communication and marketing materials, on-site offices, food and beverage, and meeting venues. The organization plans to issue standards for accommodations in late spring or early summer. The Global Reporting Initiative issued sustainability reporting guidelines for the events sector in January.

Apple's Independent Environmental Review

Apple Inc. agreed February 21 to allow two independent groups, the Natural Resources Defense Council and Beijing-based Institute of Public and Environmental Affairs, to review environmental audits of two facilities in China. The review could lead to a process for providing increased transparency about environmental issues in company supply chains without disclosing confidential business information. According to Apple's January *Supplier Responsibility 2012 Progress Report*, the company performed in-depth environmental audits of 14 facilities last year, in addition to 188 standard audits that assess facilities' management of hazardous waste, wastewater and stormwater, air emissions, and solid waste.

WCI Offsets Review and Approval

The Western Climate Initiative released final recommendations February 22 for the review and approval of greenhouse gas emissions offset projects under a regional emissions trading program involving California and four Canadian provinces. The recommendations break the review and approval process down into four steps: pre-verification and validation; registration; monitoring and quantification; and

reporting. Each WCI partner jurisdiction will be responsible for evaluating offset projects within its respective jurisdiction as well as in non-WCI jurisdictions throughout North America.