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ENERGY AND ENVIRONMENT UPDATE **February 3, 2013**

Energy and Climate Debate

As the 113th Congress gets into full swing, energy issues receive significant levels of attention as leadership changes continue within the legislative and executive branches.

Congress

Kerry Confirmed

The Senate voted 94-3 to confirm Senator John Kerry (D-MA) to succeed Hillary Clinton as secretary of state January 29. Senator Kerry has long been a leader on energy and environmental issues, and said last week that his failure to pass climate change legislation is one of his biggest regrets of his Senate tenure. Representatives Ed Markey (D-MA) and Stephen Lynch (D-MA) has launched their campaign for the Senate, but no Republicans have yet announced that they will run. Massachusetts Governor Deval Patrick (D) recently picked William "Mo" Cowan, his former chief of staff, to serve as the state's interim senator until voters choose Senator Kerry's successor in a June 25 special election.

Hagel's Confirmation Process

In written responses to Senate Armed Services Committee policy questions last week, President Obama's nominee for Secretary of Defense, former Nebraska Republican Senator Chuck Hagel, said that the military would benefit from continued investment in alternative fuels and energy efficiency efforts despite the threat of budget cuts. He agreed with Defense Department policy that alternative replacement fuels can and must be cost competitive with petroleum-based products, and, while appearing before the Committee January 31, said that reducing the Pentagon's multibillion-dollar energy bill will be a high priority if he is confirmed.

Murkowski Energy Plan

Senator Lisa Murkowski (R-AK) will release her energy blueprint, *Energy 20/20: A Vision for America's Energy Future* on February 4. The plan is aimed at achieving complete independence from OPEC oil imports in seven years by undertaking such actions as approving the Keystone XL pipeline; allowing drilling in the Arctic National Wildlife Refuge; increasing domestic oil and natural gas production; directing new revenue to create an Advanced Energy Trust Fund to encourage and hasten clean energy research; and replacing traditional subsidies with technology neutral, cost effective, and private-investment-friendly support. The plan includes language that Senator Murkowski has been drafting with Senator Mary Landrieu (D-LA) to grant an automatic 27.5 percent share of revenue to coastal states housing offshore oil and gas, wind, and other energy production, and another 10 percent for energy research and development, alternative energy, efficiency, and conservation; it would also expand from three to 12 miles

the area states control off their coasts for energy production. On a related note, Senator Ron Wyden (D-OR) will release draft nuclear waste legislation in the next several weeks.

House Keystone Support

More than 140 House members signed on to a letter January 29 calling on the president to approve the Keystone XL pipeline. The group argued that as no other portion of the pipeline has changed, and Nebraska has now approved the new route, the positive impact of domestic energy on jobs and the economy is too great to oppose.

EPW Climate Science Briefing Forthcoming

Senator Barbara Boxer (D-CA) announced January 29 that the Senate Environment and Public Works Committee will hold a climate change science briefing February 13 as Senate Democrats renew a push to address climate change legislation in the 113th Congress. All senators are invited.

Legislative and Agency Climate Ideas Solicited

On January 31, a week after kicking off a House-Senate coalition to renew congressional action on climate change, Senator Sheldon Whitehouse (D-RI) and Representative Henry Waxman (D-CA) urged more than 300 businesses, environmental and health groups, labor unions, academia, and faith-based organizations to offer ideas for legislation and suggest actions the president could take using existing executive authority. Responses are requested by February 20.

EPA Administrator Preferences

Sixteen Democratic senators, including Senators Barbara Boxer (D-CA) and Ron Wyden (D-OR), urged President Obama January 30 to nominate for Environmental Protection Agency Administrator someone who is a strong supporter of public health and is committed to addressing climate change. Administrator Lisa Jackson will depart after the president delivers his State of the Union address on February 12. Among the possible candidates for the position include former Washington Governor Chris Gregoire (D); Gina McCarthy, assistant administrator for air and radiation; and Kathleen McGinty, who chaired the White House Council on Environmental Quality during the Clinton administration and is a former Pennsylvania environment secretary.

Offshore Wind Bill Forthcoming

Senator Tom Carper (D-DE) said January 31 that he will soon reintroduce legislation to provide wind project developers a 30 percent investment tax credit to accelerate electricity production from offshore wind turbines. The measure would mirror his Incentivizing Offshore Wind Power Act (S. 1397), which he introduced in July 2011 with Senator Olympia Snowe (R-ME). Like that proposal, the new language would offer the credit to the first 3,000 MW of offshore wind electricity production.

Bird Protection Enforcement Questioned

Senators David Vitter (R-LA) and Lamar Alexander (R-TN) sent a letter January 30 to Attorney General Eric Holder to clarify the Department of Justice's policy for enforcing the Migratory Bird Treaty Act. The senators charge that the agency is singling out oil and gas producers in enforcing the law, while casting a blind eye toward renewable energy projects. The law makes it illegal to kill migratory birds, nests, or eggs.

PTC Guidance Sought

Thirty Democratic members of the House Sustainable Energy and Environment Coalition, led by Representatives Gerald Connolly (D-VA) and Steve Israel (D-NY), sent a letter February 1 to the Treasury Department and the Internal Revenue Service urging officials to quickly issue guidance to clarify eligibility qualifications under the production tax credit. The wind industry is awaiting detailed guidance about the language change to the production tax credit that was included in the end of the year fiscal cliff package.

CRS to Revise Coal Ash Report

The Congressional Research Service will revise a report it released December 2012 on coal ash legislation in response to complaints made by Republican congressmen that the report was biased. The report found that legislation introduced by Senator John Hoeven (R-ND) and Representative David McKinley (R-WV) would not guarantee the protection of human health and the environment.

Legislation Introduced

Senator David Vitter (R-LA) introduced legislation (S. 163) January 28 to prohibit any regulation regarding domestic CO₂ or other greenhouse gas emissions reduction until China, India, and Russia implement similar reductions.

The following day, Senator Vitter introduced legislation (S. 167) to suspend sales of petroleum products from the Strategic Petroleum Reserve until the president approves the Keystone XL pipeline; and S. 176 to reject the final 5-year Outer Continental Shelf Oil and Gas Leasing Program for fiscal years 2013 through 2018 of the Administration and revert it to the five-year plan scheduled under former President George W. Bush.

Alaskan Senators Lisa Murkowski (R) and Mark Begich (D) introduced legislation (S. 181) January 30 to authorize the establishment of the Niblack and Bokan Mountain mining area road corridors in the state; and a measure (S. 182) to provide for the unencumbering of title to non-Federal land owned by Anchorage, Alaska, for economy development purposes by conveyance of the Federal reversion interest to the city.

A bipartisan group of 11 senators led by Senator John Barrasso (R-WY) introduced legislation (S. 192) January 31 to eliminate restrictions in current law on exports of liquefied natural gas. The Expedited LNG for American Allies Act would amend the Natural Gas Act to streamline the Department of Energy's export license review process.

The same day, Senator Begich introduced legislation (S. 199) to amend the Outer Continental Shelf Lands Act to require that oil produced from Federal leases in certain Arctic waters be transported by pipeline to onshore facilities and to provide for the sharing of certain outer Continental Shelf revenues from areas in the Alaska Adjacent Zone.

Administration

Support for Climate Action

The National Caucus of Environmental Legislators delivered a letter to President Obama January 29 signed by 302 state legislators from 40 states urging him to make climate change a top priority in his second term. The group urged the president to finalize Environmental Protection Agency GHG standards for new power plants and elevate climate solutions to the top tier of his domestic agenda.

Tier 3 Standards Under Review

The White House Office of Management and Budget received for interagency review the Environmental Protection Agency's proposed rule setting Tier 3 vehicle and gasoline standards under the Clean Air Act January 29. The agency plans to propose the rule in March, with a final rule expected by the end of the year. If the rule is made final by the end of the year, the standards are expected to take effect for model year 2017 vehicles, limiting the sulfur content in gasoline to 10 ppm.

Department of Commerce

Climate Change Coastal Impacts

The National Oceanic and Atmospheric Administration and the U.S. Geological Survey released a report January 28 finding that U.S. coasts are highly vulnerable to the impacts of climate change, including sea-level rise, erosion, storms, and flooding, especially in populated, low-lying areas along the Gulf of Mexico and the mid-Atlantic. The report, *Coastal Impacts, Adaptation, and Vulnerabilities: a Technical Input to the 2013 National Climate Assessment*, concluded that sea-level rise and storm surge flooding pose substantial threats to energy, water, and transportation infrastructure, thus endangering public health, safety, and jobs in coastal areas.

Department of Energy

Chu to Depart

Energy Secretary Steven Chu announced February 1 that he will resign once a successor is confirmed. In a memo announcing his resignation, Secretary Chu said that we have a moral responsibility to address climate change.

LNG Exports Loom

Chris Smith, deputy energy assistant secretary for oil and natural gas, said during the January 28-29 Energy, Utilities, and Environment Conference that natural gas exports are on the horizon, but how much is allowed will depend on many factors. The agency has already authorized exporting natural gas from Sabine Pass, on the Texas-Louisiana border; other applications are under study and will be determined on a case-by-case basis.

Nuclear Plant Loan Guarantee Questioned

The Southern Alliance for Clean Energy released a report January 30 finding that an \$8.3 billion Department of Energy loan guarantee for a Vogtle nuclear power plant expansion in Georgia would put taxpayers at risk. Negotiations continue between the agency and utilities on the terms and conditions for the loan, which has been conditionally approved.

Nuclear Waste Fee Suspension Sought

The National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute filed a motion with the U.S. Court of Appeals for the District of Columbia January 31 asking the court to temporarily suspend fees paid into the Nuclear Waste Fund after the Department of Energy decided to continue collecting the fees. The groups sued the agency over the fee collection in June and the court ordered the agency to conduct a more thorough assessment of whether the fees are necessary.

Efficiency Standard Delays Costly

The Appliance Standards Awareness Project and the American Council for an Energy Efficient Economy released an analysis January 31 finding that Department of Energy delays in issuing mandatory energy efficiency standards have cost consumers \$3.7 billion in lost energy savings and resulted in an additional 39 MMT CO₂ of emissions. The agency has missed statutory, judicial, and self-imposed deadlines to issue final rules establishing eight energy efficiency standards.

Department of Treasury

RE Tax Changes

The Internal Revenue Service announced January 25 that it plans to issue guidelines to help taxpayers understand congressional changes to tax provisions for renewable energy projects. It issued a series of frequently asked questions and answers January 31 explaining how taxpayers can claim fuel tax credits retroactively extended by the American Taxpayer Relief Act, which was enacted January 2.

Environmental Protection Agency

GHG Factor Reporting

Manufacturers, petroleum refiners, coal mines, and cement kilns will be required to report the factors they use to calculate their annual GHG emissions as part of the Environmental Protection Agency's mandatory reporting rule beginning March 31, when a temporary deferral expires. The industries have been reporting their total emissions to the agency, but the administration issued a memorandum December 17 finding that much of the factor data is already publicly available and will not cause competitive disadvantages upon being released. The agency has deferred until 2015 the requirement for oil and natural gas companies to report ten inputs used to calculate their emissions, as well as several data elements from stationary source combustion, hydrogen production, iron and steel production, lead production, lime manufacturing, carbonate uses, nitric acid production, petroleum and natural gas systems, petrochemical production, petroleum refineries, phosphoric acid production, pulp and paper production, silicon carbide production, soda ash manufacturing, titanium dioxide production, zinc production, industrial wastewater treatment, and industrial waste landfills.

Haze Plans Challenged

HEAL Utah, the National Parks Conservation Association, the Powder River Basin Resource Council, and the Sierra Club filed petitions for review in the U.S. Court of Appeals for the 10th Circuit in Denver January 25 challenging regional haze plans the Environmental Protection Agency approved for New Mexico, Utah, and Wyoming. The groups also filed a petition challenging the agency's approval of a regional haze plan by Albuquerque, New Mexico. WildEarth Guardians filed its third legal challenge in two weeks January 23 involving a state implementation plan for regional haze, calling Utah's plan ineffective.

Rethinking CSAPR

Gina McCarthy, Environmental Protection Agency Assistant Administrator for Air and Radiation, told a power and utilities symposium January 29 that agency air officials will have to work with states to rethink the process for addressing cross-state air pollution issues in the aftermath of a January 24 U.S. Court of Appeals for the District of Columbia Circuit ruling denying a rehearing for the air pollution case.

Vehicles Already Meeting Fuel Standards

Gina McCarthy, Environmental Protection Agency Assistant Administrator for Air and Radiation, said January 30 that 20 percent of new passenger vehicles sold last year already meet federal GHG emissions and fuel economy requirements for 2016. The agency and the National Highway Traffic Safety Administration plan to conduct a midterm review of the model year 2022 through 2025 standards before they take effect.

RFS Rules

The Environmental Protection Agency issued two proposed rules January 31 impacting the Renewable Fuels Standard. The first establishes required volume obligations of biofuels for 2013 that refiners must blend with gasoline under the standard. Refiners will be required to blend 16.55 billion gallons of renewable fuels, including 14 million gallons of cellulosic ethanol, into the country's gasoline supply in 2013. The second creates a voluntary quality assurance program for verifying the validity of renewable identification numbers under the program, following the discovery of fraudulent biodiesel credits last year. The proposed rule would establish qualifications for third-party auditors who would determine the validity of the RINs and would establish audit procedures for renewable fuel production facilities as well as reporting requirements.

Fine Particulate Matter Case Dismissed

The U.S. District Court for the Eastern District of Virginia dismissed January 31 a complaint filed by the American Tradition Institute that called for blocking the Environmental Protection Agency from conducting studies that expose human subjects to fine particulate matter. The court argued that it did not have jurisdiction to hear the case because the studies did not constitute "final agency action" under the Administrative Procedure Act and found that the institute did not demonstrate sufficient injuries.

National Air and Space Administration

Short-lived Pollutant Reductions Urged

Drew Shindell, a climatologist at the National Air and Space Administration's Goddard Institute for Space Studies, argued February 1 that reducing emissions of short-lived climate pollutants could help to mitigate near-term challenges caused by climate change including crop loss, decreases in biodiversity, and negative effects on public health.

Personnel

Chuck McConnell, the Energy Department's assistant secretary for fossil energy, left the agency February 1. His deputy, Chris Smith, will serve as acting assistant secretary.

Senate Environment and Public Works Chairman Barbara Boxer hired Jeremy Symons as her new deputy staff director January 31. Mr. Symons, the senior vice president for conservation and education at the National Wildlife Federation, will focus on clean water, air quality, wildlife, climate change, and other environmental issues.

International

A123 Purchase Approved

Wanxiang Group Company won approval from the Committee on Foreign Investment in the United States January 30 to buy most of the assets of A123 Systems Inc. The company, China's largest auto-parts maker, will own the bankrupt electric-car battery maker backed with United States government funds, despite Congressional concerns over national security.

Black Carbon Reductions

Andrew Eli, coordinator of climate change assistance programs in the State Department's Office of Global Change, said January 29 that an international effort to reduce black carbon emissions cannot be successful without the participation of China and India. The voluntary Climate and Clean Air Coalition to Reduce Short-Lived Climate Pollutants was launched by the United States and five other countries last February; the coalition is implementing initiatives to reduce black carbon emissions from diesel vehicles and reduce CH₄ emissions from oil and natural gas productions.

Mexican Clean Cars

Mexico's Environment Secretariat announced January 17 that it will revise a vehicle fuel economy standard for 2016 in response to industry complaints by adding provisions to increase compliance flexibility. The fuel economy target for light-duty vehicles would remain at 35 mpg, but manufacturers could begin earning early-compliance credits starting in 2014. The new regulation, which would save 603 million barrels of oil and prevent 225 MMT CO₂ emissions, would also give manufacturers credits for using low-emitting refrigerants for air conditioning systems and reward the introduction of hybrid, electric, and plug-in vehicles.

States

MD Pollutants

Food and Water Watch, Patuxent Riverkeeper, and Potomac Riverkeeper issued a notice of intent to sue January 24 asserting that three NRG Energy coal-fired power plants in Maryland continue to violate nitrogen and phosphorus discharge limits in their Clean Water Act permits. The groups gave NRG a 60-day notice to comply or else face a lawsuit that would demand penalties of up to \$37,500 a day for noncompliance with the National Pollutant Discharge Elimination System permit.

NY Solar Credit

New York's Department of Taxation and Finance released an advisory opinion January 25 finding that a homeowner installing solar energy equipment in two stages is entitled to the state's maximum \$5,000 tax credit whether the equipment is placed in service at the same time or in stages.

NY Fracking Health Review Forthcoming

Nirav R. Shah, New York's health commissioner, told a legislative hearing January 30 that the public health review of the state's fracking regulations will be finished by mid-February. The Department of Health has asked three national fracking experts to review the regulations and related documents relating to public health.

CO Fracking Study

In a supplemental budget request January 25, Colorado Governor John Hickenlooper (D) recommended that the General Assembly fund a \$1.06 million study of the impacts of specific oil and gas extraction operations, including fracking, on air quality. The funding proposal would include two parts - \$492,776 for the Colorado Department of Public Health, and \$567,000 to purchase air quality survey equipment.

CA Particulate Matter

The California Air Resources Board approved plans January 24-25 to bring San Joaquin Valley and the Los Angeles area into compliance with the federal 24-hour standard for fine particulate matter (PM 2.5).

The adoption clears the way for the state implementation plan revisions to be submitted to the Environmental Protection Agency for approval.

CA Offsets Upheld

The California Superior Court upheld January 25 the California Air Resources Board's authority to use carbon offset projects as a compliance tool under the state's economy wide GHG emissions cap and trade program.

SCAQMD Port Emission Reduction Targets

California's South Coast Air Quality Management District authorized a plan February 1 to make the ports of Los Angeles and Long Beach responsible for achieving their voluntary emissions-reduction goals. The decision is likely to instigate a legal battle over whether the agency has the power to regulate the ports as an indirect source under the Clean Air Act.

NJ Clean Car Investment Veto

New Jersey Governor Chris Christie (R) issued a conditional veto January 28 of a bill (A. 3028) that would have established a Clean Car Commission to study advances in low- and zero-emission vehicles, the necessary infrastructure, and encouraging tax incentives. Governor Christie said that the measure is inconsistent with the state's energy master plan, which encourages the development and use of alternative fuel vehicles, but cautions against public over private investment.

NJ Emerging Technology Tax Credit

New Jersey Governor Chris Christie (R) signed legislation (S. 581) last week making up to \$25 million a year available in state corporate and gross income tax credits for investments in emerging technology companies within the state. The New Jersey Angel Investor Tax Credit Act provides a credit for up to 10 percent of a qualified investment in an emerging technology business with a physical presence in the state that conducts research, manufacturing, or technological commercialization. Individual company credits are capped at \$500,00 for each qualified investment.

AZ Appeals Haze Decision

Arizona petitioned the U.S. Court of Appeals for the 9th Circuit January 31 for a review of an Environmental Protection Agency rule that partially disapproves the state's regional haze program and promulgates a federal implementation plan in its place. The appeals focuses on the agency's decision to disapprove part of the state's plan for improving visibility in protected national parks and wilderness areas and requiring costly NOx controls from three coal-fired power plants.

NC Coal Plant Closures

Duke Energy announced February 1 that it will retire two of its coal-fired power plants in North Carolina on April 1, 2015, over two years earlier than previously scheduled. The retirements are part of the company's plan to modernize its facilities and retire up to 6,800 MW of its older coal- and oil-fired units, and were chosen because they have been infrequently operated, the utility has recently built more efficient plants, and natural gas prices are low.

Miscellaneous

Apple Hastening Environmental Improvements

The Institute of Public and Environmental Affairs, Friends of Nature, Envirofriends, and Nanjing Greenstone released a report January 29 finding that Apple is encouraging its suppliers to improve their environmental performance. The report, *Apple Opens Up – IT Industry Supply Chain Investigative Report Phase VI*, concluded that the company has increased also the level of transparency in its supply chain.

RFS Opposed

The American Petroleum Institute released a study performed by the Coordinating Research Council January 29 finding that higher ethanol blends such as E15 in gasoline could result in fuel pump failures, erroneous check engine light warnings, and inaccurate fuel gauge readings. The petroleum industry is

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charging that the study, *Durability of Fuel Pump and Fuel Level Senders in Neal and Aggressive E15*, provides further evidence that the renewable fuel standard should be revealed.