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ENERGY AND ENVIRONMENT UPDATE **February 5, 2012**

Energy and Climate Debate

As the payroll tax credit, unemployment insurance, and doc fix package debate continues in the House and Senate, energy issues are being highlighted in a number of areas.

Republicans on the House-Senate conference committee, led by House Energy and Commerce Chairman Fred Upton (R-MI) and Ways and Means Chairman Dave Camp (R-MI) urged the panel February 2 to delay the Environmental Protection Agency's boiler MACT rule as it works to extend the payroll tax cut through the end of 2012. They contended that so doing would, like the payroll tax cut extension (H.R. 3630), boost the economy and save jobs. The House approved legislation (H.R. 2250, 275-142) in October to delay the rules, and there is growing bipartisan support for the Senate version (S. 1392) of the bill. House legislation extending the 2 percent payroll tax cut through the end of 2012 includes language delaying the EPA rule, but the Senate version was silent on the issue, so the conference committee must decide whether the language stays in the final measure.

Senate Finance Committee Republicans and Democrats agreed January 31 that tax extenders ought to be included in discussions over comprehensive tax reform. The members, however, could not agree if the expired and expiring provisions should be acted on in 2012 before a full reform effort can be accomplished. Fifty-nine tax provisions expired at the end of 2011 that would have cost \$35 billion, and more will expire at the end of the year without congressional action. If Congress does decide to consider a tax extender package to continue some or all of the expiring and expired provisions, members will have to decide when to take up the package that has traditionally come at the end of the year; some are urging the committee to act early to extend select measures, and Congress will also have to consider how to pay for any changes, extensions, and expansions of the current extenders package. Committee Chairman Max Baucus (D-MT) highlighted the difficulties businesses face in planning and investing when the tax credits and deductions that rely upon last no longer than a few years, and called for a long-term fix to traditional tax extenders via tax reform.

This week, the Senate will debate the conference report for the Federal Aviation Administration reauthorization (H.R. 658) which passed the House on February 3 by a 248-169 vote. Senate Majority Leader Harry Reid (D-NV) scheduled debate and a vote on the measure for the afternoon of February 6. Meanwhile, House leaders will move on the STOCK Act (S. 2038) per President Obama's State of the Union plea for legislation that would end Congressional insider trading. The Senate already approved S. 2038 by a 96-3 vote on February 2.

Congress

Senate Energy Meetings Resume

Senator John Kerry (D-MA) said January 31 that he has resumed a series of regular meetings with Democratic colleagues, including Senators Barbara Boxer (D-CA), Jeff Bingaman (D-NM), and 17 others, in the hope of making at least modest progress on energy legislation this year. The group is reviving a series of near-weekly meetings akin to those Senator Kerry held with Senators Joe Lieberman (I-CT) and Lindsey Graham (R-CA) during the climate debates, and follows a November 30 strategy session between a dozen senators and Energy Secretary Steven Chu on energy legislation ranging from bills to promote renewable energy, bolster energy efficiency, and extend expiring clean energy tax credits.

Republicans Urge New Source Performance Delay

House Energy and Commerce Committee Chairman Fred Upton (R-MI), Energy and Power Subcommittee Chairman Ed Whitfield (R-KY), and Congressman Joe Barton (R-TX) sent a letter February 1 to Jeffrey Zients, acting director of the White House Office of Management and Budget asking him to block the Environmental Protection Agency from proposing greenhouse gas emissions limits on new and modified power plants. The group contends that the proposed new source performance standards would increase electricity prices and limit job creation. The OMB has been reviewing the proposal since November 7, and the EPA anticipates proposing the rule in February.

CES Legislation Forthcoming

Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) revealed his proposal for a clean energy standard in a meeting February 1 with Senate Democrats on his committee. Senator Bingaman plans to introduce his legislation sometime this month, and will hold a hearing to consider it soon thereafter. Reactions to the language thus far have been mixed, with some leaders wishing for more focus on traditional renewables and others favoring more traditional fossil fuels. The legislation is based on a November 2011 analysis from the Energy Information Administration and comments received on a white paper from Senator Bingaman and the committee's ranking member Lisa Murkowski (R-AK).

Bright Future for Natural Gas

Richard Jones, deputy executive director of the International Energy Agency, told the Senate Energy and Natural Resources Committee January 31 that innovations in shale gas and shale oil technologies mean that U.S. oil and natural gas production has a strong future, but that continued high oil prices and instability in global markets are expected. World oil prices should remain in the range of \$100-\$120 per barrel for the foreseeable future.

Loan Guarantee Investigation

Congressmen Jim Sensenbrenner (R-WI), Fred Upton (R-MI), and Cliff Stearns (R-FL) sent a letter to the White House January 30 calling on it to make public the results of an independent investigation ordered in October of the Department of Energy's loan guarantee program. Representative Sensenbrenner introduced legislation (H.R. 3331) in November that would require independent audits of all renewable energy loan guarantees as well as independent review for all future loan guarantees.

House Energy and Infrastructure Package

House Republicans introduced their five-year, \$260 billion energy and infrastructure package January 31. The measure would generally retain current funding levels while offering longer-term assurances to states that depend on federal transportation funding. The legislation would also streamline project approvals and redirect some authority to states. The legislation is partially funded with a trio of energy production measures that would open the Atlantic and Pacific coasts and the eastern Gulf of Mexico to oil and gas development, while requiring the Interior Department to lease hundreds of thousands of acres of the Arctic National Wildlife Refuge's coastal plain; the House Natural Resources Committee approved the three bills February 1.

Infrastructure Package & Keystone XL

On February 7, House Republicans plan to mark up Rep. Terry Lee's (R-NE) North American Energy Access Act (H.R. 3548), that would transfer authority for the Keystone XL pipeline to the Federal Energy Regulatory Commission. Arguing Obama's decision to deny the permit was a politically motivated move, and not in the nation's best interests, Republican leaders will attach the bill to the five-year transportation reauthorization bill (H.R. 7) scheduled to move to the House floor sometime in February. The bill requires FERC to approve the pipeline within 30 days of receiving the application from TransCanada, the pipeline's builder, and in the case of inaction from FERC the permit would be automatically approved.

FAA Reauth Restricts Battery Transport

House and Senate leadership released details February 1 of an agreement on a long-term Federal Aviation Administration reauthorization bill, which includes language to restrict federal regulations on the transport of lithium-ion batteries. The conference report, which would fund air safety programs and FAA operations through fiscal year 2015, includes a provision that would bar the Pipeline and Hazardous Materials Safety Administration from issuing or enforcing regulations that are more stringent than international standards on the transportation of lithium batteries. The provision would not apply to non-rechargeable li-ion batteries and cells transported on passenger aircraft.

House Science Subcommittee Calls for EPA Regulatory Data to be Public

On February 3, at the second in a series of hearings called "Fostering Quality Science at EPA: Perspectives on Common Sense Reform," Chairman Andy Harris (R-MD) of the House Science, Space, and Technology Subcommittee on Energy and Environment demanded that the agency's scientific data used to make regulatory decisions be made public.

Legislation Introduced

Senators John Hoeven (R-NV), Dick Lugar (R-IN), David Vitter (D-LA) were joined by 41 of their colleagues January 30 in introducing legislation to approve the Keystone XL pipeline project and provide for environmental protection and government oversight. The measure would allow TransCanada to move forward with construction of the pipeline, which runs from Alberta, Canada, to the Gulf Coast, while the state of Nebraska works with the State Department to determine an alternative route.

Senators Jim DeMint (R-SC) and Mike Lee (R-UT) introduced the Energy Freedom and Economic Prosperity Act (S. 2064) February 2 to repeal all energy specific tax credits and lower the corporate income tax rate. Congressman Mike Pompeo (R-KS) has previously introduced companion legislation (H.R. 3308) in the House.

Congressman Steve Israel (D-NY) introduced legislation (H.R. 3888) the same day to authorize microenterprise assistance for renewable energy projects in developing countries.

Sen. Max Baucus introduced the Highway Investment, Job Creation and Economic Growth Act of 2012 which will reauthorize and replenish the Highway Trust Fund. A markup is scheduled for February 7. The bill is a companion to the Moving Ahead for Progress for the 21st Century Act, and if reported out of the Finance Committee, will become part of the larger transportation bill for senate debate.

Upcoming Hearings

Senate Committee on Agriculture, Nutrition and Forestry Chair Senator Debbie Stabenow (D-MI) announced February 1 the Senate farm bill hearing schedule for February and March. The committee will hold four hearings focused on a variety of farm bill issues in the next two months. The first, on February 15, will examine energy and economy growth in rural America. On February 29, the committee will hold a hearing focused on the conservation title. The March 14 hearing will consider local food production, and the March 21 hearing will evaluate different risk management tools for farmers. The current farm bill will expire in September 2012 and many industry experts are concerned that budget constraints, deficit reductions, and election year politics will prevent the measure from being completed this year.

On February 8, the House Science Committee will review the Blue Ribbon Commission's report on America's nuclear future.

Also on February 8, the House Energy & Commerce Subcommittee on Energy and Power will hold a hearing on the American energy initiative, and the potential cost to consumers of EPA's maximum achievable control technology (MACT) rule.

Department of Commerce

Critical Circumstances Determination

Raising the possibility of retroactive duties January 30, the Department of Commerce preliminarily made a critical circumstances determination in the countervailing duty investigation on solar cells from China. The finding, the first to have been issued before a preliminary CVD determination, indicates that should the agency make an affirmative preliminary CVD determination, the department will direct U.S. Customs and Border Protection to require importers to post a cash deposit or bond 90 days retroactive to the affirmative determination. The agency's preliminary CVD rule is expected in early March, and will also issue a preliminary antidumping duty ruling on March 27.

Department of Energy

SMR Subcommittee Announced

The Secretary of Energy Advisory Board announced January 31 that it is creating a subcommittee that will meet with industry and academics to devise ways to create a domestic presence in the small nuclear reactor market. Small reactors, which generate less than 300 MW, would use gravity for cooling instead of the pump systems that failed quickly after losing power during the Japanese tsunami last year. Advisory board member Nicholas Donofrio, a former executive vice president of innovation and technology for IBM, will chair the subcommittee, which will partner with the agency's Nuclear Energy Office. MIT professor and former CIA Director John Deutch, Natural Resources Defense Council President Frances Beinecke and former Lockheed Martin Chairman and CEO Norm Augustine will also join the group, which will produce progress reports in April and July.

Department of Interior

Public Land Solar Comments Received

The Solar Energy Industries Association and the Large-scale Solar Association submitted comments to the Department of Interior's *Supplement to the Solar Energy Development Draft Programmatic Environmental Impact Statement* January 27, saying that the agency's plan to establish solar energy zones on federal land is too restrictive and poses a threat to future solar development. The agency released the revised plan last October, dramatically reducing the number of solar energy zones and acres provided for them after the department received more than 80,000 comments on the draft version.

Assessment Boosts Offshore Wind Plans

The Bureau of Ocean Energy Management issued an environmental assessment February 2 that concluded that a leasing program for wind farms in the designated areas off the coasts of Delaware, Maryland, New Jersey, and Virginia would have no significant environmental impact. The finding eases the way for a program of lease auctions for offshore wind energy sites, and the agency hopes to auction leases off the coast of Maryland during 2012. The assessment does not guarantee that the agency will not need to produce another assessment or environmental impact statement for any individual project, but it does leave open the possibility that no further assessment will be needed.

BLM to Scale Back Land Available for Oil Development

In an upcoming February 6 notice, the Bureau of Land Management will announce a scaling back of land available for oil and gas development in Colorado, Utah, and Wyoming by around 78 percent, citing unanswered questions surrounding fracking technology, impacts of commercial-scale oil shale development, and water use. The move comes in the face of opposition from developers and oil and gas advocates in Congress.

Environmental Protection Agency

Nonconformance Penalties Allowed

The Environmental Protection Agency published a proposed rule January 31 allowing manufacturers to pay nonconformance penalties to produce certain diesel engines that exceed NOx limits. Under the program, the agency would issue certificates of conformity for heavy-duty diesel engines for model years 2012 and later in both the medium and heavy weight classes that do not meet the emissions standard of 0.20g NOx/hph, as long as the emissions do not exceed .050 g/hph. The agency contended that the penalties are meant to alleviate concerns that manufacturers would be forced out of the marketplace if they could not meet emissions standards. EPA can make a nonconformance penalty available for a given model year if the emissions standard has become more difficult to meet, a substantial amount of work is required to meet the standard, and a manufacturer is noncompliant because of technological reasons.

New Source Performance Standards Forthcoming

Environmental Protection Agency assistant administrator for air and radiation Gina McCarthy said January 30 that the agency expects to propose its first source-specific emissions standard for greenhouse gas emissions from power plants sometime this February. The agency had planned to propose the new source performance standards for power plants in January under Section 111 of the Clean Air Act, but has twice missed court deadlines to propose the rule; the proposal has been at the Office of Management and Budget since November 7. Administrator McCarthy also said that revisions to its Cross-State Air Pollution Rule will be finalized this month.

Applicability Varies in Fracking Report

The Congressional Research Service published a report January 25 finding that the relevance of the Environmental Protection Agency's draft report on probable hydraulic fracturing-related groundwater contamination in Pavillion, WY, to other sites is contingent upon geology and hydrology. The report, *The EPA Draft Report of Groundwater Contamination Near Pavillion, Wyoming: Main Findings and Stakeholder Responses*, finds that the agency's assessment of the Pavillion site would be only applicable in places with similar site-specific factors.

EPA to Allow Certain GHG Self-Reporting

In a February 3 notice in the Federal Register, the Environmental Protection Agency announced a preliminary decision to accept industry recommended methods for assessing the climate impact of seven fluorinated greenhouse gases coming from five types of fluorinated gas production facilities. Industry says the ruling will ultimately help ease the burden of compliance, and EPA will accept comments until February 21 on the choice of gases and some of the preliminary decision's methodology and data.

Cross-State Exemptions Announced

On February 6, in a Federal Register notice, the Environmental Protection Agency announced it will exempt Iowa, Michigan, Missouri, Oklahoma, and Wisconsin from Cross-State Air Pollution Rule compliance as litigation is pending. The July 2011 rule, requiring a reduction from certain states of interstate transport of nitrogen oxides and sulfur dioxide to downwind states, was stayed by the U.S. Court of Appeals for the District of Columbia Circuit in December 2011 while the rule is challenged. EPA explained the decision by saying the rule that added these five states to the program uses the same underlying methodology as the now suspended rule.

Federal Energy Regulatory Commission

EPA Advice on Utility MACT Compliance

The Federal Energy Regulatory Commission released a white paper last week that outlines the process it intends to use to advise the Environmental Protection Agency on whether utilities should be granted extensions to comply with the agency's new mercury and air toxics standards rule for power plants, the utility MACT rule. The commission will accept public comments on its proposal through February 29, and as some in the electric industry have raised concerns with the potential impacts on electricity reliability because of the rule and others have said that the impacts would be localized and can be managed, comments are expected to be varied.

Personnel

President Obama has nominated John Norris for another term as a commissioner at FERC, ahead of the June expiration of his current term. Norris was initially appointed FERC commissioner in December 2009.

States

VA Climate Case Rehearing

Virginia's Supreme Court ordered a new hearing in a lawsuit January 17 in which the court previously decided that an insurance carrier did not have a duty to defend an energy company being sued for its alleged contribution to climate change. The court ordered a new hearing for the February session in the suit after AES Corp. argued the court's decision was overly broad and could impair the administration of insurance claims for negligence in Virginia. The Alaskan village Kivalina sued AES and 19 other energy and utility companies, charging that the companies' emissions contributed to the melting of the Arctic sea ice that formerly protected the village from winter storms. The case was dismissed by the U.S. District Court for the Northern District of California in September 2009, but appealed to the U.S. Court of Appeals for the Ninth Circuit.

CA Smart Meter Opt Outs

The California Public Utilities Commission concluded February 1 that Pacific Gas and Electric Company customers who want to opt out of the utility's smart meter program will have to pay an initial \$75 fee and then \$10 a month. The decision came in a proceeding that modifies the San Francisco-based utility's smart meter program, a wireless technology being deployed in response to California's renewable energy and distributed generation programs. Groups opposed to the smart meters have organized efforts to block new installations and force the utility to remove those already installed; they are also opposed to paying any opt-out fees. The utility turned to regulators to change its program to include an opt-out provision and allow it to recover the costs associated with maintaining the analog meters and removing the installed smart meters.

Climate Risk Data from Insurers

New York and Washington decided February 1 to join California in requiring insurance companies to provide data on climate change risks. California's Insurance Commissioner recently announced the multi-state effort to administer the Climate Risk Survey that the National Association of Insurance Commissioners adopted three years ago, as the state had been the only one to administer the survey. Only insurers writing policies worth more than \$300 million nationwide will be required to respond to the climate change survey.

New York Energy Efficiency Measures Proceeding Apace

On February 2, New York City and the nonprofit Urban Green Council released a report detailing how New York City will successfully lower carbon emissions, energy consumption, and waste in-line with its goals thanks to the revamping of city construction, fire, water, sewer, and zoning codes as outlined by the Green Codes Task Force. The GCTF issued 29 recommendations, and consisted of city officials as well as upwards of 200 architecture, public health, construction, real estate, organized labor, and housing volunteers. The report estimates that by 2030 these changes will reduce greenhouse gas emissions citywide by 5%, lower the city's overall lighting bill by 10%, save 30 billion gallons of water, and save the economy \$400 million.

VT Fracking Law Passes House

The Vermont House approved a three year moratorium (until July 1, 2015) on hydraulic fracturing with a bill (H. 464) passed last week, but the Senate will not take up the legislation for at least a month. The Vermont Agency of Natural Resources would be tasked with the formulation of underground injection control rules to be submitted to the state legislature by Jan. 15, 2015.

International

Costs of Increasing EU GHG Target

The European Commission published an analysis January 30 concluding that the costs of the European Union increasing its 2020 greenhouse gas emission reduction target from 20 to 30 percent would largely be outweighed by benefits like reduced fuel costs, industrial innovation, and cleaner air. The study found that a 30 percent reduction target would increase energy bills by about \$92 billion in 2020, or 0.45 percent of EU gross domestic product, but at the same time could save \$26 billion on fuel costs each year between 2016-2020 and about \$4 billion on air pollution control, while health benefits worth up to \$10.5 billion would be generated annually. The current commitment of 20 percent from 1990 levels is estimated to cost \$63 billion in 2020. EU environment ministers are likely to discuss climate and energy efficiency targets at a meeting in Brussels on March 9.

Sustainability Report

The High-Level Panel on Global Sustainability submitted a report to U.N. Secretary General Ban Ki-moon January 30 suggesting that governments should introduce carbon pricing measures and take other steps to integrate sustainability and the green economy into long-term pricing. The panel, convened in August 2010 to help guide preparations for the U.N. Conference on Sustainable Development (Rio+20) set for Jun in Rio de Janeiro, offered 56 wide-ranging recommendations for sustainable development and a low-carbon model for economy prosperity in their report, *Resilient People, Resilient Planet: A Future Worth Choosing*.

Canadian Energy Efficiency

On January 29, Canada allocated \$117 million over three years for new energy efficiency initiatives, including improved building codes, housing standards, industrial practices, vehicle labels, and consumer appliances. The investment is in addition to the \$78 million announced in September for the ecoENERGY Efficiency Initiatives program, bringing the five-year total for federal energy efficiency initiatives to \$195 million.

EU ETS Airlines in Unified Registry

The European Commission announced January 30 that airlines covered under the European Union Emissions Trading System can now open accounts to track their emissions allowances in a unified registry. All airlines subject to the system are required to open accounts in the new Union registry, which will eventually replace a system of separate national registries. The national registries have been opened for other industries subject to the EU ETS since 2005.

Increased Environmental Oversight of Tar Sands

On February 3, Canada's Environment Minister revealed the Joint Canada-Alberta Implementation Plan for Oil Sands Monitoring that will increase monitoring of activities in Canada's oil sands with testing of air, biodiversity, water, and wildlife. All results of the monitoring will be made public as well, with the federal Canadian and Alberta governments jointly managing the plan.

Miscellaneous

Optional Green Infrastructure

Former Pennsylvania Governor Edward Rendell (D) said January 31 that states should not be required to incorporate green infrastructure into their planning for water and transportation infrastructure. Governor Rendell is the co-chairman of the nonprofit Building America's Future along with former California Governor Arnold Schwarzenegger (R) and New York City Mayor Michael Bloomberg (I), said the group is advocating a 10-year national plan for making strategic investments in the nation's infrastructure. The group's August 2011 report found that such a plan should focus on transportation but also include other infrastructure challenges.