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ENERGY AND ENVIRONMENT UPDATE **March 27, 2011**

Energy and Climate Debate

The House and Senate will return March 28 from a week-long recess to resume work on a measure to fund the federal government through the end of the fiscal year and the Senate will also debate legislation (S. 493) that would reauthorize two small business research and development programs for eight more years.

Several amendments to either prohibit or delay the Environmental Protection Agency from promulgating greenhouse gas emission regulations under the Clean Air Act are expected to be offered to S. 493. One such amendment from Senate Minority Leader Mitch McConnell (R-KY) would prohibit the EPA from moving forward on any regulation concerning GHG emissions, a proposal offered by Senator James Inhofe (R-OK; S. 482) and Congressman Fred Upton (R-MI; H.R. 910) earlier this Congress. The full House Energy and Commerce Committee has already approved the measure, and the House is likely to adopt it later this year. How the Senate proceeds is more uncertain, with two other rival amendments that may also not achieve the necessary 60 votes. Senator Jay Rockefeller (D-WV) has offered an amendment that would delay for two years the EPA from regulating GHG rules. Senator Max Baucus (D-MT) has also filed an amendment to exempt the agricultural sector from EPA's GHG rules and shield smaller operations from compliance with the agency's power plant and stationary source rules. Senator Mary Landrieu (D-LA), who is managing the small business bill on the floor, said last week that she fears the debate over restricting EPA authority could sink the broader bill.

With less than two weeks remaining before the current continuing resolution expires on April 8, House Speaker John Boehner (R-OH) and Senate Majority Leader Harry Reid (D-NV) are expected to step up their efforts to identify a package of acceptable spending cuts that could permit Congress to sign off soon on a bill to fund the federal government through September. Speaker Boehner remains under pressure from House Republicans to deliver a spending package with roughly \$60 billion in reductions from current spending that reflects the savings included in H.R. 1, which the House approved last month. Senate Democrats, on the other hand, have not indicated how far they will go beyond the \$10 billion in cuts that were included in two recent short term CRs, and their initial plan reduced cut about \$10 billion from fiscal year 2010 enacted levels. Should the two houses be unable to come to a long term agreement in the next two weeks, they will need to pass another continuing resolution by April 8 to keep the federal government open.

Congress

CES White Paper Unveiled

Senators Jeff Bingaman (D-NM) and Lisa Murkowski (R-AK), Chairman and Ranking Member of the Senate Energy and Natural Resources Committee, released a white paper March 21 in which they sought the public's input on how they should craft a clean energy standard. The *White Paper on a Clean Energy Standard* lays out approximately 60 questions and potential design elements related to how a standard would be implemented, and will serve as a guiding document for the senators as they craft legislative

language for a CES in the coming months. Comments on the white paper are due April 11 and will likely be posted online.

EPA GHG Regs Field Hearing

The House Energy and Commerce Subcommittee on Energy and Power, led by Chairman Emeritus Joe Barton (R-TX), held a field hearing March 24 in Houston on the Environmental Protection Agency's efforts to take over Texas' greenhouse gas permitting program and the agency's plans to jettison the state's flexible air permits program. Texas has sued the agency over both actions. Three days previously on March 21, Congressman Barton formally launched a task force of regulators and industry leaders to focus on the impact of the EPA rules in Texas.

Natural Gas Legislation Forthcoming

Senator Bob Menendez (D-NJ) and Congressman Dan Boren (D-OK) are expected to reintroduce a version of the NATGAS Act soon. After failing to pass in the previous Congress (S. 1406; H.R. 1835), the legislation is likely to be similar to the prior version but to offer only five years of credits for vehicle purchase, fueling infrastructure, and gallons sold. High gas prices and ongoing unrest in the Middle East may provide a helpful environment for the legislation, but identifying pay-fors in the current budget debates will be a challenge.

Senators Call for Gas Price Scrutiny

A bipartisan group of senators sent a letter to the Federal Trade Commission March 25 requesting that it fully use its authority to investigate the recent increases in gas prices. Senators Jay Rockefeller (D-WV), Maria Cantwell (D-WA), Ron Wyden (D-OR), Mark Pryor (D-AR), and Olympia Snowe (R-ME) voiced concern that the FTC is not fully utilizing recently granted authority, and requested that the Commission discuss its efforts to enforce the Petroleum Market Manipulation Rule that was finalized in 2009.

Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a hearing March 29 on the Fukushima Daiichi disaster. Peter Lyons, acting assistant secretary for the Department of Energy's office of nuclear energy; Bill Borchardt, executive director for operations at the Nuclear Regulatory Commission; David Lochbaum of the Union of Concerned Scientists; and Tony Pietrangelo of the Nuclear Energy Institute will testify.

The Senate Appropriations Committee will hold a hearing March 30 to examine nuclear safety and the Japanese disaster. NRC Chairman Gregory Jaczko and Mr. Lyons will testify.

The Senate Finance Committee will hold a hearing March 30 to discuss how complexity, uncertainty, and design affect taxpayers' use of tax incentives.

The Senate Energy and Natural Resources Committee will meet March 31 to consider several bills related to hydropower, including S. 620, S. 629, and Title I, Subtitle D of the American Clean Energy Leadership Act of 2009.

The House Appropriations Subcommittee on Energy and Water Development will hold a hearing March 31 to debate the fiscal 2012 budget request for the Nuclear Regulatory Commission and nuclear safety. Mr. Lyons and Mr. Jaczko will testify.

The House Energy and Commerce Subcommittee on Energy and Water will hold a hearing March 31 to consider the fiscal year 2012 funding for the loan guarantee program and the Department of Energy's Advanced Research Projects Agency-Energy. Arun Majumdar, director of ARPA-E, will testify.

Department of Interior

Deepwater Exploration Plan Approved

The Department of Interior's Bureau of Ocean Energy Management, Regulation, and Enforcement approved on March 21 the first deepwater oil and gas exploration plan since last year's Gulf of Mexico oil

spill. The agency approved Shell Offshore Inc.'s plan under strengthened environmental reviews established after last year's explosion and massive spill in the Gulf of Mexico. BOEMRE has received 43 deepwater drilling proposals that are subject to the new safety and environmental requirements. More than half of the permits have been returned to applicants in need of additional information.

Two Drilling Permits Issued

The Department of Interior issued its fourth permit March 22 for an offshore oil and gas well that was previously banned under a federal moratorium. The permit allows Exxon to begin drilling a previously permitted well about 240 miles off the coast of Louisiana in nearly 7,000 feet of water. Three days later on March 25, the agency issued a fifth permit for a 6,750-foot-deep Chevron well 216 miles south of Lafayette, Louisiana. The project is the first to be approved that allows a completely new exploration.

Wind Farm Lease Initiated

After determining no competitive interest in the area exists, the Department of Interior announced March 24 it is beginning the process for a commercial lease for a wind farm off the coast of Delaware. If granted, the lease would be the second for an offshore wind farm in the Outer Continental Shelf. The proposed project, a 450 MW capacity wind farm 11 miles east of Dewey Beach, DE, that would generate enough electricity to power 100,000 homes, must still face further environmental review, public comment, and the submission of a detailed construction and operation plan by the developer before a final decision is made on the progress. The leasing process is the first to be initiated under a two-pronged strategy by the Bureau of Ocean Energy Management, Regulation, and Enforcement to facilitate the siting, leasing, and construction of offshore wind energy projects known as "Smart from the Start" and announced by the agency last November.

Department of Treasury

IRS Updates Tax Rules

The Internal Revenue Service issued notices March 23 updating the rules for the tax code Section 48A qualifying advanced coal project program and the Section 48B qualifying gasification project program and modifying the Section 45Q carbon dioxide sequestration credit. Notices 2011-24 and 2011-25 will be in the Internal Revenue Bulletin 2011-14, dated April 4.

Environmental Protection Agency

Gas Sample Final Rule Forthcoming

The Environmental Protection Agency will publish a final rule March 28 that will require power plants that participate in emissions trading programs to purchase gas samples used to calibrate monitors only from approved vendors. The rule also establishes competency standards for the testing bodies that verify the accuracy of the monitoring equipment. Many power plants that participate in trading programs such as the NOX Budget Trading Program, the Acid Rain Program, and the Clean Air Interstate Rule are required to use continuous emissions monitors to track their pollutant emissions; to verify that monitors are working properly, the power plants are required to periodically test the monitors using gas samples whose mixture of pollutants is known in advance. The final rule requires those samples to be purchased from certified vendors participating in EPA's Protocol Gas Verification Program.

No Reconsideration of Renewable Fuel Definition

The Environmental Protection Agency announced March 22 that it has rejected petitions by four environmental groups to reconsider the definition it established in a 2010 final rule of fuels that meet the renewable fuel standard. Petitions by the Clean Air Task Force, Friends of the Earth, World Wildlife Fund, and the National Wildlife Federation raised new issues that were not discussed during the comment period. In 2007, Congress expanded the RFS to require that the nation's motor fuel supply include 36 billion gallons of ethanol or other renewable fuel by 2022. For a fuel to qualify as renewable, the law said that it must reduce lifetime GHG emissions by at least 20 percent compared with emissions from gasoline and feedstocks for the fuel cannot be produced on cropland that was created by intentional deforestation.

Mandated Stocking of E10 Requested

Industry groups representing manufacturers of vehicles that cannot use higher ethanol blends filed a petition March 23 with the Environmental Protection Agency asking for a regulation that would ensure that retailers continue to offer gasoline with no more than 10 percent ethanol content. The petition follows two EPA waivers to the Clean Air Act's fuel restrictions, one issued in October 2010 and the other in January 2011, that allow the use of 15 percent E15 in fuel for cars and light trucks from model year 2011 and newer.

Nuclear Regulatory Commission

NRC to Conduct Lessons Analyses

The Nuclear Regulatory Commission voted last week to conduct a short- and long-term analysis of the lessons that can be learned from the situation in Japan. A newly created task force will deliver updates on the short-term effort every 30 days for the next three months. The long-term evaluation is scheduled to begin within the next 90 days and the task force will then have six months to provide a report with recommended actions. Also last week, the NRC told California Senators Barbara Boxer (D) and Dianne Feinstein (D) that their state's two nuclear plants are located in the highest seismic areas in the country.

Personnel

Brandon Hurlbut has replaced Department of Energy Chief of Staff Rod O'Connor. Mr. O'Connor was formally announced last week as AEG Facilities new executive vice president in Europe.

Miscellaneous

TX Efficiency Report Unveiled

The American Council for an Energy Efficient Economy released a report March 23 that assesses the impact of efficiency measures through 2030. Using six different scenarios, the council found that investments in combined heat and power systems, more stringent energy building codes, and better appliance and equipment standards could lead up to 30 percent efficiency gains in less than 20 years. The report concluded that the state could save \$14 billion and gain 47,000 jobs without sacrificing economic growth.

UK Budget Released

Chancellor of the Exchequer George Osborne said March 23 in a speech to Parliament that the United Kingdom will become the first country in the world to introduce a carbon price floor for the power sector in 2013. The announcement came during the unveiling of the proposed 2011 fiscal year budget. The carbon price floor will start at around \$26/MT CO₂ in 2013 and move to a target price of \$49/MT CO₂ in 2020. The budget also calls for the creation of a green investment bank in 2012.

Climate Change Law Comments Sought

China's National Development and Reform Commission issued a call for public comment March 22 to help inform the drafting of a proposed law on national actions to address climate change. No official draft of the proposal has been released, but past remarks by officials and a chapter in the recently released national 12th Five Year Plan could give some indication of China's intentions' the proposed law could essentially follow an NPC resolution on climate change from August 2009, the climate change framework established under the United Nations in 1992, and the 1997 Kyoto Protocol. China has pledged domestically binding reductions in carbon intensity by 40 to 45 percent by 2020 compared with 2005 levels.

Nuclear Moratorium for Italy

The Italian Cabinet approved a one-year moratorium on the country's nuclear program March 23. The government may also halt the atomic program if it is not satisfied with the European Union's stress tests on safety. Italy banned nuclear power in a 1987 referendum; in 2008, the government began to allow its return.

PEW Energy Blueprint Released

Former Michigan Governor Jennifer Granholm, Energy Secretary Steven Chu and former Virginia Senator John Warner unveiled a sweeping national clean energy campaign with the Pew Charitable Trusts March 24. Granholm and Warner will travel the country making the case for the energy blueprint, which includes ensuring that 25 percent of new cars sold in 2020 are electric or plug-in hybrid vehicles and developing the infrastructure to support them; increasing the fuel economy standard to between 50 and 60 miles per gallon; doubling the capture of waste heat and power; imposing a 20 percent clean energy standard by 2025; and investing \$15 billion in annual energy research and development by 2015 with the goal of increasing American jobs.

Bipartisan Policy Center Publishes Study

The Bipartisan Policy Center published a study last week that finds that solar and wind subsidies distributed through cash grants are roughly twice as effective as tax incentives. The study also determined that while federal tax policies have been crucial to the growth of renewable energy technologies, current policies will not adequately support the industry as it scales.

CA Cap and Trade Delayed

A California Superior Court issued an order March 18 enjoining the state from implementing its recently adopted GHG emissions cap and trade program and other measures in the plan approved in 2008 under the Global Warming Solutions Act (A.B. 32). CARB plans to launch in 2012 the multisector emissions trading program it adopted last December. A diverse coalition of groups that helped defeat a 2010 ballot measure designed to derail California's climate law said March 25 that it has regrouped as Californians for Clean Energy and Jobs to ensure the successful implementation of A.B. 32. The coalition had \$1 million left over from the 2010 "No on Proposition 23" campaign that it will use for its work.

CO Utility and Solar Group Reach Agreement

The Colorado Public Utilities Commission has approved a settlement March 18 restoring Xcel Energy's suspended rebate program for the installation of solar panels, albeit with a lower incentive than before. The deal between Xcel and the Colorado Solar Energy Industries Association restored the Solar*Rewards incentive program, but with an overall possible rebate of \$1.79 per watt compared with \$2.35 under the earlier program.

UN Climate Chief Releases Action Plans

The United Nations climate secretariat released actions and pledges by industrialized and developing nations to address their GHG emissions and assist in the global effort to confront climate change. The March 21 release of the compilation of actions by developing nations follows the secretariat's March 10 release of a similar compendium of actions and pledges by industrialized countries.

EC Proposes Allowance Auction

The European Commission proposed March 15 to auction 120 million allowances for GHG emissions under the European Union's Emissions Trading System in 2012, prior to the start of the third trading period from 2013-2020. Following a public comment period that ended in February, the Commission proposed the early actions in a draft amendment to the EU ETS Auctioning Regulation. The Climate Change Committee will agree formally on the proposed volume of actions by the summer.

Britain Proposes Subsidy Switches

The United Kingdom's Department of Energy and Climate Change is seeking comment on its plan to reduce subsidies for large-scale solar power production while raising support for farm-scale anaerobic digestion, in which organic waste is processed into usable biogas. The revised rates, or feed-in tariffs, for solar power and anaerobic digestion would be introduced August 1, 2011, subject to the outcome of the consultation, which closes May 6.

2011 Goals May Be Decided in April

United Nations Executive Secretary of the U.N. Framework Convention on Climate Change Christiana Figueres called on countries March 24 to develop a 2011 work plan for progress on a climate accord during upcoming negotiations in Bangkok. The U.N. climate meetings, the first since the December meeting of the Conference of Parties in Cancun, will be held in Bangkok April 3-8.

Supreme Court to Hear CT v. AEP

The U.S. Supreme Court will hear arguments April 19 in a case (Connecticut v. American Electric Power Co.) that will determine whether plaintiffs can pursue public nuisance claims against GHG emitters under common law. A decision siding with AEP would close the door on common law actions against emitters and restrict regulation of GHG emitters to Congress and regulatory agencies; a decision for the original plaintiffs could open the door to more lawsuits against GHG emitters in federal court.

Low GWP Coolants Sought

The Air-Conditioning, Heating, and Refrigeration Institute launched the Low GWP Alternative Refrigerants Evaluation Program March 25. The research effort will identify promising alternatives to refrigerants with high global warming potential now used in air conditioners, heat pumps, dehumidifiers, ice makers, and other refrigeration equipment.