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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Debate

With high gas prices on the rise, energy issues, and disagreements over the best solutions to their problems, continue to dominate the debate. On the larger Congressional agenda, the Senate will continue work on the highway bill, with the House focusing on China tariff and small business legislation – including pieces of the larger JOBS Act.

At a speech in New Hampshire March 1, President Obama countered a common Republican narrative that blames the recent gas price spike on Administration policies by asking Congress to end \$4 billion in subsidies for oil and gas companies and vowing to tackle the nation's long-term energy issues while shunning bumper-sticker election year promises to lower gas prices. While legislation eliminating the subsidies is unlikely to soon win congressional approval because Republicans and some Democrats oppose the plan, the Obama Administration continues to look for other solutions while adopting an all of the above energy strategy. The President made similar statements in his weekly address on Saturday, underscoring the importance the Obama Administration places on addressing gas prices, while Rep. Doc Hastings, Chairman of the House Natural Resources Committee, used his weekly radio address to call on eliminating regulatory barriers to domestic energy production.

President Obama and Congressional leaders from both parties held a policy-lunch earlier in the week, which attendees said yielded something of a common ground on certain energy issues. Despite a well-publicized spat between President Obama and Speaker Boehner over Keystone XL, Rep. Doc Hastings, Chairman of the House Natural Resources Committee, told reporters after the lunch that he felt confident that bipartisan energy legislation, likely related to gasoline prices, might be passed this year. Meanwhile, Senators Chuck Schumer (D-NY) Claire McCaskill (D-MO) urged the Federal Trade Commission March 1 to complete and release the results of a nine-month investigation into whether oil companies are manipulating gasoline prices.

Upon Congress' return from the Presidents' Day recess, budget hearings continued to dominate a significant portion of committee time last week. At a House Appropriations Subcommittee on Energy and Water Development hearing February 28, Republicans criticized the president's \$27.2 billion Energy Department budget request for significantly increasing funding for renewable energy at the expense of fossil fuel funding.

Secretary Chu also defended the agency's \$27.2 billion budget proposal before the House Science, Space, and Technology Committee March 1, and Chairman Ralph Hall (R-TX) said that Congress will likely reject the president's request.

The same day at a joint House Energy and Commerce Subcommittee on Energy and Power and Subcommittee on Environment and the Economy, Environmental Protection Agency Administrator Lisa Jackson defended the inclusion of \$14 million in the proposed budget for research on hydraulic fracturing. The agency is already in the process of conducting a congressionally directed study on the impact of fracking on the water supply, and is expected to release several parts of the study by the end of the year.

Appearing before the Senate Energy and Natural Resources Committee to defend the Interior Department's \$11.5 billion budget request, Secretary Ken Salazar said that the Obama Administration has not yet ruled out the use of the Strategic Petroleum Reserve to combat rising gas prices and defended the pace of energy development on federal lands. Since 2009, the agency has approved 29 onshore projects for wind, solar, and geothermal generation and for related transmission, with a goal of permitting 11,000 MW of renewable energy power by the end of next year.

Congressman Mike Simpson (R-ID) said last week that he hopes to wrap up hearings on his Interior-Environment spending bill by the end of March, but that a markup schedule depends on getting overall funding allocations from the House Budget Committee.

In other news, Senate Majority Leader Harry Reid (D-NV) hopes to finish work soon on the stalled highway and mass transit reauthorization bill (S. 1813); he undertook new procedural moves March 1 aimed at forcing action on the legislation this week. A cloture vote is scheduled for March 6. While Reid and Senate Minority Leader Mitch McConnell (R-KY) have not yet secured a final agreement on the list of amendments that will come up for a vote next, Majority Leader Reid remains open to voting on some of the GOP's non-germane amendments, which include those dealing with the Keystone XL pipeline and the boiler MACT rule.

The House will take up HR 4105, Ways and Means Chairman Dave Camp's bi-partisan bill that would allow the Department of Commerce to set countervailing duties on subsidized imports from China and Vietnam. Testifying before the House Ways and Means Committee, of which Camp is chairman, US Trade Ambassador Ron Kirk praised the legislation. The House will also take up HR 3606, the Reopening American Capital Markets to Emerging Growth Companies Act, which would give smaller companies looking to make an initial public offering a reprieve from certain securities laws.

Congress

CES Legislation Introduced

Senator Jeff Bingaman (D-NM) introduced the Clean Energy Standard Act of 2012 (S. 2146) March 1. Drawing on extensive Energy Information Administration modeling, and in line with President Obama's call for an 80 percent CES in his last two State of the Union addresses, the legislation requires retail electric utilities to provide 24 percent of their energy from qualifying clean energy sources beginning in 2015, increasing to 84 percent by 2035. Under the plan, generators of clean energy are given credits based upon their carbon intensity; the flexible framework allows traditional renewables as well as other sources of energy, including nuclear, natural gas, and coal generation with carbon capture and sequestration, to be used to meet the standard, allowing market forces to determine the optimal mix of technologies and fuels, and making it easy for new technologies to be incorporated. The bill also rewards industrial efficiency, and has a goal of doubling clean energy by 2035. Senators Ron Wyden (D-OR), Bernie Sanders (I-VT), Mark Udall (D-CO), Al Franken (D-MN), Chris Coons (D-DE), John Kerry (D-MA), Sheldon Whitehouse (D-RI), and Tom Udall (D-NM) cosponsored the measure, though it is not expected to pass both chambers and be signed into law this year.

Natural Gas Strategy Needed

Speaking at a Center for American Progress forum March 1, Senator Ron Wyden (D-OR) and Congressman Ed Markey (D-MA) called for a timeout on plans to ratchet up exports of domestic natural

gas until after Congress and the president lay out a national strategy so that it will not raise prices for consumers or manufacturers. The pair suggested that the strategy needs to include determining whether increased exports would impact domestic energy security, long-term U.S. national security, consumer protection and prices, and the environmental concerns raised by increased natural gas drilling. The comments echo findings of a March 1 report from Democrats on the House Natural Resources Committee, *Drill Here, Sell There, Pay More: The Painful Price of Exporting Natural Gas*, which contended that restricting exports could allow natural gas and wind to displace coal as the largest source of U.S. electricity production.

White House Involvement Questioned

House Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) sent a letter February 29 to White House Counsel Kathryn Ruemmler alleging White House interference in the development last year of joint greenhouse gas emission and fuel economy standards for cars and trucks. The congressman has asked for a response, detailing the White House' involvement in the Environmental Protection Agency and National Highway Traffic Safety Administration's joint proposed rule by March 14.

MIT Funding Requested

Senator John Kerry (D-MA) sent a letter to Senate Appropriations Chair Daniel Inouye (D-HI) and Ranking Member Thad Cochran (R-MS) as well as Subcommittee on Energy and Water Development Chair Dianne Feinstein (D-CA) and Ranking Member Lamar Alexander (R-TN) March 2 requesting funding for the Massachusetts Institute of Technology's fusion energy research program. The program is scheduled to lose funding as a result of a proposed 16 percent cut to domestic fusion research in the president's fiscal year 2013 budget. If the proposed cut is enacted, the C-Mod research facility will be terminated, and 130 fusion scientists, engineers, graduate students, and support personnel would be terminated.

Legislation Introduced

Congressmen Chris Gibson (R-NY) and Mike Thompson (D-CA) introduced the Storage Technology for Renewable and Green Energy 2012 Act (STORAGE) (H.R. 4096) February 2. The legislation would provide a 20 to 30 percent tax credit to individuals and businesses when they invest in energy storage systems, allowing them to keep excess energy generated when energy is in low demand and then use it during periods of peak demand. Senators Ron Wyden (D-OR), Jeff Bingaman (D-NM), and Susan Collins (R-ME) introduced a companion bill (S. 1845) last fall.

Senator Debbie Stabenow (D-MI) introduced legislation (S. 2143) February 29 to clarify that paper which is commonly recycled does not constitute a qualified energy resource under the section 45 credit for renewable electricity production.

The same day, Representative Shelley Berkley (D-NV) introduced the Clean Energy Jobs Act (H.R. 4108) to increase and extend the credit for qualifying advanced energy projects. The bill closes tax loopholes for oil companies in order to provide \$5 billion for the Section 48C Advanced Energy Manufacturing Tax Credit that provides a 30 percent tax credit for investment in new, expanded, or re-equipped domestic clean energy manufacturing facilities built in the United States.

Hearings

On March 7, the House Energy and Commerce Subcommittee on Energy will hold a hearing on America's energy initiative, with a focus on gas prices.

On March 8, the House Small Business Subcommittee on Investigations, Oversight, and Regulations will hold a hearing to examine the relationship between regulations, energy security, and small energy producers.

On March 8, the House Energy and Commerce panel will hear testimony from Energy Secretary Steven Chu on DOE's FY 2013 budget request.

On March 7, the Senate Finance Committee will hear testimony from U.S. Trade Representative Ron Kirk on President Obama's 2012 trade agenda.

Administration

Adaptation Plan Forthcoming

Kathy Jacobs, assistant director for climate adaptation and assessment in the White House Office of Science and Technology Policy, said February 29 that the administration will release a 10 year national strategic research plan, for 2012-2021, for adapting to climate change on March 7. The U.S. Global Change Research Program released a draft plan last September to identify research intended to help the government and public respond to potential risks that could result from climate change, including more severe heat waves, storms, floods, fires, crop failures, and water shortages. The administration will also release a national climate assessment in 2013 to enhance the ability of the United States to anticipate, mitigate, and adapt to changes in the global environment.

Department of Commerce

China Trade Preliminary Decision Postponed

The Department of Commerce announced last week that it will extend for the third time the due date for its preliminary determination in its investigation into whether to impose duties to offset the impacts of any illegal Chinese subsidies. Under United States trade law, this is the final extension possible. The new deadline is March 19, and if the agency finds in favor of the SolarWorld, the effective date of duties under its critical circumstances finding would be in late December.

Department of Energy

SMR Partnerships

The Department of Energy and its Savannah River Site announced March 2 three public-private partnerships to develop deployment plans for small modular nuclear reactor technologies at SRS facilities in South Carolina. As part of the agency's commitment to advancing the next generation of nuclear reactor technologies and breaking down the technical and economic barriers to deployment, the Memorandums of Understanding will help leverage the river's land assets, energy facilities and nuclear expertise to support potential private sector development, testing, and licensing of prototype SMR technologies.

\$6 Million for Fuel Cell Vehicles

The Department of Energy announced March 1 up to \$6 million available this year to collect performance and durability data on light duty fuel cell electric vehicles. The projects selected for funding will collect data for five years from next-generation FCEVs as they are operated in real world conditions to identify ways to reduce costs and improve fuel cell durability and overall vehicle performance.

\$180 Million for Offshore Wind

The Department of Energy announced March 1 the start of an ambitious initiative to capture the potential of wind energy off American coasts. As part of a planned six-year \$180 million initiative, an initial \$20 million will be available this year as the first step in supporting up to four innovative offshore wind energy installations across the country. The projects will accelerate the deployment of breakthrough wind power technologies that will help diversify the nation's energy portfolio, promote economic development, and launch a new industry in the US.

Green Truck Summit

Energy Secretary Steven Chu will visit the Green Truck Summit in Indianapolis March 5 to meet with business leaders representing the industry at all levels – fleets, suppliers, OEMs, technology developers, component manufacturers, and customers. The summit is co-hosted by CALSTART and the National Truck Equipment Association.

Department of Interior

Offshore Wind Area Reduced

The Bureau of Ocean Energy Management has reduced the size of the area it intends to offer for offshore wind development in the Area of Mutual Interest off the coasts of Rhode Island and Massachusetts. The decision, which takes into account concerns from the Massachusetts fishing industry, represents another step in the process of bringing offshore wind to New England. The bureau expects to hold the auction in 2013.

Environmental Protection Agency

Oral Arguments on Climate Rules

The U.S. Court of Appeals for the District of Columbia heard two days of oral arguments last week in lawsuits challenging the Environmental Protection Agency's climate change regime. While the judges presented significant concerns with the agency's prevention of significant deterioration permitting program for greenhouse gas emissions, they did not appear inclined to overturn it or the agency's endangerment finding, tailoring rule, or its subsequent rule limiting emissions from light-duty vehicles. Attorneys and former Environmental Protection Agency attorneys said at a March 1 Environmental Law Institute Forum that the agency would have options to regulate greenhouse gas emissions from stationary sources in the unlikely event that a federal appeals court strikes down its permitting program.

Emissions Report Unveiled

The Environmental Protection Agency released its annual greenhouse gas emissions report February 27, concluding that total annual domestic emissions increased 11 percent between 1990 and 2010. The report, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2010*, found that total CO2 emissions increased by 3.3 percent from 2009 to 2010, contrasting to a 6.1 percent decline between 2008 and 2009. The decline was largely due to the 2008 economic recession that reduced electricity consumption as well as a trend away from coal and toward natural gas. The largest source of emissions, representing 79 percent of the total in 2010, remains CO2 produced as a result of fossil fuel combustion, including electricity generation, transportation, industrial operations, residential buildings, and commercial buildings. The agency will receive public comments on the draft report through March 28.

Tailoring Rule Revisions

The Environmental Protection Agency released a proposed rule February 27 stating that it will not lower the existing thresholds in its tailoring rule for stationary emissions sources to obtain greenhouse gas permits. The agency proposed revisions to the permitting program that would allow facilities to consider their aggregate emissions when determining compliance with the permitting requirements and would create a streamlined permitting program at emissions levels below the prevention of significant deterioration threshold. The agency will accept comments through April 20.

Tier 3 to Raise Gas 1 Cent

Responding to a December letter from Congressman Ed Whitfield (R-KY) and 67 of his colleagues February 27, Environmental Protection Agency Assistant Administrator for Air and Radiation Gina McCarthy wrote that the agency's forthcoming Tier 3 proposed rule, which would reduce the sulfur content in gasoline from 30 ppm (per the Tier 2 rule) to 10 ppm, would raise the cost of gasoline by one cent per gallon. The agency is expected to propose its Tier 3 standards for gasoline and light-duty vehicle emissions this month.

EPA Brief Defends CSAPR

On March 1, the Environmental Protection Agency filed a brief claiming the Cross-State Air Pollution Rule is a direct result of the striking down of an interstate emissions trading system by a federal appellate court. The briefing goes on to defend the transport rule, which helps mitigate ozone and particulate matter in downwind states, as the best possible solution to a complex regulatory issue with immense public health consequences. The briefing defended the much-maligned Integrated Planning Model that the agency uses to establish state-level emissions budgets against claims of inaccuracy from industry.

General Services Administration

GHG Reporting and Federal Procurement

Speaking at the Climate Leadership Conference March 1, Nancy Gillis, director of the General Services Administration's federal supply chain emissions, said that the agency does not require its suppliers to report on their greenhouse gas emissions, though it is gradually incorporating consideration of emissions inventories into federal procurement decisions. The agency is conducting a three-year pilot program focusing on the ability of small businesses to complete greenhouse gas emissions inventories.

E-Waste Guidelines Released

The General Services Administration released guidelines March 1 that requires federal agencies to send electronic waste to certified third-party recyclers for end-of-life disposal. Under the *National Strategy for Electronic Stewardship*, the federal government will be encouraged to maximize the use of technology by sharing equipment among agencies and will be required to recycle e-waste that can no longer be reused. The government will also establish a tracking system for all e-waste, requiring federal agencies to submit reports on how they are managing waste.

States

CA e-GGRT Unveiled

On February 23, the California Air Resources Board released a new and improved online tool, the California Electronic and Greenhouse Gas Reporting Tool, for the mandatory of greenhouse gas emissions under the state's Global Warming Solutions Act of 2006 (A.B. 32). The CAL e-GGRT aligns the state's existing system with the Environmental Protection Agency's reporting tool, and will be used to establish emissions reduction requirements and establish the cap for the initial compliance period for the state's multi-sector emissions trading program. Under the program, California must reduce emissions to 1990 levels by 2020.

\$350 for CT Biomass

Connecticut-based investment company New Canaan Capital Management confirmed February 27 plans to raise \$350 million for investments in biomass-to-energy facilities in the United States and a number of other countries. Biomass-to-energy plants take agricultural and plant wastes, ranging from corn husks to wood chips to sewage sludge, burn the fuels in boilers, and turn a steam turbine to produce electricity.

International

Chinese Efficient Buildings Plan

Shortly after the annual meetings of the National People's Congress in Beijing later this month, China's Ministry of Housing and Urban-Rural Development will release the final version of its "Building Energy Efficiency Plan" as a key building efficiency component of the 12th Five-Year Plan (2011-2015). The plan, a draft of which was made available for public comment on January 30, calls for 10 percent reductions in energy consumption per square meter in public buildings by 2015, with 15 percent reductions mandated for buildings larger than 20,000 square meters. The reductions are baselined from levels set in the 11th Five-Year Plan, which ended in 2010. As part of the plan, the PRC is aiming for 1.18 billion square meters of new urban, green building floor space by 2015.

EU Efficiency Legislation

Members of the European Parliament's industry committee decided February 28 that the European Commission should intervene in the European Union's emissions trading system to boost the price of carbon and bring the system into line with pending energy efficiency legislation. The committee voted on a draft EU directive on energy efficiency proposed by the commission in June, which would have extensive implications for member countries and industry by imposing measures and limit energy consumption.

China Advances Low-Carbon Pilot Areas

On February 28, the climate change department for the National Development and Reform Commission announced that the five provinces of Guangdong, Liaoning, Hubei, Shaanxi, and Yunnan, and the eight

cities of Tianjin, Chongqing, Shenzhen, Xiamen, Hangzhou, Nanchang, Guiyang, and Baoding are proceeding ahead as pilot low-carbon development areas, with a focus on the transportation and building efficiency sectors. The project is part of China's 12th Five-Year Plan blueprint, and will help the country reduce, from 2005 levels, emissions per unit of gross domestic product, by 17% by 2015, and by 40-45% by 2020.

Miscellaneous

US Building Retrofits Save \$1 Trillion

The Deutsche Bank and the Rockefeller Foundation released a study March 1 finding that retrofitting buildings through cost effective energy savings methods in the United States could result in \$1 trillion in savings over 10 years and generate up to 3.3 million jobs largely without major federal financial support. The analysis, *United States Building Energy Efficiency Retrofits: Market Sizing and Financing Models*, indicated that about \$279 billion in investments would be needed to do the retrofits, which would reduce domestic electricity consumption by about 30 percent; researchers estimated that the building updates would reduce emissions by about 600 MMT, or 10 percent of total US emissions.

Climate Considerations for Builders

The University of Michigan and the U.S. Green Building Council released a report February 28 indicating that building professionals need to consider how climate change might impact their projects in the future. The report, *Green Building and Climate Resilience*, contended that green buildings should include both mitigation and adaptation strategies in order to be responsive and resilient to future climate issues.

Oil Recovery Tax Credit Revamp

The National Enhanced Oil Recovery Initiative released a report February 28 calling on Congress to overhaul the \$10/ton tax credit that rewards oil recovery sites that store carbon dioxide. The report, *Recommended Modifications to the 45Q Tax Credit for Carbon Dioxide Sequestration*, finds that revamping the tax credit would unlock billions of barrels of domestic oil but also result in the storage of millions of tons of CO₂. The recommendations, which have been praised by a group of western senators who requested the review including Senators Max Baucus (D-MT), John Hoeven (D-ND), and Kent Conrad, followed an extensive review of existing enhanced oil-recovery policies begun last July by industry, states, and nongovernmental organizations under NEORI.

Chicago Infrastructure Trust

Chicago Mayor Rahm Emanuel announced March 1 the first city infrastructure trust in the United States. The Chicago Infrastructure Trust will leverage private investment for retrofits pending City Council approval. For the Trust's first project, Retrofit Chicago, the city of Chicago will work with debt and equity investors to finance \$200 million to \$225 million in retrofits in municipal buildings, reducing energy consumption in those assets by 20 percent. The city currently spends \$170 million a year on energy. Citibank, Citi Infrastructure Investors, Macquarie Infrastructure and Real Assets Inc., J.P. Morgan Asset Management Infrastructure Investment Group, and Ullico will consider the projects the city might undertake, and have indicated an initial investment capacity of more than \$1 billion.

Melting Arctic Causes Southern Snow

The National Academy of Sciences published a study February 27 linking reduced Arctic sea ice with snowier and colder winters in more southern latitudes in China, Europe, and the United States. The study, *Impact of Declining Arctic Sea Ice on Winter Snowfall*, contends that the decreased sea ice in fall and early winter plays a critical role in the weather patterns that have created snowier winters.

Federal Adaptation Efforts

The Center for Climate and Energy Solutions released a report February 28 documenting the latest efforts by federal agencies to mainstream the consideration of climate change adaptation across their operations, programs, and policies. The report, *Climate Change Adaptation: What Federal Agencies Are Doing*, updates a similar document issued in 2010, and is organized by each major department within the federal government, providing an overview of adaptation activities such as initiatives, strategies, programs, institutional mechanisms, tools, and resources, as well as examples on federal projects that

incorporate climate change impacts and adaptive actions into their planning, design, and implementation processes.

Fracking Coordination

The American Petroleum Institute called on the Obama administration March 1 to consolidate the work of several federal agencies that are examining numerous aspects of fracking in order to avoid duplicative regulations on the oil and gas industry. API suggested that the fracking-related work of the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Interior, State, and Transportation; the Environmental Protection Agency; and the Securities and Exchange should be coordinated by the Environmental Protection Agency.

Environmentalists Support Obama on Gasoline Prices

On March 2, top executives of the Sierra Club, League of Conservation Voters, and the Natural Resources Defense Council told reporters on a conference they support President Obama in the face of increasing attacks over rising gas prices coming from Congressional Republicans and candidates for the party's Presidential nomination.

Study Links Diesel Exhaust to Lung Cancer

On March 2, the Journal of the National Cancer Institute released a 20-year study that tracked 12,000 miners working in specific industries and found a much higher concentration of instances of lung cancer than the general population. The most heavily exposed groups had instances of lung cancer three-times higher than workers with lower exposures.