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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Debate

Congress finished a few things on its plate last week as it prepared to leave Washington to begin a two-week recess.

Following House and Senate passage earlier in the week, President Obama March 30 signed into law a 90-day extension of federal highway and transit programs. The legislation (H.R. 4281) also will ensure the continued flow of motor fuel, heavy truck, and truck tire taxes into the Highway Trust Fund through the end of June. Though the Senate had previously passed their \$109 billion version of the transit reauthorization bill, the House had been unable to come to a long-term agreement on the highway bill, and so the short-term solution prevents the authorization from expiring March 31.

Despite a strong effort from Senator Robert Menendez (D-NJ), as well as a Rose Garden support speech from President Obama, the Senate failed to limit debate last Thursday on the Repeal Big Oil Tax Subsidies Act (S. 2204). The 51-47 vote fell nine votes short of the 60 needed to invoke cloture and limit debate on legislation that would end \$21 billion in tax breaks for oil and gas companies and extend through 2012 a number of expired renewable energy tax credits, including the credit for energy-efficient new and existing homes, the credit for certain plug-in electric vehicles, the credit for energy-efficient appliances, the 1603 Treasury grant program, the cellulosic biofuel producer credit, and the Section 48 investment tax credits for offshore wind facilities.

Senator Menendez' renewable energy tax extenders bill was not the first, the most recent coming from Senator Debbie Stabenow (D-MI) as an amendment to the Senate version of the highway bill, nor will it be the last. Though it is likely that similar language will be offered to most major pieces of legislation that move in Congress through the summer and fall, it is likely that it may be included as some part of a larger bargain during the lame duck session at the end of the year. When such a debate does take place, one potential trade off scenario could be that sequestration would be postponed for a year, the so-called Bush tax cuts would be extended for a year, and the energy tax credits scheduled to expire at the end of 2012 would be extended for a year, probably with some tweaking. In exchange, some reconciliation would need to be made with respect to spending cuts, potentially resembling a package that the Super Committee discussed but never formally endorsed, including reductions to entitlement programs and Defense Department funding – specifically programs that many agree need reform, but that most prefer not to address, especially during an election year.

Congress

EU ETS Airline Challenges

House Committee on Transportation and Infrastructure Chairman John Mica(R-FL) and U.S. airline representatives March 28 urged the administration to use an international aviation treaty to challenge the European Union's plan to include American carriers in its Emissions Trading System. A proposed challenge under the Convention on International Civil Aviation, or the Chicago Convention aviation treaty, would place the dispute in yet another venue. The administration has not ruled out the challenge, but wants to consider all potential scenarios first.

Energy Tax Extenders Hearing

During a Senate Finance Subcommittee on Energy, Natural Resources, and Infrastructure hearing March 27, industry leaders continued to echo the need for an extension of the production tax credit, but some Committee members argued that the credit and other tax incentives should be a part of broader tax reform discussions. The subcommittee considered renewable energy tax incentives that expired at the end of last year and are scheduled to expire at the end of this year. According to a recent report by the Joint Committee on Taxation, the energy-related provisions to be extended, including the production tax credit, would cost roughly \$11.7 billion over ten years.

Military Energy Hearing

Appearing before a joint hearing of the Senate Environment and Public Works Subcommittee on Green Jobs and the New Economy and Subcommittee on Oversight March 27, Richard Kidd, deputy assistant secretary for energy and sustainability at the U.S. Army, testified that the U.S. military is pursuing energy efficiency initiatives to protect troops and increase its energy security. He reiterated that the military is on track to meet its energy goals, including deriving 25 percent of its energy from renewable sources by 2025. Some examples of military renewable energy and energy efficiency use include 52 percent of American soldiers bringing portable solar power cells into the field that can recharge batteries and the reduction of fuel use, as well as switching to alternative fuels, in convoys in an effort to reduce casualties.

Military Energy Efficiency

Testifying before the House Armed Services Subcommittee on Readiness March 29, Dorothy Robyn, deputy undersecretary of defense for installations and the environment, said that the Defense Department is pursuing energy efficiency and other measures to reduce its energy bill and increase its energy security. The agency spends \$4 billion a year on energy, operating more than 300,000 buildings. To reduce its energy demand and costs, the agency is seeking \$1.1 billion in fiscal year 2013 for energy efficiency building retrofits, and is also entering into more than \$1 billion worth of energy savings contracts while it expands the number of renewable energy projects on military installations.

CCS On Track

Appearing before the House Appropriations Subcommittee on Energy and Water Development and Related Agencies March 27, Charles McConnell, the Department of Energy's acting assistant secretary for fossil energy, announced that the administration is on schedule to have as many as six large scale carbon capture and storage demonstration projects in operation by 2016. The projects include the FutureGen 2.0 project planned in Morgan County, Illinois, as well as large scale projects through the agency's Clean Coal Power Initiative and industrial carbon capture and storage programs. Only a small amount of the \$3.4 billion appropriated to the department for CCS projects under the Recovery Act has been spent, but funding is expected to increase significantly in the next two to three years.

ARPA-E 2013 Goals

During a House Appropriations Subcommittee on Energy and Water Development hearing March 28, the Department of Energy's Advanced Research Projects Agency – Energy Director Arun Majumdar said that the agency would emphasize projects related to transportation and stationary power systems in fiscal year 2013. Potential goals include revolutionary research into batteries and energy storage systems, alternative transportation fuels, and natural gas vehicles as well as research in solar, wind, natural gas, and smart grid technologies. The agency has requested \$350 million for fiscal year 2013, an increase of \$75 million, 27.3 percent, from current funding levels.

Gas Price Legislation

Speaking before a House Energy and Commerce Subcommittee on Energy and Power March 28, Gina McCarthy, Environmental Protection Agency assistant administrator for air and radiation, said that draft subcommittee legislation, the Gasoline Regulations Act of 2012, that aims to reduce gas price by delaying three air pollution rules will not succeed in its goal. Two of the rules that the legislation would delay – Tier 3 vehicle and gas standards and GHG standards for petroleum refineries – have not contributed to rising gas prices because they have not yet been proposed. The third rule, ozone air quality standards, has not caused high gas prices either. The legislation, sponsored by Representative Ed Whitfield (R-KY), would require the administration to form a committee to issue a report on how the agency's regulations impact gas prices, and the agency would not be able to finalize the rules until six months after the committee releases the report.

Legislation Introduced

Senator James Inhofe (R-OK) introduced the Fracturing Regulations are Effective in State Hands Act (S. 2248) March 28 to mandate that states, rather than the federal government, have the sole authority to regulate fracking on Federal land within their borders. The legislation would override regulations under development by the Interior Department's Bureau of Land Management and would block the Environmental Protection Agency's preparation of a guidance document on regulating fracking when diesel fuels are involved. Congressman Louie Gohmert (R-TX) introduced companion legislation (H.R. 4322) the following day.

The same day, Representative Pete Olson (R-TX) introduced the Resolving Environmental and Grid Reliability Conflicts Act (H.R. 4273) to exempt power plants directed by the Energy Department to increase electricity generation would protected from civil and criminal penalties for alleged violations of air quality rules. Also last Wednesday, House Energy and Commerce Committee Chairman Fred Upton (R-MI), and Subcommittee on Energy and Power Chairman Ed Whitfield (R-KY) sent a letter to Energy Secretary Chu asking whether the agency provided the Environmental Protection Agency sufficient information on whether the utility MACT and cross-state rules could raise electricity prices or harm reliability.

On March 29, Senator Tom Harkin (D-IA) introduced the Rural Energy Investment Act of 2012 (S.2270), a marker bill for the energy title of the Farm Bill.

Senator John Hoeven (D-ND) introduced legislation (S. 2264) to provide liability protection for claims based on the design, manufacture, sale, offer for sale, introduction into commerce, or use of certain fuels and fuel additives.

Representative Marsha Blackburn (R-TN) introduced legislation (H.R. 4295) to establish the Department of Energy and the Environment.

Representative Ed Markey (D-MA) introduced legislation (H.R. 4325) to provide that the Secretary of the Interior may accept bids on any new oil and gas leases of Federal lands only from bidders certifying that all oil produced pursuant to such leases, and all refined petroleum products produced from such oil, shall be offered for sale only in the United States.

Administration

US-India Solar Development

The U.S. Trade and Development Authority signed two agreements March 26 to support domestic business development in the clean energy infrastructure in India during a visit by Commerce Secretary John Bryson. The agreements will support feasibility studies for a micro-grid solar power plant and for implementation of a smart grid in India, and the projects could generate more than \$350 million of exports for U.S. companies. The projects are in keeping with a joint commitment President Obama and Prime Minister Manmohan Singh made in late 2009 to enhance energy efficiency and clean energy cooperation between the two nations, and to form a Partnership to Advance Clean Energy.

Great Lakes Wind

The administration and five states – Illinois, Michigan, Minnesota, New York, and Pennsylvania – signed a memorandum of understanding March 30 to hasten approval of offshore wind farms in the Great Lakes. Under the agreement, state and federal agencies will create a blueprint for speeding regulatory review of proposed wind farms without sacrificing environmental and safety standards. The Lakes have no offshore wind turbines, though a Cleveland partnership announced plans last year for a demonstration project that would place five to seven turbines in Lake Erie about 7 miles north of the city, generating 20-30 MW.

Department of Agriculture

\$880,000 for REAP

Agriculture Secretary Tom Vilsack announced March 30 that the agency. As part of the Rural Energy for America Program, has selected 10 projects to help rural small businesses and agricultural producers reduce energy consumption and implement renewable energy technologies. The ten projects received grants for \$50,000 to \$100,000.

Department of Defense

\$100 Million for Biofuels

The Department of Defense issued a Special Notice announcing that it intends to use its Defense Production Act authority to issue a \$100 million funding opportunity as early as June. In an effort to carry out the joint Memorandum of Understanding among the Departments of Agriculture, Energy, and the Navy to accelerate the production of domestic advanced drop-in biofuels, the Defense Department plans to offer funding for the design, construction, and operation of an Advanced Drop-In biofuel Production Project. The biofuels must have lifecycle emissions that are less than or equal to those of conventional petroleum derived fuels.

Department of Energy

Battery Charger Standards

The Department of Energy proposed energy efficiency standards for battery chargers and external power supplies March 27. Additionally, the proposed standards would amend existing standards for some Class A external power supplies, the adaptors that are used to convert high-voltage AC power from a wall outlet to lower-voltage AC or DC currents used to operate small electronic devices. The standards are scheduled to go into effect July 2013.

\$20 Million for Biofuels

The Department of Energy's Biomass Program expects to issue a \$20 million funding opportunity announcement this summer. The funding would support an innovative pilot facility to produce military spec biofuels, and the agency expects the pilot facility to process between one and fifty tons of eligible feedstock per day at existing, retrofitted, or new facilities.

Innovator Runner-Up Webinar

The Department of Energy will present a webinar April 3, featuring Element One, runner-up in America's Next Top Innovator competition, which will present its Hydrogen Detection Technologies.

\$5 Million for Advanced Fuel Cells

The Department of Energy announced March 27 the investment of more than \$5 million in two projects that will reduce the cost of advanced fuel cell systems by developing and engineering cost-effective, durable, and highly efficient fuel cell components. 3M Company, in collaboration with General Motors, Lawrence Berkeley National Laboratory, and Michigan Technological University, will receive \$3.1 million to develop a durable, low-cost, and high-performance membrane electrode assembly for use in mass-produced fuel cell electric vehicles. Eaton Corporation, Kettering University, Ballard Power Systems, and Electricore, Inc. will receive \$2.1 million to leverage advanced blower technology to develop and demonstrate an efficient and low-cost fuel cell air management system.

Department of Interior

Solar Project Locations Challenged

Defenders of Wildlife, Sierra Club, and Natural Resources Defense Council filed a pair of lawsuits against the Department of Interior in the U.S. District Court for the Central District of California March 26 challenging a utility-scale solar project planned for public lands in California's Mojave Desert. The suits follow a failed effort by the three environmental groups to have the project relocated to less environmentally sensitive lands. The 663.5 MW K Road Calico Solar Project is among a number of utility-scale solar facilities in the area permitted through joint federal and state processes to fast-track construction of renewable energy facilities.

Environmental Protection Agency

NSPS Proposed

The Environmental Protection Agency proposed a rule March 27 setting the first source-specific greenhouse gas emissions standards. The proposed new source performance standards will limit new fossil fuel-fired power plants to 1,000 pounds of CO₂ per MW and would apply to new fossil fuel-fired power plants with a generating capacity greater than 25MW. Though industry representatives are concerned that the proposed rule would make it nearly impossible to build new coal-fired power plants because carbon capture and storage is expensive and not yet commercially viable, Administrator Lisa Jackson said the rule will have minimal impact on electricity prices and is not expected to have excessive compliance costs for the power sector because it follows an industry shift toward more natural gas usage.

Sustainability Plan Forthcoming

Speaking at a meeting of the National Advisory Council on Environmental Policy and Technology March 26, Bicky Corman, Deputy Associate Administrator at the Environmental Protection Agency's Office of Policy said that an agency advisory committee will submit its initial sustainability plan, required under Executive Order 13,514, recommendations in April. The current draft suggests that the agency create a specific agency vision for sustainability that can use as the basis for establishing long-term goals and that it set immediate three- to five-year goals related to sustainability, develop and assessment and management strategy and analytic tools for implementing its plan, and develop measures for assessing its progress on initiatives.

WI Must Consider Efficient Turbines

The Environmental Protection Agency ordered Wisconsin officials last week to consider requiring more efficient turbines as part of a greenhouse gas permit for a Milwaukee sewage treatment plant. The Wisconsin Department of Natural Resources did not evaluate either combined cycle turbines or combined heat and power systems as part of its best available control technology evaluation for a proposed permit for the Jones Island Water Reclamation Facility.

Black Coal Study

On March 30, the Environmental Protection Agency released a report claiming that while more research is needed, black carbon emissions, fine particulate matter that comes various forms of fossil fuel combustion, may both harm human health and contribute to climate change. The report, required by Sen. Tom Carper's (D-DE) amendment to the Department of Interior, Environmental and Related Agencies Appropriations Act of 2010 (HR 2996), found that since black carbon emissions effects cloud formation, it is unclear whether the emissions lead to global warming or global cooling. The report found that the United States, currently responsible for 8% of global black carbon emissions, will likely reduce black carbon emissions reductions significantly by 2030 owing to power plant and diesel emissions regulations.

General Services Administration

Contractor E-Waste Regulations Forthcoming

The General Services Administration will release within 90 days a draft version of changes to the Federal Management Regulation that prohibit federal contractors using federal funds to purchase electronic

equipment from disposing of used e-devices in landfills. A final version will be published by the end of the year.

Nuclear Regulatory Commission

2 New Reactors

The Nuclear Regulatory Commission approved its second pair of new nuclear reactors in as many months March 30. The permit will expand SCANA's V.C. Summer plant near Jenkinsville, South Carolina, from one reactor to three. Last month's approval of the Vogtle plant expansion in Georgia, which is in line to receive an \$8.33 billion Department of Energy loan guarantee, drew strong objections from Chairman Gregory Jaczko over safety concerns, but he was ultimately outvoted 4-1; he dissented on last Friday's vote as well. Before last month, no new domestic nuclear reactors had been permitted since 1978.

Personnel

The Senate approved three energy-related nominations March 29. David Danielson was confirmed as assistant secretary of energy for energy efficiency and renewable energy; he has been serving as program director of the agency's Advanced Research Projects Agency-Energy. Charles McConnell was approved to be assistant secretary of energy for fossil energy; he currently serves as the office's chief operating officer. Gregory Woods, who currently serves as deputy general counsel for the Transportation Department, was approved for the position of general counsel at the Department of Energy.

States

IN E85 Deduction

Indiana enacted legislation (H.B. 1128) March 16 to repeal the gross retail tax deduction for retail merchants selling E85 fuel, as well as the credit that retailers were entitled to if the deduction exceeded the gross retail tax amount. The measure takes effect July 1.

IN Home Efficiency

Indiana repealed the state's expired gross retail tax exemption for home energy assistant transactions March 14 while providing for a new state home energy assistance program. The bill (H.B. 1141) directs the Lieutenant Governor to establish a separate state home energy assistance program that must be used to provide home energy assistance to individual homeowners. The eligibility standards are the same as those used under the federal Low Income Home Energy Assistance Block Grant.

NH RGGI Withdrawal

The New Hampshire House approved legislation March 28 that would remove the state from the Regional Greenhouse Gas Initiative, effective 2015. House members approved the measure (H.B. 1490) by voice vote. Both the House and Senate approved legislation in 2011 to exit the Northeast CO2 cap and trade program for power plants in 2012, but the Senate fell one vote short of overriding a veto by Governor John Lynch (D).

CARB Auction Delayed

The California Air Resources Board announced March 27 that its first official auction of allowances under its economy-wide greenhouse gas emissions cap and trade program will be delayed until November. By delaying the first auction, which was scheduled for August, the board will be able to maximize stakeholder readiness.

California Offset Regime Challenged

On March 28, the Citizens Lobby and Our Children's Earth filed a lawsuit in California Superior Court in San Francisco challenging the validity and enforceability of the California Air Resources Board's offset projects allowed by the state Global Warming Solutions Act of 2006 (A.B. 32). The suit alleges that four of offsets in particular are structured to minimize cost and burden for the participant, as opposed to aggressively offsetting carbon dioxide emissions. CARB approved the offsets in question last October and allow for investments in livestock operation methane reduction, the destroying of certain refrigerants,

and the creation of carbon sinks.

Maryland Offshore Wind Bill Progresses

On March 30, the Maryland House of Delegates sent to the Senate, on an 88-47 vote, an altered version of Gov. Martin O'Malley's (D) proposal to carve out a special portion of the state's renewable energy standard for offshore wind projects starting in 2017. A companion measure has lost traction in the Senate, but if enacted, the legislation would create a special market for offshore wind renewable energy credits. The law will allow utilities to pass some of the cost of the offshore wind projects to ratepayers over the course of the next 20 years, provided rates increase by less than \$1.50 per month for residential, and 1.5% per year for commercial, customers. On March 30, Environment Maryland released a report, "What Offshore Wind Means for Maryland," in support of the law.

International

US Aviation Drops EU ETS Challenge

Airlines for America, the leading trade organization for American airlines, dropped its lawsuit March 27 challenging the inclusion of aviation in the European Union's cap and trade program for greenhouse gas emissions. The group called on the administration to take action to force the bloc to cease application of the ETS to aviation, and noted other governments' opposition to the inclusion.

More Chinese Coal

China's National Energy Administration said March 22 that it would lift coal production to an annual capacity of 4.1 billion MT by 2015 while also restricting domestic demand to 3.9 billion MT in order to reduce pollution and reliance on coal. The announcement came as part of the release of the 12th Five-Year Plan for the coal industry, which calls for a consolidation of production with 20 Chinese companies accounting for over 60 percent of the nation's coal output by 2015, with 10 companies producing an annual capacity of 100 MMT and 10 producing 50 MMT. China is the world's largest consumer and producer of coal as well as the largest emitter of CO₂.

Japanese Nuclear

Tokyo Electric Power notified Japan's trade ministry March 30 that it was dropping plans for two more nuclear reactors at its Fukushima Daiichi plant. Tepco will cancel this month a 253 MW emergency power facility comprised of diesel generators and gas turbines at the Hitachinaka station, while Tohoku Electric Power Company retained its plans to build an 825 MW nuclear reactor near the Fukushima site, but provided no date for the reactor's commercial operation.

Adaptation and Mitigation Crucial

The U.N. Intergovernmental Panel on Climate Change said March 28 that increases in extreme weather events triggered by climate change over the rest of the century are likely to harm critical sectors like water supply and agriculture and add stress on vulnerable communities unless governments begin to act of adequate adaptation and mitigation measures. The IPCC released the final version of its special report, *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*, saying that a wide range of measures already exist to help address the impacts of increasing disasters.

EU Allowance Pressure

The European Parliament said last week that the European Commission could come under pressure from Poland and other central and Eastern European countries when deciding on transitional free CO₂ allowances for the power sector. The countries have applied for the allowances under a clause in a 2009 EU directive that will govern the Emissions Trading System after 2013; decisions on transitional applications will be published in July.

Chinese Vehicle Plan

China recently published a Five-Year Plan for developing new energy vehicles including plug-in hybrid electric and electric cars. New energy vehicles are one of seven strategic industries that the country is focusing on developing under its overall 12th Five-Year Plan for 2011-2015. The vehicle plan is intended

to make hybrid vehicle use more widespread in the period and envisions all-electric vehicles dominating the market by 2020.

Chinese Energy and Environmental Goals

On March 29, Wang Gang, head of China's Ministry of Science and Technology, told attendees at the Macau International Environmental Cooperation Forum that energy independence and national security are driving China's energy and environmental changes. Zhao Penggao, deputy director of the Department of Resource Conservation and Environmental Protection of the National Development and Reform Commission, also present, explained that China, as set forth in the country's 12th Five-Year Plan (2011–2015), has the goal of increasing the percentage of GDP coming from seven energy and environmental sectors to 8 percent by 2015 and 15 percent by 2020.

China's Petrochemical Energy Intensity Goals

On March 30, Sun Weishan, deputy secretary-general of the China Petroleum and Chemical Industry Federation, said China's petrochemical industry, which accounts for 12.9% of the country's energy usage, must conserve energy and become more innovative in order to compete with higher value-added refined products made in other countries. Sun announced new energy intensity reduction goals for petrochemicals due out in April as part of the nation's goal to reduce energy intensity by 16% by 2015 from 2010 levels, and the petrochemical industry's energy intensity 20% in the same timeframe.

Miscellaneous

ASE Commission

The Alliance to Save Energy formed a commission last week, the Alliance Commission on National Energy Efficiency Policy, to formulate and release a new set of national energy efficiency policies. Senator Mark Warner (D-VA) and National Grid USA President Tom King lead the Commission.

GRI Sustainability Reporting Push

The Global Reporting Initiative (GRI), a nonprofit that provides companies with a comprehensive sustainability framework, announced its support of institutional investors in their push for a declaration by national governments requiring large companies to publish sustainability numbers or explain why they won't. A similar "report or explain" requirement is being advocated by GRI for inclusion in clause 24 of the draft Rio+20 declaration, to be promulgated this summer in Rio.

OECD Environmental Recommendations

On March 30, the Organization for Economic Cooperation and Development's top environmental officials, meeting to discuss policy recommendations and the organization's recent Environmental Outlook to 2050: The Consequences of Inaction report, called for carbon taxes and smart regulation for reducing harmful emissions. The report paints a dire picture of environmental degradation without significant efforts to reduce pollution, but was out of synch with the final policy statement, adopted by the group as input to the U.N. Conference on Sustainable Development (Rio+20), which avoids advocating specific regulations.