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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Debate

As Congress prepares to return from a two-week recess and the Administration continues its vocal approval of an all of the above approach to energy policy, policymakers are gearing up for debates over a number of energy issues. The House moves immediately to its version of the transportation bill, with a Keystone XL approval provision, while the Senate will take up tax legislation with higher phased rates for the wealthy.

Now that senators have failed twice to include energy tax extenders language onto the highway bill, and though there will be efforts to tack on similar amendments to additional measures that move through the houses between now and the November elections, many are beginning to seriously consider a lame duck strategy for adopting a number of the expired or expiring energy tax extenders as part of a larger end of the year package. For example, we can expect the solar industry to begin to direct less of its attention to the now four-months expired 1603 Treasury grants program as it works to preserve the investment tax credit that is not scheduled to expire until 2016.

With most tax credits on the table because of an increased debate over tax reform as well as a high likelihood that tax credits may be tweaked as part of a negotiated compromise agreement during the lame duck session, energy groups and others will need to prioritize their most efficient, effective, and necessary programs.

The Senate Agriculture Committee continues work on a farm bill, with a possible vote sometime during the week of April 23 on a bill very similar to the proposal committee Chairwoman Debbie A. Stabenow's (D-MI) crafted last year to meet the super-committee's targets. If the committee reports out a bill this month, it will likely head to the full Senate soon thereafter. However, with the need for a House version and then a conference of the two chambers' bills, it will be an uphill battle to send something to the President before the election, or even in the lame duck. It could possibly be pushed to the next Congress, with short-term extensions on the current bill, which expires September 30.

One major EPA regulation had its day in court at the end of last week. On April 13 the U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments in several states and utilities' challenge of the Environmental Protection Agency's Cross-State Air Pollution Rule. Most significantly, one member of the three-judge panel, Judge Thomas Griffith, raised the issue for the first time that the petitioners' may have failed to raise the issue of EPA's methodology during the rule's public comment period. This is vital

to their case against the EPA because petitioners may only litigate issues raised during the official public comment period, and their comments do not address the methodology issue. EPA issued the final rule in July 2011, requiring 3,631 electricity-generating units in 28 states to reduce emissions of nitrogen oxides and sulfur dioxide that cross state lines; however the D.C. Circuit stayed the rule on December 30, 2011, two days before it was set to take effect. A decision is expected this summer, huge implications for coal-fired electrical generation as several other major EPA coal regulations are all in the works as well.

Congress

Upcoming Hearings

The Senate Agriculture Committee will mark up the Senate Farm Bill before the end of the month.

On April 16, the House Energy and Commerce Subcommittee on Energy and Power will mark up the Gasoline Regulations Act and the Strategic Energy Production Act. The first bill requires analyses of the Environmental Protection Agency's rules and actions impacting gasoline and diesel fuel prices, jobs, and the economy. The second bill calls for the development of a federal plan that would increase oil and gas exploration, development, and production on federal lands.

On April 17, the Senate Environment and Public Work's Clean Air and Nuclear Safety Subcommittee will hold a hearing on Tuesday morning titled "Review of Mercury Pollution's Impacts on Public Health and the Environment."

On April 17, the House Science Committee will hold a hearing on unconventional oil resource development's impact on energy prices and jobs.

On April 18, the House Energy and Commerce Subcommittee on Oversight and Investigations will hold a hearing on budget and spending at the Department of Energy.

On April 19, the House Energy and Commerce Subcommittee on Environment and the Economy will discuss the Domestic Fuels Protection Act (H.R. 4345), which provides liability protection related to certain fuels and fuel additives.

On April 19, the Senate Energy Committee will hold a hearing on rising sea levels and domestic infrastructure.

On April 19, the House Science Committee's Subcommittee on Investigation and Oversight and Subcommittee on Energy and Environment will hold a hearing on tax policies' impact on the commercial applications of renewable energy technology.

Administration

Climate Assessment on Schedule

White House Office of Science and Technology Policy assistant director for climate assessment and adaptation and National Climate Assessment director Kathy Jacobs said April 10 that the National Climate Assessment, a study of current and future climate change impacts on the United States, is on schedule to be released by late 2013. The report is due to Congress every four years under the Global Change Research Act of 2009, but only two reports have been completed since then: one in 2000 and one in 2009. The report is divided into 30 chapters with eight authors each. Topics range from climate change impacts on transportation, energy use, and human health to mitigation and adaptation.

Natural Gas Working Group

The White House released an executive order April 13 that will coordinate the administration's activities on natural gas. It creates a working group that includes White House offices such as the Council on Environmental Quality and National Economic Council as well as agencies like the Department of Interior and the Environmental Protection Agency.

Department of Agriculture

BioPreferred Additions

The Department of Agriculture added 13 new product categories to its BioPreferred program April 10. The program lists biobased and other products for preferred purchasing by federal agencies and contractors. Overall, the new categories will make more than 1,500 products eligible for the program. The White House had issued a memorandum requiring the agency to increase the number of categories and individual products listed for preferred purchasing by federal agencies by 50 percent by February 21, 2013.

Department of Commerce

Saudi Arabia Trade Mission

Department of Commerce International Trade Administration Assistant Secretary for Manufacturing and Services Nicole Lamb-Hale is leading 14 companies on a Renewable Energy/Energy Efficiency Trade Mission to Saudi Arabia April 13-19.

Department of Defense

Energy Security Initiatives

As the nation's largest energy consumer and as part of its long-term "Operational Energy Strategy," the Department of Defense announced April 11 a number of new energy security initiatives that will save lives, fuel, and money. The Army will open a new 30,000 square foot research center, the Ground Systems Power and Energy Lab at the Detroit Arsenal in Warren, Michigan, where eight labs will develop combat vehicles with greater fuel efficiency. Technologies from the laboratories could later be applied to civilian vehicles. The Army also will establish a Green Warrior Convoy of vehicles to test and demonstrate new fuel cell technology, hybrid systems, battery storage, and alternative fuels. Additionally, the Department of Energy's Advanced Research Projects Agency-Energy will sponsor a \$30 million competition, allocated in the agency's fiscal year 2012 budget, for research teams to develop next generation energy storage sensing and control technologies. The research is aimed at efforts such as increasing generator efficiency so that less fuel will be required at remote outposts as well as developing new electric and hybrid vehicles and enhancing the electric grid's reliability. The same day, the Army and Air Force joined the Navy in promising to add 1 GW each of renewable energy projects to installations in the United States; the Air Force estimates it will reach its goal by 2016, and the Army by 2025. The Army believes it will cost roughly \$7 billion to reach its goal. The military will contract the projects out to private developers who can take advantage of tax credits and other subsidies.

Department of Energy

\$4 Million for EV Charging

Energy Secretary Steven Chu announced April 10 up to \$4 million this year to accelerate the development and deployment of wireless charging systems for electric vehicles. Developing such systems for light duty electric vehicles could accelerate the adoption of the energy efficient vehicles by making them more convenient to charge. The agency plans to select up to four projects to research and develop a wireless charging system, integrate it into a production vehicle, and test it in real-world operating conditions. Pending successful completion of project milestones, the agency plans to make additional requests totaling \$8 million over three years for selected projects.

\$9 Million for Small Business

The Department of Energy announced April 9 up to \$9 million for roughly 50 small businesses to advance innovative energy efficiency and renewable energy technologies. The initiative will help small businesses with promising ideas in eight broad topics and 30 subtopics in areas including advanced manufacturing, energy efficient buildings, biomass, hydrogen and fuel cells, solar energy, and wind and water power technologies to bring clean energy solutions quickly to market. The funding, offered through the Small Business Innovation Research and Small Business Technology Transfer programs, will be distributed via

one-year awards of up to \$150,000 to explore the feasibility of the concepts; successful projects will have the opportunity to compete for more than \$1 million in follow on funding.

\$2.5 Million for Biomass Cookstoves

The Department of Energy announced April 13 up to \$2.5 million this year for applied research to advance clean biomass cookstove technologies for use in developing countries. The funding will support the development of innovative cookstove designs that allow users to burn wood or crop residues more efficiency and with less smoke than open fires and traditional stoves. The agency has made an additional request to Congress for \$2.5 million in fiscal year 2013 to support clean cookstove technologies.

Cost of Solar Ahead of Schedule

Speaking at a George Washington University solar energy forum April 12, Minh Le, acting deputy manager and chief engineer of the Department of Energy's Solar Energy Technologies Program, said that the agency is ahead of schedule in meeting its goal to make electricity generated by solar power cost-competitive with energy produced from traditional sources by 2020. The SunShot Initiative, launched in 2011, established a goal of reducing the cost of utility-scale solar energy systems by 75 percent to \$1 a watt, which in turn would reduce the wholesale cost of solar power to six cents per kWh. Doing so would allow solar power to account for as much as 18 percent of the country's electricity generation by 2030; it currently accounts for less than one percent. The price of utility-scale solar installations has decreased to about \$2.80/watt from \$3.80/watt in 2010.

Department of Interior

OR Wind Lawsuit

Oregon Natural Desert Association and the Audubon Society of Portland filed a lawsuit April 5 in the U.S. District Court for the District of Oregon against the Interior Department's Bureau of Land Management in an effort to block development of wind farms flanking Steens Mountain in southeast Oregon. The groups charge that the bureau's final environmental impact statement, which allows the construction of a transmission line across 12 miles of federal land, violates the National Environmental Policy Act, and violates a federal law that designated the mountain as part of the National Landscape Conservation System.

Department of Treasury

Wind PPA Tax Rule

The Internal Revenue Service issued Private Letter Ruling 201214007 April 6, concluding that where a taxpayer purchased wind energy facilities accompanied by facility-specific Power Purchase Agreements, no portion of the purchase price need be allocated to the PPAs as a separate asset. The result is favorable for acquirers of renewable energy facilities seeking to take advantage of accelerated depreciation deductions and the investment tax credit.

Environmental Protection Agency

NSPS Published

The Environmental Protection Agency's proposed greenhouse gas rule for new power plants, the New Source Performance Standards, was published in the Federal Register April 13. The rule would limit new fossil fuel-fired power plants larger than 25MW to 1,000 pounds of CO₂ per MWh. Most new natural gas-fired combined-cycle power plants should be able to meet the standard with no additional controls; however, new coal plants would be required to install emission control technologies such as carbon capture and sequestration equipment. The proposed rule will not apply to existing power plants or those that make modifications. The agency will accept comments of the proposed rule until June 12; public hearings will be announced in a separate notice.

Energy Star Buildings List

The Environmental Protection Agency released information April 11 concluding that Los Angeles leads U.S. cities in the number of Energy Star-certified buildings with 659 in 2011. Washington, D.C., was

second on the list with 404 Energy-Star certified buildings in 2011, followed by Atlanta (359), Chicago (294), and New York City (261). California also led the nation with six cities on the top 25 list. The 16,500 Energy Star-certified buildings across the country have saved nearly \$2.3 billion in annual energy costs and prevented the annual equivalent of greenhouse gas emissions from 1.5 million homes; Los Angeles building owners are saving \$149.8 million in annual energy costs. Building energy use accounts for 20 percent of domestic emissions, and Energy Star buildings use 35 percent less energy than typical buildings.

Biofuel Groups Defend RFS

The Advanced Biofuels Association, American Coalition for Ethanol, Advanced Ethanol Council, Biotechnological Industry Organization, Growth Energy, and Renewable Fuels Association filed a motion in the U.S. Court of Appeals for the District of Columbia Circuit April 6 seeking permission to intervene on behalf of the Environmental Protection Agency in lawsuits challenging its renewable fuel standards. The National Biodiesel Board filed a separate motion to intervene as well. The American Petroleum Institute sued the agency in March, challenging the standards for 2012 and calling the cellulosic biofuel requirements unachievable. The 2012 standards require that 8.865 million gallons of cellulosic biofuel be available, well below the 500 million gallon requirement set forth in the Energy Independence and Security Act of 2007. The 2012 standards require that 15.2 billion gallons of biomass based diesel, advanced biofuels, and cellulosic be on the market – 9.23 percent of fuel consumed nationwide.

Fracking Standards Problematic for API

The American Petroleum Institute sent a letter to Environmental Protection Agency Administrator Lisa Jackson April 12 saying that the agency's proposed air pollution standards for fracking operations are not cost-effective and urging them to make substantial changes before an April 17 deadline to finalize the rule. The trade association contended that the agency made incorrect assumptions about the content of volatile organic compounds in natural gas, which led to flawed assumptions about the rule's cost effectiveness.

Industry and Environmentalists Seek Coal Ash Deadline

On April 13, Headwaters Resources Inc., a Utah-based coal combustion residuals manufacturer and marketer, filed suit in the U.S. District Court for the District of Columbia seeking hard deadlines for the Environmental Protection Agency's final coal ash regulations that will either define the coal combustion byproduct as hazardous or non-hazardous. Headwaters is seeking to have their petition consolidated with that of Earthjustice, filed on April 5.

States

NY Fracking Review

A coalition of 15 environmental groups sent a letter April 12 to New York's environmental commissioner, reminding him of the state's legal obligations to undertake an environmental review of any applications to use liquefied petroleum gas as a means of exploring for natural gas. The letter was written in response to reports that Canada's Gasfrac Energy Services had reached an agreement with a company interested in exploring for natural gas in New York using a technique of fracking with liquefied petroleum gas. The state's Department of Environmental Conservation is reviewing public comments it received on its proposed rules to regulate high-volume hydraulic fracturing as the state legislature considers a number of bills to limit fracking.

RE Could Cause CA Power Gap

California Independent System Operator Corporation, which manages 80 percent of the state's power grid, said April 12 that California's grid may face a power generation cap of 3,500 MW by 2017 as more backup power will be needed to support growing renewable energy sources. The intermittent quality of many renewable energy sources becomes a greater issue as more sources are connected to the grid. California has set a goal to have 33 percent of its energy generated from renewable sources by 2020.

CA Offsets Needed

During the Climate Action Registry's 10th annual conference April 11, carbon traders and regulated entities urged California to increase the supply of offset projects available under its greenhouse gas emissions cap and trade program to avoid skyrocketing compliance costs during the second phase of the program. The conference largely focused on the state's economy-wide emissions trading program and efforts to link it with Quebec's cap and trade program. The California Air Resources Board outlined proposed changes April 9 to regulations needed to link the two programs together.

NE Pipeline Vote

The Nebraska Legislature passed a bill (44-5, L.B. 1161) April 11 that would allow the state Department of Environmental Quality to continue a route evaluation for TransCanada Corporation's proposed Keystone XL Pipeline, despite President Obama's January denial of a permit for the project. Proponents of the legislation said that it would decouple state action on the pipeline proposal from federal action and create an expedited method of evaluating pipeline proposals in addition to the system created during the 2011 special session. On the other hand, opponents cautioned that the measure would harm the system created in the special session that would allow pipeline carriers to avoid public scrutiny in the attempt to approve pipeline proposals. Governor Dave Heineman (R) expects to sign the bill in the next five days.

MD Offshore Wind Stalls

The Maryland General Assembly ended its 90-day session April 9 without approving a plan to encourage offshore wind energy development. Governor Martin O'Malley (D) has until May 29 to act on legislation passed during the 2012 regular session; he is expected to sign this year's environmental bills, but is disappointed that his signature offshore wind initiative failed to gain traction for the second straight year. The measure (H.B. 441) would have required utilities to obtain some of their power from offshore wind beginning in 2017; it cleared the House of Delegates but did not move through a Senate committee.

International

Chinese Rare Earth Association

China's Ministry of Industry and Information Technology announced April 8 that a 155-member rare earth industry association has been established in an effort to present a united front against a recent World Trade Organization claim from the European Union, Japan, and United States charging that China is unfairly restricting exports of such materials. The EU, Japan, and the U.S. are expected to request at the World Trade Organization that a panel be formed to commence the dispute discussions on or around May 12.

Annual \$100 Billion by 2020 Not Feasible

Monique Barbut, chief executive officer and chair of the Global Environment Facility, said April 11 that the world's nations need to acknowledge that richer, industrialized countries will never meet their pledge to provide \$100 billion a year to help developing countries adapt to the impacts of climate change. United States Secretary of State Hillary Clinton announced the Green Climate Fund at the 2009 U.N. climate talks in Copenhagen. The Global Environmental Facility was established in 1991 to provide environmental grants to developing countries.

Canadian Emissions Stable

Canada's Environment Minister announced April 11 that the country's overall emissions remained virtually unchanged in 2010, despite strong growth in the national economy. Emissions totaled 692 MMT CO₂e in 2010, up only 0.25 percent from 2009 despite the nation's 3.2 percent economic growth over that period. National GHG intensity has decreased on average 2.2 percent per year since 1996.

Canadian Heavy-Duty Vehicle Emissions Rule Proposed

On April 13, Canadian Environment Minister Peter Kent proposed greenhouse gas emissions regulations for model year 2014, and later, heavy-duty vehicles. Carbon dioxide, nitrous oxide, and methane emissions would all be covered, and the rule would mirror August 2011 regulations put in place in the U.S. The public has until June 13 to comment on the draft regulations.

Miscellaneous

Worldwatch Sustainability

Speaking at the Worldwatch Institute State of the World 2012 Symposium April 11, Michael Renner, a senior researcher at the institute determined that in order for the global economy to become sustainable, developing nations must grow without heavy consumption of resources while developed countries must resource use and restrict their economies. The forum was held in conjunction with the release of the organization's report, *State of the World 2012: Moving Toward Sustainable Prosperity*, which calls for a global network of green innovation center to encourage sustainability research and development as well as financial incentives for environmentally friendly products.

CAP RES Report

The Center for American Progress released an issue brief last week finding that renewable energy standards do not raise rates for consumers. Instead, CAP contends that in almost all of the 29 states that have implemented some version of an RES, the pace of rate increases has dropped, thus indicating that such a standard could work on a national scale. The brief is in large part a response to recent critiques of the RES, including a recent Manhattan Institute study that found that states with RES' have higher electricity prices and pointed to a causal relationship that CAP rebuts.

Gallup Climate Policy Poll

An April 9 Gallup poll found that 65 percent of Americans favor greenhouse gas limits, including 82 percent of Democrats and 50 percent of Republicans. Additionally, 70 percent of Americans favor new pollution standards for businesses, and 64 percent want environmental regulations to be strongly enforced. The poll also showed that 69 percent of respondents favor more government investment in wind and solar power, with 84 percent of Democrats in support and 51 percent of Republicans in support. Another 66 percent of respondents said that the government should invest more in alternative vehicle fuels, while 75 percent concluded that more government land should be opened to oil exploration.

Wind Installation Up

The American Wind Energy Association released its 2011 annual report April 12, showing a 17 percent growth in new installations. More than 6,800 MW of wind were installed last year, bringing total wind capacity to nearly 47,000 MW, about 3 percent of total domestic generation. The industry projects similar growth this year, but 2013 remains in question as developers and turbine manufacturers face the possible expiration at the end of the year of the production tax credit provides a 2.2 cent tax credit for every KWh generated.

Green Infrastructure Report

On April 12, the American Society of Landscape Architects, American Rivers, the Water Environment Federation, and ECONorthwest released *Banking on Green: How Green Infrastructure Saves Municipalities Money and Provides Economic Benefits Community-wide* arguing the flooding of combined sewer systems can be stopped with green infrastructure investments that reduce energy costs and save money for municipalities. The report cites porous pavements and rooftop rain gardens, among others, as examples of cost-effective and environmentally friendly infrastructure upgrades.