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## **ENERGY AND ENVIRONMENT UPDATE** **August 21, 2011**

### **Energy and Climate Debate**

Though Congress is in recess until after Labor Day, much debate is underway over what cuts the 12-member Joint Special Committee on Deficit Reduction will recommend. Tens of billions of dollars of energy subsidies, including clean energy loan guarantees, tax credits for solar and wind industries, and incentives for oil and gas companies, will be scrutinized as the committee identifies as much as \$1.5 trillion in deficit reduction measures by the end of November.

According to an August 1 Energy Information Administration report, federal energy subsidies totaled \$37.2 billion in 2010, an increase of more than \$19 billion from 2007. The renewable energy industry specifically received more than \$14.6 billion in subsidies in 2010 from a combination of direct and tax expenditures, research and development spending, loans, and loan guarantees. Several of the Special Committee members are likely to pay particularly close attention to energy spending, including Senator Rob Portman (R-OH, a member of the Senate Energy and Natural Resources Committee, Senator Patty Murray (D-WA), who serves on the Senate Appropriations Subcommittee on Energy and Water, and Congressman Jeb Hensarling (R-TX), whose home state accounts for nearly 30 percent of national oil production.

While the Special Committee initiates its debate, House Appropriations Committee Chairman Hal Rogers (R-KY) said last week that he plans to finish the 2012 appropriations process as soon as possible. The highly debated Interior-EPA spending bill was delayed last month amid disputes over the debt ceiling.

On the Administration front, the Office of Management and Budget released a memorandum last week directing all agency heads to submit 2013 budget requests that are five percent below 2011 enacted discretionary levels. The cuts must be targeted, and not made via across-the-board reductions, and agencies must also provide a list of additional funding reductions that would bring the upcoming request to 10 percent below 2011 levels.

At the same time, President Obama announced last week that he will unveil a jobs plan in early September. The plan is likely to be fairly broad, may include a highway bill and national infrastructure bank, and is expected to dovetail with Senate Majority Leader Harry Reid's anticipated jobs agenda. Majority Leader Reid's plan may include a highway bill, national infrastructure bank, patent reform, and energy legislation.

## **Congress**

### Democrats to Push for Tax Breaks in Lieu of Spending

Senate Democrats, looking to push their jobs agenda but needing to keep spending to a minimum, will likely focus on corporate tax breaks after the recess. Among the expected proposals is legislation from Sen. Max Baucus (D-MT) to make the 48C corporate R&D tax credit permanent and legislation from Sens. Debbie Stabenow (D-MI), Sherrod Brown (D-OH) and Jeff Bingaman (D-NM) calling for the creation of an Advanced Energy Manufacturing Tax Credit, giving a 30% break to companies manufacturing clean-energy technologies. The latter was originally conceived as part of the stimulus, but only \$2.3 billion was allocated while companies applied for \$7 billion worth of credits.

### Republicans Not Seeking Autumn Spending Battle

On August 19, Appropriations Committee Chairman Hal Rogers (R-KY) reiterated his commitment to honoring the debt limit agreement negotiated by the White House and congressional leaders despite the fact that some earlier Republican-supported Appropriations bills called for much greater cuts. Two days prior, House Majority Leader Eric Cantor (R-VA) circulated a memo attempting to persuade fellow Republicans to avoid another large appropriations spending fight in September. Prior to the debt deal, which capped appropriations spending at \$1.043 trillion, the House voted to limit appropriations spending to \$1.019 trillion, or about \$24 billion less. Between the two chambers, 12 appropriations bills need to be passed during an already busy September and October, but in all likelihood one or more continuing resolutions will be passed in September in order to avoid a government shutdown and give Congress more time to negotiate full year appropriations.

### Udall to Reform RFS

Senator Tom Udall (D-NM) announced last week his intent to soon introduce bipartisan legislation with Senator Mike Crapo (R-ID) to reform the Renewable Fuels Standard to make it technology agnostic. The legislation would remove the cellulosic biofuel carve-out and replace it with a feedstock neutral category that includes all advanced biofuels. Representatives Brian Bilbray (R-CA) and Jay Inslee (D-WA) have introduced similar legislation in the House.

### Inhofe Questions Collaboration

Senator James Inhofe (R-OK) sent letters to Federal Energy Regulatory Commission Chairman Jon Wellinghoff and Environmental Protection Agency Administrator Lisa Jackson August 1 and 17 saying that their agencies have not collaborated in a meaningful ways to evaluate how a proposed air toxics rule for power plants with impact electric reliability. The Senator has asked Administrator Jackson for information on meetings, correspondence, and coordination with FERC, public utility commissions, regional transmission organizations, and the North American Electric Reliability Corporation.

## **Administration**

### Biofuels Initiative Announced

President Obama announced August 16 that the Departments of Agriculture, Energy, and Navy will invest up to \$510 million over the next three years in partnership with the private sector to produce advanced drop-in aviation and marine biofuels to power military and commercial transportation. The U.S. Navy will serve as the guaranteed market. The initiative responds to a March presidential directive as part of the *Blueprint for a Secure Energy Future* framework, and will be steered by the White House Biofuels Interagency Work Group and Rural Council.

### Daley Meets with Industry and Advocacy Groups on EPA Ozone Rule

On August 16, White House Chief of Staff William Daley met with industry groups and advocacy organizations separately to hear arguments about EPA's ozone air quality standards, as OMB carries out an exhaustive regulatory review of the delayed rule. EPA missed its July 29 deadline and will not say when it plans on issuing a final rule, though the release of the final rule has already been delayed four times.

## **Department of Defense**

### \$7.1 Billion Renewable Energy Investment Sought

The Army announced August 16 that it is seeking \$7.1 billion in private investment for renewable energy power plants. The service plans to attract investment through long-term 20- to 30-year power purchase agreements, and investors will also be able to sell surplus power from the plants on the open market.

### **Department of Energy**

#### \$133.9 Million Loan Guarantee Announced

The Department of Energy awarded August 19 a conditional commitment for a \$133.9 million loan guarantee to Abengoa Bioenergy Biomass of Kansas. The plant will convert 300,000 tons of corn stalks and leaves into 23 million gallons of ethanol per year and will be self-sufficient.

#### Emissions Increase 3.9 Percent

The Department of Energy's Energy Information Administration announced August 18 that domestic carbon dioxide emissions related to energy consumption rose 3.9 percent in 2010. The report, Energy-Related Carbon Dioxide Emissions, 2010, found that the increase, the largest percentage and absolute increase since 1988, is primarily due to a modest economic rebound and heightened demand for coal and other energy sources. While total U.S. carbon dioxide emissions are on the upswing, they are still 6 percent below 2005 levels.

#### \$67 Million for CCS

The Department of Energy provided \$67 million to four new carbon capture and sequestration projects August 18. The projects will focus on post-combustion capture technology that could be applied to existing power generators, a significant move since capture systems must be added to the current generation of coal and natural gas plants to meet global goals for emission reductions by 2050.

#### \$102 Million for ME Wind

The Department of Energy finalized a \$102 million loan guarantee August 15 for Record Hill Wind LLC to support a wind project in Roxbury, Maine. The 22 turbine project consists of a 50.6 MW power plant, an eight-mile transmission line, and associated interconnection equipment. The project will fund 200 construction jobs.

#### Full Fuel Cycle Analysis for Appliance Standards

The Department of Energy published a policy statement in the Federal Register August 18 concluding that it will use a full fuel cycle analysis of appliance energy use and greenhouse gas emissions when it determines energy conservation standards. Current standards from the National Energy Modeling System rely on point-of-use measurements.

#### Shale Gas Recommendations Criticized

Industry and environmental activists criticized the Natural Gas Subcommittee of the Secretary of Energy Advisory Board last week for a report it transmitted August 18 to Energy Secretary Steven Chu regarding recommendations on improving environmental protection in shale gas drilling and production. Both industry and environmental groups urged action and increased demonstration of expertise on the proposals for shale gas work and hydraulic fracturing.

#### NABC's Selections Recognized

The Department of Energy recognized the National Advanced Biofuels Consortium's initial selection of two drop-in biofuels technology pathways August 15. The pathways, Fermentation of Lignocellulosic Sugars and Catalysis of Lignocellulosic Sugars, to move into stage II will be funded with \$26 million from the Department of Energy and will leverage an additional \$12 million in cost share.

#### Efficiency Standards Challenge Rejected

The U.S. Court of Appeals for the Fourth Circuit refused 2-1 August 16 to block a final rule by the Department of Energy setting the first energy efficiency standards for small electric motors. The petition for review, filed by the National Electrical Manufacturers Association, sought to vacate a March 2009 rule

setting mandatory standards for two-, four-, and six-pole electric induction motors ranging from 0.25 to 3 horsepower.

## **Department of Interior**

### Wind Development Areas Opened

The Interior Department announced August 16 that it is opening an area off the coasts of Rhode Island and Massachusetts for wind development. The agency issued a long-awaited Call for Information and Nominations from interested developers, who have 45 days to respond. The agency is also moving forward with an environmental assessment to analyze impacts from proposed offshore wind development. The department hopes to finalize the first leases in the 247 square mile area in 2012.

### Gulf of Mexico Sale Announced

The Department of Interior announced last week that the first oil and gas lease sale in the Gulf of Mexico since the spill last April will take place December 14 in New Orleans. The agency estimates the proposed sale could result in the production of 222 million to 423 million barrels of oil and 1.49 trillion to 2.65 trillion cubic feet of natural gas.

## **Environmental Protection Agency**

### EPA Defends GHG Findings in Court

On August 18, EPA filed a brief in the U.S. Court of Appeals for the DC Circuit arguing that the agency adhered strictly to Section 202(a)(1) of the Clean Air Act's guidelines for science-based decision-making in determining that GHG emissions from vehicles endanger public health and the environment. EPA argued its determination was "a protective, science-based judgment (not a fact-finding exercise) that is focused solely on potential threats to public health and welfare posed by air pollution."

### Huge Budget Cuts Likely in FY2013

On August 17, OMB released guidelines requesting FY2013 budgets be at least 5% below current levels which could reduce EPA's budget from \$8.6 billion in FY2011 to as low as \$7.8 billion, a level not since 2007. In addition to the mandatory 5% cuts, OMB called for the identification of additional discretionary spending cuts that would cut agency budgets by 10%. The FY2012 that emerged from the Republican House would cut EPA's budget to \$7.1 billion with cuts coming primarily from state revolving funds. But, in any likely scenario, the agency is going to see massive cuts.

### US-Brazil Initiatives Underway

Environmental Protection Agency Administrator Lisa Jackson led a delegation August 15 to Rio de Janeiro to establish the U.S.-Brazil Joint Initiative on Urban Sustainability. Rio is preparing \$200 billion in infrastructure developments in preparation for the 2014 World Cup and 2016 Olympics, and the institute aims to make the investments economically and environmentally sound. On August 17, Deputy Energy Secretary Dan Poneman launched the U.S.-Brazil Strategic Energy Dialogue, and the world's two largest ethanol producers will work together to build a larger global market for biofuels.

### Biomass Permit Exemption Challenged

Georgia Forestwatch, Wild Virginia, the Center for Biological Diversity, Conservation Law Foundation, and Natural Resources Council of Maine filed a lawsuit August 15 in the U.S. Court of Appeals for the District of Columbia Circuit against the Environmental Protection Agency, challenging a rule that exempts facilities burning biomass from the requirement to obtain greenhouse gas emissions permits for three years. The suit alleges the exemption will encourage the development of more wood and grass burning facilities.

### AC Loophole Urged Closed

Air conditioner manufacturers asked the Environmental Protection Agency August 15 to close a regulatory loophole that allows for the continued sale of units that use an ozone-depleting substance. The agency issued a final rule in December 2009 banning the sale and distribution of new AC and

refrigeration products and components that are pre-charged with HCFC-22 and HCFC-142b, and the companies want the agency to ban the sale and distribution of new subsystems as well.

#### Consideration of Cumulative MACT Impact Requested

In comments submitted to the Environmental Protection Agency, several state utility regulators and environmental protection departments have requested that the agency consider the cumulative effect various air regulations will have on power plants and state economies. The EPA is currently preparing an air toxic rule for power plants.

### **IRS**

#### New Guidance on Alternative Fuel Mixture Tax Credit

On August 19, the IRS Chief Counsel released an advice memorandum stating that certain methods for mixing taxable fuel to feedstock for, or derived from, anaerobic digestion processes cannot receive the alternative fuel mixture tax credit, since it is not used in actual energy production. The credit is only available for fuel mixtures qualified under Section 6462(d)(2), even if the amount added is as small as 0.1%. Those fuels must actually be sold for use as fuel and would not apply to a mixture used in anaerobic digestion. On the issue of substrate, the memorandum left it to case-by-case agency discretion, but it did explicitly say that unblended substrate used in anaerobic digestion did not qualify.

### **Miscellaneous**

#### Draft Canadian Regulations on Electricity Generation Announced

On August 19, Environment Canada issued draft regulations that would reduce the national GHG emissions from electricity generation by 31 million metric tons between 2005 and 2020 with new standards for future coal-fired plants and the phasing out of old and inefficient factories. The standards, which would take effect July 1, 2015, seek to bring all electrical generation as close to parity as possible with natural gas fired generation. In addition to retiring dated plants, the regulation would encourage investment in cleaner generation technologies and CCS technology.

#### TVA's Efficient and Clean Generation Drive Continues

On August 18, as part of a drive to produce more efficient and cleaner power, TVA's board approved the installation of scrubbers, baghouses, and SCR systems at two coal-fired power plants in Tennessee to reduce sulfur dioxide, particulate matter, and nitrogen oxide emissions at a cost of up to \$1.75 billion. In the same meeting, the board gave final approval for the purchase of the Magnolia Combined-Cycle Natural Gas power plant in Mississippi, and the completion of a \$4.9 billion nuclear unit in Alabama.

#### ADB Bank Loan to Chinese Electricity Project

On August 19, The Asian Development Bank announced a \$100 million loan for the Shandong Energy Efficiency and Emission Reduction Project in eastern China that will both reduce CO2 emissions and serve as the country's first large-scale industrial use of solar thermal technology for electrical generation.

#### Chinese Clean Vehicles Face Hurdles

China's New Energy and Energy-Saving Vehicle Industrial Plan (2011-2022) was expected to be released earlier this year, but a delayed announcement has raised questions about technological standards, intellectual property rights, and consumer acceptance for clean vehicles. The plan has a potential spending target of nearly \$15.6 billion over the next 10 years.

#### Florescent Prices Rise

Prompting price increases in response to a phosphors crisis, China's new policies on rare earths exports and production are contributing to volatility in the fluorescent lighting industry according to market outlook reports from Philips Lighting, Osram Sylvania, and General Electric Lighting. The nation produces 97 percent of the world's rare earths supplies.

#### CA Supreme Court Validates Clean Water Act Use

The California Supreme Court unanimously held August 15 that regulators did not violate the Clean Water Act by applying a cost-benefit standard to determine whether the Moss Landing Power Plant's cooling water design reflected the best available technology to protect fish and other aquatic organisms. The U.S. Supreme Court (*Entergy v. Riverkeeper Inc.*) cleared the way for regulators to compare economic costs and environmental benefits when issuing National Pollutant Discharge Elimination System permits.

#### \$8.5 Million on Diesel Exhaust

Seven cargo terminal operators at the ports of Los Angeles and Long Beach agreed last week to spend a combined \$8.5 million on diesel exhaust charges to resolve alleged violations of California's safe drinking water and toxic substances enforcement law. The operators will fund programs at both ports to curb emissions from trucks, trains, and cargo-handling equipment.

#### Long-Term Japanese Energy Project Recommended

Japan's Research and Development Study Committee of the ministry's Industrial Structure Council recommended August 15 that the country create a long-term national energy project to reduce its dependence on fossil fuel and nuclear power. Prime Minister Naoto Kan also plans to develop lithium-ion and other next-generation batteries, hybrid motor vehicles, and more efficient solar power generation systems, and other technologies.

#### India Solar Projects Announced

India's Ministry of New and Renewable Energy Secretary Deepak Gupta announced the invitation of bids for solar power projects with \$663 million and totaling 300 MW of capacity under the national solar mission within two weeks. This is the second round of bidding in Phase I of the Jawaharlal Nehru National Solar Mission, which continues until 2013. In the first round, 30 projects of 5 MW each using solar PV were awarded.

#### CA Transmission Line Construction Continues

The U.S. District Court for the Southern District of California rejected a request August 12 by environmental and community organizations to halt construction of the Sunrise Powerlink Transmission Project while an appeals panel considers their challenge of a prior ruling. San Diego Gas and Electric, the owner and builder of the transmission line, has said that the facility is necessary to meet the state mandated renewable energy goals.

#### Concentrated Solar to Benefit Developing Countries

The World Bank released a report last week that concluded that solar power systems could be important in building low-carbon energy systems in developing countries. The report, *Regulatory and Financial Incentives for Scaling up Concentrating Solar Power in Developing Countries*, found that both concentrated photovoltaic and concentrated thermal are important for successful energy build-ups.

#### RGGI Anticipates Review

The Regional Greenhouse Gas Initiative released a schedule August 17 that shows the initiative completing a comprehensive review of the program in spring 2012, as required by the original memorandum of understanding. The nine states will consider a series of recommendations, including whether the CO2 cap should be lowered, reviews of emissions leakage, CO2 offsets, and the overall success and impact of the program.

#### Fuel Standard Could Reduce Gas Use and Increase Jobs

The Northeast States for Coordinated Air Use Management unveiled an economic analysis last week that found that establishing a clean fuel standard for 11 northeastern states could reduce gasoline consumption by as much as 30 percent and spur job growth over the 10-year life of the program. The study, *Economic Analysis of a Program to Promote Clean Transportation Fuels in the Northeast/Mid-Atlantic Region*, concluded that reducing the carbon intensity of fuels by 10 percent between 2013 and 2022 through the expanded use of advanced biofuels, electricity, and natural gas to power vehicles could create between 10,000 and 50,000 jobs annually.