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ENERGY AND ENVIRONMENT UPDATE August 26, 2013

ENERGY AND CLIMATE DEBATE

Although Congress is in recess for the month, absence from Washington has not precluded them from working throughout August. In addition to several letters being sent to administration and international officials, members have hosted events and have been making tours of energy and environment hotspots. Senator Heidi Heitkamp (D-ND) visited Canada to promote the Keystone XL pipeline. Congress has also been preparing for when it returns: this past week, the House Energy and Commerce Committee announced two hearings—one on the Nuclear Regulatory Commission's review of Yucca Mountain and one on implementation of the President's climate action strategy—for the second and third weeks of September, respectively. Additional announcements detailing fall activities for Congress and for various agencies are expected this coming week.

On the agency and department side, Energy Secretary Ernest Moniz addressed Columbia University today, discussing energy infrastructure resilience. Environmental Protection Agency Administrator Gina McCarthy will travel to Alaska this week. She is expected to visit Pebble Mine and to meet with officials in Fairbanks.

CONGRESS

Letter Addresses Anticompetitive Renewable Fuel Allegations

Senators Amy Klobuchar (D-MN) and Chuck Grassley (R-IA), in an August 2 [letter](#) to Attorney General Eric Holder and Federal Trade Commission Chairman Edith Ramirez, asked the agencies to investigate anticompetitive activity restricting the sale of renewable fuel. Specifically, the senators said they have heard allegations that the oil industry, known to be in opposition of the Renewable Fuel Standard, has been undermining efforts to distribute renewable fuels.

CRS Cellulosic Biofuels Report Released

The Congressional Research Service, in its August 15 report *Meeting the Renewable Fuel Standards (RFS) Mandate for Cellulosic Biofuels: Questions and Answers*, addressed the current climate for cellulosic biofuels and potential legislative and administrative actions. The report is attached.

Heinrich Letter Supports SunZia Project

In an August 19 [letter](#) to Interior Secretary Sally Jewell, Senator Martin Heinrich (D-NM) urged the approval of the SunZia transmission project, saying it would promote the renewable energy market and would create jobs in his state. He opposed the reopening of the environmental impact statement following recent comments from the Department of Defense which [questioned](#) the route of the line. Senator Heinrich said the department approved the preferred route in 2011, only asking that a portion of the line be shifted north; the final route reflected this change.

WY Delegation Letter on Fracking

Senators Mike Enzi (R-WY) and John Barrasso (R-WY) and Representative Cynthia Lummis (R-WY) urged Interior Secretary Sally Jewell, in an August 19 [letter](#), to exempt states with existing fracking regulations from Bureau of Land Management rules. Calling the federal regulation duplicative, the trio said the rule could discourage oil and gas production. They praised regulations in CO, ID, MT, NM, UT, and WY, commenting that these states already require public disclosure.

NH Delegation Sends Letters on Northern Pass

Senators Kelly Ayotte (R-NH) and Jeanne Shaheen (D-NH), along with Representatives Ann Kuster (D-NH) and Carol Shea-Porter (D-NH), sent a [letter](#) to Energy Secretary Ernest Moniz August 20, requesting an additional review of the new route for the proposed Northern Pass transmission line. The letter also asked for a public comment period on the new route for the line which will cross the U.S.-Canada border. The delegation also sent a letter to Agriculture Secretary Tom Vilsack because the amended route crosses into the Connecticut Lakes Headwater Conservation Easement Deed.

Letter Praises Montreal Protocol Executive Secretary

Representative Henry Waxman (D-CA) and Senator Ed Markey (D-MA) urged United Nations Secretary-General Ban Ki-moon, in an August 20 [letter](#), to extend the tenure of Marco Gonzales as the Montreal Protocol Executive Secretary through 2015. The two said Gonzalez has and should continue to play an important role in international efforts to curb hydrofluorocarbons.

House Oversight Letter on Social Cost of Carbon

House Oversight and Government Reform Subcommittee on Energy Policy, Health Care, and Entitlements Chairman James Lankford (R-OK) and Ranking Member Jackie Speier (D-CA), in an August 20 [letter](#), asked Office of Information and Regulatory Affairs Administrator Howard Shelanski to expand upon past testimony about the administration's estimates on the social cost of carbon. The pair asked for specifics about the interagency working group that created the estimates. Shelanski previously appeared before the subcommittee on July 18.

Heitkamp to Canada

Senator Heidi Heitkamp (D-ND) visited Alberta, Canada August 20 to 22 to promote the Keystone XL pipeline.

House E&C Hearing on Yucca Scheduled

The House Energy and Commerce Committee has scheduled a hearing for September 10 on the Nuclear Regulatory Commission's renewed investigation of Yucca Mountain as a possible nuclear waste repository. The committee is specifically interested in the commission's response to the

recent U.S. Court of Appeals for the District of Columbia Circuit decision which ordered the agency to resume its review. Chairman Allison Macfarlane has been asked to testify.

House E&C Hearing on Climate Change Scheduled

The House Energy and Commerce Committee will hold a hearing on climate change and the President's climate action strategy on September 18. Ranking Member Henry Waxman (D-CA) urged the committee to have witnesses who are scientists. The committee [asked](#) for testimony from 13 agencies and departments: the U.S. Agency for International Development, the Environmental Protection Agency, the U.S. Export-Import Bank, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the Office of Science and Technology, and the Departments of Agriculture, Defense, Energy, Health and Human Services, Interior, State, and Transportation.

ADMINISTRATION

Southern Co. Meets with Officials

Officials from Southern Co. met with administration officials at the White House August 21, reporting that one-fourth of new natural gas-fired power plants from the past five years cannot comply with Environmental Protection Agency proposed new source performance standard. According to the Southern Co., 15 of the 59 new combined-cycle power plants built since 2008 are not able to meet the proposed emissions standard of 1,000 pounds of carbon dioxide per megawatt-hour.

Obama on Energy Efficiency, Climate Change

During an August 23 town hall event at Binghamton University, President Obama [spoke](#) about energy efficiency, climate change, and the influence of the fossil fuel industry. He spoke about the challenge of climate change and the steps that must be taken to avert it, such as encouraging consumers to use energy-efficient light bulbs. However, he noted that even simple steps like these are often opposed due to the influence of the fossil fuel industry in Congress.

DEPARTMENT OF DEFENSE

Hicks Steps Down from DASN Energy

Deputy Assistant Secretary of the Navy for Energy, Installations, and Environment Thomas Hicks stepped down from his position on August 23, after serving in that role since 2010. He will now serve as Deputy Undersecretary of the Navy in the Chief Management Office. He previously worked at the U.S. Green Building Council and the Environmental Protection Agency.

DEPARTMENT OF ENERGY

OIG Report Examines Efficiency Program Compliance

In an August 21 [audit](#) of the Appliance and Equipment Standards Program, the Department of Energy Office of the Inspector General urged the department to improve enforcement procedures. The Inspector General said the department needs to develop policies to better examine the market for compliance issues. The report found that \$5.6 million has been collected for non-compliance since 2010.

Department Funded Study on Eastern States Coal-Fired Power Plants

[Current State and Future Direction of Coal-Fired Power in the Eastern Interconnection](#), a Department of Energy-funded study completed in June, was released on August 21. The report found that the cost of retrofitting coal-fired power plants to comply with new source performance standards over the next three to five years will cause as much as 10 to 20 percent of plants to close in the eastern portion of the U.S. The study, conducted by ICF International, will be used by the Eastern Interconnection States Planning Council and the National Association of Regulatory Utility Commissioners as a planning document.

Leistikow Departs Department

Dan Leistikow stepped down as Department of Energy Director of Public Affairs on August 22, having served in that position since President Obama took office. He previously worked on the Obama and Edwards presidential campaigns as well as in the offices of former Governor Jim Doyle (D-WI), former Senator Jean Carnahan (D-MO), and former Washington, D.C. Mayor Anthony Williams (D).

Brandt Joins Department

Kate Brandt, who previously served as the Energy and Environment Director for the Office of Presidential Personnel, joined the Department of Energy August 26 as a senior advisor to the Undersecretary of Science and Energy.

SEAB New Members Announced

The Department of Energy revealed the new members of the Secretary of Energy Advisory Board on August 26. Nine members left the board with former Secretary of Energy Steven Chu, but total membership has grown from 13 to 18 with this [announcement](#). The group will meet on September 26 and will tentatively [discuss](#) task forces, briefings, and public comments.

Moniz's Monday

Secretary of Energy Ernest Moniz advocated for electric grid resilience with New Jersey Governor Chris Christie (R) on August 26. He and Governor Christie announced a partnership between the Department, the Sandia National Laboratory, NJ Transit, and the New Jersey Board of Public Utilities to create a microgrid to support the NJ Transit rail system during natural disasters. He then spoke at the Center on Global Energy Policy at Columbia University, touching upon climate change and energy infrastructure resilience.

DEPARTMENT OF INTERIOR

Court Dismisses Ivanpah Challenge

The U.S. District Court for the Central District of California dismissed on August 16 a suit against a recent Bureau of Land Management decision to approve the Ivanpah Solar Energy Generating Station. Several groups, including the La Cuna De Aztlan Sacred Sites Protection Circle Advisory Committee, filed the suit against the department, saying the station forbid committee members from accessing sacred sites via facility trails. The court determined that the groups lacked standing and that the Bureau acted reasonably.

USGS to Launch Climate Action Project Database

The U.S. Geological Survey [announced](#) August 21 that it is seeking to create a database to track projects that address climate change in an effort to better coordinate between federal, state, and local governments. Information collected by the database, set to launch in 2014, will include location and project managers.

BLM Fracking Comment Period Ends

The comment period for the Bureau of Land Management's proposed rule on fracking on federal lands concluded August 23, and more than 5,000 comments were submitted. Public disclosure and existing state regulations were the two major themes touched upon in the comments.

DEPARTMENT OF STATE

OIG Finds No Keystone Conflicts of Interest

The State Department Inspector General announced on August 23 that an initial investigation found that no conflict of interest exists in the Keystone XL pipeline analysis. Allegations were made that consulting firm Environmental Resources Management, which participated in conducting the draft analysis of the pipeline, had ties to oil industry stakeholders. A follow-up will be conducted by the Inspector General, although details of the review have not been announced; the follow-up likely means the final approval decision will be pushed back to 2014.

ENVIRONMENTAL PROTECTION AGENCY

States Announce Intent to Sue over Missed Wood Heater Deadline

In an August 1 notice, seven states [informed](#) the Environmental Protection Agency of their intent to sue the agency for missing the deadline to review new residential wood heaters air quality standards. The notice said the agency is 17 years behind reviewing standards for the sources which contribute greatly to particulate matter emissions. The states which filed the 60-day notice of intent to sue were CT, MA, MD, NY, OR, RI, and VT.

Electronics GHG Reporting Program Final Rule Released

In a [final rule](#) published on August 20, the Environmental Protection Agency revised calculations used by electronics manufacturers when reporting greenhouse gas emissions. The revisions, which provide a range of methods including default utilization and byproduct formation rates as well as stack testing, are designed to better reflect business practices. The rule was first proposed in October 2012. The final changes will take effect in January 2014.

Coordination on Coal Ash, Effluent Guidelines

During an August 20 webinar on coal ash management regulation, Environmental Protection Agency Project Manager Ron Jordan, who oversees the proposed power plant effluent guidelines, said the Offices of Air and Radiation and Solid Waste and Emergency Response have been coordinating the two separate rulemakings. He commented that the rules fit well together. Public comment on the effluent guidelines as well as the harmonization between the two rules will be accepted through September 20.

Forest, Environmental Groups Weigh in on Biomass Appeal

Forest industry groups filed a petition with the U.S. Court of Appeals for the District of Columbia Circuit on August 19 to extend the appeals deadline for a case that vacated a rule exempting biomass from significant deterioration permits. The groups, including the American Forest and Paper Association, asked the court to extend the August 26 deadline to appeal until after the Supreme Court determines whether it will consider challenges against Environmental Protection Agency greenhouse gas regulatory programs. The next day, environmental groups, including the Center for Biological Diversity, urged the court to deny the forest industry petition. In a July 12 decision, the court struck the agency rule exempting biomass from requiring Title V and prevention of significant deterioration permits.

EPA Provides Congress Requested Data

The Environmental Protection Agency submitted requested information to the House Science, Space, and Technology Committee on August 19. The committee had subpoenaed the agency for data on air pollution; staffers on the committee said they are currently reviewing all submitted information. In addition, following a series of requests beginning in March for data from Senate Environment and Public Works Ranking Member David Vitter (R-LA), the agency also released the same day part of the data used in its 2009 study on fine particulate matter and public health.

State Permitting Appeal Extension Requested

The state of Texas, the Utility Air Regulatory Group, and other industry stakeholders filed a suit in the U.S. Court of Appeals for the District of Columbia Circuit on August 21, asking to extend the appeal deadline for a recent decision which dismissed their challenge to Environmental Protection Agency greenhouse gas permitting requirements. The groups asked the court to accept an appeal until 30 days after the Supreme Court decides whether it will consider greenhouse gas regulation challenges.

AK Steel Corp., KY Settlement Reached

A [settlement](#) was reached on August 21 between AK Steel Corp., the Environmental Protection Agency, and Kentucky for a mid-2000s complaint over the company's coke production facility in Ashland. The plant, which closed in 2011, received particulate matter emissions violation notices from Kentucky beginning in 2005 and from the agency beginning in 2007. AK Steel Corp. will pay \$1.65 million under the settlement, \$25,000 of which will go to the state; it will spend an additional \$2 million on emissions reductions projects at another plant.

McCarthy to Alaska

Environmental Protection Agency Administrator Gina McCarthy will visit Alaska this week. She will stop at Pebble Mine tomorrow, August 27. She will also visit Fairbanks where she will meet with officials to discuss air quality issues.

Energy Star Lighting Event Announced

The Environmental Protection Agency will host a discussion to roadmap the Energy Star lighting program on October 9 in New Orleans. The discussion, cohosted by the National Electrical Manufacturers Association, will follow the Energy Star Product Partners Meeting. The event will focus on consumer expectations, efficiency programs, impacts on other federal programs, partnership opportunities, and anticipated technological changes.

NUCLEAR REGULATORY COMMISSION

OIG Audit Challenges NRC EIS Transparency

The Nuclear Regulatory Commission Inspector General reported in an August 20 [audit](#) that the agency has not fully complied with disclosure and public involvement regulations. The report, which examined licenses and permits, recommended that the agency improve transparency in its environmental impact statements.

NRC Hosts Foreign Ownership Teleconference

In an August 21 Nuclear Regulatory Commission teleconference, industry stakeholders urged the agency to expand foreign ownership of U.S. nuclear power plants. Specifically, the industry promoted a graded approach, accounting for the country of origin as well as direct and indirect ownership. The agency is considering revisions to its 1999 foreign ownership rule; comments may be accepted, although written comments were due by August 2.

NV County Wants Macfarlane to Recuse Herself on Yucca

The County of Nye in Nevada filed a motion on August 23, asking Nuclear Regulatory Commission Chairman Allison Macfarlane to recuse herself from Yucca Mountain nuclear repository decisions. The motion identified a book the chairman co-authored which found fault with safety modeling as well as past statements.

INTERNATIONAL

Alberta Opens Comment Period on CCS Regulations

The Albertan Ministry of Energy opened the comment period for its [Carbon Capture and Storage Regulatory Framework Assessment](#) on August 19. Officials asked for industry and public input on applications, regulatory framework, public safety, and the need for legislation and regulation. Comments will be accepted through October 3.

Indian Commission Rejects Proposal to Cut Solar Tariffs

The Gujarat Electricity Regulatory Commission dismissed on August 19 a Mumbai government petition to cut solar tariffs paid to generators to a level agreed to in contracts signed in 2010. Developers commented that investment would stall, but the commission determined that the parties were not able to alter the contract on the basis that a contract's terms were not favorable at a given point in time. This petition was the first request to cut solar tariffs in India.

IPCC Draft Report Findings Leaked

The draft version of a United Nations Intergovernmental Panel on Climate Change report, set to be released in September, was leaked on August 19. The panel, comprised of approximately 800 experts, is 95 to 100 percent confident that climate change is anthropogenic. The report continues that despite scientific confidence, public confidence in the link between human activity and global warming has either plateaued or declined slightly.

China Environmental Assessment Submission Portal to be Launched

The Chinese Ministry of Environmental Protection announced on August 21 that it will launch an online portal for new construction environmental impact assessment submissions. Companies will be able to begin the assessment process online beginning September 1. Projects involving nuclear material will still have to go through the original formal process.

French Government to Introduce Carbon Tax

French Ecology Minister Philippe Martin announced on August 22 that the government is planning to propose a carbon tax this fall when it introduces its budget. He commented that the process to introduce the tax will be transparent and progressive; it is designed to help France achieve a low-carbon energy portfolio by 2025.

STATES

CARB Carbon Allowance Auction Held

The California Air Resources Board held a carbon allowance auction on August 16, selling 13.9 million 2013 credits, which can be used immediately, at \$12.22 each. 9.56 million of the advance allowances, which go into effect in 2016, were sold at \$11.10 each; an average of 1.69 bids was made for every allowance. Every allowance available was sold at the auction.

MO RES Challenge Filed

In an August 19 lawsuit filed in the St. Louis County Circuit Court, the Great Rivers Environmental Law Center challenged the state legislature's Joint Committee on Administrative Rules for cutting parts of the voter-approved renewable energy standard. Proposition C, approved by a two-to-one margin in November 2008, requires utilities to increase renewable energy production. The committee removed two paragraphs of proposed rules in 2011.

NACAA Letter Promotes State Emissions Programs

In an August 21 letter to Environmental Protection Agency Administrator Gina McCarthy, the National Association of Clean Air Agencies urged the agency to consider and promote state energy efficiency and renewable energy programs as it crafts existing power plant greenhouse gas emissions regulations. In addition, the group said existing regional programs like the Regional Greenhouse Gas Initiative should be used to comply with agency requirements. The letter, which describes state programs as flexible, is attached.

OK to Appeal Sulfur Dioxide Decision

Oklahoma Attorney General Scott Pruitt announced on August 22 that the state will appeal a U.S. Court of Appeals for the Tenth Circuit July decision which upheld the Environmental Protection Agency federal implementation plan for sulfur dioxide emissions at two plants in the state. The state said the regional haze rule would cost Oklahoma Gas and Electric, the owner of the plants, \$1 billion in compliance efforts.

MISCELLANEOUS

CAP Low Income Natural Disaster Report

[*A Disaster in the Making: Addressing the Vulnerability of Low-Income Communities to Extreme Weather*](#), an August 19 report by the Center for American Progress, found that natural disasters disproportionately impact lower income families. The report recommended extending disaster unemployment assistance benefit payout periods, restoring LIHEAP funding levels, and retrofitting houses to better protect them from storms.

Brookings LNG Export Report

The Brookings Institution Energy Security Initiative released its report [*Revisiting the LNG Export Process*](#) on August 20, calling for a balanced approach to review liquefied natural gas export terminal applications. The approach should accurately calculate construction costs at the beginning of the process. The report goes on to recommend that the Energy Department conduct an audit of supply and demand and that each application should be required to complete the Federal Energy Regulatory Commission pre-filing process.

Chamber of Commerce Energy Security Risk Report

In its August 20 report [*Index of U.S. Energy Security Risk: Assessing America's Vulnerabilities in a Global Energy Market*](#), the U.S. Chamber of Commerce Institute for 21st Century Energy found that the U.S. improved its energy security in 2012 by increasing domestic oil and gas production. The report also found that the country saw lowered carbon dioxide emissions and energy price volatility.

Coal Ash Property Damage Ruling Released

The U.S. Court of Appeals for the Third Circuit determined in an August 20 [*ruling*](#) that residents neighboring a Pennsylvania coal-fired power plant may sue for property damage even though the plant complies with state and federal rules. The court sided with the two plaintiffs who said fly ash

emissions from the Cheswick Generating Station prevented them from fully using their land. A lower court, the U.S. District Court for the Western District of Pennsylvania, previously ruled against the residents, saying their claims were preempted by the Clean Air Act.

Report on Real Estate Industry Energy Use

The Urban Land Institute Greenprint Center's August 22 [Greenprint Performance Report](#) found that 3,232 real estate properties reduced their energy consumption by 3.2 percent and their carbon emissions by 3.4 percent between 2011 and 2012. The real estate industry also increased recycling 21.4 percent over the same time period. The data on the properties, which hail from 44 countries, was submitted by real estate investors and owners.