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## **ENERGY AND ENVIRONMENT UPDATE** **September 11, 2011**

### **Energy and Climate Debate**

Congress' return from the August recess was met with a busy week of preparations for the fall agenda as well as an address from President Obama. While all eyes are on job creation and the deficit, a number of energy issues entered into the conversation.

During his Thursday evening address to Congress, President Obama laid out a familiar package of proposals in his much-anticipated jobs speech, and this time offered a specific plan on paper that he called on the chambers to pass. The over \$400 billion American Jobs Act includes new infrastructure spending, pays for it by repealing oil and gas company tax incentives and increasing taxes on the highest income-earning corporations and citizens, and does so without altering plans for the much-debated and highly-targeted Environmental Protection Agency programs. No small number of groups sought increased funding for clean energy programs, such as the BlueGreen Alliance, a coalition of labor and environmental groups that sent a letter to the President pressing the issue. Though Obama has favored clean energy programs in earlier speeches, the aversion to spending in Congress led to a less ambitious message on clean energy.

The jobs plan will take different shapes in the House and Senate this fall, but efficiency seems to be an emerging area of consensus. Obama's speech called for almost \$30 billion to modernize schools and community colleges via projects such as emergency repairs, asbestos abatement, construction of new labs, and energy efficiency upgrades. The future of those proposals will be decided in the coming months, but for now Senate Democrats are expected to push energy legislation as part of whatever larger jobs bill emerges, with a focus on measures such as a Home Star energy efficiency plan and billions of dollars in tax credits for advanced manufacturing and renewable energy. A group of major companies including Best Buy, Intel, Siemens, and Whirlpool sent a letter to Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) last week asking them to move on stand-alone energy efficiency legislation, but if language similar to the bipartisan Energy Savings and Industrial Competitiveness Act (S. 1000) from Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) does move forward, it is likely to do so as part of a larger package. Meanwhile, House Republicans will continue to take votes to repeal Environmental Protection Agency regulations and eliminate funding for energy programs they find duplicative or overburdensome.

### **Congress**

### Energy and Water Appropriations Considered

The Senate Energy and Water Appropriations Subcommittee marked up its fiscal 2012 spending bill September 6. The subcommittee approved a \$31.6 billion bill funding energy and water programs, including nearly \$25.6 billion for the Department of Energy. The bill funds the Department of Energy's Office of Energy Efficiency and Renewable energy at \$1.8 billion and the Office of Electricity and Energy Reliability at \$141 million, both of which are identical to fiscal 2011 levels. The Advanced Research Projects Agency – Energy received a funding increase of \$70 million over enacted FY2011 levels, to \$250 million, as well as \$200 million in credit subsidies for renewable energy technologies. The Senate bill includes \$1 billion more in total funding than the House's \$30.6 billion version of the legislation (H.R. 2354), which was passed July 15. The full Senate Appropriations Committee approved the Energy & Water Appropriations bill, which includes \$4 billion less for the Department of Energy than what President Obama requested, and still \$800 million than the House-passed bill. It is unlikely that the Senate bill will pass as a standalone measure, but is likely to be included in a continuing resolution that funds the federal government from October 1 through November 18, and then eventually an omnibus spending bill.

### Committee Approves Airline EU Emissions Exemption

On September 8, the House Committee on Transportation and Infrastructure approved The European Union Emissions Trading Scheme Prohibition Act of 2011 (H.R. 2594) that would exempt US airlines from the EU emissions cap on all flights leaving or landing in the European Union set to begin in January 2012. The bill directs the secretary of transportation to prohibit US aircraft operators from participating in the scheme and instructs the administrator of the Federal Aviation Administration to ensure US aviation operators are not negatively impacted.

### Hearing on Domestic Energy Production

On September 8, the House Natural Resources Committee held a hearing investigating increased energy production and regulatory barriers to resource extraction. Representatives from two prominent consulting firms, Wood Mackenzie and IHS Global Insight/CERA, argued that job growth would result from fewer regulations in the hydrocarbon sector. GTM Research explored the problems with international competition in the solar power industry given the huge role of government financing of the industry in China and the US. Kate Gordon from the Center for American Progress Action Fund called for a clean energy standard and extending Section 1603 grants, the loan guarantee program for renewable energy projects, and tax credits for technology manufacturing related to renewable and clean energy.

### Upton Calls for End to Oil and Gas Subsidies

On September 8, Rep. Fred Upton (R-MI), member of the Joint Select Committee on Deficit Reduction and Chairman of the House Energy and Commerce Committee, called for an end to oil and gas subsidies and allowing for increased domestic exploitation. This gives added weight to speculation that longstanding oil and gas tax breaks and unused renewable energy funds will be on the table as the supercommittee continues its work.

### Wyden Calls for Protection from Chinese Solar Subsidies

In a September 8 letter, Sen. Ron Wyden (D-OR), chairman of the Senate Finance Trade subcommittee, asked President Obama to exercise all available trade laws and mechanisms to slow the "surging" growth of imported Chinese solar panels that receive immense subsidies from the Chinese government, and warned of legislative action in the event the administration fails to act. Sen. Wyden argued national trade laws and World Trade Organization agreements give the administration ample tools to address the problem.

### Senate Appropriations Approves USDA Spending Bill

On August 7, the Senate Appropriations Committee approved, on a 29-1 vote, a fiscal year 2012 funding bill for the Department of Agriculture and the Food and Drug Administration with \$19.78 billion in overall spending, a \$2.69 billion increase from the House-passed appropriations bill (H.R. 2112).

### Legislation Introduced

On September 6, Congressman Scott Tipton (R-CO) introduced legislation (H.R. 2842) to authorize all Bureau of Reclamation conduit facilities for hydropower development under Federal Reclamation law.

On September 7, Senator Bob Menendez (D-NJ) introduced a bill (S. 1516) to establish a program under which the Administrator of the Environmental Protection Agency shall provide grants to eligible State consortia to establish and carry out municipal sustainability certification programs.

The same day, Congressman Bill Shuster (R-PA) introduced legislation (H.R. 2845) to amend title 49 to provide for enhanced safety and environmental protection in pipeline transportation, and to provide for enhanced reliability in the transportation of the Nation's energy products by pipeline.

Congressman Don Manzullo (R-IL) introduced a resolution (H.Res. 396) September 8 encouraging energy efficient and environmentally friendly building and facility programs to incorporate the use of mechanical insulation as part of their standards and ratings system.

#### Upcoming Hearings

The House Energy and Commerce Committee will hold a hearing on September 14 to examine the Department of Energy's loan guarantee program. Jonathan Silver, director of the agency's Loans Programs Office, will testify, and now bankrupt and FBI-raided Solyndra President and CEO Brian Harrison and CFO W.G. Bill Stover, and White House Office of Management and Budget Deputy Director Jeffrey Zients have been invited as well.

The House Energy and Commerce Subcommittee on Energy and Power will hold a hearing on September 14 examining the impact of the Environmental Protection Agency's new and proposed power sector regulations on electric reliability.

The Senate Energy and Natural Resources Committee will hold a hearing on September 15 to consider pending Department of Energy nominations, including Gregory Woods as general counsel and David Danielson as assistant secretary of energy for energy efficiency and renewable energy.

The House Science Committee will hold a hearing on September 15 on the Environmental Protection Agency's cross-state air pollution rule, with testimony from Gina McCarthy, assistant administrator in the EPA's Office of Air and Radiation.

The House Energy and Commerce Subcommittee on Energy and Power will hold a hearing on September 13 on the Environmental Protection Agency Regulatory Relief Act of 2011 (H.R. 2250) and the Cement Sector Regulatory Relief Act of 2011 (H.R. 2681). The bills would provide the administrator of the EPA with additional time to issue Boiler MACT rules and additional time for formulating MACT standards for cement manufacturers, respectively.

### **Department of Energy**

#### \$14.9 Million for Electric Vehicles

Through the agency's Clean Cities Program, Energy Secretary Steven Chu awarded September 8 \$8.5 million to 16 projects supporting activities in 24 states and the District of Columbia to accelerate the adoption of electric vehicles in communities across the nation. He also announced \$6.4 million from the Graduate Automotive Technology Education Initiative for seven additional projects in seven states to help prepare college students for careers designing and building advanced vehicle technologies.

#### \$38 Million for Geothermal

The Department of Energy announced September 8 \$38 million over three years for 32 projects in 14 states to accelerate the development of promising geothermal energy technologies. The projects, funded through the Office of Energy Efficiency and Renewable Energy, will develop and test new ways to locate geothermal resources and improve resource characterization, drilling, and reservoir engineering techniques.

#### \$43 Million for Offshore Wind

Energy Secretary Steven Chu announced \$43 million over the next five years September 8 to spur technical innovations, lower costs, and shorten the timeline for deploying offshore wind energy systems. The 41 projects across 20 states will advance wind turbine design tools and hardware, improve information about U.S. offshore wind resources, and accelerate the deployment of offshore wind by reducing market barriers.

#### \$17 Million for Hydropower

The Departments of Energy and Interior announced September 6 nearly \$17 million over the next three years for research and development projects to advance hydropower technology. Sixteen projects in 11 states were selected for their ability to contribute to the development of innovative technologies that produce hydropower more efficiently, reduce costs, and increase sustainable hydropower generation.

#### \$275 Million Loan Guarantee for SolarCity Corp.

On September 7, The Energy Department announced it will guarantee 80% of a \$344 million loan to SolarCity Corp. for its SolarStrong project which will plan to install solar panels on up to 160,000 existing homes and 124 U.S. military bases in 33 states. SolarStrong will add 371 megawatts of new solar capacity, prevent up to 250,000 metric tons of carbon dioxide emissions annually, and generate 750 construction jobs over five years and 28 full-time jobs. This project keeps with the Defense Department's new 25% renewable energy by 2025 goal, as it is the single largest energy consumer in the US.

#### One-third of Stimulus Energy Efficiency Funds Unspent

On September 7, the Department of Energy Inspector General released *Management Alert: The Status of Energy Efficiency and Conservation Block Grant (EECBG) Recipients' Obligations* detailing how as much as \$879 million, or 33 percent, of \$2.7 billion in American Recovery and Reinvestment Act funding allocated to a federal energy efficiency grant program remains unobligated and argues the program be eliminated.

### **Environmental Protection Agency**

#### Tailpipe Rule Defended

The Environmental Protection Agency filed a brief September 1 in the U.S. Court of Appeals for the District of Columbia Circuit in defense of its tailpipe rule. The agency said that the Clean Air Act required the EPA to regulate mobile source greenhouse gas emissions after it determined that those emissions posed a hazard to the public and the environment. The agency also claims that legal challenges to the rules, issued under Section 202 of the Clean Air Act, do not address the emissions standards themselves, but instead the triggering effect of the stationary source rules.

#### Aquatic Vulnerability Difficult to Assess

The Environmental Protection Agency released a report September 6 finding that holes in data on flooding, groundwater depletion, and wetland loss make it difficult to determine how vulnerable the country's water quality and aquatic ecosystems are to the effects of climate change. The report, *Aquatic Ecosystems, Water Quality, and Global Change: Challenges of Conducting Multi-Stressor Vulnerability Assessments*, identifies 53 of 600 environmental indicators considered that could be used to give a comprehensive view of aquatic ecosystem vulnerability, but does not evaluate the actual impacts of climate change on the ecosystems.

#### Proposed Rule on Fluorinated Heat Transfer Liquid Emissions Reporting

The Environmental Protection Agency published a proposed rule requiring the reporting of greenhouse gas emissions during the production of fluorinated heat transfer fluids on September 9. Originally issued in 2010, EPA intends to finalize the rule by the end of 2011, and is accepting public comments until October 11 on the practicality of implementing the reporting requirements by March 31, 2012. Other proposed revisions include measures to change how vented and leaked waste will be reported.

#### EPA Declines Additional 15 Months for Boiler MACT Rulemaking

On September 8, the Environmental Protection Agency's top air quality official Gina McCarthy told the House Energy and Commerce Subcommittee on Energy and Power that the agency does not need or

want another 15 months to issue maximum achievable control technology standards for air toxics emissions from boilers and incinerators. The extension is proposed in Rep. H. Morgan Griffith's (R-VA) EPA Regulatory Relief Act, which will likely see a vote on October 3. McCarthy argued that EPA intends to reconsider the Boiler MACT rules by April 2012, making an additional 15 months unnecessary.

#### Murkowski Seeks Delay of Utility MACT Rulemaking

In a September 7 letter to the Environmental Protection Agency, Sen. Lisa Murkowski (R-AK) asked that implementation of a stricter federal regulation of utility emissions be stayed until the agency has a fuller understanding of the rule's affect on electricity reliability based on a pending Federal Energy Regulatory Commission study. The maximum achievable control technology requirements for utilities, or utility MACT, will limit the amount of air toxics emissions from power plants.

#### Briefs Filed in Support of EPA Vehicle GHG Rule

On September 8, Honeywell International and the Institute for Policy Integrity at the New York University School of Law filed amicus briefs arguing that an Environmental Protection Agency rule on car and light truck greenhouse gas emissions does not duplicate the National Highway Traffic Safety Administration's fuel standards. Thus far, nine states and industry groups have challenged the vehicle greenhouse gas rule, saying it added "nothing meaningful" to NHTSA's standards.

#### EPA Allows Continued Production of Diesel with Sulfur

On September 12, the Environmental Protection Agency intends to publish a rule allowing petroleum refiners to continue producing certain diesel fuel containing sulfur for use in older marine and locomotive engines. The final rule was originally issued in April 2010 eliminating the production of diesel fuel containing up to 500 parts per million of sulfur after 2014, but allowing diesel fuel with up to 1,000 parts per million of sulfur. Next week's rule is the result of a settlement with a group of petroleum refiners that challenged the standards in the U.S. Court of Appeals for the District of Columbia Circuit in June 2010.

### **Personnel**

The Senate Energy and Natural Resources Committee will consider three nominations to the U.S. Department of Energy on September 15. Gregory H. Woods will be considered for General Counsel; David T. Danielson will be considered to be Assistant Secretary of Energy Efficiency and Renewable Energy; and LaDoris G. Harris will be considered for Director for the Office of Minority Economic Impact.

### **Miscellaneous**

#### Bird Protection Laws May Apply to Wind Industry

Several conservation groups, including the American Bird Conservancy's Wind Campaign and the Audubon Society, are pushing for the enforcement of federal laws that protect migratory birds to apply to the wind energy industry. Under the Migratory Bird Treaty Act and Bald and the Golden Eagle Protection Act, no citizen-suit provisions exist for a private plaintiff to bring action against a wind energy company, while the Endangered Species Act offers such provisions. Unlike other energy industries that have been convicted under the Migratory Bird Treaty Act, the wind industry has yet to face any federal prosecution for migratory bird mortality.

#### Sandia Develops Mobile GHG Analysis

On September 8, Sandia National Laboratory announced that researchers have developed a mobile research facility to pinpoint the sources of greenhouse gas emissions. The system measures carbon dioxide, methane, sulfur dioxide, nitrogen oxides, carbon monoxide, and ozone, but is still in the testing phase. Researchers envision a full network of mobile facilities to aid in the analysis of emissions data.

#### Oxfam and WWF Report on Shipping Emissions

On September 8, Oxfam and the World Wildlife Fund issued a report arguing a carbon price of \$25 per metric ton on shipping fuel would reduce greenhouse gas emissions and raise approximately \$25 billion to assist developing countries with the effects of climate change. The report also argued that maritime emissions should dominate the UN climate change meeting in Durban, South Africa later this year.

#### Google Reveals Electrical Usage

On September 8, Google announced that the company used 2.2 million megawatt hours of electricity and emitted 1.46 million metric tons of carbon dioxide in 2010. More than 1.2 million tons of that CO<sub>2</sub> come from Google's data centers, even though the company's data centers use less than half the industry average. Google claims a "net zero" carbon footprint due to its purchase and generation of renewable energy, and the purchase of carbon footprint offsets. Fully a quarter of Google's energy came from renewable sources in 2010, which the company will increase to 35% by 2020.

#### Disappointing RGGI Auction

On September 9, The Regional Greenhouse Gas Initiative (RGGI) announced that a mere 18 percent of the 42 million carbon dioxide allowances offered in a Sept. 7 auction were actually sold. Thirty-one entities purchased the allowances at the minimum reserve price of \$1.89 apiece, and for the first time ever none of the allowances available for use after 2012 was purchased. Energy efficiency and an anemic economy have both contributed to a depressed market for allowances.

#### New Hampshire to Remain in RGGI

On September 7, the New Hampshire state Senate failed 15-9 to obtain the two-thirds majority needed to override Gov. John Lynch's (D) veto of legislation pulling the state out of the Regional Greenhouse Gas Initiative (RGGI). New Hampshire's House has twice passed, by margins much larger than two-thirds, bills mandating the state's exit from the RGGI. Instead of full repeal, the Senate amended a bill passed by the House to alter the terms of the state's RGGI participation, and mandates withdraw if other states do so first.

#### Pacific Island Nations Call for Tough Climate Action

On September 7, UN Secretary-General Ban Ki-moon was joined by leaders from sixteen Pacific island nations in calling for "urgent international action" to reduce greenhouse gas emissions and reduce the threat of global warming and associated ocean acidification at the 42nd Pacific Islands Forum summit.

#### Industry Criticizes Japanese Fuel Economy Standards

The comment period ending September 22 for Japan's proposed 2020, 47.7 miles per gallon fuel economy target for passenger cars has seen many comments from international automakers arguing the standards are discriminatory and asking that the country either adopt a set of exemptions for imports or support the establishment of the Worldwide Harmonized Light-duty Test Procedures (WLTP). The WLTP standards are currently being discussed in the UN Economic Commission for Europe's WP29 forum on motor vehicle safety and environmental standards and certification.