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ENERGY AND ENVIRONMENT UPDATE **September 18, 2011**

Energy and Climate Debate

As the themes of deficit reduction and jobs continue to dominate federal conversation, energy issues made several headlines this week as well.

The Solyndra bankruptcy and investigations have been attracting significant attention and causing some to wonder to what extent it will drive the Administration off its green jobs message. The House Energy and Commerce Committee held a hearing last week to investigate the loan guarantee program as a whole, and House Republicans are reviewing thousands of pages of internal emails between officials at the Department of Energy and Office of Management and Budget that focus on the process by which Solyndra eventually received a loan guarantee.

While many Republicans in both houses of Congress are using the demise of the federally backed solar company as a weapon against the Obama administration and its energy agenda, not all want to pull the federal government out of the clean energy business because of this one company's failure. Senator Lisa Murkowski (R-AK) said at an Energy and Natural Resources Committee hearing last week that renewable energy and the loan guarantee program are too important to walk away from because of the failure of one company to succeed.

On another note, sources are beginning to say that the Environmental Protection Agency is likely to miss its deadline to propose new greenhouse gas emissions limits for power plants. The agency has a September 30 deadline, but the rule has not yet gone to the White House for review, prompting speculation that the agency will ask for a second extension. As the Office of Management and Budget review process can take up to 90 days, the missed deadline could delay the first new source performance standards for GHG emissions from power plants or shorten a comment period for the proposed rule. House Majority Leader Eric Cantor (R-VA) included the standards in his list of regulations that impede job growth, and the controversial measure is likely to trigger another political fight with the Administration over Clean Air Act regulations.

President Obama released the text of his American Jobs Act of 2011 September 12. Under the proposed legislation, energy and water projects could be eligible for loans and loan guarantees through an initial \$10 billion appropriation through an American Infrastructure Financing Authority. Proponents contend that funding would be used for safe investments in the areas of energy efficiency, storage, transmission, distribution, and pollution-reduced energy generation, but many remain skeptical of the jobs bill, and its

passage faces a difficult battle, particularly in the House, where Republican leaders are likely to push for the rollback of EPA regulations either through the jobs bill.

Meanwhile, Microsoft Chairman Bill Gates, GE Chairman and CEO Jeff Immelt, and other business leaders called September 13 for the federal government to increase support and funding for the development of clean energy technology and innovation. In a report from the American Energy Innovation Council, leaders specifically called for the full funding of energy innovation hubs and other research centers within the Department of Energy as well as the development of a green bank.

Congress

Commerce Appropriations Marked Up

The Senate Appropriations Committee marked up the Commerce, Justice, and Science 2012 spending bill. The legislation would give \$5 billion to the National Oceanic and Atmospheric Administration, \$434 million above its 2011 allocation, including \$920 million for the Joint Polar Satellite System.

EPA Emissions Won't Jeopardize Reliability

Federal Energy Regulatory Commission Chairman Jon Wellinghoff told the House Energy and Commerce Subcommittee on Energy and Power September 14 that a suite of Environmental Protection Agency rulemakings aimed at reducing electricity industry emissions will not jeopardize the reliability of the domestic electric grid. The oversight hearing led to no resolution on how much generation would be retired if the rules go forward.

EPA Delay Bills Approved

The House Energy and Commerce Subcommittee on Energy and Power approved two bills (the EPA Regulatory Relief Act of 2011, H.R. 2250, the Cement Sector Regulatory Relief Act of 2011, H.R. 2681) by voice vote September 13 that would delay the Environmental Protection Agency's efforts to strengthen air pollution standards for cement kilns and industrial and commercial boilers. The full committee is expected to markup the measures in the coming weeks, with floor action the week of October 3.

Solar Summit Held

The office of Representative Gabrielle Giffords (D-AZ) hosted a policy conference on the state and future of solar energy last week. The Giffords Solar Summit featured perspectives on the state of solar energy from federal and Arizona officials, the US Marine Corps, and solar industry leaders and advocates.

Continuing Resolution

On September 14, House appropriators introduced H.J. Resolution 79 to fund the government from October 1 to November 18 and cuts \$1.5 billion of credit subsidies from the \$7.5 billion Department of Energy advanced vehicle manufacturing program, and slashes each agency's already enacted spending levels by 1.5 percent. In an odd turn, Resolution 79 would mean higher spending levels for both the Environmental Protection Agency and DOE fiscal 2012 and none of the policy riders proposed in earlier Republican proposals, but it is unclear whether this is the last round of cuts.

Legislation Introduced

Congressman Stephen Fincher (R-TN) introduced legislation (H.R. 2891) September 12 to delay implementation of the Cross-State Air Pollution Rule of the Environmental Protection Agency.

Senator David Vitter (D-LA) introduced legislation (S. 1566) September 14 to require an accounting for financial support made to promote the production or use of renewable energy.

Senators Tom Udall (D-NM) and Mike Crapo (R-ID) introduced legislation (S. 1564) September 15 to amend the Clean Air Act to improve the renewable fuel program by combining the categories of cellulosic biofuel and advanced biofuel into one technology and feedstock-neutral category of advanced biofuel.

The same day, Congressmen Fred Upton (R-MI) and John Dingell (D-MI) introduced legislation (H.R. 2937) to amend title 49 to provide for enhanced safety and environmental protection in pipeline

transportation to provide for enhanced reliability in the transportation of the country's energy projects by pipeline.

Representative Steve Cohen (D-TN) introduced a bill (H.R. 2946) to require that vessels used to engage in drilling for oil or gas in ocean waters that are subject to the jurisdiction of the United States must be documented under chapter 121 of title 46.

Congressman Tom Reed (R-NY) introduced legislation (H.R. 2962) to amend the Internal Revenue Code of 1986 to modify the depreciation recovery period for energy-efficient cool roof systems.

Hearings Scheduled

On September 22, the Joint Deficit Reduction Committee will hold a hearing on tax reform and examine options to reform the tax code and increase revenue.

On September 21, the Joint Economic Committee will hold a hearing on trade policy and the movement of jobs overseas, with a focus on domestic manufacturing.

On September 20 and 21, the House Energy and Commerce Committee will mark-up the EPA Regulatory Relief Act of 2011 (H.R. 2250) requiring the administrator of the EPA to issue achievable standards for industrial and commercial heating equipment, the Cement Sector Regulatory Relief Act of 2011 (H.R. 2681), and the Pipeline Infrastructure and Community Protection Act of 2011 (H.R. 2937).

On September 22, the House Energy and Commerce Subcommittee on Oversight and Investigations will hold a hearing on the EPA's regulatory process and analysis.

On September 22, the House Oversight and Government Reform Committee will hold a hearing on President Obama's green energy programs and plans.

On September 22, The Ways and Means Select Revenue Measures and Oversight subcommittees will hold a joint hearing to consider the question of the role of the tax code in crafting energy policy and the drafting of provisions that support.

Administration

Contractors Advised on Sustainability

ICF International advised businesses bidding on federal contracts last week that they should begin evaluating and making plans to reduce their greenhouse gas footprint as federal agencies move to implement Executive Order 13514 on sustainability. The 2009 executive order requires agencies to meet a series of targets for reducing energy and water use as well as waste and pollution; the order requires 95 percent of new contracts to qualify as energy efficient, water efficient, or otherwise environmentally beneficial.

APEC Transportation and Energy Conference Held

Transportation Secretary Ray LaHood, Energy Secretary Steven Chu, and California Governor Jerry Brown (D) urged the first-ever joint Asia-Pacific Economic Cooperation Transportation and Energy Ministers Conference September 13 to invest and encourage development in energy and transportation, and therefore the environment and economy. The APEC region accounts for roughly 60 percent of world energy demand with demand on the rise for the net energy importers, with the United States accounting for two-thirds of the oil use and one-third of the greenhouse gas emissions.

The Council on Environmental Quality Outlines Federal Facility Greening

On September 15, the White House Council on Environmental Quality issued *Implementing Instructions-Sustainable Locations for Federal Facilities* instructing federal agencies to avoid development of green spaces, minimize its carbon footprint, utilize existing water and sewer facilities, and prioritize brownfields development when looking to lease, relocate, or build any new facilities or upgrade any of its more than

2.7 billion square feet of work space in more than 316,000 buildings. The document is intended to supplement Executive Order 13514.

OMB Orders Quick ARRA Disbursement

On September 15, the director of the Office of Management and Budget issued a memorandum instructing federal agencies to should establish aggressive targets for disbursing any remaining funds under the American Recovery and Reinvestment Act in order to create as many jobs as possible.

Department of State

12th Major Economies Forum Held

The Department of State hosted diplomats from twenty countries September 16-17 for the 12th Major Economies Forum on Energy and Climate Change. United States special climate envoy Todd Stern and Deputy National Security Adviser for International Economic Affairs Michael Froman led the U.S. delegation.

Environmental Protection Agency

Truck GHGs Limited

The Environmental Protection Agency and National Highway Traffic Safety Administration issued the first greenhouse gas emissions requirements for heavy-duty trucks September 15. The final rules establish greenhouse gas emissions limits and corporate average fuel economy standards for model year 2014 through 2018 heavy-duty pickup trucks, delivery vehicles, and tractor trailers.

Cross-State Rule Challenged

Luminant Energy, the largest power generator in Texas, filed suit in the U.S. Court of Appeals for the District of Columbia Circuit challenging the Environmental Protection Agency's final Cross-State Air Pollution Rule, and asking that the court invalidate the rule as it applies to Texas, seeking a stay of the rule while the lawsuit is pending. The company will close coal-fired electrical generating facilities in Texas to comply with the rule. With the deadline to file lawsuits over the rule looming, GenOn Energy Inc. filed a similar petition with the same court September 13. The rule, which was published August 8, requires power plants in 27 Eastern and Midwestern states to reduce interstate transport of sulfur dioxide and nitrogen oxides. Standard & Poor predicted that the rule will require the domestic electricity industry to scramble to meet new emissions limits by the January 1 implementation date. Options to meet compliance include a combination of retrofitting plants with emissions-reducing scrubbers, switching to low-sulfur coal, and retiring older plants.

Injected CO2 Permits to be Issued

The Environmental Protection Agency announced September 14 that it will issue permits for wells used for long-term underground storage of injected carbon dioxide captured from coal-fired power plants and states can apply for the power to do so. Agency regional offices will issue permits in accordance with federal regulations for Class VI wells established under the Safe Drinking Water Act's Underground Injection Control program and the rule will require the wells to be appropriately sited, constructed, tested, monitored, and sealed to prevent groundwater contamination.

Environmental Justice to Be Considered

The Environmental Protection Agency released a plan September 14 saying that it will consider environmental justice in rulemaking, permitting, and enforcement activities over the next three years. The three-year period ends in the 20th anniversary year of Executive Order 12898, which requires agencies to incorporate environmental justice into their work.

Electronics Industry Receives Guidance on Privacy of Emissions Data

On September 15, the White House Office of Management and Budget approved proposed guidance from the Environmental Protection Agency for eight broad industrial sources (including electronics manufacturers) concerning whether greenhouse gas emissions data reported to the government will be considered confidential. The rule will cover sources that that emit 25,000 metric tons of carbon dioxide-

equivalent or more a year, with the proposed rule to be published in the *Federal Register* soon and finalized in March 2012. In addition to electronics manufacturers, electric bulk power transmission, crude petroleum and natural gas extraction, and manufacturing of commercial and industrial refrigeration equipment, will also be covered. EPA's mandatory greenhouse gas emissions requirements cover 41 industrial categories and between 85%-90% of total GHG emissions, with 29 of those sectors required to report 2010 emissions this year and the remaining 12 sectors to report 2011 emissions next years.

EPA Tells House Committee Cross-State Rule Still Being Examined

On September 15, Gina McCarthy, assistant administrator for air and radiation at the Environmental Protection Agency official told the House Science, Space, and Technology Committee under the new Cross-State Air Pollution Rule, requiring power plants to reduce interstate transport of sulfur dioxide and nitrogen oxides, that the agency has the flexibility to increase state emission budgets. EPA also is evaluating the relationship between the rule and electricity reliability. The Cross-State Air Pollution Rule covers 27 states, but officials and industry leaders in Texas have claimed the final rule is much harsher than the proposed rule.

Department of Commerce

NOAA Study Lauds Emissions Reductions from CA Regulations

On September 12, the National Oceanic and Atmospheric Administration released a study in the online edition of *Environmental Science & Technology*, arguing that between California's new speed limits for ocean-going vessels and tough new low-sulfur fuel standards those same craft can substantially reduce air pollution from ships traveling along the state's coastline by almost 90%.

Federal Energy Regulatory Commission

CO Project Approved

The Federal Energy Regulatory Commission approved construction of a hydroelectric power project in Colorado September 14. The project is the first to be approved under an August 2010 memorandum of understanding between the agency and the state that streamlined approval of small-scale renewable energy projects.

SC Requests FERC Study

South Carolina's Office of Regulatory Staff and the Public Service Commission of South Carolina filed a petition with the Federal Energy Regulatory Commission September 1 requesting the formation of a joint board to study the potential impact of Environmental Protection Agency regulations on the utility industry and consider including other utility commissions in the Southeast.

Coalition Opposes FERC Rule

On September 12, a coalition of state attorneys general and public utility commissions from eight states filed a comment letter urging the Federal Energy Regulatory Commission to stop granting incentives for the construction of new electrical transmission facilities. Instead, the coalition suggests specific steps, such as keeping consumer costs low and establishing criteria that focus on risk-mitigation.

Nuclear Regulatory Commission

Some Nuclear Plants in Eastern US May Require Earthquake Upgrades

On September 16, the head of the Nuclear Regulatory Commission said some nuclear power plants in the eastern and central United States might need modifications to make absolutely certain they can withstand large earthquakes. The statement comes as the NRC continues analysis of plants and is finding that some were not designed to survive an earthquake similar to the one that hit Virginia in August. Though all of the plants are safe to operate, the full results will be made public soon.

Government Accountability Office

On September 15, the Government Accountability Office released a report requested by the chairmen and ranking members of the House and Senate Appropriations Subcommittees on Interior, Environment, and Related Agencies warning that commitments from federal and state governments to restore the Chesapeake Bay by 2025 that were made in 2009 are now in danger due directly to funding constraints, and more indirectly to issues like climate change and land development.

Personnel

On September 16, Interior Secretary Ken Salazar announced that Michael R. Bromwich will lead the Bureau of Safety and Environmental Enforcement, and Tommy P. Beaudreau will lead the Bureau of Ocean Energy Management which will handle leasing, permitting, and environmental analysis for offshore energy projects. BOEM, a completely new agency, will grant leases for offshore wind and solar energy as well as oil and gas, with the Federal Energy Regulatory Commission maintaining responsibility for hydrokinetic offshore energy (waves and currents).

Miscellaneous

Grid Integration Challenges for RE

During an event hosted by the American Council on Renewable Energy and the American Bar Association, attorneys and energy company officials said September 14 that integrating energy from renewable sources into the domestic power grid will require careful siting of facilities, better production forecasting, and more flexibility from existing utilities.

Japan Chooses Nukes, RE

Japan's Prime Minister Yoshihiko Noda said September 13 that a stable energy supply from advanced renewable energy and nuclear power is a top priority for the new administration. Prime Minister Noda, who was placed in power September 2, said that the government will begin from scratch, and will draft a new energy policy by next summer. The previous administration had proposed phasing out the country's 54 plants following the Fukushima nuclear crisis.

Climate Assistance Fund Progressing

The Transitional Committee of the Green Climate Fund closed a September 11-3 meeting in Geneva by endorsing a reflections paper on design issues related to the fund. Negotiators said that they have made progress on establishing the framework of a new international fund to help developing countries address challenges from climate change, but that much remains to be done before the next global climate summit in South Africa later this year. The paper addresses the objectives, guiding principles, and scope of the fund as well as its governance and institutional arrangements.

No RGGI Leakage

The Regional Greenhouse Gas Initiative released a report September 14 that found that there was no emissions leakage during the first year of the initiative, despite concerns over the issue since the program was created in 2005. Leakage describes a shift of electricity generation from sources within the region that are covered by the cap to those outside of the region, or too small, that are not.

JI Panel Urges Changes

The United Nations Joint Implementation Supervisory Committee recommended September 14 the creation of a significantly modified version of the Joint Implementation program that would continue operating after the Kyoto Protocol's commitment period ends in December 2012. The proposed version, which sets the stage for a review of the guidelines when parties to the protocol meet in South Africa later this year, would provide offset credits to domestic and international greenhouse gas mitigation programs.

Adaptation Guidebook Released

The Center for Climate Strategies released a guidebook September 13 to help agencies develop climate change adaptation plans at the state, local, or regional levels. The *Adaptation Guidebook* provides a process template; priority identifiers; a catalogue of adaptation actions; performance measurements; and advice for policymakers on how to analyze actions amid the complexities of climate change.

Deforestation Reduction Incentives Needed

The United Nations Environment Program's Finance Initiative warned September 13 that any successor to the Kyoto Protocol must include strong incentives for the private sector to invest in efforts to reduce deforestation and forest degradation or the world would face significant environmental and financial losses. The report, *REDDy-Set-Grow Part II*, suggested that up to \$40 billion per year in a nested approach would be necessary to prevent such losses.

Australian CO2 Regs

Australian Prime Minister Julia Gillard introduced legislation September 13 to establish a three-year fixed price on carbon emissions starting in mid-2012. The House of Representatives is expected to vote on the Clean Energy Bill and 18 related pieces on October 12, and all of the bills are expected to be passed through both houses of Parliament before December. The Climate Change Department will release draft regulations later this month that provide detail on industry assistance measures.

Japanese Business Lobby Denounces Emissions Cuts

On September 15, Nippon Keidanren, Japan's largest business lobby, urged the government to abandon a pledged 25% reduction in greenhouse gas emissions from 1990 levels by 2020, as Japan seeks to improve its energy economy after the March 11 earthquake and tsunami. The move has triggered fears that were Japan to abandon the proposed cuts the same scenario may play out in other countries, including the United States, the European Union, China, and other emerging economies. Nippon Keidanren argued that the Kyoto Protocol only covered developed countries, excluding places like China and India, and put Japan at a huge disadvantage.

Court Rules with Insurance Company on GHG Emissions Claim

On September 16, the Virginia Supreme Court ruled that Steadfast Insurance Co. had no duty to defend or cover AES Corp. in a lawsuit the company is fighting in Native Village of Kivalina, Alaska over damages from greenhouse gas emissions, because there was no "occurrence" under AES's policy language. The village argued that drilling activities by AES and other energy companies operating in the area led to global warming which was having a very detrimental effect on the village and its economy.

Majority of Large Companies Acknowledge Climate Change

On September 14, the Carbon Disclosure Project released *CDP Global 500 Report 2011: Accelerating Low Carbon Growth*, showing that 68% of the world's largest 396 companies include provisions in their business strategies to address climate change. Furthermore, 75% of companies had targets for reducing emissions, 93% of the companies said climate change was addressed at the senior management or board level, 45% have seen reduced in their greenhouse gas emissions in 2011, but only 37% verify their emissions using internationally acceptable measurement standards. Ninety-three percent said board or senior executives had responsibility for their climate change programs, compared to 85% in 2010.

EU Non-Carbon Measures to Combat Global Warming

On September 14, the European Parliament released a resolution promising to go beyond regulating carbon dioxide in combating climate change by reducing hydrofluorocarbons, nitrogen oxides, and black carbon, and demanding that similar measures are added to international treaties such as the Montreal Protocol. The resolution urged that emissions affecting regions of snow and ice be given the highest priority. The resolution included calls for regulations to ban slash-and-burn tactics in forests, limits on biomass burning, stronger and more frequent vehicle emission tests, and more monitoring of emissions from power plant.

Climate Change Adaption Index

On September 15, the Global Adaptation Institute released the Global Adaptation Index, which purports to measure countries' vulnerability to climate change and their readiness to adapt, and ultimately help investors identify opportunities for climate-related projects. The United States was ranked third in the world in 1995 but eighth by 2010, and when adjusted for gross domestic product, was actually ranked 59 out of 160 countries that year. The index shows Brazil, Russia, India, and China, are all making huge strides.

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Arctic Sea Ice Continues Receding

On September 15, the National Snow and Ice Data Center reported that Arctic sea ice cover retreated to the second-lowest level in 30 years, covering only an annual minimum of 1.67 million square miles, and shrinking at the accelerating rate of 10% each decade.