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## **ENERGY AND ENVIRONMENT UPDATE** **September 25, 2011**

### **Energy and Climate Debate**

Deficit reduction efforts and federal appropriations continue to hold the spotlight in Washington, D.C., as clean energy issues and green jobs face heightened scrutiny.

After the House passed a continuing resolution last week, the Democratic Senate blocked the funding bill September 23 on a 59-36 vote, intensifying a fight between the two houses of Congress ahead of a September 30 deadline to keep the federal government operating. The disagreement centers around disaster relief funding for the Federal Emergency Management Agency, whose accounts are depleted this week without additional aid; House Republicans want the funding to be partially offset with spending cuts to programs considered Democratic priorities, such as \$100 million from the Department of Energy's loan guarantee program. The House bill would keep the government funded through November 18, at which time an omnibus appropriations bill for fiscal year 2012 would need to be enacted, or another stopgap continuing resolution would have to be put in place to keep the government open. Both chambers were scheduled for recess this week, but at least the Senate, and possibly the House, will need to remain in Washington to pass a continuing resolution. Majority Leader Harry Reid has scheduled a vote on the package for Monday evening, with cuts to the DOE loan guarantee program removed.

President Obama proposed a \$4.4 trillion deficit reduction plan to Congress September 19 that includes a combination of \$1.5 trillion in savings from the tax code and a higher tax rate for millionaires and billionaires. Of the total, \$1.2 trillion comes from discretionary spending cuts already enacted; \$580 billion in cuts from mandatory programs; \$1.1 trillion from troop withdrawals; \$1.5 trillion from tax reform; and \$430 billion in interest savings. Congressional Republicans have already blasted the plan as not credible, and even "class warfare," thus intensifying the already polarized debate over federal spending as a whole.

By now a household name, Solyndra continues to serve as fodder for Republican scrutiny. After receiving a \$535 million loan guarantee from the Department of Energy in 2009, the first awarded under the American Recovery and Reinvestment Act, the company declared Chapter 11 bankruptcy earlier this month. The FBI and the inspectors general of the Energy and Treasury departments are investigating the loan guarantee. On Friday, Solyndra President Brian Harrison and CFO Bill Stover testified before the House Energy and Commerce Subcommittee on Oversight and Investigations, repeatedly invoking the Fifth Amendment.

Previously in the week, Congressman Darrell Issa (R-CA) said that his Oversight and Government Reform Committee would investigate government loan programs to private corporations in light of allegations of improper dealings between the White House and Solyndra as well as wireless startup company LightSquared. The Committee issued a report last week, *How Obama's Green Energy Agenda Is Killing Jobs*, which highlights the larger argument clean energy opponents will continue to make in the coming weeks and months. The Obama administration has continued to defend itself against criticism that it exerted improper influence to the aid of both companies while also defending the president's green technology initiatives and green jobs programs.

## **Congress**

### Reliability Study Sought

Senator Lisa Murkowski (R-AK) sent a letter September 19 to Federal Energy Regulatory Commission Chairman Jon Wellinghoff asking him to conduct a formal process to determine whether new environmental regulations will jeopardize the reliability of the domestic electricity grid. Senator Murkowski has also requested that Environmental Protection Agency Administrator Lisa Jackson defer implementation of strict federal regulation of power plants until a full analysis is complete.

### Intersection of Energy and Tax Policy Previewed

The Joint Committee on Taxation released an analysis September 20 on the intersection of tax policy and energy policy in advance of last week's House Ways and Means Select Revenue Measures and Oversight subcommittees September 22 joint hearing. The report, *Present Law and Analysis of Energy-Related Tax Expenditures and Description of the Revenue Provisions Contained in H.R. 1380, The New Alternative Transportation to Give Americans Solutions Act of 2011*, summarizes present laws and discusses the economic rationale for government intervention in energy markets through the tax code. Major topics of the hearings included the Section 45 production tax credit and Section 48 investment tax credit for clean energy, as well as the 1603 Treasury grant program and a new mechanism to finance renewable energy projects with the creation of a trust fund and reverse auction.

### R&D Credit Should be Permanent

At a Senate Finance Committee hearing September 20, witnesses contended that unless the research and development tax credit is made permanent, it would be marginally effective, not spur new research and developments, nor have a major impact on the economy. The hearing came one day after Chairman Max Baucus (D-MT) and ranking member Orrin Hatch (R-UT) introduced the Greater Research Opportunities with Tax Help Act of 2011 (S. 1577), which would simplify and raise the value of the credit while allowing the traditional credit to expire and making the new credit permanent.

### House Approves TRAIN Act

The House passed the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011 (H.R. 2401) September 23. The vote adhered very closely to the party line (with 4 Republicans opposing and 19 Democrats supporting). The Act includes provisions to delay until 2012 an Environmental Protection Agency regulation designed to curb cross-state air pollution and another intended to cut mercury and other air toxics emitted by power generators. A proposal from Representative Gerry Connolly (D-VA) to have the review of EPA rules consider policies that lead to new clean energy jobs and an amendment from Congressmen Adam Kinzinger (R-IL) and Charles Gonzalez (D-TX) to require the cost review to include future EPA actions that would regulate gasoline and other fuel were also included in the legislation. The bill will have a very difficult time passing the Senate, and the White House issued a veto threat.

### House Committee Approves EPA Delays

The House Energy and Commerce Committee easily passed two bills September 21 that would delay the Environmental Protection Agency in setting emissions standards for boilers, incinerators, and cement kilns. The EPA Regulatory Relief Act of 2011 (H.R. 2250) would provide the EPA with another 15 months to issue the boiler and incinerator rule, and would give industry five years from the date of the final rule, instead of three, to comply. The Cement Sector Regulatory Relief Act of 2011 (H.R. 2681) would delay

the EPA by 15 months as well and would extend industry compliance to five years. Though the Boiler and Cement MACT rules are likely to pass the House next week, they are not expected to pass the Senate, and the White House has also threatened to veto such legislation in the event that the measures to make it to his desk.

#### Murkowski to Propose Revenue Direction for Increased Domestic Drilling

Senator Lisa Murkowski (R-AK) said September 20 that she will soon propose to the Joint Select Committee on Deficit Reduction that clean energy development is paid for with revenue from increased domestic oil and gas production. The senator's plan is similar to legislation she has already proposed (S. 351 and S. 352), which would open Alaska's Arctic National Wildlife Refuge for oil and gas exploration and production while dedicating a portion of the revenue for alternative energy projects.

#### Committee Urged to Consider Policies Affecting Solar

House Energy and Commerce Committee Democrats led by ranking member Henry Waxman (D-CA) called on the committee September 22 to investigate whether incentives and policies for American solar manufacturers are adequate to ensure their competitiveness. The letter also requested that the committee examine factors behind China's emergence as a solar manufacturing power and the relevant implications for domestic policy.

#### Green Jobs Definition Questioned

During a September 22 hearing of the House Committee on Oversight and Government Reform, Republicans accused Labor Secretary Hilda Solis of misleading the public in the way it defines green jobs. The agency is currently undertaking an initiative to quantify employment in the clean energy sector, and a recent report, *Sizing the Clean Economy: A National and Regional Green Jobs Assessment*, from the Brookings Institution, estimates that 2.7 million Americans are employed in positions related to the clean economy, receiving wages that are 13 percent higher than the national median.

#### WAPA Loan Authority Critical

At a House Natural Resources Committee hearing September 22, Lauren Azar, senior adviser to Energy Secretary Stephen Chu, contended that if Congress enacts the American Taxpayer and Western Area Power Administration Customer Protection Act of 2011 (H.R. 2915), the WAPA would not be able to establish partnerships and provide project developers the help they need to obtain federal permits. She argued that loan authority in the amount of \$3.25 billion granted by the stimulus bill to WAPA is critical for developing transmission lines.

#### Legislation Introduced

Senators Ben Cardin (D-MD) and Mike Crapo (R-ID) introduced the Energy-Efficient Cool Roof Jobs Act (S. 1575) September 19. The legislation would reduce the depreciation deduction schedule on newly installed energy-efficient roofs from 39 years to 20 years, and may create 40,000 construction jobs in the process.

Senator Max Baucus (D-MT) introduced legislation (S. 1577) the same day to amend the Internal Revenue Code of 1986 to increase and make permanent the alternative simplified research credit.

On September 21, Senators Mark Pryor (D-AR) and Tom Udall (D-NM) introduced the Clean Energy Technology Manufacturing and Export Assistance Act of 2011 (S. 1586). The bill would establish an International Trade Administration within the Department of Commerce to ensure that domestic clean energy technology companies have the information and assistance necessary to compete globally and ramp up exports of clean energy technologies and services.

Also on the 21st, Representative Shelley Moore Capito (R-WV) introduced legislation (H.R. 2983) to amend the Outer Continental Shelf Lands Act to require the Secretary of the Interior to conduct offshore oil and gas leasing and deposit use revenues into the Inland Waterways Trust Fund and the Highway Trust Fund.

Congressman Howard Berman (D-CA) introduced legislation (H.R. 2987) that he developed in 2010 with Representative Gabrielle Giffords (D-AZ) that would improve the overall coordination of current export promotion programs.

Congressman Berman also introduced the Green Export Promotion and Job Creation Act (H.R. 2988), which would promote American-made environmental and clean energy technology products in foreign markets allowing the United States to secure a larger share of global green economy by requiring the Secretary of Commerce to establish an online directory of domestic companies that would allow foreign buyers to find American companies that provide the applicable goods and services.

Representative Jay Inslee (D-WA) introduced legislation (H.R. 2994) to promote marine and hydrokinetic renewable energy research and development.

Senators Mike Crapo (R-ID), Maria Cantwell (D-WA), James Risch (R-ID), and Ron Wyden (D-OR) introduced legislation (S. 1602) September 22 to amend the Internal Revenue Code of 1986 to expand the technologies through which a vehicle qualifies for the credit for new qualified plug-in electric drive motor vehicles. The CHARGE Act improves current incentives by allowing storage devices that work in combination with batteries in order to achieve functionality equivalent of at least a 16 kw battery pack to qualify for the maximum credit amount.

Senator Cantwell was joined by Senator Dick Lugar (R-IN) the same day in introducing a bill (S. 1603) that enables transportation fuel competition, consumer choice, and greater use of domestic energy sources in order to reduce U.S. dependence on foreign oil.

Senators John Barrasso (R-WY), Roy Blunt (R-MO), Mary Landrieu (D-LA), and Joe Manchin (D-WV) introduced the Cement Sector Regulatory Relief Act (S. 1610). The bill directs the Environmental Protection Agency to re-propose and finalize a new Cement Maximum Achievable Control Technology rule that provides additional time for the cement industry to comply with new emission standards. The current rule gives companies three years to comply with the rule, while the new bill would give companies at least five years. The House Energy and Commerce Committee approved a similar bill September 21.

## **Department of Defense**

### Navy Forum to Highlight Energy Security

The Department of the Navy will hold its 2011 Navy Energy Forum October 13-14 in Washington, DC. Energy leaders from the Department of the Navy and other federal agencies, industry, and academia will meet at the Ronald Reagan Building and International Trade Center to discuss energy reform with a particular focus on energy security.

## **Department of Energy**

### International Outlook Released

The Department of Energy's Energy Information Administration released an assessment September 19 of world energy markets over a quarter of a century. The report, *International Energy Outlook 2011*, concludes that world energy use will increase 53 percent by 2035 with China and India accounting for half of the growth. Energy use in countries that are not members of the Organization for Economic Cooperation and Development will grow by 85 percent, compared with an increase of 18 percent for OECD economies. Renewable energy is expected to grow most quickly over the next 25 years, with demand rising at 2.8 percent per year and market share increasing from 10 percent in 2008 to 15 percent in 2035.

### Installed PV Cost Down

The Department of Energy's Lawrence Berkeley National Laboratory released a report September 15 finding that the installed cost of solar photovoltaic power systems in the US fell substantially in 2010 and the first half of 2011. According to the report, *Tracking the Sun IV: An Historical Summary of the Installed Cost of Photovoltaics in the United States from 1998 to 2010*, the average installed cost of residential and

commercial PV systems fell by 17 percent from 2009 and an additional 11 percent within the first six months of 2011, reflecting a drop in the cost of PV modules, installation labor, marketing, overhead, inverters, and the balance of systems.

#### Solar Decathlon Opens

University teams featuring over 4,000 students from around the world opened the Department of Energy Solar Decathlon 2011 September 22 to showcase 19 highly energy efficient solar-powered houses. The competition involves 10 contests during 10 days that gauge each house's performance, livability, and affordability.

#### Over \$600 Million in Loan Guarantees Awarded

On September 23, the Department of Energy finalized a \$168.9 million partial loan guarantee through its 1705 loan guarantee program for Granite Reliable Power's wind project in New Hampshire. DOE also awarded a partial loan guarantee of up to \$350 million to Ormat Nevada, Inc. for a geothermal power project in the state, and \$105 million loan guarantee for POET's cellulosic ethanol plant in Iowa.

### **Department of Transportation**

#### Critical Infrastructure Protection Highlighted

The Department of Transportation's Federal Highway Administration posted a report September 20 outlining a process that can be used to determine which parts of a region's critical transportation infrastructure need protection from climate change impacts. The report, *Impacts of Climate Change and Variability on Transportation Systems and Infrastructure: The Gulf Coast Study, Phase 2, Task 1: Assessing Infrastructure for Criticality in Mobile, AL*, was developed under the second phase of research on climate change impacts in the Gulf Coast region.

### **Environmental Protection Agency**

#### NM Utility Appeals Retrofit Mandate

The Public Service Company of New Mexico filed a petition for review of an Environmental Protection Agency rule September 16 in the U.S. Court of Appeals for the Tenth Circuit. The rule would require the San Juan Generating Station to install selective catalytic reduction technology on four coal-fired units within five years, and the company has also asked EPA Administrator Lisa Jackson to stay the rule until the case can be resolved in court.

#### Small Businesses Favor Stringent Standard

The Small Business Majority released the results of a poll September 20 that found eighty percent of small businesses favor a corporate average fuel economy standard of 60 miles per gallon by 2025 for cars and light trucks. The finding, which is a more stringent standard than what the Administration will propose, was issued in a *Clean Energy Report* after the group polled 1,200 small businesses on clean energy issues. President Obama proposed July 29 corporate average fuel economy and greenhouse gas emissions standards of 54.5 miles per gallon by 2025, and the Environmental Protection Agency and National Highway Traffic Safety Administration will propose standards by September 28, with a final rule expected by July 31, 2012.

#### 52 Areas Won't Attain 2008 Standard

Environmental Protection Agency Assistant Administrator for Air and Radiation Gina McCarthy said September 22 that the agency anticipates that 52 areas will be designated as out of attainment with ozone air quality requirements as it implements the less stringent 0.075 part per million standard issued by the Bush administration in 2008. The agency plans to designate nonattainment areas for the national ambient air quality standards for ozone by mid-2012.

#### Biomass Delay Challenged

The Natural Resources Defense Council filed suit September 19 in the U.S. Court of Appeals for the District of Columbia Circuit against the Environmental Protection Agency. NRDC is challenging the EPA's decision to defer for three years the requirement that facilities burning biomass fuels obtain greenhouse

gas emissions permits. The Center for Biological Diversity, Georgia ForestWatch, Wild Virginia, the Conservation Law Foundation, and the Natural Resources Council of Maine filed a similar suit on August 15.

## **Miscellaneous**

### Solar Installations on the Rise

The Solar Energy Industries Association released a report September 19 that found that domestic grid-connected photovoltaic installation grew 17 percent from the first to second quarter of 2011 and 69 percent from the second quarter of 2010.

### Low Risk Efficiency Loan Financing

The American Council for an Energy-Efficient Economy released a study September 20 that concluded that energy efficiency loan financing is proving to be a stable, low risk investment with low default rates and large-scale potential. The report, *What Have We Learned from Energy Efficiency Financing Programs?*, reviewed 24 energy efficiency loan programs and found low default rates ranging from 0-3%.

### Chinese Solar and Wind Standards Set

China's National Development and Reform Commission recently set its first feed-in tariffs for solar power and technical standards for wind power as part of its effort to expand the use of renewable energy. For solar PV projects approved before July 1, 2011 and completed by December 31, 2011, the price will be 18 cents per kilowatt-hour, and for all other projects, the price will be 15 cents/kWh. The average rate that grid companies pay to purchase electricity from power companies is about 6 cents/kWh. At the same time, China's National Energy Administration published 18 new technical standards and monitoring guidelines related to wind power technology, generation, grid connection, and project design.

### U.S. Rejects Escape Hatch

U.S. Special Envoy for Climate Change Todd Stern said September 19 that the United States would oppose allowing China and other fast-developing countries to opt out of any future climate change treaty if they did not receive sufficient financial assistance from industrialized nations.

### EU Meets Nuclear Assessment Deadline

The European Commission said September 16 that the 14 countries in the European Union that have nuclear power capacity all met a September 15 deadline to provide an interim report on the readiness of their nuclear plants to withstand a crisis such as the Fukushima facility faced. The countries agreed last spring to provide reports as part of stress tests that would consider risks from natural disasters and terrorist attacks. The reports will be finalized and submitted to national regulators and international experts before the Commission prepares a final risk assessment for a meeting of EU governments in June 2012.

### Chinese Pollutant Reductions Set

The State Council of China assigned targets September 7 for reducing energy intensity and emissions and discharge of four times of pollutants for all provinces, autonomous regions, and major municipalities. The targets apply to the period covered by the 12th Five-Year Plan from 2011-2015 and call for a nationwide reduction of chemical oxygen demand in wastewater by 8 percent, ammonia nitrogen in wastewater by 10 percent, airborne sulfur dioxide by 8 percent, and airborne nitrogen oxides by 10 percent.

### National Academy Sustainability Report Forthcoming

Companies and federal agencies weighed in September 20 on a forthcoming sustainability report from the National Academies. A committee under the National Academies' Science and Technology for Sustainability Program is working on a study, *Sustainability Linkages in the Federal Government*, which aims to establish a framework for considering environmental, societal, and economic factors in decision making. The report will be finalized between December 2012 and March 2013, but in the meantime, initial comments have included a request for simple, cost-effective goals.

#### HI Company Receives RETITC

The Hawaii Department of Taxation advised in a Letter Ruling No. 2011-06 September 2 that a company planning to install multiple photovoltaic systems at a site crisscrossed with a number of underground utility systems is eligible for a renewable energy technologies income credit because there is a legitimate nontax reason for the multiple systems. The department determined that the taxpayer's credits are subject to the \$500,000 commercial cap because the systems will be directly fed into the local utility grid.

#### Kyoto Working Groups to Meet

The U.N. Framework Convention on Climate Change will meet October 1-7 in Panama City to gain some momentum for the November-December Conference of Parties in South Africa. The Panama talks are the 16th session of the Ad-hoc Working Group on the Kyoto Protocol and the 14th session of the Ad-hoc Working Group on Long-term Cooperative Action, and are intended to pave the way for the Durban meetings that will seek to create a framework for a bridge agreement that can go into effect after the 2008-12 compliance period for the Kyoto Protocol expires.

#### EU ETS Updated

The European Commission published a technical regulation September 21 to amend guidelines on the monitoring and reporting of greenhouse gas emissions by participants in the Emissions Trading System. The regulation amends a 2007 rule that established consolidated guidelines for monitoring and reporting emissions, taking into account the first years of the system, which began in 2005. The production of bulk organic chemicals and the processing of primary aluminum will be added in 2013, and the definition of combustion will be extended.

#### Global Emissions Increase

The European Commission's Joint Research Center published a report September 21 finding that global man-made CO<sub>2</sub> emissions rose 5.8 percent in 2010 to the highest level ever recorded, 33 billion metric tons. The report, *Long-Term Trend in Global CO<sub>2</sub> Emissions*, said the increase, 45 percent above 1990 levels, was mainly an emerging economy phenomenon, and concluded that increased energy efficiency and renewable energy use were not compensating quickly enough to reflect the growing demand for power and transport.

#### New RE Laws for CA

California Governor Jerry Brown (D) signed three renewable energy bills into law September 22. Two measures (S.B. 585 and A.B. 1150) guarantee ongoing funding for rebates and incentives for projects that help to meet the state's renewable and clean energy goals, and a third bill (S.B. 16) streamlines the permitting process for renewable energy facilities. Additionally, S.B. 585 provides an additional \$200 million through the California Solar Initiative for nonresidential solar installations.

#### Bioenergy to Curb Climate Change

The International Energy Agency published a technical report last week that concluded that bioenergy's potential for reducing greenhouse gas emissions can be maximized by keeping land use changes associated with it to a minimum. The report, *Bioenergy, Land Use Changes and Climate Change Mitigation*, said that most bioenergy systems can deliver significant GHG savings if they replace fossil-fuel based energy that causes high emissions and if production emissions are kept low.

#### US Chamber of Commerce Warns Against Denying Keystone XL Permit

On September 23, the U.S. Chamber of Commerce President Thomas J. Donohue warned that if the United States failed to permit the proposed Keystone XL pipeline between Alberta and Texas, Canada would simply find an alternate export route for its oil sands crude. Donohue said that Canadian crude is currently 22%, and natural gas 95%, of US petroleum imports, and foregoing the opportunity to expand on that relationship would mean deteriorated national energy security. The 700,000 barrel per day proposed pipeline has already prompted 20-year contracts between US refiners and TransCanada Corp., which a pipeline veto would jeopardize.