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ENERGY AND ENVIRONMENT UPDATE **September 4, 2011**

Energy and Climate Debate

Two major issues will dominate the energy debate in the coming week – appropriations and the role of new environmental regulations in a fragile economy. When Congress returns after the Labor Day weekend it will immediately set about dealing with the twelve appropriations bills that must be passed by October 1. If past is prologue, it seems unlikely each bill will be considered and passed individually, but rather the bills will be packaged in one large omnibus bill or a continuing resolution will be enacted to buy more time to take each bill in-turn. Meanwhile, the 12-member Joint Select Committee on Deficit Reform, charged with formulating a 10-year, \$1.5 trillion deficit reduction plan by Thanksgiving, will hold its first organizational meeting this Thursday, and its first hearing on September 13. The Senate is expected to dive straight into Patent Reform, the Federal Aviation Administration bill, and perhaps highway legislation.

The second largest battle will revolve around a spate of rules currently moving through the Environmental Protection Agency. On September 2, to the chagrin of environmentalist and vocal praise from business and industry, the Obama administration announced that it would not be issuing a revised EPA ozone rule. The administration publicly argued that it was not necessary to finalize the rule given that it is up for revision in two years anyway. Less publicized by the administration is the recognition that the current economic climate was not conducive to revising a rule that might negatively impact the administration's stated goal of job creation. Environmental groups have promised to seek a stringent and immediate revision in court, while emboldened Congressional Republicans and business interests will continue their campaign against other pending EPA rules. Republicans are targeting rules concerning air quality standards for particulate matter, air toxics emissions for various industrial sources, and greenhouse gas regulations for power plants and refineries. In keeping with his administration's pivot towards job creation, President Obama will address Congress on Thursday and lay out a job-creation agenda that is expected to include both FAA and surface transportation measures as well as other infrastructure projects that could be expedited and a specific focus on clean energy jobs.

In other news, Senate Majority Leader Harry Reid hosted his fourth annual Clean Energy Summit in Nevada last week. Vice President Joe Biden and Energy Secretary Steven Chu joined others in speaking at the event, and expressed support for the continued and increased funding of clean energy research, development, and education; the creation of a Clean Energy Development Agency; and the enactment of a Clean Energy Standard. In advance of Congress' return and President Obama's Congressional address, Senator Dean Heller (R-NV) sent a letter to the president last Wednesday outlining his own jobs creation proposals. In addition to cutting corporate tax breaks, rolling back regulations, and passing a balanced budget amendment, the senator proposed passing a national renewable electricity standard.

Nevada already has a renewable standard in place, but the statement is a reminder that numerous Republicans have previously been in support of such a move, even if they are currently more subdued or even opposed to the idea.

Congress

Solyndra's Bankruptcy Prompts Scrutiny

Following California-based solar manufacturer Solyndra's announcement August 31 that it intends to file for bankruptcy, House Energy and Commerce Committee Chairman Fred Upton (R-MI) and Oversight Subcommittee Chairman Cliff Stearns (R-TX) requested more documents from the White House regarding the Department of Energy's \$535 million loan guarantee to the company, the first to be awarded in September 2009. The bankruptcy is likely to intensify congressional criticism of the agency's loan guarantee program and other renewable energy subsidies.

Energy and Water Markup

The Senate Appropriations Subcommittee on Energy and Water Development will mark up the Fiscal Year 2012 Energy and Water Development Appropriations bill September 6. The full committee is scheduled to consider the legislation the next day. The \$30.6 billion House version of the legislation (H.R. 2354), passed July 15, is \$1 billion below current spending levels and \$5.9 billion below the president's request. Senate work on the legislation follows the August 2 cap on the amount of money that can be spent through the annual appropriations process for the next 10 years, including a \$359 billion limit on non-defense spending for FY2012. Also on the 7th, the full committee is expected to mark up the FY2012 agriculture appropriations bill as well as the Department of Homeland Security appropriations measure.

Three House Hearings

The House Natural Resources Committee will hold a series of hearings beginning September 8 to discuss harnessing American energy resources to create new domestic jobs. This hearing will consider offshore and renewable energy, and a second related hearing will be held September 14. On September 9, the Subcommittee on Energy and Mineral Resources will hold a hearing on the status of Section 390 categorical exclusions of the Energy Policy Act of 2005 and their impact on onshore jobs, revenue, and energy.

The House Energy and Commerce's Subcommittee on Energy and Power will hold a hearing September 8 to investigate the EPA Regulatory Relief Act of 2011 (H.R. 2250) and the Cement Sector Regulatory Relief Act of 2011 (H.R. 2681).

The House Science Subcommittee on Technology and Innovation will hold a hearing on September 8 investigating the smart grid and its effects on consumer empowerment and innovation.

Administration

Biofuels RFI Issued

Secretary of Agriculture Tom Vilsack, Secretary of Energy Steven Chu, and Secretary of the Navy Ray Mabus issued a Request for Information August 31 as the next step in the creation of a public-private partnership to develop drop-in advanced biofuels. The three departments announced August 16 a \$510 million investment in the private sector to produce advanced drop-in aviation and marine biofuels to power military and commercial transportation, responding to President Obama's Blueprint for a Secure Energy Future.

Department of Energy

\$145 Million for Solar

The Department of Energy awarded \$145 million September 1 to 69 advanced solar energy technology projects in 24 states. Awarded as part of the Energy Department's SunShot Initiative, projects were funded in six categories: Extreme Balance of System Hardware Cost Reductions, Foundational Program to Advance Cell Efficiency, Solar Energy Grid Integration Systems: Advanced Concepts, Transformational

PV Science and Technology: Next Generation Photovoltaics II, Reducing Market Barriers and Non-Hardware Balance of System Costs, and SunShot Incubator.

\$12 Million for Biofuels

Energy Secretary Steven Chu announced August 31 up to \$12 million to fund three small-scale projects in Illinois, Wisconsin, and North Carolina that aim to commercialize novel conversion technologies to accelerate the development of advanced, drop-in biofuels and other valuable bio-based chemicals. The projects, funded through the Office of Energy Efficiency and Renewable Energy, seek to accelerate research and development of the fuels.

Environmental Protection Agency

Energy Star Expanded

The Environmental Protection Agency announced August 31 that new multifamily high-rise residential buildings are now eligible to qualify as Energy Star. To qualify for the program, new or substantially rehabilitated multifamily high-rise buildings must meet energy efficiency guidelines set by the agency and be designed to be at least 15 percent more energy efficient than buildings that meet the American Society of Heating, Refrigerating, and Air-Conditioning Engineers energy use standard.

Federal Energy Regulatory Commission

Transmission Planning Rule Sessions

The Federal Energy Regulatory Commission will hold two days of informational conferences September 12 and 13 to discuss compliance with a transmission planning rule (Order 1000). The July 21 final rule is intended to facilitate the building of new long-distance transmission lines and to spread the costs of financing the addition of more renewable energy generation onto the electric grid. The conference will include three sessions focusing on compliance issues for areas that have regional transmission organizations and independent system operators and on areas in the eastern and western grids that do not have regional operations.

Government Accountability Office

Immature Engineering Technologies

The Government Accountability Office released a report August 25 that found that current climate engineering technologies do not provide a viable response to global climate change and could have negative consequences. The report, *Climate Engineering: Technical Status, Future Directions, and Potential Responses*, concluded that many technologies designed to reduce or manage the risks from climate change are not ready for full-fledged production.

Miscellaneous

Solar Exports Up 73 Percent

The Solar Energy Industries Association released a report August 29 that found that net exports of solar energy products from the United States increased 73 percent, to \$1.9 billion, between 2009-2010. The report, U.S. Solar Energy Trade Assessment 2011, also stated that exports of solar energy products totaled \$5.6 billion, including \$2.5 billion from polysilicon and \$1.4 billion from manufacturing equipment. PV components represented more than 99 percent of the year's exports, with the rest coming from solar heating and cooling.

Japan Pursues Renewables

Japan's Study Subcommittee on Politics and Measures After 2012, which operates under the Ministry of the Environment's Central Environmental Council, met August 30 to consider whether the country can meet its emissions reduction targets after the Fukushima nuclear crisis. The accident has forced the nation to tighten regulations on its 54 nuclear reactors and has made it unpopular to restart them after periodic repair and maintenance, resulting in rapidly decreasing nuclear power generation and electricity shortages. Another study committee recommended in mid-August that the country set up a long-term

national energy project to reduce its dependence on nuclear and fossil fuel. Also last week, Japan's House of Councilors unanimously approved legislation to expand renewable use in the country beginning in July of next year. The new law, previously passed by the House of Representatives, requires electric utilities to purchase electricity generated from renewable sources at government-fixed prices for fixed periods.

Efficiency a Solution

The American Council for an Energy Efficient Economy released a white paper August 22 recommending that utilities invest in energy efficient systems to replace about 40,000 MW of coal-fired electricity generation at risk of being retired. The paper specifically recommends investments in combined heat and power systems as utilities face increased regulations from the Environmental Protection Agency.

Wind, Geothermal Permitting Streamlined

California Governor Jerry Brown (D) signed into law legislation (A.B. X1 13) August 29 that affords wind and geothermal power projects proposed for the state's desert areas the same streamlined permitting processes as solar installations. Developers must pay a \$75 permit application fee, and the availability of incidental take permits expires January 1, 2015.

Secondary Market Stable

The Regional Greenhouse Gas Initiative released a report August 25 finding that the price of carbon dioxide allowances in the secondary market has been stable this year and essentially the same as the \$1.89/allowance auction reserve price. RGGI will hold its next auction September 7.

Carbon Tax Concerns

The Congressional Research Service unveiled a report August 29 concluding that while adopting a carbon tax on polluting companies may improve the environment, there are concerns that it could result in a shrinking revenue base for the country if adopted as part of tax reform.

WTO Dispute Talks Seat

The United States requested August 29 to become an observer at the World Trade Organization dispute settlement talks with the European Union, Japan, and Canada regarding a challenge filed by the EU and Japan against a green energy program in Canada, citing trade interests. The EU and Japan have challenged domestic content requirements under Ontario's Feed-In Tariff program.

China's Rare Earth Production

Japan's Ministry of Economy, Trade and Industry said August 30 that China has shifted its rare earth business strategy, restricting production by tightening environmental inspections of producers of the materials that are indispensable for high-tech and new-generation motor vehicles. China planned rare earth production of 89,200 tons in 2010 but, in response to rising rare earth prices over the past two years, the actual production was closer to 130,000 tons.

Benefit Corporations Bill Passed

California Governor is poised to sign a bill (A.B. 361) that would establish a class of corporations with legal commitments to benefit society and the environment. The legislation would clear the way for the formation of benefit corporations with fiduciary duty to have a positive impact on society and produce shareholder value. Maryland, New Jersey, Vermont, Virginia, and Hawaii already have similar laws.

Reliability Problems Not Anticipated

PJM Interconnection, the regional grid operator for most of the eastern United States, submitted a report last week finding that it does not expect overall electricity reliability to be threatened in its service area because of Environmental Protection Agency-induced coal-fired power plant closures.

CARB Incorporates Best Practices

UCLA law school's Emmet Center on Climate Change and the Environment examined CARB's proposed trading regulations and compared them with the European Trading System and trading programs in the United States, including the federal sulfur dioxide, or acid rain program; the Regional Greenhouse Gas

Incentive program; and the Regional Clean Air Incentives Market in the Los Angeles area. The resulting 81-page report, *Rules of the Game: Examining Market Manipulation, Gaming and Enforcement in California's Cap-and-Trade Program*, concluded that California has designed a cap-and-trade program to regulate GHG emissions in a way that incorporates the best practices from other emissions trading programs that is likely to result in a fair, cost-effective market compared with other trading programs, and that the proposed market regulations will reduce the risk of market manipulation or gaming.

BASIC Promotes Kyoto Goals

Ministry-level officials from Brazil, South Africa, India, and China (BASIC) released a statement August 27 warning against attempts by developed nations to abandon the Kyoto Protocol to pursue an accord that would require more nations to take mitigative climate change action but set less vigorous targets. The countries also argued that developing nations, which do not have emissions reduction commitments under the Kyoto Protocol, should not adopt specific targets, but rather differentiated appropriate mitigation actions.

NV Governor Opposes Keystone

Citing water concerns, Nebraska Governor Dave Heineman (R) sent letters August 31 to President Obama and Secretary of State Hillary Clinton urging them to deny a permit for TransCanada's proposed Keystone XL oil pipeline from Alberta to Texas.

Airline Challenge Decision

Attorneys said August 31 that the Court of Justice of the European Union will issue an opinion by late this year on a challenge to the inclusion of U.S. airlines in the European Union's Emissions Trading System. The judge advocate of the court plans to issue an advisory opinion October 6, after which the 13-judge panel will issue its opinion.

Insurers Unprepared for Climate Risks

Ceres released a report September 1 finding that a majority of U.S. insurers are unprepared to manage climate change risks. Though climate change is likely to have an effect on extreme weather, only 11 of 88 major insurers have formal plans for addressing the growing risks.

Biofuel Production Up

The Worldwatch Institute unveiled a report August 30 that showed a 17 percent increase in global biofuel production between 2009 and 2010. The United States and Brazil continue to lead world production of ethanol, with 49 billion liters, or 57 percent of the world output, from the United States.

GJGNY On-Bill Payment Disclosure

On August 4, the New York legislature passed a bill requiring the Green Jobs-Green New York (GJGNY) Program to make sellers disclose certain information to purchasers about property that owes money for efficiency upgrades. The GJGNY, among other energy efficiency and renewable energy promotion programs, allows households and small businesses to pay for energy efficiency improvements over time on their normal utility bill. If the seller of property fails to provide the buyer with written notice of those on-bill payments, the seller can be held liable.

Paper Argues Asthma Related Illness to Increase with Ozone Levels

A paper titled "Modeling of Regional Climate Change Effects on Ground-Level Ozone and Childhood Asthma" in the September issue of the American Journal of Preventive Medicine predicts a rise in New York-area children's asthma-related emergency hospital visits through the 2020s, as climate change begets higher ground-level ozone concentrations.