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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Legislation: Looking Ahead in 2010

The United Nations Framework Convention on Climate Change concluded its negotiations December 19 with a political Copenhagen Accord that was not formally endorsed by the participants but which provides a basis for the Obama administration to claim a degree of success at the talks and encourage the Senate to pass comprehensive climate legislation this spring. The Accord lays out a broad call to action framework on issues spanning from emission targets to finance and transparency, the greater details of which will rely on the political decisions of individual member nations and subsequent international negotiations.

Many believe that the non-binding accord is unlikely to significantly affect the longstanding political considerations and economic concerns shaping the legislative agenda in the United States, in part because it fails to resolve major issues such as commitments by large developing nations, and also because of the difficult Christmas Eve vote on health care and the busy 2010 schedule, which will be dominated by health care, jobs legislation, and a financial reform package.

After the House passed a jobs bill December 15, Senate Democrats are now hoping in the coming weeks to wrap up work on jobs legislation, much of which will be paid for by unspent TARP funds. A number of clean energy provisions could be included in this jobs bill, including expansion of the Advanced Energy Manufacturing Tax Credit, extension of the Grants-In-Lieu-of-Tax-Credits, restoration of \$2 billion to the DOE's Loan Guarantee Program, extension of Bonus Depreciation, the creation of a Cash for Caulkers Program, a 30% investment tax credit for advanced biofuels, a Clean Energy Deployment Agency, and other programs to stimulate clean energy jobs.

The Finance Committee is scheduled to begin hearings and a markup of the climate legislation later this month, and Senator Rockefeller, Chairman of the Senate Commerce Committee announced in December that his committee will begin a markup of legislation in January as well. Senators John Kerry (D-MA), Joe Lieberman (I-CT), and Lindsey Graham (R-SC) plan to spend January writing their bill and getting it to the EPA, the CBO, and others for analyses ahead of floor debate in the spring.

Though most agree that passage of comprehensive climate change legislation is unlikely in 2010, the Administration and Democratic leaders in Congress are still pushing for passage of a carbon pricing mechanism. Should the Senate fail to pass climate legislation this year, it is very likely that they will move on an energy bill alone that could include some climate lite provisions such as a federal RES and additional clean tech provisions, as well as increase America's Energy Security, for which the Brookings Institution praised the Obama administration recently.

The EPA is becoming more likely to set a price on carbon. The Senate, however, is poised to consider a resolution to block EPA's greenhouse gas endangerment finding. While the language is not expected to be

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approved, Energy Committee Ranking Member Lisa Murkowski (R-AK) will begin what is sure to be a long fight over whether or not the EPA can regulate GHGs with her resolution that would create a one year moratorium on the EPA's authority to regulate emissions from stationary sources under the Clean Air Act. Congressman Darrell Issa (R-CA) is expected to introduce similar legislation in the House.

Other carbon pricing mechanisms include a carbon tax, a sector approach to cap and trade, a carbon link fee, and the joining of state and regional GHG reduction programs.

Energy companies that have fought climate legislation in Congress are also facing threats in states, where governors and legislatures are acting on their own to curb emissions. Eleven governors from the Northeast and Mid-Atlantic region adopted a low-carbon fuel standard December 30. The memorandum was signed by the governors of the RGGI states as well as Pennsylvania.

Wisconsin Governor Jim Doyle (D) signed the state's Clean Energy Jobs Act January 7, which is aimed at accelerating the state's green economy and creating as many as 15,000 green jobs by 2025. The act sets a 20% RES for 2020 and 25% for 2025 and sets graduated statewide electricity savings goals, leading up to a 2% reduction by 2015 and annual reductions thereafter.

According to a January 4 analysis, adopting measures to cut greenhouse gases would bolster Michigan's economy, creating jobs and saving money in the next few years. Changes suggested by the Michigan Climate Action Council would result in 129,000 net new jobs in 2025, direct net cumulative savings of about \$10 billion between 2010 and 2025, and a \$25 billion net gain in gross state product from 2010 to 2025.

Senate

Gillibrand Introduces Green IP Protection Resolution

Senator Kirsten Gillibrand (D-NY) introduced a resolution December 17 urging the administration not to weaken intellectual property protections in the course of negotiating in Copenhagen.

Renewable Energy Incentive Act Introduced

Senators Diane Feinstein (D-CA) and Jeff Merkley (D-OR) introduced the Renewable Energy Incentive Act (S. 2899) December 17. The legislation would extend the Treasury Grants Program until 2010 to allow renewable energy developers to take grants from the Treasury Department instead of claiming tax credits; the program is scheduled to expire in 2010. The bill also permits public power utilities to receive the grants, expands the solar investment tax credit to include manufacturing equipment for solar water heaters for commercial and community pools, and establishes a solar tax credit for consolidation of disturbed private land with high solar value.

The Senate is in recess until January 20.

House

The House is in recess until January 12.

Administration

White House to Expand NEPA

The Obama Administration is set to issue an executive order adding greenhouse gas emissions and climate change impacts to the list of factors federal agencies must take into account when evaluating projects and policies. The forty-year-old National Environmental Policy Act currently requires agencies to consider environmental factors such as land use, biodiversity, and air quality. Environmental groups have lobbied for

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the inclusion for several years, but several Senators, including James Inhofe (R-OK) and John Barrasso (R-WY), are on record for opposing expansion of the Act.

Department of Agriculture

Agriculture Department to Review EPA Analysis of Effect of House Climate Legislation

Agriculture Secretary Tom Vilsack announced December 18 that the Department of Agriculture will work with the EPA to review and make changes to the economic analysis used by the EPA to calculate the financial effects of the House climate bill. They will review the use of the Forest and Agricultural Sector Optimization Model, which may currently overestimate afforestation, as well as other assumptions that reduce farmer income from GHG emission offsets. This announcement came as Secretary Vilsack released the Department's economic analysis of the American Clean Energy and Security Act, which showed that agriculture would benefit from climate change legislation that includes a robust carbon offset program.

Department of Energy

DOE to Invest up to \$366 Million in Energy Innovation Hubs

DOE outlined plans on December 22 to invest up to \$366 million to establish and operate three new Energy Innovation Hubs, each of which will focus on accelerating research and development in a key energy area. The three hubs will focus on producing fuels directly from sunlight; improving energy-efficient building systems design; and developing advanced nuclear reactors. Each hub, to be funded at up to \$122 million over five years, will bring together a multidisciplinary team of researchers in an effort to speed research and shorten the path from scientific discovery to technological development and commercial deployment of highly promising energy-related technologies. The hubs are expected to begin work in 2010 and become fully operational by 2011. A Funding Opportunity Announcement has been issued for the Fuels from Sunlight Energy Innovation Hub, with a due date of March 29, and the FOAs for the other two hubs should be issued later this month.

DOE, FERC to Develop Nationwide Transmission Plans

On December 18, Energy Secretary Steven Chu and Federal Energy Regulatory Commission Chairman Jon Wellinghoff signed an interagency agreement to improve coordination of electricity transmission planning across the entire country using \$60 million in stimulus funding for the project. This is the first time that federal officials have funded programs to collaborate on transmission improvements across all three regions (eastern states, western states, and the intrastate system in Texas). The MOU gives DOE the lead on research and development of new technologies and FERC will focus on reliability and transparent, nondiscriminatory access.

Department of the Interior

BLM to Fast-track 31 Renewable Energy Projects

The Bureau of Land Management will accelerate the environmental analysis and public review process for 31 renewable energy projects in order to ensure their eligibility for stimulus funding by the December 2010 deadline. The first wave of projects to be subject to the accelerated processing includes 14 solar, seven wind, seven transmission, and three geothermal projects. Abbey said that the fast-tracked projects are those for which the developers have demonstrated to BLM that they have made sufficient progress in getting to the environmental review and public participation process.

Interior Department Tightens Leasing Rules

The Interior Department announced January 6 a tightening of environmental reviews before federal lands can be leased for oil and gas development, including more public comment and tougher restrictions on using congressionally approved means of expediting the leases. Secretary Ken Salazar said that the changes are needed to limit the litigation that has slowed down production on leases granted by the Bush Administration,

reduced industry certainty, and wasted millions of dollars. The changes were favored by Chairman Bingaman and House Natural Resources Chairman Nick Rahall (D-WV), but opposed by Ranking Member Lisa Murkowski and industry leaders who believe that this move will drive production overseas.

Department of Labor

Labor Department to Fund Clean Energy Jobs Training

The Labor Department announced January 6 that it is awarding almost \$100 million in stimulus grants for training programs that help dislocated workers, veterans, and minority groups find jobs in the clean energy sector. Twenty-five Energy Training Partnership Grants will prepare workers for jobs as hybrid and electric auto technicians, weatherization specialists, wind and energy auditors, and solar panel installers and will be tailored to jobs that are in demand locally. The programs are designed to lead to industry credentials and employment, including placement in registered apprenticeship programs.

Department of Treasury

Advanced Energy Manufacturing Tax Credits Announced

President Obama awarded \$2.3 billion via Advanced Energy Manufacturing Tax Credits (48C) on Friday, January 8. One hundred eighty three projects in forty three states will create thousands of high quality clean energy jobs; the stimulus funding will increase domestic manufacturing of advanced clean energy technologies. During his announcement, the President called for an expansion of the highly successful program, saying that there were three times as many technically acceptable applications than there was funding, and he reiterated the Vice President, Energy Secretary Chu, and numerous Senators' call for additional funding of up to \$5 billion for the program. Expansion of the program is likely in an upcoming jobs bill later this month.

Environmental Protection Agency

EPA Seeks Proposals to Capture and Use Methane

The Environmental Protection Agency announced January 8 a solicitation for up to \$5 million in grants to fund innovative projects that reduce methane emissions in 21 countries. They expect to award grants for up to 35 cooperative assistance agreements through the Methane to Markets Partnership, a public-private partnership that reduces GHG emissions by promoting the cost-effective, near-term recovery and use of methane. Proposals are due April 15 and should support feasibility studies, technology transfer, technology deployment, training, emission inventories, and other methane capture and reuse projects.

EPA Proposes New Smog Standards

On January 7, the EPA released a draft rule that proposes strict new smog standards. The agency proposed to set the health-based primary standard for smog within a range of 60 to 70 parts per billion (ppb) when averaged over an 8-hour period. The Bush administration tightened the ozone limits from 84 ppb to 75 ppb in 2008, despite scientific advisers' recommendations to issue a standard between 60 ppb and 70 ppb. The EPA also proposed a separate secondary standard aimed at protecting vegetation and ecosystems, including parks, wildlife refuges and wilderness areas. The draft rule recommends setting that standard within the range of 7 to 15 parts per million-hours. Such a standard would be based on a cumulative, weighted total of daily 12-hour ozone exposures to plants and crops over a three-month period. After a sixty day comment period, EPA plans to issue its final standards by August 31.

EPA Proposes To Double Enforcement Priorities

The EPA proposed January 4 doubling the number of categories it will prioritize for enforcement over the next few years, raising questions about whether the proposed list is so broad that it will dilute the agency's focus on key needs at a time when the enforcement program has seen a diminution of its enforcement results. Under its current set of priorities for fiscal years 2008-10, the EPA is targeting concentrated animal feeding

operations, old sewer systems and stormwater runoff in its water program; new source review permit violations and toxics in its air program; and financial assurance in its hazardous waste program. But EPA enforcement data for FY09 shows a large drop of more than \$6 billion in injunctive relief compared to FY08 – the last full year of the Bush administration’s enforcement efforts – and a similarly massive drop of roughly 3 billion pounds of pollution reduced. The agency’s proposed list of priorities for 2011-13 carries over many of the existing priorities and adds several new sectors that would double the scope of the agency’s enforcement focus, including environmental justice, surface impoundments, RCRA corrective action enforcement, resource extraction, wetlands, marine debris, and protection standards for pesticides.

EPA Faces Legal Hurdles Over Climate Rules

A coalition of agriculture, mining, and energy groups filed a petition on December 23 with the U.S. Court of Appeals for the District of Columbia Circuit seeking review of EPA’s December 15 finding that GHGs endanger human health. The Southeastern Legal Foundation filed a petition with the EPA on behalf of nine Republican members of Congress asking the agency to reconsider the finding in the light of climategate. The Competitive Enterprise Institute filed a December 2 petition to the EPA amending their earlier filing that sought delay of the finding.

The American Chemistry Council, American Petroleum Institute, Fertilizer Institute, and Energy Recovery Council have filed separate petitions with the DC Circuit seeking review of the GHG reporting rule.

The Small Business Association warned in a letter December 23 that the EPA improperly certified that it need not convene special panels to review the regulatory impact of its climate rules on small businesses. Under the Regulatory Flexibility Act, EPA and OSHA must certify that their proposed rules will not harm a substantial number of small businesses or else conduct small business review panels to consider regulatory alternatives, but SBA believes that the EPA unlawfully certified that neither the proposed rule regulating mobile GHGs nor the tailoring rule would require the panels because they believe that at least 1,200 small businesses would be affected.

Industry groups who oppose the pending rules are urging moderate Democrats to back legislation to delay the rules by up to two years, and Senator Murkowski is expected to introduce a resolution to block EPA’s final finding later this month. Congressman Darrell Issa (R-CA) plans to introduce a House companion to the Senate resolution.

EPA Permit Responses Signal BACT Shift

The EPA is moving toward requiring integrated gasification combined cycle (IGCC) power generating technology and cleaner-burning fuels such as lower-emitting coal and natural gas as a best available emissions control technology to limit GHGs in permits for new or modified coal fired power plants. In one December 15 order in response to a petition to object to a Title V permit issued in Arkansas, the EPA is requiring the state to better justify why it rejected IGCC. On another, the EPA agreed the permit flawed because Kentucky state regulators failed to consider natural gas as an alternative. Another Kentucky petition on December 22 demonstrates that the EPA is willing to require regulators to consider cleaner sources of coal.

EPA Sends Renewable Fuels Standard Draft Final Rule to White House

On December 22, the Environmental Protection Agency sent a final draft rule determining what biofuels meet the requirements of the renewable fuels standard to the White House Office of Management and Budget. The rule, which is expected to be finalized as soon as mid-January, would implement the standard which mandates that renewables produce 20 percent fewer greenhouse gas emissions than gasoline, as measured over the fuel’s entire life cycle from production to use. The law exempts ethanol produced in facilities built or under construction before December 19, 2007, meaning much of the ethanol produced now would not be held to that standard for emissions.

Personnel

John Norris was confirmed to the Federal Energy Regulatory Commission December 24 after FERC Chairman Jon Wellinghoff agreed to look more closely into a Maine hydropower relicensing issue at the request of Sen. Olympia Snowe (R-ME). A former Iowa utility regulator, Norris takes the seat of former Chairman Joseph Kelliher, who stepped down a year ago.

The Senate confirmed two high-level Environmental Protection Agency officials December 24 by voice votes, allowing Robert Perciasepe to become EPA deputy administrator and Paul Anastas to become director of the agency's Office of Research and Development.

Perciasepe, who is assuming EPA's No. 2 post, was the agency's assistant administrator for water and then its assistant administrator for air in the Clinton administration. Prior to that, he was a Maryland environmental official. Since leaving the Clinton administration, he has worked for the Audubon Society, where he became chief operating officer. His nomination was held up by Sen. George V. Voinovich (R-OH), who was not critical of the nominee but wanted to pressure EPA for more thorough answers on questions about the agency's economic analysis of climate change legislation.

Anastas, a chemist by training, served in the White House Office of Science and Technology Policy during the Clinton administration. Prior to that, he worked for the EPA in chemistry offices. After leaving the Clinton administration, he directed the Green Chemistry Institute, based at the American Chemical Society. Most recently he has been a chemistry professor at Yale University. His nomination was held up by Sen. David Vitter (R-LA), who was using his hold on the nomination to pressure EPA to allow an independent review of the agency's assessment of health risks from formaldehyde, a subject of research reported through EPA's Integrated Risk Information System.

Miscellaneous

Studies Demonstrate Greater Climate Change at More Rapid Pace

In the December 20 issue of *Nature Geoscience*, researchers from Yale University examining long-term climate models found that the current increases in atmospheric CO₂ could lead to global temperatures higher than previously expected.

In the December 24 issue of *Nature*, researchers from the California Academy of Sciences calculated ecosystems must shift geographically .42 km per year to keep pace with changing temperatures as a result of climate change. They estimated that nearly one-third of ecosystems will face temperature increases faster than the highest possible migration rates for the plants that live in those areas, and that overall, expected temperature increases in most areas of the world will rise faster than the ability of wildlife to adapt, leading to mass extinction of many species.

Compiling satellite readings from six large lakes in CA and NV over the past 18 years, NASA's Jet Propulsion Laboratory announced findings December 17 that lakes' water temperature had risen twice as fast as regional air temperatures.

Scientists Urge Ending Mountaintop Mining

A group of 12 environmental scientists recently reported in *Science* that mountaintop-removal coal mining destroys streams and threatens human health at such alarming rates that the government should stop granting new permits for it. Mountaintop-removal mining has destroyed roughly 2,040 square miles of land in Appalachia and buried more than 2,000 miles of streams, and the consequences are pervasive and irreversible.