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ENERGY AND ENVIRONMENT UPDATE
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Energy and Climate Legislation

As Congress returns from the July 4th recess, the future of climate and energy legislation is still uncertain. Though Majority Leader Harry Reid (D-NV) is expected to have a bill on the floor perhaps as early as the week of July 19, the contents of that package are still unknown, and though there is some agreement as to which pieces to include in the march toward 60 votes, the quantity and quality of those pieces are still to be determined. Senators are likely to be presented with options of what could be included in the package this Tuesday or Wednesday, and a debate is expected either in mid-July or the first of August if Majority Leader Reid keeps the Senate in session that long.

Though the Obama Administration has continued its call to put a price on carbon, it increasingly appears that if Senate leadership hopes to include any price at all, it will be on the utility sector alone, language for which is currently being drafted by Senators Jeff Bingaman (D-NM) and Olympia Snowe (R-ME). If Majority Leader Reid opts away from a climate bill, he is likely to cobble together energy pieces from a number of packages, beginning with the bipartisan bill passed out of the Senate Energy Committee last summer. Other likely sources of language will come from Senator Dick Lugar (R-IN)'s recently unveiled energy plan, as well as several pieces that address the Gulf of Mexico oil spill, including the bipartisan bill recently passed out of the Energy Committee and a proposal from Senator Bob Menendez (D-NJ) that eliminates the liability cap, and numerous energy tax pieces on which the Senate Finance Committee is currently working.

The Congressional Budget Office released an analysis last Wednesday that shows that the American Power Act would save \$19 billion from the federal deficit over 10 years and would bring in over \$750 billion through 2020 from the sale of carbon credits.

A coalition comprised of several environmental groups sent a letter to President Obama last Tuesday urging the White House to take a bigger leadership role in the Senate climate and energy negotiations, including helping to draft a bill that responds to the Gulf of Mexico oil spill and limits greenhouse gas emissions while creating jobs and protecting the health of Americans. The Alliance for Climate Protection, the BlueGreen Alliance, the Center for American Progress Action Fund, Environment America, the Environmental Defense Fund, the League of Conservation Voters, the National Wildlife Federation, the Natural Resources Defense Council, and the Union of Concerned Scientists signed onto the letter.

As the Senate works to piece together a package that can garner 60 votes, leadership will have to carefully weigh which pieces to include in order to secure support from enough moderate, coal and rust-belt Democrats, as well as a few Republicans. Just as passage of other big ticket items this Congress necessitated it, this will require leadership from the White House as well its greatest supporters such as Senators John Kerry (D-MA) and Joe Lieberman (I-CT).

One thing is for certain, however, and that is that the Senate is facing an increasingly short timeframe before the August recess and midterm elections, and in addition to addressing climate and energy legislation, they will need to confirm a Supreme Court Justice, finish the tax extenders legislation, and

address several other pressing matters. If the Senate is able to pass an energy or energy-climate bill, differences between it and the Waxman-Markey legislation the House passed last summer will have to be reconciled either before the November midterm elections or during a lame duck session.

Congress

Congressional Offices Protest Yucca Decision

A group of 91 members of Congress led by Senator Patty Murray (D-WA) and Congressman Doc Hastings (R-WA) sent a letter last Thursday to Energy Secretary Steven Chu asking that he stop moving forward on closing the nuclear waste repository site at Yucca Mountain, Nevada. This year the Obama Administration stopped funding the project, which has been in the works for more than two decades. Earlier this year, Washington and South Carolina filed suits questioning whether the administration has the legal right to halt the project.

The Nuclear Regulatory Commission board recently ruled that the administration did not have the right to withdraw its license for the project without Congressional approval.

Additional Issues to Address Before August Recess

When the Senate returns from the July 4th recess this week, they plan to continue work on the tax extenders bill. Senate leadership has been unable to advance the legislation (H.R. 4213) thus far, as several motions to cut off debate on a substitute amendment have fallen short of the 60-vote threshold required to move forward on legislation that includes an extension of emergency unemployment insurance benefits.

Legislation Introduced

On June 28, Representative Earl Blumenauer (D-OR) introduced legislation with seven House colleagues (H.R. 5612) that would provide a 30 percent tax credit through 2016 to investments in geothermal energy. Geothermal energy resources exist in all 50 states, and there are over 40 plants in California that contribute to almost 5 percent of the energy in the state.

Upcoming Hearings

The House and Senate will return from the July 4th recess the week of June 12.

On Monday, the Management, Investigations, and Oversight Committee of the House Homeland Security Committee will hold a hearing titled The Deepwater Horizon Oil Spill Chain of Command: An Examination of Information Sharing Practices During a Spill of National Significance.

On Wednesday, July 14, the House Natural Resources Committee will mark up mineral energy and resources consolidation legislation.

The same day, the House Agriculture Committee will hold a business meeting to consider the Rural Energy Savings Program Act (H.R. 4785), which authorizes the USDA's Rural Utilities Service to provide interest-free loans to financial institutions, which would then provide loans to qualified consumers who wish to implement energy efficiency measures.

Administration

Efforts to Promote US Exports Underway

Last Tuesday, the National Export Initiative released a full progress report. Since President Obama called for the NEI in his State of the Union Address, the initiative has made significant progress on each of its five main objectives, including improving advocacy efforts on behalf of U.S. exporters, increasing access to export financing, reinforcing efforts to remove barriers to trade, enforcing trade rules, and promoting internationally policies that lead to strong, sustainable and balanced economic growth.

On Wednesday, President Obama announced his appointments to the President's Export Council. The 40-member group is composed of business and labor leaders as well as representatives from the Administration, House, and Senate who will offer advice on how to promote U.S. exports, jobs, and growth. In March, President Obama announced that Boeing CEO James McNerney will serve as Chair of the PEC, and Xerox CEO Ursula Burns will serve as Vice Chair.

Advanced Vehicle Battery Market Growing

During a speech at the Smith Electric Vehicles factory in Kansas City, MO, last week, President Obama announced that the U.S. share of the world market for advanced batteries for electric and hybrid vehicles would grow by a factor of 20, up to 40 percent of the world's market, by 2015.

President Calls for Expansion of 48C Program

During a speech at the University of Nevada with Senate Majority Leader Harry Reid last Friday, President Obama continued touting economic progress since taking office. Though much of the speech was a detailed outline of improvements in the economy, the President also reiterated his call for a \$5 billion expansion of the Advanced Energy Manufacturing Tax Credit, the widely successful and overly subscribed program that encourages development in the manufacturing sector by awarding a 30 percent tax credit to successful applicants.

Department of Energy

Solar Energy Demonstration Projects Announced

Energy Secretary Steven Chu, Interior Secretary Ken Salazar, and Majority Leader Harry Reid announced the site of the new Solar Demonstration Zone in Nevada last Thursday. The Solar Demonstration Zone will be located on a 25 square mile area in the southwest corner of the Nevada Test Site, a former nuclear site, on lands owned by the Department of Interior's bureau of Land Management and administered by DOE's National Nuclear Security Administration. The two Secretaries signed an interagency Memorandum of Understanding that will enable DOE to use the site to demonstrate innovative Concentrating Solar Power technologies. The Zone will complement BLM's establishment of 24 Solar Energy Study Areas on public lands in the U.S. Southwest by helping to ensure that the most advanced CSP technologies are ready for commercial deployment.

BLM and DOE are also working in close coordination with the U.S. Air Force to identify and address potential problems with locating and operating the Zone on the Nevada Site, and both the DOE and the DOI will continue to collaborate with the Air Force and the Department of Defense on similar projects near military installations across the country.

Domestic Emissions Up for 2010

The Energy Information Administration released its latest short-term energy outlook last week and concluded that domestic emissions of CO₂ would rise 3.2 percent this year. The agency also estimated that emissions from the burning of natural gas, coal, and petroleum will rise an additional 1.6 percent in 2011 after falling 7 percent last year. The outlook credits the 2010 rise to projected economic growth and the increased use of coal and natural gas in the electric power sector, and the expected 2011 increase may be attributed to an increased demand for gasoline, diesel, and jet fuel in the transportation sector and to the continued demand for more coal from electric utilities.

\$67 Million for CCS Projects

The Department of Energy announced \$67 million in grants over the next three years for 10 advanced carbon capture and sequestration technology projects for existing and new coal power plants last Wednesday. The projects will improve the efficiency and lower the cost of CCS so that it can add less than 30 percent to the price of new pulverized coal plants and 10 percent for coal gasification plants.

State Energy Program Begins to Receive Funding

A state-based program administered by the Department of Energy, the State Energy Program, is on track to obligate \$3.1 billion in Recovery Act funds by September 30 for renewable energy and energy-

efficiency projects after encountering initially delayed progress. Thus far, \$2.5 billion has been obligated for projects via grants, rebates, and revolving loans.

Energy Efficient Lighting Could Save \$2.2 Million

On July 8 the Inspector General released an audit report that detailed the Department of Energy's role as the lead agency for promoting new technologies and helping other federal agencies to conserve energy. However, an audit of 96 buildings at seven DOE sites found that the agency continues to use outdated, less efficient, lighting systems. About a third of the buildings did not use occupancy sensors, and 80 percent did not use scheduling systems to automatically turn off lights. The report concluded that DOE could save over \$2.2 million per year by using the light technology it has promoted and for which it has provided millions in research and development funding.

\$18.2 Million for Nuclear Research and Training

The Department of energy awarded \$18.2 million to U.S. colleges and universities last Thursday to bolster their nuclear energy research and train scientists and engineers. The Nuclear Energy University Program is providing \$13.2 million to 39 institutions to upgrade their research reactors and buy laboratory equipment, and \$5 million will support 85 scholarships for undergraduate students and 32 fellowships for graduate students in engineering and science programs related to nuclear energy.

Department of Transportation

Nearly \$300 Million for Streetcar and Bus Projects

The Department of Transportation, through the Federal Transit Administration, announced July 8 \$293 million in federal support for streetcar and bus projects around the country. The Department will help to fund six streetcar projects with \$130 million from the Urban Circulator grant program, and another \$163 million from the Bus and Bus Facilities Livability Program will go to 47 bus vehicle and facility projects in 31 states. The programs are designed to further the Administration's livability initiative, which seeks to improve quality of life by coordinating transportation, housing, and environmental decisions.

Environmental Protection Agency

EPA Proposes New Interstate Rules

On Tuesday, July 6, the EPA proposed interstate rules to replace its Clean Air Interstate Rule by requiring 31 Eastern and Midwestern States and the District of Columbia to curb emissions of sulfur dioxide and nitrogen oxides from power plants beyond what was required under CAIR, which was overturned by the U.S. Court of Appeals for the District of Columbia in 2008. The proposed rule, which would take effect in 2012, would strictly limit interstate trading to cover unforeseen increases in power plant emissions, but would allow unlimited intrastate trading between the plants themselves. EPA estimates that by 2014, its proposed interstate rule would reduce SO₂ emissions by 6.3 million MT per year, or 71 percent below 2005 levels, and NO_x emissions by 1.4 million MT per year, or 52 percent from 2005 levels.

CAIR was issued in 2005 to reduce ozone and fine particle pollution from power plants that transported across state lines and to help downwind states attain air quality standards by establishing an interstate emissions trading scheme. It originally applied to 28 states and DC, but the updated version now also includes. The rule was overturned in 2008 because EPA had failed to adequately ensure that the upwind emissions reductions would be sufficient to help downwind states meet the standards, and because the agency improperly tied SO₂ and NO_x emissions reductions required by CAIR to acid rain portion of the Clean Air Act.

EPA will accept comments on the proposal for 60 days, and the agency will hold three public hearings on the proposal. The final standards are expected in August.

Worries that this proposal could also be rejected in court could prompt Congress to move forward with legislation. One such bill (S. 2995) from Senators Tom Carper (D-DE) and Lamar Alexander (R-TN) would reduce power plants' SO₂ emissions 80 percent by 2018 and NO_x emissions 50 percent and mercury

emissions 90 percent by 2015. Hearings on the bill have occurred in the last year, and Senator Carper recently stated that he plans to seek a markup once the EPA releases its modeling of the legislation.

25 Lawsuits Challenge GHG Limits and Fuel Economy Rules

With many industries objecting to GHG regulation under the Clean Air Act because it could harm their businesses, industry groups have filed 25 lawsuits in the past few weeks challenging a final rule establishing limits of greenhouse gas emissions from cars and light trucks and increasing fuel economy. Eighteen of the suits were filed July 6, the deadline for filing challenges to the emissions limits. The EPA published the GHG limits and fuel economy increase May 7 in a final joint rulemaking with the National Highway Traffic Safety Administration in the first federal effort to place mandatory control requirements under the Clean Air Act.

Groups Support EPA's Biomass Decision

Four conservation groups, the Conservation Law Foundation, the Natural Resources Council of Maine, Georgia ForestWatch, and Wild Virginia, filed a motion last Tuesday to intervene in a lawsuit against the EPA to defend the agency's decision not to exempt emissions from biomass energy production from the June GHG limitations from large stationary sources. The agency announced in June that while the rule will include biomass for the time being, it will soon take comment on exempting emissions from some types of biomass burning, and will make a final decision by July 2011. The groups said that some biomass burning may produce more GHG emissions than other fuels, and should therefore be included in the rule.

EPA Submits Enforcement Plan to OMB

On July 8, the EPA submitted to the White House Office of Management and Budget a proposed federal implementation plan to ensure that GHG permitting requirements would be enforced across the country. The federal implementation plan, Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions, would make the permitting requirements enforceable even in states that do not have their own laws and regulations to implement the agency's tailoring rule.

Federal Housing Finance Agency

Fannie and Freddie Assessment Could Threaten Energy Efficient Loan Program

The Federal Housing Finance Agency announced last week that the Property Assessed Clean Energy Program, which encourages homeowners to invest in renewable energy and energy efficiency improvements with financing at a municipal bond rate, could damage the already fragile mortgage system. The FHFA has urged state and local governments to put the program, which attaches the loans to property tax bills, on hold. The Office of the Comptroller of the Currency recently said that the approach poses significant risk to homeowners.

Miscellaneous

China to Host October Climate Change Negotiations

Though the official announcement is expected sometime after July 12, the October round of UNFCCC climate negotiations will be held in Tianjin, China. The meetings will be the final round of large scale UN-sponsored meetings before the December Conference of Parties summit in Mexico, and will be the first to take place in China, possibly paving the way for China to host the 18th COP in 2012. But first, the UN has one more set of negotiations before the China talks, a set of inter-sessional negotiations August 2-6 in Germany.

Chinese and Indian Emissions Increase

The Netherlands Environmental Assessment Agency released a study July 1 that noted that while global CO2 emissions remained stable in 2009, increases in China and India offset decreases in industrialized countries. The study, No Growth in Total Global CO2 Emissions in 2009, shows that emissions from fossil-fuel combustion fell 7 percent in industrialized countries, while in China and India, they increased by

9 and 6 percent. The International Energy Agency last year forecasted that global emissions would drop by 3 percent in 2009.

Two New Reports from Ceres

According to a new report from Ceres and Navigant Consulting, utilities across the U.S. will need become more energy efficient and environmentally sustainable in order to remain competitive and attract necessary investment in the upcoming decades. The report, "The 21st Century Electric Utility: Positioning for a Low-Carbon Future," contends that a comprehensive energy bill will be necessary to accomplish this.

Another report released last week outlines 95 climate-change or sustainability related shareholder resolutions that were filed with U.S. companies in 2010. 47 of the resolutions were withdrawn after successful negotiations, and 16 percent garnered more than 30 percent of voting shares in annual meetings.

OK Passes Energy Credits Legislation

Oklahoma enacted legislation (H.B. 3024) June 9 to modify and limit the application of tax credits for manufacturing, zero-facilities, hydrogen fuel cell vehicles, and the rehabilitation of historic property. The legislation also creates a new credit for the manufacture of electric vehicles.

WCI Would Save \$100 Billion

The Western Climate Initiative released a new report July 6 that shows that its GHG reduction plan would save the participating states and providences about \$100 billion in reduced energy costs by 2020. The analysis also found that the 11 member entities could achieve their goal of reducing GHGs to 15 percent below 2005 levels by 2020 while also supporting continued economic growth.

VT Updates Solar Energy Tax Credit

Vermont enacted legislation (H.B. 781) June 4 to amend its solar energy tax credit to make it available to investments made after January 1 in small solar energy plants with a capacity of 2.2 MW or less. The legislation requires that plant owners file a petition by this Thursday with the public service board for a certificate of good service and an application for the credit with the clean energy development board. The legislation also makes the credit applicable against personal income tax, and may be carried forward for five years.

MA Court Upholds Wind Farm Project

The Massachusetts Supreme Judicial Court upheld a lower court finding July 6 that state environmental officials had acted properly in ruling that a wind farm project proposed for the western part of the state complied with the state's Wetlands Protection Act. As a result of the ruling, Iberdrola Renewables will construct 20 wind turbines in the 30-MW Hoosac Wind Project in Berkshire County, MA.

Switzerland and Mexico Plan Climate Strategy Meeting

Switzerland and Mexico will co-host a ministerial meeting September 1-3 in an attempt to increase the prospects for an international climate change agreement at the UNFCCC's Conference of Parties in December. The meeting will focus on issues related to the long-term financing of climate change mitigation and adaptation measures in underdeveloped countries.

France Seeks CCS Project Funders

On July 8 the French government called for demonstrations of interest from manufacturers in an effort to identify French candidates for special EU funding for carbon capture and storage and renewable energy projects. The EU's 2009 climate-energy package created a New Entrant Reserve 300 fund to finance industrial-scale demonstration projects for renewable energy and CCS projects. The mechanism set aside CO2 allowances worth up to \$11.37 billion for new entrants into the EU Emission Trading System.