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ENERGY AND ENVIRONMENT UPDATE **February 6, 2011**

Energy and Climate Debate

Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) met with President Obama at the White House February 2 to discuss energy legislation for the 112th Congress.

Though significant effort awaits Administration officials and congressmen hoping to progress on energy legislation, Senator Bingaman noted that he and the president agreed that Congress is in a good position to develop bipartisan legislation to advance the nation's energy and economic security.

The two leaders spoke about a number of energy issues during their meeting, most significantly the 80 percent clean electricity standard for which President Obama called during his January 25 State of the Union address. Senator Bingaman has historically been in favor of a renewable electricity standard but opposed to a standard that included energy sources such as nuclear, but earlier in the week, he signaled that he is open to negotiations on the qualifying energy sources in a standard should forward movement be possible this Congress.

Noting the conflict in Egypt and the pressing need to increase America's energy security and regain a competitive advantage in the global clean energy market, Senator Bingaman outlined his energy agenda January 31 during a speech at the New Democratic Network. His priorities include addressing energy efficiency in appliances, manufacturing, buildings, and vehicles; boosting financing options and tax support for clean energy technologies; passing oil spill reform legislation; increasing advanced energy technology research and development; developing some sort of clean energy standard; and protecting the electrical grid from cyberattacks. The Senator is planning to reintroduce a revised package of appliance standards and manufacturing energy efficiency measures in the next few weeks. Senator Bingaman and the White House are ironing out details of a broad proposal to require that 80 percent of the country's electricity come from clean sources such as solar, wind, nuclear, clean coal, and natural gas by 2035.

Two other pieces of news that will impact the energy agenda: the Senate Appropriations Committee announced February 1 that it will include no earmarks in the spending bills it writes this year, and President Obama will release his fiscal year 2012 budget February 14.

Congress

Upton Releases EPA Draft

House Energy and Commerce Chairman Fred Upton (R-MI) unveiled draft legislation February 2 aimed at prohibiting the Environmental Protection Agency from regulating GHGs. Congressman Upton's Energy Tax Prevention Act of 2011 is widely seen as the lead Republican vehicle for blocking agency GHG rules by barring the agency from regulating GHGs under the Clean Air Act. Senator James Inhofe (R-OK), the ranking Republican on the Senate Environment and Public Works Committee, and Representative Ed Whitfield (R-KY), chairman of the House Energy and Commerce Subcommittee on Energy and Power, joined Congressman Upton in releasing the draft legislation.

Klobuchar to Introduce RES

Senator Amy Klobuchar (D-MN) said February 3 that she will soon introduce legislation with Senator Tim Johnson (D-SD) that would create a renewable electricity standard. Senator Klobuchar praised President Obama's State of the Union call for a wider clean energy standard for utilities, and suggested that her effort could be widened to include a broader array of energy sources. Her bill is also expected to include an energy efficiency standard and tax credits for biofuels producers.

Shaheen to Introduce Efficiency Legislation

Senator Jeanne Shaheen (D-NH) is planning to introduce energy efficiency legislation in the next few weeks. The bill is expected to include many of the efficiency measures in last year's energy legislation, as well as a Rural Star program for electric co-ops and an extension of the Energy Department's building renovation loan program.

EPA Delay Alternative

Senators Tom Carper (D-DE) and Bob Casey (D-PA) are beginning discussions over whether to introduce legislation that would blunt the force of a bill to handcuff Environmental Protection Agency regulations if one ever reaches the Senate floor. The two senators considered a tailoring measure at the end of last year that would exempt small sources from EPA's climate rules while allowing the agency to regulate larger polluters.

Oil Spill Legislation Negotiated

Senators Mary Landrieu (D-LA) and Mark Begich (D-AK) said last week that they are close to striking a deal on a bill that would increase the \$75 million oil spill cap while preventing smaller companies from being priced out of the market because of higher insurance. Senator Landrieu is suggesting two separate bills; one would go through the Senate Environment and Public Works Committee and would lift the liability cap and send Clean Water Act penalties to regions affected by the spill, and another would go through the Energy and Natural Resources Committee and would help to reorganize the Bureau of Ocean Energy Management, Regulation and Enforcement.

Spending Cuts Unveiled

Unveiling a discretionary spending limit for the remainder of the current budget year, House Republicans laid out their first marker February 3 in what is likely to be a series of battles over the level of federal spending in the coming months. The plan would result in a cut of about \$41 billion from non-security programs. A continuing resolution with the new, lower level will come to the House floor the week of February 14. Many House members were hoping to see at least \$100 billion in non-security savings this fiscal year, and may offer amendments to achieve that goal.

Some Defend EPA's Authority

Congressmen Henry Waxman (D-CA) and John Dingell (D-MI) called on their colleagues February 3 to urge House leaders to reject attempts to delay or remove the Environmental Protection Agency's authority to regulate GHGs. The two former House Energy and Commerce Committee chairmen wrote a Dear Colleague letter asking their colleagues to protect the EPA's authority under the Clean Air Act.

Committee Assignments

Senator Jack Reed (D-RI) will head the Senate Appropriations Subcommittee on Interior, Environment and Related Agencies, which has jurisdiction over funding for the Environmental Protection Agency, the Interior Department, and the White House Council on Environmental Quality. Senator Dianne Feinstein (D-CA) previously served as chair, but will not chair the Appropriations Subcommittee on Energy and Water Development. Senator Lisa Murkowski (R-AK) will serve as Ranking Member on the Interior, Environment, and Related Agencies Subcommittee. Senators Reed and Murkowski will be joined by Senators Feinstein, Patrick Leahy (D-VT), Barbara Mikulski (D-MD), Herb Kohl (D-WI), Johnson (D-SD), Ben Nelson (D-NE), Jon Tester (D-MT), Landrieu, Lamar Alexander (R-TN), Thad Cochran (R-MS), Susan Collins (R-ME), Ron Johnson (R-WI), Roy Blunt (R-MO), and John Hoeven (R-ND).

Legislation Introduced

Senator John Barrasso (R-WY) introduced legislation (S. 228) January 31 that would strip the federal government of any authority under any existing law to regulate greenhouse gas emissions. The Defending America's Affordable Energy and Jobs Act would prevent federal action on climate change without explicit congressional authorization. Senators Inhofe, Blunt, Mike Enzi (R-W), David Vitter (R-LA), Pat Roberts (R-KS), Jerry Moran (R-KS), John Thune (R-SD), John Cornyn (R-TX), Orrin Hatch (R-UT), and Mike Lee (R-UT) cosponsored the legislation.

The same day, Senator Jay Rockefeller (D-WV), along with Senators Jim Webb (D-VA), Claire McCaskill (D-MO), Johnson (D-SD), Joe Manchin (D-WV), Nelson (D-NE), and Kent Conrad (D-ND), introduced legislation (S. 231) that would delay the Environmental Protection Agency from regulation greenhouse gas emissions under the Clean Air Act for two years.

Senator Carl Levin (D-MI) introduced legislation (S. 232) to more than double the number of vehicles per manufacturer eligible for a \$7,500 tax credit for plug-in hybrid and electric vehicles. Currently the tax credit is phased out over six quarters after a manufacturer sells 200,000 vehicles, but the bills would raise that cap to 500,000. Representative Sandy Levin introduced companion legislation (H.R. 500) the previous week.

Majority Leader Harry Reid (D-NV) was joined by Senators Feinstein and Barbara Boxer (D-CA) in introducing legislation (S. 234) to provide for enhanced safety and environmental protection in pipeline transportation and to provide for enhanced reliability in the transportation of US energy products by the pipeline.

Upcoming Hearings

Most Senate committees will not meet during the February 7 week due to a Democratic caucus retreat.

The House Energy and Commerce Subcommittee on Energy and Power meets February 9 for a hearing on The Energy Tax Prevention Act of 2011. The legislation would prevent GHG emissions from being subject to regulation under the Clean Air Act.

The House Oversight and Government Reform Committee will hold a hearing February 10 to examine regulatory barriers that are impeding job creation. Committee Chairman Darrell Issa (R-CA) has promised aggressive oversight of the Environmental Protection Agency.

Administration

Obama Proposes Buildings Initiative

At a February 3 appearance at Pennsylvania State University, President Obama announced a new Better Buildings Initiative. The program is intended to make domestic commercial buildings 20 percent more energy efficient by 2020 through cost-effective upgrades and incentives such as tax credits. The initiative is designed to reduce energy bills for businesses by about \$40 billion annually. The five components of the new initiative will be in the president's fiscal year 2012 budget, and will create a new and more effective tax incentive for business owners seeking to upgrade, increase access to financing, launch a Race to Green competitive grant program, train the next generation of commercial building technology workers, and call on the private sector to upgrade their facilities and make investments that will decrease their energy use and create jobs.

Department of Energy

DOE Pursues SunShot Initiative

Energy Secretary Steven Chu announced details of the Department's SunShot initiative February 4 to reduce the total costs of photovoltaic solar energy systems by about 75 percent so that they are cost competitive at large scale with other forms of energy without subsidies before the end of the decade. By reducing the cost of utility scale installations to roughly \$1 a watt, solar energy systems could be broadly deployed across the country, thus increasing American economic competitiveness and helping the nation

regain leadership in the global solar PV market. As a part of the initiative, the Department of Energy is awarding \$27 million in projects to support the development, commercialization, and manufacturing of advanced solar energy technologies. Senator Bernie Sanders (I-VT) applauded the announcement, saying that he would integrate much of the plan into his Ten Million Solar Roofs Act, which he plans to reintroduce in the coming months.

DOE Facilitates Air Conditioner Deployment

Energy Secretary Steven Chu announced February 3 that the Department is joining with the private sector to support market-based efforts to develop and deploy next generation high efficiency air conditioners for commercial buildings. As part of a voluntary program, the Department worked with members of the agency's Commercial Building Energy Alliances to develop new performance criteria for rooftop unit air conditioners.

Court Vacates Transmission Study

The U.S. Court of Appeals for the Ninth Circuit ruled February 1 that the Department of Energy must reconsider its designation of regional zones for possible construction of electrical transmission lines because of inadequate consultation with states and failure to conduct an environmental study. The federal transmission zones have been a sore point for states trying to prevent federal encroachment on the traditional role of states in the approval of transmission siting.

Inspector General Warns of Attacks

The Department of Energy's inspector general released a report February 1 concluding that agency does not have enough statutory authority to protect the nation's electricity grid from a cybersecurity attack. The *Federal Energy Regulatory Commission's Monitoring of Power Grid Cyber Security* report confirmed what FERC commissioners have already told Congress the past two years: that the grid remains vulnerable to security threats that could cause major blackouts, threaten public safety, and result in huge economic losses.

DOE and EPA to Collaborate on Energy Star

The Department of Energy announced February 1 that it will work with the Environmental Protection Agency to identify products that exceed Energy Star requirements by adding a new tier to the voluntary energy efficiency product labeling program. The new tier will be limited only to product categories for which the Department of Energy has significant efficiency data.

Department of Interior

Solar Energy Zones Criticized

Environmental groups led by the Sierra Club criticized a proposed plan February 2 by the Department of Interior that would allow development of large-scale solar facilities on as much as 21.5 million acres of public land, urging the agency to adopt a scaled-back alternative. The remarks came at the first of 14 public meetings to be held across the nation on the Bureau of Land Management's draft solar programmatic environmental impact statement, which identified solar energy zones in six Western states.

Environmental Protection Agency

No Dramatic Limits Expected

The Environmental Protection Agency's assistant administrator for air and radiation said February 4 that the agency will not impose dramatic limits on GHGs from electric power plants in the new source performance standards that will be released in July. New source performance standards issued under Section 111 of the Clean Air Act apply to new and modified facilities in specific industrial sectors.

Sustainability Communities Program Formed

The Environmental Protection Agency formed the Sustainable Communities Building Blocks program February 3. The program is designed to help interested communities adopt sustainable planning methods. Communities are invited to apply February 3-23 to receive technical assistance during a day-long session that will help them achieve their sustainable planning goals.

Carbon Monoxide Standards Retained

The Environmental Protection Agency proposed January 31 to retain its national air quality standards for carbon monoxide. Current health standards are 9 ppm measured over 8 hours, and 35 ppm measured over an hour. The agency will take steps to gather additional data through more focused monitoring.

MACT Sub-Categories Possible

The Environmental Protection Agency said last week that it will weigh its categorization plan to temper industry fears of utility maximum achievable control technology standards. It may include an industry-favored sub-categorization option that would establish some less stringent emission standards for some categories of facilities, and will issue a proposal by March 15.

Some PSD Permit Applications Won't Cover GHGs

The Environmental Protection Agency signaled in a January 31 court filing that some air permit applications filed for new and modified stationary air pollution sources will not have to consider GHG emissions, but will instead be grandfathered in under the old rules. Additionally, these sources will not have to comply with requirements under national ambient air quality standards for N₂O standards issued in 2010. The filing came in a lawsuit in the U.S. District Court for the District of Columbia filed by Avenal Power Center LLC that alleged EPA had delayed action on a Clean Air Act permit for the facility.

Reporting Rule Questioned

The Semiconductor Industry Association filed a petition in the U.S. Court of Appeals for the District of Columbia Circuit January 31 seeking review of the Environmental Protection Agency's GHG reporting rule for sources of fluorinated GHGs. The final rule was published in the Federal Register December 1.

Most Trucking Comments Positive

Mostly positive comments were submitted by trucking and other transportation-related industry groups as well as state and environmental groups on a proposal by the Environmental Protection Agency and the National Highway Traffic Safety Administration to establish the first GHG and fuel economy standards for heavy-duty trucks. Energy industry groups opposed the proposal because of its effect in triggering GHG requirements for stationary sources. The standards, which would apply to vehicles in model years 2014 through 2018, were published November 30.

Federal Energy Regulatory Commission

Smart Metering Doubles

The Federal Energy Regulatory Commission released its 2010 survey of demand response and smart metering last week. The report found that the use of smart meters in the US has nearly doubled over the last two years, while the capacity of demand response programs to reduce peak electric load increased more than 40 percent over that time period.

Miscellaneous

U.S. Hydropower May Double

Responding to President Obama's State of the Union call for an 80 percent clean electricity standard by 2035, the National Hydropower Association last week pledged to meet 20 percent of that goal, or 16 percent of the total electricity supply. Such an increase would double domestic hydropower by 2035.

Canadian Minister Opposes Panel Recommendations

During his first major speech as Canada's environment minister last week, Peter Kent dismissed the idea of enacting a cap-and-trade system or disengaging from the United States on climate policy. Both ideas were recommended by a government-appointed panel last week to ensure that the nation meets its emission reduction targets without economic difficulty.

China Adopts e-Waste Regulations

China's State Council released regulations on electronic waste recycling January 1. Industry observers noted last week, however, that the implementation of rules on products such as computers and household appliances will take time because the producer responsibility scheme that will subsidize recycling centers has not yet been established.

Chamber of Commerce Releases Energy Plan

The U.S. Chamber of Commerce's energy institute released a plan February 1 calling for expanded domestic energy production and streamlined environmental reviews for new energy projects. The report, *Facing Our Energy Realities: A Plan to Fuel Our Recovery*, calls for the US to maximize its own energy resources through efficiency and domestic production, including by providing easier access to federal lands for energy development, increases research and development on energy technologies such as nuclear power, and improving math and science education.

UN Releases Ocean Fertilization Report

The United Nations Education, Scientific, and Cultural Organization's Intergovernmental Oceanographic Commission released recently its *Oceans Fertilization: A Scientific Study for Policy Makers* report. The study found that small-scale experiments in fertilizing oceans with iron have shown varied success in increasing oceans' uptake of CO₂, and the long-term effects of a larger program are difficult to predict.

EC Pledges Increased Recycling

The European Commission published a checklist of measures it plans to take to increase recycling in the European Union February 2. The measures are part of a strategy to counter potential shortages of raw materials.

NRC to Approve Reactor Design

The Nuclear Regulatory Commission announced February 2 that they expect to achieve a significant milestone this summer with the anticipated approval of a reactor design that is proposed for the first new nuclear power plant to be built in 30 years. The commission is currently completing its review of a license on the controversial Yucca Mountain storage site as requested by the Department of Energy.

Quartet of Renewable Energy Measures for CA

California Democratic leaders announced February 2 a Clean Energy Jobs Initiative. The four-measure package, designed to jump start the state's clean energy business sector and create jobs, would expedite siting for renewable energy projects, provide incentives to make homes and businesses more energy efficient, fund grants for clean technology jobs, and establish a legally binding 33 percent renewable portfolio standard.

CA Court Could Stall Climate Regs

A California Superior Court issued a tentative ruling January 21 that, if finalized, could stall implementation of the state's climate change regulations, including its recently adopted cap and trade program. The San Francisco County Superior Court concluded that the California Air Resources Board failed to adequately consider alternatives to cap and trade and other climate programs as required under the California Environmental Quality Act.

AZ Removes EPA Support

Citing an effort to protect states' rights, Arizona's new attorney general withdrew the state from a court case February 1 that his predecessor had supported in a bid to curb GHG emissions. The state was among a larger group of states that supported the Environmental Protection Agency in 2010 challenges by business and industry organizations, but will no longer back EPA regulation of GHGs under the Clean Air Act.

Washington and British Columbia to Share Information

Washington state's Department of Ecology director and British Columbia's minister of state for climate action signed agreements February 2 to share information on carbon-neutral government operations and to promote public awareness of sea level rise and coastal impacts.

EU Approves Energy Security Plan

European Union member states agreed February 4 to a new plan to enhance the security of energy supplies and reduce dependence on Russia by calling for significant investments in new cross-border energy infrastructure links including super grids and to complete the EU single market for the free movement of gas and electricity by 2014.

GHG Treaty Impossible in 2011

India's Environment Minister told attendees at the 11th Delhi Sustainable Development Summit February 4 that this year's U.N. climate change negotiations in South Africa would not result in a legally binding agreement to reduce GHG emissions. He also said that though one of the biggest accomplishments of the Cancun negotiations involved progress toward the formal creation of the Reducing Emissions from Deforestation and Degradation program, significant work to refine, model, and measure reforestation is still necessary.