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ENERGY AND ENVIRONMENT UPDATE September 12, 2010

Energy and Climate Debate

As Congress returns from the August recess this week, there are efforts underway to revisit or address new or additional pieces of energy legislation this fall.

Senate Democratic leadership is not expecting to return to energy issues until the lame duck session, though, given the increasingly partisan climate, it is uncertain if there are sufficient votes to pass any legislation either before or after the November midterm elections. That being said, Senate Majority Leader Harry Reid (D-NV) is increasingly discussing moving forward with a scaled-back energy package largely focused on oil spill regulation, and has recently suggested that he may try to include a renewable electricity standard (RES) in the legislation as well.

Majority Leader Reid's office reiterated last week that Senator Reid plans to bring an energy package to the floor either the week of November 15th or November 29th. Senator Reid said in late August that two Republicans had encouraged him to reconsider his decision not to include an RES in his latest energy legislation, and it appears that there is growing support for passing an RES similar to that found in last summer's bipartisan Energy Committee legislation this Congress. A recent report from Ernst & Young showed that China has passed the United States for the first time to become the most attractive destination for global clean energy investment, and a renewable electricity standard would be the first stable, long-term policy to support clean energy in the United States, which could enable long term investor planning, as well as increases in manufacturing and jobs here at home.

Other potential energy pieces that could be included in this or another package are an expansion of the 48C Advanced Energy Manufacturing Tax Credit, and extension of the 1603 Grants in Lieu of Tax Credits, funding for a Home Star energy efficiency program, and the creation of a green bank. During his Clean Energy Summit last week, Majority Leader Reid said that one of the first pieces of energy legislation he may try to move would be a two-pronged package of natural gas vehicle legislation and the Home Star program, both of which were included in his scaled back energy package in August.

With Democratic losses expected in both the House and the Senate, clean energy and environmental organizations are gearing up to defend the Environmental Protection Agency's existing authority to regulate greenhouse gas emissions under the Clean Air Act. Should the Senate address energy policy this Congress, Senator Jay Rockefeller (D-WV) has been promised a floor vote of a bill (S. 3072) that would delay EPA regulation of power plants and other stationary sources for two years. Even if this measure fails, a one-year delay could be included in an appropriations bill or other piece of legislation in September or October.

Congress

House Pursues Manufacturing Jobs

House Majority Leader Steny Hoyer (D-MD) said September 7th that Democratic lawmakers plan to continue pursuing legislation that encourages and facilitates more domestic manufacturing jobs as a part

of the Making It in America agenda. To jump start the process, the House passed the U.S. Manufacturing Enhancement Act July 21st and the Strengthening Employment Clusters to Organize Regional Success Act on July 19th. Majority Leader Hoyer plans to next work on legislation to create a national manufacturing strategy, clean energy technology export assistance, and legislation aimed at ending the trade deficit. Additionally, the House is expected to consider Congressman Jim Clyburn's (D-SC) Rural Energy Savings Program Act (H.R. 4785), which would authorize the Secretary of Agriculture to make interest-free loans through the Rural Utilities Service that would allow qualified customers to implement energy efficiency measures.

Senate to Discuss Small Business Tax Bill

Upon return from the August recess, the Senate is expected to continue working on a small business tax bill, the Small Business Lending Fund Act of 2010 (H.R. 5297). This legislation could become the vehicle for an expansion of the 1603 Grants in Lieu of Tax Credits program, and Senator George Voinovich (R-OH) pledged last week to vote for the long-awaited bill. The House may take up the small business bill if it is passed by the Senate.

Upcoming Hearings

The House Rules Committee is expected to mark up the Rural Energy Savings Program Act (H.R. 4785) for consideration on the floor this week. The committee will take a substitute amendment that, among other things, authorizes the Department of Energy, in consultation with the Department of Agriculture, to establish standards for energy efficiency. The legislation will include a Home Star energy efficiency loan program that is nearly identical to the grant program in H.R. 5019 as reported out by the Energy and Commerce Committee last April. The program allocates funds to states in the form of long-term loans so that states may select eligible entities to provide loans to consumer for residential energy efficiency measures.

Administration

White House Sustainability Drive Underway

On September 9th, the White House released plans from federal agencies to acquire low-emissions vehicles, use more energy-efficient systems, and expand the use of teleconferencing and web-based meetings as part of their strategies to meet the sustainability goals required by a 2009 executive order. Last October, the White House instructed federal agencies to establish greenhouse gas emissions reduction targets for 2020 and formulate plans for meeting those targets.

Transportation Priorities Outlined

President Obama released key priorities for a long-awaited rewrite of highway and transit policy over the Labor Day weekend. The administration is seeking an immediate \$5 billion investment in U.S. road, transit, high-speed rail, and airport infrastructure that is modeled after last year's economic stimulus package that provide \$48 billion for transportation infrastructure. Additional reform language would be included to create an infrastructure bank, integrate high-speed passenger rail into the surface transportation program, consolidate over 100 existing transportation programs, and increase spending on safety, environmental sustainability, economic competitiveness, and livability as part of a six-year reauthorization of the surface transportation bill.

Department of Energy

\$37 Million for Marine and Hydrokinetic Energy Technology

Energy Secretary Steven Chu announced selections for more than \$37 million in funding to accelerate the technological and commercial readiness of emerging marine and hydrokinetic technologies September 9th. The technologies will generate renewable energy from the country's oceans and free-flowing rivers and streams via 27 projects.

\$30 Million for State Energy Efficiency Projects

The Department of Energy announced September 9th the investment of \$28.5 million to 12 states and territories through the Department's State Energy Program to support energy efficiency projects that will

help create a sustainable transformation in the market for energy-saving, whole-building improvements in residential and commercial buildings and generate policy and program frameworks to support private-sector investment in energy efficiency for the long term. The awards fall into two categories: Strengthening Building Retrofit Markets, and Stimulating Energy Efficiency Action.

\$16.5 Million for Biofuels

The Department of Energy awarded \$16.5 million to seven projects September 8th to create biofuels that can be sustainably produced and used in current infrastructure and vehicles. The agency will invest \$12 million over four years in four projects to advance pyrolysis that uses heat to produce bio-oil for gasoline, diesel, and jet fuel. The remaining \$4.5 million will fund three projects to analyze and model sustainable biomass production systems across several regions and feedstocks.

\$8.5 Million for Solar-Grid Integration

The Solar Energy Grid Integration Systems program, a collaboration among the Department of Energy, Sandia National Laboratories, and industry, utility, and university stakeholders, announced September 7th that they will provide \$8.5 million to four projects in the program's third round. The projects, part of the Department's ongoing work to improve the country's electrical grid reliability as solar energy technology reaches cost-competitiveness, will be matched by contractors to support more than \$20 million in total projects.

Over \$600 Million for Carbon Capture and Storage (CCS)

The Department of Energy announced a \$40 million effort September 8th to develop an initiative for computer simulation of carbon capture and storage technologies. Researchers will use advanced modeling and simulation to develop technologies to lower the cost of CCS and reduce the risks from its storage underground. The previous day, the agency announced that 22 CCS projects would receive a combined \$575 million in Recovery Act dollars for technology and research to accelerate prospects for carbon capture and storage as a means of reducing GHG production.

Energy Research Consortia Selected

The Department of Energy announced September 2nd that two consortia will receive a total of \$25 million over five years under the U.S.-China Clean Energy Research Center. The University of Michigan consortia will advance clean vehicles and the West Virginia University consortia will study carbon capture. Funding for both projects will be matched by the grantees, and China will provide an additional \$50 million.

Loan Guarantee Announced

The Department of Energy announced on September 7th a partial guarantee for a \$98.5 million loan to the 49.5 MW Blue Mountain "Faulkner 1" geothermal project in northwestern Nevada. The project includes a geothermal well field and fluid collection and injection systems that enable energy to be extracted from rock and fluid below the Earth's surface.

\$8.9 Million for Bioenergy Plants

The Departments of Energy and Agriculture announced September 2nd that they will award \$8.9 million for research under a joint DOE-USDA genetic breeding program that will create plants better suited for bioenergy production. Scientists at eight institutions will investigate biomass genomics to improve biofuels production affectivity.

Debate over Demand Respond Plan

Following a March 18th rulemaking by the Federal Energy Regulatory Commission (FERC) that would establish the first national standard for compensating customers who participate in demand response programs, the domestic electric utility industry and some of the country's largest businesses will debate September 13th how much to compensate companies for reducing their electricity usage. FERC commissioners will hear from 20 groups representing the diverse views of electricity generators, large commercial customers, state utility regulators, consumer advocates, and regulatory economists in a day-long public workshop.

Environmental Protection Agency

Mobile Source Emissions Model Updated

The Environmental Protection Agency updated its mobile source emissions model September 8th to account for the most recent corporate average fuel economy standards and greenhouse gas emissions standards for cars and light trucks.

Diesel Performance Standards Difficult

During a comment period that ended September 8th, state regulators told the Environmental Protection Agency that its proposed new source performance standards for stationary diesel engines would make it difficult to meet air quality standards. The EPA's proposed rule would allow use of stationary diesel engines for up to 15 hours per year in non-emergency situations to address sudden spikes in the demand for electricity to prevent power outages, and would revise the performance standards for emissions of nitrogen oxides, particulate matter, and hydrocarbons from compression ignition internal combustion engines. Several major environmental groups threatened legal action last week if the EPA fails to agree by next week to set GHG limits for power plants under the NSP standards.

States Ask Court to Review Nuisance Case

Twelve states urged the Supreme Court last week to overturn an appeals court decision that would allow GHG emitters to be sued for the contribution to global warming, challenging the appropriateness of using the courts to address climate change. The case, American Electric Power v. Connecticut, is headed to the Supreme Court this fall after the 2nd U.S. Circuit Court of Appeals decided last year that other states had standing to sue coal-fired utilities for their share of the damage caused by climate change. The Court will determine in October whether to review the case.

Green Design Capitals Picked

The EPA committed last week to help the capital cities of Arkansas, Connecticut, Massachusetts, Missouri, West Virginia pursue high quality green development that includes cleaning up and recycling vacant land, providing greater housing and transportation choices, and reducing infrastructure and energy costs. Through its Greening America's Capitals program, a new project of the Partnership for Sustainable Communities, an agreement between EPA, the Department of Housing and Urban Development, and the Department of Transportation, the administration will fund private sector experts to provide sustainable design assistance to the cities.

Greenhouse Gas (GHG) Permitting Hearing This Week

The EPA will hold a public hearing September 14th on the agency's plans to take over permitting programs for states that cannot or will not comply with GHG rules. The draft rule is one of two EPA proposals issued last month to ensure that state permitting programs can comply with the Administration's climate regulations for industrial sources. The first seeks to allow states that are not prepared to regulate GHGs to revise their programs, and the second outlines the agency's plan to take over permitting programs in states that do not meet the requirements by next January.

Calls for 60 MPG Cars by 2025

A coalition of 19 environmental groups sent a letter September 9th to President Obama calling on his administration to raise the fuel economy standard for cars and light trucks to 60 mpg in 2025, up from 35.5 mpg in 2016. Additionally, the organizations urged the administration to limit GHG emissions to 143 grams per mile of CO₂e, down from 250 grams in 2016. President Obama directed the EPA and the National Highway Traffic Safety administration to issue a notice of intent outlining a proposal to increase fuel economy and reduce GHG emissions from cars and light trucks by the end of this month.

Personnel

The Senate Budget Committee will hold a hearing September 16th on the nomination of Jack Lew to be director of the Office of Management and Budget, at which the nominee will testify. The Senate Homeland Security and Governmental Affairs Committee will also hold a hearing on Mr. Lew's nomination that day.

Previously, Mr. Lew directed the agency from 1998-2001, and he currently serves as Deputy Secretary of State for Management and Resources.

Miscellaneous

New York Extends Energy Tax Exemption

New York recently enacted legislation (A.B. 10875) to extend, from January 2011 to January 2015, the sunset date for the property tax exemption for real property that includes solar or wind energy systems or farm waste energy systems. The legislation took effect August 13th.

Nevada Adopts Renewable Energy Facility Tax Abatement

The Nevada Energy Commissioner adopted rules August 13th to implement Nevada Revenue Statute Sections 701A.300-390, which provides partial sales tax and property tax abatements for renewable energy facilities.

Australian Carbon Price on Agenda

Following the recent Australian elections, a price on CO2 emissions is again firmly on Australia's political agenda. The ruling Labor Government secured the support of two independents to allow it to form a minority government with the additional support of the Greens party, and the independents referenced climate change when announcing their decision.

States Pursue Clean Energy

The National Governors Association (NGA) said September 8th that every state and territory in the U.S. is working to advance clean energy measures through a combination of renewable energy and energy efficiency programs. In a report, *Clean and Secure State Energy Actions: 2010 Update*, the NGA examined seven categories of clean energy activities in all 50 states as well as U.S. territories and commonwealths, and found that 49 states have adopted or updated policies relating to electricity generation, 47 states took action to expand their energy-efficiency measures, and 39 states have developed policies and made investments to advance green economic development.

Washington Amends Clean Vehicle Rules

The Washington Department of Revenue adopted amendments August 13th to implement sales tax exemptions for alternative fuel vehicles. The legislation extended from January 2011 to July 2015 the sunset date of the sales and use tax exemption for purchases of clean alternative fuel vehicles.

Renewable Content of Gasoline Rises

Environment Canada issued final rules September 1st that require gasoline sold in the country to contain an average of 5% renewable fuel. The requirements in the Renewable Fuels Regulations will take effect December 15th, and are designed to reduce the country's GHG emissions by 23.8 MT CO2e over the next 25 years.

California Energy Commission (CEC) Licenses Solar Plant

After a 20-year hiatus, the California Energy Commission licensed the Abengoa Mojave solar thermal power plant September 8th. The certification is the second in two weeks, and approves another 250 MW Beacon Solar proposal, this one will use parabolic trough technologies to heat synthetic oil and water for steam generation, and commercial service will begin in 2013.

Wyoming Law Blocks it from GHG Regulation

Wyoming Governor Dave Freudenthal (D) told the EPA September 9th that the state cannot implement the new federal permitting requirements for sources of GHG emissions because state law prohibits regulation of those emissions. Governor Freudenthal said that it would be impossible to enact legislation to resolve the issue before January 2, 2011, when the first phase of the permitting program is to take effect. Texas has adamantly stated that it will not implement the rule because it does not have the authority to do so.

India Considers Emissions Trading Program

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The Indian government is considering establishing a national emissions trading program to control industrial air pollution, with pilot projects planned in the states of Gujarat and Tamil Nadu. The program would cover conventional air pollutants such as SO₂, N₂O, particulate matter, and perhaps other GHGs.