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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Legislation

With one week to go before the Senate adjourns for its August recess, the fate of energy legislation hangs in the balance.

Last Wednesday Senate Majority Leader Harry Reid (D-NV) unveiled his long-awaited, and much scaled back, energy package. The Clean Energy Jobs and Oil Company Accountability Act (S. 3663) addresses oil spills, home energy efficiency, natural gas vehicles, and land conservation, and is paid for with a 37 cent increase in the per-barrel Oil Spill Liability Trust Fund excise tax. Republican leaders recently offered their alternative (S. 3643), the Oil Spill Response Improvement Act of 2010, which would quickly lift the deepwater moratorium on drilling rigs that meet new inspection criteria and formally reorganize the Interior agency that oversees offshore drilling

Since the Senate will need to devote much of this week to the confirmation of Elena Kagan to the Supreme Court and other must-pass issues, it is possible that the Senate may wait until after the August recess to consider the legislation. If the Majority Leader does file cloture on the bill on Monday, it is likely to face a series of procedural hurdles before a final vote, and before then, since the floor schedule is still in flux, the motion to proceed could be delayed.

After a week of pressure from a growing number of clean energy and environmental groups to include a renewable electricity standard (RES) in the package, it is unlikely that it will be included in the scaled back bill, though Majority Leader Reid and others have left the door open to considering both it and a carbon cap later in the fall. Though there is bipartisan support for the RES, it is unlikely that Majority Leader Reid will allow it as an amendment when the Senate does consider the legislation as he is expected not to entertain any amendments to the legislation.

Senator Lisa Murkowski (R-AK) had hoped to attach an amendment last week to the pending small business tax relief bill that would prevent the EPA from imposing GHG regulations for two years, but with the legislation stalled, she plans to attach the Rockefeller-like legislation to any upcoming legislation that appears to be moving forward. White House officials said last week that President Obama would veto such legislation, and also that even with climate change legislation on hold in the Senate, the Administration remains committed both to reducing greenhouse gas emissions and to providing funding for low-carbon energy sources in fast-developing nations. State Department Special Envoy for Climate Change Jonathan Pershing told a House Foreign Affairs subcommittee that the administration remains committed to its \$1.9 billion FY 2011 request that would support a fast start to the climate fund agreed upon during the Copenhagen climate talks. Climate legislation would have served as a key source of funding for such efforts.

Other attempts to move forward with energy legislation, specifically a renewable electricity standard and a cap and trade program, have been suggested in recent days. In addition to a possible, but tricky, attempt to move legislation during a lame duck session, others have recommended resolving these issues in a conference if the Senate is able to pass oil spill legislation that includes any energy provisions this

Congress. White House spokesman Robert Gibbs suggested last week that the administration would not rule out encouraging the House to add its climate provisions to the Senate's scaled back legislation during conference negotiations, and House Energy and Commerce Chairman Henry Waxman (D-CA) seconded that option.

Senate

Oil Spill Hearings Continue

The Senate Small Business Committee met last Tuesday to discuss the impact of the Obama Administration's deepwater drilling ban on companies operating in the Gulf of Mexico. The same day, the Senate Judiciary Committee discussed legal protections for victims of major oil spills. Also on Tuesday the Environment and Public Works Subcommittee on Water and Wildlife assessed the ecological damage caused by the spill as well as efforts to document it going forward.

Legislation Introduced

On July 27 Senator Michael Johanns (R-NE) introduced legislation to block proponents from adding cap and trade measures in the conference process. The amendment would require two thirds of the Senate to approve a cap and trade proposal in conference if it had not been debated and approved with 60 votes beforehand.

On Wednesday, July 28, Senator Frank Lautenberg (D-NJ) was joined by Senators Barbara Mikulski (D-MD), Kerry, and Ben Cardin (D-MD) in introducing legislation (S. 3661) to amend the Federal Water Pollution Control Act to ensure the safe and proper use of dispersants in the event of an oil spill or release of hazardous substances.

Upcoming Hearings

On Wednesday, August 4, the Environment and Public Works Oversight Subcommittee will hold a hearing on the use of oil dispersants in the Gulf of Mexico oil spill.

House

House Passes Oil Spill Legislation

As the final piece of business before adjourning for the August recess, and after approving nine amendments to the bill, the House passed the Consolidated Land, Energy, and Aquatic Resources Act (CLEAR Act, H.R. 3534) by a vote of 209-193. Borrowing from three separate measures that have passed out of the Natural Resources, Energy and Commerce, and Transportation and Infrastructure committees, the legislation codifies the Interior Department reforms, sets new safety standards, boosts conservation funding, and removes the current \$75 million liability cap. The House also passed a related bill (H.R. 5851) that protects workers in the offshore oil and gas industry who want to voice concerns about dangerous working conditions.

Oil Spill Hearings Continue

The House Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection examined the spill's impact on the tourism industry and how tourism-related claims will be handled by the \$20 billion fund.

Congressmen Ask EPA to Delay E15 Waiver

Noting their concerns that higher ethanol blends in gasoline could damage some vehicle engines, House Energy and Commerce Chairman Henry Waxman (D-CA), and Congressmen Joe Barton (R-TX), Ed Markey (D-MA), and Fred Upton (R-MI) asked the EPA last Thursday to postpone approving 15 percent ethanol blends until the Department of Energy completes testing. Additionally, three corn and ethanol industry groups asked EPA Administrator Lisa Jackson last Monday to approve an E12 blend as an interim step. The EPA recently announced that it is likely to grant a partial waiver in September for model year 2007 vehicles and newer.

Clean-Tech Export Legislation Passes

The House passed legislation (H.R. 5156) last Thursday that would grant export assistance to clean-tech manufacturers. Representative Doris Matsui's (D-CA) bill would authorize a \$15 million annual fund to help manufacturers boost clean technology exports through 2015 and would push the International Trade Administration to help companies understand the standards, policy, marketing, and import laws abroad.

National Manufacturing Strategy Legislation Passes

The House passed the National Manufacturing Strategy Act (H.R. 4692) last Wednesday; the legislation would require the president every four years to publish a national manufacturing strategy and establish a National Manufacturing Strategy Board composed of federal officials and representatives of the private sector.

Green Jobs Legislation Unveiled

House Ways and Means Committee Chairman Sandy Levin (D-MI) released his Domestic Manufacturing and Energy Jobs Act of 2010 last Monday. The legislation would invest in domestic manufacturing to create jobs and see to it that the clean energy technologies of the future are made in the U.S. The draft bill would also provide long-term certainty that the U.S. will continue to support renewable energy and energy efficiency, and will encourage manufacturers to build facilities in the US; among other things, it expands the Advanced Energy Manufacturing Tax Credit (48C) and the Grants in Lieu of Tax Credits 1603 Program, and funding for biofuels.

Advanced Research Legislation Approved

Congressman Bart Gordon (D-TN) proposed the Nuclear Energy Research and Development Act of 2010 (H.R. 5866) last Monday which would provide over \$800 million per year through 2013 for research and development programs for small nuclear reactors, advanced fuels, and waste storage. The Science and Technology's Energy and Environment Subcommittee approved the legislation last Wednesday by a voice vote, and the full committee is expected to mark up the bill in September.

Committee Explores Hydropower Potential

The Natural Resources Subcommittee on Water and Power examined the opportunities and impediments for small hydropower generation in Western states last Thursday. Witnesses also discussed the federal government's role in promoting and overseeing such projects.

Legislation Introduced

On July 26, Congressman Lloyd Doggett (D-TX) introduced legislation with Representatives John Lewis (D-GA), Earl Blumenauer (D-OR), and Rush Holt (D-NJ) introduced legislation (H.R. 5856) to provide for an investment tax credit for waste-to-energy facilities.

The same day, Congressman Jared Polis (D-CO) introduced legislation (H.R. 5863) to amend the Outer Continental Shelf Lands Act with regard to oversight and judicial review in connection with offshore oil production and exploration.

Last Tuesday Congressman Bart Gordon (D-TN) introduced legislation with Representatives Ralph Hall (R-TX), Brian Baird (D-WA), and Bob Inglis (R-SC) introduced legislation (H.R. 5866) to require the Secretary of Energy to carry out initiatives to advance innovation in nuclear energy technologies, to make nuclear energy systems more competitive, and to increase efficiency and safety of civilian nuclear power.

The same day, Congressman John Hall (D-NY) introduced legislation (H.R. 5868) to establish conditions for the issuance of oil and gas leases under the OCS Lands Act to prevent discharges of oil in operations.

Also on Tuesday, Representatives Jay Inslee (D-WA), Bill Delahunt (D-MA), Raul Grijalva (D-AZ), Mike Honda (D-CA), and Betty McCollum (D-MN) introduced the Renewable Energy Jobs and Security Act (H.R. 5883), which would create a national feed in tariff.

On Wednesday, July 28, Congressman Sandy Levin (D-MI) was joined by 20 cosponsors in introducing legislation (H.R. 5893) to create jobs through increased investment in infrastructure and eliminate loopholes which encourage companies to move offshore.

The same day, Representative Devin Nunes (R-CA) introduced legislation (H.R. 5899) to expand domestic fossil fuel production, develop more nuclear power, and expand renewable electricity.

Later in the day, Representative Gerry Connolly (D-VA) introduced legislation (H.R. 5905) to deny a deduction for removal costs and damages for which taxpayers are liable under the Oil Pollution Act of 1990.

Upcoming Hearings

The House will be in recess.

Department of Commerce

NOAA Concludes Global Warming Undeniable

The National Oceanic and Atmospheric Administration released a report July 28 showing that the past decade (2000-2009) was the warmest on record. The State of the Climate in 2009 found that while there were cooler and warmer years, the past decade continued the trend of each decade on average being warmer than the one before it, with an average of one-fifth of a degree up each decade.

Department of Energy

DOE Releases PV FOA

The Department of Energy released a funding opportunity announcement last Friday for a Photovoltaic Manufacturing Initiative. The program is intended to accelerate the coordination of stakeholders and fund technology development efforts across the solar industry, and with other state and federal policy incentives, facilitate the development of a strong PV manufacturing industry and supply chain in the US. The agency will accept applications in university-focused and industry-focused areas through October 5. Last week the department announced the creation of the Fuels from Sunlight Energy Innovation Hub to develop revolutionary methods of generating fuels directly from sunlight.

DOE and DOD to Cooperate on Military Energy Technologies

The Departments of Energy and Defense entered into a memorandum of understanding with the Department of Energy July 27 that highlights ways the two departments can collaborate on renewable energy and energy efficiency projects. The Department of Energy will provide research expertise and the Department of Defense will help to speed up development of new technologies.

\$117 Million for HI Loan Guarantee

The Department of Energy finalized a \$117 million loan guarantee for Kahuku Wind Power last Tuesday. The company is developing a 30-MW wind farm in Oahu that will include 12 2.5MW turbines and a 10-MW battery operated storage system.

Department of Treasury

IRS Computers More Energy Efficient

The Treasury Inspector General for Tax Administration released a report July 26 that concluded that the Internal Revenue Service has improved the green efficiency of its desktop computers, but that it needs to take additional steps to become a "green government" agency. The IRS could save an estimated \$8.8 million in annual energy costs if it fully implemented the Energy Star Features on its computers.

Environmental Protection Agency

EPA Examines Energy Efficiency as BACT

The Climate Change Work Group of the EPA is preparing to recommend that the agency require energy efficiency improvements as best available control technology for greenhouse gas emissions at new and modified large stationary sources. The questions of what qualifies as BACT has become a central issue as the EPA prepares to impose the first GHG emissions limits on stationary sources January 2, 2011.

Endangerment Finding Challenges Dismissed

The EPA denied 10 petitions July 29 challenging the validity of the climate change science used as the basis of its finding that mobile source GHG emissions endanger public health and welfare. The petitions urged the EPA to rethink its endangerment finding in light of the climate-gate controversy and errors in the 2007 IPCC report, but the EPA found that neither the emails nor the IPCC's errors invalidated the EPA's conclusion.

CBD Petitions EPA on Biomass Inclusion

Last Wednesday, the Center for Biological Diversity petitioned the EPA to include emissions from biomass combustion in its national greenhouse gas inventory. Each year, the EPA releases an Inventory of U.S. Greenhouse Gas Emissions and Sinks in which it recognizes that biomass and biofuels combustion produce GHG emissions, but excludes them from GHG emissions calculations because biomass fuels are of biogenic origin, and the agency assumed that the carbon released during the consumption of biomass is recycled as forests and crops regenerate, causing no net addition of the CO₂ in the atmosphere. The EPA will review its decision by July 2012.

Lawsuits against Tailoring Rule Continue

The U.S. Chamber of Commerce filed a lawsuit July 29 challenging the EPA's GHG tailoring rule, which requires only the largest new and modified sources of GHGs to control their emissions. The lawsuit, which was filed in the U.S. Court of Appeals for the District of Columbia Circuit, is the latest in a series filed by the Chamber and other groups disputing EPA initiatives to regulate GHGs. The deadline for filing suits against the tailoring rule is August 2, and thus far, four others have been filed.

Personnel

Jeffrey Zients, the deputy director for management at the White House Office of Management and Budget, will serve as acting director while the Obama Administration awaits confirmation of Jack Lew as the new director. Mr. Zients was confirmed by the Senate in his deputy director post in June 2009 and previously served as the first Federal Chief Performance Officer, Chairman of the Advisory Board Company, and Chairman of the Corporate Executive Board. Rob Nabors will rejoin the OMB as acting deputy director. Mr. Nabors is a former congressional appropriations aide who previously also served as deputy OMB director under outgoing director Peter Orszag.

Miscellaneous

CCS Estimates States GHG Reductions

The Center for Climate Strategies released a study last week that found that if all states undertake a series of 23 policies already underway in more than a dozen of them, they could reduce greenhouse gas emissions to 27 percent below 1990 levels by 2020 even without a national cap. Several of the policies considered included a renewable portfolio standard, increased nuclear power, CCS, appliance efficiency standards, and pay-as-you-drive auto insurance.

CA Climate Law Delay Detrimental

The Clean Economy Network released a report last Monday that concluded that suspending implementation of California's climate change law (A.B. 32) would undermine private investment in the state's rapidly growing green technology sector. A ballot measure in the November elections, Proposition 23, would put the state's climate policies on hold until its unemployment rate, now at over 12 percent, drops to 5.5 percent over four consecutive quarters.

BASIC Countries Fail in Shared GHG Reduction Approach

During their Rio de Janeiro climate meeting early last week, officials from Brazil, South Africa, India, and China found no common approach to fairly share the burden of reducing greenhouse gas emissions. The four countries have argued that developing nations should undertake ambitious, but not specific, nationally appropriate mitigation actions while industrial countries take the lead on quantified GHG emissions reductions post-Kyoto.

WCI Outlines Cap and Trade Design

The Western Climate Initiative unveiled a strategy July 27 to reduce greenhouse gas emissions that centers on a regional cap and trade program. The group hopes that their model, which is designed to reduce GHG emissions to 15 percent below 2005 levels by 2020, will become the basis of a national trading program in the US and Canada. Each jurisdiction would develop a trading program within its own state and provincial regulations to meet its respective emissions reduction goals and then systems can be eventually linked to build a robust regional market.

MI Amends Battery Credit

Michigan enacted legislation (S.B. 1343) earlier this month to amend the large battery facility credit to allow additional sources of financing to meet the credit's eligibility requirements. The legislation allows for a taxpayer to have the option of obtaining conventional financing, recovery zone facility bonds, or federal loan guarantees to meet the credit's financing requirements.

Geothermal Production on the Rise

The International Energy Agency released a paper July 29 showing that global geothermal power production could increase by a factor of 15 by 2050, reaching more than 1,000 terawatt-hours per year. In 2009, roughly 67.2 terawatt-hours of electricity was generated from geothermal energy, but under a scenario that assumes a 50 percent reduction in energy-related CO2 emissions by 2050, it could increase up to 1,060 terawatt-hours a year by mid-century.