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ENERGY AND ENVIRONMENT UPDATE

January 31, 2009

Energy and Climate Legislation

Last week while President Obama prepared for and gave the State of the Union, lawmakers moved forward with legislation that will address the growing national debt and a jobs bill that will impact the energy and environment industries.

Hours after the Obama Administration submitted its reduction targets to the UNFCCC as required by the Copenhagen Accord, the president announced that the Federal Government will reduce its greenhouse gas emissions by 28% by 2020.

Though key developing nations, such as China and India, have not yet indicated what they will commit to under the agreement, the U.S' international commitment, which is due for insertion into an Appendix of the Accord by February 1, calls for reductions "in the range of 17%," and in line with anticipated Congressional legislation. The domestic goal, however, is stronger than this international non-binding pledge.

In October, President Obama issued Executive Order 13514 on Federal Sustainability, which calls for reducing and reporting GHG emissions so as to ensure that the Federal Government leads by example in building the clean energy economy. Last Friday, the Administration stated that actions taken under the EO will "spur clean energy investments that create new private-sector jobs, drive long-term savings, build local market capacity, and foster innovation and entrepreneurship in clean energy industries."

The largest energy consumer in the US, the Federal Government spent more than \$24.5 B on electricity and fuel in 2008. The White House estimated a savings of \$8-11 billion in energy costs as the government adopts new energy efficiency and renewable energy practices. The federal emissions reduction target is the result of 35 agencies' self-reported targets using a 2008 baseline, and many agencies have already started taking actions to reduce their emissions.

In the Senate, as the health care debate continues to be on hold, lawmakers push forward on two other big issues. Last Thursday, with Senator-Elect Scott Brown (R-MA) not yet seated, the Senate passed a debt ceiling extension (60-39) that allows the government to go \$1.9 trillion deeper in debt. Mr. Brown is expected to be sworn in February 11.

In a move demonstrating Democrats' desire to focus on job creation between now and Election Day, Senators are working on a jobs bill via a two track process. Democratic leadership, including Senate Majority Leader Harry Reid (D-NV), Democratic Policy Committee Chairman Byron Dorgan (D-ND), and Senate Majority Whip Dick Durbin (D-IL), is working on the legislation, and the Senate Finance Committee is developing a comprehensive job-creation package. Some of the items under consideration, including expansion of the Advanced Energy Manufacturer's Investment Tax Credit, energy efficiency retrofit

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programs, and infrastructure provisions, were discussed at a Friday meeting of Senate Democratic leaders and committee chairmen. No final decisions have been made, but a bill is expected to be unveiled later this week that will include billions of dollars for energy efficiency and other clean energy efforts and emphasize both short and long term job creation. Majority Leader Reid said last week that he hopes to begin consideration of the jobs bill before the Presidents' Day recess in mid-February.

The House passed a \$150 billion jobs bill that would use \$75 billion in Troubled Asset Relief Fund dollars to pay for infrastructure, and the Senate bill is likely to add up to about \$82.5 billion. President Obama called congressional passage of a jobs package a top priority in his State of the Union address last week.

The Obama Administration will release its \$3.8 trillion fiscal year 2011 budget proposal this Monday. While the President is going to propose a three-year spending freeze on many domestic programs that will save \$250 billion by 2020, the budget will include some funding increases for clean energy programs. In addition to asking Congress for an additional \$5 billion in clean energy manufacturing tax credits, the budget request will also include additional funding for the Advanced Research Projects Agency-Energy (ARPA-E), the Energy Department's clean energy innovation hubs, loan guarantees for the construction of nuclear reactors, and climate programs at the EPA and DOE.

Much to the chagrin of lawmakers currently working on cap and trade and other climate legislation, the president's FY11 budget proposal will assume receipt of billions of dollars in revenue generated from a national cap and trade program.

Though President Obama called for passage of a comprehensive climate and energy bill in his State of the Union address last week, passage of a comprehensive climate bill becomes increasingly unlikely. Senators have begun talking more and more about moving an energy bill first or shifting to another approach altogether, including perhaps Senator Maria Cantwell's (D-WA) cap-and-dividend approach or even sector-specific approaches along the lines of legislation introduced by Senators Tom Carper (D-DE) and George Voinovich (R-OH).

Senators John Kerry (D-MA), Joe Lieberman (I-CT), and Lindsay Graham continue to hold daily meetings on their compromise climate bill. While they are making progress, Senator Lieberman said last week that they are also working to build Republican support, including Senators Olympia Snowe (R-ME) and Susan Collins (R-ME). Senator Snowe is scheduled to meet with Senator Kerry this week to discuss the legislation. Senator Graham last week said that the delay of the health care vote also gives him more hope that the Senate can move forward with a climate bill this year.

Senator Lisa Murkowski (R-AK), who introduced a week and a half ago a resolution of disapproval in an effort to strip the EPA of its authority to regulate greenhouse gas emissions under the Clean Air Act, is still seeking additional Democratic co-sponsors. Thus far, Senators Blanche Lincoln (D-AR), Ben Nelson (D-NE), and Mary Landrieu (D-LA) have joined 36 Republican co-sponsors on the resolution.

Senate

EPW Holds Solar Hearing

The Senate Environment and Public Works Committee and Green Jobs and the New Economy Subcommittee held a hearing last Thursday to highlight solar energy and clean energy jobs. Interior Secretary Ken Salazar was joined by leaders of several solar companies, including Robert Rogan, Senior Vice President of eSolar, Andrew Morriss, Professor at the University of Illinois College of Law, Rob Gillette, CEO of First Solar, and Jeff Wolfe, CEO of groSolar. Secretary Salazar has recently streamlined the application process for renewable energy siting, and the Department is expected to complete the environmental impact statements for 13 solar energy projects at the end of this year.

During the hearing, Senator Bernie Sanders (I-CT) said that he is planning to reintroduce legislation this Wednesday to fund a ten million solar panels program, which will provide incentives for buying solar panels and water heaters and the companies that produce them for ten years. The legislation is similar to the bill he introduced last Congress (S. 3224), though it also includes incentives for solar water heater as well as PV panels.

Homeland Security Subcommittee Holds Hearing on Federal Emissions Cutting Efforts

The Financial Management, Government Information, federal Services, and International Security Subcommittee of the Senate Homeland Security and Governmental Affairs Committee held a hearing last Wednesday to examine how the government is addressing an executive order (13514) issued last year by President Obama outlining conservation targets for federal agencies. The executive order requires federal agencies to set a target for how much they can reduce GHGs by 2020, reduce fleet petroleum consumption, conserve water, reduce waste, support sustainable communities, and leverage federal purchasing power to promote environmentally responsible products and technologies. Nancy Sutley, Chairwoman of the President's Council on Environmental Quality, Richard Kidd, Program Manager of DOE's Federal Energy Management Program, Sam Pulcrano, Vice President of Sustainability for the U.S. Postal Service, and Deputy Undersecretary of Defense Dorothy Robyn testified. Senator Tom Carper (D-DE), Chairman of the Subcommittee, was the only attendee, and he announced plans to introduce legislation in the Senate next month to ensure the government has the funds it needs to improve the energy efficiency of federal buildings.

Commerce Committee Holds Hearing on Nominees

The Senate Commerce Committee held a hearing last week to hear from Timothy McGee, nominee for Assistant Secretary for Environmental Observation and Prediction at the National Oceanic and Atmospheric Administration, Michael Huerta, nominee for Deputy Administrator of the Federal Aviation Administration, and David Matsuda, nominee for Administration of the Maritime Administration.

Senate Passes Energy Sanctions Bill

The Senate passed legislation (S. 2799) last Thursday by a voice vote aimed at pressuring Iran to suspend its uranium enrichment program by increasing economic sanctions on companies involved in its energy sector. The measure also includes language that allows state and local governments and mutual funds to divest from firms working in Iran's energy sector. The House passed a similar measure (H.R. 2194) in December. Majority Leader Reid said that he hopes to move to conference with the House soon.

Upcoming Hearings

On Tuesday, the Committee will hold a confirmation hearing on the pending nominations of Larry Persily to be Federal Coordinator for Alaskan Natural Gas Transportation Projects and Patricia Hoffman to be Assistant Secretary of Energy for Electricity Delivery and Energy Reliability.

On Thursday, the Committee will hold a hearing on the proposed fiscal 2011 budget for the Department of Energy, and the Superfund, Toxics, and Environmental Health Subcommittee will hold a hearing on the current science of public exposures to toxic chemicals.

The Committee will hold hearing February 9 on the Department of Energy's loan guarantee program.

House

Science and Technology Committee Holds Hearing on ARPA-E

The House Science and Technology Committee held a hearing last Wednesday to discuss programs that have been made by the Advanced Research Projects Agency-Energy (ARPA-E) and its potential to foster the development of game changing energy technologies. Arun Majumdar, Director of ARPA-E, Charles Vest, President of the National Academy of Engineering, and Anthony Atti, President and CEO of Phononic Devices, Inc. testified on the affectivity of a program that takes chances on high risk, high reward projects.

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Committee Chairman Bart Gordon (D-TN) has said that reauthorizing a broad 2007 research and education law that first established ARPA-E is at the top of his to do list for 2010.

Coal-State Members Create New Caucus

A bipartisan group of six House lawmakers announced Monday the formation of the Congressional Coal Caucus to provide a forum for coal-state lawmakers in upcoming debates on climate and energy policy. The six Congressmen include Shelly Moore Capito (R-WV), John Shimkus (R-IL), Dennis Rehberg (R-MT), John Salazar (D-CO), Jason Altmire (D-PA), and Tim Holden (D-PA).

Legislation Introduced

Congressman Bruce Braley (D-IA) introduced legislation (H.R. 4512) last Tuesday to require the Secretary of Energy to implement country-of-origin disclosure requirements with respect to motor vehicle fuels. The bill has been referred to the Committee on Energy and Commerce.

Upcoming Hearing

The Energy and Environment Subcommittee of the House Science and Technology Committee will hold a hearing on the scientific basis and engineering challenges of geoenvironment Thursday, February 4.

Department of Defense

The Pentagon has increased its long-term efforts to reduce its energy consumption in the wake of a Defense Department analysis that confirms that the military's heavy reliance on fossil fuels creates significant risks and costs at a tactical as well as a strategic level. At a Homeland Security Subcommittee hearing last week, Dorothy Robyn, the Pentagon's Deputy Undersecretary for Installations and Environment announced that reducing military defense on costly fuel consumption will not only "enhance the environment," but also improve "mission effectiveness."

Department of the Interior

Interior Secretary Ken Salazar announced at the Platt's Energy Podium Tuesday, January 26, that he will soon begin an environmental analysis that could lead to drilling in areas up to 200 miles offshore in the Atlantic Ocean. Upon completion of a 45-day comment period, which began last Thursday, seismic testing of the Atlantic Outer Continental Shelf will map out fossil fuel resources off the coast. Data collection does not necessarily mean new drilling, but the Interior Department will release a separate document on how or whether to expand offshore drilling.

Environmental Protection Agency

EPA Drafting Backstop Rule

The Environmental Protection Agency is developing a rule to address broad concerns that state laws and regulations may be inadequate to implement the EPA's pending tailoring rule, which would give the EPA authority to take over permitting in states that fail to fix their laws and rules to implement the new federal regulation. States are warning that they could need up to two years to pass laws or rules changing their definition of regulated pollutants. The EPA is working to address state concerns by drafting a rule that would impose federal implementation for the agency to run permitting directly until it approves revised state permitting programs.

EPA Tightens N2O Rules

The EPA announced last Monday that it will institute a new air quality standard for short-term exposure to nitrogen dioxide emissions. The new one hour standard raises the emissions standard to 100 ppb in high-exposure zones such as major roadways, but will retain the annual standard of 53 ppb. The Agency will also

set new requirements requiring N₂O monitoring around major roads and urban areas with more than 500,000 residents.

Fewer National Enforcement Priorities

The EPA announced last week that it plans to set fewer national enforcement priorities for the next three years as it considers new industry initiatives. As a part of its three year review, the EPA has proposed fifteen new enforcement areas for considerations, but is likely to set only nine or so areas as priorities.

Securities and Exchange Commission

The Securities and Exchange Commission voted last Wednesday to encourage companies to disclose the effects of climate change on their businesses.

Miscellaneous

Wind Power Grows in 2009

According to the American Wind Energy Association's annual report, released last Tuesday, wind power grew by 39% in 2009. Despite the recession and tight credit markets, wind power now contributes almost 2% of all electricity to the grid. Last year's increase was the highest jump on record, and experts point to the federal stimulus package, which provided tax credits and industry investment incentives, as the primary reason for so much expansion.

Climate Change Linked to Heavy Precipitation

According to a new National Wildlife Federation report released last week, this year's winter weather is a sign of how climate change impacts long-standing weather patterns. In a study of the Great Lakes region, the report noted that the area is experiencing heavier snow than usual due to warmer winter months.

Massachusetts Sets Ambitious Energy Standards

As required by the Green Communities Act, last Friday Massachusetts state officials announced new energy efficiency standards for utilities. The plan, to be the most ambitious in the nation, calls for a statewide reduction of 2.4% in electricity use and 1.15% in natural gas use per year for three years. Savings will be achieved largely through \$1.6 billion in incentives for utility customers who take energy conservation steps such as insulating their homes or replacing light bulbs.