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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Legislation

Upon Congress' return from the Memorial Day recess last week, movement began on several pieces of the long-awaited climate legislation debate.

On Wednesday, Senator Dick Lugar was joined by Senators Lisa Murkowski (R-AK) and Lindsey Graham (R-SC) in introducing his Practical Energy and Climate Bill of 2010, an alternative to the Kerry-Lieberman American Power Act that reduces greenhouse gas emissions by half of the 17% from 2005 levels seen in other climate measures via energy efficiency and renewable fuel increases without setting a cap on emissions of greenhouse gases.

On Thursday, the Senate declined to consider a resolution (S.J. Res. 26) disapproving EPA's regulation of greenhouse-gas emissions by 47-53. Despite defections from party ranks, Democratic leaders were able to beat the bill with the help of aggressive lobbying from the White House. The resolution, which Senator Murkowski introduced, would have put the Senate on record as wanting to block the EPA from regulating greenhouse-gas emissions under the Clean Air Act. Even if it passed the Senate, the House was unlikely to take it up, and the White House has promised to veto the legislation if it gets that far. In addition to the 41 original co-sponsors, Senators Jay Rockefeller (D-WV), Evan Bayh (D-IN), Mark Pryor (D-AK), Susan Collins (R-ME), Scott Brown (D-MA), and Olympia Snowe (R-ME) voted for the measure.

Earlier in the day, Senate leaders struck a deal to lure Democrats from supporting the Murkowski resolution by agreeing to hold a vote on the Rockefeller measure (S. 3072) that will delay EPA's action by two years. No date has yet been set for that vote.

On Thursday afternoon, Senate Majority Leader Harry Reid (D-NV) met with committee chairs of the six committees with jurisdiction over energy and climate legislation in a closed-door meeting. Senators Byron Dorgan (D-ND), Charles Schumer (D-NY), Patty Murray (D-WA), and Joe Lieberman (I-CT) also joined the meeting. Afterwards, Majority Leader Reid said that he is still trying to find the right combination of energy and climate measures to bring to the floor next month and downplayed the conflict over whether or not to include cap and trade in that legislation. He plans to meet with the full Democratic caucus this Thursday to continue the discussion. Earlier in the week, Senator Schumer said that the climate bill was likely to be offered as an amendment to the bipartisan energy bill that came out of the Energy and Natural Resources Committee last summer, but Majority Leader Reid responded that no decision has yet been made as to how to move forward with a comprehensive package yet, and Senator John Kerry (D-MA) met with Senator Schumer prior to the larger afternoon session to privately converse about the measures.

Foreign Relations Chairman Kerry said that Majority Leader Reid ordered him to work with Finance Chairman Max Baucus (D-MT) and Energy and Natural Resources Chairman Jeff Bingaman (D-NM) over the coming weeks to see what they can work out an agreement.

The same day, President Obama spoke with a bipartisan group of Congressional leaders at a White House meeting and urged them to work together to pass energy and climate legislation this year, citing the oil spill as well as the need to create jobs and lead the world renewable energy market.

The Environmental Protection Agency was scheduled to release their economic analysis of the American Power Act last week, but instead will provide the analysis to Senators Kerry and Lieberman on Monday and release it to the public on Tuesday. The Department of Energy's Energy Information Administration is expected to release their analysis of the bill later this month. Additionally, Senators Maria Cantwell (D-WA) and Collins requested last Thursday that EIA quickly produce a series of modeling runs on their CLEAR Act (S. 2877), which, via a cap and dividend program, reduces CO2 emissions 14 percent below 2005 levels by 2030. Senators Bingaman, Murkowski, and George Voinovich (R-OH) also signed onto the request.

Majority Leader Reid reconfirmed last week that energy policy would be the primary focus of the Senate during July, along with confirmation hearings on Supreme Court nominee, Elena Kagan. Other issues for the agenda before the August recess include the Defense Department reauthorization bill, a food safety and child nutrition bill, and tax extenders legislation.

Senate

Oil Spill Hearings Continue

Numerous Senate committees held hearings last week to investigate the causes of and response to the massive oil spill in the Gulf Coast. The Senate Environment and Public Works Committee held a hearing on the Big Oil Bailout Prevention Liability Act of 2010 (S. 3305), which increases the liability cap for oil companies responsible for oil spills. The Senate Judiciary Committee examined whether recent court decisions and liability caps encouraged irresponsible corporate behavior. The Senate Energy Committee reviewed a report from the Department of Interior on increased safety measures for energy development, including recommendations to improve the safety of offshore oil development. The Senate Homeland Security and Governmental Affairs Subcommittee on State, Local, and Private Sector Preparedness and Integration assessed the impact of the spill on states, localities, and the private sector. The Senate Health, Education, Labor, and Pensions Subcommittee on Employment and Workplace Safety discussed safety management policies in the oil and gas industry. Senators Bill Nelson (D-FL) and Bob Menendez (D-NJ) have introduced legislation to raise the current \$75 million liability limit to \$10 billion, and others, including Senators Schumer, Dorgan, Frank Lautenberg (D-NJ), Mary Landrieu (D-LA), and Lamar Alexander (R-TN) and Majority Leader Reid support this or other attempts to hold oil and gas producers fiscally responsible for any damages resulting in drilling.

With the Coast Guard acknowledging that cleanup efforts may extend well through the fall, President Obama announced last week that he will meet with BP Chairman Carl-Henric Svanberg at the White House on Wednesday to discuss the creation of a BP-funded escrow account for a third-party administered claims process. He will also address the nation this week.

Senate Debates Tax Extenders Legislation

The Senate began debate on the tax extenders legislation last Thursday and Friday that would provide incentives for renewable energy and energy efficiency. A substitute amendment by Senate Finance Committee Chairman Baucus is similar to legislation (H.R. 4213) the House passed May 28. The bill extends through the end of 2010 the \$1/gallon production tax credit for biodiesel and diesel fuel from biomass, as well as the small agri-biodiesel producer credit of 10 cents per gallon and 50 cents per gallon tax credit for alternative fuels derived from biomass, compressed or liquefied biogas, natural gas, or propane. The legislation also would extend several other biofuels and biomass credits as well as a number of energy efficiency credits.

Legislation Introduced

Senator Bernie Sanders (I-VT) was joined by Senators Arlen Specter (D-PA), Ben Cardin (D-MD), Sheldon Whitehouse (D-RI), Ted Kaufman (D-DE), Kirsten Gillibrand (D-NY), Debbie Stabenow (D-MI), Patrick Leahy (D-VT), Barbara Boxer (D-CA), Bob Casey (D-PA), Tom Harkin (D-IA), Lautenberg,

Menendez, Jeff Merkley (D-OR), and Kerry to introduce legislation (S. 3460) June 7 to require the Secretary of Energy to provide funds to States for rebates, loans, and other incentives to eligible individuals or entities for the purchase and installation of solar energy systems for domestic properties.

On June 8, Senator Jeanne Shaheen (D-NH) was joined by 15 cosponsors in introducing legislation (S. 3462) to provide subpoena power to the National Commission on the Gulf of Mexico oil spill.

On June 9, Senator Menendez was joined by 22 cosponsors in introducing legislation (S. 3472) to amend the Oil Pollution Act of 1990 to require oil polluters to pay the full costs of oil spills.

The same day, Senator Lugar introduced legislation (S. 3464), outlined in the front section, with Senators Graham and Murkowski to establish an alternative climate bill to the American Power Act.

Upcoming Hearings

The Senate Committee on Energy and Natural Resources will consider six bills on Tuesday, June 15. They are S. 3460, as discussed above, S. 3396, which amends the Energy Policy and Conservation Act to establish a Supply Star program at the Department of Energy, S. 3251, which improves energy efficiency and renewable energy use by Federal agencies, S. 679, which establishes a research, development, demonstration, and commercial application program to promote heavy duty plug-in hybrid vehicles, S. 3233, which amends the Atomic Energy Act of 1954 to authorize the Secretary of Energy to barter, transfer, or sell surplus uranium from DOE's inventory, and S. 2900, which establishes a research, development, and technology demonstration program to improve the efficiency of gas turbines used in combined and simple cycle power generation systems.

The same day, the Senate Health, Education, Labor, and Pensions Committee will hold a hearing on the health impacts of the Gulf Coast oil spill.

On June 16, the Federal Financial Management, Government Information, Federal Services, and International Security Subcommittee of the Senate Homeland Security and Governmental Affairs Committee will hold a hearing on ensuring a financially responsible oil spill cleanup effort.

On Thursday, June 17, the Small Business and Entrepreneurship Committee will hold a hearing on efforts to harness small business innovation, focusing on navigating the evaluation process for Gulf Coast oil spill cleanup proposals.

House

Oil Spill Hearings Continue

Several House committees held hearings last week to continue investigating the cause of and response to the April 20 oil rig explosion and resulting Gulf Coast oil spill. The House Science Subcommittee on Energy and Environment focused on the research and technology needed to effectively clean up oil spills. The House Natural Resources Subcommittee of Insular Affairs, Oceans, and Wildlife examined the short and long term impact of the Gulf Coast spill on natural resources. The House Transportation Committee held a hearing on the liability issues associated with the spill, referring specifically to the Oil Pollution Act of 1990. Additionally, the House voted (410-0) last Thursday to keep federal funds flowing for the massive emergency response to the ongoing Gulf of Mexico oil spill. The Senate unanimously signed off on the effort (S. 3473) the day before.

Legislation Introduced

On June 8, Congressman Earl Blumenauer (D-OR) was joined by numerous colleagues in introducing legislation (H.R. 5478) to provide an incentive to encourage the replacement of inefficient, outdated freight railcars with more fuel efficient vehicles.

The same day, Congresswoman Lois Capps (D-CA) introduced legislation (H.R. 5481) to give subpoena power to the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling. The legislation has a companion bill in Senator Shaheen's S. 3462.

Upcoming Hearings

The Energy and Environment Subcommittee of the House Energy and Commerce Committee will hold a hearing June 15 called Drilling Down on America's Energy Future: Safety, Security, and Clean Energy.

Later that day, the Insular Affairs, Oceans and Wildlife Subcommittee of the House Natural Resources Committee will hold hearings on the Gulf Coast oil rig explosion.

On June 16, the Energy and Environment Subcommittee of the House Science and Technology Committee will hold a hearing on real time forecasting for renewable energy development.

The same day, the Health Subcommittee of the House Energy and Commerce Committee will hold a hearing on actions taken by the Department of Health and Human Services to identify and address health effects of the Gulf Coast oil spill.

The Oversight and Investigations Subcommittee of the House Energy and Commerce Committee and the Energy and Mineral Resources Subcommittee of the House Natural Resources Committee will hold hearings June 17 on the oil spill as well.

Administration

President Obama issued a memo last Thursday requiring federal agencies to save at least \$3 billion over the next two years by using less energy, selling real estate, and making better use of facilities. Facing criticism over his handling of the Gulf Coast oil spill while also urging Congress to pass energy and climate legislation, the President framed his order as a call for fiscal responsibility with the side benefit of greenhouse gas emission reductions. The Administration also instructed federal agencies last week to reduce their budgets by 5 percent for FY 2012.

Department of Energy

\$612 Million for Industrial CCS Projects

The Department of Energy awarded \$612 million for the building of three large industrial carbon capture and storage projects. The projects, in Louisiana, Texas, and Illinois, are part of the Administration's goal of commercializing CCS technology within 10 years and building as many as 10 demonstration plants by 2016. The funding is matched by \$368 million in private funding.

\$29 Million for Weatherization Training

The Department of Energy awarded \$29 million in Recovery Act funding to 32 organizations in 27 states to train workers how to weatherize buildings. The funding expands eight weatherization training centers and creates 26 others. Many of the centers will be located on community college campuses, and all will offer standardized accreditation and training for workers.

\$60 Million for Local Energy Efficiency Efforts

The Department of Energy's Energy Efficiency and Conservation Block Grant Program announced June 11 that they have selected 20 communities to receive more than \$60 million in Recovery Act funding to implement local energy efficiency and renewable energy programs that will reduce energy use by American homes, vehicles, and businesses. Local governments, nonprofit organizations, and quasi-governmental organizations are among the recipients for the competitive grants.

RFI on Targets for Portable Power from Fuel Cells

The Department of Energy issued a Request for Information June 7 seeking input on proposed technical and cost targets for fuel cells designed for portable power applications. Though the RFI will not lead directly to a funding opportunity, the Department wants to provide an opportunity for stakeholders and the research community to submit feedback on objectives for the technology.

Department of Interior

On June 8, Interior Secretary Ken Salazar and the governors of ten East Coast states signed a memorandum of understanding formally establishing an Atlantic Offshore Wind Energy Consortium to expedite permitting projects on the Outer Continental Shelf. Signatories, in addition to the Department of Interior, include the governors of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Virginia, Delaware, Maryland, and North Carolina. Secretary Salazar announced at the same time the establishment of a regional office, located in Virginia, to coordinate and expedite the development of renewable energy projects on the AOCS.

Environmental Protection Agency

EPA Amends Pollutant Standards

After the EPA realized that some paragraphs were missing from the March 3 final rule, the agency released a direct final rule June 11 to amend the emissions standards for hazardous air pollutants from stationary engines used to generate electricity and power equipment at factories and other facilities.

\$10 Million for Emissions and Energy Efficiency Projects

The EPA announced June 8 that its Climate Showcase Community Program, in its second round of funding, will offer up to \$10 million in grants to local and tribal governments for projects that increase energy efficiency or otherwise reduce greenhouse gas emissions. The program expects to award about 25 grants, and with the exception of grants to Indian tribes, awardees will be required to fund half of the project. Proposals are due July 26.

Emission-Comparable Fuels Rule Withdrawn

The EPA officially rescinded a rule June 8 that was approved in the final weeks of the previous administration that would exempt more than 100,000 tons of hazardous waste per year from federal law governing the disposal of such substances. The withdrawal of the emission-comparable fuels rule, which has been under discussion by the Obama Administration almost since its inception, does away with a regulatory exemption that was intended to save money for the industry but did not result in the level of savings anticipated in 2008.

Data Centers Eligible for Energy Star

The EPA announced June 7 that stand-alone data centers and buildings that house large data centers can now earn the Energy Star label. To earn the label, data centers, which account for about 1.5 percent of domestic energy consumption, must be in the top 25 percent of their peers in energy efficiency according to EPA's energy performance scale. By improving efficiency, centers can save energy and money and help fight climate change. Data centers have not been previously eligible for Energy Star ratings because there were insufficient data on the energy use of these types of buildings, but EPA has spent the past two years developing a performance scale for data centers, taking into account actual performance metrics from data centers across the country.

States Support EPA's Vehicle Rules

California and twelve other states filed a motion to intervene June 7 on behalf of the EPA in a lawsuit challenging a final EPA rule that limits greenhouse gas emissions from cars and light trucks. The Association of International Automobile Manufacturers and Natural Resources Defense Council filed separate motions the same day to intervene on behalf of the EPA. The EPA published its final rule May 7; it would increase fuel economy for cars and light trucks from a combined 25 mpg to 35 mpg by model year 2016, and the rule established the first greenhouse gas emissions standard for cars and light trucks at 250 grams per mile of CO₂e. Since then, two lawsuits have been filed against the EPA on their decision.

National Aeronautics and Space Administration

The National Aeronautics and Space Administration will launch an oceanographic research program this Tuesday, June 15, aimed at better understanding changing ecosystems in the Arctic Ocean and how those changes affect the ocean's ability to absorb greenhouse gases. The Impacts of Climate on

Ecosystems and Chemistry of the Arctic Pacific Environment program will send more than 40 scientists to study the Arctic from a U.S. Coast Guard icebreaker.

Miscellaneous

Report Finds Hydropower World's Largest Renewable Power Source

New figures in Globe Data's Global Small Hydro Power Market Analysis and Forecasts through 2020 showed that hydropower is the world's largest renewable source of power generation, accounting for about 20 percent of the global electricity supply. Cumulative installed capacity of small hydropower is currently at 888.8GW, and is expected to reach an additional 140GW in 2015 and 201GW in 2020. Interestingly, Vermont last week declared that power generated from large hydroelectric dams counts as a renewable resource in a piece of legislation signed by Governor Jim Douglas (R) that also provides solar tax credits, efficiency provisions and incentives to generate electricity from cow-manure emissions.

Business Leaders Call for Clean Energy Spending Increase

Members of the American Energy Innovation Council released a report last week calling for \$16 billion in annual federal spending on clean energy innovation. The group, which includes current and former heads of Microsoft, Xerox, Lockheed Martin, Bank of America, DuPont, GE, Cummins, and others, also met with President Obama and Congressional leaders last week to pitch their plan of creating an independent National Energy Strategy Board to coordinate federal energy research.

UT Lays Out 10-Year Plan

Utah Governor Gary Herbert announced a 10-year energy plan on June 8. Saying that he prefers to rely on free enterprise, he suggested that the state could become a net energy exporter in the next decade. The governor did not establish any mandates or specific targets, but did say that nuclear energy should be a part of the package.

NM Court Allows Consideration of State GHG Cap

The New Mexico Supreme Court ruled last Monday, June 7, to allow a state regulatory panel to continue consideration of petition to cap greenhouse gas emissions in the state. The court vacated a preliminary injunction issued in April by a lower court that ruled that the state Environmental Improvement Board did not have the authority to regulate greenhouse gas emissions. The Board is set to resume public hearings at the end of the summer.

Words of Caution from UN Climate Chiefs

In his final days of office, the United Nation's top climate change official Yvo de Boer said June 7 that it appears worldwide reductions in emissions will not exceed 14 percent from 1990 levels by 2020. The Intergovernmental Panel on Climate Change has called for reductions of 25 percent to 40 percent by then, but Mr. de Boer expressed hope that the 2050 goal of 80 percent below 1990 levels remains achievable. Speaking on the sidelines of the May 31-June 11 Meeting of the Convention Bodies in Bonn, Germany, Incoming U.N Climate Official Christiana Figueres of Costa Rica warned last week that there is no quick fix to climate change, but that she expects much of the framework for a post-2012 deal to be completed this year with additional details to be finalized at the 2011 COP. The talks yielded an informal text outlining goals for emissions and technology, including incorporating greenhouse gas emissions reductions plans for developed countries.

UNEP Report Urges Focus on Agriculture and Fossil Fuels

The United Nations Environment Program published a report, Assessing the Environmental Impacts of Consumption and Production: Priority Products and Materials, June 2 that was prepared by the International Panel for Sustainable Resource Development. The report, a guide to the economic sectors and activities presenting environmental risks, urges environmental policy makers to focus first on livestock production and fossil fuel combustion, as they deemed them the least environmentally sustainable economic activities.

G-20 Lags on Fossil Fuel Subsidy Reform

In September 2009, leaders at the Group of 20 summit agreed to phase out fossil fuel subsidies, estimated at \$500 billion yearly worldwide, because they determined that they encourage wasteful consumption, reduce energy security, impede investment in renewable energy sources, and undermine efforts to fight climate change. Yet, with leaders preparing to meet again June 26-27 in Toronto, many governments appear to have made little headway on the national implementation strategies that will be scheduled to present at the meeting.

CA Passes Power-Storage Bill

The California Assembly passed a bill (A.B. 2514) recently that would require investor-owned utilities to store more energy in anticipation of increases in renewable power. The measure would require the California Public Utilities Commission to set storage targets of 2.25 percent of daytime peak demand by 2014 and 5 percent peak demand by 2020.

HI Defends Renewable Energy System

The Hawaii Department of Taxation issued guidance May 21 clarifying the term system as applied to solar PV systems for the purposes of claiming the renewable energy technologies income tax credit. The credit against individual or corporate income tax is equal to the lesser of 35 percent of the cost of the system or a cap amount determined by the use of the property where the system is installed.

MD Amends Clean Energy Credit

Maryland amended the state's clean energy credit to extend the sunset date, set a minimum amount, and make the credit refundable in legislation (H.B. 464) Governor Martin O'Malley signed on May 20. The legislation takes effect July 1.

EU Delays Emissions Discussion

The European Council decided June 11 to delay further discussion on whether to increase the EU's pledge to reduce greenhouse gas emissions 20 percent below 1990 levels by 2020. EU countries agreed at the end of 2008 to a mandatory 20 percent reduction by 2020, and included the possibility for increasing that commitment to 30 percent if other countries developed similar targets.