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ENERGY AND ENVIRONMENT UPDATE
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Energy and Climate Legislation

With a Democratically controlled Congress still sorting through the fallout of the Republican victory in Massachusetts, retirements continuing from the moderate middle, and mid-term elections approaching and inviting even more partisanship, the Obama Administration is likely to start acting on energy and environment initiatives on its own. Thus far, President Obama has issued considerably fewer executive orders than most of his predecessors, but that is likely to change soon. As passing major legislation becomes increasingly difficult, President Obama is likely to turn to his regulatory authority; and agencies are poised to insert climate and environmental considerations into almost every decision. For example, in addition to the endangerment finding, the EPA has finalized an N2O standard, proposed an SO2 standard and a greenhouse gas standard for mobile sources, and opted to revise the previous administration's ozone rules.

Last week marked the one-year anniversary of the signing of the American Recovery and Reinvestment Act, and the Administration commenced a public-relations campaign to focus on job creation as the Administration's top priority. On Tuesday, President Obama discussed new investments to create energy jobs and transition to a low-carbon economy, including a loan guarantee that will fund construction of the first nuclear reactor facilities in decades. Vice President Biden spent Tuesday in Michigan praising job retraining programs and touring a facility that received stimulus funding under the Advanced Energy Manufacturing Tax Credit.

Furthermore, President Obama sent members of his cabinet across the country last week to discuss job creation and promote the economic stimulus plan and he and the Vice President said at a White House event on Wednesday that the stimulus created or saved over 2 million jobs by the end of 2009 and it is working to create a new clean economy that gets more people to work today and lays the foundation for long-term growth. The Department of Energy alone estimates that its Recovery Act programs have created or saved over 60,000 jobs thus far, and that clean energy aspects of the package will create over 700,000 jobs by 2012.

A vote to open debate on the \$15 billion jobs bill is scheduled for Monday, when the Senate returns from the President's Day Recess, but Senate Majority Leader Harry Reid (D-NV) may not have the 60 votes for cloture he needs. Senate Republicans, who had previously signaled approval of the \$85 billion bipartisan bill negotiated by Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Chuck Grassley (R-IA), are still seeking consensus within the party on how to vote on the cloture motion Monday, and Senators Blanche Lincoln (D-AR) and Susan Collins (R-ME) sent Majority Leader Reid a letter last week asking him to consider the broader package because they believe it will better jump-start the economy than the scaled down version. Majority Leader Reid plans to pursue a series of job-creation measures that will include many of the provisions found in the broader Finance Committee legislation, including tax extenders provisions and several clean energy programs.

Critics of the EPA's climate regulations are setting the stage for a legal battle over the agency's endangerment finding. In all, 16 industry groups, conservative think tanks, Congressmen, and states filed

lawsuits with the U.S. Circuit Court of Appeals for the District of Columbia by the February 16 deadline to reconsider the EPA's determination that greenhouse gases threaten public health and welfare. Petitioners will likely be required to file briefs within a few months and the Administration will have 60 days to respond before challengers have another 30 days to submit reply briefs. Several governors, led by Mississippi Governor Haley Barbour (R) are circulating a draft letter to Congress requesting that they pass a resolution to stop EPA from enacting greenhouse gas regulations. Senator Lisa Murkowski (R-AK) is preparing to seek a floor vote next month on her resolution to veto EPA's endangerment finding, and Congressman Joe Barton (R-TX) is expected to introduce a companion House resolution soon. Neither measure is expected to clear the chambers, but if they do, they would face a likely White House veto.

Though US and EU climate negotiators are on track to reach the Copenhagen Accord goals, the United Nations' Climate Chief resigned last week. Citing his disappointment that the December climate change conference failed to produce an enforceable agreement to reduce greenhouse gases, Yvo de Boer will resign his post as of July 1, 2010.

Senate

Senator Graham Circulates Clean Energy Draft

Last week, Senator Lindsey Graham (R-SC) began circulating legislation that would give a boost to nuclear power and clean coal as part of a nationwide standard for renewable energy. Senator Graham began working on the proposal before he teamed up with Senators John Kerry (D-MA) and Joe Lieberman (I-CT) to draft a compromise climate bill, and Senators Kerry and Lieberman have not committed to including it in their compromise package, details of which are expected to become increasingly clear next month. The Graham measure requires the country to generate a certain percentage of clean energy over the next 15 years: 13% by 2014, 20% by 2020, and 25% by 2025. In addition to nuclear and clean coal, wind, solar, biomass, and hydropower would qualify toward the renewable standard. The proposal also includes placeholder language for a nuclear loan guarantee provision sufficient to build 60 additional nuclear reactors; a similar idea was made into a larger nuclear title by Senator Lieberman last year.

Upcoming Hearings

On February 23, the Subcommittee on Communications, Technology, and the Internet of the Senate Committee on Commerce, Science, and Transportation will hold a hearing on improving energy efficiency through technology and communications innovation. The hearing will explore how expanding broadband, strengthening smart grid technologies, and improving customer understanding of their energy usage could lead to dramatic energy savings and reductions in greenhouse gas emissions. Witnesses include Aneesh Chopra, Chief Technology Officer of the White House Office of Science and Technology Policy, Dan Hesse, CEO of Sprint Nextel, Adrian Tuck, CEO of Tendril Networks, Kathrin Winkler, Chief Sustainability Officer of EMC Corporation, and Lorie Wigle, General Manager of the Eco-Technology Program Office at Intel Corporation.

On the same day, the Senate Environment and Public Works Committee will hold a hearing on the President's proposed fiscal year 2011 budget for the Environmental Protection Agency.

The following day, the Interior Environment, and Related Agencies Subcommittee of the Senate Appropriations Committee will hold hearings on the proposed fiscal year 2011 appropriations for programs and activities under its jurisdiction.

House

Top Democrats Launch Hydraulic-Fracturing Inquiry

House Energy and Commerce Committee Chairman Henry Waxman (D-CA) and energy and Environment Subcommittee Chairman Ed Markey (D-MA) sent requests to eight oil-field service companies February 18 to provide information about chemicals used in a controversial drilling technique that has expanded access to natural gas resources across the country. In addition to data and documents

on the types and quantities of chemicals used in hydraulic fracturing fluids, they are seeking information on the proximity of injections to underground drinking water sources, environmental and health impacts, and the chemical contents of wastewater produced by the operations. The letters come as the EPA is conducting a congressionally mandated study on the impact of fracturing on drinking water.

Upcoming Hearings

The recent snowstorm in Washington forced most congressional committees to postpone scheduled meetings during the week of February 8, and many of those hearings have been rescheduled for this week.

Several House Committees will hold budget and appropriations hearings on February 24.

The House Science and Technology Committee will hold a hearing on the fiscal year 2011 budget request for science and technology research and development programs.

The Agriculture, Rural Development, FDA, and Related Agencies Subcommittee of the House Appropriations Committee will hold hearings on proposed fiscal year 2011 USDA appropriations.

The Energy and Water Development Subcommittee of the House Appropriations Committee will hold hearings on proposed fiscal year 2011 DOE appropriations.

The Interior, Environment, and Related Agencies Subcommittee of the House Appropriations Committee will hold hearings on proposed fiscal year 2011 Interior Department and EPA appropriations.

The Insular Affairs, Oceans, and Wildlife Subcommittee of the House Natural Resources Committee will hold a hearing on the proposed fiscal year 2011 budget for the National Oceanic and Atmospheric Administration, the Office of Insular Affairs, and the U.S. Fish and Wildlife Service.

Also on Wednesday, the Readiness Subcommittee of the House Armed Services Committee will hold a hearing on energy management and initiatives on military installations; the Energy and Mineral Resources Subcommittee of the House Natural Resources Committee will hold a hearing on geothermal production expansion legislation; and the Energy and Environment Subcommittee of the House Science and Technology Committee will hold a hearing on advanced computing for energy applications.

On February 25, the Interior, Environment, and Related Agencies Subcommittee of the House Appropriations Committee will hold hearings on proposed fiscal year 2011 Interior Department and EPA appropriations.

Administration

White House Issues Status Report on Stimulus' Success

Vice President Joe Biden released The Vice President's Annual Report to the president on Progress Implementing the American Recover and Reinvestment Act February 16 that shows that ARRA has succeeded in giving a boost to the U.S. economy and much of the stimulus is has provided will continue in 2010. As of the end of January, the Recovery Act has obligated \$334 billion in spending, including \$179 billion in outlays, and provided an estimated \$119 billion in tax relief, which comes to 57% of the total funding. The Administration is on track to meet its commitment that \$550 billion, or 70% of the funds, will have been spent or delivered in tax benefits by the end of September this year. Thus far, projects underway include clean energy programs, highway improvements, and investments in the nation's smart grid.

CEQ Issues Guidance to Gauge Emissions Impact of Federal Actions

The White House Council on Environmental Quality issued draft guidance February 18 that would direct federal agencies to analyze the impact of greenhouse gas emissions from federal actions that increase

carbon emissions by 25,000 tons per year. On the same day, CEQ released draft documents on categorical exclusions and mitigation and monitoring of environmental impacts.

Department of Commerce

On February 18, Jane Lubchenco, Administrator of the National Oceanic and Atmospheric Administration, said that almost all of the agency's increase in FY2011 spending will go toward funding satellites, including fixing the Polar Orbiting Environmental Satellites Program.

Department of Energy

Loan Guarantees Issued for Nuclear Reactors

On February 16, President Obama announced \$8.3 billion in Department of Energy loan guarantees to permit construction of the first two nuclear power plants in the US in three decades. The reactors, the first to receive a conditional loan guarantee for nuclear power, will be built in Georgia by the Southern Company, but must first be approved by the Nuclear Regulator Commission, which is not expected until late 2011 or 2012. The reactors will not be in operation before 2016, but construction will create thousands of short term jobs, and 800 permanent jobs. During the announcement, President Obama called nuclear power a crucial part of the energy mix, and urged Congress to pass comprehensive climate change legislation.

FERC Grants Power Marketer Status to Google

The Federal Energy Regulatory Commission unanimously approved a request February 18 by Google to buy and sell power into the wholesale electricity market. A wholly owned subsidiary, Google Energy LLC, will have authority to buy and sell wholesale electricity at market-based rates beginning February 23 and will also be able to sell ancillary services in organized electricity markets that keep the grid running smoothly. Google pursued the status because it believes that it can save money by arranging for its own power supplies to run its large computer operations and the flexibility will help the company meet its goal of operating as a zero emissions company.

Department of the Interior

According to Interior Secretary Ken Salazar, The Interior Department and Governors of eleven Atlantic states agreed February 19 to form an Atlantic Wind Consortium to expedite the permitting process for offshore wind projects in the Outer Continental Shelf. The consortium will work with the Federal Energy Regulatory Commission, the National Oceanic and Atmospheric Administration, the Department of Energy, and the Defense Department.

Department of Transportation

Department of Transportation Secretary Ray LaHood awarded \$1.5 billion in transportation grants February 17, spreading the federal stimulus cash out to more than 50 major projects in 41 states. The funding came from a widely popular Transportation Investments Generating Economic Recovery (TIGER) grant program for innovative, long-term work that will likely take longer than some of the shovel ready projects that were the primary focus of the American Recovery and Reinvestment Act. The 40 times oversubscribed program also received an additional \$600 million in funding last December that will be distributed through a separate project evaluation process, and Administration officials are seeking additional TIGER funding in congressional job-creation measures.

Environmental Protection Agency

EPA Has Obligated Almost All Recovery Act Funds

Speaking at a news conference marking the one-year anniversary of the stimulus bill, EPA Administrator Lisa Jackson said February 18 that the EPA has obligated \$7.1 billion to states under ARRA, or nearly 99% of the available funds. The Recovery Act has funded a variety of projects that will put people to work improving air quality, protecting drinking water, cleaning up land, and training workers.

EPA Funds New Climate Research

The Environmental Protection Agency announced last week that it is awarding \$17 million in research grants under the Science to Achieve Results (STAR) program to 25 universities to assess the impacts of climate change on air quality and water resources affecting public health.

Federal Communications Commission

The Federal Communications Commission's broadband task force highlighted several recommendations February 18 under consideration in the national purposes section of the national broadband plan, including, among other things, ensuring consumers have access to real-time energy information electronically. The task force will deliver its plan to Congress in mid-March.

Miscellaneous

Renewable Sector Set for Strong Period of Growth

According to a report issued by GBI research last week, the proposed introduction of a federal renewable portfolio standard (RPS) combined with the extension of production tax credits up to 2012 is expected to boost the market for renewable energy in the United States. GBI predicts that the market for renewable power in North America will grow from an historical compound annual growth of 2.4% in 2001-08 to 6.85% between 2009 and 2015.

Three Firms Leave USCAP

Last Tuesday, three major US companies, ConocoPhillips, BP America, and Caterpillar, said that they are leaving the US Climate Action Partnership because while they support green economy provisions, they believe that the currently proposed climate bills are unfair to them.

CARB Unveils Proposal for Next-Generation Vehicle Standards

The California Air Resources Board (CARB) unveiled February 8 a proposal that would require by 2022 new automobiles and light-duty trucks sold in California to emit a third of the air pollutants released by cars currently. CARB's proposal is the first step in an effort to integrate its low-emission vehicle program, zero-emission vehicle regulations, and greenhouse gas emissions standards for vehicles.