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ENERGY AND ENVIRONMENT UPDATE **March 21, 2010**

Energy and Climate Legislation

Senators John Kerry (D-MA), Lindsey Graham (R-SC), and Joe Lieberman (I-CT) released key details last Wednesday of their climate legislation during a closed-door meeting with major industry groups that they are hoping will join their effort to pass the new package. The eight page outline provides additional details of an eight-titled bill they hope to introduce when they return from the March 29 recess. The plan calls for an economy wide cap on greenhouse gases, but employs a sectoral approach to reduce emissions by 17% below 2005 levels by 2020 and 80% by 2050. Large electric utilities that emit 25,000 tons of greenhouse gases per year would be regulated in 2012, and other major industrial sources, including manufacturing industries, would be phased in beginning in 2016. The outline also includes details of a carbon linked fee on transportation fuels. The proposal would pre-empt EPA climate regulations under the Clean Air Act and would override state actions as well. A hard price collar limiting greenhouse gas allowances to between \$10 and \$30 per ton and a strategic reserve of 4 billion greenhouse gas credits are included in the proposal. Both are intended to provide industry certainty by controlling price volatility. The plan also includes some of the principles of the Cantwell-Collins cap and dividend proposals by rebating half of the revenue from allocation sales back to consumers.

The eight titles are as follows: Refining, America's Farmers, Consumer Refunds, Clean Energy Innovation, Coal, Natural Gas, Nuclear, and Energy Independence. The bill will include federal standards for energy efficiency and renewable energy as well.

Leadership from the U.S. Chamber of Commerce, the American Petroleum Institute, the Nuclear Energy Institute, the National Electric Manufacturers Association, the American Association of Railroads, the American Forest and Paper Association, Edison Electric Institute, the American Farm Bureau, the Air Transport Association, the Alliance of Automobile Manufacturers, the National Mining Association, the American Gas Association, the Portland Cement Association, and the National Association of Manufacturers attended the meeting last Wednesday. Though many are adopting a wait and see approach for when the actual legislation comes out, industry leaders are cautiously optimistic that this climate effort will be something that they can sign onto. Industry support will also make it more likely that moderate Republicans and Democrats will feel comfortable with the legislation.

Twenty environmental groups, including The Alliance for Climate Protection, the Sierra Club, and the National Resources Defense Council also met with the trio last week, and have said that they are encouraged by the progress the group has made. Other groups including Oceana and the Center for Biological Diversity have criticized inclusion of some of the more conservative aspects of the plan, including incentives for oil and gas drilling and preemption rules.

After the trio delivers the full outline of the bill on Tuesday to a larger group of senators who have been working on climate and energy legislation for the last year, they hope to send a proposal to the EPA and the Congressional Budget Office by the end of the week for a five to six interagency analysis, and then release a complete bill in April.

Consumer advocacy group Public Citizen sent a letter to Senators Kerry, Lieberman, and Graham last week urging them to keep carbon offsets out of Senate climate change legislation. The move comes on the heels of a January Resources for the Future report suggesting that, contrary to popular wisdom, offsets can contribute to additional market volatility.

A group of fourteen Midwestern electric utilities known as the Midwest Climate Coalition last Monday asked the trio to provide a full economic study on their bill for businesses and consumers in coal-dependent states and suggested that the legislation provide additional allowances to those industries that would be most affected by the legislation.

The 29 member Governors' Wind Energy Coalition said last Tuesday that Congress should move forward with clean energy legislation separately from climate, especially cap and trade, legislation. In their report, Great Expectations: U.S. Wind Energy Development, they outline policy recommendations for a renewable electricity standard that would require utilities to generate 10 percent of their electricity from renewable sources by 2012, research and development funding as well as expedited permitting for onshore and offshore wind technology, a new interstate transmission system, and tax incentives and grants for renewable energy projects.

The Alliance of Automobile Manufacturers, which represents Ford, GM, Chrysler, Toyota, and seven other carmakers, sent a letter to congressional leaders last week expressing opposition to congressional efforts to block the EPA from regulating greenhouse gas emissions. The letter comes two weeks after the National Automobile Dealers Association lent its support to Senator Lisa Murkowski's resolution of disapproval. The U.S. Chamber of Commerce petitioned the EPA last Monday to reconsider its endangerment finding. Other industry groups are asking that the EPA apply greenhouse gas emissions regulations only to new and modified stationary sources that are already subject to emissions limits related to federal air quality standards.

Senator Majority Leader Reid said early last week that options for moving climate and energy legislation this year remain open. He is likely to marry the energy bill reported out of the Energy and Natural Resources Committee last summer with the Kerry-Graham-Lieberman climate effort as he works to craft a comprehensive package for Senate debate in late spring. But with the healthcare debate becoming increasingly partisan, Senator Graham and others worry that legislative maneuvering may eventually derail the energy and climate effort.

Former President Bill Clinton urged Senators last week to pass a climate and energy bill in order to create jobs and keep the United States economically competitive. With healthcare to finalize, several jobs packages to complete, and financial services reform ahead of climate legislation, many moderate democrats are wary of addressing another difficult issue in an already busy calendar.

On the jobs front, the Senate finalized and sent to President Obama last Wednesday the first of several small jobs packages (H.R. 2847). The \$17.6 billion jobs bill that includes a payroll tax break for new hires, a small-business expensing provision, surface transportation funding, and Build America Bonds financing passed 68-29. The House passed the measure March 4. A broader \$140 billion long-term tax extender package (H.R. 4213) has passed both chambers and awaits conference, but since the Senate will try to first finish health care reform, it is unlikely that this package will be finished before the March 29 recess. Also on Wednesday, the House Ways and Means Committee approved a \$16.8 billion package (H.R. 4849) designed to provide incentives for small businesses to create new jobs. Majority Leader Reid has promised to bring a small-business jobs package, which is still being developing in collaboration with the Finance, Entrepreneurship, and Banking Committees, to the Senate floor.

A fourth legislative package focuses on "green jobs," manufacturing, and energy efficiency. Senator Debbie Stabenow (D-MI) and others are working to include an additional \$5 billion for the 48C manufacturing tax credit and expand the program so that credits can be monetized as grants. This bill may also be a vehicle for the HomeStar and BuildingStar efficiency incentives as well as an investment tax credit for advanced biofuel production facilities and a tax credit for CHP systems and microturbines. Neither the Senate Finance nor House Ways and Means Committees will get to the green jobs tax bill

until after the recess. This leaves about four solid weeks to work on including favorable provisions in this bill. Offsets for the bill remain an issue.

For the second time in a week, the Senate voted March 18 to kill a proposal to impose a moratorium on Congressional earmarks, signaling that it is unlikely to follow the House to call for a ban on or limit to earmarks.

Senate

Udall Introduces Solar Bill

Senator Mark Udall (D-CO) introduced a bill last Wednesday to expand solar energy tax credits so that individuals who buy into community solar projects, or solar gardens, can receive a 30 percent tax credit. The current tax credit expires in 2016 and provides homeowners a 30 percent tax credit for installing solar panels on their homes. Senator Udall hopes to attach his proposal to the compromise climate bill.

Republicans Seek EPA Clarification on Guidance Implementing Davis-Bacon Act

A group of thirteen Senate Republicans sent a letter March 1 to EPA Administrator Lisa Jackson requesting that the EPA clarify that prevailing wage requirements included in the Davis-Bacon Act for water infrastructure projects apply only to fiscal year 2010 appropriations. The letter comes as Congress considers legislation to reauthorize the Clean Water Act and the Safe Drinking Water Act. Signatories included Senators Lamar Alexander (TN), John Barrasso (WY), Bob Bennett (UT), John Cornyn (TX), Mike Crapo (ID), Chuck Grassley (IA), James Inhofe (OK), Jon Kyl (AZ), John McCain (AZ), Jim Risch (ID), Pat Roberts (KS), John Thune (SD), and David Vitter (LA).

Upcoming Hearings

The Senate Environment and Public Works Committee will hold a hearing March 24 on energy security, and particularly on transportation policy.

House

Home Star Legislation on Fast Track

The House version of the Home Star energy efficiency rebate program could be introduced and marked up as soon as this week. Like its Senate companion, the Home Star Energy Retrofit Act of 2010, the House bill would create a \$6 billion two tiered rebate program for homeowners who complete energy efficiency upgrades. Congressman Peter Welch (D-VT) is expected to sponsor the legislation.

Markey Introduces Energy Data Legislation

Congressman Ed Markey (D-MA) introduced the Electricity Consumers' Right to Know Act (e-KNOW) on March 16. The bill would require utilities to provide customers with instant electronic access to their electricity consumption data on a real-time basis. The proposal would require the Federal Energy Regulatory Commission to issue guidelines identifying minimum national standards. On the same day, the Federal Communications Commission officially released its plan to spread broadband service nationwide, which includes suggestions to make energy data accessible to consumers through internet and smart grid technologies and to protect consumer privacy and accessibility to their energy data.

Select Committee Holds Black Carbon Hearing

Congressmen and industry leaders agreed during a March 16 hearing of the House Select Committee on Energy Independence and Global Warming that reducing black carbon emissions a low-cost, high-impact way to address global warming in the short term.

Rare Earth Element Shortage Could Undercut Green Technology Growth

Witnesses told the House Science and Technology Subcommittee on Investigations and Oversight last Tuesday that some of the most prominent green technologies, such as wind turbines, hybrid vehicles, and fluorescent lights, may face a component shortage in a few years if current supply and demand trends for rare earth elements continues. About 95 percent of the world supply of some of these elements is produced by China, and China is continuing to tighten export controls on the minerals.

Upcoming Hearings

The House Appropriations Subcommittee on Energy and Water Development will hold a hearing March 23 to examine the fiscal year 2011 budget request for nuclear energy programs at the Department of Energy. Warren Miller, Jr., DOE Assistant Secretary for Nuclear Energy, will testify.

The House Oversight and Government Reform Subcommittee on Domestic Policy will hold a hearing March 23 on federal loan guarantees for nuclear power.

The House Energy and Commerce Subcommittee on Energy and the Environment will hold a hearing March 23 on oversight of the Federal Energy Regulatory Commission.

The House Appropriations Subcommittee on Energy and Water will hold a hearing March 24 on the fiscal year 2011 budget for the Department of Energy. Energy Secretary Steven Chu will testify.

Administration

The Interagency Climate Change Adaptation Task Force released a report last week that found significant gaps in the government's strategy to combat and adapt to climate change. The report was crafted by a task force President Obama appointed last October to recommend the ways government can create a federal strategy to address the adverse impacts of climate change. The six key components include bolstered scientific research and better integration of science in policy, improved communications, coordination and collaboration across the federal government with local and state governments, flexible frameworks for agencies, prioritization and continued evaluation. The task force, composed of more than 20 federal agencies, will submit final recommendations to the President in October.

Department of Defense

The Defense Department and the Air Transport Association of America agreed March 19 to cooperate on the development of biofuels for aviation. The Defense Energy Support Center believes that the agreement will better prepare the armed forces to reduce their dependence on imported oil and reach greenhouse gas reduction and renewable energy use targets. The two will work to identify locations suitable for alternative fuel production and use as well as distribution, and to jointly publicize supply opportunities and develop compatible pricing mechanisms.

Department of Energy

Clean Energy Small Businesses Receive \$5.4 Billion from Recovery Act

The Department of Energy released a report March 17 the detailed recipients of Recovery Act funding. In so doing, the Department found that small businesses have been selected to receive nearly \$5.4 billion in stimulus funding (about a third of the total DOE ARRA funding) through approximately 624 grants, contracts, loans, loan guarantees, and tax credits for clean energy technologies. The Small Business Administration has approved an additional 2,800 loans for renewable energy businesses from 2006 to 2009 worth \$656 million.

New Sustainable Energy Institute Launched

The Department of Energy's National Renewable Energy Laboratory launched the Joint Institute for Strategy Energy Analysis last Thursday. The Institute will work to smooth the global transition to a sustainable energy economy by guiding energy investment and policy decisions around the world. The institute is a joint effort with NREL, the Massachusetts Institute of Technology, Stanford University, the University of Colorado, Colorado School of Mines and Colorado State University.

DOE Laying Home Retrofit Groundwork

As Congress works to develop home energy efficiency programs, the Department of Energy has begun developing advanced technology and guidelines to do home energy audits. According to Secretary Chu's

Energy Vision Update 2010, while energy efficiency retrofits can accrue massive financial and energy savings, many of the benefits are often unrealized because homeowners choose the least efficient projects, endure poor installations, or cannot afford the upfront costs of good technology.

Massive Wind Power Potential

The National Renewable Energy Laboratory released a study last week that determined that Nebraska and nearby states can get up to 40 percent of their electricity from wind without causing major disruptions in the electrical grid. To reach such a level, the region would need millions of dollars in federal investment in electrical transmission lines. Previous modeling of the region's wind capacity found only 20 to 30 percent. Currently, Nebraska gets about 1.5 percent of its electricity from wind energy.

Department of Interior

Interior Secretary Ken Salazar said last Thursday that the Department will make a final decision on the Cape Wind offshore wind project in Nantucket, MA, in late April. He is awaiting advice from an independent advisory council that will be submitted April 15. The Department hopes to approve plans to add 9,000 MW of renewable energy capacity on federal lands by the end of 2011.

Environmental Protection Agency

EPA Clears Path for E15 Waiver

The EPA launched a new ethanol pump rule last week, paving the way to grant partial approval of an ethanol industry request to lift the federal limit on ethanol in gasoline from 10 to 15 percent and to provide manufacturer certification to sell E15. The pump label will prevent the misfueling of vehicles and engines not authorized to use E15. The waiver may come as early as this summer.

Research to Begin on Hydraulic Fracturing Risks

The EPA announced last Thursday that it will conduct comprehensive research on the potential adverse impacts of hydraulic fracturing on water quality and human health. Hydraulic fracturing (fracking) is a technique of forcing liquids into a geologic layer to create and enhance cracks through which gas or oil can flow to a well. It has been used in the US for about 60 years but has recently instigated environmental concern.

EPA Reconsidering Cap and Trade Impacts on Agriculture

At the request of the Department of Agriculture, the EPA is revising its model for forecasting how a greenhouse gas cap and trade system would impact agriculture.

International Energy Agency

The International Energy Agency announced last week that biofuels could account for 25 percent of transportation fuel by 2050. Current global levels are about 1.5 percent. The Sustainable Production of Second-Generation Biofuels details scenarios in which biofuels increase due to the increase of low carbon technologies. As it develops a biofuels road map, the IEA will conduct an expert workshop on biofuel technologies and sustainable feedstock production later this year, and will publish the road map at the end of the year.

Personnel

The Senate confirmed three nominees to the Nuclear Regulatory Commission March 19. William Ostendorff, George Apostolakis, and William Magwood IV bring the five-member board to full capacity for the first time since 2007.

The Senate Energy and Natural Resources Committee held a confirmation hearing March 17 for Jeffrey Lane to become Department of Energy Assistant Secretary for Congressional and Intergovernmental Affairs. He will need to be confirmed by the full Senate.

Miscellaneous

CA Regulators to Tighten GHG Reporting Threshold

California regulators are preparing to lower the annual greenhouse gas emissions threshold from 25,000 MT to 10,000 MT per year. The threshold could add pressure on the EPA to lower its 25,000 MT threshold to ensure consistency. The California Air Resources Board issued a notice March 12 about the potential GHG reporting rule changes; they are scheduled to be discussed at a March 23 workshop. The threshold would make California consistent with the proposed Western Climate Initiative.

Loss of Ethanol Tax Credit Would Harm Economy

The Renewable Fuels Association released a study March 18 that determined that the expiration of a tax incentive for the ethanol industry at the end of the year would result in the loss of more than 112,000 jobs and the reduction of domestic ethanol production by nearly 40 percent.

OR Reduces Renewable Energy Tax Credit

Oregon Governor Ted Kulongoski (D) signed H.B. 3680 last Thursday, thus reducing the state's renewable energy tax credit program. Under the current program, personal and corporate income taxpayers can claim tax credits for renewable energy project for up to 50 percent of eligible costs over five years. The new law will phase out large scale wind farms by 2013 and will limit credits to \$3.5 million in 2010, \$2.5 million in 2011, and \$1.5 million in 2012. The program will be capped at \$300 million through 2011 and \$150 million for fiscal year 2012. The reduction is expected to save the general fund a total of \$140 million.

WCI Releases Final Offset Recommendations

The Western Climate Initiative released final recommendations March 18 on how to implement an offset limit in their regional greenhouse gas emissions cap and trade program, which is slated to begin in 2012, and which will eventually reduce GHGs 15 percent below 2005 levels by 2020. Formed in 2007, WCI members include Arizona, California, Montana, New Mexico, Oregon, Utah, Washington, British Columbia, Manitoba, Ontario, and Quebec.

Improvements to GHG Measurements

The National Research Council published a report March 19 detailing technological and policy improvements that could increase the accuracy of greenhouse gas measurements. The report, *Verifying Greenhouse Gas Emissions: Methods to Support International Climate Agreements*, says that CO₂ estimates in some developed countries can be accurate within 5 percent, but that estimates of other gases, especially in more developing countries, can be completely uncertain. Better accuracy checks of national inventories would make international climate agreements more possible and meaningful.