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## **ENERGY AND ENVIRONMENT UPDATE** **December 26, 2010**

### **Energy and Climate Debate**

After passage by both legislative chambers, President Obama signed a continuing resolution into law on December 22<sup>nd</sup>. The resolution will fund the federal government at fiscal year 2010 levels until March 4<sup>th</sup>. With the lame duck session of the 112<sup>th</sup> Congress having punted major funding debates into 2011 by passing the continuing resolution, Congressional Republicans are eyeing openings early in the year to reduce EPA funding that could hamper the agency's ability to implement and enforce its climate and other rules as well as funding for the Department of Energy and numerous other agencies and programs. Incoming House Appropriations Chairman Hal Rogers (R-KY) is planning to introduce a major rescission package as one of his first moves in the new Congress, with several measures targeting the EPA as well as un-obligated funds from last year's Recovery Act in an attempt to reduce the budget by about 20% to fiscal year 2008 levels. The White House is expected to deliver its 2012 budget at the beginning of February, which usually initiates congressional appropriations hearings and the bill-writing process. But with consideration of the fiscal year 2011 budget still incomplete, there will be a backlog of work to be done on both appropriation measures.

Though no major pieces of energy legislation became law this year, a number of small but significant items were included in the end of the year \$859 billion tax package, and Congressmen across the board are making plans for movement in the 112<sup>th</sup> Congress. Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) reiterated last week that he will return to work on a renewable electricity standard next year, including considering a possible broader clean energy standard. Senator Bingaman, who also chairs the Senate Finance Subcommittee on Energy, Natural Resources, and Infrastructure, said last week that he will redouble his efforts to collaborate with Senator Olympia Snowe (R-ME) on fuel-saving provisions that include items such as energy efficiency, clean technology manufacturing, energy independence, and pollution reduction. He is already mapping out next year's hearings on clean energy, and hopes to consider many of the ideas found in the Advanced Energy Tax Incentives Act of 2010, which he introduced with Senator Snowe in September.

The House and Senate are adjourned *Sine Die* pursuant to H. Con. Res. 336 until January 5, 2011.

### **Congress**

#### **House Passes COMPETES Bill**

The House approved (228-130) the America COMPETES Reauthorization Act of 2010 (H.R. 5116) December 21<sup>st</sup>. The legislation authorizes research programs within the Department of Energy, including a wide range of programs established by the 2007 energy legislation such as nearly \$17 billion for basic research over three years within the Energy Department's Office of Science and \$918 million for the Advanced Research Projects Agency – Energy (ARPA-E). House passage of the bill clears it for President Obama's signature.

#### **House Reauthorizes Diesel Grants**

Clearing the way for President Obama's signature, the House unanimously passed legislation December 21<sup>st</sup> reauthorizing grants to state, local, and tribal governments for programs to reduce emissions from existing diesel engines. The bill authorizes \$100 million annually for the grants for fiscal years 2012 through 2016.

#### Legislation Introduced

Representatives Jay Inslee (D-WA) and Mike Castle (R-DE) introduced a petroleum replacement bill last week. Aimed at establishing a marker for the 112<sup>th</sup> Congress, the language includes provisions for electric vehicles and natural gas.

### **Department of Energy**

#### \$74 Million for Fuel Cells

The Department of Energy announced that it is accepting applications for up to \$74 million to support the research and development of clean, reliable fuel cells for stationary and transportation applications. The solicitations include up to \$65 million over three years to fund continued research and development on fuel cell components and \$9 million to conduct independent cost analyses to assess the progress of the technology under current research initiatives.

#### Impact Analysis Halted

The Department of Energy's Western Area Power Administration cancelled its preparation of an environmental impact statement for a proposed NextGen coal-fired power plant in South Dakota on December 22<sup>nd</sup>. The cancellation occurred after Basin Electric Power Cooperative informed the agency that it was suspending action on the project because of regulatory, technological, and economic uncertainties.

#### Wind and Solar Projects Receive Loan Guarantees

Energy Secretary Steven Chu announced December 20<sup>th</sup> a \$1.45 billion loan guarantee for the world's largest parabolic trough concentrating solar plant in Arizona. The plant will be built by Abengoa Solar, Inc., and will produce enough energy to serve 70,000 households through a power purchase agreement with Arizona Public Service Company. The previous Saturday, Secretary Chu had announced a partial loan guarantee for a \$1.3 billion loan to support the world's largest wind farm, to be located in Oregon.

### **Department of Interior**

#### Solar Project Approved on Bureau of Land Management (BLM) Land

Interior Secretary Ken Salazar signed a record of decision December 20<sup>th</sup> that authorizes construction of a 110 MW solar power plant on Bureau of Land Management land in Nevada. Construction is expected to begin in mid-2011 on the Crescent Dunes concentrated solar energy project by SolarReserve LLC of Santa Monica, California. The project will power 75,000 homes in Nevada, and is the third large-scale solar project approved on public lands this year in Nevada and the ninth in the U.S.

### **Department of Treasury**

#### 1603 Extension Details Available

The Department of Treasury announced last week that applications for its extended 1603 grants in lieu of tax credits for qualified renewable energy projects must be submitted before October 1, 2012. The Recovery-Act program was extended for a year as part of an \$859 billion tax package signed into law December 17<sup>th</sup>.

### **Environmental Protection Agency**

#### Greenhouse Gas (GHG) Data Submission Deadline Postponed

The Environmental Protection Agency postponed December 20<sup>th</sup> the deadline for facilities to submit data used to calculate their 2010 GHG emissions so that it can determine whether the information should be made available to the public once it is submitted. The new August 31, 2011 deadline replaces a March

31<sup>st</sup> deadline included in an interim final rule. Additionally, the agency is considering delaying the reporting of the data even further and issued a proposed rule that would give facilities until 2014 to submit data for calendar year 2010-2012. The EPA is also seeking additional comments and information to help determine which data should remain confidential.

#### GHG Limit Schedule Issued

The Environmental Protection Agency announced December 23<sup>rd</sup> a schedule for setting performance standards, or GHG limits, for electric utilities and petroleum refineries. Under an agreement with states and environmental groups, and which the White House Office of Management and Budget (OMB) has signed off on, the EPA will issue a draft of the standards for power plants by July 2011 and a final rule by May 2012. The agreement also requires the agency to issue a draft limit for refineries by next December and a final rule by November 2012. New source performance standards would apply to new and modified facilities, and emissions guidelines would apply to existing facilities.

#### EPA Rejects Best Available Control Technology (BACT) GHG Extension

Environmental Protection Agency Administrator Lisa Jackson sent a response December 20<sup>th</sup> to a November 24<sup>th</sup> inquiry by House Oversight and Government Reform Committee incoming Chairman Darrell Issa (R-CA) advising that the agency will not reopen the public comment period for the guidance of its new climate regulations or give businesses more time to prepare for them. Beginning January 2<sup>nd</sup>, developers of new power plants, refineries, and other high-emitting industrial facilities will need permits showing that they are using the best technology available (Best Available Control Technology) to limit their GHG emissions. Administrator Jackson said that reopening the guidance document for another 60 days would burden companies with regulatory uncertainty that the agency hopes to avoid.

#### Acid Rain Reductions Delivered

The Environmental Protection Agency released a report December 20<sup>th</sup> that shows 15 years of successful results from its nationwide effort to address acid rain. Since its inception in 1995 as part of the Clean Air Act Amendments of 1990, EPA's Acid Rain Program has earned widespread acclaim due to dramatic SO<sub>2</sub> and NO<sub>x</sub> emission reductions that are saving American lives and ecosystems. The analysis estimates annual public health benefits of the program in 2010 alone at more than \$120 billion, about 40 times the estimated cost.

#### Colorado Standard Sent to OMB

The Environmental Protection Agency sent to the White House Office of Management and Budget a proposed update to the national air quality standards for carbon monoxide December 21<sup>st</sup>. The agency is under a court-ordered deadline to decide whether to change the limits on ambient levels of CO from nine parts per million over an eight-hour period and 35 ppm over a one-hour period, so the updated signals the impending release of a draft rule. A final rule is due in May 2011.

#### Appeals Court Rejects Renewable Challenge

The U.S. Court of Appeals for the District of Columbia Circuit rejected a challenge by the National Petrochemical and Refiners Association and the American Petroleum Institute December 21<sup>st</sup> to EPA requirements for blending renewable fuels in transportation fuels. The court said that the rulemaking record demonstrates that the EPA, in rejecting concerns by affected parties about possible retroactive effects, fulfilled its obligation to consider the relative burdens and benefits in applying the renewable fuel standard (RFS) to the entire year, which took effect July 1<sup>st</sup> but covered all of 2010.

#### E15 Waiver Challenged

The Engine Products Group, a newly formed alliance of automakers and marine and outdoor equipment manufacturers, filed a petition with the U.S. Court of Appeals for the District of Columbia Circuit December 20<sup>th</sup> to block implementation of an EPA waiver that would allow higher blends of ethanol to be used in new vehicles. The petition challenges EPA's October approval of the use of E15 for use in cars and light trucks manufactured in model year 2007 or later, citing engine failures, increased emissions, and other problems in non-road engines and equipment and in older vehicles for which the fuel is not intended.

#### Diesel Air Toxics Review Scheduled

The Environmental Protection Agency announced December 23<sup>rd</sup> that it will hold a public meeting January 13<sup>th</sup> on its review of hazardous air pollutant standards for stationary diesel engines in North Carolina. The comment period on the proposed rule will be extended one week to February 14<sup>th</sup>. The agency's national emissions standards for hazardous air pollutants for stationary compression ignition reciprocating internal combustion engines limited the time the engines could be used to meet peak electricity demand.

#### **Federal Energy Regulatory Commission**

##### Michigan Seeks Federal Energy Regulatory Commission (FERC) Reconsideration

Responding to a December 16<sup>th</sup> plan, Michigan officials and utilities are asking the Federal Energy Regulatory Commission to reconsider a decision that would spread the cost of constructing new high-voltage transmission lines and upgrades across a dozen Midwestern states in order to address the growing backlog of wind energy projects. The plan would require Michigan electric customers to subsidize renewable projects in other states and could jeopardize the state's own requirement for meeting its 10% renewables target with in-state generation.

#### **Miscellaneous**

##### Carbon Capture and Storage (CCS) Sites Selected

On December 20<sup>th</sup>, the FutureGen Industrial Alliance chose four sites in central Illinois as potential locations for the underground CO<sub>2</sub> storage facility called for in its \$1 billion plan to construct a near-zero-emission coal-fired power plant. The Alliance expects to make a final decision on the CCS facility in mid-February.

##### Diesel Standards Postponed

The California Air Resources Board delayed for up to four years implementation of emission standards for in-use heavy-duty diesel equipment, trucks, and buses on December 17<sup>th</sup>. Under the revised regulations, numerous companies will not be required to install particulate filters and they will be able to retain some of the equipment and vehicles in operation longer.

##### National Grid Energy Programs Approved

The Rhode Island Public Utilities Commission approved expanded energy-efficiency programs for National Grid customers in Rhode Island December 23<sup>rd</sup>. The programs will offer more incentives to conserve natural gas and electricity beginning the first of the year.