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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Debate

After a week of intense lame duck negotiations, most notably between the White House and Senate Republicans, the Senate and House will focus on a tax package this coming week, and the Senate will also address legislation to fund the federal government.

The Senate meets Monday, December 13th to resume consideration of the Middle Class Tax Relief Act of 2010 (H.R. 4853), debating an amended version of the legislation that would extend the 2001 and 2003 income tax rates for all taxpayers until 2012 and unemployment benefits for an additional 13 months, as well as a two-year extension for the alternative minimum tax and a one-year reduction of the Social Security payroll tax, with an afternoon vote to invoke cloture on a motion to concur in the House amendment to the Senate amendment to the tax bill.

After a considerable amount of lobbying from renewable energy and environmental groups and notable statements and letters from a handful of Senators and Representatives during negotiations on the tax package last week, a one-year extension of the 1603 Grants in Lieu of Tax Credits program was included in the package. The provision was in Senate Finance Committee Chair Max Baucus' draft tax package, and then was stripped out during President Obama's negotiations with Republican leadership because of its affiliation with the Recovery Act. A few modest provisions on energy efficient homes and appliances were also included in the draft, as was the extension of the per-gallon tax credits and outlay payments for ethanol.

During this week's debate, Senate Majority Leader Harry Reid (D-NV) is hoping to reach an agreement on a certain number of amendments to the tax package for each side of the aisle. Senators Jeff Bingaman (D-NM), Debbie Stabenow (D-MI), and Sherrod Brown (D-OH) are expected to file an amendment to include a \$2.5 billion expansion of the 48C Advanced Energy Manufacturing Tax Credit, which was also removed from the tax package during negotiations early last week. House Ways and Means Chairman Sandy Levin (D-MI) said this weekend that he hopes to renew the 48C tax credit before the end of the year, saying that it was arbitrarily left out. The package as a whole is highly unpopular with many Democrats, particularly the estate tax provisions, and a significant number of House Democrats have threatened to keep the measure from ever reaching the floor. Should the measure pass the Senate this week, it will return to the House, where, due to the House Democratic Caucus voting last week not to bring the compromise to the floor without changes, it is likely to first go to the House Ways and Means Committee for further review.

As congress has yet to complete work on any of the 12 regular appropriations bills for fiscal year 2011 and the current Continuing Resolution (CR) is set to expire December 18th, the House passed (212-206) a 10-month CR last Wednesday, and the Senate may take up the legislation (H.R. 3082) this week. When it does, Majority Leader Reid is expected to amend the measure, facing Republican opposition, by substituting it with the text of an omnibus appropriations bill, including a number of earmarks, that Senate Appropriations Committee Chairman Daniel Inouye (D-H) and Ranking Member Thad Cochran (R-MS)

developed. If the Senate is able to pass the legislation, House Republicans have said that they will strongly oppose the measure; they already opposed the House-passed CR, calling it too expensive.

Also last week, negotiators from 194 countries concluded the annual United Nations Framework Convention on Climate Change Conference of Parties (COP 16). COP 16 attendees adjourned the convention December 11th after adopting a series of agreements that recognize the need to push for greater greenhouse gas (GHG) emission reductions, while providing a firm foundation for broad adaptation, climate aid, and forest protection. The Cancun Agreements seek to limit the global rise in temperatures to two degrees Celsius compared to pre-industrial levels and call for a review of that goal and a possible tightening in 2013. The texts also establish a goal to reduce emissions by 25 to 40% compared to 1990 levels by 2020 and recognize the need for individual countries to raise their levels of emissions reductions to achieve the collective goals. Additionally, the agreement opened a Green Fund to disburse the \$100 billion a year expected to be collected by 2020 to assist vulnerable poor countries with low-carbon development and adaptation efforts. Binding agreements are still at least a year away, but achieving agreement on the above issues established hope and credibility for significant progress at next November's talks in South Africa.

Looking to the 112th Congress, House Republicans last week approved Representative Fred Upton (R-MI) to chair the Energy and Commerce Committee, Representative Hal Rogers (R-KY) to lead the Appropriations Committee, Representative Dave Camp (D-MI) to head the Ways and Means Committee, Representative Ralph Hall (R-TX) to chair the Science and Technology Committee, Representative Doc Hastings (R-WA) to lead the Natural Resources Committee, and Representative John Mica (R-FL) to head the Transportation and Infrastructure Committee.

During a contentious campaign for chairmanship of the Energy and Commerce Committee, Representative Upton pledged to pursue an "all of the above" energy strategy. Though he hopes to name all of his subcommittee chairmen this week, Chairman-Elect Upton has already chosen Representative Joseph Pitts (R-PA) to chair the Health Subcommittee, and the leading candidate for chairman of the Energy and Environment Subcommittee is Representative Ed Whitfield (R-KY), though Mr. Upton is planning on splitting the Subcommittee into the Energy Subcommittee and the Air Quality and Environment Subcommittee, opening the door for Representative John Shimkus (R-IL) to lead whichever of the two restructured panels Mr. Whitfield does not choose.

House Republicans also decided that the Energy and Commerce Committee will maintain jurisdiction over energy issues in the 112th Congress. Natural Resources Committee Chairman-Elect Hastings had sought to have energy issues consolidated in the Natural Resources Committee in the upcoming Congress. Additionally, Republican leadership named 10 new members to serve on the Ways and Means Committee last week.

The House Democratic Conference formally approved December 9th Representatives Sandy Levin (D-MI), Norm Dicks (D-WA), Barney Frank (D-MA), Henry Waxman (D-CA), and Robert Brady (D-PA) to serve as Ranking Members on the Ways and Means, Appropriations, Financial Services, Energy and Commerce, and Administration Committees, respectively, in the 112th Congress.

Senate Environment and Public Works Committee Chair Barbara Boxer (D-CA) said last week that the committee would focus on climate change science in its briefings and hearings in an attempt to demonstrate the importance of acting on climate change, and suggested that smaller pieces of climate legislation may come out of the committee in the coming congress.

Congress

Legislation Introduced

Representative Linda Sanchez (D-CA) introduced the American Microturbine Manufacturing and Clean Energy Deployment Act of 2010 (H.R. 6515) December 9th.

The same day, Representative Ted Poe (R-TX) was joined by 23 cosponsors in introducing legislation (H.R. 6511) that would stop the Environmental Protection Agency from implementing any GHG limits, including a cap-and-trade program.

Supreme Court

Court to Hear American Electric Power Co. v. Connecticut

The U.S. Supreme Court announced December 6th that it will hear a challenge to a court of appeals decision allowing several states to maintain a public nuisance lawsuit against American Electric Power Company and other utilities for their GHG emissions (*American Electric Power Co. v. Connecticut*, U.S., No. 10-174, *certiorari granted* 12/6/10). The case is significant because if the lawsuit by several states and environmental groups were to go forward, it would signal that the court is allowing challenges to a company's GHG emissions under federal common law, which may create another method by which to curb emissions.

Administration

Eight Agencies Launch Energy Initiative

The Departments of Agriculture, Commerce, Energy, and State, and the U.S. Export-Import Bank, the Overseas Private Investment Corporation, the U.S. Trade and Development Agency, and the Office of the U.S. Trade Representative launched the Renewable Energy and Energy Efficiency Export Initiative December 7th. The program is the nation's first federal government coordinated effort to support renewable energy and energy efficiency exports, and is aimed at meeting the goals of the President's National Export Initiative.

Department of Energy

Plants Receive Energy Certification

The Department of Energy certified the first industrial plants under the Superior Energy Performance program December 9th. The program is a new, market-based industrial energy efficiency program and will serve as a roadmap for industrial facilities to help improve their efficiency and maintain market competitiveness.

Lighting Webinar Scheduled

The Department of Energy's Building Technologies Program will host a webinar on December 14th titled "Commercial Lighting Solutions Web Tool: Improve Your Building Efficiency." The tool provides best practices lighting solutions for offices and box retail in new and existing buildings.

Nuclear Energy Needs Government Support

At the New Millennium Nuclear Energy Summit December 7th, participants concluded that domestic nuclear energy expansion can only occur with government support and predictable policies and regulations. The Department of Energy's Idaho National Laboratory and Third Way organized the event, co-hosted by Senators Tom Carper (D-DE) and George Voinovich (R-OH). At the same event, Energy Secretary Chu laid out a possible proposal for a clean energy standard, suggesting that it could be viable to set a 50% by 2050 standard, with an intermediate target of 25% by 2025.

Environmental Protection Agency

Court Denies Stay of EPA Climate Rules

The U.S. Court of Appeals for the District of Columbia Circuit denied industry and state motions December 10th to stay the Environmental Protection Agency's regulations limiting GHG emissions from mobile and stationary sources under the Clean Air Act. The order allows the agency to proceed with its findings that mobile source GHGs endanger public health and welfare and to proceed with the emissions limits it has issued for cars and light trucks. The ruling also will allow the EPA to proceed with its program to require large new and modified stationary sources to control emissions and obtain preconstruction permits for those emissions.

EPA Sends Tailoring Rule to Office of Management and Budget (OMB)

The Environmental Protection Agency sent to the White House Office of Management and Budget a final rule for review December 9th that would ensure that GHG emissions requirements to obtain operating permits under Title V of the Clean Air Act apply only to the largest sources. Title V operating permits for GHG emissions are scheduled to take effect January 2nd, along with requirements for new and modified sources to obtain pre-construction permits under prevention of significant deterioration provisions of the Clean Air Act. Under the tailoring rule, the requirements would only apply to sources with emissions greater than 100,000 MT CO₂e per year.

Smog Decision Delayed

Last week, the Environmental Protection Agency announced for the third time this year that it needs additional time to issue a set of rules that decide how aggressively the country will need to fight ground-level ozone, the key ingredient in smog. The agency will ask its scientific advisers for additional advice on revisions to the national ambient air quality standards for ozone, pushing the final decision until the end of July.

Boiler and Incinerator Rules Delayed

The Environmental Protection Agency asked the District Court for the District of Columbia December 7th to extend the deadline for issuing national emissions standards for hazardous air pollutants for industrial, commercial, and institutional boilers and process heaters and new source performance standards for commercial and industrial solid waste incinerators until April 2012. The agency seeks the extension as it reviews new emissions data received during the proposal's comment period.

Federal Energy Regulatory Commission

Renewable Developers Urged to Partner

Federal Energy Regulatory Commission Chairman Jon Wellinghoff said during an American Council on Renewable Energy conference December 9th that natural gas could evolve into a baseload fuel for power generation that would complement the intermittent nature of wind and solar power. Saying that low natural gas prices do not mean the end of the renewable energy boom, he urged renewable developers to partner with the natural gas industry to solve the longstanding problem of renewable energy generation unpredictability.

Personnel

President Obama plans to nominate Peter Lyons, who is currently serving as the Department of Energy's Principal Deputy Assistant Secretary for Nuclear Energy, to replace Pete Miller as Assistant Secretary for Nuclear Energy.

Miscellaneous

Wind Turbines to be Upgraded

Under an agreement announced by California Attorney General Edmund Brown Jr. December 6th, NextEra Energy Resources will upgrade 2,400 wind turbines in the Altamont Pass Wind Resources Area over the next four years to prevent harm to birds and bats. The company will also close all other outdated turbines by 2015 and pay \$2.5 million for ongoing animal fatalities.

Washington to Require GHG Reporting

The Washington Department of Ecology adopted a rule December 3rd that will require large stationary sources and transportation fuel suppliers to report their GHG emissions starting 2012. The rule goes into effect January 1st.

New Mexico Passes Cap and Trade Plan

New Mexico's Environmental Improvement Board voted 4-1 last week to approve, with modification, a petition from the New Energy Economy that would establish an in-state emissions cap beginning in 2013,

even if the rest of the Western region walks away from a regional program. The baseline emissions level will begin in 2010.

EU to Assist Chinese Cities

The European Union announced last week that it will set up a project to help eight Chinese cities trade emissions in a collaboration that goes beyond the disagreements between rich and poor nations on GHG emissions. The EU will provide expertise on regulations, verifications, and registries to track the purchase of credits.

Pew Releases Energy Report

The Pew Environment Group released a report December 8th called “Global Clean Power: A \$2.3 Trillion Opportunity.” The report found that with enhanced, but differentiated, clean energy policies, G-20 countries could raise as much as \$2.3 trillion in the next decade in clean power investments—over \$546 billion more than current 2020 estimates.

China to Adopt Demand-Side Management

China will implement regulations January 1st on demand-side management of energy resources to help it reach energy efficiency and emissions-reduction targets.

California Senator Resumes Renewable Portfolio Standard (RPS) Push

California State Senator Joe Simitian (D) resumed his fight December 6th for legislation to require public and private utilities to produce 33% of their electricity from renewable sources by 2020. Senator Simitian began the first day of the state’s 2010-11 session by introducing S.B. 23 to establish the renewable energy mandate.

Nuclear Unit to Close

Exelon agreed December 9th to shut down the Oyster Creek Nuclear Generating Station in New Jersey by the end of 2019. State environmental regulators and the company will shut down the nation’s oldest operating nuclear plant 10 years ahead of schedule as part of a comprehensive plan outlined by Governor Chris Christie (R) to prevent further degradation of Barnegat Bay.