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ENERGY AND ENVIRONMENT UPDATE

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Energy and Climate Debate

After a brief return to Washington, D.C., the House adjourned September 21 and the Senate adjourned early the following morning until after the elections. Congress will return shortly thereafter to begin a lame duck session during which debates over tax extenders, energy efficiency legislation, defense reauthorization, the farm bill, and more will take place.

During the brief September work period, both the House and Senate passed a six-month continuing resolution (H.J. Res. 117) to keep the federal government funded through March 27, 2013. Despite a last minute effort to fund the Department of Energy's weatherization program, the legislation maintains a roughly 60 percent cut in program funding, leaving about \$70 million that was included in last December's omnibus funding legislation for fiscal year 2012.

Due to divisions between the parties over the severity of cuts to the food stamp program, the House adjourned without voting on either a full farm bill or any short-term extension. The current, 2008, farm bill expires September 30. The expiration will not immediately end commodity and food stamp programs, but a number of conservation and energy programs will be unable to enroll new participants as of October 1. The House may take up the measure when it returns November 13, though it could be delayed until early next year. The Senate passed its version of the five-year farm bill (S. 3240) in June.

Congress

Stop the War on Coal Act Passed

The House passed, 233-175, the Stop the War on Coal Act (H.R. 3409) September 21. The five-bill package includes a number of measures that have already passed the chamber, including an effort to prohibit the Environmental Protection Agency from regulating greenhouse gas emissions, as well as provisions to halt several environmental, vehicle efficiency, and coal mining rules. The legislation includes an amendment from Representative Mike Kelly (R-PA) that would require the Department of Transportation to detail the human and economic costs of the new Corporate Average Fuel Economy Standards.

Airline Emissions Legislation

The Senate passed a bill (S. 1956) by unanimous consent September 22 that would prohibit the European Union from including American airlines in its CO2 emissions trading system. The House approved a similar measure (H.R. 2594) last October.

EPA CCS Regs Block Supported

During a hearing before the House Energy and Commerce Subcommittee on Energy and Power September 20, power companies and mine workers testified that Congress should block the Environmental Protection Agency's proposed new source performance standards for new coal-fired power plants until the technology can be demonstrated to be feasible on a commercial scale. Representative David McKinley (R-WV) introduced the legislation (H.R. 6172) July 24.

Legislation Introduced

Senators John Hoeven (R-ND) and Kent Conrad (D-ND) introduced legislation (S. 3563) September 19 to amend the Energy Policy Act of 2005 to modify the Pilot Project offices of the Federal Permit Streamlining Pilot Project.

Representatives Ted Poe (R-TX) and Mike Thompson (D-CA) introduced the Master Limited Partnerships Parity Act (H.R. 6437) September 19 to amend the Internal Revenue Code of 1986 to extend the publicly traded partnership ownership structure to energy power generation projects and transportation fuels. Senators Chris Coons (D-DE) and Jerry Moran (R-KS) introduced companion legislation (S. 3275) June 7.

Senators Olympia Snowe (R-ME), Jeff Bingaman (D-NM), Dianne Feinstein (D-CA), and Ben Cardin (D-MD) introduced legislation (S. 3591) September 20 to amend the Internal Revenue Code of 1986 to improve and extend the deduction for new and existing energy-efficient commercial buildings.

The same day, Senators Kent Conrad (D-ND), Mike Enzi (R-WY), and Jay Rockefeller (D-WV) introduced legislation (S. 3581) to make financing easier for companies that want to use an existing tax credit for storing CO2 captured from power plants.

Representatives Pete Olson (R-TX), Gene Green (D-TX), Jim Matheson (D-UT), and Marsha Blackburn (R-TN) introduced legislation (H.R. 6444) September 20 to require the Environmental Protection Agency to develop a system for a third party to validate Renewable Identification Numbers by January 2013.

Administration

Sequestration Impacts

The White House Office of Management and Budget released a report last week detailing its plans to implement reduced spending levels as required by the Budget Control Act of 2011. Under current law, budget sequestration will go into effect January 2013 and impact hundreds of federal programs, including grants issued by the 1603 Treasury Program in Fiscal Year 2013, which is expected to be trimmed by 7.6 percent.

Environmental Protection Agency

API Challenges RFS

The American Petroleum Institute filed a lawsuit September 18 in the U.S. Court of Appeals for the District of Columbia Circuit challenging the Environmental Protection Agency's 2012 cellulosic ethanol requirements set under the renewable fuel program. The group argued that the agency's projections for cellulosic biofuels are unrealistic, as they require refiners to blend 8.65 million gallons of cellulosic biofuel into the national gasoline supply this year even though only 20,069 gallons have thus far been produced. Refiners will be required to pay penalties for not purchasing the biofuel, even though it is not commercially viable.

E-Waste Challenge

The Environmental Protection Agency launched the Sustainable Materials Management Electronics Challenge September 20. The challenge is a voluntary program designed to encourage original electronics manufacturers and retailers to increase their device collection and third party recycling. Companies may join the challenge at the bronze, silver, or gold level, pledging to recycle up to 50, 95, and 100 percent, respectively.

GHG Permit Streamlining

Gina McCarthy, Environmental Protection Agency assistant administrator for air and radiation, told the EPA Clean Air Act Advisory Committee September 20 that the agency will consider, but not immediately act on, a suggestion to propose options for streamlining the greenhouse gas permit process. The committee shared a report with the agency the previous week, but did not offer any specific recommendations. A rule is not expected for at least a few years.

CO2 Reduction Benefits Underestimated

A September 17 report in the Journal of Environmental Studies and Sciences found that the Environmental Protection Agency's Interagency Working Group on the Social Cost of Carbon February 2010 report set too constrictive of a figure when it attempted to assign a dollar amount to the benefits derived from reducing CO2 emissions because it substantially underestimated the societal benefits of CO2 reductions. The study, *The Social Cost of Carbon in U.S. Regulatory Impact Analyses*, found that the panel did not consider the economic damages that climate change may impose on future generations.

Reheater Replacements Not Routine

The U.S. District Court for the Middle District of Louisiana ruled September 19 that reheater replacements at a Louisiana power plant are not eligible for a routine maintenance exception under the Clean Air Act. The court's ruling enables the Environmental Protection Agency and the Louisiana Department of Environmental Quality to advance a lawsuit claiming that Louisiana Generating LLC failed to install and run adequate pollution control equipment after modifications to its Big Cajun 2 power plant, in violation of the Clean Air Act and state law. The court argued that when a generating facility takes 25 days and spends \$4.5 million to decrease forced outages and increase future generation, the work cannot be considered routine.

Federal Energy Regulatory Commission

J.P. Morgan Subsidiary CA Trading Investigated

The Federal Energy Regulatory Commission issued a show-cause order to J.P. Morgan Ventures Energy Corp. September 20 to determine whether the company's electricity trading activities in the California wholesale electricity markets violated commission regulations under the Federal Power Act. The trading firm, which has 21 days to respond, could lose its authority to sell electricity, transmission capacity, and ancillary services at market-based rates, as well as face civil penalties.

OEIS Created

Federal Energy Regulatory Commission Chairman Jon Wellinghoff announced September 20 the creation of a cybersecurity office as part of the government-wide effort to protect the country's electric grid. The Office of Energy Infrastructure Security will assist the commission and electric industry participants in identifying and protecting against cyber attacks and physical threats. Joseph McClelland, director of the commission's Office of Electric Reliability since 2006, will lead the new office.

Electric-Natural Gas Industry Coordination

Federal Energy Regulatory Commissioner Phillip Moeller said September 18 that the electric and natural gas industries need to coordinate better in order to maintain a reliable national electric grid as generators shift away from coal to cleaner burning natural gas. The commission conducted five technical conferences in August to obtain comments on methods to improve coordination and prevent unexpected power outages.

Government Accountability Office

Spent Nuclear Fuel Storage

The Government Accountability Office released a report September 14 advising the Nuclear Regulatory Commission to develop a mechanism to ensure easy access to classified studies on the safety and security of spent fuel. The report, *Spent Nuclear Fuel: Accumulating Quantities at Commercial Reactors Present Storage and Other Challenges*, concludes that a temporary storage facility or permanent

repository could be decades away, and that storing spent fuel on-site at commercial utilities could result in the release of harmful radiation. Representatives Fred Upton (R-MI), chair of the House Energy and Commerce Committee, and Joe Barton (R-TX) asked the agency to examine the key benefits and challenges of moving spent nuclear fuel out of wet storage away from commercial nuclear reactors.

Personnel

Environmental Protection Agency Administrator Lisa Jackson appointed Ron Curry September 21 to serve as the new Region 6 administrator. Mr. Curry comes from the University of New Mexico, and previously served as Cabinet secretary of the Environment Department in New Mexico Governor Bill Richardson's administration.

States

Fracking Documents Requested

The Environmental Working Group filed a lawsuit September 17 in the New York State Supreme Court for Albany County charging that the New York State Department of Environmental Conservation and Governor Andrew Cuomo (D) failed to provide all the requested documents related to the drafting of state rules to limit fracking. The court has scheduled a hearing for October 26.

CA Fracking Regs

The California Division of Oil, Gas, and Geothermal Resources announced September 18 that it will propose rules governing fracking activities this fall. The proposal will require oil and gas producers to notify the agency when using fracking at existing wells, to disclose which chemicals and fluids are used in fracking, to protect groundwater, and to ensure that fracking does not negatively impact nearby well integrity.

DE Sea Level Rise

The Delaware Department of Natural Resources and Environmental Control released a report September 12 showing that all three of the state's counties and 31 of its 57 cities and towns would be directly impacted by a rising sea level. The final report, due in 2013, *Preparing for Tomorrow's High Tide: Sea Level Rise Vulnerability Assessment for the State of Delaware*, will make recommendations based on the vulnerability assessment to improve the ability of governments, businesses, and residents to adapt to sea level-caused changes.

CARB to Review Cap and Trade

The California Air Resources Board plans to address the potential effects of waste-to-energy operations and combined heat and power facilities on greenhouse gas emissions by making a new round of revisions to the state's cap and trade program. The board adopted a resolution September 20 calling for staff to review the program's trading rules governing electricity importers and to continue evaluating the risks posed by cap and trade rules to trade exposed industries. The resolution also calls for staff to return to the governing board in October to address the program's resource shuffling issue. The program applies to 360 businesses, representing 600 facilities.

NY Fracking Rules Delayed

According to a September 20 announcement by New York's environmental conservation commissioner Joseph Martens, proposed rules for fracking will be postponed so that a public health review can be conducted by the state Department of Health. The decision to delay the proposed rules comes after months of lobbying by environmental groups for an independent study of the health impacts of fracking.

Court Rejects Global Warming Public Nuisance Claim

The U.S. Court of Appeals for the Ninth Circuit affirmed September 21 the dismissal of a claim of public nuisance for global warming caused by greenhouse gas emissions. The court argued that the claim, which was brought by the Alaskan Village of Kavalina against ExxonMobil, is displaced by the Clean Air Act and actions taken by the Environmental Protection Agency. The Court's argument for dismissal is in

accordance with the reasoning used in the Supreme Court's 2011 ruling in *American Electric Power Co. v. Connecticut*.

International

Mobile Fuel Economy Imperative

International Energy Agency Deputy Executive Director Richard Jones said September 19 that improving vehicle fuel economy quickly is critical for reducing CO2 emissions, and countries cannot afford to wait. More than 92 percent of transportation sector energy use comes from oil products, and increasing global road transit could significantly increase both energy demand and emissions. A wide range of solutions, from advanced technologies to traffic demand management, will be necessary to achieve transportation sustainability.

Japanese Energy Plan

Japan's Cabinet indefinitely deferred September 19 the approval of a long-term energy and environment policy that would have phased out nuclear power, deciding instead to examine and review national energy programs as necessary. The country's Energy and Environment Council, which adopted the policy September 14, called for the country to halt nuclear power generation by the end of the 2030's and for increased renewable energy use and energy conservation.

Chinese Emissions Trading

Shenzhen, China announced September 19 that, as one of five Chinese cities and two provinces preparing to launch pilot CO2 trading platforms, it is hoping to strike a balance that is not too restrictive on business and industry. The city's legislature will discuss a second draft of major regulation on strengthening CO2 emissions management in October, and has already released a number of related regulations and handbooks.

EU-China Environment Cooperation

The European Commission announced September 20 that the European Union and China will cooperate on GHG emissions trading, with Europe providing input over four years to the design and implementation of Chinese pilot programs. The two will also cooperate on urban energy and resource efficiency, and on improving waste management, reducing water pollution, and minimizing heavy metal discharges.

Providing Risk Data Makes RE Possible

The Asian Development Bank said September 20 that its ability to provide free, accurate estimates of returns on investment will help to attract private investment in clean energy projects. Eliminating the costs of measuring financial uncertainty has helped to develop Asian solar and wind energy. The bank invested \$2.1 billion in clean energy projects in 2011, two years ahead of its \$2 billion goal.

Chinese Industries to Report Emissions

National Development and Reform Commission officials said September 13 that several Chinese industries, including aviation, electricity, iron, steel, cement, plate glass, chemical, and nonferrous metal producers, will be required to report CO2 emissions in the future, and those failing to report will not be allowed to engage in emissions trading.

EC's Shipping Emissions Proposal Potentially Harmful

Speaking at a European Policy Center event September 18, Andreas Chrysostomou, chairman of the International Maritime Organization's Marine Environment Protection Committee, said that an upcoming European Commission proposal on controlling shipping emissions could disrupt international negotiations on the issue and provoke a backlash from developing countries. The Commission plans to publish a proposal to regulate international shipping emissions by the end of the year.

EU Biofuel Limit Challenged

On September 18, a day after the European Commission confirmed that it will propose a 5 percent limit for 2020 on crop-based biofuel in the European Union's transportation fuel mix, ethanol and biodiesel

producers called the idea a “masterpiece of irresponsible policy making,” that will compromise billions in recent investments and cost hundreds of thousands of jobs.

French Energy Plan

French President François Hollande said September 14 that the nation, the first in the world to ban fracking for unconventional hydrocarbons, will reject permits to explore and extract the energy sources for at least five more years. He also announced plans to reduce the country's reliance on nuclear power, and the government is scheduled to issue an environmental road map in the coming week.

Miscellaneous

Sustainability Index

The FTSE Group released its periodic review September 17, adding Tiffany & Co., DirecTV Group, nine other American companies, and nine other companies from five other countries to the FTSE4Good sustainability indexes. The indexes, launched in 2001, measure the performance of companies that meet certain corporate responsibility standards.

CO2 Tax Raises Significant Funds

The Congressional Research Service reported September 17 that a federal carbon tax could raise as much as \$90 billion in its first year, and more in following years, to reduce the federal budget deficit or offset reductions in other taxes. The report, *Carbon Tax: Deficit Reduction and Other Considerations*, found that a tax of \$20/MT CO2 could raise as much as \$144 billion annually by 2020. Representative Pete Stark (D-CA) introduced the Save Out Climate Act of 2011 (H.R. 3242) and Representative Jim McDermott (D-WA) introduced the Managed Carbon Price Act of 2012 (H.R. 6338) this session.

Alternative Vehicle Tax Credits

The Congressional Budget Office released a report September 20 finding that tax credits for plug-in hybrid and electric vehicle purchases will cost about \$7.5 billion through 2019. The report, *Effects of Federal Tax Credits for the Purchase of Electric Vehicles*, concluded that the incentives, which peaked at \$7,500 per vehicle, did not make the alternative energy vehicles cost competitive with conventional or traditional hybrid cars.

Wind Energy Layoffs

The American Wind Energy Association warned last week that the American wind energy industry could lose about 10,000 jobs this year as uncertainty about the expiring production tax credit leads to increasing layoffs. Siemens Energy Inc. announced September 18 that 615 workers would lose their jobs at manufacturing facilities in Iowa, Kansas, and Florida, partially due to the uncertain future of the PTC. Should the credit not be extended, that number could grow to 37,00 jobs by the end of the first quarter of 2013.

Electronics Recycling Up

The Consumer Electronics Association released a study September 19 finding that 48 percent of consumer electronics owners have donated a product for reuse and 26 percent have recycled at least one device in the last year. The report, *CE Recycling and Reuse 2012 Edition*, concluded that 63 percent of electronics owners know where to recycle their devices, up five percent from two years ago.

Corporate Sustainability Roles

Deloitte released findings of a survey September 18 showing that the percentage of chief financial officers and chief operating officers accountable to their company's boards for sustainability issues almost doubled in the past year, from 20 to 36 percent. The report, *Sustainability: CFOs Come to the Table*, found that the primary sustainability authority is moving away from chief executive officers and corporate sustainability heads to CFOs and COOs.

RE Tax Incentives to Decline

The Congressional Research Service released a report September 19 finding that renewable energy tax incentives are projected to decline by nearly half, from \$6.3 billion to \$3.3 billion, between 2011 and 2015.

The report, *Energy Tax Incentives: Measuring Value Across Different Types of Energy Resources*, concluded that relative to their domestic production levels, current federal support for renewable energy exceeds funding for fossil fuels. The value of federal tax support for the energy sector was estimated at \$19.1 billion in 2010, when fossil fuels accounted for 78 percent of total energy production, while renewable energies comprised 10.7 percent, but renewable energies received more than 68 percent of the energy related tax incentives, and fossil fuels received 12.6 percent. Nearly half of the 68 percent went toward biofuels.

Climate Change Increases Insurer Risk

Ceres released a report September 21 finding that extreme weather events and other effects of global warming have resulted in greater risks to U.S. insurers. The report, *Stormy Futures for U.S. Property and Casualty Insurers: The Growing Costs and Risks of Extreme Weather Events*, concluded that extreme weather cost U.S. property and casualty insurers \$34 billion in 2011. Though losses in 2012 are lower than 2011 thus far, this year's drought is expected to cost insurers \$20 billion.