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ENERGY AND ENVIRONMENT UPDATE
December 23, 2012

Energy and Climate Debate

After the House failed to move forward with Speaker of the House John Boehner's (R-OH) Plan B proposal to avoiding the fiscal cliff, President Obama called on Congress December 21 to pass a basic agreement on the fiscal cliff that would preserve middle class tax cuts and unemployment insurance funding, while laying the groundwork for growth and deficit reduction. However, the Administration has since expressed a willingness to settle for a less comprehensive package after a short Christmas recess, but doing so will still require bipartisan cooperation.

An outcome for the tax extenders debate, as part of the fiscal cliff negotiations, remains up in the air. Whether or not $70 billion in tax extenders funding is even included in an final end of the year fiscal cliff avoidance package has yet to be determined, as Congress focuses primarily on blocking the full impact of $607 billion in tax increase and spending cuts scheduled to take effect in January. Though there is bipartisan support for renewing most of the extenders provisions, the tax extenders package may be passed instead on a retroactive basis early in the new year, and House and Senate leaders are attempting to review the various incentives to eliminate the least effective, thus reducing the price tag.

Advocates for the extension of the expiring production tax credit continue to voice their support for the program. Energy Secretary Steven Chu warned December 19 that failure to extend the production tax credit could force wind energy investments overseas, and called the credit incredibly important for the growth of the domestic industry. A group of senators also sent a letter December 20 urging Senators Harry Reid (D-NV), Mitch McConnell (R-KY), Max Baucus (D-MT), and Orrin Hatch (R-UT) to adopt commence construction language for both the Section 45 production tax credit and the Section 48 investment credit in any year-end deal.

In other end-of-the-year measures, Congress approved a $633.3 billion fiscal year 2013 National Defense Authorization Act (H.R. 4310, S. 3254) and the President is expected to sign the bill. Restrictions on the military's use of biofuels were removed from the final version of the measure, as was a provision that would have prevented the Pentagon from entering into a contract to plan, design, or construct a biofuel refinery, but the final version does limit funds for biorefinery construction until the Defense Department receives equivalent contributions from the departments of Agriculture and Energy.

Potential forward movement for the Farm Bill before the end of the year is becoming increasingly unlikely, as leaders in both houses fear that including it in a fiscal cliff package could cost votes, even though it offers billions in savings. The House is likely to markup a new bill at the end of February if it does not pass a bill this year.

Congress

Murkowski's Energy Agenda
Senator Lisa Murkowski (R-AK), the ranking member of the Senate Energy Committee, reiterated December 17 that she does not believe that a carbon tax has significant political support right now, but that addressing legislation that benefits a diverse energy package and allows Americans to be responsible environmental stewards is something she hopes to work on in the coming Congress.

Mikulski to Chair Senate Approps
Following the death of Senator Daniel Inouye (D-HI), Senator Barbara Mikulski (D-MD) will take over as chairman of the Senate Appropriations Committee in the 113th Congress. Senator Mikulski will be the first woman to chair the committee, and her elevation to the chair follows a similar move in the House where Representative Nita Lowey (D-NY) was chosen to serve as the top Democrat on the House Appropriations Committee – the first woman to serve as ranking member there.

Natural Resources 113th Subcommittees
Representative Doc Hastings (R-WA), chairman of the House Natural Resources Committee, named subcommittee chairmen December 20 for the coming Congress and expanded the scope of the National Parks, Forests, and Public Lands Subcommittee to direct more attention to the National Environmental Policy Act, renaming it the Public Lands and Environmental Regulation Subcommittee. All five chairmen from the 112th Congress were reappointed.

Legislation Introduced
Senators John Kerry (D-MA), Frank Lautenberg (D-NJ), and Kirsten Gillibrand (D-NY) introduced the Strengthening the Resiliency of Our Nation on the Ground Act (STRONG Act) December 19 to strengthen the country's infrastructure to better respond to extreme weather events. The legislation, which would coordinate federal extreme weather resilience and adaptation efforts and place a greater focus on pre-disaster efforts, does not have a strong chance of passing Congress in the near future.

Administration

Energy Efficiency Law
President Obama signed the American Energy Manufacturing Technical Corrections Act of 2012 (H.R. 6582) into law December 18. The compromise measure includes language from several House and Senate energy efficiency bills, including tweaking appliance standards for water heaters and commercial refrigerators, promoting energy efficient technology development, studying the barriers to industrial efficiency and the best practices for federal government advanced metering, and disclosing federal facilities' energy and water usage.

Department of Commerce

Costly Extreme Weather
The National Oceanic and Atmospheric Association released a report December 20 concluding that the United States experienced 11 extreme weather and climate events in 2012 that cost $1 billion or more, including seven severe weather/tornado events, two tropical storm/hurricane events, and the yearlong drought and related wildfires. The events caused 349 deaths, and though the agency is not yet able to estimate the total economic losses from this year's events, it expects the figure to be higher than 2011's $60 billion.

Wind AD/CVD Determination
The International Trade Administration released antidumping and countervailing duty final rulings December 18 finding that China dumped utility-scale wind towers in the United States market at margins ranging from 44.99 to 70.63 percent, providing countervailable subsidies to exporters and producers of the goods ranging from 21.86 to 34.81 percent. The Commerce Department also found that Vietnam dumped utility-scale wind towers in the United States market at margins ranging from 51.50 to 58.49

percent. The International Trade Commission will vote on material injury to the domestic industry by January 31. The Wind Tower Trade Coalition requested the investigation.

Department of Energy

CCS Report
The Department of Energy Office of Fossil Energy released a report December 19 finding that North America can store at least 700 years' worth of CO_2 emissions captured from power and industrial plants. The fourth edition of the *Carbon Utilization and Storage Atlas* concluded that saline formations, oil and gas reservoirs, and unmineable coal seams in the United States and parts of Canada could hold 2.38 TMT CO_2.

LNG Export Terminal Opposition
The American Public Gas Association and the Sierra Club filed comments December 17 urging the Department of Energy to reject a proposal from Southern LNG Co., LLC to construct a liquefied natural gas export terminal at Elba Island, Georgia. The project is one of 15 applications to construct such facilities to sell natural gas to non-free-trade agreement countries that the Office of Fossil Energy is reviewing.

Climate Change Impact on CA Power
The Lawrence Berkeley National Laboratory released a report December 18 finding that higher temperatures caused by climate change are negatively affecting the generation and transmission equipment used to power California and the state may need up to 40 percent more capacity by the end of the year. The lab considered the impacts of rising temperatures, frequent wildfires, and sea level rise on the primary components of the electrical system from gas storage tanks and pipelines to transmission lines and power plants.

$9 Million for Efficient Buildings
The Department of Energy awarded December 21 $9 million to six manufacturing projects to advance energy efficient building technologies, including high performance windows and HVAC systems. The projects are in California, Connecticut, Idaho, Maryland, Missouri, and Tennessee.

$20 Million for CSP
The Department of Energy announced December 17 $20 million in new funding for two to four projects to integrate concentrating solar power systems with fossil fuel power plants. The hybrid systems leverage the infrastructure of fossil fuel plants, helping to reduce the cost of solar electricity and bring CSP plants online more quickly. Currently, between 11 and 21 GW could be built and integrated into existing plants in the country, enough to power between 3 and 6 million homes.

Department of Interior

BLM Fracking Rule Opposed
Governor Bobby Jindal (R-LA) and Attorney General E. Scott Pruitt (R-OK) sent a letter December 17 to President Obama asking him to withdraw a proposed rule that would increase fracking regulations on federal lands. The Bureau of Land Management expects to issue a final rule in 2013. The Governor and Attorney General are chairmen of the Republican Governors Association and Republican Attorneys General Association, respectively, and sent the letter on behalf of the associations.

NPR-A Final Plan
The Department of Interior released the Final Integrated Activity Plan and Environmental Impact Statement for the National Petroleum Reserve in Alaska on December 20. NPR-A will open 11.8 million acres for oil and gas drilling, constructing pipelines carrying oil and gas from operations in the Chukchi and Beaufort seas. The proposed leasing area contains an estimated 549 million barrels of oil and 8.738 trillion cubic feet of natural gas.

Largest Solar Plant

The Bureau of Land Management completed a final environmental impact statement December 20 for the McCoy Solar Energy Project, what will become the world's largest solar power project in Southern California. The project will sit on more than 4,300 acres of mostly public land in the Colorado Desert. The agency will publish the final statement December 24, paving the way for the Interior Department to issue a record of decision and a right-of-way grant early next year authorizing NextEra Energy Resources Inc. to build the 750 MW capacity plant.

NV Wind EIS Released
The Interior Department finalized the environmental impact statement December 17 for a 200 MW wind energy facility in Nevada. Searchlight Wind Energy applied to the Bureau of Land Management for a right-of-way grant on public lands to develop the facility on 18,790 acres of bureau lands 60 miles southeast of Las Vegas.

Onshore Oil and Gas Leases
The Bureau of Land Management raised $233 million on 31 onshore oil and gas lease sales this year, attracting bids on more than 1.4 million acres of public land. The agency has scheduled 33 oil and gas lease sales for 2013.

Environmental Protection Agency

SNURs Withdrawn
The Environmental Protection Agency published a notice December 21 withdrawing significant new use rules (SNURs) for eight chemicals due to objections it received. The eight SNURs were among 20 the agency published as direct final rules November 2, and it intends to reissue them as proposed rules for comment in a future notice, but it has not given a timeline for publishing them. Six of the eight withdrawn chemicals are complex mixtures containing benzene and are made by a renewable fuels company that has designed drop-in fuels to replace traditional fossil fuels.

Ozone Designation Reconsideration Denied
The Environmental Protection Agency denied petitions for reconsideration December 14 over attainment and nonattainment designations for the 2008 ozone air quality standard. The agency published a final rule with attainment designations for the 2008 ozone national ambient air quality standard of 75 parts per billion on May 21.

RFS Requested
The American Petroleum Institute called on the Environmental Protection Agency December 19 to issue overdue renewable fuel standard requires for the upcoming year by January 1. The agency missed the November 30 statutory deadline to finalize the 2013 volume requirements and set the biomass-based diesel fuel requirements for 2014, which must be set 14 months in advance. The proposed rule for 2013 has been with the Office of Management and Budget for review since July.

Boiler MACT Finalized
The Environmental Protection Agency released the final boiler Maximum Achievable Control Technology rule December 21. The boiler MACT rule sets emissions standards for boilers, incinerators, and cement manufacturing facilities; the agency also finalized changes to a rule that determines which products would not be considered waste if used as a fuel. The previous day, to meet a court deadline, the agency signed revisions to the 2010 cement manufacturing emissions rule, extending time for industry to implement the rule.

Fraudulent RIN Case
The Environmental Protection Agency sent a proposed rule to the Office of Management and Budget December 15 for interagency review that would establish a third-party verification system for renewable fuel credits. The proposed rule comes after 30 companies reached a settlement with the agency in April in which they agreed to pay about $3.65 million in penalties after they purchased fraudulent renewable identification numbers. Two days later, OceanConnect LLC appealed a December 5 U.S. District Court for the Southern District of Texas order in the U.S. Court of Appeals for the Fifth Circuit, arguing that the

agency's mismanagement is responsible for fake credits entering the marketplace and should be allowed to be sued by a third party. On a related note, Toronto-based Bioversel Trading Inc. hired CN Rain to export biodiesel to the United States in order to generate 12 million credits. Though RINs must be retired when fuel is exported, once it reached the United States, Bioversel's American partner, Verdeo Inc., transferred the fuels back to Canada, and Verdeo retired cheaper ethanol credits instead of the newly created biodiesel RINs. The agency and Canada's Border Services Agency are investigating the situation.

Portions of RFS Challenge Dismissed
The U.S. Court of Appeals for the District of Columbia Circuit dismissed December 17 portions of an American Petroleum Institute, American Fuel & Petrochemical Manufacturers, and Western States Petroleum Association lawsuit challenging the Environmental Protection Agency's renewable fuel standard for 2011. The court found that the industry did not file a challenge to the December 2010 rule, which established renewable fuel volume requirements for 2011, within 60 days as required. At the same time, parts of the suit challenging the agency's decision to deny industry petitions to waive the cellulosic ethanol component of the 2011 renewable fuel standard will be allowed to proceed.

Locomotive and Marine Diesel Sulfur Eased
Environmental Protection Agency Administrator Lisa Jackson signed off on a final rule December 15 easing part of the diesel sulfur program for locomotives and marine diesel fuel. The rule reinstates the ability of locomotive and marine diesel fuel produced from transmix by transmix processors and pipeline operators to meet a maximum 500 ppm sulfur standard outside of the Northeast Mid-Atlantic Area and Alaska and expand the ability to within the Northeast Mid-Atlantic Area if the fuel is used in older technology engines that do not require 15 ppm sulfur diesel fuel and the fuel is kept separately.

Fracking Impact Progress Report
The Environmental Protection Agency released a progress report December 21 on its study of fracking's impact on drinking water. The agency will host two webinars about the report on January 3 and 4.

Nonhazardous Secondary Materials Revisions
The Environmental Protection Agency released a final rule December 20 that specifies which materials may be considered fuel as opposed to solid wastes when burned in boilers or solid waste incinerators. In particular the new rule indicates that reinstated wood, coal refuse that has been recovered from legacy piles, scrap tires that are managed by established tire collection programs may be treated as fuels rather than wastes. The agency also revised its definitions of "clean cellulosic biomass," "contaminants," established tire collection programs," and "reinstated wood". The new rule will come into effect 60 days after it is published in the Federal Register.

Boiler and Incinerator Air Pollution Standards
The Environmental Protection Agency released final rules December 20 that revise air emissions limits for boilers and incinerators but allow the industry extra time to comply. The new rules, which the agency says retain many of the benefits of the original 2011 standard, are expected to prevent 8,100 premature deaths and 5,100 heart attacks by reducing emissions of mercury, particulate matter, and other pollutants. The rules require that major source boilers be in compliance by 2016. The solid waste incinerator rule revises new source performance standards and emissions guidelines while also adjusting emissions limits for dioxins and mercury. The rule also eliminates the oxygen correction requirements for carbon monoxide emissions limits during startup and shutdown and mandates constant parametric monitoring of particulate matter from waste-burning kilns and large energy recovery units.

Research Grants for Sustainable Chemical Developments
The Environmental Protection Agency and the National Science Foundation December 20 announced that they will provide as much as $32 million via as many as 10 grants for research examining the life cycle of chemicals as well as inquiries that supports the safe, sustainable development of chemicals. Those interested in the grants must submit requests for applications by March 18.

Federal Energy Regulatory Commission

CA MOU
During a December 20 business meeting, the Federal Energy Regulatory Commission announced that it is drafting a memorandum of understanding with the California Air Resources Board to establish a process for monitoring the impact of the state's GHG emissions reduction program on West Coast wholesale electric markets. The commission wants to ensure that the cap and trade program does not threaten electric reliability or create market manipulation problems.

Demand Response Report
The Federal Energy Regulatory Commission issued an annual report December 20 updating progress in establishing demand response programs and tracking the volume of advanced metering installations. The report, *Assessment of Demand Response and Advanced Metering*, found that almost 72,000 MW, almost 10 percent of domestic peak demand, of demand response capability is available in the country. The program has increased by 13,000 MW between 2009 and 2011, and peak reduction capability has more than doubled since the first annual survey in 2006. Florida, Texas, and the West have the most advanced metering.

Grid Integration Challenges Denied
The Federal Energy Regulatory Commission denied a rehearing December 20 on challenges to the agency's June rule (Order 764) designed to promote more efficient integration of variable energy resources into the grid. Central complaints included the requirement that transmission providers offer customers the option of scheduling service at 15-minute intervals and the cost for small entities to comply. The commission has granted a request to extend the period for submitting compliance filings from next September 11 until November 12.

Nuclear Regulatory Commission

San Onofre Permitting
The Nuclear Regulatory Commission's licensing board denied a request December 21 to hear Citizens' Oversight's challenge to the operating permit for SoCal Edison's San Onofre plant in part because of a lack of standing. The company proposed in October updating its license to the commission as part of a pursuit to repair one of its reactors. Following the move, Citizens' Oversight charged that the public was entitled to a hearing because of the proposed changes, and the licensing board heard oral arguments on their three contentions earlier this month.

Personnel

President Obama nominated Senator John Kerry (D-MA) December 21 to be the next Secretary of State. Kerry, who is widely expected to win Senate confirmation, is a decades-long advocate of addressing global warming, and has called climate change a major security and foreign policy challenge.

Senate Majority Leader Harry Reid (D-NV) chose a replacement December 20 for longtime energy aide Chris Miller, who is stepping down at the end of the year. Alexander McDonough will become senior policy advisor for energy and the environment; he has worked in the office for seven years, first as a legislative correspondent and then as a legislative assistant for energy and the environment, as well as a policy adviser for natural resources.

International

Coal Market Report
Maria van der Hoeven, executive director of the International Energy Agency, said December 18 that Europe, China, and India should learn from the United States' experience suggesting that access to inexpensive natural gas can lead to reductions in coal use, CO_2 emissions, and electricity prices, even as carbon capture and storage technology appears unlikely to have a significant global impact before 2017. The agency's *Medium-Term Coal Market Report 2012* projects that coal's share of the global energy mix will continue a relentless rise, particularly in China and India; by 2017 it will almost overtake oil as the

world's top energy source. The agency expects coal demand to increase in every region of the world in the next five years except in the U.S., where coal is being pushed out by natural gas.

Fracking Risk Consultation
The European Commission opened a public consultation December 20 on the use of fracking in the European Union for extracting unconventional fossil fuel deposits. The consultation results would feed into a 2013 proposal for a framework to manage fracking risks, address regulatory shortcomings, and provide as much legal clarity and predictability to market operators and citizens as possible.

Aviation Emissions Negotiations
The High-level Group on International Aviation and Climate Change met December 12-13 in Montreal for the first round of discussions on forming a global agreement to reduce GHG emissions from the aviation sector. Representatives from the United States and 16 other countries considered two potential approaches to a market-based measure system for addressing aviation emissions: a single global system of mandatory offsets or trading; or a flexible framework allowing member states to implement individual market-based measures.

WTO Ruling Against Ontario Welcomed
The European Union applauded the publication of a World Trade Organization dispute panel ruling December 19 backing a complaint they and Japan filed against discriminatory provisions in Ontario's green energy program. The panel ruled that the feed-in tariff program violated WTO rules by discriminating against foreign suppliers of equipment and components for renewable energy generation facilities through domestic content requirements.

EU Car Taxation
The European Commission launched December 14 an attempt to harmonize tax systems and other policies in the 27 European Union member states and to remove obstacles that individuals and companies face. The initiative follows several court cases against member states for violation of cross-border passenger car registration taxation rules.

U.S. Establishes Clean Energy Development Center in Africa
In an attempt to bolster the development of renewable energy projects in sub-Saharan African countries the United States is launching a Clean Energy Development and Finance Center in South Africa. The clean energy center, which is being backed by the Overseas Private Investment Corporation and the U.S. Export-Import Bank, will offer technical and financial support for solar, wind, biomass, geothermal, hydropower, ocean energy, and natural gas.

Canadians Recycle More Plastic; Unsure of What to Do With E-Waste
According to recent studies, Canadian consumers have increased the amount of plastics they recycle by 24 percent but are still unsure of how to properly dispose of their electronic wastes. The 2011 Postconsumer Plastics Recycling in Canada report, released by the Canadian Plastics Industry Association December 17, found a 24 percent increase in consumer plastic recycling from 478 million pounds to 592 million pounds in 2011. A separate December 19 report from Samsung Canada found that about 10 percent of Canadians admitted to throwing away their used electronics and that 35 percent were unsure of to do with their e-waste.

States

CA Fracking Regs
California Department of Conservation's Division of Oil, Gas, and Geothermal Resources released draft fracking regulations December 18 that address testing, monitoring, disclosure, and wastewater treatment. The process could lead to a final rule for activities that have been subject only to general oil and gas industry standards, though the draft does not launch an official rulemaking process, only a public discussion of the document in preparation for the formal rulemaking that will begin next year.

CA Carbon Registry Credits

The California Air Resources Board approved last week the Climate Action Registry and the American Carbon Registry to help evaluate compliance-grade carbon offsets under the state's cap and trade program. It has accredited trained third-party verifiers to help evaluate the quality of offset projects submitted for approval. The two registries may now issue compliance credits covered entities may use under the economy-wide trading program to meet declining annual emissions caps. The board has approved accounting protocols for forestry, urban forestry, diary manure digesters, and the destruction of ozone-depleting substances.

<u>CA Diesel Truck Lawsuit</u>
The U.S. District Court for the Eastern District of California ruled December 19 that it lacked jurisdiction in a lawsuit challenging standards for the state's diesel trucks and buses because the regulations are part of a federally approved state implementation plan. The ruling forces the California Dump Truck Owners Association to determine whether to continue the suit, which alleges that the state regulations are unconstitutional because the Federal Aviation Administration Act of 1994 preempts them.

<u>CA Ratepayer to Receive Carbon Allowance Revenues From Utilities</u>
California state regulators ruled December 20 that 85 percent of the revenues derived from the sale of greenhouse gas emissions allowances by the state's investor-owned utilities, between 2013 and 2020, must be passed on to ratepayers in the form of rate reductions and semiannual "climate dividends". California's three investor-owned utilities are Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas and Electric Company. The California Public Utilities Commission predicts that utilities will return between $5.7 billion and $22.6 billion to ratepayers as a result of the new rule.

Miscellaneous

<u>Sustainability Reports Up</u>
The Governance and Accountability Institute released a report December 17 finding that the number of companies in the S&P 500 and Fortune 500 preparing GHG, water use, and other sustainability data reports doubled from 2010 to 2011. The report, *2012 Corporate/ESG/Sustainability/Responsibility Reporting – Does It Matter?*, concluded that 52 percent of S&P 500 companies prepared reports in 2011, compared with only 19 percent the previous year; 57 percent of Fortune 500 companies prepared reports.

<u>Unconventional Oil and Gas Benefits</u>
IHS CERA and IHS Global Insight released a state by state analysis December 19 showing larger economic benefits to more states from unconventional oil and natural gas production than is generally found. The group will release a study on the impact of unconventional oil and natural gas production on domestic manufacturing in February.

<u>Consumers Reward Corporate Climate Change Action</u>
Yale University and George Mason University published a report December 19 finding that almost a third of domestic consumers said that in the past 12 months they have given business to a company as a reward for taking steps to reduce climate change. The report, *Americans' Actions to Limit Global Warming in September 2012*, found further that nearly a quarter of those surveyed said that they have punished companies that oppose GHG reduction efforts by not purchasing their products.

<u>Environmental Groups To Sue First Energy</u>
The Environmental Integrity Project and Public Justice sent December 20 a notice of intent to sue FirstEnergy Corporation over purported seeping of heavy metals into waterways from an unlined coal ash disposal pond in Pennsylvania. According to the notice, levels of boron, selenium, arsenic, and molybdenum that exceed local and federal standards were detected in water samples taken downstream from the disposal pond.