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ENERGY AND ENVIRONMENT UPDATE **March 20, 2011**

Energy and Climate Debate

Following last weekend's natural disaster in Japan and the subsequent nuclear explosions, U.S. legislators and administration officials on both sides of the aisle have come to the defense of the domestic nuclear industry, while some also begin to express the need for added caution.

The immediate policy ramifications may include delays in negotiations over a clean energy standard and Department of Energy loan guarantees for nuclear power plants. The long term impact is more difficult to predict, however. If one were to point to last April's Gulf of Mexico oil spill as an example, in the weeks and months following, many pieces of legislation were introduced and debated to more stringently regulate the industry, and now House Republicans have returned to their drill now, drill here, message. Combined with rising conflict in the Middle East and higher gas prices, the disaster could also force debate toward more natural gas, renewable energy, and energy efficiency as near-term solutions.

While the crisis in Japan has dominated much of the conversation this past week, President Obama also signed another stopgap government funding bill into law March 18 (H.J. Res. 48). The measure is a three-week package of spending cuts that reduces funding \$6.1 billion from the fiscal year 2010 budget and buys Congress until April 8 to strike a deal and wrap up work on federal spending for fiscal year 2011. Soon after the House and Senate passed the compromise measure, they recessed until March 28; if they are unable to come to an agreement by early April, Congress will either have to pass another continuing resolution or again face the threat of a government shutdown.

Energy Secretary Steven Chu told House appropriators last week that he does not believe the ongoing nuclear power plant crisis in Japan should result in a moratorium on building new nuclear reactors in the United States. He said that the country needs a diversified portfolio of energy resources that includes nuclear energy. Numerous congressmen, including House Energy and Commerce Committee Chairman Fred Upton (R-MI) who have nuclear facilities in or near their districts have also come out in support of the U.S. nuclear industry.

Meanwhile, Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) and Environment and Public Works Committee Chairwoman Barbara Boxer (D-CA) both issued statements last week saying that they will hold hearings on nuclear safety in the coming weeks, and the U.S. Nuclear Regulatory Commission has already briefed the committees. Additionally, the increased prospect of new safety reviews and regulations for the nuclear industry will likely sent construction, insurance, and liability costs higher, perhaps further stalling industry growth.

Last Wednesday, the Union of Concerned Scientists released a report criticizing the NRC for what it said were lapses in safety procedures at some of the country's 104 operating nuclear plants. On Thursday, President Obama called for a comprehensive safety review of all US plants. On Friday, the Environmental Protection Agency and the Department of Energy released a joint statement noting very miniscule quantities of radiation consistent with the Fukushima reactors had been detected by monitoring stations in Sacramento, California, but assured that the levels posed no health risk.

Congress

Senate EPA Regs Debate Still Ahead

The Senate is expected to vote on Senator Jay Rockefeller's (D-WV) plan for a two-year delay on the Environmental Protection Agency's climate regulations after they return from recess. The measure will come to the floor in the form of an amendment to the pending Small Business Reauthorization Act (S. 493). Senator Max Baucus (D-MT) introduced an amendment last week to exempt farmers and limit permitting rules to the biggest industrial emitters. With House expected to pass legislation that would expressly forbid the EPA from regulating GHGs, Senators Rockefeller and Baucus are both seeking to sway senators away from a provision (S. 482) from Senate Majority Leader Mitch McConnell (R-KY) and Senator James Inhofe (R-OK) that would do the same. That measure has also been offered as an amendment to the small business bill. Senators Claire McCaskill (D-MO), Debbie Stabenow (D-MI), Mark Prior (D-AR), and Jim Webb (D-VA) are among the still uncommitted votes.

House Committee Approves Legislation to Restrict EPA

The House Energy and Commerce Committee voted (34-19) March 15 to approve a bill to strip the Environmental Protection Agency of its authority to regulate GHG emissions, with three Democrats joining Republicans in voting for the measure. Passage clears the way for a mid-April floor vote on the bill (H.R. 910), authored by Committee Chairman Fred Upton (R-MI). Republicans rejected every Democratic amendment save one, a proposal by Congressman Jim Matheson (D-UT) that was then tweaked by a perfecting amendment from Congressman Charles Bass (R-NH) that urged Congress to develop a policy to address global climate change.

ENR to Consider Varied Legislation

Noting that he hoped to move forward with several energy bills over the next couple of months, Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) said last week the committee will host markups on a broad range of energy bills this spring, including measures to boost energy efficiency and hydroelectric power, as well as larger pieces such as a clean energy standard. Senator Jeanne Shaheen (D-NH) is awaiting a Republican cosponsor for her energy efficiency legislation, but plans to soon introduce the broad measure. Senators Bingaman and Energy Ranking Member Lisa Murkowski (R-AK) are expected to soon release a white paper on the clean, or diverse, energy standard, and have been in conversations with the White House.

House GOP Launches Domestic Energy Initiative

The House Natural Resources Committee and House Energy and Commerce Subcommittee on Energy and Power held simultaneous hearings March 17 to officially kick off Republican energy legislation, the "American Energy Initiative." House Republicans envision passage of several targeted energy bills in the coming weeks and months to increase domestic production of crude oil, natural gas, and coal, though chances for compromise with the Democratic-controlled Senate are minimal. House Speaker John Boehner (R-OH) announced the initiative March 10.

OMB Loan Guarantee Information Sought

House Energy and Commerce Committee leaders said March 14 that they are seeking documents and other information from the White House Office of Management and Budget as they broaden their investigation into a \$535 million loan guarantee to a California solar panel manufacturer that has since closed a plant and laid off workers. According to a March 14 letter to OMB Director Jacob Lew, signed by Committee Chairman Fred Upton (R-MI), Oversight and Investigations Subcommittee Chairman Cliff Stearns (R-FL), and Energy and Power Subcommittee Chairman Ed Whitfield (R-KY), OMB is responsible for reviewing and approving the credit subsidy costs of Energy Department loan guarantees, and the Congressional leaders are questioning whether Solyndra was an appropriate candidate.

DOE Funding Increase Unlikely

Congressman Rodney Frelinghuysen (R-NJ), chairman of the House Appropriations Energy and Water Subcommittee, told Energy Secretary Steven Chu March 15 that Congress is unlikely to back increased funding for the Department of Energy as outlined in President Obama's fiscal year 2012 budget request.

The budget request calls for a \$3.1 billion increase over the department's enacted FY 2010 funding levels.

Barton to Launch Air Permit Task Force

Congressman Joe Barton (R-TX) will formally launch a task force of regulators and industry leaders March 21 to focus on the impact of Environmental Protection Agency rules in Texas. Texas Commission on Environmental Quality Commissioner Brian Shaw and other state officials will join the Austin, TX event. The House Energy and Commerce Committee will hold a field hearing in Houston March 24 to discuss H.R. 910.

Industry Urges Ethanol Tax Credit Preservation

A number of energy industry groups urged Senators March 17 to oppose a pending amendment that seeks to eliminate the 45 cents per gallon blenders' tax credit for ethanol. Growth Energy, the American Coalition for Ethanol, the National Corn Growers Association, the Renewable Fuels Association, and the National Sorghum Producers sent a letter last week in opposition to S. Amdt. 220 to the Small Business Innovation Research and Small Business Technical Transfer Reauthorization Act (S. 493), which would strike the Volumetric Ethanol Excise Tax Credit from the tax code. The amendment is very similar to legislation (S. 520) that Senator Tom Coburn (R-OK) introduced March 9.

BUILD Act Forthcoming

Senators John Kerry (D-MA) and Kay Bailey Hutchison (R-TX) announced March 15 that they will soon introduce their Building and Upgrading Infrastructure for Long-Term Development Act. The legislation would create a national infrastructure bank that would fund transportation, water, and energy projects; the fund would require \$10 billion in seed money, which would be used to support loans and loan guarantees for up to \$640 billion worth of projects.

Legislation Introduced

Senator Amy Klobuchar (D-MN) introduced legislation (S. 580) March 15 to amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to require the appointment of a member of the Science Advisory Board based on the recommendation of the Secretary of Agriculture.

Senator Bob Casey (D-PA) introduced the Fracturing Responsibility and Awareness of Chemicals Act of 2011 (S. 587) March 15. The legislation would amend the Safe Drinking Water Act's underground injection program by including hydraulic fracturing, a process that was previously exempted under the Energy Policy Act of 2005. Representative Diana DeGette (D-CO) introduced companion legislation (H.R. 1084) in the House.

Senator Sherrod Brown (D-OH) introduced legislation the Security in Energy and Manufacturing Act (S. 591) March 15. The legislation would authorize \$5 billion for the 48C Advanced Energy Manufacturing Tax Credit Program. Senators Debbie Stabenow (D-MI), Maria Cantwell (D-WA), and Bob Casey (D-PA) cosponsored the legislation, and Congressman Steven Rothman (D-NJ) introduced companion legislation (H.R. 724) in the House.

On March 16, Senator Sheldon Whitehouse (D-RI) introduced legislation (S. 592) to amend title 46 to remove the cap on punitive damages established by the Supreme Court in *Exxon Shipping Company v. Baker*.

The same day, he introduced legislation (S. 594) to amend the Oil Pollution Act of 1990 to facilitate the ability of people affected by oil spills to seek judicial redress.

Senator Bob Menendez (D-NJ) introduced legislation (S. 600) to promote the diligent development of Federal oil and gas leases. The bill would require oil companies to file reports on how they plan to use millions of federal acres already under lease for energy exploration and innovation or risk losing their lease.

Senators Inhofe and Mike Johanns (R-NE) introduced legislation (S. 609) March 16 that would require certain Environmental Protection Agency regulations to be assessed for their impacts on jobs, economic development, the electric power and domestic refining and petrochemical sectors, and state and local governments.

Senators Olympia Snowe (R-ME) and Jeff Merkley (D-OR) introduced legislation (S. 612) March 17 to amend the Energy Policy and Confirmation Act to require the Secretary of Energy to develop and implement a strategic petroleum demand response plan to reduce the consumption of petroleum products by the Federal Government.

Senator Murkowski introduced a trio of bills promoting conventional hydropower as well as hydrokinetic technologies. The Hydropower Improvement Act of 2011 (S. 629) would establish a competitive grant program for efficiency improvements or capacity additions at existing hydroelectric facilities. The Hydrokinetic Renewable Energy Promotion Act of 2011 (S. 630) would authorize \$225 million for fiscal years 2012 through 2014 to provide research, development, and other assistance to the marine hydrokinetic industry. The Hydropower Renewable Energy Development Act of 2011 (S. 631) would ensure that the generation of hydroelectric power is considered as a renewable resource for the purposes of any federal program standard and expands the types of hydropower that can qualify for the Production Tax Credit and the Clean Renewable Energy Bonds program to include all new hydropower, small hydropower under 50 MW, lake taps, and pumped storage projects.

Congressman Brian Bilbray (R-CA) introduced legislation (H.R. 1149) to amend the Clean Air Act to include algae-based biofuel in the renewable fuel program and amend the Internal Revenue Code of 1986 to include algae-based biofuel in the cellulosic biofuel producer credit.

Congressman Jared Polis (D-CO) introduced legislation (H.R. 1204) to amend the Clean Air Act to eliminate the exemption for aggregation of emissions from oil and gas development sources.

Upcoming Hearings

Congress is in recess until March 28.

Department of Energy

\$12 Million for Hydrogen Storage

The Department of Energy's Fuel Cell Technologies Program announced a funding opportunity of up to \$12 million to advance hydrogen storage technologies for use in fuel cell powered vehicles and other applications March 18. The funding will be made available for applied research and development projects for the development of low-cost, novel hydrogen storage vessels and low-cost fibers for composite tanks to reduce the overall costs of hydrogen storage and the development of novel, practical hydrogen storage materials for diverse applications.

Upcoming Budget Cuts Ocean Energy

President Obama's fiscal year 2012 budget request for the Department of Energy would reduce funding for water power programs by 20 percent. The \$17.8 million budget request for marine and hydrokinetic technologies represents one of the only cuts within the Office of Energy Efficiency and Renewable Energy, and would mark the first year since the program's inception that the technologies have been funded at a lower level than the conventional hydropower program.

Environmental Protection Agency

Boiler Standards Forthcoming

The Environmental Protection Agency will publish four final rules March 21 requiring operators of industrial boilers and incinerators to control emissions of mercury, particulate matter, nitrogen oxides, and other pollutants. At the same time, the agency will also publish a notice announcing its intention to reconsider portions of the boiler and solid waste incinerator rules, following a federal judge's refusal to extend the agency's deadline to issue the emissions standards. The EPA will reconsider additional

subcategories for large industrial boilers, establishing work practice standards for major source boilers that have limited use, limits on fuel-switching for industrial incinerators, revisions to the carbon monoxide requirements for both boilers and incinerators, and setting particulate matter emissions limits under less stringent generally available control technology standards for small oil-fired boilers. Along with the four boiler and incinerator rules, the agency will publish a final rule that defines which materials are considered solid waste when burned and therefore subject to emissions standards for incinerators and which are considered fuel and subject to less stringent boiler standards under the Clean Air Act.

Hazardous Air Pollutant Rule Proposed

Responding to a March 16 court deadline, the Environmental Protection Agency announced proposed rules last Wednesday that would establish new numeric, technology-based limits on emissions of mercury, acid gases, and sulfur dioxide from new and existing power plants. Proposed revisions to the new source performance standards for steam-generating units at power plants would set more stringent emissions limits for SO₂, nitrogen oxides, and particulate matter. The agency estimates the rules would yield 31,000 construction jobs and 9,000 long-term utility jobs and would prevent as many as 17,000 premature deaths and 11,000 heart attacks per year. The final rule is due by November 16.

GHG Reporting Deadline Extended

The Environmental Protection Agency announced March 17 that it will postpone from March 31 the deadline for sources to report 2010 greenhouse gas emissions until September 30. The delay will give the agency more time to test its electronic data submissions system.

Biomass Qualifies as BACT

The Environmental Protection Agency issued guidance March 14 establishing that use of wood, grass, and other biomass as a fuel can be considered best available control technology for CO₂ for large new and modified air pollution sources. The guidance will apply until the agency completes an examination of the science associated accounting emissions from biomass. Along with the guidance, the EPA proposed a rule that would defer for three years GHG permitting requirements for new and modified industrial facilities that use wood, crop residues, grass, and other biomass for energy.

Federal Energy Regulatory Commission

Demand-Response Compensation Rule Released

The Federal Energy Regulatory Commission issued a final rule March 15 establishing a compensation scheme for demand-response programs that directs utilities to pay participants in wholesale electricity markets for not consuming power. The final rule was adopted with one dissent from Commissioner Philip Moeller, though most agreed that the scheme will increase efficiencies, reduce costs, and encourage innovation and new technologies in the marketplace.

Government Accountability Office

Offset Use Complicated

The Government Accountability Office released a report March 17 that concluded that the effective use of offsets in a federal GHG emissions cap and trade program would be complicated by several factors. The report, *Climate Change Issues: Options for Addressing Challenges to Carbon Offset Quality*, found particular concern over whether offsets, specifically the question of additionality, lead to true emissions cuts, concerns that have been voiced in both the European program and the Chicago Climate Exchange.

Miscellaneous

NTU Urges Subsidy Elimination

The National Taxpayers Union spearheaded a March 17 coalition letter in which more than 30 groups called on Congress to eliminate energy subsidies in the face of constricted federal spending and questionable results. The letter called on Congress to create no new subsidies, to expand no existing subsidies, to evenly apply lower taxation across the board, and to begin to dismantle the current system of subsidies.

Six States Approve GHG Lawsuits

New York's Attorney General filed a brief with the U.S. Supreme Court March 11, urging the court on behalf of New York, Connecticut, California, Iowa, Rhode Island, Vermont, and the city of New York to uphold the right of states to sue power companies as major contributors to climate change (*American Electric Power Co. v. Connecticut*, U.S., No. 10-174, brief filed 3/11/11). The lawsuit is set for oral argument in the U.S. Supreme Court on April 19.

NC Nuclear Financing Legislation Delayed

Due to the crisis in Japan, North Carolina legislators delayed introduction of a bill last week that would streamline the recovery of nuclear power plant construction costs in the state. The legislation, which is expected to be released later this year, would allow utilities to collect financing costs as the build nuclear facilities without going through a complete rate review proceeding.

Natural Gas Report Released

The Interstate Natural Gas Association of America released a report March 16 that found that natural gas can be used as a backup source of electricity when a sufficient amount of renewable energy, especially wind power, is unavailable to meet power demands, but it is costly. ICF International prepared the report, *Firming Renewable Electric Power Generators: Opportunities and Challenges for Natural Gas Pipelines*, and concluded that an additional 88 GW of intermittent wind generation could be built in the next 15 years, which would require almost 5 billion cubic feet per day of incremental delivery capability for natural gas.

Iceland May Export Clean Energy Undersea

A preliminary study of a proposed cable linking Iceland with the European Union's power grid will be completed by the end of this year. In early findings, however, it appears that geothermal power and hydropower from Iceland could be made available to the EU 500 million-customer base in the next decade if an undersea power cable is determined to be economically feasible.

China Puts Nuclear on Hold

China's State Council decided March 16 to suspend all new approvals of nuclear plants for a review of safety standards in the wake of Japan's unfolding potential nuclear crisis; no timeline has been specified. China has undertaken an unprecedented nuclear power development drive in recent years, and is in the midst of plans to build 28 new nuclear power plants, or 40 percent of the new plants being developed worldwide.

EPA Regs Could Harm Cement Industry

Portland Cement Association released a report March 15 that concluded that Environmental Protection Agency regulations requiring cement kilns to control GHG emissions and toxic air pollutants could eliminate 15,000 to 23,000 jobs in the cement and construction industries by 2015. The report, *Overview Impact of Existing and Proposed Regulatory Standards on Domestic Cement Capacity*, found that the reductions would reduce production of cement from nearly 90 million tons in 2005 to nearly 86 million tons in 2015.

Germany Closes Old Nuclear Plants during Safety Evaluation

German Chancellor Angela Merkel said March 15 that the government will temporarily close all seven of its nuclear power plants that started operations before 1980. Chancellor Merkel's statement comes one day after she announced a three-month moratorium on a planned extension of Germany's 17 nuclear power plants in response to the crisis in Japan. She said that the issue would be addressed further when leaders of the 27 member states in the European Union meet at the spring summit March 24-25 in Brussels.

EU to Test Nuclear Plants

European Union member states agreed March 15 to carry out stress tests on the 143 nuclear installations based in the EU in order to determine whether problems similar to those experienced in Japan could be avoided in the wake of a natural disaster or a terrorist attack. The executive body will also accelerate

work on new nuclear safety laws in order to adapt them to lessons learned from the Japanese crisis, and will reassess its long-term energy policies; currently nuclear power provides about 33 percent of the EU's electricity. The EU will encourage neighboring countries to carry out similar stress tests.

State Plans Alternatives to EPA Regs

Speaking at an International Emissions Trading Association conference March 14, California Air Resources Board chairwoman Mary Nichols said that the state's carbon emissions cap and trade program should be considered equally effective as federal regulation of GHGs. She argued that state programs could provide a viable alternative to a federal program and could operate as an alternative to a future regulatory program conducted by the EPA.