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ENERGY AND ENVIRONMENT UPDATE
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Energy and Climate Legislation

Now that Congress has passed and the President has signed into law health care legislation, Congress will turn its attention to other measures that they hope to enact this year. For example, there is growing bipartisan support for passing a financial services regulatory reform bill, though the Senate Banking Committee passed it out last week on party lines, and it is a growing possibility that the Senate will consider a comprehensive climate or energy-only bill this spring.

Congress is in recess until the middle of April, but when legislators return, they will be focused on jobs bills that primarily include tax incentives to create new jobs. One measure has already been signed into law; the second is in a conference committee, and the third passed the House last week. The fourth bill will focus more on green jobs, and is likely to be marked up in the Senate Finance and House Ways and Means Committees sometime in April. This legislation could pass as a fourth stand-alone jobs bill, or be folded into a climate or energy bill later this year.

Following a week of meetings with their Senate colleagues, Senators John Kerry (D-MA), Lindsey Graham (R-SC), and Joe Lieberman (I-CT) have set the week of April 19 as their target for releasing a comprehensive climate plan.

On Tuesday, the trio gave a PowerPoint presentation of their proposal to twenty of their colleagues who have spent the last year working on energy and climate legislation. Though Senator George Voinovich (R-OH) was the only Republican present at the meeting besides Senator Graham, the group's progress toward a compromise first-step climate bill was favorably received, and the trio looks forward to working out additional specific details with their colleagues. Later the same day, Majority Leader Harry Reid (D-NV) met with Senator Kerry and the five other committee leaders with jurisdiction over energy and climate legislation, including Environment and Public Works Chairwoman Barbara Boxer (D-CA), Energy and Natural Resources Chairman Jeff Bingaman (D-NM), Finance Chairman Max Baucus (D-MT), Commerce Chairman Jay Rockefeller (D-WV), and Agriculture Chairwoman Blanche Lincoln (D-AR). Joined by principal climate officials of the Obama Administration, the group discussed approaches to bringing the climate bill to the floor in the spring, including using the energy bill as the base legislation and offering climate amendments to that bill, and even the possibility of eventually moving on an energy bill alone later in the summer.

As expected, distribution of allocations will be the most difficult portion of the climate debate to come. Senators Kerry, Graham, and Lieberman planned from the beginning to leave this portion to the very end, as they sought to first develop more agreement on other areas that could get them to the elusive 60 votes. But the Senators said late last week that they are in the early stages of determining their allocation distributions, but that getting closer to unveiling their allocations proposal.

With electric utilities, petroleum refiners, and manufacturers each facing a different kind or level of cap, allocations to each sector will also work differently. The transportation sector is likely to face a carbon-linked fee, with revenue possibly going into the Highway Trust Fund. Revenue from the electric utilities'

allocations will be directed back to public and industrial customers via LDCs. The three Senators are planning on returning about 60% of the revenue raised back to the public, and are calling their proposal a "reduction and refund" approach rather than "cap and trade."

Responding to a request from Senator Baucus, the Government Accountability Office released a report March 26 called Observations on Options for Selling Emissions Allowances in a Cap-and-Trade Program that said that Congress needs to set priorities for allowance sales to determine the best distribution mechanism.

Yet another complicating factor in the ever-tight allocation pool is that the Senate will be required to reduce 25% of the total allocations in order to keep the legislation deficit neutral over its lifetime, thus the overall pot will be even smaller than it was in the House, which passed (219-212) comprehensive climate change legislation last summer.

The trio is also looking into extending EPA and state preemption language from the House's 2017 timeline.

Twenty-two Democratic senators called on the Majority Leader last Monday to move comprehensive climate legislation to the Senate floor this year in order to increase clean energy jobs and provide more regulatory certainty for American businesses. The group, which includes senators from high energy intensive and trade sensitive industry states, believes that passage of legislation will provide companies with clear policy signals that will allow them to more wisely invest in new technologies.

Last week, ten coastal Senate Democrats warned the trio that they should reject a major expansion of offshore oil and gas drilling or fear losing their support for the bill.

Senators Maria Cantwell (D-WA) and Susan Collins (R-ME), meanwhile, continue to push for their cap and dividend CLEAR Act, and believe that theirs should be the primary climate legislation. The 39 page bill refunds 75 percent of the revenue generated from permit purchases back to consumers. The trio is planning on including some of the Cantwell-Collins consumer protection pieces, but the two senators believe that their simpler bill is a better approach overall.

Senator Kent Conrad (D-ND) has drafted a letter urging Majority Leader Reid to first address an energy bill before moving on to a climate bill, but decided last week to wait to see how the trio's effort plays out before releasing the letter.

Senators Rockefeller and Voinovich are floating legislative language aimed at promoting CCS research and deployment in an attempt to influence the design and scope of the comprehensive climate bill, and especially its impact on coal states. The draft plan authorizes \$850 million over 15 years for cooperative industry-government research and development program based out of the Department of Energy, provides incentives to achieve the deployment of 20 GW of CCS energy generation, and includes an early adopter tax credit program.

Senator Tom Carper (D-DE) said late last week that he expects the Environment and Public Works Committee will mark up his 3-pollutant bill soon after returning from recess. The bill will reduce SO₂ by 80 percent by 2018, NO_x by 50 percent by 2015, and mercury by 90 percent by 2015.

Efforts are still underway to stall the EPA's regulation of greenhouse gas emissions under the Clean Air Act. Twelve states filed motions last Thursday to challenge the EPA's endangerment finding, citing extreme economic impacts.

Senate

The Senate Energy and Natural Resources Committee is considering adding new language to update the bipartisan American Clean Energy Leadership Act (S. 1462) that they passed last summer. As almost a year has gone by since then, new programs and technologies will need to be worked into the energy

package. A coalition of environmental groups and renewable energy developers sent a letter to Senators Bingaman, Murkowski, Reid, and McConnell last week requesting that they rework transmission language to make integration of renewable energy into a national electric grid more feasible.

House

Subcommittee Approves Home Star Program

The Energy and Environment Subcommittee of the House Energy and Commerce Committee passed by voice vote the Home Star energy efficiency retrofit rebate legislation last week. The proposal would provide, under the Silver Star tier, customers a rebate of up to \$3000 for energy efficiency upgrades. The Gold Star program provides an additional \$3000 for a home energy audit and additional home efficiency upgrades.

Subcommittee Approves Energy Research Funding

The Energy and Environment Subcommittee of the House Science and Technology Committee approved three pieces of legislation March 25 that would provide \$40 billion to Department of Energy research and development programs. The three measures include the DOE Office of Science Authorization Act of 2010, which provides \$35.8 billion over five years for fusion energy, bioenergy, and biological and environmental research programs; the \$3.4 billion ARPA-E Reauthorization Act of 2010; and the nearly \$900 million Energy Innovation Hubs Authorization Act of 2010. The full committee will mark up the legislation at the end of April as it begins considering reauthorization of the America COMPETES Act.

Appropriators Object to Yucca Mountain Closure

Energy Secretary Steven Chu testified before the House Appropriations Subcommittee on Energy and Water Development last Wednesday. With the fiscal year 2011 budget, the Administration plans to close the Yucca Mountain nuclear waste storage facility and appoint a blue-ribbon commission to study alternatives, and committee members from both parties questioned whether the DOE could spend money on closing the facility without first receiving congressional approval to do so. A bipartisan coalition introduced a resolution of disapproval March 23 that would require DOE to stop its efforts to withdraw the Yucca Mountain project license application from the Nuclear Regulatory Commission.

Subcommittee Approves Cybersecurity Bill

The Energy and Environment Subcommittee of the House Energy and Commerce Committee approved the Grid Reliability and Infrastructure Defense (GRID) Act last Wednesday, March 24, by a unanimous voice vote. The measure would give the Federal Energy Regulatory Commission authority to issue mandatory emergency orders to utilities and therefore protect the electricity grid from cyberattacks and other security threats.

Legislation Introduced

Congressman Bill Posey (R-FL) introduced H.R. 4934 on March 24 to prohibit the Securities and Exchange Commission from enforcing the interpretive guidance it issued on climate change reporting in January. The bill had 17 cosponsors.

Joined by 27 cosponsors, Congressmen Earl Pomeroy (D-ND) and John Shimkus (R-IL) introduced the Renewable Fuels Reinvestment Act (H.R. 4940) last Thursday that would extend ethanol tax credits and an ethanol import tariff that are scheduled to expire at the end of this year.

Administration

Research Program Will Focus on Addressing Climate Change

The U.S. Global Science Research Program, formerly called the Climate Change Science Program, will begin focusing not merely on climate science, but also on mitigation and adaptation techniques to address the impacts of climate change. The Program, under the direction of the White House Office of Science and Technology and with the participation of thirteen agencies, completed its first research project last summer on the domestic impacts of climate change.

Environmental Groups Concerned about CAFE Discount Rate

Seven environmental groups raised concern with the White House Office of Management and Budget March 19 over its efforts to apply high discount rates to the EPA and NHTSA's upcoming revised fuel economy standards for cars and light trucks. The groups believe that the OMB suggested discount rates of up to 50% of the value of fuel economy savings would lower the standards and limit greenhouse gas reduction efforts in the long run; discount rates of three to seven percent are more common in similar modeling scenarios.

Department of Energy

FERC to Issue Transmission Funding Rulemaking

Federal Energy Regulatory Commission Chairman Jon Wellinghoff said late last week that he plans to launch a rulemaking process this year to establish guidelines for determining cost allocation, or who has the responsibility to pay for new transmission lines and upgrades. The Senate energy bill expands and clarifies FERC's authority over expansion of the transmission grid.

Climate Modeling Program Announced

The Departments of Energy and Agriculture and the National Science Foundation launched a \$49 million joint research program to create a new climate change modeling program. The program will focus on localized climate impacts over shorter time periods than modeled before. The five year program will provide up to \$300,000 for three year projects and up to a million dollars for five year projects, and is expected to fund about 20 projects total.

Environmental Protection Agency

Biofuels Final Rule Published

The Environmental Protection Agency published a final rule March 26 to outline which biofuels meet the renewable fuels standard. EPA released the initial rule in early February, and said that corn-based ethanol qualifies as renewable fuel since the rule states that a fuel must produce 20 percent fewer greenhouse gas emissions than gasoline to meet the standard.

Tailoring Rule Delayed

With the March 31 deadline fast approaching, the EPA announced last week that they will not release the tailoring rule on schedule. Under the Clean Air Act, the rule will limit emissions of greenhouse gases from large (25,000 MT or more) new and modified stationary sources. The tailoring rule will not apply until January 2011. The Agency is still on track to release its mobile source rule by the end of March. That rule was recently found to reduce up to a billion MT of greenhouse gas emissions per year by 2030.

GHG Reporting Rules Proposed

The EPA proposed three rules early last week to require greenhouse gas reporting at CCS facilities, oil and gas wells, and locations that produce or use fluorinated gases. These three gases were not included in the EPA's economy-wide mandatory reporting rule issued last October that requires sources that emit more than 25,000 MT of greenhouse gases per year to report their emissions beginning in January 2010.

Government Accountability Office

The GAO released a report March 24 detailing the cause of less-than stellar results from the Department of Energy's Weatherization Assistance Program. The Davis-Bacon Act requirements of the Stimulus Act necessitate that federal contractors receive "prevailing wages", and therefore reduce the amount of homes that might receive funding under the low-income energy efficiency upgrade weatherization program.

International Maritime Organization

The International Maritime Organization finalized plans last Friday that would subject ships within a 230-mile buffer zone around the US and Canadian coastlines to stricter air pollution regulations. The emission

control areas, which will take effect in August 2012, are expected to save over 8,000 lives every year. The rule will require ships to reduce NO₂ emissions by 80 percent, particulate matter by 85 percent and SO₂ by 95 percent by 2015.

Nuclear Regulatory Commission

Last Thursday, the Nuclear Regulatory Commission issued a final environmental impact statement for the proposed third reactor at the Dominican Virginia Power's Lake Anna site. The statement determined that no environmental effects would preclude its construction.

Personnel

President Obama nominated Carl Wieman last Monday to be associate director for science in the Office of Science and Technology Policy. Dr. Weiman, a Nobel laureate, is a physics professor at the University of British Columbia and the University of Colorado.

Miscellaneous

Energy Disproportionately Expensive

The American Coalition for Clean Coal Electricity released a study last week that found that poorer Americans spend a disproportionately high amount of their income on energy. Lower income families earning less than \$10,000 spend 69 percent of after-tax income on energy bills, and families that earn less than \$50,000 spend about 19 percent of their income on heating, cooking, and transportation fuel.

CO Sets Higher RES

Colorado Governor Bill Ritter (D) signed legislation last Monday that increases the state's renewable energy standard from 20 to 30 percent. Under the revised law, the state will be required to use renewable energy for 30 percent of its electricity by 2020.

China Leads in Clean Technology Investment

The Pew Environmental Group released a report last week showing that China is the major country most invested in clean technology. With \$34.6 billion in private funds directed toward green energy markets and an effort underway to reduce greenhouse gas emissions, China is leading the US in the clean energy economy, and Brazil and India are not far behind in private and government spending, combined. American investments in 2009 were 40 percent down from 2008 levels, at \$18.6 billion, and the Pew Center believes that federal renewable energy standards and other climate regulations are necessary to push the US to the top of the market.

State Officials Adopt Environmental Resolutions

State Officials at the Environmental Council of the States spring meeting adopted twelve resolutions outlining environmental policy priorities last week. Resolutions included preserving state and local greenhouse gas reduction efforts, advocating for a national mercury monitoring effort, and urging the EPA to establish national ambient air quality standards.

CA Climate Laws Under Additional Scrutiny

With Governor Arnold Schwarzenegger announcing last week that he favors free allocation of permits under a cap and trade system, and some industries concerned that implementation of AB 32 will result in job losses and even more difficult economic times, another study this week concluded that the law will actually do the opposite. The California Air Resources Board unveiled an economic analysis of the legislation last Wednesday that projects no harm to the state economy, and even reduces energy prices and creates jobs while creating an emissions trading program in the state.

IDB Increase Climate Funding

The Inter-American Development Bank announced at its annual meeting last week that it will increase funding for climate change projects from 5 to 25 percent of its total lending by 2015. Climate change,

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renewable energy, and environmental sustainability projects will receive priority funding from 2012 to 2015.