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ENERGY & ENVIRONMENT UPDATE

November 25, 2013

ENERGY AND CLIMATE DEBATE

The Senate made an historic move Thursday to trigger the “nuclear option,” reducing the confirmation threshold for presidential nominees to a simple majority. Supreme Court nominees will still require 60 or more votes to be confirmed, but the change will allow Department of Energy, Department of the Interior, Environmental Protection Agency, and other nominees to move more quickly through the process.

No quorum was reached to consider the National Defense Authorization Act, and debates in three major House-Senate conferences—for the budget, the Farm Bill, and the Water Resources Development Act—are still ongoing. On Thursday, House Agriculture Chairman Frank Lucas (R-OK) said that farm bill discussions have faltered and that it will be difficult to have a final agreement on the House floor by December 13.

Senate Finance Chairman Max Baucus (D-MT) released [draft legislation](#) Thursday that could be considered part of the larger tax reform effort. The bill would repeal the Modified Accelerated Cost Recovery System for renewable energy and replace it with a tiered system. The Finance Committee is now considering a concept that pairs a clean energy standard with production and investment tax credits; the details of this concept are still in flux.

The United Nations Framework Convention on Climate Change held annual talks from November 11 to 22 in Warsaw. The discussions were designed to set the stage for a global climate change agreement set to be made at the December 2015 conference in Paris. Countries, including the U.S., agreed to create individual plans to contribute to international efforts to reduce emissions by early 2015, but no consensus was reached as to how to evaluate the proposals.

The Senate will be in recess for the next two weeks, returning December 9 to tackle the National Defense Authorization Act, efforts to raise the minimum wage, nominations including Janet Yellen

to serve as Chairman of the Federal Reserve and Jeh Johnson to serve as Secretary of Homeland Security, and possibly Affordable Care Act implementation bills.

ML Strategies wishes you a very happy and healthy Thanksgiving; look for our next update December 9.

CONGRESS

Letters Push Administration Efficiency Efforts

House and Senate members sent identical letters to President Obama November 4 advocating for an extension of the 2011 Presidential Memorandum on federal agency efficiency upgrades; the letters became public November 20. The memorandum directed agencies to use \$2 billion in private sector funding, such as through energy savings performance contracts and utility energy service contracts, for efficiency upgrades over two years. The bipartisan letters asked the president to set a new goal of \$1 billion over the next five years. The House [letter](#), with 117 signatories, was led by Representatives Cory Gardner (R-CO) and Peter Welch (D-VT) while the Senate [letter](#), with 22 signatories, was led by Senators Chris Coons (D-DE) and John Boozman (R-AR).

CRS Report on GHG Standards

The Congressional Research Service released [EPA Standards for Greenhouse Gas Emissions from Power Plants: Many Questions, Some Answers](#) November 15. The report concluded that debates over the new source performance standards are largely symbolic and exaggerated. It said the coal industry currently most of the blame on its decline on the Environmental Protection Agency but the market is the key factor. The report warned that upcoming rules for existing power plants could significantly impact the coal industry.

Sessions on Section 1603

Senate Budget Ranking Member Jeff Sessions (R-AL), in a November 18 [letter](#) to the Treasury Department, expressed concern about the Section 1603 program. Established by the 2009 Recovery Act, the program allowed companies to convert investment tax credits into cash grants. Ranking Member Sessions said he is worried that the program supported an unviable clean energy technology.

Stabenow on RFS

Senate Agriculture Chairman Debbie Stabenow (D-MI) addressed a Third Way event November 19, saying that she does not perceive any ways to change the Renewable Fuel Standard proposed 2014 levels legislatively. She commented that Congress is too busy addressing the budget and farm bill, and she urged members of the public to provide comments on the proposal.

Capps Pushes Fracking Moratorium

Representative Lois Capps (D-CA) sent a [letter](#) November 19 to Interior Secretary Sally Jewell and Environmental Protection Agency Administrator Gina McCarthy advocating for a federal offshore fracking moratorium. She said the moratorium should remain in place until impacts on public health and the environment can be further studied.

ASE Efficiency Event

Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) and Representatives Paul Tonko (D-NY), Mike Burgess (R-TX), and David McKinley (R-WV) participated in the Alliance to Save Energy's Great Energy Efficiency Day on November 20. Senator Portman said he believes there are 60 votes in the Senate to pass [S. 1392](#), the Energy Savings and Industrial Competitiveness Act, the Shaheen-

Portman energy efficiency legislation. He also said he thinks it will be considered between early and mid-December. Senator Shaheen said the Energy and Natural Resources Committee has already cleared 15 amendments to the bill.

ITIF Data Center Event

Addressing a November 20 Information Technology and Innovation Foundation event, Representative Anna Eshoo (D-CA) said energy efficiency efforts at federal data centers could result in hundreds of millions of dollars in electricity cost savings. These centers account for ten percent of all U.S. data energy at roughly \$600 million. The congresswoman's bill, [H.R. 540](#), the Energy Efficient Government Technology Act, would require energy efficient technologies at these centers.

Subcommittee Approves Infrastructure Act

The House Energy and Commerce Subcommittee on Energy and Power approved [H.R. 3301](#), the North American Energy Infrastructure Act, by a 19-10 vote on November 20. The bill would expedite cross-border energy infrastructure projects. Three amendments were proposed: one by full committee Ranking Member Henry Waxman (D-CA) to exclude the Keystone XL pipeline, one by Representative Kathy Castor (D-FL) to expand approval criteria from national security interest to public interest, and one by Representative John Dingell (D-MI) protecting the National Environmental Policy Act environmental review process. The Waxman and Castor amendments were not approved, and Representative Dingell withdrew his amendment.

Transportation Committee on EU ETS

Leadership on the House Transportation and Infrastructure Committee, in a November 20 [letter](#), urged Secretary of Transportation Anthony Fox to ensure American flights are not part of the European Union Emissions Trading System. The European Commission proposed last month that any flight to, from, or between European airports would be part of the system. The letter was signed by Chairman Bill Shuster (R-PA) and Ranking Member Nick Rahall (D-WV) as well as Aviation Subcommittee Chairman Frank LoBiondo (R-NJ) and Ranking Member Rick Larsen (D-WA)

Heller, Reid on Nuclear Option, Nuclear Waste

Following the passage of the filibuster change November 21, Senator Dean Heller (R-NV) expressed concern that the changes could be extended to impact legislation rather than just nominations, specifically legislation that could restart the Yucca Mountain nuclear waste repository proposal. A spokesperson for Senate Majority Leader Harry Reid (D-NV) commented that the changes will only impact nominations.

Boxer on VMT, Shuster on Infrastructure

Senate Environment and Public Works Chairman Barbara Boxer (D-CA), at a November 21 infrastructure financing forum, said she supports the vehicle miles traveled tax. She supports an honor system over placing GPS units in cars as a way to measure miles traveled. Following her remarks, House Transportation and Infrastructure Chairman Bill Shuster (R-PA) said the public needs to understand the problems facing transportation infrastructure before funding talks begin.

EPW NRC Hearing Cut Short

The Senate Environment and Public Works Committee began a hearing November 21 on Nuclear Regulatory Commission implementation of post-Fukushima safety recommendations, and although members were able to give opening statements, the hearing was recessed so the members could consider the Senate's filibuster changes. Chairman Barbara Boxer (D-CA) opposed a new agency policy to deny information to lawmakers and Ranking Member David Vitter (R-LA) pushed the

commission to complete its Yucca Mountain review. The hearing will be rescheduled on a yet-to-be-determined date.

House Passes Energy Bills

The House of Representatives approved three energy bills introduced by Republican members this past week. On November 20, the House voted 235-187 to approve [H.R. 2728](#), Protecting States' Rights to Promote American Energy Security Act. An amendment offered by Representative Peter DeFazio (D-OR) requiring all natural gas produced on public lands to be sold only in the U.S. was defeated 276-142. The next day, the House approved [H.R. 1900](#), the Natural Gas Pipeline Permitting Reform Act, by a vote of 252-165 and [H.R. 1965](#), the Federal Land Jobs and Energy Security Act, both by a vote of 228-192. The White House threatened to veto all three bills.

Bills Introduced

- On November 20, Senators John Hoeven (R-ND), Mark Pryor (D-AR), Saxby Chambliss (R-GA), Amy Klobuchar (D-MN), and Roy Blunt (R-MO) introduced [S. 1739](#), the Water Heater Efficiency Act. The bill would allow rural electric power cooperatives and their members to use large, energy efficient water heaters in demand response conservation programs.
- The same day, Representatives David McKinley (R-WV) and Diana DeGette (D-CO) introduced [H.R. 3565](#), a bill to create the Biennial Commission on Energy Policy to develop a comprehensive U.S. energy policy. The 15-member commission, appointed by the president and congressional leadership, would make legislative and administrative recommendations.
- On November 21, Senator Bernie Sanders (I-VT) introduced [S. 1762](#), the End Polluter Welfare Act. The bill would eliminate certain fossil fuel production subsidies, including intangible drilling cost reductions, and would close the Department of Energy Office of Fossil Energy Research. A House version, [H.R. 3574](#), was introduced by Representative Keith Ellison (D-MN) and ten cosponsors.
- The same day, Senators Ed Markey (D-MA) and Sheldon Whitehouse (D-RI) introduced [S. 1767](#), the Pipeline Modernization and Consumer Protect Act of 2013. The bill would require gas pipeline facilities to repair and replace high-risk pipelines.
- The same day, Senators Ed Markey (D-MA) and Sheldon Whitehouse (D-RI) introduced [S. 1768](#), the Pipeline Revolving Fund and Job Creation Act. The bill would create state revolving loan funds to repair or replace natural gas distribution pipelines.
- The same day, Representatives David McKinley (R-WV) and Nick Rahall (D-WV) introduced [H.R. 3570](#), a bill to prevent the U.S. from following Treasury Department guidance on how multilateral development banks should engage with developing countries on coal-fired power generation.
- The same day, Representative Earl Blumenauer (D-OR) and Richard Hanna (R-NY) introduced [H.R. 3582](#), the Water Protection and Reinvestment Trust Fund Act of 2013. The bill would create a Water Infrastructure Investment Trust Fund.
- The same day, Representatives Cory Gardner (R-CO), Peter Welch (D-VT), and Larry Bucshon (R-IN) introduced [H.R. 3587](#), the Energy Savings through Public-Private Partnerships Act. The bill would provide guidance on utility energy service contracts, allowing federal agencies to sign UESCs for up to 25 years.

ADMINISTRATION

Obama on Energy Future

In his November 16 weekly radio address, President Obama said the country is on the track to energy independence thanks to increased domestic oil, natural gas, and renewable energy

production. He also said energy efficiency efforts will help the U.S. reach this goal. Citing job growth numbers, the president said that the choice between economic development and emissions reduction efforts is a false choice. The transcript from the address can be found [here](#).

National Climate Assessment Release Delayed

A federal advisory committee announced November 18 that the National Climate Assessment will be released in April 2014, rather than March, due to the government shutdown. The third report will address climate change science and response strategies. The National Oceanic and Atmospheric Administration, the National Science and Technology Council, and the Office of Management and Budget will review it before it is released next year.

White House Hosts Biofuels Meetings

Officials of the Obama Administration met with biofuels industry members at the White House on November 19 and 20. The meetings focused on the recently proposed Renewable Fuel Standard levels for 2014. Agriculture Secretary Tom Vilsack, White House Deputy Director for Energy and Climate Change Dan Utech, Counselor to the President Pete Rouse, and senior Environmental Protection Agency advisors participated in the meeting.

Social Cost of Carbon Public Comment Period to Open

The Office of Management and Budget released November 25 a technical [update](#) for the social cost of carbon. It will be published in the Federal Register on November 26, and the public comment period will be open for 60 days. Technical changes were made in May, and Administrator Howard Shelanski said earlier this month that the agency would accept public comment on the revisions.

Climate Council Holds First Meeting

The Council on Climate Preparedness and Resilience held its first meeting November 25. The interagency group, established under a November 1 executive order, is working to improve the country's resilience to climate change.

DEPARTMENT OF DEFENSE

Paez on Biofuels, Kidd on CHP

Addressing a November 20 George Mason University event, senior Navy energy official Bryon Paez said the branch believes biofuels could be market-competitive by 2016. The Navy is on track to obtain 170 million gallons of biofuels at less than \$4 per gallon by that year through an initiative with the Departments of Agriculture and Energy. At the same event, Deputy Assistant Secretary of the Army for Energy Richard Kidd said the branch will convert or replace all coal-fired boilers with combined heat and power technology; projects will range from \$1 million to \$126 million.

Hagel Unveils Arctic Strategy

Secretary of Defense Chuck Hagel unveiled the department's Arctic Strategy November 22 at the Halifax International Security Forum. He said climate change is impacting the Arctic more rapidly than any other region, and he advocated for efforts like the strategy to ensure environmental and human security. Secretary Hagel also said that efforts to address climate change and invest in clean energy would create a stronger military.

DEPARTMENT OF ENERGY

Nuclear Waste Fee Ruling Released

The U.S. Court of Appeals for the District of Columbia Circuit [ruled](#) November 19 that the Department of Energy must change the nuclear waste fee to zero until the Yucca Mountain nuclear repository proposal is reopened or until another waste management plan is signed into law. The agency had defended its stance to collect fees from utilities despite the abandonment of the Yucca Mountain proposal in a case filed by the National Association of Regulatory Utility Commissioners.

DOE Provides \$5M to 7 Methane Hydrate Projects

In a November 20 [statement](#), Energy Secretary Ernest Moniz announced that the agency would provide \$5 million to seven methane hydrate research projects. Secretary Moniz said the funding would increase understanding of the ice-like structures that hold natural gas within them. The projects are at universities in GA, MA, OR, TX, and WA.

\$19M Provided for Solar Projects

The Department of Energy [announced](#) November 20 that \$19 million is available for projects designed to drive down solar energy soft costs and improve hardware efficiency. Ten million dollars will be provided through the ninth round of SunShot Incubator program while nine million will be given out through the Next Generation Photovoltaics III program.

Clemson Opens Largest Wind Energy Testing Facility

Clemson University [opened](#) the nation's largest wind energy testing facilities November 21. It is designed to test and validate turbines, chiefly for offshore wind projects. The South Carolina facility received \$47 million in Department of Energy funding and \$60 million in outside funding.

\$30 Million for DG Cost Reduction

The Advanced Research Projects Agency-Energy announced plans November 25 to spend up to \$30 million on a program aimed at reducing the cost of distributed power generation. The Reliable Electricity Based on Electrochemical Systems program is seeking projects that advance fuel cell technology for distributed power generation in the hope of improving grid stability and reducing greenhouse gas emissions.

Electric Motor Efficiency Standard

The Department of Energy released a proposed rule November 25 for improving electric motors efficiency. The proposed increase would save consumers between \$8.7 billion and \$23.3 billion, and reduce CO2 emissions by nearly 400 MMT by 2044. The final rule is expected in May, with a standard in effect December 2015.

DEPARTMENT OF INTERIOR

Brown to Serve as BOEM Environmental Officer

The Department of the Interior announced November 22 that William Yancey Brown would serve as Chief Environmental Officer of the Bureau of Ocean Energy Management. Brown, who most recently served as Woods Hole Research Center CEO, will lead the bureau's environmental studies and assessments programs.

DEPARTMENT OF JUSTICE

Duke Energy Subsidiary Pleads Guilty on Bird Kill Issue

The Department of Justice [announced](#) November 22 that Duke Energy Renewables pled guilty to violating the Migratory Bird Treaty Act in the U.S. District Court in Wyoming. The company had failed to address U.S. Fish and Wildlife Service warnings about potential bird kill issues prior to

construction, and 14 golden eagles and 149 other protected birds died between 2009 and 2013 at two wind projects in Wyoming.

DEPARTMENT OF TRANSPORTATION

Tesla Did Not Request NHTSA Investigation

National Highway Traffic Safety Administration Director David Strickland testified before a November 19 House Transportation and Infrastructure Subcommittee on Highways and Transit hearing to examine the future of automobiles. The administration opened an [investigation](#) of Tesla Model S battery fires on November 15. Tesla did not request the investigation, but it is agency protocol to contact a manufacturer 48 to 72 hours before it announces the investigation publicly.

ENVIRONMENTAL PROTECTION AGENCY

EPA to Hold RFS Public Hearing

The Environmental Protection Agency announced November 20 that it will hold a public hearing on the recently released 2014 Renewable Fuel Standard mandates in Arlington, VA December 5. Those interested in testifying at the meeting should contact the Office of Transportation and Air Quality by November 26.

Federal Procurement Green Draft Guidelines

[Draft guidelines](#) on federal agency procurement were released by the Environmental Protection Agency November 20. The guidelines address environmental and sustainability issues and spur consumers to use and demand greener products. Created with the General Services Administration, the agency's guidelines will have a 90 day public comment period.

NAAQS Revision Oral Arguments Held

Oral arguments began November 22 in a case involving an Environmental Protection Agency decision to extend the deadline for states to comply with revised national ambient air quality standards, and plaintiff Natural Resources Defense Council said the agency had violated the Clean Air Act. The group asked the U.S. Court of Appeals for the District of Columbia Circuit to overturn the 2012 implementation rule. The agency said that the extension was needed in order for states to show compliance in three full summer ozone seasons.

Draft NOx Health Impact Assessment Released

The Environmental Protection Agency [published](#) November 22 a draft scientific assessment of the impact of nitrogen oxide pollution on public health. The Office of Research and Development's National Center for Environmental Assessment completed the assessment in preparation for the next agency review of the national ambient air quality standards. The agency will accept public comment through January 21.

GHG Case to Be Considered in February

The Supreme Court announced November 25 that it would hear one hour of oral arguments February 24 for a consolidated case on a narrow part of the Environmental Protection Agency's greenhouse gas regulations, specifically, whether the agency "permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases."

FEDERAL ENERGY REGULATORY COMMISSION

FERC, CA MOU Signed

The Federal Energy Regulatory Commission and the California State Water Resources Control Board signed a [memorandum of understanding](#) November 20 to improve hydropower project licensing. The agreement will streamline the pre-application review, coordinate with state water quality certifications, and improve licensing efficiency.

Small Generator Electric Grid Interconnection Rule Approved

The Federal Energy Regulatory Commission approved November 21 a [final rule](#) simplifying electric grid interconnection agreement procedures for small generators. Chairman Jon Wellinghoff had recused himself from the final rule because of a former client. The final rule, which resulted from a solar industry issue, revised fast track processes and provided for a customer request for a pre-application system condition report.

Wellinghoff Leaves FERC

Federal Energy Regulatory Commission Chairman Jon Wellinghoff stepped down November 24. Commissioner Cheryl LaFleur will serve as acting Chair until a replacement is confirmed.

INTERNATIONAL

World Bank Resilience Report

The World Bank, in its November 18 report [Building Resilience: Integrating Climate and Disaster Risk into Development](#), said development efforts should consider climate change risks. It advocated for long-term resilience investment and recognized that these investments sometimes require substantial startup costs. However, it said the resilience efforts pay off in the long run.

IEA Multilateral Cooperation Framework Released

The International Energy Agency held its ministerial meeting November 19 and 20, and the meeting resulted in an [agreement](#) between the agency and six countries to create a multilateral cooperation framework. China, Brazil, India, Indonesia, South Africa, and Russia would be allowed under the agreement to fully participate in agency meetings. The agreement also expressed support for four energy policies including energy efficiency targets and highly efficient coal-fired power plants.

STATES

DE Advised Not to Adopt Supplier Rule Proposal

The Delaware Public Service Commission was [advised](#) by the Federal Trade Commission on November 15 to create an alternative proposal for its Rules for Certification and Regulation of Electric Suppliers. The state commission had opened comments on a proposal that updated the rules to consider new technological developments such as smart meters. The FTC said the proposal, which would require a supplier to provide customers price per kWh five days prior to the price effective date, would preclude some of the most beneficial variable price offers.

WY Groundwater Testing Rule

The Wyoming Oil and Gas Conservation Commission unanimously approved November 15 a final groundwater testing rule. The rule, set to go into effect in March 2014, will require a radial approach to well sampling without a cap on the number of wells tested. Environmental groups such as the Environmental Defense Fund applauded the rule, saying the sampling and analysis protocol is the most detailed guidance of any of the states.

CO Methane Leak Rule

Governor John Hickenlooper (D-CO) announced November 18 that the Air Pollution Control Division has proposed methane emission regulations for the oil and gas industry. The state will be the first to regulate methane emissions should the rules be finalized. The governor and environmental groups praised the rules.

WY Fracking Disclosure Oral Arguments

The Wyoming Supreme Court heard oral arguments for a case on the Wyoming Oil and Gas Conservation Commission fracking fluid disclosure laws November 20. The law was adopted several years ago, and environmental groups requested that the information disclosed to the government be published. The district court ruled in favor of the commission, agreeing that the information was considered as trade secrets.

NARUC Annual Meeting Held

Colette Honorable, who currently serves as the Arkansas Public Service Commission Chairman, was elected November 20 to serve as National Association of Regulatory Utility Commissioners President for a one-year term at the association's annual meeting. Philip Jones of Washington has led the group for the past year. At the same meeting, the group passed a [resolution](#) promoting the role of state regulators in developing emissions regulations for existing power plants.

NYSERDA Offers \$1 Million for Data Centers

The New York State Energy Research and Development Authority issued a funding opportunity announcement November 25 for data center and information and communications technology research, development, and demonstration projects. Round one applications are due February 11.

SUSTAINABILITY

Clinton on Sustainability, International Climate Policy

Former Secretary of State Hillary Clinton said during a November 21 U.S. Green Building Council event that energy efficiency, job creation, and sustainability need to be part of international climate policies. She said building sustainability is good for both business and the planet. She also urged businesses to view sustainability efforts as an economic opportunity.

MISCELLANEOUS

Utility to Recycle all Coal Ash at SC Plants

Santee Cooper announced November 19 that it will recycle all coal ash at three South Carolina facilities. The ash storage ponds at the Grainger, Jefferies, and Winyah stations will be emptied over the next 10 to 15 years. The Winyah facility is still in operation although the coal-fired units at Grainger and Jefferies have been retired. The Grainger plant is at the center of two environmental lawsuits, but a Southern Environmental Law Center attorney said the announcement settles the cases.