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## **ENERGY AND ENVIRONMENT UPDATE**

**May 22, 2011**

### **Energy and Climate Debate**

Following a week during which both Democratic and Republican versions of oil and gas legislation were voted down in the Senate, the upper chamber will debate a four-year extension of the USA PATRIOT Act this week, and the House will return to vote on the fiscal year 2012 defense authorization bill.

On May 17, Democrats failed (52-48) to move to debate on their legislation (S. 940, the Close Big Oil Tax Loopholes Act) to repeal \$21 billion in tax preferences for the five largest oil companies. The next day, a procedural motion to move to debate on the Republican Offshore Production and Safety Act (S. 953), which largely mirrors a trio of pro-drilling measures passed recently by the House, fell on a vote of 42-57, well short of the 60-vote threshold set by mutual agreement. The two largely symbolic votes leave the Senate in a state of partisan gridlock over how to address gasoline prices.

In the midst of the debate last week, Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) expressed his frustration over the difficulty of moving legislation through Congress this session. With a packed committee schedule for the next several weeks, Senator Bingaman and his colleagues will consider numerous pieces of energy legislation, ranging from a Clean Energy Development Administration to hydrokinetic energy to a Clean Energy Standard to efficient vehicle technologies to carbon capture and sequestration and more. Also last week, former White House aide Joe Aldy and New York Times columnist Tom Friedman called for the passage of a clean energy standard this Congress. The committee is currently analyzing over 300 responses to a white paper Senators Bingaman and Lisa Murkowski (R-AK) published seeking input on how a clean energy standard should be crafted.

House Energy and Commerce Committee Chairman Fred Upton (R-MI) said May 18 that he will soon meet with Senator Jeff Bingaman (D-NM) to consider what spill prevention measures or other lessons from last year's Gulf of Mexico oil spill might be included in a package of energy legislation along with measures to promote domestic energy production.

### **Congress**

#### **Open Process Urged in Ethanol Review**

In a May 17 letter to House leaders, 73 congressmen led by Representatives Jeff Flake (R-AZ) and Joseph Crowley (D-NY) said that legislation to renew financial support for the ethanol industry should be considered in a full and open legislative process, with an opportunity for amendment. The 45-cent-a-gallon Volumetric Ethanol Excise Tax Credit, as well as the 54-cent per gallon protective import tariff are both due to expire at the end of 2011. On a related note, five ethanol trade groups sent a letter May 17 to chairmen and ranking members of the House Energy and Commerce Committee and Senate Environment and Public Works

Committee asking them to oppose attempts to repeal or alter ethanol production requirements mandated by the Renewable Fuels Standard.

#### Comment Period Extension Requested

Congressman Fred Upton (R-MI) and Ed Whitfield (R-KY), Senator James Inhofe (R-OK), and the Electric Reliability Coordinating Council asked the Environmental Protection Agency last week to extend the comment period for proposed rules that would establish new limits on power plant emissions of mercury, acid gases, and sulfur dioxide. The comment period currently closes July 5, but Congressional officials have requested that the comment period be extended to 120 days, and the power companies have asked for 150 days. The American Lung Association sent a letter May 18 asking the agency to not extend the comment period.

#### Cap and Dividend May Resurface

Senator Maria Cantwell (D-WA) said May 18 that with Congress struggling to find common ground in upcoming debt limit and budget talks, she hopes to resurrect a cap and dividend bill with Senator Susan Collins (R-ME). The two introduced the Carbon Limits and Energy for America's Renewal Act (S. 2877) in December 2009 as an alternative to cap and trade legislation.

#### FTC Probe Requested

Senate Democrats led by Senator Claire McCaskill (MO) sent a letter May 17 to the Federal Trade Commission calling for an investigation into any possible price gouging by petroleum refiners that may have contributed to gasoline prices over \$4 per gallon.

#### Cuban Exploration Intervention Requested

Senator Bill Nelson (D-FL) sent a letter May 19 to Secretary of State Hillary Clinton requesting that she intervene to block plans by Cuba to explore for oil in waters between Havana and Key West. Senator Nelson introduced legislation (S. 405) earlier this year that would require oil companies doing business with Cuba to comply with all US safety regulations.

#### Reliability Questioned

Senator Lisa Murkowski (R-AK) sent a letter May 17 asking the Federal Energy Regulatory Commission whether the Environmental Protection Agency's new rules and proposals on climate, water, and pollutants could force the closure of coal-fired power plants and jeopardize electric reliability. Both agencies have suggested the creation of a task force to address the reliability issue.

#### Legislation Introduced

Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH) officially introduced legislation (S. 1000) May 16 that would enact a national energy efficiency strategy. The Energy Savings and Industrial Competitiveness Act of 2011 contains a broad package of low-cost tools that would reduce barriers for business, homeowners, and consumers looking to adopt off-the-shelf, cost effective energy efficiency technologies.

Senators Ron Wyden (D-OR) and Debbie Stabenow (D-MI) introduced the Alternative Fuel Vehicles Competitiveness and Energy Security Act of 2011 (S. 1001) May 16.

Senator James Inhofe (R-OK) introduced legislation (S. 1007) May 17 to amend the Internal Revenue Code of 1986 to eliminate the taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.

#### Upcoming Hearings

The House Energy and Commerce Subcommittee on Energy and Power will hold a hearing May 23 on the Keystone XL pipeline issue and the related House GOP draft bill, the North American Made Energy Security Act of 2011. The legislation would set a November 1 deadline for the Obama administration to make a decision on the proposed Canadian-US oil sands pipeline. The State Department is currently soliciting public comment on a supplemental draft environmental impact statement until June 6, and will make a decision by the end of the year.

The House Oversight and Government Reform Committee will hold a May 24 hearing on oil and natural gas production. Environmental Protection Agency Administrator Lisa Jackson and David Hayes, deputy secretary of the interior, will serve as witnesses.

The House Natural Resources Committee will meet May 25 for the third in a series of hearings on harnessing American energy resources to create jobs and address rising gasoline prices. The hearing will specifically focus on the impact of high gas prices on seniors, working families, and Memorial Day vacations.

The House Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending will hold a hearing May 25 on gasoline prices, examining how Federal Reserve policies contribute to rising prices.

The House Foreign Affairs Subcommittee on Oversight and Investigations will meet May 25 for a hearing on the United Nations climate talks. U.S. Special Envoy for Climate Change Todd Stern is scheduled to appear as a witness.

The Senate Energy and Natural Resources Committee will hold a markup May 26 of two pieces of electric vehicle legislation. Following a May 11 hearing on the Promoting Electric Vehicles Act of 2011 (S. 948) and the Advanced Vehicle Technology Act of 2011 (S. 734), the committee will markup the legislation this week. Any bill on which the committee has held a hearing is also eligible to be marked up, including a marine and hydrokinetic renewable energy bill (S. 630), legislation amending the carbon capture and sequestration program (S. 699), a measure establishing a prize for large-scale carbon capture (S. 757), and a bill establishing a Clean Energy Deployment Administration.

## **Administration**

### Permitting Hastened and Leases Extended

During his May 14 radio address, President Obama announced additional oil leasing in Alaska, a high level interagency working group to speed permitting in the state, and an extension of some existing leases there and in the Gulf of Mexico.

## **Department of Energy**

### US-India R&D Center Funded

The Department of Energy announced May 16 that it has committed \$25 million over the next five years to support the US-India Joint Clean Energy Research and Development Center. Teams of scientists and engineers from the US and India will initially focus on building energy efficiency, second-generation biofuels, and solar energy, and funding will be matched by US grantees and the Indian Ministry of Science and Technology. Applications are due August 16.

### 2012 Budget Uncertain

Energy Secretary Steven Chu said May 18 that Congress is unlikely to approve President Obama's fiscal year 2012 budget request of \$29.5 billion for the department. The budget request, which was submitted to Congress on February 14, represents a \$3.1 billion increase over the agency's FY 2010 levels, and members of the House Appropriations Committee have already warned that the Department of Energy's request is unlikely to be approved in its current form.

### \$737 Million Loan Guarantee Offered

The Department of Energy offered a conditional commitment for a \$737 million loan guarantee May 19 for a concentrating solar power generation project on a 2,250-acre site leased from the Bureau of Land Management near Tonopah, Nevada. The 110 MW capacity Crescent Dunes Solar Energy Project will be the first of its kind in the country, using a molten salt-based collection and storage system.

### Energy Innovator Agreement Signed

Vice President Joe Biden announced May 20 that the Department of Energy has entered into its first energy innovator agreement with a Colorado company that will use a solar energy technology developed by the department's National Renewable Energy Laboratory. The agency signed the agreement with U.S. e-Chromic under the new America's Next Top Energy Innovator challenge to develop a new thin film window material with electrochemic technology that uses an electronic field to change the tint of a window. The challenge was announced in March as part of the administration's Startup America Initiative to accelerate entrepreneurship.

## **Department of Interior**

### Energy Coalition Possible

Interior Secretary Ken Salazar met separately with Senate Majority Leader Harry Reid (D-NV) and Senators Tom Carper (D-DE), Susan Collins (R-ME), John Hoeven (R-ND), Rob Portman (R-OH), Mark Pryor (D-AR), and Jeanne Shaheen (D-NH) May 19 in an effort to form a bipartisan coalition to advance energy legislation. Discussions included three areas in which agreement might be forged, including conventional energy production such as coal and onshore and offshore drilling, renewable energy, and energy efficiency.

## **Environmental Protection Agency**

### Boiler MACT Postponed

The Environmental Protection Agency announced May 16 that it will indefinitely postpone implementing new air pollution limits for large industrial boilers and solid waste incinerators while it reconsiders portions of the rules and addresses legal challenges. The agency said last week that additional time will allow it to solicit public comments through July 15 and compile additional emissions data. The rules issued in March established national emissions standards for hazardous air pollutants for major source industrial, commercial, and institutional boilers and process heaters and revised new source performances standards for commercial and industrial solid waste incinerators. Industry groups have since filed several more lawsuits challenging the rules, as May 20 was the deadline to file suit in the U.S. Court of Appeals for the District of Columbia Circuit.

### Interstate Transport Rule to OMB

The Environmental Protection Agency sent to the White House Office of Management and Budget for review a final rule requiring power plants to curb interstate transport of sulfur dioxide and nitrogen oxides May 16. The interstate transport rule is intended to assist states downwind of power plant emissions in meeting national ambient air quality standards for ozone and particulate matter. The agency is expected to finalize the rule, which would replace the Clean Air Interstate Rule, in July.

### Endangerment Finding Petitions Challenged

Texas and Virginia filed a brief in the U.S. Court of Appeals for the District of Columbia Circuit May 20 contending that the Environmental Protection Agency relied on material never subjected to public review when it denied petitions to reconsider its finding that greenhouse gas emissions endanger the public. The states asked the judges to rule that the EPA improperly denied their petitions to reconsider and to require that the document be subject to a new round of public notice and comment.

## **Federal Energy Regulatory Commission**

### Incentives Rates Approved

The Federal Energy Regulatory Commission approved incentive rates for several proposed transmission projects May 19. Among approvals include the 250 mile Atlantic Wind Connection that will interconnect up to 6,000 MW of offshore wind power to the East Coast power grid and the 118 mile Desert Southwest Power's 500 kV transmission line.

## **Miscellaneous**

### India to Prioritize Green Building

India's Ministry of Environment and Forests issued memorandums May 10 and 13 exempting certain solar energy projects from the requirement to obtain environmental clearance and prioritizing the handling of permit applications for green construction projects. Specifically, projects that generate electricity from photovoltaic cells will not require environmental approval, and priority will be given to considering environmental clearance applications for building and other construction sector projects that have obtained a green building rating.

#### EU ETS GHGs Rose

The European Commission released verified data May 17 showing that power plants and industrial facilities covered by the European Union's Emissions Trading System generated 3.16 percent more greenhouse gases in 2010 than in 2009. Although emissions rose, they stayed below the 2010 cap of 1.99 billion MT.

#### Climate Finance at Risk

Representatives of the European Commission, the European Investment Bank, and Transparency International warned at a May 18 European Policy Center event that international climate finance is at risk of corruption and fraud because of regulatory loopholes, lack of transparency, and weak governance. The event considered Transparency International's April 30 *Global Corruption Report: Climate Change* report.

#### High Gas Prices Increases Fuel Economy Support

The Consumer Federation of America and Consumer Action released a poll May 16 that found that growing concern over rising gasoline prices means that 65 percent of the country is now willing to support an aggressive fuel economy standard of 60 miles per gallon by 2025.

#### Efficiencies Could Reduce Emissions 25 Percent

The International Energy Agency released a report May 16 that concluded that carbon dioxide emissions from residential, commercial, and public buildings could be cut by 25 percent by 2050 through the use of energy efficient technologies like solar heating and thermal storage. The report, *Technology Roadmap – Energy-Efficient Buildings: Heating and Cooling Equipment*, determined that solar thermal, heat pumps, thermal energy storage, and combined heat and power for buildings could reduce emissions by up to 2 GT by midcentury.

#### Britain Releases Carbon Budget

British Energy and Climate Change Secretary Chris Huhne announced May 17 that the government will reduce greenhouse gas emissions by 50 percent from 1990 levels by 2027. In proposal outlines for the UK's fourth carbon budget, the nation will be on target to reduce emissions by at least 80 percent from 1990 levels by 2050; Parliament plans to reach final approval of the budget by June 30.

#### CA Approves On-Site Generation Incentives

The California state Assembly passed (71-0) legislation (A.B. 864) May 19 that would extend financial incentives to cement plants, refineries, and other large industrial users of electricity for investing in on-site renewable energy projects. The legislation seeks to encourage investment in distributed generation as the state works to meet its renewable energy and emissions reduction goals.

#### NY Makes RGGI Plans

Two of New York's top environmental officials affirmed Governor Andrew Cuomo's (D) full commitment to the Regional Greenhouse Gas Initiative May 20. Proceeds from the RGGI auctions will be used for clean and renewable energy and energy efficiency projects this year; the state diverted \$90 million in proceeds to close a budget deficit in its 2009-2010 year, and plans to spend \$94 million over the next three years on its Cleaner, Greener Communities program.

#### CA Cap and Trade Delayed

The California Superior Court ruled May 20 that the California Air Resources Board may not take any additional steps to implement its greenhouse gas emissions cap and trade program until the agency completes an adequate environmental analysis of the program. Environmental justice advocates had accused CARB of not complying with the California Environmental Quality Act when it adopted a scoping plan to implement the state's climate change law (A.B. 32) in 2008.

Arctic Governance Tightened

At a recent meeting of the Arctic Council, several observers noted that Arctic states are moving to keep governance of the region strictly among countries with sovereign territory in the Arctic Ocean, rather than allowing all potential users of the arctic to influence future legal questions. The Council issued new criteria for permanent observers at its ministerial meeting May 12 in Greenland.

Belief in Climate Changes Falters

The Resource Innovation Group released a review of public opinion polls May 18 that found that the number of Americans who believe in climate change and its causes has fallen since 2008 to its lowest levels since 1997.