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ENERGY & ENVIRONMENT UPDATE November 4, 2013

ENERGY AND CLIMATE DEBATE

Renewable electricity standards were the hot topic in Congress last week with the introduction of not one, but two bills establishing such a mandate. On Tuesday, Senators Tom Udall (D-NM), Mark Udall (D-CO), and Ben Cardin (D-MD), introduced their Renewable Electricity Standard Act of 2013. The bill, [S. 1595](#), would create a standard of 25 percent renewable energy generation by 2025. The Udall cousins first introduced a version of the 25x25 bill in 2002 and continue to be champions for the issue. The duo also said they were considering adding the proposal as an amendment to the Shaheen-Portman energy efficiency package. Two days later, Senator Ed Markey (D-MA) introduced a similar measure, [S. 1627](#). While in the House, he included RES language in bills, including Waxman-Markey, and said during his first speech on the Senate floor that he wished to introduce his own version of an RES bill as well.

This Senate will focus this week on issues like healthcare and employment non-discrimination and the House will be in recess next Tuesday.

On the nominations front, the President nominated John Elkind to serve as Assistant Energy Secretary for International Affairs and Joseph Hezir to serve as the Energy Department's Chief Financial Officer. The Senate Energy and Natural Resources Committee announced last week that it would hold a hearing November 14 to consider the nominations of Steven Croley to serve as Energy Department General Counsel and Christopher Smith to serve as Assistant Energy Secretary for Fossil Energy.

The United Nations Framework Convention on Climate Change talks will begin in Warsaw November 11. On Friday, a blog published the leaked version of the upcoming Intergovernmental Panel on Climate Change [report](#) on climate change impacts, adaptation, and vulnerability issues. While the findings—which include warnings on how climate change could negatively impact agriculture, human health, and security—will not be finalized until March 2014, it is unclear how the leaked report will impact discussions in Warsaw.

CONGRESS

Whitfield, Manchin Unveil Draft EPA Regulation Bill

Representative Ed Whitfield (R-KY) and Senator Joe Manchin (D-WV) unveiled October 28 their [draft bill](#) to repeal the Environmental Protection Agency greenhouse gas standards for new power plants and to provide Congress more authority over future regulatory processes. The bill would require the agency to submit to Congress details about projected economic and emissions impacts. Supportive members of the bill include Senators Joe Donnelly (D-IN) and Heidi Heitkamp (D-ND).

Boxer on Climate Change Legislation

Senate Environment and Public Works Chairman Barbara Boxer (D-CA) told reporters October 29 that she may not seek a floor vote for her bill [S. 332](#), the Climate Protection Act of 2013, which she introduced in February with Senator Bernie Sanders (I-VT). The bill would create a carbon fee on oil, gas, and coal production. She commented that she may consider adding the language as an amendment to another bill or including it in tax reform efforts.

Rally for American Energy Jobs

The Rally for American Energy Jobs was held in front of the Capitol on October 29, and several members of Congress pledged to fight Environmental Protection Agency greenhouse gas regulations. Representative Ed Whitfield (R-KY) and Senators Mike Enzi (R-WY), Joe Manchin (D-WV), Mitch McConnell (R-KY), and Rand Paul (R-KY) all pledged to fight for a balanced approach to creating regulations to curb emissions, and called for listening sessions in coal-producing states.

Bipartisan Letter on Coal Export Terminals

Senators David Vitter (R-LA), Joe Manchin (D-WV), John Barrasso (R-WY), Heidi Heitkamp (D-ND), Jeff Sessions (R-AL), and Jim Inhofe (R-OK) sent a [letter](#) October 30 to Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy and Council on Environmental Quality Chairman Nancy Sutley expressing concern that forthcoming White House guidance on National Environmental Policy Act reviews could negatively impact proposed coal export terminal development. Members said the guidance would require the U.S. Army Corps of Engineers to conduct broad environmental reviews, setting a dangerous precedent.

Booker Joins Senate, EPW, Commerce

Senator Cory Booker (D-NJ) was sworn into office on October 31. He was subsequently assigned to serve on the Senate Small Commerce, Science, and Transportation; Environment and Public Works; and Small Business Committees. Senate Majority Leader Harry Reid (D-NV) commented that he hopes the new senator will continue his post-Hurricane Sandy work on climate change. He fills the vacancy left by the late Senator Frank Lautenberg (D-NJ) who served on the Commerce and Environment and Public Works Committees.

Republican Senate Letter on EPA Listening Sessions

Senators John Barrasso (R-WY), David Vitter (R-LA), Michael Enzi (R-WY), Mike Lee (R-UT), Mike Johanns (R-NE), Pat Toomey (R-PA), Mike Crapo (R-ID), Deb Fischer (R-NE), John Boozman (R-AR), Jim Risch (R-ID), and Orrin Hatch (R-UT) sent a [letter](#) October 31 to Environmental Protection Agency Administrator Gina McCarthy urging the agency to hold additional listening sessions on greenhouse gas regulations in coal states. Seventeen of the top twenty coal-burning states will not hold sessions. The letter came one day after a similar [letter](#) from the Chamber of Commerce.

Bills Introduced

- On October 28, Representatives Eliot Engel (D-NY) and Nita Lowey (D-NY) introduced [H.R. 3354](#), the Dry Cask Storage Act. The bill would require that spent nuclear fuel be stored in certified dry cask storage.
- On October 29, Senators Tom Udall (D-NM), Mark Udall (D-CO), and Ben Cardin (D-MD) introduced [S. 1595](#), the Renewable Electricity Standard Act of 2013. A press release on the bill, which would create a renewable electricity standard of 25 percent renewable energy generation by 2025, can be found [here](#).
- The same day, Senators Lisa Murkowski (R-AK) and Ron Wyden (D-OR) introduced [S. 1600](#), the Critical Minerals Policy Act of 2013. The bill would direct the Interior Secretary to create a list of minerals critical to the U.S. economy. It would also coordinate discovery, production, use, and re-use policies. A press release on the bill can be found [here](#).
- The same day, Representative Peter Welch (D-VT) and Bob Gibbs (R-OH) introduced [H.R. 3378](#), a bill to extend the nonbusiness energy property credit to insulation siding components.
- On October 30, Representative John Larson (D-CT) introduced [H.R. 3424](#), a bill to create a tax credit for qualified methane conversion technology for transportation fuel and chemicals.
- On October 31, Senator Ed Markey (D-MA) introduced [S. 1627](#), a bill to create a federal renewable electricity standard. A press release on the bill, which would require 25 percent renewable energy generation by 2025, can be found [here](#).

Upcoming Hearings

- On November 5, the Senate Environment and Public Works Subcommittee on Oversight will hold a hearing on oil and gas industry fugitive methane emissions.
- On November 6, the Senate Homeland Security and Governmental Affairs Subcommittee on Emergency Management, Intergovernmental Relations, and the District of Columbia will hold a hearing to examine Hurricane Sandy recovery efforts.

ADMINISTRATION

Climate Change EO Signed

President Obama signed an executive order, [Preparing the United States for the Impacts of Climate Change](#), November 1 to help states and communities address the impacts of severe weather caused by climate change. The order creates a Council on Climate Preparedness and Resilience as well as a State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience to remove or reform barriers to invest in climate change resiliency projects, to reform policies that increase vulnerability to climate change risks, and support climate-resilient investments through grants and guidance. Following the president's signature, Energy Secretary Ernest Moniz said Hurricane Sandy underscored the need to protect critical infrastructure.

Zichal on GHG, Fracking Rules

Addressing a November 1 Department of Commerce Forum, Deputy Assistant to the President for Energy and Climate Change Heather Zichal said the administration is working to balance economic development and environmental protection as it develops rules on power plant emissions and natural gas production on public lands. The goal is to provide a framework that does not impede production and that allows states to be in the lead. At the same event, Environmental Protection Agency Deputy Administrator Bob Perciasepe said the agency is planning additional venues for input on its rules.

Social Cost of Carbon Public Comment Period

Office of Information and Regulatory Affairs Director Howard Shelanski, in a November 1 [blog post](#), said the administration would open up the social cost of carbon estimate to public comment. More information on the period will be published in the Federal Register soon. The White House plans to release updated values for the social cost of carbon, citing minor technical changes to the May 2013 figures.

DEPARTMENT OF ENERGY

Goo to DOE

An October 25 memo announced that Environmental Protection Agency Associate Administrator for Policy Michael Goo will move to the Department of Energy to implement the President's Climate Action Plan and to work on the Quadrennial Energy Review. Principal Deputy Associate Administrator Shannon Kelly will become acting director of the agency's Office of Policy. The memo is attached.

FY14 SBIR/STTR Topics Released

The Department of Energy released October 28 several topics for FY2014 Small Business Innovation Research and Small Business Technology Transfer programs. Topics include advanced manufacturing, buildings, fuel cells, geothermal, solar, vehicles and wind. A formal funding opportunity announcement will follow on November 25. The document is attached.

California Valley Solar Ranch Operational

SunPower Corp. announced October 31 that the California Valley Solar Ranch facility, the recipient of a \$1.2 billion Energy Department loan guarantee, is now operational. The project, owned by NRG Energy and NRG Yield, began supplying the grid with power last October. With 250 MW of photovoltaic capacity, it is one of the world's largest solar power plants.

EPA Releases FutureGen EIS, DOE Comments on Funding

A November 1 [notice](#) by the Environmental Protection Agency released the environmental impact statement for the FutureGen 2.0 carbon capture and sequestration project, and the Energy Department proposed in comments that the project receive \$1 billion in stimulus funding. The construction period for the \$1.65 billion project is expected to last from 2014 to 2017.

DEPARTMENT OF INTERIOR

Interior Agency Order Signed

Secretary Jewell signed an agency order October 31 impacting renewable energy development on federal lands and waters. The order creates a task force to strengthen mitigation measures that offset impacts from large development projects on federal lands and waters. According to the order, "The Task Force will also determine what steps can and should be taken to ensure that mitigation opportunities are identified as early in the permitting process as possible, such as at the scoping or pre-application stage, to maximize predictability and transparency in the review and permitting process." The task force will prepare a report in the next 90 days with recommendations. The order is attached.

DEPARTMENT OF TREASURY

MDB Coal-Fired Generation Guidance

The Treasury Department issued October 29 guidance to multilateral development banks engaged with developing countries on coal-fired power generation. The agency first developed coal-fired power generation in MDBs guidance in December 2009, and the new guidance provides updates for the President's Climate Action Plan. The revised document is intended to level the playing field for clean energy alternatives. The guidance is attached.

Biodiesel Credit Guidance Provided

In a November 1 chief counsel advice memorandum, the Internal Revenue Service Office of the Chief Counsel provided guidance on the Section 6426 excise tax credit and the Section 6427 biodiesel blender credits. The memorandum said payments under these sections are not items of gross income. The credits are provided to biodiesel producers and sellers to be used against fuel excise taxes.

Section 25C, 25D Guidance Issued

A November 1 guidance by the Internal Revenue Service provided changes to Sections 25C and 25D credits from the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. The guidance said both credits are nonrefundable personal credits. Section 25C credits are for nonbusiness energy property, and Section 25D credits are for residential energy-efficient property.

ENVIRONMENTAL PROTECTION AGENCY

Subtitle D Ruling Released

The U.S. District Court for the District of Columbia Circuit ruled October 29 that the Environmental Protection Agency has 60 days to review and revise Resource Conservation and Recovery Act Subtitle D coal ash regulations. Environmental groups sued the agency over delays in finalizing a proposed rule, and the court determined that the agency must review the regulations every three years and revise when necessary.

2013 RFS Case Expedited

The U.S. Court of Appeals for the District of Columbia Circuit determined October 29 that it would hear a case involving the Environmental Protection Agency's Renewable Fuel Standard 2013 requirements under expedited proceedings. The case, brought against the agency by Monroe Energy LLC, challenged the agency's failure to release 2013 requirements by the statutorily mandated November 2012 date. Initial briefs are due December 9, and responses are due February 20.

2014 RFS Proposals, Black Soot Discussed

Environmental Protection Agency Office of Transportation and Air Quality Director Chris Grundler, addressing an October 29 hearing of the Clean Air Act Advisory Committee Subcommittee on Mobile Sources Technical Review, said the agency will propose its 2014 Renewable Fuel Standard mandates soon. The agency is required to release the figures by November 30. At the same hearing, Office of Atmospheric Programs Senior Analyst Benjamin DeAngelo said further study on black carbon is needed.

Denver Listening Session Held

The Environmental Protection Agency held a listening session on greenhouse gas regulations for power plants in Denver October 30. With over 300 people in attendance, the public comments were split between environmental protection and coal industry support. Some expressed concern that carbon capture technology is neither technologically feasible nor affordable.

CSAPR Brief Filed with SCOTUS

Utility and labor groups filed a brief in the U.S. Supreme Court October 31 for a case on the Cross-State Air Pollution Rule. The brief, written by groups including the United Mine Workers of America and Entergy Corp., said the Environmental Protection Agency could have cut emissions with cheaper controls than those required in the rule. The court will hear oral arguments in the case between EME Homer City Generation and the agency on December 10; the U.S. Court of Appeals for the District of Columbia Circuit vacated the rule.

Proposed 316(b) Regulation Finalization Delay

Environmental Protection Agency spokesman Alisha Johnson commented November 1 that the agency is considering a new deadline for a final rule for cooling water towers at existing power plants. While the rule was scheduled to be finalized November 4, the government shutdown delayed the process. An agreement has moved the deadline to November 20.

EPA Climate Change Adaptation Implementation Plans

As a follow up to its June 2012 draft climate change adaptation [plan](#), the Environmental Protection Agency released November 1 implementation [plans](#) for the ten regional offices and for seven offices at its headquarters. The 2009 executive order Federal Leadership in Environmental, Energy, and Economic Performance required all agencies to develop climate change adaptation plans. The final version will be released later this fall, and public comments will be accepted until January 3, 2014.

NUCLEAR REGULATORY COMMISSION

Court Denies Yucca Rehearing

The U.S. Court of Appeals for the District of Columbia Circuit denied October 28 a request by Nevada to rehear a case involving the proposed Yucca Mountain spent fuel repository. In August, the court ruled to require the Nuclear Regulatory Commission to restart its review of the project. The state asked the court to rehear the case en banc.

INTERNATIONAL

EU to Reform ETS

At an October 28 meeting for 13 European Union energy and climate ministers in Brussels, the group pledged to reform the Emissions Trading System. While no specific target was set, a yet-to-be-released final proposal could recommend binding targets for 2030.

STATES

CA, OR, WA, BC Agreement Signed

California, Oregon, Washington, and British Columbia signed an agreement October 28 to link their efforts to curb greenhouse gas emissions. Oregon and Washington will place a price on emissions and will adopt low-carbon fuel standards. The four agreed to harmonize 2050 reduction targets and to better connect their electric grids.

MISCELLANEOUS

LCV Poll on EPA Rules, Climate Change

An October 28 poll by the League of Conservation Voters found that 74 percent of those surveyed in 11 Senate swing states support Environmental Protection Agency power plant regulations. 66 percent responded that they trust agency authority to regulate emissions, and 48 percent said they would be less likely to support a political candidate who opposed the regulations. 65 percent said climate change is a serious problem. The states of those surveyed were AK, AR, CO, GA, IA, LA, MI, MT, NC, NH, and VA.