

Energy and Environment Update - June 3, 2012

Article By:

Energy Technology Industry at Mintz Levin

Energy and Climate Debate

President Obama visited a **Honeywell** facility in Minnesota June 1 to discuss his proposed **Veterans Jobs Corps**. The company is a manufacturing conglomerate that focuses heavily on energy efficiency, and Treasury Secretary Tim Geithner announced at the same facility in 2010 that the administration would push for a \$5 billion extension of the **48C Advanced Energy Manufacturing Credit**. Though the extension of the three-times-oversubscribed \$2.3 billion program has not yet occurred, the president is again urging Congress to do so as part of his all of the above approach to energy policy.

The House Rules Committee approved the \$32.1 billion fiscal year 2013 **Energy and Water Development Act** (H.R. 5325) May 30. The measure would appropriate \$26.3 billion for the **Department of Energy** and would bar the agency from finalizing energy efficiency standards for federal buildings. The House began general debate on the bill late in the week, and five amendments, among them a provision that would have eliminated funding for the Energy Department's energy efficiency and renewable energy office, all failed to make it into the package. Roughly 80 more amendments will likely be offered, and a final vote should come around June 4. The **White House Office of Management and Budget** released a statement of administration policy saying that the president would veto the measure as it currently stands. As part of the larger picture, the bill is a threat to the White House as setting a precedent of appropriations bills below, as opposed to equal to, discretionary funding levels for fiscal year 2013 mandated by the Budget Control Act of 2011.

The transportation reauthorization conference committee continues to meet in an attempt to work toward a compromise in advance of the June 30 deadline, but Senator Barbara Boxer (D-CA) expressed frustration May 31 over House Republicans unwillingness to prioritize the legislation. Conferees are still at odds over whether to include two environmental provisions -- regarding the Keystone XL pipeline and coal ash regulations -- that are included in the House version of the bill but not in Senate language. Last week, the Sustainable Energy and Environmental Coalition (SEEC, a group of 33 Democratic members of Congress, asked the conference leadership to abandon controversial environmental provisions from the bill.

Congress

NRC Hearing Postponed

Republicans on the House Energy and Commerce Committee had scheduled a May 31 hearing with all five commissioners of the Nuclear Regulatory Commission to consider policy disagreements and management issues that have plagued the commissions over the past year, but the hearing was cancelled. Following Chairman Gregory Jaczko's May 21 announcement to resign as soon as the Senate confirms his replacement, President Obama nominated Allison Macfarlane as his successor May 24. The Subcommittees on Environment and the Economy and Energy and Power will hold a hearing after the Senate confirms Ms. Macfarlane as well as Kristine Svinicki to a second term.

GAO Report Shows Necessary Nuke Safety Upgrades

Senator Barbara Boxer (D-CA) and Representative Ed Markey (D-MA) said that a May 29 Government Accountability Office report confirms their belief that most American nuclear plants are not using the most advanced risk assessment methodology available, which would better assess the plants' vulnerability to natural disasters. The two requested the report, Nuclear Regulatory Commission: Natural Hazard Assessments Could Be More Risk-Informed, which recommends that the Nuclear Regulatory Commission should determine whether a more systematic methodology should be required.

Loan Guarantee Docs Sought

In a May 29 letter, Republican leaders from both chambers of Congress are threatening to subpoena the Interior Department, saying that it has refused to provide information about Energy Department loan guarantee recipients who were granted federal land for their projects. Specifically, the letter requests that the agency provide documents and communications related to seven projects that were awarded loan guarantees through the Energy Department.

Levin Letter Calls for Addressing Extenders

On June 1, Ways and Means Committee ranking member Sander Levin (D-MI) sent a letter to Chairman Dave Camp (R-MI) asking that the committee leadership address the expired research and development tax credit and the tax code Section 48C energy manufacturing credit. Also, Levin's letter mentioned the production tax credit for the wind power industry, the 100 percent bonus depreciation provision, and the Build America Bonds program designed to spur infrastructure investment.

Legislation Introduced

Representative Glenn Thompson (R-PA) introduced legislation (H.R. 5873) May 31 to amend the Farm Security and Rural Investment Act of 2002 to modify the definition of the term "biobased product."

The same day, Congressman Jim Moran (D-VA) introduced a resolution (H.Res. 672) expressing the sense of the House of Representatives that the energy, environmental, and foreign policies of the United States should reflect appropriate understanding and sensitivity concerning issues related to climate change, as documented by credible scientific findings and as evidenced by the extreme weather events of recent years.

Upcoming Hearings

On June 6, the Senate Commerce, Science, and Transportation Committee will hold a hearing on the European Union's Emissions Trading System (ETS), with testimony from Transportation Secretary Ray LaHood.

On June 6, the House Science, Space and Technology Subcommittee on Energy and Environment will hold a hearing on the Environmental Protection Agency's impact on jobs and energy affordability, with testimony from Cass Sunstein, administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget.

On June 6, the House Energy and Commerce Subcommittee on Energy and Power will hold a hearing on EPA's priorities and practices.

On June 7, the Senate Environment and Public Works Subcommittee on Clean Air and Nuclear Safety will hold a hearing on nuclear waste storage and management facilities, with a focus on recommendations made by the Blue Ribbon Commission on America's Nuclear Future.

On June 8, the Ways and Means Committee will resume their review of expired and expiring tax breaks for individuals and businesses, hearing testimony from academics and think tank analysts.

Administration

Ex-Im Bank Reauthorized

President Obama signed the three year Export-Import Bank Reauthorization Act of 2012 on May 30. The Bank, the export credit agency of the United States, provides a number of products, including direct loans, loan guarantees, working capital guarantees, insurance, and special financing programs. The congressional compromise raised the bank's credit exposure cap that was approaching the current \$100 billion limit by \$20 billion in 2012 and \$10 billion in both 2013 and 2014.

Department of Agriculture

Vilsack Reaffirms Commitment to Biofuel Tax Breaks

On May 31, Agriculture Secretary Thomas Vilsack said the Obama administration remains seriously committed to extending the biofuel tax breaks, even though the provisions were left off the White House's congressional "to-do" list. The Obama administration drew criticism from industry advocates after the provisions were left off, but Vilsack said the administration will continue to press Congress to reinstate the \$1-per-gallon credit for biodiesel blenders that expired in 2011 as well as the Accelerated Depreciation Allowance for Cellulosic Biofuel Plant Property that allows a 50% depreciation allowance for biofuel plants placed in service by December 31, 2012.

Department of Commerce

Chinese Wind CVD

The Commerce Department's International Trade Administration preliminarily found May 30 that China is providing countervailable subsidies to producers and exporters of utility-scale wind towers ranging from 13.74 percent to 26.00 percent. The Wind Tower Trade Coalition, which includes Broadwind Towers Inc., DMI Industries, Katana Summit LLC, and Trinity Structural Towers Inc., filed the countervailing duty case and the companion dumping petition. Imports of utility-scale towers from

China were valued at \$222 million in 2011.

Department of Energy

\$26 Million for Manufacturing Jobs Challenge

The Department of Energy announced May 29 a \$26 million multi-agency Advanced Manufacturing Jobs and Innovation Accelerator Challenge to foster innovation-fueled job creation through public-private partnerships. The investments will help catalyze and leverage private capital, build an entrepreneurial ecosystem, and promote cluster-based development in regions across the country. This is the third round of the Jobs Accelerator competition, which is being funded by the Department of Commerce's Economic Development Administration and National Institute of Standards and Technology; the Department of Energy; the Department of Labor's Employment and Training Administration; the Small Business Administration; and the National Science Foundation. Applications are due July 9.

\$120 Million for Critical Materials

Energy Secretary Steven Chu announced plans May 31 to invest up to \$120 million over five years to launch a new Energy Innovation Hub establishing a multidisciplinary and sustained effort to identify problems and develop solutions across the lifecycle of critical materials. Rare earth elements and other critical materials have chemical and physical characteristics that are important for growing many energy technologies, and the materials are at risk for supply disruptions. The award selection is expected this fall.

Nuclear Waste Fund Ruling

On June 1, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the Energy Department has not provided sufficient justification for continued payments by nuclear utilities, totaling \$750 million a year, into the Nuclear Waste Fund to pay for management of high-level radioactive waste. Without suspending payments, the court will maintain jurisdiction over the case while DOE conducts a thorough, six-month assessment of whether the fees are necessary given the fact that the intended permanent geologic repository at Yucca Mountain, NV the fees were intended to pay for was never opened.

Department of Interior

MA Wind to Proceed

The Interior Department's Bureau of Ocean Energy Management announced May 30 that it is moving forward with the creation of a special zone for wind farms off the coast of Massachusetts despite objections from conservation groups and the commercial fishing industry. The wind energy area would consist of about 743,000 acres of federal waters beginning about 12 nautical miles south of Martha's Vineyard and 13 nautical miles southwest of Nantucket. Proposed projects in the area would receive expedited permitting and leasing, similar to other wind energy areas identified off the mid-Atlantic coast for having high generating potential. The agency is also considering the establishment of a wind energy area off the coast of Rhode Island, and four others have been identified off the coasts of Maryland, Delaware, New Jersey, and Virginia to have no environmental impact.

AZ-NM Transmission Line

The Department of Interior's Bureau of Land Management released its draft environmental review May 30 of the proposed 500-mile, 3GW SunZia transmission line that would stretch across Arizona and New Mexico. The line is aimed at connecting remote solar and wind projects on the grid, but environmentalists are concerned about the line's impact on watersheds and bird migration routes. Public comments are open for 90 days.

Environmental Protection Agency

Cellulosic Biofuel Waiver Rejected

The Environmental Protection Agency rejected May 22 a petroleum industry petition to retroactively waive the cellulosic biofuel production requirements for 2011 under its renewable fuel standard. The groups, including the American Petroleum Institute, the National Petrochemical and Refiners Association, and the Western States Petroleum Association, petitioned the agency to waive the production requirements in January. The agency required 6.6 million gallons of cellulosic biofuel last year, down from the 250 million gallons stipulated in the Energy Independence and Security Act as part of its renewable fuel standard requirements.

Particulates Rule Sent to OMB

The Environmental Protection Agency told the U.S. District Court for the District of Columbia May 30 that it sent a proposed rule that would set air pollution standards for particulate matter to the White House Office of Management and Budget May 29 for interagency review. Advocacy groups and a number of states have asked the court to compel the agency to review the national ambient air quality standards for particulate matter, and the agency has said that it needs until next August 5 to issue a final rule.

GHG Permits for Biomass Emissions

Saying May 29 that the sector generates fewer life cycle emissions than other industries, the Solid Waste Association of North America is urging the Environmental Protection Agency's Science Advisory Board to support a permanent exemption from greenhouse gas permitting for biogenic carbon dioxide generated by the waste industry. The association is reviewing the agency's Draft Accounting Framework for Biogenic CO₂ Emissions From Stationary Sources. The association wants the board to back its request for a lifetime exemption from having to obtain Clean Air Act permits for decomposing biomass emissions.

Pennsylvania Environmental Official Testifies on Fracking Rules

On May 31, Michael L. Krancer, secretary of the Pennsylvania Department of Environmental Protection, told the House Oversight and Government Reform Subcommittee on Technology that the Environmental Protection Agency's draft guidance on fracking with diesel fuels is a "back door" challenge to Pennsylvania's regulatory regime. The draft guidance's public comment period ends July 9.

Judge Orders Particulate Matter Rule

On May 31, the U.S. District Court for the District of Columbia gave the Environmental Protection

Agency until June 7 to finalize a proposed rule setting air pollution standards for particulate matter, citing the lack of a reasonable explanation for the length of the rulemaking process. EPA sent the rule to the White House Office of Management and Budget for interagency review on May 29, typically the last step before a rule is released to the public. The Clean Air Act requires EPA to review and consider revising air quality standards every five years, with the last review coming in 2006.

Federal Trade Commission

EnergyGuide Revisions

On May 31, the Federal Trade Commission released a notice seeking public comments on several EnergyGuide label changes being considered for residential furnaces, central air conditioners, and heat pumps. The label changes would replace the current uniform national efficiency standards for these products with standards that vary by region.

States

CA Accord with NRG Challenged

ECOtotality Inc., a San Francisco-based company that installs electric vehicle charging systems, filed a lawsuit in the California Court of Appeals First Appellate District May 25 challenging the \$120 million settlement California agreed to with NRG Energy earlier this year, which is designed in part to help fund the development of electric car charging facilities throughout the state. The company called the agreement to resolve alleged electricity overcharges for NRG's predecessor Dynegy Inc., illegal, unfair, and anti-competitive, and said implementation of the agreement would cause it irreparable injury and severe financial losses.

IA RE Credits

Iowa Governor Terry Branstad (R) signed legislation May 25 to create income tax credits for residents who install solar or geothermal energy systems in their homes. Both credits will be based on the federal income tax credits available for the installations. Should federal credits be extended, both state credits will be extended as well.

CA GHG Revenue Spending Regulated

The California Assembly approved, 49-27, a bill May 29 to regulate the spending of revenues derived from the pending GHG allowance auction under the state's cap and trade program. The measure (A.B. 1532), which now heads to the Senate, would create a Greenhouse Gas Reduction Account within the existing Air Pollution Control Fund to hold all funds collected under market-based mechanisms implemented under the state's climate law, except for penalties and fines.

OH BAT Ruling

The U.S. Court of Appeals for the Sixth Circuit ruled May 25 that a citizen suit to compel the Ohio Environmental Protection Agency to enforce a Clean Air Act requirement to limit pollution from new and modified sources is without legal standing. The court reversed a 2010 lower court ruling that found that the state agency violated the act by refusing to make best available technology determinations before issuing permits to small emitters. Since 2006, the agency has exempted from the requirement sources that emit less than 10 MT of air pollution a year.

Walmart Receives E-Waste Letter

On May 31, a group of 100 faith leaders from all 50 states sent a letter to Walmart asking the retail store to expand to all of its 10,231 stores its used electronics recycling program and to expand its line of green products. Federal legislation currently under consideration would ban the exportation of electronic waste to developing countries, and the International Trade Commission launched an investigation into the e-waste exportation earlier this year.

California Efficiency Standards

On May 31, the California Energy Commission, on a 4-0 vote, adopted stricter energy efficiency standards for commercial and residential buildings, effective Jan. 1, 2014. The standards are updates of 2008 codes and are designed to help the state reach its goal of all new homes by 2020, and new buildings by 2030, using energy efficiency and distributed generation to meet all their energy needs. The codes are designed to make residences 25% more efficient, make residential roofs more amenable to solar panel installation, windows more efficient, pipes better insulated, etc. Commercial buildings will be required to have solar panel friendly roofs, high-performance windows, advanced lighting control systems, and solar panel-ready roofs.

International

Baltic Sea Adaptation

European Union countries in the Baltic Sea region announced May 22 that they are working to promote area adoption of policies to protect the agriculture, tourism, and infrastructure sectors from the impacts of climate change. The Baltadapt project has enlisted national, regional, and local policymakers, businesses, and experts in forming a set of adaptation measures that can be adopted at various levels of government and will assess vulnerabilities in the sectors of greatest economic importance in the region – tourism, agriculture, and infrastructure, before proposing implementation strategies to the Council of the Baltic Sea States.

Golden Rules of Gas

The International Energy Agency released a report May 29 finding that worldwide production of unconventional gas could more than triple in the next 25 years if producers follow certain good conduct rules and address public concerns about environmental risks. The report, Golden Rules for a Golden Age of Gas, concluded that production of unconventional gas, particularly shale gas, could rise to 1.6 trillion cubic meters by 2035, with China a major producer and the United States a net exporter of gas.

WTO Rejects Canada's Challenge

A World Trade Organization panel rejected May 25 a procedural claim filed by Canada challenging dispute proceedings initiated by the European Union and Japan targeting alleged discriminatory sourcing requirements and illegal subsidies in Ontario's Feed-In Tariff program. The panel rejected Canada's charge that the EU and Japan failed to specify the nature and type of the subsidy at issue, the government or public body providing the subsidy, and how and to whom the subsidy was given. The panel is expected to issue its ruling on the complaints in September.

Rio+20 Preparations

United Nations Secretary General Ban Ki-moon urged negotiators May 29 to work to narrow their differences over the language of a central text for the Rio+20 sustainable development summit as they undertake an added round of preparatory talks in advance of the June 20-22 meeting. The latest round of talks, which went through June 2, was added to give negotiators another chance to move forward on the Rio+20 draft outcome document before the final June 13-15 preparatory sessions.

Global Carbon Market Rises

The World Bank released a report May 30 at the Carbon Expo finding that the value of the global carbon market grew by 11 percent in 2011 to a record \$176 billion. The report, *State and Trends of the Carbon Market 2012*, concludes that an increase in overall traded volume offset near record low prices and economic volatility.

EU Extends GHG Reporting Requirements

The European Parliament's environment committee approved legislation May 30 that would require member states to report more extensively on their efforts to reduce greenhouse gas emissions and prepare low-carbon strategies through 2050. The measure would update a 2004 regulation that outlines climate change information EU countries must provide in preparation for submissions of GHG inventories to the U.N. Framework Convention on Climate Change.

Chinese Alternative Vehicle Regulations

On July 1, China's Ministry of Industry and Information Technology will begin enforcing new quality, safety, and performance standards for all-electric vehicles with ranges of more than 50 miles and maximum speeds of 50 miles per hour or more. The country's State Council set aside \$9.4 billion for alternative energy vehicle policies and subsidies for vehicles with engines of 1.6 liters or less.

Canadian Oil Sands Studies

On May 30, Canada's Pembina Institute released "In the Shadow of the Boom: How Oilsands Development is Reshaping Canada's Economy" which argues the nation's booming oil sands sector is harming Canadian manufacturing and artificially inflating the Canadian dollar. "No Dutch Treat: Oil and Gas Wealth Benefits All of Canada," a report released the same day by the Macdonald-Laurier Institute, points out that while the oil boom may hurt Canadian manufacturing sales abroad, increased spending within Canada may make up the difference.

China Criticizes US Renewable Subsidies

On May 24, the Chinese Ministry of Commerce announced preliminary findings that improper incentives for wind, solar, and hydroelectric energy producers are available in California, Massachusetts, New Jersey, Ohio, and Washington. The finding, coming on the heels of the US Department of Commerce's May 17 finding that Chinese producers were dumping solar panels on the US market, mentioned six projects that were studied but announced no next-steps. The next day, China announced that it would take the solar panel dispute, and a separate wind tower dispute, to the WTO for dispute proceedings.

US-Danish Green Cooperation

On May 31, the American Chamber of Commerce announced the expansion of the 2010 Green

Partnerships for Growth, a U.S.-Danish initiative. The updated program will allow companies to better take advantage of green market opportunities in the public sector and couple Danish green technology with U.S. companies and vice versa.

Miscellaneous

UCS Releases Corporate Climate Report

The Union of Concerned Scientists released a report May 30 finding that while some American companies have pledged actions to combat global climate change, many have worked to undermine public understanding of the issue. The report, *A Climate of Corporate Control: How Corporations Have Influenced the U.S. Dialogue on Climate Science and Policy*, focused on the roles played by 28 publicly traded corporations in the debate over climate science and proposed caps on domestic emissions in 2009 and 2010. While all 28 companies expressed concern about climate change or promised to curb their emissions, 14 of them were found to have misrepresented the state of climate science in public communications.

FirstEnergy Lawsuit

The Environmental Integrity Project and Public Justice announced plans May 30 to file a citizens' lawsuit against FirstEnergy Corp. for alleged violations of state and federal pollution control laws at a coal ash disposal facility for the company's Bruce Mansfield power plant in western Pennsylvania. The notice finds that leaks and direct discharges from Little Blue Run, an unlined 1,000-acre coal ash impoundment in Pennsylvania and West Virginia are polluting groundwater and surface water in violation of the Clean Water Act and the Pennsylvania Clean Streams Law. The plaintiffs will ask the court to require the company to isolate the waste from the environment, clean up polluted water, and treat discharges to surface water to remove selenium and boron.

Climate Risk Business and Investor Guide

On May 31, Oxfam America, Calvert Investments, and Ceres released a guide, "Physical Risks From Climate Change: A Guide for Companies and Investors on Disclosure and Management of Climate Impacts," to help companies disclose and analyze climate-related risks in operations and supply chains. The guide focuses on several sectors, including agriculture, electric power, mining, oil and gas, and insurance, etc.

©1994-2025 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. All Rights Reserved.

National Law Review, Volume II, Number 156

Source URL: <https://natlawreview.com/article/energy-and-environment-update-june-3-2012>