

November 24, 2015 - Energy & Environmental Law Update

Article By:

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ENERGY AND CLIMATE DEBATE

Congress returns from the Thanksgiving recess early next week to a full schedule starring the six-year reauthorization of federal highway programs, which expires December 4 now that chambers passed last week a two-week extension (H.R. 3996) of the Highway Trust Fund's authority, as well as the omnibus spending bill to fund the government after December 11. Policy riders are likely to be the biggest obstacle to negotiating a final agreement, with potential environmental riders including the Environmental Protection Agency's waters of the United States and ozone rules. Congress may also finalize a tax extenders agreement before the end of the year. When Congress returns next year for a schedule truncated by the presidential election, the House will arrive January 5 for 28 weeks and the Senate January 11 for 31 weeks, both punctuated by extended recesses throughout the year, though with eyes on issues such as cybersecurity, tax reform, and trade, among others.

The upper chamber approved, 52-46, measures (S. J. Res. 23 and S. J. Res. 24) November 17 disapproving the Environmental Protection Agency's power plant rules, both of which have companion Congressional Review Act resolutions in the House (H. J. Res. 71, H. J. Res. 72), and White House has already [threatened](#) to [veto](#) the measures. When it comes to it, Congress will not have the votes to override the veto. The House will address energy issues, including H.R. 8, portions of which were adopted as an amendment to the highway bill, and the power plan opposition efforts on the floor the week of November 30. The House Energy and Commerce Committee advanced the power plant resolutions November 18.

On tax extenders, it remains to be seen how a package will ultimately shake out, though the House is calling the Senate Finance Committee-approved version a framework for the extenders package, which suggests that the lower chamber does not want to simply accept the upper chamber's two-year bill. The framework contains various scenarios that are being scored, including three-, four-, and five-year phaseouts of the PTC and ITC, with and without commence construction language. House leaders await the score as well as Senate Finance Committee Chair Orrin Hatch's (R-UT) response. Any larger package may include the making permanent of a handful of the business and middle class tax extender provisions. Still, the most frequent and probably easiest scenario is that the parties simply agree to a straight two-year extension, agreeing to the status quo through the 2016 elections. The vehicle for the package also remains undecided, though it is likely to be attached to either the highway bill, which may favor congressional Republicans, or the omnibus, which would provide more leverage to congressional Democrats.

The 21st Conference of the Parties to the United Nations Framework Convention on Climate Change will take place in Paris November 30-December 11, and after meeting with outside groups last week, French Foreign Minister Laurent Fabius announced that hundreds of side events will proceed as planned, though outdoor marches have been cancelled and security has been reinforced. The White House confirmed early last week that President Obama would still attend the negotiations, as will roughly 120 heads of state and dozens of other world leaders who were already scheduled to travel to Paris for the beginning of the two-week talks. The summit is expected to draw 60,000 people, including some 10,000 government representatives, 7,000 observers each week, and 3,000 journalists, to the Le Bourget conference center in a northeast Paris suburb. European Union Commission President Jean-Claude Juncker and Council President Donald Tusk will hold bilateral meetings on opening day, and President Obama and Indian Prime Minister Narendra Modi are expected to make a joint announcement, potentially on technology transfer. Negotiators will work December 1-5 with the aim of establishing the parameters for a cohesive agreement to be debated the following week. The French presidency is expected to release the new text on December 5, and then bilateral and closed door meetings will make up much of the negotiations' second week, culminating in a final agreement on or around December 11.

In advance of the formal talks, ministers and heads of delegations from about [75 countries](#) met early this month to discuss the [51 page](#) draft text and make progress on a range of issues still outstanding, including climate finance, adaptation and mitigation efforts, and the responsibilities of developing versus developed nations; the group focused heavily on long-term goals.

After Secretary of State John Kerry and French Foreign Minister Laurent Fabius and French President Francois Hollande publically disagreed over the structure of the international climate agreement, President Obama and French President Francois Hollande spoke November 13 in part to smooth over the rift over the degree to which the Paris accord would be legally binding. The two emphasized their commitments to reaching an ambitious and durable climate agreement in Paris and underlined that the precise nature of the accord would be negotiated in Paris next month. A treaty would need to be ratified by the Senate, where its chances of success are slim to none. The Obama administration has long held the position that the Paris agreement should be a hybrid mix of legally binding and nonbinding elements, with countries voluntarily offering pledges to reduce emissions but subjecting those reductions to binding transparency and verification requirements. For more congressional views on the process, see the Congress section, below.

The G20 [reemphasized](#) recently its commitment to phasing out fossil fuels over the medium term, but India and Saudi Arabia rejected a European Union attempt to strengthen the G20's commitment to addressing climate change by requiring members to accept a review mechanism of countries' progress on achieving their climate goals every five years. The G20 accounts for about 85 percent of world greenhouse gas emissions. During a summit in Antalya, Turkey, G20 leaders endorsed November 16 the efforts of international climate negotiators to seek an ambitious binding accord to keep global warming to two degrees Celsius by the end of the century.

CONGRESS

GCF Support/Opposition

Senators Mark Kirk (R-IL), Susan Collins (R-ME), Jeff Merkley (D-OR), and Tom Udall (D-NM) sent a letter November 12 to Senate Appropriations Committee leaders asking them to include language that supports the Green Climate Fund in omnibus spending legislation. President Obama has pledged \$3 billion for the United Nations Green Climate Fund and requested \$500 million for fiscal

year 2016, though the bill does not currently include any support for the fund. Senator Merkley inserted a provision into the Senate appropriations bill giving the State Department to contribute to the fund using its own budget without prior congressional approval. During a Senate Environment and Public Works Committee hearing about the international climate negotiations November 18, Senators James Inhofe (R-OK) and John Barrasso (R-WY) led 37 of their Republican colleagues in [sending](#) a [letter](#) to President Obama saying that they will not allow funding for the Green Climate Fund until the international climate agreement is submitted to the Senate for advice and consent. They also indicated their opposition to any international climate deal in the next few weeks. The following day, Senators Inhofe, Roy Blunt (R-MO), and Joe Manchin (D-WV) [introduced](#) a nonbinding resolution stating that the United States should not follow an international climate agreement unless the Senate approves it. Senator Mike Lee (R-UT) [introduced](#) a separate nonbinding resolution (S. Con. Res. 25) the same day. 46 House members introduced a companion resolution (H. Con. Res. 97) the same day stating that any international climate agreement reached in Paris requires the advice and consent of the Senate and saying that Congress should refuse to consider any budget or appropriations bill with Green Climate Fund moneys until an agreement is submitted to the upper chamber.

GAO Climate Inaction Estimate

Senators Maria Cantwell (D-WA) and Susan Collins (R-ME) asked the Government Accountability Office November 18 to analyze the costs of failing to address climate change. The senators asked the office to examine how the costs of climate change are calculated, the present and future costs of climate change if the federal government does not adopt helpful climate policies, and what actions would have the largest impact on reducing climate costs.

PTC Opposition

Senators Lamar Alexander (R-TN), Joe Manchin (D-WV), Shelley Moore Capito (R-WV), Jeff Flake (R-AZ), John McCain (R-AZ), James Risch (R-ID), and Pat Toomey (R-PA) sent a [letter](#) November 19 to Senators Mitch McConnell (R-KY) and Harry Reid (D-NV) opposing the wind production tax credit and asking Senate leadership to allow the credit to remain expired. The credit expired in December 2014, though Congress has voted to extend it nine times since it was established in 1992, and the Senate Finance Committee approved a two-year extension of the credit in the \$96 billion tax extenders package this summer.

House Climate Support

House Energy and Commerce Committee Democrats and some members of the House Sustainable Energy and Environment Coalition convened a [forum](#) November 19 to hear from representatives of Rwanda, the Seychelles, the Netherlands, and France about their expectations for the upcoming international climate negotiations and reassure the global community that some members of Congress are supportive of an international climate agreement.

Legislation Introduced

Representative Bill Flores (R-TX) introduced legislation (H.R. 4000) November 16 to harmonize requirements of the 2008 and 2015 ozone national ambient air quality standards.

Senator Tom Udall (D-NM) introduced legislation (S. 2287) November 17 to amend the Department of Energy Organization Act to improve technology transfer at the Department of Energy by reducing

bureaucratic barriers to industry, entrepreneurs, and small businesses and ensure that public investments in research and development generate the greatest return on investment for taxpayers.

Senator Jeff Flake (R-AZ) introduced a Congressional Review Act resolution (S. J. Res. 25) November 17 to challenge the Environmental Protection Agency's newly finalized national ambient air quality standard for ozone

Representative John Fleming (R-LA) introduced legislation (H.R. 4035, H.R. 4036, H.R. 4037) November 17 to protect consumers by prohibiting the Environmental Protection Agency Administrator from promulgating as final certain energy related rules estimated to cost more than \$100,000,000 that will cost significant adverse economic impacts; to prohibit any regulation regarding CO₂ or other greenhouse gas emissions reductions in the United States until China, India, and Russia implement similar reductions; and to prohibit the Environmental Protection Agency Administrator from proposing, finalizing, implementing, or enforcing any prohibition or restriction under the Clean Air Act with respect to the emission of methane from the oil and natural gas source category.

Representative Eliot Engel (D-NY) introduced legislation (H.R. 4047) November 17 to amend chapter 329 of title 49 in the United States Code to ensure that new vehicles enable fuel competition in order to reduce the strategic importance of oil in the United States.

Senator Michael Bennet (D-CO) introduced legislation (S. 2305) November 19 to amend the Internal Revenue Code of 1986 to provide for the issuance of exempt facility bonds for qualified carbon dioxide capture facilities.

Senator John Barrasso (R-WY) introduced legislation (S. 2318) November 19 to reauthorize the Land and Water Conservation Fund for ten years.

Representative Randy Weber (R-TX) introduced legislation (H.R. 4084) November 19 to enable civilian research and development of advanced nuclear energy technologies by private and public institutions and to expand theoretical and practical knowledge of nuclear physics, chemistry, and materials science.

Representative Bill Pascrell (D-NJ) introduced legislation (H.R. 4088) November 19 to amend the Internal Revenue Code of 1986 to provide for an investment tax credit related to the production of electricity from offshore wind.

Representative Debbie Dingell (D-MI) introduced legislation (H.R. 4106) November 19 to provide for a program of research, development, demonstration, and commercial application in vehicle technologies at the Department of Energy.

Upcoming Hearings

The Senate Energy and Natural Resources Committee will hold a hearing December 1 to receive testimony on the Well Control Rule and other regulations related to offshore oil and gas production.

The Senate Energy and Natural Resources Committee will hold a hearing December 3 to receive testimony on the implementation of the Alaska National Interest Lands Conservation Act of 1980, including perspectives on the Act's impacts in Alaska and suggestions for improvements to the Act.

ADMINISTRATION

Solar Summit

The White House held the National Community Solar Summit November 17 and [announced](#) that sixty-eight cities, states, and private sector businesses and organizations are investing \$545 million across 21 states to advance community solar projects and increase solar access to more than 20,000 low- and moderate-income households. The efforts expand the White House's National Community Solar Partnership, which it unveiled in July.

APEC Effort Encouragement

During the Asia-Pacific Economic Cooperation forum in Manila November 18, President Obama challenged governments and businesses in the region to continue their greenhouse gas emissions reduction efforts, noting the associated economic benefits and related security and infrastructure concerns. He met with Philippine President Benigno Aquino earlier in the day and the two discussed the particular heightened threats climate change poses to Asia Pacific nations. Ministers from the 21 member countries are working on plans to increase the resiliency of energy infrastructure to natural disasters.

US-Canada Meeting

President Obama and Canada's new Prime Minister Justin Trudeau had their first formal meeting November 19 on the sidelines of the Asia-Pacific Economic Cooperation forum and came out of the meeting presenting a united front to encourage clean energy production after President Obama rejected the Keystone XL pipeline earlier this month. Among other things, their talks focused on how the two nations are cooperating on trade, energy, and climate change. President Obama plans to host Prime Minister Trudeau at the White House early next year.

Regulatory Agenda

The White House Office of Management and Budget [released](#) November 20 the Unified Regulatory Agenda and Regulatory Plan for Fall 2015. The semi-annual release offers a comprehensive snapshot of the thousands of rules in various stages at 59 federal departments, agencies, and commissions in the Prerule Stage, Proposed Rule Stage, Final Rule Stage, Long-Term Actions, and Completed Actions. Among other things, the plan shows that the Environmental Protection Agency will continue a full schedule in the coming months, following its power plant rules with climate standards in 2016 including targeting emissions from trucks, landfills, and oil and gas wells and hydrofluorocarbons emissions. The agency also plans to issue an endangerment finding on aircraft greenhouse gas emissions, respond to the Supreme Court's mercury standard ruling, and issue its final federal implementation plan for the Clean Power Plan. The Department of Interior will issue a final regulation on stream protection and several regulations covering offshore oil and gas exploration wells.

RFS by November 30

The Office of Management and Budget's Office of Information and Regulatory Affairs is reviewing the Environmental Protection Agency's final renewable volume obligations in the renewable fuel standard. A final rule on the 2014-2016 biofuel blending mandates is due November 30.

DEPARTMENT OF ENERGY

\$3.7 Million for ME Offshore Wind

The Department of Energy granted November 16 \$3.7 million in additional funds to the planned Maine Aqua Ventus I, a 12 MW offshore wind project. The funds allow the project to complete engineering and design work and the technology could allow cost-effective access to more than 50 percent of the domestic offshore wind resources in deep waters within 50 miles of the coast. Developers expect a pilot project to be online by August 2017 with two 6 MW turbines attached to submersible concrete hulls located 10 miles off the coast of Maine. The project received \$3 million from the agency's Offshore Wind Advanced Technology Program in May 2014, coming in as a runner-up for \$47 million that went to projects in New Jersey, Oregon, and Virginia.

Emissions Increase

The Energy Information Administration released an analysis November 23 finding that the electricity sector increased its CO2 emissions by 0.9 percent between 2013 and 2014, emitting 5,406 MMT, up from 5,355 MMT in 2013. Domestic carbon intensity decreased 0.3 percent last year because of an increased use of natural gas and renewable energy; a 2.4 percent increase in gross domestic product contributed to the increase in overall electricity related CO2 emissions. Transportation CO2 emissions rose 1.3 percent last year.

\$125 Million for ARPA-E

The Department of Energy [announced](#) November 23 that it plans to award \$125 million to 41 different projects through the Advanced Research Projects Agency-Energy's OPEN program. The program reviews applications that intend to significantly improve current low-emitting energy technology rather than call for ideas within preexisting subject areas.

ENVIRONMENTAL PROTECTION AGENCY

Boiler MACT

The American Chemistry Council, American forest and Paper Association, and Council of Industrial Boiler Owners asked the U.S. Court of Appeals for the District of Columbia Circuit November 12 to uphold the current oral argument schedule for Environmental Protection Agency boiler and incinerator emissions standards, which begins December 3, and reject November 6 environmental group requests for panel reassignment. Major industrial sources need to comply with the Boiler MACT rule in January. The court rejected November 16 the environmental groups' request for panel reassignment, and oral arguments will proceed in the three related cases December 3.

CASPR Update

The Environmental Protection Agency [proposed](#) November 16 an update to the Cross State Air Pollution Rule to address interstate air quality impacts and help states comply with the 2008 National Ambient Air Quality Standards for ozone. The updates would strengthen limits on summertime NOx emissions from smokestacks in 23 eastern states that contribute to downwind ozone air quality problems, reducing power plant NOx emissions in the eastern United States by 85,000 MT in 2017 compared to business as usual. The agency expects to finalize the rule next year and have it go into effect in 2017.

The Advanced Energy Economy Institute released a [report](#) November 18 finding that Arkansas, which sources over half of its electricity from coal fired power plants, would see minimal to no impact on its electricity bills due to compliance with the Environmental Protection Agency's Clean Power Plan. The study used the State Tool for Electricity Emissions Reduction to consider compliance mechanisms for the state under the Clean Power Plan; the state is part of multi-state litigation against the regulation.

MATS Supplemental Finding

The Environmental Protection Agency proposed a [supplemental finding](#) November 20 reaffirming its finding that it is appropriate and necessary to regulate power plant mercury emissions after considering cost at the direction of the Supreme Court. The agency's previous finding triggered a requirement that the agency promulgate power plant emissions standards under Section 112 of the Clean Air Act, but the court ruled in June that the agency erred in not factoring in cost consideration when it issued the finding. As a result of the high court remanding the litigation back to the U.S. Court of Appeals for the District of Columbia Circuit, the lower court issued an order the same day scheduling December 4 oral arguments on the mercury and air toxics standards to determine whether the standards should be vacated or remain in place.

GOVERNMENT ACCOUNTABILITY OFFICE

Private Sector Climate Prep

The Government Accountability Office released a [report](#) November 19 examining how businesses are preparing for climate change that contained findings from a July 21 forum discussion on opportunities and actions regarding business related climate risks, including those pertaining to infrastructure, operations, and supply chains.

NUCLEAR REGULATORY COMMISSION

Decommissioning Rules

The Nuclear Regulatory Commission issued an [advanced notice of proposed rulemaking](#) November 19 seeking feedback from stakeholders on a proposal to establish clear requirements for nuclear reactors to hasten and reduce the costs of the decommissioning process. Comments are due January 4.

INTERNATIONAL

Ontario Cap and Trade

Ontario [confirmed](#) November 16 that it plans to implement a greenhouse gas cap and trade system that would align with programs in Quebec and California. The province will launch the system in January 2017 to help it meet its 15 percent GHG reduction from 1990 levels target by 2020. Comments will be accepted through December 15.

Climate Spending Up

The Climate Policy Initiative released a [report](#) November 16 [finding](#) that global spending on projects to reduce greenhouse gas emissions and climate vulnerability increased 18 percent last year as governments and investors increased green investments. Spending increased from \$331 billion in 2013 to \$391 billion in 2014. About \$292 billion was spent on solar, wind, and other renewable energy projects, as decreasing prices allow investments to achieve greater impacts than ever before, and about \$25 billion was directed toward adaptation and resiliency efforts.

India's RE

Indian Prime Minister Narendra Modi asked the G20 November 16 to build support systems focused on nations that have the greatest growth potential and to retain infrastructure financing in developing countries as a key priority. He also pledged to quadruple India's renewable power capacity to 175 GW by 2022 and reduce fossil fuel subsidies.

Efficient Airlines

The International Council on Clean Transportation released a [report](#) November 16 comparing the fuel efficiency of the top airlines on transatlantic routes between the United States and Canada and Europe last year. The report found that British Airways, SAS, and Lufthansa were the least fuel efficient and that the Norwegian Air Shuttle led the market in fuel efficiency.

OECD Coal Financing

Organization of Economic Cooperation and Development nations agreed November 17 to eliminate public financing for overseas construction of most coal-fired power plants. The 34-nation agreement would eliminate public financing for 85 percent of plants in the pipeline and would stop financing for 80 percent of the overseas plants built in the last ten years; Japan had blocked a similar agreement for several years. The agreement still allows public financing for the most efficient plants using carbon capture technology and allows the poorest and least electrified nations to get credit to build smaller, less efficient plants.

Green Bonds

The World Bank Group's International Finance Corporation said November 17 that a global climate agreement would increase the issuance of green bonds, making a market-based approach to solving climate investment issues more viable. HSBC Holdings Plc. announced November 20 that it is prepared to issue its first green bond, most likely before the end of the month. \$37 billion green bonds were issued in the market last year, but significantly more investment, to the tune of \$1 trillion a year, is needed to finance a two degree Celsius world.

IEA Ministerial

Speaking at the International Energy Agency November 17-18 ministerial meeting, Executive Director Faith Birol said that natural gas could play a key role in reaching international climate goals. He noted that since energy production and use account for two thirds of global greenhouse gas emissions, energy policies would be an important part of the global climate negotiations in Paris. U.S. Energy Secretary Ernest Moniz [chaired](#) the meeting and reiterated that innovative technologies will need to contribute significantly toward achieving that goal. Ministers released a [statement](#) during the meeting calling for success as the global climate negotiations in Paris and establishing five key opportunities

aimed at reducing energy sector greenhouse gas emissions, including increasing energy efficiency in the buildings, industry, and transportation sectors; phasing out inefficient coal fired power plants; increasing renewable energy technology investment; gradually phasing out fossil fuel subsidies; and reducing oil and gas methane emissions.

UNFCCC Report

The United Nations Framework Convention on Climate Change released a [report](#) November 18 finding that governments could strengthen their climate action by imposing a higher price on CO2 emissions, reducing fossil fuel subsidies, providing more help to poorer nations, and improving related laws and regulations. The United Nations projects a 12 GT excess in CO2 emissions in 2030, risking the international goal to limit the global temperature increase to less than two degrees Celsius by 2100, but the report finds that the target could be reduced by 10-19 GT between now and 2020 if countries expand their use of renewable energy, energy efficiency, and carbon capture and storage technology, and reduce transportation and land use sector emissions.

EU Renewables Consultation

The European Commission [announced](#) November 18 that it would prepare next year a draft European Union directive outlining a post-2020 renewable energy strategy for the 28-country bloc that allows the bloc to obtain 27 percent of its energy from renewable sources by 2030. Consultation is open through February 10 and the commission will publish proposals next fall.

Climate Preparedness Grades

Climate Central and ICF International released an [analysis](#) November 18 [finding](#) that flooding, drought, wildfire, and extreme heat pose increasing threats to the United States, with all states facing at least one of the threats and a few states dealing with all of them. Climate preparedness, however, varies across states, and the study provides a report card of states' climate-threat preparedness.

Alberta Climate Plan

Alberta, Canada announced November 22 a climate change plan to set emissions limits for oil sands, introduce a carbon tax, and transition to more renewable energy resources, including phasing out coal by 2030.

China Clean Energy Investment

Climatescope released a report November 23 finding that China, the world's largest CO2 emitter, continues to hold the top position as the best developing country in which to invest in clean energy. Using 2014 data, Brazil and Chile followed China in an analysis of 55 emerging market nations that outlined progress in spending, capacity deployment, and policy development.

STATES

RGGI Stakeholder Meeting

The Regional Greenhouse Gas Initiative held its first stakeholder [meeting](#) November 17 as part of a regular quadrennial program review. Stakeholders, including electric power companies, environmental organizations, and others, provided guidance on compliance with the Clean Power

Plan. As a result, the initiative is undertaking a program review to consider the necessary changes for compliance with the Clean Power Plan, including a potential adjustment to the RGGI emissions cap and expansion to include other states. The initiative will hold three more stakeholder meetings and will accept written comments until December 4. The states have agreed to a compliance framework that includes using mass-based emissions goals, covering existing and new units, and using the plan's emissions standards approach.

RGGI Prices Increase

The Regional Greenhouse Gas Initiative announced November 23 that carbon allowances traded in the secondary market continued to climb in the third quarter, boding well for prices in the initiative's next auction on December 2. Secondary market prices closed the quarter at \$6.75 and averaged \$6.14. The \$6.02 record allowance price came during the most recent auction in September.

NY Clean Energy Standard

New York Governor Andrew Cuomo (D) will issue soon a Clean Energy Standard to require the state to achieve 50 percent of its power from renewable sources by 2030. The standard will also provide support for upstate nuclear power plants whose operations are under threat because of low natural gas prices. Nuclear sources will not count toward the requirement.

MISCELLANEOUS

Corporate Climate Efforts

CDP issued its 2015 climate change [report](#) November 16, finding that more S&P 500 companies are actively working to manage climate change in their businesses and hold their executives accountable for energy efficiency. The analysis compared 2015 surveys to 2010 surveys from 1,799 companies in 51 countries and found that corporate board level climate responsibility has increased from 67 to 95 percent while GHG emissions reductions initiatives have increased from 52 to 96 percent.

GE RE

General Electric launched November 17 a GE Renewable Energy business after acquiring Alstom's power and grid business for \$10.6 billion. The new business unit is focused largely on wind power and turbine manufacturing.

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