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Climate, Energy, & Air Update

Weeks of September 11 – 24, 2014

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At U.N. Climate Summit, Obama announces resilience initiatives, calls for international action . . . EPA extends deadline for comments on 111(d) proposed rule . . . D.C. Circuit orders EPA to respond to petition for writ on 111(d) proposed rule . . . Senate holds hearings on energy tax provisions . . . House hearing questions whether 111(d) proposed rule would make any meaningful dent in global CO₂ emissions.

Executive Branch

- **Obama Reaffirms Commitment to Climate Action at UN Summit.** On September 23, President Barack Obama delivered an address reaffirming the United States' commitment to addressing climate change, highlighting recent U.S. action and proposing action to reduce carbon pollution. He also called on other nations to do the same, and announced policies to support the mitigation and adaptation efforts of developing nations. Specifically, President Obama announced a commitment to provide extreme weather risk assessment and other data to developing nations, an executive order requiring federal agencies to factor climate resilience into international development programs and investments, among other climate-related commitments. Echoing remarks that Secretary of State John Kerry and Secretary of the Treasury Jack Lew made the previous day, President Obama also highlighted federal investments in clean energy, efficiency standards for cars, trucks, buildings, and appliances, and the Environmental Protection Agency's proposed Clean Power Plan to set CO₂ emission standards for existing power plants. Together these efforts are designed to cut U.S. carbon emissions 17 percent below 2005 levels by 2020, consistent with President Obama's commitment at the 2009 Copenhagen climate conference. President Obama's speech is available at <http://www.whitehouse.gov/the-press-office/2014/09/23/remarks-president-un-climate-change-summit>. A fact sheet on the climate data-sharing initiatives, international development executive order, and other policies announced at the Summit is available at <http://www.whitehouse.gov/the-press-office/2014/09/23/fact-sheet-president-obama-announces-new-actions-strengthen-global-resil/>.
- **EPA Extends Clean Power Plan Comment Deadline.** The EPA announced that the public comment period for the Agency's proposed Clean Power Plan will be open for an additional 45 days. The proposed rule is, aimed at setting CO₂ emission limits for existing power plants under section 111(d) of the Clean Air Act. Comments will now be due by December 1. The pre-publication draft of EPA's announcement is available at <https://federalregister.gov/a/2014-22832>. Public comments may be filed at <http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OAR-2013-0602>.
- **White House Announces New Support for Solar and Energy Efficiency.** On September 18, the White House announced a series of executive actions and private commitments aimed at expanding deployment of solar power and energy efficiency. The Department of Energy proposed energy efficiency conservation standards for commercial air conditioners; issued a final determination regarding the energy savings of updated commercial building codes and a preliminary determination regarding updated residential building codes; made available a number of tools and information to aid in the financing and deployment of solar energy; announced an initiative aimed at doubling U.S. energy productivity by 2030; and announced plans to launch a veterans solar job training pilot program at three military bases. USDA announced \$68 million in renewable energy and energy efficiency loans through the Rural Energy for America Program. The Department of Housing and Urban Development announced that the Community Development Block Grant

Section 108 program can be used to fund clean energy and energy efficiency projects. The White House also announced new commitments from the private, public, and non-profit sectors to fund deployment of solar and energy efficiency. A White House fact sheet on the announcement is available at <http://www.whitehouse.gov/the-press-office/2014/09/18/fact-sheet-white-house-announces-executive-actions-and-commitments-across>.

- **White House Partners with Industry to Reduce Use of High Global Warming Potential Refrigerants.** On September 16, the White House Council on Environmental Quality (CEQ) announced a series of executive actions and private sector commitments to reduce the use of refrigerants that emit hydrofluorocarbons (HFCs), which are greenhouse gases with global warming potential as much as 11,700 times greater than CO₂. CEQ announced executive actions including the reduced use of HFCs by federal agencies and a commitment to fund research and development of alternatives to HFCs. CEQ also announced voluntary commitments by industry including a commitment by the Air-Conditioning, Heating and Refrigeration Institute to invest \$5 billion over 10 years to develop alternative air conditioning and refrigerant technologies and to increase efficiency. A handful of corporations also announced commitments to reduce or phase out HFC use. A White House fact sheet on the announcement is available at <http://www.whitehouse.gov/the-press-office/2014/09/16/fact-sheet-obama-administration-partners-private-sector-new-commitments>.
- **DOD, DOE, USDA Contract for 100 Million Gallons of Drop-in Military Grade Biofuels.** On September 19, the Navy signed contracts for the construction and commission of three biorefineries, together capable of producing of over 100 million gallons per year of drop-in biofuels meeting military specifications for jet fuel and marine diesel. These contracts are supported by \$210 million in funding and expertise from the Departments of Defense, Energy and Agriculture. The fuel will cost \$3.50 per gallon on a weighted-average basis and will be available for delivery as soon as 2016. More information is available at <http://energy.gov/articles/departments-navy-energy-and-agriculture-invest-construction-three-biorefineries-produce>.
- **DOE Approves Two LNG Export Applications.** On September 10, DOE granted final approval for the export of liquefied natural gas (LNG) from the Louisiana-based Cameron LNG project and the Florida-based Carib Energy project. Both facilities have already cleared FERC approval. These are DOE's first LNG export approvals since revising the export permit approval procedures in August. DOE's final order approving export by Cameron LNG LLC is available at <http://energy.gov/fe/downloads/cameron-lng-llc-final-order>; the final order approving export by Carib Energy LLC is available at <http://energy.gov/fe/downloads/carib-energy-llc-order>.
- **Interior Department Proposes Plan to Develop Renewable Energy in California Desert.** Secretary of the Interior Sally Jewel announced the release of the draft Desert Renewable Energy Conservation Plan to establish a 2 million acre "development focus area" for commercial-scale solar, wind, geothermal, and transmission projects within a 22.5-million-acre planning area in the Southern California desert. The plan also proposes a conservation strategy for avoiding environmentally sensitive areas and mitigation for unavoidable impacts. The draft plan, including an accompanying 8,000 page draft environmental impact statement (EIS), was developed over five years in a partnership among the Bureau of Land Management and Fish and Wildlife Service within the Department of Interior, the California Energy Commission, and the California Department of Fish and Wildlife. The plan would not remove the requirement that renewable and transmission projects undergo environmental review; however, this review would be streamlined based on the EIS and mitigation included as part of the Plan. The draft plan is open for public comment through January 2015 and is expected to be completed in 2016. More information is available at <http://www.drecp.org/>.
- **GAO Issues Report Finding Increase in Planned Coal Plant Retirements.** The Government Accountability Office (GAO) issued a report on September 15 finding that the electric power sector has retired or plans to retire 42 gigawatts, or 13 percent, of coal-fired generating capacity between 2012 and 2025. This estimate constitutes an increase from a 2012 GAO report that estimated

retirements of 2 to 12 percent of capacity. GAO cites low natural gas prices, increased coal prices, low electric demand growth and four EPA regulations: the Cross-State Air Pollution Rule (CSAPR), Mercury and Air Toxics Standards (MATS), cooling water intake regulations, and coal ash disposal regulation. The report also finds initial progress in implementing a previous GAO recommendation that DOE, EPA, and the Federal Energy Regulatory Commission (FERC) develop a process to monitor coal retirements. The GAO report is available at <http://www.gao.gov/assets/670/665325.pdf>.

Legislative Branch

- **Senators Send Bipartisan Letter to EPA.** On September 11 a bipartisan group of 53 Senators signed a letter to EPA Administrator Gina McCarthy requesting that the agency provide a 60 day extension of the comment period for the Clean Power Plant proposed rule. The letter states that the “complexity and magnitude of the proposed rule necessitates the extension.” As noted above in the Executive Branch section, the EPA subsequently extended the deadline. A copy of the letter is available at http://www.fischer.senate.gov/public/_cache/files/37ae316d-ec3c-4ce8-89a6-6a19fdb63fd5/9.11.14-letter-from-53-senators-to-epa-to-request-60-day-extension-for-public-comment-on-111d-rule-1-.pdf
- **Senate Votes on Nominations.** On September 16 the Senate confirmed three pending nominations:
 - Elizabeth Sherwood-Randall, confirmed by voice vote to be Deputy Secretary of Energy:
 - Jeffery Baran, confirmed by a vote of 56 to 44 to be a Member of the Nuclear Regulatory Commission for the remainder of the term expiring June 30, 2015; and,
 - Stephen G. Burns, confirmed by a vote of 60 to 40 to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 2019.
- **House Committee Holds Hearing on 111(d).** On September 17, the House Science, Space and Technology Committee held a hearing entitled “White House, EPA: Regulations will have Minimal Impact on Climate Change.” The only witnesses were Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation at the EPA; and, John Holdren, Director, Office of Science and Technology Policy, Executive Office of the President. The hearing focused on the direct impacts of carbon dioxide emissions on human health. Republican Members questioned whether the Clean Power Plan rule and other Obama Administration climate policies would make any meaningful reductions. Additional information is available at <http://science.house.gov/press-release/white-house-epa-regulations-will-have-minimal-impact-climate-change>
- **Senate Holds Hearing on Energy Tax Policies.** On September 17, the Senate Finance Committee held a hearing entitled “Reforming America’s Outdated Energy Tax Code.” Witnesses included Norman R. Augustine, retired Chairman and CEO of Lockheed Martin Corporation; and, Gilbert Metcalf, Professor of Economics at Tufts University. In his testimony, Metcalf told the Committee about the impact of subsidies on various forms of energy and to argue that subsidies should be replaced with a carbon tax. A full list of witnesses, webcast of the hearing and written testimony are available at <http://www.finance.senate.gov/hearings/hearing/?id=cf43ba55-5056-a032-5258-2751125c414c/>
- **House Votes on Energy Bills.** On September 18, the House passed H.R. 2, the “American Energy Solutions for Lower Costs and More American Jobs Act” by a vote of 226-191. As reported in our previous update, H.R. 2 combines a number of energy-related bills into one package. The full list of the bills included in the package is available at <http://www.gop.gov/bill/h-r-2-american-energy-solutions-for-lower-costs-and-more-american-jobs-act/>
- **Senate Republicans Release Paper on Energy Insecurity.** On September 18, Senate Energy and Natural Resource Committee Ranking Member Lisa Murkowski (R-AK) and Senator Tim Scott (R-

SC) released a report entitled “Plenty at Stake: Indicators of American Energy Insecurity.” According to the cover letter accompanying the paper, the Senators intend to initiate a “new discussion about American energy insecurity and the dangers associated with rising household energy costs.” The report is available at http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=075f393e-3789-4ffe-ab76-025976ef4954/

- **Congress Passes and President Signs Spending Bill.** On September 19, the President signed H.J.Res.124, the “Continuing Appropriations Resolution, 2015.” The measure was passed by the House on September 17 by a vote of 319 to 108 and by the Senate on September 18 by a vote of 78 to 22. H.J.Res.124 provides funding for the government past the end of the fiscal year on September 30th through December 11. The House and Senate are expected to reconvene during the week of November 12.

Judicial Branch

- **EPA Must Respond to Request to Block Carbon Power Plant Rule.** On September 18, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) ordered the EPA to respond to a coal company’s petition for a writ of extraordinary relief alleging that the Agency lacks legal authority to regulate existing power plants under section 111(d) of the Clean Air Act. *In re Murray Energy Corp.*, No. 14-1112. Murray Energy filed a similar lawsuit in the D.C. Circuit asking the court to find the 111(d) proposed rule is illegal because power plants are already regulated under the toxic emissions standards. The issue arises due to a controversy over the 1990 amendments to the Clean Air Act, which resulted in competing amendments to section 111(d). *In re Murray Energy Corp.*, No. 14-1151.
- **Local Environmental Groups File Challenge to Texas’s Flexible Permit Program.** On September 12, a group of Texas environmental groups filed a petition for review with the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) asking the court to review EPA’s approval of Texas’s revisions to the state’s flexible air permit program. *Environmental Integrity Project v. EPA*, No. 14-60649. Texas’ flexible permit program gives minor source facility operators the option to establish a site-wide emissions cap, which allows them to modify their plants without additional permitting, so long as the modifications do not increase the site-wide emissions cap. The petition claims that EPA should not have approved the flexible permit program because it does not require the facilities to give public notice or apply for necessary permits before undergoing modifications, as is required by the Clean Air Act. In 2010, EPA rejected Texas’s flexible permit program; however, the Fifth Circuit eventually vacated this decision, finding that EPA failed to adequately explain how the program ran afoul of the Clean Air Act’s requirements. EPA finally approved the state’s plan this past July.
- **Federal District Court Rejects EPA’s Motion to Dismiss Coal Companies Request to Evaluate Jobs Loss.** On September 16, a federal judge with the U.S. District Court for the Northern District of West Virginia rejected EPA’s motion to dismiss a coal company’s suit arguing that EPA is required to conduct a Clean Air Act-mandated review of how the Agency’s air rules impact employment. *Murray Energy, et. al. v. EPA*, No. 5:14-CV-39. Section 321(a) of the Clean Air Act requires the Administrator to “conduct continuing evaluations of potential loss or shifts of employment...” EPA argued the court did not have jurisdiction to hear the case because this statutory requirement is discretionary; however, the court rejected the Agency’s motion to dismiss and found that the suit could be heard on the merits of whether EPA is required to undertake an employment analysis review.

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If you have question about topics covered in this Update, please contact Kyle Danish at kwd@vnf.com.

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