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Climate Change Policy Update Week of October 22 - 26, 2007

Commentary

*The Lieberman-Warner bill got its first Congressional hearing this week in a subcommittee of the Environment & Public Works Committee. It also attracted a surprise early endorsement from Sen. Max Baucus (D-MT), who represents a state with significant coal interests. Senators Lieberman and Warner have scheduled a mark up of the bill for Nov. 1 and hope to report the bill out of the subcommittee to the full committee shortly thereafter. Senators on the subcommittee and the full committee, however, are demanding more hearings and time to assess the complicated program. * * * * Permitting issues for coal-fired power plants remain at the forefront of the climate change debate. Late last week, the State of Kansas rejected a major coal-fired power plant. This week, EPA's Environmental Appeals Board considered a permit challenge from the Sierra Club, which argued that the Supreme Court's holding in Massachusetts v. EPA that CO₂ is a "pollutant" means that EPA must set CO₂ emissions limits for new and modified power plants under the Clean Air Act. How this issue is resolved will bear close attention during the coming months.*

Congress

- **Senate Begins Work on Lieberman-Warner Climate Bill.** On Wednesday, the Senate Environment and Public Works Subcommittee on the Private Sector and Consumer Solutions to Global Warming and Wildlife Protection held a legislative oversight hearing on America's Climate Security Act (S. 2191), which was introduced last week by Senators Joe Lieberman (I-CT) and John Warner (R-VA). During the hearing, subcommittee member Max Baucus (D-MT) declared his support for the bill. Senator Baucus, whose home state of Montana is a leading coal producer, has previously voted against measures to cap greenhouse gas (GHG) emissions and represents a potential swing vote in the subcommittee and full committee. Several Senators participating in the hearing said that they wanted to see more explicit encouragement for nuclear power in the bill. The Subcommittee is scheduled to mark up the bill on November 1. EPW Chairman Barbara Boxer (D-CA) has said that her committee will hold multiple hearings and briefings in order to see the legislation move through the full committee before traveling to Bali in December for the U.N.'s climate negotiations.
- **Republicans Block Energy Conference.** A small group of Republican Senators, led by Kay Bailey Hutchison (R-TX), this week placed a hold on Majority Leader Harry Reid's motion to proceed to a House and Senate conference on the energy bill. Chief among Sen. Hutchison's concerns were a provision in the House-passed energy bill (H.R. 3221) that would divert \$16 billion in tax breaks for the oil and gas industry to fund renewable energy research and development, and a provision in the Senate-passed bill (H.R. 6) that would increase the renewable fuel standard to 36 million gallons by 2020. Meanwhile, House and Senate staff remained engaged in behind-the-scenes informal negotiation. Sen. Reid confirmed on Thursday that Senate Finance Chairman Max Baucus (D-MT) was in the final stages of resolving differences between the House and Senate Finance energy

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tax packages.

- **Democrats Angry Over Testimony Redaction by White House.** Environment and Public Works Committee Chairman Barbara Boxer (D-CA) said at a news conference on Thursday that the White House removed large portions of draft testimony addressing the health impacts of climate change. The testimony was prepared and delivered by Julie Gerberding, Director of the Centers for Disease Control and Prevention (“CDC”), at a hearing before the EPW Committee on Tuesday. White House officials maintained that the testimony was edited in order to conform to the findings in a recent report by the U.N.’s Intergovernmental Panel on Climate Change. The White House ultimately removed six out of fourteen pages of testimony. House Science Committee Chairman Bart Gordon (D-TN) and Investigations and Oversight Subcommittee Chairman Brad Miller (D-NC) launched an inquiry into the CDC testimony edits on Thursday.
- Selected Committee Hearings From the Past Week:
 - The Senate Environment and Public Works Committee held an oversight hearing on the human impacts of global warming (October 23, 2007) (discussed above)
 - The Senate Environment and Public Works Subcommittee on the Private Sector and Consumer Solutions to Global Warming and Wildlife Protection held a legislative hearing on S.2191, the Lieberman-Warner climate bill (October 24, 2007) (discussed above).
 - The House Select Panel on Energy Independence and Global Warming held a hearing to address the future of biofuels (October 24, 2007).

Administration

- **EPA Environmental Appeals Board Considers EPA Must Set CO₂ Standards for New or Modified Power Plants.** EPA’s Environmental Appeals Board (EAB) held a hearing on the Sierra Club’s challenge to Clean Air Act “Prevention of Significant Deterioration” (PSD) permits issued by the Illinois EPA to Christian County Generation, LLC to build an integrated gasification combined cycle (IGCC) power plant, asserting that CO₂ is a “pollutant subject to regulation” in the meaning of the PSD program. The environmental group claims that the PSD permit must set limits on the facility’s CO₂ emissions. EPA’s Office of Air and Radiation acknowledged the Supreme Court decision holding that CO₂ is a “pollutant,” but said that the agency has interpreted the phrase “pollutant subject to regulation” to mean pollutants that are subject to actual emission controls – CO₂ emissions, for now, are not subject to such controls under Federal law. However, the Sierra Club argued that the term includes any pollutant already regulated in any manner under the Clean Air Act. The group noted that the Clean Air Act’s acid rain program requires monitoring and reporting of CO₂ emissions; Sierra Club argues that this supports its claim that CO₂ is a pollutant “subject to regulation.”

States and Cities

- **RGGI Developing Rules on Credit Auctions.** State officials participating in the Northeast Regional Greenhouse Gas Initiative (RGGI) are preparing to release a research paper on issues

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involved in a regional credit auction, including prevention of credit hoarding and collusion. RGGI officials have been working on strategies to limit opportunities for a small number of parties to purchase a substantial number of credits in an auction, which would drive up credit prices and could make it difficult for power plants to comply with the program or trigger the program's safety valve price cap. Officials also are developing strategies to prevent participants from working together to keep credit prices artificially low and are considering a floor price for credits. The paper is scheduled for release on October 26 and a stakeholder meeting will be held on November 7, 2007.

- **New York Proposes RGGI Implementation Rules.** New York issued proposed regulations for the implementation of RGGI in New York State. New York proposes to auction all of the CO₂ allowances allocated to the state under the program. Proceeds from the auctions would be used to fund energy efficiency and clean energy technology programs. The regulations will be subject to a 60-day comment period and four public hearings will be held during the week of December 10.

Studies and Reports

- **EIA Report Finds Decreased CO₂, NO_x and SO₂ Emissions in 2006.** The Energy Information Administration (EIA) issued its Electric Power Annual, finding that increased U.S. reliance on natural gas and renewable energy resulted in lower emissions of sulfur dioxide (SO₂), nitrogen oxides (NO_x), and CO₂ during 2006. The report also found that retail electricity prices increased by 9.3 percent to an average of 8.9 cents per kilowatt-hour, the largest yearly increase since 1981. The EIA reported that although coal is still the primary source of electricity generation, it has declined to 49 percent of total generation, down from a peak of 53 percent in 1997. Wind energy represents only a small overall share of electricity generation, but its use increased by almost 10 percent in 2006.
- **Researchers Argue Against Kyoto Global Approach to GHG Reductions.** In an article published in the latest issue of the journal *Nature*, Gwyn Prins of the London School of Economics and Oxford University researcher Steve Rayner argued that the Kyoto Protocol has failed as a means of reducing GHG emissions. The researchers called for the participants in the next conferences of the parties for the United Nations Framework Convention on Climate Change and the Kyoto Protocol, to be held in December in Bali, to develop a new approach to address climate change. The article said that efforts should be focused on the largest emitters instead of negotiating an agreement among all nations. The researchers identified the G8+5 and President Bush's September meeting with the world's 16 largest GHG-emitting nations as sound alternatives to the Kyoto approach because they recognize that less than 20 nations are responsible for about 80 percent of global emissions.
- **NGOs Recommend Against Increased Biofuels Use Due to Environmental Harms.** The Clean Air Task Force, an environmental group, issued a report on the harms associated with increased use of biofuels in the European Union and urged Congress to carefully consider such environmental problems before requiring greater use of biofuels in the U.S. Another group, the Global Subsidies Initiative (GSI), reached a similar conclusion in a report on increasing U.S. government subsidies for biofuels. The GSI recommended that the government adopt a neutral policy that favors all petroleum substitutes instead of focusing on expanded use of biofuels.
- **Farm Bill Could Result in Major GHG Emission Reductions, Report Finds.** The Environmental Law and Policy Center issued a report finding that the energy provisions in the Farm Bill could result

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in a 75 million metric ton reduction in CO₂ emissions. The study first examined past data on GHG emissions and reductions, then evaluated existing and new programs that would be funded by the Farm Bill over the next five years. The bill would address investment in wind energy, biofuels, biomass energy, and energy efficiency improvements. The study assumed \$1 billion in energy funding for each year, which is slightly above the amount authorized by the House bill. The Senate Agriculture Committee approved its version of the Farm Bill on October 25 and the legislation will now move to the Senate floor for consideration.

- **Carbon Sinks Struggle to Keep Pace With Emission Increases.** The British Atlantic Survey found that economic growth has led to much faster than expected increases in CO₂ emissions and carbon sinks have been unable to keep the same pace in absorbing CO₂. Another study, published in the Journal of Geophysical Research, found that the efficiency of carbon sinks such as oceans and trees has declined and that the absorption of CO₂ by the North Atlantic Ocean decreased by about half between the mid-1990s and the period from 2002-05.

International

- **European Commission May Delay Release of Climate Package.** A spokesperson for the European Commission's Environment Directorate said that the Commission will probably delay the release of its climate change package until January 2008. The package, which will include the European Commission's review of the European Union (EU) Emission Trading Scheme and the details of the proposed climate change and renewable energy programs, was expected to be released on December 5.
- **France to Invest €1 Billion in Clean Energy.** French President Nicolas Sarkozy announced plans to invest €1 billion in clean energy projects over the next four years as part of a broad plan to reduce GHG emissions. The announcement was made at the conclusion of a summit of environmental groups, farmers, trade unions, businesses, and government to develop proposals to be brought before the French Parliament early next year. The group called for a 20 percent reduction in energy consumption by 2020 and for renewable power to account for 20 percent of energy production by 2020. President Sarkozy also proposed that the EU "examine the option of taxing products imported from countries that do not respect the Kyoto Protocol."
- **European Parliament Approves Vehicle CO₂ Emission Standards.** The European Parliament adopted a report calling for new CO₂ emission standards for passenger vehicles. The Parliament's report recommends a CO₂ emission limit of 125 grams per kilometer (g/km) by 2015. The report is not binding but will be considered by the European Commission. The 125 g/km limit is more stringent than the California standard for 2015, which is 213 grams per mile (132 g/km).

The Climate Policy Update is intended as a general summary of major climate change-related policy developments that we judge to be of interest to a broad range of our clients and friends. We welcome your comments and suggestions. Coverage in, and selection of topics for, the Update is not intended to reflect the position or opinion of Van Ness Feldman or any of its clients on any issue. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.

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