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Climate Change Policy Update Weeks of November 24-December 5, 2008

Commentary: *Poznan: positioning or posing? . . . Brazil has come forward with a noteworthy commitment, agreeing to adopt an ambitious target for reducing deforestation . . . Legislators from “advanced developing countries” – Brazil, India, China, South Africa, and Mexico – suggest that they might be willing to accept targets based on emissions intensity. However, they are expecting a commitment to meaningful mid-term (2020 or so) emission targets from the developed countries . . . Will Poznan see progress on reforms to the Clean Development Mechanism? A report from the General Accountability Office gives a mixed review to the CDM . . . When will the new Chairman of the House Energy & Commerce Committee, Rep. Henry Waxman (D-CA), make a statement about his plans for energy and climate change legislation? . . . Even as many businesses and industry associations filed comments with the EPA imploring the Agency not to regulate GHG emissions under the Clean Air Act, a group of utilities and other businesses joined the Environmental Defense Fund in taking a somewhat different tack. They sent a short missive to EPA making clear their preference for legislation, but also offering to work with the Agency as it promulgates GHG regulations. The statement suggests that some businesses are resigned to EPA’s commencement of a rulemaking process.*

Congress

- **Senate Majority Leader Cites Setting Carbon Price as Priority.** Senate Majority Leader Harry Reid (D-NV) said at a clean energy forum sponsored by the think tank Third Way that establishing a market price for carbon will be a top priority during the 111th Congress. Other legislative priorities will be a renewable electricity standard; additional renewable energy tax credits; energy efficiency improvements; and development of a smart electricity grid. Majority Leader Reid said that many of the clean energy provisions could be included in the economic stimulus package that Senate Democrats intend to consider after President-elect Barack Obama’s inauguration in January 2009.

If you have questions about topics covered in this Update, please contact Kyle Danish, head of the Climate Change and Emissions Trading Practice, at kwd@vnf.com

States and Cities

- **Western Governors Association Delivers Climate Recommendations to President-Elect Obama.** The Western Governors Association (WGA), a group composed of governors from 19 Western states, sent a letter to President-Elect Obama providing policy recommendations on how the nation should address climate change and expand development of clean and renewable energy sources. The WGA letter recommended: establishing a national GHG reduction goal; implementing a national program for reducing GHG emissions using market-based principles; creating a national energy efficiency program; establishing programs to develop clean and renewable energy resources; setting an oil import goal to reduce dependence on foreign oil; establishing a goal of achieving near-zero emissions from new coal-fired power plants within 10 years using carbon capture and sequestration and other technologies; promoting development of low-emission vehicles; reducing vehicle miles traveled; and expanding mass transit for people and goods. The WGA Chairman, Utah Gov. Jon Huntsman, Jr. (R), and Vice Chairman, Montana

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Gov. Brian Schweitzer (D), recently met with John Podesta, co-chair of the Obama transition team, to discuss the WGA's recommendations.

- **Florida Climate Commission Approves Adoption of California Vehicle Emission Standards.** The Florida Environmental Regulation Commission voted to adopt California's vehicle CO₂ emission regulations. The Florida Department of Environmental Protection estimates that the rule would reduce state CO₂ emissions by 2 million tons annually by 2016, an amount equal to removing 500,000 vehicles from the road. Before it can take effect, the rule must be approved by the Florida legislature and California must receive a waiver from the Environmental Protection Agency (EPA). EPA denied California's request for a waiver of its emission standards in December 2007, and it remains unclear whether President-Elect Obama will reverse that decision. If California receives its waiver, Florida and other states can adopt the California standards. According to the Pew Center on Global Climate Change, 16 states are in various stages of adopting the California standards. See http://www.pewclimate.org/what_s_being_done/in_the_states/vehicle_ghg_standard.cfm.
- **900+ Mayors Sign Climate Agreement.** Culminating an effort that began in 2005, over 900 mayors signed an agreement to reduce their cities' CO₂ emissions. The pact, the U.S. Conference of Mayors Climate Protection Agreement, commits signatories to reduce CO₂ emissions to 7 percent below 1990 levels by 2012. The climate agreement was developed by the U.S. Conference of Mayors, a non-partisan group representing 1,139 cities with populations greater than 30,000.
- **LA Mayor Issues Solar Plan.** Los Angeles Mayor Antonio Villaraigosa issued a solar energy plan aimed at increasing the city's solar power generation to 1.3 gigawatts by 2020. The plan would increase solar generation, estimated at 10 percent of the city's energy needs, by providing subsidies for residential solar panel installation, expanding solar power use on city-owned property, and promoting the development of 500 megawatts of private solar power generation projects in the Mojave Desert. The new plan is intended to help meet the mayor's goal of reducing the city's 2030 GHG emissions to 35 percent below 1990 levels.

Studies and Reports

- **GAO Issues Report on EU ETS Phase I and CDM.** The Government Accountability Office (GAO) report, commissioned by House Energy and Commerce Committee Ranking Member Joe Barton (R-TX), Rep. Ed Whitfield (R-KY), and Darrell Issa (R-CA), examined whether the European Trading Scheme (ETS) and the Kyoto Protocol Clean Development Mechanism (CDM) could inform Congressional decisionmaking on climate legislation. The GAO found that the ETS demonstrated that accurate emissions data will be essential to setting an effective cap and achieving emission reduction goals; allowance allocation methods can influence the outcome of the program; and that any trading program should cover a time period long enough to influence decisions regarding technology investment. With regard to the CDM program, the GAO concluded that the program may reduce compliance costs but its cost-effectiveness is impaired due to the high transaction costs on participants. The report also found that, despite rigorous review procedures, at least some projects credited under the CDM did not achieve additional emission reductions. The Republican members of Congress who requested the report pointed to the study as finding no substantiated emission reductions or economic benefits from the ETS.

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They also warned that the study found potential economic harm to the European Union if additional emission reduction targets are imposed. The report is available at: http://republicans.energycommerce.house.gov/Media/File/News/12.02.08_GAO_Report_on_International_Carbon_Programs.pdf.

- **EIA Report Shows Overall Increase in U.S. Emissions, Decrease in Emissions Intensity in 2007.** A study released by the Energy Information Administration found that total GHG emissions from the U.S. energy and industrial sectors increased by 1.4 percent (102.7 million metric tons) in 2007, compared to 2006 levels. The report also found that GHG intensity declined by 0.6 percent from 2006 levels, the smallest annual decrease since 2002. The report is available at: <ftp://ftp.eia.doe.gov/pub/oiaf/1605/cdrom/pdf/ggrpt/057307.pdf>.
- **Pew Center Issues Series of Climate Policy Briefs.** The Pew Center on Global Climate Change released a series of 10 Congressional policy briefs on climate change. The briefing papers are intended to provide policymakers with a guide to design choices for a cap-and-trade program. The briefs cover reduction timetables; the scope of a cap-and-trade program; allowance allocations; cost containment; offsets; competitiveness; technology policies; emissions from coal-fired electricity generation; transportation sector emissions; and tax incentives to reduce GHG emissions. The ten white papers are available at: <http://www.pewclimate.org/DDCF-Briefs>.

Industry

- **Coalition of Businesses, Environmental Group Release Principles for Regulation of GHGs under the Clean Air Act.** The Environmental Defense Fund and several businesses released a set of principles they believe should guide EPA if the agency proceeds with a rulemaking that would regulate GHG emissions under the existing Clean Air Act (CAA). The coalition did not urge EPA to issue such rules, but recommended that the agency provide flexibility mechanisms, performance standards, and source-specific emission limits if rules are issued. Specifically, the group urged EPA to focus on the New Source Performance Standard (NSPS) program under CAA § 111, which regulates new and reconstructed sources of air pollutants by establishing a minimum level of emission control technology that must be installed. The group recommended that EPA avoid establishing National Ambient Air Quality Standards for GHGs. Companies signing the statement included AES Corp.; American Electric Power; American Honda Motor Co. Inc.; Austin Energy/City of Austin, Texas; National Grid; NRG Energy Inc.; PG&E Corp; Public Service Enterprise Group; Reliant Energy Inc.; Texas Industries, Inc.; and 3M Co.

International

- **International Climate Negotiations Begin in Poznan, Poland.** The Fourteenth Conference of Parties (COP-14) to the United Nations Framework Convention on Climate Change (UNFCCC) began in Poznan, Poland with representatives from 190 nations attending. At the annual meeting of representatives from parties to the UNFCCC, negotiators are seeking to advance negotiations on issues related to a successor treaty to Kyoto Protocol to the UNFCCC (Kyoto Protocol), with the goal of paving the way for a final agreement on the successor treaty at COP-15 in Copenhagen, Denmark in December 2009. The Kyoto Protocol expires at the end of 2012. The 12 days of negotiations began with technical meetings, where negotiators noted increased cooperation

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among the U.S., the EU and China. Many country delegations made public announcements of their goals and positions for the negotiations.

- *U.S. Negotiators Representing the Outgoing Bush Administration Eye Clean Energy Technology, Tariff Relief.* James Connaughton, the current Chairman of the White House Council on Environmental Quality, and Paula Dobriansky, current Undersecretary of State of Democracy and Global Affairs, announced that the major goals for the U.S. delegation were to address issues related to the development and deployment of clean-energy technologies, and the reduction and removal of tariff and non-tariff barriers to facilitate international trade of those technologies.
- *South Africa Suggests Mid-Term Targets for Australia, Canada, Japan, and Russia.* South African negotiators called on the four nations to come forward with “credible and ambitious” targets for 2020.
- *Brazil Announces Forestry Offsets Veto.* Brazil announced that it will veto the inclusion of any provisions in a successor treaty that would allow developed nations to meet their emission targets using offsets created by preventing deforestation in tropical forests. Observers suggest that Brazil’s indigenous groups oppose forestry offsets, on the argument that such provisions could lead to a land grab by carbon market participants before indigenous rights to forest lands are secure. Brazil also announced a pledge to preserve vast tracts of the tropical rain forest while accommodating agricultural interests. (For further information, see “**Brazil Finalizes National Climate Plan**” below.)
- *New Zealand Seeks Special Status.* The New Zealand negotiators are pursuing special status for the nation under a successor treaty due to the nation’s heavy reliance on agriculture. Unlike other developed nations, over half of New Zealand’s GHG emissions come from the agriculture sector. The New Zealand negotiators assert that few emission reduction options exist for the sector other than simply reducing agriculture production. The negotiators argue that reduced production in New Zealand only would shift production to higher-emitting countries, resulting in no environmental benefits.
- **Legislators from Advanced Developing Countries Agree to Pursue Intensity-Based Reduction Targets.** At a meeting of the Global Legislators Organization for a Balanced Environment (GLOBE), a global organization that facilitates high-level policy negotiations among senior parliamentary representatives, representatives from advanced developing countries signed an agreement calling for those countries to adopt intensity-based GHG emission reduction targets. GLOBE members are the G8+5, which include the Group of Eight major economies plus the advanced developing countries of Brazil, India, China, Mexico, and South Africa. Intensity-based targets do not place an absolute limit on emissions, but rather measure the amount of emissions per unit of a reference factor, usually gross domestic product. Under the agreement, the advanced developing countries would pursue commitments to slow the growth of their emissions intensity, with the goal of eventually taking on binding emission targets.
- **EU Parliament’s Climate Committee Adopts Recommendations.** The European Parliament’s Temporary Committee on Climate Change adopted a report that recommends near-term and long-term emission targets for the EU. As a near-term target, the report proposed a 25 percent

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reduction below 1990 levels by 2020, a target that would increase to 30 percent if an international agreement is reached. The long-term target would be set at 80 percent below 1990 levels by 2080. The report will likely be submitted to the EU Parliament for adoption by February 2009.

- **Brazil Finalizes National Climate Plan.** Brazilian President Luiz Inacio Lula da Silva signed into law a climate plan aimed at reducing the nation's GHG emissions. The major feature of the National Climate Change Plan is a set of quantitative deforestation targets for 2006-2017. The plan establishes targets for four-year periods, with the first target requiring the annual deforestation rate for 2006-2009 to fall to 40 percent below the ten-year average deforestation rate as of 2005. Each ensuing target period would reduce the deforestation rate an additional 30 percent. Approximately 75 percent of Brazil's GHG emissions result from deforestation. The plan also includes measures aimed at increasing energy efficiency, expanding the use of ethanol, and promoting increased use of cogeneration.
- **Chile Unveils National Climate Plan.** Chilean President Michelle Bachelet signed a national climate change plan for 2008-2012. The plan contains no binding emission targets, but focuses on renewable energy generation, and climate change mitigation and adaptation. The Chilean plan will invest \$700 million in a center for renewable energy and adopts seven adaptation measures, including the implementation of programs addressing climate-related diseases.
- **UK Expands Scope of National Climate Response.** The United Kingdom (UK) Parliament passed, and the queen approved, a trio of laws aimed at addressing climate change. In other action, a government panel recommended stringent new targets for near-term emissions.
 - *UK Approves Three Climate Laws.* The Climate Change Act sets a binding target of reducing nationwide emissions to 80 percent below 1990 levels by 2050, and a mid-term target of 26 percent below 1990 levels by 2020. Energy and Climate Change Secretary Ed Miliband stated that the targets will be achieved using five-year carbon budgets that will be set fifteen years in advance. The Energy Act will expand nuclear power generation, increase the use of renewable energy sources, and promote the development of new energy technologies, such as CCS and smart energy meters.
 - *Climate Committee Proposes Stringent Near-Term Emission Targets.* The United Kingdom's (UK) Committee on Climate Change issued a report calling on the nation to reduce its GHG emissions to 24 percent below 1990 levels by 2012, and to strengthen its mid-term target to 34 percent below 1990 levels by 2020. The report recommends that the 2020 target be even more stringent – 42 percent below 1990 levels – if an international agreement on climate change is reached. The report recommends that the nation meet those goals through a combination of increased reliance on renewable energy sources, development of nuclear power, and more stringent vehicle emission standards.

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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