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Climate Change Policy Update Week of January 12-16, 2009

Commentary: *The starting pistol went off this past week . . . EPA Administrator-nominee Lisa Jackson strongly indicated that there would be early action on the waiver for California’s motor vehicle GHG emissions standard . . . Chairman Waxman stated that he wants to report climate change legislation out of the Energy and Commerce Committee before Memorial Day . . . The US Climate Action Partnership issued its “Blueprint” for legislation and shopped it publicly in a hearing before the Energy and Commerce Committee, and privately at meetings with top officials of the incoming Administration. Allocation of transitional allowances to industry, ample use of offsets, and a very powerful “Carbon fed” are key elements of the program . . . It’s quite possible that the biggest news of the week is the statement issued by the Edison Electric Institute (EEI), the nation’s trade association for investor-owned electric utilities. For years, efforts of the major utilities to hammer out a compromise proposal on allowance allocation have come to naught because of the sharp differences between merchant and regulated companies and coal-based and non-coal-based companies. This past week, however, EEI issued a statement outlining its “50-50-50” proposal, which is described in greater detail below. The EEI statement, coupled with USCAP’s detailed Blueprint, indicates that we are entering into a new stage of deep industry engagement on policy design.*

Executive Branch

- **Senate Holds Nomination Hearings for Sen. Clinton, Chu, Jackson and Vilsack.** Secretary of State nominee Sen. Hilary Clinton (D-NY), Secretary of Energy Nominee Steven Chu, EPA Administrator nominee Lisa Jackson, and Secretary of Agriculture nominee Tom Vilsack all fielded questions on climate change during their nomination hearings before the relevant Senate committees.
 - Sen. Clinton described climate change as “an unambiguous security threat” that could “incite new wars of an old kind--over basic resources like food, water, and arable land.” Sen. Clinton said that she intends to create a special coordinator for energy security issues within the State Department and for the U.S. to be a leader in the international efforts to address climate change.
 - Mr. Chu, explaining his 2007 reference to coal as his “worst nightmare,” stated that continued heavy reliance on traditional coal-fired power plants both domestically and abroad is “a pretty bad dream,” given the lack of air pollution controls in many countries and the sizable greenhouse gas (GHG) emissions associated with traditional coal-fired facilities. Chu went on to say, however, that a transition to renewable energy will take time, and intermediate steps must involve dramatic energy efficiency improvements, the capture and storage of CO₂ emissions from new and existing coal-fired power plants, and nuclear energy. Chu also said that the U.S. would need to move first on curbing GHGs, with the expectation that China and other developing countries would follow quickly with assistance from wealthier countries. He

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reiterated President-elect Obama's support for a cap-and-trade program and his own desire for such a program to be very simple with minimal loopholes.

- Ms. Jackson told members of the Environment and Public Works Committee that if confirmed she would "very, very aggressively, very soon" review the Bush administration's decision to deny California a waiver under the Clean Air Act that would allow the state to implement its vehicle GHG emission standards. Jackson also said that she would act quickly to respond to the 2007 Supreme Court ruling in *Massachusetts v. EPA*, in which the Court held that EPA had the authority to regulate CO₂ emissions under the Clean Air Act if the agency makes a finding that CO₂ emissions endanger public health or welfare. Jackson noted that an EPA decision on endangerment "will indeed trigger the regulation of CO₂ for this country" but expressed her desire to work with Congress to address the shortcomings of GHG regulation under existing Clean Air Act authorities. She also reiterated President-elect Obama's preference for a cap-and-trade system rather than a carbon tax.
- Mr. Vilsack told the Senate Agriculture committee that he hopes to "enhance the role of the farm sector and rural communities in solving the great environmental and energy-related challenges our country faces" by promoting renewable energy technologies and sustainable agriculture.

The full Senate will vote on these nominations in the coming weeks and is expected to confirm each of the four nominees.

Congress

- **Stimulus Package Unveiled in House; Contains Major Clean Energy Funding.** The House of Representatives is considering the \$825 billion American Recovery and Reinvestment Act of 2009. The bill proposes significant investments in clean energy and energy efficiency projects, including:
 - \$11 billion for research and development of smart grid technologies;
 - \$8 billion in loans for renewable energy generation and transmission projects;
 - \$2.4 billion for carbon capture and sequestration demonstration projects;
 - \$2 billion in loans and grants for advanced vehicle batteries and battery systems;
 - \$1.5 billion in loans and grants for energy efficiency improvements by school districts, local governments, and municipal utilities;
 - \$6.2 billion to weatherize low-income homes;
 - \$2 billion for energy efficiency and renewable energy research;
 - \$6.9 billion in block grants to local governments for weatherization and energy efficiency projects; and
 - \$16 billion for public housing retrofits.

Additional funds would be provided to encourage purchases of energy-efficient appliances, government acquisition of alternative fuel vehicles, electric vehicle development, energy-efficient manufacturing, diesel engine emission reductions, and military related renewable energy usage. The bill also will include more than \$20 billion in energy-related tax provisions, including a long-

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term extension of the renewable energy production tax credit, a temporary ability to claim the investment tax credit in lieu of the production tax credit, funding for Clean Renewable Energy Bonds and Qualified Energy Conservation Bonds, energy efficiency and conservation tax incentives, and tax credits for renewable energy development and smart energy conservation.

- **Chairman Waxman Proposes Ambitious Climate Legislation Schedule; Hears Testimony From USCAP.** Rep. Henry Waxman (D-CA), chair of the House Committee on Energy and Commerce, stated that he hopes to pass a comprehensive climate bill out of committee before the scheduled recess beginning on May 22. The committee's first hearing focused on climate change, with testimony from members of the U.S. Climate Action Partnership (USCAP), a coalition of businesses and environmental organizations. USCAP members testifying at the hearing included James Mulva, Chairman and CEO, ConocoPhillips; Jim Rogers, Chairman, President and CEO, Duke Energy; Fred Krupp, President, Environmental Defense Fund; John Rowe, President and CEO, Exelon Corporation; Jeffrey Immelt, Chairman and CEO, General Electric; Frances Beinecke, President, Natural Resources Defense Council; David Crane, President and CEO, NRG Energy; Eileen Claussen, President, Pew Center on Global Climate Change; Peter Darbee, Chairman, CEO and President, PG&E Corporation; Jeffrey Sterba, Chairman, CEO and President, PNM Resources; Preston Chiaro, Chief Executive - Energy and Minerals, Rio Tinto; George Nolen, President and CEO, Siemens Corporation; Mark Tercek, President and CEO, The Nature Conservancy; and Jonathan Lash, President, World Resources Institute. Coalition members urged quick legislative action and proposed cutting U.S. GHG emissions 80 percent by 2050, with weaker near-term targets, widespread availability of offsets, and significant free allowance allocations to regulated entities with gradual movement to an auction system. When asked if climate legislation would have a negative impact on their economic performance, the CEOs testifying said no. The USCAP coalition currently includes 27 industry members and four environmental groups. The USCAP legislative blueprint is available at http://www.uscap.org/pdf/USCAP_Blueprint.pdf.

Brief report on Chairman Henry Waxman available. Van Ness Feldman has prepared a report on the leadership, staffing and Committee organization changes at the House Committee on Energy and Commerce. This report can be found at <http://www.vnf.com/news-alerts-324.html>.

- **Utility Trade Association Issues Consensus Statement on Climate Policy Design.** The Edison Electric Institute – the Nation's trade association for investor-owned electric utilities – published a statement titled "Global Climate Change Points of Agreement" asserting that EEI "remains committed to working with Congress on enactment of legislation that will produce substantial emission cuts." The statement calls for an 80 percent reduction from current levels of emissions by 2050; interim targets should be set based on "technology availability." EEI also asserts that cost containment provisions should include both a floor price and a ceiling price for allowances. The statement falls short of calling for total preemption of all state climate policies, but does maintain that there should be a single, federal cap-and-trade program. Most notably, the statement recommends that, in the "early years of the program," the utility sector should receive an allocation of allowances corresponding to its share of total CO₂ emissions (40 percent). EEI further explains that the sector's allowances should be distributed as follows:

merchant coal generation would receive allowances equal to 50% of base-year emissions (because it is assumed both that the other 50% is recovered by gas being

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on the margin in competitive markets and that gas has, on average, 50% of the carbon content of coal), with the balance of allowances allocated to [local distribution companies] based on an even split between base-year emissions (including emissions associated with purchased power) and retail sales. This approach is referred to as the 50-50-50 proposal.

States and Cities

- **California Releases Draft GHG Guidelines for Environmental Reviews.** The California Governor's Office of Planning and Research released proposed amendments to the California Environmental Quality Act (CEQA) that would guide how state agencies assess the impacts of GHG emissions associated with new development projects. CEQA requires state agencies to identify the environmental impacts of development projects. The amendments would advise state agencies to assess a project's potential GHG emissions and to review a project's impacts on fuels and energy resources, the effects on traffic, and other GHG-related impacts.

Studies and Reports

- **DOE Reports Warn of Approaching Grid Problems.** The Energy Advisory Committee for the Department of Energy released three reports with the central message that the current electric power delivery system will not be able to handle the expected growth in electricity demand in addition to increases in long-distance electricity transportation from distant renewable energy sources to urban areas. The reports identified aging, obsolete transmission systems, uncoordinated state and federal regulatory policies, shortages of electrical engineers and technicians, opposition to new power line construction, and constriction of investment capital due to the financial crisis as major problems. The reports' authors, who represent power utilities, technology companies, public power agencies, engineers, and federal and state regulators, could not agree on solutions to these problems. The committee noted, however, that "smart meters" allowing homeowners to understand and control their electricity usage and other "smart grid" technologies could significantly ease the burden on the grid, potentially saving up to \$46 billion in power system investments in the next 20 years. The committee also criticized the DOE for failing to set energy efficiency standards for appliances, noting that such standards produced large energy savings with reasonable costs. The reports are available at <http://www.oe.energy.gov/eac.htm>.
- **Warming Oceans May Store Less Carbon.** A new study by researchers at South Korea's Pohang University of Science and Technology have found that warmer global temperatures are disrupting the vertical cycling of the water column that carries CO₂ from surface waters to the depths of the ocean in the Sea of Japan, also known as the East Sea. Because oceans currently absorb approximately 25 percent of annual anthropogenic CO₂ emissions, a decrease in the oceanic uptake of CO₂ could significantly increase the amount that ends up in the atmosphere. The researchers do not believe the effect will be limited to the Sea of Japan.
- **Energy Efficiency Could Moderate Electricity Usage Growth.** Research by the Electric Power Research Institute indicates that, under ideal conditions, measures to shift the timing of energy demand and improve energy efficiency could reduce growth in electricity use by up to 36 percent over the next 20 years. Energy efficiency measures would include efficient lighting,

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programmable thermostats, and improved building insulation. The report is available at <http://my.epri.com/portal/server.pt>.

International

- **Vietnam Allocates \$115 Million to Climate Change Mitigation.** Vietnam will allocate \$115 million to prepare itself for the effects of climate change. The funds will be used over the next six years to assess the potential impacts of climate change on the country and to prepare a plan to mitigate those impacts. A 2008 World Bank Report named Vietnam as one of ten countries likely to suffer to worst impacts of climate change. The World Bank estimates that over 10 percent of the nation's population could face displacement with a sea level increase of three feet.
- **Transport Ministers Hold Climate Conference.** Climate ministers from 22 nations convened in Tokyo, Japan to discuss ways to reduce GHG emissions from the global transportation sector. The three-day Ministerial Conference on Global Environment and Energy in Transport (MEET) was attended by representatives from major CO₂-emitting developed and developing countries, including the G8, India, and China. A major focus of the conference was the development of mechanisms for developed nations to provide developing nations with financial and technological assistance.

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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