

May 4, 2009

## Climate Change Policy Update Week of April 27-May 1, 2009

**Commentary:** *Negotiations continue behind closed doors as aides for Waxman and Markey work to find common ground with moderate Democrats from the Subcommittee on Energy and Environment in order to avoid a public dust-up in a mark-up. Major top-level issues continue to be unresolved in those negotiations . . . In the Senate, there may be a deal taking shape on a renewable electricity standard . . . For climate change policy, which was the bigger party switch this week: Specter or Holliday? . . . Climate envoy Stern signaled early thoughts on a mid-term emissions target that the United States could live with . . . The European Union also sent signals, saying that it would seek more significant contributions from developing nations and could tolerate “no less” than emission targets for such countries, but it is not clear that the U.S. could get on board with such an approach.*

### Executive Branch

- **Presidential Nominations and Appointments.** Jason Bordoff, currently policy director of the Hamilton Project at the Brookings Institution, has been appointed to serve as Associate Director for Climate Change at the White House Council on Environmental Quality (CEQ). A former consultant at McKinsey & Co., Bordoff served as an adviser to Deputy Secretary of the Treasury Stuart Eizenstat during the Clinton Administration. The Senate confirmed Tom Strickland to serve as Assistant Secretary of the Interior for Fish, Wildlife, and Parks. Among other things, Strickland will help shape the Obama Administration’s consideration of climate change impacts under the Endangered Species Act. The Senate Energy and Natural Resources Committee also voted to send the following nominations to the full Senate: Hilary Tompkins, for Solicitor at the Department of Interior; Kristina Johnson, for Under Secretary for Energy at the Department of Energy (DOE); Ines Triay, for Assistant Secretary for Environmental Management at DOE; Steven Koonin, for Under Secretary for Science at DOE; and Scott Blake Harris, for General Counsel at DOE. The Senate Environment and Public Works Committee held confirmation hearings last week for three of the Obama Administration’s nominees for senior positions at the Environmental Protection Agency (EPA): Cynthia Giles for Director of the Office of Enforcement; Mathy Stanislaus, for Director of the Office of Solid Waste and Emergency Response; and Michelle DePass, for Director of the Office of International Affairs. Also, the nomination of Gina McCarthy to serve as Director of EPA’s Office of Air and Radiation has stalled due to a procedural “hold” placed by Sen. John Barrasso (R-WY). Sen. Barrasso said he placed the hold because he was dissatisfied with McCarthy’s answers concerning EPA regulation of carbon dioxide.
- **State Department Climate Envoy Plans Call for Mid-Term GHG Target.** In remarks following the Major Economies Forum on Energy and Climate last week, the Obama Administration’s State Department Climate Envoy, Todd Stern, stated that the United States would call for a mid-term global greenhouse gas (GHG) reduction target for developed nations at this December’s international negotiations on climate change in

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](mailto:kwd@vnf.com)

May 4, 2009

Copenhagen. Stern said the target would be at least as aggressive as the Administration's domestic goal of a 14% reduction below 2005 emission levels by 2020, and could be as high as the 20% reduction called for in the Waxman-Markey draft climate change legislation released March 31, 2009. The Major Economies Forum convened representatives of seventeen of the world's top GHG-emitting countries to discuss future climate change policy. (For further information on the Major Economies Forum, see "**Major Economies Forum Focuses on Copenhagen, Low-Carbon Technologies**" below.)

- **DOE Announces Stimulus Funds for Wind Research.** The Department of Energy (DOE) plans to distribute \$93 million of energy-related funding provided in the American Recovery and Reinvestment Act of 2009 (the "stimulus package") for wind technology research grants. The federal government will use approximately half of the funding to support the development of longer-lived drive trains for wind turbines; provide \$14 million to private firms for research on advanced materials for turbine blades and towers; and \$24 million for up to three academic-industry research partnerships.

## Congress

- **Backroom Negotiations on ACES Draft Continue.** Negotiations between the sponsors of the House cap-and-trade and energy bill and other Democratic members of the Energy and Commerce Committee's Energy and Environment Subcommittee do not appear to have produced a consensus draft to date, and no mark-up date has been set. Observers can watch for a Subcommittee notice which must be issued 36 hours before a mark-up can take place. Issues under debate reportedly include the stringency of the emissions cap, allowance allocation, the renewable electricity standard, methods of protecting the international competitiveness of energy-intensive U.S. industries, offset provisions (emission reductions made in uncapped sectors), and the prohibition on the use of biomass from federal lands for renewable energy production.
  - Allowance allocation proposals from some Committee Democrats include an initial free distribution of 40% of allowances to local (electricity) distribution companies, and an additional 20% to trade-exposed energy intensive industries, including 5% to petroleum refiners.
  - Committee member Jay Inslee (D-WA) has drafted language he hopes to add to the bill that would give the federal government backstop authority to site transmission lines and allocate the costs on a load-ratio share basis, should regional planning efforts fail. The new authority would apply to high voltage lines, lines needed to transport renewable energy, and necessary upgrades to existing transmission infrastructure. Electricity generators with a GHG emissions rate higher than that of a single-cycle natural gas-fired turbine would be banned from connecting to the lines. The GHG intensity provision would sunset upon implementation of a federal GHG regulatory program that applied to the electricity sector.
  - Although the Democratic leadership acceded to Republican requests for additional hearings and scheduled a hearing for May 1<sup>st</sup>, the Republican members rejected the hearing as useless without an allowance allocation draft to use as a basis for testimony on the bill's projected costs. Republicans have instead scheduled a summit of "business and

May 4, 2009

public life leaders” on May 5<sup>th</sup> to air the views of conservative think tanks and industry representatives on the bill.

- **Other House Committees Address Climate Legislation.** Although the Energy and Commerce committee has taken the lead on climate change legislation in the House, other committees are starting to get involved as well.
  - The Science and Technology Committee will hold a hearing on May 5<sup>th</sup> on the proposal to create a National Climate Service at the National Oceanic and Atmospheric Administration. Although the proposal is included within the ACES bill, it could also move as a stand-alone bill through the Science and Technology Committee. Committee Chair Bart Gordon (D-TN) and Rep. Brian Baird (D-WA), who chairs the Committee’s Subcommittee on Energy and Environment, have told reporters that they are also writing legislation on the monitoring, reporting, and verification of GHG emissions.
  - The Small Business Committee held a hearing on the role of small businesses and family farms in addressing climate change, with testimony from a former president of the National Corn Growers Association and from the National Farmers Union. Committee Chair Nydia Velázquez (D-NY) promised to take the witnesses’ concerns about the ACES bill—which include the need for more offset opportunities for farmers and an increased role for the Agriculture Department in overseeing agricultural offsets—to the Energy and Commerce Committee leadership.
  - Natural Resources Committee Chair Nick Rahall (D-WV), Rep. Raúl Grijalva (D-AZ), and other Committee members introduced The Climate Change Safeguards for Natural Resources Conservation Act (H.R. 2192). The bill would require federal agencies to develop a national plan to protect natural resources vulnerable to climate change impacts and to work with local groups and private landowners to identify and protect vulnerable ecosystems.
  - In addition, 19 congressmen from steel-producing districts wrote to House Speaker Nancy Pelosi (D-CA), Energy and Commerce Chair Henry Waxman (D-CA), and Energy and Environment Subcommittee Chair Ed Markey (D-MA) urging the climate policy leadership to give the steel industry free emission allowances to protect against job loss and the migration of production overseas. The letter is available at [http://murphy.house.gov/UploadedFiles/SC\\_Climate\\_Change\\_4\\_27\\_09.pdf](http://murphy.house.gov/UploadedFiles/SC_Climate_Change_4_27_09.pdf).
- **Bingaman Releases New Transmission, RES Proposals.** Senate Energy and Natural Resources Committee Chair Jeff Bingaman (D-NM) has circulated new versions of transmission siting and renewable electricity standard (RES) proposals.
  - The new transmission siting bill would give states the opportunity to site “high priority” electricity transmission lines before federal siting authority would be triggered. If a state rejected a proposed “high priority” project, failed to consider it within a year, or created “unreasonable” conditions that would hamstring the project, FERC would then have the authority to consider and site the transmission lines. Lines could qualify as “high priority” projects without carrying renewable energy, but renewable energy sources

May 4, 2009

would be a “guide” for constructing transmission. The new version gives FERC responsibility for coordinating regional planning efforts, rather than directing the creation of regional planning entities. Sen. Bingaman seeks to mark up the plan on May 6<sup>th</sup>.

- The new RES proposals would give utilities greater flexibility in the combination of renewable production and energy efficiency improvements they may use to meet the federal standard. One proposal would require 10% of generation from new renewable production by 2020, 5% from energy efficiency, and an additional 10% from any combination of the two. A second proposal would lower the overall RES requirement (15% from renewable generation and 5% from efficiency) and allow utilities to further reduce the renewable generation percentage requirement by 1% for each 2% of additional energy efficiency gains produced. Committee member Debbie Stabenow (D-MI) has said that she is seeking to add a “release valve” to the legislation that would relax the bill’s requirements should costs reach certain levels. A rumored compromise between Sen. Bingaman and key senators would require large electric utilities to obtain 15% of their electricity from renewable sources by 2021 and allow the use of energy efficiency improvements in lieu of 4% of the requirement, with an “off-ramp” provision exempting utilities whose rates increased by 4% or more in a year due to the mandate.

Senate Energy Committee staffers announced that mark-ups would be held weekly starting the week of May 4th with the goal of voting the bill out of Committee by the Memorial Day recess. According to a “tentative” schedule, in addition to the transmission siting bill, the proposal to create a “Clean Energy Deployment Administration” within the Energy Department to provide financing for clean energy projects will be marked-up next week. During the week of May 11<sup>th</sup>, the Committee will mark-up the RES proposal as well as provisions on building sector energy efficiency and cybersecurity. During the week of May 18<sup>th</sup>, the Committee will mark-up legislative language on oil and gas development on public lands, carbon capture and sequestration, and other issues. Hearings will precede the mark-ups on some proposals.

- **Specter Switch Unlikely to Transform Climate Politics.** Sen. Arlen Specter of Pennsylvania announced that he was changing parties from Republican to Democratic this week. Because Pennsylvania has significant energy intensive manufacturing and a large coal industry, Sen. Specter is expected to be as focused on issues of cost containment and a gradually tightening emissions cap as he has been in the past. Sen. Specter previously co-sponsored a bill with Sen. Jeff Bingaman (D-NM), which would have established a relative moderate emissions cap coupled with an allowance price “safety valve.” Sen. Specter has indicated support for passing climate change legislation this year.
- **Republican Aide Joins EPW Staff.** Senate Environment and Public Works Chairman Barbara Boxer (D-CA) has hired Jessica Holliday to work on climate change and energy issues as senior counsel on the Committee staff. Holliday most recently served as a legislative assistant to Sen. Lamar Alexander (R-TN) and previously worked at the environmental group Environmental Defense, for private industry, and served as Republican counsel to the House Energy and Commerce Committee for eight years, during which time she was heavily involved in development of the acid rain provisions of the 1990 Clean Air Act Amendments.

May 4, 2009

## States and Cities

- **Development of California Climate Regime Continues.** The fast-paced development of California's comprehensive climate change regime continued with the introduction of a new bill to allocate potential revenues from GHG regulation, a California Air Resources Board (CARB) proposal for an economy-wide GHG fee, and several CARB concept papers analyzing the design of a GHG offsets program. Under the proposed bill, any revenues collected from GHG fees or compliance mechanisms (a term that includes emission allowance auctions under a future cap-and-trade program) would be spent on the state's climate change program, renewable energy and energy efficiency programs benefitting low-income consumers, green jobs development and training programs, and GHG reducing-technologies. Sen. Fran Pavley, the primary author of the state's motor vehicle GHG emission legislation, introduced the legislation, which has been approved by the Senate's Environmental Quality and Energy Committees.

In related action, CARB released the latest draft of a proposed regulation that would impose an economy-wide GHG fee. The fee is authorized under the state's AB 32 climate change law and is intended to pay for the costs of administering the AB 32 climate change program. The fee would mainly affect utilities and certain industrial sources, and would apply to gasoline, diesel, coal, and natural gas fuels, as well as refining and cement manufacturing process emission. In a break from previous drafts of the proposed regulation, the latest version would extend the fee to fossil fuel-based power imported into the state.

CARB also released several concept papers aimed at exploring options for the design of an offsets policy under the state's future cap-and-trade program. The papers, released by CARB staff ahead of a stakeholders meeting on offsets, addressed such issues as offset ownership rights, geographic limitations on allowable offset projects, and enforcement of offset eligibility criteria for projects located outside the state.

- **New York Agency Finalizes RGGI Auction Revenue Spending Plan.** The New York State Energy Research and Development Authority finalized a plan to allocate the state's share of revenues from Regional Greenhouse Gas Initiative (RGGI) auctions. The plan directs over \$525 million over three years to a variety of energy efficiency and renewable energy programs in five sectors, with the largest shares going to the residential, commercial and industrial sectors. The plan provided a set of six criteria that will be used to determine which programs receive funding.

## Industry

- **IETA Issues Principles for Land-Use Offsets.** The International Emissions Trading Association (IETA), a coalition of firms that trade GHG allowances and offset credits, has issued a set of "Principles for Reducing Emissions and Enhancing Sequestration in the Land-Use Sector." IETA emphasized that the forestry and agricultural sectors account for 30% of global emissions and present significant, cost-effective emission reduction opportunities. IETA recommended that land use offset credits be fully fungible with other forms of GHG allowances and offsets in domestic and international GHG programs. In addition, IETA urged that offset programs avoid "temporary" crediting of projects, and address potential sequestration reversals through reserve buffer or insurance programs. IETA also advocated the eventual direct award of

May 4, 2009

offset credits to land use project sponsors in developing countries. The Principles may be viewed at: <http://www.ieta.org/ieta/www/pages/getfile.php?docID=3278>.

- **Broad Coalition Resists Concept of “Revenue Decoupling.”** A coalition of ten organizations representing industrial energy customers, consumers, and state officials criticized the concept of “revenue decoupling” last week in a letter to the Chairmen and Ranking Members of the House Committee on Energy and Commerce and the Subcommittee on Energy and the Environment. “Revenue decoupling” generally refers to electricity ratemaking structures designed to maintain utility revenues when energy efficiency measures cause sales to decline; the aim of decoupling is to provide incentives (or remove disincentives) for utilities to invest in demand-side efficiency measures. The letter stated that federal energy efficiency legislation should focus on achieving low-cost reductions in energy use, instead of guaranteeing “earnings for utilities.” The coalition also urged that ratemaking structures be determined at the state level rather than through federal legislation. The letter did not address any specific legislation before the Committee, but was apparently intended to respond to industry leaders, environmental organizations and lawmakers who have advocated decoupling.
- **Chamber of Commerce Finds High Costs for Cap-and-Trade.** A report issued by the U.S. Chamber of Commerce and the Coalition for Affordable American Energy argues that President Obama’s proposal to cap U.S. emissions would raise energy prices, slow economic growth, and constrict household buying power. The analysis, conducted by CRA International, did not incorporate the value of mitigating climate change impacts or model the use of offsets (emission reductions in uncapped sectors) or the banking of emission allowances. The report is available at [http://www.uschamber.com/publications/reports/090428\\_climateprovision.htm](http://www.uschamber.com/publications/reports/090428_climateprovision.htm).

## Studies and Reports

- **Scientists Set Fossil Fuel Budget for Planet.** According to new research published this week in *Nature*, the world can burn only a quarter to a third of known fossil fuel reserves, and must limit anthropogenic emissions between 2000 and 2050 to about 1 trillion tons of carbon dioxide equivalent, in order to have good odds (>75%) of limiting global average temperature rise to less than 2 degrees Celsius. Many climate scientists have concluded that temperature increases beyond 2 degrees will greatly increase the odds of catastrophic and potentially irreversible climate changes. According to one of the lead researchers, realistically, global emissions must peak around 2020 to meet this budget.
- **Study Finds ACES RES Cost Impact Modest.** According to an analysis by the Energy Information Administration, the American Clean Energy and Security Act’s Renewable Electricity Standard (RES) would produce only modest price increases in electricity prices nationwide. By 2020, most regions would see increases in prices of between 2 and 5% relative to baseline projections; by 2030 regional prices are generally only 1-3% higher than baseline. The highest price increases are 6%; areas with large renewable capacity could see price declines. Changes in renewable production vary widely by type. The report is available at <http://www.eia.doe.gov/oiaf/servicerpt/acesa/index.html?featureclicked=3&>.
- **China Can Limit Emissions While Growing.** A report by the U.K.’s Tyndall Centre for Climate Change Research projects that China could transform itself into a low-carbon economy

May 4, 2009

via policies encouraging clean energy and carbon sequestration, energy efficiency, and economic transition towards higher value sectors. These changes—which would also require significant investment from developed countries—could allow China to grow more than 10 times by 2050 while controlling emissions to levels recommended by the Intergovernmental Panel on Climate Change. More information is available at

[http://www.tyndall.ac.uk/media/press\\_releases/tyndallrelease29april09.pdf](http://www.tyndall.ac.uk/media/press_releases/tyndallrelease29april09.pdf).

- **WBCSD Releases Study on Reducing Emissions From Inefficient Buildings.** A four-year study released by the World Business Council on Sustainable Development (WBCSD) last week concluded that GHG emissions attributable to energy use in buildings globally could be reduced 40% by 2050, through an investment of \$150 billion each year in insulated windows, heat pumps and other efficiency measures. According to WBCSD, building owners would, on average, recover the costs of these measures within five years, assuming an oil price of \$60 per barrel. The report also found that global building-related emissions could be reduced by 52% by 2050 at an annual cost of \$300 billion, with a five-to-ten year cost recovery period, but that a 77% reduction in emissions by 2050 would require energy efficiency standards and other policy interventions. The study is available at <http://62.50.73.69/transformingthemarket.pdf>.

## International

- **Major Economies Forum Focuses on Copenhagen, Low-Carbon Technologies.** Representatives from 17 major GHG emitting nations and the EU met in Washington, DC for a two-day summit on climate change and clean energy. The latest meeting of the Major Economies Forum on Climate and Energy, begun under the Bush Administration as the Major Emitters Meetings, focused primarily on setting the agenda for later meetings this summer and laying a foundation for the successful negotiation of climate treaty in Copenhagen, Denmark later this year. The summit's substantive discussions addressed mitigation targets and the development of clean energy technologies. The summary of the meeting stated that the nations agreed that climate change is "a clear and present danger to our world" that will require "near-term ambitious actions for all." (For further information on the Major Economies Forum, see "**State Department Climate Envoy Plans Call for Mid-Term GHG Target**" below.)
- **EU Proposes "No-Lose" Emissions Market for Developing Nations.** The European Union has proposed a carbon trading plan intended to increase the participation of major developing nations in reducing GHG emissions. The EU proposal would create an emission trading program based on voluntary emissions targets. The nations would generate tradable credits for any emission reductions below the targets, but would not face any penalties for failure to achieve the reductions goals. The role of developing nations is one of the major issues that need to be addressed in negotiations on a successor treaty to the Kyoto Protocol.
- **Canada Targets Power Sector with New Emissions Reduction Initiatives.** In an effort to strengthen his nation's position prior to climate negotiations this December, Canadian Environment Minister Jim Prentice announced a number of new initiatives aimed at reducing GHG emissions from the power sector. Minister Prentice announced that Canada will begin developing regulations that would impose a carbon dioxide emission standard on existing power plants and require new plants to include carbon capture and sequestration technology. The

May 4, 2009

regulations, which will be issued later this year, will permit existing plants to meet the emissions standard through the use of a market-based trading mechanism.

- **Asian, Middle Eastern Nations Call For Inclusion of CCS, Nuclear in CDM.** Following the Third Asian Ministerial Energy Roundtable in Tokyo, Japan, the energy ministers from 21 Asian and Middle Eastern nations issued a statement in which they called for changes to the Kyoto Protocol's Clean Development Mechanism (CDM) to allow credit for nuclear and carbon capture and sequestration (CCS) projects. The CDM, one of three flexibility mechanisms in the Kyoto Protocol, allows developed countries that are subject to a binding emission target to generate credits toward meeting their target by funding a project that will result in reduced emissions in a developing nation. The proposal will be one of the issues addressed in the negotiations on the successor treaty to the Kyoto Protocol this December.
- **Brazil Proposes Incremental Approach to Reduction.** At the G-8 Summit in Siracusa, Italy, Brazil submitted a new proposal for the on-going international climate change negotiations that would take an incremental approach to reducing emissions and limiting temperature increase. For emission targets, the Brazilian proposal would create two five-year compliance periods to follow the expiration of the Kyoto Protocol at the end of 2012. The first compliance phase would have a goal of a 20 percent reduction from 1990 levels and the second would have a 25 percent reduction goal. The proposal would take a similar approach with global GHG concentrations by adopting the Intergovernmental Panel on Climate Change's (IPCC) goal of limiting global temperature increase to no more than 2 degrees Celsius and then breaking down the goal into ten decade-long increments with temperature increase targets of .2 degrees Celsius each.
- **Island Nations Propose Expanding Montreal Protocol to Regulate HFCs.** The small island nations of Mauritius and the Federated States of Micronesia have proposed amending the Montreal Protocol to regulate hydrofluorocarbons (HFC), a class of potent GHGs used in refrigeration and air conditioning equipment. The two nations proposed to phase down the use of HFCs in coming years. The United States has been considering a similar amendment.

*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.*

© 2009 Van Ness Feldman, P.C. All Rights Reserved.