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Climate Change Policy Update Week of August 3-7, 2009

Commentary: *In the Senate, who will draft provisions for distributing allowances? Boxer? Baucus? Reid? All of the above? . . . Ten Senators from manufacturing states sent a joint letter emphasizing the importance of having border adjustment measures in any cap-and-trade program . . . Suddenly, there is a lively discussion about an allowance “price collar” – provisions that would set a floor and a ceiling for allowance prices. Both Brookings and the National Commission on Energy Policy released papers advocating such an approach, and it was a topic of discussion at this week’s Senate Finance Committee hearing. The papers are critical of the ACES “strategic allowance reserve,” which might address, at best, volatility, but would not be effective in address systematically high allowance prices due to the unavailability of technology. Some policy-makers also have latched onto the price collar as a mechanism to prevent adverse impacts from market speculation. NGOs remain critical of the concept. . . . It was a week of studies. The Energy Information Administration analysis of ACES predicts that electricity prices would be 3% above the business-as-usual projection by 2020 and 19% above business-as-usual by 2030. The Congressional Budget Office reinforced previous findings about the significant cost containment impacts from offsets. The General Accountability Office concluded that costs to consumers from a cap-and-trade program are a function of how allowance value is distributed. The GAO generally praised approaches that returned allowance value to consumers in the form of rebates or tax relief, and generally criticized approaches that used allowance value to reduce energy prices. Studies by the Electric Power Research Institute and a group of national academies reinforced the point that the cost and effectiveness of climate policy turns on the rate of technology development and deployment.*

Executive Branch

- **EPA Denies Request to Prepare New Economic Analysis of ACES.** Citing the release of a new economic analysis of the American Clean Energy and Security Act (ACES) prepared by the Energy Information Administration (EIA), the Environmental Protection Agency (EPA) formally denied a request by Senators James Inhofe (R-OK) and George Voinovich (R-OH) to prepare a new analysis of the bill with an expanded range of assumptions. In a letter to the Senators, EPA Administrator Lisa Jackson explained that the EIA analysis already incorporated many of the features that had been requested by the Senators, such as future scenarios in which low-carbon energy sources are assumed to be expensive and in limited supply. Sen. Inhofe stated in response that the EIA analysis did not address state-specific job impacts or the availability of international offset credits, and that a new EPA analysis would still be necessary. Sen. Voinovich vowed to continue a “hold” he has placed on the nomination of Robert Perciasepe for Deputy Administrator of EPA until the agency prepares the analysis requested.

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- **DOE Awards \$2.4 Billion For Electric Vehicle Batteries.** The Department of Energy (DOE) announced that it had awarded a total of \$2.4 billion in grant funding to 48 separate research, development and demonstration projects relating to the production of electric vehicles and vehicle batteries. The funding was provided by the American Recovery and Reinvestment Act of 2009 (the “stimulus package”) signed into law in February of this year. Recipients of these grants will be required to provide varying levels of matching funds. Of the total package, \$1.5 billion will support the expansion of domestic battery manufacturing and recycling capacity; \$500 million will be used for the manufacturing of electric vehicle components and electronics; and \$400 million will be used to purchase test vehicles, deploy vehicle charging infrastructure, and provide workforce training. The largest grants were awarded to Johnson Controls (\$300 million), A123 Systems (\$250 million), and General Motors (\$241 million) for the production of lithium-ion batteries.

- **Update on Presidential Nominations and Appointments.**
 - The Senate confirmed Kerri-Ann Jones as Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs. Jones has served previously as Director of the National Science Foundation’s Office of International Science and Engineering and as Acting Director and Associate Director for National Security and International Affairs in the White House Office of Science and Technology.
 - The Senate confirmed Craig Hooks, currently serving as Acting Assistant Administrator for the Office of Administration and Resources Management at EPA, to be an Assistant Administrator of EPA. Hooks has served at EPA for 21 years, including as Director of the Office of Wetlands, Oceans, and Watersheds.
 - The Senate confirmed James Markowsky to be an Assistant Secretary for Fossil Energy at DOE. Markowsky, who previously worked for American Electric Power for 29 years, is currently a consultant in the energy and electric power generation sector, a member of the National Research Council’s Committee on America’s Energy Future, and Chair of the National Academy of Engineering’s Section 6 – Electric Power / Energy Systems Committee.
 - The Senate confirmed Warren “Pete” Miller to serve as Assistant Secretary for Nuclear Energy at DOE. Miller is currently a professor at Texas A&M University and retired from work as a researcher and administrator at Los Alamos National Laboratory in 2001.
 - The Senate confirmed Robert Abbey to be Director of the Bureau of Land Management (BLM) at the Department of the Interior. Abbey is currently a private consultant at Abbey – Stubbs – Ford, LLC, where he specializes in western land and resource strategies. He previously served as the Nevada State Director for the BLM.
 - The Senate confirmed Colin Scott Cole Fulton to be an Assistant Administrator of EPA. Fulton previously served in a number of positions at EPA, including as Acting Assistant Administrator of the Office of International Affairs, as a judge on the Environmental Appeals Board, and as Director of Civil Enforcement.

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- The Senate Committee on Energy and Natural Resources held confirmation hearings for John Norris, who is President Obama's nominee to serve as Commissioner of the Federal Energy Regulatory Commission (FERC).
- The Senate Committee on Environment and Public Works approved the nomination of Gary Guzy for the position of Deputy Director of the Council on Environmental Quality.

Congress

- **Senate Heads to Recess With Final Hearings.** In the Senate's final week before the August recess, key committees held hearings focused on climate change policy issues.
 - The Environment and Public Works hearing on climate change and U.S. leadership in clean energy featured Interior Secretary Ken Salazar, Federal Energy Regulatory Commission Chairman Jon Wellinghoff, DOE Assistant Secretary for Policy and International Affairs David Sandalow, Environmental Defense Fund President Fred Krupp, and MidAmerican Energy Company President and CEO Bill Fehrman. Committee Chairman Barbara Boxer (D-CA) remarked on options that she is considering for her cap-and-trade bill. She said she is considering a 2020 target of between 17 and 20% below 2005 emissions, and is also considering imposing a "price collar" (minimum and maximum) on emission allowance prices to provide greater cost certainty.
 - The Finance Committee's hearing on emission allowance allocation featured expert testimony from John Stephenson from the Government Accountability Office, Dallas Burtraw from Resources for the Future, Nat Keohane of the Environmental Defense Fund, and Alan Viard from the American Enterprise Institute. At the hearing, Sen. Blanche Lincoln (D-AR) described the ACES bill as "deeply flawed," citing its adverse impacts on smaller oil refineries such as those in her state. Sen. Debbie Stabenow (D-MI) asked witnesses whether imposing a price collar on emission allowance prices would be a more effective cost-containment mechanism than free allowance allocation. Keohane warned that such a mechanism could make the cap ineffective. Committee Chairman Max Baucus (D-MT) said that the Senate should "match" or "build on" the provisions in the ACES bill that use allowance value to give low-income Americans relief from energy costs. Chairman Baucus has not said whether he would rewrite the House allocation formula or leave it as is, but he did say that the Finance Committee will mark up a bill in mid- or late September.
- **Manufacturing-State Senators Ask for Carbon Tariffs.** Ten senators, all of whom represent states with significant manufacturing industries, wrote to President Obama to communicate support for inclusion of a "longer-term border adjustment" in climate legislation to ensure that energy-intensive jobs and industries do not leave the U.S. for non-carbon constrained countries. Signatories include Sens. Sherrod Brown (D-OH), Debbie Stabenow (D-MI), Russ Feingold (D-WI), Carl Levin (D-MI), Evan Bayh (D-IN), Bob Casey (D-PA), Robert Byrd (D-WV), Arlen Specter (D-PA), John Rockefeller (D-WV), and Al Franken (D-MN).

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- **Members Introduce Constituent-Focused Climate Bills.** Several bills were introduced that respond to constituency-specific climate policy issues:
 - A bipartisan bill (H.R. 3460) was introduced in the House that would add algae-based biofuels to the cellulosic fuel category eligible to meet EPA's renewable fuels standard (RFS). Because the legislation would not alter the amount of cellulosic fuels that must be used by refiners to meet the RFS, algae-based biofuels would be in competition with conventional cellulosic fuel producers such as switchgrass to supply the existing volume requirements.
 - Sen. Jeanne Shaheen (D-NH) introduced the Forest Carbon Incentive Program Act (S. 1576) which would direct the Forest Service to create a program to pay small forest owners who set aside forested acres through conservation easements or take other measures to store carbon and reduce emissions.
 - Sen. Mark Begich (D-AK) introduced a set of seven bills intended to address climate change impacts in Alaska and the arctic. The legislation would create economic development programs for Alaskan villages already deleteriously affected by coastal erosion, flooding, and other climate change impacts; direct formation of a long-term Arctic Ocean research plan; give Alaska natives 37.5% share of royalties from offshore oil and gas production, and create a U.S. ambassador to the arctic to represent the U.S. at international negotiations of arctic nations.
- **More Cash for Clunkers.** The House and the Senate gave new infusion of \$2 billion in funding to the popular "Cash for Clunkers" program, which provides individuals with up to \$4,500 towards the purchase of a new car if they trade in a less efficient model. The program, which had nearly run through the \$1 billion appropriated to it in its first days of operation, has been criticized for failing to produce sufficient environmental benefits and for benefiting foreign car companies. Although the Ford Focus is one of the most popular cars purchased with the rebates, the other cars in the top five are made by Toyota and Honda.

States and Cities

- **New York Governor Establishes 2050 Emissions Target, Creates Climate Council.** New York Governor David Patterson (D) signed an executive order that sets a GHG emission reduction target for the state of 80 percent below 1990 levels by 2050. The order also creates a Climate Action Council that is tasked with preparing by September 30, 2010 a climate action plan that will help the state meet its emission reduction target. As a member of the Regional Greenhouse Gas Initiative, New York has already committed to reducing GHG emission levels from its power sector to 10 percent below 2009 levels by 2018.
- **Michigan Governor Sets Targets of 20 Percent by 2020, 80 Percent by 2050.** Michigan Governor Jennifer Granholm (D) issued an executive order that sets GHG emission reduction targets of 20 percent below 2005 levels by 2020 and 80 percent below 2005 levels by 2050. The order directs state agencies to meet the targets by developing programs aimed at decreasing vehicle emissions, increasing building energy efficiency, developing and deploying carbon capture and sequestration technologies, and creating partnerships with other state governments.

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- **State Regulators Call on Senate to Strengthen House Climate Bill.** In separate letters to U.S. Senators, the National Association of Clean Air Agencies (NACAA) and the Environmental Council of States (ECOS) called on the Senate to improve on the House-passed ACES legislation when drafting its own climate legislation. Among the most significant changes sought by the NACAA, a group of state and local air regulators, are a tightening of the 2020 reduction target from 17 percent to 20 percent below 2005 levels; periodic review of emission targets; expansion of state and local authority to enact more stringent climate regulations; a strengthened renewable electricity standard; and placement of authority over the domestic offset program with the Environmental Protection Agency (EPA), rather than the Department of Agriculture. Offsets are projects to reduce or sequester emissions in uncapped sectors of the economy or in developing countries. The ECOS letter, which the group of state environmental agency leaders delivered to certain key Senators only, focused primarily on the preemption issue and the right of states to create their own climate programs.

Industry

- **Coal, Natural Gas, Other Industries Advocate for Performance Standards Elimination.** A large number of coal, natural gas, utility, and other companies joined offset advocacy coalitions in a letter to all Senators. The letter urges the Senate to forgo including in a Senate climate bill a provision of the ACES that directs the EPA to develop performance standards for uncapped sources of greenhouse gas emissions, arguing that the provision would eliminate an important source of early offset projects and cost-containment. The provision targets sources of methane emissions in the coal, natural gas, and landfill sectors.
- **Energy, Forestry, and Wildlife Groups Campaign for Expanded Definition of Biomass in Climate Bill.** In a joint letter signed by 76 entities ranging from Duke Energy to the National Wild Turkey Federation, various energy, forestry, and wildlife interests urged the Senate to adopt a broad definition of “renewable biomass” in climate and energy legislation to be taken up in September. The American Clean Energy and Security Act of 2009 recognizes restricted categories of biomass from Federal lands for purposes of compliance with the GHG cap-and-trade program, the proposed federal renewable energy standard, and the existing Renewable Fuels Standard created in the Energy Policy Act of 2005. The letter, which was sent to the Chairmen and Ranking Members of the Senate Committee on Environment and Public Works and the Senate Committee on Agriculture, Nutrition, and Forestry, claimed that the ACES definition “will exclude some of the biomass from much-needed restoration and forest health improvement projects.”

Studies and Reports

- **New Studies of Federal Climate Legislation Released.**
 - *Congressional Budget Office:* A report released by the CBO concludes that, without offsets, the costs of ACES would increase by \$147 billion by 2030. The report predicts that offsets help reduce the cost of the bill by an annual average of 70% between 2012 and 2050. The report is available at <http://www.cbo.gov/ftpdocs/104xx/doc10497/08-03-Offsets.pdf>.

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- *Energy Information Administration:* An analysis of ACES by EIA projects that electricity prices will be between 11 and 17.6 cents per kilowatt-hour in 2030, depending upon the ease of low-carbon technology deployment such as CCS and biomass, energy generation costs, and offsets availability. The study's "basic case" scenario assumes allowance prices of \$32/ton in 2020 and \$65/ton in 2030, and that 61% of emission reductions come from offset projects. The majority of reductions by capped entities would come from the electricity sector. The basic scenario predicts that electricity prices will be 3% above the business-as-usual projection by 2020 and 19% above business-as-usual by 2030. Costs imposed by the bill are projected to reduce annual household consumption by \$134 in 2020 and \$339 in 2030, and to lower U.S. gross domestic product by .3% between 2012 and 2030. None of the cost projections consider any avoided costs due to averted climate change impacts. The study is available at [http://www.eia.doe.gov/oiaf/servicerpt/hr2454/pdf/sroiaf\(2009\)05.pdf](http://www.eia.doe.gov/oiaf/servicerpt/hr2454/pdf/sroiaf(2009)05.pdf).
- *General Accountability Office:* A GAO report concludes that the costs borne by consumers under a cap-and-trade program will depend primarily upon how allowance value is distributed. The report predicts that most regulated entities will pass along allowance costs in the form of increased prices, but found that the costs borne by consumers as a result could be largely offset through the distribution of revenue generated by allowance auctions. Distributing allowances for free, the report notes, could increase the overall cost of the program by holding down energy prices and reducing the incentive for consumers to conserve. The report is available at <http://www.gao.gov/new.items/d09950t.pdf>.
- *National Academies:* A study co-authored by the Committee on America's Energy Future, the National Academy of Sciences, the National Academy of Engineering, and the National Research Council concludes that it will be important to make carbon capture and sequestration (CCS) and "evolutionary" nuclear technologies viable if the U.S. is to achieve significant GHG reductions. The report recommends the use of performance based standards and regulations to drive technological development and market investment. The study is available at http://www.nap.edu/catalog.php?record_id=12710.
- *Electric Power Research Institute:* EPRI released the results of an analysis of electricity sector technologies which suggest that the electricity sector could reduce emissions by 41% below 2005 levels by 2030 if low-carbon technologies such as CCS, renewable generation, and nuclear generation as well as energy efficiency improvements are aggressively developed and deployed. According to the analysis, aggressive deployment would reduce the cost of emission reductions by more than \$1 trillion by 2050 and limit wholesale electricity cost increases to 80% (rather than 210%) by 2050 as compared to a limited deployment scenario. The report assumes that renewable energy sources would contribute 15% of U.S. generation by 2030, that energy efficiency initiatives would reduce expected electricity demand by 8% by 2030, and that 40% of vehicles sold in 2025 would be plug-in hybrids. A slideshow presenting these results is available at <http://mydocs.epri.com/docs/SummerSeminar09/Specker09SumSem.pdf>.

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International

- **South Korea Commits to 2020 Target of 21-30 Percent Below BAU.** President Lee Myung-bak announced that South Korea will choose by the end of this year one of three emission reduction targets for 2020. The three possible targets are 21 percent, 27 percent and 30 percent below business-as-usual (BAU) emissions. South Korea, which was not subject to an emission reduction commitment under the Kyoto Protocol, is the first such nation to accept an emissions target for the post-Kyoto period.

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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