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Climate Change Policy Update Week of January 11-15, 2010

Commentary: *Senate Majority Leader Harry Reid (D-NV) sees a bipartisan climate bill on the floor of the Senate in the Spring . . . Reid and some other Senate Democrats are rallying in opposition to an expected amendment from Senator Lisa Murkowski (R-AK), but it's not yet clear whether she will offer an amendment and, if she does, what form it will take . . . The countdown is underway: January 31 is the deadline under the Copenhagen Accord for major economies to register their mitigation commitments. It will be a first test of the durability of the Accord . . . The Farm Bureau's annual meeting delivered a resounding statement of opposition to GHG regulation in any form . . . California dodged a legislative effort to suspend A.B. 32, but a referendum could be in the offing . . . The US Climate Action Partnership is advocating that the relevant agencies begin work now on offset protocols and certification processes, and calls on Congress to provide any authority or resources the agencies might need to get a jump start on these efforts.*

Executive Branch

- **U.S. Climate Negotiators Urge Post-Copenhagen Action.** In remarks to investors meeting at the United Nations headquarters, U.S. Special Envoy on Climate Change Todd Stern called on parties to the United Nations Framework Convention on Climate Change to submit greenhouse gas (GHG) reduction targets by the Copenhagen Accord's deadline of January 31, 2010. Stern said that the Accord "did really include significant breakthroughs" including a "breach in the firewall between developed and developing countries" (referring to commitments by major developing countries to undertake "nationally appropriate mitigation actions"), a consensus on a global warming target of no more than two degrees Celsius over pre-industrial levels, and a commitment by industrialized countries to facilitate \$100 billion per year in financing for developing countries by 2020. Stern also called for a "small group process" for significant GHG emitting countries, similar to the Major Economies Forum negotiations that have occurred over the last two years, to take place in the coming year.
- **EPA Sees Approach to Climate Regulations Minimizing Job Loss.** In a letter from Gina McCarthy, Assistant Administrator for Air Quality and Radiation, to Reps. Joe Barton (R-TX) and Greg Walden (R-OR), the Environmental Protection Agency (EPA) responded to criticisms of its recent moves to regulate GHGs under the Clean Air Act (CAA). In the letter, McCarthy argued that EPA's "endangerment finding" did not require a formal economic analysis because the finding did not, of its own accord, impose any regulatory requirements. However, McCarthy pledged that EPA would draft future GHG regulations "in a manner that minimizes any job losses and enhances the U.S. economy's

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potential for job growth to the maximum extent allowed by law.” McCarthy also said the agency’s proposed “Tailoring Rule,” which would limit GHG requirements under the CAA’s Prevention of Significant Deterioration program to large sources with the potential to emit at least 25,000 tons CO₂-equivalent per year, would not cause any job losses because the rule would have the effect of shielding small businesses and facilities from permitting requirements. The letter is available at http://republicans.energycommerce.house.gov/Media/file/News/011210_Response_from_EPA_on_Rules.PDF.

Congress

- **Reid Committed to Climate Bill—If Bipartisan.** According to Forbes, Senate Majority Leader Harry Reid (D-NV) said at a geothermal industry conference that he remains committed to getting a climate and energy legislative package through the Senate this spring, provided the bill’s supporters can generate bipartisan support.
- **EPW Democrats Urge Vote against Murkowski Amendment.** The Democratic members of the Environment and Public Works Committee wrote to their fellow Senators to urge them to vote against any legislative effort to overturn EPA’s finding that GHG emissions endanger public health and welfare. Senator Lisa Murkowski (R-AK) may offer such an amendment next week to a bill that would raise the ceiling on the public debt, but her aides said she had not decided whether to offer an amendment next week, nor decided what amendment to offer. According to her aides, Sen. Murkowski also is considering is using the amendment opportunity to force a vote on the Kerry-Boxer climate bill in order to demonstrate that it is a “non-starter.”

Judicial

- **Utilities Challenge New Mexico’s Proposed GHG Regulations.** El Paso Electric Co., the New Mexico Rural Electric Cooperative Association, Public Service Co. of New Mexico, and various other plaintiffs filed suit in New Mexico state court last week to prevent the state’s Environmental Improvement Board (EIB) from considering GHG regulations requested in a 2008 petition by a nonprofit organization called New Energy Economy, Inc. The plaintiffs claim that the EIB lacks authority under state law to entertain the petition, because EIB may only adopt air quality regulations pursuant to national or state air quality standards, and such standards have not been established for GHGs. In 2009, the EIB determined that it had jurisdiction over the petition and proceeded to schedule hearings on whether to establish a state cap on GHG emissions.

States and Cities

- **Challenge to California Climate Law Fails in Committee.** The California Assembly’s Natural Resources Committee defeated 6-3 a bill aimed at suspending the state’s landmark A.B. 32 climate change law. Authored by Assemblyman Dan Logue (R), A.B. 118 would have required implementation of A.B. 32 to be suspended until the state’s unemployment rate dropped from its current 12.3 percent to 5.5 percent or below for four consecutive quarters. Assemblyman Logue, along with other prominent state Republicans, is also gathering signatures in an effort to have the A.B. 32 suspension measure placed on the state-wide ballot in November.

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- **California Agency's Approval Finalizes Low-Carbon Fuel Standard.** The California Office of Administrative Law (OAL) granted its approval of low-carbon fuel standards developed last year by the California Air Resources Board. The OAL action makes the standards immediately effective. The standards are aimed reducing the carbon intensity of transportation fuels by 10 percent by 2020.

Industry and NGOs

- **USCAP Calls for Accelerated Development of Offsets Regulations.** The U.S. Climate Action Partnership (USCAP), a coalition of environmental groups, businesses, and think tanks whose recommendations significantly influenced the Waxman-Markey climate change bill, released a white paper calling on federal agencies to lay the groundwork for an offset credits system before a climate change bill is ultimately passed. The paper argued that EPA, the U.S. Department of Agriculture, and other federal agencies should conduct research and convene expert panels on offset measurement and verification so that these agencies will be prepared to quickly approve offset project methodologies in the early years of a cap-and-trade program. In addition, the paper advocates measures that would reward entities that carry out "early action" projects to reduce GHG emissions in advance of a mandatory GHG program – including entities that ultimately will be subject to allowance requirements, but which make reductions in advance of their obligations (the paper recommends "Credit for Accelerated Reductions"). The Waxman-Markey and Kerry-Boxer climate change bills, which would allow up to 2 billion offset credits to be submitted each year, rely heavily on offset credits to control the cost of compliance. USCAP's proposals are intended to address widespread concerns that there will be insufficient supply of offset credits at the outset of a cap-and-trade program. The paper is available at <http://www.uscap.org/PHPages/wp-content/uploads/2010/01/USCAP-Offsets-and-Early-Emissions-Reductions.pdf>.
- **Farm Bureau Condemns Climate Bill and EPA Regulation of GHGs.** The American Farm Bureau Federation (Farm Bureau), the nation's most influential agricultural lobby, approved a resolution at its annual convention opposing both the climate change bills pending in Congress and EPA's efforts to regulate GHGs under the Clean Air Act. The resolution expressed the Farm Bureau's view that such initiatives would increase prices of fertilizer and fuel for farmers, and cost jobs in the agriculture sector. Referring to the recent controversy over the unauthorized disclosure of e-mails and files at the University of East Anglia's Climate Research Unit, the resolution also questioned the integrity of climate change science.
- **EEI President Skeptical of Alternative Climate Bill Approaches.** Edison Electric Institute (EEI) president Thomas Kuhn voiced concerns about various proposed alternatives to the Waxman-Markey and Kerry-Boxer climate change bills at a conference in Washington, D.C. Commenting on the notion of a cap-and-trade bill limited to the utility sector, Kuhn said that the approach has "major downsides" and said EEI's position on the idea would depend on how much utilities would have to reduce their emissions and whether other economic sectors would eventually be brought into the program. Kuhn also criticized the notion of auctioning all emission allowances in a cap-and-trade system and returning the revenues directly to consumers in the form of a dividend. Explaining that EEI prefers comprehensive climate legislation to an EPA-driven regulatory approach under the existing Clean Air Act, Kuhn said that EEI has been lobbying in favor of the cap-and-trade bills pending in Congress.

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Studies and Reports

- **Study Finds Anti-Tax Bias.** A study by psychologists at Columbia University gave participants a choice between a less expensive and a more expensive product, with the cost differential either due to a “carbon tax” or a “carbon offset.” In the “offset” trial, participants of all political persuasions were more likely to select the costlier product over the cheaper option, and were equally likely (across party) to support making the surplus charge mandatory. When the surplus was due to a “tax”, self-identified Republicans and Independents were less likely to choose the more expensive option, and did not support legislation to make the tax mandatory. An overview of the study is available at <http://www.psychologicalscience.org/media/releases/2010/hardisty.cfm>.

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.

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