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Climate Change Policy Update Week of July 19-23, 2010

Commentary: *Majority Leader Reid pulled the plug on a carbon pricing element of the energy bill, citing insufficient votes. The announcement by Reid cut short an effort by some environmental groups and a few utilities to develop a compromise utility-only cap-and-trade program; the effort had not yet borne fruit. Senator Kerry says he still intends to bring the bill forward during the recess . . . Reid also said he did not see sufficient votes for a renewable electricity standard; however, concerted efforts are underway to revive such a standard. Key questions will include the level of stringency, and whether the standard should reach energy efficiency, nuclear power, natural gas, or coal-fired generation with carbon capture . . . Expect the energy bill to include oil spill liability provisions, Home Star, the Pickens incentives for use of natural gas in trucks, and funding for land and water conservation . . . Retiring Senator Byron Dorgan (D-ND), a long-time coal supporter, admonished industry leaders to engage in the climate policy design discussion . . . Now that it is all but certain that Congress will not enact a climate program this year, look for the debate to shift to the Rockefeller bill and other initiatives aimed at shaping, delaying, or derailing EPA regulation of GHG emissions under the Clean Air Act.*

Executive Branch

- **White House Heightens Efforts to Reduce GHG Emissions from Federal Sources and Activities.** President Obama announced that the federal government is seeking to reduce its indirect GHG emissions – such as emissions resulting from employee commuting, contracted waste disposal, and transmission of purchased electricity – by 13 percent by 2020. The new commitment aims to reduce consumption, improve efficiency, and use renewable energy sources like wind and solar power. The President announced in January 2010 that federal agencies would cut their direct GHG emissions by 28% by 2020 under federal GHG reduction plans mandated in Executive Order 13514. The latest announcement states that, if successful, cumulative GHG reductions from federal operations will total 101 million metric tons of carbon dioxide, equivalent to the emissions from 235 million barrels of oil. The President’s statement is available at <http://www.whitehouse.gov/the-press-office/president-obama-expands-greenhouse-gas-reduction-target-federal-operations>.
- **Forest Service Releases Plan for Responding to Climate Change.** The United States Forest Service announced the release of its *National Roadmap for Responding to Climate Change*, which identifies the Forest Service’s plans to incorporate climate change adaptation, mitigation, monitoring, sustainable consumption, and education objectives into existing programs and procedures. The

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Roadmap builds on the agency's 2008 strategic plan for responding to climate change. The Roadmap is available at <http://www.fs.fed.us/climatechange/pdf/roadmap.pdf>.

Congress

- **Senate Democrats Abandon Climate Bill.** Senate Majority Leader Harry Reid (D-NV), joined by Sen. John Kerry (D-MA) and Carol Browner, Director of the White House Office of Climate Change and Energy Policy, announced that legislation to be brought to the floor next week will not regulate GHG emissions nor include a renewable electricity standard. Instead, Senate Democrats will focus on passing a limited oil spill and energy efficiency package before the August recess. The oil spill and energy bill will have four components: oil spill response; a "Home Star" energy efficiency program; incentives for natural gas powered trucks; and funding for land and water conservation. Climate legislation could be revisited after the August recess or the election in November.

"To be clear, we are not putting forth this bill in place of a comprehensive [climate and energy] bill," Maj. Leader Reid said. "This is not the only energy legislation we will do; this is what we can do now." An informal working group of utilities and environmentalists had recently begun negotiations on a "utility-only" bill to cap GHG emissions from utilities. However, Sen. Joseph Lieberman (I-CT) asked for more time for negotiations after the Edison Electric Institute said it could not make a decision to support the draft bill within the timeline established by Maj. Leader Reid. At a town hall-style gathering hosted by the Natural Resources Defense Council, Sen. Kerry told the audience: "[A comprehensive energy-climate bill] is not dying. It's not going away. . . . We're going to try our best to find a way to do it in the next few weeks. If we can't do it in the next weeks, we'll do something that begins to do something responsibly in the short term. But this will stay out there and we'll be working on it, we'll be asking you to talk to your senators and move them to understand why we have to get this done."

- **Senators Urge Reid to Price Carbon.** The day before Maj. Leader Reid announced his decision to postpone consideration of climate legislation, twelve senators wrote to the Majority Leader urging quick action to end dependence on foreign oil, commit to clean energy development, and place a price on pollution from fossil fuels. The letter argued that a strong bill with these priorities will drive investment into clean energy technologies to create well-paying jobs and revitalize the economy. The letter was signed by Senators Patrick Leahy (D-VT), Sheldon Whitehouse (D-RI), Jack Reed (D-RI), Ben Cardin (D-MD), Bernie Sanders (I-VT), Frank Lautenberg (D-NJ), Jeanne Shaheen (D-NH), Jeffrey Merkley (D-OR), Ted Kaufman (D-DE), Kirsten Gillibrand (D-NY), Al Franken (D-MN), and Robert Menendez (D-NJ).
- **EPA "Time-out" Legislation Resurfaces in House.** A legislative effort to impose a two-year delay on Environmental Protection Agency (EPA) regulation of GHG emissions from stationary sources narrowly failed in the House Appropriations Subcommittee on Interior and Environment. Two Democrats, Reps. Alan Mollohan (D-WV) and Ben Chandler (D-KY), voted with Republicans to deadlock the vote at 7-7. Sen. Maj. Leader Harry Reid (D-NV) has reportedly promised that that a similar bill sponsored by Sen. Jay Rockefeller (D-WV) will be brought to the Senate floor by the end of the year.

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- **Dorgan Delivers Tough Message to Coal Allies.** Sen. Byron Dorgan (D-ND), a staunch supporter of the coal industry who will retire after the completion of his term in January, met with the heads of several coal trade associations to urge them to engage in the carbon price policy debate to shape it to their benefit. Sen. Dorgan told reporters: “Regulations are coming in the future. If coal does nothing, coal will lose [T]hey’ve been on the defensive position, not negotiating with anyone, and they’re going to lose under that [scenario due to a] substantial conversion to natural gas.” Dorgan told the gathered coal leaders that the only chance for their industry to maintain its market share was by ensuring billions of dollars of federal funding for “clean coal” technology such as carbon capture and sequestration.

Judicial

- **EPA Seeks Settlement in GHG Reporting Rule Litigation.** On July 20, EPA released proposed settlements of six citizen suits filed by industry associations challenging the agency’s mandatory GHG reporting rule. Promulgated in October 2009, the reporting rule requires sources emitting at least 25,000 metric tons of GHGs, and suppliers of fossil fuels and industrial GHGs, to submit annual reports to the EPA. If the settlements are approved by the D.C. Circuit, five of the citizen suits would be entirely dismissed and one suit would be dismissed in part. Two additional challenges, filed by the Environmental Defense Fund and Kinder Morgan CO₂, are not covered by the proposed settlements and would not be affected. Under the proposed settlement agreements, EPA would propose various amendments to several subparts of the reporting rule, including: (1) revising the applicability threshold for local natural gas distribution companies; (2) revising a threshold for more stringent monitoring for municipal solid waste combustors; and (3) allowing certain complex oil refineries to request authorization to use “best available monitoring methods” through 2015. The changes would affect general stationary fuel combustion sources, oil refineries, fertilizer producers, fluorinated GHG producers, and suppliers of natural gas. The *Federal Register* notice announcing the settlements is available at <http://edocket.access.gpo.gov/2010/2010-17700.htm>.

States and Cities

- **CARB Delays Global Warming Solutions Act Funding Fees.** The California Air Resource Board (CARB) will wait until November to begin collecting fees to fund the Global Warming Solutions Act (or “A.B. 32”), the state’s landmark climate change statute. According to CARB, the action results from state budget issues. The state legislature and Governor Arnold Schwarzenegger (R) missed a July 1 deadline to agree on a state budget, which precludes CARB from assessing fees. The fee program was adopted last September with the purpose of shifting A.B. 32 implementation costs to businesses in the six economic sectors responsible for 85 percent of the state’s GHG emissions. CARB intends to collect over \$63 million for the 2010-2011 fiscal year from gasoline producers, natural gas distributors, electricity generators, and others.

Industry and NGOs

- **Electric Utilities Meet With Key Senators on Limited GHG Emissions Cap.** Electric utility executives met with Sens. John Kerry (D-MA) and Joseph Lieberman (I-CT) on July 20 to offer reactions to legislative proposals to cap the electric industry’s GHG emissions while leaving other economic sectors uncapped. According to trade press reports, several of the utility

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representatives argued that more concessions to the industry would be required in order for utilities to support such a bill, including additional free emissions allowances and relief from Clean Air Act regulations governing non-GHG air pollutants and permitting of new and modified sources. The utility representatives also called for more time to broker a legislative deal. The concept of relaxing existing Clean Air Act regulations as part of a broader climate bill has generated intense opposition from the environmental community; in a July 16 letter, David Hawkins of the Natural Resources Defense Council asked Sens. Kerry and Lieberman for a “clear statement” that the senators would in no way curtail Clean Air Act requirements in order to gain support for their energy legislation. Hawkins stated that health protections were not a “chit to be traded,” and that any further delay in establishing additional protections would be “profoundly objectionable public policy and should receive a simple response: ‘no way.’”

- **Utilities/Environmentalists Push for Cap on Carbon Emissions.** Prior to Sen. Reid’s announcement that the Senate would not be able to take up a climate change bill before the August recess, a “working group” of utility executives and leading environmentalists – including officials from the Natural Resources Defense Council, the Environmental Defense Fund, the Pew Center on Global Climate Changes, Duke Energy, Exelon Energy and others – sent a two-page memo to the Majority Leader with suggestions on how to configure a new carbon market so as to reduce utility costs and promote renewable energy sources. According to *ClimateWire*, the memo suggests pre-empting the EPA from regulating GHGs, establishing price limits on emission allowances, and encouraging an emissions reduction target of 17 percent below 2005 levels by 2020. Separately, a group of 57 businesses and trade groups, including Nike, eBay and Best Buy, sent a letter to Sen. Reid urging that a Senate energy bill include an “energy efficiency resource standard” that would require utilities to reduce electricity usage every year through 2020.

Studies and Reports

- **RFF Study Analyzes Hybrid Subsidies, Finds Duplication of CAFE Savings.** A Resources for the Future (RFF) study analyzed the effects of different kind of subsidies on hybrid-electric, plug-in hybrid, and battery electric vehicle utilization and subsequent energy savings. According to the study, subsidies directly impacting the price of the vehicle tend to be more effective than tax rebates. Subsidies for different vehicle size categories may provide the greatest opportunities for fuel savings because they reward fuel efficiency in all segments of the market, the report found. However, the report also concluded that subsidy of hybrids will not likely affect fleet fuel economy, overall energy use, or vehicle-miles traveled because hybrids duplicate energy savings mandated by CAFE standards, and auto manufacturers will take advantage of the hybrid gains to build less efficient conventional vehicles elsewhere in the fleet. The study is available at <http://www.rff.org/RFF/Documents/RFF-BCK-McConnellTurrentine-Hybrids.pdf>.
- **EIA Finds American Power Act Would Cost Less than 1 Percent of GDP.** An analysis by the U.S. Energy Information Administration of the American Power Act (APA) proposed by Senators John Kerry (D-MA) and Joseph Lieberman (I-CT) found that cumulative GDP losses resulting from the APA through 2035 would likely range from 0.1 to 0.4 percent and cost between \$153 and \$336 annually per household. The analysis also projected that offsets would account for the majority of the emission reductions under the APA through 2035 and that the vast majority of reductions in energy-related emissions would occur in the electric power sector. Under a scenario in which international offsets are not used and investment in low-emissions technologies remains

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low, cumulative costs could rise to 1.0 percent of GDP, or \$814 annually per household. The analysis is available at [http://www.eia.gov/oiaf/servicerpt/kgf/pdf/sroiaf\(2010\)01.pdf](http://www.eia.gov/oiaf/servicerpt/kgf/pdf/sroiaf(2010)01.pdf).

International

- **UNFCCC Releases Contingency Plan for Kyoto Protocol Expiration.** The U.N. Framework Convention on Climate Change (UNFCCC) secretariat released an advance draft of a document outlining considerations relating to a potential gap between the expiration of the Kyoto Protocol in 2012 and the entry into force of a successor agreement on climate change. The document reviews the legal options for ensuring that no such gap occurs and identifies the legal consequences and implications if a gap does occur. Potential legal options for preventing a gap between treaties include decreasing the number of countries required for approval of new emissions targets or extending present emission caps for two additional years. The draft is available at <http://unfccc.int/resource/docs/2010/awg13/eng/10.pdf>
- **U.N. Agencies Increase Aid Funding Requests Due to Climate-Related Famine in Africa.** Two United Nations (U.N.) agencies – the United Nations Children’s Fund (UNICEF) and the U.N. World Food Programme – doubled aid worker funding requests for the Sahel region of Africa, an area that includes Niger, Nigeria, Burkina Faso, and Mali. The U.N. and other aid agencies claim \$1.6 billion is needed to address issues related to climate change-induced famine in the region.
- **China Plans Domestic GHG Trading Scheme.** China Daily, a state owned newspaper, reports that Chinese officials have decided to develop a voluntary, domestic GHG emissions trading program. According to China Daily, the design of the pilot trading program remains largely undecided, but design options under review include whether to apply the emissions cap to specific economic sectors or to certain geographical areas, and whether to impose a cap based on absolute emissions or emissions intensity. The report also noted that the trading program would not be part of negotiations over a successor treaty to the Kyoto Protocol. The pilot is scheduled for launch during China’s next five year planning period (2011-2015).
- **European Commission Issues Draft ETS Auction Law.** The European Commission sent European Union (EU) government leaders a draft law on auctioning Emissions Trading Scheme (ETS) allowances for 2012 and beyond. The draft would establish a common system for auctioning ETS allowances among EU member nations, with a goal of being simple, efficient, and transparent. The EU will use the process of “legislative procedure with scrutiny,” meaning the law will pass automatically after three months provided that there are no objections from members of the EU Parliament and EU Council. The EU Commission expects that 1 billion allowances will be auctioned in 2013.

Harold Bulger, Van Smith and Doug Rhorer, Summer Associates at the firm, contributed to this Update.

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.

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

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