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Climate Change Policy Update November 19 - 30, 2007¹

Commentary

It looks increasingly likely that the Senate Environment & Public Works Committee will report out the Lieberman-Warner bill at the end of its Dec. 5-6 markup. Chairman Boxer and Senator Lieberman have assured Senators that have concerns about the bill that they will have ample opportunities to amend the bill as it winds its way to the Senate floor in 2008. Even so, the bill underwent some significant surgery this week, including modifications to the allowance allocation provisions and a shift to "upstream" regulation of emissions from natural gas. Unchanged were the restrictive provisions related to use of offsets, and in particular the prohibition on use of offsets from developing countries. Meanwhile, there are indications that the House and Senate could close on an energy bill in December. The final bill appears likely to include a substantial tightening of fuel economy standards.

Congress

- **Revised Lieberman-Warner Bill Headed to Markup on December 5-6.** Senate Environment and Public Works (EPW) Committee Chairman Barbara Boxer (D-CA) negotiated with Senators Joseph Lieberman (I-CT) and John Warner (R-VA) this week to amend the climate change legislation (S. 2191) that is currently scheduled to be marked up by the full committee on December 5-6. The new version accelerates the phase-out period for the allocation of free greenhouse gas emission credits from 2036 to 2031. The new version also increases the total percentage of credits that will be available for auction, from 18 percent to 22.5 percent in 2012 and from 59 percent to 70.5 percent in 2031. Additionally, the revised bill includes a separate limit on hydrofluorocarbons as well as "upstream" regulation of natural gas processors as a means of capping emissions from the use of natural gas. The natural gas provision will expand the overall coverage of the bill from 75 percent to 80 percent of the total U.S. economy. The EPW Committee held a series of hearings, briefings and staff-level meetings on the legislation prior to the Thanksgiving Congressional recess.
- **House and Senate Close to Agreement on Energy Legislation.** House and Senate negotiators this week neared agreement on energy legislation and appear likely to have bill language finalized when Congress returns from recess on December 3. The compromise is likely to include the Senate-approved goal of increasing corporate average fuel economy (CAFE) standards from 25 miles per gallon (mpg) to 35 mpg by 2020. House Energy and Commerce Chairman John Dingell (D-MI) accepted the CAFE increase in return for a compromise that would extend fuel efficiency credits to flex-fuel vehicles and create separate mileage standards for cars and light trucks. The bill also appears likely to include a provision requiring a study on the feasibility of fuel-economy standards for medium- and heavy-duty trucks, which have not been subject to such standards before. The final bill also is expected to include the Senate-approved requirement for gasoline manufacturers to ramp up their use of ethanol to at least 13 billion gallons

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¹ The Climate Policy Update was not distributed for the week of November 19-23 due to the U.S. Thanksgiving holiday. This Update includes major developments from a two-week period.

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by 2012 and 36 billion gallons by 2022. Language also has been added that would require at least 3 billion gallons of “advanced biofuels,” derived from sources other than corn, to be used starting in 2013, instead of the original Senate-approved deadline of 2016. More controversial elements of the House-passed bill, including a renewable electricity standard and a repeal of tax breaks for the oil industry, are not expected to appear in the final bill. A formal announcement on the deal is not expected to be made by leadership until Congress returns early next week, and further changes are possible.

Administration

- **FTC Considers Guidelines to Address Advertising Claims on Carbon Offsets, Renewable Energy Credits.** In a *Federal Register* notice published on November 27, the Federal Trade Commission (FTC) requested comment on whether it should update the agency’s “Green Guides” to include guidelines on environmental claims made in advertisements for the sale of carbon offsets and renewable energy credit certificates. The Green Guides have not been revised since 1998 and do not address these marketing activities. The Green Guides provide guidelines on the way environmental claims can be used in marketing and can provide the basis of an FTC investigation into unfair or deceptive marketing practices. The agency will hold a workshop on reviewing the guidelines on January 8, 2008.
- **U.S. Delegation for Bali Climate Change Talks Set.** The Bush Administration released details about the negotiation team that will attend the climate talks in Bali, Indonesia next week. The official head of the team will be State Department Undersecretary Paula Dobriansky, but will also include the Chairman of the Council on Environmental Quality, Jim Connaughton, and the U.S. Trade Representative, Susan Schwab. United Nations (UN) representatives praised the administration for sending a high-ranking delegation to the talks.

States and Cities

- **California Agency Staff Proposes 1990 GHG Emission Level as Reduction Target.** California Air Resources Board (CARB) staff proposed to set the state’s 1990 baseline GHG emissions level at 427 million metric tons of carbon dioxide-equivalent (CO₂e). Under AB 32, the comprehensive state GHG reduction law, California is required to reduce its emissions to 1990 levels by 2020. The CARB staff has been examining estimated emissions data from various sectors in the state to develop the 1990 baseline. Industry groups are critical of the level, particularly with regard to estimated emissions from electricity imported across state lines. At a December 6 hearing, CARB will decide whether to adopt the staff proposal as the 1990 baseline.
- **Industry Calls for RGGI Price Cap.** The electric power industry in the Northeast is calling for a cap on the price of CO₂ allowances under the Northeast Regional Greenhouse Gas Initiative (RGGI). At a meeting on the October report on RGGI, *Auction Design for Selling CO₂ Emission Allowances under the Regional Greenhouse Gas Initiative*, representatives from the power industry said that the price floor under consideration could raise the cost of allowances and drive up electricity prices.
- **Montana Governor Announces Plans to Join Western Climate Initiative, Energy Reduction Initiative for State Agencies.** Montana Governor Brian Schweitzer (D) announced that the state

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intended to join the Western Climate Initiative, which includes Arizona, California, New Mexico, Oregon, Utah, Washington, and the Canadian provinces of British Columbia and Manitoba. He also unveiled an initiative under which state agencies will aim to reduce their energy use by 20 percent by 2010, stating, “climate change is serious and Montana should lead by example.” Each agency will decide how it can reach the goal. Gov. Schweitzer also announced that the state will pursue the purchase of vehicles with average fuel efficiency of 30 mpg or greater for state use.

Industry

- **Leaders of Over 150 Global Businesses Urge Adoption of a Comprehensive Legally-Binding United Nations Agreement.** A statement published today from over 150 business leaders calls for “strong, early action” on climate change and expresses their belief that the benefits “outweigh the costs of not acting.” The communiqué has been sent to the environment ministries attending the upcoming UN conference in Bali, Indonesia, as well as to UN Secretary General Ban Ki-Moon. The statement asserts: “It is our view that a sufficiently ambitious, international and comprehensive legally-binding United Nations agreement to reduce greenhouse gas emissions will provide business with the certainty it needs to scale up global investment in low-carbon technologies.” The statement also calls for an “enhanced and extended carbon market” as part of an agreement. The initiative is led by The Prince of Wales’s UK and EU Corporate Leaders Groups on Climate Change. Signatories include businesses from the four continents, and include Coca-Cola, DuPont, British Airways, Volkswagen, and Nike.
- **Xcel Energy Plans to Close Two Coal-Fired Plants, Add 1,050 Megawatts of Renewable Power.** Colorado-based Xcel Energy announced that it will close two coal-fired power plants and add roughly 1,050 megawatts of renewable power by 2015. The company’s long-range generation resource plan estimates that the changes will reduce the company’s GHG emissions by at least 10 percent below 2005 levels by 2017. Xcel also said that it will file an expedited resource plan in 2009 that will set out actions the company will take to reduce its GHG emissions by 20 percent below 2005 levels by 2020. Earlier this year, Colorado Governor Bill Ritter (D) set that level of reduction as a goal for the state.
- **Google Announces Initiative to Develop Low Cost Renewable Energy.** The internet company Google, in conjunction with the company’s philanthropic foundation, Google.org, announced plans to accelerate development of renewable energy technologies. Google co-founder Larry Page announced that Google’s intention was to develop technologies that mature into an industry to produce electricity “cheaper than coal” and that the goal was to produce 1 gigawatt of renewable energy “in years, not decades.” The company is hiring energy experts and engineers to evaluate renewable energy sources and the foundation is investing in renewable energy projects.

Studies and Reports

- **United Nations Intergovernmental Panel on Climate Change Issues Fourth Assessment.** The UN’s Intergovernmental Panel on Climate Change (IPCC) released its fourth assessment of global climate change last week. The report, known as the *Synthesis Report*, is the fourth report of the IPCC and provides an integrated view of climate change. The panel concludes that “warming of the climate system is unequivocal,” and that the impacts of global climate change are unavoidable in this

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century, even if GHG emissions are cut in the future. The report predicts that global temperatures will continue to rise through the rest of the century, and that without aggressive action, emissions are expected to increase anywhere between 25 percent and 90 percent from 2000 to 2030.

- **United Nations Report Details Effects of Climate Change on Poor.** The UN Annual Human Development Report, issued this week by the UN Development Programme, focuses on the impacts of climate change in the world's poorest regions. The report warns that failure to address climate change will impair international efforts to reduce poverty. The report indicates that poor nations will bear the brunt of environmental impacts. The 400-page report concludes that the most damaging climate change impacts can be avoided, but that action must be taken in the near future to do so.
- **European Commission Forecasts that European Union Will Meet its Kyoto Protocol Goals Because of Emissions Trading.** The European Commission released a forecast that the European Union (EU) will meet its target of an 8 percent reduction from 1990 levels by 2012. The forecast indicated that without the EU Emissions Trading Scheme (EU ETS), implemented in 2005, the EU Kyoto target would not be met. Other studies have questioned whether the EU is on track to comply with its target.
- **Study Indicates That U.S. Can Reduce GHG Emissions at Moderate Cost.** A report released this week by the consulting firm McKinsey & Co. – *Reducing U.S. Greenhouse Gas Emissions: How Much at What Cost?* – evaluated scenarios for significant U.S. GHG emission reductions. The study found that it is possible to reduce U.S. GHG emissions by 3.0 to 4.5 gigatons of CO₂e in 2030. The study indicated that 40 percent of the reductions would pay for themselves over their lifecycle, including measures for consumer electronics, fuel economy standards, and agriculture conservation. The other reductions are forecast to be possible at a price below \$50 per metric ton of CO₂, and include building efficiency improvements, carbon capture and storage, and reforestation. The report forecasts that the reductions could be achieved with new net investment of roughly \$50 billion annually through 2030, primarily in the power and transportation sectors. The report does not make any assumptions based on current legislative proposals, but asserts that “the U.S. will need to develop and implement a strong, coordinated program of economy-wide abatement actions in the near future” to achieve emissions reductions at the lowest economic cost.
- **U.S. GHG Emissions Decreased 1.5% in 2006 from the Prior Year.** The U.S. Energy Information Administration (EIA) released a report indicating that the U.S. emitted 7,076 metric tons of CO₂e in 2006, a reduction of 105 metric tons from 2005. This has been the first time since 2001 that there has been a decrease in emissions, and the agency indicated that the main reasons for the decrease were favorable weather conditions, high fuel prices, a trend toward increased use of natural gas, and greater reliance on non-fossil energy sources.

International

- **New Australian Prime Minister Promises to Ratify the Kyoto Protocol and Move Toward Domestic Emissions Trading.** The newly-elected Australian Prime Minister, Kevin Rudd, announced shortly after his election victory that he intends to ratify the Kyoto Protocol. The Prime Minister has not yet set a timeline for ratification, but will be attending the upcoming climate talks in Bali, Indonesia. The Prime Minister also established a new ministry for climate change and water.

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The ministry will represent the government in international climate negotiations and will be charged with designing a domestic emissions trading scheme that could be introduced as early as 2010.

- **Voluntary Carbon Standard Launched for Certifying Offset Credits.** The Climate Group, the International Emissions Trading Association (IETA), and the World Business Council for Sustainable Development issued a voluntary carbon standard (VCS) to certify credits from voluntary emission offset projects. Under the VCS, offsets must be real, measurable, and result in permanent emission reductions that can be independently verified. Verifications must be conducted by firms approved by the United Nations to verify Clean Development Mechanism projects. Once approved under the VCS, projects will receive “Voluntary Carbon Units,” which correspond to one ton of CO₂e emissions.
- **Government of British Columbia Introduces Legislation for Carbon Neutrality of Public Sector.** The government of British Columbia introduced legislation to put into law the Province’s target of reducing GHG emissions to 33 percent below 2007 levels in 2020. The act would require the provincial government to be carbon neutral by 2008, and all public sector organizations to be carbon neutral by 2010. British Columbia Premier Gordon Campbell, who introduced the legislation, stated: “This act puts into law the most aggressive greenhouse gas reduction targets in North America and makes our carbon neutral government commitment legally binding.”
- **Asian Nation Leaders Pledge for Action on Climate Change.** The leaders of the Association of Southeast Asian Nations (ASEAN), joined by Australia, China, India, Japan, New Zealand, and South Korea, announced support for the United Nations as the “core mechanism” for confronting global warming. In addition, the leaders pledged to increase forest cover by 37 million acres by 2020 and to cooperate on the development of civilian nuclear power. The leaders released a declaration that the countries would “commit to the common goal of stabilizing atmospheric greenhouse gas concentrations in the long run, at a level that would prevent dangerous anthropogenic interference with the climate system.”

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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