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Climate Change Policy Update Week of March 3 - 7, 2008

Commentary: *Evidence abounds of the “mainstreaming” of renewable energy. Still, it was hard not to be impressed by the immensity of the Washington International Renewable Energy Conference (WIREC) this past week in Washington, D.C. Registrations exceeded 7,000, and the meeting attracted not just a mix of project developers, but also the major financials, foreign ministers, and President Bush. As discussed below, WIREC also was a focal point for new U.S. and international policy initiatives . . . The locus of climate change legislation in the House of Representatives is the Energy and Commerce Committee. The Committee’s Chairman John Dingell (D-MI) said that he will release a draft bill by mid-April . . . Chairman Dingell also held a hearing on strategies for addressing international competitiveness concerns in U.S. climate change legislation. The U.S. Trade Representative raised concerns about approaches that would require countries without emissions caps to buy allowances in order to import energy-intensive goods in the United States. Such a mechanism currently is reflected in the Lieberman-Warner bill.*

Congress

- **House of Representatives Subcommittee Holds Hearing on International Competitiveness Issues.** The House Energy and Commerce Subcommittee on Energy and Air Quality held a hearing to discuss concerns over competitiveness issues and developing countries, and how this issue should be addressed in a federal climate change program adopted by the U.S. Full Committee Chairman John Dingell (D-MI) and Subcommittee Chairman Rick Boucher (D-VA) agreed that U.S. climate change legislation should contain provisions that encourage developing countries to reduce their emissions. Witnesses at the hearing included American Electric Power CEO and President Michael Morris; former Congressman Jim Slattery (D-KS), who testified on behalf of the U.S. steel industry; and David Doniger, Director of the Natural Resources Defense Council Climate Center. The witnesses identified a number of options for addressing competitiveness concerns, including having countries purchase allowances in a U.S. carbon market for their exports (an approach proposed by American Electric Power, and which is incorporated into the Lieberman-Warner bill); setting “carbon-intensity production standards” for U.S.- and foreign-made goods that are sold in the U.S.; or allocating 10% of allowances, free of charge, to companies that maintain operations in the United States. Chairman Dingell and Rep. Boucher have issued several white papers addressing various aspects of climate legislation and announced that they plan to release draft climate change legislation by mid-April.
- **U.S. Trade Representative Cites Concern Over Retaliatory Trade Measures in Letter to Energy and Commerce Committee.** Susan C. Schwab sent a letter to Chairman Dingell and the Ranking Members of the Energy and Commerce Committee and the Subcommittee on Energy and Air Quality regarding the impacts of climate change legislation on international trade. Ms. Schwab stated that import restrictions based on the exporting nation’s response to climate change could result in the adoption of retaliatory measures by other countries or trade disputes before the World Trade Organization. She added that import restrictions would stifle U.S. economic growth and discourage international cooperation on climate change.
- **Rep. Inslee Proposes Clean Energy Buy-Back Act.** At WIREC, Rep. Jay Inslee (D-WA) unveiled a proposal that would provide incentives to

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consumers and businesses to install clean energy technology. The draft legislation is modeled after a German program and guarantees consumers who install wind or solar technology a connection to the electricity grid. The proposal also would set minimum rates at which utilities will purchase the power and does not cap the amount of electricity that could be sold into the grid. Similar performance-based incentives (also known as feed-in tariffs) have been adopted by 41 nations, U.S. states, and Canadian provinces. Germany credits its program for enabling the country to produce 14 percent of its electricity supply from renewable sources.

- **Senate Appropriations Subcommittee Criticizes EPA Funding Cuts, Decision on California Waiver.** EPA Administrator Stephen L. Johnson testified before the Senate Appropriations Subcommittee on Interior, Environment and Related Agencies regarding President Bush's FY 2009 budget request for the EPA. Some Subcommittee members voiced opposition to cuts in the EPA budget, especially grants for state environmental programs. Other Subcommittee members questioned EPA's delay in responding to the 2007 Supreme Court decision *Massachusetts v. EPA*, which directed the agency to regulate GHG emissions from vehicles and fuels or to explain why such a rulemaking is not necessary. Sen. Dianne Feinstein (D-CA) and other panel members criticized EPA's denial of California's request for a Clean Air Act waiver to implement its vehicle CO₂ emission standards.
- **House Bill Would Overturn EPA Decision on California's Clean Air Act Waiver.** Reps. Peter Welch (D-VT) and Brad Sherman (D-CA) introduced legislation, H.R. 5560, that would overturn EPA's denial of a Clean Air Act waiver for California and more than a dozen other states to implement vehicle CO₂ emission limits. In the Senate, Sen. Barbara Boxer (D-CA) has introduced similar legislation.
- **Legislation Introduced to Establish International Renewable Energy Agency.** Rep. Ed Markey (D-MA) introduced legislation, H.R. 5529, to create an International Renewable Energy Agency. The agency would coordinate the establishment of international policies and programs that promote renewable energy and energy efficiency.

Administration

- **EPA Seeks Comments on Draft U.S. GHG Inventory.** EPA announced that it is seeking comments on its draft report, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2006*. The annual report summarizes emissions by source and industrial sector and finds that U.S. emissions declined by 1.5 percent from 2005 to 2006. EPA attributes the decrease in emissions to warmer winter weather, less fuel consumption due to higher oil prices, and increased use of natural gas and renewables in the electricity production sector. The agency will accept comments on the draft report until April 6, 2008.
- **DOE Announces New Renewable Fuels Grant Program.** Secretary of Energy Samuel Bodman announced an \$18 million grant program to conduct research and development on turning switchgrass and other plant materials into renewable fuel.

States and Cities

- **Wyoming Passes Bills Aimed at Promoting Development of CCS Technology.** Wyoming passed two laws intended to facilitate the development of carbon capture and sequestration (CCS) technology at coal-fired power plants within the state. The first bill follows the model of the state's water rights law and grants land owners the rights to underground "pore space" located below their surface property. The second bill establishes a state regulatory regime for CCS projects. The two bills, signed by

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Governor Dave Freudenthal (D), will go into effect July 1 of this year. The laws are based on model legislation developed by the Interstate Oil and Gas Compact Commission (IOGCC). While a number of legal issues remain to be addressed, these bills place Wyoming on the leading edge of efforts to promote the use of viable CCS technology as a means of reducing GHG emissions.

- **Washington State Passes GHG Reduction, Green Jobs Bill.** Washington Governor Christine Gregoire (D) is expected to sign legislation passed by the Washington legislature that calls for reductions in state-wide GHG emissions and for investment in green jobs. The emission targets in the “Climate Action and Green Jobs” bill seek to cut state-wide GHG emissions to 1990 levels by 2020 and to 50 per cent below 1990 levels by 2050; and address transportation sector emissions by reducing vehicle miles traveled 18 percent by 2002, and 50 percent by 2050. The state-wide emissions limits would regulate sources, or combinations of sources, that emit 10,000 metric tons or more, while the transportation sector goals would apply to fleets of vehicles emitting 2,500 metric tons or more of GHGs per year. Other provisions in the bill create a Green Economy Jobs Growth Initiative and call on the Washington Department of Ecology to cooperate with the Western Climate Initiative (WCI) as it develops a regional cap-and-trade program.
- **Florida Senator Introduces Package of Energy Efficiency and Renewable Energy Bills.** Florida State Senator Lee Constantine (R) introduced four bills aimed at reducing the state’s GHG emissions through a variety of tax credits and energy efficiency measures. The bills are based on recommendations issued earlier in the year by both the Florida Energy Commission and Governor Charlie Crist (R). The bills would impose energy efficiency and sustainable materials standards on public buildings; create a “Farm-to-Fuel” grants program to promote research and development related to bioenergy production; promote private deployment of renewable energy technology and hybrid vehicles through new tax credits; and authorize the Florida Building Commission to implement energy efficiency standards for residential, commercial and public buildings.

Industry

- **Supercritical Coal-fired Power Plant in Southern Illinois to Proceed.** The developers of a \$2 billion 1,600 MW supercritical coal-fired power plant and accompanying mine project announced that the final regulatory and legal review process for its air permit has concluded and construction of the facility will proceed. The project, the Prairie State Energy Campus, had been subject to extensive legal challenges under the Clean Air Act. Prairie State Partners Group, composed of public power companies and cooperatives in the Midwest, is developing the project and expects operations to begin in southern Illinois by 2012. The developers claim the power plant will be one of the lowest-emitting conventional U.S. coal-fired power plants, with CO₂ emissions 15% lower than typical U.S. coal-fired generation.
- **Climate Change Research Organization Formed by Major Water Agencies.** Eight of the largest U.S. water agencies announced the formation of the Water Utility Climate Alliance (WUCA) to research the impacts of climate change on the water supply, and to identify strategies for climate change adaptation and GHG reductions. WUCA members supply water to over 36 million people, and include Denver Water, the Metropolitan Water District of Southern California, New York City Dept. of Environmental Protection, Portland Water Bureau, San Diego County Water Authority, San Francisco Public Utilities Commission, Seattle Public Utilities, and the Southern Nevada Water Authority.
- **Chevron and Weyerhaeuser Announce Joint Venture for Biofuel Development.** Chevron Corp. and Weyerhaeuser Co. announced the formation of a joint venture to focus on development of alternative

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fuels from non-food sources. Both global companies are expected to contribute resources to the effort and will be equal participants in the venture, which is to be known as Catchlight Energy LLC.

- **World Bank Purchases Carbon Credits from Indonesian Landfill.** The World Bank announced the purchase of 3.75 million Certified Emissions Reductions (CERs) from an Indonesian landfill over the course of 15 years. CERs issued under the Clean Development Mechanism may be used as credits under the Kyoto Protocol. The World Bank acted in its capacity as a trustee for the Netherlands, buying credits for current and future emissions reduction obligations of the Dutch government.

Studies and Reports

- **OECD Reports that Environmental Impacts of Climate Change can be Avoided Without Significantly Harming Economic Growth.** The Organization for Economic Cooperation and Development (OECD), an agency serving 30 developed countries, released a report, *OECD Environmental Outlook to 2030*, analyzing economic and environmental trends through 2030. The report concludes that confronting key environmental challenges is an achievable and affordable goal, while noting the high costs of inaction. The report forecasts a near doubling of world GDP by 2030, accompanied by a 37% GHG emissions increase, under current policies. The report recommends policy actions that it expects can lower the GHG emissions increase to 12% and address “some . . . key environmental challenges . . . at a cost of just over 1% of world GDP in 2030, or about 0.03 percentage points lower average annual GDP growth to 2030.” The report is available on the [OECD website](#).
- **Study Assesses Western U.S. Utility Analysis of Carbon Regulatory Risk.** Researchers at the Lawrence Berkeley National Laboratory released a study, *Reading the Tea Leaves: How Utilities in the West Are Managing Carbon Regulatory Risk in their Resource Plans*, which evaluates how western electric utilities are preparing for future CO₂ regulation in resource planning. The study compared utility resource planning submissions to regulators and found that while utility resource planners incorporate future carbon prices, they “often assume relatively moderate emission prices.” The study also found that energy efficiency and renewable generation are dominant elements in utilities’ preferred resource portfolios, which are used to project resource acquisition plans. The study was requested by the Western Governors Association and is available on the [Berkeley Lab website](#).
- **Report Indicates that New York Electricity Generators Will Require Large Share of State RGGI Emissions Allowances.** The New York Independent System Operation (NYISO) released its annual analysis of impacts on the state’s bulk electricity system, *Power Trends 2008*. The report forecasts increased demand for electricity and notes that environmental programs could begin to have an impact on the state’s electric power system. The report notes that, “[g]iven the state’s current fleet of power plants and normal conditions, electric system reliability will require that [Regional Greenhouse Gas Initiative (RGGI)] emission allowances of 52 million tons per year of CO₂ from New York’s total RGGI allowance cap (64 million tons per year of CO₂) be made available to New York generators.” In addition, the report notes that the full allotment of RGGI allowances could be needed in the event of a nuclear generator outage. The report is available on the [NYISO website](#).

International

- **European Commission Eyes Limits on Shipping Emissions.** The European Commission is reviewing its options for reducing GHG emissions from the shipping sector. The review comes in response to the

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exclusion of shipping from regulation under the Kyoto Protocol and the perception in some quarters that the International Maritime Organisation (IMO), the international body governing the maritime sector, has failed to take action on the issue. One of the options under consideration is inclusion of shipping in the EU Emissions Trading Scheme. The Commission's review of shipping emissions follows a recent Commission proposal to restrict GHG emissions from the aviation sector.

- **Forty Nations Commit to Increased Use of Renewable Energy.** At WIREC, over forty countries pledged to expand their reliance on renewable energy projects to meet their energy needs as a means of reducing GHG emissions. New Zealand and Denmark made the most substantial commitments, pledging to generate 90 percent and 30 percent, respectively, of their electricity from renewable sources by 2025. The U.S. committed to promote renewable energy through energy efficiency and conservation measures, renewable fuels targets, and loan guarantees for clean energy. Bush Administration officials remained opposed, however, to a federal renewable electricity generation standard.
- **Japan Announces New International GHG Reduction Initiatives, Explores Implementation of Domestic Cap-and-Trade Program.** Japan continued its multi-pronged efforts to address climate change this week with a number of initiatives at the international and domestic levels. The Japanese Ministry of Economy, Trade and Industry announced an initiative, called the "Cool Earth Promotion Program", aimed at halving global GHG emissions by 2050. The program will promote the development and deployment by 2030 of 21 specific innovative technologies, ranging from advanced solar power generation and high-efficiency coal-fired thermal power generation to fuel cell vehicles and next-generation lighting systems. Japan will promote the Cool Earth program at the upcoming G8 and G20 conferences. Another focus for Japanese officials at the G20 ministerial, to be held later this month in Tokyo, will be to promote a sectoral approach to GHG emission reductions after the Kyoto Protocol expires in 2012. Japanese representatives will propose that each country determine the emissions reduction potential of its domestic industries and set a national reduction goal based on the aggregate of those estimates. At the domestic level, Japanese Prime Minister Yasuo Fukuda held the inaugural meeting of a 12-member expert panel charged with reviewing ways to address climate change, including exploring implementation of mandatory domestic cap-and-trade program.
- **Europe Debates GHG Emission Penalties for Vehicle Fleets; Sweden Proposes Stringent Emissions Target; Report says New Zealand Likely To Miss Kyoto Target.** In other international news, European ministers debated new measures to reduce GHG emissions from European car fleets through penalties; Sweden, seeking to become a leader in the efforts against climate change, will propose legislation to reduce nation-wide GHG emissions to 30 below 1990 levels by 2020; and a Greenpeace report found that under current policies, which include a national emissions trading scheme and a 90 percent renewable energy generation target, New Zealand will not achieve its Kyoto Protocol emissions target of 1990 emission levels until 2050, 38 years later than required under the Protocol.

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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