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Climate Change Policy Update Week of March 17-21, 2008

Commentary: *Senators Cantwell and Ensign appear ready to take another run at renewing renewable energy tax credits . . . Democrats on the House Oversight and Government Reform Committee believe that EPA is sitting on its “endangerment finding” for GHG emissions; such a finding could trigger requirements to regulate a variety of sources of emissions . . . RGGI is set to hold its first auctions. The auctions will use a “reserve price,” which is intended to create an allowance price floor and thereby ensure that the program forces some amount of emission reductions . . . The EU is telling US airlines that if they do not join the EU Emissions Trading Scheme they will face limits on landing rights.*

Congress

- **Senate Foreign Relations Committee to Focus on Climate Change.** Chairman Joseph Biden (D-DE) and Ranking Member Richard Lugar (R-IN) sent a letter to Committee members saying that climate-related issues will be an additional focal point for the remainder of the 110th Congress. The letter emphasized the importance of understanding the U.S. role in negotiating a post-Kyoto international climate accord by late 2009. The Chairman and Ranking Member encouraged committee members to either participate or stay informed during negotiations on this new climate change treaty.
- **Senators Discuss Renewable Energy Tax Credit Legislation.** Sen. Cantwell (D-WA) and Sen. Ensign (R-NV) are discussing a new renewable energy tax credit bill that might not offset the costs of extending those tax credits. The new legislation could be similar to a \$5.5 billion energy tax package included in the Senate Finance Committee's economic stimulus bill, which failed to overcome a filibuster in February. The measure would extend several expiring tax provisions, including investment and production tax credits for solar, wind, geothermal and other alternative energy. These renewable energy tax credits were not offset by spending reduction in the economic stimulus package.

Administration

- **EPA Requests Information from House Oversight and Government Reform Committee; Will Not Provide Documents to EPA.** EPA Associate Administrator Christopher P. Bliley has requested transcripts of interviews that committee staff conducted with EPA employees regarding EPA's work in determining whether GHG emissions endanger the health and welfare of the public. In the *Massachusetts v. EPA* decision, the Supreme Court mandated that EPA consider such an “endangerment finding,” which is a predicate to EPA regulation of a pollutant. Were EPA to make such a finding with respect to GHG emissions from motor vehicles, it might also trigger requirement for the agency to promulgate regulations for a wide variety of stationary sources of GHG emissions. The employees testified before the committee that, in December, EPA sent an endangerment finding to the White House and a proposed vehicle GHG regulation to the Department of Transportation, but all work on the project has ceased since then. Mr. Bliley also sent a letter to the Committee declining its request to provide either documents related to EPA's work on regulating GHG emissions from vehicles or documents related to the endangerment finding. Mr. Bliley explained that it is necessary to preserve important Executive Branch confidentiality interests and that the documents requested do not reflect the final thinking of the EPA.

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- **Council on Environmental Quality Raises Concerns About Cost of Lieberman-Warner.** Last week, EPA released its analysis of the Lieberman-Warner climate change bill. The analysis included several projections of the legislation's impact on U.S. GDP growth. In statements to the press, James Connaughton, Chairman of the White House Council on Environmental Quality, noted that EPA found that the Lieberman-Warner program could decrease by GDP as much as \$983 billion (3.8%) in 2030 and up to \$2.9 trillion in 2050.

States and Cities

- **RGGI to Hold First Allowance Auction in Mid-September; New Hampshire House Passes RGGI Implementation Legislation.** The Regional Greenhouse Gas Initiative (RGGI) announced that the regional cap-and-trade program will hold its first emissions allowance auction on September 10 of this year. The auction will be the first GHG allowance auction under a mandatory cap-and-trade program held in the United States. Originally scheduled for June 2, RGGI officials delayed the auction date to allow member states more time to finalize legislation implementing the cap-and-trade program. RGGI will hold its second quarterly auction just three months later, on December 17. The September auction will be open to all entities that meet certain financial security requirements and will be subject to a \$1.86 "reserve price" – the "reserve price" mechanism would ensure that allowance prices could not fall below \$1.86/ton. Subsequent auctions will use a reserve price that is the higher of 80% of the market allowance price at the time of the auction or an inflation adjusted \$1.86. RGGI is a 10-state initiative in which member states have each agreed to cap carbon dioxide emissions from the electricity sector from 2009-2019. In other RGGI news, New Hampshire's state House of Representatives passed legislation to implement the RGGI emissions trading program. If the bill is passed by the state Senate and signed by the Governor, New Hampshire will join Connecticut, Maine, Massachusetts, New Jersey, and New York, as a state that has passed implementing legislation enabling it to participate in the September 10 auction.
- **CARB Analyzing Carbon Fee on Fossil Fuels.** The California Air Resources Board (CARB), the state agency charged with implementing California's climate change legislation, has begun economic analysis of an upstream carbon fee on fossil fuels. Seen as the likely alternative if CARB chooses not to implement a GHG emission cap-and-trade program, proponents say a carbon fee would promote conservation while providing funds for the state's climate change program. The CARB analysis will model a carbon fee of \$10, \$20, and \$30. While CARB says the new analysis does not mean a carbon fee is more likely, the analysis comes at a time when CARB is facing increased pressure from opponents of a cap-and-trade program and Governor Arnold Schwarzenegger (R) is seeking ways to reduce a \$14 billion state budget deficit.
- **Alaska Commission Report Analyzes Impacts of Climate Change on State.** The Alaska Climate Impact Assessment Commission, established by the state legislature to assess the effects of climate change on the state, released its final report this week. The group spent two years preparing its report and focused on adaptation strategies for the state, finding that climate change "presents unavoidable challenges for the citizens of Alaska." The report identifies serious threats to fish and wildlife, as well as threats to coastal villages. In addition, the report highlights areas of the state's economy that could benefit from climate change, such as the expansion of commercial shipping through the Arctic and increased tourism. The report is available at http://housemajority.org/coms/cli/cli_finalreport_20080301.pdf.
- **Kansas Governor Vetoes GHG Emissions Intensity Legislation Authorizing New Coal-Fired Power Plants; Creates Climate Advisory Group.** Kansas Governor Kathleen Sebelius (D) vetoed

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legislation passed by both houses of the Kansas legislature that would have created a GHG emissions intensity standard permitting the construction of two new coal-fired power plants in the state. In vetoing the legislation, Gov. Sebelius asserted that the construction of new coal plants would create additional economic liabilities for the state under pending federal GHG emissions reduction legislation. The Governor noted that the power plants would have increased the state's CO₂ emissions by 11 million tons and that the bill's emission intensity standard of 1,910 lbs of CO₂ per megawatt-hour was significantly higher than similar intensity standards in other states, many of which limit CO₂ emissions to 1,100 lbs per megawatt-hour. Gov. Sebelius followed the veto of the bill with an executive order creating a task force, called the Kansas Energy and Environmental Policy Advisory Group, that will advise the Governor on the state's options for reducing GHG emissions.

Industry

- **Online Market Opened to Pair Emissions Offset Project Developers and Investors.** Climate Capital Ltd. announced the launch of an online marketplace at www.climatecapital.net that aims to connect investors with project developers. The climate change marketplace seeks to accelerate capital flows for development of GHG emission reduction projects, which will include those that develop voluntary offsets as well as offsets for compliance markets.

Studies and Reports

- **Report Identifies Market Barriers to Increased Energy Efficiency in Buildings.** The International Energy Agency (IEA) released a report this week, *Promoting Energy Efficient Investments: Case Studies in the Residential Sector*, which evaluates policies to overcome financial barriers to energy efficiency in residential building through case studies from developed countries, including the U.S. The report notes that existing buildings account for 24% of world CO₂ emissions, and finds that market barriers – such as accessing capital, low priority of energy issues, and “principal-agent” problems – inhibit increased energy efficiency in residential buildings. The report concludes with lessons for overcoming financial barriers to increased energy efficiency, including the need for broad “policy packages,” more public-private partnerships, a market for energy efficiency, increased political will, and adaptation to specific national contexts.
- **Scientists Report Record Glacial Melting.** The World Glacier Monitoring Service, under the auspices of the U.N. Environment Programme, reported that the rate of glacial melting around the world is accelerating. The group reported that glaciers lost an average mass balance of 38 feet of water equivalent since 1980, and lost ice at twice the average rate in 2004-2006. While some of the 100 glaciers monitored by the group did gain mass, the gains of thickening glaciers were offset by losses in other glaciers.

International

- **G20 Meeting Produces Few Results on Climate.** The three-day Group of Twenty (G20) meeting of energy and environmental ministers from developed and developing countries produced little progress on a successor treaty to the Kyoto Protocol. The attendees reconfirmed the idea of “common but differentiated responsibilities” for developed and developing countries in a post-2012 agreement and reiterated the need to draft a successor treaty to the Protocol (as agreed at the Bali conference). In

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addition to discussing the shape of a future agreement on climate change, the G20 ministers also discussed the transfer of clean energy technologies to developing countries.

- **Japan Plans Parallel Climate Discussions at G8 Meeting.** Japan has invited eight additional countries to climate change talks it plans to hold in connection with the Group of Eight (G8) meeting on July 9. Japan has invited the countries to participate in talks aimed at furthering negotiations on a successor treaty to the Kyoto Protocol. The additional participants will include Australia, Brazil, China, India, Indonesia, Mexico, South Korea and South Africa.
- **EU Demands U.S. Airlines Join EU ETS or Face Flight Limits.** As part of the second phase of negotiations between the European Union (EU) and the United States on a treaty regulating intercontinental flights, EU Transport Commissioner Jacques Barrot demanded that U.S. airlines flying to Europe join the EU Emissions Trading Scheme (ETS) by 2012 or the EU will reduce the number of flights it allows or suspend certain rights. A recent EU Commission proposal for the third phase of the EU ETS would require all airlines flying to and from the EU to join the trading scheme by 2012.
- **Australia Plan Calls for an Emissions Trading Program by 2010.** A plan released by Australia's Minister for Climate Change, Penny Wong, seeks to begin trading under a cap-and-trade program by 2010. The nation's climate change ministry has already begun consultations with industry and non-government groups, and aims to have draft rules for the trading program open for public comment in July. Minister Wong hopes to deliver final rules for the trading program to the Australian Parliament by early 2009 in order to have laws implementing the program in place later that year.
- **South Korea Caps GHG Emissions at 2005 Levels Through 2012.** South Korea, which is not a party to the Kyoto Protocol, has agreed to reduce its GHG emissions to 2005 levels this year and keep them at that level through 2012. The emissions reductions will be achieved primarily through energy conservation measures and increased reliance on natural gas-powered buses. South Korea is the ninth largest emitter of GHGs in the world.

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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