

April 28, 2008

Climate Change Policy Update Week of April 21 - 25, 2008

Commentary: *Staff for Senators Boxer, Lieberman, and Warner are working on a “Manager’s Amendment” that would substitute for the existing Lieberman-Warner bill and reflects certain agreed, but as yet unknown, modifications . . . Senator George Voinovich (R-OH) is working on a bill that would focus on technology incentives with a cap-and-trade program coming into effect only if the technology policies fail to achieve certain emissions milestones . . . Tropical deforestation was on the Senate agenda this week. Some Senators are interested in expanding the Lieberman-Warner bill’s provisions allowing regulated companies to earn credits for investments in activities that reduce deforestation . . . California might regulate vehicle manufacturers under a cap-and-trade program if EPA’s denial of the state’s vehicle emissions standards is upheld in the courts . . . Duke Energy CEO Jim Rogers is advocating the establishment of a wires charge for electricity to generate a source of near-term funding for research, development, and deployment of clean energy technologies.*

Congress

- **Three House Members Offer Guidelines for Global Warming Legislation.** Reps. Edward Markey (D-MA), Henry Waxman (D-CA), and Jay Inslee (D-WA) circulated a letter calling for GHG emissions reductions that would exceed those included in the Lieberman-Warner bill. They recommended emissions reduction goals ranging from fifteen percent to twenty percent below current levels by 2020, and eighty percent below 1990 levels by 2050. The letter also stressed the importance of allowing states to have climate policies that are more stringent than the federal policy, as well as greater use of clean energy, minimizing the economic impacts of emissions reduction legislation, and assisting both domestic and foreign communities that are particularly vulnerable to the adverse effects of global warming. Rep. Markey is Chairman of the Select Committee for Energy Independence and Global Warming, which does not have bill-writing authority, but has held multiple hearings on climate policy issues.
- **Senators Want Deforestation Credits in Lieberman-Warner Bill.** In a hearing held by the Senate Committee on Foreign Relations, Sen. Robert Menendez (D-NJ) and Sen. John Kerry (D-MA) said they would push for incentives to slow tropical deforestation. The Senators want to clarify that forest preservation efforts are eligible under the bill’s provisions that allow U.S. firms to meet up to fifteen percent of their allowance submission requirements by purchasing “international emission allowances.” The bill currently defines “international emission allowances” as allowances from countries with national emissions caps, thus excluding credits from emission reduction or sequestration activities in developing countries that do not have such caps.

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

Administration

- **NOAA Study Says GHG Output Increased in 2007.** According to an annual study conducted by the National Oceanic and Atmospheric Administration (NOAA), the concentration of CO₂ in the atmosphere rose by 2.4 parts per million and methane emissions grew by 27 million tons last

April 28, 2008

year. This is the first increase in methane emissions since 1998, but CO₂ has increased by an average of 1.94 parts per million per year since 1995. The study was based on monitoring data from sixty different sites around the world.

- **Department of Transportation Issues Proposed Rule on Increased Automobile Fuel Economy Standards.** DOT proposed increased automobile fuel economy standards over a five-year period, beginning in 2011, with the standards rising 4.5 percent a year. The proposed rule would raise average fuel economy standards to 35.7 miles per gallon for passenger cars in 2015, up from the current 27.5 mpg, and 28.6 mpg for light trucks, an increase from the existing standard of 22.5 mpg. The rule would also allow vehicle manufacturers to generate tradable credits by outperforming the fuel economy standards. Surplus credits could be sold to other manufacturers, who could use them to comply with the standards.

States and Cities

- **California Continues Wide-Ranging Efforts to Address Climate.** California continued its efforts to address climate change on a number of fronts, including through initiatives at the state, federal, and international levels:
 - The transportation sector is the largest contributor to state-wide GHG emissions. In an effort to influence consumer vehicle choices, the California legislature is considering a bill to establish a feebate program that would provide a rebate for purchases of highly fuel efficient vehicles while imposing a fee on less efficient vehicles.
 - In another effort to address transportation sector emissions, the California Air Resources Board (CARB) is considering including vehicle manufacturers in a future cap-and-trade program and making them surrender allowances for vehicle emissions. CARB sees the proposal as a back up plan in the event that the state loses its current lawsuit against EPA for denying a Clean Air Act waiver for California's vehicle CO₂ emission regulations.
 - Other California state agencies are continuing to work on design issues related to the possible future state-wide cap-and-trade program to meet emission limits under the AB 32 legislation. The California Public Utilities Commission (CPUC) and the California Energy Commission (CEC) have issued a report reviewing allowance distribution options for the electricity sector. The report describes three possible approaches: 1) allocation of half the allowances to electricity suppliers based on their historic emission levels combined with public auction of the remaining allowances; 2) allocation of ninety percent of allowances to electricity suppliers based on electric output combined with a public auction of the remaining ten percent; and 3) allocation of twenty-five percent and public auction of seventy-five percent. CPUC and CEC issued the report as a series of recommendations to the California Air Resources Board (CARB), the state agency charged with implementing the AB 32 legislation.
 - The CEC also passed standards to improve the energy efficiency of appliances and commercial, industrial and residential buildings within the state. The CEC expects the newly passed building and appliance codes to reduce state-wide CO₂ emissions by 333,000 tons per year after they go into effect in 2009.

April 28, 2008

- Additional action took place in the California Senate. The state Senate Energy Committee (Committee) is considering developing legislation that would exempt the Los Angeles Department of Water and Power (LADWP), the primary provider of power to the Los Angeles area, from regulation under a cap-and-trade program. Senators from LADWP's district are concerned that the municipal utility could be disadvantaged relative to private companies under current proposals for a state-wide cap-and-trade program. The Committee will hold hearings on the issue in May.
- At the federal level, California officials are planning to challenge language in the Dept. of Transportation's recently released proposal for revised Corporate Average Fuel Economy (CAFE) standards. (See discussion under **Administration**.) The DOT proposal language states that, "any state regulation regulating tailpipe carbon dioxide emission from automobiles is expressly pre-empted"; such language would appear to preempt California's vehicle GHG emission regulations. California officials say that, if the language is part of the final regulations, they will challenge the regulations as directly contradicting the Clean Air Act and contrary to the U.S. Supreme Court's 2007 *Massachusetts v. Environmental Protection Agency* decision.
- Internationally, the Secretary of California's Environmental Protection Agency signed a compact under which the state agrees to help China reduce its GHG emissions. Under the agreement, California will offer China the expertise of its public agencies and encourage private entities to pursue climate-related projects in China.
- **New York, New Jersey Sustainable Transport Plan to Include Offset Program.** The Port Authority of New York and New Jersey (Authority) announced a program allowing travelers to calculate and offset the CO₂ emissions of their travel. The Authority, which operates airports, bridges, tunnels and other transportation links in the New York metropolitan area, will become the first tolling agency in the nation to offer such services. The Authority says that it will work with internationally-recognized third-party verifiers. The Authority has set a goal of achieving zero net GHG emissions by 2010.
- **Los Angeles Passes Green Building Ordinance; Similar Proposal Pending in San Francisco.** Los Angeles passed a city ordinance establishing stringent green building standards for large commercial and residential buildings. The "Private Sector Green Building Plan" (Plan) is intended to reduce city-wide CO₂ emission by 80,000 tons by 2012. The Plan requires commercial buildings over 50,000 square feet and residential buildings over 50,000 square feet, 50 or more units, and over six stories to be certified under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) standard. The San Francisco City Council will consider an even more stringent green building proposal offered by San Francisco Mayor Gavin Newsome (D) next week. The San Francisco green building proposal is part of Mayor Newsome's plan to cut the city's emissions to twenty percent below 1990 levels by 2012.
- **Oregon Agency to Hold Public Hearings on Mandatory GHG Reporting Rules.** Oregon's Department of Environmental Quality (DEQ) held the first of a series of eight public hearings to review DEQ's proposed GHG reporting rule. The proposed rule would require sources covered by Title V of the Clean Air Act and sources that emit 2,500 or more tons of GHGs annually to register and report their GHG emissions each year. DEQ's reporting guidance will rely on

April 28, 2008

standards developed by The Climate Registry, a non-profit organization that has developed GHG measurement protocols for 39 states.

- **Kansas Governor Issues Second Veto of Bill Authorizing Coal-Fired Power Plants.** For the second time in less than a month, Kansas Governor Kathleen Sebelius (D) vetoed legislation that would have allowed construction of two new coal-fired power plants in the state. The bill also would have narrowed the authority of the State Secretary of Health and Environment to deny applications for similar plants in the future. State legislators are expected to attempt to override the Governor's veto when the legislature reconvenes on April 30. An override requires a two-thirds majority in both houses of the legislature. Although the bill received sufficient votes in the Senate to override, the House vote was one vote below the amount needed to override.
- **Minnesota Legislature Approves Cap-and-Trade Legislation.** Both house of Minnesota's state legislature passed legislation authorizing the state to participate in a cap-and-trade program created under the Midwestern Greenhouse Gas Accord (Accord). The bill, "The Green Solutions Act of 2008", creates guidelines for Minnesota's participation in the Accord. The Accord is a regional GHG reduction agreement among six Midwestern U.S. states and the Canadian province of Manitoba to reduce the group's GHG emissions to 60-80 percent below current levels by 2050 using a cap-and-trade program.

Industry

- **State Regulators Seek Changes to Allowance Distribution in the Electricity Sector under Cap-and-Trade Legislation.** The National Association of Regulatory Utility Commissioners (NARUC) sent a letter this week to senators recommending changes in the allocation of free emission allowances in the electricity sector under Lieberman-Warner. NARUC argued in its letter that all of the free allowances in the power sector should be given to local distribution companies (LDCs), rather than to electric generators. NARUC argues that providing free allowances to all generators could result in a "windfall" to generators in restructured markets who can pass the full price of allowances on to consumers. "This inequality can be rectified," the letter asserts, "by allocating all no-cost allowances to regulated LDCs, thus giving state utility commissions in both restructured and traditionally regulated states control over how revenues from the allowances would be used." The LDCs then would be required to ensure that the value of the allocated allowances goes to ratepayers. NARUC also recommended distributing allowances based on historic emission levels in the power sector, rather than power sales, to avoid disproportionately benefiting areas with historically low emissions. The text of the letter is available at <http://www.naruc.org/News/default.cfm?pr=78>.
- **New Project Pinpoints U.S. CO₂ Emissions.** Scientists have released a detailed map of U.S. CO₂ emissions, which compiles data from a variety of sources including the EPA, DOE, and federal highway data. The "Vulcan Project," funded by NASA and DOE, presents a new level of detail of CO₂ emissions across the U.S. Maps and data are available at <http://www.purdue.edu/eas/carbon/vulcan/index.php>.
- **Duke Energy CEO Discusses Electricity Wires Charge to Transition to Cap-and-Trade Regime.** Jim Rogers, the CEO of Duke Energy, announced support for a wires charge on electricity sales in the short term to fund current research, development, and deployment of clean-

April 28, 2008

energy technologies as a transition before climate change legislation is enacted. Duke Energy supports mandatory GHG emission reduction legislation, but Rogers cautioned that requiring utilities to purchase all of their allowances would cause prices to rise mainly for the consumers in the 25 states with large coal-fired generation portfolios. He warned that such a plan could cause a “consumer revolt” and generate significant political opposition to a cap-and-trade program. He said that, given the urgency of the situation, “[w]e can’t afford to get started and stop.”

Studies and Reports

- **Japan, EU to Push for Mid-Term GHG Targets.** The Prime Minister of Japan and the Prime Minister of Slovenia, who is the current European Union President, announced their cooperation in pushing for mid-term national GHG emission reduction targets for a post-Kyoto Protocol climate treaty. The development of mid-term goals is likely to be opposed by the United States, which favors establishment of only long-term emission targets. In addition to calling for mid-term targets, the Prime Ministers’ statement noted that Japan and the EU would focus on the development of a sectoral approach to reducing emissions.
- **Study Indicates Minimal Economic Impact from Cap-and-Trade Policy.** The Environmental Defense Fund found that the overall impact of climate change policy on the U.S. economy will be small. The EDF report reviewed a series of economic studies of different bills, including the Lieberman-Warner bill and the Lieberman-McCain bill, and also more stringent, generic programs. The report says the projected median economic impact of capping greenhouse gases would be 0.03 percent annually, and would cost less than one percent of an average household's budget over the next two decades. The study also shows that projected increases in energy bills would be significantly smaller than recent run-ups in prices of gasoline, heating oil and natural gas. EDF further asserts that the new “low carbon” economy could lead to greater technological innovation and make the U.S. a leader in this new economic structure. EDF analyzed studies conducted by the Energy Information Agency (EIA), Research Triangle Institute (RTI), Harvard (the IGEM model), the Massachusetts Institute of Technology (MIT), and Pacific Northwest National Laboratories (PNNL). The study is available at: <http://www.edf.org/article.cfm?contentID=5405>.
- **EPRI and EEI Release Study on Benefits of Energy Efficiency Programs.** The study was conducted by the Electric Power Research Institute (EPRI) and the Edison Electric Institute (EEI) to examine strategies to meet rising electricity demands. EPRI and EEI found that electric utilities could decrease power demand by as much as eleven percent if more aggressive energy efficiency measures, such as tougher building codes, new energy efficiency standards for appliances and market-based consumer programs, were adopted. The report also encourages the use of “smart meters” and “smart appliances” that optimize a home or office's energy efficiency because the increased use of electricity-intensive devices is a major barrier to decreasing energy demand. The report is available at: <http://www.edisonfoundation.net/events/2008-04-21/index.htm>.
- **Study of Carbon Capture and Storage (CCS) Provisions in Lieberman-Warner.** A study conducted by the Center for American Progress (CAP) proposes that an emission performance standard be put in place to require that all new coal-fired power plants capture and sequester their carbon dioxide emissions in order to prevent substantial additions to atmospheric CO₂ levels.

April 28, 2008

CAP also suggests that “performance standard subsidies” be provided to offset the increased capital and operational costs of CCS plants. The report asserts that this approach improves on the “bonus allowance” provisions in the current version of the Lieberman-Warner bill. The authors explain that, unlike the bonus allowance program, all new coal plants would receive the subsidies, subsidies would be no larger than necessary for CCS plants to be cost-competitive, and no individual plants would receive a windfall. The subsidies would be funded by the proceeds of allowance auctions. The study also proposes simplifying the multiple CCS subsidy programs in the Lieberman-Warner bill by consolidating the subsidies into two programs: one for large-scale CCS deployment at new and existing plants and the other for early CCS demonstration projects and R&D. The report is available at:

http://www.americanprogress.org/issues/2008/04/early_deployment.html.

International

- **Japan, EU to Push for Mid-Term GHG Targets.** The Prime Minister of Japan and the Prime Minister of Slovenia, who is the current European Union President, announced their cooperation in pushing for mid-term national GHG emission reduction targets for a post-Kyoto Protocol climate treaty. The development of mid-term goals is likely to be opposed by the United States, which favors establishment of only long-term emission targets. In addition to calling for mid-term targets, the Prime Ministers’ statement noted that Japan and the EU would focus on the development of a sectoral approach to reducing emissions.
- **Six Countries Achieve Emissions Trading Eligibility Under the Kyoto Protocol.** Belgium, Finland, Liechtenstein, Lithuania, Norway, and Slovenia joined a growing number of nations eligible to participate in emissions trading under the Kyoto Protocol. Thirteen other countries are already eligible to participate. A country becomes automatically eligible sixteen months after having its national emissions accounting system and registry reviewed. Upon eligibility, a country can trade credits developed under the Kyoto Protocol’s Clean Development Mechanism and Joint Implementation.

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.

© 2008 Van Ness Feldman, P.C. All Rights Reserved.