



CLIMATE CHANGE, SUSTAINABILITY & ENERGY INDEPENDENCE

November 26, 2008

Economic Meltdown and the Environment: Will Climate Change and Energy Independence Still Be Top Priorities for Obama?

By J. Andrew Stephenson and Patrick W. Duval

When President-elect Barack Obama is sworn in as the 44th President of the United States on January 20, 2009, he will inherit, among other things, two wars, the deepest recession in more than 20 years, the worst financial crisis since the Great Depression and a waive of foreclosures and failing businesses. Understandably, these challenges alone could derail long-anticipated climate change and energy independence legislation. But will climate-change/energy independence in fact be put on the back burner?

With Wall Street melting faster than the polar ice cap, many are predicting (and some are even hoping) that the Obama administration will delay the implementation of comprehensive climate change and energy independence initiatives. But for those hoping for a delay, it appears the hopes may be wishful thinking. Throughout his campaign, Mr. Obama repeatedly promised bold new policy on climate change and energy independence—claiming he would make these issues a top priority if elected, even in the face of our current economic troubles. Mr. Obama won the election and any doubt that he has shifted his focus away from these issues was addressed this past week when Mr. Obama made clear that he has no intention of softening or delaying his aggressive policy to reduce greenhouse gas emissions and achieve energy independence. During his strongly worded remarks to a gathering of governors and foreign officials on November 18th, Mr. Obama said: “Now is the time to confront this challenge once and for all . . . Delay is no longer an option. Denial is no longer an acceptable response. . . . My presidency will mark a new chapter in America’s leadership on climate change that will strengthen our security and create millions of new jobs in the process.”

We anticipate that Mr. Obama will make good on his campaign promise and move quickly on comprehensive climate change and energy policies. Here are some of the key items we would expect to see from the Obama administration in these areas:

Domestic Climate Change:

The centerpiece of Mr. Obama's climate change policy is legislation that would cap CO₂ emissions and auction emission credits to encourage a fundamental transition away from high emitting sources to low-carbon alternatives. Such a policy would be more aggressive than any other cap and trade system proposed to date. Legislation under Mr. Obama's plan is anticipated to include the following key features or goals:

- A mandatory economy-wide cap and trade program that seeks to cut U.S. CO₂ emissions by 80% below 1990 emission levels by 2050, with interim goals to reduce current CO₂ emissions to 1990 levels by 2020.
- Auctioning of 100% of emission permits—making polluters pay for every ton of CO₂ they emit.
- The use of emission auction revenues—between \$30 and \$50 billion annually—(or a portion thereof) to develop and establish clean energy technology.
- A federal renewable portfolio standard that requires 10% of U.S. electricity to come from renewable sources by 2012, increasing to 25% by 2025, and 30% of the federal government's electricity from renewables by 2020.
- Extending the renewable energy production tax credit for 5 years.
- Improving energy efficiency in the U.S. by 50% by 2030.
- Reducing electricity demand by 15% from the Department of Energy's projected levels by 2020.
- Achieving carbon neutrality in new buildings by 2030.
- Phasing out of incandescent light bulbs by 2014.
- Establishing a low carbon fuel standard to accelerate the introduction of low-carbon non-petroleum fuels.
- Creating 5 million new jobs by strategically investing \$150 billion over 10 years in research and development for renewables, biofuels, efficiency, "clean coal" and other advanced technologies.

Energy Independence:

Mr. Obama's plan for achieving energy independence (reducing or eliminating our reliance on foreign oil) includes the following key components:

- Reducing U.S. oil consumption by 35% by 2030.

- Reducing the number of conventional gas automobiles and increasing the number of plug-in hybrids on the road to 1 million by 2015.
- Requiring at least half of all cars purchased by the federal government to be plug-in hybrids or all-electric by 2012.
- Increasing the use of biofuels to 36 billion gallons annually by 2022 and 60 billion gallons annually by 2030.
- Raising fuel economy (CAFE) standards for automobiles to 40 miles per gallon and light trucks to 32 miles per gallon by 2020.
- Allowing for some expansion of offshore oil drilling, but avoiding extensive new domestic petroleum production.

Global Climate Change:

Many scientists believe that irrespective of what Mr. Obama does locally, it is far more important for the U.S. to get engaged in global climate change policy. Based on his recent remarks, the President-elect appears to agree (at least to some extent): “Once I take office, you can be sure that the United States will once again engage vigorously in these negotiations and help lead the world toward a new era of global cooperation on climate change.” Some of the key elements of the Obama administration’s international climate change agenda will include:

- Re-engagement of the U.S. in the U.N. Framework Convention on Climate Change.
- A leadership role in discussions to enact a successor to the Kyoto Protocol (which treaty is set to expire in 2012) at the climate conference meeting of world leaders in Copenhagen in December 2009.
- The creation of a new Global Energy Forum consisting of the G8 countries plus Brazil, China, India, Mexico and South Africa to complement and participate in the U.N. negotiation process to develop a successor to the Kyoto Protocol.
- Transfer U.S. technology to the developing world to fight climate change.
- Development of programs to protect forests from deforestation and enhance carbon sequestration.

The Challenges Ahead:

The President-elect’s ambitious climate change and energy independence goals will not come easy or without pain and compromise. At least initially, moving to a low-carbon economy may raise manufacturing, transportation and material costs because of higher energy prices and may put U.S. goods and services at a competitive disadvantage to economies that lack similar emission standards,

such as China, India, Russia and South America.

Moreover, even with a more Democratic Congress and the recent successful bid by Rep. Henry A. Waxman to become chair of the influential Committee on Energy and Commerce, Mr. Obama will have a tough time convincing all of his colleagues in Congress to subscribe to each of his key policy points. Indeed, much less aggressive climate change legislative proposals failed to advance in Congress this past term—prior to the downward spiral in the economy. The President-elect understands this and has hinted that if Congress fails to move forward with comprehensive climate change legislation he will direct the U.S. Environmental Protection Agency to use the 1990 Clean Air Act to set greenhouse gas emission limits on power plants and other emitters—an action he believes can be accomplished under the Supreme Court’s 2007 ruling that CO₂ is a pollutant under the Clean Air Act—which will likely be more costly to and much less efficient for the regulated community than his proposed cap and trade program.

The bottom line is this: Comprehensive climate change and energy policies are coming and they are coming soon. They will be transformative—affecting every sector of our economy—and may be painful (at least initially). But they will also force innovation and create huge opportunities. And, as recently noted by the *Harvard Business Review*, “businesses that continue to sit on the sideline will be badly handicapped relative to those that are now devising strategies to reduce risk and find competitive advantage in a warming, carbon constrained world.”

How will your company and industry be affected by, and respond to, President Obama’s initiatives to manage climate change and achieve energy independence? Duval & Stachenfeld LLP’s Project Greenstorm was started to help companies forecast and evaluate the impact of climate change and energy independence initiatives on their businesses and to develop strategies for addressing the challenges and seizing the opportunities that will be created by these initiatives. ■

J. Andrew Stephenson
Project Greenstorm (co-chair)
jastephenson@dslp.com
(212) 692-5530

Patrick W. Duval
Project Greenstorm (co-chair)
pduval@dslp.com
(212) 692-5555

Copyright © 2008 Duval & Stachenfeld LLP. This publication should in no way be relied upon or construed as legal advice and should not be relied upon to address specific factual situations without the advice of counsel. As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the U.S. Internal Revenue Code. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought.

 Please consider the environment before printing this publication.