

## **Energy & Environmental Law with the University of Houston Law Center**

**By**

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Good afternoon ladies and gentleman. I would like to start by thanking the University of Houston Law Center for giving me the opportunity to come and speak with you today.

Let's begin with a view of the issues of the moment from a Washington perspective in regards to our national budget. With the new Congress and recent shift to Republican control of the House of Representatives, many policymakers and congressional leaders are gearing their attention on the deficit debt and committing to budget reductions. Newly elected Senator Rand Paul from Kentucky has aligned with the Tea Party and plans to cut \$500 billion from the budget. The Heritage Foundation's plan cuts \$343 billion: \$6.5 billion in energy subsidies and research and development, \$200 million by restricting the federal power marketing agencies, and \$60 billion to repeal unspent stimulus (some of which is energy). The Republic Study Group's plan is to cut \$2.5 trillion over a 10 year period, including combining, and/or eliminating numerous agencies. Also, The Presidential Debt Commission, formerly called the National Commission on Fiscal Responsibility and Reform, presented its plan to cut \$4 trillion by 2020.

Key areas for cuts (energy related):

- Oil industry tax treatment
- Subsidies across the board
- Renewable production tax credits and investment rebates/credits
- R&D for carbon capture and sequestration, including demonstrations projects
- Nuclear (and other) loan guarantees
- Ethanol subsidies – may be tough due to role of Iowa in 2012 elections
- Loan guarantees for biofuel projects

Also on the target lists are other R&D programs which include low income home weatherization programs, TVA, across the board pay freezes, reduction in travel budgets, etc.

Whether Republicans in the House have the ability to seriously effect budget cuts is unclear. Three near-term opportunities exist for those wishing to cut budgets- in regards to the 2011 budget failing to pass, a vote will be needed on a continuing resolution by March 4, 2011; the President's 2012 budget which is to be released on February 14, 2011; and actions needed to raise the debt ceiling. Republicans may demand cuts as a condition of increasing the amount the government is authorized to borrow. The vote to raise the debt ceiling is expected in March 2011.

So the budget issues are most likely to drive action and the possibility of a major disconnect between energy policy goals, possibly even determined in a bi-partisan spirit, and budget policy goals is very real.

Remember that all spending bills must originate in the House. Now, perhaps more than ever, the difference between programs to implement policy and the appropriations to fund those programs could clash in a way not witnessed in recent years.

So let's move past the budget and look at what policies are out there.

Using cap and trade as a tool to deal with greenhouse gases is dead at least for now, which I am certain was well covered earlier. Many point to the Copenhagen collapse, the leaked emails from East Anglin University, the self-admitted IPCC report errors, and the dysfunctional nature of the UN Framework Convention on Climate Change, including the conference of the party's process as the death knell for a U.S. climate bill.

I beg to disagree. A few summers ago, the United States Senate did a dry-run on a U.S. cap and trade bill. While most observers did not expect a bill to emerge, it certainly caused a lot of activity. Many senators came to appreciate the impacts in their states from various legislative proposals. This coupled with the financial crisis, the home mortgage crisis, and oil prices shooting up from \$60 barrels to \$140 only drop to \$40, all in a short period of time, provided a yellow light for some Democratic senators from coal producing and coal consuming states. And an unwillingness to put our energy future even further in the hands of Wall Street emerges.

At the end of the day, which may be a decade or more away, I think there will be a global agreement to reduce greenhouse gas emissions. It will take political will on behalf of the United States and of China. When we two nations come together, the rest of the world will follow. But, do not expect this anytime soon. Many of us may be hopefully retired before we see this. Perhaps global climate change legislation will create the careers of the next generation of lawyers.

In the short-term, President Obama has moved past climate change and is focusing on other legislative approaches. In the State of the Union Address, he detailed his approach for a clean energy standard with five core principles:

- “Doubling the share of clean electricity over the next 25 years, increasing from 40 percent today to 80 percent by 2035;”
- “Credit a broad range of clean energy sources to provide maximum flexibility in meeting the target. Clean energy credits should be issued for electricity generated from renewable and nuclear power; partial credits given for clean coal and efficient natural gas;”
- “Protecting consumers against rising energy bills;
  - Energy efficiency programs; stronger appliance efficiency standards, tax credits for energy efficiency upgrades; proposed Home Star program;
  - Help manufacturers invest in technologies to improve efficiency and reduce energy costs.”
- “Ensuring fairness among regions. Today, different regions of the country rely on diverse energy sources. These differences are taken into account – both among regions and between rural and urban areas.”

- “Promoting new technologies such as clean coal; deployment of new and emerging clean energy technologies, such as coal with carbon capture and sequestration.”

Now, remember that today about 50% of power is produced through coal, about 20% is natural gas, about 20% is nuclear, and about 10% is renewables made up mostly of large hydro. I’m not sure how those numbers add up to 40%. I was never good at math, so let’s discount my calculations. Maybe they give the “partial credit” for efficient natural gas.

Tactically, the President’s proposal to produce more electricity through clean energy is to deploy capital investment to sustain and create jobs. According to President Obama’s State of the Union address, this can be done “by providing a clear signal towards a clean energy future, the President’s proposal will move that capital off of the sidelines and into the economy, mobilizing tens of billions of dollars each year in new investment and creating jobs across the country.” Another step towards achieving this goal is to “drive innovation in clean energy technologies. Equipping American businesses a market here at home for innovative clean energy technologies will unleash the creative power of American entrepreneurs and ensure that our nation leads the world in clean energy.” Also, complementing the clean energy research and development agenda...would help push bold new ideas through to commercialization.

Sputnik Moment –the President’s innovation agenda proposes...“a new commitment to supporting clean energy technology that will be paid for by ending taxpayer subsidies for fossil fuels” and increasing clean energy technology funding by a third compared to 2010. The President called for ending the approximately \$4 billion per year in tax subsidies to oil, gas and other fossil fuel producers. With 58% in agreement with the aforementioned proposal, they also support the President’s goal to put 1 million advanced technology vehicles on U.S. roads by 2015. President Obama will propose in his Budget a new effort to support electric vehicle manufacturing and adoption in the U.S. through improved consumer rebates, investments in R&D, and competitive programs to encourage communities that invest in electric vehicle infrastructure. Also, the renewable energy grant program under the Recovery Act has been an essential tool in deploying renewable energy resources in the U.S. over the past two years. By successfully increasing U.S. manufacturing and creating tens of thousands of new American jobs, the President suggests expanding future production through the successful “1603” grant program. As of now, 72% support renewable tax credits and 62% support clean coal. In conjunction with the proposed agenda, the president believes siting a record number of renewable projects on public lands will gain support for future innovation plans.

Criticisms some have about the Administration’s proposals are that it largely relies on increased government spending, hence not recognizing a message of budget cutting coming out of the 2010 elections. It also relies on government, not private sector action, as well as not being based on reliance on market forces but rather the government picking winners and losers in terms of technologies, resource development and fuels.

In regards to the President’s Proposal for a Clean Energy Standard, which is both a proxy for a climate bill as it is a renewable portfolio standard, the immediate action will be in the Senate Energy Committee.

Yesterday, Bob Simon, the Senate Energy Committee Staff Director and I both spoke on the same panel at a conference in D.C. Bob mentioned that Committee Chair, Senator Jeff Bingaman was meeting the President that afternoon for the purpose of the Chairman understanding how President Obama wants

to proceed with CES legislation. You probably saw some news reports about the meeting. Like any legislation, the devil is in the details. In order to win over some coal state Democrats and some Republicans, the notion of including nuclear and clean coal, or at least coal with carbon capture and storage, could be attractive. Today, carbon capture and storage is at the early demonstration phase, we hope, but cannot be certain that it is ready for prime time by 2020 or 2025. The year 2035, as in the President's proposal, sounds better for CCS and new nuclear.

Until the market and the financial community look at CCS and new nuclear as readily for wide-spread commercial application, we likely live in a wind and natural gas world for new power generation for the next few years.

On the Republican side of the aisle, Senator Murkowski was confirmed this week to be the ranking minority leader on the Senate Energy and Natural Resources Committee. You may recall that the Senator lost a primary challenge and ran and was eventually seated as an independent. Senator Murkowski has previously exhibited an ability to work well in a bi-partisan manner with Senator Bingaman. She certainly is viewed as a moderate Republican, which probably led to her primary challenge. Nevertheless, with her affirmed as the Ranking Minority Member of the Senate Committee, one might expect continued bi-partisanship on the committee.

In the house, expectations are a bit less clear. Fred Upton from Michigan was selected instead of Joe Barton to chair the House Energy and Commerce Committee. Chairman Upton has felt challenged to prove his conservative leanings. He has vowed to investigate renewable subsidies and repeal prior legislation including the lighting standards that in effect ban incandescent light bulbs. I think this particular notion is not so much anti-energy efficiency but rather a notion that the government is too intrusive in the life of Americans. Many representatives in the House have vowed to use new committee chairmanships to investigate a variety of administrative policies including stimulus spending, the science of climate change, and the Administration's inability to move on loan guarantee programs. Other key legislative players such as Senator Lindsay Graham of South Carolina wishes to block the EPA from regulating greenhouse gases, expanding domestic oil and gas production, and passing a clean energy standard bill. Senator Inhofe indicated he and House Chair Upton will try to strip EPA from regulating greenhouse gas emissions. Some legislators have indicated an intention to investigate the science of climate change, but I am not sure how that will work out.

In the remaining time, let me turn to some domestic and international issues that others may not go into.

1. Is the recent drop in demand for electricity, the first time since WWII, a new trend or a blip?
2. Will the recent increase in supply of U.S. shale gas as well as Brazilian offshore oil and gas prove to be sustainable or are they blips?
3. How goes Russia? European security threat or solution? Geopolitics of pipelines?
4. Is Middle Eastern oil, and now natural gas, supply stable or unstable? Is an organization of gas exporting countries likely to originate? Also, what are the chances of it being effective?

5. What will be the percentage market shares for fossil fuels, renewables, and nuclear in 2030 and 2050?
6. Will carbon capture & storage and new nuclear innovations be politically viable? As well as financially viable?
7. Will electric vehicles, such as hybrids, plug-ins, or pure electric vehicles, overcome the cost and convenience of gasoline?
8. What is the timeframe for climate agreements? Global Agreements and domestic legislation?
9. With domestic oil companies providing 90% of the nation's resources, can national and international oil companies find a mutually useful business/cooperation model?
10. Will next generation biofuels resolve the food versus fuel debate?
11. Since you can't (and don't want to) put the renewable genie back in the bottle, how much wind can the power system absorb? Also, how much ethanol can the gasoline supply system absorb?
12. Will we build 400 new nuclear plants globally by 2050? Is the supply chain, including human resources, ready for this growth?
13. In regards to the energy and water nexus, will this issue be more important than climate change on a global basis?
14. How does energy fit into strategic interests? Security? Development? Climate?

I have not gone into detail about the chaos in the Middle East possibly threatening global oil supplies . While U.S. imports are relatively small, any disruptions on a worldwide scale can impact our nation's oil markets. Also, these calls for reform may manifest themselves in other countries, including South America, Africa, and Asia.

To conclude, it is fair to say that national and international energy policy issues will be a wild ride for some time to come.