



A Sea Change for Federal Energy Policy?

James J. Hoecker

Editor's note: Citing his workload and that writing a column about ever-changing legislation and regulation requires more time than he anticipated, Jim has decided to make this his last column. We will certainly miss his input, which has reflected his years at the highest policy level, as well as his dry sense of humor.—*Ed.*

Washington is awash in change. One hundred days of any presidential administration is unlikely to leave an indelible stamp on public policy, but the Obama era is off to a running start in trying to do just that. We as a nation are once again testing whether energy policy contrived in Washington and various state capitals—and dramatically recast in terms of energy independence and low-carbon energy production and consumption—can transform the markets for oil, natural gas, and electricity.

SIGNS OF THE CHANGE AGENDA

Consider the almost breathtaking events of the first quarter of 2009:

- An \$800 billion stimulus package, a sizeable portion of which is devoted to technological innovation and efficiency in the electricity markets, and decoupling electric utility services from a fee-for-service model
- Introduction of major legislative proposals to expand electric transmission infrastructure to in-

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terconnect remote renewable resources, generally expanding federal authority over the grid (Senators Jeff Bingaman [D-NM], Bryan Dorgan [D-ND], Harry Reid [D-NV], and Representative Jay Inslee [D-WA])

- A massive proposal for a federal cap-and-trade system to price “carbon” (targeted reductions in CO₂ emissions) and establishment of renewable electricity standards, penalties for failures to achieve reductions in power and natural gas demand, low-carbon fuel standards, new source performance standards, and funding for carbon capture and storage technology development (House Energy and Commerce Committee Chairman Henry Waxman [D-CA] and Representative Ed Markey [D-MA])
- The Environmental Protection Agency’s (EPA’s) finding that greenhouse gases endanger human health and welfare, a precondition for regulation of CO₂ under the Clean Air Act¹
- Election of Representative Waxman (of California) to chair the House Energy and Commerce Committee instead of John Dingell (D) from economically ailing Michigan; appointment of Jon Wellinghoff, whose priorities are efficiency (including demand response) and integration of renewable energy, to chair the Federal Energy Regulatory Commission; and designation of Carol Browner, former EPA administrator and noted expert on environmental regulation, as assistant to the president for energy and climate change

HISTORY IN THE MAKING?

For one of the few times in the country’s history, the federal government is prepared to augment its control over natural resources otherwise subject to state authority—the others being the Civil War and the New Deal. In an environment characterized by

relatively slack demand for energy, financial stress, job losses, deep concern about the global climate, and an introspective foreign policy outlook, Congress and the Administration are in frenetic pursuit of greater energy efficiency, expanded infrastructure, and low-carbon electric generation and vehicular transportation—presumably, although not expressly, while ensuring that our supply of fossil energy is sufficient to see us reliably through the transition to a different kind of energy economy.

The next few weeks and months will be telling, although not necessarily conclusive with respect to the ultimate work product of the 111th Congress. There is a substantial likelihood that, the president's efforts to reach across the aisle notwithstanding, any energy legislation—and certainly any climate legislation—will pass (if at all) without any Republican support whatsoever. This may augur well for a rapid leap forward for basic alteration of the fabric of energy policy but poorly for the balance or longevity of such ambitious programs. As energy policy developments go, however, this could prove to be a time of remarkable innovation, not unlike the national energy legislation of the Carter era.

FRAGMENTED REGULATION—UPSIDES AND DOWNSIDES

The regulatory backdrop to this situation is, as always, unclear. The domestic energy regulatory structure is highly fragmented, particularly on the electric utility side where the power business has a history as a local concern and ownership is incredibly diverse. In Washington alone, about a dozen congressional committees and numerous energy, land and resource, defense, and environmental agencies impact the energy agenda.

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Moreover, the diverse sovereign interests of states in regions with concentrations of hydroelectric, coal, oil and gas, renewable, or nuclear resources makes formulation of a truly national policy a serious challenge. “Drill, baby, drill” is second nature to the oil patch,² but an affront to sustainability and emissions control policies elsewhere. An ongoing effort to promote a high-volt-

age interstate transmission grid to make renewable energy available even in regions where its supply is limited inspires resistance from even “green” energy advocates who prefer that local resources be exploited irrespective of cost.³

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Given the obstacles to streamlined policies and improved decisional processes, new technology often seems to offer a way out. Make the grid smarter or build transmission around state jurisdiction and investment in new infrastructure is obviated or made easier! We must always look critically at such suppositions. In light of recent (highly questionable) revelations that foreign intelligence services have sabotaged the software that controls our interstate power grid, policymakers should at least be sensitive to the vulnerabilities that may come with enhanced gee-whiz interconnectivity.

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DEMAND AND PRICE RESPOND TO CRISIS

The market backdrop to the ferment in policymaking circles is largely one of declining demand. As has recently been said, “Supply moves slowly, regulations don't move much faster, but demand turns on a dime.”⁴ Following the oil and gasoline price spikes—some would say market failures—of last summer, demand fell precipitously. The economic meltdown and the loss of confidence in financial markets have depressed prices farther. Consequently, the cost of fossil energy declined tremendously. Crude oil now sells at below \$50 a barrel.

Natural gas, after a sustained period approaching \$10 a million Btu's or more, has fallen to as low as \$3.50. The prospects for a near-term price recovery are slender. My random and entirely unscientific survey of projected prices for 2009 generally foresees natural gas optimistically at between

\$5 and \$6.⁵ This low level is attributable in part to an oversupply of gas from the huge success of shale plays made possible in recent years by new horizontal drilling technology and by large volumes of liquefied natural gas poised to enter the U.S. market under the right conditions. Look for capped wells and a declining rig count for awhile.

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The good news for natural gas is that it remains a significant source of electric generation and will be readily employed to augment the variability of wind and other renewable resources that will be delivered to distant loads. Moreover, low-carbon fuel standards, like those recently adopted in California as part of a program to reduce greenhouse gas emissions from the transportation sector, favor natural gas. The conversion of vehicles to natural gas in any significant numbers will require a substantial investment in infrastructure, but the California example may be contagious.⁶

Declining demand means declining investment and fewer jobs. However temporary, on the other hand, declining demand can also be an assurance of continued reliability and price stability. It can give renewables a window of opportunity within which to penetrate the market without the threat of price hikes brought about by scarcity.

CLIMATE CHANGE WILL DRIVE POLICY

Climate-change skeptics may be an endangered species, but it appears to me that agreement on how to address this global phenomenon is not yet in hand. Despite the EPA's endangerment finding and its ability to regulate CO₂ even without new legislation, there is little increased pressure on Congress to act—on Waxman/Markey or anything else. It will take a year to promulgate new regulations pursuant to that finding, followed by court challenges, midterm elections, and whatnot. Moreover, the advocates of a more elegant but undoubtedly controversial carbon tax are still making their case.

In the meantime, the House and Senate are eyeing each other, looking for indications of which approach will be the most politically defensible. The pile of cap-and-trade bills introduced in the last Congress has not materialized this year. Thus, the

coming mark-up of the Waxman/Markey discussion draft will be the most keenly watched process in town. The upcoming United Nations conference on climate change in Copenhagen (December 8–17, 2009) has raised the importance of some form of positive action by the United States in this area.

THROUGH A GLASS DARKLY

I have a sense of anticipation about the long-term prospect for a leaner, cleaner domestic energy market. Nevertheless, that hope is tempered by the realization that our federal political system, the regional characteristics and priorities among U.S. markets, and the physical realities of our energy-delivery infrastructure resist change. Not all change is positive, but it will be essential to rationalize the nation's insatiable hunger for energy. Sparkling new technologies, greater efficiency, and an exciting vision of the energy future may drive innovation, but the "rubber meets the road" in the tedium of regulatory reforms that lay the groundwork for new investment.

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The bright prospects for fundamental change in the energy economy that have crystallized over the past few months may prevail or suffer a case of arrested development. It will depend on a pragmatic re-allocation of the legal authority to regulate it and a more commonly understood and shared commitment to an identifiable end state. At this time, all that can be said about that objective is, We're working on it! 

NOTES

1. This follows the Supreme Court's holding *Massachusetts v. EPA* that the EPA has authority to regulate automotive emissions under the Clean Air Act. See Hoecker, J. J. (2007, June). Carbon and the Court. *Natural Gas & Electricity*, 23(11), 1–6.
2. Samuelson, R. J. (2009, May 4). The bias against oil and gas. *Washington Post*. Retrieved May 4, 2009, from <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/03/AR2009050301849.html>.
3. Bowles, I. (2009, March 6). Home-grown power. *New York Times*. Retrieved May 4, 2009, from http://www.nytimes.com/2009/03/07/opinion/07bowles.html?_r=1&scp=1&sq=Ian%20Bowles&st=cse.
4. ClearView Energy Partners. (2009, April 8). Newsletter, p. 13.
5. Federal Energy Regulatory Commission. (2009, April 16). *State of the Markets 2008*, pp. 5–10.
6. Navigant Consulting. (2009, May). *NG Market Notes*.