



# The National Coal Council

## *Power for America from America*

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### **Thoughts as I gaze across the alley...**

We are rapidly approaching the spring meeting of the full Council. That meeting will take place on Thursday morning, March 7 here in Washington at the offices of Hunton & Williams. I want to send a big thank you to the folks at H&W. They have a great facility, although it might be a bit snug in fitting all of our folks into the conference room. I think it should work out just fine. And there is great news! We have recently gotten confirmation that the new Acting Assistant Secretary for Fossil Energy, Chris Smith, will be able to join us and offer some remarks at the outset of the meeting. Along with Chris we will have Howard Gruenspecht who is with the DOE Energy Information Administration, as well as Mike Duncan with the American Coalition for Clean Coal Electricity, and technical experts on mercury control and cyber security. Along with that we will do the business of the Council. The agenda is packed so we may actually run a bit longer than usual. But we will do everything we can to be adjourned no later than 12:30.

Also as usual, and in association with this meeting, the Council will have a reception at Smith & Wollensky, a nationally renowned steak house. We have had receptions there in the past and folks really enjoyed the food and the atmosphere. It should be a fun evening.

We would like to send out another big thank you to all who have paid their 2013 dues. Everyone is facing some difficult financial times in this economy so we really appreciate the support.

See you in March!

### **Robert A Beck Vice President & COO**

A federal appeals court has denied industry groups' request for an en banc rehearing of a case in which it upheld the Environmental Protection Agency's authority to regulate greenhouse gas emissions.

According to the newspaper *POLITICO*, in the June ruling at issue, a three-judge panel of the court said the agency's legal reasoning supporting its regulation of greenhouse gases was "unambiguously correct." It backed EPA's finding that these emissions pose a danger to public health and welfare.

In its latest order, the newspaper reported, a three-judge majority of the full court said that Congress had "spoke[n] clearly," and EPA had fulfilled its statutory responsibilities. Two dissenting judges disputed that, with one arguing the endangerment finding was counter to congressional intent, because the Clean Air Act had never been intended as "an environmental cure-all."

However, *POLITICO* indicated, the majority indicated that this issue did not relate to their decision, but to the Supreme Court's 2007 ruling in which it agreed that greenhouse gases could be considered pollutants under the Clean Air Act.

But dissenting judge Janice Rogers Brown contended that Congress had rejected proposals to regulate greenhouse gases in the 1990 Clean Air Act Amendments, and EPA should not be able to prevail over lawmakers' gridlock on the issue.

The other dissenter, Judge Brett Kavanaugh, also took issue with the majority's interpretation of "any air pollutant" with respect to the Prevention of Significant Deterioration provisions, *POLITICO* noted.

Elsewhere, almost 200 countries attending a United Nations climate conference in Doha, Qatar, agreed to extend the 1997 Kyoto Protocol, while affirming a previous decision to adopt a new global climate pact by 2015, according to an AP report in the *Kentucky Enquirer*.

Despite "vague promises of financing to help poor countries cope with climate change," many developing nations rejected the deal as insufficient, the publication added.

The second phase of Kyoto will cover only about 15 percent of global emissions, due to the pullout of emitters such as Canada, Japan, Russia and New Zealand, the paper indicated.

According to the report, the new treaty is expected to be adopted in 2015 and take effect five years later, although details have not been worked out.

Meanwhile, while the U.S. is not bound by global climate obligations under the Kyoto Protocol, new international obligations to cut carbon emissions, as well as new domestic regulatory initiatives, will challenge the coal industry, *Argus Coal Weekly* said.

Any new regulatory efforts -- U.N. or domestic -- would face stiff opposition in

Congress, *Coal Weekly* pointed out. But the potential exists for tougher federal climate regulations, it added, "particularly if the U.S. tries to meet any standards set by U.N. members."

Regardless of what happens in the U.S., coal producers increasingly linked with overseas markets "must pay close attention," the newsletter said. "Kyoto members may not always meet their targets, but the push to cut emissions is serious business."

"An increasingly export-focused U.S. coal industry will bring new benefits for producers," *Argus* added. "But the new era also carries a price -- a greater exposure to changing international rules."

## Air Quality

Critics of the Environmental Protection Agency are claiming to see "ill omens" for President Obama's second term in the announcement of significantly tightened air pollution limits on soot from smokestacks and exhaust pipes, according to a column in *POLITICO*.

The finished rule that emerged from EPA -- an annual fine particulate matter standard of 12 micrograms per cubic meter -- was about as stringent as the one that the agency submitted for White House review, the newspaper said. It described this as a turnaround from the previous dynamic of White House pressure forcing EPA to postpone new rules.

In this latest case, the agency also persuaded the White House Office of Management and Budget to turn the proposal around "with what is considered dizzying speed for the regulatory world."

"OMB had obviously very little time to consider the rule," an American Petroleum

Institute official told *POLITICO*. "The office was taking meetings with stakeholders yesterday."

This confluence has caused some industry groups to wonder what to expect in coming months as EPA finishes regulations for greenhouse gas emissions from new power plants, *POLITICO* said. Meanwhile, it added, "A host of pending regulations for industrial boilers, power plants and the coal industry [are] waiting in the wings."

According to a study conducted in Florida and reported in *Fortnightly* magazine, electricity price increases that would stem from proposed Environmental Protection Agency regulations on coal- or oil-fired electric utility steam generating units would amount to "a regressive tax on the elderly."

The study focused on EPA's Utility Maximum Achievable Control Technology (MACT) regulations, and found "troubling" implications, rate increases of up to 25 percent. While these would burden all state residents, the magazine noted, they would be particularly onerous for millions of seniors living on fixed incomes and already at or close to the poverty line.

## **Energy Issues**

Coal will come close to topping oil as the world's top energy source by 2017, with its use growing in every part of the globe except the U.S., the International Energy Agency has forecast.

According to *Argus Coal Daily*, IEA forecast that global coal consumption will reach 4.32 billion metric tonnes of oil equivalent by 2017, with oil at 4.4 btoe. It said that China and particularly India will lead the growth in coal demand during this period.

In the U.S., however, gas-fired generation will displace coal; the agency projected that the nation's coal demand will fall by 14 percent between 2011 and 2017, with coal demand falling by 14 percent, *Argus* said.

In the shorter term, however, rising natural gas prices in the U.S. will cut into that fuel's share of the nation's electricity generation, allowing coal to regain some market share, *Coal Daily* reported separately.

According to the Energy Information Administration, gas will provide some 27 percent of generation in 2013, down from an expected average of 30 percent in 2012, the newsletter said. The agency expects that the delivered price of gas in 2013 will be 31 percent above what it was in January 2012, curtailing its use as a generating fuel.

Coal's share of total generation is forecast to rise to 40 percent in 2013, up from 2012's 37 percent but well below the approximately 50 percent share of previous years.

*Argus* reported that EIA also forecast residential electricity consumption will rise 8.6 percent during December 2012 through February 2013, compared with year-earlier figures, due to a 15 percent increase in heating degree days during those months.

Separately, *POLITICO* reported that a private sector forecasting firm projected that widespread coal-to-gas switching will continue well into 2013, despite the rise in natural gas futures.

The firm, Energy Ventures Analysis, said that weather and overall power demand will play a major role in the fuel switching, the newsletter indicated.

Switching may decrease this winter, because gas prices are more sensitive to weather than coal prices, *Argus* reported

EVA as saying. But gas prices will likely come back down when winter ends, it added.

In addition to this price factor, gas has claimed more utility demand as several old coal-fired plants were retired, the firm said, adding that there is not likely to be much change in this regard in 2013.

According to *POLITICO*, EIA's report also indicated that U.S. energy production will continue to boom in coming decades, attributable to burgeoning shale production, plummeting imports and gasoline consumption below previous estimates.

In fact, EIA forecast, domestic energy production will grow more quickly than consumption through 2040, and oil imports will drop from 19 percent of total U.S. energy consumption in 2011 to 9 percent in 2040.

Turning to natural gas, *POLITICO* reported that EIA forecast the U.S. will become a net exporter even earlier than projected a year ago, with net exports of liquefied natural gas in 2016 and net exports of total natural gas in 2020.

On the renewables front, the Energy Department statistical unit forecast that such energy will account for 16 percent of generation in 2040, up from 2011's 13 percent.

The report projected that the nation's energy-related carbon dioxide emissions will remain more than 5 percent below 2005 levels through 2040. By comparison, *POLITICO* noted, the Waxman-Markey cap-and-trade bill would have set targets of dropping greenhouse gas emissions 3 percent below 2003 levels by 2012, 17 percent by 2020 and 83 percent by 2050.

Congressional efforts to limit federal regulation of coal ash could result in little or no regulation of the material, according to a report from the Congressional Research Service covered in *POLITICO*.

The vague language of two bills -- HR 2273 and S 3512 -- intended to preempt an Environmental Protection Agency proposal to designate the substance as hazardous waste could make it difficult to tell if states were voluntarily implementing their own programs, and to which facilities such programs would apply, CRS said.

This uncertainty defeats the purpose of a permit program, the Capitol Hill watchdog unit added.

A report in *Argus Coal Weekly* says that the FutureGen 2.0 carbon capture and sequestration project faces delay, or even cancellation, if Illinois regulators fail to include it in their annual power and renewable energy credit procurement plan.

Specifically, the supporters want the Illinois Commerce Commission to include a power purchase agreement for the facility in its annual procurement plan for Commonwealth Edison and Ameren Illinois.

If they fail to do this, FutureGen Industrial Alliance CEO Kenneth Humphreys told *Argus*, the project's strict schedule for a variety of permitting deadlines "gets so much tighter," and it is difficult to see "a path forward."

## **People on the Move**

Environmental Protection Agency Administrator Lisa Jackson has announced her upcoming departure from the Cabinet following a four-year stint. The agency chief indicated she will leave following the

President's State of the Union Address in February.

If a successor has not been nominated and confirmed by that point, *POLITICO* reported, the White House plans to name Jackson's deputy, Robert Perciasepe, as acting Administrator.

Jackson was praised by the President for her leadership in EPA's performance of what he termed "sensible and important steps to protect the air we breathe and the water we drink." Meanwhile, *POLITICO* quoted an industry lobbyist as saying that from "an energy and consumer perspective ... the Jackson EPA presided over some of the most expensive and controversial rules in agency history."