Obama Policy: Control Greenhouse Gases At Home, Enable Export of Fossil Fuels

Thursday, December 19, 2013
from Daily Report for Executives™
By Paul Shukovsky

Dec. 18 --Even as President Barack Obama promises to implement aggressive regulatory measures to rein in climate change domestically, this year his administration used the same regulatory authority to quietly position the U.S. to become a global leader in fossil fuel exports.

Much of the policy is being carried out behind closed doors.

At its nexus is the White House Council on Environmental Quality. The CEQ exercises oversight, in secret, over the ways that permitting agencies such as the U.S. Army Corps of Engineers and the Bureau of Land Management implement the National Environmental Policy Act.

In a series of decisions made by regulators under CEQ oversight, proposals for projects to export--for the first time in U.S. history--huge amounts of coal to Asia and liquefied natural gas globally are being evaluated without a comprehensive analysis of the impact of exporting on climate change.

'Chilling Effect.'

In June, after being summoned to a series of NEPA-consultation meetings convened by the council--the corps said that it wouldn't consider the climate-change impact of burning hundreds of millions of tons of U.S. coal in Asia in its environmental analysis of export terminals being proposed in the Pacific Northwest.

There are scant details concerning what happened in those White House CEQ meetings. The CEQ has for more than a year repeatedly declined to answer Bloomberg BNA's questions on what guidance it has been giving the Corps of Engineers as the agency evaluates the environmental impact of proposals to build coal export terminals that would enable U.S. companies to become major suppliers to China, Japan, South Korea and Taiwan.

The CEQ, in response to a Bloomberg BNA Freedom of Information Act request seeking documents that would reveal what guidance or instructions it has been giving regulatory agencies on the proposed coal export terminals, produced heavily redacted documents. In August, a CEQ senior counsel declined a final administrative appeal by Bloomberg BNA, citing the deliberative-process exemption under FOIA. He wrote that release of the documents “would have a chilling effect on efforts to foster open and frank discussions of legal and policy issues.”

White House press secretary Jay Carney did not respond to a Dec. 5 e-mail message and a Dec. 12 telephone call seeking comment. CEQ Communications Director Taryn Tuss, in response to several detailed questions, wrote in a Dec. 12 e-mail: “CEQ encourages coordination among agencies and often brings them together for that purpose, however CEQ doesn't tell agencies how to conduct their NEPA reviews.”

Proposals Double Coal Exports

The three proposed coal terminals in Oregon and Washington would open a conduit for shipping coal mined from federal land in the Powder River Basin of Wyoming and Montana, which contains an estimated 162 billion tons of recoverable coal. Upon build-out, the terminals collectively would more than match the total of 107 million tons exported from the U.S. in 2011.

The Gateway Pacific Terminal, which would export up to 53 million tons of coal annually, would be built near the Canadian border with Washington state on north Puget Sound. SSA Marine, which calls itself the largest U.S. terminal and stevedoring company, is behind the proposal to build Gateway. The Smith-Hemingway family owns a 51 percent interest in parent company Carrix Inc., with the other 49 percent being held by Goldman Sachs Infrastructure Partners. Gateway would be served by Berkshire Hathaway Inc.'s Railway Co.

Peabody Energy Corp., which says it is the biggest private-sector coal company in the world, has contracted to ship as much as 26.5 tons of coal through Gateway Pacific, about half of the annual capacity of the proposed export terminal.

About 200 miles to the south, on the Columbia River, is the proposed Millennium Bulk Terminal. It is a project of Ambre Energy Ltd. with a 62 percent interest, and Arch Coal Inc. with a 38 percent interest. The terminal, about 63 miles from the river's mouth, would be capable of shipping as much as 48.5 million tons of coal annually. Upriver about 270 miles is another Ambre project. The proposed Morrow Pacific project would ship as much as 8.8 million tons of coal annually from the Coyote Island Terminal.

Northwest Governors, EPA Rebuffed

The Corps of Engineers rebuffed the Environmental Protection Agency, along with the governors of Oregon and Washington in June, when it rejected their calls to go beyond site-specific environmental impact statements (EIS) that focus on effects in the immediate vicinity of the proposed coal export terminals. The EPA and the governors instead had called for a wide-ranging study of the cumulative impacts of all the projects together, including the effects on climate change from the burning of U.S. coal in China.

Govs. John Kitzhaber (D) of Oregon and Jay Inslee (D) of Washington, in a March 25 letter to CEQ Chairwoman Nancy Sutley, asked for a comprehensive federal policy review--in essence a programmatic or policy EIS that would consider the broadest range of impacts from the mines in Wyoming to smokestacks in China .

Ray Clark, who was CEQ associate director for NEPA oversight in the Clinton administration, as well as several environmental attorneys, have told Bloomberg BNA that if Obama chose to do so, he could simply order such a programmatic or policy EIS to be conducted.

"The president could say there are a bunch of different issues associated with this and so I want the federal government to do an environmental impact analysis on whether or not we should promote as a national policy the export of coal," Clark said earlier this year. "Then it's a very good policy EIS."

Contradictory Evidence.

The CEQ is a statutory entity established by NEPA within the Executive Office of the President as the interpreter of the statute for the executive branch. Among its statutory roles under NEPA is to act as arbiter when conflict exists between regulatory agencies such as this difference between the EPA and the Corps of Engineers.

There is contradictory evidence regarding whether the White House CEQ took a hands-off role or directly instructed the corps about how to proceed in its NEPA analysis of the coal export proposals. Some corps officials have told Bloomberg BNA that the CEQ gave no instructions about how to proceed.

In contrast, a corps e-mail obtained through a FOIA request recording the first of several CEQ-convened meetings on the topic says the June 7, 2012 teleconference was called by the CEQ so it could "provide preliminary feedback on what direct, indirect and cumulative effects may be considered within each agency's control and responsibility."

The controversial matter is apparently viewed with some sensitivity within the administration. After EPA's disagreement with the Corps of Engineers first became public, a Region 10 EPA official told Bloomberg BNA that EPA headquarters had forbidden public discussion of the dispute. In November, EPA Region 10 Administrator Dennis McLerran turned down a Bloomberg BNA request to discuss the EPA's long list of environmental impacts of the coal terminal proposals that it told the corps to evaluate--to no avail.

The White House CEQ has repeatedly declined to describe what happened in its meetings with the regulatory agencies or what guidance it has given, instead referring Bloomberg BNA to the agencies themselves.

'Passive' Policy Making?

Georgetown University law school professor Lisa Heinzerling was senior policy counsel to then-EPA Administrator Lisa Jackson during the first two years of the Obama administration. She finds it difficult to envision the White House allowing a kind of de facto national climate change policy to be set by the CEQ, deferring to regulatory agencies like the corps and BLM.

Heinzerling told Bloomberg BNA on Nov. 19, “If CEQ's position was that the Army Corps of Engineers was completely free to write an EIS of whatever scope it chose, then that would be a passive way of making a really significant policy decision about climate change.”

Whether or not the White House CEQ fulfilled its statutory role to resolve the conflict between the EPA and the Corps of Engineers; whether or not the CEQ is telling the agencies to ignore the climate change impact of overseas combustion of U.S. fossil fuels in their NEPA analyses or is leaving it to the agencies to make their own decisions, the result is the same: an Obama administration policy that enables the export of fossil fuels without considering numerous secondary, indirect and cumulative effects including the exports' impact on climate change.

Obama Touts Natural Gas

On June 25, Obama gave what was billed as a major policy address on climate change at Georgetown University. It was widely praised by environmentalists. While it contained soaring rhetoric on the dangers of climate change and announced significant steps to cut greenhouse gases emitted by domestic coal-fired power plants, Obama didn't directly mention his policy on U.S. fossil fuel exports .

Scientists, said Obama, have “acknowledged the planet is warming, and human activity is contributing to it. So the question now is whether we will have the courage to act before it's too late. As a president, as a father, and as an American, I'm here to say we need to act. I refuse to condemn your generation and future generations to a planet that's beyond fixing.”

“Now, even as we're producing more domestic oil, we're also producing more cleaner-burning natural gas than any other country on Earth,” Obama said. “And, again, sometimes there are disputes about natural gas, but let me say this: We should strengthen our position as the top natural gas producer because, in the medium term at least, it not only can provide safe, cheap power, but it can also help reduce our carbon emissions.”

“And it's the transition fuel that can power our economy with less carbon pollution even as our businesses work to develop and then deploy more of the technology required for the even cleaner energy economy of the future.”

Viewing Mitigation Benefits Skeptically

Obama's CEQ is well-acquainted with the “disputes about natural gas” he mentioned to the students at Georgetown. More than a year before he gave the speech, the Sierra Club wrote a letter to a senior counsel at the CEQ warning that far from being a transition fuel, liquid natural gas exports are the “very dirtiest of a dirty fuel.”

The April 18, 2012, letter says, “We urgently need CEQ and EPA's help to ensure that LNG exports are properly analyzed under NEPA.”

The Federal Energy Regulatory Commission had two days earlier issued what is the first long-term authorization for a facility to export domestic liquefied natural gas other than a mothballed plant on Alaska's Cook Inlet. The Sabine Pass project in Cameron Parish, La., owned by Cheniere Energy Partners, L.P., initially applied to export 16 million metric tons of LNG per year.

The Sierra Club letter to the CEQ, citing a Carnie-Mellon University study of the life-cycle emissions of LNG, says that because energy is required to liquefy natural gas, transport it and re-gasify it, “LNG is not an attractive substitute for coal.” And the letter says the analysis becomes starker when fracking is added to the equation because pumping natural gas from shale formations releases into the atmosphere much more methane, a greenhouse gas more potent that carbon dioxide.

The letter cites Energy Information Administration projections that 85 percent of LNG exports will be sourced from unconventional sources such as shale formations. “The upshot is that CEQ should view claims that LNG produces significant climate change mitigation benefits with skepticism,” the letter says.

'I Don't Believe CEQ Did Anything.'

FERC, which chose to conduct a less rigorous environmental assessment as opposed to a full-fledged EIS on the Sabine Pass project, didn't analyze the life-cycle emissions of exported LNG. The Sierra Club also criticized FERC's decision not to conduct an analysis of the impact of LNG exports inducing increased domestic production of shale gas.

“The NEPA failings in the Sabine Pass matter may well be repeated without clear guidance from CEQ and EPA,” the letter says.

Asked what the CEQ did in response to the letter, Sierra Club attorney Nathan Matthews told Bloomberg BNA Nov. 22, “I don't believe CEQ did anything one way or the other on Sabine Pass.”

“Our ultimate concern is staving off this devastating global warming and we feel that LNG exports and the additional gas production that they would induce is inconsistent with paths that would avoid catastrophic global warming,” Matthews said. “All these pending export applications are inconsistent with the President's own stated climate policy.’’

'Cooked-in Accusation.'

Steve Everley, a spokesman for an Independent Petroleum Association of America advocacy program, Energy in Depth, contests the accuracy of Sierra Club assertions that LNG's life-cycle emissions make it not an attractive substitute for coal. In a Dec. 12 telephone interview with Bloomberg BNA, he cited a 2011 Carnegie Mellon University study saying that it had found fracked Marcellus shale natural gas “adds only 3% more emissions to the average conventional gas when used to generate electricity.” The study cited by Everley doesn't address the life cycle emissions of LNG derived from Marcellus shale.

While he doesn't contest that LNG exports will stimulate production of fracked gas, “the sort of cooked in accusation with that--that that is a bad thing--is demonstrably false.”

“Sierra Club has been making these claims about fracking, saying that because you are fracking, because you are producing from so-called unconventional reservoirs, the methane leakage rate is so high that it cancels out the greenhouse gas benefit. What I am saying is that experts for the Department of Energy, the U.S. Environmental Protection Agency, state regulators and independent experts across the country have all affirmed that that is not the case.”

On Oct. 25, FERC denied a Sierra Club petition for rehearing on a pipeline to deliver gas to Sabine Pass. The agency wrote, “The Commission further found that any impacts which may result from additional gas production are not 'reasonably foreseeable' under the applicable judicial standard or as defined by the CEQ regulations and thus rejected Sierra Club's contention that the effects associated with the additional natural gas production needed to be addressed in the EA.”

Said Matthews, “These energy exports are such a shift in the way energy is done in the U.S. that we have explicitly called for a programmatic EIS in a lot of these export project proposals. Someone needs to stop and look at this in a systemic way.”

CEQ, BLM Consult on Coal Leases

Kitzhaber shares the perspective that a systemic analysis is needed. In April 2012, he wrote to then-Secretary of Interior Ken Salazar, the secretary of the Army, and the director of the Bureau of Land Management, asking for the formulation of a clear federal policy on coal exports before further permitting and coal mine leasing decisions are made. The letter got the White House CEQ's attention.

On June 25, 2012, the CEQ's Horst Greczmiel, associate director for NEPA oversight, convened a conference call that included a discussion of the BLM's Powder River Basin coal leasing program, according to a redacted, handwritten note from a corps official who participated in the meeting. The note, obtained by Bloomberg BNA through a Freedom of Information Act request for corps documents, makes reference to litigation challenging the BLM's NEPA analysis of coal leases in the Wright Area of the basin.

And a BLM official who participated in the teleconference told Bloomberg BNA that there was discussion about the possibility of doing a supplemental EIS on the Wright Area to account for future export of the coal.

There was no indication in the redacted note of what position, if any, White House CEQ staff took on the issues. Since then, there has been no supplemental EIS on the Wright Area and the Department of Justice has been vigorously defending a series of suits challenging the adequacy of BLM's NEPA analysis of coal leases.

China Will Get Coal From Somewhere

The environmental group WildEarth Guardians routinely challenges BLM's environmental impact statements on its Powder River Basin coal leases and has several suits outstanding against the agency. An opening brief filed Oct. 24 by WildEarth, the Sierra Club and a local group in three associated cases challenges the adequacy of BLM's NEPA analysis of Wright Area leases on a variety of grounds, most related to air quality issues in general and climate change in particular (*WildEarth Guardians v. Bureau of Land Mgmt.*, D. Wy., No. 2:12-cv-00085, *opening brief filed*, 10/24/13).

One WildEarth argument zeros in on a theme that repeatedly arises in debates over fossil fuel exports and to which Obama alluded in his Georgetown University climate change address. It can be summarized by the oft-heard phrase in those debates: “If we don't sell it to them, someone else will.”

That perspective is present in the NEPA documents for BLM coal leases and for FERC's environmental assessment of Sabine Pass. The final EIS for the Wright Area coal leases says: “It is not likely that selection of the No Action alternatives would result in a decrease of U.S. CO2 emissions attributable to coal mining and coal-burning power plants in the longer term, because there are multiple other sources of coal that, while not having the cost, environmental, or safety advantages, could supply the demand.”

The same thought process also appears in the Keystone XL pipeline draft EIS, which included a life cycle analysis of greenhouse gas (GHG) emissions and concluded “that approval or denial of the proposed Project is unlikely to have a substantial impact on the rate of development in the oil sands.”

Obama referred directly to this equation in his Georgetown address: “Allowing the Keystone pipeline to be built requires a finding that doing so would be in our nation's interest. And our national interest will be served only if this project does not significantly exacerbate the problem of carbon pollution. The net effects of the pipeline's impact on our climate will be absolutely critical to determining whether this project is allowed to go forward.”

Dueling Princeton Economists

The question of whether U.S. fossil fuel exports will “significantly exacerbate the problem of carbon pollution” is deeply controversial and far from settled. Two economists, both experts in natural resources and both trained at Princeton University, take divergent views with respect to coal exports.

Thomas Power is an emeritus professor at the University of Montana, where he spent 30 years as chairman of the economics department. He is still active there as a research professor and authored a paper in May 2013, “The Impact of Powder River Basin Coal Exports on Global Greenhouse Gas Emissions.”

Power calls himself a “decentralist’’ and says he often gets invited to libertarian think tank events “because they like some debate.”

Power told Bloomberg BNA Dec. 1 in a telephone interview: “If we are going to sell it, we are going to be competing against other sources of coal. We are going to drive down the price and that is going to encourage the use of coal and discourage the use of other fuels. There is no way out. It has to be true.”

Power's paper modeled the export of 140 million tons of Powder River Basin coal annually to markets on the south China coast. He found that exports at that level “would reduce coal prices by 12.4 percent. That would lead consumption to increase by 14.9 percent.” Power concluded that 70 percent of the coal exports from the U.S. would represent new consumption in China and result in “an annual increase in GHG emissions of about 183 million tons of CO2.”

Economically Rational About Energy

“I have no idea why people say the Chinese are going to burn it no matter what,” Power said. “That suggests they are economic morons; that they don't care about efficiency. The only way we can sell it is if we can compete effectively, sell it cheaper than the other sources of coal, both domestic Chinese and foreign.”

“When people say that the Chinese are going to burn the same amount of coal no matter what, they are saying that price and costs of coal to the Chinese doesn't matter, that the Chinese ... are economic morons; that they don't pay attention to costs when they make investment decisions,” Power said. “They are as economically rational as we are.”

Robert Nelson is a professor at the School of Public Policy at the University of Maryland. For about a decade, beginning in the mid-1980s, he played a pivotal role in establishing federal coal-leasing policies at the Department of Interior. He's a senior fellow at the Independent Institute, a libertarian think tank.

Nelson told Bloomberg BNA in a telephone interview Nov. 26: “The debate is about whether the United States is going to try to limit the use of coal by not allowing its export. My general view is that there is not much the United States can do. If we don't export it to China, they are still going to burn the coal.”

Long-Term Effect Is Greater

“If we ship coal to China, will that have any effect on the amount of coal-fired power production in China?” Nelson asked. “In the short run, the answer is probably no. They are going to get it and burn it.”

Nelson had this caveat: “If our sending coal to China meant that the substitution of gas for coal would be slowed down, that would have a negative effect on climate change. It is really a matter of time frame. If you are talking about exports for five years, it wouldn't have an impact. China is going to burn the coal one way or another.”

“But as you extend the time frame, the possibility of an effect becomes greater,” Nelson said. “If you are talking about 30 years from now, Powder River Basin coal going into China could have a significant effect on coal to gas. It also raises the question of how fast is wind and solar going to come along.”

“If it were up to me, I would export it,” Nelson said. “But I couldn't prove it to you that that is the right thing to do. If I had been in the Obama administration, I would probably have made the same decision as they did.”

'They Simply Wave a Wand.'

Power also reflected on the long-term economic impact of coal exports. Cheap coal sold to China will “undermine the incentives for developing wind and solar energy. They are going to invest more heavily in coal because it has been provided more cheaply. Those are 50-year decisions. Once you've built a coal-fired generator, once you've put billions of dollars into a large coal-fired generator, you are committing yourself to use of coal for a very long period of time.”

Asked whether the BLM's NEPA analysis of Powder River Basin (PRB) coal adequately addresses the cost of coal in terms of its impacts on climate change, Power said: “Absolutely not. They ignore the ultimate combustion of the coal and the GHGs released. They simply wave a wand and say that the amount of coal Americans consume or the world consumes will be the same whether federal PRB coal is sold or not.”

Brenda Neuman, BLM's chief of the solid minerals branch in Wyoming, told Bloomberg BNA in a series of conversations in December that the agency didn't ignore the greenhouse gases released. Although BLM coal lease environmental impact statements such as those conducted on the Wright Area contain estimates of GHGs released from combustion, BLM didn't analyze the resulting climate change impact, Neuman said.

“There is not really any science that says burning a discrete amount of coal from a pit in Wyoming has some sort of numerical value that we can say causes a discrete amount of climate change,” Neuman said.

Coal Industry Supports Regulatory Approach

The coal industry supports the Obama administration's NEPA process in the Powder River Basin. Peabody Energy Vice President Beth Sutton provided an e-mailed reply Dec. 5 to a Bloomberg BNA request for an interview. “We believe the current regulatory approach to surface mine permits is appropriate and protects the environment.”

In a Dec. 4 telephone interview, National Mining Association General Counsel Katie Sweeney said she has “not heard suggestions for improvement” of BLM oversight of the coal resource from NMA's membership.

"For a while, there were quite a few delays in sales in the early the early to mid-2000s," Sweeney said. "It seemed to take five plus years to get between nominations and sales. But that seems to have improved."

Luke Popovich, NMA vice president for external communications, told Bloomberg BNA, "I think there has been a fairly forceful response from the administration against claims by the environmental litigants" contesting the adequacy of NEPA review of coal leases. "They have defended the current process."

Arch Coal Inc. spokeswoman Kim Link declined to comment Dec. 4.

'It's Speculative at this Point.'

Major players in the Powder River Basin--including Arch, Ambre and Peabody--have announced plans to export coal from the Basin through the proposed Pacific Northwest export terminals. But the BLM hasn't analyzed in its coal lease EISs what the impacts would be of selling coal to Asia. That question arose in the first meeting convened by the White House CEQ, according to the BLM's Neuman.

Neuman said she participated in one of the CEQ meetings. "There was some discussion," said Neuman, who noted that her participation was limited to providing a schedule of various leases. "People were asking the question of whether we should supplement our EISs that are out there right now, particularly the Wright Area EIS, to include export from ports in Washington."

Asked about the outcome, Neuman said, "Our position in BLM Wyoming is that the coal isn't being used for export." She said there are no plans to conduct a supplemental EIS.

"We generally assume that the coal is going to be used for domestic use," Neuman said. "We can't say that it will never be used for export, but right now, we're not seeing that. It's speculative at this point." That's one reason BLM cites for its decision not to evaluate the effects of coal export on climate change.

CEQ Has Statutory Authority

Heinzerling, the former Obama administration EPA official, said the notion that the CEQ simply steps back, allowing the BLM or the Corps of Engineers to make these decisions without White House guidance doesn't make sense.

"CEQ does have a superior role as far as NEPA implementation," Heinzerling said. "So it would be odd to me if they were saying, 'Oh, we don't really have anything to do with the way agencies implement this.' "

"CEQ's guidance on NEPA implementation has been deferred to by the courts. They are one of the few White House offices that actually has statutory authority. It would be reasonable for them to engage in a kind of coordinating function in this regard. It seems not quite plausible to think that they are not engaged in that kind of coordinating."

“This White House has been extremely, actively involved in agency decisions; as much as probably any past administration. It's not a White House that is shy about being involved. It would be weird if they said hands off in this place where they actually have authority, but they are all over places where they don't really have authority.”

To contact the reporter on this story: Paul Shukovsky in Seattle at pshukovsky@bna.com

To contact the editor responsible for this story: Heather Rothman at hrothman@bna.com