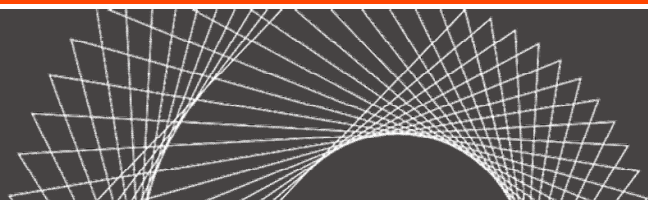


# Mid-Year Energy Briefing



**Akin Gump**  
STRAUSS HAUER & FELD LLP

June 15, 2021

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John Goodgame

Graham McCall

Chris Treanor

Susan Lent

Gabe Procaccini

Jamie Tucker

Ken Markowitz

Arshi Siddiqui

Wes Williams

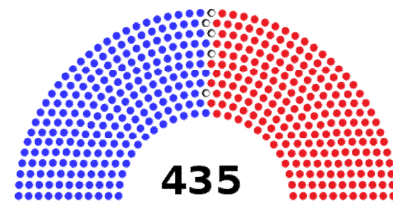
# Energy/Climate Policy in the Biden Administration



# Overview of the Current Political State

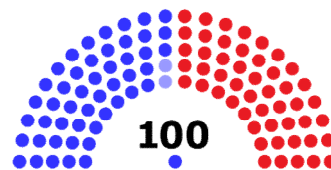
- **President Biden is nearing his 150<sup>th</sup> day in office on June 18<sup>th</sup>**
  - He has had a full cabinet as of March 22
  - He has issued 50 *Executive Orders* and signed 16 *bills into law*
  - He addressed Congress in a State of the Union address on April 28
- **A Democrat-controlled Senate has been crucial to advancing nominees and the president's agenda.**
  - Vice President Kamala Harris has cast 4 tie-breaking votes, 3 to advance the passage of [H.R. 1319](#) – *The American Rescue Plan Act of 2021*
- A narrow-Democratic majority has remained active in the House of Representatives and has passed more than 80 pieces of legislation.
- The Senate Parliamentarian has ruled that two additional bills can use the reconciliation process to advance.

## U.S. House of Representatives



- Democratic Majority (218)
- Republican Minority (212)
- Vacant (5)

## U.S. Senate



- Democratic Majority (48) +1
  - Independent (2)
- Republican Minority (50)

# American Jobs Plan and Energy/Climate Policy

- Makes available \$16 billion to plug abandoned oil and gas wells and restore and reclaim abandoned coal, hardrock and uranium mines.
- Makes \$5 billion available to remediate and redevelop idle real property and spur buildout of infrastructure in distressed and disadvantaged communities and leverage Department of Commerce Economic Development Administration Public Works, HUD and U.S. Department of Agriculture grants, Appalachian Regional Commission POWER grants and DOE retooling grants for idled factories (through the Section 132 program).
- Pairs an investment in 15 decarbonized hydrogen demonstration projects with a new production tax credit to spur capital-project retrofits and installations that bolster and decarbonize industry.
- Establishes 10 pioneer facilities that demonstrate carbon capture retrofits for large steel, cement and chemical production facilities.
- Supports large-scale sequestration efforts.
- Reforms and expands IRS section 45Q tax credit, making it direct pay and easier to use for hard-to-decarbonize industrial applications, direct air capture and retrofits of existing power plants



## Would provide \$100 billion for the following:

- Targeted investment tax credit to incentivize the buildout of at least 20 gigawatts of high-voltage capacity power lines and mobilize private capital.
- Create new Grid Deployment Authority at the Department of Energy (DOE) to leverage rights-of-way along roads and railways and support creative financing tools to spur additional high priority, high-voltage transmission lines.
- Approve 10-year extension and phase down of expanded direct-pay investment tax credit and production tax credit for clean energy generation and storage.
- Provide clean energy block grants to state and local governments.
- Direct federal departments and agencies to purchase 24/7 clean power for federal buildings.
- Establish **Energy Efficiency and Clean Electricity Standard** to move toward 100 percent carbon-pollution free power by 2035.

# Infrastructure Negotiations and Energy/Climate Policy



## Biden Administration Energy Infrastructure Priorities

- ❑ A clean electricity standard
- ❑ Funding for a national network of charging stations for electric vehicles
- ❑ Tax incentives to support solar, wind, and other clean energy
- ❑ Funding to retrofit homes for energy conservation
- ❑ Funding for the development of new transmissions lines

- On Tuesday, June 8, the White House called off negotiations with Senate Republicans and Sen. Shelley Moore Capito (R-WV) after reaching an impasse on several infrastructure provisions.
- White House Press Secretary Jenn Psaki stated that investments in "areas like EV [electric vehicle] buses and EV charging stations and some of the components that are essential to investing in industries of the future and ensuring that we're creating millions of jobs while also doing it in a way that protects our climate" were missing from the Republican infrastructure counterproposals.
- The Biden administration has continued negotiations with a bipartisan group of 10 Democratic and Republican Senators putting forward a **\$1.2 trillion infrastructure package focused on core infrastructure.**

### Democrats

- Sen. Joe Manchin (D-WV)
- Sen. Jeanne Shaheen (D-NH)
- Sen. Kyrsten Sinema (D-AZ)
- Sen. Jon Tester (D-MT)
- Sen. Mark Warner (D-VA)

### Republicans

- Sen. Bill Cassidy (R-LA)
- Sen. Susan Collins (R-ME)
- Sen. Lisa Murkowski (R-AK)
- Sen. Rob Portman (R-OH)
- Sen. Mitt Romney (R-UT)

- Democratic Senators have expressed concerns that provisions to push clean energy and climate change will be left out of a final infrastructure package.
  - **Sen. Ed Markey (D-MA):** "I won't just vote against an infrastructure package without climate action – I'll fight against it"
  - **Sen. Martin Heinrich (D-NM):** "An infrastructure package that goes light on climate and clean energy should not count on every Democratic vote."
  - **Sen. Sheldon Whitehouse (D-RI):** "I'm still very anxious and I'm going to stay very anxious until we have a solid 1.5 degree [Celsius] bill and a path to passage."

# From Campaign Proposal to Policy

In July 2020, then-former Vice President Biden's campaign unveiled the Biden Plan to "Build a Modern Sustainable Infrastructure and an Equitable Clean Energy Future" which now serves as a guide to the administration's approach to climate/energy policy.



## Biden Plan for Climate Change and an Equitable Clean Energy Future

- Rejoin the Paris Climate Agreement
- Ban new oil and natural gas leases on public lands and waters and modify royalties to account for climate costs
- Establish a National Climate Task Force led by a National Climate Advisor and a Special Presidential Envoy for Climate
- Convene a climate world summit to directly engage the leaders of the major carbon-emitting nations
- Use the federal government procurement system to drive towards zero-emission vehicles
- Ensure all U.S. government installations and facilities are more energy efficient and resilient
- End export subsidies of high-carbon products
- Conserve 30 percent of America's lands and waters by 2030
- Draft and pass a national infrastructure plan to drive clean energy innovation
- Require public companies to disclose climate risks and their greenhouse gas emissions in their operations and supply chains
  - Require methane pollution limits for new and existing oil and gas operations
  - Establish an enforcement mechanism to achieve net-zero emissions no later than 2050
  - Condition future trade agreements on partners' commitments to meet their climate targets



## Executive Orders and Presidential Actions

- ✓ Rejoined the Paris Climate Agreement
- ✓ Paused new oil and natural gas leases on public lands and offshore waters and launched a review of leasing policies including royalties
- ✓ Established a National Climate Task Force led by the National Climate Advisor and assisted by the U.S. Special Presidential Envoy for Climate
- ✓ Held a Leaders Climate Summit on April 22-23, 2021
- ✓ Directed federal agencies to develop a comprehensive plan to replace the federal fleet with zero-emission vehicles
- ✓ Mandated that federal agencies improve adaptation and increase resilience for federal facilities and operations
- ✓ Instructed federal agencies to eliminate fossil fuel subsidies
- ✓ Mandated the preservation and conservation of 30 percent of federal lands and waters by 2030
- ✓ Announced the American Jobs Plan to drive clean energy infrastructure innovation
- + Established an Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization
- + Revoked the March 2019 Permit for the Keystone XL Pipeline

# Congress – Policy Proposals

## House of Representatives

- [H.R. 1512](#) – *Climate Leadership and Environmental Action for our Nation’s (CLEAN) Future Act*
  - Introduced by House Democrats on March 2, 2021
  - Comprehensive legislation that would achieve net-zero greenhouse gas emissions no later than 2050, and reduce pollution by 50 percent no later than 2030
  - Includes sector-specific and economy-wide solutions to achieve targets, authorizing \$565 billion over ten years
  - Sets a National Clean Electricity Standard and establish a Clean Energy & Sustainability Accelerator to make investments in low- and zero-emission technologies
- [H.R. 1848](#) – *Leading Infrastructure for Tomorrow’s (LIFT) America Act*
  - Introduced by House Democrats on March 11, 2021
  - Comprehensive legislation that would invest \$312 billion in clean energy, energy efficiency, drinking water, broadband, and health care infrastructure
- [H.R. 3684](#) – *INVEST in America Act*
  - Introduced by Rep. Peter DeFazio on June 4, 2021
  - Surface transportation reauthorization legislation that would invest \$547 billion in repairs to existing roads and bridges, improvements in passenger rail, public transit, cycling and walking infrastructure
- **While the majority of climate and energy legislation has been led by Democrats in the House, House Republicans have announced their intention to introduce a climate plan in the coming weeks.**

## Senate

- **Unlike the House, the Senate has seen bipartisan climate and energy bills including:**
  - [S. 799](#) – *Storing CO2 and Lowering Emissions (SCALE) Act*
    - Would invest in infrastructure to transport CO2 from the sites of capture to locations where it can be utilized or sequestered
  - [S. 986](#) – *Carbon Capture Utilization and Storage Tax Credit Amendments Act*
    - Would enhance the 45Q and 48A tax credits to encourage increased commercialization of CCUS and Direct Air Capture technologies
- [S. 1298](#) – *The Clean Energy for America Act*
  - Introduced by Senate Democrats on April 21, 2021
  - Would overhaul the federal energy tax code and consolidate energy tax incentives into emissions-based provisions to incentivize clean electricity, energy efficiency, and clean transportation

# Opportunities for an ‘All of Government’ Approach

- The [American Jobs Plan](#), the \$2 trillion infrastructure package with considerable funding for climate initiatives, is still be negotiated.
- The [President’s Discretionary Request for Fiscal Year 2022](#) includes:
  - \$10 billion to non-defense agencies to achieve a net-zero carbon economy by 2050
  - \$815 million for climate resilience and disaster planning
  - \$600 million for electric vehicles and charging infrastructure across 18 federal agencies
  - \$1.2 billion for the Paris Climate Agreement’s Green Climate Fund
- **Congressional Democrats and the Biden administration are still hoping to draft and pass a comprehensive climate package in the long term.**
- Legislative vehicles options for climate programs/initiatives:
  - Additional reconciliation legislation
  - Appropriations
  - Standalone





# Trends in Carbon-Neutral Oil & Gas Transactions

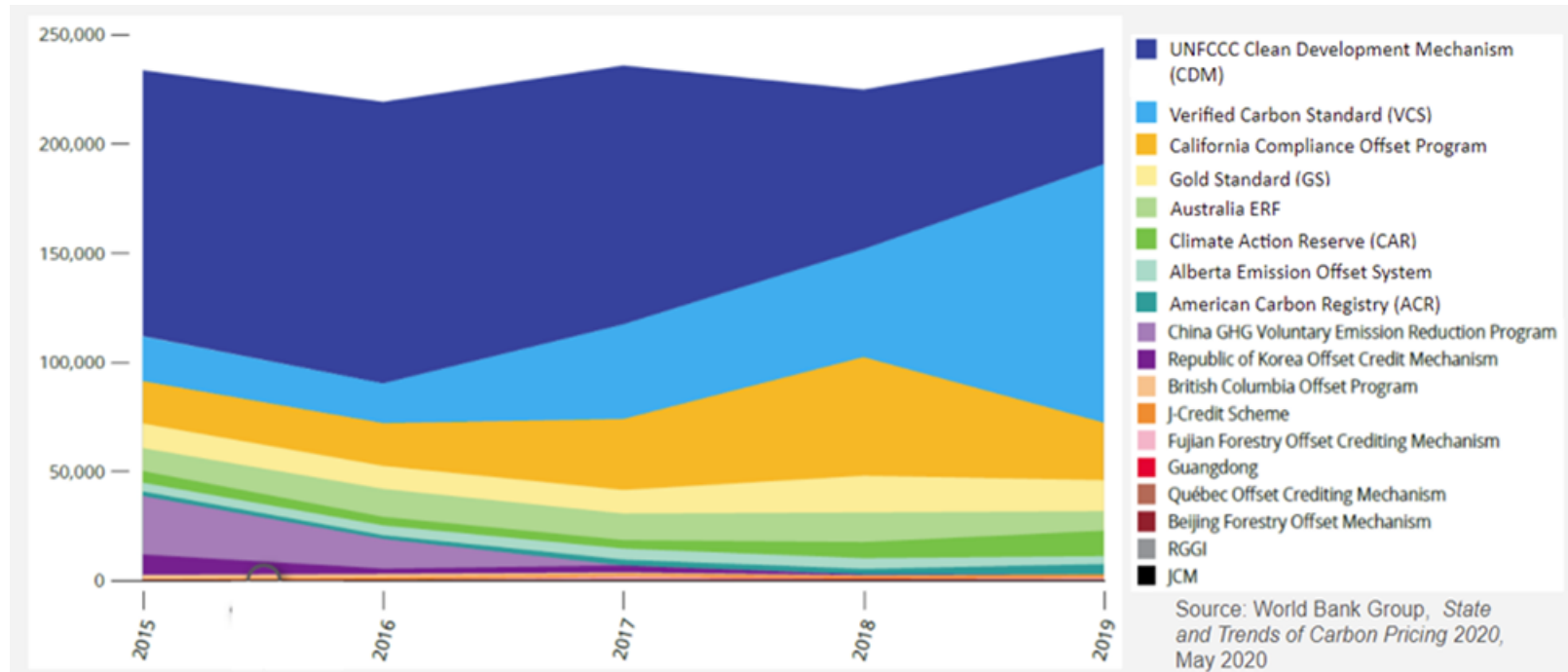


# What is a Carbon Offset?

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- Tradeable attribute that represents one ton of carbon that was removed from the atmosphere or was not released to the atmosphere during a business as usual scenario.
- Two basic types
  - Compliance grade (e.g., Cal. Cap and Trade, EUETS)
  - Voluntary (e.g., VCS)
- All offsets share these common characteristics
  - Real, Verifiable, Permanent, and Additional
  - Additionality is the key challenge for most projects

# Flavors of Carbon Offsets



# Why Does Business Care?

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- Pressure from investors or shareholders to offset carbon emissions across operations.
- Environmental, social and governance policies and commitments.
- Substantiate “net-zero” and “carbon neutral” claims.
- Align business practices with Paris Agreement Targets.

# Carbon Offset Projects

- Forest carbon and other nature based solutions that store or sequester carbon.
- Significant interest in creating carbon credits in the oil and gas services sectors for detecting and plugging leaks but face increasing additionality challenges.
- Several leading standards organizations and registries – Verra, the Gold Standard American Carbon registry, with varying methodologies and degrees of rigor.



Energy



Construction



Waste



Agriculture



Grasslands



Livestock & manure



Industrial processing



Transport



Mining



Forestry



Wetlands



Non-VCS methodologies

# Carbon Offset Trends to Watch

- Huge uptick in demand leads to challenges to deliver high quality supply
  - Task Force on Scaling Voluntary Carbon Markets
- “Carbon Neutral Products”
- Securitization and commoditization of tranches of carbon offsets
- Stacking of environmental and social attributes consistent with the UN Sustainable Development goals



# Pairing Carbon Offsets with Oil & Gas Transactions to Create Carbon-Neutral Products

## Carbon Credit Supply

- Offset credit quality
- Sourcing
- Credit attributes
- Project due diligence
- Volume of credits required
- Pricing

Pairing Attained



Transaction Closes



Credit Retirement Begins



## Oil & Gas Demand

- Agreed-upon value chain
- Carbon footprint measurement
- Carbon accounting issues
- Accuracy-check/inventory management
- Volume of emissions to be offset
- Cost allocation

# Select Carbon-Neutral Transactions List

DATE	SELLER	BUYER	TANKER	DELIVERY	SOURCE OF CERTIFICATES	SCOPE COVERED	PRESS RELEASE
19-Jun	Shell	Tokyo Gas	LNG	Japan	From Shell project portfolio	1, 2, & 3	<a href="#">link</a>
19-Jun	Shell	GS Energy	LNG	South Korea	From Shell project portfolio	1, 2, & 3	<a href="#">link</a>
19-Jun	JERA		LNG	India	CER	3	<a href="#">link</a>
20-Mar	Shell	CPC	LNG	Taiwan	From Shell project portfolio	1, 2, & 3	<a href="#">link</a>
20-Oct	Total	CNOOC	LNG	China	VCS units	1, 2, & 3	<a href="#">link</a>
21-Mar	Mitsui	Hokkaido Gas	LNG	Japan	From Mitsui portfolio	1, 2, & 3	<a href="#">link</a>
21-Mar	Gazprom	Shell	LNG	U.K.	VCS	1, 2, & 3	<a href="#">link</a>
21-Jan	Occidental	Reliance	Crude oil	India	VCU through CBL platform	1, 2, & 3	<a href="#">link</a>
21-Mar	Woodside	Trafigura	Condensate	N/A	Gold Standard, VCS		<a href="#">link</a>
21-June	Oman LNG	Shell	LNG	U.K.	N/A		



# CFTC Jurisdiction

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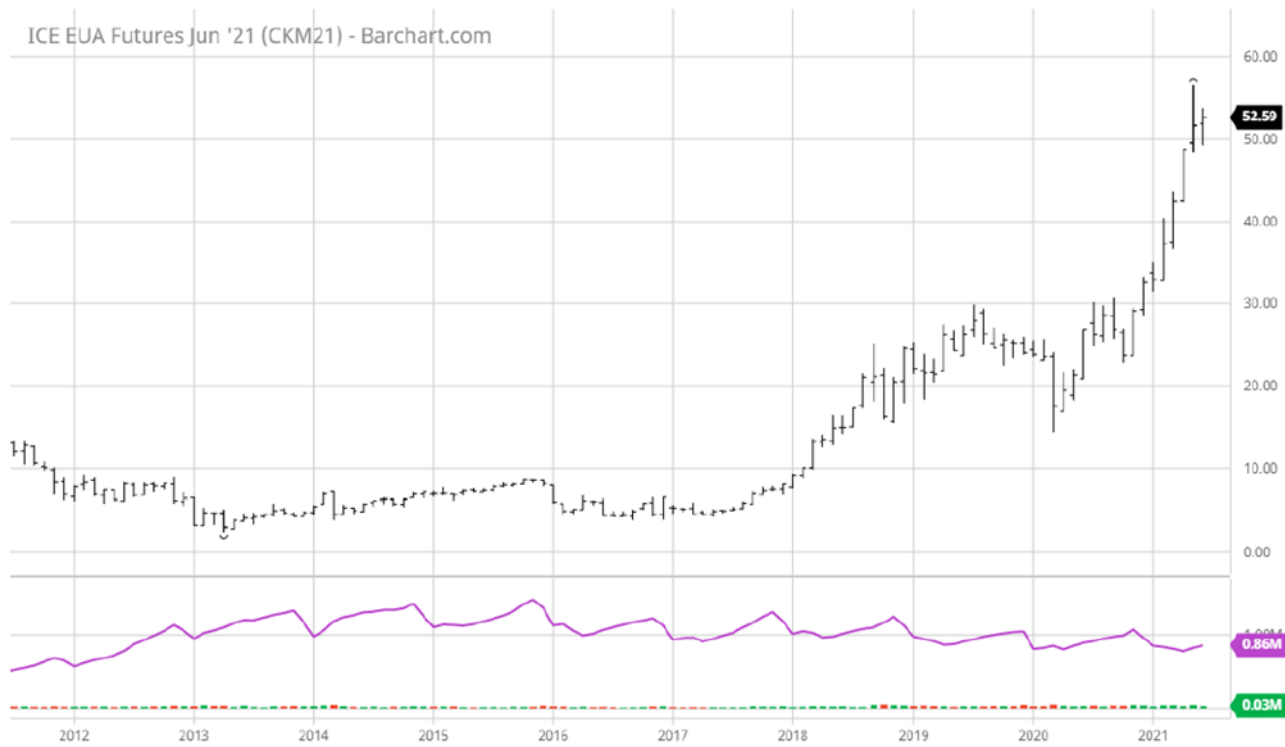
- “Commodities” consist of all “**goods and articles**, except onions ... and motion picture box office receipts ..., **and all services, rights and interests ... in which contracts for future delivery are presently or in the future dealt in.**”
- **Futures:** Standardized contracts for delivery of a specified amount of a commodity on a specified date in the future; may either be cash settled or physically settled through delivery.
  - Must be entered into on a registered exchange through a futures commission merchant and cleared through a central clearinghouse (e.g., CME).
  - Subject to speculative position limits.
- **Swaps:** Standardized or bespoke contracts that provide for the exchange, on a fixed or contingent basis, of one or more payments based on the change in value of a commodity that transfers, in whole or in part, the financial risk related thereto without also transferring ownership.
  - If traded OTC or on a swap execution facility, counterparties must be “eligible contract participants” (e.g., \$10M+ in assets).
  - Certain IRS and index CDS must be cleared and traded on exchange; otherwise margin may be required.
  - Must be reported to a swap data repository.
  - Effective January 2023, certain “economically equivalent” swaps will be subject to combined speculative position limits.

# Forward Contract Exclusion

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- “Any sale of a **nonfinancial commodity** or security for **deferred shipment or delivery**, so long as the transaction is **intended to be physically settled**” is a forward contract excluded from the futures and swap contract definitions.
  - Privately negotiated (non-standardized) contracts that contemplate deferred delivery of a specified amount of a nonfinancial commodity for a pre-determined price in the future.
  - Excluded forwards are generally not subject to CFTC regulation (other than for manipulation/fraud).
- RECs are nonfinancial commodities because they can be physically delivered and consumed (either through the purchaser emitting the amount of the carbon specified in the REC or retiring the REC itself through a registry like Verra).
- Forward exclusion for an REC transaction is **not available** if the transaction:
  - includes a unilateral termination right or pre-arranged provision allowing for financial settlement such that only price risk is transferred;
  - is structured as a commodity option (or “trade option”) or has certain non-qualifying embedded volumetric optionality; or
  - constitutes a “retail commodity transaction.”

# ICE EUA Futures Jun '21 (CKM21)



# Politics and Policy

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- The Administration will aggressively pursue emissions reductions where it has existing authority.
- Major carbon pricing schemes will require Congress
  - Clean Electricity Standard
  - Carbon Tax
  - Price on Carbon
  - Carbon Border Adjustment
- Carbon markets
  - Democrats want to reward early actors
  - Integrating separate climate markets is very complicated
- Congressional approach to carbon offsets
  - Industries in which near-term direct emissions reductions are unachievable
  - Agriculture (Growing Climate Solutions Act from Sens. Stabenow, Braun, Graham and Whitehouse)
  - Carbon capture, utilization and storage

# Politics of the Carbon Neutral Transaction

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- Democrats want strict standards with penalties for “greenwashing.”
  - Federal Trade Commission (FTC) – Carbon-neutral claims and advertising
  - Commodities Futures Trading Commission (CFTC) – “environmental commodities”
    - Must comply with requirements under the Commodity Exchange Act (with some exceptions like “forward transactions”)
  - Securities and Exchange Commission (SEC) – Enforcement and disclosures
- Progressives will push for offset/credit constraints and high prices.
- Moderate Democrats and most Republicans see offsets as a necessary bridge to help carbon-intensive industries survive.

# Questions?

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**John Goodgame**  
Partner  
jgoodgame@akingump.com  
Houston  
+1 713.220.8144



**Susan H. Lent**  
Partner  
slent@akingump.com  
Washington, D.C.  
+1 202.887.4558



**Kenneth J. Markowitz**  
Consultant  
kmarkowitz@akingump.com  
Washington, D.C.  
+1 202.887.4513



**W. Graham McCall**  
Counsel  
gmccall@akingump.com  
Dallas  
+1 214.969.2837



**Gabriel Procaccini**  
Partner  
gprocaccini@akingump.com  
Houston  
+1 713.250.2200



**Arshi Siddiqui**  
Partner  
asiddiqui@akingump.com  
Washington, D.C.  
+1 202.887.4075



**Christopher A. Treanor**  
Counsel  
ctreanor@akingump.com  
Washington, D.C.  
+1 202.887.4551



**James Romney Tucker Jr.**  
Partner  
jtucker@akingump.com  
Washington, D.C.  
+1 202.887.4279



**Wesley P. Williams**  
Partner  
williams@akingump.com  
Dallas  
+1 214.969.4233

Thank you for joining us!

