SHEARMAN & STERLING LLP

PROJECT DEVELOPMENT & FINANCE | APRIL 13, 2016

Cleantech and Transportation Intersect in the 2017 U.S. Federal Budget Proposal

With the federal budget process for FY2017 and related appropriation discussions expected to heat up in Congress over the next couple of months, the previously announced 21st Century Clean Transportation Plan (the "CTP") continues to be a featured aspect of the Obama Administration's budget proposal. Designed to create a more sustainable transportation system through technology and increased R&D, the CTP is a $320 billion initiative that would build on existing federal investments, including increased investments in public transit systems under the recently-enacted Fixing America's Surface Transportation (FAST) Act of December 2015. Attached is a summary of the CTP's principal goals and matters likely to be the focus of Congressional debate, including the Plan's proposed funding sources, which would include an upstream tax on oil (and a price increase at the pump).

Cleantech and Transportation Intersect in the 2017 Federal Budget Proposal

The enhancement of "clean" transportation through technology is a featured aspect of the Obama Administration's budget proposal for federal fiscal year 2017, which runs from October 2016 through September 2017 (the "**Budget**").[1]

The 21st Century Clean Transportation Plan (the "**CTP**" or the "**Plan**") is a multi-agency, $320 billion initiative to build a clean transportation system. The Plan builds on investments made by the federal government through the American Recovery and Reinvestment Act (ARRA) of 2009, which provided federal support for clean energy investments, the Build America Transportation Investment Center, which was established within the USDOT in July 2014 to facilitate transportation public-private partnerships (P3s), and the recently-enacted Fixing America's Surface Transportation (FAST) Act of December 2015, which significantly increased federal funding for public transit systems (although by less than the Administration had initially sought). The CTP also dovetails with the Administration's goals under Mission Innovation, the landmark 20-country agreement signed in connection with the recent Paris climate summit (COP21), to double federal funding for clean energy R&D over five years.[2]

Following is a brief summary of the Plan's principal goals. Based on early discussions in Congress in connection with the budget resolution process currently underway, the CTP is likely to be subject to robust partisan debate. In

[1] Office of Management and Budget, The Budget of the United States Government, Fiscal Year 2017, https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/budget.pdf.

[2] White House, Announcing Mission Innovation, https://www.whitehouse.gov/blog/2015/11/29/announcing-mission-innovation (Nov. 29, 2015, 7:01 p.m.).

particular, the CTP's proposed funding sources, which would include an upstream tax on oil (and a price increase at the pump) appear to present a significant hurdle to advancement of the Plan.

Repositioning and Refocusing Federal Investments

The first major goal of the CTP is to reposition and refocus the federal government's current transportation investments toward more sustainable, low-carbon investments. The CTP proposes increasing US investments in clean transportation infrastructure by about $20 billion per year on average over ten years (an increase of about 50%), as follows:

- The Budget would allot more than $10 billion on average over such 10-year period for the Federal Transit Administration ("**FTA**") New Starts, Small Starts and Transit Formula Grants programs, under which the US Department of Transportation ("**USDOT**") invests in the efficiency and performance of both existing and new transit systems. It would also create a new Rapid Growth Area Transit program to provide capital, on a competitive basis, to support the implementation of new bus rapid transit systems in communities experiencing rapid growth.
- The federal government would allocate an additional $7 billion per year on average over such 10-year period to investments in high-speed rail (particularly those that integrate advanced rail technologies) and an additional $1 billion on average over such period to a multi-modal freight program that would provide grants for innovative rail, highway and port projects seeking to reduce emissions.
- The Budget would almost double funds available through the USDOT's Transportation Investment Generating Economic Recovery ("**TIGER**") multi-modal competitive grant program, which supports innovative, sustainable investment in infrastructure. The TIGER grant program has made investments totaling nearly $4.6 billion to 381 different infrastructure projects nationwide.

Technology and Innovation at the State and Local Level

Second, the CTP aims to support innovation and the development of technologies at the state and local level through an allocation of approximately $10 billion per year on average over ten years for regional transportation initiatives.

A 21st Century Regions grant program would allocate an average of over $6 billion per year to metropolitan and regional planners to support regional strategies that are designed to achieve large reductions in greenhouse gas emissions and vehicle miles traveled. A Clean Communities competitive grant program would provide an average of approximately $1.5 billion per year for the implementation of "green" policies such as cleaning up existing transportation assets, transit-oriented development and initiatives reconnecting downtowns within urban centers.

Approximately $1.7 billion per year on average, to be made available under the Climate-Smart Performance Formula Funds program, would reward states for investing in projects that reduce air pollution and other transportation impacts, and a further $750 million per year would be reserved for Resilient Transportation competitive grants to support investments making mass transit more resilient to climate change.

Integration of Technologies

The third major goal of the CTP is the integration of new technologies into US infrastructure and the speeding of cleaner, transportation-focused, goods to market. The CTP would allocate approximately $2 billion per year on average over ten years to clean transportation R&D and accelerating the transition to smart, clean vehicle fleets and supporting infrastructure. Specifically, $400 million per year would support the deployment of self-driving and wirelessly connected vehicles, associated R&D, and the development of related infrastructure.

Another $600 million per year would be made available to the US Department of Energy ("**DOE**") to fund initiatives to expand access to low-carbon fuels and electric vehicles powered with clean-sourced energy. DOE, the Environmental Protection Agency ("**EPA**"), and the National Aeronautics and Space Administration ("**NASA**") would also receive an average of $1 billion per year for R&D related to clean fuels and transportation technologies, including (in the case of NASA) a fleet of low-carbon aircraft.

Funding

The principal source of funding proposed for the CTP is true to the Plan's clean energy goals. The Plan would assess oil companies a fee of $10.25 for each barrel of oil produced domestically or imported from overseas. It would also apply to imported (but not exported) petroleum products, although the precise application of the fee to such products is not clear as one barrel of crude does not produce one barrel of gasoline, for example.[3] A portion of the fee is anticipated to be passed on to consumers, who would see about a 25 cent per gallon increase in gas prices.

Conclusion

In the current political environment, it seems unlikely that the CTP will emerge unscathed from the budget process. Reactions to the Administration's funding proposal, which effectively would be an upstream fuel tax increase, have been strong on both sides of the political aisle, sowing the seeds for future debate on the feasibility of the Plan.[4] The degree to which elements of the Plan described above, and of other similar initiatives, such as the Administration's Clean Power Plan published last year,[5] gain traction in Congress (and are championed by the incoming President) will shape the future debate over federal clean energy programs and determine the feasibility of achieving the types of larger goals that have been proposed by the Obama Administration to combat climate change.

Special thanks to Shearman & Sterling Associate Alyssa Cowley for her contributions to this client publication.

[3] Congressional Research Service, Memorandum to Senate Energy and Natural Resources Committee, $*10 Fee/Tax on Oil* (Feb. 8, 2016).

[4] Brian Kahn, *Climate Economists React to Obama's Proposed Oil Tax*, Climate Central, http://www.climatecentral.org/news/climate-economists-react-obama-oil-tax-20000; Alan Neuhauser, *Obama Floats $10-per-Barrel Oil Tax to Fund Green Transportation*, US News & World Report, http://www.usnews.com/news/articles/2016-02-04/obama-floats-10-per-barrel-oil-tax-to-fund-green-transportation; Keith Goldberg, *Fossil Fuels Would Foot Bill for $320B Clean Transport Plan*, LAW360 (Feb. 9, 2016).

[5] See Robert Freedman, Jeff Salinger & Dillon Smith, *Changing Climate: What the Paris Accord Means for the US*, LAW360 (Mar. 11, 2016) (discussing the COP21, the CPP and other climate change initiatives of the Obama Administration).

CONTACTS

Paul J. Epstein
New York
+1.212.848.5266
paul.epstein@shearman.com

Robert N. Freedman
New York
+1.212.848.4340
robert.freedman@shearman.com

Patricia G. Hammes
New York
+1.212.848.8269
phammes@shearman.com

599 LEXINGTON AVENUE | NEW YORK | NY | 10022-6069