

Federal Climate and Energy Activities Weekly Roundup
October 26—October 30

Update on Senate Climate Legislation:

Late on October 23, Senators Barbara Boxer (D-CA) and John Kerry (D-MA) released a completed version of their climate change legislation, which is serving as the chairman's mark in the Environment and Public Works (EPW) Committee. The previous version, introduced September 30, left critical sections with placeholder language, including the formula for distributing allowances to covered entities under the cap and trade system the bill sets up. In many respects, the Senate bill tracks closely with the House-passed climate legislation, however, the Senate bill auctions a larger portion of the allocations than does the House bill, leaving fewer allocations to be given away. Specifically, the Senate bill would auction 25 percent of the allowances, and give the other 75 percent away freely at the onset of the program. The House would auction only 15 percent of allowances and give the other 85 percent away freely at the onset of the program. The Senate bill also commits far more of the revenue raised through the auction to the Treasury to keep the bill deficit neutral well into the future than does the House bill. Because the total pie of free allowances is smaller in the Senate bill, while most industries receive the same proportion of the free allowances, they get fewer allowances over all. For example, local electricity distribution companies receive 30 percent of the free allowances under both bills, but in the House bill, they would receive 30 percent of 85 percent of the total allowances, while in the senate they would receive only 30 percent of 75 percent of total allowances. The Senate bill also differs from the House bill in that Boxer and Kerry added additional sweeteners for trade-exposed industries, agriculture and forestry sectors, and early developers of carbon capture and sequestration. The EWP Committee held three days of hearings on the legislation this week, on October 27, 28 and 29, at which they heard from supporters and opponents of the legislation. At times, the hearings became heated with Committee members reportedly raising their voices at one another.

The EPA released a preliminary analysis of the Senate bill at the same time that the chairman's mark became available. According to that estimate, the bill would cost households on average \$100 annually. However, a more detailed analysis of the bill is not yet available. Testifying on October 27, EPA Administrator Lisa Jackson acknowledged EPA has not yet done modeling runs on the Senate bill, but rather relied on work it did to analyze the House bill earlier this year in preparing its preliminary analysis. The more detailed analysis is not expected for another four or five weeks.

Boxer has said that her committee is likely to markup the bill next week—as early as Tuesday November 2—however, she has not officially set the date as of this writing. Republicans on the Committee, lead by Ranking Member James Inhofe (R-OK), are threatening to boycott the markup, and therefore deny Boxer the quorum she needs to report the bill out of committee. They maintain the Committee should not mark up the legislation until members have been able to review the more detailed analysis by EPA with runs on the actual Senate bill as well as a CBO review of the legislation.

By the time the bill reaches the Senate floor, it could look significantly different than the version that comes out of the EPW Committee. Several other Senate committees have jurisdiction over portions of the bill; and while Kerry has said the Foreign Relations Committee, which he chairs, will not hold a separate markup of the legislation, the Commerce, Agriculture, and Finance Committees are expected to hold markups. In addition, changes are likely to be made after all the markups but prior to the bill coming to the floor, as Kerry, Senate Majority Leader Harry Reid (D-NV) and Senator Lindsey Graham (R-SC) work out compromise language in keeping with the partnership Kerry and Graham established in their October 11 *New York Times* op-ed piece.

Kerry last week pressed Reid to set a timetable requiring all relevant committees to markup the legislation by the Thanksgiving recess, however that does not appear likely to happen, as several of the other committee chairs do not feel that this provided them with sufficient time. In fact, Commerce Committee Chairman Jay Rockefeller (D-WV) stated October 29 that his panel might not consider the bill until next year due to his focus on health care legislation. Moreover, Senate Finance Committee Chairman Max Baucus (D-MT) has said he has “serious reservations” about the legislation. Both Baucus and Rockefeller have expressed discomfort with the bill’s 2020 target for greenhouse gas reductions (the Senate bill currently has its 2020 reduction requirement pegged at 20 percent below 2005 levels, while the House bill sets its 2020 requirement at 17 percent below 2005 levels). Baucus also said he would try to attach pre-emption language prevent EPA from regulating greenhouse gases under its Clean Air Act authority if the bill passes. The Senate bill currently does not prohibit EPA from acting under the Clean Air Act, but the House bill does.

EPA Publishes Proposed Rule on Emissions Controls- 60 Day Comment Period Commences

On October 27, the EPA published a proposed rule in the federal register regarding the regulation to control carbon dioxide and other greenhouse gases emitted from large stationary sources. This rule is the result of the *Massachusetts vs. EPA* Supreme Court Case and the resulting endangerment finding on greenhouse gases which allows EPA to regulate those gases under its Clean Air Act Authority. EPA announced its proposal on September 30, however the proposed rule was not available until now. Stationary emitters emitting 25,000 tons of carbon dioxide equivalent would be subject to the rule. However, many have suggested that, because the Clean Air Act has a threshold of only 250 tons per year of emissions, court cases could ensue that would force EPA to cover far smaller emitters. The deadline for comments is December 28.

Markey, and Lawmakers from China and 14 Other Nations Pledge Carbon Reductions

Meeting in Copenhagen over the October 24-25 weekend, House Energy and Commerce Subcommittee on Energy and Environment Chairman Edward Markey (D-MA), China’s head of its environment committee of its Congress, and lawmakers from 16 other major economies, pledged to support legislation promoting domestic carbon dioxide emissions cuts regardless of the outcome of international negotiations. They also called for wealthy countries to agree in to emission targets at the Copenhagen summit coming up in December. Language supported by Markey requiring developing countries such as China and India to pledge that their emissions would peak by 2025 was not included in the group’s final statement.

Senate Energy Committee Holds Hearing on Natural Gas Benefits

On October 28, the Senate Energy Committee held a hearing on the roll of natural gas in mitigating climate change. Natural gas is often considered a “bridge fuel” as the nation moves away from high carbon fossil fuels, but before the technology is available to produce more electricity through

renewable sources. Representatives from the natural gas industry stressed the importance of “transitional incentives” to close less efficient coal-fired power plants and shift to other fuel sources, including natural gas. However, other witnesses warned that too much demand for natural gas could cause volatility and high prices in that market.

New Legislation:

- On October 27, Senator Jeff Bingaman (D-NM) introduced S. 1933. The bill would establish an integrated Federal program that protects, restores, and conserves natural resources by responding to the threats and effects of climate change, and for other purposes. The bill was referred to the Committee on Environment and Public Works.
- On October 29, Senator Mark Udall (D-CO) introduced S. 2052. The bill would amend the Energy Policy Act of 2005 to require the Secretary of Energy to carry out a research and development and demonstration program to reduce manufacturing and construction costs relating to nuclear reactors, and for other purposes. The bill was referred to the Committee on Energy and Natural Resources.