

Federal Climate and Energy Activities Weekly Roundup
September 28—October 2

Update on Senate Climate Legislation

On September 30, Senate Environment and Public Works (EPW) Committee Chairman Barbara Boxer (D-CA) and Senate Foreign Affairs Committee Chairman John Kerry (D-MA) introduced the Clean Energy Jobs and American Power Act, S.1733, which will serve as the primary climate change legislation in the Senate. Like the Waxman-Markey bill in the House, the Boxer-Kerry bill would set up an economy-wide cap and trade system to reduce greenhouse gases. While in many respects, the bill tracks closely with the House legislation, it differs from the House bill in a few key areas. The following is a breakdown of some of the critical issues and how the Senate bill approaches them compared to the House bill.

- **Emissions Reduction Targets:** The Senate bill sets a more aggressive greenhouse gas (GHG) reduction target for 2020—a 20 percent reduction below 2005 levels. The House bill requires a 17 percent reduction below 2005 levels in 2020. Targets for the out years are the same for both bills: a 42 percent reduction in 2030 and an 83 percent reduction in 2050.
- **EPA Regulatory Authority:** Unlike the House bill, which would pre-empt the Environmental Protection Agency (EPA) from regulating carbon emissions under its Clean Air Act authority, the Senate bill does not prohibit EPA from issue such regulations. Rather, it provides EPA with even greater authority to set emissions standards when issuing permits for existing power plants. Kerry signaled this could be changed as part of negotiations if necessary to win votes.
- **Distribution of Allowances:** The Senate bill currently includes only placeholder language for the distribution of allowances. It specifies that certain industries would be given allowances—including producers of electricity, natural gas, home heating oil and propane—but does not include particulars as to how many allowances will be distributed without cost to such industries, nor does it include the phase-out time frame for the free allowances. However, the bill does specify that 25 percent of allowances would be auctioned off each year at a price, and that the revenue raised would go to the Treasury to keep the bill deficit neutral. The House bill would distribute 85 percent of admissions without charge to specific industries in the early years of the program and includes detailed language on who would receive those free emissions allocations and for how long they would be made available without cost. There is a turf battle brewing over which committee has jurisdiction over the distribution of allowances, with Senate Finance Committee Chairman Max Baucus (D-MT) maintaining his committee is the committee of jurisdiction and Boxer maintaining that distribution of allowances would fall under the EPW Committee's jurisdiction.
- **Nuclear Title:** The Senate bill includes placeholder language for a title aimed at providing incentives for nuclear energy and other clean energy technologies. At this point, the nuclear title does not detail how those incentives would work. Rather, it is likely to be fleshed out based on negotiations with Senators that strongly support nuclear energy such as Senator Joe Lieberman (I-CT), Senator John McCain (R-AZ) and Senator Lindsey

Graham (R-SC). McCain is pushing for additional provisions dealing with fuel storage, recycling and loan guarantees for nuclear facilities. The House bill does not include a nuclear title.

- Incentives for Natural Gas: Unlike the House bill, the Senate bill includes new incentives for producers of natural gas. It would reward companies that switch from higher emissions power sources to “clean” fuels, including natural gas.
- International Trade Issues: As of its introduction, the Senate bill does not include a “border tax adjustment” on imports from countries that do not have similar emissions controls. This portion of the bill is under the jurisdiction of the Senate Finance Committee, which provided only placeholder language the does not address this issue so far. The House bill includes carbon tariff authority.
- Offsets: Like the House legislation, the Senate bill allows for 2 billion tons of GHGs to be offset each year. However, unlike the House bill, which specifies that 1 billion of the offsets would come from international projects and 1 billion from domestic projects, the Senate bill limits the number of offsets for international projects to 500 million tons, leaving 1.5 billion for domestic projects. One issue of concern is how many tons of GHGs can realistically be offset in a given year, both domestically and internationally, and especially whether there actually are 1.5 billion tons available to be offset from domestic projects alone. A second concern is that international offset projects could be less costly than domestic offset projects, therefore the Senate bill could be more costly to industries looking to offset their emissions than the House bill. Another controversial issue is which agency will oversee the offset projects. The final version of the House legislation gives oversight of the offset program to the Department of Agriculture. However, this was a concession to House Agriculture Committee Chairman Collin Peterson (D-MN) in order win his and other farm state members’ support. The original version of the House bill would have given that authority to EPA. The Senate bill gives that authority to the President, but does not specify which agency would actually oversee the program.
- Allowance Price Levels: Both the House and Senate bills set a floor for prices of allowances that are auctioned off, and a price ceiling that when reached would trigger the auctioning of allowances that are otherwise kept in strategic reserve. The bills differ over how much the ceiling would rise in future years, but the mechanism is similar. The increased supply of allowances is intended to keep prices from rising too much. However, many industry groups are concerned that without an absolute “safety valve” limit on the price of allowances, that costs could spiral and there could be excessive volatility in the carbon market.

Hearings on the legislation are expected throughout October, with a likely markup the week of October 26. Senate Majority Leader Harry Reid maintains the Senate is on track to consider the legislation this year.

A section-by-section prepared by the EPW Committee is attached.

EPA Issues Greenhouse Gas Emissions Regulations

On September 30, EPA issued long-awaited regulations requiring entities that emit more than 25,000 tons of GHG annually to obtain permits from the EPA to account for their emissions. This regulation is the first step in EPA regulating GHGs under its Clean Air Act authority. While EPA maintains that only larger emitters will be regulated, it is likely that the decision to only regulate those emitters will be challenged in court, which would mean that smaller emitters could become

subject to the regulations. This is because the Clean Air Act was designed for the regulation of less prevalent air pollutants than carbon dioxide, and therefore the authority permit threshold is actually far smaller than EPA's proposal for carbon dioxide.

G-20 Leaders Agree to Phase out “Inefficient Fossil Fuel Subsidies”

At the close of the meeting of the 20 largest economies on September 25, participating world leaders announced that they had agreed to phase out inefficient fossil fuel subsidies, which they maintain “encourage wasteful consumption, reduce energy security, impede investment in clean energy sources, and undermine efforts to deal with the threat of climate change.” At this point, the proposal does not include details, however, G-20 energy and finance representatives have been tasked with developing implementation strategies and timeframes for the goal.

House Subcommittee Approves Bills Boosting Solar and Water-Energy Research

On September 30, the House Science and Technology Subcommittee of the Energy and Environment Committee approved H.R. 3585, the Solar Technology Roadmap Act and H.R. 3598 the Energy and Water Research Integration Act. H.R. 3585 authorizes \$6 million annually from 2013- 2015 for the Department of Energy to develop a “road-mapping process” for solar research, development and demonstration. H.R. 3598 authorizes \$60 million annually from 2011 until 2015 for research into energy and energy efficiency technologies that minimize freshwater withdrawal and consumption and water use efficiency.

New Legislation:

- H.R. 3659. Introduced September 29 by Representative David Wu (D-OR). The bill would amend the Internal Revenue Code of 1986 to allow a credit against income tax for amounts paid for energy efficient property placed in service in commercial buildings pursuant to an approved energy efficiency plan. Status: Referred to the Committee on Ways and Means.
- S. 1733 Introduced September 30 by Senator John Kerry (D-MA) and Senator Barbara Boxer (D-CA). The bill would create clean energy jobs, promote energy independence, reduce global warming pollution, and transition to a clean energy economy; to the Committee on Environment and Public Works.