

NRECA Concerns with Kerry-Boxer Draft Climate Legislation As Released Version (9/30/09)

Overview

Climate change legislation will profoundly impact electric cooperative members if not done with great care. NRECA has urged the Senate to develop legislation to reduce greenhouse gas emissions in an affordable, fair, and technologically-achievable manner. NRECA CEO Glenn English sent a letter to Senate Environment and Public Works Committee Chairman Boxer listing a number of improvements over the House-passed bill that are needed to protect cooperative consumers. After NRECA's initial review of this draft of the bill, it does not adequately address the concerns expressed to Sen. Boxer. NRECA will continue to work with all Senators interested in developing a workable, affordable piece of climate legislation at every step of the process. The September 30th draft does not meet that test and NRECA would oppose it if it were presented to the Senate in its current form.

Caps and Timelines

The emission caps are far too aggressive, particularly in the early years of the program. Achieving a 20% reduction in GHG emissions by 2020 would be approximately equivalent to cutting utility emissions in half over an 8 year period. A more realistic reduction schedule, particularly during the first decade, is critical. As Senator Rockefeller said on September 30, "Requiring 20 percent emission reductions by 2020 is unrealistic and harmful – it is simply not enough time to deploy the carbon capture and storage (CCS) and energy efficiency technologies we need. Period."

Further, beginning the program in 2012 is unrealistic, at best. Federal agencies, state governments, and other entities that need to establish regulations and program oversight will not be able to develop those regulations and programs by the time the bill becomes effective in 2012, even if it were enacted this year.

Allowance Allocation

The bill maintains the fundamental formula for distributing emission allowances to the electric utility sector – namely the so-called EEI "50-50-50 formula." Such a formula will lead to significant regional disparities for electricity consumers. While the bill contains a provision contained in the House-passed bill to protect against utilities receiving a "windfall" of allowances, the root cause of the disparities (the formula) should be fixed, rather than addressing one of the symptoms of that formula. Further, the bill continues to provide allowances to unregulated merchant coal generators, which will dilute the allowances provided to protect electricity consumers and instead provide additional profits to those companies. Allowances for the utility sector should be distributed to local distribution companies based on an emissions factor for the duration of the cap-and-trade program.

Cost Containment

The bill very closely follows the strategic reserve proposal from the Waxman-Markey bill, which does not place an upper limit on the cost of emission allowances. While some components of the strategic reserve are improved in this draft, other details are not yet included in the draft bill. Instead, the legislation should include a strong cost containment mechanism that guarantees prices will not rise above a certain level, such as a safety valve or price collar.

Offsets

These provisions will require more review, but NRECA believes that the U.S. Department of Agriculture is in the best position to work with farmers and landowners on offset projects. The Senate bill takes a step backward by allowing the President to decide which agency or agencies will take the lead with offset projects, rather than specifying the role USDA will play in this important component of a cap-and-trade program.

A Single, Integrated program

The bill also goes backwards on the issue of pre-empting other laws that could be used to require reductions of GHG emissions. As it stands, the Kerry-Boxer bill would result in the worst-case scenario of simply layering a new set of requirements on top of existing laws (that were never designed or intended to regulate GHG emissions). Further, the bill fails to effectively pre-empt states and other units of government from establishing their own cap-and-trade systems. Such a pancaking of new and old laws and regulations must be avoided in new legislation.

Technology Incentives

The bill contains several provisions that are intended to provide financial and regulatory incentives to develop carbon capture and sequestration technologies. These provisions require further review, but at first blush appear to be a move in the right direction, but remain insufficient to help ensure the timely development of CCS technologies. Additionally, several regulatory and liability hurdles remain to be addressed by the legislation to ensure a robust CCS program is available to achieve the reduction requirements in the bill.

Other Issues

New Source Performance Standards (NSPS) – The bill retains a House-passed provision requiring any coal-based generating unit that receives an initial permit after January 1, 2009 to meet certain performance standards. Retroactively applying this NSPS provision unfairly changes the rules of the road for those utilities that have permit applications pending. Any NSPS provisions provide belt-and-suspenders protections that are unnecessary under a cap-and-trade system, but if they are going to be included, the standards should apply only prospectively, not retroactively, and must be set at a level that is technologically achievable.

Nuclear Power – While the bill contains some provisions stating it is US policy to promote a revitalization of nuclear power, it does not go nearly far enough toward addressing regulatory, financial, and other hurdles limiting development of nuclear power.

Conclusion

Numerous provisions of the bill have not been reviewed in detail, and additional concerns may arise as a more in-depth review is conducted. For further information on NRECA's position on climate change legislation in the Senate, see the letter NRECA CEO Glenn English sent to Chairman Boxer on August 6, 2009 at <http://www.nreca.org/Documents/PublicPolicy/IssueSpotlight/SenBoxerAug2009.pdf>.