

# Citizens' Utility Ratepayer Board

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## Joint Committee on Energy and Environmental Policy

Comments on Pending Federal Energy Legislation

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Citizens' Utility Ratepayer Board

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### Background Assumptions:

1. Consumer rates will increase in the future.
  - Additional generation needed
  - Stricter emission limits require environmental (non-GHG) retrofits
  - Mandatory renewable portfolio standard
  - Push in build transmission
  - Push to improve system through "smart grid" technology
  - Fuel price volatility
    - Natural gas price is low at the moment, but may not stay low, coal and rail subject to congestion)
  - Normal operating expense increasing
    - Health care, pensions etc.
2. Consumers have a general concern about climate issues, and on average are willing to invest some level of capital (higher rates) in clean technologies. The question inevitably is how much capital and how high of rates. Also, certain investments may serve to offset increases in other cost drivers listed above.

### Pending Federal Legislation<sup>1</sup>: Consumer Comments

1. Allowance allocations are inadequate
  - Allowances are not allocated based on the level of historic emissions. Unlike SO<sub>2</sub> cap and trade programs, which capped emissions at historic level and then ramped down over time, allowing the utility to adjust and implement technology, the current federal bills leave some utilities with more allowances than they need, and other utilities with far less than needed.

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<sup>1</sup> HR 2454: The American Clean Energy and Security Act of 2009 (Rep.'s Waxman/Markey)  
S. 1733: The Clean Energy Jobs and American Power Act (Sen.'s Kerry/Boxer)  
S.1462: The American Clean Energy Leadership Act of 2009 (Sen. Bingaman )

- Total allowances start off at only 90% of 2005 emissions in Waxman Markey.
- Of the total pool of allowances, the electric sector receives 43.75% in 2012-2013, 38.89% 2014-2015 and then 35% 2016-2025. Between 2025 and 2029 allowance allocations are phased down to zero. KEY: after 2029 100% of emission allowances must be acquired in the market.
- Natural gas utilities receive 9% of the total pool of allowances between 2016 and 2025, and then phase down to zero by 2029.
- All allowances going to LDC utilities must be used for the benefit of customers.
  - Kerry/Boxer has certain requirements for ratable allocations within the utility to customer classes.
- Merchant generators receive 5% of electric sector allowances, leaving only 30% of an already inadequate supply for local distribution company electric utilities. Massive give away to merchant plants that sell into wholesale markets and that may in fact have no emissions. Nuclear plants would receive allowances even with no emissions.
- Allowances available to LDC's are allocated 50% based on historic emissions, and 50% base on historic sales. States that rely heavily on coal will not be allocated enough emission allowances to cover historic emissions under this allocation structure and must go to the market to acquire additional allowances.
- Customers are at risk for the shortfall in allowances. Utility rates will (likely) increase by the amount of a) allowances need to meet emissions purchased in the market at market prices, and/or b) the cost of technologies, retrofits, resource changes or any other utility actions to reduce GHG emissions.
- There are regional winners and losers under this mechanism. Shorting the coal dependent states in the middle of the country and requiring them to buy allowances, while at the same time allocating allowances to states that rely far less on coal and allowing them to sell the allowances creates a massive transfer of wealth from the middle of the country towards the coasts.
- Kerry/Boxer pulls 15% of the total allowance pool off the top, (the percentage increases in the later years) most to be used for deficit reduction. It keeps the same percentage allocations to the electric sector as Waxman/Markey, but some question whether the 35% is out of the total pool, or whether the 35% is out of the 85% left after the deficit reduction allowances are removed. If it's the latter, then the amount of allowances allocated to our Kansas utilities will be further reduced.

## 2. Lack of firm price protection for allowances

- Allowances will be traded freely on the market. No restriction on who can buy, sell or hold. Likely will be a derivatives market created also. The market price of the allowances will determine the level and severity of cost impact on consumers where allowances are needed to cover emissions.
- Neither Waxman/Markey nor Kerry/Boxer contains a firm market price cap for allowances. Both take a small percentage of total allowances and hold them in a strategic reserve to be sold when prices go above certain trigger levels. Kerry/Boxer triggers at \$28/ton in 2012, but increases between 5-7% plus inflation each year following. Waxman/Markey triggers at \$28/ton in 2012 but then moves to a trigger price 60% above the 36 month rolling average in 2015.

- KEY: The strategic reserve *may* have the effect of cushioning price increases; it will *not* create an absolute price cap.

### 3. Offsets

- Both Waxman/Markey and Kerry/Boxer allow up to 2 billion offsets of allowances which can be split between domestic and international sources.
- Both Waxman/Markey and Kerry/Boxer require the creation of an agency to monitor and verify the integrity of the offsets. Potential for fraud in this program, but allowing this flexibility might help reduce the overall cost impact of reducing GHG emissions.
- Some question about how we will account for these offsets in consumer rates. If a utility buys trees and Brazil as an offset, how do we account for this in the rate setting process?

### 4. Climate Change Consumer Refund

- The allocation of allowances goes from 35% to the electric sector in 2025 to zero in 2029. After 2029 all allowances must be purchased at market. At the same time, under both Waxman/Markey and Kerry/Boxer emission caps decrease from 17% below 2005 levels in 2020 to 42% below 2005 levels in 2030. In this ten year period there is a huge reduction in allowed emissions but utilities lose all the free allowance allocations.
- Under Waxman/Markey, the allowances don't simply disappear. Instead of allocating allowances to the electric sector, the government sells the allowances in the market and deposits the proceeds in the "Climate Change Consumer Refund" account at the treasury. (estimated at 54% of all allowances in 2050)
- Secretary of the Treasury shall provide tax refunds on a *per capita* basis to each household each year from this fund.
- KEY: Entire program moves from allocations to utilities to a program that provides direct tax refunds to consumers.

### 5. Low income support: The "Energy Refund Program"

- Waxman/Markey allocated 15% of the total pool of allowances *in all years* to be sold and the revenue used to fund the Energy Refund Program. The Energy Refund Program will provide cash payments to cover loss of purchasing power for households whose gross income does not exceed 150% of federal poverty level.

### 6. Renewable Energy Standard

- Waxman/Markey has mandatory Federal Energy Efficiency and Renewable Electricity Standard. By 2020, 20% of base energy net of hydro and nuclear must be supplied through the submission of renewable energy credits (REC's)
  - REC's may be sold, transferred and exchanged. Can be banked for three years.
  - Up to 25% can be supplied by "demonstrated savings" through energy efficiency.
  - Increase Energy efficiency portion to 2/5 with Governor's petition to FERC.
  - Only retail electric suppliers that sell more than 4 million MWh's/year
- Alternative Compliance Payments
  - \$25 per MWh: 2.5 cents per kWh. (Inflation adjusted after 2009)
  - Paid directly to the state in which the retail electric supplier is located and must be used only to deploy technologies that generate electricity from renewable energy sources or to implement cost-effective energy efficiency programs.

- Customer Impact in Kansas
  - Likely neutral given Kansas aggressive RPS standard
  - Additional flexibility with energy efficiency option and alternative compliance payment gives broader set of option than current Kansas law
- Kerry/Boxer has no renewable energy standard (either energy efficiency or renewable power). Bingaman does have RPS. Some question whether it will be pulled into Kerry/Boxer.

#### 7. Carbon Storage and Research Corporation

- “Accelerate the commercial availability of carbon dioxide capture and storage technologies and methods” by issuing grants “to support commercial-scale demonstrations of carbon capture or storage technology projects capable of advancing the technologies to commercial readiness”
- Operated by the Electric Power Research Institute (EPRI)
- Funded by assessment on Electric utilities
  - \$1 billion per year for 10 years
  - EPRI gets 5% Administrative fee
  - 50% goes to “early movers”
    - Utilities that commit to large scale CCS projects designed to capture a “substantial portion” of emissions before the corporation awards its first grant.
- If 40% of State Regulatory Authorities submit written notices of objection within 180 days of enactment, the corporation “shall not be established”.
- Waxman/Markey also provides 2-3% of total allowance pool allocated to help electric utilities install carbon sequestration technologies.

#### Final Thoughts

- Current allowance scheme could prove expensive to Kansas customers.
- Other sectors received far fewer allowances. Some risk that the allocation scheme can shift and the electric sector could end up with fewer allowances as legislation passes.
- No assurances that government will actually return the allowance sales revenue given other needs for federal revenue sources.
- It would likely be more productive to have a simple program run like the successful SO<sub>2</sub> allowance program where emissions are initially covered and then reduced on a reasonable timeline consistent with technology availability
- Seeing a broad shift of regulatory authority, especially transmission, from states to federal regulators.
- EPA will likely act first to regulate GHG emissions.
  - Clean Air Act Section 202 GHG regulation for cars and light duty trucks could be finalized as early as March. Once this step is taken, GHG fall under Clean Air Act and EPA must take regulatory action.
  - Far more likely than Climate bill.