

A Critique of the American Clean Energy and Security Act of 2009 The “Waxman-Markey” Bill

by New Energy Economy

The “Waxman-Markey” bill would establish a “cap-and-trade” system, which sets limits on greenhouse gas emissions over the next 40 years. By 2050 it projects reductions of 83% from 2005 levels for the United States. It does this primarily through the establishment of 1) a “cap” on emissions and the annual issuance by the government of permits to emit greenhouse gases, both of which—the cap and the emissions permits—come down steadily year after year, and 2) a tradable market to buy and sell those permits to emit global warming pollution. That’s why it’s called a “cap-and-trade” system.

The Waxman-Markey bill aims to help the world “avoid atmosphere greenhouse gas concentrations above 450 parts per million carbon dioxide equivalent; and global surface temperature 3.6 degrees Fahrenheit (2 degrees Celsius) above the pre-industrial average.” However, as highlighted below, the cuts proposed in the bill will fail to stabilize emissions at that level.

The targets and “offsets” could let emissions to rise until 2030: The bill sets a goal of a 17% reduction in greenhouse gases (GHGs) from 2005 levels by 2020. This is about 3% below U.S. GHG levels in 1990. However, the Intergovernmental Panel on Climate Change has stated that industrialized nations must reduce emissions by 25-40% below 1990 levels by 2020 to even have a reasonable chance of stabilizing CO2 levels at 450ppm. Unfortunately, a growing number of scientists now believe that the global warming assessment by the IPCC was too conservative¹, and that we need even more dramatic cuts in emissions if we are to avoid catastrophic climate change.

Worse still, there is a provision made for huge numbers of “offsets” – where companies can pay for clean energy projects elsewhere - instead of reducing their own greenhouse gas emissions. The bill allows for up to 2 billion tons worth each year, which is more than one-quarter of the U.S.’s total annual GHG emissions.

What this means is that a company could, instead of actually reducing emissions here, buy inexpensive “offsets” in a developing country and have their emissions stay the same or even rise. With so many offsets available it will be difficult to regulate such a program throughout the world. The European Union has been using offsets and has had tremendous difficulty in verifying that the offsets are actually reducing emissions.

Because of these offset provisions, there are good analyses that predict that the Waxman-Markey bill would likely yield no substantive reductions of carbon emissions in the United States until after 2030. This would be the case even if GHG emissions permits were auctioned.

(Breakthrough Institute -

http://thebreakthrough.org/blog/2009/05/the_climate_bills_catch_22_is.shtml#more).

¹ As reported on May 19, 2009, global warming's effects this century could be twice as extreme as estimated just six years ago. Earth's median surface temperature could rise 9.3 degrees F (5.2 degrees C) by 2100, scientists at the Massachusetts Institute of Technology found, compared to a 2003 study that projected a median temperature increase of 4.3 degrees F (2.4 degrees C).

Furthermore the penalties for exceeding the emissions limits are low and could allow for polluters to continue polluting. The bill establishes a penalty for any company that does not have sufficient emissions credits to cover its actual emissions. The penalty is “twice the fair market value of emissions allowances established for emissions.” It is possible, given the ups and downs of markets and product prices, that there could be years when fossil fuel companies would make more money by using more carbon-based fuels than they have permits for and then pay the penalty.

In brief, we believe the bill will allow emissions to continue to rise – allowing potentially dangerous feedback loops to occur, such as the release of methane from the Arctic or precipitous melting of Greenland and the Antarctic.

Huge Giveaways to Energy Companies: A huge percentage of the permits to emit GHGs will be given away rather than sold via an auction. Only 15% of the permits will be auctioned for roughly the first 15 years or so of the program, despite President Obama’s strong support for a 100% auction during his campaign. Coal companies are the big winners; “local distribution companies,” which are overwhelmingly coal-related, and “merchant coal” companies receive 35% of the permits, also known as “allowances” (as in an allowance to emit global warming pollution). Other global warming polluters who receive free allowances are local natural gas distribution companies (9% of the permits), “energy-intensive, trade-exposed industries” like steel, paper, aluminum and cement (15%), oil refiners (2%), and coal companies to “cover the costs of installing and operating carbon capture and sequestration technologies”(5%). This adds up to about 65% of the allowances being given for free to carbon polluters, 50% to the fossil fuel industry directly.

The Director of the Office of Management and Budget, Peter Orszag, was blunt in his assessment before a Congressional Hearing saying free allowances “would represent the largest corporate welfare program that has even been enacted in the history of the United States”.

Additionally, this bill would establish a carbon market is open to anyone, not just those entities which emit greenhouse gases. For example, Wall Street firms whose primary purpose is to make money for their investors can buy and sell pollution permits. Given the recent problems with the sub-prime mortgage crisis, there is concern about the potential for this system to be abused by those out to make quick profits.

The United States can learn from the European carbon market where too many carbon permits were given for free to carbon-intensive corporations rather than requiring those companies to purchase these permits. This has led to extreme price volatility for consumers, windfall profits for corporations, and there has been no reduction in global warming pollution.

Fails to protect low and middle-income families: Interestingly, most of the free allowances to carbon polluters are described as “consumer protection” even though no consumer organizations have been advocating for this plan. The advocates for it were representatives like Congressman Rick Boucher of Virginia who received over \$176,000 from the coal industry for the 2007-2008 Congressional election cycle. Since the passage of this bill out of committee Boucher has said publicly that that the legislation will “create the opportunity for increasing coal production.” The legislation assumes that coal companies and other large corporations can be trusted, or regulated, to pass along to consumers the savings they will gain from the free

permits they will be given. And remember that they can sell these emissions permits on the carbon market that is being set up.

The Environmental Protection Agency in April 2009 released its analysis of the bill and found that “freely distributed allowances to firms tend to be very regressive. Higher income households may actually gain at the expense of lower income households under this policy.”

Public Citizen has noted that “the committee’s plan to distribute allowances to coal utilities will set up a legal fight in all 50 state utility regulatory commissions over how exactly the money will be returned to families and how much utilities can skim off the top—a fight that anti-poverty and consumer groups lack adequate resources to wage, given the army of lawyers utilities hire and the millions in campaign contributions that they make.” What anti-poverty groups in New Mexico will have the resources to adequately intercede in those jurisdictions and challenge PNM? Last year PNM made 95 million dollars in profit.

Coal Wins – Consumers Lose: Coal companies are big winners under this legislation. They receive 35% of emissions permits for free via Local Distribution Companies and merchant coal plants. They also receive 5% of the funds, which will cover the costs of installing and operating carbon capture and sequestration (CCS) technologies. CCS is a technology that 1) barely exists, 2) is roughly a decade from perhaps being commercially viable on a large scale, 3) surrounded by serious safety questions such as leakage into underground drinking water and local asphyxiation. CCS involves the pumping of billions of tons of liquefied carbon dioxide into the earth, or under the sea. New coal plants would be required to capture 50% of their carbon emissions -- but not until 2025. Plants built after 2020 must capture 65%. It is certain that, a dozen or so years from now, if these provisions are not changed, the coal industry will be expending tens of millions of dollar in advertisements, campaign contributions and lobbying to extend those deadlines if it turns out that extensive carbon capture and sequestration is not possible.

The bill will provide some support for new energy technologies and for consumers, but it is small in comparison to the enormous giveaways proposed for coal and fossil fuels. Specifically, 1.5% of the allowances will go to states to benefit users of home heating oil and propane; approximately 7% to states for renewable and energy efficiency programs; approximately 2% to the automobile industry for electric vehicles and other advanced technology and deployment; 1% for “Clean Energy Innovation Centers;” 5% to prevent tropical deforestation; 2% for domestic adaptation and 2% for international adaptation to the negative impacts of a changing climate; and ½ of a percent for worker assistance and job training. These figures are generally for the first 10 years of the program; most are increased after that first 10 year period.

Could actually undermine the development of renewable energy: There is a renewable electricity/energy efficiency requirement for states of 20% by 2020, a minimum of 12% renewables and 8% efficiency. (For comparison New Mexico has a 30% requirement by 2020.) *The Energy Information Administration, a government agency, has estimated that as a result of existing state laws and other factors, there could be more renewable energy generated without this federal renewable energy provision than with it.* If this bill is passed it would supercede existing state renewable energy and efficiency laws, which exist in about half the states. Concerns have also been expressed about the exemption of nuclear power and coal with carbon capture and storage from the baseline against which renewable energy increases are measured. A more positive feature is that the bill does call for the development by several

federal departments of plans for the siting of offshore renewable energy facilities, a potentially huge source of clean energy.

Severely Restricts the EPA and States from taking action: There are serious restrictions on the power of the Environmental Protection Agency (EPA) to do its job. According to an analysis by the Sierra Club, the bill “eliminates EPA authority under the Clean Air Act to set performance standards for CO₂ from sources covered under the cap, including coal-fired power plants. The bill does set modest standards for new coal plants. Additionally, the bill eliminates the existing requirement that new and modified sources of ghg’s undergo a case-by-case review process that requires stringent GHG limits.” The bill prohibits any greenhouse gas from being listed as a “criteria pollutant” or a “hazardous air pollutant.” The bill also bars states that have already passed such legislation to implement or enforce a cap on greenhouse gas emissions between 2012 to 2017, but it does allow regulation of emissions by other means during this period.

Good provisions for energy efficiency and a smart grid: The one real bright spot for the bill is that there is a broad support for energy efficiency standards and investments across the economy. Building codes are improved 30% by 2010 and 50% by 2016 (essentially the Architecture 2030 goals). \$500-\$3000 per household is provided for families which weatherize their homes to reduce energy use at least 20%. Similar financial support is also provided for weatherization of commercial buildings. Up to \$10,000 per house is provided for installation of renewable energy technology. Natural gas utilities must use 1/3 of the value of their free permits for energy efficiency programs.

The document also calls for various kinds of infrastructure support for the development of plug-in hybrids and electric vehicles, such as plug-in hybrid charging stations, retooling factories to manufacture electric vehicles and purchase of batteries. It enacts various measures to strengthen the development of a “smart grid,” which means the modernization of our electricity and transmission system so that it can better use digital information and technology, better integrate small-scale renewable energy, incorporate “demand response” and energy efficiency mechanisms, and in other ways strengthen the capacity of the electrical grid to be more energy efficient, consumer-friendly and effective.

Review of the program is infrequent: Provision is made for an overall review of the entire program and how well it is working by the National Academy of Sciences. This is a good thing, but is required only every four years. Given the accelerating pace of climate change, as indicated most dramatically by what is happening with Arctic sea ice, a more frequent assessment by NAS seems prudent. After the NAS assessment, the President is charged with submitting legislation to Congress based on NAS recommendations as far as any acceleration or adjustments to the overall program.

Summary: We believe that America can and needs to do better than what is proposed in the Waxman-Markey bill, and we urge you to get involved in helping to improve this bill. You can go right now to New Energy Economy.org at http://org2.democracyinaction.org/o/5385/t/5599/petition.jsp?petition_KEY=226 to sign the petition and stay informed.

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