



KANSAS ELECTRIC POWER COOPERATIVE, INC.

NEWSMAKER

A Touchstone Energy® Cooperative 

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Carbon Regulation

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Two years ago, the U.S. Supreme Court ruled that the Environmental Protection Agency (EPA) has the authority and the obligation to regulate greenhouse gases under the Clean Air Act and, if an endangerment ruling is made, the EPA is obligated to regulate them. As such, the choice is no longer between legislation or no legislation. It is between legislation or regulation. One way or another, greenhouse emissions would be controlled by a federal program either under the Clean Air Act or under a new piece of legislation approved by Congress.

Under the Clean Air Act, the EPA now must issue rules regulating carbon emissions from all major sources, including vehicles, factories, and fossil-fuel power plants. The law specifically states that EPA “shall” (i.e. must, not may) regulate dangerous pollutants once they are found to endanger public health or welfare.

Recently, the EPA began finalizing a timeline for greenhouse gas regulations, starting with the formal determination that no power plants, industrial facilities or other stationary sources will be federally regulated for greenhouse gases before January 2011.

It’s the start of a series of official measures related to greenhouse

gas regulations expected this year. Those include EPA’s vehicle emissions standards, which could be finalized later this summer; a determination on the size of industries that would be subject to greenhouse gas regulations; and a rule that could add the oil and gas industries to the 31 industries already required to report their greenhouse gas emissions.

To get the process started, the EPA has done two things. First, it affirmed part of a rule that Bush EPA Administrator Stephen Johnson issued in December 2008, shortly before leaving office. Johnson had ruled that new power plant and industrial facilities and those planning to expand were not required to get Clean Air Act Prevention of Significant Deterioration (PSD) permits for any pollutant or greenhouse gas until that pollutant was officially regulated by the EPA. If EPA only monitored the pollutant, that didn’t count, according to Johnson’s ruling, and the Obama EPA agreed.

Second, it clarified that any PSD permit requirements, including for greenhouse gases, would start when a nationwide rule for regulation takes effect. For GHGs, ‘takes effect’ means when the first national rule regulating controlling GHGs takes effect. If finalized as proposed,

the rule limiting GHG emissions for cars and light trucks would trigger these requirements in January 2011.

Current EPA Administrator Lisa Jackson has stated that she plans to issue that final vehicle emissions standard soon. The vehicle standards began with an agreement last spring between President Obama and the auto industry, which wants to avoid the patchwork of state standards that would result if California and other states set their own rules. The EPA’s endangerment finding in December, which included the determination that emissions from motor vehicles contribute to greenhouse gas buildup in the atmosphere and, thus, climate change, set the legal groundwork for action.

Jackson also repeated her commitment to focus greenhouse gas regulations on only the largest emitters in an effort to protect the donut shops and other small businesses that opponents say couldn’t afford regulations. The agency will set the emission threshold, initially discussed at 25,000 tons a year and now likely to be 75,000 tons, later this year. Interesting that under the Clean Air Act, thresholds of 100 to 250 tons per year trigger regulations. The EPA has made a decision that these low limits would require almost all small businesses to register and be regulated and that this would be unworkable. One wonders whether the EPA has the authority to deviate from the law in this manner.

Congressional Pushback

The EPA administrator has been discussing the 2011 delay and protective measures to ease the impact of greenhouse gas regulations for weeks, but it hasn't stopped the pushback from Congress.

At last count, 43 senators and 193 House members (including 33 Democrats) have signed on to at least one of nine bills attempting to block the EPA from implementing carbon regulations, according to the environmental group 1Sky:

- Sen. Lisa Murkowski (R-Alaska) and Reps. Joe Barton (R-Texas), Jerry Moran (R-Kan.), Ike Skelton (D-Mo.), Jo Ann Emerson (R-Mo.) and Collin Peterson (D-Minn.) have launched four different resolutions intended to have Congress override the EPA's authority to regulate greenhouse gases under the Clean Air Act by disapproving the endangerment finding.
- Sen. Jay Rockefeller (D-W.Va.) and Reps. Nick Rahall (D-W.Va.), Alan Mollohan (D-W.Va.) and Rick Boucher (D-Va.) launched bills in their respective chambers proposing a less enduring plan that would instead delay EPA action on greenhouse gases other than vehicle emissions for two years.
- Other bills by Reps. Marsha Blackburn (R-Tenn.), Earl Pomeroy (D-N.D.), Skelton, Emerson and Peterson would amend the Clean Air Act so the term "air pollutant" does not include carbon dioxide, water vapor, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons or sulfur hexafluoride.

Blackburn's would add that "Nothing in the Clean Air Act shall be treated as authorizing or requiring the regulation of climate change or global warming," and Peterson's would forbid the EPA from considering indirect land use changes when calculating the lifecycle emissions of biofuels.

Meanwhile, Sens. Joe Lieberman (I-Conn.) and John Kerry (D-Mass.) introduced a climate and energy bill, labeled The American Power Act, on May 12. Contained in the 987 page bill are a plethora of subjects which include: nuclear power; offshore drilling; coal; carbon capture and sequestration; renewable energy and energy efficiency; transportation; pollution reduction; emission allowances; disposition of allowances; regulation of greenhouse gas markets; consumer protection; and job protection and growth, just to name few. The senators have cited a growing and unprecedented bipartisan coalition from the business, national security, faith and environmental communities in support of the legislation.

The bill seeks to reduce domestic greenhouse gas emissions according to a schedule: 17% below 2005 emissions levels by 2020, 42% below by 2030, and 83% below by 2050. To aim for a reduction in emissions of 83% by 2050 is not achievable. That would be equivalent to U.S. emissions in 1910 according to Department of Energy historical statistics on energy consumption. Then, the U.S. population

was about 92 million people. By 2050, the Census Bureau estimates the U.S. population will be 420 million. That means by 2050 the per capita emissions will have to be reduced to one-quarter the per capita emissions in 1910 and take us back to the economy in about 1875.

The bill establishes a price range for CO2 emissions allowances with a floor of \$12 per metric ton (increasing annually by 3% + inflation) and ceiling of \$25 (increasing annually by 5% + inflation). According to the EPA, US emissions of CO2 in 2009 were 5787 million metric tons. Thus, if the legislation is applied to all US emissions, the cost would be \$69 billion (floor) to \$145 billion (ceiling) annually, increasing at 6 to 8+ % each year.

On the plus side, the legislation would authorize \$54 billion in federal loan guarantees for new nuclear plant construction. The bill also offers \$2 billion a year for the commercial-scale deployment of technology that captures and stores carbon dioxide emissions from coal-fired power plants.

President Obama said energy prices will "necessarily skyrocket." That's because of two factors. First, producers will have to purchase emissions permits or allowances, adding to the cost of doing business, a cost that will be passed on to the consumer, and second, these producers will be forced to buy the privilege of continuing to produce, from the Chicago Climate Exchange, which will raise the cost of doing business even more. Again this will be passed on to the consumer. The

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Congressional Pushback

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Chicago Climate Exchange will be the only exchange for trading these credits and will make hefty commissions buying and selling these credits.

Much speculation still exists as to whether or not there is enough time or support, in either chamber, for a comprehensive climate and energy bill at this time. Immigration reform seems to have supplanted climate issues in Washington. In addition, the recent oil spill in the Gulf has brought new scrutiny to energy and environmental issues and clouded any effort to increase offshore drilling. As these agendas move forward, KEPCo will be in contact with our Kansas delegation, in addition to NRECA, to try and ensure that any legislation or regulation has the least possible impact on rural Kansas.

Ward Loyd Nominated to KCC

Governor Parkinson has nominated former state representative Ward Loyd of Garden City to the Kansas Corporation Commission (KCC). Loyd's appointment fills the vacancy left by the resignation of Michael Moffett. Loyd served in the Kansas House of Representatives from 1999 to 2007.

Most recently, Loyd practiced law in Garden City while also serving as general counsel for Garden City Community College and the Southwest Kansas Area Cooperative District 613 in Ensign.

Kansas Co-op's Visit Kansas Delegation



A contingent of 33 Kansas electric cooperative representatives attended the NRECA Legislative Conference in Washington, D.C. on May 2, 3 and 4. Phil Wages, Director, Member Services, Government Affairs and Business Development represented KEPCo.

More than 3,000 electric cooperative representatives from across the country were present in Washington to convey industry issues to their respective congressional leaders. Each year this conference is the largest electric cooperative grass roots event in the nation's capitol.

Issues discussed with House and Senate members included RUS funding, the regulation of derivatives, PMA contracts, and energy legislation, among others.

Touchstone Energy Brand Reaches 700 Co-op Members

Touchstone Energy cooperatives have reached a milestone as membership in the brand has reached 700 members.

"Reaching the 700 member co-op mark is really a testament to the strength of the programs offered to co-ops, and what those programs offer to members at the end of the line," said Mike Sims, president of Touchstone Energy Cooperatives board of directors.

Membership activity has shown an increase recently as more than a dozen cooperatives have joined Touchstone Energy during the past few months.



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National Broadband Plan Could Impact Electric Co-ops

The Federal Communications Commission (FCC) delivered an ambitious “National Broadband Plan” to Congress on March 17, as mandated by last year’s stimulus bill.

The plan is a compilation of FCC recommendations, some of which would impact electric cooperatives if enacted into law.

Electric cooperatives welcomed the promotion of broadband in rural areas. “NRECA supports the goals of the FCC plan for universal broadband,” said NRECA CEO Glenn English. “As rural communities plan for the future and look for ways to remain sustainable in a world increasingly connected to and dependent on the Internet, widening access to broadband will be critical.”

However, the FCC recommended revoking an important exemption that could affect consumer’s electric bills. The exemption allows co-ops to determine fees for attachments to cooperative-owned utility poles. Cable

television and telecommunications companies have a federal right to access utility poles to attach equipment and enable the



transmission of their broadcasts or communication services.

The federal government regulated the amount of money that for-profit utilities can charge for a pole attachment, but not for electric cooperatives.

Congress noted, “cooperatively-owned utilities, by and large, are located in rural areas where often over-the-air television service is poor. Thus customers of these utilities have an added incentive to foster the growth of cable television in their areas...pole rates charged by municipally owned and cooperative utilities are already subject to a decision making process based upon constituent needs and interest.”

Revoking the exemption would leave electric consumers subsidizing for-profit telecoms and cable companies, whether or not those consumers want broadband service. A quick increase in access to poles could also compromise the safety and reliability of electric service.