

Federal Legislative Outlook For Public Power Utilities

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American Public Power Association

TMEPA Meeting
July 15, 2010

APPA Overview

- The American Public Power Association (APPA) is the service organization for the nation's more than 2,000 community-owned electric utilities that serve more than 45 million Americans.
- It was created in 1940 as a non-profit, non-partisan organization, and its purpose is to advance the public policy interests of its members and their consumers, and provide member services to ensure adequate, reliable electricity at a reasonable price with the proper protection of the environment.
- APPA is governed by a regionally representative Board.
- Approximately 62 staff work in APPA's office in D.C., with eight of those in the government relations department.

Overview

- Climate change
- Energy/electricity policy
- Tax and financing issues
- Rail customer legislation
- Financial regulatory overhaul
- Telecommunications
- Cyber security

Climate Change – House

- H.R. 2454 passed the House of Representatives 219-212 on June 26, 2009.
 - Title I – Clean Energy
 - Title II – Energy Efficiency
 - Title III – Reducing Global Warming Pollution -- Establishes an economy-wide cap and trade program to reduce greenhouse gas emissions, primarily CO₂. Adds new Title VII to the Clean Air Act. 17% reduction by 2020; 83% by 2050.
 - Title IV – Transitioning to a Clean Energy Economy

Climate Change – APPA Priorities

- APPA letter sent on September 15, 2009, to all Senators stressing APPA's priorities based on the House-passed bill:
 - Price collar must be included
 - Allocate (not auction) all allowances to LDCs - no direct allocation to unregulated merchant coal generators
 - Allocate enough allowances to electricity sector to avoid immediate fuel switching
 - Clearly separate greenhouse gas emissions reduction program from Clean Air Act
 - Targets and timelines should allow for new technology

Senate Action on S. 1733

- Environment and Public Works Committee held hearings on the bill the week of Oct. 26; more than 60 witnesses testified.
- “Mark up” scheduled the week of Nov. 2, 2009, but boycotted by Committee Republicans due to “incomplete” analysis of the bill by EPA.
- Unable to vote on amendments (Committee rules require two members of the minority to be present). S. 1733 was approved 11-1. Sen. Baucus (D-MT) dissented.
- As approved by EPW, S. 1733 will not pass on the Senate floor, but efforts continue...

Continuing Senate Efforts to Enact Climate Legislation

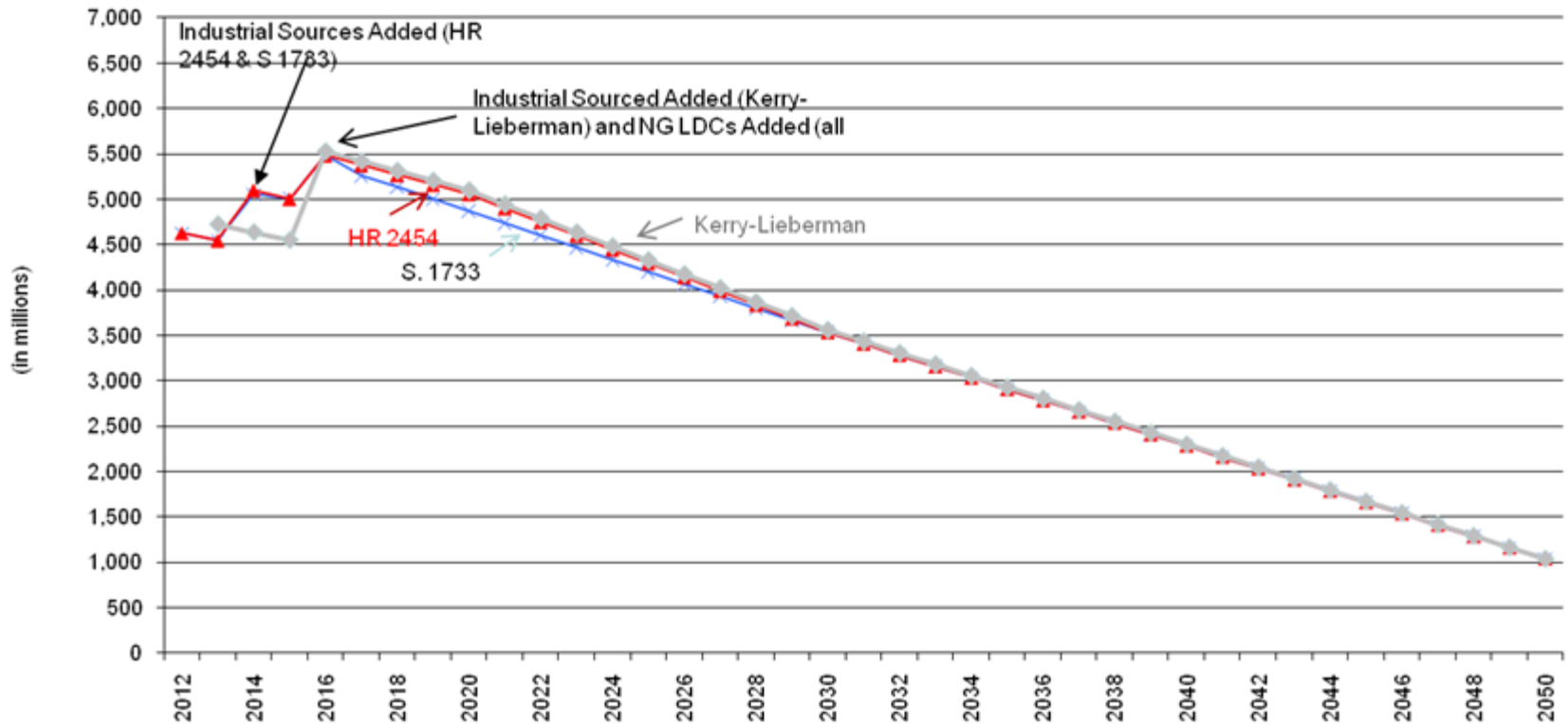
- Kerry-Lieberman Bill
- Utility-only Bill (Bingaman)
- Lugar Bill (Clean Energy Standard)
- Rockefeller 2-year Delay Bill

Kerry-Lieberman Bill

- Similar to Waxman-Markey (House) bill for electricity sector
- Improvements:
 - More allowances
 - Closer to a hard price collar - \$12-\$25/ton
 - Better separation from CAA; full pre-emption of state and regional cap and trade programs
 - Starts one year later – 2013
 - 75/25 (emissions/sales) allocation methodology

Comparison of Allowance Caps

Allowance Cap for Senate and House Bills



1 allowance = 1 metric ton of CO2 equivalent.

Kerry-Lieberman Bill (Cont'd)

- Continuing concerns:
 - Merchant generator carve-outs; 75/25 allocation – still not enough allowances
 - 0.5% allocation to small LDCs not included
 - Price collar ceiling (\$25) and escalators (3%/5%) still too high
 - CAA pre-emption insufficient
 - Targets and timelines remain too stringent
- Senate Majority Leader Reid to confer with committee chairs this week to see if there is enough support to bring the bill to the floor.

Continuing Senate Efforts?

- The obstacles to legislation are large:
 - Time (2010 mid-term elections)
 - Controversy – most major issues remain unresolved
 - Complexity – few understand the important details; so many committees involved
 - Other priorities – extending tax credits, immigration, financial services reform, appropriations,
 - Energy and environmental issues tend to be more regional than partisan
 - EPA regulatory action, pending Murkowski “disapproval resolution.”
 - Oil spill

Efforts to Delay EPA

- Sen. Murkowski's S.J. Res. 26, "resolution of disapproval" would block EPA from regulating GHG emissions under the CAA by overturning EPA's "endangerment finding." Failed by a vote of 47-53 in June.
- Identical legislation has been introduced in the Senate (Rockefeller; D-WV) and House (Boucher; D-VA) that would impose a 2-year delay on EPA, limited to stationary sources. Leadership promised a vote, but could be as an amendment.

Meanwhile, EPA Moves Forward Under the Clean Air Act

- EPA has indicated it will begin regulating GHG emissions under the CAA Prevention of Significant Deterioration program in 2011.
- EPA recently issued its “tailoring rule” asserting it would begin with the largest emitting sources in 2011.

Energy Legislation

- Congress has also developed energy legislation (S. 1462 and part of H.R. 2454) that addresses a number of key topics including renewable electricity production, transmission expansion, nuclear energy, energy efficiency, electric transportation, cyber security, and energy workforce development.
- The oil spill has complicated movement of energy and climate legislation since most want to address BP liability and prevention of a new spill in the future. Other energy provisions, and even an electricity-only cap-and-trade bill, could be added to this “core” must-pass oil spill measure, but what those might be has not been fully fleshed out as of this writing. There are about nine legislative weeks left before the election...

Energy Legislation – Key Components

Renewable Electricity Standard

- HR 2454 – 20% by 2025; S 1462 – 15% by 2021. Both include small utility exemption; existing nuclear and large hydro out of the baseline; incremental nuclear and new hydro allowed; other features consistent with APPA resolution.

Transmission

- HR 2454: clarifies backstop siting authority for lines meeting certain criteria in the western interconnection; status quo for the eastern interconnection. Promotes regional planning through existing entities. Silent on cost allocation.
- S 1462: Clarifies federal backstop authority for High Priority National Transmission (HPNT) projects (345KV and higher). Regional planning with more FERC oversight/involvement. Cost allocation to be set by FERC rulemaking; limited to “measurable” benefits (Corker amendment).

Energy Legislation – Key Components (cont'd)

- Energy efficiency
 - Manufacturing, appliances, buildings
 - Clean Energy Development Administration (S. 1462 only) – includes loan guarantee program
- Electric drive transportation/plug-in hybrid electric vehicles
- Cyber security (not in H.R. 2454)

Tax Issues

- Tax legislation is being developed that will include energy related provisions. If there is also energy legislation, then the energy-related tax provisions may be more robust and would likely be attached to such energy legislation. APPA's priorities in tax legislation include:
 - Public power eligibility for the 30% grant conversion of the investment tax credit authorized for private entities in the economic stimulus bill. This program ends Jan. 1, 2011.
 - A substantial increase in authorization for Clean Renewable Energy Bonds. Also, additional flexibility (direct-pay model, included in JOBS bill).
 - Increased flexibility in the use of tax-exempt bonds by eliminating entirely the “private use” restrictions on bonds to finance transmission facilities, and elimination of the \$15 million restriction that applies on both a per-project and per-issuance basis for all tax-exempt bonds.

Tax Issues (Cont'd)

- We expect legislation to be introduced in the House and Senate by Rep. McDermott (D-WA) and Sen. Cantwell (D-WA) that would remove the cap on BREBs, eliminate the “other governmental entity” category, and make other improvements.
- We hope to move that bill before the end of the session; there are two potential packages of tax legislation under development that could serve as the “vehicle.”

Rail Customer Legislation

- Two “tracks” – pun intended:
 - Bills to put railroads under major antitrust laws – H.R. 233 and S. 146, have been passed by House and Senate Judiciary Committees.
 - Legislation to reform the Surface Transportation Board’s practices and ratemaking – S. 2889 passed the Senate Commerce, Science and Transportation Committee in December 2009.
 - Politics of this issue continue to be extremely difficult, but the best progress has been made in 20 years to get legislation enacted.

Financial Regulatory Overhaul

- Major financial reform legislation passed the House late in 2009 and in the Senate last month, that includes additional regulation of derivatives markets. APPA supported “end user” exemption to mandatory clearing for hedging included in bill.
- APPA also supports clear delineation of FERC vs. CFTC jurisdiction for purposes of regulating financial transmission rights in RTO markets. Language was included in House bill, but a better provision was included in the Senate.
- The conference report reconciling the House and Senate versions of the bill has passed the House and is awaiting passage in the Senate.

Telecommunications

- Release of National Broadband Plan by FCC the week of March 15. Congress must then act on the recommendations included therein. Two major areas of interest:
 - Pole attachments. FCC has proposed doing away with muni, coop, railroad exemption.
 - Community broadband. FCC has indicated support for expanding.

Cyber Security

- Lots of interest in more regulation of electric industry related to cyber security.
- Industry is united in the view that any new authority should build on current NERC/FERC framework and be narrowly targeted to deal with cyber emergencies.
- House legislation passed – the GRID Act – not so good from industry perspective.
- Senate situation is much more complicated in terms of the committees interested in the issue and the path forward (Energy, Homeland Security, Intelligence, Commerce, etc.).

Electricity Markets

- RTO market problems continue to rank high on APPA's priority list, and Congress seems most interested in the transparency issue. Senator Schumer is contemplating legislation on this issue, for example.
- FERC's oversight of and attitude toward these markets, however, continues to be problematic, as evidenced by a recent process related to RTO metrics.

FERC Efforts

- Very busy at FERC -- two of note:
 - March 18 reliability orders, recent technical conference.
 - NOPR on transmission planning and cost allocation.

APPA Natural Gas Study

- Released on July 7
- Primarily written by Katie Elder of Aspen Environmental
- Not primarily a policy piece

APPA Resources

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www.APPAnet.org

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