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Protecting Working Families in Climate Change Legislation: Improving the Local Distribution Company Mitigation Approach

H.R. 2454—which was approved by a 219 to 212 vote by the House on June 26, 2009—attempts to address climate change by limiting U.S. emissions of greenhouse gases by "capping" such emissions and requiring polluters to obtain allowances through a trading mechanism.[1] For the first 20 years of the program, the vast majority of the pollution allowances are distributed for free to emitting entities. Thirty-two percent of all allowances are handed to local electricity distribution companies (LDCs, which are regulated by state utility commissions) with another 5% allocated to unregulated merchant coal generators. Nine percent are reserved for regulated natural gas utilities. The 32% of the free allowances to LDCs will cover roughly 85 percent of their emission needs.

Proponents of the legislation claim that the legislation shields electricity ratepayers from major rate increases by requiring them to only use the free emission credits for "the benefit of ratepayers." **But a careful reading of the legislative language suggests that the lack of any definition of what constitutes a "benefit" will be interpreted differently by the 50 state utility commissions that the legislation bestows wide latitude to design allocation of the allowances.** While some state utility commissions have good track records protecting household consumers, many do not. While there are ways to improve the LDC mitigation approach—such as clearly defining "benefit" to the advantage of moderate- and low-income households, and mandating intervenor funding to assist the ability of local consumer groups to participate in the state proceedings—it is clear that the decentralized, cumbersome nature of the LDC mitigation approach has been prioritized to preserve jurisdictional exclusivity for the Energy & Commerce Committee at the expense of superior mitigation mechanisms (rebates structured through the payroll tax, social security, disability, unemployment, food stamps, EITC, HUD weatherization/rental assistance, etc) that would leave competing congressional committees in charge of the disbursement of funds.

[1] http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2454eh.txt.pdf

Section 783 of H.R. 2454 contains the LDC mitigation language, which was amended in minor, superficial ways by the Space Amendment adopted by voice vote.[2] Section 783 states, in part, that "…the Administrator shall distribute to electricity local distribution companies for the benefit of retail ratepayers…emission allowances."

PROBLEM: "Benefit" is never defined. From Public Citizen's experience intervening before state utility commissions, many different types of programs designed by (and sometimes for) utilities can be construed as being for the "benefit" of ratepayers. The language fails to limit compensation paid to utilities for managing any new programs for the "benefit" of consumers, thereby delegating far too much discretion to unpredictable state regulators.

Evidence that "benefit" is ill-defined can be found in last-minute language that was inserted without a vote that isolates ratepayer protections for industrial consumers—which include oil refiners and other large manufacturing facilities—but *not* households. On page 902 of the House enrolled version of the bill, there has been inserted a new section, (D), titled "Industrial Ratepayers," which states, in part, that "if compliance with the requirements of this title [LDC allocation disbursement through state PUCs) results (or would otherwise result) in an increase in electricity costs for industrial retail ratepayers…[the LDC] shall pass through to industrial retail ratepayers…the value of the emission allowances…to reduce electricity cost impacts." There is no similar clarifying language providing such rate protection guarantees for households.

Section 783 also determines the formula by which the 32% of free allowances distributed to LDCs are allocated: half based on emissions and half based on electricity sales, or "electricity deliveries."

PROBLEM: Relying on "electricity deliveries" disadvantages households at the expense of large consuming entities such as manufacturing facilities (oil refineries, etc) and large commercial buildings (office buildings, Wal-Mart, etc). Although the language places a limitation on basing the distribution "solely on the quantity of electricity delivered," state utility commissions will still be designing the bulk of the rebate disbursement based on kilowatt hours sold. A superior approach would be basing the distribution on revenues. That is because household consumers pay higher rates than do their commercial and industrial counterparts.

For example, examine the following data: In 2008, there were 3.7 trillion kilowatt hours of electricity sold in America, broken down by the following ratepayer classes[3]:

Households = 37.2%
Commercial = 36.4%
Industrial = 26.4%

[2] http://energycommerce.house.gov/Press_111/20090521/hr2454_III_space.pdf
[3] www.eia.doe.gov/cneaf/electricity/epm/table5_1.html

Large users of electricity enjoy significant rate discounts: in 2008, the average U.S. household paid 11.4 cents per kilowatthour, while commercial customers enjoyed an average rate of 10.3 cents/kwh and industrial customers 7.0 cents/kwh.[4] As a result of this discrepancy between prices charged to the different classes of retail customers, household consumers represent a larger share of the revenue paid to utilities. In 2008, utilities booked $364.5 billion in electricity sales, with the following customer class breakdown:[5]

Households = 43%
Commercial = 38%
Industrial = 19%

If lawmakers are seeking to shield households from the impacts of higher prices from climate policies, ratepayer benefits should be allocated by revenue rather than electricity deliveries.

Indeed, the Congressional Budget Office confirms this. In a June 19 analysis,[6] which concludes that households will receive only one-third of the $41 billion worth of free allowances distributed to electricity and natural gas consumers—a ratio lower than the 43% share of revenues paid by household electricity consumers. An analysis by the Center on Budget and Policy Priorities also raises equity issues with the LDC mitigation approach.[7]

SOLUTIONS: While Public Citizen prefers alternatives to the LDC approach (requiring an auction with the proceeds used to mitigate the regressive impacts on households with rebates structured through the payroll tax, social security, disability, unemployment, food stamps, EITC, HUD weatherization/rental assistance, although the distribution through LDCs could be used as a supplemental system in conjunction with some/all of the other options listed here) we recommend the following solutions to improve Section 783 of H.R. 2454:

1. Define "Benefit" to the advantage of moderate- and low-income consumers. This could include dedicating 25% of the LDC's emission allowances to benefit households with incomes up to the state median income.
2. Determine distribution of emission allowances for the benefit of retail ratepayers by consumer class based on revenue rather than electricity deliveries.
3. Mandate that state commissions processing the requirements of this section provide *intervenor funding* to offset expenses incurred by public interest groups intervening on behalf of household consumers. This will help ensure that public interest groups with limited resources will be financially reimbursed for their work. Model language would be California's successful intervenor funding statute.[8]

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[4] www.eia.doe.gov/cneaf/electricity/epm/table5_3.html
[5] www.eia.doe.gov/cneaf/electricity/epm/table5_2.html
[6] http://energycommerce.house.gov/Press_111/20090620/cbowaxmanmarkey.pdf
[7] www.cbpp.org/files/7-10-09climate.pdf
[8] www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=01001-02000&file=1801-1812