

**State Climate and Energy Program—State Technical Forum**  
**Federal Climate Legislation and Implications for State Energy Offices**  
Wednesday, June 17, 2009

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## Introduction

Julia Miller: Between the State Climate and Energy Tech Forum and the National Council on Electricity Policy, I'd like to thank all the speakers for joining us today. I know that they spend a lot of time putting together their presentations and we always appreciate it.

Because this is a joint call with the National Council on Electricity Policy, I just wanted to talk for just a minute about the EPA Climate and Energy program for the folks on the call who aren't familiar with us. We, as a program, promote clean energy—which we define as energy efficiency, renewable energy and combined heat and power—as a solution to climate change. And we provide technical assistance, and tools and guidance, and peer exchange opportunities like today's call. As part of the peer exchange efforts and the Tech Forum calls, we cover a range of issues. We've talked about everything from energy efficiency and renewable energy resource standards, tech performance building, biofuels, IGCC and carbon capture and storage, removing disincentives for clean energy and utility rate making, and a host of other issues. And we're always open to new topics from participants. We'll go through maybe a little bit later on how you can contact us to submit topics in the future.

Also, if you're on the call today and you don't receive regular notices about calls you can e-mail me or Catherine Morris. And my e-mail address is [miller.julia@epa.gov](mailto:miller.julia@epa.gov). Catherine can give you her e-mail address when she gets on in a minute. You're probably seeing the agenda right now on the webinar and there should be a Web address at the bottom of it. We post background materials, including all of today's presentations, on the Web site that's listed on the agenda. So, if you'd like, and I know some people like to do this, they like to go through the slides on their own at their own pace. So, you can go to the Web site if you want and download those presentations.

I wanted to give Phil Guidice a chance to talk about the National Council on Electricity Policy for a minute, so Phil.

Phil Guidice: Great. Thank you Julia. Yes, this is Phil Guidice and in addition to being a commissioner and a panelist today I'm also the Vice-Chair on the National Council on Electricity Policy. The council is a members organization with representation from all of the state agencies that are involved in energy and air quality issues, which includes NARUC [National Association of Regulatory Utility Commissioners], National Association of State Energy Officials, National Council of State Legislatures, National Governor's Association. And then our federal partners, the Federal Energy Regulatory Commission, Department of Energy, EPA, and I don't think I mentioned the National Association of Clean Air Agencies. It's really an organization that brings together the perspectives from the state as well as the federal government around electricity policy issues and tries to be a forum to bring all of the various perspectives, be it legislature perspectives or governors perspectives or state energy offices or air quality or regulator perspectives, into a forum to discuss electricity policy issues amongst ourselves as well as with the federal representation. It was originally set up, I think, during the initial stages of restructuring and deregulation, but it is in more recent years gotten involved in efficiency issues and demand response and transmission issues. And so, I encourage everyone

and anyone to learn more about it by going to the Web site which is [www.ncouncil.org](http://www.ncouncil.org). You can connect with the organization through there and give us your ideas of topics to focus on. Thank you Julia for the opportunity to co-sponsor this with you and I look forward to everyone's input.

Julia Miller: Great. Thanks Phil. I'll sort of do a little context for today's call: We wanted to do the topic for today because there's been so much activity in Congress related to climate change, and there are huge implications for states if Congress does indeed pass climate legislation. Last year we saw a lot of activity in the Senate for a Lieberman-Warner Bill that made it to the floor but it didn't pass. This year, the House has really taken the lead. The Waxman-Markey Bill has been voted out of the Energy and Commerce Committee and now is taken route through other committees. There may be a floor vote next week, but that's up in the air right now.

The Waxman-Markey Bill covers seven greenhouse gases—carbon dioxide, methane, nitrous oxide, and the F gases, including HFCs, PFCs, SF<sub>6</sub>, and NF<sub>3</sub>. Covered entities include large stationary sources that emit more than 25,000 tons per year of greenhouse gases, also producers and importers of petroleum fuels, which especially includes refineries, natural gas distributors, and the produces of F gases as well. The targets in this bill are to reduce greenhouse gasses 17 percent below 2005 levels by 2020, 42 percent below 2005 levels before 2030, and 83 percent below 2005 levels by 2050. The Senate, although things seem to change daily there, the Senate signaled that they're probably going to use the Waxman-Markey Bill as a starting point and they will likely take up Senate legislation this fall.

So that's the context of what's been going on. And today we're really lucky to have speakers that have been tracking all the congressional action, and they can talk about how federal climate legislation might impact the states. Before we get started I think Catherine Morris from the Keystone Center has a few housekeeping items.

Catherine Morris: Thanks Julia. I just wanted to remind everybody it's really imperative since we haven't muted all the lines today that everybody hit \*6 or push the mute button on your line so that we don't have interference and do not, do not put us on hold. Even if your mute button is on and you put us on hold, we'll get background noise. I can't emphasize that enough. It really is disruptive. The main reason that's very important is because I think we have a record number of people on the call today. We have almost 200 people registered for this call and the count continues to rise, but we're up over 120 now. I don't want that to discourage anybody from interacting with our speakers because that is why we set these up with plenty of time to engage them, to ask questions after presentations as well as a discussion period afterward. So, please take advantage of two opportunities to talk to them. One—it will be verbally, I'll give you the cues to unmute your line when we get there. Ask your questions of them directly. I encourage you to share your own experiences or your own concerns about the legislation as we're going through. And the other opportunity you have is to use the question line on your webinar. So, for those of you logged into the webinar, you have a control bar on the right hand side and you can maximize and minimize it based on using the double arrows on the top left corner. But when it's open fully you click on the questions box and you can enter questions there that go to us and we will sort through them and prioritize them and try to get through as many as we possibly can.

As Julia mentioned, we've got on the Keystone Web site all these documents as well as some background documents you might find helpful on the legislation. And there you'll also find the contact information for our speakers, so that if we don't get to all the questions hopefully you'll have a chance to follow up with them directly. They've been kind enough to share that with us. Let me give you my e-mail, if you do have some topics in mind. It's [cmorris@keystone.org](mailto:cmorris@keystone.org). We've been working with EPA on this forum for five years now, and we've covered a lot of different topics. And we're always looking for your guidance about what you want to hear from. To that point, we're hoping that over this summer over our brief recess between calls—we usually take off the summer, and we will do that again. We'll be back with our first call in the fall in October. But, during the summer we're going to try and reach as many of you as possible and get feedback about what we've covered so far and what you want to hear about next fall. So, look for that. It will be a quick questionnaire that won't take you more than five minutes to do and it really does help us see things relative to what you're doing day to day in your work.

## **Waxman-Markey, American Clean Energy and Security (ACES) Act of 2009: Implications for States**

With that, I'm going to introduce our first speaker. As Julia said, all of these speakers have been, if not testifying at the House on this legislation, they have been certainly tracking it very closely. And our first speaker is Kate Zyla. She is now the Director of Research and Policy Analysis of a fairly recent organization—Georgetown State-Federal Climate Resource Center—here in DC. And their job is to be looking at implications for climate policy for the state. So, we've asked her to really give you an overview of the bill as it now stands. Of course all of you know that this is now a legislation in motion. It can be changing from day to day as it moves through committee and certainly as it gets through the Senate side as well. Before Kate was the director with the Federal-State Resource Center, she was working at WRI (the World Resources Institute) and they're also focused on greenhouse gas emission markets and state-federal roles. And before that she was staffing the Midwest Regional Greenhouse Gas Reduction Accord process, their cap and trade program. So she's looking at this from a lot of different perspectives. And Kate, with that we will turn the presentation controls over to you.

Slide 1: Waxman-Markey, American Clean Energy and Security (ACES) Act of 2009: Implications for States

Kate Zyla: Can everyone see the presentation okay?

Catherine: There is a bit of a lag. You might just notice that there's a little bit of delay between what we see and what you see up there. But we're all online now.

Kate Zyla: Great. Thanks for having me here everyone. I'm Kate Zyla from the Georgetown Climate Center. As you just heard, we're brand new, started in February. And our role is really to focus on the intersection of state and federal roles in climate and energy policy. We are designed to be a resource for states on what's happening at the federal level, and I'm really please to be here to try and do that today.

Slide 2: Waxman-Markey State-Relevant Provisions

Kate Zyla: I will start talking about the bill overall. We have a summary up on our Web site, which is [georgetownclimate.org](http://georgetownclimate.org), that is a summary of the full Waxman-Markey Bill as it relates to states. I think that was provided for all of you today, and you can find it online at our site. The idea is not really to summarize the entire bill but to focus in on the pieces that are most important to states, whether that's funding that states would receive, whether that's an increase or a decrease in state's authority in some way or another. And we'll talk today about a few of the highlights of that summary. We certainly won't go through the whole thing—it's about 10 pages long—but you're welcome to check out the details there or and ask me about any piece that you'd like to. The bill is often talked about as a climate change bill, as a cap and trade bill, but it's essentially a lot bigger than that. There are four titles to the bill: one is on clean energy, one is on energy efficiency, one is on cap and trade, and the last is on a transition to a cleaner economy and that involves allotting international provisions as well. In all of those are pieces that have relevance to states and I'm going to talk about a few of them today, including the

efficiency and renewable electricity standard, funding mechanisms of the pieces that have very flippanant roles for states including building codes and transportation efficiency. Then I'll talk about the cap and trade program and the registry that goes with it.

### Slide 3: Combined Efficiency and Renewable Electricity Standards

Kate Zyla: Getting started here: the combined efficiency and renewable electricity standard. This is the RPS/RES that you hear talked about in a lot of different contexts. The House version is a 20 percent by 2020 mandate with at least three quarters of that coming from renewables; the other quarter can come from efficiency. When the bill was first introduced in the draft. There were two separate standards that were combined during the negotiation process in the manager's amendment. There are a few things states can do to play a role in that. One of them is they can petition to change that proportion of the target that they can get from efficiency. So when it's 20 percent, they can typically only get one quarter of that percent in efficiency. They could essentially change that to two-fifths. So, it would be 8 percent from efficiency and 12 percent from renewables.

States can also petition for delegation of authority to them to review and verify the electricity savings piece of the portfolio standard. I know this has raised some questions for states about roles that they're used to having and whether they're used to playing in this area, but I'll leave that to the states to state their own concerns about. The other piece that is relevant for states here is that for electricity retailers who choose to pay an alternative compliance payment instead of meeting the standard, there's the paying of the \$25 per megawatt-hour. That money would go directly to the states in which that retailer is located. And that money is on hand to distribute. Lastly, the bill is very clear that this provision does not in any way interfere with the state's ability to adopt laws on renewable electricity such as their own portfolio standards that may go farther than the federal one does. So, all the existing state RPSs would still be in effect and not affected by this program.

### Slide 4: State and Energy Development Funds

Kate Zyla: Moving onto the SEED Funds, the State and Energy Development Funds, these are the repositories for all the allowance revenue that comes from allocations and auction in the cap and trade program. So all of the money that states get for efficiency and renewables go here. It starts out that 9.5 percent allowances are given to states, along with another pot that is given to states if they follow certain procedures regarding building codes. The allowances are given to states according to a formula that states should be pretty familiar with. It's the state energy program formula, which is a third equally among the states, a third according to population, and a third according to energy consumption. Then, there are additional rules about how that money can be spent, with some amount going to efficiency, some amount going to renewables, some amount going to local governments for those same purposes, and another bucket that you have more discretion over. There are a variety of reports that are required to show how that money is being spent.

### Slide 5: Building Codes

Kate Zyla: The building codes. It starts out with a national energy target for reductions in building energy performance. And the federal government then establishes new building codes to meet those targets. First, that rule is given to the consensus building codes standard organizations, if they don't actually provide a code in time then the agency steps in and does it for them. States are then told to review and update their own codes or adopt that national code to meet the targets. Then they certify that their code meets these standards. Then they certify that they've achieved compliance with the code. And compliance means that 90 percent of new and substantially renovated building space meets the code. If all that happens, there's this other half of a percent of allowance pot that can possibly be given to states. If that doesn't happen, there are a variety of other pieces of funds that states would possibly lose eligibility for, and this has raised some concerns as well.

#### Slide 6: Transportation Efficiency

Kate Zyla: Transportation efficiency works somewhat similarly. States are asked to perform certain tasks, and if they don't there are federal pots that they're no longer eligible for. In this case, states are asked to submit goals for transportation-related greenhouse gas emission reductions to EPA—it's kind of contentious whether that should be EPA or DOT. States then (and should be Metropolitan Planning Organizations in their states) submit a plan for choosing a goal to submit to the EPA and DOT. If those goals or plans are not submitted then EPA can impose prohibition in DOT approval of projects and funds. However, the hitch here is that none of this prohibition can be based on the contents of the plans, or on the goals, or whether they're successfully meeting the plans or the goals; it's just that there just has to be a goal and there has to be a plan. And then there are competitive funds for MPOs to implement the plans. Once again, given all that there's also a savings clause where states really sets aside that states still maintain the authority to do the planning and control the land use. They just have to create these plans.

#### Slide 7: Greenhouse Gas Registry

Kate Zyla: In the greenhouse gas section, there is first a greenhouse gas registry, which is explicitly instructed to take into account best practices, from the existing registries, including the climate registry that many states are participants in. The registry would start up in 2011, for the years the years 2007 to 2010, and then become quarterly reporting after that. All of the sources that are covered by the cap and trade program would have to report to the registry and there's also some required reporting from sources that would have been covered in the cap and trade program if they had higher emissions, but are slightly below the 25,000 ton threshold. If they're above the 10,000 ton threshold, then they have to report. So there's a wider net of reporting than there is for clients with the cap.

#### Slide 8: Cap and Trade: Early Offsets

Kate Zyla: The cap and trade program itself has a few ways in which states play a role. The first is that any offset credits that were issued by a state or tribal regulatory or voluntary greenhouse gas offset program can get early action credits in the federal program. That is explicitly programs established by states or tribal law; it doesn't include voluntary programs established by some

other entity. And there are a variety of requirements shown on this slide for which programs count.

Catherine Morris: Kate we're getting a couple folks who are having trouble hearing you. I don't know if you can turn up the volume on your phone or speak up a little louder.

Kate Zyla: Sure, I can try.

Catherine Morris: Thanks.

#### Slide 9: Cap and Trade: Allowance and Allocation to States

Kate Zyla: Next, the allowance allocation is certainly a major part of the cap and trade piece. There is a fairly substantial pot given directly to states to administer for a few specific purposes. The first is renewable energy and energy efficiency programs. It's a decreasing pot of money. It starts out at 9.5 percent of allowances—this is the one that I mentioned earlier is divided up to equally among the states for a third, a third by population, and a third by energy consumption. There's another pot that is given to states to protect consumers from home heating oil and propane price increases. That's a smaller pot and that declines over time as well. Then there are a few pots that are conditional on state's actions. So, the first two pots you get all automatically. The rest of the pots you get if you do certain things. One of them is this building code program that I mentioned a few slides back. There are also two sets of money for adaptations. Interestingly, adaptation categories are the only categories that increase in percentage over time, as opposed to decrease. All the other pots decrease over time. And, based on states' submission of plans for these two adaptation pots, they can get additional sets of money for those.

One thing I should mention on the allocation—I'll jump back for a second—what I'm not showing here is the allocation to entities within states. There are a bunch of pots. Say for example, allowances are given to local distribution companies to offset customer cost increases, those obviously will be distributed among the LDCs in various states but they're not allowances given directly to the states themselves to administer, so I haven't shown them here.

#### Slide 10: Cap and Trade: State-Issued Allowances

Kate Zyla: Next, the bill does mention how allowances from state-issued and regionally-issued programs would be handled. Allowances issued by the state of California, by the Regional Greenhouse Gas Initiative in the Northeast, or by the Western Climate Initiative can be traded in for federal allowances. It's not a one-to-one trade; it's based on the value of the allowance from when it was purchased. But there is an exchange that's possible. Now, interestingly any allowances from the Midwestern Accord were left off of this, so that seems to be more of an oversight than anything else. I know that some of the Midwest states have been talking to some of the bill authors about getting those included, and I believe they will be.

#### Slide 11: Cap and Trade: State GHG Standards

Kate Zyla: Then we have elements of the bill that deal with states' own greenhouse gas standards. There's a modification to the Clean Air Act section that talks about state's authority to adopt and enforce standards on emissions and air pollutants and that was modified to explicitly include greenhouse gasses. And to say that it includes the capping of greenhouse gasses and the requirement of surrendered emissions allowances. So it allows states to create their own cap and trade programs and to require submission of allowances. It then follows that by saying "with the exception of the years 2012-2017." So, for this six-year period, states may not have their own cap and trade programs, which would preempt all of the regional programs currently being developed for that time period. That preemption, however, is only on cap and trade programs, it's not on caps; it's not on emission standards. It's not on anything except the trading of allowances to meet a state requirement like that.

#### Slide 12: Questions

Kate Zyla: There are a variety of other little pieces throughout the bill that affect states in one way or another. Again we have a full summary of all of these and other materials for this call, as well as on our Web site, which is [georgetownclimate.org](http://georgetownclimate.org). I went through this a little bit quickly, so if you have any questions and we don't have time for today, please feel free to e-mail me at the e-mail address that's on the screen right now. So, now I can take any questions.

Catherine Morris: Thanks very much Kate. Let's take a few right now. I have a couple coming in online, but I'd like to open it up to the phones. So, for those of you on the line, you can hit \*6 to unmute your line. I just want to remind you that after you ask your question hit \*6 again to re-mute because we do have a lot of folks. We're up to about 143 people right now. So any questions for Kate?

Glenn: Yeah, this is Glenn with the National Conference of State Legislatures. I had a quick question actually with regards to the building code requirement with regards to the 30 percent improvement. Is there a—you may have mentioned it briefly—but is there detail on enforcement and requiring states to enforce the codes since that seems to be one of the biggest issues within states that have perhaps stronger codes that may not always be enforced?

Kate Zyla: I think there is some language there. I haven't spent a lot of time looking into it to be honest, but I'd be happy to dig for that and get back to you on some more information about what these enforcement provisions look like.

Catherine Morris: Kate, there was another question that came in online asking whether or not the building code requirements that you have to comply with would apply only to state or government buildings or if they apply to public and private sector buildings.

Kate Zyla: Public and private. And, I should say it also allows local cities within states to certify these things as well. So, cities could apply for that money as well. If the state isn't fully in compliance, the city could be. So, it works at the two different levels of government, but it is for all buildings not just public buildings.

Catherine Morris: Any other questions?

Lance Miller: Yes, this is Lance Miller from New Jersey Board of Public Utilities. While we're on this building code subject, what's the base here for the increase in the efficiencies?

Kate Zyla: I feel like its 2005, but I'd have to confirm that as well. I don't have all the language in from of me, so let me check that as well.

Danny: This is Danny from EPA in Atlanta. What I was curious about was how does this deal with...we've got a great many buildings that are very efficient either LEED certified as either gold or platinum and then you've got a whole bunch of ENERGY STAR buildings out there that are performing really well and to require that they make these large reductions would seem a bit tough. What would be your comment on that?

Kate Zyla: The improvements they're asking for are only for new and renovated buildings. So, it doesn't ask existing buildings to change. It's for new construction only, and it's 90 percent of new construction.

Catherine Morris: Oh, there are a lot of questions coming in, and I know that some of these other speakers will be talking about. Let me ask one that came up about the RECs. Is there a set aside and retirement of RECs used in the voluntary markets?

Kate Zyla: I'm not quite sure I get the question. Can I ask for clarification?

Catherine: Claire are you on the line? If you could just clarify with hitting \*6.

Claire: Just to clarify, in the RGGI model rule there is the provision that allows participating states to set aside and retire renewable energy certificates used in the voluntary markets. I was just wondering if that provision would be maintained or if there's anything that addresses that issue at all in this bill.

Kate Zyla: I'm not sure if this answers your question. But, first of all, states that have those sorts of provisions would not be affected at all by this for their own programs. Also, states can require entities to do various things with the federal RECs. The states could retire federal RECs as well. I don't think there's a provision in there for the federal government to do that sort of retirement of their own REC.

Catherine Morris: A quick question for you Kate from online is whether or not the base year for the cap and trade is 2005 and how are early reductions from point sources treated?

Kate Zyla: It is 2005 and early reductions outside these early offsets are not addressed explicitly largely because early reduction credits tends to come up mostly when you're allocated by way of historical emissions so agencies that have reduced their emissions over time shouldn't be penalized for getting those reductions early on and not getting as many allowances because of those reductions. Because the bill doesn't really allocate these historical emissions that's why it's not really addressed here.

Catherine Morris: I'm going to ask you one more before we go to our next speaker, which I think you can probably answer pretty quickly also. Can you provide an estimate of the expected annual value of the allowances and what the typical range might be for states in the early years? So, the price.

Kate Zyla: Yeah, I don't have the total number off the top of my head. So, the EPA has done an assessment of the program which is on their Web site, which I've found extremely helpful. And there is a memo that was released by the EPA when the bill was revised that talks about how they expect the changed bill to affect the value of allowances. I don't think the full assessment has been revised, but there's no other talk about the sorts of directional changes that you would expect to see. Based on those reductions, we've done some really preliminary analyses of what states might get, and it varies over time but at one point—2026-ish, I have to check that—at one point it gets up in the \$13 billion range. But I don't have the exact numbers there and if people want to call me and talk about the number I'd be happy to do that separately.

Julia Miller: I believe that Phil Guidice might have a couple numbers in his presentation.

## **Federal Climate and Energy Legislation Implications for State Energy Offices**

Catherine Morris: Great segue. Let me introduce Commissioner Guidice from the Massachusetts Department of Energy Resources. He's our next speaker and we asked him to bring the perspective of those of you who are working in the state energy offices. How the legislative proposals might affect you. And one of the things in addition to his role as commissioner, he is also serving on the board of RGGI, which many of you know as the Regional Greenhouse Gas Initiative for New England and Mid-Atlantic states. He is also on the board and the chair for the Massachusetts Renewable Energy Trust. So again he brings lot of different perspectives, including the private sector because in his earlier years he served as the senior vice president for EnerNOC, which is a start up company that provides electricity demand management services. Phil, so we'll hand presentation controls to you.

### Slide 1: Federal Climate and Energy Legislation Implications for State Energy Offices

Phil Guidice: Thank you very much. Glad to be here and really enjoying these low-carbon ways to convey perspectives and ideas. It's a lot better than getting on planes and having to travel all over the country. And yes, I will provide in very few slides some perspectives in state energy offices.

### Slide 2: State Energy Offices

Phil Guidice: My e-mail address is right there on the cover page, so if people have questions that we don't get to today feel free to send them to me and I'll do my best to get them back to you with any answers that we can provide.

The first page of the presentation gets to sort of the history of state energy offices, which have been really quite varied in different states, as state budgets and state funding abilities and federal funding opportunities are made available to get state energy offices up and running and keep them up and running. In the past and to one degree or another, state energy offices are involved in overseeing efficiency programs, renewable programs, weatherization, low income support, and safe and reliable energy supply. Some staffs in state energy offices are literally just a handful of people, one, two, or three and sometimes staffs get up into the 100 plus people like in California with the largest state energy office. So it is quite varied as to what we're working with across the country in terms of state energy offices.

On top of the historic responsibility, probably one of the biggest areas of change that I've seen from my experience for state energy offices is what has happened with the stimulus and the American Recovery Act that we're all going through to try and put that money to work as quickly as possible and as productively as possible. And as I see it, I think this area of spending is probably the largest ramp up of spending in any of the stimulus areas. Clearly, significant monies are going into other areas in transportation, education, health care as well. Look at some of the programs that are now being funded under the stimulus—it's literally a 20 fold increase in funding available for some of the activities that state energy offices have traditionally looked at and overseen and been involved in. So we're all involved at a very extensive level to really help get that money to work as productively and quickly as we can to help get the impacts that we

can. And it's really positioning state energy offices quite well for the future, which to me these agencies will be some of the most key agencies and responsible for actually creating our low-carbon future and doing it as quickly as we possibly can. Building off of the history of work that we've done, building off the recent stimulus work that we're doing, and really moving forward to the greatest degree possible on all of the various levers as we move forward.

#### Slide 3: Ratepayer Funded Efficiency

Phil Guidice: As we look at ratepayer funded energy efficiency programs, you can see across the country certain levels of spending as reported through the Energy Information Administration. That reached into the \$2.5 billion or so level in 1995, and as the industries and much of the country started to go through deregulation, many states that had done energy efficiency programs started ramping them down and hoping the market was going to take care of all the energy efficiency side of activities. It turns out of course there are lots of market failures to energy efficiency. It really didn't take off in a way that some had hoped that it might. Many jurisdictions have really been ramping up energy efficiency programs in recent years. Massachusetts for one adopted legislation in 2008 that will very dramatically be ramping up our energy efficiency activities. We are putting our RGGI revenues to work right now to really begin that ramp up. We look forward to continuing that ramp up period through this new national legislation that's likely to be coming. But overall across the country maybe \$2-2.5 or \$3 billion is maybe going into energy efficiency activities right now through these various ratepayer activities.

#### Slide 4: Substantial Funding for EERE

Phil Guidice: As we look at... (and this chart is actually from the Georgetown State-Federal Climate Resource Center that Kate was just speaking from and gave to me last night and I thought it was sort of a useful way to frame some of the analysis as to what might be coming to the states from the current draft of Waxman-Markey.) Lots of changes are yet to happen. Clearly, we don't have a Senate bill yet. This will have to get to a Congress committee at some point and lots of change might happen, but on this chart it does look as Kate was remembering that we might be over some \$12 billion of spending on all various programs out of the east as W-M legislation for energy and adaptation programs on a state level. Strictly in energy efficiency and renewables, it looks to be in the order of \$5 or \$6 billion as it goes forward and that compares to the existing spending of \$2-2.5 or \$3 billion under the efficiency programs under ratepayer programs. So significant further ramping up on a national basis and from at least my perspective, this will be some of the best investments that we can possibly make in terms of both improving our economy and dealing with some of the greenhouse gas issues that we need to deal with as quickly as we possibly can.

#### Slide: 5 Expected Legislative Outcomes

Phil Guidice: So the past, the current and now the future. We do expect, and Kate did touch on some of these issues that are explicitly addressed in the W-M draft, significant new goals to come out for efficiency and renewables. We expect new funding will be available for many activities including carbon capture, sequestration, cleaner transportation, efficiency, renewables, smart grid, transmission planning, innovation, and R&D. And we are also quite excited about the

new national leadership around building codes and building energy labeling, as well as moving forward much more dramatically on many equipment and appliance efficiency standards to move us forward to make a much more energy efficient future for us. So, we're quite excited about a lot of levers that in are in the Waxman-Markey draft being exactly what we need. We just want to get going on the results here on it.

#### Slide 6: Our Future

Phil Guidice: And so what I see as our future from a state energy office is that we will be working together amongst the various states as well as between the states and the federal government like we never have before. As indicated, I've been in the private sector for 30 years before the last couple now in the public sector, and it had only very tangential sort of roles working in Washington on the various initiatives from the private sector standpoint and never really looked at Washington's leadership around these energy matters in my three decades of work as being particularly helpful or even particularly relevant for major chunks of time and that we were always off trying to do the best we can with whatever policies are out there. But, at this time and into the future, as I see it, there are so many demands figuring out how states need to work and how the federal government needs to work effectively at both the state level and across the nation that it's really quite an exciting and remarkable time for all of us really to be able to deliver the goods on the promises we've made.

I do also expect that we will be under a spotlight for transparency and results that are being achieved in all of the work that we're doing like never before because it is so important for us. And I do encourage all of us from every aspect—the federal, state, and every agency—to really get involved in the details. The legislation is moving forward; there will be Senate activity; and then all the rule makings that will have to come out of the various executive branch agencies are going to be absolutely critical to really be able to understand influence so they're as productive and positive as they possibly can be. Highlight the areas, and Kate touched on a little bit, the issues of renewable portfolio standards, the 28 states that already have them, and how to work those programs in conjunction with the new federal programs, as well as transmission citing and cost allocation for transmission, who gets to make the smart grid standards and rule makings around that as well as measurement and verification for spending in particular around the efficiency side of this. It's really kind of an exciting time as you probably get a sense from my voice that as I look at the world. I really applaud the national leadership, both the executive branch and the legislative branch. And I really look forward to working amongst all of the fellow states and the federal government to really deliver results for what the opportunities are in front of us here. And with that I will turn it back to the moderator.

#### Questions

Catherine Morris: Thanks Phil. Questions? Just a reminder you can hit \*6 to unmute your line be sure you hit \*6 again when you're done.

Steven Liu: Hello, can you hear me?

Catherine Morris: Yes, I can.

Steven Liu: This is Steven Liu from North Carolina Department of Natural Resources, Air Quality Division. As you know these seem like a long term investment of budget analysis for the energy sector. Will the budget hinder other parts of federal programs, such as the defense budget, NMD (National Missile Defense) since we seem to be facing threat from some countries. What is the budget allocation compared to other federal programs?

Phil Guidice: I think I understand the question and I know that I don't have the expertise to give a good answer to it.

Catherine Morris: Yes, it sounds like he's asking whether or not there are direct trade offs between the dollars going into the energy and renewable energy energy-efficiency and renewable energy portions and other federal programs.

Phil Guidice: I'm sensitive to the challenge here. I think these public monies we have to be very sure we're getting a great return on and there are lots of priorities as we all know for the public monies that are available to us. But, I don't really have perspective on how best to weigh that from a federal government standpoint.

Steven Liu: Thank you so much. Good. Did very good presentation and very defendable. Thank you.

Catherine Morris: One of the questions we have online, Phil, is whether or not the amount for energy efficiency under the federal legislation is to be in addition to the rate funded programs that are already in place, or will they take the place of some of those programs that utilities are running or that the system benefits charge recover.

Phil Guidice: The legislation as I have seen it and as I understand it will allow the states to be making—state PUCs—in principle to be making that determination on a state-by-state basis. From my perspective, I suspect that many states will look at this federal money and want to add it to the money that's already coming out of ratepayers because of the returns on investment for this funding in terms of saving. Everybody is reducing the energy-waste that we're all doing day-to-day as quickly as we possibly can. It's in our best economic interests and obviously in our best environmental interests. But I think it's really going to be determined on a state-by-state basis as we move forward.

Catherine Morris: Ok, any other questions for Phil?

Wally Nixon: I've got one question. This is Wally Nixon with the Arkansas Public Service Commission. Has there been any action yet by DOE for the applications by the state energy program?

Phil Guidice: My understanding is that the first 10 percent of the funding has been provided to the states that have applied for the state energy program financing funding. I do expect, as I've been, I am expecting that in the next very few days the next crunch of monies will be released for the states whose plans are in the process of getting approved. I don't know how many states that

will be. That first crunch, as determined by the DOE, will be about 40 percent of the funding. So, I think that we'll start seeing those funds released here, at least for a number of states in the next few days. The federal government and DOE in particular has an enormous task underway to evaluate all of the various plans both from state energy programs as well as the energy efficiency and conservation block grant programs. These are literally 1,000 plus programs that they have to review and approve before they can release funding for. And they're very actively going through that as quickly as they possibly can. So my expectation is very soon we'll be seeing some significant money being released.

Steven Liu: Hello this is Stephen Liu again NC state DEQ. Is there any energy auditing program established to monitor how those monies are spent and how to audit the result or performance of the efficiency programs?

Phil Guidice: Yes, so there are various protocols, international protocols that are monitoring, measuring, and verifying savings generated from energy efficiency programs. In many states, I think it's about half the country's states that have significant energy efficiency programs, have very significant procedures and protocols that are reviewed through the regulatory processes to assure that we're getting good results on the activity. Diane Brunik, myself, and Diane Mong—Diane Brunik from the California PUC and Diane Mong from Iowa, I can't remember her affiliations right now—are chairing a task force for an action plan for energy efficiency to look at these measures and verification. We're building off a lot of expertise that exist to date, but we're going to really take a step and look at it all and come out with our collective best thinking on how to move forward on measurement and verification on energy efficiency. And that's due to be, that's underway right now. Consultants are involved in a task force, advisers are involved in this, and over the next very few months we'll be compiling all the best practices on that and releasing our best thinking as to how to move forward. But, I would assure you that a lot is done to date and we are looking hard at new ways to do it better and move forward so that we can be absolutely sure that we're getting the results that we think we need to from the spending that we're doing.

Steven Liu: Thank you so much for your perfect answer.

[Unknown speaker]: I have a question. We know that a lot of the problems sometimes originate from maybe not having a good preparation and maintenance program, maybe installing a lot of really high tech but not maintaining it. Is there going to be any—I know you talked about the measurement verification—but is there going to be anything that would track over time how well the buildings and anything we're putting together are really working and the money towards operation maintenance?

Phil Guidice: I think this is going to be something that needs to occur on a state-by-state level, but I'm sure the federal government can help in designing some programs and support for some of this and maybe some protocols. But in Massachusetts, for instance, we do have significant funding that we are in the process of making available for energy efficiency programs, for commissioning and retro-commissioning and continuous-commissioning of building, as well as reporting out on building energy performance, so that we can know that it's not just a one shot deal in terms of putting in good equipment but that it's actually being operated appropriately and

is getting results on a continuing basis. So, it's an important issue and I think we're going to have to solve it in a state-by-state basis.

Catherine Morris: Phil, can you just repeat the name of the task force the M&V task force that you mentioned and how people can track the progress you make?

Phil Guidice: Yes, so the National Action Plan for Energy Efficiency, which is co-sponsored by the EPA and DOE, co-lead by both agencies, has a Web site. Someone on here will know how to direct folks to that and in that Web site are various activities that are underway, and this is one of those activities. I'm sure we'll be making that available very publicly as soon as we possibly can.

## **American Clean Energy and Security Act of 2009: Analysis and Discussion**

### Slide 1: American Clean Energy and Security Act of 2009: Analysis and Discussion

Catherine Morris: Thanks. I want to move onto our next speaker even though I know there's a lot more questions out there. We can also hear from perspective of both the public utility commissioners as well as state air directors. Amy Royden-Bloom is the senior staff associate at NACAA. And many of you that are air directors that are on the phone or on the staff of the clean air agencies are familiar with her work across both the criteria pollutants as well as the greenhouse and climate change policy helping states, both educating states on those issues and helping them with resources. So, Amy let me quickly turn it to you. I see that you already have the controls so you can take over.

Amy Royden-Bloom: Ok, thanks very much. As Catherine mentioned, I'm with NACCA. We represent state and local air pollution control agencies, 53 states and territories, and over 165 major metropolitan areas across the country. For those who aren't in air agencies, what we do? We help measure/monitor air pollution across the country. We develop state implementation plans to show how we can attain or meet health-based air quality standards, issue permits to sources and make sure they don't over pollute, and inspect and enforce to make sure the emission limits are complied with.

Alright, well I'm pleased to be here to talk about the legislation. Some of my slides repeat, so I'll get through those really quickly.

### Slide 2: Key Issues

Amy Royden-Bloom: Here's a list of the key issues and what the legislation are for the perspective of states and local agencies.

### Slide 3: Rights of States and Localities

Amy Royden-Bloom: Ok. One of the biggest issues for us is the rights of state and local air agencies and local agencies in general to enact more stringent measures. The existing savings clause in the Clean Air Act (section 116) protects the rights of state and local entities to enact more stringent air pollution control measures and policy. And just to recap, why is this important? It's important because we are laboratories of innovation. States are the ones that came up with RGGI and the Western Climate Initiative and, in the RGGI program, showed that 100 percent offset of allowances could work. State and local more stringent programs are sort of a back stop in case the federal programs aren't stringent enough, hasn't been enacted or over time, or if—God-forbid—we get an administration that doesn't want to implement the act. And we all recognize that we need more than cap and trade to solve global warming and that's recognized in the bill so you need a whole suite of measures both at the federal level and at the local level to reduce greenhouse gas emissions—that's why it's important to protect our rights. And there are also coal pollutant benefits from a lot of greenhouse gas reduction measures. Measures that reduce greenhouse gas emissions from coal-fired power plants also tend to reduce emissions of other hazardous criteria air pollutants. But what does the bill do?

Catherine Morris: Amy I'll just interrupt briefly to remind people to hit \*6. I'm hearing some background noise from some of our participants. So \*6 to mute your line or push your mute button please.

Amy Royden-Bloom: I just want you to know that the existing savings clause and the Clean Air Act already have a lot of protection for regulation of greenhouse gas emissions. That is because the Supreme Court in Massachusetts versus EPA held that greenhouse gases are an air pollutant under the Clean Air Act. So anyway we could regulate a criteria pollutant, we could do for greenhouse gas emissions. For example, a greenhouse gas emissions limit out of source and performance standards. What the bill does is add to that by expressly protecting the right of a state or local government to cap greenhouse gas emissions and to require the surrender of an allowance or offset credit or require use of such allowance or offset credit as a means of demonstrating compliance with the state and local requirement. Now, why are the latter two important? The latter two are important because if a green state, for example, enacts a more efficient greenhouse gas emissions performance standard on power plants, under a cap and trade program what would happen is power plants in a green state would reduce their emissions. That would give them more allowance to sell in the market and emissions could just go up somewhere else. What this says is green state could say to these power plants "You've got to turn over those excess emission allowances to us, green state retires them and that way greenhouse gas emissions actually go down because of green state's more stringent provisions.

#### Slide 4: "Timeout" for State/Local Cap and Trade Programs

Amy Royden-Bloom: Nevertheless, as Kate mentioned, there is a narrow preemption in the bill. There is a timeout for state and local caps for six years, which is between the years 2012 and 2017. Our understanding is that this is to give a chance for the federal cap and trade program to get off on its feet. It is a very narrow preemption; only preempt cap and trade programs where allowances are issued and traded. All of our other authorities are maintained during that time and forewarned. So, it is a narrow preemption.

#### Slide 5: Treatment of Offsets from Existing State Programs

Amy Royden-Bloom: Alright, treatment of offsets from existing state program, Kate already went over this. My interpretation of this section was to allow for an offset program transition until the federal offset program gets off its feet. As you see in the last bullet under the first bullet, offset credits states can only issue them until they issue their offset regulations for three years after enactment. But this does provide that offset credits issued under a state program after 2009 will be exchanged for federal offsets. And for other offset programs that were not established under state or tribal law or not established before January 1, 2009, EPA may issue credits if certain criteria are met.

#### Slide 6: Performance Standards for Coal-Fired Power Plants

Amy Royden-Bloom: Ok, power plants. Our favorite subject. In general the bill exempts any resource that is covered by the cap in performance standards. The exception is for coal-fired power plants. Why do you need performance standards for power plants; they're under the cap

that should control their emissions? Well, the only way to control emissions that we know of right now from coal-fired power plants is through sequestering the emissions and putting them under ground or in an aquifer—carbon capture and storing technology. And the prevailing thought is that allowance prices would never get high enough to induce power plants to apply CCS technology. So this performance standard is designed to provide a push for CCS technology. The bill also has incentives for CCS technology and deployment, and this is important for us because power plants are a major source of global warming-causing pollution and also other types of pollutions.

#### Slide 7: Industrial Sources of GHGs

Amy Royden-Bloom: And just briefly, as I mentioned new source performance standards are emission standards for new sources or modified, and the bill provides that sources inside the cap are exempt for NSPS. However, for sources that are outside the cap, which are generally smaller sources below 25,000 tons per year, EPA is directed to set new source performance standards. The bill prioritizes the biggest greenhouse gas sources to go first. Now, what's interesting is that because there isn't a national standard for ambient air quality greenhouse gasses, the NSPS would apply not just to new reconstructed sources but also to existing sources. If there were a slightly different mechanism, states would have to submit plans to EPA stating how they would then impose an NSPS onto an existing source. They can give more protracted deadlines, but that is an interesting thing that I thought I'd point out here.

#### Slide 8: Other Clean Air Act Titles

Amy Royden-Bloom: Other Clean Air Act Titles: This stuff is very important to us. First of all, the bill says that greenhouse gases will not be considered in determining applicability to Title V. What is Title V? Title V requires emitting facilities over a certain threshold to have Title V permits and these permits list all applicable requirements including emission limits. So they're a very important tool for state and local agencies. However, the bill does say that if a source already has a Title V permit the greenhouse gas emission limits that pass will be written into that permit. And inclusion in the Title V permit means that states and local air agencies have inspections and enforcement authority over the greenhouse gas emissions from that source. To summarize, if you don't have a Title V permit for your greenhouse gas emissions, they'll make you get one. If you already have a Title V permit, though, your greenhouse gas emissions have to be written into it.

Second bullet, also very important. EPA is prohibited from listing greenhouse gases as criteria air pollutants or hazardous air pollutants under the Clean Air Act. That means no national ambient air quality standards, like there are for ozone or particulates or lead, for greenhouse gases.

And the last bullet. Greenhouse gasses are exempt from New Source Review or other permitting provisions. There's also a safe exemption. For example, EPA could not require that new sources or sources making major modifications apply Best Available Control Technology for controlling greenhouse gas emissions. We have found that NSR provisions are very useful in controlling air

pollutant emissions. Again, I think the thinking here is that the overall cap is sufficient to control emissions from sources in the cap.

#### Slide 9: Transportation Efficiency: Motor Vehicle Standards

Amy Royden-Bloom: Alright, very quickly. Kate already went through this: Motor Vehicle Standards. I think the important thing here is that the bill reaffirms California's legal authority to adopt and enforce its own mobile sources emissions standards. That's very important.

#### Slide 10: Transportation Efficiency: Mobile Source Standards

Amy Royden-Bloom: For mobile source standards, EPA is directed to set greenhouse gas emission standards for a variety of sources. As you all know, the mobile source sector is a huge source for greenhouse gas emissions. This is very important. The low-carbon fuel standard that was in the discussion draft was deleted. So it's no longer in the bill.

#### Slide 11: Transportation Efficiency: Planning Requirements

Amy Royden-Bloom: There are also planning requirements and again this is very important for both greenhouse gases and other air pollutants because vehicle miles traveled is growing. This bill tries to encourage planning to reduce those emissions. As Kate mentioned, there are no sanctions if you don't meet your greenhouse gas emission reduction targets. There are sanctions for not having a plan. And EPA is supposed to certify that the plan looks likely to meet the target. So it's a step in the right direction. And those of you from California will notice this is based on a bill called SP375. There are a lot of similar provisions here.

#### Slide 12: Funding

Amy Royden-Bloom: Funding. One of our favorites. The manager's amendment included something that wasn't in the discussion draft, and it's a section authorizing EPA to make grants to air pollution control agencies under Section 105 for purposes of assisting in implementation of the act. We were very happy to see that.

#### Slide 13: Greenhouse Gas Registry

Amy Royden-Bloom: And last, as Kate mentioned, there is a section on setting up a greenhouse gas registry. We're hopeful that state and local agencies can play a role in that.

#### Slide 14: Contact Information

Amy Royden-Bloom: And that's it. I'm happy to take any questions.

Catherine Morris: I would like to take a few questions for Amy before we move on. One of the questions that came in earlier was if you could be more specific about how the federal legislation is likely to affect RGGI states.

Amy Royden-Bloom: Well, because of the time out for state and local cap, the RGGI program is dissolved between 2012 and 2017. So funding that RGGI states were receiving through the oxygen allowance disappears. Now it's replaced by the funding stream under the bill, but I don't think anyone is going to do one-to-one comparison to see is Massachusetts getting the same amount of money it would have under RGGI as New York, etc. But the RGGI states, if they chose, (or any other states if they still decide to) can set a cap for emissions within its own state and implement that cap and retire allowances off the federal market so they can try and accomplish the same goal. It just can't be a cap and trade program between 2012 and 2017.

Michael Jerris: Amy, this is Michael Jerris with the South Carolina DHEC. I was wondering if there's been any sense of from NACCA in terms of the current mandatory greenhouse gas reporting rule and this relationship of what the Waxman-Markey Bill asks for. Do you see any consistency or will there be a large difference for the state if the bill makes it through Congress this year?

Amy Royden-Bloom: Oh gosh, that's a good question, and I can't read the tea leaves there. My recollection is that there are a lot of similarities except the bill does not have an option for sources to report directly to states, it's directly to EPA, whereas EPA in its proposal floated the option of sources reporting to states and then states reporting to EPA. That's one of the big differences. But neither of those have verification.

Catherine Morris: It sounds like we might have somebody on the line who's doing some sort of automatic dial every few minutes. If you can check your phones on that that would be helpful. There is a clarification question. You said that the states can establish a state cap and retire allowances; can this be done during this moratorium period between 2012 and 2017?

Amy Royden-Bloom: Yes, they can set a cap and then require federal allowances to be turned in and retired.

Catherine Morris: And let me just ask you one more and then we'll move on to Commissioner Morgan. Could you expand on any of the planning requirements for the transportation efficiency? Does this also cover public transportation?

Amy Royden-Bloom: Well, the plans are supposed to be developed with the concurrent air and transportation agencies. I think they see them working together, and whether the MPOs (Metropolitan Planning Organizations) they're supposed to be on the plan. So it's supposed to be close coordination. But, to be honest with you, I have not studied this section in depth. But if people do have questions, they can e-mail me and I'm happy to answer what I can.

## Talk by Commissioner Rick Morgan

Catherine Morris: Ok, thanks very much Amy. All of our speakers are staying on the line and hopefully we'll have a few more minutes to come back to some of these outstanding questions. Commissioner Morgan is our next speaker and he's going to—as the Commissioner for the District of Columbia Public Service Commission—talk about all the implications of this bill for state regulators of the utility sector. And he's also the leader of the task force on climate policy work. Before being a commissioner and also being on the staff of the D.C. Public Service Commission, he spent many years—12 to be precise—at EPA working on greenhouse gas emission trading. Rick does not have a presentation, so we're just going to leave our agenda and discussion questions up but Rick go ahead.

Rick Morgan: Thanks, Catherine. I apologize for not having time. I didn't really have any suitable PowerPoints for this topic. I usually just work from notes. So you'll have to rely on my audio. I want to focus my remarks on the provisions in Waxman-Markey that are particularly significant to utility regulators, such as the allowance allocation provision under the cap and trade portion. As you can imagine, utility regulators are going to take the heat for any higher utility bills that might happen, but we also have a terrific opportunity to try to direct some of the resources made available by a cap and trade program toward public policy options, such as energy efficiency. We also have some further ideas of how it might be possible to minimize some of the economic impacts on utility rate payers.

As I mentioned, the allowance allocations are really key. The original proposal that came from President Obama was to auction 100 percent of the allowances and Waxman-Markey would auction only about 15 percent. The other 85 percent would be given away, and the proceeds of those allowances are therefore very valuable to any of the entities that receive them. They would be given specifically to different categories. I'm not going to run through all of them, but among them are the wires companies that delivery electricity to consumers, and I'm going to talk about that in a little bit more detail.

It's important to recognize that the idea of giving away allowances is not about weakening the environmental goals in the legislation but rather it's about who's going to foot the bill. And that's why it's so important to utility regulation. But, how the money is spent has environmental implications indirectly. Among the total allowances that are created under Waxman-Markey, approximately 30 percent would be given to electric local distribution companies and nine percent to gas local distribution companies. This is in addition to the allocation that will be made directly to states that Phil talked about in more detail. I think something like 15 percent—I don't know if you're muted now—but I think that was the number that goes directly to the state and state energy offices.

Phil Guidice: I believe it's 10 percent.

Rick Morgan: Ten percent ok, sorry. Thank you. Let me explain a little bit what a local distribution company is because it's often a confusing term. It is confused with other terms, such as load serving entity, which is something quite different. A local distribution company at least on the electric side is the wires company. It's owns the wires and delivers the electricity. It may

or may not be a generator. In some states, and these are the states that still have traditional regulation, where the generation and the putting power into the grid, as well as delivering it, is all under one vertically integrated entity. But then in restructured jurisdictions, these functions tend to be unbundled, so that the wires company may not have any generation at all. And it may also rely on other companies to provide the electricity into the grid, and those are the load serving entities.

What's unique about the local distribution companies is that, unlike the other parts of the electricity sector, they are always regulated by some kind of ratemaking authority. It's usually a public service commission or, in the case of municipal or electric cooperative utilities, there's some kind of board that's accountable to consumers. So the idea is if you give the allowances to a regulated local distribution company, then they are required as part of their responsibility to make sure that those benefits are flowed through the consumers. It does play out differently in restructured jurisdictions versus traditional jurisdictions because a company that has no generation—is only a wires company—essentially would need to auction off the allowances and sell them probably to a generator who is going to need them for compliance. On the other hand, if it's a vertically integrated utility, the allowances are likely to be transferred internally from the wires company to the generator, but in either case, the benefits must be accounted for by the regulator. And they can make certain that the benefits are passed along to consumers, which in almost every circumstance did happen under the acid rain program with the SO<sub>2</sub> allowances. So, we would expect the same thing to happen here.

Now within Waxman-Markey there are some specific requirements about how the benefits would be distributed to the local distribution companies. There is a question about whether it would be done through rebates versus energy efficiency versus low income assistance, and also how it would be allocated among the utilities' customers. The legislation actually does not specify any requirement about providing resources for energy efficiency or low income assistance, nor does it say that that's precluded. So it basically would leave it up to the state commissions. It would be certainly possible for a substantial portion of the funds to be used to fund new efficiency initiatives, for example, as opposed to returning that money to consumers. It does, however, have a requirement that says that the distribution of the value of these allowances must be allocated to the different rate classes—that usually means commercial versus industrial versus residential—must be allocated rateably, in other words in the same proportion. And also within each of those classes, it has to be allocated equitably. It's not clear exactly what that means, but it could make it more difficult to run an energy efficiency program because it might be difficult to show that the proceeds of the allowances are being spread out evenly among those different classes or different subclasses of consumers.

Now, the legislation does not require that the allowances be auctioned. It does make it possible for vertically integrated utilities to transfer those allowances internally. Although, that is an issue that is right now actively being debated by participants involved with Waxman-Markey.

Let me go onto a few different important issues in the cap and trade portion of Waxman-Markey. One of these is cost containment. There are a number of proposals that have been floated around for ways of trying to bound the cost of compliance and also bound the prices of allowances. One approach is known as a safety valve and it usually means putting perhaps an upper bound on the

price of allowances by having the government essentially agree to sell allowances at a certain price so that it would essentially depress the amount of the market price to keep it below that price ceiling. Another approach is to create an allowance reserve by essentially taking allowances from within the cap so that you're not essentially expanding the cap, which the safety valve would do, and setting those aside and putting them on the market if the price escalates too quickly, for example usually this would be applied in cases where the prices got too volatile. Another issue is offsets policy. What sort of offset mechanism might be available to provide additional resources to reduce emissions? That might be things like reductions through forestry practices and that sort of thing. There are provisions in there for either domestic or foreign offsets and the idea is to make available low cost reduction options.

Another very important issue to regulators is the recognition of the role that clean energy resources, such as energy efficiency, need to play. There is a concern about the reliance on higher prices occasioned by putting a price on carbon and how that's going to affect utility rates. And, there are various advocates who have pointed out, for example, that per dollar spent on reducing carbon, energy efficiency is likely to reduce carbon emissions at the rate of about seven times as much per dollar spent than simply raising the price. In that sense, as the argument goes, taking the proceeds from putting a price on carbon and recycling it back into energy efficiency programs would help to bolster the goals of a cap and trade program, reinforce it, and in fact help to bring down allowance prices and compliance prices generally. And, lower the overall economic impact of putting a price on carbon and, frankly, make it more politically viable. And that's an issue that is been argued by the Regulatory Assistance Project, for example. This isn't something necessarily that would get written into the legislation, but rather it's more a matter of opportunity certainly for utility rate makers. But, I think it also applies to energy offices and also to environmental regulators to recognize, as I think many of us do already, but it sort of reinforces the importance of relying on energy efficiency as a resource. Once we put a price on carbon it just becomes that much more valuable as a resource.

I was going to mention the issue about federal and state roles—the significance of Waxman-Markey suspending the state regulatory state and regional programs for six years—but Amy has covered that. Outside of just the climate provisions in Waxman-Markey, Kate covered the RPS and the efficiency standard, but there's one more that I want to mention, which is the smart grid provision. Which not only would require EPA to look at peak reduction technology as something that should be put in its ENERGY STAR program, but another provision would establish the requirement of peak reduction goals for load serving entities. Those are the entities that put power in the grid to provide electricity for consumers. And that is another issue that has generated a lot of interest because it's kind of a new idea that hasn't been fully explored, and there's a lot of uncertainty about exactly how that might work but it is a potential way of lowering peak loads and helping to bring down overall energy costs.

So, we're up to 3:30 so maybe I'd better stop there and see what sort of questions people might have.

Questions

Catherine Morris: Thanks, Rick. Questions for Rick? I'm sure people don't mind if we go over a little bit because there still are a lot of outstanding questions.

Rick Morgan: Unfortunately, I only have about five minutes because I have to move onto something else.

[Unnamed speaker]: I'm really interested in... you said that the local distribution companies are the ones that own the wires, not the generators. Would that include also federal agencies that may own the wires?

Rick Morgan: In cases where federal agencies own the wires—when I say own the wires we're talking about the distribution wires not transmission wires—so there are some transmission lines owned by federal agencies but not very much in the way of distribution lines. There are a few industrial consumers that buy power directly from the federal agency and that might apply there, but it's a relatively small portion of the overall electric sector. It does include a lot of municipal utilities, electric co-ops, and of course investor-owned utilities.

Catherine Morris: Rick, one of the other questions we have online is who actually gets to decide the allocations of the allowances that are going to be allocated to these different entities and industrial sectors?

Rick Morgan: Well, the allocation is based on a proposal that came from the Edison Electric Institute. It's half based on historic allocations underlying the region in which the utility operates, and the other half would be based on electricity delivery to consumers during a baseline period. There is some flexibility on what exactly that baseline period is, so you would expect all the companies to look back over the last 12 years approximately to pick out the three consecutive years that work best for them. They would each choose that period of time and then the allocation would be made by EPA based on that information. Now that does create a big job for EPA. EPA would have to do the calculation to find out what those underlying emissions are. It does assign that job to EPA, and that would be a fairly substantial undertaking. One logical source of data is the eGRID database, which I actually worked on when I was at EPA, which does have emission factors for all of those regions.

## Questions and Answers

Catherine Morris: And before you have to leave, I'll throw this question out to you and the rest of the speakers, for your predictions as to how the Waxman-Markey bill might be treated by the other House committee that it has to make its way through and the Senate.

Rick Morgan: I really don't know much more than what I read in the papers. There's pressure from agriculture in particular on the House side. I know that the agriculture committee is concerned about the use of biomass. They're also concerned about that issue of the underlying emissions. They're arguing, for example, that doing so based on electricity delivery might disadvantage regions that are more heavily coal oriented. I just have no idea how all that is going to play out. It all has to do with counting votes and of course the leadership of those committees are just going to have to look at where the votes are and make the decision. That's what I would expect anyway. On the Senate side, as somebody mentioned earlier, there is an expectation that Senator Boxer is going to use Waxman-Markey as a starting point, and I've heard that from a number of different sources. I would expect to see something like that. Of course, the Senate is going to do things its own way to some extent. I also think they'll probably separate the climate bill from other energy legislation, and so there might be multiple bills that are combined into one big huge bill on the House side, but more than one bill—at least two if not more—on the Senate side.

Catherine Morris: Any other speakers want to take a shot at that?

Phil Guidice: No [laugh]

Amy Royden-Bloom: This is Amy. One additional issue I've heard from the Chair of the House Committee is that EPA is completely in charge of the offsets program. They want USDA to have some role in particular with ag. and forestry offsets. I think negotiations are still ongoing, and I couldn't predict how that would come out in the House and the Senate, no idea either.

Catherine Morris: There was another set of overarching questions, which is how the bill might affect states that are already trying to engage the international community in cap and trade, how it might affect those interactions? Any of our speakers that might have some views on that.

Phil Guidice: I think this is really important to move forward with to position us well for Copenhagen this December and to continue dialogues that have been started between China and the United States. I think progress, even if it's not the perfect bill, which obviously it won't be, is so helpful to be continuing our international dialogue and moving forward with that at this time.

Amy Royden-Bloom: We also see this bill as moving forward on the very important job of capping global warming emissions.

Catherine Morris: Mark Fox had asked whether or not any of you have done, or expect as this moves forward, an analysis—a state-by-state analysis—that really does specify what some of the implications are on a state-by-state basis that would be pretty specific to their current policies.

Phil Guidice: We've looked at this very closely but I have nothing that we really can share from Massachusetts, and there is still a fair amount of fluidity out there, so I don't know how we can really get that out to anybody yet.

Catherine Morris: Kate, do you know if your organization is going to try and tackle that job?

Kate Zyla: We are similarly looking at a lot of questions, but again hard to follow until everything is done, and we're also trying to work with some of the states individually to understand the numbers they have as well. They have been involved in progress, but nothing yet that we can share either.

Wally Nixon: Could I ask a question of Rick Morgan, please? This is Wally Nixon in Arkansas. Rick, I tend to think that energy efficiency programs have a tendency, like other programs, to put impact upwards on prices. And if the states are in a situation where they have to choose between where they put the allowance money—bringing down rates or making them stay where they are versus putting in energy efficiency—are there any considerations in the bill to address that or the issue of the rate or bottom? Can they get in a situation where they say our goal is to show that we have rates lower than the national average, we're going to put all of our funds into that and not do efficiency. Is that an issue? Am I thinking of it wrong or how could that be addressed?

Rick Morgan: I think that's a very legitimate question. I think we can all speculate on how the different states are going to respond. And, to the extent that there is pressure to minimize rates, I think way toward giving rebates rather than putting the money into energy efficiency. If the concern is more overall utility bills, that might work the other way. There is no doubt that there is pressure on rates. I don't expect that to change, but I think one of the most important things that all of us can do is to make sure that utility regulators are aware of the opportunities and the importance of relying on efficiency as a resource, and that could go a long way toward minimizing the overall cost to the consuming public of putting a price on carbon. I agree, that's going to be a tough issue and it's going to play out in every state.

Catherine Morris: Jeff Habrol, you had a question that's been standing since early in the webinar, Jeff, and I'm not sure I can do it justice. You had a question about whether or not EPA was going to determine some sort of regional standard emission rate. Can you expand on that?

Jeff Habrol: Yes, we've done a number of calculations on emissions reductions for Texas, and we worked closely with Art Diem when he was issuing eGRID, and we found that this is very specific to the version of eGRID that you're working with. When it came to carbon, however, there seemed to be a little more of a gray area there, and there seems to be a lot of uncertainty with the carbon even that's contained within eGRID. For example, there was a panel that EPA participated on that showed that carbon, as well as some of the other pollutants, can have a very significant time of day element that's currently not captured in eGRID, which has typically done hourly emissions data and monthly electricity data. I was wondering if there are any efforts in this area to move forward with the time of day version of eGRID.

Julia Miller: Jeff, this is Julia Miller. I would say at this point in time that's maybe a little cart before the horse for us. We're just seeing how things are going through Congress and things can

obviously change and different provisions and responsibilities are changing, and so something like that would be taken up in rulemaking, so I can't answer that at this time.

Rick Morgan: Maybe I can add a little bit to that since I worked on eGRID before Art took it over. I do understand that there is some methodology that Art is working with that does provide some sort of temporal granularity. I can't tell you exactly how it works, but I know it's something that they're looking at...using some of the hourly data from the continuous emission monitors. But it's, I believe, still a work in progress. Art Diem would be the one to contact, and I know he's got a brand new baby at home, so I doubt if he's reachable at this time.

Jeff Habrol: The other question I have is in a similar fashion to NO<sub>x</sub> emissions credits for the SIP. Do you think EPA is going to require a quality assurance plan on any of the carbon calculations?

Julia Miller: I can't answer that. I don't know the answer to that, but I can certainly try to track down the right person, and see if we can get back to you.

Jeff Habrol: Great, thank you.