



The Large Public Power Council

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The Honorable Barbara Boxer
United States Senate
SH-112 Hart Senate Office Building
Washington, DC 20510-0505

The Honorable John F. Kerry
United States Senate
SR-218 Russell Senate Office Building
Washington, DC 20510-2102

Dear Chairmen Boxer and Kerry:

As you and your colleagues continue to craft climate legislation in the Senate, the Large Public Power Council (LPPC) would like to bring to your attention a number of important legal technical and policy issues in the House-passed climate bill, H.R. 2454 – the American Clean Energy and Security Act. The LPPC¹ is comprised of 23 of the largest publicly-owned power systems in the United States, including major utilities in California, Colorado, Florida, and Texas. Our members share the common goal of ensuring strong consumer cost protections while addressing the Nation's energy and climate protection concerns. LPPC members provide reliable, low-cost electric service to most of the more than 45 million people served by public power. Member utilities own and operate 75,000 megawatts of generation, consisting of a diverse portfolio of fossil, nuclear, hydropower, wind, geothermal, solar, tidal energy, and other renewable energy sources that reflect the national energy mix.

LPPC is conducting a detailed review of H.R. 2454. The focus so far of the LPPC review has been on those provisions relating to the establishment of an economy-wide greenhouse gas (GHG) cap-and-trade program. Based on this review, LPPC has identified significant policy issues that are described in detail in the attached issue paper. This letter summarizes several key issues and options you and your colleagues may wish to consider in connection with these cap-and-trade issues. We anticipate providing input on other related issues in the future.

Consumer Cost Protection. A key objective for LPPC members is protecting electric consumers from large electric rate increases that could result from extreme volatility in allowance prices or sustained high allowance prices. There are many provisions of H.R. 2454 which may contribute to these price impacts and several methods which can be adopted to mitigate them.

- *Need For Price Ceiling or Price Collar.* Economic impacts of the proposed cap-and-trade program depend on wide range of factors, some of which are beyond control – such as the adequate supply of emissions offsets and demonstration of new technologies for lowering the nation's carbon footprint. LPPC is concerned that these or other unexpected circumstances may result in unacceptable allowance price volatility or sustained high allowance prices. While H.R. 2454 has an allowance price floor, it has no ceiling on allowance prices.

¹ LPPC's New York members are unable to concur in this letter and are participating in policy recommendations being developed by the State of New York.

Proposed solution: LPPC recommends the Senate include a price collar mechanism that places a ceiling as well as a floor on allowance prices. The ceiling should provide for certainty as to the maximum level of allowance prices, be based on expected availability of control technology, and be consistent with emission control objectives of the program. The price collar should be designed primarily to contain costs by preventing sustained and unacceptably high allowance prices, providing cost certainty to facilitate investment planning, and dampening damaging volatility in allowance prices.

- *Allowance Retention.* A substantial percentage of allowances distributed under H.R. 2454 go to entities that are not utilities and have no compliance obligations under the program. LPPC is concerned that these entities may fail to sell their allowances on a timely basis, thus having the unintended effect of increasing the stringency of the cap and driving up allowance prices for the entire economy.

Proposed solution: LPPC recommends the Senate consider –

- Requiring allowance recipients that are not utilities and have no compliance or load-serving obligations under the program to sell their allowances into the national allowance market within a reasonable time period after receipt; or
- Provide that allowances allocated to such entities be auctioned and the revenues disbursed to entities entitled to the allowances.

Implementation Schedule. H.R. 2454 provides for a January 1, 2012, start-up date for the major portion of the cap-and-trade program. The legislation will not be enacted until late 2009 at the earliest, leaving at most two years to promulgate implementing regulations, allocate allowances, issue permits, and take other essential actions to implement the cap-and-trade program. By comparison, Congress allowed four years for the limited Phase I acid rain program and nine years for Phase II. The 2012 start-up date for control of most of the economy's CO₂ emissions is infeasible.

Proposed Solution: LPPC recommends that the Senate establish reasonable time frames for EPA to promulgate regulations and implement the core elements of the cap-and-trade program. LPPC believes that Congress must provide, at a minimum, four calendar years from date of enactment to the start of the cap-and-trade program.

Other Issues. LPPC has identified a number of other significant issues with H.R. 2454, which are described in detail in the attached issue paper, including the following:

Offsets. H.R. 2454 relies heavily on the use of emissions offsets (up to 2 billion tons per year of domestic and international offsets) to reduce the overall cost of the cap-and-trade program. LPPC supports the offset program as an important part of cost containment. However, LPPC is concerned that, under the H.R. 2454 framework, offsets may not be available in the quantities needed to achieve the cost containment goals of the bill. For example, international offsets are discounted 20 percent under H.R. 2454. Because international offsets are subject to the same rigorous standards as domestic offset credits, this discount should be eliminated. In addition, state and regional offset programs meet quality criteria could provide additional supply of offset credits. Consideration should be given to providing additional

resources to these state and regional programs during the implementation phase of the federal program to allow them to develop additional offset projects during this timeframe.

- *Relationship to Other Federal Law.* H.R. 2454 provides relatively narrow restrictions on EPA climate regulation under the CAA and other existing Federal statutes. LPPC recommends that the cap and trade program remain the exclusive means of regulating GHGs under federal law.
- *Lowering Emissions Thresholds.* H.R. 2454 permits EPA to expand the scope of the emission cap by lowering emissions threshold for regulation from 25,000 to 10,000 tons of CO₂ per year. The Senate should consider increasing the level of the cap to reflect inclusion of smaller sources.
- *Restrictions on Electric LDC Allowance Use.* Electric local distribution companies receive significant allowance allocations in the early years of the program, but must meet prescriptive requirements for use of these allowances. These provision need to be clarified and streamlined.
- *GHG Performance Standards for New Coal Plants.* Coal plans permitted after 2008 must meet phased carbon capture and storage requirements. These requirements may turn out to be infeasible, and need to be less inflexible.

As Senate consideration of climate legislation proceeds, LPPC looks forward to working with you and the committee with the objective of fashioning a fair and workable energy and climate legislation.

Very truly yours,



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