

Legislation on global warming may turn renewables white hot

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Global warming concerns are driving significant developments at international, national, state and local levels. These developments will directly affect Houston as the celebrated Energy Capital of the world by increasing the investment in and development of renewable energy sources.

In early February, the United Nations' Intergovernmental Panel on Climate Change issued a report, "Climate Change 2007: The Physical Science Bases," which concludes that an "unequivocal" warming of the climate system is occurring and that human activity is "very likely" causing such warming.

The report's writers are 90 percent certain that human activity is a "major" contributor. It is not clear what level of contribution qualifies as major, but the report's message is clear: Governments and policy-makers should seriously evaluate means of mitigating and controlling greenhouse gas emissions.

GREENHOUSE GAS BILLS

At the national level, the new Democratic Congress has begun to take up that challenge. To date, four major bills have been filed that seek to implement green-house gas emissions reduction processes.

These bills — introduced respectively by Sen. Joe Lieberman (I-Conn.), Sen. Bernie Sanders (I-Vt.), Sen. Dianne Feinstein (D-Calif.) and Rep. John Oliver (D-Mass.) — all focus upon enacting caps on GHG emissions and using tradable emission allowance schemes to allow the market to more efficiently allocate the costs of controlling GHG emissions. Beyond these basic concepts, the various bills differ widely in their approaches. Questions to be resolved in the legislative process include:

- Whether GHG emission caps should be economy-wide or only affect certain sectors such as the electric generation industry.
- The levels to which and the speed with which

GHG emissions should be reduced.

- The extent to which allowances will be allocated based upon cutting absolute GHG emissions using renewable energy sources or implementing carbon sequestration strategies such as through forest management or the underground injection of GHG.

- The degree to which GHG reductions in other countries can offset emissions in the United States.

- Whether GHG emission allowances should be auctioned to emission sources or simply allocated based upon historical emission levels.

Still, even with the recent flurry of activity at the federal level, questions exist regarding whether an overall national legislative package will emerge. Consequently, many individual states including Texas are tackling the global warming issue.

ACTION IN TEXAS

Texas' most recent legislative session brought the introduction of two bills mandating that Texas inventory and reduce GHG emissions to 1990 levels. To some extent, Texas' proposed legislation addresses questions left unanswered by the bills proposed in the United States Congress.

Sen. Rodney Ellis (D-Houston) and Rep. Eddie Rodriguez (D-Austin) each introduced GHG emission reduction legislation in their respectful legislative chambers. Each proposal requires the Texas Commission on Environmental Quality to establish a statewide GHG emissions inventory and to develop a comprehensive plan to reduce GHG emissions to 1990 levels within specific time frames. Ellis' bill requires the baseline be achieved by 2021 while Rodriguez' bill requires those reductions by 2020.

Ellis' proposed legislation requires that statewide GHG emissions be measured in a way that accounts for electricity consumed within Texas, but that is generated outside of the state. This framework mitigates the likelihood of Texas being affected by the construction of GHG emitting facilities in neighboring states within close proximity to its borders.

In addition to the establishment of a GHG inventory, the bills require monitoring and reporting of GHG emissions by sources and categories of sources. The emissions reductions mandated by the plan appear to include sources beyond electric generators and have a *de minimis* threshold exemption below which additional emissions reductions cannot be required.

Much like a state implementation plan to curtail emissions under the Clean Air Act, the Comprehensive Plan will likely embody various rules, incentives and controls. The proposed legislation calls for the plan to include market-based compliance mechanisms, including emissions banking and likely cap and trade programs, as well as both direct emissions reduction requirements and alternative compliance mechanisms to achieve the baseline.

Alternative compliance mechanisms are defined as those actions taken by a GHG source that achieve the same reduction as direct emission reductions over the same period of time. The legislation contemplates that the plan will consider monetary and non-monetary incentives and take into account the impact of voluntary actions like carbon sequestration projects, alternative compliance mechanisms and best management practices.

DIRECT EMISSIONS REDUCTIONS

Use of alternative means of achieving the baseline has been an issue watched keenly by industry. Sequestration projects have been advocated by some industry groups as an alternative means to mitigate the exclusive need for direct reductions.

While Texas' proposed legislation leaves broad authority to the Texas Commission on Environmental Quality to develop the Comprehensive GHG Reduction Plan, there can be no question that any plan will face the same types of challenges that the City of Houston faced when its current ozone state implementation plan was crafted. Both industry and environmental groups need to be prepared for compromise. While the legislation leaves open the possibility of using alternative reduction measures, the traditional energy industry should be prepared for the impact of direct GHG emissions reductions.

The beneficiary of direct emissions reductions will be the renewables industry. The financial playing field should become more leveled between traditional energy producers and the renewable industry as the traditional sector becomes compelled to invest in retrofitting technology and expand their portfolios to include more renewable projects. As a result, the demand for renewable energy production should experience strong growth, and the Houston energy industry is primed to lead that growth.

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