[Alerts and Updates]

New RES Component of Cap-and-Trade Bill Would Add to Existing Federal Incentives

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On May 21, 2009, Democratic leaders of the U.S. House of Representatives' Energy and Commerce Committee completed their mark-up of a bill that, if enacted, would substantially overhaul U.S. energy and climate change policy. In addition to proposing the establishment of a cap-and-trade regime for the emission of greenhouse gases, the American Clean Energy and Security Act of 2009 would establish a national Renewable Energy Standard (RES) and give the Federal Energy Regulatory Commission (FERC) jurisdiction over its enforcement.

Although prior drafts of the bill reflected President Obama's stated goal of generating 25% of the United States' electric power from renewable energy resources by the year 2025, the negotiated RES proposed in the House bill would require each state to generate 15% of its electric energy from renewable energy resources by 2020, with an incremental requirement that states reduce their electric power consumption by 5% with energy efficiency measures. The bill would permit governors of states that are not rich in renewable energy resources to reduce the 15% threshold to 12%, provided that any such reduction be offset with corresponding increases in energy efficiency to maintain the 20% combined renewable energy and energy efficiency target. The House bill would authorize FERC to implement and enforce the RES and its network of tradable credits, alternative compliance payments, and other features. The House bill would benefit wind, solar, renewable biomass, certain qualified hydropower, and certain marine and hydrokinetic renewable energy. New nuclear power, certain hydropower, and fossil fuel generation that is combined with carbon capture and storage all would be excluded from the base amount of electric power supplied by utilities against which increases in renewable power are measured in the House bill. Electric utility companies that sell less than 4 million MWh each year would be exempt from the RES requirement.

The House bill is scheduled for mark-up this week. At the same time, the Senate Energy and Natural Resources Committee will attempt to finalize its agreement on an RES in its own comprehensive energy legislation. The Senate version of an RES, unveiled earlier this week, would mandate a 15% standard, while permitting as much as 4% of that requirement to be achieved through energy efficiency measures. The Senate bill has yet to be reported out of committee.

Twenty-eight states and the District of Columbia already have enacted their own individual Renewable Portfolio Standards (RPS) with their own individualized targets – most are more stringent than the national RES currently being debated in both chambers of Congress. To varying degrees, most of these RPS states have seen continuing growth of the development and consumption of renewable energy resources in their states. Not only are these states already leading the U.S. in renewable energy development, they also are likely to be the primary beneficiaries of the incremental renewable energy and efficiency investment arising from the recent economic stimulus package incentives as a result of the early creation of their own renewable energy markets.

When President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law on February 17, 2009, he put into place key elements of a comprehensive policy to assist the development of renewable energy in the United States. The ARRA renewable energy provisions reflect a significant upgrade of the incentives included in prior stimulus packages. The tangible benefits brought to the U.S. energy sector are likely to be both immediate and sustainable over the near term. Developers of renewable energy projects now have the opportunity to engage in the longer-term planning necessary for sustained development activity without the risk of the boom-and-bust cycle that has tracked the periodic extension and expiration of certain other incentives and tax credits. The ARRA benefits, combined with even a modest RES, such as those contemplated in the House and Senate bills, lay the foundation for a growing renewable energy market for the next 10 years.

A report recently released by the Energy Information Administration forecasts that even the originally proposed national RES requiring 25% renewable energy generation by 2025 was not expected to affect national average electricity prices until after 2020. In other words, the enactment of a national RES (even one targeting 25% renewable energy by 2025) is not forecasted to drastically change electric power market prices for at least 10 years. A subsequent study conducted by the U.S. Department of Energy's National Renewable Energy Laboratory examined three proposed RES standards, including a 20% RES with a 2021 full implementation date, and determined that average electricity prices would rise less than 1%.

In the meantime, there is a relatively predictable market in which the states continue to create, control and enhance market opportunities, and thereby influence where renewable energy investments will be made.

In order to successfully navigate these newly enhanced market opportunities, developers, investors, lenders and regulators should have a comprehensive understanding of the patchwork and interaction of any federal RES and the various states' RPSs, federal and state tax incentives, loan guarantees, research and development funding and other benefits distributed on both federal and state levels. In essence, just when the ARRA benefits and incentives are making the renewable energy market structure a little more predictable, market participants need an understanding of the new market rules that are likely to emerge following enactment of the currently proposed climate change legislation.

For Further Information

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