



Carbon Offsets and Renewable Energy Credits Under Waxman-Markey

Kyle Danish

Van Ness Feldman, P.C.

1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, DC 20007
(202) 298-1800

Millennium Tower
719 Second Street, Suite 1150
Seattle, Washington 98104
(206) 623-9372

ABA-ACORE

**Utilizing Offsets and
RECs Post-Waxman-
Markey**

September 16, 2009

Van Ness Feldman

- Energy, environment, and natural resources law firm
- Practices in
 - Renewable energy
 - Climate change and emissions trading
- Coalition for Emission Reduction Projects

Coalition for Emission Reduction Projects (CERP)

- American Electric Power
- Blue Source
- C-Quest Capital
- C-Trade
- Deutsche Bank
- Dominion
- DTE Energy
- Duke Energy
- EcoSecurities
- Element Markets
- El Paso Corporation
- Environmental Credit Corp
- Equator LLC
- John Deere
- Leaf Clean Energy Company
- Natsource
- Noble Carbon Credits
- PG&E

State of Play

■ House of Representatives

- American Clean Energy and Security Act (ACES), H.R. 2454

■ Senate

- American Clean Energy Leadership Act (ACELA), S. 1462
- Waiting for action by Boxer
 - Offsets: Stabenow, Kerry
- Reid: Senate bill may slip to 2010

■ EPA

- Endangerment finding
- Vehicle standards
- Tailoring rule for PSD/Title V

Renewable Energy: Comparing ACES and ACELA

■ Obligation

- House: 6% in 2012 / 20% in 2020
- Senate: 3% in 2011/15% in 2021

■ Base

- House: excludes *new* nuclear, “non-qualified” hydropower, CCS-equipped generation
- Senate: excludes *new or incremental* nuclear; non-qualified hydropower, *MSW*, and CCS-equipped generation

RECs Comparison, cont.

■ Means of compliance

■ House:

- RECs
- energy savings credits (up to 25% of total/can petition for 40%)
- \$25/MWh payment

■ Senate:

- RECs
- energy efficiency credits (up to 26.67%)
- \$21/MWh payment

■ Hardship

■ Senate:

- Utilities can petition DOE for waiver to limit impact of program to 4%/retail customer/yr

RECs Comparison, cont.

House:

- Wind
- Solar
- Ocean
- Geothermal
- Renewable biomass
- Biofuels, biogas from renewable biomass
- Some marine and hydrokinetic
- Small distributed generation (3x)

Senate:

- Wind
- Solar
- Ocean
- Geothermal
- Biomass
- Landfill gas
- Incremental hydropower
- Hydrokinetic
- New hydropower at dams with no generation
- Incremental geothermal production
- Coal mine methane
- Qualified WtE
- Small distributed generation (3x)

Basic Offsets Provisions in ACES

- 2 billion ton ceiling on use of offset credits
 - Translates into per-entity limit
 - Split between domestic and international
 - Ability to use up to 1.5 billion tons of international credits
- Banking permitted
- Early offset supply
- Domestic
- International

Project Process

- Petition for project approval
 - Must have:
 - Eligible project type
 - Eligible methodology for determining “additionality”
- Agency approval
 - Domestic agriculture/forestry: USDA
 - All other: EPA
- Receive “crediting period”
 - Project is eligible to earn credits for 5 to 10 years, longer for forestry
- Regular verification of reductions, issuance of credits

Early Action

■ Issue:

- Finalizing federal offset rules could take several years
- Provide pathway for project development now

■ ACES:

- Projects registered under “state-established” programs receive credits (Climate Action Reserve, RGGI)
 - Agency may also approve other programs that are “equally stringent”
- Period of crediting
 - 2009 until earlier of 3 years or date that federal regulations are effective

Early Offset Supply (Sec. 740)

- ACES credits early projects only for reductions starting in 2009
 - Pre-compliance market started in 2005 with Senate resolution
 - Allow credits for reductions starting in 2005
- ACES credits early projects only from 2009 through 2012
 - Period is too short to encourage investment
 - Provide 5-10 year “crediting period”
- ACES provides a long list of project types that agency should “consider” making eligible
 - More certainty needed about what will count
 - Provide an initial eligible list, and a 1 year deadline for promulgating methodologies

Methane Performance Standards (Sec. 331)

- Directs EPA to establish command-and-control standards for uncapped methane sources
 - Coal mines
 - Natural gas systems
 - Landfills
- EPA modeling of Sec. 331
 - Eliminates 45% of domestic offset supply
 - Increases allowance prices by 9%
- Possible movement in the Senate

International Offsets

- EPA may issue international offset credits
- Can exchange for credits from “international body”
- Requirements
 - Must be as stringent as domestic
 - Starting in 2018: 5:4 devaluation
 - “Arrangement” required with each country supplying reductions

International offsets, cont.

■ “Sectoral” crediting

- EPA/State must identify sectors appropriate for “sectoral” limits
- Phase out of project-based crediting for identified sectors in 2016

■ Special rules for forestry (REDD)

- Emphasis on crediting against a national deforestation baseline
- Tiering system
 - Brazil, Indonesia, et al, have national baselines from Day One
 - Other countries “graduate” from project-based activities to national baselines over time
- Other requirements
 - Equitable sharing with local communities

International offsets issues

- 5:4 penalty
- Requirement for “arrangement” with each country
- Precipitous phase-out of CDM in sectors identified for sectoral mechanisms
- More flexibility needed in REDD framework

Market Oversight

- Shift OTC derivatives onto CFTC-regulated exchanges
 - Would include derivatives for allowances, offset credits, and RECs
 - Possibly a limited exemption for offset project transactions
- **Implications**
 - Standardization
 - Collateral requirements
 - Complication of risk management
- Developments to watch in the Senate
 - Feinstein-Snowe
 - Cantwell



For more information

Kyle Danish

202-298-1876

kwd@vnf.com

For weekly news and analysis about climate change policy and business developments, go to:

www.vnf.com/news-signup.html

ABA-ACORE

**Carbon Offsets and
RECs Post-Waxman-
Markey**

September 16, 2009