



N A R U C  
National Association of Regulatory Utility Commissioners

May 19, 2009

The Honorable Henry A. Waxman  
Chairman, Energy & Commerce Committee  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Joe Barton  
Ranking Member, Energy & Commerce Committee  
U.S. House of Representatives  
2109 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Ed Markey  
Chairman, Energy & Environment Subcommittee  
Energy & Commerce Committee  
U.S. House of Representatives  
2108 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Fred Upton  
Ranking Member, Energy & Environment Subcommittee  
Energy & Commerce Committee  
U.S. House of Representatives  
2183 Rayburn House Office Building  
Washington, D.C. 20515

**Re: Allowance Allocation in the American Clean Energy and Security Act of 2009**

Dear Chairman Waxman, Chairman Markey, Ranking Member Barton, and Ranking Member Upton:

On behalf of the National Association of Regulatory Utility Commissioners (NARUC), we are writing to express our preliminary views about the allowance allocation provisions in the American Clean Energy and Security Act of 2009 (ACES). We are encouraged that the ACES legislation provides a significant allocation of allowances to Local Distribution Companies (LDCs), as we have previously advocated. This will ensure that State regulators are able to pass through to consumers the value of these allowances. However, we are concerned that the language, as presently drafted, is overly prescriptive and could prevent State commissions from adequately protecting ratepayers.

The regulation of greenhouse gasses will affect States, regions, consumers, and utilities in varying ways. This is why a bottom-up, cooperative approach to protecting consumers is more appropriate than a top-down, one-size-fits-all model. In our view, the current State regulatory process for LDCs provides the necessary oversight and accountability, through transparent processes open to all consumers, established legal principles and judicial review, for Congress to be confident that allowance values will benefit consumers and serve the public interest.

Currently, the ACES legislation contains prescriptive provisions—Title III, Subtitle B, Part H, Sections 783 and 784—that constrain the ability of State regulators to ensure that consumers are not unduly burdened by new limits on carbon emissions. These provisions also implement unnecessary reporting requirements on LDCs as a condition on the receipt of these allowances. This language, which requires LDCs to regularly file specific State-approved rate proceedings to the U.S. Environmental Protection Agency at least every five years, will have a chilling effect on the creativity of State regulators to use the allowance proceeds efficiently and mitigate the price of carbon for consumers. It is not clear what purpose is served by requiring these reports, but it will undoubtedly create a significant administrative burden on LDCs, States, and, ultimately, the EPA. State regulatory authorities already have a fiduciary responsibility to ensure that consumers are protected. The reason for allocating allowances to LDCs, as opposed to merchant generators, is to employ the oversight of State regulators to govern how the value of these allowances will be used. Accordingly, we urge Committee members to give State regulators greater flexibility in how they address this critical issue.

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On a related issue, ACES allocates 5% of the allowances to merchant coal generators. As we have stated before, we see no discernable consumer benefits to providing merchant generators any free allowances. This will only lead to windfall profits for a particular sector of the electricity industry at the expense of end-use customers. The Committee should modify this section of the bill and provide all allowances allocated in the electricity sector to LDCs.

While we are still reviewing the rest of the legislation, we believe these changes are necessary to make ACES a stronger product. Utility bills are expected to increase without climate regulations as new investments are made to upgrade transmission infrastructure, support renewable energy resources, deploy smart grid technologies, and strengthen utility systems against physical and cyber attacks. Without a doubt, we will be asking a lot of the Nation's ratepayers. In our view, a cooperative, Federal-State relationship that provides the flexibility necessary to tailor to conditions in local energy markets is the most appropriate way to ensure that we do not overly burden our consumers.

Thank you for your time and consideration. We look forward to working with you and the rest of the House Energy and Commerce Committee as this legislation moves forward.

Sincerely,

A handwritten signature in black ink, reading "Frederick F. Butler". The signature is written in a cursive style with a large initial 'F'.

Frederick F. Butler  
President, NARUC

CC: Members of the House Committee on Energy & Commerce