



News Release

**STATEMENT BY
THE AMERICAN PUBLIC POWER ASSOCIATION
ON ITS CONTINUING CONCERNS WITH
CHAIRWOMAN BOXER'S MARK OF S. 1733,
THE CLEAN ENERGY JOBS AND AMERICAN POWER ACT**

Washington, D.C., October 28, 2009 – The American Public Power Association (APPA) released today the attached letter sent to Chairwoman Barbara Boxer (D-CA) and members of the Senate Environment and Public Works Committee expressing its continuing and strong concerns with the impact of S. 1733 on public power utilities and their customers.

The “Chairwoman’s Mark,” the most recent version of S. 1733 released on Saturday, continues to miss the mark in its intention to adequately protect consumers and the U.S. economy while addressing the harmful effects of greenhouse gas emissions on the global environment. APPA supports federal legislation to address this important issue. However, as delineated more completely in its letter, APPA remains very concerned about key aspects of the legislation including the lack of a “hard” cost collar on emission allowances, the insufficient number of allowances allocated to local distribution companies in the electricity sector, and the absence of language clearly precluding overlapping and duplicative requirements under other titles of the Clean Air Act.

In addition, APPA notes the inclusion in today’s committee hearing of a witness representing the Long Island Power Authority (LIPA), an APPA member. As LIPA also indicates, their testimony is strictly their own and does not represent the views of APPA. APPA respects the committee’s prerogative to invite witnesses as it deems appropriate, and at the same time wants to make clear that it was not included by the committee in this selection process.

APPA and its members look forward to continuing to work with the Senate to pass legislation that is workable, sustainable and protects our environment without unduly harming consumers and the U.S. economy.



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October 27, 2009

The Honorable Barbara Boxer
Chairwoman
Senate Environment and Public Works
Committee
SD-410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable James M. Inhofe
Ranking Minority Member
Senate Environment and Public Works
Committee
SD-410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairwoman Boxer and Ranking Member Inhofe:

As your committee begins hearings this week and anticipates markup soon of S. 1733, the Clean Energy Jobs and American Power Act, I am writing on behalf of the American Public Power Association (APPA) to convey our views on the most recent version of the bill, the "Chairwoman's Mark" (Mark) released this past Saturday, October 24. APPA represents the interests of the more than 2,000 publicly-owned electric utilities nationwide, collectively serving over 45 million Americans. APPA supports federal legislation to reduce greenhouse gas (GHG) emissions, and we recognize the difficulty of addressing this issue in a comprehensive manner that achieves the desired environmental results while also protecting the American economy and consumers. With that recognition, we appreciate the hard work Chairwoman Boxer and her staff have invested in this issue in general and in the Mark in particular.

At the same time, based on our preliminary review of the Mark, we find that it falls short of what we believe is necessary for a workable, sustainable, and affordable GHG reduction program. Some of the changes made in the Mark, such as increased support for clean coal technologies and energy efficiency, are positive. However, we were disappointed to see that the key concerns we identified in the first iteration of S. 1733 remain essentially unchanged in the Mark.

This letter, then, summarizes our position on the issues of utmost priority for public power and to reiterate that appropriate resolution of these issues will be essential for APPA's support of any legislation.

S. 1733 must preempt the Clean Air Act. APPA believes that federal GHG emissions reduction legislation should create a new regime for addressing these ubiquitous gases that does not overlap or duplicate other existing environmental statutes, in order to avoid unnecessary confusion and litigation. Thus, provisions must be added to S. 1733 that makes it absolutely clear that the requirements and obligations of this new program are entirely separate from existing requirements under such statutes, particularly the Clean Air Act.

S. 1733 must contain a hard "cost collar" or similar, equally effective cost containment mechanism. While we appreciate that S. 1733 improves the strategic reserve provisions of H.R. 2454, the Mark continues to only provide what has been dubbed a "soft" price collar, which is not really a collar at all because it is one-sided. The Mark merely sets the **minimum** price for the Market Stability Reserve created in the bill – which is \$28, meaning the reserve will be activated only when the market price reaches \$28 - but there is no limit on how high the reserve price can rise. APPA believes it preferable to

enact a mechanism that also sets a hard maximum allowance price to ensure that energy costs do not rise too high and too fast, particularly for low-income consumers and energy-intensive industries.

S. 1733 must continue to freely allocate, and not auction, allowances to the electricity sector. APPA appreciates that the Mark allocates, rather than auctions, allowances to the electricity sector and we strongly urge you to continue that approach. Moreover, APPA supports extending the time frame for such allocations beyond 2030. One of the arguments advanced in favor of an auction is that the legislation should avoid giving industry a “windfall profit” at the expense of consumers. This concern arose from experiences with the European cap-and-trade system where many generators included the market cost of allowances in their electricity prices even though they were allocated allowances and did not pay for them. Allocating allowances to load-serving entities, rather than fossil fuel-fired generators, eliminates this concern (see below). Moreover, in the case of not-for-profit, consumer-owned public power utilities, we cannot reap a windfall or any other profit by definition.

S. 1733 must provide the electric utility sector with the amount of allowances necessary to operate under the bill’s established targets and timelines without having to fuel switch. If enormous GHG reductions are required by the bill before the availability of new technology, such as carbon capture and sequestration (CCS), or the construction of new nuclear plants, the most likely result will be significant fuel-switching to natural gas and resulting higher natural gas prices. In addition to the risk of higher gas prices, significant switching to gas will increase GHG emissions (compared, for example, to a switch to nuclear or CCS), causing emissions to reach the cap sooner and increasing the market price for available allowances, which will in turn further increase the cost of electricity. Therefore, APPA urges the Committee to provide the electricity sector with enough allowances – approximately 40 percent of the total provided economy-wide - to cover existing operations at the beginning of the program with only modest reductions until technology such as CCS is commercially available on a wide scale in the U.S. Although S. 1733 seems to distribute 35% of allowances to the electricity sector, we are concerned that this is not really the case because it appears that Section 771 of the bill provides an initial reservation of allowances that takes precedence over all other auctioned or distributed allowances, such as those to electricity. Thus, it appears that the electricity sector would be receiving only 30% of the allowances, rather than the claimed 35 percent. This additional reduction to the electricity sector allowance pool is extremely problematic.

S. 1733 must only allocate allowances to local distribution companies (LDCs) and not to merchant coal generators. APPA urges the Committee to ensure that allocation of allowances flow directly to local distribution companies whose retail rates are regulated at the state and local levels as opposed to providing allowances to wholesale or “merchant” coal generators. A free allocation to merchant coal generators provides no price benefits. The generators will simply add the opportunity cost of holding an allowance to their price bids. Merchant coal generators primarily sell into the deregulated wholesale electricity markets administered by regional transmission organizations (RTOs). In these markets the highest bid sets the price each hour, meaning this opportunity cost adder raises the price of electricity sold by *all* plants in that hour –including renewable and nuclear generating units that emit no carbon. Unproductive costs, or the costs paid by consumers that are simply windfall profits and unrelated to carbon reductions, would increase greatly under an allocation to merchant coal. Unfortunately, S. 1733 includes the same allocation methodology as was included in H.R. 2454, which allows up to 10 percent of the total electricity sector allowances to flow to unregulated generators.

The targets and timelines in S. 1733 must be realistic. Instead of mentioning the exact year in which such emissions reductions should begin, APPA urges the Committee to consider establishing the timeline of “at least five years after date of enactment of the bill” before reductions begin thereby giving the regulatory process time to be completed and the technology more time to become commercially viable. In

addition, the bill's aggressive emission targets may lead to short-sighted and expensive strategies to reduce CO₂ from the electric sector, such as a massive switch to natural-gas fired generation. APPA believes, with sufficient time and appropriate incentives for technology, we can reduce emissions and avoid unnecessary increases in electricity prices. The targets and timelines in S. 1733 do not allow for such a transition, and will impose an enormous cost on certain regions of the country unnecessarily.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, reading "Mark Crisson". The signature is written in a cursive style with a long horizontal stroke at the end.

Mark Crisson
President and CEO

Cc: Members of the Senate Environment and Public Works Committee