

Transportation Solutions Defense and Education Fund

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“Solutions Is Our Middle Name”

July 28, 2011
By E-Mail

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, California 95814

Re: Supplement to Scoping Plan FED

Dear Sirs:

Our organization previously commented on the cursory and legally inadequate analysis of a carbon tax alternative in the FED, and provided comments on the merits of a carbon tax in our August 1, 2008 “Comments on CARB Draft Scoping Plan.” (relevant section attached). We are appalled at the shoddy treatment given to the carbon tax alternative in the Supplement to the AB 32 Scoping Plan Functional Equivalent Document (“Supplement”). It is obvious that Alternative 4 was designed to consider a carbon fee or tax in the most unfavorable possible light--a straw man meant to be knocked down. A fair and honest alternatives analysis would not treat an alternative this way--especially not the one preferred by successful plaintiffs.

As this Supplement will be under court scrutiny as a result of *Association of Irrigated Residents, et al. v. California Air Resources Board, et al.*, the Air Resources Board would be well advised to comply with CEQA in its response to comments. A mitigated Alternative 4 must be studied. While appropriate mitigations were identified in the text of the Supplement, they were neither studied nor developed in detail. If the ARB declines to study a Mitigated Alternative, the FED Supplement will be legally inadequate.

While regulated industries may prefer Cap-and-Trade to a carbon tax or fee, ARB should not draw any conclusions from that as to the efficacy of the control mechanism. On the contrary, it is at least equally likely that industry resists a carbon tax precisely because it is hard to game, which is another way of saying a carbon tax doesn't offer the opportunities for fraud presented by Cap-and-Trade. Clearly, industry's interest in reducing GHGs is solely a matter of regulatory compliance, rather than a recognition of responsibility for staving off global catastrophe.

Mitigations

On page 83 of the Supplement, the first obvious but unimplemented mitigation is identified: “unless special provisions were included in legislation or regulations for automatic adjustments.” Nonetheless, the text admits that “an automatic adjustment could be included in the original authorization.” (p. 95). Such provisions need to be designed, assumed in the definition of a mitigated alternative, and tested in the alternatives analysis. This is critical, because an unmitigated Alternative 4 “creates a substantial risk of either falling short of the target or over-complying” (p. 95), thus causing Alternative 4 to receive only Medium scores for Achiev[ing] Reductions and Ensur[ing] Reductions. Meanwhile, ARB's favored alternatives scored High for these Project Objectives. (p. 112).

Page 88 admits that “a standard approach would be for all emissions in the covered sector to be subject to the fee or tax” yet selects the marginal fee or tax approach for study. (at 89). The purpose of environmental review here is to identify the optimal program for effective reduction of GHGs. If ARB suspects that a marginal approach would discourage leakage, it needs to demonstrate that through comparison to the “standard approach.” Given the simplicity of administering the “standard approach” as compared to the “marginal approach” and the ensuing protection it provides against gaming or manipulation, clearly these approaches need to be compared, either as sub-alternatives, or as separate alternatives.

The Supplement states that “If pursued, this Alternative would need to be designed to include administrative mechanisms to minimize the potential for leakage.” (p. 95). The unmitigated Alternative 4 was scored with a Low likelihood of Minimiz[ing] Leakage. (p. 112). When the document preparer acknowledges the potential for mitigation, a fair and honest alternatives analysis would employ mitigation to make it possible to compare a carbon tax or fee on a level playing ground. That was not done here.

The scoring for Avoid Disproportionate Impacts is unfair to a carbon tax or fee, because Alternative 4 is unmitigated for such impacts. A properly designed tax would typically include rebates that would offset the impact on low-income communities. Once again, the carbon tax or fee was not allowed to compete effectively with the favored alternatives.

Alternatives Analysis

Although the implementation of offsets would result in potential environmental impacts that were identified in the text, this was left out of Table 2.8-1 (at 112). If this table is not expanded to include all identified impacts, a new table summarizing the alternatives analysis is needed.

“The carbon fee or tax provides a clear, long-term signal of the price that parties will face for their GHG emissions, which allows for long-term operational planning.” (p. 96). This is a very major advantage of a carbon tax that was not factored into the alternatives analysis. Uncertainty as to the value of carbon credits has been harmful to the effectiveness of the EU-ETS.

While industry's acceptance of the regulatory program is certainly an issue, public confidence in the fairness of the program and in its resistance to gaming is at least equally important, and should be a formal evaluation criterion.

We disagree strongly with the evaluation of the likelihood of achieving the minimization of administrative burden at p. 112. It should be obvious that a carbon fee or tax would have the absolute minimum of an administrative burden, while Cap-and-Trade, and its variants, would have a high burden, as it would require the creation of at least one entirely new bureaucracy as well as a new market. "In theory, a carbon tax or fee may be more straightforward to design and administer, compared to other regulatory alternatives." (p. 91). "In theory, a key administrative advantage to taxes is that they may be levied and enforced through established tax collection methods..." (p. 92). An honest scoring for this objective would have been High and Low, respectively.

There is nothing inherent in a carbon tax or fee that would make it score Low on Link with Partners. Linking is solely a question of whether the partners select compatible mechanisms. British Columbia already implements a carbon tax. Due to California's market weight, its choice of GHG reduction methodology could influence the choices of its partners. With Australia's recent adoption of a carbon tax, these choices should not be considered fixed in stone. Accordingly, there is no justification for scoring a carbon tax as Low.

The scoring for Credit Early Action is equally suspect. Entities that have voluntarily reduced their GHG emissions prior to the implementation of regulations receive appropriate credit for early voluntary actions in the form of lower carbon tax or fee payments, which provide competitive advantages in the marketplace.

It was unreasonable to penalize Alternative 4 for Prevent Increases in Other Emissions by scoring it the same as the Cap-and-Trade Alternatives. Because it does not contain offsets, there is no likelihood of a carbon tax or fee resulting in increased emissions in already burdened communities. On the other hand, offsets could readily increase "direct, indirect, and cumulative emissions impacts from a market-based compliance mechanism, including localized impacts in communities that are already adversely impacted by air pollution." (p. 6) Therefore, the Cap-and-Trade Alternatives should have scored Medium or Low for Consider Emissions Impacts.

The Low score for Technologically Feasible and Cost-Effective for Alternative 4 is dubious, given the statement: "However, it is uncertain that Alternative 4 would result in the most cost-effective GHG emissions approach, because the level of the fee or tax would be set legislatively or administratively, rather than being easily adjusted to the market." (p. 95). That uncertainty, while not substantiating a High score, certainly doesn't justify a Low one. When evaluating cost-effectiveness, the potential for gaming the system must be analyzed. The European Cap-and-Trade system was plagued by gaming, making it very costly in terms of actual GHG reductions.

Finally, the scoring for Technologically Feasible and Cost-Effective was presented without any substantial evidence. Even if the scoring is the product of expert opinion, such opinion must be grounded in fact to qualify as substantial evidence. No facts were presented in the alternatives analysis to justify the scores given. The burden of presenting substantial evidence exists even at the programmatic level of environmental review.

Faulty Analysis

The Supplement states on p. 90 that “Under a system that imposes the fee or tax further upstream, such pricing effects may not be as apparent to the downstream energy user (Niemeier et al 2008) because the charge is imbedded in the cost of the input, rather than directly assessed based on the activity of the downstream party.” This is nonsense. The total price to the downstream user will provide plenty of incentive to seek energy efficiency improvements.

“One other possible advantage of downstream assessment is that it may be easier to target relief for low-income households if that is the point of regulation.” On the contrary, existing programs benefitting low-income utility customers (e.g., CARE) offer an obvious means of providing relief in that sector, even if the tax were applied upstream.

The Supplement states on p. 91 that “For purposes of this analysis, the point of regulation of electrical generation and industrial sources would be the facility operator (i.e., the generation or industrial facility).” Given the preponderance of gas-fired electricity generation, regulation of such plants would appear unnecessary, due to the regulation of the gas feedstock.

Errors in Document Production

The Bay Area Air Quality Management District's carbon fee should never have been included in Table 2.6-1 on p. 86, as it was intended solely to recover regulatory costs, and not to reduce GHGs.

The last sentence on p. 89, "Therefore, in principle, there may be a reduction in administrative and monitoring costs, if assessed midstream" is a flawed duplicate of a sentence earlier in that same paragraph.

Table 2.6-3 on p. 90 has incorrect labels for the lefthand “Fee or Tax Assignment Point.” It appears they should be Upstream, Downstream and Midstream, respectively.

Conclusion

The Supplement to the FED is legally inadequate as to its analysis of a carbon tax or fee alternative. The Supplement must be revised and recirculated to allow the public to comment on the new material added to the Supplement, as a fair and honest evaluation of such an alternative is likely to produce a different Environmentally Superior Alternative. ARB and its efforts to reduce GHGs deserve nothing less.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President

From our August 1, 2008 letter titled "Comments on CARB Draft Scoping Plan."

AB 32 Program Design Comments

While I am not an economist, I have been very struck by the website, carbontax.org which contains the writings of Charles Komanoff. Rather than offering a series of links to articles and publications there, I urge CARB to thoroughly explore the site. I see several very large advantages to carbon taxes, as compared to cap and trade programs:

Cap and trade will require the creation of new institutions and expertise, which will be very costly. The thousands of lawyers and investment bankers that will be needed to make it work will add tremendous cost to the emissions reduction process. Conferences currently being offered on the business opportunities that will be created by cap and trade suggest that vast sums that otherwise could go back to the public or into emissions reduction projects will be siphoned off by entrepreneurs. A carbon tax will be simple and inexpensive to administer and will not require an army of lawyers. The proceeds of the tax could be used to create cost-effective transit systems, as well as other low-carbon mitigations. Another possibility is to return the entire proceeds to taxpayers, to offset the increased cost of consumer goods.

Another tremendous problem with cap and trade is the potential for sophisticated gaming. (Think of how Enron manipulated the California energy market.) A carbon tax, on the other hand, is very straightforward. It should be easy to catch bad actors.

The chief benefit cited for cap and trade is the certainty that the target will be achieved. This is dubious: if the system is itself flawed, as was Europe's, or if it is gamed, it won't achieve its goal. On the other hand, a carbon tax can be adjusted in response to observations of energy consumption levels. This isn't rocket science!

I urge CARB to conduct a full public evaluation of the potential benefits of a carbon tax before being stampeded by the business community into adopting cap and trade. The very popularity of cap and trade with the business community should be enough to cause CARB to stop and evaluate whether implementing it would truly be in the public interest.