LATHAM&WATKINS LLP

Environment, Land & Resources

Insights and commentary on environmental issues and developments impacting business in the US and across the world

TCI Proposes to Reduce Carbon Emissions From Transportation in the Northeast

By Latham & Watkins LLP on March 11, 2019

Posted in Air Quality and Climate Change, Environmental Regulation, Environmental, Social and Governance

TCI's proposal is poised to become its own carbon reduction program with a focus exclusively on the transportation sector, alongside RGGI's existing cap and trade program.

By Jean-Philippe Brisson, Joshua T. Bledsoe, David B. Amerikaner, and Benjamin W. Einhouse

The Regional Greenhouse Gas Initiative (RGGI) may soon have a transportation-focused companion to its functioning power plant-focused cap-and-trade program. Operating under the banner of the Transportation & Climate Initiative (TCI), most of the RGGI jurisdictions announced plans on December 18, 2018, to design a program to address carbon emissions from the combustion of transportation fuels. TCI plans to seek input from stakeholders and develop a policy during 2019, with the intention that each participating jurisdiction could adopt and implement the policy in 2020 and beyond.

The structure of the program is not yet clear. In its press release, TCI indicated that the program would cap and reduce transportation fuel emissions, with revenues from the system reinvested in carbon-reduction technologies and transportation infrastructure. However, key details of the program, including the level of the emissions cap, the mechanisms for auctioning and reinvesting auction proceeds, and the categories of entities covered by the program (i.e., the point of regulation), have not been determined.

Background on RGGI and TCI

When its first compliance period began in 2009, RGGI became the first mandatory market-based program in the United States to regulate greenhouse gas (GHG) emissions. RGGI caps carbon dioxide (CO_2) emissions from fossil-fueled power plants on a regional level, and then sells allowances to emit CO_2 at quarterly auctions. The proceeds from these auctions are used to invest in energy efficiency, renewable energy, and other consumer-benefit programs. Regulated entities in RGGI states must hold and retire allowances equal to their CO_2 emissions over a three-year control period.

The nine Northeast and Mid-Atlantic states that make up RGGI include Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. New Jersey left RGGI in 2012 following a decision from then Governor Chris Christie, but is now in the process of rejoining. Virginia is in the process of joining RGGI for the first time. Both New Jersey and Virginia hope to participate in the 2020 RGGI allowance auction.

Since 2009, GHG emissions from the power sector covered by RGGI has decreased by 53.3% when compared with the average baseline emissions between 2006 and 2008[i]. In addition according to an independent study by Analysis Group in 2018, RGGI led to approximately $1.4 billion in economic value added between 2015 and 2017, a result the study attributed to participant states' spending on energy efficiency measures, community-based renewable energy projects, customer electric bill assistance, GHG reduction measures, research, and education and job training programs, using funds derived from RGGI's carbon allowance auctions.

TCI was formed nine years ago as an offshoot of RGGI, and includes all of the current RGGI member states as well as New Jersey, Virginia, Pennsylvania, and the District of Columbia. Ten of the TCI jurisdictions decided to participate in the TCI program to cap GHG emissions from transportation: Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia. It is possible and expected that more jurisdictions, such as New York and Maine, eventually will join. TCI is facilitated by the Georgetown Climate Center and is administered by state and district agencies located within the 13 TCI jurisdictions. Each agency is free to determine whether, and how, it will participate in individual projects and working groups.

TCI's Proposal: The Details

The low-carbon transportation program will be refined over a one-year development process which will include input from stakeholders and experts. Though the structure of the program is not yet clear, the TCI press release indicates that a potential approach is to set a cap on carbon emissions from transportation, and that such a cap will decline over time. It is possible that allowances to emit carbon emissions under the cap will be sold and traded as part of this program, much like the current RGGI program for power plants. In other words, it would appear that the TCI proposal is poised to become its own cap-and-trade program, alongside RGGI, with a focus exclusively on the transportation sector.

Contrast With Low-Carbon Fuel Standards

Several jurisdictions worldwide, including California, Oregon, British Columbia, and the United Kingdom, have existing policies in place to reduce the carbon intensity of transportation fuels using variations on a low-carbon fuel standard (LCFS). Some of these programs mandate the blending of biofuels into petroleum-based fuels, and some include provisions for auctioning and trading compliance credits. Some, like California, focus not only on emissions of carbon dioxide, but on all greenhouse gases emitted by the transportation sector. All of the LCFS programs measure life cycle emissions — including the direct effects of producing and using the fuel, as well as the indirect effects, such as land use changes, that are primarily associated with biofuels — to calculate carbon intensity.

It does not appear that TCI is considering an LCFS standard for the Northeast at this time. Rather, it appears that TCI's proposal is, for the time being, focused solely on regulating tailpipe emissions of transportation fuels.

TCI's Proposal Going Forward

Over the next 12 months, TCI is expected to engage the public, stakeholders, and expert consultants, as well as conduct modeling activities and reviews of potential design decisions and impacts. As part of this outreach, TCI plans to contact fuel providers for input on their policies. In addition to developing a low-carbon policy proposal for transportation fuels, TCI will prepare complementary policies, such as coordinated infrastructure planning, land use planning improvements, and the development of green banks and other innovative financing mechanisms. In late February, signatories to the TCI agreement finalized the schedule for developing this plan at a meeting in Washington, D.C. The schedule calls for arranging stake holder meetings in April 2019, conducting modeling activities over the summer of 2019, and having a final proposed plan by early fall 2019. This timeline will give TCI member states the opportunity to review the plan and determine if they want to endorse it by the end of the year.

The introduction of a low-carbon fuels program in the Northeast represents a significant development for the clean transportation industry. The lengthy development process also offer fuel suppliers, both traditional and low-carbon intensity, an opportunity to engage with policymakers to help craft a program that delivers maximal benefit to the public and the transportation system while minimizing costs imposed on suppliers and motorists. As an example of how such costs can shake out, under California's LCFS, the cost of regulating transportation fuels is passed through to consumers via heightened prices at the gas pump.

Depending on the final shape of the program, policymakers could be presented with numerous opportunities to maximize its size and effect. In addition to the flexibility for entities to meet emissions reductions in a cap-and-trade program, there are incentives for the TCI program to adopt a program with cap-and-trade characteristics. The TCI program could be linked to the existing RGGI power-plant program, and could allow for future linkage to the cap-and-trade programs in California and Quebec.

[i] This decrease in CO_2 emissions only relates to RGGI electric generation sources, and factors in CO_2 emissions reductions from broader economic and industry factors, as well as the RGGI program design and implementation. The Economic Impacts of the Regional Greenhouse Gas Initiative on Nine Northeast and Mid-Atlantic States, The Analysis Group, April 17, 2018, pg. 3, available here.

Environment, Land & Resources

Latham & Watkins LLP

BEIJING, BOSTON, BRUSSELS, CHICAGO, DUBAI, DÜSSELDORF, FRANKFURT, HAMBURG, HONG KONG, HOUSTON, LONDON, LOS ANGELES, MADRID, MILAN, MOSCOW, MUNICH, NEW JERSEY, NEW YORK, ORANGE COUNTY, PARIS, RIYADH*, SAN DIEGO, SAN FRANCISCO, SEOUL, SHANGHAI, SILICON VALLEY, SINGAPORE, TOKYO AND WASHINGTON, D.C. * IN ASSOCIATION WITH THE LAW OFFICE OF SALMAN M. AL-SUDAIRI