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Special Committee on Global Climate: 1992 Annual Report

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This report addresses four topics from 1992: (1) completion of a Framework Convention on Climate Change; (2) international agreement on amendments to strengthen protection of the ozone layer; (3) adoption of global climate change provisions in national energy legislation; and (4) state initiatives addressed to climate change.

I. Framework Convention on Climate Change

The most important development related to climate change in 1992 was the signing of a Framework Convention on Climate Change at the so-called "Earth Summit" held in Rio in June 1992. The Convention, signed by more than 150 governments, seeks the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system . . . within a time frame sufficient to allow ecosystems to adapt naturally . . . ." As the term "framework convention" suggests, however, this boldly stated goal is not accompanied by any specific commitments for reductions in greenhouse gases. In this key respect, the outcome was consistent with U.S. opposition to the inclusion of targets or timetables for emission reductions.

Although lacking specific requirements for greenhouse gas reductions, the Convention has several highly important provisions relevant to the evolution of future international policy on climate change. A Secretariat and Conference of the Parties are designated as institutions to oversee the implementation of the Convention. Mechanisms are established for financial assistance to developing countries and periodic review and revision of the science of climate change and national commitments. Signatories are required to submit detailed information on sources of greenhouse gas emissions and to prepare "action plans" that describe the measures they are prepared to take to reduce such emissions. Although not required until the end of 1993, the United States released a "National Action Plan for Global Climate Change" in December for review at a meeting of the convention's International Negotiating Committee in Geneva.

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2The Framework Convention on Climate was printed in 14 INTL. ENV. REP. 314 (May 1992). For assessments of the Earth Summit (actually titled the United Nations Conference on Environment and Development), see the Summer 1992 issue of "Environmental Law," the newsletter of the ABA's Standing Committee on Environmental Law (Volume 11, Number 4), and articles in 34 ENVIRONMENT 6 (Oct. 1992).

3During the campaign, President Clinton several times expressed his differences with this position and his support for a more action-oriented accord.


5Comments on the Action Plan were invited by the President's Council on Environmental Quality.
II. Actions to Protect the Ozone Layer

The Montreal Protocol on Substances that Deplete the Ozone Layer,\(^6\) signed in 1987, is often cited as a model for the possible course of more recent international efforts to respond to climate change.\(^7\) The Protocol was added to a framework agreement in many respects comparable to that signed to address climate change in Rio. It too created a process for negotiation without specific commitments or a timetable for action.

As scientific understanding of ozone depletion continues to improve, the interest of governments in protecting the ozone layer has undergone a parallel increase and the Protocol has been strengthened twice, first in 1990 and again in 1992. The most recent amendments were adopted in Copenhagen in November 1992 and provide for reductions in emissions of additional compounds according to a faster schedule than agreed only two years before; production of halons (fire extinguishants) will be halted by 1994, while production of chlorofluorocarbons, carbon tetrachloride, and methyl chloroform will end by 1996.\(^8\)

The most controversial aspect of the Copenhagen negotiations had to do with use of methyl bromide, an economically important pesticide. After intense debate, the parties agreed to freeze production of methyl bromide at 1991 levels (with some exceptions) starting in 1993. The issue is to be revisited in the next two to three years.

The United States has consistently adopted policies sooner, and sometimes more stringent, than required by the international treaty process. For example, the Clean Air Act Amendments of 1990 already require a U.S. phaseout of methyl bromide by the year 2000.\(^9\)

III. Climate Change and National Energy Legislation

Title XVI of the Energy Policy Act of 1992\(^10\) adopts several requirements for addressing global climate change, including a "least-cost" energy plan for reducing greenhouse gas emissions that must be subject to public notice and comment. The Act also authorizes a Director of Climate Protection at the Department of Energy and an assessment of alternatives policies for reducing greenhouse gas emissions, both of which may become significant should the Clinton Administration choose to move more aggressively on this issue.

Another provision in Title XVI, section 1605, creates a voluntary system for calculating and tracking industry reductions in greenhouse gas emissions. The provision resembles legislation proposed by Congressmen Cooper and Synar that would have encouraged industry to reduce greenhouse gas emissions by creating credits that could be used in case of future regulation.\(^11\) Although voluntary, the

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provision has led to speculation about prospects for a futures market for greenhouse
gases comparable to the emerging market created by the Clean Air Act Amendments
of 1990 for sulfur emissions. Such trading could occur across national boundaries;
the Climate Convention refers to the possibility that countries might undertake "joint
implementation" of commitments.

IV. STATE INITIATIVES

States adopted a wide range of legislative and policy responses to climate
change in 1992. The National Conference of State Legislatures issued model
legislation based on some of these actions. The Environmental Protection Agency
also released a summary of state responses to climate change that illustrated a
diverse array of responses. Several states, including Connecticut, Missouri, South
Carolina and Texas, are assessing the implications of climate change and responses
to reduce the potential impacts. Other states, including New York, California, and
Vermont, have included climate change as a factor in their energy planning.

Several states have already implemented utility regulatory policies that
effectively give some weight to the risks of climate change as a factor in the selection
of energy resources. A number of public utility commissions (PUCs) have recognized
that the same concerns over greenhouse gas emissions that led to the Framework
Convention may result in regulation of CO₂ emissions from power plants, potentially
converting previously prudent investment decisions into seriously uneconomic ones.

Wanting to account for future emissions restrictions in today's utility planning,
PUCs are using the classic economics of market pricing, which requires that the price
of goods and services must account for all external costs of production -- which
includes the cost of environmental damage -- in order to avoid the inefficiency of
society subsidizing certain goods and services by absorbing hidden external costs.

Applying this theory, the California PUC requires that its utilities must add
to the price of a proposed new resource $7.60 per ton of CO₂ to be emitted over the
life of the plant, while Massachusetts requires that $26 be added, Wisconsin
$14, Nevada $22 and New York just $1, although the New York PSC has
decided to revisit that value.

Environmental costing new resource options by

12L. Runyon and L. Morandi, Proposed Global Warming Legislation: A
13U.S. Environmental Protection Agency, Office of Policy, Planning and
Evaluation, Selected Summary of Current States to Climate Change (1992). For a
14California PUC, Docket 92-04-045 (April 22, 1992); California Energy Comm.
15Commonwealth of Massachusetts, Dept. of Public Utilities, Investigation by the
Department of Public Utilities on Its Own Motion as to the Environmental Externality
Values to be Used in Resource Cost-Effectiveness, Tests by Electric Companies Subject
to the Department's Jurisdiction, Final Order, DPU 91-131 (Nov. 10, 1992).
16Wis. Public Service Comm., Docket No. 06-Ep-6 (Sept. 15, 1992).
17Nevada Public Service Comm., Docket No. 89-752 (Jan. 22, 1991) (Value in
1990 dollars).
18N. Y. Public Service Comm., Docket No. 92-E-1187, Order Instituting Proceedings
on Motion of the Commission to Determine Whether to Incorporate Environmental
Costs into the Long-Range Avoided Costs for the State's Electric Utilities and Whether
and in What Context Estimates of the Value of Externalities Should be Utilized (Dec.
including a cost for CO₂ emissions has the effect of disfavoring coal, and to a lesser extent, natural gas as resource options, while favoring energy efficiency investments and renewable resources, which have lower societal cost.

The valuation of environmental externality costs has created hotly contested issues before PUCs. In Massachusetts, 25 parties were involved in a review of the externality order adopted in 1990;¹⁹ the Massachusetts DPU declined to abandon its "strong commitment to the concept of considering environmental externalities in resource decision making" and "market-based mechanisms of environmental regulation to meet societal environmental objectives in least-cost manner."²⁰

The DPU reaffirmed its environmental externality values for CO₂ ($26/metric ton in 1992 dollars), methane ($265/metric ton), nitrous oxide ($4,850/metric ton) and carbon monoxide ($61/metric ton). However, the DPU was willing to allow utilities to avoid the environmental externality costing process for new resources by using a market-based offsets approach if a) the offsets are for surplus emissions in excess of what would have otherwise been emitted, and b) the offsets are readily verifiable and enforceable.²¹

In 1992, California extended its concept of prudency by adding the insurance-like requirement of mandatory climate change risk-shifting to the environmental externality procedure previously adopted. California’s regulations on acquisition of new electric resources now require that utilities "should undertake a long-term purchase [of fossil generation] only if the supplier provides assurance that it alone will bear the cost of meeting any future costs resulting from a carbon tax, acquisition of tradeable emission permits, retrofits, or other carbon emission control strategy or regulation applicable to the supplier’s plant."²² Thus, all new supply contracts must be drafted to account for future impact of climate change legal requirements, with the supplier of energy bearing the entire risk of future CO₂ taxes, limitations or restrictions.²³ It is not yet known what CO₂ "insurance premium" fossil fuel energy suppliers will add to the cost of new contracts.

Application of the externalities concept is also being addressed at the federal level. Section 808 of the Clean Air Act Amendments of 1990 requires the Federal Energy Regulatory Commission (FERC) to make recommendations on the best ways to reward renewable energy technologies for their environmental benefits. A FERC staff report issued in response was somewhat critical of "adders" used by some states to internalizing environmental externalities.²⁴ The report suggests that a better approach may be to await the results of work in progress to define damage functions based on empirical studies of the full costs of emissions.

²⁹, 1992); the relationship between externalities and Clean Air Act compliance will be considered in a separate proceeding ordered last summer, N.Y. Public Servic Comm., Docket No. 91-E-0237, Opinion 92-16 (June 26, 1992).

¹⁹Mass. DUP 91-131, supra note 7.

²¹Id.

²²Id.

²³Id.


²⁵For more detailed discussion of this development, see, Cavanagh et al, Utilities and their Carbon Dioxide Emissions: Who Bears the Risk of Future Regulation ELECTRICITY JOURNAL (Forthcoming 1993).