

MINUTES

Legislative Commission on Global Climate Change

Wednesday, January 13, 2010

10:00 a.m.

Room 544, Legislative Office Building

The Legislative Commission on Global Climate Change met January 13, 2010 at 10:15 a.m. in Room 544 of the Legislative Office Building. Mr. John Garrou, Co-Chair presided. The agenda for the Commission is included as **ATTACHMENT A**.

In his opening remarks Co-Chairman Garrou said the Commission is due to expire in October and that he and Co-Chair Representative Harrison agreed not to seek an extension, unless there was need for a small extension of a few months. The Co-Chairs want to recommend a newly constituted smaller panel with a membership made up primarily of legislators. He said the aim would be to include the knowledge and interest of the lawmakers in a smaller group that could be more focused. He said that recommendations would come to the Commission from the Co-Chairs to then be made to the General Assembly.

Mr. Garrou said the large amount of information and research that had been provided to the Commission in the twenty plus meetings should not be lost or filed away. He suggested there should be a method to filter that material into recommendations. The filters may come by way of the Commission members to the staff. He said the filters could take the form of economic benefits or detriments of a recommendation, even those factors beyond the scope of climate change. The political consideration of recommendations would look at ancillary benefits, job creation, ease of implementation etc. The results would more likely be presented to the new commission to review for possible legislative action. In some instances, the current Commission could also propose legislation that could be done quickly and smoothly.

Mr. Garrou welcomed input from the Commission members on the various steps in the outlined process.

In item three on the agenda, Commission Counsel Tim Dodge provided an overview of the agenda items. He noted that the agenda would provide information on significant developments. He said that due to time constraints, Item #9, report of the Division of Emergency Management's risk assessment on sea level rise and storm frequency would be delayed until the February meeting.

Citing recent interest in the accomplishments and contributions of the Commission, Mr. Dodge provided the members with a summary of actions taken by the Commission to date. (*SEE ATTACHMENT B: Brief Summary of the Activities and Actions of the Legislative Commission on Global Climate Change.*) The information notes that the Commission adopted 17 recommendations in February, 2007. The interim report was not published, but the recommendations are related to 2007 General Assembly actions.

Mr. Dodge called attention to printed copies of Commission minutes for November 14, 2008 and November 17, 2009 which were provided for review. Action on those minutes will be taken at the February meeting. Minutes for the December 2008 and January 2009 will be provided for review and action later.

At this point Co-Chair Garrou asked that the Commission observe a moment of silence out of sympathy and concern of the victims of the tragic earthquake in Haiti that occurred on Tuesday, January 12, 2010.

PRESENTATIONS

Update on Federal and International Actions Related to Climate Change.

Professor Victor Flatt, Tom and Elizabeth Taft Distinguished Professor of Environmental Law at the UNC School of Law provided this report beginning with the federal picture. (*SEE ATTACHMENT C: Presentation by Victor Flatt to Commission*).

Professor Flatt said that the Environmental Protection Agency (EPA) had made an endangerment finding in December saying that greenhouse gas emissions are an endangerment to human health. This declaration was made under provisions of the Clean Air Act. Professor Flatt said there was a possibility of challenges to this, but challenges to the science of the finding should not prevail, although the process could be slowed down.

Professor Flatt said the way the EPA goes about regulating greenhouse gasses under provisions of the Clean Air Act would be something to watch. He said there is a so-called 'Tailoring Rule' that would allow exemption of certain small sources of stationary greenhouse gasses. He expects that rule to be challenged.

He said there were other potential challenge points that would take some time to be considered. Some of the regulations would be allowed to go into effect while legal challenges proceed.

Further he noted that Senator Lisa Murkowski (R-AK) will be allowed to propose an amendment to an omnibus spending bill. Her amendment would strip the EPA of the power to regulate stationary sources of greenhouse gasses. To get a full vote there must be sixty Senators voting to consider her amendment to take away those regulatory powers. Professor Flatt does not expect the Senator to be successful, but that she wants the amendment to be considered to get a sense of the Senate's position on the issue.

A Senate committee has approved the Boxer-Kerry bill concerning climate change, but has taken no action beyond that. The bill has some characteristics of the emissions bill passed by the House. The Senate plans to consider financial regulation before any bills on climate change, meaning late April before climate change legislation might be considered.

While there have been several Senators who have announced they will not run, Professor Flatt does not see much shift on environmental issues at this time.

Senators Graham and Kerry have proposed a substantive change by virtue of a comprehensive climate change proposal that would focus on more incentives for nuclear power, off-shore drilling, and increased domestic drilling and natural gas subsidies. Professor Flatt feels that this proposal could appeal to three Senate republicans who might

otherwise oppose the idea. The Professor expects the final bill to have more substance concerning nuclear power.

He expects California to have statewide climate change regulations in place by January 2011 which is the target date.

On the subject of the Copenhagen meeting of the United Nations Framework Convention on Climate Change (UNFCCC), Professor Flatt considers the Copenhagen Accord an agreement that has an unclear legal status under international environmental law. (**SEE ATTACHMENT D: Copenhagen Accord.**) The Annex 1 countries, essentially the developed countries and the former Eastern Soviet bloc, will publish by January 30, 2010 what their reduction effort will be by 2020. Each country will set up its own baseline year. Other countries can agree to “national appropriate mitigation actions”. Some of the countries such as China have agreed to reduce energy intensity which is different from emission reduction. Underdeveloped countries which agree to international aid to cope with climate change problems agree to verification inspections. A country that does not receive aid does not have to be inspected. China and India agreed to report every two years rather than inspection.

The next meeting of the UNFCCC will be in Mexico City in December 2010, at that time the Copenhagen Accord calls for the positions and actions of the Copenhagen Accord to be made binding under internal environmental law.

In the Accord, the parties agreed that for a country to receive credit for deforestation reduction, the entire forest stock of the country must be registered. This portion of the Reduction of Emissions from Deforestation and Degradation (REDD) will set up a base line so that reductions can be verified more easily.

Professor Flatt said China made a slight move with the semi-binding agreement for reporting.

Also the Accord established that United States does not have to enact legislation to meet its climate change targets. There is enough power in the Executive Branch to meet those near term targets. Thus a combination of EPA rules and state initiatives means that the U. S. can be part of the international discussion without formal legislative action.

Professor Flatt said President Obama was aiming for a domestic audience saying that the U. S. will move ahead on its own. In the Professor’s view the President said thrust of the meeting was about American security, economy and developing American industry.

The ultimate point, according to Professor Flatt may have been the rejection of the UNFCCC process. He said it was obviously difficult to reach agreement among 192 countries. There were major disagreements between developed countries and underdeveloped countries. The final agreement was worked out between China, Brazil, India, South Africa and the U. S. This group’s position was put before the Convention which relies on consensus, and the adoption of a position reached in this manner he feels does away with the process of the UNFCCC. Professor Flatt feels that future actions will come as part of negotiations between countries in the G-20 economic organization.

As Professor Flatt sees the situation, the major message was the need to put a price on a carbon and to look for technological breakthroughs. Rather than look to maintaining a 2 degree Celsius global temperature rise, which can not be sustained even

with all the various efforts by the countries, we need to change the incentives for technology that would lead to a change in the carbon footprint in the world.

Professor Flatt said the feeling expressed, particularly from the private sector, that cap and trade was a done deal. Private entities seem to be ahead of the countries in this regard. As he put it “it doesn’t matter what the countries do.” He said a lot of the side meetings in Copenhagen dealt with setting up a carbon market and the various ramifications of such a market. He said U. S. companies were leading the effort, but that China and Japan were becoming interested. Already there are initiatives which put about half the U. S. population under a cap and trade system. He believes the EPA will set up a cap and trade regime that would cover the entire country’s stationary source market to a cap and trade system. Thus this multi-billion dollar system will set a price on carbon. Then there is likely to be import trade restrictions on countries, such as China and India which do not have some sort of set limit on carbon emissions.

Representative Harrison asked if the U. S. was resigned to the 2005 baseline for reductions rather than 1990. Professor Flatt said that was not the case, that there might be some sort of averaging over the period of time. Representative Harrison also asked if there was a better chance of passage for the Murkowski amendment since it is now set for a January vote and the amendment was sidetracked in October. Professor Flatt said he felt that the upcoming vote was more a matter of courtesy.

Dr. Smith, who also attended the Copenhagen meeting, said the saying that the “negotiations were too political for the negotiators and too technical for the politicians.” was evident during the event. He also pointed out that there was a large presence of nongovernmental organizations and there was significant discussion regarding the adjusting the target level of carbon parts per million. Dr. Smith did not agree that the overall process of the UNFCCC would be abandoned. He also noted that there is a great disconnect between the U. S. and the rest of the world on the subject of climate change: more sophisticated in other parts of the world, than in this country. He cautioned that the U. S. needs to be more interested and involved in clean technology.

Professor Flatt believes the Copenhagen meeting showed him that the climate change issue was moving forward with or without political agreements. The private sector is willing to move ahead. The question in his mind remains what will happen politically around the world

Co-Chairman Garrou asked if the price on carbon and the technological advances have energy security and geopolitical implications especially with countries that were not oil-rich. Professor Flatt said this is the thrust of the Kerry-Graham idea with its move toward nuclear, off-shore drilling, etc. in addition to decreasing emissions. Putting the price on carbon, thereby reducing oil demand was one reason Saudi Arabia voted against the Copenhagen Accord.

Dr. Andrews asked how the trade barrier situation would stand up to scrutiny by the World Trade Organization (WTO). Professor Flatt said he felt the restrictions would be arguably legal with the WTO. It would be considered as an equalization tariff.

Dr. Eggers asked if long term offset contracts were being held in public now. Professor Flatt said the negotiations were going on in public and the best advantage would be to set up the offsets, but not take them yet. He said the cheapest offsets would come first but not all the rules are in place. Dr. Eggers also asked how North Carolina could

position itself to benefit. Professor Flatt said this was an issue better addressed by the legislators; however he did say there was an opportunity in forest resource management. He said he could see an offset market headquartered in North Carolina. The state has begun recognizing such things as energy capture from hog manure and other private sector initiatives could count as assets for the state under the federal bills.

Senator Jacumin wanted to know about economic research was available comparing carbon producers and offset producers. Professor Flatt figured that offset producers could be responsible for half of the emission reduction by 2050.

Mr. Urlaub asked if there were major financial institutions were in Copenhagen, particularly North Carolina entities. Professor Flatt said he did not notice such presence.

Rep. Allen asked whether no-till farming be viewed as sequestering. Professor Flatt said he did not know. It depends on soil content and other factors.

Dr. Everett asked how binding the commitments signed in Copenhagen really were. Professor Flatt said there was no specific law, but a position taken.

North Carolina Renewable Energy and Energy Efficiency Portfolio Standards

The Chairman of the North Carolina Utilities Commission, Edward Finley presented the Commission with the procedure for Senate Bill 3 (S.L. 2007-397) enacted in 2007. (*SEE ATTACHMENT E: Implementation of Senate Bill 3.*) At the outset he said Senate Bill 3 was a new, intricate piece of legislation. He said since this was new ground the Utilities Commission began with a clean slate.

Mr. Finley said the bill was explicit in some instances and implicit in others. The law does allow an “off-ramp” provision, wherein the Utilities Commission could expand on what the language might say. So far, he said this provision had not been used.

He noted that demand side management and energy efficiency was the province of the consumer and not the Utilities Commission or the utilities themselves. North Carolina has relatively low utility rates and that demand side management and efficiency usually work better where rates are high.

Mr. Finley said that if Congress passes the cap and trade legislation that there should be more movement toward demand side management, energy efficiency and renewable energy.

He said that the goal is a 12 ½% renewable energy portfolio by 2021 which he termed ambitious. At the same time there are conservative price caps. There are three set asides: solar energy, poultry waste, and hog waste energy generation; some of these may be more expensive generation than from non-set asides.

Mr. Finley provided several case histories about the complex issues involving Senate Bill 3 the Utilities Commission has been resolving.

Further, Mr. Finley provided information on the efforts of Progress Energy and Duke Energy in the area of renewable energy systems.

Mr. Slocum asked if the Utilities Commission interprets the list of renewable energy biomass sources as an exclusive list, since the list includes wood waste, but does

not include wood. Mr. Finley said the list should be considered as examples, not an exclusive list.

Co-Chair Representative Harrison asked if the Utilities Commission would be open to a clarification in Senate Bill 3 regarding the issue of in-state generation of renewable energy sources. Mr. Finley said the panel would welcome legislative advice at any time. Representative Harrison asked if the Utilities Commission would have trouble meeting the offset deadline for swine and poultry waste and would want to extend that mark. Mr. Finley said the first deadline is 2012. He said the situation regarding the poultry set aside deadline has been resolved. The swine waste set aside is still being negotiated.

Representative Wilkins asked about the tracking system for Renewable Energy Credits (RECs). Sam Watson from the Utilities Commission staff said the vendor would track only the RECs and the system would be funded by the utility companies. Dr. Everett said trying to deal with the RECs did bring about challenges. He said that a wind turbine demonstration had been announced for the North Carolina coast. The wind turbine plan in the Northeastern states has been in the works for nine years before a federal decision. He said that when people trying renewable energy solutions run into a snag on one system, the usual operation is to turn to another option which can be more expensive and brings cost caps into play without obtaining renewable energy. He said there are both cost and technology issues.

Senator Stein said it would be good for the General Assembly to review Senate Bill 3 and the other statutes the law brings into play with suggestions and recommendations to the Commission from those such as Duke Energy and others who are working in the framework of the law.

Mr. Urlaub said the Utilities Commission has a great commitment to deal with the new ground and process in Senate Bill 3. He also cited Progress Energy and Duke Energy for their success with solar energy. He said North Carolina ranked 11th in the U. S. for installed solar capacity at the end of 2008. He agreed that suggestions on implementation were in order.

Dr. Smith asked if Duke Energy was being more ambitious in terms to energy efficiency. Mr. Finley said that Senate Bill 3 prompted renewed emphasis in energy efficiency. There was also an impetus due to costs facing energy suppliers.

Ms. Tompkins asked if the consumer could see more solar energy use and simpler and less expensive net metering. Mr. Finley said there are methods of simplifying net metering, but that rate making involved a balance of factors from all sides.

North Carolina Energy Policy Council

Tim Toben, Chair of the Energy Policy Council, presented the Commission with an overview of the Council. (*SEE ATTACHMENT F: Activities and Objectives of the Energy Policy Council*) The panel began in 1975 prompted by the energy crisis of the 1970s. The enactment of HB 1481 in 2009 responded to the current sense of crisis in terms of fuel prices, carbon reduction and the like. The Council now comes under the Department of Commerce with an Assistant Secretary for Energy.

The Council is looked upon as the lead energy policy body to make recommendations to the Governor and the General Assembly. Four legislators serve on

the Council: Representatives Pricey Harrison and Angela Bryant and Senators Ellie Kinnaird and Richard Stevens. The Governor has appointed twelve public members each with a particular energy focus.

The Council is charged with developing long range energy policy to be recommended to the Governor. Further the panel is to create a work plan for affordable low carbon energy and subsequent affordable low carbon energy legislation to be considered by the General Assembly.

The Council is proceeding on the assumption that there will be carbon constraints in developing the plans. He noted that private businesses are building these constraints into their future plans, much ahead of what government might be doing.

Mr. Toben also believes that energy efficiency is a vital part of energy policy.

Dr. Riggs asked Mr. Toben to differentiate between the commissions headed by former UNC-W Chancellor Jim Leutze, the Governor's newly appointed off-shore energy advisory commission, and the Energy Policy Council. Mr. Toben said the Leutze group was a research panel to consider the opportunities and concerns of such ventures as off-shore drilling for oil and gas and wind power potential. He suggested that the latest group would be the place for the research to be refined into recommendations for the Governor.

Dr. Riggs said he wanted to know more about how to integrate the efforts of such panels.

Mr. Slocum asked how policy concerning forests and soils wound up falling under transportation concerns. Mr. Toben said the assignment reflected the intent for the Council subcommittees to provide “robust” discussion.

Dr. Eggers asked about carbon emission offsets for nuclear plants using major amounts of concrete that have so much energy embodied that it would take some ten years to have even a neutral effect on the climate. Mr. Toben said there would be an attempt to assess costs for any source of power generation.

Progress Energy Plans to Retire Coal-fired Generating Units

Caroline Choi, Director of Energy Policy and Strategy for Progress Energy and a member of the Commission provided the group with the information on this plan. (***SEE ATTACHMENT G: PEC’s Retirement Plan and News Release***) Progress Energy will close eleven units at four sites across the company’s service area:

600 MW L. V. Sutton Plant –Wilmington
316 MW Cape Fear Plant- Moncure
172 MW Witherspoon Plant- Lumberton
397 MW H. F. Lee Plant – Goldsboro

This group of units reflects 30% of Progress Energy coal-fired generation capacity in North Carolina. Several of these units will be replaced by natural-gas fired units and the fuel source change is expected to make significant reduction in sulfur dioxide emissions. Mercury emissions would also be reduced.

Dr. Everett said the price of natural gas was very volatile. He said Duke Energy had built about \$7 billion worth of gas fired plants most of which never came on line because the price of natural gas increased. He said the idea that using solar and wind energy with natural gas as the backup should be reversed: natural gas with solar and wind as back up. He cautioned about too much dependence on gas with more and more of the country seeking to use gas-fired generating units.

Ms. Choi said that retirement of these plans affected 256 employees and that plans were already underway to consider those employees future as the plants go off line, since the gas-fired plans would use about half that number of employees.

Mr. Andrews said he remembered when the natural gas prices did rise, that there was a cap put on the amount that utilities could use as a trade off for the use of gas for home heating. He asked how the plant retirements figure with the Clean Smokestacks Act (S.L. 2002-4). Ms. Choi said the Act was the driver that led to the retirement of the Lee Plant in order to meet the restrictions of the Act which go into effect in 2013. She said that Progress Energy could meet the provisions of the Clean Smokestacks Act without retiring any other plants. In further questions, Ms. Choi said the retiring of the plants would reduce about 6.5 million tons of carbon dioxide; the remaining system would produce about 22 million tons.

Climate Initiatives in the Department of Environment and Natural Resources

David W. Knight, Assistant Secretary for Natural Resources provided the Department's priority which is based on mitigation and adaptation strategies. (*SEE ATTACHMENT H: DENR Climate Change Initiatives.*) He said the plan was on the Department's web site at <http://www.climatechange.nc.gov>.

The Department has set up a Climate Change Steering Committee to help position the state relative to federal, regional and state policy actions.

The Division of Air Quality has reported the Department's carbon footprint to The Climate Registry and is obtaining verification of the data.

The Division of Coastal Management Division is holding a science forum January 14-15 to provide preliminary projected sea level rise data.

The Coastal Habitat Protection Plan is being updated to reflect climate change impact.

The Department will co-host a workshop March 2-3, "Planning for North Carolina's Future: Ask the Climate Question."

NOTE: As noted above, Agenda Item #9 Report of the Division of Emergency Management was postponed until the next meeting.

DISCUSSION

Dr. Riggs asked if the Copenhagen meeting dealt with the issue of adaptation. Dr. Smith said that the issue was addressed within the \$30 billion Fast Start Aid and \$100 billion of other aid money. While he professed not to have full details he said that many of the underdeveloped countries and island countries were particularly involved in this. He

said that the adaptation issue was not being addressed as much as it should in the United States.

Dr. Riggs referenced the opening remarks concerning the future of the Commission. Co-Chairman Garrou said that the idea of a future group with a heavier legislative representation would not lose the technical representation and information that the Commission has developed over its tenure. Rather, he suggested the future Commission would need to involve the legislative presence to bring the Commission's work into implementation. Co-Chair Representative Harrison said there had been discussion of an advisory group similar to the Coastal Resources Advisory Commission.

Dr. Eggers asked what the procedure would be for creating proposals. Co-Chair Garrou said he welcomed proposals from the members and that the Co-Chairs would also have recommendations.

Dr. Riggs asked if the information provided by Tim Dodge earlier was an edited version. Mr. Dodge said the report presented covered formal actions and that other matters were available. Mr. Dodge encouraged members to review earlier comments or proposals with an eye to whether those ideas should be re-submitted or if positions had changed.

Dr. Smith asked about the difference between the Energy Policy Council's adoption of a low carbon position and any action by the Commission. Co-Chair Garrou said there was some overlap, but that the Council is looking toward long-term policy. Mr. Toben is focused strictly on energy, but could overlap with issues in the Commission. Mr. Toben said there were other issues that the Commission considered that were not specifically related to energy, but that the EPC could be interested in knowing.

The meeting adjourned at 1:27 p. m.

Mr. John Garrou, Co-Chair Presiding

Thelma T. Utley, Commission Clerk

Representative Pricey Harrison, Co-Chair

Ted Harrison, Clerk