

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**

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Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long Term Procurement Plans

R.10-05-006  
(Filed May 6, 2010)

**PREHEARING CONFERENCE STATEMENT OF CALIFORNIANS FOR  
RENEWABLE ENERGY, INC. (CARE)**

**I. Introduction**

Pursuant to the Administrative Law Judge's *Ruling Modifying System Track I Schedule and Setting Prehearing Conference*, issued February 10, 2011 ("ALJ Ruling"), Californians for Renewable Energy Inc. (CARE) submits the following Prehearing Conference ("PHC") Statement.

**II. Modeling runs and materials that will be available April 13, 2011**

The ALJ Ruling adjusted the Track I schedule and required that the California Independent System Operator ("CAISO") and the Investor-Owned Utilities ("IOUs") file the results of available completed modeling runs by April 13, 2011. Public Util. Code § 1822 requires that any computer model that is the basis for any testimony in a Commission proceeding be available to the parties, and further requires that testimony based on a computer model shall include all of the equations and assumptions built into the model.

In response to a data request in this proceeding, the ISO stated:

For the Step 1 analysis the ISO used software developed by Pacific Northwest National Laboratory (PNNL). *The ISO cannot make the software available due to commercial licensing restrictions* but has made the input data available [.] (Responses of the California Independent System Operator to the First Set of Data Requests from L. Jan Reid, Response to Data Request No. 1, dated February 1, 2011.)

This response appears to raise potential issues relating to compliance with Rules 10.3 and 10.4 and Public Util. Code § 1822, and therefore CARE objects to the Commission's reliance on the software and any subsequent action the Commission might take in response to the modeling results to be release by April 13, 2011.

The Pacific Northwest National Laboratory in Richland Washington is a U.S. Department of Energy (DOE) government research laboratory or a government agency not a private party

that would have some private financial interest in protecting such information under a “commercial license”. The Commission already has rules in place to protect the disclosure of information that would give a competitive advantage to one commercial interest over another commercial interest. Consistent with Decisions (“D.”) 06-06-066 and 08-04-023 governing confidentiality procedures, which also determined that CAISO is a “non-market participant” CARE respectively demands that CAISO provide the other non-market participants access to such modeling software code under an appropriate non-disclosure agreement, otherwise CARE respectfully request in the interest of administrative economy that this portion of the proceeding be abandoned and terminated.

### **III. Track III issues that should be addressed concurrently with Track I.**

The ALJ Ruling requested that parties identify Track III issues that can be addressed concurrently with Track I, including the filing of testimony on these Track III issues by July 8, 2011. The Order Instituting Rulemaking (“OIR”) originally identified eight Track III issues and these Track III issues do not at this point, appear to be as time-sensitive

### **IV. It is premature to establish any schedule for GHG procurement-related issues**

On January 13, 2011, the original Scoping Memo was revised by an ALJ Ruling so that GHG procurement-related issues will now be addressed concurrently with the Track I schedule. Since January 13, the ALJ has issued several additional rulings revising the Track I and Track II schedules in this proceeding. However, these rulings have not yet addressed GHG procurement related issues or adopted a schedule for addressing these issues.

According to a February 16, 2011 article (attached) in the *UCLA Daily Bruin*, titled *Environmental justice groups sue for cap and trade alternatives*:

The California Global Warming Solutions Act, also known as Assembly Bill 32, aims to reduce carbon emissions to 1990 levels by 2020. To reach these goals, the California Air Resources Board adopted the Scoping Plan in 2008 to reduce carbon dioxide emissions through various methods, including cap and trade policy.

*Last month, a preliminary ruling by the San Francisco Superior Court found the Scoping Plan unlawful.* If the decision is finalized, the Air Resources Board will have to reconsider the environmental impact of the Scoping Plan, said Cara Horowitz, director of the Emmett Center for Climate Change and the Environment. [*Emphasis added*]

Therefore it is premature to consider GHG procurement related issues until the Court can determine if the California Air Resources Board adopted Scoping Plan in 2008 to reduce carbon dioxide emissions through various methods, including cap and trade policy is even lawful

**V. Conclusion**

The modeling software of the CAISO fails to comply with Rules 10.3 and 10.4 and Public Util. Code § 1822 and therefore it fails to serve the public's and non-market participants' purposes of determining procurement related issues. Likewise the inputs to the model itself can not be realistically determined until the California Air Resources Board adopts a Scoping Plan to reduce carbon dioxide emissions through various methods, including cap and trade policy that is demonstrated to be lawful.

Respectfully submitted,



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February 23, 2011

## Attachment

<http://sustain.ucla.edu/news/article.asp?parentid=10354>



### ENVIRONMENTAL JUSTICE GROUPS SUE FOR CAP AND TRADE ALTERNATIVES

A final decision regarding a law on California greenhouse gas emission reduction will likely come in the next few weeks.

*By Ramsey Ugarte*

*Originally published in [Daily Bruin](#)*

The California Global Warming Solutions Act, also known as Assembly Bill 32, aims to reduce carbon emissions to 1990 levels by 2020. To reach these goals, the California Air Resources Board adopted the Scoping Plan in 2008 to reduce carbon dioxide emissions through various methods, including cap and trade policy.

Last month, a preliminary ruling by the San Francisco Superior Court found the Scoping Plan unlawful. If the decision is finalized, the Air Resources Board will have to reconsider the environmental impact of the Scoping Plan, said Cara Horowitz, director of the Emmett Center for Climate Change and the Environment.

Horowitz is a law professor at UCLA and has blogged about the case on “Legal Planet,” a joint UCLA/UC Berkeley environmental law and policy blog.

Initially, a coalition of environmental justice groups found two problems with the Scoping Plan.

The first problem was that the Scoping Plan did not seek “maximum technologically feasible and cost-effective reductions,” a requirement of the bill. The court dismissed this claim.

The second problem was the Scoping Plan allegedly did not consider environmental impact and consequences of a cap and trade system, Horowitz said. Judge Ernest Goldsmith agreed with the second claim in his preliminary ruling.

The debate has now been narrowed to examining alternatives to the Scoping Plan's cap and trade policy. This program puts a cap on the amount of greenhouse gases that can be emitted. The state government then sells the rights to emit carbon dioxide to companies, which can trade pollution credits with each other, said Stephanie Pincetl, the director of the UCLA Center for Sustainable Urban Systems.

But the environmental justice groups that brought the lawsuit against the Air Resources Board oppose the cap and trade program. These groups include the Communities for a Better Environment and the Center for Race, Poverty and the Environment.

"Cap and trade will create toxic hotspots in low-income communities of color," said Maya Golden-Krasner, a staff attorney for Communities for a Better Environment.

Those who support cap and trade say the revenue gained from the trading of emission rights will be used to forge programs for these poor populations, Pincetl said.

This argument does not satisfy the environmental justice community, though.

"This heavy reliance on cap and trade won't get us where we need to be," Golden-Krasner said.

The coalition seeks methods other than cap and trade to reduce carbon emissions.

"We are supportive of AB 32," Golden-Krasner said. "We just want to see the Air Resources Board actually examine alternatives to cap and trade."

These alternatives include a direct tax to carbon emissions.

"The environmental justice community would like to see a reduction in fossil fuels and for these fuels to be priced in accordance to their environmental costs," Pincetl said. "Cap and trade does not change the fossil fuel mix in California and there will be unequal exposure to green house gas emissions."

Looking to the future, Pincetl said a tax on carbon will not only reduce greenhouse gas emissions, but also encourage industries to move away from nonrenewable energy sources, possibly generating new jobs.

If the ruling is finalized, it will likely be taken to an appeals court, which could overturn the previous ruling entirely or further stall AB 32, Horowitz said.

Regardless, an alternative program is unlikely.

"The court did not demand the state to not use cap and trade, but just to reconsider the alternatives," Horowitz said, adding that the state will likely move forward with cap and trade. "If the state decides to use another method, it won't largely be because of this case."

Date Posted: 2/16/2011

**Verification**

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23<sup>rd</sup> day of February 2011 at Soquel, California.



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**Certificate of Service**

I hereby certify that I served the foregoing document “*PREHEARING CONFERENCE STATEMENT OF CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE)*” under CPUC Dockets A.09-04-001, with a copy to the R.10-05-006 service list. Each person designated on the official service lists, has been provided a copy via e-mail, to all persons on the attached service lists on February 23, 2011 transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23<sup>rd</sup> day of February 2011, at Soquel, California.



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