UNC/jv1 10/16/2013

FILED
10-16-13
02:37 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions.	Rulemaking 11-03-012 (Filed March 24, 2011)

ADMINISTRATIVE LAW JUDGE'S RULING UPDATING ENERGY DIVISION STAFF PROPOSAL ON GREENHOUSE GAS REVENUE ALLOCATION FORMULAS AND REQUESTING COMMENTS

Summary

To resolve the potential for disclosure of sensitive confidential information, this ruling presents an amendment to the *Greenhouse Gas Allowance Revenue Allocation Methodologies for Emissions Intensive and Trade Exposed Entities and Small Businesses* Energy Division Staff Proposal. Under the amendment, the California Public Utilities Commission would retain the services of an outside disbursement agent to distribute greenhouse gas allowance revenues directly to individual emissions-intensive and trade-exposed (EITE) entities separate from their utility bills rather than relying upon Energy Division staff to convey the dollar amount of the individual EITE entity's revenue return to the issuing utility. In addition, the disbursement agent would be tasked with collecting and validating attestations of eligibility from EITE customers with annual emissions less than 10,000 $MTCO_2e$. Opening and reply comments are due on October 30 and November 6, 2013, respectively.

Background

On July 10, 2013, assigned Administrative Law Judge Melissa K. Semcer entered into the record of Rulemaking 11-03-012 the Greenhouse Gas Allowance Revenue Allocation Methodologies for Emissions Intensive and Trade Exposed Entities and Small Businesses staff proposal of the California Public Utilities Commission's (Commission) Energy Division (Staff Proposal). The Staff Proposal recommends formulas and processes to distribute greenhouse gas (GHG) allowance revenues to emissions-intensive and trade-exposed (EITE) entities and small business customers pursuant to Decision (D).12-12-033. Parties provided comments on the Staff Proposal on July 24, 2013, and a proposed decision adopting final formulas and processes is currently being drafted.

In Section 8.1 of the Staff Proposal, Energy Division staff recommends that the GHG allowance revenue due to EITE customers be returned as an annual on-bill credit. To implement the return to EITE customers, each year Energy Division staff proposes to calculate the dollar amount of the GHG allowance revenue owed to each EITE customer. Energy Division staff would then convey that dollar amount to the utilities in whose service territory the EITE operates for inclusion as an on-bill credit.

To identify all EITE entities and to calculate the dollar amount of the revenue return for each EITE entity, Energy Division set forth a process in Section 9.1 of the Staff Proposal in which Energy Division staff would rely upon data reported to the California Air Resources Board (ARB) by EITE entities through ARB's Mandatory Reporting Regulation (MRR). Using the data collected through the MRR, along with other necessary information, Energy Division staff would calculate the specific dollar amount of the revenue return

for each EITE entity using the proposed product-based, energy-based, or refinery allocation formulas set forth in the Staff Proposal.

In addition to the regular EITE GHG revenue return, in Section 6 of the Staff Proposal, Energy Division staff proposes processes and allocation methodologies to distribute GHG allowance revenues to EITE entities with annual GHG emissions less than 25,000 metric tons of carbon dioxide equivalent ($MTCO_2e$). D.12-12-033 ruled that these entities should receive GHG allowance revenues, but must opt-into ARB's Cap-and-Trade program in order to be eligible, unless another method could be developed to obtain the information necessary to implement the allocation methodologies.[1]

In the Staff Proposal, Energy Division staff recommends that EITE entities with emissions between 10,000 and 25,000 $MTCO_2e$ be required to opt-into the Cap-and-Trade program; however, for entities under 10,000 $MTCO_2e$, Energy Division staff recommends a different approach to identify and verify EITE status that does not require an entity to opt-in. Of relevance to this ruling is the recommendation contained in Section 6.2.2 that EITE customers with emissions below 10,000 $MTCO_2e$ be required to provide an attestation of their EITE status to the utility. Energy Division staff propose that these customers would be identified and contacted by their utility in order to fulfill this requirement.

Confidential Information and Disclosure Risk

In order to calculate the product-based allocation methodology of the EITE GHG revenue return, Energy Division staff would rely upon each EITE entity's annual product output, which is collected through the MRR and is deemed

[1] D.12-12-033 at 75.

confidential. The Commission, under the terms of a non-disclosure agreement executed with ARB, must ensure that product output data remains confidential (Section 10 of the Staff Proposal). For this reason, the Staff Proposal envisions that the dollar amount of each EITE entity's individual GHG revenue allocation that is conveyed from Energy Division to the utility would remain confidential.

If the confidential dollar amount of the revenue return were to be disclosed, an individual or private organization could easily determine the annual product output of an individual facility, which is highly confidential business information. The risk arises because all variables in the proposed product-based allocation methodology formula, except for an EITE facility's product output, have the potential to be fixed and publicly disclosed in their own right. With this information and the dollar amount of the return in hand, it would be a trivial exercise to calculate the product output of a given EITE facility. Disclosure of product output information could be used by competitors to damage or gain a financial advantage over an industrial facility.

Recently, it has come to the attention of Energy Division staff that under the current Staff Proposal, the dollar amount of each EITE entity's individual revenue return could be disclosed as part of a Public Records Act[2] request once it has been communicated by Energy Division to the utility. The Commission's confidentiality privileges and obligations extend to firms under contract with the Commission. Under the Staff Proposal as written, the Commission would not have a contractual relationship with the utilities. As a result, the Commission would have limited ability to guard confidential industrial output data from

[2] CA Government Code §§ 6250-6276.48

being released if the Commission were subject to a Public Records Act request that sought information about how much GHG allowance revenue each industrial facility receives in a given year.

Because the Commission has an obligation to protect confidential data, which includes the product output data for each EITE entity, and that information can be calculated with knowledge of the dollar amount of an EITE facility's GHG revenue return allocation, Energy Division staff wishes to amend the proposed EITE methodology contained in Section 8.1 of the Staff Proposal to provide additional protection to meet the Commission's obligation under its non-disclosure agreement with ARB.

Amendment to the Staff Proposal: Disbursement Agent

Under its amended proposal, Energy Division staff recommends that the Commission contract with a disbursement agent whose primary responsibility would be to issue revenue to EITE customers. Because the disbursement agent would be under direct contract with the Commission, the terms of the Commission's non-disclosure agreement with ARB, along with any other existing confidential protections, would extend to the entity under contract. However, since the disbursement agent would not have direct access to customer bills, under the amended proposal, the EITE revenue return would occur distinct from utility bills - as a check, for example.

Under this amended approach, Energy Division staff would gather MRR data as necessary and calculate the amount of revenue each EITE customer should receive in a given year. Energy Division staff would then report to the utilities and the disbursement agent an aggregate total amount of revenue

needed to implement the revenue return.[3] Energy Division staff would also communicate to the disbursement agent the confidential dollar amount due to each EITE facility eligible to receive GHG revenues. The utilities would then transfer the total allotted amount of EITE revenues to the disbursement agent, and the disbursement agent would distribute revenues to individual EITE customers.

EITE Entities Under 10,000 MTCO2e

In addition to the responsibility of distributing revenues to EITE customers, Energy Division staff also recommends that Section 6.2.2 of the Staff Proposal be amended such that the disbursement agent is tasked with collecting and verifying attestations of EITE customers with emissions less than 10,000 $MTCO_2e$, rather than the utilities. This recommendation comes in response to the July 24, 2013 comments filed by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E). In their comments, the three utilities argue that there is a need for a centralized system to collect and validate the attestations, and that EITE customers with emissions less than 10,000 $MTCO_2e$ should be required to provide those attestations to the Commission. Adding this task to the scope of work of the disbursement agent would result in a centralized, streamlined process without adding to the already over-extended duties of Energy Division staff.

[3] The total aggregated amount of revenue returned to EITE customers is public information.

Budget and Selection Process

It is difficult to predict in advance the annual cost of the services to be provided by the disbursement agent; however, Energy Division staff recommends a maximum budget of $500,000 per year, based on a solicitation conducted by ARB for a financial services contractor to assist with the operations of its allowance auctions.[4] It is expected that the actual contract amount would come in well under this maximum. The disbursement agent would be selected through a competitive solicitation process with the final scope of work to be developed by Energy Division staff. The Commission's annual contract amount for the disbursement agent would be reimbursed by the three large investor-owned utilities, PG&E, SCE, and SDG&E, in proportion to their percentage of retail sales and from GHG allowance revenues in a given year, in keeping with previous contracting expenditures authorized under D.12-12-033. In the same manner as administrative and outreach and education budgets, the utilities would be required to set aside the appropriate amount of money to cover the costs of the disbursement agent in advance of any distribution of revenues to EITE, small business, and residential customers.

Comments

Parties are invited to provide comment on the amendments to the Staff Proposal set forth in this ruling. In particular, the Commission seeks comments on the following:

---

[4] http://www.arb.ca.gov/cc/capandtrade/contracts/reissuance/reissued_financial_services_rfp.pdf

1) The reasonableness of the proposal for the Commission to contract with a disbursement agent, to be selected by competitive solicitation, for the purposes of providing a return of GHG revenues to EITE customers and collecting and validating attestations of eligibility for EITE customers with annual emissions less than 10,000 $MTCO_2e$.

2) The reasonableness of a proposed maximum annual budget of $500,000 for the services of the disbursement agent to be funded by annual GHG allowance revenues received by PG&E, SCE, and SDG&E in proportion to their percentage of retail sales.

IT IS RULED that:

1. Sections 6.2.2 and 8.1 of the *Greenhouse Gas Allowance Revenue Allocation Methodologies for Emissions Intensive and Trade Exposed Entities and Small Businesses* Energy Division Staff Proposal, incorporated into the record on July 10, 2013, are as set forth herein.

2. Parties may file and serve opening and reply comments on the updated sections of the *Greenhouse Gas Allowance Revenue Allocation Methodologies for Emissions Intensive and Trade Exposed Entities and Small Businesses* Energy Division Staff Proposal on October 30, and November 6, 2013, respectively.

Dated October 16, 2013, at San Francisco, California.

/s/ MELISSA K. SEMCER
Melissa K. Semcer
Administrative Law Judge