PROPOSED DECISION

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Ratesetting
3/13/2014 Item 13

Decision **PROPOSED DECISION OF ALJ SEMCER** (Mailed 2/10/2014)

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)

DECISION CLARIFYING COMMISSION POLICY ON GREENHOUSE GAS COST RESPONSIBILITY FOR CONTRACTS EXECUTED PRIOR TO THE PASSAGE OF ASSEMBLY BILL 32

1. Summary

The decision clarifies Commission policy and direction pertaining to the recovery of greenhouse gas costs in contracts executed between independent generators and utilities prior to the passage of Assembly Bill 32 (the Global Warming Solutions Act) that lack specific terms and conditions assigning greenhouse gas cost responsibility (Legacy Contracts).

It is the policy of the Commission that greenhouse gas costs and responsibility for such costs should be clearly articulated in Legacy Contracts in order to account for greenhouse gas costs in generation dispatch decisions. The Commission reiterates this policy and orders the utilities to continue renegotiating contracts to include provisions to ensure that generators party to Legacy Contracts receive compensation for their greenhouse gas costs.

Concerning the broad applicability of regulatory policy to Legacy Contracts, the Commission defers to the Greenhouse Gas Cap-and-Trade regulation amendment process currently underway at the California Air

Resources Board. The November 8, 2013 California Air Resources Board's proposed amendments to the final Cap-and-Trade regulation, among other actions, set forth eligibility criteria for contracts to be designated as Legacy Contracts and propose a Legacy Contract greenhouse gas compensation process through a direct allocation of greenhouse gas allowances to independent generators that are party to Legacy Contracts. The proposed Cap-and-Trade regulation amendments apply to all Legacy Contracts regardless of whether the contract is executed with a utility subject to Commission jurisdiction.

Utilities subject to Commission jurisdiction, as a first course of action, are ordered to continue renegotiating Legacy Contracts in good faith to arrive at suitable contract terms and conditions that clearly include greenhouse gas costs and assign greenhouse cost responsibility. Absent resolution through the renegotiation process, generators party to Legacy Contracts may find relief through the amended regulations currently under consideration at the California Air Resources Board.

Should the proposed amendments to the Cap-and-Trade regulation pertaining to Legacy Contracts not ultimately be adopted by the California Air Resources Board, the Commission may revisit this issue; however, as stated in the August 2, 2012 amended scoping memo to Rulemaking 11-03-012, the Commission does not find it appropriate to address issues of greenhouse gas cost responsibility at the individual contract level.

This proceeding remains open.

2. Background

2.1. Procedural Background

On March 24, 2011, the Commission opened Rulemaking (R.) 11-03-012 to address issues related to greenhouse gas (GHG) costs and revenues resulting

from the implementation of California's GHG Cap-and-Trade program pursuant to Assembly Bill (AB) 32.[1] Track 1 of R.11-03-012 focused on the use of revenues generated by the auctioning of GHG allowances by the electric utilities as required by the California Air Resources Board (ARB); the Commission adopted rules for the use of this revenue in Decision (D.) 12-12-033. Other tracks of R.11-03-012 address the use of revenues that the electric utilities may receive from the sale of Low Carbon Fuel Standard credits and issues related to GHG costs and revenues for natural gas utilities.

On July 3, 2012, Panoche Energy Center LLC (Panoche) filed a motion asking that the scope of this proceeding be expanded to address bilateral contracts between utilities and generators that were executed prior to the passage of AB 32 that lack terms and conditions explicitly designating responsibility for GHG costs (Legacy Contracts). Several parties, including the Independent Energy Producers Association, La Paloma Generating Station, and Western Power Trading Forum, filed responses in support of Panoche's motion. Pacific Gas and Electric Company (PG&E) filed a response in opposition to this motion.

On August 2, 2012, the assigned Commissioner and the then-assigned Administrative Law Judges (ALJs) issued an amended scoping memo in this proceeding granting Panoche's motion and creating a second phase in Track 1 of R.11-03-012 to consider responsibility for GHG costs arising in Legacy Contracts. On August 7, 2012, the assigned ALJs issued a ruling setting forth next steps to build a record on the issue of whether independent generators that are party to Legacy Contracts should be compensated for GHG costs, and if so, how. In addition, the Commission sought to develop eligibility criteria for contracts to be

[1] Stats. 2006, ch. 488.

designated as Legacy Contracts. Multiple parties filed opening and reply comments on these issues in August and September of 2012.

On December 7, 2012, ALJ Semcer issued a ruling granting a motion filed by Panoche to take official notice of ARB Resolution 12-33, dated September 20, 2012, which states ARB's intention to develop a methodology that provides transition assistance[2] to covered entities that have a compliance obligation under ARB's Cap-and-Trade regulation that cannot be reasonably recovered under the terms of the entities' existing Legacy Contracts. In addition, the December 7, 2012 ruling added to the record a letter from James N. Goldstene, Executive Officer at ARB, to Mr. Bob Lucas of the California Council for Environmental and Economic Balance, dated October 23, 2012. In that Letter, ARB states "…legacy contracts for which the [Commission] has jurisdiction should be resolved by the parties through the existing processes at the [Commission]."

On June 5, 2013, Commission President Peevey sent a letter to ARB Chair Mary Nichols stating "[i]f ARB decides that legacy facility operators should receive some administrative relief from cap and trade compliance costs, then I see no reason for ARB to treat facilities differently on the basis of whether the counterparty is an [investor-owned utility] or another type of entity. The eligibility criteria and formulas for calculating relief that ARB develops should apply equally to all similarly-situated facilities."

Other procedural actions taken in Phase 2 of Track 1 include a May 8, 2013 ruling issued by then-assigned ALJ Hecht denying procedural motions filed by

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[2] Transition assistance is assistance, usually in the form of an allocation of allowances to an entity, to slowly ease that entity into experiencing GHG costs, known as a carbon price signal.

PG&E and Panoche, including motions to compel and limit discovery, and a July 25, 2013 ruling issued by ALJ Semcer granting confidential treatment to an *ex parte* communication by PG&E.

2.2. Policy Background: The Commission

The Commission has consistently encouraged parties to resolve disputes over GHG cost responsibility in Legacy Contracts through negotiation and settlements or (if necessary) through the dispute resolution processes articulated in existing contracts. Specifically, D.11-04-046, "direct[s] the utilities to renegotiate the contracts at issue so that they reasonably address the allocation of AB 32 compliance costs."[3] Rulings in the instant proceeding have included similar statements such as "it remains appropriate for parties to legacy contracts to renegotiate those contracts."[4]

In addition, the Commission has provided policy guidance on the appropriate framework in which to consider contract modifications to designate which party is responsible for GHG costs. In several previous decisions and rulings, the Commission has stated its policy that all market participants should be treated "equitably and fairly," and that the Commission "do[es] not want to inadvertently create or maintain unfair competitive impacts."[5] At the same time, the Commission has acknowledged that variations in the responsibility for GHG compliance costs between Legacy Contracts and post-AB 32 procurement contracts may appear arbitrary and unfair.

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[3] D.11-04-046 in R.10-05-006 (Long-Term Procurement Proceeding) at 62.

[4] May 8, 2012, Ruling in R.11-03-012 at 16.

[5] Quoted from D.12-04-046 at 67. Similar statements are made in D.08-10-037 and D.08-03-018 in the Commission's previous GHG proceeding, R.06-04-009.

Overall, existing Commission policy supports the principle that utilities should compensate generators for GHG compliance costs.[6] For example, in D.12-12-002, which addresses a petition by San Diego Gas and Electric Company to modify an existing power purchase agreement with the Otay Mesa Energy Center to address GHG cost responsibility, the Commission finds that it makes policy sense for the utility to bear responsibility for GHG compliance costs in order to ensure that these costs are considered in dispatch decisions.[7] D.12-12-002 references earlier Commission decisions that approved contracts containing similar GHG cost allocations to utilities.[8] Thus, the Commission has expressed a policy preference that utilities pay the costs of GHG compliance and compensate generators for those costs, including through modifications to power purchase agreements if necessary.

2.2.1. Background on Policies Pertaining to Legacy Contracts

In regards to the question of cost responsibility in Legacy Contracts, on August 4, 2011, the then-assigned ALJs to R.11-03-012 and to the then-current Long-Term Procurement Proceeding (LTPP), R.10-05-006, issued a joint ruling specifying that "GHG compliance costs associated with contracts executed between independent generators and utilities prior to the passage of AB 32, which do not provide for pass-through of such costs, would be more

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[6] This can take the form of an agreement where the utility pays a certain negotiated all-in energy price that includes a GHG price adder or, less frequently, where the utility takes on the compliance obligation on behalf of the generator.

[7] See D.12-12-002 at 7-8 and Findings of Fact 7 and 8.

[8] For example, see D.09-12-026, D.11-04-033 Attachment A conformed version of D.10-12-055.

appropriately addressed in an LTPP proceeding," and so would be addressed in R.10-05-006.[9]

Legacy Contract issues, however, were not resolved in the final decision, D.12-04-046, in R.10-05-006. Instead D.12-04-046 states that "parties should be able to renegotiate any contracts that currently do not address the allocation of AB 32 compliance costs, so that the contracts are modified to be consistent with Commission policy."[10] More specifically, that decision "direct[ed] the utilities to renegotiate the contracts at issue so that they reasonably address the allocation of AB 32 compliance costs."[11] In the event that parties failed to reach a settlement on the contracts, D.12-04-046 allowed for the issue to be raised in R.11-03-012. Absent a settlement and renegotiation of its contract, Panoche filed its July 3, 2012 motion to expand the scope of R.11-03-012 to address GHG compliance cost responsibility.

The August 2, 2012 amended scoping memo in R.11-03-012 states that "[p]arties seeking relief on this issue should not construe our consideration of the issue to mean that relief will or will not ultimately be granted."[12] That ruling also informs parties that the decision on this issue "will be based on the record developed in this proceeding, consistent with Commission policy and the public

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[9] August 4, 2012, Joint Ruling at 2.

[10] D.12-04-046 at 62.

[11] D.12-04-046 at 62.

[12] Ruling amending Scoping Ruling, August 2, 2013, at 6.

interest,"[13] and "is likely to apply equally to all parties… and is unlikely to address the unique situations or contracts of each party."[14]

2.3. Policy Background: ARB

As noted earlier in this decision, on September 20, 2012, ARB issued Resolution 12-33, which directs the Executive Officer of ARB to develop a methodology to provide transition assistance to entities with a compliance obligation under the Cap-and-Trade regulation whose costs cannot be reasonably recovered under the entity's Legacy Contract. As originally stated, ARB was to develop a transition assistance methodology in consultation with the Commission, but Legacy Contracts executed with utilities under Commission jurisdiction would rely upon the policies adopted by the Commission. President Peevey's June 5, 2013 letter requested that the transition assistance methodology adopted by ARB apply equally to all Legacy Contracts regardless of whether the contract is with a utility subject to Commission jurisdiction.

In November 2013, ARB released its draft amendments to the Cap-and-Trade regulation, which include criteria to identify contracts as Legacy Contracts, regardless of jurisdiction of the utility, and a methodology to provide transition assistance to generators that are party to Legacy Contracts in the form of an allocation of allowances to compensate generators for their GHG costs.[15] To date, ARB has not adopted the draft amendments; however, should the amendments be adopted, a workable GHG cost compensation solution will exist for all independent generators providing power under Legacy Contracts, as those

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[13] *Ibid*.

[14] *Id.* at 6-7.

[15] http://www.arb.ca.gov/regact/2013/capandtrade13/capandtrade13isorappe.pdf.

contracts are defined in the draft amendments, if parties to Legacy Contracts are unable to resolve their conflicts.

3. Discussion and Resolution

As described in D.12-12-002, the Commission has approved two main approaches to compensate generators for GHG compliance costs. In some cases, the Commission has approved contracts specifying that generators will be paid market rates for electricity under the assumption that compliance costs have been embedded in the agreed-upon market price.[16] In other cases, the Commission has approved new contracts or modifications to existing contracts under which GHG compliance costs are passed through from the seller to the purchaser. Under this structure, the purchaser compensates the generator for actual GHG costs up to a pre-determined limit.[17] In both of these scenarios, it is clear whether GHG compliance costs have been accounted for in the original contract or a contract amendment, and if so, which approach has been taken. Similarly, contracts signed since the adoption of AB 32 generally can be expected to have incorporated GHG costs in the agreed-upon market price. In contrast, contracts signed significantly in advance of the development of statutes and rules focused on GHG reduction and climate change policy can be assumed not to have addressed the allocation of such costs.

Most of the contracts raised in this proceeding were negotiated and signed at a time when it was reasonably foreseeable that there would be costs for GHG compliance in the future, but the extent to which such costs were accounted for in the contracts may not be clear. To the extent that these Legacy Contracts do not

[16] For example, in D.10-12-035.

contain terms that explicitly allocate responsibility for GHG compliance costs, it may not be clear which party, if any, bears responsibility for those costs under the contract. It would be inappropriate to amend a contract to require utilities and their ratepayers to pay those compliance costs a second time if they were accounted for in the original contract. At the same time, the Commission is not in a position to know whether GHG costs are already embedded in existing contracts; that is a factual question that is beyond the scope of this proceeding.[18] To make these factual determinations, Legacy Contracts must be examined individually, and avenues exist, such as a contract's explicit dispute resolution process, that are more appropriate than this proceeding for resolving questions of the presence or absence of specific GHG cost compensation terms and conditions in Legacy Contracts.

It remains the stated policy of the Commission that GHG costs should be included in contracts in order to account for GHG costs in dispatch decisions. To that end, Legacy Contracts should contain terms and conditions so as to clearly assign GHG cost responsibility between generators and utilities. In order to achieve the most accurate accounting of GHG costs, utilities subject to Commission jurisdiction are ordered to continue to renegotiate in good faith, or to use the contractual dispute resolution processes at their disposal, to develop clear terms and conditions addressing GHG cost responsibility.

However, the Commission need take no further action at this time, beyond reiterating that the current policy seeks to ensure that generators party to Legacy Contracts receive compensation for their GHG costs. Absent successful

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[17] For example, in D.11-04-033 and D.12-12-002.

[18] August 2, 2012, Joint Ruling Amending Scope at 6-7.

renegotiation, which may include use of a contract's dispute resolution provisions, generators that are party to Legacy Contracts, regardless of whether the generator is in contract with a utility regulated by the Commission, should find the relief necessary to ensure GHG cost compensation through the Cap-and-Trade regulation amendment process currently underway at ARB.

ARB's proposed Cap-and-Trade regulation amendments contain clearly articulated eligibility criteria for Legacy Contracts. Therefore, the Commission need not develop its own criteria to define Legacy Contracts in this decision and defers instead to ARB's process to amend its Cap-and-Trade regulation to include transition assistance for Legacy Contracts, as it defines them.

At this juncture, the Commission finds it appropriate to defer to the resolution ultimately adopted by ARB. Should the proposed amendments to the Cap-and-Trade regulation pertaining to Legacy Contracts not ultimately be adopted by ARB, the Commission may revisit this issue; however, as stated in the amended scoping memo to R.11-03-012, the Commission does not find it appropriate to address these issues at the individual contract level.

4. Incorporation of June 5, 2013 Letter Into the Record

The June 5, 2013 letter from President Peevey to ARB Chair Mary Nichols regarding ARB's treatment of Legacy Contracts is relevant to the resolution of Phase 2 of Track 1 of R.11-03-012 and is incorporated into the record by this decision. The letter is found in Attachment A to this decision.

5. Outstanding Motions

Numerous parties have filed motions in Track 1 Phase 2 of this proceeding requesting party status or asking for resolution of specific issues. To our knowledge, we have addressed all outstanding motions either via electronic or

written ruling; those previous rulings are hereby confirmed. Any outstanding motions in Track 1 Phase 2 of this proceeding are hereby denied.

6. Categorization and Need for Hearing

The original Scoping Ruling issued in this proceeding on September 2, 2011, confirmed the categorization of this proceeding as ratesetting and set forth a process by which parties could request hearings. The ruling amending the Scoping Ruling issued on August 2, 2012, retained the original categorization of this proceeding. All issues in Track 1, Phase 2 of this proceeding were sufficiently addressed through comments. Therefore, we confirm our initial determination that evidentiary hearings are not needed in Track 1, Phase 2 of this proceeding.

7. Comments on Proposed Decision

The proposed decision (PD) of the assigned ALJ in this matter was mailed to parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. PG&E and Panoche timely filed comments on March 3, 2014. The same parties filed reply comments on March 10, 2014.

In comments, PG&E raised concern that the Legacy Contract renegotiation requirement in the PD could be interpreted to signal that PG&E must start ongoing renegotiation and dispute resolution efforts anew. The Commission acknowledges that utilities have been engaged in Legacy Contract renegotiation and contract dispute resolution efforts; the Commission does not intend to negate progress already underway. Accordingly, Conclusion of Law 3 and Ordering Paragraph 1 are modified to acknowledge that the renegotiation process may include the use of a contract's existing dispute resolution provisions. PG&E's specific proposed language is rejected. The Commission defers to ARB's process

to revise its Cap-and-Trade regulations to address Legacy Contracts and to ARB's jurisdiciton to decide if or how arbitration results impact the proposed allocation of allowances to Legacy Contract generators.

Panoche, in comments, requests that the Commission remove Findings of Fact 1-6, Conclusion of Law 2, and associated discussion deeming this language unnecessary to support the conclusions and ordering paragraphs and possibly being construed as modifying existing policy or establishing new policy. Furthermore, Panoche argues that the PD errs by including discussion pertaining to disputed issues of fact for which the Commission has not taken any testimony or other evidence, specifically in reference to when generators could have reasonably foreseen the existence of GHG compliance costs. By issuance of this decision, the Commission reiterates and clarifies previously stated policy; no changes or modifications to existing policy should be construed. Panoche's arguments that Findings of Fact 1-6, Conclusion of Law 2, and associated discussion are superfluous to the ultimate conclusions of this decision are rejected. These findings provide information on policy and procedural history necessary to support the Commission's conclusion to defer to contract dispute resolution procedures or ARB's proposed distribution of allowances to generators party to Legacy Contracts. Acknowledgment of the ARB proposals alone, absent statement of the Commission's policy position, would fail to provide the findings necessary under Public Utilities Code 1705 to support the Commission's decision to defer to ARB's proposed regulation amendments.

The Commission disagrees that the PD includes findings pertaining to unexamined disputed issues of fact; however, we remove reference to the Panoche contract in the discussion pertaining to when generators could have reasonably foreseen the existence of GHG costs. The specifics of the Panoche

contract are irrelevant to the Commission's conclusions, which pertain equally to all Legacy Contracts. The discussion itself is simply a general restatement of earlier Commission finding that the timing of contract execution is relevant when considering whether or not GHG costs could have been reasonably foreseen.[19]The PD is modified to correct typographical errors and improve clarity.

8. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Melissa K. Semcer is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission has historically approved two main approaches to compensate generators for GHG compliance costs. In some cases, the Commission has approved contracts specifying that generators will be paid market rates for electricity, under the assumption that GHG compliance costs have been embedded in the agreed-upon market price. In other cases, the Commission has approved new contracts or modifications to existing contracts under which GHG compliance costs are passed through from the seller to the purchaser. Under this structure, the purchaser compensates the generators for actual GHG costs up to a pre-determined limit. In both of these scenarios, it is clear whether GHG compliance costs have been accounted for in the original contract or contract amendment and which approach has been taken.

2. Contracts signed since the passage of AB 32 generally can be expected to have incorporated GHG costs in the agreed upon contract price.

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[19] D.12-12-002 at FOF 9.

3. There exist contracts that were signed in advance of the passage of AB 32 that lack terms and conditions explicitly assigning GHG cost responsibility. In the case of these contracts, generally known as Legacy Contracts, it may not be clear whether such costs are included under other contract provisions or are entirely absent for each individual contract. The Commission is not in a position to know whether GHG costs are embedded in individual existing Legacy Contracts.

4. The Commission has consistently encouraged parties, in this and other proceedings, to resolve disputes over GHG cost responsibility in Legacy Contracts through negotiation and settlements or (if necessary) through the dispute resolution processes articulated in existing contracts.

5. The Commission has provided policy guidance that market participants should be treated equitably and fairly and that the Commission does not want to create or maintain unfair competitive impacts. The Commission has also acknowledged that variations in the responsibility for GHG compliance costs between Legacy Contracts and post-AB 32 procurement contracts may appear arbitrary and unfair.

6. Commission policy has supported the principle that utilities should compensate generators for GHG compliance costs to ensure that these costs are considered in dispatch decisions.

7. Issues relating to Legacy Contract GHG cost responsibility were originally considered in R.10-05-006, the Long-Term Procurement Proceeding. However, absent resolution in that proceeding, and absent successful renegotiation of contracts, D.12-04-046 in R.10-05-006 allowed for the issue to be raised in R.11-03-012.

8. The August 2, 2012 scoping memo amending R.11-03-012 to consider Legacy Contract issues stated that any resolution adopted would likely pertain equally to all parties; the Commission would be unlikely to address the unique situations or contracts of each party.

9. On September 20, 2012, ARB issued Resolution 12-33, which directed the Executive Officer of ARB to develop a methodology to provide transition assistance to entities with a compliance obligation under the Cap-and-Trade regulation whose GHG costs cannot be reasonably recovered under the entities' Legacy Contracts.

10. On December 7, 2012, the assigned ALJ issued a ruling supplementing the record with a letter from James N. Goldstene, Executive Officer at ARB, to Mr. Bob Lucas of the California Council for Environmental and Economic Balance, dated October 23, 2012. In that letter, ARB states "…legacy contracts for which the [Commission] has jurisdiction should be resolved by the parties through the existing processes at the [Commission]."

11. On June 5, 2013, Commission President Peevey sent a letter to ARB Chair Mary Nichols stating "[i]f ARB decides that legacy facility operators should receive some administrative relief from cap-and-trade compliance costs, then I see no reason for ARB to treat facilities differently on the basis of whether the counterparty is an [investor-owned utility] or another type of entity. The eligibility criteria for and formulas for calculating relief that ARB develops should apply equally to all similarly-situated facilities."

12. On November 8, 2013, ARB released draft amendments to the Cap-and-Trade regulation, which, among other items, include criteria to identify contracts as Legacy Contracts, regardless of jurisdiction of the utility, and a methodology to provide transition assistance to generators that are party to

Legacy Contracts in the form of an allocation of allowances to compensate generators for their GHG costs. As of the issuance of this decision, ARB has not adopted the draft amendments.

13. Numerous parties filed motions in Track 1 Phase 2 of this proceeding. To the Commission's knowledge, all outstanding motions have been addressed either via electronic or written ruling.

14. The August 2, 2012 amended scoping memo in this proceeding anticipated that the issues of Track 1 Phase 2 could be resolved without the need for hearing but deferred a final determination on hearings to this decision.

Conclusions of Law

1. The Commission's policy is that GHG costs should be included in contracts to account for GHG costs in dispatch decisions; nothing in the record of R.11-03-012 should change that policy.

2. It is inappropriate for the Commission to review individual Legacy Contracts to determine whether contracts contain terms and conditions assigning GHG cost responsibility; other avenues exist, such as a contract's explicit dispute resolution process, that are more appropriate to resolve such questions.

3. Utilities subject to Commission jurisdiction should continue to renegotiate Legacy Contracts, which may include use of a contract's dispute resolution provisions, to develop clear terms and conditions addressing GHG cost responsibility.

4. Absent successful renegotiation of contracts, it is appropriate for the Commission to defer to the GHG Cap-and-Trade regulation amendment process currently underway at ARB, which, if adopted, should provide generators that are party to Legacy Contracts, as those contracts are defined by ARB, the relief necessary to ensure sufficient payment of GHG costs.

5. If the proposed Cap-and-Trade regulation amendments pertaining to Legacy Contracts are not ultimately adopted by ARB, the Commission may wish to revisit the issue of GHG costs in Legacy Contracts; however, it would remain inappropriate to address these issues at the individual contract level.

6. The June 5, 2013 letter from President Peevey to ARB Chair Mary Nichols regarding ARB's treatment of Legacy Contracts is relevant to the resolution of Phase 2 of Track 1 of R.11-03-012 and should be incorporated into the record.

7. Any outstanding motions pertaining to Track 1 Phase 2 of R.11-03-012 should be denied.

8. The preliminary determination that hearings are not required in Track 1 Phase 2 of R.11-03-012 should not be disturbed.

9. All outstanding issues pertaining to Track 1 Phase 2 of R.11-03-012 have been resolved by this decision; Track 1 Phase 2 of R.11-03-012 should be closed. R.11-03-012 should remain open to resolve outstanding issues in other tracks.

O R D E R

IT IS ORDERED that:

1. Electric utilities with contracts executed prior to the passage of Assembly Bill 32 (the Global Warming Solutions Act) that lack specific terms and conditions assigning greenhouse gas cost responsibility are ordered to continue to renegotiate these contracts, which may include use of a contract's existing dispute resolution provisions, to ensure greenhouse gas costs and responsibility for those costs are clearly articulated in contracts. Absent successful renegotiation, generators party to these contracts may find relief through the November 8, 2013 Greenhouse Gas Cap-and-Trade proposed amendments currently under consideration by the California Air Resources Board.

2. The June 5, 2013 letter from President Peevey to California Air Resources Board Chair Mary Nichols regarding the California Air Resources Board's treatment of Legacy Contracts, affixed to this decision as Attachment A, is incorporated into the record.

3. Any outstanding motions pertaining to Track 1 Phase 2 of Rulemaking 11-03-012 are denied.

4. Hearings are not needed in Track 1 Phase 2 of Rulemaking 11-03-012.

5. Rulemaking 11-03-012 remains open; Track 1 Phase 2 of Rulemaking 11-03-012 is closed.

This order is effective today.

Dated _____, at San Francisco, California.