

Decision **PROPOSED DECISION OF ALJ FARRAR** (Mailed 4/12/2016)**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 DENYING THE MAY 26, 2015 PETITION FOR MODIFICATION OF
TESORO REFINING & MARKETING COMPANY LLC****Summary**

By this Decision, the Commission denies the May 26, 2015 petition for modification of Tesoro Refining & Marketing Company LLC of Decision 14-12-037 (Decision Adopting Greenhouse Gas Allowance Revenue Allocation Formulas and Distribution Methodologies for Emissions-Intensive and Trade-Exposed Customers). This proceeding is closed.

1. Background

On May 26, 2015, Tesoro Refining & Marketing LLC (Tesoro) filed a petition for modification of Decision (D.) 14-12-037. In D.14-12-037, the Commission adopted formulas and methodologies to distribute greenhouse gas (GHG) allowance proceeds to emissions-intensive and trade-exposed (EITE) customers, as those customers are defined in D.12-12-033 (Decision Adopting Cap-and-Trade Greenhouse Gas Allowance Revenue Allocation Methodology for the Investor-Owned Electric Utilities). D.14-12-037 ordered Energy Division to

“be responsible for collecting all information and performing calculations necessary to return allowance revenue to [EITE] entities.”¹

D.14-12-037 directs the Commission’s Energy Division to calculate the size of the credit each EITE facility should receive using one of three methodologies: a product-based, energy-based, or refinery methodology. The Commission found in D.14-12-037 that distribution of GHG allowance proceeds to EITE customers should closely mirror the California Air Resources Board’s (ARB) Industry Assistance allocation methodologies whenever possible.² If a facility receives allowances from ARB pursuant to ARB’s product-based methodology, it will receive California Industry Assistance according to the Commission’s product-based methodology.

D.14-12-037 also acknowledged that an EITE facility could span investor-owned utility (IOU) and publicly-owned utility (POU) territories. Because “the Commission has no insight into how POUs use their allowances...the Commission cannot conclude that POU electricity rates include a carbon price signal.”³ Therefore, the Commission’s product-based formula does not compensate EITE facilities for the portion of the facility’s product output that is associated with electricity purchases from POUs.⁴ In the case of facilities that receive their credit under the product-based allocation methodology, “the Commission should discount the annual product output

¹ D.14-12-037 at Ordering Paragraph (OP) 3.

² D.14-12-037 at Conclusion of Law 1.

³ D.14-12-037 Finding of Fact 69.

⁴ The energy-based formula takes a similar approach, but we discuss the product-based formula here because it is the subject of the petition for modification.

variable for each facility by the percentage of the facility's total electricity purchases that are from publicly-owned utilities because POUs are responsible for compensating their EITE customers."⁵ This is reflected in Equation 1 of Appendix A to D.14-12-037. D.14-12-037 concluded that it is reasonable for the CPUC to use data that facilities report to ARB under the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR),⁶ when MRR data is available.⁷ The MRR reporting for a facility that spans IOU and POU territories includes total product output for the facility; it does not include product output separately for the portion of the facility that is associated with POU electricity purchases. To estimate the product output that should be used in the product-based allocation equation, the existing Commission equation discounts total product output reported in MRR by the percentage of the facility's POU electricity purchases reported through MRR.⁸ This methodology applies to any facility that spans IOU and POU territory and receives their allocation through the product-based allocation.

2. Petition for Modification

Tesoro's Petition for Modification seeks modification of the adopted methodology in D.14-12-037 for distributing GHG allowance proceeds to EITE customers that have operations in the service territories of both an IOU and a POU. Specifically, Tesoro seeks a requirement that Energy Division calculate the product output between IOU and POU service territories based on the actual

⁵ D.14-12-037 Conclusion of Law 30.

⁶ Title 17, California Code of Regulations (CCR), sections 95100-95158.

⁷ D.14-12-037 Conclusion of Law 33.

⁸ D.14-12-037 Equation 1 of Appendix A.

location-specific output data, when actual data are available, rather than relying on electricity purchases as a proxy for location. Tesoro proposes changes to at 32, Appendix A, and Conclusion of Law 30 to reflect its proposal.

Specifically, when Energy Division calculates allocations, Tesoro suggests it should use data on the actual production in IOU versus POU territory, rather than relying on electricity purchase data as a proxy for the location of production. Tesoro suggests that actual data may be available through a facility's MRR reporting to ARB that would show product output in POU versus IOU territory, and in those cases, Energy Division should use the MRR data in the formulas.

3. ARB's Response

ARB was the only party to file a response to Tesoro's Petition for Modification. ARB supports the concept of using location-specific production data to determine the fraction of output associated with each service territory, but is concerned with the data Tesoro proposes to use and suggests more stringent data validation before data could be used in Commission formulas. Thus, ARB supports the ends of the Petition for Modification, but not the means Tesoro proposes. Specifically, if the Commission were to accept additional location-specific data, "ARB insists that location-specific purchased electricity data and purchased electricity provider information must be reported and verified annually by an ARB-accredited third-party verifier."⁹

ARB is concerned that under current practices, the needed location-specific data would not be submitted as part of a facility's MRR reporting, as MRR reporting is done at the facility level. The location-specific data that Tesoro

⁹ ARB Response at 2.

proposes would therefore not be subject to the same standards, requirements, and penalties as all other MRR data used to calculate the California Industry Assistance allocation; MRR data is verified by a third party verifier.

For the Commission to be able to use the data as Tesoro proposes, ARB suggests that the location-specific production data, purchased electricity data, and purchased electricity provider information be reported annually and verified by a third party that is accredited by ARB. ARB also recommends that the Commission only accept this supplemental, verified data from sub-facilities that were previously assigned a distinct facility ID for MRR reporting, and that these location-specific data be verified against that previous facility definition.

4. Discussion

4.1. Standard for Petition for Modification

Pursuant to Commission Rule 16.1, a petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit. If the petitioner was not a party to the proceeding in which the decision proposed to be modified was issued, the petition must state specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier. This Petition for Modification meets the above requirements.

4.2. Discussion

We deny Tesoro's Petition for Modification because it introduces additional administrative complexity into the Industry Assistance allocation process that will increase staff burden without helping to further the policy goals of California Industry Assistance. As we concluded in D.14-12-037, "the Commission should prioritize administrative simplicity when presented with competing policy choices that have generally commensurate public benefits."¹⁰

The new complexity would occur because, as ARB explains in its response, verified location-specific product data at a sub-facility level is not part of the existing MRR process. Thus, a new verification process would be necessary to use the type of data Tesoro proposes. Without this verification, while the calculation Tesoro proposes may differ from the method adopted in D.14-12-037, it will not necessarily render the calculation materially more accurate.

Further, Tesoro's suggested modification with the protections ARB recommends would create an additional burden on Energy Division staff to identify which facilities would be eligible to submit data, manage and receive additional sources of data, coordinate with ARB and/or the third party verifier on verification of data, ensure the data are in the appropriate format, and update credit calculation methodologies. Using data from a different source depending on the facility also means that calculations are less systematic and require more manual inputs. This increases the risk of calculation errors, requiring additional review and verification of calculations.

In addition, Tesoro's proposed modification does not further the goal of CA Industry Assistance - to prevent emissions leakage. Emissions leakage

¹⁰ D.14-12-037 Conclusion of Law 1.

occurs when emissions decrease within California, but increase outside of California. Assembly Bill 32, under which the Cap-and-Trade Program was created, requires the state to minimize leakage to the extent feasible. The CA Industry Assistance Credit protects eligible industrial sectors against emissions leakage by compensating them for a portion of the greenhouse gas emission costs associated with the electricity they buy. There is no evidence that the proposed modification would do anything additional to minimize the risk of leakage across the state. Tesoro's proposal appears to make a special exception for a specific facility. By using a standard methodology as approved in D.14-12-037, the Commission avoids making exceptions for certain facilities that could bias outcomes.

We deny the Petition for Modification. The costs of implementing Tesoro's suggested modification (staff time, potential further delay in distributing the credits) and the failure of Tesoro's proposal to ensure more accuracy in the EITE calculation all dictate this result.

5. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Farrar in this matter was mailed to the 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. Comments were received on May 2, 2016 from Tesoro and were duly considered.

6. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Julie Halligan was the assigned ALJ in this proceeding, and the matter was recently reassigned to ALJ Darwin E. Farrar.

Findings of Fact

1. The Commission found in D.14-12-037 that distribution of GHG allowance proceeds to EITE customers should closely mirror ARB's Industry Assistance allocation methodologies whenever possible.
2. Tesoro's Petition for Modification introduces additional administrative complexity into the CA Industry Assistance allocation process that will increase staff burden without helping to further the policy goals of CA Industry Assistance.
3. Tesoro's Petition for Modification does not further the goal of CA Industry Assistance - to prevent emissions leakage.
4. Tesoro's suggested modification would create an additional burden on Energy Division staff to: identify which facilities would be eligible to submit data, manage and receive additional sources of data, coordinate with ARB and/or the third party verifier on verification of data, ensure the data are in the appropriate format, and update credit calculation methodologies.
5. Tesoro's proposal fails to ensure more accuracy in the EITE calculation than the method adopted in D.14-12-037.
6. Tesoro's request does not contain protections suggested by ARB to ensure data accuracy.

Conclusions of Law

1. It is reasonable, when considering the merits of Tesoro's proposed modification of D.14-12-037, to evaluate whether the proposed change would further the Commission's goal of CA Industry Assistance - to prevent emissions leakage.
2. It is reasonable, when considering the merits of Tesoro's proposed modification of D.14-12-037, to evaluate whether the proposed change would

create an additional burden on Energy Division staff to: identify which facilities would be eligible to submit data, manage and receive additional sources of data, coordinate with ARB and/or the third party verifier on verification of data, ensure the data are in the appropriate format, and update credit calculation methodologies.

3. Tesoro's May 26, 2015 Petition for Modification of D.14-12-037 should be denied.

4. R.11-03-012 should be closed.

O R D E R

IT IS ORDERED that:

1. Tesoro Refining & Marketing Company LLC's May 26, 2015 Petition for Modification is denied.

2. Rulemaking 11-03-012 is closed.

This order is effective today.

Dated _____, at San Francisco, California.