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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emission Standards into Procurement Policies	Rulemaking 06-04-009 (Filed April 13, 2007)

and

BEFORE THE CALIFORNIA ENERGY COMMISSION

AB 32 Implementation	07-OIIP-01

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO THE JOINT CPUC AND CEC STAFF PROPOSAL FOR AN ELECTRIC RETAIL PROVIDER GHG REPORTING PROTOCOL

Introduction

Pursuant to the Ruling of ALJs TerKeurst and Lakritz dated June 12, 2007, the California Independent System Operator Corporation ("CAISO") submits its comments to the Joint California Public Utilities Commission and California Energy Commission Staff Proposal for an Electricity Retail Provider GHG Reporting Protocol (hereafter "Staff Reporting Proposal").

The Staff Reporting Proposal is a draft protocol for the tracking and reporting of Greenhouse Gas ("GHG") emissions associated with electricity retail sales in California and is the point of departure for developing a set of CPUC and CEC recommendations to present to the California Air Resources Board ("ARB") in September 2007. ARB will consider these recommendations in its development of final reporting regulations by a

January 1, 2008 deadline, pursuant to the ARB's mandate under AB 32.[1] While the proposal notes that it addresses reporting rules for a load-based approach, it also notes that "the issue of whether a load-based cap is the appropriate approach will be addressed elsewhere in this proceeding."[2]

At the same time that the ARB is developing reporting and inventory regulations, the ARB will also determine what the statewide GHG emission level was for 1990, and the ARB will approve a statewide GHG limit, equivalent to that baseline level, to be achieved by 2020.[3] In a recent workshop in this proceeding, it was clarified that the 1990 baseline/2020 limit that the ARB establishes under AB 32 will be a single number, aggregated across all the sectors of the California economy, and not a series of sector-specific numbers for the electricity sector and the other sectors of the California economy.[4]

1. General Comments on the Overall Product

At the outset, the CAISO wishes to express appreciation to the CPUC and CEC staff for their work in formulating the Staff Reporting Proposal. The CAISO recognizes that many hours of effort were necessary to i) investigate and gather information from many diverse sources, through formal workshops, informal outreach to knowledgeable parties, and literature review; ii) study, digest, analyze and synthesize the information; and iii) craft a construct that lays out the information in a comprehensive, structured manner.

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[1] Staff Reporting Proposal, Executive Summary, at p. vi. Health & Safety Code Section 38530(a) of AB 32 sets forth the reporting and verification regulation requirement by January 1, 2008.
[2] Staff Reporting Protocol, Section 1.1 [*Implementing a Load-based Tracking System in the Electricity Sector*], p.1, n1.
[3] Health and Safety Code Section 38550.
[4] Joint Workshop of the CEC and CPUC, held June 22, 2007 in Sacramento. The comment was made at the beginning of the workshop. As of the date of CAISO's Comments, the transcript of this workshop is not available.

In addition, the CAISO appreciates the effort undertaken by the staff to understand and acknowledge, in the Staff Reporting Proposal, the potential interplay between GHG reduction policies and the CAISO's wholesale markets for energy, reserves, and transmission service; in particular, the upcoming implementation of a day-ahead integrated forward market (IFM) and the real time market (RTM). The proposal recognizes that the IFM and the RTM are designed to optimize economic (i.e. least-cost) dispatch of supply resources and to provide non-discriminatory access to the wholesale power grid, while also maintaining grid reliability. In this regard, the proposal aptly includes criteria expressing that the "reporting method should not distort the electricity markets by causing retail providers to make non-optimal resource choices" and "the reporting protocol should not incentivize buyers or sellers to misuse the IFM or the real time market."[5]

The CAISO also believes that the Staff Reporting Proposal takes a reasoned approach in assigning default emission factors to account for unspecified power sources, such as imported power and system power purchases, and to account for the difference between contracted energy and actual dispatch.[6] This is an appropriate way to address the task of creating a first cut reporting system for the field of GHG regulation.

2. Specific Points for Modification of the Proposal

In turning to the CAISO's specific recommendations for treatment of the CAISO real time and integrated forward markets, the CAISO recommends that the proposal assign the <u>same default factor to both markets</u> and that this emissions level initially be set at <u>1,100 lbs per megawatt hour</u>, which is the standard that the CEC and CPUC have established for their AB 1368 emissions performance standard, as approximating the emissions level of a natural gas combined cycle combustion turbine ("CCGT").

[5] Staff Reporting Protocol, Section 2.3.5 [*Minimization of Unintended Consequences*], at p. 7.
[6] Staff Reporting Protocol, Executive Summary, at p. vi.

In addition, the CAISO mentions one note of concern, regarding the large difference between the proposed emissions factors for imports from the Northwest and the Southwest. The concern is that adopting a Southwest emissions factor that is 2.5 times greater than the Northwest emissions factor could create a strong incentive for contract shuffling, to take advantage of the lower Northwest emissions factor. Such contract shuffling, could, in turn, lead to significant changes in parties' scheduled use of the CAISO grid, to increase imports from the Northwest and decrease imports from the Southwest, in a manner that does not really reflect changes in the dispatch of generating resources in the Western region.

The CAISO Recommends that the Proposal Set the Same Default Emission Factor for the Real Time and Integrated Forward Markets

The proposal sets default emission factors of 900[7] for the CAISO real time market (RTM) and 1,000 for the CAISO integrated forward market (IFM). However, the proposal does not state what information was used as the basis for these numbers, or the reason to assign different values to the two markets.

CAISO is concerned that assigning different values for the two markets may create an incentive for parties to select one market over the other. In this regard, CAISO is concerned about creating the incentive (in reality or perception) for a retail provider to hold itself out of the IFM and shift its purchases to the RTM, in order to take advantage of the lower GHG emission factor assigned to the RTM. Creating such an incentive would run counter to the criterion in Section 2.3.5, Minimization of Unintended Consequences. This criterion notes that the reporting mechanism should not cause retail providers to make non-optimal resource choices, nor should it incentivize buyers or sellers to misuse the IFM or the RTM.[8] Furthermore, it is important to note that the IFM

[7] All default factors represent pounds of CO2 per MW hour.
[8] Staff Reporting Protocol, Section 2.3.5 [Minimization of Unintended Consequences], at p.7.

is anticipated to be the more optimal market, since it is forward in time and addresses a wider resource market than RTM. This optimization includes more than price. IFM enhances identification of transmission constraints and infeasible transactions. To the extent that there were carbon-regulation motivated shifting to the RTM, this would complicate the task of control room operators.

Moreover, the IFM will be a new market structure when it commences in February 2008, representing the first implementation of a transparent day-ahead energy market since the demise of the California Power Exchange in 2001. As such, the IFM will be subject to study and potential refinement, as it unfolds. Setting two different rates for the IFM and the RTM will introduce an additional factor into the analysis of why parties might have elected to participate in one market versus the other, thus complicating the analysis by bringing one more variable into the new market structure.

The CAISO Recommends that the Proposal Set the Emission Factor(s) for Both the RTM and the IFM at 1,100

The emission factors that the proposal establishes for the RTM and IFM are each set at levels that are likely to be lower than the emission factors for in-state specified sources. (These factors will be established from the generation source emissions data reported to ARB, which ARB will use to certify unit-specific or facility-specific emission rates.) This is because the in-state specified sources group will include older units and power facilities that will be certified at emission rates higher than 1000 pounds (the IFM emissions factor).

While the CAISO recognizes that the CAISO emission factors represent an aggregated number for the power pools, and would be a mix of higher and lower carbon emitting resources, it is the CAISO's opinion that the numbers are set too low. This is especially the case for the RTM, which, in large part, will be comprised of short-start units. Short-start units are often single cycle combustion turbines (CTs) used for peak

loads. The current stock of peaker units are generally higher carbon emitters than CCCTs.[9]

The CAISO recommends that the Joint Staff Proposal use a 1,100 emission factor for both the RTM and the IFM. This is the number that the CEC and CPUC have established as the Emissions Performance Standard (EPS) for retail service providers under SB 1368. After receiving stakeholder input on the subject, the CEC and CPUC determined that 1,000 pounds best represents the performance level of the current stock of CCGTs, accounting differential for performance based age and specifications of various units (i.e. LM6000s) and other factors, such as the elevation and ambient temperature where CCGTs may be sited. The CAISO is of the opinion that the 1,100 number more accurately reflects the carbon emission level of the resource mix for the RTM and the IFM. In addition, utilizing the same emissions factor as the EPS will promote consistency in GHG regulation.

3. Comments on Some of the Issues Raised In Administrative Law Judges' June 12th Ruling

The CAISO also provides the following comments on some of the issues raised in the ALJs' June 12th ALJs' Ruling:

> *Whether the criteria for assessing reporting protocols identified in Section 2.3 of the report are appropriate, and whether the Staff proposal adequately complies with what you view as appropriate criteria*

Section 2.3.3 lists the criteria "simplicity," but the discussion also contains an important concept that might well be expressly stated: that of proportionality of burden to benefit. The discussion notes that the protocol should not impose an overly burdensome procedure on either the reporting entities or the state agencies. In this regard, the reporting protocol should strive for a proportional fit between i) the obligations it

[9] Given this fact, if different numbers are to be used for IFM and RTM, the RTM emissions factor should be the higher number in comparison to the IFM.

imposes on retail providers to provide detailed information and ii) the expected usefulness of the information for overall GHG regulation.

The primary subject area to apply this criterion is the treatment of unspecified power: that is, imported and exported power, and unspecified contracts. In this regard, it has been noted, for example, that the scope of unspecified power is a relatively small level of total electricity consumption. Moreover, current methodologies, such as e-tags, do not contain enough information to trace power flows from source to sink, and the commercial electricity market activity includes some 800 to 1000 custody changes of purchased power per hour and approximately, and 8,000MWs of net imports into California per hour.[10]

The CAISO believes that, overall, the Staff Reporting Protocol strikes an appropriate balance, outlining a reporting approach proportionate to the benefits derived from accounting for GHGs attributable to unspecified power. The emission factors are more detailed, and designed to achieve more accuracy, than if would be achieved by merely averaging the import portfolio mix from the Pacific Northwest and the Southwest. It seems that, if the proposal had tried to drilling down further (for example, to account for more variables, such as season or hour of import/export or to try to get a more granular breakdown of more source areas or for specific generation units), it would have imposed too much burden, with little commensurate gain in accuracy of GHG emissions.

Whether the intent should be to design a reporting protocol that could be adopted directly by other states in the region and, if so, whether modifications to the Staff proposal would be needed for this purpose

At this early stage of GHG regulatory development, it is preferable to strive to design a reporting protocol that is <u>not inconsistent</u> with currently known features of other developing state GHG schemes, rather than to focus on affirmatively refining the

[10] See CAISO presentation made at the April 12, 2007 CPUC GHG workshops in this proceeding, posted on the CPUC internet website at http://www.cpuc.ca.gov/static/energy/electric/climate+change/caliso.pdf

proposal to incorporate features that other states may want to include in order for those states to directly adopt California's protocol.

How the proposed reporting requirements including, in particular, the use of estimates, could affect the integrity of greenhouse gas (GHG) emission allowances and whether the requirements may have implications on the ability to trade GHG emission allowances with other regimes

California is a net importer of electric power. As other Western state regimes are developed, California may be able to look to the other states for details on the emissions composition of their exports to California. This information could conceivably be used to validate and refine the default emission factors used in the current reporting protocol, or in lieu of particular default emission factors.

In addition to any technical, policy, or other concerns, whether the Staff proposal raises any legal issues

The primary legal challenge for the proposal is to develop a California regulatory system that is consistent with the duality of state and federal regulation and does not regulate interstate commerce in violation of the federal commerce clause. Commerce clause prohibitions are implicated when courts perceive that state regulatory schemes treat out-of-state products, or product providers, inappropriately differently than in-state products or providers, or regulate them in ways that are over-inclusive in regulatory reach, or not well tailored to promote the stated purpose for the regulation, when the court weighs that state purpose of the rule against its adverse impact on the out-of-state product or producer.[11] The paradigm unconstitutional regulation is the protectionist one

[11] See e.g., City of Philadelphia v. New Jersey, 437 U.S. 617; 98 S. Ct. 2531 (1978).
In this regard, it is also useful to note that, in both SB 1368 and AB 32, the Legislature articulated that a primary purpose of the measures was to enhance and protect California's economy from GHGs, a state interest that federal law has upheld when state regulation has been challenged on federal preemption grounds. (See PG&E v. CEC, 461 U.S. 190 (1983) [Congress has preserved the dual regulation of nuclear-powered electricity generation: the Federal Government maintains complete control of the safety and "nuclear" aspects of energy generation, whereas the States exercise their *traditional authority over economic questions such as the need for additional generating capacity, the type of generating facilities to be licensed, land use, and ratemaking*. This Court accepts California's avowed *economic rather than safety purpose* as the rationale for enacting 25524.2, and accordingly the statute lies outside the federally occupied field of nuclear safety regulation. (Id. at pp. 205-216, emphasis added.)]).

that intentionally penalizes out-of-state imports, but which the state claims, under pretext, is intended to promote health and safety.

Accordingly, the protocol should be drafted so as to treat power imports into California, and power exports from California, similarly to in-state power. The Joint Staff Proposal appears to have done so.

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2007. I served, by electronic mail, a copy of the foregoing Prehearing Conference Statement of the California Independent System Operator, as follows:

To all parties in CPUC Docket No. R.06-04-009;

To the CEC Docket Office for CEC Docket 07-OIIP-01, by delivery to docket@energy.state.ca.us;

To Karen Griffin, CEC Project Manager for CEC Docket 07-OIIP-01, by delivery to kgriffin@energy.state.ca.us;

Executed on July 2, 2007 at Folsom, California.

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