



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
01-15-10
04:59 PM

Order Instituting Rulemaking to Implement
the Commission's Procurement Incentive
Framework and to Examine the Integration
of Greenhouse Gas Emissions Standards
into Procurement Policies

Rulemaking 06-04-009
(Filed April 13, 2006)

**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES
TO PETITION FOR MODIFICATION
OF DECISION 07-01-039**

I. INTRODUCTION

Pursuant to Rule 16.4(f) of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits this response to the Petition for Modification of Decision (D.)07-01-039 (PFM), which the Natural Resources Defense Council, the Environmental Defense Fund, Green Power Institute, Union of Concerned Scientists and the Utility Reform Network filed on November 30, 2009.¹ D.07-01-039 adopted an Emissions Performance Standard (EPS) for new long term financial commitments to baseload generation of all load serving entities (LSE's), consistent with the requirements of Public Utilities Code Section 8341.

D.07-01-039 requires covered procurements with a baseload facility utilizing carbon sequestration projects to comply with the EPS, but in calculating the net emissions rate from such facilities, excludes carbon dioxide that is sequestered through injection in geologic formations. Subsequent to D.07-01-039's adoption, the laws and regulations governing carbon sequestration have evolved, but the PFM pointed out potential

¹ Administrative Law Judge Veith granted an electronic extension of the deadline for filing responses to the PFM from December 30, 2009 until January 15, 2010, according to the December 9, 2009 email of Norman Pedersen, sent to the parties in this proceeding.

regulatory gaps that could degrade the effectiveness of the EPS. The PFM therefore proposes “minor but important”² modifications to D.07-01-039 to ensure adequate subsurface monitoring of carbon dioxide injected to allow compliance with the EPS. The PFM’s proposed changes are designed to safeguard the integrity of the EPS.

DRA agrees that clarifying the requirements for carbon capture and sequestration would enhance the EPS and help ensure that ratepayers obtain its intended benefits. DRA therefore respectfully requests that the Commission adopt the changes recommended in the PFM.

II. DISCUSSION

Senate Bill 1368, codified as Sections 8340 and 8341 of the Public Utilities Code, established a minimum performance requirement, or EPS, for any long-term financial commitment for baseload generation that will be supplying power to California ratepayers. The EPS is intended to reduce California’s financial risk exposure to the compliance costs associated with greenhouse gas (GHG) emissions. Absent an EPS, California ratepayers could be exposed to the high cost of retrofits (or the need to purchase expensive offsets) under future emission control regulations, and to potential supply disruptions when high-emitting facilities are retired early or taken off line for retrofits in order to comply with future regulations. D.07-01-039 therefore adopted an EPS to protect California ratepayers from these risks and costs during the transition to a load-based GHG emissions cap.

The EPS allows compliance through the use of carbon capture and sequestration. However, as the PFM points out, it is unclear whether currently proposed regulations of the United States Environmental Protection Agency will allow adequate monitoring and verification of carbon dioxide injected in geologic formations in order to comply with the EPS, since those regulations currently focus on impairments to groundwater quality

² Petition of the Natural Resources Defense Council (NRDC), the Environmental Defense Fund (EDF), Green Power Institute (GPI), Union of Concerned Scientists (UCS), and The Utility Reform network (TURN) for Modification of Decision 01-07-039, “Interim Opinion on Phase 1 Issues: greenhouse Gas Emissions Performance Standard,” (PFM), p. 2.

rather than release into the atmosphere, and are not aimed at verifying and ensuring the permanence of subsurface sequestration.³ Without adequate subsurface monitoring of injected carbon dioxide, along with robust verification and reporting, it will be impossible to ensure real compliance with the EPS.

The PFM therefore proposes modifications to D.07-01-039 that will augment the documentation required by LSEs that intend to use carbon sequestration to comply with the EPS. Currently D.07-01-039 requires that such LSEs must provide documentation demonstrating that the CO₂ capture, transportation and geological formation injection project has a reasonable and economically and technically feasible plan that will result in a permanent sequestration of CO₂ once the injection project is operational.⁴

The PFM would add the following requirement:

The plan must include sufficient ongoing monitoring and reporting activities, which are enforceable under Federal and/or State law, to determine the subsurface extent and behavior of the injected CO₂, verify the permanence of sequestration, and account for any releases from the subsurface.⁵

DRA agrees that the “technically feasible plan” envisioned by D.07-01-039 should include adequate and enforceable monitoring of carbon dioxide and should verify the permanence of sequestration and account for any releases. The modification proposed by the PFM would help ensure that existing regulatory gaps are closed and that the EPS serves its intended purpose: protecting ratepayers from risks associated with the compliance costs associated with GHG emissions.

III. CONCLUSION

DRA respectfully requests that the Commission adopt the PFM’s proposed revisions to D.07-01-039, which will clarify the requirements for carbon capture and

³ PFM, pp. 4-5. The PFM notes that these regulatory gaps are not addressing in any existing or proposed state laws.

⁴ D.07-01-039, p. 94, p. 175; Conclusion of Law 47 on pp. 272-73.

⁵ PFM, p. 6.

sequestration as a means of complying with the EPS, and thereby safeguard the EPS and help ensure that ratepayers obtain its intended benefits.

Respectfully submitted,

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January 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES TO PETITION FOR MODIFICATION OF DECISION 07-01-039**” to each party of record on the official service list in **R.06-04-009** via electronic mail.

Parties who did not provide an electronic mail address were served by first-class U.S. mail.

Executed on **January 15, 2010** at San Francisco, California.

/s/ MARTHA PEREZ

Martha Perez