



FILED

05-26-11

04:59 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.

R. 11-03-012
(Filed March 24, 2011)

**RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO
TO THE JOINT MOTION OF PACIFIC GAS AND ELECTRIC COMPANY,
SOUTHERN CALIFORNIA EDISON COMPANY, AND SAN DIEGO GAS AND
ELECTRIC COMPANY FOR INTERIM DECISION TO AUTHORIZE USE OF
GREENHOUSE GAS ALLOWANCE REVENUES FOR 2012 ELECTRICITY RATES**

I. INTRODUCTION

Pursuant to Commission Rule of Practice and Procedure 11.1(e), the City and County of San Francisco (“CCSF”) submits this response to the joint motion (the “Joint Motion”) of the investor owned utilities (“IOUs”). In the Joint Motion, the IOUs request an interim decision in this rulemaking by September 1, 2011 authorizing them to use greenhouse gas (“GHG”) allowance revenues from the California Air Resources Board’s (“ARB”) cap-and-trade program to reduce 2012 electricity rates.

While CCSF agrees in principle with some aspects of the Joint Motion, we also think it is premature, overstates the sense of urgency regarding the need for authorization to use allowance revenues, pre-judges the outcome of the rulemaking, potentially conflicts with the ARB’s own cap-and-trade regulations, and fails to explain why the Energy Resource Recovery Account

(“ERRA”) forecast proceedings should be the vehicle used to refund distribution rates. For these reasons, the Commission should deny the Joint Motion without prejudice.

II. DISCUSSION

A. CCSF Supports Some Aspects of the Joint Motion.

CCSF supports the Joint Motion to the extent that it seeks to equally return to all customers the economic benefits of the allowances that are allocated to electrical distribution utilities, and to ensure that all CCA and direct access customers receive their fair share of those benefits. This aspect of the proposal is consistent with the ARB’s staff-proposed regulations, which require equal treatment between customers of CCAs and IOUs regarding the use of proceeds from allowances allocated to the electrical distribution utilities.¹ One of the purposes of this rulemaking is to determine the appropriate use and allocation of revenue from GHG allowances so as to not create an unlevel playing field or give the incumbent utilities an unfair advantage relative to CCAs, electric service providers (“ESPs”), and independent power producers. However, as discussed more fully below, the Commission should not decide this one issue before the details of the GHG cap-and-trade program are finalized. The Commission should deny the Joint Motion without prejudice until those details have been determined.

B. The Joint Motion is Premature.

The Joint Motion is predicated on the certainty of events and actions that the rulemaking itself notes are uncertain. The Joint Motion posits that “ARB’s AB32 cap and trade program is scheduled to launch January 1, 2012,”² despite the OIR noting that the current status of the program is suspended by court order with no certainty as to when the program will actually be implemented. The Commission should also consider that on May 20, 2011, San Francisco Superior Court Judge Goldsmith issued a judgment that “specifically enjoin[s] ARB from engaging in any cap and trade-related Project activity that could result in an adverse change to

¹ ARB Staff-Proposed Regulation Section (“Section”) 95892(d)(3)(A).

² Joint Motion, at p. 2.

the physical environment until ARB has come into complete compliance with ARB's obligations under its certified regulatory program and CEQA, consistent with the court's order."³ Until the time that any appeal is resolved, or ARB complies with the California Environmental Quality Act, implementation of ARB's cap-and-trade program will be delayed. Thus, the Joint Motion's sense of urgency is belied by the fact that the status of the underlying program is currently delayed.

The Joint Motion then goes on to suggest that forecasted allowance revenues be returned to ratepayers while also admitting that "the allowance allocation has not yet been finalized."⁴ Because the Joint Motion proposes to refund monies to ratepayers based on an unsettled allowance allocation method and at an allowance price which has yet to be set, it is premature for the Commission to grant the relief sought in the Joint Motion.

C. The Joint Motion Overstates the Sense of Urgency.

In the Joint Motion, the utilities assert that "[i]f the return of the AB32 cap and trade allowance value is delayed beyond the beginning of 2012, customers will begin incurring costs associated with the cap and trade program without the return of allowance revenue in rates."⁵

This statement creates an unnecessary sense of urgency by failing to address the substance of many of the ARB staff-proposed regulations. In fact, the first auction of allowances won't even be conducted by the ARB until February 14, 2012,⁶ after which the ARB must perform a number of additional steps before actually releasing the allowances. These steps include confirming that the auction reserve price has been met;⁷ allocating the allowances among the various sub-accounts established in the regulations;⁸ verifying that no single entity (or

³ Judgment in Case No: CPF-09-509562 (Association of Irrigated Residents vs. California Air Resources Board)

⁴ Joint Motion, at p. 2.

⁵ *Id.* (emphasis added).

⁶ Section 95910.

⁷ Section 95911(b)(1).

⁸ Section 95911(b)(3).

group of affiliated entities) has purchased more allowances than permitted by regulation;⁹ randomly assigning allowances if the quantity of bids at the lowest winning price is greater than the available amount of remaining allowances;¹⁰ having the Executive Officer certify that the auction was properly conducted;¹¹ collecting payments from the winning bidders;¹² and only then crediting revenues to the utilities for their sold allowances.¹³

As this will be the first auction ever conducted by the ARB for allowances, it is reasonable to build in a buffer of time for estimates of when allowance revenue will actually be available to the utilities. This, of course, assumes that there will be no start-up problems associated with the auction, and as previously noted, also assumes that the program starts on schedule on January 1, 2012. If the Commission approves the Joint Motion, it will be deciding the allocation of revenues from the allowances almost six months before the actual amounts are known, and at a time when the entire cap-and-trade program has been enjoined.

D. The Joint Motion Prejudges the Outcome of the Proceeding.

In the OIR, the Commission stated that one of the goals of this rulemaking is to address “the direction the Commission should give to the electric utilities about the uses of revenues they may receive to the extent there is auctioning of their GHG emissions allowances by ARB.”¹⁴ Specifically, the Commission stated that it would consider developing additional guidelines, including whether to “adopt percentages, or dollar amounts, or potential auction revenues to be used for specified purposes such as customer bill relief, energy efficiency programs, programs that achieve AB 32 environmental justice goals, and research development and demonstration of GHG emissions reducing technologies.”

⁹ Section 95911(c).

¹⁰ Section 95911(d).

¹¹ Section 95911(l).

¹² Section 95911(l)(2).

¹³ Section 95911(l)(2)(D).

¹⁴ OIR at 17.

The Joint Motion would prejudge the allocation of allowance revenues among these competing beneficial uses by assigning all of the revenues to one use (ratepayer rebates). While this may ultimately be determined to be the desired final outcome of this rulemaking, this decision should be reached only after the proceeding has run its course, a proper record has been developed, and the Commission can make an informed decision.

E. The Joint Motion Potentially Conflicts with the Requirements of the ARB’s Cap-and-Trade Program Regarding Refunds Provided to Ratepayers.

CCSF appreciates that the Joint Motion’s proposal would refund allowance revenues in the same manner to all of the utilities’ distribution customers including Community Choice Aggregation and direct access customers as required by ARB staff-proposed regulation Section 95892(d)(3)(A).¹⁵

It is unclear, however, if the proposed methodology to allocate these revenues meets the ARB’s other requirements. The Joint Motion proposes that “AB32 allowance revenues would be allocated among customer classes based on CPUC-approved generation cost allocators and returned to customers on a volumetric basis”¹⁶ and further that “[t]he Commission should not provide this allowance value return on a fixed basis.”¹⁷

This proposed mechanism does not appear to be consistent with the ARB’s regulations regarding the rebate of allowance revenues. Proposed Section 95892(d)(3) of the ARB’s Cap-and-Trade regulations require that:

(B) To the extent that an electrical distribution utility uses auction proceeds to provide ratepayer rebates, it shall provide such rebates with regard to the fixed portion of ratepayers’ bills or as a separate fixed credit or rebate.

And that:

(C) To the extent that an electrical distribution utility uses auction proceeds to provide ratepayer rebates, these rebates shall not be based

¹⁵ Joint Motion, at p. 3.

¹⁶ *Id.*

¹⁷ *Id.*

solely on the quantity of electricity delivered to ratepayers from any period after January 1, 2012.

Once again, resolution of these legal concerns are best addressed through the normal course of the rulemaking proceeding, and not through an expedited process.

F. Many Questions Remain Regarding the Use of the ERRA Forecast Proceedings.

The Joint Motion proposes to use each utility’s ERRA forecast proceedings “to directly reduce a delivery rate component, e.g. distribution rates, that all customers pay, including DA and CCA customers, so that all customers receive the benefits of the free allowance revenue beginning January 1, 2012.”¹⁸ CCSF reiterates that it supports a structure where all of the IOUs’ customers, including CCA customers, receive the benefits of the free allowance revenues. However, CCSF has concerns that the ERRA forecast proceeding may not be the right venue, and raises some unresolved issues. For example, the ERRA proceeding is specific to generation revenue requirements, and sets rates to collect only a portion of those generation revenue requirements. To the extent that the allowance revenues are credited against distribution revenue requirements, this may be an inappropriate use of the ERRA proceeding. Further, it is unclear whether the IOUs intend for the reduction in the delivery rate component to be a separate and identified credit, or blended in with revenue requirements and resulting rates. In addition, the IOUs propose to use generation cost allocators for a delivery rate component, but have not explained why that approach is reasonable. More broadly, in the past, the ERRA proceeding has not been used to address rate design and rate methodology issues. It may be more appropriate to address rate design and rate methodology issues in a separate proceeding.

///

///

¹⁸ *Id.*

III. CONCLUSION

Although CCSF supports some aspects of the Joint Motion, the Commission should deny the Joint Motion without prejudice.

Respectfully submitted,

DENNIS J. HERRERA
City Attorney
THERESA L. MUELLER
AUSTIN M. YANG
Deputy City Attorneys

By: /S/
AUSTIN M. YANG

Attorneys for:
CITY AND COUNTY OF SAN FRANCISCO
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Telephone: (415) 554-6761
Facsimile: (415) 554-4763
E-Mail: austin.yang@sfgov.org

May 26, 2011

CERTIFICATE OF SERVICE

I, Paula Fernandez, declare that:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4623.

On **May 31, 2011**, I served the **RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO TO THE JOINT MOTION OF PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, AND SAN DIEGO GAS AND ELECTRIC COMPANY FOR INTERIM DECISION TO AUTHORIZE USE OF GREENHOUSE GAS ALLOWANCE REVENUES FOR 2012 ELECTRICITY RATES**

by electronic mail on all parties on the service list R1103012.

BY UNITED STATES MAIL: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

City of Anaheim
Public Utilities Dept.
201 S. Anaheim Blvd., Suite 802
Anaheim, CA 92805-3860

Alice Reid
Attorney
Pacific Gas and Electric Company
77 Beale Street, 30th Floor
San Francisco, CA 94109

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on **May 31, 2011**, at San Francisco, California.

/S/

Paula Fernandez