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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 Emissions Standards into Procurement Policies.

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

ASSIGNED COMMISSIONER'S RULING AND PHASE 2 SCOPING MEMO

I. Introduction and Overview

In the Order Instituting Rulemaking (OIR), the California Public Utilities Commission (CPUC) provided a preliminary scoping memo for this proceeding and instructed that Phase 2 of this rulemaking should serve as the forum for implementing a load-based greenhouse gas (GHG) emissions cap as the cornerstone of the procurement incentive framework adopted in Decision (D.) 06-02-032 in Rulemaking (R.) 04-04-003. This scoping memo addresses implementation of a load-based GHG emissions cap program for the electricity sector. In a later scoping memo, I will establish procedures for consideration in Phase 2 of GHG emissions cap policies for customer use of natural gas, as also contemplated by D.06-02-032 and the OIR.

On September 27, 2006, the Governor signed into law Assembly Bill (AB) 32, "The California Global Warming Solutions Act of 2006." This legislation requires the California Air Resources Board (CARB) to adopt a GHG emissions cap on all major sources, including the electricity and natural gas sectors, to reduce statewide emissions of GHGs to 1990 levels. In light of passage of AB 32,

Phase 2 will focus on development of guidelines that CARB can consider as it develops a GHG emissions cap for the California economy, including the electricity and natural gas sectors.

As required by the CPUC's Rules of Practice and Procedure,¹ my June 1, 2006 ruling adopting a scoping memo for Phase 1 affirmed the proceeding category as quasi-legislative. As provided in that ruling, Phase 2 is categorized as quasi-legislative.

II. Collaboration with the California Energy Commission

As has become more common in recent proceedings, the CPUC intends to conduct this proceeding in collaboration with the California Energy Commission (CEC). The CEC possesses familiarity and expertise with issues associated with GHG regulation and mitigation for the publicly-owned utilities (POUs) by virtue of its responsibilities granted in Senate Bill (SB) 1368, which requires the CEC to adopt an emissions performance standard for POUs. The CEC also works with the POUs on a number of initiatives relevant to GHG reduction such as energy efficiency and renewables programs. This expertise at the CEC can be utilized to help both the CPUC and CEC craft a set of recommendations to CARB for the electricity sector on the implementation of AB 32.

From a decision-making perspective, conducting this proceeding collaboratively means two things. First, the Chair of the CEC will work as my counterpart as the "assigned" commissioner from the CEC. In practice, this means that when we conduct public events such as workshops or hearings in this

¹ All references herein to "Articles" or "Rules" refer to the CPUC's Rules of Practice and Procedure, which can be viewed at www.cpuc.ca.gov.

proceeding, Chair Pfannenstiel and/or her representative will also participate. She and I will also collaborate and work together on the conduct of the proceeding. Second, when it comes time for a CPUC vote on the outcome of this proceeding, which I describe further herein to be a set of guidelines and/or recommendations to CARB about the electricity sector rules under AB 32, we expect that the CEC will also bring up the final set of recommendations for a vote at one of its public meetings. Thus, in essence, we will be able to bring a joint recommendation of both the CPUC and the CEC to CARB for its consideration when adopting the overall “scoping plan” as called for in AB 32 to govern the GHG emissions limits in California overall.

From a staff perspective, having a collaborative proceeding means that the CPUC and CEC staff will work together to conduct the activities associated with the scope of this proceeding. Staff will communicate regularly and thoroughly and will act as one set of advisory staff to both the CEC and CPUC commissioners involved in this effort. In some instances, workshops or staff reports may be produced jointly or by members of either the CPUC or CEC staff.

In summary, this proceeding, R.06-04-009, will be the forum for joint recommendations of the CPUC and the CEC for GHG emissions limits pursuant to AB 32 that will be delivered to CARB for its consideration.

III. Preliminary Scope Established in OIR

The OIR included a preliminary scoping memo that set forth two major issue areas in this rulemaking: (1) threshold issues associated with the adoption and design of a GHG emissions performance standard, and (2) implementation issues associated with the load-based GHG emissions cap adopted in D.06-02-032 as part of the Commission’s procurement incentive framework. The OIR specified that the implementation phase would also further define steps to take

to ensure that GHG emissions associated with customer use of natural gas are incorporated into a procurement incentive framework. In D.07-01-089 in Phase 1 of this proceeding, the CPUC recently adopted a GHG emissions performance standard for new long-term financial commitments to baseload electric generation. Phase 2 of this proceeding will focus on a load-based GHG emissions cap and coordination of the CPUC's requirements with regulations that CARB will adopt to implement AB 32.

In my June 1, 2006 scoping memo for Phase 1, I indicated that Phase 2 would consider whether a GHG emissions performance standard should be adopted as a permanent complement to a load-based GHG emissions cap and, if so, the design of such a standard. SB 1368 directs the CPUC to review this issue once a load-based GHG emissions cap has been adopted and is fully operational. Consistent with SB 1368, consideration of the long-term future of the emission performance standard adopted in D.07-01-089 would be premature in Phase 2. The CPUC will consider continuation of the emissions performance standard adopted in accordance with SB 1368 in a subsequent proceeding to be determined in the future.

The OIR for this proceeding identified the following steps that would be needed to implement the load-based GHG emissions cap adopted in D.06-02-032: (1) quantifying the GHG emissions baseline for each Load Serving Entity (LSE), (2) adjusting GHG emissions requirements over time, (3) adopting and administering a process for allocating emission allowances, and (4) developing flexible compliance mechanisms with appropriate performance incentives and

penalties. In D.06-02-032, the CPUC described that implementation of a load-based cap would be guided by the following:²

- a. The load-based cap should include emissions allowances for “tons of carbon dioxide equivalent,” and over time include all six major GHGs (i.e., carbon dioxide, methane, nitrous oxide, hydro fluorocarbons, perfluorocarbons, and sulfur hexafluoride).
- b. The load-based cap should include provisions for lowering [adjusting] the GHG reduction requirements (and associated cap) over time, relative to a baseline level of GHG emissions.
- c. The baseline should be established on a historical year basis, with 1990 as the preferred reference year. A final determination on this matter should await further consideration of implementation issues associated with using this particular year as the reference, including the availability of adequate historical emissions data for the investor-owned utilities (IOUs) and other LSEs.
- d. The costs and benefits of the GHG emissions cap and associated flexible compliance options that are developed for Commission [CPUC] consideration during the implementation phase should be evaluated.
- e. GHG emissions allowances under the load-based cap should be allocated administratively by the Commission [CPUC].
- f. The pros and cons of various flexible compliance options should be fully explored, including offsets, trading, banking, and borrowing. Efforts during the implementation phase should focus on ensuring that compliance options are credible, verifiable, and administratively feasible.

² D.06-02-032, Ordering Paragraph 2.

- g. A penalty mechanism should be developed in conjunction with further consideration of flexible compliance options, with preference towards structuring penalties as alternative compliance payments.

IV. Effect of AB 32 on Phase 2

Passage of AB 32 changes the landscape in which the CPUC will consider a load-based GHG emissions cap. CARB has the lead role in implementing the provisions of AB 32, in coordination with other agencies, including the CPUC. While AB 32 does not modify the CPUC's overall regulatory authority in any way, I believe that any load-based GHG emissions cap should allow all electricity-sector LSEs to participate in the broader market for GHG emissions that will result from CARB's implementation of the state-wide GHG emissions cap required by AB 32. To achieve this goal there must be close coordination among the CPUC, CARB, CEC, and other involved entities.

In D.06-02-032, the CPUC recognized the need to work closely with the California Climate Action Registry (CCAR or Registry) and the Governor's Climate Action Team in moving forward with implementing a load-based cap.³ In addition, the CPUC recognized that implementation of an emissions registration requirement for generation resources would require close

³ Executive Order S-3-05, issued by Governor Schwarzenegger on June 1, 2005, called for the California Environmental Protection Agency (CalEPA) to lead a multi-agency effort to conduct an analysis of the impacts of climate change on California and to develop strategies to achieve the targets and mitigation/adaptation plans for the state. This effort is referred to as the Climate Action Team. The Climate Action Team is currently comprised of representatives from the Governor's Office, CalEPA, CPUC, CEC, California Department of Transportation, Resources Agency, CARB, California Integrated Waste Management Board, and California Department of Food and Agriculture.

coordination with the Registry. In discussing the development of a baseline and emissions reductions (and associated cap) over time, the CPUC also stated:

“...we recognize that the CCAR is essential to this effort. We note that CCAR participated in the workshops in this proceeding by describing the emissions data collection efforts already completed and those underway. CCAR has also offered to work closely with the LSEs on the further development of emissions data and with this Commission in exploring the implementation options associated with a load-based cap. [footnote omitted.] We appreciate CCAR’s constructive participation in this proceeding. We will work closely with them, as well as the Governor’s Climate Action Team, in our efforts to establish baselines and associated GHG emissions caps.”⁴

The need for close coordination has intensified and shifted with the passage of AB 32, as well as the Governor’s issuance of Executive Order S-20-06 on October 18, 2006.⁵ In addition to the CPUC’s previously stated intention to coordinate closely with the Climate Action Team and the Registry, AB 32 now also codifies an independent role for CARB in the development of a statewide multi-sector approach to climate policy. Therefore, as already envisioned by D.06-02-032, the CPUC and CEC will work closely and collaboratively not only with the Climate Action Team as a whole, and with the Registry on reporting issues, but also directly with CARB on the integration of the CPUC’s and CEC’s GHG emissions policies with the statewide policies and regulations under

⁴ D.06-02-032, *mimeo.*, p. 40.

⁵ Executive Order S-20-06 reiterates the direction in Executive Order S-3-05 that the Secretary of CalEPA, as the leader of the Climate Action Team, should coordinate statewide policies and efforts to address climate change.

development at CARB. In developing guidelines for a load-based GHG emissions cap, the CPUC will collaborate with the CEC, as described above, and will consult with the California Independent System Operator, which also has important expertise in this area.

I do not anticipate that these organizations will participate as parties in this rulemaking but, rather, that CPUC staff will coordinate regularly with their counterparts at the other agencies. In addition, I expect that decision-makers at all involved agencies will be communicating directly to ensure a coordinated approach to policymaking and rulemaking associated with the implementation of AB 32 and Executive Order S-20-06. I intend that the Phase 2 record and the planned development of guidelines for a load-based GHG emissions cap will help inform AB 32 implementation efforts by CARB, and the CPUC and CEC will work closely with CARB on the development of joint and/or coordinated policies, wherever possible.

V. Scoping Memo for Phase 2 Addressing Electricity Sector

A. Phase 2 will Focus on Development of Guidelines for a Load-Based Emissions Cap

After reviewing the PHC statements and recommendations made by parties at the PHC, I revise the preliminary scoping memo contained in the OIR. As discussed at the PHC, I agree with parties that a single, unified set of rules for a GHG cap and a single market for GHG emissions credits in California is desirable. As a result, Phase 2 should focus on development of general guidelines for a load-based emissions cap that could be applied by the CPUC and CARB to all electricity sector entities that serve end-use customers in California. These guidelines will be developed in collaboration with the CEC and will be

presented to CARB as recommendation for how a load-based GHG emissions cap should be implemented for the entire electricity sector in California.

The CPUC directed in D.06-02-032 that the GHG emissions cap on the electricity sector be load based. Taking a load-based approach for the electricity sector ensures two very important things:

- First, it allows us to capture emissions associated with California's significant electricity imports. A load-based approach is totally consistent with AB 32. I also note that approximately half of our emissions footprint is associated with our imported power and not with power produced within California.
- Second, a load-based approach allows the CPUC and the CEC (among other agencies) to continue to utilize our policy levers for renewables and energy efficiency, because it puts the responsibility for achieving emissions reductions on LSEs. If we were to take a source-based approach and apply emissions caps only to generators, then it would be much more difficult to integrate energy efficiency and renewables policies into our overall climate strategy.

I acknowledge and understand that CARB may need, in the course of its proceedings, to consider certain source-based approaches in the electricity sector to cover gaps in the load-based approach. In particular, in cases where a generation unit operating in California does not serve California load, CARB may need to adopt policies to address emissions reductions from those sources. I also acknowledge that there may be an appropriate distinction between entities that are required to report their emissions under AB 32 and entities that are subject to an emissions cap under AB 32. I believe it is entirely consistent with the CPUC's load-based cap policy for individual GHG sources in the electricity

sector to be required to report their emissions to CARB as part of AB 32 implementation.

In addition, as explained more fully below, Phase 2 will include a detailed examination of how a load-based cap would affect POUs. In addition to providing guidelines for a load-based cap, the record developed in Phase 2 will provide CARB with an invaluable source of information to use in its analysis of key elements in a GHG emissions cap, including baseline, allocations of credits, and flexible compliance. Phase 2 will undertake a broad investigation on issues related to the electricity sector, so that CARB may consider, and hopefully adopt, the recommended guidelines and regulations for a load-based GHG emissions cap for the entire electricity sector.

While a primary outcome of Phase 2 will be the submission of guidelines for CARB's consideration, the CPUC may also adopt regulations to address GHG emissions of regulated LSEs. I remind the regulated LSEs that they will be expected to comply with any GHG emissions regulations adopted by the CPUC in addition to any GHG emissions regulations that CARB may adopt to fulfill the requirements of AB 32.

The policies in D.06-02-032 were adopted prior to passage of AB 32. While Phase 2 of this OIR will focus on developing guidelines to aid CARB in implementing a GHG emissions cap for the electricity sector, this proceeding will use, as its starting point, the policies adopted in D.06-02-032. As the CPUC and CEC coordinate with CARB and other agencies on development of guidelines for a load-based emissions cap for the electricity sector, changes to the policies the CPUC adopted in D.06-02-032 may be necessary. Parties are placed on notice that, in the course of Phase 2, the CPUC may adopt policies that may modify portions of D.06-02-032 as a result of the passage of AB 32, subsequent

rulemakings by CARB, or any other record developed in the course of this proceeding.

In both D.06-02-032 and the OIR, the CPUC stated its intent to examine the costs and benefits of various load-based GHG emissions cap options. With passage of AB 32, the Legislature and the Governor have determined that limiting GHG emissions is in the public interest. Rather than performing an analysis of the benefits of a load-based cap, we will focus in this proceeding on evaluating the costs and rate impacts of different load-based cap design options.

B. Scope Will Include Impacts on CCAs, ESPs, Electrical Corporations, and POU

In D.06-02-032, the CPUC articulated its intent to apply the load-based GHG emissions cap to the three major IOUs, community choice aggregators (CCAs), and energy service providers (ESPs) operating within the service territories of the three major IOUs. In D.06-10-020 amending the OIR, the CPUC specified that, with the passage of SB 1368, all ESPs, all CCAs, and all electrical corporations, including all IOUs, multi-jurisdictional utilities, and electric cooperatives, are respondents in this rulemaking. Consistent with these two decisions, Phase 2 will address whether the load-based GHG emissions cap should apply to the additional respondents added by D.06-10-020.

As stated earlier, I intend that Phase 2 will provide CARB with recommended guidelines that could be applied both to LSEs that we regulate and to POU (including municipal utilities and irrigation districts). By statute, CARB has the authority to apply a GHG emissions cap to the electricity sector, including POU. As I stated at the PHC, it is important that POU be active participants in this rulemaking to ensure that the guidelines address their specific concerns and potential impacts to them of policies under consideration.

POUs have expertise and knowledge about this segment of California's electricity market that is not regulated by the CPUC and also about the broader electricity market in California. POUs can provide other parties to this proceeding, as well as the CPUC, insight about the effect that various GHG emissions cap options could have on POUs and the California electricity market as a whole. I encourage the POUs and/or their representatives to participate actively in Phase 2 and commit to full and fair consideration of their issues and concerns. In no way does this encouragement of active participation in a CPUC proceeding by POUs indicate any assertion of regulatory authority (real or implied) over the POUs. I recognize that the POUs fall outside of any potential mandatory requirements by the CPUC, though, as stated above, CARB has been granted authority under AB 32 to impose similar requirements on POUs.

C. Coordination of AB 32 and a Load-Based GHG Emissions Cap with Other Related Policies and Programs

The proceeding will identify and address interactions between a load-based GHG emissions cap and programs and policies regarding energy efficiency, renewable resources, distributed generation, and low-emission vehicles, and any other relevant policies or programs in the electricity sector that affect GHG emissions. The proceeding will address how resources and activities in these programs should be accounted for in the overall emissions reduction goal established by a load-based cap. For example, we may examine how to reflect in the load-based cap activities by LSEs that may exceed programmatic goals for energy efficiency and renewables procurement, or how to account for their failure to achieve any of these objectives. The proceeding will also address the appropriate treatment of GHG emissions related to distributed generation

resources. In addition, the proceeding may address, as appropriate, the treatment of low-emission vehicle programs of the electric utilities.⁶

D. Issues Related to Design of a Load-Based Cap

In their PHC statements, some parties suggested that several “threshold” issues be addressed at the outset of the proceeding. These parties asked for up-front specification of the method of coordination with CARB as well as up-front adoption of early action credits, emission milestones that LSEs would need to meet, and certain design elements of the load-based cap. As discussed at the PHC, I do not believe that early resolution of these issues is either practical or likely to expedite the proceeding.

In its PHC statement, Community Environmental Council recommended that the CPUC apply a lifecycle analysis to identify emissions related to liquefied natural gas storage facilities. Community Environmental Council argues that lifecycle analysis provides a more complete picture of emissions associated with energy consumption. However, such an analysis is considerably more complicated than traditional output-based emissions analysis. I understand from CPUC staff that researchers have yet to agree upon a methodology for performing lifecycle analyses of GHG emissions for some fuel sources, in particular, nuclear and liquefied natural gas. If this proceeding were to undertake a lifecycle analysis for liquefied natural gas facilities, to be consistent a lifecycle analysis would be necessary for all methods used to produce electricity.

⁶ Executive Order S-1-07 on a Low Carbon Fuel Standard, issued by Governor Schwarzenegger on January 18, 2007, states “The Public Utilities Commission, in the implementation of the GHG emissions cap adopted by Decision 06-02-032, is requested to examine and address how the investor-owned utilities can contribute to reductions in GHGs in the transportation sector.”

This would require well-established, peer-reviewed analyses and/or submission by the parties of alternative analyses for review in this proceeding.

Because the methodology for lifecycle analysis of GHG emissions is still being developed, and widely accepted studies have not been completed, I do not include lifecycle analysis of GHG emissions in the scope of Phase 2. Because CARB has indicated a desire to conduct this type of analysis for its AB 32 regulations and those regulations are not required to be adopted until after the end of the timetable for this proceeding, it is possible that the CPUC may want to consider analysis of lifecycle emissions during a later proceeding.

In D.06-02-032, the CPUC determined that a load-based cap is the most effective way to regulate GHG emissions in the electricity sector. In developing guidelines for a load-based GHG emissions cap, Phase 2 will address the following issues:

1. reporting requirements,
2. development of 1990 electricity sector baseline and current entity-specific GHG emissions levels,
3. GHG emissions reduction measures and annual emissions caps,
4. flexible compliance mechanisms,
5. entity-specific allowance allocation, and
6. modeling to support policy design and evaluation of costs.

What follows is a description of the types of details regarding each of these issues I expect this proceeding to address, organized by the six categories above. This description is not meant to be exhaustive, and may be refined during the course of the proceeding. It is also important to note that many of the issues are interrelated, so individual topics will not be examined in isolation.

1. Reporting Requirements

CARB is taking the lead on developing reporting protocols and requirements for all entities covered by AB 32, including the electricity sector. I expect that the proceeding will develop limited recommendations on reporting requirements that are unique to the electricity sector. The proceeding will explore electricity reporting issues, including treatment of GHG emissions from non-unit-specific (or unspecified) contracts, reporting requirements for imported power, and appropriate attribution of emissions for cogeneration facilities. Staff will coordinate closely with CARB on development of reporting requirements, and will explore with CCAR and CARB ways in which reporting protocols may need to be modified or further developed to accommodate a load-based cap.

2. Baseline Development

In this category, the proceeding will take up two distinct questions related to determining the allowable levels of GHG emissions for the sector at large and for individual entities.

First, we will address the appropriate baseline for the entire electricity sector in 1990. The proceeding will consider and integrate information from the CEC's most recent emissions inventory report as well as the Climate Action Team report, in developing guidelines regarding the 1990 baseline for the electricity sector. I anticipate that this information will be used by CARB to refine its estimate of 1990 electricity sector emissions as part of its broader effort to determine statewide 1990 GHG emissions across all sectors in order to set the state's target GHG emissions level for 2020.⁷

⁷ AB 32 requires total California GHG emissions, including those from imported energy consumed within the state, to be reduced to 1990 levels by 2020. The legislation also

Footnote continued on next page

Second, we will develop current GHG emissions levels for each entity by examining individual entities' recent historical emissions profiles. The current emissions levels will be considered, along with other factors, in establishing each entity's allowable GHG emissions going forward. 1990 emissions levels will not be developed for individual entities.

3. Emission Reduction Measures and Annual Emissions Caps

This portion of the proceeding will examine the level and costs of emission reductions that can be achieved by the electricity sector before 2020 (target date set by AB 32). This section will include examination of both mandatory programs and market-based measures to achieve emissions reductions, including those programs described earlier such as energy efficiency, renewable investment, distributed generation, and low-emission vehicle policies and programs in the electricity sector. In addition, we will address the rate at which these types of reductions can be achieved, which will inform our recommendations for annual emissions caps for the electricity sector. This undertaking will be informed by the electricity sector modeling described below.

4. Flexible Compliance Mechanisms

This portion of the proceeding will examine various possible flexible compliance mechanisms for the electricity sector including, but not limited to, multi-year compliance periods, early action credits, banking provisions, in-state and out-of-state trading options, and emission offsets. In addition, in this

charges CARB with inventorying historical emissions in order to provide a precise value for the statewide target.

portion, we will examine appropriate performance incentives, including the concept of allowance sale incentives, and a penalty mechanism.

5. Entity-Specific Allowance Allocation

This portion of the proceeding will build on the examination of individual entities' current GHG emissions levels and the assessment of feasible annual emissions caps for the electricity sector, to address how to allocate annual emissions allowances under a load-based cap to individual entities.

In addition, we will examine an appropriate process for administering the allocation of allowances, most likely through CARB.

6. Modeling to Support Policy Design and Analysis of Costs

The CPUC expects to hire a consultant to conduct detailed modeling of the electricity sector impacts of potential GHG emissions cap scenarios. The modeling analysis will take into account the policy options developed in other portions of the proceeding in order to analyze various options for load-based cap design and implementation. I expect that the consultants will conduct a public input process as the model is developed and public workshops to explain model results to the parties.

VI. Phase 2 Schedule

In their November 1, 2006 ruling, the ALJs proposed a schedule for the proceeding. After reviewing PHC statements and those made at the PHC, I have revised the schedule for consideration of a load-based GHG emissions cap for the electricity sector to reflect parties' comments, and the respective roles that CARB and the CPUC will play in implementing a GHG emissions cap consistent with AB 32. The revised schedule set forth in this section will serve as roadmap for this proceeding. Because many of the issues in this proceeding are complex and

novel, I authorize the assigned ALJs to add detail and make modifications to the schedule to reflect a growing understanding of the issues as Phase 2 proceeds.

This schedule is designed to dovetail with the schedule CARB anticipates for its AB 32-related activities. The major milestones associated with CARB's schedule, as we understand them, are as follows:

- April 2007 – CARB conducts a public status workshop.
- June 2007 – The Market Advisory Committee⁸ presents its recommendations.
- October 2007 – CARB conducts a status workshop and finalizes a CARB staff report on mandatory reporting requirements.⁹
- February 2008 – CARB conducts an “integration” workshop to address overall AB 32 framework recommendations.
- Summer 2008 – CARB staff releases preliminary draft of AB 32 “scoping plan.”
- October 2008 – CARB staff finalizes “scoping plan” for Board adoption in November 2008.

The schedule outlined below is designed to ensure that this proceeding develops materials that can be utilized on a timely basis by CARB.

In addition, we are subject to other requirements on timing. Section 1701.5 provides that, in a quasi-legislative proceeding, the issues raised in the scoping memo are to be resolved within 18 months of the date the scoping memo is issued unless the CPUC issues an order extending the deadline (Section

⁸ The Market Advisory Committee was created by Governor's Executive Order S-20-06 to advise CARB on the development of a market-based compliance program.

⁹ AB 32 requires that CARB adopt mandatory reporting requirements by January 1, 2008.

1701.5(a)) or the scoping memo specifies a later resolution date (Section 1701.5(b)). As described above, the scope of this proceeding encompasses numerous complex and unique tasks and requires extensive consultations with CARB and other entities. Development of guidelines for a load-based GHG emissions cap will require a number of intermediate evaluations. Therefore, it is the CPUC's intention to complete this phase of this rulemaking within 24 months of the date of this scoping memo, rather than the 18 months specified in Section 1701.5.¹⁰

The schedule for this phase of the proceeding is organized around the six programmatic elements outlined above: (1) reporting requirements, (2) baseline development, (3) emission reduction measures and annual emissions caps, (4) flexible compliance mechanisms, (5) entity-specific allowance allocation, and (6) modeling to support policy design and evaluation of costs. The adopted schedule is contained in the table below.

¹⁰ D.06-10-020, Order Amending OIR, Section IV.

Schedule for Electricity Sector GHG Emissions Cap

Phase 2 of R.06-04-009

| Reporting Issues: | |
|---|----------------|
| Ruling soliciting information about historical emissions and tracking mechanisms in place | February 2007 |
| Parties submit information | March 2007 |
| Workshop on reporting issues including unspecified contracts, imports, and cogeneration emissions | March 2007 |
| Ruling soliciting comments on a staff straw proposal | April 2007 |
| Comments on straw proposal | May 2007 |
| Reply comments | May 2007 |
| Ruling establishing reporting requirements for modeling runs | September 2007 |
| Assigned Commissioner's Ruling outlining reporting recommendations to CARB | September 2007 |
| Inclusion in Staff Report | January 2008 |

| Baseline Development: | |
|---|-------------------------|
| Ruling soliciting comments on CEC's estimate of 1990 GHG emissions and data necessary for determining current entity-specific GHG emissions | March 2007 |
| Comments on CEC's 1990 estimate of GHG emissions and entity-specific data needed for current emissions | April 2007 |
| Workshop on current entity-specific GHG emissions | May 2007 |
| Assigned Commissioners Ruling with recommendations for 1990 GHG baseline to CARB | October 2007 or earlier |
| Ruling establishing entity-specific baselines for modeling runs | October 2007 |
| Inclusion in Staff Report | January 2008 |
| Emissions Reduction Measures and Annual Sector Emissions Caps: | |
| Ruling soliciting comments on staff white paper identifying emission reduction measures, sources of data, and data to be developed | March 2007 |
| Comments and/or workshop | March 2007 |
| Ruling soliciting data on emission reduction measures | April 2007 |
| Parties submit data | June 2007 |
| Ruling soliciting comments on a staff straw proposal | July 2007 |
| Comments on straw proposal and parties' recommendations for annual electricity sector emissions caps | August 2007 |
| Reply comments | August 2007 |
| Inclusion in Staff Report | January 2008 |

| Flexible Compliance Mechanisms: | |
|--|----------------|
| Workshop to identify issues and review electricity sector flexible compliance regimes in other jurisdictions | April 2007 |
| Ruling soliciting parties' proposals to address issues identified in workshop and by staff | May 2007 |
| Parties file proposals | May 2007 |
| Parties file comments on proposals | June 2007 |
| Parties file comments on Market Advisory Committee Report | July 2007 |
| Ruling establishing flexible compliance scenarios for modeling | October 2007 |
| Inclusion in Staff Report | January 2008 |
| Entity-Specific Allowance Allocation: | |
| Workshop on policy issues e.g., auction vs. allocation and structure of allowances | May 2007 |
| Ruling soliciting allocation proposals and establishing electricity sector annual emissions caps for use in allocation proposals | July 2007 |
| Allocation proposals submitted | August 2007 |
| Comments on proposals | September 2007 |
| Initial allocations in Staff Report | January 2008 |

| Modeling to Support Policy Design and Evaluation of Costs: | |
|--|--|
| Contracting process (RFP, proposals, selection process, contract approval) | 1 st Quarter 2007 |
| Consultants conduct public input process | 2 nd - 3 rd Quarter 2007 |
| Workshop on "sample" results | Late 4 th Quarter 2007 |
| Initial results in Staff Report | January 2008 |
| Adopt Final Policies: | |
| Staff Report | January 2008 |
| Workshops, comments, additional modeling, hearings if needed | 1 st Quarter 2008 |
| Draft guidelines issued via ruling for comment | April/May 2008 |
| Workshop and/or comments | May/June 2008 |
| Proposed decision on guidelines for load-based GHG emissions cap | July/August 2008 |
| Comments on proposed decision | August 2008 |
| CPUC Decision | September 2008 |

VII. Need for Evidentiary Hearings

I concur with the ALJs' assessment at the PHC that evidentiary hearings may be required to resolve some of the issues in Phase 2. The ALJs may set issues for hearing as needed. Pursuant to Rule 13.2(c), as the assigned Commissioner I am also the presiding officer in this proceeding. Charlotte F. TerKeurst and Jonathan Lakritz are the assigned ALJs in Phase 2.

VIII. Category of Proceeding

The OIR issued on April 17, 2006 preliminarily determined that this proceeding should be categorized as "quasi-legislative." In my June 1, 2006 scoping memo for Phase 1, I affirmed the preliminary categorization of this

proceeding. No party objected to the preliminary categorization in the OIR or the final determination in the June 1, 2006 ruling. As determined in the June 1, 2006 ruling, Phase 2 is categorized as quasi-legislative.

IX. Service List and Service Requirements

The current service list for this proceeding, established in Phase 1 and modified at the November 28, 2006 PHC and subsequently, is posted on the CPUC's website. Parties may request corrections or updates to the service list by letter or electronic mail to the CPUC's Process Office, with service on all parties. The Process Office's e-mail address is Process_office@cpuc.ca.gov. A person may become a party to this proceeding as provided in Rule 1.4. All notices, comments, and other submittals required by this ruling or subsequent rulings should be formally filed at the CPUC and served on the service list in this proceeding pursuant to the Electronic Service Protocols attached to the OIR and consistent with Rules 1.9 and 1.10. Please note that those protocols require that the assigned ALJs and I are also served hard copies of all submittals.

X. Ex Parte Communications

This proceeding is subject to Article 8, which specifies standards for engaging in *ex parte* communications and the reporting of such communications. Rule 8.2(a) applies to proceedings categorized as quasi-legislative. Accordingly, *ex parte* communications are allowed without restriction or reporting requirement in all phases of this rulemaking.

IT IS RULED that:

1. The schedule and scope of consideration in Phase 2 of a load-based GHG emissions cap for the electricity sector are adopted as set forth in this ruling. The scope of Phase 2 includes the following issues:

- a. Development of guidelines for a load-based GHG emissions cap for the electricity sector that could be applied by the CPUC and CARB to all electricity sector entities that serve end-use customers in California.
- b. Whether the Commission should modify D.06-02-032 as a result of passage of AB 32, subsequent rulemakings by CARB, or other factors.
- c. Impacts of the load-based GHG emissions cap on CCAs, ESPs, electrical corporations, and POUs.
- d. Whether the load-based GHG emissions cap should apply to all ESPs, all CCAs, and all electrical corporations in California.
- e. Interactions between a load-based GHG emissions cap and programs and policies regarding energy efficiency, renewable resources, distributed generation, and low-emission vehicles, and any other policy or program affecting GHG emissions from the electricity sector.
- f. The following elements related to design of a load-based GHG emissions cap: reporting requirements, baseline development, emissions reductions measures and annual emissions caps, flexible compliance mechanisms, entity-specific allowance allocation, and modeling to support policy design and the evaluation of costs.

2. Because of the extensive scope of Phase 2 and the need for consultations with the CEC, CARB and other entities, and because development of the load-based GHG emissions cap guidelines is dependent on a number of intermediate evaluations, this proceeding will remain open beyond the 18-month period specified in Pub. Util. Code § 1701.5. It is the CPUC's intention to complete this portion of the rulemaking within 24 months of the date of this scoping memo.

3. While this scoping memo provides guidance regarding the manner in which each identified issue will be considered, the assigned ALJs may make any revisions or provide further direction regarding the manner in which the issues are to be addressed, as necessary for a full and complete development of the record regarding a load-based GHG emissions cap.

4. The assigned ALJs may make any revisions to the schedule necessary for the fair and efficient management of the proceeding.

5. The ALJs may set issues for evidentiary hearing as needed.

6. All notices, comments, and other submittals required by this ruling or subsequent rulings shall be formally filed with the CPUC and served on the service list in this proceeding pursuant to the Electronic Service Protocols attached to the OIR and consistent with Rules 1.9 and 1.10. Hard copies shall also be served on the assigned ALJs and the assigned Commissioner, pursuant to those protocols.

7. This proceeding is categorized as quasi-legislative. Accordingly, pursuant to Rule 8.2(a), *ex parte* communications are allowed without restriction or reporting requirement in all phases of this rulemaking.

8. This ruling shall be served on the service lists in R.06-04-009, R.04-04-003, R.06-02-012, R.06-05-027, R.06-03-004, and R.06-04-010.

Dated February 2, 2007, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

