



FILED

07-22-11
10:28 AM

UNC/jt2 7/22/2011

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)

**ADMINISTRATIVE LAW JUDGE'S RULING SUSPENDING REQUESTS FOR
ALTERNATE PROPOSALS AND COMMENTS, CONFIRMING NEW
PREHEARING CONFERENCE, CONFIRMING WORKSHOP, ENCOURAGING
PARTIES TO COMPLETE PRE-WORKSHOP READING, AND DENYING
MOTION FOR INTERIM DECISION**

1. Summary

In response to the California Air Resources Board's June 29, 2011 announcement of a one-year delay in the enforcement of its cap-and-trade program, until 2013, this ruling confirms a second prehearing conference and sets a tentative schedule and scope for the proceeding, confirms a workshop, encourages parties to complete pre-workshop reading, and denies the May 11, 2011 Joint Motion of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company requesting the Commission to issue an interim decision to authorize the use of greenhouse gas allowance revenues for 2012 electric rates before January 1, 2012.

2. Background

On March 30, 2011, the Commission opened Rulemaking (R.) 11-03-012 to address the use of greenhouse gas (GHG) emissions allowance auction revenues

that electric utilities may receive from the California Air Resources Board (ARB) under the ARB cap-and-trade program, among other issues. Numerous parties filed prehearing conference (PHC) statements and responses on April 21, 2011 and May 5, 2011, respectively. On May 11, 2011, Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE), (together, the Joint Utilities) filed a joint motion requesting the Commission to issue an interim decision to authorize the use of GHG allowance revenues for 2012 electric rates before January 1, 2012 as well as offering a proposed revenue allocation methodology (the Joint Motion). Ten parties filed responses to the Joint Motion showing broad support for an interim decision, but not necessarily in support of the interim revenue allocation methodology proposed by the Joint Utilities.

On June 2, 2011, Administrative Law Judge (ALJ) Jessica T. Hecht held a PHC to discuss the scope and schedule of this proceeding. The bulk of the discussion centered upon the content of the Joint Motion, and parties tentatively agreed to a schedule of next steps, setting a phased approach to the proceeding. On June 24, 2011, ALJ Hecht issued an email ruling directing parties to file alternative proposals to the Joint Utilities' proposal as well as comments on the legal and policy implications of various allowance revenue allocation mechanisms by July 13, 2011.

On June 29, 2011, ARB Chairwoman Mary Nichols announced a one-year delay in the enforcement of the cap-and-trade program, until 2013. On June 30, 2011, ALJ Melissa K. Semcer issued an email ruling ordering parties to continue to operate under the deadlines imposed in ALJ Hecht's June 24, 2011 ruling while the Commission worked with ARB to fully understand the implications of the announced delay. On June 30, 2011, counsel for the California Energy

Consumer Association sent an email to the service list stating its support for the continuation of a July 13, 2011 deadline for alternate proposals but suggesting that it may be premature to file comments on the legal and policy implications of various allowance revenue allocation mechanisms by July 13, 2011. Counsel for PG&E also sent an email agreeing that it was premature to make any adjustments to the schedule until parties had more information from ARB. On July 6, 2011, counsel for the Energy Producers and Users Coalition sent an email to the service list stating that, based on information from ARB, an interim decision was no longer needed by January 1, 2012. On the same date, counsel for Western Power Trading Forum sent an email to the service list agreeing with Energy Producers and Users Coalition. On July 6, 2011, counsel for PG&E replied to the service list stating that revenues and costs may still be incurred in 2012, requiring cost and revenue mechanisms to be in place by 2012.

On July 8, 2011, ALJ Semcer sent an email ruling to the service list stating that it is the Commission's understanding that while ARB may distribute allowances and hold auctions in 2012, those actions will be for the purposes of 2013 compliance. ALJ Semcer ruled that an interim decision adopting a revenue allocation mechanism for 2012 by January 1, 2012 was no longer needed. Furthermore, the email ruling suspended the submission of alternate proposals and comments that were due on July 13, 2011. Finally, the ruling set a second PHC for August 1, 2011 and announced a workshop to commence immediately upon the completion of the PHC on August 1, 2011.

3. Suspension of Alternate Proposals and Comments

We confirm here the findings in ALJ Semcer's July 8, 2011 ruling. Alternate proposals and comments on the legal and policy implications of various allowance revenue allocation mechanisms are suspended until a new

schedule is set in a scoping memo to be released following the August 1, 2011 PHC.

4. Confirmation of Prehearing Conference

Official notice setting a second PHC in R.11-03-012 before Administrative Law Judges Melissa K. Semcer and Jessica T. Hecht, for August 1, 2011, commencing at 10:00 a.m., in the Commission Auditorium, State Office Building, 505 Van Ness Avenue, San Francisco, California was given on July 19, 2011. The PHC is confirmed here.

4.1. Prehearing Conference Assignment

Based upon review of the original PHC statements and replies filed in this proceeding, the Commission tentatively sets the scope and schedule set forth below. Parties are asked to come prepared to discuss the tentative scope, and, if parties wish to propose alternative schedules, parties should bring sufficient hard copies of their proposed schedule changes for discussion at the PHC.

5. Tentative Scope

The Commission offers the following scope for discussion at the August 1, 2011 PHC:

1. How should the electric utilities under Commission jurisdiction allocate the revenues from the auction of GHG emission allowances received from ARB?
 - a. What portion, if any, of revenues should be returned directly to customers to offset GHG compliance costs versus held for use for other purposes, e.g., energy efficiency programs and renewable energy procurement?
2. How should the electric and gas utilities under Commission jurisdiction allocate revenues from the sale of Low Carbon Fuel Standard (LCFS) credits received from ARB?

- a. Should the revenues from LCFS credits be used for different purposes than the revenues from GHG allowance auctions?
3. What are the appropriate procurement authorities, standards, cost recovery, and revenue allocation mechanisms for gas utilities under Commission jurisdiction to procure GHG compliance products (e.g. allowances and offsets), set hedging strategies, and allocate revenues?

As discussed in the June 2, 2011 PHC, gas utilities will also need approved procurement and revenue allocation mechanisms in place in order to operate under a cap-and-trade program. However, natural gas utilities will not be covered under the ARB carbon cap until 2015 and will therefore have no compliance under cap-and-trade until that time. Furthermore, ARB has not released the regulation governing those sectors that come under cap-and-trade in 2015. As such, it is premature to design procurement and revenue allocation mechanisms at this juncture and, indeed, it may be more appropriate to address such issues in different or subsequent proceedings. However, we find it appropriate to hold these issues as a placeholder in the scope of this proceeding. We will discuss how to address these issues at a later time.

6. Tentative Schedule

The Commission offers the following tentative schedule for discussion:

| Date | Item |
|---|---|
| August 1, 2011, 10:00 a.m. | Second PHC |
| August 1, 2011 Workshop (immediately following PHC) | Workshop to discuss revenue allocation mechanism objectives and status/objectives of LCFS |

| | |
|------------------|---|
| October 5, 2011 | Parties file cap-and-trade revenue allocation proposals for 2013 and beyond and LCFS credit revenue allocation proposals effective immediately. |
| October 26-27 | Workshop to discuss proposals |
| November 9, 2011 | Parties file revised proposals, if desired |
| December 7, 2011 | Comments due on proposals |
| January 10, 2012 | Reply comments due on proposals |
| January 10, 2012 | Deadline for requests for hearings |
| January 20, 2012 | Ruling on requests for hearings ¹ |
| April, 2012 | Proposed Decision |

7. Notice of Workshop

On August 1, 2011, immediately following the completion of the PHC, Energy Division staff will hold a workshop to discuss the following issues:

- 1) Policy objectives associated with the use of emission allowance auction revenues
- 2) Status of the LCFS program
- 3) Policy objectives associated with the use of revenues from the sale of LCFS credits.

A detailed agenda will be released prior to the workshop.

¹ If hearings are granted, this schedule will need to be revised to allow time for the submission of testimony and hearings.

7.1. Policy Objectives Associated With the Use of Emission Allowance Auction Revenues

To help inform the development of party proposals addressing the use of auction revenues, as well as our evaluation of those proposals, we believe it is important to identify key policy objectives against which the different proposals can be assessed. We have considered the policy objectives that have been offered through various decisions and advisory materials developed over the course of Assembly Bill 32 implementation, as those materials relate to the use of auction revenues. Based on our review of these materials, we offer seven objectives, described below, that parties could consider in developing their respective proposals. These are not the only objectives that may be considered, and parties are encouraged to suggest others for discussion during the workshop.

- 1) Preserve the Carbon Price Signal
- 2) Prevent Economic Leakage
- 3) Equitably Allocate Revenue Value Recognizing the Public Asset Nature of the Atmospheric Carbon Sink
- 4) Reduce Adverse Impacts on Low Income Households
- 5) Correct for Market Failures that Lead to Underinvestment in Carbon Mitigation Activities and Technologies.
- 6) Competitively Neutral Across Load Serving Entities
- 7) Administratively Simple/Easy to Implement and Comprehend

A brief description of each of the above criteria/principles is provided below. Detailed explanations can be found in Attachment A to this ruling.

7.1.1. Preserve the Carbon Price Signal

This policy objective refers to the extent to which, under a given proposal, the cost of carbon is reflected in rates, net of any allowance or allowance revenue allocation that might be used to directly offset those cost impacts.

7.1.2. Prevent Economic Leakage

This policy objective refers to the extent to which a given proposal addresses concerns regarding Emission Intensive Trade Exposed industries shifting production to jurisdictions outside of the cap and trade regime to avoid carbon costs, that, owing to the regional or global nature of the market in which they are operate, they are unable to pass on to customers.

7.1.3. Equitably Allocate Revenue Value Recognizing the “Public Asset” Nature of the Atmospheric Carbon Sink

This objective refers to the degree to which the revenues or the value created from the use of those revenues under a given proposal are allocated in a manner consistent with the notion that the atmosphere is a global commons to which all individuals have an equal claim, irrespective of whether or not they use that commons.

7.1.4. Reduce Adverse Outcomes to Low Income Households

This policy objective refers to a given proposal’s recognition of the potentially disproportionate impact of cap and trade on the cost burden borne by low income households as a share of total household income. Such cost burden is not necessarily limited to the direct impacts of cap and trade on household energy bills, but also includes the impacts felt through the prices of other goods and services low income households consume which may increase as a result of carbon pricing. Additionally, this objective includes consideration of the potentially disproportionate impacts on low income households and communities resulting from climate change itself, given the relatively limited capacity these households and communities may have to adapt to changing climactic conditions and associated effects.

7.1.5. Correct for Market Failures that Lead to Ongoing Underinvestment in Carbon Mitigation Activities and Technologies

This policy objective refers to the degree to which the proposed use of auction revenues addresses market failures that are likely to continue to inhibit or prevent investment in carbon mitigation activities and technologies, irrespective of emissions pricing. Examples include energy efficiency as well as research, development, and demonstration activities that relate to emerging clean technologies.

7.1.6. Competitively Neutral Across Load Serving Entities

This policy objective refers to the degree to which a given proposal does not alter the relative competitive position of utilities, energy service providers, community choice aggregators and publicly owned utilities in the provision of energy services.

7.1.7. Administratively Simple/Easy to Implement and Comprehend

This policy objective refers to the relative simplicity of a given proposal from the standpoint of implementation, as well as the ability of consumers to comprehend the approach being proposed.

7.2. Policy Objectives Associated with the Use of Revenues from the Sale of Low Carbon Fuel Standard Credits

The policy objectives identified in the preceding section pertain to the use of revenues generated from the sale of emission allowances under the cap-and-trade regime that will be returned to the distribution utilities. We recognize that the LCFS, although part of the State's overall efforts to reduce GHG emissions, differs from cap-and-trade in several ways, including but not limited to the scope of regulated entities, compliance obligations, cost impacts, and scale of potential

revenues that may accrue to the regulated utility between now and 2020. As a result, the policy objectives in section 7.1 may not be applicable to LCFS credit sale revenues. We will seek party guidance on this matter at the August 1, 2011 workshop and in subsequent proposals, to the degree parties choose to address issues regarding the use of revenues from the sale of LCFS credits.

7.3. Workshop Preparation and Incorporation of Documents Into the Record

In preparation for the August 1, 2011 workshop, parties are asked to read two documents, in addition to coming prepared to discuss the policy objectives in Attachment A and the Low Carbon Fuel Standard policy objectives. By this ruling, we incorporate into the record the following attached materials.

| Attachment | Title |
|-------------------|---|
| B | “Allocating Emission Allowances Under a California Cap and Trade” by the Economic and Allocation Advisory Committee, 2010 |
| C | Attachment J of the California Air Resources Board’s October 28, 2010 Initial Statement of Reason |

8. Joint IOU Motion for Expedited Decision

On May 11, 2011, PG&E, SDG&E, and SCE, filed the Joint Motion requesting the Commission to issue an interim decision to authorize the use of GHG allowance revenues for 2012 electric rates before January 1, 2012 as well as offering a proposed revenue allocation methodology. While ARB may distribute allowances and hold auctions in 2012, it is our understanding that those auctions will be for the issuance of allowances to cover emissions compliance obligations commencing in 2013. Therefore, an interim decision adopting a revenue

allocation mechanism for 2012 by January 1, 2012 is no longer needed. The Joint Motion is hereby denied. However, we decline to rule on the substance of the auction revenue allocation mechanism contained in the Joint Motion at this time, as such a ruling would prejudice the outcome of this proceeding. The Joint Utilities, either individually or as group, are encouraged to file a comprehensive auction revenue allocation proposal for 2013 and beyond as determined in the schedule set in the forthcoming scoping memo in this proceeding.

We acknowledge that ARB may hold allowance auctions in 2012 for 2013; thus, utilities may incur costs in 2012 for 2013. If this occurs, the utilities may wish to request that the Commission approve the creation of a memorandum account to track 2012 costs, among other options. Parties are encouraged to discuss the process for addressing this issue at the PHC.

IT IS RULED that:

1. A prehearing conference is confirmed for August 1, 2011, commencing at 10:00 a.m., located at the California Public Utilities Commission, Commission Auditorium, 505 Van Ness Avenue, San Francisco, CA 94102.
2. Alternate proposals and comments on the policy and legal ramifications of various revenue allocation mechanisms are no longer due on July 13, 2011.
3. Parties must come to the prehearing conference prepared to discuss the tentative scope, and, if parties wish to propose alternative schedules, parties should bring sufficient hard copies of their proposed schedule changes for discussion at the prehearing conference.
4. A workshop to be led by Energy Division Staff will be held on August 1, 2011, commencing immediately following the completion of the prehearing conference. The workshop will cover: a) policy objectives associated with the use of emission allowance auction revenues; b) Status of the Low Carbon Fuel

Standard program; and c) policy objectives associated with the use of revenues from the sale of Low Carbon Fuel Standard credits.

5. Parties are encouraged to read the following materials in advance of the August 1, 2011 workshop, and such materials are incorporated into the record:

a) The Economic and Allocation Advisory Committee Report “Allocating Emission Allowances Under a California Cap and Trade Program” (2010) (Attachment B); and b) Appendix J from the California Air Resources Board’s October 28, 2010 Initial Statement of Reason.

6. The May 11, 2011 Joint Motion of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (the Joint Utilities) requesting that the Commission issue an interim decision to authorize the use of greenhouse gas allowance revenues for 2012 electric rates before January 1, 2012 is denied. We decline to rule on the proposed revenue allocation methodology offered by the Joint Utilities in the Joint Motion at this time in anticipation of a more comprehensive filing by the utilities under the schedule adopted in the forthcoming scoping memo.

Dated July 22, 2011, at San Francisco, California.

/s/ MELISSA K. SEMCER

Melissa K. Semcer

Administrative Law Judge