

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Address Utility
Cost and Revenue Issues Associated with
Greenhouse Gas Emissions.

Rulemaking 11-03-012
(Filed March 24, 2011)

**PREHEARING CONFERENCE
STATEMENT OF THE DIVISION OF RATEPAYER ADVOCATES**

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I. INTRODUCTION

Pursuant to Rule 7.2 of the Commission’s Rules of Practice and Procedure, and the March 24, 2011 “Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions” (OIR), the Division of Ratepayer Advocates (DRA) submits the following statement in advance of the prehearing conference that is expected to be scheduled as soon as practicable.¹ The OIR provides parties the opportunity to file prehearing conference statements on April 21, 2011 relating to “the scope and schedule of this proceeding, category, need for hearing and other procedural issues,” and states that parties may file replies on May 5, 2011.²

DRA agrees with the OIR’s preliminary categorization of the proceeding as ratesetting and that hearings will likely not be necessary. DRA agrees that the Commission should move forward with consideration of the issues identified in the OIR, and recommends that the Commission consider the establishment of upfront guidelines and standards for the utilities’ possible participation in greenhouse gas (GHG) allowance and offset markets in this Rulemaking, rather than in Rulemaking (R.)10-05-006, Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans, given the close relationship of that issue to the cost and risk management issues that will be addressed in this proceeding, and the very challenging schedule and multitude of other issues already subject to consideration in R.10-05-006.

II. DISCUSSION

A. DRA generally supports the proposed scope of the OIR, and the Commission’s intent to “timely address issues” within its jurisdiction.

The OIR’s announced scope is to address “potential utility cost and revenue issues associated with greenhouse gas (GHG) emissions,” including (1) the electric utilities’ use of revenues from the auction of GHG allowances that the California Air Resources Board (ARB) allocates to the utilities; (2) the use of revenues from the sale of Low Carbon Fuel Standard credits the utilities may receive from

¹ Order Instituting Rulemaking to Address Utility Cost and revenue Issues Associated with Greenhouse Gas Emissions, R.11-03-012, March 24, 2011 (OIR), p. 20.

² OIR, p. 20.

ARB; and (3) the treatment of possible GHG compliance costs related to procuring electricity.³ The OIR acknowledges that implementation of ARB's proposed cap-and-trade regulation has been enjoined by a San Francisco Superior Court decision pending resolution of problems identified with the proposed regulation. While it is unclear when those issues will be resolved or whether the final regulation will operate as the currently proposed regulatory program, the OIR observes that it is "prudent for the Commission to begin thinking about how to possibly implement what appears to be ARB's preferred approach, so that this Commission will be prepared if and when ARB moves forward."⁴

DRA agrees that the Commission should begin consideration of the issues within the scope of the OIR now so that it is prepared to proceed expeditiously when the issues with ARB's proposed regulation are resolved. The San Francisco Superior Court decision stays implementation of ARB's proposed regulation, but it did not alter Assembly Bill (AB) 32's requirement that California must lower its GHG emissions to the 1990 level by 2020. Given AB 32's underlying requirement to reduce emissions, and the indication of ARB's preferred regulatory approach, the interests of ratepayers would be best served if the Commission promptly begins addressing the issues that the utilities would face under ARB's proposed regulation.

B. DRA recommends that the Commission consider the establishment of upfront standards and guidelines for the utilities' possible participation in greenhouse gas (GHG) allowance and offset markets in this OIR rather than in R.10-05-006.

This Rulemaking will address various aspects of the utilities' management of their potential exposure to GHG compliance costs and the guidance that the Commission should provide to the utilities regarding potential GHG compliance costs associated with electricity procurement.⁵ One aspect of the utilities' GHG cost exposure is the arrangement for GHG compliance responsibility in bilateral contracts. This Rulemaking will consider the establishment of guidelines so that when the utilities evaluate competing bids to provide electricity, with "potentially different GHG compliance exposure characteristics and with differing spreads between the prices offered for different GHG exposure options,"⁶ they are using assumptions regarding the price of potential future GHG allowances that will ensure that ratepayers do not over-compensate generators that take on the GHG compliance risk.

³ OIR, p. 2.

⁴ OIR, p. 8.

⁵ OIR, p. 17.

⁶ OIR, p. 20.

Another aspect of the utilities' GHG cost exposure is a direct compliance exposure, where the utility is designated as the GHG emissions source (e.g. utility-owned generation and electricity imports). The Long-Term Procurement Planning Proceeding, R.10-05-006, will consider authorization for utilities to buy and sell GHG emissions allowances and offsets⁷ to meet their GHG compliance obligation. However, according to the GHG OIR, either R.10-05-006 or the GHG Rulemaking may consider "the establishment of guidelines for the utilities possible participation in GHG emissions allowance and offset markets."⁸ This issue relates to how utilities will manage their GHG price risk in procuring GHG compliance products for their compliance obligations. This would include the potential GHG financial products that utilities are authorized to procure, the methods by which utilities are authorized to procure GHG products, such as through ARB auctions or on the secondary market, and the risk management strategies that will guide the utilities procurement of GHG instruments.

DRA recommends that the Commission consider and develop upfront standards and guidelines for utility participation in GHG emissions allowance and offset markets in the GHG rulemaking, because the issue closely relates to the establishment of guidelines for evaluating competing bids to provide electricity. In one instance, the utility must evaluate the risk of GHG compliance as it applies to a contract for electricity; while in the other case it must evaluate the risk as it applies to a separate compliance product. In other words, the GHG price assumptions, emissions projections, and other metrics used to establish the market strategies that utilities employ to meet their direct GHG compliance obligations, including procuring GHG allowances and offsets for utility-owned generation and electricity imports, must be the same as those assumptions and metrics used to evaluate the contracts in which a utility assumes (or does not assume) the GHG price risk. In both cases the utilities will be managing their GHG risk and attempting to mitigate the volatility in customer rates due to GHG price movements. A consistent approach should be used to evaluate GHG compliance risk whether that risk is pursuant to a contract to buy electricity or a separate compliance instrument such as an allowance or an offset. Such consistency would best be promoted by considering the issues in the same proceeding. Moreover, R.10-05-006 already has numerous issues pending in a rigorous three-track schedule, so it would be more efficient to address the issue of guidelines for participation in GHG markets in this proceeding.

C. Coordination between R.10-05-006 and the GHG OIR

DRA has previously recommended in R.10-05-006 that the authority to procure GHG products and the development of GHG risk management strategies be addressed in Track III of R.10-05-006, as it

⁷ OIR, p. 20.

⁸ OIR, p. 20.

is an issue that needs separate consideration in a timely manner before the implementation of ARB's proposed cap-and-trade regulation. However, this was before the scope of the GHG OIR was known, and given the close relationship of these issues to those in the GHG OIR, DRA now recommends that the upfront standards and guidelines for the utilities' possible participation in GHG allowance and offset markets be considered in the GHG OIR.

Regardless of which proceeding ultimately addresses this issue, the Commission should ensure that the two proceedings are coordinated so that the utilities' bundled procurement plans reflect procurement authority consistent with the Commission's GHG policy. Whether the decision is issued in R.10-05-006 or this GHG OIR, the utilities will need to update their bundled procurement plans to reflect the authorized GHG products, methods of procuring GHG products, and implementation strategies to comply with ARB's proposed cap-and-trade regulation. The utilities filed their proposed bundled procurement plans on March 25, 2011 in R.10-05-006, and parties are currently preparing testimony in response. The utilities have indicated that they will update their bundled plans to include the procurement authority to transact GHG products in order to comply with ARB's proposed cap-and-trade regulation following Commission approval of that authority.²

D. Procedural issues

DRA agrees with the preliminary categorization of this proceeding as ratesetting and that the Commission should consider issues by allowing parties to submit comments and participate in workshops. It appears that hearings will be unnecessary.

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² Southern California Edison AB 57 Bundled Procurement Plan, R.10-05-006, March 25, 2011, page 42; San Diego Gas & Electric Company 2012 Long-Term Procurement Plan, R.10-05-006, March 25, 2011, Appendix F, page F1; Pacific Gas and Electric Company Bundled Procurement Plan, R.10-05-006, March 25, 2011, page 24.

III. CONCLUSION

DRA respectfully recommends that the Commission consider the recommendations summarized in this prehearing conference statement and establish upfront standards and guidelines for the utilities' possible participation in GHG allowance and offset markets in this OIR rather than in the Long Term Procurement proceeding, R. 10-05-006.

Respectfully submitted,

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