



FILED

04-16-08

04:37 PM

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)

**ADMINISTRATIVE LAW JUDGES' RULING
UPDATING PROCEEDING SCHEDULE AND
REQUESTING COMMENTS ON EMISSION ALLOWANCE
ALLOCATION POLICIES AND OTHER ISSUES**

1. Summary

In this ruling, we establish the schedule for further activities that will lead to a joint proposed decision with recommendations to the California Air Resources Board (ARB) on remaining policy issues regarding greenhouse gas (GHG) regulatory strategies for the electricity sector. Parties may file comments on all of these remaining issues in one set of comprehensive comments and reply comments, as directed below.

In this ruling, we request comments on the attached staff paper, which analyzes several potential methods for the allocation of GHG emission allowances, and solicit responses to certain additional questions addressing GHG emission allowance policies. In their comments, parties may propose alternative emission allocation methods. Parties may utilize the GHG Calculator developed by Energy and Environmental Economics, Inc. (E3), as further described below, to help inform their comments and proposals. Another forthcoming ruling

(or rulings) may include additional guidance regarding the scope of parties' comments on other issues, including flexible compliance, treatment of combined heat and power (CHP), and other remaining policy and modeling issues.

2. Proceeding Schedule

We establish the schedule for further activities that will lead to a joint California Public Utilities Commission (Public Utilities Commission) and California Energy Commission (Energy Commission) proposed decision with recommendations to ARB on remaining policy issues for the electricity sector, including allocation of emission allowances, flexible compliance mechanisms, the treatment of CHP facilities, and the electricity sector's potential contribution toward meeting the economy-wide GHG emission reduction goals set by Assembly Bill (AB) 32. Today's ruling provides guidance regarding parties' comments on GHG emission allowance policies. Subsequent ruling(s) will provide additional guidance regarding the scope of comments (which will be due at the same time) addressing modeling results and other policy issues.

As previously noticed, a two-day joint workshop will be held commencing April 21, 2008, at the Public Utilities Commission, which will address the analysis and positions presented in the staff paper and other issues related to GHG emission allocation policies. The workshop will also address preliminary results from E3's Stage 2 modeling efforts, including potential impacts on rates of the allocation proposals in the staff paper. This workshop will be webcast. A preliminary workshop agenda is as follows:

| | |
|--------------------|--|
| April 21 morning | Overview of changes to E3 model |
| April 21 afternoon | Presentation and discussion of staff paper on allocation |

April 22 morning Presentation and discussion of preliminary
E3 modeling results of allocation options

A more detailed workshop agenda and instructions for accessing the webcast will be posted on the Public Utilities Commission website and e-mailed to the service list in this rulemaking.

An additional workshop on modeling issues will be held on May 6, 2008. At that time, E3 will present final modeling results and will provide parties with training regarding operation of E3's revised GHG Calculator. This workshop should provide parties the information necessary to produce their own modeling scenarios for possible presentation in their comments. The meeting will be webcast and the GHG Calculator in MS-Excel will be viewable over the internet via Web-Ex. Further information about the webcast and the workshop agenda will be e-mailed to the service list in this rulemaking and posted on the Public Utilities Commission website. E3 might make final revisions in response to parties' comments during the workshops, and plans to post the final GHG Calculator shortly thereafter.

The planned schedule addressed in this ruling is summarized below:

| | |
|---|-------------------|
| Workshop on allowance allocation policies and preliminary E3 model results for Stage 2 | April 21-22, 2008 |
| Ruling providing further guidance regarding record development on flexible compliance mechanisms, treatment of CHP facilities, and other issues | April 30, 2008 |
| Workshop on E3 model results and training for operating the E3 GHG Calculator | May 6, 2008 |
| E3 posts revised final model and GHG Calculator | May 10, 2008 |

Comments due May 27, 2008

Reply comments due June 10, 2008

3. GHG Emission Allowance Allocation Methods

On June 22, 2007, a workshop was held at the Energy Commission in this joint Public Utilities Commission and Energy Commission proceeding. While that workshop focused on allocation of GHG emission allowances under a load-based cap for the electricity sector, an October 15, 2007 ruling requested comments on allowance allocation-related issues for a deliverer/first seller approach and also for the natural gas sector, consistent with amendments to the rulemaking adopted in Public Utilities Commission Decision (D.) 07-07-018 and D.07-05-059. A second workshop on emission allocation issues was held at the Energy Commission on November 5, 2007.

In March 2008, the Public Utilities Commission and the Energy Commission adopted a joint decision (Public Utilities Commission D.08-03-018 and Energy Commission Interim Decision CEC-100-2008-002-F, respectively), which recommends that, in implementing AB 32, ARB adopt a mix of direct mandatory/regulatory requirements for the electricity and natural gas sectors and a cap-and-trade system that uses a deliverer approach for the electricity sector. In that decision, the Commissions recommend that some portion of the emission allowances available to the electricity sector should be auctioned. They also recommend that any policy for the distribution of allowances provide that revenues from the sale of allowances be used primarily to benefit consumers in the energy sectors directly.

In the joint decision, the two Commissions conclude further:

[A]dditional record development is needed to allow us to make more complete recommendations on allowance distribution issues, including the proper mix between auctions and administrative allocations of emission allowances for the electricity sector, the manner in which auction proceeds should be used for the benefit of electricity consumers, and the manner in which any administrative allocations should be made. We will consider various options for the allocation of allowances, including to retail providers and/or deliverers. The concerns of all parties, along with potential solutions, will be considered carefully.¹

Attached to this ruling is a staff paper which analyzes several potential allowance allocation methodologies. As mentioned above, the two-day workshop on April 21-22, 2008 will address the staff paper and other emission allocation issues, in addition to Stage 2 model results.

Following the workshop, parties are invited to file comments on the staff paper and the two articles attached to the staff paper. Parties may also submit their own proposals for emission allowance allocation methods. Parties may use the evaluation criteria staff uses in its paper, or may propose other criteria, and may use the Stage 2 model to quantify the effects of any proposed allocation method.

In addition to general comments parties may wish to submit, we request that parties address the following specific questions related to emission allocation methods and policies:

1. Please explain in detail your proposal for how GHG emission allowances should be allocated in the electricity sector.

¹ D.08-03-018, mimeo. at 9.

2. Does any of the allowance allocation options discussed in the staff paper, or in the articles attached to the staff paper, or in your opening comments, raise concerns under the Dormant Commerce Clause? If so, please explain why that allocation option(s) may violate the Commerce Clause, including citations to specific relevant legal authorities. Also, explain if and, if so, how the allocation option(s) could be modified to avoid the Commerce Clause problem.
3. Does any of the allowance allocation options discussed in the staff paper, or in the articles attached to the staff paper, or in your opening comments, raise legal concerns about whether they involve the levying of a tax and, therefore, would require approval by a two-thirds vote of the Legislature? If so, please explain why that allocation option(s) is taxation, including citations to specific relevant legal authorities. Also, explain if and, if so, how, the allocation option(s) could be modified to avoid such legal concerns.
4. Does any of the allowance allocation options discussed in the staff paper, or in the articles attached to the staff paper, or in your opening comments, raise any other legal concerns? If so, please explain in full with citations to specific relevant legal authorities. Also, explain if and, if so, how, the allocation option(s) could be modified to avoid such legal concerns.
5. For reply comments: Do any of the allowance allocation options discussed in other parties' opening comments raise concerns under the Dormant Commerce Clause? If so, please explain why that option(s) may violate the Commerce Clause, including citations to specific relevant legal authorities. Also, explain if and, if so, how the allocation option(s) could be modified to avoid the Commerce Clause problem.
6. For reply comments: Do any of the options discussed in other parties' opening comments raise legal concerns about whether they involve the levying of a tax and, therefore, would require approval by a two-thirds vote of the Legislature? If so, please explain why that allocation option(s) is taxation, including citations to specific relevant legal authorities. Also, explain if

and, if so, how, the allocation option(s) could be modified to avoid such legal concerns.

7. For reply comments: Do any of the allowance allocation options discussed in other parties' opening comments raise any other legal concerns? If so, please explain in full with citations to specific relevant legal authorities. Also, explain if and, if so, how the allocation option could be modified to avoid such legal concerns.
8. The staff paper describes an option that would allocate emission allowances directly to retail providers. If you believe that such an approach warrants consideration, please describe in detail how such an approach would work, and its potential advantages or disadvantages relative to other options described in the staff paper. Address any legal issues related to such an approach, as described in Questions 2 - 4 above.
9. Please address the effect that each of the allowance allocation options discussed in the staff paper, or in the articles attached to the staff paper, or in your own or other parties' opening comments, would have on economic efficiency in the economy, and the economic incentives that each option would create for market participants.

In D.08-03-018, the two Commissions concluded that the proceeds from the auction of GHG emission allowances for the electricity sector should be used primarily to benefit electricity consumers in California in some manner. The Commissions identified two methods for returning revenues from allowance auctions: (1) using auction revenues to augment investments in energy efficiency and renewable power, or (2) using revenues to maintain affordable rates. Please answer the following questions regarding the use of auction revenues.

10. Describe in detail the method you prefer for returning auction revenues to benefit electricity consumers in California. In addition to your recommendation, comment on the pros and cons of each method listed above, especially regarding the benefit to electricity consumers, impact on GHG emissions, and impact on consumption of electricity by consumers.

11. If auction revenues are used to augment investments in energy efficiency and renewable power, how much of the auction proceeds should be dedicated to this purpose?
12. If auction revenues are used to maintain affordable rates, should the revenues be used to lower retail providers' overall revenue requirements, returned to electricity consumers directly through a refund, used to provide targeted rate relief to low-income consumers, or used in some other manner? Describe your preferred option in detail. In addition to your recommendation, comment on the pros and cons of each method identified for maintaining reasonable rates.
13. If you prefer a combination of methods for returning auction revenues, describe your preferred combination in detail.

4. Stage 2 Modeling

The purpose of the modeling effort in this proceeding is to produce a tool by which the impact of alternate policy means to achieving emissions reductions within the electricity sector under AB 32 may be quantified. The modeling effort seeks primarily to provide insights about the relative cost-effectiveness of GHG abatement measures available within the electricity sector, as well as the overall cost impacts of achieving GHG emission reductions of varying stringency within the 2020 timeframe. The insights from this modeling effort will inform the two Commissions as they make further recommendations to ARB.

This modeling effort may also assist ARB's macroeconomic modeling of the broader economic impacts of potential GHG emission reduction measures across all sectors in the California economy. The collective insights gained from the electricity sector and macroeconomic modeling will position ARB for making better-informed decisions about assigning sector- and entity-level GHG emission reduction obligations.

The Public Utilities Commission has entered into a contract with E3 as the prime contractor to develop an electricity sector model for evaluating GHG

policies. This project is being overseen by a multi-agency staff team that includes, in addition to Public Utilities Commission staff, representatives of ARB and the Energy Commission.

E3 has divided its analysis into two stages. The first stage was completed in November 2007, and the second stage will be completed by June 2008. In Stage 1, E3 developed several scenarios to model a range of GHG emission reductions for the entire electricity sector and associated cost impacts. By a November 9, 2007 ruling, parties were provided the preliminary results from Stage 1, which E3 then presented at a November 14, 2007 workshop. Parties were permitted to file opening and reply comments during January 2008. In response to those comments and to reflect the deliverer approach adopted in D.08-03-018, E3 has made further modifications to the GHG model and has expanded its functionality to permit modeling of impacts on rates and total program costs of several different allowance allocation methods.

At the two-day workshop commencing on April 21, 2008, E3 will explain modifications done in response to parties' Stage 1 comments, educate parties on the additional functionality of the GHG model, and share preliminary results for Stage 2. An additional workshop on modeling issues will be held on May 6, 2008, during which E3 will present final Stage 2 model results and will provide parties with training regarding operation of the revised GHG Calculator.

Parties may address the E3 modeling effort in their comments and reply comments due on, respectively, May 27, 2008 and June 10, 2008. We may provide additional guidance in an ALJ ruling after the workshops regarding modeling-related information we would like to see in these comments.

5. Filing Requirements

All parties filing comments or reply comments should file them at the Public Utilities Commission's Docket Office and should serve them consistent with Rules 1.9 and 1.10 of the Public Utilities Commission Rules of Practice and Procedure and Resolution ALJ-188. The parties should serve their comments and reply comments on the service list for R.06-04-009 posted at www.cpuc.ca.gov when the filings are due, and should mail a hard copy of the filings to the assigned Commissioner and assigned Administrative Law Judges.

To support the ability of the Public Utilities Commission and the Energy Commission to develop joint recommendations to ARB, we ask that parties submit their comments and reply comments both in R.06-04-009 and to the Energy Commission's docket 07-OIIP-01.

Procedures for submitting the filings to the Energy Commission are included here for the parties' convenience. The Energy Commission encourages comments by e-mail attachments. In the subject line or first paragraph of the comments, include **Docket 07-OIIP-01**. When naming your attached file, please include your name or your organization's name. The attachment should be either in Microsoft Word format or provided as a Portable Document File (PDF). Send your comments to docket@energy.state.ca.us and to project manager Karen Griffin at kgriffin@energy.state.ca.us. In addition to electronic filing, **one paper copy** must also be sent to:

California Energy Commission
Docket Office, MS-4
Re: Docket No. 07-OIIP-01
1516 Ninth Street
Sacramento, CA 95814-5512

IT IS RULED that:

1. As directed in this ruling, parties may file comments no later than May 27, 2008 that address the staff paper on GHG emission allowance allocation methodologies attached to this ruling, and other matters as described in this ruling. Parties may file reply comments no later than June 10, 2008.

2. Parties shall file their comments and reply comments at the Public Utilities Commission's Docket Office and shall serve them consistent with Rules 1.9 and 1.10 and Resolution ALJ-188. The parties shall serve their filings on the service list for R.06-04-009 posted at www.cpuc.ca.gov when the filings are due, and shall mail a hard copy of the comments to the assigned Commissioner and the assigned Administrative Law Judges.

3. As previously noticed, a two-day workshop shall be held on GHG emission allowance allocation issues and modeling issues commencing at 10:00 a.m. on April 21, 2008, at the Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California.

4. Another workshop shall be held on modeling issues and to provide parties with training regarding operation of the revised GHG calculator commencing at 10:00 a.m. on May 6, 2008, at the Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California.

Dated April 16, 2008, at San Francisco, California.

/s/ CHARLOTTE F. TERKEURST
Charlotte F. TerKeurst
Administrative Law Judge

/s/ JONATHAN LAKRITZ
Jonathan Lakritz
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated April 16, 2008, at San Francisco, California.

/s/ LILLIAN LI

Lillian Li