

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 JUDGE'S RULING
AND NOTICE OF PREHEARING CONFERENCE**

Today's ruling provides notice of a May 10, 2006 prehearing conference (PHC), establishes the due date for pre-PHC comments on the scope, schedule and need for evidentiary hearings, and addresses other procedural matters.

I. Notice of PHC and Due Date for Pre-PHC Comments

A PHC will be held at 10:00 a.m. on Tuesday, May 10, 2006, at the Commission Hearing Room, 505 Van Ness Avenue, San Francisco, California.

The purpose of the PHC will be to address scoping issues, scheduling and other procedural matters, including the need for evidentiary hearings. Pre-PHC comments addressing these issues are due by May 5, 2006. In preparing their comments on the scope of this rulemaking, interested parties should review the Preliminary Scoping Memo contained in the Order Instituting Rulemaking (OIR) and the Attachment to this ruling.¹ Interested parties should also comment on the proposed schedule for Phase 1 and prioritization of issues that I have

¹ See OIR, Section III.

outlined below, and indicate if there are other scheduling considerations (e.g., hearings in other proceedings) that should be considered in developing a final schedule.

At the PHC, I will also address the categorization of this proceeding. As noticed in the OIR, any person who objects to the preliminary categorization of this proceeding as quasi-legislative shall raise such objection no later than 10 calendar days from the date the OIR was issued.²

II. Scope of Proceeding and Proposed Phase 1 Schedule

The OIR presents a preliminary scoping memo that sets forth two major issue areas in this rulemaking: (1) threshold issues associated with considering the adoption and design of a greenhouse gas (GHG) performance standard, and (2) implementation issues associated with the load-based GHG emissions cap adopted in Decision (D.) .06-02-032 as part of the Commission's procurement incentive framework. This rulemaking is also the forum for addressing the implementation issues associated with a GHG performance standard that may be adopted upon addressing the threshold issues under (1) above. Drawing from the preliminary scoping memo and augmenting as appropriate, the Division of Strategic Planning has compiled a listing of the issues/questions to address in this rulemaking, organized by issue area. That listing is presented in the Attachment to this ruling.

In the OIR, the Commission stated its goal to address the threshold policy issues associated with a GHG performance standard by year end, while moving forward with key implementation issues associated with the procurement

² *Ibid.* Section IV, Ordering Paragraph 6.

incentive framework established in D.06-02-032.³ Therefore, I have developed a schedule that focuses on addressing the GHG performance standard threshold issues first, so that a decision can be prepared for Commission consideration by year end. In doing so, I have carefully considered Commission staff resource availability as well as the work load on Respondents and interested parties, many of which will also be participating in other high-priority resource proceedings during the remainder of 2006. Finally, the proposed schedule is compatible with my sabbatical plans for late summer/early fall.

Phase 1 of this proceeding will address the threshold performance standard policy issues, as described more fully in the Attachment. My proposed schedule for Phase 1 is as follows:

Phase 1 Schedule

Pre-Workshop Comments on Phase 1 Issues	June 12, 2006
Workshop	June 21-23, 2006
Post-Workshop Comments	<i>To be scheduled</i>
Draft Workshop Report/Staff Recommendations	August 21, 2006
Opening Comments on Workshop Report	September 1, 2006
Reply Comments on Workshop Report	September 12, 2006
Final Workshop Report/Staff Recommendations	September 25, 2006
Draft Decision Addressing Final Staff Recommendations and Parties' Positions	November 9, 2006
Comments on Draft Decision	November 29, 2006
Reply Comments on Draft Decision	December 4, 2006
Final Decision (on Agenda)	December 14, 2006

³ OIR, Section IV.

The Phase 1 workshop will be facilitated by DSP staff or their consultants, and I will be in attendance.

With respect to the other issue areas in this proceeding (collectively referred to as “Phase 2” in the Attachment), I intend to move forward as expeditiously as possible, beginning this fall, with GHG emissions reporting protocols and the registration requirements discussed in D.06-02-032. In particular, the Commission articulated its preference to require the immediate registration of emissions by all generation resources serving California load with the California Climate Action Registry (CCAR).⁴ Recognizing that there was more work to be done before this requirement could be implemented effectively, the Commission stated that the implementation phase should “explore with CCAR ways in which their protocols can be modified to include generation/facility specific data to fit within a load-based cap” during the implementation phase.⁵ In conjunction with that work, a date will be established by which all power purchase agreements that Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) sign for power should include a provision requiring supplier registration with the CCAR. In addition, as part of the implementation

⁴ D.06-02-032, *mimeo.*, p. 4. CCAR is a non-profit public benefit corporation created pursuant to Health and Safety Code Section 42820. It serves as a voluntary GHG registry of participating companies’ emissions profiles. Participating power generators and electric utilities account for and report GHG emission inventories according to the CCAR’s reporting protocols. PG&E, SCE and SDG&E are already voluntary members of CCAR.

⁵ *Id.*

phase, the Commission will develop a method for assigning emissions values to supplies that are unregistered with the CCAR.⁶

In their pre-PHC comments, parties should discuss the sequence (phasing) and timing for addressing the additional implementation issues identified in the Attachment (and any additional issues that parties may identify), and the appropriate procedural forum (workshops/evidentiary hearings) for addressing them.

III. Coordination with CCAR, Governor's Climate Action Team and California Energy Commission

In D.06-02-032, the Commission recognized the need to work closely with the CCAR and the Governor's Climate Action Team, which includes the California Energy Commission (CEC), in moving forward with implementing a load-based cap⁷ In particular, as discussed above, the Commission recognized that implementation of an emissions registration requirement for generation resources would require close coordination with the CCAR. In discussing the

⁶ *Ibid.*, pp. 48-49. Ordering Paragraph 2.h.

⁷ 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 now being referred to as the Climate Action Team. The Climate Action Team is currently comprised of representatives from the Governor's Office, CalEPA, California Public Utilities Commission, California Energy Commission, California Department of Transportation, Resources Agency, California Air Resources Board, California Integrated Waste Management Board and California Department of Food and Agriculture.

development of a baseline and emissions reductions (and associated cap) over time, the Commission 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.”⁸

More generally, in discussing the implementation steps associated with a GHG emissions cap, the Commission articulated its intent “to coordinate closely with CCAR during this process to ensure that the appropriate data collection, reporting and tracking protocols are developed in tandem with these implementation steps.”⁹ Similarly, consistent with Energy Action Plan II, the Commission stated its intent to collaborate and coordinate with the Governor’s Climate Action Team, as well as other state, regional or federal agencies that are exploring design options for cap-and-trade programs, throughout the implementation of D.06-02-032.¹⁰

Accordingly, as envisioned by D.06-02-032, we will work closely with the CCAR and Climate Action Team members, including the CEC. It is my

⁸ D.06-02-032, *mimeo.*, p. 40.

⁹ *Ibid.*, p. 53. See also Finding of Fact 24.

¹⁰ *Ibid.*, pp. 3, 5, 10, 26, 46, 55 and Conclusion of Law 1.

understanding that these organizations do not intend to participate as parties to this rulemaking.

IV. Service List, Filing Requirements, Electronic Service Protocols

The OIR was served on a temporary service list, comprised of utility and non-utility Respondents and the service lists in eight resource-related proceedings. To create a permanent service list in this rulemaking, the Commission directed the following:¹¹

- (1) Within 15 days of the date of mailing of this order, any individual or representative of an organization who wishes to be placed on the service list in this rulemaking must send a request to the Commission's Process Office.
- (2) The request must be sent both electronically to the Process Office (Process_office@cpuc.ca.gov) and by hard copy to the Process Office at 505 Van Ness Avenue, Room 2000, San Francisco, California 94102.
- (3) The request must include the following: (a) this proceeding number, (b) the name of the individual/representative and organization (as appropriate), (c) mailing address, (d) electronic address, (e) telephone number, and (f) where to be listed on the service list (under the "appearances," "state service," or "information-only" categories).

Accordingly, all interested parties (not including Respondents) should follow these procedures if they wish to be placed on the permanent service list in this proceeding. All parties filing pre-PHC comments shall serve their comments on the service list posted as of May 5, 2006 at www.cpuc.ca.gov when those comments are due. If the Process Office is unable to compile the permanent service list by that date, pre-PHC comments should be served on Respondents and the service lists listed in my ruling below.

¹¹ OIR, Section V.

As provided for in the Commission's Rules, I will consider requests to be added to the permanent service list by persons attending the May 10, 2006 PHC in person and submitting an appearance form to me at that time. Those who demonstrate a plan to actively participate in the proceeding will be granted party status. Any others filing appearances will be granted Information Only or other appropriate status. However, I encourage all interested parties to follow the procedures set forth in the OIR, and summarized above, rather than waiting to attend in person at the PHC to file an appearance

All filings required by this ruling shall be filed at the Commission's Docket Office and served pursuant to the Electronic Service Protocols attached to the OIR and consistent with Rules 2.3 and 2.3.1.

IT IS RULED that:

1. As described in this ruling, a PHC will be held at 10:00 a.m., on Wednesday, May 10, 2006, at the Commission's Hearing Room, 505 Van Ness Avenue, San Francisco, California.
2. Any person who objects to the preliminary categorization set forth in the OIR shall raise such objection no later than 10 calendar days from the date the OIR was issued.
3. As directed in this ruling, pre-PHC comments addressing scoping and scheduling issues, including the need for evidentiary hearings, are due no later than May 5, 2006.
4. A permanent service list will be established as described in the OIR. If the Process Office is unable to compile the permanent service list by the due date for pre-PHC comments, parties should serve these comments on Respondents and the service lists described in #6 below.

5. The comments required by this ruling shall be filed at the Commission's Docket Office and served pursuant to the Electronic Service Protocols attached to the OIR and consistent with Rules 2.3 and 2.3.1

6. This ruling shall be served on the Respondents listed in Attachment 3 of the OIR and the service lists in the following proceedings:

- R.04-04-003 and R.06-02-013, the procurement rulemakings;
- R.03-10-003, the community choice aggregation rulemaking;
- R.01-08-028, the energy efficiency rulemaking or its successor rulemaking;
- R.04-04-026, the renewables portfolio standard rulemaking;
- I.00-11-001, the transmission planning investigation;
- R.04-01-026, the transmission assessment rulemaking;
- R.04-03-017, the distributed generation rulemaking; and
- R.04-04-025, the avoided cost rulemaking.

For the purpose of serving this ruling, those organizations and individuals listed under the state service list and information-only categories in the service lists above will be served electronically only.

Dated April 17, 2006, at San Francisco, California.

/s/ MEG GOTTSTEIN
Meg Gottstein
Administrative Law Judge

ATTACHMENT

Page 1

This ruling seeks comments on the proposed scope, schedule, and questions related to the two major issue areas in this rulemaking: (1) threshold issues associated with considering the adoption and design of a GHG performance standard, (2) implementation issues associated with the load-based GHG emissions cap. Please identify any significant issue areas not captured in the lists below that should be addressed in either Phase 1 or 2, and explain why. In addition, present recommendations regarding the prioritization and staging of these issues.

Phase 1: Consideration of the GHG Performance Standard Policy Statement

- 1) Is a GHG emissions performance standard necessary and appropriate along with a load-based cap on GHG emissions?
- 2) Will a GHG emissions performance standard (such as the one adopted by the Commission in October 2005) achieve the Commission's goals as articulated in the Energy Action Plan and Commission decisions? How does it contribute to the environmental goals established by the Governor's Executive Order S-3-05?
- 3) If a performance standard is adopted, should it be developed:
 - (a) As an interim measure in the near-term, so it may guide ongoing procurement planning while the Commission takes the necessary steps to fully implement the load-based cap adopted in D.06-02-032, or
 - (b) With the intention to apply it concurrently with the load-based cap adopted by D.06-02-032?
- 4) If adopted, how should the GHG performance standard be integrated into the state's other GHG emissions policies, including:
 - (a) the carbon adder (D.04-12-048)?
 - (b) the procurement incentive framework (load-based GHG emissions cap) adopted in D.06-02-032?
 - (c) development of the long-term procurement filings in R.06-02-013?

ATTACHMENT

Page 2

- 5) Are there changes to the standard set forth in the October 2005 GHG Performance Standard Policy Statement that would further ensure achievement of these goals?
- 6) On what basis should the standard be applied: on the utility's entire long-term procurement portfolio, each individual long-term procurement contract, baseload facilities and contracts only, or another basis?
- 7) How should "long-term" procurement be defined: for contracts periods of three years or greater, five years or greater, or another time period?
- 8) What ratepayer costs would be associated with implementing the standard and how could these costs be mitigated?
- 9) If a GHG performance standard is adopted, what enforcement mechanisms would be appropriate and necessary?
- 10) In your opinion, would a GHG performance standard deter development of intensive GHG-emitting new generation infrastructure either within California or to serve California's load? Will it accelerate development of low GHG-emitting generation infrastructure either within California or to serve California's load? Why or why not?
- 11) How would the implementation of a GHG performance standard, such as the one envisioned in the October 2005 policy statement, impact the types of technologies being utilized for new generation facilities?
- 12) Should offsets be allowed? Are the issues associated with offsets for a GHG performance standard sufficiently similar to those associated with offsets for a load-based GHG emissions cap that the Commission could address these questions together?
- 13) Other issues or recommendations that we should consider that are not covered above?

Phase 2: Implementation Issues Associated with the Load-Based GHG Cap

The following is a listing of key issues that will need to be addressed in implementing a load-based cap, including the CCAR registration requirements discussed by the Commission in D.06-02-032. Additional questions are also posed for issue areas #1 and #2.

ATTACHMENT

Page 3

Phase 2 Issue Areas:

- 1) Establish GHG emissions reporting standards and requirements, including treatment of GHG emissions from non-specific resource contracts. Explore with CCAR ways in which their protocols may need to be modified to include generation/facility specific data to fit within a load-based cap.
- 2) In conjunction with work in Issue area #1 above:
 - (a) Establish a date by which all power purchase agreements that PG&E, SDG&E and SCE sign for power will include a provision requiring supplier registration with the CCAR, and
 - (b) Develop a method for assigning emissions values to supplies that are unregistered with the CCAR.
- 3) Establish the GHG emissions baseline for each LSE.
- 4) Establish GHG emission reduction requirements over time for LSEs as a whole and for each individual LSE, relative to the baseline.
- 5) Adopt and administer a process for allocating emission allowances.
- 6) Evaluate and consider for adoption various flexible compliance mechanisms, including but not limited to multi-year compliance periods, early action credits, banking provisions, in-state and out-of-state trading options, emission offsets, among others.
- 7) Develop appropriate performance incentives and penalties. Explore the concept of allowance sale incentives, consistent with the direction in D.06-02-032.
- 8) Evaluate the costs and benefits of the GHG emissions cap and associated flexible compliance options that are developed for Commission consideration during the implementation phase. Develop appropriate scenario analysis for this purpose.
- 9) Address how energy service providers and community choice aggregators will be included under the load-based cap incentive framework. In

ATTACHMENT

Page 4

particular, per D.06-02-032, identify issues for which these energy service providers, community choice aggregators and the utilities should be subject to the same terms and conditions of GHG reduction requirements and associated caps, and those where differences may be appropriate.

- 10) Define the steps to take to ensure that GHG emissions associated with customer use of natural gas are incorporated into a procurement incentive framework for the future.
- 11) Other significant issues not covered in this list.

Specific Questions Regarding Issues (1) and (2) above:

- a) How accurate are the LSEs' current emissions estimates, including emissions associated with imported power and non-unit-specific power contracts? What, if any, reporting or accounting improvements are needed to ensure that emissions reported reflect actual emissions associated with LSE load in order to implement a load based cap-and-trade program?
- b) Do we have enough information to account for the emissions characteristics of the Department of Water Resources power contracts?
- c) Do we have enough information to account for the emissions characteristics of liquidated damages contracts generally?
- d) What improvements should be made to improve the accuracy of LSE emissions reporting, especially as it relates to non-unit-specific power contracts?
- e) Should the CCAR's reporting protocols be modified to allow for facility-based registration and reporting for entities who sell power to LSEs? If so, how would facility-based reporting address entities who do not offer unit-specific contracts? What other options do you recommend that would capture independently verified emissions values and estimates for LSE contracted power?
- f) What emissions information should be included in LSE procurement contracts? And how should this information be verified?

ATTACHMENT

Page 5

- g) In the absence of independent verification of resource-specific or contract-specific emissions values, or in order to deter inappropriate “contract shuffling,” should a default emissions factor be assigned at the value of coal for any non-renewable supplies of electricity with fossil fuel emissions? Or should the emissions value be assigned at an average portfolio level or some other level?
- h) What modifications or updates should be made to existing emission factors and estimates, if any? Are the estimates used by CCAR the best estimates available?; are they adequate to support a load-based cap?; if improvements are needed, how can they be accomplished in the near term?
- i) What are the prospects for a region-wide generation attribute tracking system? What work should be done in California and, if appropriate, elsewhere to support a multi-state approach to this issue?

(END OF ATTACHMENT)

R. _____ MEG/niz

CERTIFICATE OF SERVICE

I certify that I have by mail and electronically this day served a true copy of the original attached Administrative Law Judge’s Ruling and Notice of Prehearing Conference on Respondents and all appearances of record in: R. 04-04-003 and R.06-02-013, R.03-10-003, R.01-08-028, R.04-04-026, I.00-11-001, R.04-01-026, R.04-03-017, R.04-04-025, or their attorneys of record. I have also served electronically those organizations and individuals listed under the state service and information-only categories in the proceedings referenced above.

Dated April 17, 2006, at San Francisco, California.

/s/ ELVIRA NIZ
Elvira Niz

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission’s policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074,

R._____ MEG/niz

ATTACHMENT

Page 7

TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.