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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking to Review Climate Credits for Current Compliance with Statute and for Potential Improvements.	Rulemaking 20-05-002 (Filed May 7, 2020)

COMMENTS OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION AND DIRECT ACCESS CUSTOMER COALITION

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Pursuant to the directive in the Assigned Commissioner's Scoping Memo and Ruling issued July 3, 2020 (Scoping Ruling), the California Large Energy Consumers Association (CLECA)[1] and Direct Access Customer Coalition (DACC)[2] submit these comments. These comments focus on the issues associated with Large Emissions-Intensive, Trade-Exposed (EITE) entities.

I. INTRODUCTION

The California Public Utilities Commission (Commission) and the California Air Resources Board (CARB) recognize that for California's climate goals to succeed, the state must do all it can

[1] CLECA is an organization of large, high load factor industrial customers throughout California; the members are in the cement, steel, industrial gas, pipeline, beverage, cold storage, and mining industries and share the fact that electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite renewable generation. CLECA has been an active participant in Commission regulatory proceedings since 1987, and all CLECA members engage in Demand Response (DR) programs to both promote grid reliability and help mitigate the impact of the high cost of electricity in California on the competitiveness of manufacturing. CLECA members have participated in the Base Interruptible Program (BIP) and its predecessor interruptible and non-firm programs since the early 1980s.

[2] DACC is a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements. Pursuant to Rule 1.8(d) of the Rules of Practice and Procedure, DACC has authorized counsel for CLECA to tender for filing these comments.

to keep Large EITE entities in California. Large EITE manufacturing is energy-intensive, requiring a large amount of power to produce the goods and services that California and the nation require. California has cleaner electric energy than most other states. Thus, if Large EITE manufacturing moves out of the state, the energy used in that out-of-state manufacturing facility is likely to have a higher carbon content than the electricity that would have been used in California, thereby increasing associated emissions. Transportation of the final product back to California, be it by rail or by truck or by cargo ship, would also increase associated emissions. Accordingly, the Commission and CARB regulations seek to keep Large EITE entities buffered from the cost of carbon in California's electricity rates, as most other states and countries lack a carbon price in the cost of electricity, to prevent economic leakage. (CARB separately allocates allowances to Large EITE entities for the *direct* emissions associated with their production processes to prevent emissions leakage.)

Currently, CARB provides allowances to the Investor-Owned Utilities for the Large EITE entities' *indirect* emissions associated with their electricity use. These allowances are monetized in the Cap-and-Trade Auctions; then, under the Commission's oversight, the Investor-Owned Utilities transfer the value to the Large EITE entities as a credit on their bills. The proposal to transfer this credit process from the Commission to CARB raises significant concerns over timing, and a potential gap in coverage for Large EITE entities. The net carbon benefit to keeping Large EITE entities in California, long recognized by this Commission, compels carefully coordinated action by CARB and this Commission now. The need to ensure that there is no gap in allowance allocations for the Large EITE entities' indirect emissions is driven by the need to prevent economic leakage.

II. COMMENTS

A. Threshold Issues

1. <u>COVID-19 Threshold Issue</u>: Should the Commission consider, in this proceeding, any impacts of COVID-19 and the economic downturn on the climate credits? For example, this could include the timing of issuing the credits due to the potential for increased long term work from home and the economic downturn and/or the timing of implementing any changes to the climate credits.

In 2012, the Commission set the priority for the allocation of greenhouse gas allowance revenues: first, to compensate EITE entities; second, to offset the rate impacts to small business; and lastly, to residential customers with a semi-annual bill credit based on the remaining revenues.[3] The Straw Proposal would rightly preserve this priority.[4] Consideration of the impacts of COVID-19 vis-à-vis individuals working from home long-term, and the timing of issuing the credits, likewise should not lead to a change in these relationships. The economic impacts of COVID-19 are not limited to the residential class, and the Commission must not lose sight of the ongoing need to avoid economic leakage.

2. <u>CARB Coordination Timing Threshold Issue</u>: What should the timing be for coordinating, addressing, and implementing these issues?

We are gratified by the Scoping Ruling's anticipation of collaboration with CARB in this proceeding, and recognize the Straw Proposal's *intent* to provide continuous coverage.[5] The

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[3] *See* D.12-12-033, at 49-50. Initially there was also a volumetric credit on the higher tiers, but this was discontinued.

[4] Staff Straw Proposal and Request for Input on Electric Investor-Owned Utilities Cap-and-Trade Program Allowance Proceeds Use (Straw Proposal), Appendix 5, at 59 ("CPUC staff's proposed handoff process for EITE credits preserves the relationship among the available pool of assistance funding, EITE, and residential customers to the extent possible, adjusting future residential credits for the EITE true-up allocations where practical.").

[5] Scoping Ruling, at 3; *see also* Straw Proposal, at 59 ("The CPUC and CARB will both continue initial and true-up allocations on their existing schedules until both CARB and the CPUC mutually agree to transfer crediting responsibilities").

CARB letter dated July 17, 2020, to the parties in this proceeding, describes it thusly:

> The Straw Proposal outlines a procedure for a potential transition from the current process of crediting large EITE facilities to a future process where CARB directly allocates allowances to these facilities. *Under the Straw Proposal, the current process of crediting large EITE facilities continues and would only end once CARB begins directly allocating allowances to these facilities for electricity purchases.* So, under the Straw Proposal, large EITE facilities will have continuous leakage protection for carbon costs in electricity rates.[6]

As the CARB Letter states, "These bill credits are provided to large EITE facilities to minimize emissions leakage risk due to carbon costs included in electricity rates."[7] However, as Pacific Gas & Electric Company explained, the CARB allocations to the Investor-Owned Utilities will be reduced, and will not include allowance allocations to cover indirect emissions of Large EITE entities, beginning January 1, 2021.[8] Unfortunately, the CARB Cap-and-Trade amendment process to directly allocate the allowances to the Large EITE entities has not yet begun.[9] Accordingly, unless the CARB intends to undertake its formal amendment process very soon and complete it by year's end, the coverage of Large EITE entities' indirect emissions may *not* be continuous if the Investor-Owned Utilities were to reduce or stop the bill credits to Large EITE entities beginning next year.[10]

The timing for coordinating and addressing this issue must be now; January 1, 2021 is fast approaching. Beyond the declaration in the CARB Letter that the CARB amendment process will

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[6] CARB Letter to Parties to CPUC Rulemaking 20-05-002 (CARB Letter), dated July 17, 2020, at 1 (emphasis added).
[7] CARB Letter, at 1.
[8] Response of Pacific Gas & Electric Company to Climate Credit Rulemaking and Preliminary Responses to Straw Proposal Questions, at 4-5.
[9] CARB Letter, at 2.
[10] As CLECA previously stated, the Commission's statutory obligation to Large EITE entities continues. See Comments of the California Large Energy Consumers Association on Order Instituting Rulemaking and Staff Proposal, at 4.

be public and announced to all stakeholders at the same time,[11] there is no information in this proceeding on the CARB amendment process, associated milestones, and timeline. Greater clarity on the amendment process at CARB should be provided on the record here, and contingency plans should be put in place now (or very soon), given CARB's planned January 1, 2021 termination of allowances to the Investor-Owned Utilities for the Large EITE entities' indirect emissions.

Will the Commission direct the Investor-Owned Utilities to provide bill credits to Large EITE entities even if no allowances are allocated by CARB to generate the revenues for those bill credits? CARB appears to contemplate making up for a mismatch in timing of bill credits and allowance allocations; the CARB Letter states:

> A potential Cap-and-Trade Regulation amendment process could also include providing additional allowance allocations to IOUs to account for years when IOUs had both reduced allowance allocations from CARB and a requirement to provide credits to large EITE facilities.[12]

At a minimum, if CARB doesn't complete its amendment process in time, continued credits by the Investor-Owned Utilities to Large EITE entities for indirect emissions should be planned for now. All parties, including the Investor-Owned Utilities, must recognize the need to continue these credits until CARB completes its takeover of the allocations for indirect emissions. We note that the Investor-Owned Utilities may be concerned by this approach. However, it is not the only approach. A cleaner alternative to this contemplated "we may pay you back later" approach is a contingency regulation by CARB that would *defer* the planned January 1, 2021 termination of the allowance allocations to Investor-Owned Utilities for Large EITE indirect emissions coverage; the

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[11] CARB Letter, at 2 ("Due to the Cap-and-Trade Program's market-based nature, any future Cap-and-Trade Regulation rulemaking will be announced publicly in a coordinated fashion to all stakeholders").
[12] CARB Letter, at 2.

deferred date should be the same as the effective date of the future CARB allocation to the Large EITE entities. This would ensure continuity of Large EITE indirect emissions coverage by the Investor-Owned Utilities in the event that CARB's Cap-and-Trade amendment process is not completed in time.

Regardless of the ultimate approach – pay-you-back later for the Investor-Owned Utilities, or deferral of the January 1, 2021 termination date – the transfer process for Large EITE entities' allowance allocation to CARB must be planned and timed carefully to ensure continuous coverage with no gaps for the Large EITE entities.

3. Small Business Climate Credit Near-Term Issue:

Not addressed at this time.

4. EITE Near-Term Issue: What changes, if any, should the Commission make to continue to distribute California Industry Assistance after 2020?

The Commission should not make any changes, and should continue to distribute California Industry Assistance *up to and until* the contemplated transfer process for Large EITE entities to direct provision of allowances by CARB is complete. Then there should be a simultaneous termination of the Commission's distribution to Large EITE entities, and commencement of CARB's distribution. The Straw Proposal suggests a flexible timeline, depending on when CARB undertakes and completes its formal amendment process of its Cap-and-Trade Regulations.[13] For Large EITE entities, any changes necessarily depend on the timing of that transfer.

No changes are recommended for medium/small emitters.

[13] Straw Proposal, at 59.

5. Bear Valley Near-Term Issue:

Not addressed at this time.

B. Issues for All Credits

1. Compliance Long-Term Issue: Are the three customer climate credits compliant with current statute and regulation? Where a credit is no longer compliant, what steps should the Commission take to re-align the two?

The risk here for Large EITE entities is not current compliance, but the potential risk to future compliance if a gap in coverage for the indirect emissions allowance allocation is allowed to develop. The statute requires:

> Except as provided in subdivision (c) the Commission shall require revenues…received by an electrical corporation as a result of the direct allocation of greenhouse gas allowances to electric utilities…to be credited directly to the residential, small business, and emissions-intensive trade-exposed retail customers of the electrical corporation.[14]

The law has not changed, and this obligation to credit Large EITE entities remains; as determined in D. 12-12-033 and the Straw Proposal, Large EITE entities are, and remain, first in line to be credited.[15]

2. Process Improvement Long-Term Issue: What steps should the Commission take to improve crediting processes, including streamlining administration and delivery? What is the administrative feasibility and cost-effectiveness of these improvements? When should the implementation of these improvements occur?

Not addressed at this time, as the Large EITE credits are intended to be transferred to CARB, with timely development by CARB of an indirect emissions allowance allocation process to ensure continuous coverage for Large EITE entities.

[14] Pub. Util. Code §748.5.
[15] D. 12-12-033, at 65

3. Policy Objectives Long-Term Issue: What are the current outcomes of the customer climate credits with respect to the policy objectives adopted in D.12-12-033? What changes should the Commission make to improve these outcomes?

D. 12-12-033 sets a clear priority for the seven adopted policy objectives; notably, the two highest priorities are preservation of the carbon signal and prevention of economic leakage.[16] Regarding the leakage risk, D. 12-12-033 explains:

> Consistent with the policy stance taken by ARB and the presumed intent of the Legislature in SB 1018, we seek to minimize the effects of economic (and emissions) leakage in California as a result of the Cap-and-Trade program. As a result, *we consider this policy objective to be a high priority.*[17]

The current outcomes support this high priority policy objective. We have no recommended changes, and support continued attention to this high priority policy objective.

4. Outreach Long-Term Issue: In addition to the policy objectives, should the Commission also consider the objective of customer understanding of the climate credits and the processes? What changes, if any, should be made to limit customer confusion? What improvements, if any, should the Commission make to the outreach for the three customer climate credits?

All customers should understand the need to avoid economic leakage.

III. CONCLUSION

CLECA and DACC appreciate the opportunity to comment, emphasize the continued risk of economic leakage, and reiterate that retention of Large EITE entities in California remains critical to the long-term success of California's climate policy goals.

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[16] D. 12-12-033, at 52-53.
[17] D. 12-12-033, at 65 (emphasis added).

Respectfully submitted,

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CLECA
CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION

July 24, 2020

APPENDIX

BIP	Base Interruptible Program
CARB	California Air Resources Board
CCA	Community Choice Aggregators
CLECA	California Large Energy Consumers Association
DA	Direct Access
DACC	Direct Access Customer Coalition
DR	Demand Response
EITE	Emissions-Intensive, Trade Exposed
OIR	Order Instituting Ruling