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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 JUDGES' RULING SOLICITING
COMMENT FROM PARTIES ON IMPACT OF SENATE BILL 1018**

Background

On June 27, 2012, Governor Brown signed Senate Bill (SB) 1018,¹ which, among other actions, added Section 748.5 to the Public Utilities Code to read:

748.5. (a) Except as provided in subdivision (c), the commission shall require revenues, including any accrued interest, received by an electrical corporation as a result of the direct allocation of greenhouse gas allowances to electric utilities pursuant to subdivision (b) of Section 95890 of Title 17 of the California Code of Regulations to be credited directly to the residential, small business, and emissions-intensive trade-exposed retail customers of the electrical corporation.

(b) Not later than January 1, 2013, the commission shall require the adoption and implementation of a customer outreach plan for each electrical corporation, including, but not limited to, such measures as notices in bills and through media outlets, for purposes of obtaining the maximum feasible public awareness of the crediting of greenhouse gas

¹ Statutes of 2012, Chapter 39.

allowance revenues. Costs associated with the implementation of this plan are subject to recovery in rates pursuant to Section 454.

(c) The commission may allocate up to 15 percent of the revenues, including any accrued interest, received by an electrical corporation as a result of the direct allocation of greenhouse gas allowances to electrical distribution utilities pursuant to subdivision (b) of Section 95890 of Title 17 of the California Code of Regulations, for clean energy and energy efficiency projects established pursuant to statute that are administered by the electrical corporation and that are not otherwise funded by another funding source.

Discussion

The provisions of SB 1018 directly impact the outcome of this proceeding. Parties that wish to comment may file and serve comments on the impact of Section 748.5 on various proposals and aspects of this case. Comments are due on July 27, 2012. Parties are given broad discretion to address any and all issues of concern raised by the new Section 748.5; however, we specifically seek comment on the following questions:

- 1) What criteria should the Commission use to define a small business? In answering this question, we offer several examples parties may consider. This list is not exhaustive, and parties are encouraged to offer alternative definitions to those described in bullets a., b., and c. below.
 - a. The Small Business Administration (SBA),² for most industries, defines a "small business" either in terms of the average number of employees over the past 12 months, or average annual receipts over the past three years. In addition, SBA defines a United States (U.S.) small business as a concern that:

² 13 Code of Federal Regulations 121

- i. Is organized for profit;
- ii. Has a place of business in the U.S.;
- iii. Operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor;
- iv. Is independently owned and operated; and
- v. Is not dominant in its field on a national basis.

The business may be a sole proprietorship, partnership, corporation, or any other legal form. In determining what constitutes a small business, the definition varies to reflect industry differences, such as size standards.³

- b. The California Department of General Services (DGS)⁴ states that a small business must:
 - i. Be independently owned and operated;
 - ii. Not be dominant in field of operation;
 - iii. Have principal office located in California;
 - iv. Have owners (officers, if a corporation) domiciled in California; and,
 - v. Including affiliates meet one of the following conditions,
 1. Be a business with 100 or fewer employees and have average annual gross receipts of \$14 million or less over the last three tax years;

³ SBA defines a size standard – whether based on number of employees or annual receipts - for each private sector industry in the U.S. economy, using the North American Industry Classification System (NAICS) to identify each industry. SBA publishes a Table of Small Business Size Standards, which is available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.xls.

⁴ For DGS Small Business Eligibility Requirements see: <http://www.dgs.ca.gov/pd/Programs/OSDS/SBEligibilityBenefits.aspx>

2. Be a manufacturer⁵ with 100 or fewer employees;
or,
 3. Be a microbusiness. A small business will automatically be designated as a microbusiness if gross annual receipts are less than \$3,500,000, or the small business is a manufacturer with 25 or fewer employees.
- c. The three major investor-owned utilities (IOU) have distinct commercial and industrial rate class divisions that may provide a useful delineation for small businesses. For example, Southern California Edison and San Diego Gas & Electric Company have specific tariffs for small businesses that draw under 20 kilowatts (kW) in demand, and Pacific Gas and Electric Company has a tariff for businesses drawing under 200 kW in demand. The IOUs' commercial and industrial rate classes appear to be determined solely based on electrical demand, not size or type of business.
- 2) If a party recommends a definition of "small business" that does not rely on characteristics of customer load, such as maximum demand, how would small businesses be identified by the utilities? If a party's recommended definition does generally rely on customer load, are there instances in which the use of load characteristics are not appropriate? For example, if the utilities' existing

⁵ For Small Business Certification purposes, a manufacturer is a business that is both of the following:

1. Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.
2. Classified between Codes 31 to 339999, inclusive, of the NAICS Manual, published by the United States Census Bureau, 2007 edition.

thresholds for customers to qualify for a “small” commercial and industrial customer tariff are used, are there instances in which multiple accounts serve the same business location, and those accounts fall into two or more rate classes? If so, how should such businesses qualify for compensation as a small business?

- 3) What proportion of the total available greenhouse gas (GHG) allowance revenue should be returned to small business customers, or, alternatively, what share of total allowance revenue would be returned to small businesses under the distribution being proposed (See Question 4)?
- 4) What distribution mechanism should be used to return revenues to small business customers? As one example, the GHG allowance auction revenues allocated to the “small business” class could be returned on an equal cents per kilowatt-hour basis. Assuming a return based on a methodology other than a volumetric return, should revenue be returned on a per business basis or on a per utility account basis (recognizing that some businesses may have multiple accounts)?
- 5) In regards to customer outreach, how should the Commission implement Section 748.5(b)? We note that some parties addressed this issue in proposals; however, those parties and others may wish to provide additional comment.
 - a. What goals should the Commission establish to determine that outreach has been achieved to create “maximum feasible public awareness of the credit of greenhouse gas allowance revenues”?
 - b. What is an appropriate budget for customer outreach?
 - c. What cost recovery mechanisms must be adopted to ensure cost recovery in rates pursuant to Section 454, as provided for in Section 748.5(b)? Should cost recovery come from a source other than greenhouse gas allowance revenues?

- d. Who should have responsibility for designing and implementing the customer outreach and education plan (e.g., the IOUs or a third-party)?
- 6) The statute stipulates that “The commission may allocate up to 15 percent of the revenues, including any accrued interest... for clean energy and energy efficiency projects established pursuant to statute that are administered by the electrical corporation and that are not otherwise funded by another funding source.” How do this cap and the limitation that the projects must be “established pursuant to statute” and not be “otherwise funded” affect or change proposals currently before us?

IT IS RULED that:

1. Parties to Rulemaking 11-03-012 may file and serve comments on the impact of Senate Bill 1018 by July 27, 2012.
2. Parties are given broad discretion to address any and all issues of concern raised by the new Section 748.5; however, parties are requested to address, at a minimum, the questions posed in the body of this ruling.
3. Comments are limited to no more than 10 pages.

Dated July 11, 2012, at San Francisco, California.

/s/ JESSICA T. HECHT

Jessica T. Hecht
Administrative Law Judge

/s/ MELISSA K. SEMCER

Melissa K. Semcer
Administrative Law Judge