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)

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of: Order Instituting Informational Proceeding on a Greenhouse Gas Emissions Cap	Docket 07-OIIP-01

COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY ON THE AUGUST 15, 2007 PROPOSED "INTERIM OPINION ON REPORTING AND TRACKING OF GREENHOUSE GAS EMISSIONS IN THE ELECTRICITY SECTOR"

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In accordance with Rules of Practice and Procedure of the Public Utilities Commission (CPUC), and the instructions set forth in the CPUC's August 15, 2007 Cover Letter issuing the proposed *Interim Opinion on Reporting and Tracking of Greenhouse Gas Emissions in the Electricity Sector* (Proposed Decision or PD), the Northern California Power Agency[1] (NCPA) submits these comments for the CPUC's consideration. These comments are also submitted to the California Energy Commission (CEC) in Docket 07-OIIP-01, in accordance with the practice established in this proceeding. The CPUC and CEC are collectively referred to as either the "Joint Agencies" or the "Commissions" in these comments.

[1] NCPA is a Joint Powers Agency whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, the Truckee Donner Public Utility District, and the Turlock Irrigation District, and whose Associate Members are the Plumas-Sierra Rural Electric Cooperative, and the Placer County Water Agency.

I. INTRODUCTION

NCPA supports the efforts of the Joint Agencies to assist the California Air Resources Board (CARB) in developing a greenhouse gas (GHG) mandatory reporting and tracking protocol for the electricity sector. NCPA applauds the efforts of the Joint Agencies and the time and resources that staff for both Commissions have spent on this complex issue. Given the complexity of the issues involved, submitting a joint recommendation to CARB from the Commissions, who are infinitely more experienced with the workings of the electricity sector, can only positively impact the overall feasibility of the entire process and help to insure that the protocol not only meets the objectives defined in AB 32, but are in fact "workable" in the context of the real time operations of the electricity markets.

Appendix A of the Proposed Decision sets forth the *Proposed Electricity Sector Greenhouse Gas Reporting and Tracking Protocol* (Protocol), which the Commissions provide as a joint recommendation to CARB, and which is intended to "complement" the source-based protocol proposed by that agency. (PD at p. 6) NCPA offers these comments on the Protocol in an effort to further the objectives of AB 32 and the Commissions.

NCPA notes that despite the current ongoing debates regarding the point of regulation for a cap-and-trade program or the extent to which AB 32 goals should be achieved by a regulatory- or market-based system, AB 32 does require that emissions be tracked and reported (§ 38530)[2], and to that end the recommendations being made to CARB by the Commissions must address the ability of all retail providers to accomplish such tracking and reporting regardless of the ultimate implementation scheme adopted by the state, and in a manner consistent with the legislation. Accordingly, while the PD correctly notes that § 38530 requires reporting and verification for electricity consumed in California (subsection (b)) as well as "statewide emissions" (subsection (a)), emissions from resources owned or partially-owned by California entities that are located outside of the state and not "consumed" in California are not properly included within the mandatory reporting protocol required under AB32.

[2] Unless otherwise noted, all code sections shall be references to the California Health and Safety Code.

II. COMMENTS

A. The Protocol Should be Evaluated Annually

The PD, by its very title, addresses an *interim* recommendation for the mandatory tracking and reporting of GHG emissions. Given the nascent nature of the Protocol, and indeed of AB 32 in general, it is clearly good policy to reevaluate the Protocol at the end of the first year and insure that the requirements set forth therein are not adversely impacting the reliable and efficient operation of retail electric systems. NCPA supports the PD's limitation on the recommendations contained therein to 2008 (PD at p. 4) and encourages the Commissions to include in the final decision a schedule for the Joint Agencies and CARB to review and evaluate how the Protocol has worked after the first year, rather than just a recommendation that such a review be undertaken by CARB. While AB 32 requires CARB to adopt a reporting and tracking protocol for the state by January 1, 2008, there should be no limitations on the continued improvement of such a protocol, and as is evidenced by CARB's willingness to accept assistance from the state's electricity commissions, the Commissions should be prepared to offer future assistance if necessary.

NCPA also encourages the Commissions to work collaboratively with CARB to continue efforts towards regional solutions, and to anticipate a review process that would allow for the facile revision of the Protocol in the event that a regional or federal system is adopted that would impact the tracking and reporting of GHG emissions in California. This is especially crucial given the importance of ascertaining accurate emissions rates from power generated *outside* of California, yet used to serve retail customers within the state.

B. The Protocol Should be Limited to Energy Used to Serve Load in California

As it pertains to electric generation located outside of California, emissions tracking and reporting under the Protocol are lawfully limited to the emissions associated with electricity that is used to serve the load of the retail provider.[3] The PD notes that the Protocol would "assign responsibility to each electricity retail provider for the GHG emissions

[3] "Account for greenhouse gas emissions from all electricity consumed in the state. . ." § 38530(b)(2), emphasis added.

associated with the electricity generated to serve its load." (PD at p. 6) In order to accurately capture emissions for electricity used to serve load in California, emissions associated with owned or contracted for generation *outside* of California that is never imported into the state to serve retail customers *within* California, is not properly reportable under AB 32. (Protocol, § 3.2)

CARB should not attribute emissions to generation from owned power plants located outside of California *unless* that power is used to serve retail load in California. The Protocol should not add to an already complex scheme to require that a retail provide also demonstrate that (1) the power could not be delivered into the state during the time that it was sold or (2) that the power was not needed. (PD at p. 17) The PD's recommendation that CARB "initially attribute emissions for owned and partially-owned power plants proportional to an entity's ownership share" (PD at p. 19) for out-of-state resources should be rejected. CARB should only attribute emissions for that portion of the energy that is *consumed* in California.

There are many legitimate operational reasons why power from such a plant may not have been imported or consumed in California that are neither linked to need nor to transmission constraints. CARB – and indeed these very Commissions – must keep in mind that AB 32 is not intended to hamper the safe and reliable provision of electricity to California's end-use customers, nor impose needless additional costs on them. Such a requirement would do all of these, and for no net benefit to the state.

C. The Protocol Should Not Limit Access to Existing Low GHG-Resources

The Protocol cannot be used to thwart legitimate and lawful power purchases and exchanges. Sections 3.2 and 3.3 would impose unlawful restrictions on the ability of retail providers, specifically entities such as NCPA and its members, to contract for renewable and other low-GHG emissions resources. The restrictions proposed in these sections of the Protocol, as discussed in the PD (see pp. 12-13, 21-22) are not only unlawful, but contrary to sound public policy.

Staff's concerns and assertions regarding the potential for retail providers to "contract shuffle" are unsubstantiated and misplaced. The Protocols should not be utilized to thwart a perceived evil to the detriment of the retail providers and the electricity markets as a whole. While AB 32 does address "real" emissions reductions, it does not allow CARB to extend its

reporting requirements so far as to limit the ability of retail providers to enter into new agreements with existing out-of-state sources. There is no evidence to support the notion that "new contracts for existing low- or zero-GHG plants are unlikely to yield real reductions in GHG emissions" or for the assertion that "there is little reason to believe that an agreement between a retail provider and an existing plant will induce generation that would not have occurred anyway." (PD at p. 13) Indeed, to the extent that a green-power hungry California retail provider enters into new contracts with existing wind or other low-GHG resources, other entities desiring those same low-GHG resources and the developers of those resources, would be encouraged to develop new plants. California retail providers should not be the only ones adversely impacted by the need to contract only for future resources, a time delay that could in fact hinder the ability of the state to meet its GHG goals. California has set an aggressive GHG reduction schedule – one that NCPA and its members are committed to meeting; however, retail providers must be given the tools they need to meet that schedule, and should not have the state's own protocol "tie their hands" in doing so.

The PD correctly notes that the "reporting and tracking system is central to determining individual entities' compliance with AB32 and ensuring that the overall goals of AB 32 are achieved." (PD at p. 11) This is key; the false assumption that contracts with existing resources do not contribute to "real" emissions can skew this determination or otherwise give an inaccurate impression of the extent to which individual entities are meeting their compliance obligations.

NCPA raises these concerns in the context of a legitimate legislative intent to see actual GHG reductions, and not only within California. However, with that said, the fact remains that the arbitrary determination that contracts with facilities in existence prior to 2008 do not contribute to "real" reductions addresses a hypothetical and unproven scenario, rather than a real and substantiated problem. Further, as discussed above, this would not only limit a California entities' ability to meet its compliance obligation, but could thwart achieving the very goals of AB 32.

While the proposed limitation does not prohibit parties from entering into lawful contracts with existing facilities, it does restrict their ability to demonstrate actual emissions levels that result from such financial commitments. The PD's recommendation that "ARB adopt conditions that would prevent the attribution to retail providers of GHG reductions that

are not real" is legitimate. (PD at p. 15) However, to place potentially punitive restrictions – in the form or higher than actual emissions attributes – on lawful contracts, therefore assuming that all reductions associated with such contracts are illusory, is not.

Resource-specific emissions should be allowed and an arbitrary emissions factor should not be applied. Neither the Staff Proposal, nor the Proposed Decision provide sufficient facts upon which to justify the rigid imposition of rules that "would require that the level of emissions attributed to certain power for the purposes of GHG accounting be different than the level of GHG emissions that occurs from the source specified in the contract." (PD at p. 16) An arbitrary attribution – either higher or lower than the actual source specific levels – does not serve the goals of AB 32. It hinders the accurate measurement of the success of both the state as a whole, and individual entities in meeting the objectives of AB 32.

Rather, instead of starting with the assumption that contract shuffling *will* occur and requiring "a convincing showing that real GHG emissions were achieved," the Protocol should require a showing of malfeasance before instituting barriers to energy procurement from low-GHG resources.

D. Default Emissions Factors for the Pacific Northwest Should Not be Further Increased

In the PD, the Commissions would recommend that CARB adopt a default emission factor for the Pacific Northwest of 714 pounds CO_2e/MWh (PD at p. 31), up from the 419 pounds CO_2e/MWh originally set forth in the Staff proposal, as substantiated by the findings in the Griffin/Alvarado report ("Revised Methodology to Estimate the Generator Resource Mix of California Electricity Imports," CEC-700-2007-007, March 2007).

The default emissions factor for the Pacific Northwest should not be set so high as to ignore the fact that a large part of the power being exported indeed comes from hydro facilities in that region, particularly during periods of spring run-off. As Commissioner Peevey very recently commented in the context of the first-seller/load-based debate as a point of regulation under a cap-and-trade program, parties are out to protect their own oxen,[4] and as such, numbers are being put forth on both sides that are clearly not aligned. NCPA believes that the data set forth in the Griffin/Alvarado report are substantiated. However, as it is

[4] CPUC/CEC En Banc Hearing; August 21, 2007, Tr. 191:15-18.

necessary to adopt a number at this time, based on the discussion set forth in Appendix B it would be prudent to adopt the 714 pounds CO_2e/MWh recommendation set forth in the PD. Further, NCPA believes that it is imperative that these numbers be evaluated on an annual basis, and that modifications be made if warranted.

E. The Proposed Decision Properly Addresses Firming Power for Renewable Resources

In order to meet the state's GHG emissions reductions goals, retail providers will need to contract for renewable resources, many of which will require firming resources to insure their delivery to the retail customer. To that end, NCPA supports the PD's treatment of firming power. (PD at pp. 22-23)

III. CONCLUSION

For the reasons set forth herein, NCPA requests that the Proposed Decision and the Protocol be revised to:

(1) Include a requirement for an annual review process by the Joint Agencies and CARB, including a means by which the Protocol can be changed to accommodate a regional or federal program;

(2) Clarify that emissions from to out-of-state owned or partially-owned resources are only attributable to California entities to the extent that electricity from those resources is consumed in California;

(3) Allow for source-specific emissions attributes from new and existing low-GHG resources;

(4) Remove the presumption regarding contract-shuffling and the limitations associated with this presumption; and,

(5) Acknowledge that the Griffen/Alvarado Report default emissions factors for the Pacific Northwest were accurate, and that the 714 pounds CO_2e/MWh level should not be further increased and provide for an annual review of the default emissions factor.

August 24, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rule of Practice and Procedure, I have this day served a true copy of the COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY ON THE AUGUST 15, 2007 PROPOSED "INTERIM OPINION ON REPORTING AND TRACKING OF GREENHOUSE GAS EMISSIONS IN THE ELECTRICITY SECTOR" on all parties on the Service Lists for R.06-04-009, as listed on the Commission's website on August 22, 2007, by electronic mail, and by U.S. mail with first class postage prepaid on those Appearances that did not provide an electronic mail address.

Executed at San Jose, California this 24th day of August, 2007.

Katie McCarthy