

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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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)
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**REPLY COMMENTS OF MORGAN STANLEY CAPITAL GROUP INC.
ON THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS
AND NOTICING WORKSHOP ON ALLOWANCE ALLOCATION ISSUES**

I. INTRODUCTION

Pursuant to the October 15, 2007 ruling of Administrative Law Judges Charlotte F. TerKeust and Jonathan Lakritz, Morgan Stanley Capital Group Inc. ("MSCG") respectfully submits its reply comments on issues related to the distribution of greenhouse gas ("GHG") emission allowances.¹

II. REPLY COMMENTS

In these reply comments, MSCG responds to certain comments that address the Commission's questions on issues related to the distribution of GHG emission allowances. The State should read MSCG's reply comments in conjunction with its initial comments, which lay out its overall position on allowance allocation.

A. Regularly-Scheduled, Open Auctions Would Foster Market Liquidity

1. *PacifiCorp, LADWP, and SCPPA inaccurately equate broad market participation in GHG allowance auctions with market manipulation*

MSCG disagrees strongly with PacifiCorp's suggestion that California limit who it allows to participate in allowance auctions to address alleged adverse consequences that might arise with

¹ Administrative Law Judge's Ruling Requesting Comments and Noticing Workshop on Allowance Allocation Issues, *Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies* (Docket No. R.06-04-009) (issued Oct. 10, 2007).

“nongenerators bidding to acquire allowances.”² PacifiCorp’s recommendation is premised on its false assumption that, unless auction participation is limited, “[f]inancial speculators could participate, hoping to acquire allowances cheaply and sell them to companies that need them to operate at a higher price.”³ PacifiCorp’s meritless theory that increased auction participation will result in unlawful manipulation warrants no consideration by California.

PacifiCorp inaccurately equates broad market participation with “market manipulation.” As MSCG pointed out in reply to an identical claim made by CalEnergy earlier in this proceeding, this is a significant conclusion unaccompanied by any supporting data. Moreover, PacifiCorp does not demonstrate how limiting auction participation to current first-sellers, California generators, or entities that can show that they will be a first-seller, would eliminate the potential for speculation or market manipulation. Instead, if California adopted PacifiCorp’s proposal, it would likely reduce market liquidity for allowances to the detriment of the State.

LADWP states that “[i]f a large percentage of allowances are auctioned, there is a chance of market manipulation.”⁴ It then claims that entities that need allowances to serve native load and unsuccessfully bid at auction may have to “purchase allowances at significantly higher prices from entities that are speculating (*e.g.*, financial entities).”⁵ LADWP repeats the logical error it made in its August 6, 2007 comments.⁶ It suggests that if one event occurs (*e.g.*, participation by financial entities in auctions) another event will result (*e.g.*, market manipulation). LADWP once again fails to provide any evidence to show that a financial entity’s participation in California’s GHG

² PacifiCorp Comments at 9.

³ *Id.*

⁴ LADWP Comments at 8.

⁵ *Id.*

⁶ *See* LADWP Comments (filed in this docket on August 6, 2007).

allowance auctions will result in market manipulation. There simply is no cause-and-effect relationship and it is disturbing that LADWP would twice draw such a serious conclusion without either proof or a supporting line of argument.

The Southern California Public Power Authority's ("SCPPA") echoes LADWP's unfounded view that increased auction participation would lead to market manipulation.⁷ SCPPA believes that "the most obvious form of potential market abuse" occurs "[i]f entities that have no need to obtain allowances other than to remarket them are permitted to participate in the auction...."⁸ It reasons that "such entities may participate and then hoard allowances, jeopardizing market liquidity and increasing allowance prices."⁹ If SCPPA's concerns over "jeopardizing market liquidity" are sincere, then it should want to encourage a broad range of participants to be active in the California energy markets. Asking California to impose allowance market rules and conditions that would single out a group of market participants based on their business model and prohibit their participation in the State's GHG allowance auctions is counterproductive to SCPPA's goal of market liquidity.

2. *TURN accurately notes that closed auctions would be futile*

Restricting auction participation would not only result in an illiquid California GHG allowance market, but also would prove futile. TURN states aptly the industry-wide agreement that there will be a secondary market for allowances, regardless of how California establishes its cap-

⁷ As LADWP is SCPPA's largest member, it comes as no surprise that SCPPA would share LADWP's view. See SCPPA Comments at 17 (noting "[t]he largest member of SCPPA [is] LADWP").

⁸ SCPPA Comments at 20.

⁹ *Id.* MSCG also notes that the Climate Protection Campaign ("CPC") – while advocating for a system where 100% of allowances are auctioned – contends that California should adopt closed auctions. CPC Comments at 5. Unlike SCPPA, CPC places less emphasis on the need for market liquidity. *Id.* at 4 ("Market liquidity is not as important as reducing GHG emissions."). MSCG reiterates its agreement with the Market Advisory Committee that market liquidity is important for California, and that open auctions with unlimited participants is the best way to foster liquid allowance markets.

and-trade program.¹⁰ Thus, MSCG agrees with TURN that “there is no guarantee, and in fact no one would know initially, if one generator or more had paired with a hedge fund to help them secure allowances.”¹¹ In other words, a closed auction would be pointless because nothing would prevent a third party from contracting with an “authorized” auction participant to buy allowances on the third party’s behalf and subsequently transfer the allowances to the third party in the secondary market.

B. California Should Auction Allowances On A Regular, Predetermined Schedule and Without Expiration Dates

The Natural Resources Defense Council (“NRDC”) and Union of Concerned Scientists (“UCS”) suggest California auction GHG allowances in annual “vintages” to match that year’s cap, and auction some allowances in advance of the vintage year when entities will use them so that regulated entities can plan ahead.¹² MSCG believes that NRDC and UCS identify a legitimate planning concern. However, it would be much easier to simply issue a fixed number of allowances without expiration dates pursuant to a set and known schedule, and eliminate the idea of vintaging all together. MSCG’s recommended approach will ensure California realizes its emission reduction goals, while also giving market participants flexibility to choose when and how they will curb GHG emissions through the submission of allowances or other reduction mechanisms. In addition, by eliminating vintaging, the concept of “banking” allowances becomes moot because banking would apply only in a system where allowances expire. California, in turn, would face a reduced burden when administering its GHG allowance program because it would not need to track and enforce

¹⁰ See TURN Comments at 15.

¹¹ *Id.*

¹² NRDC/UCS Comments at 7.

allowance expiration dates. Thus, California should issue allowances that do not expire and it should do so based on a regular, predetermined schedule.

C. CHP Resources Will Not Be Unduly Burdened By Auctions

The Energy Producers and Users Coalition (“EPUC”) and Cogeneration Association of California (“CAC”) claim “an allowance auction differentially affects customers who elect to install CHP facilities on their premises, potentially discouraging CHP development and operation.”¹³ They explain that when an industrial site invests in a high-efficiency CHP plant, total emissions from the production of electrical and thermal energy decrease and emissions attributable to CHP are substantially less than emissions from separate central power generation and industrial boiler installations.¹⁴ EPUC and CAC conclude that auctions can disproportionately affect a CHP facility by requiring it to purchase more allowances than it would have needed had it not invested in CHP.¹⁵

To make their point, EPUC and CAC provide an example in which an industrial facility produces heat from a steam boiler and purchases electricity from a utility. They state that the facility would be responsible for 39 units of CO₂ emissions (18 units of on-site; 21 units off-site). EPUC and CAC then contrast the industrial facility with a CHP facility, arguing it will produce the same amount of heat and will use the same amount of electricity, but emit only 31 units of CO₂ (all on-site). They conclude that the CHP facility decreases aggregate global emissions by 8 units, but increases its on-site emissions by 13 units. Consequently, EPUC and CAC believe that in an auction system, the CHP facility would need to acquire 13 additional allowances (31 less 18) to cover the total emissions.¹⁶

¹³ EPUC/CAC Comments at 15.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 16.

California should not rely on the foregoing analysis because it appears to be based on the assumption that the only relevant metric is the number of allowances directly purchased. However, it is much more logical to assume that if a CHP owner instead purchased all of its electricity from an outside provider, the cost of that power would include the cost of an allowance. From that perspective, a CHP owner retains the net benefit of its relative efficiency, by avoiding the cost of 8 allowances relative to purchasing all of its electricity from an external source. The only difference is whether it purchases the 13 incremental allowances directly, or pays for them indirectly in the cost of power.

D. California Should Follow The Lessons Learned In The European Union

To support their position that California should allocate allowances, EPUC and CAC cite to comments that the Danish Energy Authority filed on allowance allocations in the European Union (“EU”).¹⁷ The Danish comments seem to indicate Denmark’s reluctance to support allowance auctions. MSCG certainly supports using the EU experience to learn lessons that will inform the creation of a better GHG program in California. However, the lesson for the State to draw in regard to auctions is not the one EPUC and CAC try to convince California to draw from the Danish comments that they reference.

Denmark filed the cited comments pre-Phase 1 when the EU was wrestling with how to distribute allowances and before it had direct experience with the consequences of selecting one allowance distribution method over another.¹⁸ Now, with the benefit of experience and hindsight that show that free allocation was not the most efficient, effective or equitable means for distributing allowances, the EU’s Phase 2 GHG allowance design discussions are focused on the

¹⁷ *Id.* at 7.

¹⁸ *See id.* (noting that the Danish Energy Authority “expressed ... concerns over auctioning before the first round of EU-ETS allocations”).

amount of allowances the EU should auction – not on whether the EU should use auctions. The initial reluctance some parties felt during Phase 1 of the EU's program has subsided and it appears the EU will adopt allowance auctions going forward. California should instead consider what actually occurred from the EU's decision to allocate allowances during Phase 1 rather than focusing on Denmark's pre-Phase 1 comments.

III. CONCLUSION

MSCG respectfully requests that the CPUC and CEC consider these reply comments in their recommendation to CARB on how to distribute GHG emissions allowances in California.

Respectfully submitted,

/s/

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November 14, 2007

Attorneys for Morgan Stanley Capital Group Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Reply Comments of Morgan Stanley Capital Group Inc. on the Administrative Law Judge's Ruling Requesting Comments and Noticing Workshop on Allowance Allocation Issues on all of parties of record in R. 06-04-009 by electronic mail and by U.S. mail to those parties that have not provided an electronic address to the Commission. I also have sent hard copies by overnight mail to the assigned Commissioner, Michael R. Peevy, and the assigned Administrative Law Judges, Charlotte F. TerKeurst, Jonathan Lakritz, and Meg Gottstein.

Moreover, pursuant to the October 15, 2007 Administrative Law Judge's Ruling Requesting Comments and Noticing Workshop on Allowance Allocation Issues issued in R. 06-04-009, I have sent one hard copy of these comments by overnight mail to the California Energy Commission and have sent electronic copies of these comments to docket@energy.state.ca.us and to kgriffin@energy.state.ca.us.

Dated at Washington, DC, this 14th day of November 2007.

/s/

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