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

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emission Standards into Procurement Policies.	Rulemaking 06-04-009 (Filed April 13, 2006)
Order Instituting Informational Proceeding – AB 32.	CEC Docket No. 07-OIIP-01

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
COMMENT ON PROPOSED DECISION**

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Dated: February 28, 2008

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SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
COMMENT ON PROPOSED DECISION

In accordance with Rule 14.3 of the Rules of Practice and Procedure of the California Utilities Commission ("CPUC"), the Southern California Public Power Authority ("SCPPA") respectfully submits this comment on the Proposed Decision ("PD") mailed in the captioned proceeding on February 8, 2008. This comment is being submitted simultaneously to both the CPUC and the California Energy Commission ("CEC") (jointly, "Commissions").

For the reasons discussed below, SCPPA recommends that the PD be revised to designate retail providers rather than "deliverers" as the points of regulation for a cap-and-trade program, consistent with SCPPA's overall recommendation throughout this proceeding. If the Commissions decline to make that revision, then SCPPA recommends that implementation of a cap-and-trade program be deferred until a west-wide or a national program can be implemented. Absent deferral, SCPPA recommends adoption of an alternative compliance mechanism to allow retail providers that are also "deliverers" of electricity to elect to mitigate the double burden of paying for programs to reduce GHG emissions while simultaneously paying for allowances. Retail providers that are also deliverers who elect to be regulated under the alternative compliance mechanism would be subject to entity-specific caps on emissions associated with deliveries for service to native load and would not be required to acquire allowances to cover emissions under their caps.

I. THE PD ESTABLISHES TWO REGULATORY PROGRAMS WITH TWO DISTINCT POINTS OF REGULATION.

Under the PD, the Commissions would recommend that the California Air Resources Board ("CARB") adopt *two* distinct programs for achieving greenhouse gas ("GHG") reductions in the electricity sector to meet Assembly Bill ("AB") 32 goals. One program would impose "direct mandatory/regulatory requirements" on all retail providers in California. PD at 27. The second program would apply to "deliverers" of electricity into the California grid. PD at 3. Deliverers of electricity would be included in a "multi-sector cap-and-trade program" so as to be required to acquire allowances to cover their GHG emissions. PD at 3.

A. The Direct Mandatory/Regulatory Program and Its Impact on Retail Providers.

The direct mandatory/regulatory program would impose an obligation on retail providers to achieve GHG reductions programmatically. Retail providers would be required to achieve "mandatory levels of energy efficiency savings." PD at 29. Likewise, retail providers would be required to meet heightened renewable portfolio standards. PD at 30. Lastly, retail providers would continue to be subject to an Emissions Performance Standard. PD at 27. The PD is emphatic that "all retail providers of electricity, including IOUs, POUs, ESPs, and CCAs," should be subject to "the same minimum requirements in the areas of energy efficiency and renewables." PD at 29.

SCPPA members are fully committed to achieving AB 32 GHG emission reduction goals, and they are fully committed to attaining high levels of energy efficiency savings and renewable electricity delivered. For renewable electricity, the PD proposes that "ARB require the POUs to deliver at least 20 percent renewable electricity to their customers by…2015 or 2017." PD at 29. The SCPPA members committed themselves *in 2003*, five years ago, to achieve a 20 percent renewable portfolio standard by 2017. Individual SCPPA members have adopted more aggressive timetables. For example, Burbank and Riverside are committed to achieving the 33 percent standard by 2020.

The cost of meeting the energy efficiency targets and renewable portfolio standards that would be mandated for retail providers under the direct regulatory program envisioned in the PD will be high for the SCPPA members. As a result of their geographical and historical circumstances, SCPPA and its members are encumbered by legacy electrical generation resources that are substantially carbon-based. SCPPA is now procuring wind energy, geothermal energy, solar-thermal energy, and biomethane-based energy. The steps that will be required to meet energy efficiency and renewable portfolio goals will impose hundreds of millions of dollars of additional costs on the SCPPA members and their customers annually.

B. The Cap-and-Trade Program and Its Impact on Deliverers.

In addition to imposing programmatic mandates on retail providers to achieve GHG emission reductions, the PD would include "deliverers" of electricity in a multi-sector cap-and-trade program. "Deliverers" would "include generators, retail providers, marketers, and any other types of entities that deliver power to the California grid." PD at 66.

1. The Rationale for Requiring "Deliverers" to Participate in the Multi-Sector Cap-and-Trade Program Is Unclear.

The PD's rationale for requiring "deliverers" to participate in the multi-sector cap-and-trade program is unclear. The PD says that deliverers would be required to participate in the multi-sector cap-and-trade program "for a number of policy reasons." PD at 32. One reason is that requiring deliverers to participate in the multi-sector cap-and-trade program would achieve emission reductions that would be additional to those that would be produced by the imposition of programmatic mandates on retail providers. PD at 32. However, the PD itself forecasts that the additional emission reductions that would result from requiring deliverers to participate in a multi-sector cap-and-trade program will be minimal. PD at 32.

A second reason given in the PD for requiring "deliverers" to participate in a multi-sector cap-and-trade program is that "emissions trading maximizes the flexibility in achieving emissions targets by allowing obligated entities to rely on the least-cost options across the entire economy." PD at 32. However, under the multi-sector cap-and-trade program anticipated by the PD, while there will be an emissions target for the California economy as a whole, there will be no emissions target for any individual "obligated entity." If there are no entity-specific targets, it is unclear what it means to say that "emissions trading maximizes the flexibility in achieving emissions targets."

A third reason for requiring "deliverers" to participate in a multi-sector cap-and-trade program is that it would allow "market participants to manage risk associated with compliance obligations." PD at 32. That rationale would certainly not apply to retail providers that would be required to attain energy efficiency or renewable portfolio targets. Requiring deliverers to acquire allowances to cover their GHG emissions will impose a new risk on deliverers without helping retail providers to manage the risk of having mandatory energy efficiency or renewables targets imposed on them.

The reasons advanced in the PD for requiring "deliverers" to participate in a multi-sector cap-and-trade program are suspect. None are cogent.

2. The Consequence of Requiring "Deliverers" to Participate in the Multi-Sector Cap-and-Trade Program Is Clear and Adverse.

Although the PD's rationale is unclear, the consequence of requiring deliverers to participate in a multi-sector cap-and-trade program is clear. Deliverers would be required to hold allowances equivalent to the emissions associated with the electricity that they deliver to the California grid. To the extent to which the deliverers are required to buy allowances either through an auction or through secondary market transactions, the deliverers will incur increased out-of-pocket costs. The cost of allowances for deliverers is likely to be substantial. At $25 per ton, the cost of allowances to cover emissions associated with serving forecasted 2008 California load would be over $2 billion. *See* SCPPA Supplement to Opening Comment at 2 (Nov. 14, 2007). At $50 per ton, the cost would double to over $4 billion. That would be for *one year alone*. *Ibid*.

C. Imposing *both* the Mandatory Regulatory Program *and* the Cap-and-Trade Program Would Impose a Double Burden on Retail Providers that Are Also "Deliverers" of Electricity.

The PD's imposition of the direct regulatory program on retail providers and the simultaneous imposition of the cap-and-trade program on deliverers would be likely to have a profound cost impact on entities that are *both* retail providers *and* deliverers, particularly fully-resourced publicly-owned utilities ("POUs"). Publicly-owned utilities such as the SCPPA members tend to be fully resourced. As a result, they would be "deliverers" of electricity to the California grid for all or nearly all of the electricity that they deliver to their retail customers. Thus, they would be fully exposed to being required to incur *both* the cost of the direct regulatory program that would be imposed upon them as retail providers by the PD *and* the full cost of acquiring allowances to cover their emissions as "deliverers" of electricity.

For southern California publicly-owned utilities, the cost of auctioned allowances would be over $700 million per year, based on 2008 projected emissions at $25 per ton. The cost would be over $1.4 billion per year if auctioned allowances cost $50 per ton. *Ibid* at 3. The payments for emission allowances would represent an additional cost to the POUs that would not contribute in any way to reducing their earlier footprint. The money spent on allowances would represent nothing more than a wealth transfer away from the POUs to whomever might receive auction proceeds.

II. THE PD SHOULD BE REVISED TO ADOPT THE COMPREHENSIVE RETAIL PROVIDER PROGRAM PROPOSED BY SCPPA AND TO REJECT "DELIVERERS" AS THE ELECTRICITY SECTOR PARTICIPANTS IN A MULTI-SECTOR CAP-AND-TRADE PROGRAM.

SCPPA has consistently recommended a comprehensive program for the electricity sector in this proceeding that would avoid the punitive consequences that would be likely to flow from the program proposed in the PD. SCPPA's proposal builds upon the foundation laid by the CPUC in its landmark D.06-02-032 and by CPUC President Peevey in his February 2, 2007 Scoping Memo.

SCPPA recommends that the Commissions adopt a GHG regulatory program for the electricity sector in which regulated retail providers would be the point of regulation for both the imposition of programmatic mandates and for participation in a multi-sector cap-and-trade program. Allowances would be allocated to the retail providers for the benefit of the retail providers' customers, with the allocation of allowances being based upon pre-AB 32 actual experienced emissions and with the amount of allowances that are allocated to each retail provider for each successive compliance period being reduced over time as necessary to achieve AB 32 GHG emission reduction targets for the electric sector and for each retail provider individually by 2020. SCPPA also supports consideration of the "flexible compliance mechanisms" that were envisioned by the CPUC in D.06-02-032, including the allowance trading, banking, borrowing, and appropriate offsets. *See* SCPPA Reply Comment at 3 (Dec. 17, 2007).

Contrary to SCPPA's recommendation, the PD designates "deliverers" as the electricity sector participants in a multi-sector cap-and-trade program rather than retail providers. The PD justifies by evaluating each point-of-regulation option in light of five criteria:

1. Environmental integrity.
2. Compatibility with/expandability to potential regional and/or national GHG emissions cap-and-trade markets.
3. Accuracy and ease of reporting, tracking, and verifying GHG emission reductions.
4. Compatibility with ongoing reforms of wholesale and retail energy markets.
5. Legal issues.

PD at 53-54. The PD errs by not taking into account other criteria, at least two of which – fairness and cost minimization– should be given paramount priority. Further, the PD errs in how it applies the criteria that it does take into account.

A. The PD Errs by Failing to Evaluate the Point-of-Regulation Options on the Basis of Fairness.

The PD errs by not giving any weight to fairness in evaluating the options for the electric sector point of regulation. In the view of the Market Advisory Committee ("MAC"), fairness was one of the four fundamental objectives for a GHG reduction program. The MAC defined "fairness" as "assuring that the program avoids causing environmental harm to particular communities, and *assuring that compliance costs are spread equitably across sectors and regions*." MAC Report at 18. Fairness should hold a paramount place of importance in deliberations of any regulatory agency, including the Commissions.

The objective of fairness requires that compliance costs of any GHG regulatory program should be spread equitably across sectors, regions, and communities. It would be unfair for the Commissions to concoct a program that would require particular sectors, regions, and communities that, due to historical and geographical circumstances, face the greatest challenges and costs in meeting GHG reduction goals, to simultaneously transfer wealth to others. However, that is precisely what would be likely to happen if retail providers that are fully resourced are designated as being "deliverers" and are required to buy allowances while simultaneously being required to take all the actions that will be necessary to reduce their carbon footprint. The money paid for allowances would be likely to be transferred to others, unfairly leaving the most challenged communities to meet the greatest proportional burden of mitigating

GHG emissions with substantially reduced financial resources. The designation of "deliverers" is the first step of a wealth transfer scheme and should be evaluated on that basis.

B. The PD Errs by Failing to Evaluate the Point-of-Regulation Options on the Basis of Cost-Effectiveness.

A second criteria that should be at or near the top of the list of criteria along with fairness is cost-effectiveness. The MAC properly observed that a GHG program "must be fair *and cost effective* while bringing about real emission reductions." MAC Report at 11 (emphasis added).

The Commissions do not have discretion about evaluating the GHG emissions reduction program on the basis of cost-effectiveness. AB 32 *requires* such an evaluation. While AB 32 mandates a reduction in California's GHG emissions to 1990 levels by 2020, AB 32 also requires that the reductions shall be "implemented in an *efficient and cost-effective* manner." Cal. H&S Code § 38561(a) (emphasis added). AB 32 requires CARB to adopt GHG "emission reduction measures by regulation to achieve the maximum technologically feasible and *cost-effective* reductions in greenhouse gas emissions…." Cal. H&S Code § 38562(a) (emphasis added). CARB shall "[d]esign the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to *minimize* costs and maximize the total benefits to California…." Cal. H&S Code § 38562(b) (1) (emphasis added).

Designating deliverers as the point of regulation will unnecessarily lead to higher wholesale electricity rates. As deliverers are required to buy emission allowances, the deliverers will embed the cost of the allowances in their price for electricity. Further, to the extent to which the *marginal* deliverers raise electricity prices to recover the cost of GHG emission allowances, *inframarginal* deliverers will raise their wholesale prices for electricity, particularly in the short-term (real time or day-ahead) market. SCPPA Opening Comment (Dec. 3, 2007); "The Change in Profit Climate," Victor Niemeyer, Electric Power Research Institute ("EPRI"), Public Utilities Fortnightly at 26 (May, 2007). EPRI found that in the Midwest, imposing an emission allowance of $50 per ton on generators could more than *double* the wholesale price of electricity. *Ibid*.

The PD's error is further compounded as a result of the fact that the criterion of cost minimization intersects with the criterion of fairness. By selecting an option that raises electricity costs as would be likely to result under the "deliverer" approach, the PD contravenes the criterion of fairness as well as cost-effectiveness. Increases in electricity prices are regressive. Poor households would bear a larger burden relative to the incomes of wealthier households. *See* SCPPA Opening Comment at 12-13 (October 31, 2007); *Tradeoffs in Allocating Allowances for CO_2 Allowances*, Economic and Budget Brief, at 3; Congressional Budget Office (April 25, 2007). The regressive impact of the PD's program would be unfair.

The adverse impact of the GHG program on wholesale electricity prices could be substantially avoided for short-term (real time or day ahead) wholesale transactions if retail providers were selected as the point of regulation as opposed to deliverers. Deliverers would not be required to acquire allowances if retail providers were the point of regulation.

C. The PD Commits Legal and Factual Error in Evaluating the "Deliverer" Option on the Basis of the PD's Selected Criteria.

In addition to omitting key criteria that should be used to evaluate point of regulation options, the PD errs by improperly evaluating the retail provider and deliverer options on the basis of the criteria that the PD does apply.

1. Legality

The PD concludes that the deliverer option is not preempted by the Federal Power Act. PD at 69. The basis for that finding is that requiring deliverers to be the point of regulation for the electric sector so as to be required to obtain emission allowances is "not directed at wholesale rates or service" that are the focus of the Federal Power Act. PD at 70. The PD errs. The *only* way that emission reductions can be achieved at facilities that deliver imported energy to California under the "deliverer" approach is by directly affecting the wholesale price for the imported electricity. The impact of the envisioned cap-and-trade program on wholesale rates is neither indirect nor ancillary as it is under Clean Air Act regulation. Thus, the "deliverer" program would be preempted.

Furthermore, the envisioned program would be impermissible under the "dormant" Commerce Clause. A program such as the one envisioned in the PD would be declared unlawful as violating the "dormant" Commerce Clause if the burden imposed in interstate commerce were "clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, 397 US 137, 142 (1970). The burden of the PD's envisioned program on interstate commerce would be direct, intended, and potentially massive. Not only would wholesale electricity prices be elevated by the need for "deliverers" of electricity to incorporate the cost of allowances into prices charged in wholesale transactions. Additionally, wholesale prices would be elevated as a consequence of inframarginal "deliverers" raising their wholesale prices in response to marginal "deliverers" raising their wholesale prices to reflect the additional cost of emission allowances.

Conversely, the local benefits to California would be minimal. The PD admits that the cap-and-trade program will "produce a relatively small portion of the overall emission reductions in the short term," while "a large portion of the emission reductions in the electricity sector will come from investments in energy efficiency and renewable energy." PD at 33. Thus, the PD's analysis of the legality of the envisioned cap-and-trade program under the "dormant" Commerce Clause is as erroneous as the PD's analysis of the preemption issue.

2. Compatibility with Wholesale and Retail Energy Market Reforms

In assessing the retail provider and deliverer options for "compatibility with wholesale and retail energy market reforms," the PD focuses on the impact each of the options would have on the California Independent System Operator ("CAISO") Market Reform and Technology Upgrade ("MRTU") market. PD at 60-65. The PD fails to properly take into account the broader impact that the deliverer option would have on wholesale prices generally, as discussed above. As a result of the failure to recognize that broader impact, the PD analysis of the impact on the MRTU market is flawed.

The PD claims that under the retail provider approach, the CAISO would have less flexibility to schedule resources into the real time or day-ahead MRTU markets on the basis of economic or operational considerations. Instead, the CAISO would be forced to dispatch units that are "self-scheduled due to relatively low GHG emission characteristics." PD at 64. Insofar as the self-scheduled generation would receive the market clearing price under MRTU, "wholesale prices from low-emission generation would rise…." *Ibid*.

The PD fails to take into account the fact that if deliverers were the point of regulation and, as a result, were required to acquire allowances, the wholesale price charged by marginal deliverers would raise the market clearing price of the wholesale market. As a result, *all* generation that sells into the wholesale market would receive a higher price than would be obtained otherwise. Under a retail provider approach, wholesale prices for self-scheduled low emission generation may rise to the market clearing level, but the market clearing level would not be elevated to reflect the cost of allowances acquired by the marginal generators. Thus, contrary to the PD's evaluation, the consequences of the deliverer approach for wholesale prices in the CAISO MRTU market as well as short-term wholesale markets generally would be potentially more adverse than the consequence of adopting the retail provider approach, even assuming self-scheduling of low-GHG resources by retail providers that participate in the MRTU market.

3. Accuracy and Ease of Reporting, Tracking, and Verifying Emissions

The PD finds that the retail provider approach is "less preferable" than the deliverer option because it would be "difficult" to track the emissions associated with electricity that retail providers purchased to serve California customers "in the case of purchases from unspecified power plants." PD at 59. The PD observes: "Making the deliverer the point of regulation moves the compliance obligation as close as possible to the generation source, which increases the accuracy of knowledge of GHG emissions attributes to the generation sources." PD at 60. However, moving "the compliance obligation as close as possible to the generation source" does not address the problem of not knowing the emissions associated with unspecified generation. The problem of not knowing the emissions associated with purchases of unspecified power would be the same under the retail provider and deliverer options.

4. Expandability and Compatibility

The PD finds that the retail provider approach would be "least likely to be compatible with the national and regional system," making it the "least preferred" under the "expandability and compatibility" criterion. PD at 57-60. The PD ignores the fact that finding an option to be less expandable so as to preclude it from consideration can be a self-fulfilling prophecy. If California, which dominates the electricity market in the west, were to adopt retail providers as a point of regulation, that adoption would increase the likelihood that California's partners in the Western Climate Initiative ("WCI") would be inclined to adopt a similar approach. The Commission should evaluate point-of-regulation options on the basis of paramount criteria such as fairness, and cost minimization rather than to try to guess about the "compatibility" of any particular option with the assumed preferences of other jurisdictions.

D. SCPPA's Recommendation: Revise the PD to Reverse the Selection of the Deliverer Option.

In light of the improper selection of evaluation criteria and the inappropriate application of the criteria that were utilized in the PD to make a selection from among the point of regulation options, SCPPA recommends that the PD be revised to reverse the selection of the deliverer option and to adopt the retail provider option.

III. IF THE COMMISSIONS DECLINE TO REVISE THE PD TO ADOPT RETAIL PROVIDERS AS THE POINT OF REGULATION FOR THE CAP-AND-TRADE PROGRAM, THE COMMISSIONS SHOULD CONSIDER DEFERRAL OF THE CAP-AND-TRADE PROGRAM UNTIL THE PROGRAM CAN BE ESTABLISHED ON A WEST-WIDE OR NATIONAL BASIS.

If the Commissions decline to revise the PD to adopt retail providers as a point of regulation for the cap-and-trade program, the Commissions should defer implementation of the program until the program can be established on a west-wide or national basis. Diverse parties supported deferral. As noted in the PD, these parties include Pacific Gas and Electric Company, San Diego Gas & Electric Company, the California Independent System Operator, the Northern California Power Authority, The Utility Reform Network, the Division of Ratepayer Advocates, and the Los Angeles Department of Water and Power. PD at 22-23.

The benefits of prompt implementation of a cap-and-trade program for the electricity sector without awaiting establishment of a cap-and-trade program on a west-wide or national basis are minimal. The PD admits that the cap-and-trade system envisioned in the PD would "only produce a relatively small portion of the overall emission reductions in the short term" with "a large portion of the emission reductions in the electricity sector" coming from the implementation of programmatic measures such as energy efficiency and renewable energy. PD at 33. Furthermore, implementation of a cap-and-trade program for the electricity sector would not reduce costs by permitting regulated entities to have flexibility in meeting their emission caps as was envisioned by the CPUC in D.06-02-032. Under the PD, there would be no individual caps on participants in the cap-and-trade program.

Conversely, the negative consequences of implementing the cap-and-trade program for the electricity sector on anything less than a regional basis are substantial. *First*, there would be a potential for leakage of emissions to jurisdictions that are interconnected with the California grid but which do not have GHG emission regulations. *Second*, the smaller the scope of the multi-sector cap-and-trade program, the more there is a chance for illiquidity and price volatility in the secondary market for allowances. *Third*, if the Commissions decline to await implementation of a regional or national cap-and-trade program, there is a risk of implementing a program that will be inconsistent with whatever might be adopted as a west-wide or national program. For these reasons and more as set forth in the comments of the numerous and diverse advocates for deferral, SCPPA urges the Commissions to defer implementation of a cap-and-trade program if the Commissions decline to adopt SCPPA's recommendation to designate retail providers as the point of regulation.

IV. IF THE COMMISSIONS DECLINE TO REVISE THE PD TO ADOPT RETAIL PROVIDERS AS THE POINT OF REGULATION FOR THE CAP-AND-TRADE PROGRAM OR TO DEFER THE CAP-AND-TRADE PROGRAM, THE PD SHOULD BE REVISED TO PROVIDE FOR AN ALTERNATIVE COMPLIANCE OPTION FOR RETAIL PROVIDERS THAT ARE ALSO DELIVERERS.

If the Commissions decline to revise the PD to adopt retail providers as the cap-and-trade point of regulation or to defer cap-and-trade, then SCPPA recommends that the Commissions revise the PD to include an alternative compliance option for retail providers that would also be "deliverers" under the dual regulatory approach envisioned in the PD.

In order to avoid the double burden of complying with mandatory energy efficiency and renewable energy mandates while simultaneously paying for allowances to cover emissions associated with deliveries to serve native load, retail providers that are also deliverers should be permitted to elect to be regulated under an alternative compliance mechanism. Specifically, to mitigate the double burden of paying for the programmatic mandates while also paying for allowances to cover emissions associated with deliveries to serve native load, retail providers/deliverers should be permitted to elect to be subject to entity-specific caps and to be relieved of the obligation to acquire allowances to cover emissions associated with deliveries to serve native load up to level of their caps.[1]

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[1] At least initially, the caps should be set on the basis of recent pre-AB 32 historical emissions associated with deliveries to serve native load as actually experienced by the retail provider/deliverers that elect to be regulated under the alternative compliance option. By setting the entity-specific caps on the basis of recent but pre-AB 32 emissions, the caps would be set so as to give credit for emissions reduction measures that would be undertaken by the retail providers between the date of enactment of AB 32, January 1, 2007, until the effectiveness of AB 32 regulations, January 1, 2012.

Insofar as the cap on a retail provider/deliverer's emissions would decline over time, there is a question about the rate of decline. One option would be to calculate the rate of decline so that a retail provider/deliverer experiences periodic reductions in its cap that are proportional to the decline in allowances available to the multi-sector cap-and-trade market. However, the Commissions may desire to have retail providers that are regulated under the alternative compliance mechanism progress toward greater participation in the cap-and-trade auction and secondary market for emissions and to reduce their reliance on their entity-specific caps. If so, an alternative would be to have the entity-specific caps decline at a rate that would be somewhat faster than the overall decline in allowances for the multi-sector cap-and-trade program.

A faster decline would require the retail provider/deliverers that are regulated under the alternative compliance mechanism to acquire progressively more allowances through an auction or through the cap-and-trade

To the extent to which a retail provider/deliverer that elects to be regulated under the alternative compliance mechanism has emissions associated with deliveries to serve native load that exceed its cap, the retail provider/deliverer would be required to acquire allowances through an auction or through the cap-and-trade secondary market in order to avoid a penalty. Likewise, if the retail provider/deliverer engages in wholesale sales of electricity, the retail provider/deliverer would be required to obtain allowances to cover the emissions associated with the deliveries for wholesale sales. The entity-specific cap that applies to a retail provider/deliverer that elects to be regulated under the alternative compliance mechanism should be based on emissions associated with deliveries to serve the retail provider/deliverer's native load, not deliveries for wholesale sales.

V. THE NATURAL GAS SECTOR SHOULD BE INCLUDED IN ANY MULTI-SECTOR CAP-AND-TRADE PROGRAM.

The PD would allow the natural gas sector to avoid being included in a multi-sector cap-and-trade program. The rationale is that "the natural gas sector has limited ability to substitute different fuel types for natural gas" so that the only "major direct programmatic approach to reducing emissions from the sector… is energy efficiency…." PD at 104-105. On that basis, the PD recommends "that the natural gas sector not be included in a cap-and-trade system at this time." PD at 106.

The PD's rationale for excluding the natural gas sector from a multi-sector cap-and-trade program is erroneous. In addition to energy efficiency, other measures such as solar water heating are available to reduce natural gas consumption just as there are alternatives to using carbon-based fuels to produce electricity. Thus, if the electricity sector is to be included in a multi-sector cap-and-trade program, the natural gas sector should be included, as well.

VI. CONCLUSION

For the reasons set forth above, SCPPA recommends that the Commissions revise the PD to adopt retail providers as the point of regulation within the electricity sector for both

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secondary market to cover the emissions associated with the retail provider/deliverers' emissions associated with service to native load. However, in order to contain the cost consequences of paying for emission allowances while paying for emission reduction programs as well as to contain the potential wealth transfer effect of requiring retail provider/deliverers to pay for allowances, the percentage of emissions associated with deliveries for service to native load that would be required to be covered by auctioned or secondary market allowances should be limited.

programmatic mandates and for participation in a multi-sector cap-and-trade scheme, consistent with SCPPA's recommendation throughout this proceeding.

If the Commissions are disinclined to revise the PD so as to adopt retail providers as the points of regulation, SCPPA recommends that the Commissions revise the PD to defer the cap-and-trade program. Absent deferral, SCPPA recommends that the Commissions revise the PD to provide for an alternative compliance option for retail providers that are also deliverers of electricity to permit the retail providers/deliverers to elect to be subject to retail provider/deliverer-specific caps on emissions associated with deliveries to serve native load so as relieve the retail provider/deliverers of the obligation to obtain allowances to cover emissions under their entity-specific caps.

Lastly, SCPPA recommends that the PD be revised to include the natural gas sector in any multi-sector cap-and-trade program.

Proposed Revisions and Findings of Fact and Conclusions of Law to incorporate SCPPA's recommendations into the PD are appended as Appendix A.

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Dated: February 28, 2008

APPENDIX A

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY PROPOSED REVISIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROPOSED REVISIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW TO REFLECT RETAIL PROVIDERS RATHER THAN "DELIVERERS" AS THE ELECTRIC SECTOR POINT OF REGULATION FOR A MULTI-SECTOR CAP-AND-TRADE PROGRAM.

A. Proposed Revisions to Findings of Fact:

- Revise Finding of Fact 7 as follows:

7. For the electricity sector, a cap-and-trade system <u>with retail providers as the electric sector point of regulation</u>, in conjunction with the continuation and strengthening of existing policies regarding energy efficiency building codes and appliance efficiency standards, retail provider energy efficiency programs, the renewables portfolio standard program, and the emissions performance standard as recommended in this decision, is likely to be a less expensive means of complying with AB 32 GHG emission reduction requirements than sole reliance on existing and increased mandatory programmatic requirements.

- Revise Finding of Fact 8 as follows:

8. For the electricity sector, GHG emissions trading would maximize flexibility in achieving emissions targets by allowing ~~obligated entities~~ <u>capped retail providers</u> to rely on least-cost options across the entire economy.

- Revise Finding of Fact 10 as follows:

10. For the electricity sector, a GHG emissions cap-and-trade program would allow ~~market participants~~ capped retail providers to manage risk associated with compliance obligations.

- Revise Finding of Fact 12 as follows:

12. Implementing a GHG emissions cap-and-trade system in 2012 for the electricity sector would allow ~~entities~~ capped retail providers to gain experience with finding real least-cost GHG emission reduction opportunities.

- Revise Finding of Fact 14 as follows:

14. For the electricity sector, placing the compliance obligation in a GHG emissions cap-and-trade system on ~~the entities that deliver power to the electricity grid in California, which we call "deliverers,"~~ retail providers is reasonable because this point of regulation best meets, on balance, the most important criteria, as described in this decision.

- Revise Finding of Fact 15 as follows:

15. By choosing a ~~deliverer~~ retail provider *point of regulation* we are simply choosing a trigger that determines which entities have to comply, but what is being regulated is the amount of GHGs being produced ~~in California~~ ~~or~~ to supply electricity to customers located in California.

- Revise Finding of Fact 16 as follows:

16. The ~~deliverer~~ retail provider point of regulation does not single out wholesale sales of electricity, but rather applies uniformly to electricity consumed in California ~~and electricity generated in California~~.

- Revise Finding of Fact 17 as follows:

17. An entity with compliance obligations under a ~~deliverer~~ retail provider form of regulation, if it does not already possess enough allowances, would have an opportunity ~~after delivery of the energy~~ to acquire allowances on the market or to show compliance using offsets or other flexible compliance mechanisms.

- Revise Finding of Fact 19 as follows:

19. A ~~deliverer~~ retail provider point of regulation would treat all electricity delivered to the California grid the same, whether that electricity is generated in California or elsewhere. In either case, the ~~deliverer~~ retail provider would later have to surrender GHG allowances (or secure adequate offsets) based on the amount of GHG emissions associated with that electricity.

- Revise Finding of Fact 23 as follows:

23. Any burdens on interstate commerce that may result from the implementation of AB 32 under the regulations that we recommend to ARB (including a ~~deliverer~~ retail provider point of regulation) would be purely incidental, while the local benefits to California of reducing GHG emissions, and therefore the impact of global warming, would be most significant.

- Delete Finding of Fact 26.
- Delete Finding of Fact 27.
- Delete Finding of Fact 32.
- Delete Finding of Fact 34.
- Delete Finding of Fact 35.
- Revise Finding of Fact 40 as follows:

40. It is reasonable for ARB to ~~not~~ include the natural gas sector when designing a multi-sector GHG emissions cap-and-trade system for California, for implementation in 2012, as described in this decision.

B. Proposed Revisions to Conclusions of Law:

- Delete Conclusion of Law 4.
- Delete Conclusion of Law 5.
- Delete Conclusion of Law 6.
- Delete Conclusion of Law 7.
- Delete Conclusion of Law 8.
- Delete Conclusion of Law 9.
- Delete Conclusion of Law 10.
- Revise Conclusion of Law 13 as follows:

13. The proposed ~~deliverer~~ retail provider point of regulation would not conflict with the FPA's electric reliability provisions.

- Revise Conclusion of Law 14 as follows

14. A ~~deliverer~~ retail provider point of regulation is not preempted by the FPA.

- Revise Conclusion of Law 17 as follows:

17. The use of a ~~deliverer~~ retail provider point of regulation would not violate the dormant Commerce Clause.

- Revise Conclusion of Law 18 as follows:

18. The ~~deliverer~~ retail provider point of regulation would only regulate electricity that is generated in, or delivered for consumption in, California. Thus, it

would not regulate any commerce that occurs totally outside of California, and therefore would not regulate extraterritorially in violation of the Commerce Clause.

- Revise Conclusion of Law 20 as follows:

20. Our recommended ~~deliverer~~ retail provider point of regulation would not cover power that is merely wheeled through California.

II. PROPOSED REVISIONS OF FINDINGS OF FACT AND CONCLUSIONS OF LAW TO REFLECT DEFERRAL OF IMPLEMENTATION OF A CAP-AND TRADE PROGRAM.

A. Proposed New Findings of Fact:

- The benefits of prompt implementation of a cap-and-trade program for the electric sector without awaiting establishment of a cap-and-trade program on a west-wide or national basis are minimal.

- Implementation of a cap-and-trade program for the electric sector would not reduce costs by permitting regulated entities to have flexibility in meeting their emission caps unless there are individual caps on regulated entities.

- The negative consequences of implementing a cap-and-trade program for the electricity sector on anything less than a regional basis are substantial.

III. PROPOSED REVISIONS OF FINDINGS OF FACT AND CONCLUSIONS OF LAW TO REFLECT ADOPTION OF AN ALTERNATIVE COMPLIANCE MECHANISM:

A. Proposed New Findings of Fact:

- In order to avoid the double burden of complying with mandatory energy efficiency and renewable energy mandates while simultaneously paying for allowances to cover emissions associated with deliveries to serve native load, retail providers that are also deliverers should be permitted to elect to be regulated under an alternative compliance mechanism.

- To eliminate the double burden of paying for programmatic mandates while also paying for allowances to cover emissions associated with deliveries to serve native load, retail providers that are also deliverers should be permitted to elect to be subject to entity-specific caps on emissions associated with deliveries to serve native load and to be relieved of the obligation to require allowances for emissions up to the level of the entity-specific caps.

- To the extent to which a retail provider/deliverer that elects to be regulated under the alternative compliance mechanism has emissions associated with deliveries to serve native load that exceed the cap or has emissions associated with deliveries for wholesale sales, the retail provider/deliverer should be required to acquire allowances through an auction or through the cap-and-trade secondary market in order to avoid paying a penalty.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON PROPOSED DECISION** on the service list for CPUC Docket No. R.06-04-009 and CEC Docket No. 07-OIIP-01 by serving a copy to each party by electronic mail and/or by mailing a properly addressed copy by first-class mail with postage prepaid.

Executed on February 28, 2008, at Los Angeles, California.

/s/ Sylvia Cantos

Sylvia Cantos

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