BEFORE THE
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

REPLY COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY ON PROPOSED DECISION REGARDING "INTERIM OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES"

C. Susie Berlin
McCarthy & Berlin, LLP
100 Park Center Plaza, Suite 501
San Jose, CA 95113
Phone: 408-288-2080
Fax: 408-288-2085
Email: sberlin@mccarthylaw.com
Attorneys for the:
Northern California Power Agency

March 4, 2008

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)

BEFORE THE 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

REPLY COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY ON PROPOSED DECISION REGARDING "INTERIM OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES"

In accordance with Rules of Practice and Procedure of the California Public Utilities Commission (CPUC), the Northern California Power Agency[1] (NCPA) submits these reply comments on the February 8, 2008, proposed *Interim Opinion on Greenhouse Gas Regulatory Strategies* (Proposed Decision). 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 the "Commissions."

A number of stakeholders filed opening comments on the Proposed Decision, and from those comments, one factor was abundantly clear – there are still a number of details that must be worked out before the Commissions' recommendations can be used by the California Air Resources Board (CARB) to adopt an Assembly Bill (AB) 32 implementation plan for the

[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.

electricity sector. NCPA notes the following conclusions can be taken away from the opening comments filed on February 28, 2008:[2]

1. Overly prescriptive mandates regarding renewable portfolio standards (RPS) are not in the best interest of effecting overall greenhouse gas (GHG) reductions.

2. Conclusions that the publicly owned utilities' (POU) current energy efficiency and renewable energy programs are not equivalent to those of the investor owned utilities are not supported by fact or the record – and such issues are properly the purview of the State Legislature which has already enacted clear mandates for public power in this regard.

3. The record must be further developed in order to substantiate the recommendation that a cap-and-trade program is the most cost-effective means by which to effect GHG reductions for the electricity sector, and many complicated and controversial issues surrounding the use of an auction and the distribution of emissions allowances must be fully explored before the Commissions can move forward with any reasoned recommendation on this point.

5. It is important for stability in the market and for cost-effectiveness that a California GHG reduction program be developed in a way that can be integrated into a regional or federal program.

6. The deliverer point of regulation requires further clarification.

I. NO CHANGES ARE NEEDED TO CURRENT ENERGY EFFICIENCY AND RENEWABLE ENERGY PROGRAMS.

As those subject to the requirements and mandates established by the Legislature for POU energy efficiency and renewable energy have aptly demonstrated,[3] changes are not needed to the existing framework to effect real and permanent GHG reductions. Indeed, the faulty premise upon which the Proposed Decision's recommendation was based was exemplified in one set of opening comments that it supports "extension of energy efficiency and RPS to publicly owned utilities."[4] This very statement shows the misconception that POUs are not currently subject to rigorous energy efficiency and renewable energy programs, which is clearly not the case. In distinguishing between the need to "extend" these programs to POUs and why such oversight of energy service providers (ESPs) is not necessary, WPTF/AReM went on to recommend that the Proposed

---

[2] For purposes of these comments, NCPA takes no position on issues addressed by stakeholders in Opening Comments that NCPA does not respond to in this Reply.

[3] See Opening Comments of the Los Angeles Department of Water and Power (LADWP), the Sacramento Municipal Utility District (SMUD), and the Southern California Public Power Authority.

[4] Western Power Trading Forum and the Alliance for Retail Energy Markets Comments, p. 4.

Decision be modified to clarify that the requirements not be interpreted as including ESPs; "since ESPs are already facilitating energy efficiency programs of their customers, there is no need to impose specific energy efficiency requirements on ESPs." (Id.) POUs, on the other hand, do more than merely facilitate energy efficiency programs of their customers, and in fact offer a plethora of programs specifically tailored to the individual needs of the communities in which they are located. NCPA raises this point in order to further demonstrate the faulty reasoning and factual error upon which the Proposed Decision's recommendation regarding any changed regulation of POU energy efficiency and renewable energy programs is based. POUs are already more than adequately covered under existing energy efficiency and renewable energy legislative mandates, and those mandates should not be adversely impacted by the implementation of AB 32. References to a "level playing field" (Edison, p. 2; Community Environmental Council, p. 4) are simply misplaced. The Community Environmental Council's support for such a "level playing field" is supported by unsubstantiated assertions that "the lack of any outside enforcement of POU goals makes achievement of the self-imposed goals less likely." (Community Environmental Council, p. 4) As several parties noted in their February 28 comments on the Proposed Decision, not only are these self-imposed goals being achieved, they are being exceeded and are often surpassing the goals of the IOUs. Further, these goals are enforced by publicly accountable boards and councils elected at the most representative level of government. State mandates on POUs already exist; there is no demonstrable evidence to support changing the current structure. Indeed, as noted above, especially as it pertains to renewable programs, the POUs have largely been more successful than the IOU programs.

Certainly, as it pertains to the economy-wide goals of AB 32, CARB is better served by directing these kinds of regulations to those outside the electricity sector, as it is the electricity sector that is already subject to the most GHG reduction measures; a fact that was not unknown to the Legislature when AB 32 was enacted.

While NCPA strongly supports the development of renewable energy, simply mandating an increase in the overall requirements for the State's renewable programs will not necessarily achieve the most cost-effective emissions reductions. Development of renewable energy policy cannot be done in a vacuum; the State must still address the very real constraints associated with the delivery of renewable resources to consumers, which, in most instances, requires the costly development of new or expanded transmission.

Moreover, forcing the State to utilize resources for one purpose, rather than allowing entities the discretion to make expenditures based on the most cost-effective emissions reductions

options available is contrary to sound public policy, and does not optimally advance the objective of achieving actual emissions reductions.

NCPA notes its concurrence with those parties that caution against overly rigid mandates that could ultimately be so prescriptive as to inhibit the achievement of real GHG reductions. Implementation of AB 32 must be done in an integrated and comprehensive manner in order to achieve the overarching climate policy objectives of the State, by employing all of the "tools in the GHG reduction tool-box," rather than merely adding more narrowly constructed regulatory requirements and additional administrative burdens.

Finally, NCPA notes its concurrence with the Division of Ratepayer Advocate's (DRA) recommendation that the Proposed Decision – and CARB – clarify that emissions reductions attributed to RPS be credited toward achievement of AB 32 goals. (DRA, pp. 6-7) As previously noted, the electricity sector is the one sector in the State-wide economy that is already mandated with taking actions that reduce GHG emissions; it is clear that the Legislature intended these programs to complement the reductions sought through AB 32. The Proposed Decision should be revised to acknowledge this same principle.

II. A CAP-AND-TRADE PROGRAM SHOULD NOT BE HASTILY IMPLEMENTED

Many stakeholders commented on the need for further developing the record to support recommendation of a cap-and-trade program, noting in particular the lack of any empirical data supporting this recommendation as the most cost-effective approach. Indeed, even the Proposed Decision notes that there is an insufficient record upon which to make a recommendation on allocation of emissions allowances or the proceeds that result from an auction. While this topic was addressed by almost all of the commenting stakeholders, there was no clear consensus on any of the issues surrounding allocation of allowances or use of an auction. Accordingly, it is imperative that the Commission not rush to implement a cap-and-trade program without fully exploring all of the myriad of options, details, and implications attended thereto. As noted by many parties, a more thorough analysis of the potential impacts and implications of integrating a California program with a regional or federal program must also be developed. Indeed, even the recommendation to adopt a cap-and-trade program and auction "at least" some of the allowances, unsupported by further analysis regarding the cost-effectiveness and administrative burdens associated with such a program, is contrary to the mandates of AB 32.[5]

[5] Health & Safety Code § 38662(b)(7).

Notably, the only issue in which stakeholders all generally concurred was that the proceeds from emissions allocations should be used to benefit electricity customers; NCPA concurs with this position, and further clarifies that such proceeds should be administered by the retail service providers impacted, and not just CPUC-jurisdictional load-serving entities. (See PG&E Comments, pp. 5-6)

NCPA raises the importance of these crucial issues, and concurs with the parties that urge the Commissions and the State to proceed with caution in advancing any cap-and-trade program. As evidenced by recent media coverage, including a March 2, 2008, Sacramento Bee article that highlights the prospect that State revenues may need to be supplemented by industry fees, there is a very real possibility that auction revenues will in turn be diverted to cover administrative costs, rather than utilized to effect meaningful emissions reductions.

III. DELIVERER NEEDS FURTHER CLARIFICATION

The issues raised by the SCPPA regarding the dual points of regulation and the potential additional administrative and financial burdens that this may cause merit further review and consideration (SCPPA Comments, pp. 2-5). AB 32 mandates that the State achieve economy-wide reductions in GHG emissions. However, the statute also notes, in several places, that such reductions be achieved – to the greatest extent possible – in a cost-effective manner, and by minimizing the administrative burden of both implementation and compliance.[6] Without further clarification of how the deliverer point of regulation will be determined – especially for imports, and absent explanation of how the deliverer point of regulation will not impose a duplicate and burdensome compliance obligation on retail providers that are also deliverers, the Commissions' recommendation to CARB is incomplete.

The Proposed Decision must provide greater clarity on the definition of deliverer.[7] The Proposed Decision does not provide sufficient clarity to define unequivocally who has the ultimate compliance obligation to purchase emissions credits for any power delivered into the State. Since CARB is seeking guidance from the Commissions on ways to implement AB 32 for the electricity sector that can be included in its comprehensive Scoping Plan, it is imperative that these ambiguities be clarified before a formal recommendation is submitted to CARB.

---

[6] See, for example, Health & Safety 38662(b)(5) and (7), 38501(h), and 38562(b)(1).

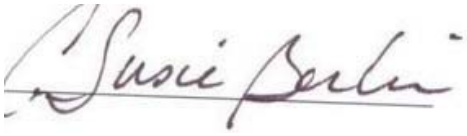
[7] See the Opening Comments of the Independent Energy Producers, SMUD, Modesto Irrigation District, Natural Resource Defense Council.

IV. CONCLUSION

NCPA recommends that the Commissions correct the Proposed Decision as noted herein.

March 4, 2008

Respectfully submitted,



C. Susie Berlin
McCarthy & Berlin, LLP
100 Park Center Plaza, Suite 501
San Jose, CA 95113
Phone: 408-288-2080
Fax: 408-288-2085
Email: sberlin@mccarthylaw.com
Attorneys for the:
NORTHERN CALIFORNIA POWER AGENCY

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 **REPLY COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY ON PROPOSED DECISION REGARDING "INTERIM OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES"** on all parties on the Service Lists for R.06-04-009, on the Commission's website on March 4, 2008, 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 4th day of March, 2008.

Katie McCarthy