

**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

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**OPENING COMMENTS OF THE
CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION
ON RECOMMENDED GREENHOUSE GAS EMISSION REDUCTION POLICIES**

June 2, 2008

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**OPENING COMMENTS OF THE
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ON RECOMMENDED GREENHOUSE GAS EMISSION REDUCTION POLICIES**

In accordance with Rules 1.9 and 1.10 of the Rules of Practice and Procedure of the Public Utilities Commission (“CPUC”) of the State of California, the California Municipal Utilities Association (“CMUA”) hereby files these Comments pursuant to the *Administrative Law Judge’s Ruling Modifying Schedule and Correcting Suggested Outline for Comments and Reply Comments* (“Ruling”) issued on May 20, 2008, in R.06-04-009. CMUA also files these Comments with the California Energy Commission (“CEC”) in Docket 07-OIIP-01. In these Comments, the CPUC and CEC will collectively be called the “Joint Agencies” and the California Air Resources Board will be called “CARB.” These Comments follow the outline numbering convention suggested in the Ruling.

I. SUMMARY

CMUA is a trade association that represents California’s diverse mix of publicly owned electric utilities (“POUs”). Possibly more so than any other regulatory proceeding heretofore, that diversity is manifest in the consideration of specific operational details for implementing Assembly Bill (“AB”) 32. CMUA members range from utilities having some of the highest greenhouse gas (“GHG”) emission intensities¹ in California to the lowest.² Demonstrating their commitment to emission reductions, some CMUA members with higher emission intensities have commenced the most aggressive GHG emission reduction plans in the state and possibly the nation.³

¹ “LADWP has an overall carbon intensity of approximately 1300 lbs/MWh, while the average of large utilities in California are much lower, and in some cases less than half of our carbon intensity. LADWP and the City of Los Angeles supported AB 32 during the 2006 legislative session, recognizing that our electric portfolio poses one of the greatest challenges and one of the greatest opportunities for reducing emissions.” *Opening Comments of the Los Angeles Department of Water and Power on the Administrative Law Judge’s Ruling Requesting Comments on Allowance Allocation Issues* (Oct. 31, 2007) at 3.

² For example, “[M]any NCPA member utilities already have California-eligible RPS levels that exceed the 33% threshold being considered as a *new* threshold value, and one NCPA member has a California-eligible RPS above 50% [Alameda].” *Comments of the Northern California Power Agency on the February 8 Proposed Decision of President Peevey* (Feb. 28, 2008) at 13. Also, a number of smaller POUs serve their load with portfolios comprised of 50-100% carbon-free hydroelectric resources.

³ See e.g., “The LADWP has made it a priority to shift our energy resource mix to cleaner resources and thereby reduce our carbon footprint. The LADWP accelerated its Renewable Portfolio Standard goal to 20% by 2010. On May 15, 2007, Mayor Antonio Villaraigosa released the “Green LA – An Action Plan to Lead the Nation in Fighting Global Warming” (GREEN LA Plan) that has an overall goal of reducing the City of Los Angeles’ greenhouse gas emissions by 35% below 1990 levels by 2030. The cornerstone of the GREEN LA Plan is increasing the City’s use of renewable energy to 35% by 2020.” *Opening Comments of the Los Angeles Department of Water and Power on the Joint CPUC/CEC Staff Proposal for a GHG Reporting Protocol* (Jul. 2, 2007) at 11.

CMUA and its members unambiguously restate here their full support for the goals of AB 32.⁴

CMUA stands for the core principle that, as with many matters of statewide importance, local decision-making is the best vehicle for achieving cost-effective emission reductions while ensuring reliable service.⁵ CMUA's comments in this proceeding do not, and in most cases cannot, go to detailed proposals that are better left to operational/technical experts of specific POUs. CMUA's comments are properly constrained to articulating consensus umbrella policy principles. Hence, CMUA's comments should *never* be interpreted to (explicitly or implicitly) supplant the POU-specific positions stated by the local boards, councils, and personnel.

This core principle being espoused by CMUA is that CARB must design the regulatory structure to grant the primarily vertically-integrated POUs the autonomy to achieve AB 32's goals. CMUA and its member POUs *do not* argue that they should be exempt from AB 32's requirements or relieved of their equitable burden to reduce GHG emissions.⁶ They *do* argue that the POUs *will* achieve their equitable share of reductions in accordance with the clearly stated legislative intent of AB 32 if CARB's regulations incorporate provisions that optimize the scope of local decision-making.⁷ Accordingly, CMUA looks forward to participating in the comprehensive CARB proceeding to implement a Scoping Plan that incorporates all sectors and not just the electric sector.

⁴ "The LADWP remains committed to partnering with the State to achieve the goals of AB 32 to reach 1990 GHG emission levels by 2020." *Opening Comments of the Los Angeles Department of Water and Power on the Proposed Decision of President Peevey* (Feb. 28, 2008) at 1. "NCPA recognizes the importance of a statewide program that will reduce GHG emissions across all sectors of the economy." *NCPA Comments* (Feb. 28, 2008) at 2. "Redding is committed to continuing to work with the Joint Agencies on developing the most efficient and economically feasible strategies and program designs that will maximize the greenhouse ("GHG") emissions reductions obtainable through implementation of AB 32." *Comments of the Redding Electric Utility on the Proposed Decision of President Peevey on the Interim Opinion on Greenhouse Gas Regulatory Strategies* (Feb. 28, 2008) at 1. "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." *Southern California Public Power Authority Comments on Proposed Decision* (Feb. 28, 2008) at 2. "CMUA unequivocally states here that it supports the goals and the effective implementation of Assembly Bill ("AB") 32." *Comments of the California Municipal Utilities Association on the Proposed Decision of President Peevey on the Interim Opinion on Greenhouse Gas Regulatory Strategies Opening Comments* (Feb. 28, 2008) at 1.

⁵ AB 32 states the intent of the Legislature that CARB design emissions reduction measures "in a manner that minimizes costs and maximizes benefits for California's economy." CAL. HEALTH & SAFETY CODE § 38501(h). The emission reductions shall be "implemented in an efficient and cost-effective manner." CAL. HEALTH & SAFETY CODE § 38561(a). 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. HEALTH & SAFETY CODE § 38562(b)(1).

⁶ See e.g., *Opening Comments of the LADWP on the Administrative Law Judge's Ruling Requesting Comments and Legal Briefs on Market Advisory Committee Report* (Aug. 8, 2007) at 3.

⁷ "CMUA supports the implementation of a specific emissions cap for each retail provider. These caps will provide milestones for retail providers on the amount of GHG emissions reductions each must achieve to meet the AB 32 requirements without resulting in cost shifts. Each retail provider will be authorized to make prudent judgments for achieving its compliance obligation through the most cost-effective means. As guided by the particulars of its specific compliance obligation, a retail provider's judgments may include making substantial investments for energy efficiency and/or additional renewable resources." *CMUA Opening Comments* (Feb. 28, 2008) at 2-3.

II. ALLOWANCE ALLOCATION

B. Response to staff paper on allowance allocation options and other allocation recommendations

The Joint Agency White Paper: (1) fails to consider reliability issues that may be created by an auction; (2) fails to adequately describe the auction details yet it includes an auction component in every proposal for a market-based system; and (3) fails to consider or evaluate the additional costs of an auction. It is premature, at best, for the Joint Agencies to recommend an auction without knowing or providing more details

CMUA does not support an auction mechanism in that it will cause increased compliance costs,⁸ inequitable cost-shifting,⁹ and decreased reliability.¹⁰ The CPUC's own consultant identifies the auction option as the most expensive to consumers.¹¹ In addition, the recent experience with the auctioning of transmission capacity rights by the California Independent System Operator resulted in a large part of the auctioned rights going to hedge funds and not to retail providers. Such a result in a GHG allowance auction would undoubtedly cost consumers money that would not go directly to reducing emissions.

⁸ SMUD argues that in relation to an auction, [r]ather than using its customer/owner funds to make direct reductions in GhG emissions, SMUD would be required to increase electricity rates to fund State administration of an auction, as well as new State programs that would result from the multi-billion dollar auction revenue stream. In the best case scenario, some portion of these customer/owner funds would flow back to make emissions reductions in the electricity sector. However, the reductions gained as a result of these expenditures would most certainly be less than applying the funds towards direct emissions reductions in the first place. Since there are no profits or profit motive for SMUD, this interchange would be a money-losing proposition for SMUD and an additional cost to its ratepayers." *SMUD Opening Comments* (Feb. 28, 2008) at 3-4. "Redding does not support the use of an auction due to the potential economic impact to consumers." *Redding Opening Comments* (Feb. 28, 2008) at 3.

⁹ "Auctioning simply drains funds from LADWP in a way that will hobble, if not cripple, the programs that LADWP has adopted, in the exercise of its powers as a charter city, to achieve direct GHG reductions. LADWP cannot simply stand by and submit to a distorted implementation of the statute that was not contemplated by the Legislature and that mandates significant or full auctioning of allowances, with revenue recycled to other sector or out-of-sector participants and away from municipal activities to reduce GHG emissions." *LADWP Opening Comments* (Feb. 28, 2008) at 9. "SMUD is concerned about ratepayer funds going to purposes other than investments in direct emission reductions or relief for low income ratepayers. SMUD believes ratepayer funds should be used in ways that directly reduce emissions such as building or contracting for additional renewable generation, capital funding for new transmission to reach renewable generation, or investing in additional energy efficiency programs for its ratepayers. In addition and consistent with SMUD's existing programs, SMUD would intend to use ratepayer funding (whether from direct or allocated auction revenue) to decrease the regressive rate impacts of this program on those ratepayers that will have the most difficulty paying the higher costs of GhG compliant generation." *SMUD Opening Comments* (Feb. 28, 2008) at 4.

¹⁰ "At the end of the day, retail providers are responsible for providing safe and reliable electricity to consumers; a mandate that is not ignored in AB 32. Retail providers must also be able to do this, even with the implementation of AB 32, in the most cost-effective manner. Accordingly, it is imperative that all retail providers with compliance obligations not be unduly constrained from being able to provide customers with reliable electricity." *NCPA Comments* (Feb. 28, 2008) at 4. "NCPA [] notes that a rush to implement a program that has not been more fully developed is certainly not in the best interest of California consumers. The lessons of the California energy crisis should provide a strong reminder about the perils of hastily implementing a market-based program." *NCPA Comments* (Feb. 28, 2008) at 6.

¹¹ Oral statement made at the *Joint Agency Workshop on Greenhouse Gas Allocation Issues for the Electricity Sector, and to Review Economic Modeling Results* held on May 6, 2008.

Furthermore, CMUA believes that reliability issues are broader than just the auction mechanism. Should CARB decide to implement a cap and trade mechanism for the emission reductions not achieved by the core measures,¹² CMUA would have concerns with a California-only approach and believes that a regional solution (at least) would be preferable.¹³ The problem is that a state-only program that regulates out-of-state generators will involve nationwide market participants and drive up costs for California ratepayers.¹⁴

IV. FLEXIBLE COMPLIANCE MECHANISMS

A. Detailed Proposal

CMUA fully supports the general principle of implementing flexible compliance mechanisms. CMUA supports a multi-year compliance period. CMUA emphasizes that no flexible compliance mechanism should be discarded until CARB's Scoping Plan implementation process is complete.

Unfortunately, the Joint Agency staff has: (1) failed to provide any White Paper or other descriptive details on flexible compliance; (2) asked for responses to questions that CMUA cannot answer because they far exceed the scope of information discussed in workshops; and (3) asked for responses to questions that CMUA cannot answer because they are contingent upon other unresolved issues in this proceeding. Accordingly, CMUA is unable to respond more fully to the complex questions presented in the ALJ Ruling and suggests that flexible compliance mechanisms should be discussed further by regional participants.

VI. NON-MARKET-BASED EMISSION REDUCTION MEASURES (OTHER THAN CHP) AND EMISSION CAPS

A. Electricity emission reduction measures

The POUs are already committed to achieving greenhouse gas emission reductions through

¹² The scoping plan concept of "core measures" was presented by CARB staff during the *Policy Scenarios Workshop* on May 19, 2008.

¹³ "We strongly support development of a regional or national program, and believe a California-only cap-and-trade program for the electricity sector combined with first seller and full auctions is the wrong public policy and will ultimately fail. The many risks posed by California's acting in isolation and proposing a never-before tested unconventional market scheme will be borne solely by the electric ratepayers of California. The LADWP is not alone in raising concerns about how a cap-and-trade program is being developed in California, there is a ground swelling of opposition. Our sister utilities have also expressed concerns via the California Municipal Utilities Association and the Southern California Public Power Authority regarding the point of regulation and impacts that an allowance auction may have on our local communities." *LADWP Opening Comments* (Feb. 28, 2008) at 2. *See SMUD Opening Comments* (Feb. 28, 2008) at 8.

¹⁴ "CMUA emphasizes its members' desires to integrate GHG goals together with providing reliable and affordable electric service and with wholesale power market functions." *Opening Comments of the California Municipal Utilities Association on the Administrative Law Judge's Ruling Requesting Comments and Legal Briefs on Market Advisory Committee Report* (Aug. 6, 2007).

aggressive energy efficiency increases and renewable resource procurements.¹⁵ Therefore, it is not necessary to coerce such actions with new legislation or to apply CPUC rules to the POUUs.¹⁶

Without knowing the magnitude or scope of reduction goals that will be required for the electricity sector, CMUA is unable to effectively comment on additional direct programmatic or regulatory emission reduction measures. Parties must know the compliance obligation for each sector and for the entities within the sectors.¹⁷ CMUA reiterates its call that the Joint Agencies must recommend principles, and CARB must implement regulations, that encompass an equitable proportionality of reduction obligations amongst the different sectors and the separate entities within those sectors.¹⁸

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¹⁵ “The LADWP has established an aggressive goal of developing and owning new renewable generation to meet our 20% by 2010 and 35% by 2020 RPS mandates.” *LADWP Opening Comments* (Feb. 28, 2008) at 3. LADWP has nearly tripled its portfolio of renewable energy since 2005 and “has more energy projects currently under development to meet [its] 20% by 2010 mandate.” *Id.* “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.” *SCPPA Opening Comments* (Feb. 28, 2008) at 2. NCPA states that taken as a whole, its members have already achieved the 20% by 2010 RPS threshold. *NCPA Comments* (Feb. 28, 2008) at 13. Redding “took action to increase its RPS from 3% in 2006 to 27% in 2007.” *Redding Opening Comments* (Feb. 28, 2008) at 2.

¹⁶ See *SMUD Opening Comments* (Feb. 28, 2008) at 11-14.

¹⁷ “We believe that the best approach to fulfilling this commitment is through quantifiable direct emission reductions. We support the use of the Renewable Portfolio Standard (RPS) and Energy Efficiency (EE) as mechanisms for the electricity sector to meet its AB 32 goals.” *LADWP Opening Comments* (Feb. 28, 2008) at 3. The regulatory program should ensure a “level playing field for all retail providers by virtue of setting the appropriate individual caps. Then, in compliance with AB 32’s core principles, all retail providers will exercise discretion to determine the most cost-effective means to meet their respective emissions cap.” *CMUA Opening Comments* (Feb. 28, 2008) at 1-2.

¹⁸ “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.” *SCPPA Opening Comments* (Feb. 28, 2008) at 4. “AB 32 must not result in cost shifts: (1) between the different retail providers; (2) between their respective ratepayers; or (3) between the different sectors of the economy that have quantified GHG emissions.” *CMUA Opening Comments* (Feb. 28, 2008) at 1-2.

VIII. CONCLUSION

CMUA respectfully requests the Joint Agencies to consider these comments as they draft recommendations for greenhouse gas emission reduction policies.

Dated: June 2, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to be "BM" or "B. McLaughlin", written in a cursive style.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached:

OPENING COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION ON GREENHOUSE GAS EMISSION REDUCTION POLICIES

on all known parties to R.06-04-009 by transmitting an e-mail message with the document attached to each party named in the official service list. I served a copy of the document on those without e-mail addresses by mailing the document by first-class mail addressed as follows:

See attached service list

Executed this 2nd day of June 2008, at San Francisco, California.

A handwritten signature in black ink, appearing to read 'Ryan Bernardo', is written over a horizontal line. The signature is stylized with large, overlapping loops.

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