

**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 Emission Standards into  
Procurement Policies.

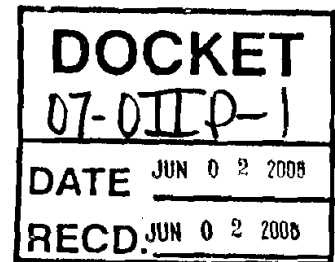
R.06-04-009  
(Filed April 13, 2006)

**ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF  
THE STATE OF CALIFORNIA**

Order Instituting Informational Proceeding  
AB-32 Implementation: Greenhouse Gases

Docket 07-OIIP-01

**COMMENTS OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION  
ON EMISSION ALLOWANCE ALLOCATION METHODOLOGIES**



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Dated: June 2, 2008

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Pursuant to the May 13, 2008 ruling of California Public Utilities Commission Administrative Law Judges Charlotte TerKeurst and Jonathan Lakritz ("May 13 Ruling"), as revised by subsequent ruling of May 20, 2008 ("May 20 Ruling" or collectively, "the Rulings"), the California Large Energy Consumers Association ("CLECA") respectfully submits these comments on cogeneration, or combined heat and power ("CHP"), as cogeneration, as a means to achieve greenhouse gas ("GHG") emissions reductions and certain other related issues set forth in the Rulings. As directed in the Rulings, CLECA is also providing its Comments to the California Energy Commission.

**I. SUMMARY**

CLECA is comprised of large industrial customers, including steel, cement, industrial gas and beverage industry companies. CLECA members compete in highly competitive national and international markets. A significant percentage of its members' cost of production is incurred for electricity. Electricity costs comprise up to 70 percent of the cost of production for some of CLECA's members. As a result, it is critical to CLECA that California's electricity market

operates as efficiently and effectively as possible and that California electric rates remain as low as reasonably achievable. Just and reasonable electricity rates that reflect the true costs of efficiently serving our members are essential for the survival of these industries in California and to their ability to continue provide good jobs and local manufacturing capacity for basic materials and supplies essential for maintaining, improving and expanding California's infrastructure.

CLECA's primary interest in proceedings before the California Public Utilities Commission ("CPUC" or "the Commission") has traditionally been on ensuring that California electric rates are just and reasonable. AB-32 and the recent initiatives of the California Air Resources Board ("ARB"), California Energy Commission ("CEC") and CPUC to implement this law have raised significant new issues of potentially far broader impact on CLECA members. These issues have the potential to have profound effects on the ability of CLECA members to compete in highly competitive international marketplaces and also on the ability of California to achieve the net reductions in GHG emissions to which it has committed.

These concerns arise primarily from the fact that GHG regulation in California is virtually certain to increase the cost of operation and production for key industrial products essential for California's infrastructure, particularly cement and steel, but also other products including industrial gases. GHG regulation in California will increase the costs of operation to CLECA members directly through GHG regulations applicable to specific industries, such as the cement industry, and indirectly for virtually all industries by increasing California's already high rates for electricity. Moreover, there is a very real and substantial risk that GHG regulations may increase such costs to the point that California producers may no longer be able to effectively compete with producers in other states and countries that are not subject to the same GHG regulations and requirements as their counter parts in California.

Were this to occur, California's GHG regulation could have devastating effects on both the California economy and GHG reduction goals and objectives. California could lose important local manufacturing capacity for key materials and products critical to its infrastructure and lose thousands of good, well-paying jobs. Equally if not more importantly from a public policy perspective, GHG emissions may be reduced locally but could significantly increase globally. This could occur due to two factors. First, less efficient foreign production of cement, steel and potentially other products may displace more efficient California production. And second, transportation of these bulk commodities from more distant foreign producers, including producers of cement and steel in Asia, may significantly increase transportation related GHG emissions. The GHG regulations adopted by the ARB to implement AB-32 could thus have devastating impacts on California businesses, industries and residents and prove to be self-defeating - aggravating rather than reducing global GHG emissions. This risk, commonly referred to as the risk of GHG "leakage," is by no means academic. It is a very substantial risk that has not been fully reflected in assessments of various GHG reduction strategies and measures.

Climate change is a global problem that must be addressed from a global perspective. As a result, it is imperative that the risk of GHG leakage be addressed as a top priority by the CPUC, CEC and ARB in formulating California's strategies and implementation plans for GHG emission reduction, otherwise California's GHG plan, and particularly its most aggressive reduction measures, may be worse than ineffective, they may be completely counterproductive. Alternative GHG strategies and reduction measures must be evaluated on a life-cycle basis taking into full account the potential for increased GHG emissions due to displacement of industrial production from one geographic location to another and any incremental transportation related GHG emissions such dislocation may entail.

CLECA believes that expanded use of CHP can and must be adopted as a GHG emission reduction measure and as an integral part of a broader strategy to address the risk of GHG leakage.

CHP can reduce GHG emissions by using waste heat to produce additional electricity that can displace electricity from the grid and its associated GHG emissions that utilities would otherwise have to generate. Bottoming cycle cogeneration can do so with little or no incremental GHG emissions thereby significantly reducing overall GHG emissions. Topping cycle cogeneration can also increase the overall efficiency of fuel use and thereby reduce overall GHG emissions associated with separate electricity generation and industrial processes. As a result, expanded use of CHP, whether bottoming cycle or topping cycle, should therefore be recognized and adopted as a means of reducing GHG.

Providing additional incentives for CHP and removing existing barriers to expanded use of CHP should also be adopted as specific GHG reduction strategies for California. This is just as important as recognizing CHP as a means of reducing GHG emissions since the potential for GHG reduction through expanded use of CHP cannot be achieved unless existing barriers are reduced or eliminated and additional incentives for CHP provided.

Reducing barriers to and increasing incentives for expanded use of CHP are also important as means of mitigating the cost of other GHG reduction measures and the risk that existing highly efficient California production, particularly of cement and steel but potentially also of industrial gases, is not displaced by less efficient, more distant, production in other states and countries that are not subject to the GHG restrictions and standards adopted in California. Such mitigation is particularly important in the cement industry since it will be impacted not only by the increased cost of GHG requirements passed through in electricity rates, but also and more significantly by the additional GHG requirements adopted specifically for the cement

industry. Mitigating these GHG related costs will be essential in order to maintain the competitiveness of California businesses and industries, including the cement and steel industries, that compete in global markets, and for California to avoid the significant potential GHG “leakage” that may otherwise occur and which could completely negate California’s ability to achieve its desired GHG reduction objectives.

CLECA offers the following specific recommendations on the issues set forth in the CPUC’s Rulings to address these concerns.

1. The CPUC, CEC and ARB should recognize CHP as a means of reducing GHG emissions.
2. The CPUC, CEC and ARB should encourage expanded use of CHP by reducing and eliminating existing barriers to expanded use of CHP, particularly for industries that must compete in global markets such as the cement and steel industries.
3. Existing barriers to expanded use of CHP that should be reduced or eliminated including: (a) constraints on the market for CHP electricity, including the exception from CPUC regulation for cogeneration contained in Public Utilities Code section 218 that limits the use or sale of electricity from cogeneration to the cogenerator, its tenants and certain “over the fence” sales; (b) other rules and restrictions that impede the ability of cogenerators from wheeling power and from producing power at one plant location for use at other facilities in other locations; (c) non-bypassable charges and exit fees currently imposed on departing load customers including, Competitive Transition Charges (“CTC”), Cost Responsibility Surcharges (“CRS”), Public Purpose Program charges, Nuclear Decommissioning charges, and Department of Water Resources (“DWR”) Power

and Bond charges; (d) cumbersome “Rule 21” interconnection standards and requirements for interconnecting CHP facilities to the utility grid; (e) excessive charges imposed by utilities for standby power that fail to account for the diversity of distributed generation and CHP; and (f) local permitting requirements, including local air pollution control district rules and restrictions, to the extent they may be inconsistent with broader California state GHG emissions reductions goals and objectives.

4. Bottoming cycle CHP involving the production of electricity with waste heat from industrial processes should be considered to have no incremental GHG emissions, except to the extent that supplemental firing may be used.
5. The efficiency gains from both bottoming cycle and topping cycle CHP due to the use of fuel for combined industrial processes and electricity production should be acknowledged and fully reflected in GHG regulations.
6. CHP should not be subject to cap and trade regulation, since such regulation will result in higher costs for CO<sub>2</sub> allowances that cannot be passed on to consumers by producers in highly competitive global markets and will therefore impede the expanded use of CHP and reduce GHG emissions reductions that could otherwise be achieved through CHP.

CLECA’s comments on certain of the specific questions raised in the Rulings follow with reference to the pertinent portion of the outline for comments provided in the Rulings.

## **II. TREATMENT OF CHP**

### **A. Detailed Proposal**

**Q1 Taking into account and synthesizing your answers to other questions in this paper, explain in detail your proposal for how GHG emissions from CHP facilities should be regulated under AB 32.**

Expanded use of both bottoming cycle CHP and topping cycle CHP should be encouraged as GHG reduction measures and as means to address the risk of GHG leakage through the possible displacement of more efficient California production of industrial products, including cement, steel and potentially industrial gases, by less efficient production in other states and countries that are not subject to the same GHG regulations as California companies. This should be done by reducing or eliminating existing barriers to expanded use of CHP and providing additional incentives for CHP.

Regulation of GHG emissions from CHP facilities should fully reflect the efficiency gains and emissions reductions that can be achieved through the recovery of heat energy that would otherwise be wasted if not for its secondary use for industrial processes in topping cycle CHP systems and electricity generation in bottoming cycle CHP systems. In either instance, as long as minimum efficiency standards are met, fuel is used more efficiently and electricity is produced more efficiently and with lower aggregate GHG emissions than if the industrial production and electricity were produced separately. Where the electricity is used on-site, there are also additional benefits in the form of reduced generation and transmission losses that should also be recognized.

Zero GHG emissions should be attributed to bottoming cycle CHP where electricity is generated entirely through waste heat left over from industrial processes. GHG emissions attributed to such bottoming cycle CHP should reflect the difference in GHG emissions from fuel use for the industrial facility before and after the CHP facilities were added. Supplemental firing at bottoming cycle CHP facilities should reflect the GHG emissions associated only with the incremental fuel used for electric generation.

The emissions associated with thermal uses for industrial processes and bottoming cycle CHP should be regulated through pertinent industrial sector regulations because the emissions



from bottoming cycle CHP that rely on waste heat from industrial processes are an intrinsic part of the industrial process and should be recognized as such. The net electricity generated displaces electricity that would otherwise have to be acquired from the utility grid and associated GHG emissions that would be produced by separately generating this electricity.

Topping cycle CHP may be considered qualitatively different than bottoming cycle CHP since in topping cycle CHP electricity is not generated entirely or substantially from waste heat from industrial processes, but rather relies on fuel use for the primary purpose of generating electricity and secondarily on the use of waste heat from electricity generation for industrial purposes. In light of this difference, a different regulatory regime may be warranted. Topping cycle CHP may be subject to different efficiency standards than bottoming cycle CHP facilities in order to ensure that the incremental electricity produced through topping cycle CHP is in fact more efficient than the separate utility generation it is displacing and when considered in conjunction with the industrial process fuel use, achieves a net reduction in overall GHG emissions.

## **B. Regulation of CHP GHG Emissions**

### **Q2 Should GHG emissions from CHP systems be regulated in one sector? If so, which one? How?**

Not necessarily. It may be most appropriate to address CHP systems as integral to the industrial process of which they are a part. This is particularly appropriate for bottoming cycle CHP. See response to section V.A. Question 1 above.

### **Q3 For in-state CHP systems, should all of the GHG emissions (i.e., all of the emissions attributed to the electricity generation and to the thermal uses) be regulated as part of the electricity sector? If so, for the electricity that is delivered to the California grid, should the deliverer as defined in D.08-03-018 be the point of regulation? And, what entity(ies) should be the point(s) of regulation for thermal usage and electricity that is not delivered to the California grid if those uses are included in the electricity sector for GHG regulation purposes?**

No. It may be most appropriate to address CHP systems as integral to the industrial process of which they are a part. This is particularly appropriate for bottoming cycle CHP. See response to section V.A. Question 1 above.

**Q5      Should CHP units be placed in different sectors based on CHP unit capacity size?**

No. It may be most appropriate to address CHP systems as integral to the industrial process of which they are a part, rather than based on CHP unit capacity size. See response to section V.A. Question 1 above.

**Q7      Should the type of GHG regulation (i.e., cap and trade or direct regulation) be different for a topping-cycle CHP unit versus a bottoming-cycle unit?**

No. Neither bottoming cycle CHP nor topping cycle CHP should be subject to cap and trade regulation. Such regulation would increase the cost of acquiring GHG allowances for CHP and impede the expanded use of CHP thereby reducing its potential contribution to GHG emissions reduction and as a means of addressing potential GHG leakage. Industrial CHP hosts, particularly those that compete in highly competitive international markets such as the cement and steel industries, have no ability to pass through the cost of purchasing GHG allowances under a cap and trade regime to their customers the way utilities can. As a result, subjecting CHP to cap and trade regulation will make CHP economically less viable for California industries. It will also increase the risk of GHG leakage by making it more difficult for California industries to compete in global markets and may thereby contribute to the displacement of more efficient California production of critical products and materials, including cement and steel, with products from less efficient manufacturers in other states and countries that are not subject to the same GHG regulations as their California counter parts. Any GHG regulation that increases the risk of such GHG leakage could very well have the perverse effect

of increasing rather than decreasing global GHG emissions and should not be adopted without mitigation measures sufficient to effectively eliminate such risks.

**Q8 Should the sectors used for GHG regulation be different for topping cycle and bottoming cycle CHP units?**

Not necessarily. It may be most appropriate to address CHP systems as integral to the industrial process of which they are a part. This is particularly appropriate for bottoming cycle CHP, but may also be appropriate for topping cycle CHP.

**Q9 Should CHP be part of a cap-and-trade program or not? If so, should the entire unit or certain CHP outputs be part of the cap and trade program?**

No. Neither bottoming cycle CHP nor topping cycle CHP should be subject to cap and trade regulation. Such regulation would increase the cost of acquiring GHG allowances for CHP and impede the expanded use of CHP thereby reducing its potential contribution to GHG emissions reduction and as a means of addressing potential GHG leakage. See response to section V.A. Question 7 above.

**Q13 If CHP is treated separately from the electricity sector, but is still included as part of a cap-and-trade program, how should allowance allocation to CHP units be handled?**

CHP should not be included in a cap and trade program. See response to section V.A. Question 7 above.

**Q14 If allowances are allocated administratively to CHP units, should the allocations take into account increased efficiency of CHP? If so, how?**

CHP should not be included in a cap and trade program. See response to section V.A. Question 7 above.

**Q15 Are there advantages to having all emissions from in-state CHP regulated as part of the electricity sector under cap and trade (and therefore with the need for only a single set of allowances?) How should this be accomplished?**

No. CHP should not be included in a cap and trade program. See response to section V.A. Question 7 above.

**Q17 What is the best approach to regulation of CHP emissions to minimize the potential for disincentivizing new installations of CHP and why is that the best approach?**

First, for the reasons stated in response to section V.A. Question 7 above, CHP should not be included in a cap and trade program. Second, the potential energy efficiency gains achievable through CHP, including the GHG reductions associated with avoided utility fossil-fired generation and related avoided transmission losses as a result of the use of on-site CHP, should be recognized and GHG regulations established that encourage expanded use of CHP. Third, existing barriers to expanded use of CHP should be reduced or eliminated as part of a broader GHG strategy, including: (a) constraints on the market for CHP electricity, including the limited exemption from CPUC regulation for cogeneration contained in Public Utilities Code section 218 for the use or sale of electricity from cogeneration to the cogenerator, its tenants and certain “over the fence” sales; (b) other rules and restrictions that impede the ability of cogenerators to wheeling power and from producing power at one plant location for use at other facilities in other locations; (c) non-bypassable charges and exit fees currently imposed on departing load customers; (d) cumbersome “Rule 21” interconnection standards and requirements; (e) excessive charges imposed by utilities for standby power; and (f) local permitting requirements, including local air pollution control district rules and restrictions, to the extent they may be inconsistent with broader California GHG emissions reductions goals and objectives.

**C. CHP as an Emission Reduction Measure**

**Q16 Should CHP be considered an emission reduction measure under AB 32? Why or why not?**

Yes, CHP can and must be adopted as a GHG emission reduction measure. CHP can reduce GHG emissions by using waste heat to produce additional electricity that displaces electricity from the grid utilities would otherwise have to generate and its associated GHG emissions. Bottoming cycle cogeneration can do so with little or no incremental GHG emissions, thereby significantly reducing overall GHG emissions. Topping cycle cogeneration can also increase the overall efficiency of fuel use and thereby reduce overall GHG emissions associated with the separate generation of equivalent electricity generation and industrial production processes. As a result, expanded use of CHP, whether bottoming cycle or topping cycle, should be recognized and adopted as a means of reducing GHG.

**Q18 Should ARB and/or the Commissions consider policies or programs to encourage installation of CHP for GHG reduction purposes? Why or why not?**

Yes, the ARB, CPUC and CEC should consider policies and programs to encourage the expanded use of CHP. They should do so both as a means of reducing GHG emissions and as part of a broader strategy for addressing the risk of increased GHG emissions through GHG “leakage.”

GHG regulation in California is virtually certain to increase the costs of operation and production for key industrial products essential to maintain and expand California’s infrastructure, particularly cement and steel. Such costs will increase both directly as a result of GHG regulations applicable to specific industries such as the cement industry, and indirectly for virtually all industries by increasing California’s already high electricity rates. GHG regulations may very well increase such costs in some industrial sectors and for some companies to the point that they are no longer be able to effectively compete in highly competitive global markets with producers in other countries that are not subject to the same GHG regulations and requirements as California companies. Were this to occur, existing highly efficient California production,

particularly of cement and steel, could be displaced by less efficient, more distant, production in other states and countries that are not subject to the GHG restrictions and standards adopted in California. The net effect may be that global GHG emissions increase rather than decrease. California could also lose important local manufacturing capacity for key products critical to maintaining its infrastructure and thousands of good, well-paying jobs.

Expanded use of CHP can serve as an important means of reducing GHG emissions and as an integral part of a broader strategy to address the risk of increased GHG emissions through GHG leakage. Climate change is a global problem that must be addressed from a global perspective. As a result, it is imperative that the risk of GHG leakage be addressed as a top priority by the CPUC, CEC and ARB in formulating California's strategies and implementation plans for GHG emission reduction, otherwise California's GHG plan, and particularly its most aggressive reduction measures, may prove to be counterproductive.

The CPUC, CEC and ARB should thus encourage the expanded use of CHP both to reduce GHG emissions and as a means of addressing the risk of increased global GHG emissions through GHG leakage.

**Q23    Should the Commissions pursue policy or programmatic measures to overcome some of the barriers to CHP deployment?**

Yes. Removing existing barriers to expanded use of CHP should be among the strategies adopted to reduce GHG emissions. CHP cannot achieve its potential for GHG reduction unless existing barriers are reduced or eliminated. Such barriers include: (a) constraints on the market for CHP electricity, including the exemption from CPUC regulation for cogeneration contained in Public Utilities Code section 218 that limits the use or sale of electricity from cogeneration to the cogenerator, its tenants and certain "over the fence" sales; (b) other rules and restrictions that impede the ability of cogenerators to wheel power and from producing power at one plant location for use at other facilities in other locations; (c) non-bypassable charges and exit fees

currently imposed on departing load customers including, Competitive Transition Charges (“CTC”), Cost Responsibility Surcharges (“CRS”), Public Purpose Program charges, Nuclear Decommissioning charges, Department of Water Resources (“DWR”) Power and Bond charges, and the Regulatory Asset Charge adopted by the Commission in D.03-12-035; (d) cumbersome “Rule 21” interconnection standards and requirements for interconnecting CHP facilities to the utility grid; (e) excessive charges imposed by utilities for standby power that fail to account for the diversity of distributed generation and CHP; and (f) local permitting requirements to the extent they may be inconsistent with broader California GHG emissions reductions goals and objectives, including local air pollution control district rules and restrictions that may not recognize the emissions from utility fossil generation avoided by electricity generated through CHP.

Some of these barriers could be reduced or eliminated through administrative policy changes. In D.03-04-030 for example, the CPUC exempted certain distributed generation (“DG”) customers from Cost Responsibility Surcharges (“CRS”). This exemption was later expanded somewhat by the CPUC in D.07-05-006. Reducing or eliminating other barriers, such as the restrictions on cogeneration contained in Public Utilities Code section 218, would require legislation. To the extent reducing or eliminating such barriers may be accomplished through administrative initiatives, CLECA urges the CPUC, CEC and ARB to undertake such initiatives. Where legislation is required, CLECA urges the CPUC, CEC and ARB to include legislative remedies for expanded use of CHP in their broader GHG reduction strategy.

### **III. CONCLUSION**

GHG regulations adopted to implement AB-32 could have a devastating impact on California businesses and industries and could prove to be self-defeating - aggravating rather than reducing global GHG emissions. This could occur if GHG regulations adversely affect the

ability of California cement, steel and other basic industries to compete in highly competitive global markets and more efficient California production is displaced by products for more distant foreign sources. Climate change is a global problem that must be addressed from a global perspective. As a result, it is imperative that the risk of such GHG leakage be addressed as a top priority by the CPUC, CEC and ARB in formulating California's strategies and plans for implementing AB-32. CLECA believes that expanded use of CHP can and must be adopted as a GHG emission reduction measure and as an integral part of a broader strategy to address the risk of GHG leakage.

Respectfully submitted,

Dated: June 2, 2008

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## CERTIFICATE OF SERVICE

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

On June 2, 2008, I caused the following to be served:

**COMMENTS OF THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION  
ON EMISSION ALLOWANCE ALLOCATION METHODOLOGIES**

via electronic mail to all parties on the service list R.06-04-009 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as “Parties” and “State Service” on the attached CPUC service list who have not provided an electronic mail address.

I also caused this filing to be served on the California Energy Commission, as directed in the CPUC’s May 20, 2008 Ruling, by e-mail to [docket@energy.state.ca.us](mailto:docket@energy.state.ca.us) and [kgriffin@energy.state.ca.us](mailto:kgriffin@energy.state.ca.us); and by mailing a copy to: California Energy Commission, Docket Office, MS-4, Re: Docket No. 07-OIIP-01, 1516 Ninth Street, Sacramento, CA 95814-5512.

— /s/ Judy Pau

Judy Pau

cc: Commissioner Michael R. Peevey (via U.S. Mail and Email)  
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California Public  
Utilities Commission

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## CALIFORNIA PUBLIC UTILITIES COMMISSION

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