

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

DOCKET 07-OIIP-1	
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Order Instituting Rulemaking to Implement the)
Commission's Procurement Incentive Framework)
and to Examine the Integration of Greenhouse)
Gas Emissions Standards into Procurement)
Policies.)
_____)

Rulemaking 06-04-009
(Filed April 13, 2006)

Order Instituting Informational Proceeding)
AB 32 Implementation: Greenhouse Gases)
_____)

CEC Docket 07-OIIP-01

**Reply Comments
of the California Cogeneration Council**

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On Behalf of
CALIFORNIA COGENERATION COUNCIL

June 16, 2008

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REPLY COMMENTS OF THE CALIFORNIA COGENERATION COUNCIL

Pursuant to the procedural schedule and scope set forth in the Rulings dated April 16, May 1, May 6, May 13, and May 20, 2008 in the above-captioned proceeding, the California Cogeneration Council (CCC) respectfully submits reply comments on issues concerning the scope and structure of California's future regulation of greenhouse gas (GHG) emissions from the energy sector, including the central issue of how to allocate GHG emission allowances. The CCC also is filing these comments in the companion proceeding before the California Energy Commission (CEC), CEC Docket 07-OIIP-01.

The CCC's opening comments set forth our detailed proposal for the regulatory treatment of combined heat & power (CHP) projects in California, and responded to many of the questions presented in the *Joint CPUC / CEC Staff Paper on GHG Regulation for CHP (CHP Staff Paper)*, issued on May 1, 2008. The CCC's proposal has the following key elements:

- **A CHP Sector.** The two Commissions should recommend to the California Air Resources Board (CARB) the creation of a stand-alone CHP sector. All of the GHG emissions from a CHP project, for all of its energy outputs (electricity for the grid, electricity for on-site use, and thermal energy for on-site consumption), should be

regulated in this sector. A stand-alone CHP sector would ensure that the state's GHG regulations support the continued development of efficient CHP projects, by simplifying and clarifying the regulation of GHG emissions from CHP.

- The CHP sector should be included in a **multi-sector cap-and-trade** program that also includes the electric sector.
- **GHG emission allowances** should be allocated to CHP projects based on each CHP project's historical emissions in a baseline year. This allocation would decrease each year by the same percentage change as the change in the overall multi-sector cap.
- **New CHP entrants** should receive emission allowances based on a "double benchmark" allocation.
- CHP should be treated as an **emissions reduction measure**.

The CCC's review of the opening comments has brought home to CCC members both the ambition and the uncertainty of what AB 32 is attempting to achieve. The economy-wide regulation of GHG emissions has the potential to impact every aspect of the operation of a CHP facility: from the fuel that a plant buys, to the efficiency of its operations, to its contractual relationships with the customers that buy or use each of its energy products. The full impact of AB 32 on a CHP project will not be known until GHG regulations are proposed for the emissions associated with each of these products. Even then, any regulatory structure that California puts into place may be superseded by a federal program. CCC members may be impacted by GHG regulations in multiple sectors of the energy industry: as a producer of electricity exported to the grid, as a natural gas consumer, and as a commercial or industrial point source of emissions associated with thermal production. In California, the electricity sector is well ahead of other sectors of the energy industry in delineating the scope and structure of its GHG regulations. In some cases – for example, commercial and industrial point sources – the process to define the scope of GHG regulations has barely begun. As a result, the CCC cautions that the positions it is taking in this proceeding are preliminary, are based on the limited knowledge available to the CCC today, and may change in the future as the full scope of AB 32 regulations becomes better defined.

In these reply comments, the CCC will respond to the opening comments of other parties,

with an emphasis on the parties that addressed the questions in the *CHP Staff Paper*. In order for these reply comments to be most useful to the Commissions, we focus both on (1) those comments with which we disagree most strongly and (2) the comments that advanced proposals different from the CCC but that we believe are workable. We organize our reply comments according to the basic elements of the CCC's proposal, as set forth above.

I. THE CHP SECTOR

Many parties joined the CCC in proposing the establishment of a stand-alone CHP sector.¹ A separate CHP sector recognizes the unique nature of CHP, which does not just provide electricity to the grid. CHP projects also provide electricity and thermal energy to on-site or over-the-fence loads. The CHP project is the deliverer, and should be the point of regulation, for all of these energy products. The CHP project is also the retail provider for on-site electricity and thermal energy.

At this time, based on the knowledge available to it, the CCC believes that a single CHP sector would simplify and clarify the regulation of GHG emissions from CHP, and would ensure that the GHG policies adopted for the sector appropriately consider the efficiency and unique attributes of CHP. However, we do not have full knowledge of the alternatives to a single CHP sector. If there is not a distinct CHP sector, a CHP project would be regulated in multiple sectors – the electric sector and whatever other sector or sectors apply to the CHP project's production of on-site electrical and thermal energy. For example, although this case has generated a great deal of information and debate on the regulation of the electric sector, virtually nothing is known about how commercial or industrial point sources will be regulated. It is difficult to take a definitive position in favor of a CHP sector when the alternative is not fully defined. Accordingly, the CCC must caution that its support for a single CHP sector may evolve

¹ Cogeneration Association of California / Energy Producers and Users Coalition (CAC/EPUC), California Clean Distributed Generation Coalition (CCDG), California Large Energy Consumers Association (CLECA), and the Indicated Cement Companies (Cement Companies).

as the full picture of GHG regulations in other sectors becomes clearer.

1. Regulating CHP emissions in multiple sectors may raise barriers to further CHP development.

The parties that did not support a stand-alone CHP sector generally proposed to separate (1) the GHG emissions associated with a CHP project's electric output to the grid from (2) its emissions for on-site products. This paradigm received support from Pacific Gas & Electric (PG&E), Sacramento Municipal Utility District (SMUD), Southern California Gas Company / San Diego Gas & Electric (SoCalGas / SDG&E), Independent Energy Producers (IEP), and the Western Power Trading Forum (WPTF). The emissions associated with power exports to the grid would be regulated in the electric sector, like those of any other electric generator; the emissions from the thermal energy consumed on-site would be regulated in whatever other sector would be appropriate if the thermal energy were produced on a stand-alone basis. The parties differed on whether the on-site production of electricity should be regulated in the electric sector or in the sector in which the thermal emissions are placed.

The essential problem with this paradigm is that CHP units are not just like other electric generators. The enhanced efficiency of CHP comes with a set of constraints related to a CHP unit's sequential production of power and thermal energy. For example, CHP units often have limits on their ability to be dispatched by the utility, because they must operate in order to produce thermal energy for their on-site host. PURPA recognized these constraints when it included CHP units as QFs and required the utilities to purchase power made available by CHP QFs. The Commission acknowledged these constraints most recently in D. 07-09-040, in which the Commission rejected the utility / consumer advocate position that, in order to obtain a power purchase contract with a utility, a QF should have to participate in the utility's procurement solicitations just like a merchant generator.²

² See D. 07-09-040, at 116-127.

CHP also is different in that it competes directly with the utility to serve retail loads. Both PURPA and state statutes³ have recognized that this retail competition presents a barrier to the utilities' willingness to buy power produced by CHP, even though there are societal benefits from the more efficient, more local, and more reliable production of electricity in CHP facilities.

The potential benefits of a single CHP sector are well illustrated by the fact that the parties that oppose a CHP sector offer a confusing array of proposals for how to separately regulate CHP project's three distinct energy products (electricity for the grid, electricity for on-site use, and thermal energy for on-site consumption). These parties have proposed just about every possible combination of how each of these products should be regulated.⁴ Indeed, it is entirely possible that a CHP project could be regulated in three sectors. Consider a typical CHP project that produces significant power for export to the grid, has GHG emissions related to its thermal output that exceed the CARB's threshold of 25,000 tonnes per year for regulation as an industrial point source, and produces just a small amount of power for on-site use (with associated emissions less than 25,000 tonnes per year). Many CCC members fit this profile. This project's exports to the grid could be regulated in the electric sector, its thermal emissions would be an industrial point source, and its consumption of natural gas to produce on-site power would fall into the natural gas sector.

Even PG&E, which proposes to treat CHP units like merchant generators, recognizes that CHP is different, when it acknowledges that a barrier to CHP is the fact that CHP hosts often are

³ See P.U. Code Sections 218 and 2801 – 2821. Also, AB 1613 (Blakeslee, the “Energy: Waste Heat and Carbon Emissions Reduction Act” of 2007), which added new P.U. Code Sections 2840 – 2845.

⁴ For example, PG&E (Comments at 75) and SMUD (at 32) would regulate CHP exports to the grid in the electric sector, with on-site electric and thermal use regulated in the industrial sector. SoCalGas/SDG&E (at 19) and WPTF (at 24) would regulate all electric production, both for export or on-site use, in the electric sector, with only thermal production regulated in the industrial sector. Calpine (at 19) suggests that all CHP emissions should be in the electric sector, while Edison (at 30-31) would place all CHP emissions in the natural gas sector.

not in the energy business and require education on what is required to produce your own power. PG&E cites a 2005 IEPR workshop that discussed the following market barriers to CHP deployment: “complexity found in Cal ISO tariffs; high payback criteria for capital investment in the commercial and industrial sectors; perceived volatility of the natural gas market; and unwillingness to acquire the necessary skills to own and operate a CHP installation.”⁵ If the Commission adopts PG&E’s proposal to require CHP units to split their emissions into multiple sectors, with different GHG reporting and regulatory approaches in each, there is the potential to add “complexity of multi-sector GHG regulations” to the barriers to further CHP development. As the CCC emphasized in the introduction to these reply comments, it is difficult to be definitive on this point, as the scope of GHG regulations in sectors other than the electric sector are not well defined.

If the Commission adopts a multi-sector cap-and-trade program, then the definition of a “sector” under that program becomes less important. Ultimately, the CCC expects that emitters in all sectors under cap-and-trade would obtain allowances through a single auction process, at a single well-defined market-clearing price. Thus, if a sector is included under cap-and-trade, the definition of a “sector” really matters only in the initial administrative allocation of allowances. As set forth in the CCC’s opening comments and in Section II below, there are strong reasons for the use of a distinct method to allocate GHG allowances to CHP units; accordingly, this argues for placing CHP in a distinct sector.

2. Edison’s proposal to place CHP in the natural gas sector does not square with D. 08-03-018’s definition of that sector.

Edison advanced the unique proposal to place CHP in the natural gas sector. Edison does not provide a detailed justification for this placement, except to observe that CHP units burn natural gas and are a means to increase the efficiency with which natural gas is consumed.⁶ The

⁵ PG&E Comments, at 84.

⁶ Edison Comments, at 30-31.

CCC does not believe that this placement makes sense, given that D. 08-03-018 significantly reduced the scope of the emission sources included in the natural gas sector, to the following four sources:

- 1) End-user combustion sites with annual emissions below the ARB threshold (25,000 tonnes per year) for separate industrial point-source regulation,
- 2) Natural gas infrastructure used in the provision of storage, transportation, and distribution of natural gas to end users,
- 3) Fugitive emissions, and
- 4) Emissions from distributed generation facilities for the portion of electricity that is used on site.⁷

D. 08-03-018 observes that CARB intends to regulate natural gas combustion sources emitting more than 25,000 tonnes per year as point sources, and thus removes these sources from the natural gas sector. All CCC members have total emissions greater than 25,000 tonnes per year, and many CCC members have emissions associated with their thermal production that exceed this threshold.

The Commission also has decided to recommend that the natural gas sector not be included, at least initially, in the multi-sector cap-and-trade program. Instead, GHG emissions from the natural gas sector would be regulated through programmatic measures.⁸ Edison characterizes CHP as such a programmatic measure, and urges that GHG allowances be allocated to CHP units using a “double benchmark” method similar to those proposed by the CCC (for new CHP entrants) and CAC / EPUC (for all CHP). However, such an allocation method will leave some CHP units with excess allowances and some with too few. Edison proposes that these allowances should be “fungible” with other sectors, which appears to contradict with D. 08-03-018's determination to exclude the natural gas sector from a multi-sector cap-and-trade program. The CCC submits that the intent of Edison's proposed treatment of CHP can be rationalized with D. 08-03-018 if CHP is placed in its own sector and made part of the multi-sector cap-and-trade program.

⁷ D. 08-03-018, at 112.

⁸ *Ibid.*, at 121-123.

II. ALLOCATION OF GHG ALLOWANCES TO CHP

The CCC has proposed that GHG emission allowances should be allocated to CHP projects based on historical emissions in a baseline year; this allocation would be reduced each year in proportion to the annual change in the overall multi-sector cap. The CCC's opening comments emphasized that this proposal makes sense in the specific context of CHP, and should not be viewed as an endorsement of the use of historic emissions in the broader context of allocating allowances to the electric sector. Because California's CHP fleet is far more efficient than the average fossil generator in California, an allocation for CHP based on historical emissions will make more allowances available to other generators in the electric sector, than if an output-based allocation is used for CHP. An output-based allocation based on California fossil generation would allocate 28% more allowances to CCC members than the quantity needed to cover their historic emissions. The CCC's proposal acknowledges the efficiency benefits that CHP projects have long provided, and continue to provide, to the California economy. It would ensure that these efficient resources are able to produce at historical levels, yet would provide existing CHP with an increasing incentive to repower or otherwise to improve their efficiency over time.

However, the CCC recognizes that other parties have advanced different proposals that also would accomplish these goals.

- 1. The CCC can support a “double benchmark” method of allocating GHG allowances to CHP. If the Commission adopts this approach, the Commission should use CAC/EPUC’s proposed benchmark for existing CHP.**

CAC/EPUC propose a “double benchmark” for existing CHP that appropriately recognizes that the state's existing fleet of CHP units should operate as efficiently as the combination of a modern CCGT and a steam boiler. The CAC / EPUC benchmark would provide a strong incentive for efficient CHP operations, as CHP projects that operate more efficiently would receive more allowances to cover their GHG emissions. The CAC / EPUC

benchmark would be relatively easy to administer, as CHP projects already report the necessary electrical and thermal output data. Although meeting this benchmark may provide challenges for some CHP operators, the CCC believes that the CAC / EPUC benchmark would not present existing CHP with major new costs that could endanger continued operations.

For new CHP entrants, a somewhat more stringent double benchmark, such as that proposed by CCC, is appropriate, to ensure that new entrants improve the efficiency of the state's CHP resources. Edison's double benchmark proposal is similar to the CCC's, although Edison specifies a range of values. The CCC's proposed heat rate benchmark of 7,000 Btu per kWh is approximately in the middle of Edison's heat rate range. For new entrants, the Commission should not adopt a boiler efficiency above 85%, because higher boiler efficiencies generally are associated with the production of lower grade heat (i.e. hot water) or situations in which there is no direct return of condensate to the CHP's heat recovery steam generator, and thus the input water has a relatively low heat content. It is difficult to obtain boiler efficiencies higher than 85% in common industrial CHP configurations where high-quality steam is needed and there is a significant return of hot condensate to the CHP unit.

The CCC recognizes that generation technology will improve over time. If combined-cycle units with recorded, real-world heat rates significantly below 7,000 Btu per kWh begin to be installed widely in California, then the Commission should adjust the CHP benchmark to reflect the new technology. This would be similar to the process that the Commission now uses to update the operating parameters of the combined-cycle plant used as the market price referent (MPR).⁹

2. The CCC can support a “hybrid” approach that begins with an administrative allocation method, then phases-in the use of an auction over time.

To avoid a major market meltdown (see 2000 - 2001) and the possible impacts on electric

⁹ D. 05-12-042, at 31, footnote 43.

reliability if the market does not function as intended, California should proceed carefully in implementing an auction process to allocate emissions. Two of the staff's "preferred" proposals would begin with almost all allowances allocated using an administrative method, then would phase in the use of an auction over an eight-year period. The CCC believes that these phase-in plans represent a prudent approach to implementing an auction to allocate allowances.

3. The Commission should reject PG&E's proposal to require all generators, including CHP, to purchase allowances from the utility.

PG&E proposes that retail providers should be allocated GHG allowances based on retail sales, then those allowances would be auctioned to generators and other deliverers, including CHP projects. The utility would retain the revenues to reduce rates and fund development programs for low-carbon technologies and energy efficiency. The CCC strongly opposes this approach, for the following reasons:

- .
- The utilities are the owners of generating plants that compete with merchant generators in the wholesale market. The utilities also compete with CHP projects that can be built to serve an on-site electric loads directly, displacing retail utility service. Thus, the utilities would have an inherent conflict as the recipient and distributor of allowances because they directly compete with non-jurisdictional entities, including CHP, in serving both wholesale and retail markets. This could confer an unfair competitive advantage on utility-owned resources in procuring allowances. PG&E's proposal is akin to the South Coast Air Quality Management District allowing Edison to administer the RECLAIM market for NO_x allowances in southern California. The CCC supports the comments of parties such as WPTF and Calpine on this point.
- If the two Commissions and CARB wish to auction allowances and return the revenues to retail providers, an independent entity should conduct the auction, establish a public and transparent market-clearing price for allowances, collect the revenues, serve as a clearinghouse and reporter of allowance prices in the secondary market, and, under the

CPUC's direction, return revenues to retail providers. Retail providers should include both the utilities and CHP units that serve on-site retail loads. As directed by the CPUC, the utilities then can provide a rebate to their electric customers.

- The Commission should consider carefully how auction revenues are returned to ratepayers. If a utility receives substantial revenues, the reduction in rates could reduce customers' incentives to conserve electricity or to invest in efficient on-site CHP or renewable distributed generation. IEP comments at length on how this "revenue recycling" can distort price signals. The Commission should consider returning auction revenues in ways that minimize the distortion of price signals, such as through periodic lump-sum rebates.
- PG&E appears to propose to auction 100% of allowances in the first year. For the reasons set forth above, California should implement an auction in small, measured steps.
- The party that bears the responsibility for regulatory compliance (the deliverer) must be the party that receives the allocation of allowances. PG&E's proposal is essentially the same as the load-based GHG regulatory scheme that the Commission rejected in D. 08-03-018, except that the retail provider is no longer the point of regulation. For the utility, PG&E's proposal is better than load-based regulation, as the utility receives all of the auction revenues, without any of the responsibility for ensuring that its portfolio complies with the adopted cap. In essence, PG&E's proposal inappropriately separates the allocation of allowances from the compliance responsibility.

III. CHP AS AN EMISSIONS REDUCTION METHOD

1. California's GHG regulations should support CHP as a significant emissions reduction method.

California's significant potential for additional CHP development is well-recognized. This case provides an opportunity for the Commissions to take significant steps to make that potential a reality. The "double-benchmarking" proposal for new CHP projects provides an appropriate efficiency standard to ensure that new CHP represents a significant emissions reduction measure. If new projects exceed the standard, the excess allowances will represent an incentive to encourage the installation of incremental, efficient CHP.

2. The CCC supports the comments of CAC/EPUC, CCDG, CLECA, and the Cement Companies concerning the programmatic steps that the Commission should take to remove barriers to CHP development, and offers several additional ideas in this area.

The opening comments reveal a significant tension between those parties that focus on the allocation of allowances and the design of a cap-and-trade program, and the parties that emphasize the programmatic steps that the Commission can take to reduce GHG emissions. The CCC generally believes that both are essential: the foundation of the Commission's CHP policies should be a strong suite of programmatic policies to encourage CHP development, but a cap-and-trade program also is essential to provide a transparent market signal of the value of emission reductions and to allow emitters to rationalize their allocation of allowances.

In the programmatic area, the Commission took a major step last fall in adopting D. 07-09-040, which approved new 10-year firm capacity contracts for CHP QFs. The CCC is working hard to ensure that this decision is implemented in the near future. We also are aware that the Commission is considering initiating a rulemaking proceeding on CHP to review its policies related to CHP development in the state. The CCC supports the following nine programmatic initiatives:

1. The CCC urges the Commission to ensure that the avoided capacity costs adopted in D. 07-09-040 are updated regularly. As the Commission is well aware, construction costs for power plants have escalated rapidly in recent years. The Commission regularly updates the power plant costs used in the market price referent that is a benchmark in the Renewables Portfolio Standard program. The CCC has filed a petition for modification of D. 07-09-040 to provide for the **updating of the capacity values** adopted in that order (which are based on outdated costs from 2005).
2. CHP projects typically are located close to load centers or major loads. As a result, they contribute to local reliability and avoid the need for additional bulk transmission facilities. As early as the outset of the QF program in the 1980s, the Commission recognized that CHP could avoid transmission costs, but this component of avoided costs has never been quantified. Models to calculate **avoided transmission costs** already exist, and are used to determine the avoided costs associated with energy efficiency measures.¹⁰ The use of these models should be expanded to apply to distributed generation and CHP.
3. **Elimination of non-bypassable charges.** The utilities have aggressively sought to expand the costs that are subject to recovery through non-bypassable (NBC) charges. They argue that, because they have not forecasted significant CHP additions, they will incur long-term costs to serve the loads that CHP would supply. The utilities then seek to charge these costs to the departing loads. Thus, the consequences of the utilities' under-forecasting of CHP development is that CHP faces another barrier to development. The CCC believes that the utilities should plan for a robust level of CHP additions to their systems so that they do not incur long-term costs to serve loads likely to migrate to CHP.
4. **Removing restrictions to over-the-fence sales** from CHP units would require legislative changes to P.U. Code Section 218, but could modestly expand the potential for micro-grids that might enhance local reliability.
5. Some companies that are candidates for CHP have multiple facilities. Allowing the **self-service wheeling of CHP-generated power** to those multiple facilities would be a measured means to re-introduce direct access and to encourage the efficiency benefits of CHP.
6. The CCC believes that more study is needed of the diversity benefits of distributed CHP. On distribution circuits where multiple CHP or other DG facilities reduce line loadings, these facilities should qualify for **reduced standby charges**.
7. The CCC agrees with PG&E that the lack of **customer education** on self-generation is a

¹⁰ See D. 05-04-024, at 16-17 and 35-36.

barrier to CHP. Given the typical utility view that CHP represents retail competition for the utility, significant Commission encouragement would be needed to motivate the utilities to offer such education. Alternatively, as suggested below, the utilities should be given a financial incentive to become an active and supportive partner in CHP development.

8. **A CHP portfolio standard.** As the next step toward the goals expressed in Energy Action Plan II,¹¹ the CCC has asked the Commission to adopt a Cogeneration Portfolio Standard goal of a 25% increase in the state's CHP capacity.¹² CAC / EPUC introduces a similar idea in its comments, in which it proposes that CHP should be allowed to participate as a qualifying resource in the expansion of the Renewables Portfolio Standard (RPS) program from 20% to 33% of the utilities' resource mixes.¹³
9. Robust development of efficient CHP in California is unlikely unless the utilities are active partners in that effort. The CCC urges the Commission to consider ways in which **the utilities can be given a financial incentive to support CHP development**, perhaps through incentives tied to the energy and GHG savings that CHP produces. One possible model for such incentives is the program that the Commission has instituted to reward the utilities for meeting energy efficiency goals.

The CCC emphasizes that almost all of these initiatives involve reducing existing barriers to CHP development, including many barriers that result in the under-valuing of CHP generation, rather than providing positive incentives for CHP development. We recognize that the dismantling of these barriers will need to be pursued in other venues, and look forward to

¹¹ The two Commissions' Energy Action Plan II states:

EAP II continues the strong support for the loading order – endorsed by Governor Schwarzenegger – that describes the priority sequence for actions to address increasing energy needs. The loading order identifies energy efficiency and demand response as the State's preferred means of meeting growing energy needs. After cost-effective efficiency and demand response, we rely on renewable sources of power and distributed generation, such as combined heat and power applications.

Key Action #2 of EAP II says that the state will "...provide for the continued operation of cost-effective and environmentally sound existing generation needed to meet current reliability needs, including combined heat and power generation."

¹² CCC Opening Testimony in R. 04-04-025 / R. 04-04-003 (August 31, 2005), at 60-63.

¹³ CAC / EPUC Comments, at 56 - 58.

working with the Commission on these matters in the upcoming CHP OIR, or in whatever other proceeding or forum is appropriate.

The CCC appreciates the Commission's attention to these reply comments.

Respectfully submitted,

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On Behalf of
THE CALIFORNIA COGENERATION COUNCIL

June 16, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing document, **REPLY COMMENTS OF THE CALIFORNIA COGENERATION COUNCIL**, by Electronic Mail where possible and First-Class Mail where not, on all known parties to R. 06-04-009, named on the service list attached to the original certificate of this document pursuant to the Commission's Rules of Practice and Procedure.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Berkeley, California, Monday, June 16, 2008.

/s/ Christa Goldblatt

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