

**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)**

AB 32 Implementation

**CEC Docket
07-OIIP-01**

**REPLY COMMENTS OF
MORGAN STANLEY CAPITAL GROUP INC.**

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I. INTRODUCTION

Pursuant to the May 6, 2008 and May 13, 2008 Rulings of Administrative Law Judges Charlotte F. TerKeurst and Jonathan Lakritz, Morgan Stanley Capital Group Inc. ("Morgan Stanley") respectfully submits its reply comments on the possible policies for flexible compliance in a cap-and-trade program as it pertains to the electricity sector,¹ general issues and non-market-based greenhouse gas ("GHG") emissions reduction measures and emissions caps.²

II. REPLY COMMENTS

In these reply comments, Morgan Stanley responds to certain comments submitted by other parties addressing the questions presented by the Commission in its May 6 and May 13, 2008 Rulings.

¹ Administrative Law Judges' Ruling Requesting Comments on Flexible Compliance Policies (R. 06-04-009) (issued May 6, 2008).

² Administrative Law Judges' Ruling Requesting Comments on Emission Reduction Measures, Modeling Results, and Other Issues (R. 06-04-009) (issued May 13, 2008).

A. Participation of Parties Without Compliance Obligations (Q5, May 13, 2008 Ruling)

Some parties³ propose to limit who may participate in the GHG emissions allowance and/or offset markets for a variety of reasons. Most of these parties have taken a similar position in prior comments in this docket. In contrast, Morgan Stanley and others previously have demonstrated why limits on market participation would be detrimental to market development and competition. Morgan Stanley will not repeat the arguments it already has made in this docket but, rather, will make a few additional broad observations on the concerns raised by other parties in their initial comments.

First, the parties that propose limits on who may participate in these markets, cite to only vague general fears of “market manipulation” or repeat the current popular demagoguery that “speculators artificially drive up prices.”⁴ None of these parties cite to any court findings, academic research, economic principles or other relevant authoritative source to support their grim predictions.⁵ Thus, such proposals to restrict market participation should be regarded as expressions of unsupported, if understandable, fear, rather than well-reasoned suggestions based on empirical evidence that the absence of such limitations will be harmful. In contrast, economic experts have found that speculation is good for markets because it adds needed liquidity and

³ See, e.g., “Comments of The Coalition of California Utility Employees (“CUE”) and California Unions for Reliable Energy (“CURE”) on Greenhouse Gas Emission Allowance Allocation Methodologies and Other Matters,” (R. 06-04-009 and D. 07-OIIP-01) (filed June 2, 2008) (“Comments of CUE/CURE”); “Opening Comments of PacifiCorp (U 901 E) on Administrative Law Judges’ Ruling Requesting Comments on Emission Reduction Measures, Modeling Results, and Other Issues; Incorporating Materials into the Record; and Recommending Outline for Comments,” (R. 06-04-009 and D. 07-OIIP-01) (filed June 2, 2008).

⁴ See Comments of CUE/CURE at 5.

⁵ In their comments, CUE/CURE quote an opinion from a book author, but do not include a discussion of what, if any, evidence this author uses to support his opinion. *Id.* at 6.

allows the market to operate more efficiently.⁶ This is particularly important in commodity markets where planning is driven by forward prices. Contrary to simplistic conventional wisdom, forward prices do not reflect consensus expectations of future spot prices, but rather reflect the clearing price between forward buyers and forward sellers. Without speculators, forward prices can become severely distorted by the different risk tolerances and different motivation to transact forward of fundamental buyers and sellers.

Second, although GHG emissions allowances and/or offsets will be created by a single state's action and subject to state anti-fraud and competition laws, commercial trade in such commodities also will be subject to applicable federal laws. The Commodity Futures Trading Commission ("CFTC") has the authority to monitor and punish market manipulation in both listed and over-the-counter ("OTC") derivatives markets, including with respect to the underlying physical commodity.⁷ Thus, California's allowance and/or offset market will be far from the unregulated, "wild west" free-for-all envisioned by the proponents for limitations on market participants.

Third, other emissions markets have operated successfully for some time without limiting the entities that may participate. For instance, the US markets for SO₂ and NO_x allowances, the Chicago Climate Exchange emissions markets, as well as the European Union market for GHG emissions allowances ("EUAs") all have operated effectively for years. Additionally, after a thorough examination of the issues, the northeastern Regional Greenhouse Gas Initiative ("RGGI") elected to open its market without limiting participation to those entities with

⁶ See, e.g., CFTC Office of the Chief Economist Report, Market Growth, Trader Participation and Pricing in Energy Futures Markets (February 7, 2007), available at <http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/marketreportenergyfutures.pdf>

⁷ In addition, Senator Feinstein also has introduced legislation, which currently is in committee, that would give the Environmental Protection Agency ("EPA") the authority to prosecute manipulation in physical OTC emissions markets.

compliance obligations.⁸ In fact, participation by entities without compliance obligations has assisted the development of these markets, by promoting market liquidity, market efficiency, and performing a price discovery function. Therefore, the available empirical evidence suggests that limiting market participation is neither necessary nor desirable.

B. Kyoto/CDM Process (Q 25, May 6, 2008 Ruling)

In its response to Question 25 from the Commission’s May 6, 2008 Ruling, Dynegy makes the unsupported statement that “the Kyoto/CDM process is complicated and is currently proving to be too burdensome to allow timely review and approval of projects.” Morgan Stanley interprets Dynegy’s statement to be a negative response to the last part of Question 25, which reads “Should use of CDM credits or Joint Implementation credits be allowed?” Morgan Stanley disagrees with Dynegy’s characterization of the CDM process, but ultimately this type of statement is solely a matter of opinion. Importantly, even if Dynegy’s statement is completely accurate, it is irrelevant to deciding whether to allow CDM credits for compliance purposes. In fact, CDM credits are readily available, but even if they were not, such scarcity should not preclude any available CDM credits from being used for compliance. As Morgan Stanley has articulated repeatedly in prior comments in this docket, restrictions on offsets for reasons other than quality will only result in increased costs to consumers with no corresponding incremental environmental benefit. Morgan Stanley believes that any offset certification process like the UN-administered process should be appropriately rigorous and subject to well-defined and high standards in order to ensure ongoing faith in the market.

⁸ See, e.g., Overview of RGGI CO₂ Budget Trading Program (Oct. 2007), available at http://www.rggi.org/docs/program_summary_10_07.pdf

C. Brackets and Collars (Q6, May 6, 2008 Ruling)

Multiple parties have suggested using a moving “price collar” or similar method to control prices within a range. In addition to the theoretical arguments against price floors and ceilings, such price constraints have at least two other practical challenges to overcome. First, to the extent that a price ceiling triggers a release of incremental allowances, this release either violates the environmental integrity of the program by allowing additional emissions reductions, or becomes an “allowance advance.” Second, to the extent an auction is used to distribute all or part of the allowances, advocates have not explained how allowances would be distributed among bidders when the price hits the ceiling and demand exceeds the amount to be distributed. Therefore, Morgan Stanley believes that such price collars or brackets do not provide any material advantages over outright price-based “safety valves,” the problems of which have been widely discussed by many parties in this docket.

D. Use of Outside Allowances and/or Offsets for Compliance under AB 32 (Q27, May 6, 2008 Ruling)

CUE/CURE suggested in their comments that the language of AB 32 explicitly precluded outside allowances and/or offsets from use for compliance in the California GHG cap-and-trade program.⁹ CUE/CURE argued that “[t]he language of AB 32 forecloses the possibility of a cap and trade program in California utilizing offsets regionally, nationally or internationally” because AB 32 requires all measures to be enforceable by CARB and CARB cannot oversee and enforce offsets outside of California.¹⁰

⁹ See Comments of CUE/CURE.

¹⁰ See *id.*

Morgan Stanley suggests that CUE/CURE’s interpretation of Section 38580(a),¹¹ which requires CARB to monitor and enforce compliance with California’s GHG emissions regulations, is too narrow. Rather, this section should be analyzed in light of the overall statutory context, namely the legislature’s explicit recognition that “[n]ational and international actions are necessary to fully address the issue of global warming”¹² and that “actions taken by California to reduce emissions of greenhouse gases [] have far-reaching effects by encouraging other states, the federal government and other countries to act,”¹³ as well as its mandate that California design a GHG emission reduction program that will “achieve the maximum technologically feasible and cost-effective [GHG emissions] reductions”¹⁴ and “minimize[] costs and maximize[] benefits for California’s economy.”¹⁵ To meet the legislature’s mandates and goals, California will necessarily need to develop a well-designed program that ensures that outside allowances and/or offsets meet California’s compliance criteria. Within this context, Morgan Stanley suggests that a more reasonable and consistent interpretation of Section 38580(a) is that CARB’s role is to monitor and enforce the requirements of California’s program as it applies to the California emitters. CARB will have no need to overstep its jurisdictional boundaries, because any allowance and/or offset that does not meet California’s criteria will simply not be eligible for compliance purposes in California.

¹¹ California Health and Safety Code § 38580(a) (“The state board shall monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by the state board pursuant to this division”).

¹² *Id.* at §§ 38501(d)-(e) (2006).

¹³ *Id.* at § 38501(d).

¹⁴ *Id.* at §§ 38560.5(c), 38562(a).

¹⁵ *Id.* at § 38501(h).

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have on this date served a copy of the foregoing "Reply Comments of Morgan Stanley Capital Group Inc. on General Issues, Flexible Compliance Policies And Non-Market-Based Emission Reduction Measures (Other Than CHP) And Emission Caps" on all parties of record in R. 06-04-009 by either electronic mail or U.S. mail to those parties that have not provided an electronic address to the Commission.

Copies were also sent by U.S. mail to Commissioner Michael R. Peavy, Administrative Law Judges, Charlotte F. TerKeurst and Jonathan Lakritz, the California Energy Commission, Docket Office, MS-4, Re: Docket No. 07-OIIP-01, 1516 Ninth Street, Sacramento, CA 95814-5512, and, as directed, by electronic mail to docket@energy.state.ca.us and to kgriffin@energy.state.ca.us.

Dated at Washington, DC, this 16th day of June, 2008.

/s/
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**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)**

AB 32 Implementation

**CEC Docket
07-OIIP-01**

**REPLY COMMENTS OF
MORGAN STANLEY CAPITAL GROUP INC.**

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