BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	Rulemaking 06-04-009 (Filed April 13, 2006)

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

In the Matter of: Order Instituting Informational Proceeding on a Greenhouse Gas Emissions Cap	Docket 07-OIIP-01

REPLY COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY ON ASSIGNED ADMINISTRATIVE LAW JUDGES' RULINGS AND STAFF PAPERS REGARDING RECOMMENDATIONS TO THE CALIFORNIA AIR RESOURCES BOARD FOR THE ELECTRICITY SECTOR

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In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC), and the direction set forth by the Assigned Administrative Law Judges (ALJ) in this proceeding, the Northern California Power Agency[1] (NCPA) submits these Reply Comments[2] to the June 2, 2008 Opening Comments[3] of various parties responding to the four

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[1] NCPA is a Joint Powers Agency whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, the Truckee Donner Public Utility District, and the Turlock Irrigation District, and whose Associate Members are the Plumas-Sierra Rural Electric Cooperative, and the Placer County Water Agency.

[2] Consistent with the direction set forth in the ALJ Ruling, these comments are concurrently filed with the CPUC in R.06-04-009 and the CEC in Docket 07-OIIP-01.

[3] Unless otherwise noted, all references to "comments' or "opening comments" shall refer to the June 2, 2008 comments filed by interested parties in response to the four ALJ Rulings.

ALJ Rulings seeking input on issues related to the development of a cap-and-trade program that would include the electricity sector.[4]

The ALJ Rulings sought detailed and specific information regarding the treatment of greenhouse gas (GHG) emissions for the electricity sector under a potential cap-and-trade program, in order to guide the CPUC and California Energy Commission (CEC) in making a recommendation to the California Air Resources Board (CARB) on the implementation of Assembly Bill (AB) 32 to be included in the CARB Scoping Plan, due out later this summer. In these comments, the CPUC and CEC are collectively referred to as the "Joint Commissions." [5]

I. SUMMARY

In response to the four ALJ Rulings, nearly 50 sets of comments were filed with the Joint Commissions, comprised of hundreds of pages of recommendations and feedback regarding the wide range of issues presented. The Joint Commissions must acknowledge the fact that a great many parties filed a broad array of comments on the numerous issues raised in the ALJ Rulings. Accordingly, given the volume and breadth of comments submitted, the Joint Commissions should view the information received as the basis for a recommendation to CARB on the *preliminary matters* that must be more fully and thoroughly addressed before any final recommendation can be made regarding the implementation of a cap-and-trade program that includes the electricity sector.

While the parties' comments offer a wide variety of recommendations, NCPA makes the following observations:

- Recommendations regarding development of a cap-and-trade program should be viewed by the Joint Commissions as preliminary input.

[4] The June 2, 2008 Opening Comments responded to the request for information set forth in the following ALJs' Rulings: April 16, 2008 *Ruling Updating Proceeding Schedule and Requesting Comments on Emission Allowance Allocation Policies and Other Issues* (April 16 Ruling), the *Joint CPUC and California Energy Commission (CEC) Staff paper on Options for Allocation of GHG Allowances in the Electricity Sector* (Allocation Staff Paper), the May 1, 2008 *ALJs' Ruling Requesting Comments on Combined Heat and Power Policies* (May 1 Ruling), the *Joint Staff Paper on GHG Regulation for Combined Heat and Power* (CHP Staff Paper), the May 6, 2008 *ALJs' Ruling Requesting Comments on Flexible Compliance Policies* (May 6 Ruling), the May 13, 2008 *ALJ s' Ruling Requesting Comments on Emission Reduction Measures, Modeling Results, and Other Issues, etc*, (May 13 Ruling), and the May 20, 2008 *ALJs' Ruling Modifying Schedule and Correcting Suggested Outline for Comments* (May 20 Ruling).

[5] To the greatest extent possible, these Reply Comments follow the Suggested Outline set forth in the May 13 Ruling, as corrected by the May 20 Ruling. For specific party Opening Comments not addressed in this filing, NCPA takes no position on those issues at this time, but reserves the right to address them in the future where appropriate.

- The sheer volume and scope of comments submitted require that the Joint Commissions make only a preliminary recommendation to CARB on elements that must be further examined by that agency before making a final determination regarding the use of a cap-and-trade program for the electricity sector.
- The results of the economic modeling are not sufficient to base a recommendation on allowance allocation for the electricity sector.
- CARB must make a determination regarding the compliance obligation of each sector throughout the State's economy so that entities within capped sectors know exactly what their compliance obligation will be.
- There is no consensus among the commenting parties regarding an allowance allocation methodology.
- California's program should be designed to link, and eventually transition, to a regional or national program.
- Programmatic, non-market based emissions reduction measures will achieve the greatest emissions reductions in the electricity sector.
- There is no evidence in the record to show that reliability will not be adversely impacted under a cap-and-trade program with a deliverer point of regulation.
- Allowance allocations based on an updated, fuel-neutral, output-based methodology, such as retail sales, best meets the stated objectives of AB32.
- Retail sales-based allowance allocation accommodates load growth in the electricity sector.
- Allowance allocations based on historic emissions is inherently unfair and contrary to the mandates of AB32.
- Retail providers are best positioned to effect the greatest and most cost-effective emissions reductions.
- Entities with higher emissions profiles should be required to make greater emissions reductions.
- The complications associated with implementation of an auction have not been adequately addressed.
- Auctions are detrimental to the electricity sector, and even a program that returns 100% of auction revenues does not remedy the market-power or potential market-manipulation problems inherent in an auction.

- While return of revenues back to electricity sector customers is better than no return at all, in addition to failing to address market concerns, an auction draws funds away from investments in actual carbon reduction measures.

- The Joint Commissions should recommend a minimum three year compliance period for the electricity sector.

- The Joint Commissions should recommend that all flexible compliance mechanisms be further explored and developed; the State's programs must be designed to link with those in other states and regions.

- The Joint Commissions should recommend that the use of offsets be further developed.

- Combined heat and power (CHP) facilities should be encouraged, and regulation should not disadvantage the development of CHP facilities.

- Existing state and local regulations have demonstrated effectiveness in reducing GHG emissions, and are sufficient to continue reducing emissions through non-market-based programs.

II. GENERAL ISSUES

Recommendations regarding development of a cap-and-trade program should be taken as preliminary input.

Several parties[6] expressed support for utilizing the current round of comments and inquires regarding the proper aspects of a cap-and-trade program for the electricity sector as preliminary input. Parties also noted that due to the complexity of the issues surrounding the implications of a cap-and-trade program for the electricity sector, the scope of information currently before the Joint Commissions is factually insufficient to provide a final recommendation to CARB, or for CARB to utilize in the Scoping Plan.[7] Given the magnitude of the issues presented in the four ALJ Rulings, and the wide range of replies the parties submitted, NCPA concurs with those commenting parties that urge the Joint Commissions to make only a preliminary recommendation to CARB regarding

[6] See, for example; LADWP, p.15; SCPPA, p. 8; NCPA, p. 14.

[7] See, PG&E, p. 12, stating that there must be detailed consideration of all impacts of the Scoping Plan on a wide range of energy-related matters; PG&E, pp. 13-15, stating that "the scoping plan must contain sufficient detail on all key elements in the final regulations so that the public and affected parties have sufficient knowledge and understanding to evaluate and comment on the *overall* costs and benefits of the AB 32 program, not just individual components…[and it] remain[s] concerned that the deadline fast approaches for issuance of the scoping plan, with key elements still to be developed."

these matters, so that stakeholders can continue to work with the Joint Commissions and CARB in developing more detailed and comprehensive regulations.

CARB must make a determination regarding the compliance obligation of each sector throughout the State's economy.

In order for the Joint Commissions to make a recommendation to CARB regarding the most feasible and cost-effective means of achieving the AB32 emissions reduction mandates, the total emissions reduction obligation of the electricity sector must be determined in advance of implementing AB32. NCPA concurs with those parties that have called for the Joint Commissions to make a recommendation to CARB regarding the appropriate level of electricity sector reductions and cautioning against allocation of a disproportionate share of emissions reduction obligations to the electricity sector.[8]

There is no consensus regarding an allowance allocation methodology.

It is clear from reviewing the Opening Comments that there is no consensus among the commenting parties regarding an allowance allocation methodology. Parties supported various aspects of the preferred alternatives set forth in the Allocation Staff Paper, supported none of the proposed mechanisms, or proposed allocation schemes not previously addressed. Coupled with the fact that the electricity sector modeling results – designed specifically to recommend the most cost-effective allocation methodology – provide conflicting and inconclusive results,[9] the Joint Commissions do not have an adequate record upon which to make a final recommendation to CARB regarding an allocation methodology for a proposed cap-and-trade program that includes the electricity sector.

This issue is of vital importance to entities within the sector, to all California electricity customers, and indeed the State's economy as a whole. Accordingly, NCPA urges the Joint Commissions to proceed with caution, and not make a recommendation based on one-sided interpretations of equity.

California's program should be designed to link, and eventually transition to a

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[8] See PG&E, p. 12; MID, p. 4; NCPA, pp. 42-43; Calpine, p. 14.

[9] See *infra* Section VII – Modeling Issues.

regional or national program.

Parties have expressed support for California to remain a leader in addressing the challenges of reducing GHG emissions and meeting the mandates of AB32. At the same time, however, the commenting parties express almost universal support for the idea that California's program be designed to link, and eventually transition, to a regional or national program. The Joint Commissions must continue to consider developments regarding regional and federal emissions reduction programs, and ways in which the state can transition to those programs as they mature, while ensuring the integrity and viability of a California-only program in the interim. Failure to design a forward-moving program will result in either needless delays in transitioning to broader-based emissions reduction programs, or a California-only program that is irrelevant and ineffectual.

Programmatic, non-market based emissions reduction measures should be utilized to achieve the greatest emissions reductions in the electricity sector.

Programmatic, non-market based emissions reduction measures can and should be utilized to achieve the greatest emissions reductions in the electricity sector. In addition to the Joint Commissions' own acknowledgement of this point,[10] several parties noted that non-market based emissions reduction measures will be the core mechanism by which emissions reductions can be achieved in the electricity sector, while others noted that the Joint Commissions should recommend that the electricity sector not be included in a cap-and-trade program.[11] NCPA agrees with the concerns raised by the Division of Ratepayer Advocates (DRA) that in light of the fact that the Joint Commissions – and several key stakeholders – recognize that the majority of the reductions in the sector can be achieved *without* a market-based program, there should be a full analysis of the administrative costs and regulatory burdens inherent in the adoption of a cap-and-trade program prior to moving forward.[12]

Additionally, California's retail providers are already employing the "loading order",[13] appliance standards, building standards, and building retrofit requirements. All of these

[10] See D.08-03-018, pp. 36, 39.

[11] See LADWP, pp. 4, 16; SCPPA, p. 7, 13; NCPA, p. 14; MID, p. 3.

[12] DRA, p. 4.

[13] See Energy Action Plan II – Implementation Roadmap for Energy Policies, September 21, 2005.

measures help to ensure that increased energy-efficiency measures are "built in," which will eventually result in even greater efficiencies.

There is no evidence in the record to show that reliability will not be adversely impacted under a cap-and-trade program with a deliverer point of regulation.

The deliverer as the point of regulation in the electricity sector creates reliability concerns. The Joint Commissions have recommended the deliverer as the point of regulation for the electricity sector.[14] However, as several parties noted, there are many aspects of this point of regulation that are problematic, including the fact that the deliverer may not have an obligation to serve. A generator that has exhausted all of its emissions allowances during a compliance period may be forced to cease operating a powerplant if additional emissions allowances are not available, or if the generator is unable or unwilling to purchase the allowances at the market price. Such an occurrence would jeopardize the provision of reliable electricity across the state. NCPA concurs with those parties that urge the Joint Commissions to reexamine this issue, and to designate the retail provider as the point of regulation.[15]

III. ALLOWANCE ALLOCATION

Allowance allocation based on retail sales best meets the stated objectives of AB32.

Allowance allocation based on an updated, output-based methodology, such as retail sales, best meets the stated objectives of AB32. Such an approach is also supported by a wide range of sector participants.[16] However, even with broad support for an output-based methodology to underlie allowance allocation, several variations of this approach have been suggested that differ in many respects, including: to whom the allowances should be allocated, whether or not the output should be fuel-neutral, and whether or not the allowances should be placed into a mandatory auction.[17] To maximize the benefits to electricity sector consumers, allowances should be freely allocated to the retail providers, because it is the retail providers that

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14 D.08-03-018, p. 61.

15 LADWP, pp. 13, 17; SCPPA, p. 31.

16 PG&E, p. 20; NCPA, p. 16; Calpine, p. 4; SMUD, p. 3; FPL, p. 5 (stating that if a free distribution method is chosen, allocation should be output-based.).

17 *Id.*

are best able to achieve the greatest GHG emissions reductions at the lowest possible cost to electricity customers.[18]

Retail sales-based allowance allocation accommodates load growth in the electricity sector.

As noted in the Opening Comments, only a retail sales-based methodology accommodates growth in the electricity sector. While AB32 mandates that the State achieve 1990 emissions levels[19] without a specific reference to doing so in the face of load growth, in order to ensure the vitality of the State's economy, load growth must occur. This growth will have a large impact on the electricity sector, as the State grows its economy and brings on new businesses and homes. Furthermore, many emissions reductions measures being contemplated in other sectors – such as electrification of the transportation and goods-movement sectors – will result in greater electricity demand. The electricity sector will be called upon to meet the challenges of reducing its current emissions, and keeping those emission levels down in the face of greater demand. The allocation methodology adopted by CARB must ensure that the retail providers that will be bearing this burden have sufficient allowances to do so. The retail sales-based methodology accomplishes this goal. Likewise, it is only the retail sales-based allocation methodology that allows a straight-forward and administratively simple means to account for new entrants into the market place.

Allowance allocation based on historic emissions is inherently unfair and contrary to the mandates of AB32.

The allocation of emissions allowances based on historic emissions, or based on fuel-type that would provide greater allowances to generation from fossil-based fuels, needlessly discriminates against entities that have lower emissions profiles. If all entities are going to be called upon to make emissions reductions, then all entities should be allocated allowances; including those with lower emissions profiles. Indeed, under one potential scenario where entities would be required to make "across the board" reductions, it is the lower emitting entities that will face a disproportionate challenge in meeting reduction mandates since they will have fewer opportunities for additional low-GHG investments.

[18] LADWP, p. 14; PG&E, p. 21; MID, p. 6.

[19] Cal. Health & Safety Code § 38550.

Entities with higher GHG emitting profiles should be called upon to make greater emissions reductions.[20] However, without a recommendation from CARB regarding the overall reduction obligation of the electricity sector, and corresponding entity-specific reduction obligations, entities with a compliance obligation will be unaware of their total reduction obligations. This means that entities must be prepared to make emissions reductions to their portfolios, regardless of how "clean" they already are. Only with a known emissions reduction target can entities maximize the use of the most cost-effective and economically efficient emissions reduction measures. This is of paramount importance if retail providers are going to be able to meet the mandates of AB32 and continue to provide reliable and competitively priced electricity to the State's consumers.

Furthermore, allocation based on historic emissions is directly contrary to the mandates of AB32 to consider voluntary reductions taken prior to implementation of AB32.[21] Only under an allocation regime that focuses on retail sales as the output basis are early reductions recognized as required by AB32.

The complications associated with implementation of an auction have not been adequately addressed.

While several parties support the use of an auction to allocate allowances,[22] these parties either do not address the unresolved issues regarding the administration and governance of an auction, or note that these are key issues that must be more fully developed. Even parties that support an auction premised upon the 100% return of auction revenues to retail electricity customers[23] have not provided sufficient information to support the implementation of an auction that would draw revenues *away* from customers and diminish the total amount of money available to retail providers to implement emissions reductions and cost impact mitigation programs. In fact, one party even notes that a portion of the auction revenues would need to be

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[20] While LADWP proposes a drastically different allocation methodology, it has also acknowledged that the declining cap "would require deeper cuts from high carbon utilities than from low carbon utilities under a retail provider point of regulation." See LADWP, p. 19.

[21] Cal. Health & Safety Code § 38562.

[22] See FPL, p. 4; DRA, p. 5; TURN, p. 9; NRDC, p. 6.

[23] NRDC, p. 6; TURN, p. 16; DRA, p. 7.

used to pay for the auction administration, rather than emissions reductions.[24]

The total administrative costs of an auction should not be underestimated. Even auction advocates that claim the costs of an auction will be borne by the market, must realize that any costs that are "part of the market" will have to be paid for by entities participating in that market. That means those costs must be added to the total price of emissions, and will therefore not be available to invest in actual emissions reductions. There is no evidence in the record to the contrary, and before CARB moves forward with implementation of an auction that includes the electricity sector, there must be a thorough investigation into this matter.

Auctions are detrimental to the electric sector, and even a program that returns 100% of auction revenues does not remedy the market-power or potential market-manipulation problems inherent in an auction.

Contrary to one party's assertion that "there is almost universal agreement that an auction is the only method to fairly allocate allowances in a capped system,"[25] that is simply not the case. The use of an auction is not the "fairest" way to allocate allowances because it results in the greatest cost impacts on electricity consumers. As noted above, even with a return of 100% of the auction proceeds to those same consumers, there has already been a diminution in the total amount of revenues available to invest in actual emissions reductions measures, reducing the cost-effectiveness of such a program. Furthermore, such an approach does not address market-power or potential market-manipulation problems inherent in an auction.

If an auction is implemented, NCPA concurs with the vast majority of the commenting parties that participation in the auction must be limited to entities with a compliance obligation.[26]

IV. FLEXIBLE COMPLIANCE

The Joint Commissions should recommend a minimum three year compliance period for the electricity sector.

In all of the comments received by NCPA, commenters supported the adoption of a multi-year compliance period. A minimum of three years is necessary, in order to allow parties

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[24] DRA, p. 7.

[25] TURN, p. 9.

[26] See, for example, TURN, p. 13; Dynegy, p. 16.

the ability to address unforeseen events, including climatic and load growth changes,[27] and to plan and invest in longer-term emissions reduction measures that cannot be brought online within 12 months. The Joint Commissions should recommend nothing less than a three year compliance period.

The Joint Commissions should recommend that all flexible compliance mechanisms be further explored and developed, and that the State's programs be designed to link with those in other states and regions.

Overall, parties support the further development of flexible compliance mechanisms as long as those mechanisms do not compromise the integrity of the overall emission reduction program. NCPA agrees with those parties that have noted that the record in this proceeding is not robust enough to make a formal recommendation, and that the matter should be left exclusively to CARB.[28]

The Joint Commissions should recommend use of offsets to be further developed.

Offsets are an important and vital tool, which should be used to facilitate even greater overall emissions reductions.[29] Some parties either did not support the unlimited use of offsets, or are opposed to linking California's program with offsets from other programs. However, in light of the fact that global warming is just that – a global issue – the State should not limit its options with regard to meeting the mandated goals, nor be limited in looking beyond the initial mandates. However, the details regarding how offsets will be developed, tracked, and utilized, are specific to the overall program design. Accordingly, the Joint Commissions should recommend to CARB that the State continue to have an active role in the review and development of possible offset programs, including its continued participation in the Western Climate Initiative Offsets Subcommittee.[30]

V. TREATMENT OF CHP

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27 NRDC, p. 22; IEP, p. 22; DRA, p. 32; PG&E, p. 37; SMUD, p. 29; SCE, p. 12; SDG&E/SCGC, p. 25; FPL, p. 9; SCPPA, p. 62.

28 LADWP, p. 27.

29 MID, pp. 8-9; IEP, p. 24; DRA, p. 38; PG&E, p. 36; SMUD, p. 27; SCE, p. 29; EPUC/CAC, pp. 72-73; SDG&E/SCGC, p. 25; FPL, p. 9; SCPPA, p. 53; CEERT, p. 6.

30 DRA, p. 43.

CHP facilities should be encouraged, and regulation should not disadvantage the development of CHP facilities.

In its Opening Comments, NCPA articulated three general principles that should be applied when fashioning the regulation of CHP under AB32. The recommendations of the primary commenters on CHP issues[31] have, for the most part, adhered to these principles.

First, regulation of GHG emissions from CHP facilities should not disadvantage or discourage CHP technologies or specific applications, particularly when a facility meets or exceeds the minimum efficiency threshold determined pursuant to AB1613. This principle includes the concept of eliminating unnecessary legal or regulatory barriers to CHP development. Second, regulations adopted by CARB should recognize the unique efficiencies and GHG reduction benefits that CHP facilities provide.[32] And third, the burden of regulation should be fairly allocated between the electricity generation and thermal energy production components of CHP.

Recognition of CHP as a viable option to reduce GHG emissions is more important than the sector under which it will be regulated.

NCPA has suggested that for most in-state CHP systems, the GHG emissions should be regulated as part of the electricity sector, especially for larger, topping cycle facilities. For bottoming cycle and smaller CHP units however, where the electricity output is used on-site, NCPA agrees with those CHP Commenters that suggest that GHG emissions from the thermal component of CHP units should properly be included in the industrial sector of which the CHP unit is a part, while the emissions from the electricity production should be included in the electricity sector (or possibly a separate CHP sector) in order to recognize the unique characteristics of CHP. One point on which all of the commenting parties agreed, regardless of which sector is the most appropriate point of regulation for CHP, the regulations must fully reflect the potential for emissions reductions that can be achieved by utilizing CHP facilities, and the benefits of CHP compared with the separate generation of thermal and electric energy.

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31 These parties include the California Clean DG Coalition, PG&E, the California Cogeneration Council (CCC), the Energy Producers and Users Coalition/ the Cogeneration Association of California (EPUC/CAC), the California Large Energy Consumers Association (CLECA), Sacramento Municipal Utility District (SMUD), and the Indicated Cement Companies (ICC); collectively, the "CHP Commenters" Or "commenting parties."

32 A comprehensive listing of agencies and committees that have recognized these benefits is contained in the EPUC/CAC Comments, pp. 39-41.

Cap-and-Trade is not the optimum mechanism to reduce GHG emissions.

The opinions of the CHP Commenters on inclusion of CHP in a cap-and-trade program differ significantly, and NCPA continues to maintain that the greatest GHG reductions will be achieved through non-market-based mechanisms. However, if the electricity sector is included in a cap-and-trade program, the allowance allocations should include consideration of both the electricity and thermal output from the entire unit.

The Joint Commissions should follow the IEPR recommendations to remove barriers to CHP.

The commenting parties also recommended several measures designed to remove legal and regulatory barriers to CHP implementation. These include: (1) exemption of CHP from the imposition of applicable departing load non-bypassable surcharges, (2) elimination of restrictions on wheeling and sales of electricity output, (3) simplification of interconnection requirements, (4) portfolio set asides, (5) payments for transmission and distribution congestion relief, and (6) reinstating CHP as a technology eligible for incentives under the Self-Generation Incentive Program. NCPA believes that, to the extent such measures are within the purview of the Joint Commissions, they merit serious consideration, and should be more thoroughly vetted in the CPUC's Rulemaking 08-03-008 or other appropriate CPUC or CEC proceeding.

None of the commenting parties disagreed with NCPA's recommendation that new CHP installations should be allowed to claim GHG emissions reductions for the combined increase in efficiency, even if the prior heat and power resources were owned by separate entities. Recognition of this simple concept by regulators eliminates a disincentive for new CHP installations.

Overall, the CHP Commenters encouraged the further development of CHP facilities as a vital tool for helping the State meet its emissions reductions goals, and the Joint Commissions should include a recommendation to CARB that the expanded use of CHP facilities should be included as a core measure of the Scoping Plan.

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

Existing state and local regulations are sufficient to continue reducing emissions through non-market based programs.

In its Opening Comments, NCPA noted that non-market based emissions reduction measures will play a key role in achieving the mandated goals of AB32. Indeed, these programs can already be credited with significant reductions in overall energy usage (through energy efficiency programs) and development of renewable resources (through RPS). As one party noted, "key conclusions from the actual emissions data and forecast modeling results is that the electricity sector is not the cause of future increases in emissions."[33] Crucial to continued reductions in the electricity sector is an assurance that each retail provider will be allowed to access the tools that work best within the particular geographic and socio-economic limitations and opportunities presented within the individual communities served. Indeed, NCPA concurs with DRA that no new *mandates* should be put into place until the cost-effectiveness of reduction programs in other sectors have been fully reviewed,[34] and with TURN, which stated that it "does not believe that the CARB or legislature should at this time impose new mandates," and that "setting mandatory requirements for particular technology purchases invites supplier market power."[35]

As it pertains to existing mandates, the investments in energy efficiency programs made by publicly owned utilities (POUs) should not be discredited. Cost-effective energy efficiency programs are considered first and foremost by POUs, consistent with the state's loading order, the provisions outlined in Senate Bill 1037 and Assembly Bill 2021, and historical business practices. The results of these efforts are highlighted in a report issued earlier this year with respect to public power energy efficiency programs: "public power energy efficiency programs provide more than three dollars of societal benefit for every dollar spent."[36] Greenhouse gas reduction efforts are clearly part of the equation. It is important to note these efforts have been publicly recognized during the past year by key environmental groups such as NRDC, as well as the Chairman of the Assembly Utilities and Commerce Committee. [37]

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[33] TURN, p.3.

[34] DRA, p. 4.

[35] TURN, p. 19.

[36] CMUA, Energy Efficiency in California's Public Power Sector: A Status Report – March 2008.

[37] In an October 10, 2007, letter to NCPA's General Manager, Levine recognized and thanked NCPA for its leadership during the first year of implementation of AB 2021, and specifically noted his confidence that "with

Statements made by PG&E and SDG&E/SoCalGas[38] challenging the commitment of POUs to aggressively pursue energy efficiency programs fail to account for the disparate sizes of many of the smaller POUs. This fact was, however, recognized by the CEC in the 2007 Integrated Energy Policy Report (IEPR), which states, "the investor-owned utilities in California have offered ratepayer-funded programs of incentive and rebates to encourage customers to participate in savings programs or purchase efficient appliances. Many of the publicly owned utilities have offered similar programs for their customers, *although significant differences in size among the publicly owned utilities affect their level of program development.*" [39] At the same time, the size and locale of many POUs allows them to target specific energy efficiency programs that result in the most cost-effective load reductions, and as the CEC has noted, allows them, due to their knowledge of local conditions and customers, to craft new program ideas.[40] Without question, successful emissions reduction accomplishments through existing non-market based programs are clearly not limited to the State's investor owned utilities.

Moreover, the 2007 IEPR notes that "the publicly owned utilities administer a variety of energy efficiency programs for their customers. During the fiscal year 2005-2006, all publicly owned utilities collectively spent more than $54 million on energy efficiency and saved more than 170 gigawatt hours and 53 megawatts of peak electricity." For its part, LADWP "increased its expenditures to more than $14 million in fiscal year 2006–2007, and is projected to spend $80 million in fiscal year 2007–2008."[41]

While the IOUs claim energy efficiency achievements that vastly exceed those of POUs, when compared to the energy efficiency targets set for the IOUs, actual savings were less than laudable. As noted in the 2007 IEPR, the IOUs failed to achieve their projected energy efficiency targets in the years 2004 and 2006. While in 2005, the IOUs exceeded their energy efficiency goals, it is important to note that 2005 "represents the last year the utilities were allowed to count commitments to install in a future year as part of their current year's reported

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NCPA's help and continued leadership in the coming years, California can meet the goals set in the this historic legislation.

38 PG&E, pp. 89, 90; SDG&E/SCGC, pp. 8-9.

39 2007 IEPR, p. 78 (emphasis added).

40 Id., at p. 4.

41 Id., at p. 79.

savings."[42] The IEPR notes that the change in the rule resulted in a "sharp drop-off in 2006," but nevertheless "enhanced the credibility of claimed savings levels."[43] The IOUs' failure to achieve their targets led to a CPUC decision to adopt a risk/reward incentive mechanism that will require each utility to achieve merely 85% of adopted targets before being eligible for performance based incentives.[44]

While some parties advocate for the same stringent rules for all retail providers, NCPA cautions the Joint Commissions against making recommendations that advance a prescriptive policy for meeting GHG reduction goals. Instead, retail providers – both POUs and IOUs – should be guided by their governing bodies and local expertise to develop the best mix of emissions reductions measures to meet the needs and demands of their communities – and best achieve key environmental objectives.

VII. MODELING ISSUES

The results of the economic modeling are not sufficient to base a recommendation on allowance allocation for the electricity sector.

The Joint Commissions cannot rely on the E3 modeling as a foundation upon which to base a comprehensive policy recommendation to CARB. While many parties filed varied comments on the content and usefulness of the E3 modeling, the most common theme derived from the commenting parties is the fact that the results of the E3 modeling – in any variation – should not be used as basis upon which to make final policy recommendations to CARB regarding cap-and-trade and the electricity sector. NCPA concurs with those parties that caution the Joint Commissions not to rely too heavily on the results of the E3 model in forming policy recommendations to CARB for the electricity sector.[45]

As NCPA noted in its Opening Comments, there are several shortcomings contained in the model, which recommend against its use as the basis for recommendations. Numerous commenting parties shared this concern regarding the model's limitations and expressed unease with various aspects of the model, noting that the model was developed within a very limited

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42 Id., at p. 92.

43 Id.

44 Id., p. 93; See CPUC D.07-09-043.

45 See, for example, NRDC, p. 39.

timeframe, and the opportunity to comment on the model results was even more limited.[46] Furthermore, the actual price *risks* are not addressed in the model at all.[47] There are too many contingencies built into the model to make the final outcome reliable. Different parties have run the model using their own inputs and have come up with wildly divergent numbers.[48] Given the potential magnitude of the impact the chosen allowance allocation methodology will have on the entire electricity sector – including California's electricity consumers – reliance on model results that have not yet been fully vetted should be discouraged. NCPA supports the observations of Western Power Trading Forum (WPTF) that while the E3 model is useful in evaluating the "relative" effect of different allocation schemes, it has limited value in assessing the cost-effectiveness of GHG trading relative to regulatory approaches, or assessing the cost or cost-effectiveness of GHG reductions in the electric sector relative to other capped sectors.[49] Similarly, DRA comments that the E3 model represents a picture of possibilities, but does not give insight into the least cost path of compliance among covered sectors.[50]

In their Opening Comments, several parties expressed concern that details underlying input assumptions have not been made public[51] and specifically challenge the assumptions related to energy efficiency cost estimates and RPS potential.[52] Parties have indicated that energy efficiency costs utilized in the model are too low, but a proper reasonableness assessment cannot be made because of the lack of documentation to support the assumptions.[53]

As indicated in NCPA's Opening Comments, and those of SCPPA and MID, the model results provide little, if any, guidance for POUs included in the aggregated "Northern California Others" and "Southern California Others" groups. The impact on individual utilities is not reflected in the model due to the level of aggregation employed in the model. Without knowing the magnitude of such impacts, no recommendation can be made.

There are inherent uncertainties contained in the model. A few of the commenting

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[46] SDG&E/SoCalGas, p. 39; Calpine, p. 23; IEP, p. 44; EPUC, p. 23.

[47] NRDC, p. 39.

[48] Solar Alliance, pp. 9-10, and its Attachment B.

[49] WPTF, p. 27.

[50] DRA, p. 48.

[51] IEP, p. 45; SCE, p. 44, SMUD, p. 36.

[52] SCE, pp. 44, 46; NRDC, p. 39; PG&E, pp. 113, 116.

[53] *Id*.

parties agree that the E3 model may be useful to guide discussions on the cost impacts of different allocation options and reduction policies, but even so, state that it should not be the basis for any policy recommendations to CARB.[54]

VIII. CONCLUSION

NCPA appreciates the opportunity to submit these Reply Comments to the Joint Commissions regarding proposed recommendations to CARB on a cap-and-trade program that includes the electricity sector.

June 16, 2008

Respectfully submitted,

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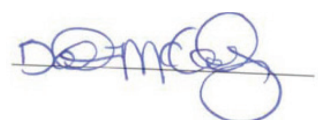
[54] See June 2, 2008 Opening Comments of SDG&E/SoCalGas, p. 39; IEP, p. 44; NRDC, p. 39; PG&E, p. 102.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rule of Practice and Procedure, I have this day served a true copy of the **REPLY COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY COMMENTS ON ASSIGNED ADMINISTRATIVE LAW JUDGES' RULINGS AND STAFF PAPERS REGARDING RECOMMENDATIONS TO THE CALIFORNIA AIR RESOURCES BOARD FOR THE ELECTRICITY SECTOR** on all parties on the Service Lists for R.06-04-009, on the Commission's website on June 13, 2008, by electronic mail, and by U.S. mail with first class postage prepaid on those Appearances that did not provide an electronic mail address.

Executed at San Jose, California this 16th day of June, 2008.



Katie McCarthy