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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)

Order Instituting Informational Proceeding –  
AB-32

CEC Docket Number 07-OIIP-01

**COMMENTS OF KENNETH C. JOHNSON ON  
THE FINAL OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES**

Kenneth C. Johnson, an unaffiliated individual, U.S. citizen, and resident of California having a personal interest in and concern about climate change, respectfully submits the following comments in response to the *Final Opinion on Greenhouse Gas Regulatory Strategies* (09/12/2008).

The stated reasons for excluding renewable sources from the allowance distribution are baseless, and the phase-in of fuel-neutral allocation is too rapid.

The Final Opinion states the following (page 156),

Staff recommends that the output-based approach, if chosen, distribute allowances only to deliveries from GHG-emitting resources, since including all generation would provide free allowances to deliverers that use non-emitting resources including nuclear, hydro, and renewable sources that do not need them.

Nuclear and hydro have been commercially successful without regulatory intervention on the scale of AB 32, and expansion of these sources is not contemplated as a core AB 32 compliance strategy, so this recommendation is reasonable insofar as it applies to nuclear and hydro. But the notion that renewable sources have no need for allowances (or

allowance value) neglects the very problem that is being addressed, that renewable sources cannot currently be economically competitive without regulatory intervention. Renewables need the allowance value to offset their higher costs relative to cheap coal, properly credit their superior environmental qualities, and overcome market barriers to their commercialization.

The Opinion argues that the disadvantage to renewables would be inconsequential because “given our recommendation to rapidly transition the allocation method to 100% auctioning, any potentially deleterious effect on the competitiveness of renewables would be short-lived” (page 216). But renewables will be in greatest need of regulatory support in the near term, when they need startup financing. The proposed allocation method will unnecessarily bridle the renewables market during this critical capital expansion period.

Furthermore, the proposed phase-in to fuel-neutral allocation is far too rapid. Even in 2020 a large portion of California’s electricity may still be fossil-fuel-based, and the large transfer of wealth from fossil fuels to nuclear and hydro will divert and squander resources that should be focused on renewables expansion. Emission reductions will need to continue, and possibly accelerate, after 2020, particularly if current climate trends (e.g. disintegration of the Arctic ice cap) continue. The phase-in of fuel-neutral allocation should be tied to the phase-out of fossil fuels so that resource allocation remains focused on expedient expansion of renewables.

The Opinion further argues that “...the State’s current, and potentially increasing, mandates for development of renewables, leads us to question whether including renewables in fuel-differentiated output-based allocations would be warranted” (page 216). Such inclusion would be warranted because the RPS is an unfunded mandate. Unless renewables can compete equitably with fossil fuels, based on emissions per MWh, it may be difficult to achieve compliance with the RPS and create market momentum for continued emission reductions that will be required after 2020.

The income that would accrue to renewable generators from output-based allocation is erroneously characterized as “windfall profits” (page 160). These are normal and expected profits that derive from the monetized environmental value of low-emission energy, not from unforeseen circumstances or protectionist policies. Such profits serve the public interest by facilitating expedient commercialization of renewable energy and avoiding costly energy supply disruptions that could lead to real windfall profits.

Fuel weighting may be unnecessary, and the inconsistency between output-based allocation to deliverers and historical emissions-based allocation to retail providers should be avoided

The proposed output-based allocation to deliverers and historical emissions-based allocation to retail providers are inconsistent and incompatible. This incompatibility can

be resolved, and the need for fuel weighting can perhaps be avoided, by adopting a simpler allocation methodology such as the following: Divide the electricity sector into two sub-sectors: (1) legacy nuclear and hydro, and (2) other fuels (coal, NG, new renewables). Determine the allocation between these two sub-sectors based on historical emissions, and determine the allocation within each sub-sector based on output or sales (with no fuel weighting). The historical emissions-based allocation between the two sub-sectors would be phased out as fossil fuels are phased out. (This approach may be somewhat over-simplified, but the selection of a preferred allocation methodology should be deferred until fuel-differentiated allocation can be realistically modeled. The Opinion notes, on page 156, that the CPUC currently does not have this capability.)

The main point of the above allocation approach is that resource allocation would be focused on expansion of new renewables. The Opinion argues that there should be no such focus: “We do not recommend, as suggested by staff, that the sales calculation be performed on a ‘net load’ sales basis (excluding large hydro and nuclear). ... we believe that the longer-term priorities should be to provide strong incentives for increased reliance on all low- and non-emitting resources, including legacy generation” (page 210). But legacy generation cannot significantly increase capacity, so trying to displace fossil fuels by increasing reliance on legacy generation is not a viable regulatory strategy.

The Opinion asserts that “A pure output-based approach would be more effective than a fuel-differentiated approach in providing strong incentives to develop lower-emitting resources” (pages 209-210), but this statement is untenable if new renewables receive allowances under either approach. Until such time as renewables have substantially displaced fossil fuels, diversion of capital resources to legacy generation will only create inequities and impede decarbonization of the industry contrary to the purposes of AB 32.

Auction revenues should be used, at least in part, to comply with AB 32, § 38560 via participation in the voluntary offsets market.

The Opinion cites several provisions of AB 32 as legislative grounds for supporting and sustaining the voluntary renewables market (pages 217-218). Among these is § 38560, which requires ARB to “adopt rules and regulations ... to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions ...”.

A voluntary offsets market would not require creation of a set-aside reserve, as recommended by the Solar Alliance (but not recommended in the Opinion, pages 217-218). All that is required is for the public to have rights to buy allowances through auctions or the secondary market. The concerns about Unlimited Market Participation in Sec. 7.4.2 (pages 254-256) would not apply to the voluntary market, which would purchase allowances solely for the purpose of retiring them. (From the perspective of

regulated entities in California, allowance purchases for the voluntary market would be no different from trades with out-of-state buyers via WCI linkage. In either case, the number of allowances available to cover in-state emissions would decrease.)

To the extent that auction revenue is applied to reduce emissions pursuant to § 38560, this can be efficiently achieved by participating in the voluntary offsets market (i.e., revenue would be used to purchase and retire allowances). In contrast to other proposed revenue-allocation methods, voluntary offsets would guarantee additional emission reductions that are “real, permanent, quantifiable, verifiable, and enforceable”. Moreover, the means by which the additional emission reductions are achieved would be determined by market actors, not by regulators, in keeping with a market-based regulatory strategy.

Respectfully submitted,

*/s/ Kenneth C. Johnson*

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Dated: September 16, 2008

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of COMMENTS OF KENNETH C. JOHNSON ON THE FINAL OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES on the service list for CPUC Docket No. R.06-04-009 and CEC Docket No. 07-OIIP-01 by serving a copy to each party by electronic mail and/or by mailing a properly addressed copy by first-class mail with postage prepaid.

Executed on September 16, 2008, at Santa Clara, California.

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