

**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 Implementation: Greenhouse Gases)
_____)

CEC Docket 07-OIIP-01

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**Opening Comments
of the California Cogeneration Council
on the Proposed Decision of President Peevey**

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On Behalf of
CALIFORNIA COGENERATION COUNCIL

October 2, 2008

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**OPENING COMMENTS OF THE CALIFORNIA COGENERATION COUNCIL
ON THE PROPOSED DECISION OF PRESIDENT PEEVEY**

In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure, the California Cogeneration Council (CCC) respectfully submits these opening comments on the Proposed Decision of President Peevey (PD), as mailed to the parties on September 12, 2008. The PD sets forth the strategies and policies that the Commission and the California Energy Commission (CEC) will recommend to the California Air Resources Board (ARB) for the regulation of greenhouse gas (GHG) emissions in the electricity and natural gas sectors in California. Under AB 32, the state law regulating GHG emissions, ARB has final responsibility for adopting GHG regulations, and is required to consult with the CPUC and CEC concerning the regulation of the energy sectors.

I. INTRODUCTION

The CCC is an *ad hoc* association of natural gas-fired combined heat and power (CHP) projects located throughout California, in the service territories of all three of California's major investor-owned electric utilities (IOUs) - Pacific Gas & Electric Company (PG&E), Southern California Edison (Edison), and San Diego Gas & Electric (SDG&E). CCC member facilities

are certified as qualifying facilities (QFs) pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA). In aggregate, CCC members' 31 different CHP projects in California generate about 1,300 megawatts (MWs), most of which is sold to the California IOUs. The CCC represents a significant share of the distributed CHP projects now operating in California.

In aggregate, the CCC's member projects have produced significant reductions in California's emissions of greenhouse gases since the 1980s, and continue to do so today. The CHP facilities of CCC members today produce electricity and steam with an efficiency that is greater than if these energy products were produced separately in state-of-the-art facilities, even though the CCC members' projects generally were built 20 years ago. It is vital that the state's GHG policies encourage the continued operation of the state's existing CHP resources. The commercial, industrial, and institutional customers that CCC members serve are integral to the California economy, and CHP is an essential tool with which these energy consumers can manage and reduce both their energy costs and their GHG emissions.

As the PD correctly notes, at page 101, the ARB has identified the further development of CHP in California as a key emissions reduction measure in its AB 32 Draft Scoping Plan. The ARB projects that new CHP facilities could generate 32,000 GWh per year, add 4,000 MW of capacity to the grid, and reduce GHG emissions by 6.9 MMT CO₂e in 2020. The CCC fully supports such ambitious goals, but observes that this goal will be achieved only through a concerted, coordinated effort to implement policies that support and sustain further investment in CHP in California – both the repowering of existing facilities and the development of new CHP capacity.

The CCC commends President Peevey and the two Commissions for the clarity and comprehensiveness of the PD, including the specific attention that the PD devotes to CHP issues. Not surprisingly given the scope and complexity of this endeavor, the CCC strongly supports certain elements of the PD, is disappointed in other aspects, and can accept some features of the proposed GHG policies that were not the CCC's first choice. The CCC presents below its specific comments on the PD.

II. THE CCC SUPPORTS THE PD’S FINDING THAT CHP IS AN IMPORTANT EMISSIONS REDUCTION METHOD, AND APPRECIATES THE COMMISSION’S DETERMINATION TO OPEN A BROAD RULEMAKING ON CHP POLICIES.

The CCC agrees completely with the PD’s support for the treatment of CHP as an emissions reduction method. We also concur with the PD that GHG policies may inadvertently present a barrier to further CHP development and to the significant reductions in GHG emissions that additional CHP capacity could produce. The PD correctly cites the example of a customer whose costs for GHG compliance would rise if he installs CHP, because the CHP unit has greater GHG emissions per MWh than the retail power that it displaces. Yet the GHG emissions from this CHP unit for the production of electricity are lower than those of the marginal generator, and thus the CHP project would reduce GHG emissions from a societal perspective.¹ The state’s GHG policies for CHP must be crafted to remove this barrier. The PD concludes that the Commission should examine in more detail the market and regulatory barriers to the expanded use of CHP, and announces that the Commission will issue a broad-based OIR on CHP issues in the near future.² The CCC welcomes and supports this initiative, and will participate actively in the upcoming CHP OIR.

While the PD expresses strong support for policies that encourage the development of efficient CHP facilities, the PD does not adopt a particular approach to setting a benchmark for the efficiency of new CHP. The CCC presumes that this will be a central issue in the new CHP OIR. We observe that, in the comments in this case, a “double benchmarking” standard received support “on both sides of the aisle,” that is, from Edison as well as from the CCC and the Cogeneration Association of California (CAC). In moving forward with the new CHP OIR, the Commission should build upon the ideas presented and the agreements achieved in this case. The two Commissions also should remain open to revising their GHG policies and recommendations to ARB based on the further work to be undertaken in the CHP OIR.

¹ PD at 99-100. The PD observes correctly that this issue can arise with any distributed generation technology that has GHG emissions, not just with CHP. PD, at 100.

² PD at 102.

III. THE REGULATION OF CHP IN MULTIPLE SECTORS MAY PRESENT A NEW BARRIER TO CHP DEVELOPMENT.

The PD would regulate in the electricity sector a portion of the GHG emissions from a CHP facility – the emissions associated with the production of electricity, both power sales to the grid and electricity produced for on-site use. While the CCC understands the Commissions’ desire to treat CHP like other electricity generators, the Commissions should be aware that this determination may erect a new barrier to CHP development. In contrast to the PD, the CCC, the CAC, and other parties have advocated the placement of CHP in its own sector, as is done in many countries in the European Union. The CCC continues to believe that a CHP sector would provide the greatest encouragement to new CHP development, because it would allow GHG regulations for CHP to be tailored to the unique attributes of CHP and would simplify the administration of GHG regulations for CHP. If the GHG emissions from CHP are regulated in multiple sectors, the administrative burden on CHP projects will increase, as will the potential for CHP projects to face unintended incentives to favor one type of output over another. If the PD is adopted as drafted, and CHP emissions to produce electricity are included in the electric sector, the Commissions should be mindful that this course will increase regulatory costs and uncertainties for CHP projects. The CCC appreciates the PD’s commitment to reduce the barriers to CHP, but observes that this task will be complicated by the choice to regulate the GHG emissions from CHP in multiple sectors. By taking a step backward in this respect, the Commissions’ efforts to promote CHP development will need to take two steps forward in other areas.

IV. THE CCC STRONGLY SUPPORTS THE PD'S DETERMINATION THAT THE CHP OPERATOR IS THE RETAIL PROVIDER OF GENERATION USED ON-SITE.

The CCC appreciates the PD's acceptance of the CCC's position that, for the electricity that the CHP unit supplies on-site, the CHP owner/operator is the retail provider.³ Thus, the CHP owner/operator would be allocated emission allowances for the on-site loads that it serves, in the same fashion as other retail providers. The revenues from the mandatory auction of those allowances would flow to the CHP owner/operator, to be used for purposes consistent with AB 32.⁴ As noted in the PD, the CHP owner/operator is also a deliverer and will be required to obtain allowances to cover its GHG emissions to produce electricity. Thus, the CHP owner/operator is likely to use its share of auction revenues to purchase the allowances that it needs, probably in the same auction.⁵

V. THE CCC ACCEPTS THE PD'S PROPOSAL TO ALLOCATE EMISSION ALLOWANCES TO CHP BASED ON THE FUEL-DIFFERENTIATED OUTPUT OF CALIFORNIA FOSSIL GENERATION.

The PD proposes that, in 2012, 80% of GHG emission allowances should be allocated for free to deliverers, on the basis of the fuel-differentiated output of fossil generators in California. This percentage would then decrease by 20% per year, with the percentage of allowances distributed by auction increasing correspondingly.⁶ In its comments, the CCC recommended the allocation of allowances to CHP on the basis of historical emissions, and also advised a slower phase-in of the full auctioning of GHG allowances. Nonetheless, the CCC can accept the PD's proposal. The PD's approach should align closely with historical emissions, and will also provide an incentive for existing generators to operate as efficiently as possible during the five-year period when there is a partial administrative allocation of allowances. As the PD observes,

³ PD, at 245.

⁴ PD, at 246-247.

⁵ PD, at 247.

⁶ PD, at 203-204 and 207-208.

there remain open issues on the exact means to model and to implement this allocation;⁷ as the devil is always in the details, the CCC looks forward to participating constructively in the next step of this process.

The CCC appreciates the attention of both Commissions to these comments on this landmark proposed decision.

Respectfully submitted,

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⁷ PD, at 209 and 211.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing document, **Opening Comments of the California Cogeneration Council on the Proposed Decision of President Peevey**, 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, Thursday, October 2, 2008

/s/ Christa Goldblatt

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