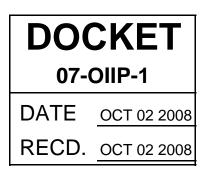
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

COMMENTS OF THE INDICATED CEMENT COMPANIES ON THE PROPOSED FINAL OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES



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I. INTRODUCTION

Pursuant to Section 14.3 of the Public Utilities Code, the Indicated Cement Companies (ICC) respectfully submit these comments on the Proposed Final Opinion (Proposed Decision or PD) on Greenhouse Gas (GHG) Regulatory Strategies for the Electricity Sector, issued on September 12, 2008. The Indicated Cement Companies include CEMEX-Pacific Region (CEMEX), Mitsubishi Cement Corporation (MCC), National Cement Company (NCC), and TXI-Riverside Cement Company (TXI). The focus of interest of the ICC in this proceeding has been on the role of Combined Heat and Power (CHP) (also known as cogeneration) as a greenhouse gas (GHG) mitigation strategy.

ICC commends the California Public Utilities Commission (Commission or CPUC) and the California Energy Commission (CEC), with which it worked closely, on this massive effort to develop a GHG mitigation strategy for the electric sector. While ICC herein suggests that more issues need to be resolved in some areas covered by the PD, these comments should be understood to recognize the enormous effort that has gone into the current document and the monumental task it represents. Indeed, it can hardly be surprising that there are a few additional matters that need to be addressed in order for the Commission's proposals to be effectively implemented. ICC hopes that the Commission will receive these comments with that understanding.

II. THE ELECTRIC SECTOR SHOULD NOT FACE DISPROPORTIONATE GHG REDUCTION GOALS

The Commission's PD is appropriately sensitive to concerns that the electric sector should not face a disproportionate share of the state's GHG reduction goals. As the PD clearly states, the electric sector should not face required reductions that are out of proportion to the historical share of GHG emissions in the electric sector when compared to the rest of the economy:

Any further decisions about allowance allocation to the electricity sector should, at a minimum, be based on some analysis of the proportionality of the burdens being borne by each sector of the California economy. The additional reductions necessary to meet the AB 32 goals should not rest solely or even primarily on the electricity sector, given how much has already been achieved in the sector. If ARB determines that additional emission reduction measures should be mandated for the electricity sector, ARB should distribute additional allowances or allowance value to the electricity sector, so that the related costs would be shared among the sectors rather than borne by the electricity sector alone. (PD at p. 126)

This policy guidance is critical. The electricity sector should not be given a

disproportionate share of the GHG reduction goals simply because it is regulated more than other industries and regulated at the state level. As the PD notes, there are likely to be large retail rate increases due to GHG mitigation in the electric sector. (PD at p. 111 and p. 165) Electricityintensive industries and businesses will face large enough electric rate increases without having to face greater burdens than their competitors may do in other states or countries where the electric sector is not so targeted. ICC agrees with the Commission's statement that any additional burdens on the electric sector must be avoided unless they can be demonstrated to be more cost-effective than mitigation in other sectors:

We recommend that any further electricity sector reductions required as part of a multi-sector cap-and-trade program be justified based on detailed analysis of the costs of GHG mitigation in other sectors. Until that additional analysis is conducted, we recommend that the electricity sector not be required to reduce its emissions below the approximately 79 MMT CO2e estimated in E3's Accelerated Policy Case. (PD at p. 124)

As it is, the PD adopts as its goal the implementation of E3's Accelerated Policy Case, which is a very ambitious undertaking. (PD at p. 124). This case includes over 4200 new MW of CHP. One consideration that will be critical to meeting the Commission's ambitious goals as contained in the E3 Accelerated Policy Case is the importance of effective integration of the many parts of the electricity-related GHG mitigation strategies. For example, the 33% Renewable Portfolio Standard (RPS) goal must result in new resources that complement each other as well as other GHG mitigation strategies. Procurement of intermittent renewable resources must mesh with procurement of baseload CHP and geothermal and biomass resources without creating or aggravating minimum load problems. The procurement of all of these targeted resources must be done in such a way as to allow the CAISO to effectively manage the grid in a manner that assures reliability and minimizes costs to consumers. It is imperative that the RPS, CHP, energy efficiency (EE), and demand response (DR) goals, among no doubt others, are effectively coordinated to minimize unnecessary costs or operational problems.

III. THERE ARE SEVERAL REMAINING ISSUES REGARDING CHP TO BE ADDRESSED

ICC greatly appreciates the PD's demonstrated understanding of the nature of bottoming cycle CHP and the fact that the waste heat from the industrial process does not produce any

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GHG in the production of electricity. (PD at 234, 246) Only supplemental firing results in electricity-related GHG emissions. If this concept is not clearly understood, proposed regulations will attribute too many GHG emissions to bottoming cycle CHP and inhibit its development by requiring excessive mitigation. If CHP is included in cap and trade as part of the electric sector, as proposed in the PD, the mitigation could take the form of excessive allowance requirements, which would undermine the cost-effectiveness of bottoming cycle CHP for the customer. The PD's recognition that, for bottoming cycle GHG, the only GHG emissions associated with electricity production come from supplemental firing, is important in avoiding this pitfall, which would simply add another impediment to new CHP.

ICC commends the proposal to treat on-site use of electricity from CHP as retail provision of electricity that should be included in determining the distribution of free allowances to individual retail providers. (PD at p. 246) However, ICC is concerned that the PD does not address *new* CHP is this context. It appears that the allocation of free allowances to retail providers is to be based on the emissions profile of their historical electricity portfolios. (PD, at pp. 246-247) New CHP will not have an historical profile until at least a year after it is built. It is thus critical that the determination of its allowance requirement take place at the end of its first year of operation, rather than the beginning.

In addition, the PD does not address a means for provision of allowances for *new* CHP, as well as other *new* supply resources, if new GHG-mitigating investments are to be undertaken. One possibility was presented by EPUC in its proposal that there be a reserve set up for allowances for new projects that will be required to meet GHG mitigation goals under the ARB's Scoping Plan. ICC recommends that this issue be addressed through additional workshops and comments.

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Regarding the development of a separate fuel-differentiated output-based approach to distribution of free allowances for new CHP (PD at 246), ICC notes that there are unique issues associated with bottoming cycle CHP and supplemental firing that will have to be addressed in this regard. We recommend that the appropriate method be a subject for further discussion through a workshop and comment process.

ICC is concerned that the CPUC is delaying until 2009 a new proceeding whose goal is to analyze and remove impediments to new CHP. (PD at 101-102) The Air Resources Board's (ARB's) Scoping Plan includes 4000 MW of new CHP. The E3 Accelerated Policy Case includes over 4200 MW of new CHP. These additional investments have not been forthcoming because of current impediments to greater CHP resulting from both existing law and regulation. Thus, there is more work to do for this additional CHP to be implemented, and it will have to take place in a timely and comprehensive manner at both the Commission and the Legislature. ICC intends to participate actively in all arenas in which constraints to development of new CHP are addressed and encourages the Commission to begin this new proceeding as soon as possible.

This new proceeding is needed because the existing proceedings cited in the PD as currently addressing CHP are in fact too narrowly focused to meet the needs of many potential CHP projects. (PD at 101-102) AB 1613 only addressed CHP less than 20 MW, while many industrial applications will be larger. Not all larger CHP will be interested in being a qualifying facility under PURPA. New CHP greater than 20 MW that is not operating as a QF will have no market for power in excess of site load. The marketability of this power will be a critical issue in determining the economic feasibility of some larger new CHP projects. Indeed, if excess power cannot be sold at prices that cover investment and operating costs, including the cost of procured

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GHG allowances, the economics of new CHP will fail to induce sufficient investment. ICC encourages the Commission to address such matters in a timely manner.

ICC further notes that the CPUC is meeting the energy efficiency (EE) goals that are part of the ARB Scoping Plan through the use of incentives that are proposed to increase to the point where all cost-effective EE will be undertaken. Currently there are no CHP incentives except the very limited (in size and technology) ones included in the Self Generation Incentive Program (SGIP). These incentives exclude all large CHP facilities and also exclude even very efficient nature gas-fired CHP. If new CHP is to be a significant source of GHG mitigation along with EE, it may need new incentives along with the elimination of current legal and regulatory impediments in order for desired investments to be made.¹ The Commission should undertake its analysis of all these issues as soon as is practicable for new CHP investment to occur well in advance of 2020.

IV. CONCLUSION

ICC appreciates this opportunity to provide its comments on the PD on GHG mitigation in the electric sector. We reiterate our commendation of the vast effort undertaken by the Commission and its results. We respectfully include our recommendations regarding additional efforts that must be undertaken by the Commission in order for the CHP aspects of the Accelerated Policy Case and the ARB's Scoping Memo to be fully implemented in concordance

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¹ ICC notes that the PD proposes that retail providers receive free allowances that must be auctioned, with the proceeds to be used for purposes consistent with AB 32. (PD at 223-224) One possibility is that some of these auction proceeds could be used to provide incentives for new CHP.

with the agencies' mandates and policy goals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christina Karo, certify:

I am employed in the City and County of San Francisco, California, am over eighteen

years of age and am not a party to the within entitled cause. My business address is Davis Wright

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On October 2, 2008, I caused the following to be served:

COMMENTS OF THE INDICATED CEMENT COMPANIES ON THE PROPOSED FINAL OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES

Via electronic mail to all parties on the service list R.06-04-009 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as "Parties" and "State Service" on the attached service list who have not provided an electronic mail address.

_/s/Christina Karo_____

Christina Karo

CALIFORNIA PUBLIC UTILITIES COMMISSION Service Lists

PROCEEDING: R0604009 - CPUC - PG&E, SDG&E, FILER: CPUC - PG&E, SDG&E, SOCALGAS, EDISON LIST NAME: LIST LAST CHANGED: OCTOBER 1, 2008

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