

**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 Emission Standards into)
Procurement Policies.)

R.06-04-009
(Filed April 13, 2006)

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**COMMENTS OF CALPINE CORPORATION ON THE PROPOSED DECISION OF
COMMISSIONER PEEVEY ON GREENHOUSE GAS REGULATORY STRATEGIES**

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Pursuant to Rule 14.3 of the California Public Utilities Commission ("CPUC") Rules of Practice and Procedure, Calpine Corporation ("Calpine") respectfully submits these comments on the Proposed Decision of President Peevey on greenhouse gas ("GHG") regulatory strategies ("Proposed Decision"). The Proposed Decision represents the second joint "policy" decision to be issued by the CPUC and the California Energy Commission (collectively, the "Commissions") pursuant to Assembly Bill ("AB") 32. Calpine strongly supports the GHG emissions reduction goals established in AB 32 and commends the Commissions for their efforts to design an effective and efficient means for reducing GHG emissions from the electricity sector.

I. INTRODUCTION

The Proposed Decision would recommend a combination of both programmatic and market-based mechanisms to reduce GHG emissions in the electricity sector. Specifically, the Proposed Decision would call for the implementation of "aggressive energy efficiency programs,"¹ a 33% renewable energy procurement requirement, and the creation of a broad, multi-sector cap-and-trade program linked to programs developed by other states in the Western

¹ Proposed Decision at 4.

Climate Initiative (“WCI”). Calpine supports many aspects of the Proposed Decision, in particular the development of a region-wide, multi-sector cap and trade system and key market design features.

However, to achieve the long-term emissions reduction goals set out in AB 32, Calpine believes that certain recommendations in the Proposed Decision must be revised. Specifically, the Proposed Decision should be revised to recommend that:

- The distribution of allowances be made using a fuel-neutral, output-based approach;
- Allowances not be given directly to retail providers prior to being auctioned nor auction revenues provided only to retail providers; and
- Low-emitting renewable resources, such as geothermal generation, be excluded from the GHG cap.

The Proposed Decision correctly notes that many design and implementation features remain to be addressed by the Air Resources Board (“ARB”). Calpine urges both Commissions to stay actively involved in ARB’s ongoing process to develop the AB 32 implementation plan to ensure a final design that is workable for the electricity sector that does not conflict with California’s evolving electricity markets.

II. CALPINE SUPPORTS A REGION-WIDE MULTI-SECTOR CAP-AND-TRADE SYSTEM AND KEY DESIGN ELEMENTS IDENTIFIED IN THE PROPOSED DECISION

The Proposed Decision would recommend the adoption of a region-wide multi-sector cap-and-trade program as a means to “broaden opportunities to find real, cost-effective emission reductions, to smooth the effects of localized weather and hydrologic variations, and to avoid leakage and other potential drawbacks of a California-only system.”² Calpine agrees that such

² Proposed Decision at 17 citing Pub. Util. Code, § 38505(j).

an approach represents an efficient and cost-effective means for meeting the state’s long-term emissions reduction goals.

With respect to market design, the Proposed Decision would recommend unlimited market participation,³ no price triggers or safety valves,⁴ a three-year compliance period,⁵ unlimited banking,⁶ and the use of “high quality offsets.”⁷ Calpine agrees that this combination of market design features and flexible compliance measures will better “ensure a liquid and transparent allowance trading system, limit rate increases to consumers, and provide a reasonable range of compliance options for the electricity sector while also maintaining the environmental integrity of the emissions cap.”⁸ Accordingly, Calpine supports the Commission’s adoption of these features of the Proposed Decision.

III. THE PROPOSED DECISION SHOULD BE REVISED TO RECOMMEND THAT THE DISTRIBUTION OF ALLOWANCES BE MADE USING A *FUEL-NEUTRAL*, OUTPUT-BASED APPROACH

The Proposed Decision would recommend the adoption of “a *fuel-differentiated* output-based allocation approach with distributions limited to emitting deliverers”⁹ as the basis for allocating allowances during a five year transition period to a 100% auction.¹⁰ The Proposed Decision reasons that such an approach would provide entities with existing high emitting resources time “to adjust their generation investments before they face the full cost of their emissions.”¹¹ The Proposed Decision would further find that the five year transition period “would ensure that any undue windfall profits to deliverers would be short-term and declining in

³ Proposed Decision at 254-256.

⁴ Proposed Decision at 260-262.

⁵ Proposed Decision at 263-265.

⁶ Proposed Decision at 265-267.

⁷ Proposed Decision at 267.

⁸ Proposed Decision at 252-253.

⁹ Proposed Decision at 207 (emphasis added).

¹⁰ Proposed Decision at 203-204.

¹¹ Proposed Decision at 203.

nature.”¹² While Calpine supports the allocation of allowances directly to electricity delivers during a transition period, the use of a fuel-differentiated approach is inconsistent with the policy goals in AB 32.

As the Proposed Decision correctly acknowledges, a fuel-specific approach to allocating allowances is akin to a historic emissions (*i.e.*, “grandfathering”) approach, in that both approaches would essentially reward high-emitting sources by “reduce[ing] the compliance costs of high-emitting sources.”¹³ The net effect is that compliance costs for low-emitting resources will go up relative to existing, inefficient generation. An allowance allocation system that rewards higher emitting resources neglects the contribution of entities that have already invested in generation with lower emissions prior to the imposition of the cap.

Such an approach also fails to recognize that, in the absence of such “early action,” California would be facing a far greater hurdle in reducing current emissions. The need to reduce GHG emissions was recognized well before AB 32 was adopted. Based on these concerns, many generators, including Calpine, invested in cleaner, lower-emitting, generation resources, despite the fact that it was likely that the short-term return on these investments would not be as high as the return on higher-emitting assets. It is completely inconsistent with AB 32, as well as equitable principles, to ignore the efforts of these early actors and instead reward higher emitting resources for their inaction. Penalizing low-emitting resources in such a way threatens the long-term success of the State’s emissions reduction efforts.

Furthermore, a fuel-differentiated output-based approach would encourage high emitting resources that might otherwise retire or reduce production to continue operating. Indeed, a fuel-differentiated approach provides a disincentive for entities to proactively shift to low-GHG

¹² Proposed Decision at 203.

¹³ Proposed Decision at 198.

technologies since to do so would result in loss of allowances. Simply put - prolonging the life or encouraging the use of inefficient, dirty generating sources is clearly contrary to the goals of AB 32.

The Proposed Decision also finds that a fuel-differentiated output-based approach for distributing allowances is one of the most expensive allowance distribution options for ratepayers.¹⁴ While the Proposed Decision contends that such an approach “would minimize wealth transfers from customers of retail providers with relatively high emitting portfolios to customers of retail providers with cleaner portfolios,”¹⁵ the overall cost to ratepayers would nevertheless be higher than under a fuel-neutral output-based approach.¹⁶

In stark contrast, a fuel-neutral output-based approach is consistent with the policy goals in AB 32, will provide incentives for investment in low-emitting generation technologies, and will help mitigate costs associated with transition to a 100% auction system.

As an initial matter, AB 32 requires emission reduction measures to recognize and reward entities that have taken early action:

(b) In adopting regulations pursuant to this section and Part 5 (commencing with Section 38570), to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California,

¹⁴ Proposed Decision at 195, 197.

¹⁵ Proposed Decision at 197.

¹⁶ See Joint California Public Utilities Commission and California Energy Commission Staff Paper on Options for Allocation of GHG Allowances in the Electricity Sector (April 16, 2008) at 27 (<http://docs.cpuc.ca.gov/efile/Rulings/81554.pdf>).

and *encourages early action to reduce greenhouse gas emissions.*

. . .

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section *receive appropriate credit for early voluntary reductions.*¹⁷

A fuel-neutral approach would recognize voluntary actions to reduce GHG emissions because the quantity of allowances an entity receives would be predicated on the entity's output, rather than emissions. Thus, under an emissions cap, early actors who have already invested in low emission technologies would be appropriately rewarded for their investment by receiving a greater number of allowances relative to higher emitting resources.

Furthermore, a frequently updated, fuel-neutral output-based approach would put downward pressure on wholesale electricity prices, something that would not occur under a fuel-differentiated approach. This is because, when updated, a fuel-neutral approach for distributing allowances will incentivize increases in power production from the most efficient generating units. As more generation shifts to lower-emitting resources, the allowances distributed to these resources would increase, which in turn would provide additional incentives to increase efficiency.

Although Calpine supports the proposed transition to a 100% auction system, it is important that the Commissions recognize that some generation under long-term fixed price tolling agreements (executed before AB 32) may not have the ability to recover AB 32 compliance costs under the terms of the agreements. Thus, to ensure that these generation resources are not unfairly harmed under a 100% auction system, it may be necessary to distribute allowances to these resources until the terms of these fixed price agreements have expired.

¹⁷ Health and Safety Code § 38562(b) (emphasis added).

The Proposed Decision finds that “[a] pure output-based approach would be more effective than a fuel-differentiated approach in providing strong incentives to develop lower-emitting resources.”¹⁸ Calpine agrees with this finding and further believes that the development of lower-emitting resources in the near-term will be critical to success of AB 32 over the long-term. Accordingly, the Proposed Decision should be revised to distribute allowances using a fuel-neutral output based approach.

IV. THE PROPOSED DECISION SHOULD BE REVISED TO RECOMMEND THAT ALLOWANCES *NOT* BE GIVEN DIRECTLY TO RETAIL PROVIDERS PRIOR TO BEING AUCTIONED *NOR* AUCTION REVENUES PROVIDED ONLY TO RETAIL PROVIDERS

The Proposed Decision would recommend that allowances to be given directly to retail providers who would then be required to sell the allowances at auction.¹⁹ Under this approach, auction revenues would remain with the retail provider²⁰ to be used:

for purposes related to [AB] 32, including the support of investments in renewables, energy efficiency, new energy technology, infrastructure, customer bill relief, and other similar programs.²¹

Although certain aspects of the Proposed Decision suggest that auction revenues would be used for the benefit of the entire “electricity sector,”²² the Ordering Paragraphs in the Proposed Decision provide that only retail providers, in particular investor-owned utilities and publicly-owned utilities, would be entitled to auction revenues.²³

¹⁸ Proposed Decision at 209-210.

¹⁹ Proposed Decision at 210.

²⁰ Proposed Decision at 289 (Ordering Paragraph 10).

²¹ Proposed Decision at 289 (Ordering Paragraph 12).

²² See Proposed Decision at 225 (“We [the Commission] recommend that all auction revenues from allowances allocated to the electricity sector . . . be used for the benefit of the electricity sector, consistent with AB 32.”)

²³ See Proposed Decision at 290 (Ordering Paragraph 14) (“We recommend that ARB allow the Public Utilities Commission for investor-owned utilities and the governing boards for publicly-owned utilities to determine the appropriate use of retail providers’ auction revenues consistent with the purposes of AB 32.”)

Such an approach is anti-competitive and patently unfair in that it would require entities regulated under the program *that are not retail providers* to provide a revenue stream to retail providers that could then be used by the retail providers to invest in new generation and technology. Given that retail providers that also own generation assets compete with non retail provider owners of generation in the wholesale energy market, the net effect would be one segment of the electricity sector – namely non retail provider deliverers – subsidizing the research and development efforts of a competing segment of the sector – retail providers.

It is also unrealistic to assume that the allocation of allowances directly to retail providers would be consistent with an eventual federal cap-and-trade system. For instance, under proposed federal legislation, auction revenues would be transferred to a state’s general fund (or a possibly a specialized fund), rather than the direct allocation of allowances to retail providers.

For the above reasons, the Proposed Decision should be revised so that allowances are not given directly to retail providers prior to the allowances being auctioned nor auction revenues provided only to retail providers. Such a revision will help maintain a level playing field in the wholesale energy market, correctly recognize that there are non retail providers that are subject to AB 32, and will likely ensure a smoother transition to an eventual federal cap-and-trade program.

V. THE PROPOSED DECISION SHOULD BE REVISED TO RECOMMEND THAT LOW-EMITTING RENEWABLE RESOURCES BE EXCLUDED FROM THE GHG CAP

It is not clear whether the Proposed Decision would subject low-emitting renewable resources, such as geothermal generation, to the GHG cap. If adopted, however, such an approach would be inconsistent with the aggressive renewable procurement goals supported in the Proposed Decision and the State’s renewables portfolio standard (“RPS”) program. Specifically, if it were necessary for geothermal generation to acquire emission allowances to

comply with AB 32, geothermal resources would be disadvantaged relative to other RPS-eligible renewable resources and the overall costs of RPS compliance would increase. Such a result fails to recognize that the benefits provided by geothermal resources greatly outweigh the impact from emissions from these resources. Unlike intermittent renewable resources, geothermal generation has the unique and valuable benefit of providing both baseload and renewable energy. Thus, it is critical that the Commissions do not adopt policies that might discourage the future use and development of geothermal generation.

As a practical matter, emissions from geothermal resources are extremely small compared to fossil-fueled resources, small in terms of the state's overall emissions, and in some cases completely independent from the act of generating electricity. For example, GHG emissions associated with geothermal generation occur as a result of naturally occurring releases of steam, irrespective of whether the steam is used to produce electricity. Thus, GHG emissions associated with geothermal generation are clearly distinguishable from GHG emissions which occur as a direct result of fossil-fueled generation. Accordingly, GHG emissions related to geothermal generation should not be treated the same as emissions from fossil-fueled generation for AB 32 purposes.

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Expansion of renewable resources is an important state policy goal and will be critical to the success of AB 32. Accordingly, the Proposed Decision should be revised to explicitly exclude low-emitting renewable resources, such as geothermal generation, from the GHG cap.

Respectfully submitted,

/s/ Jeffrey P. Gray

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Dated: October 2, 2008

Appendix A
Proposed Revisions to Proposed Decision of Commissioner Peevey
on Greenhouse Gas Regulatory Strategies

1. Findings of Fact 27 should be revised to read:

A ~~fuel-differentiated~~ fuel-neutral output-based allocation approach with distributions limited to emitting deliverers would provide all deliverers with allowances roughly in proportion to the amount they need and would reduce the potential for allowance rents.

2. Findings of Fact 28 should be revised to read:

A ~~fuel-differentiated~~ fuel-neutral output-based allocation approach with distributions limited to emitting deliverers would avoid undue economic harm to California electricity consumers who are currently locked into a certain degree of dependence on coal.

3. Findings of Fact 29 should be deleted:

~~In a fuel-differentiated output-based allocation approach, it is reasonable that a higher weighting factor be applied for all coal generation delivered to the California grid.~~

4. Findings of Fact 31 should be revised to read:

~~It is reasonable that allowance distributions to deliverers transition toward an output-based approach that weights weigh all types of generation equally, to be reached by 2020 if 100% auctioning is not achieved by that time.~~

5. Findings of Fact 32 should be deleted:

~~A centralized auction in which retail providers rather than the State own most or all of the electricity sector allowances at the time they are auctioned would simplify the auctioning and revenue distribution process, in that auction revenues would pass directly to the retail providers.~~

6. Findings of Fact 33 should be deleted:

~~A centralized auction in which retail providers are required sell any allowances they receive would remove anti-competitive concerns regarding the distribution of allowances to retail providers.~~

7. Findings of Fact 34 should be deleted:

~~It is reasonable to require that retail providers sell any allowances they receive in a centralized auction.~~

8. Findings of Fact 35 should be deleted:

~~Allocating allowances to retail providers based on historical emissions in their electricity portfolios would accommodate carbon-intensive retail providers that may face relatively high-rate impacts due to compliance costs.~~

9. Findings of Fact 36 should be revised to read:

A long-term priority for allocating allowances is to provide strong incentives for increased reliance on low- and non-emitting resources and to provide consistent signals to all ~~retail providers~~ entities that have compliance obligations under AB 32 regarding the value of low-emitting portfolios.

10. Findings of Fact 37 should be deleted:

~~It is reasonable to transition allocation of allowances to retail providers from an historical emissions basis to a sales basis by 2020 because a sales-based allocation would provide a long-term incentive to reduce reliance on high-emitting resources.~~

11. The Following Findings of Fact should be added:

Low emitting renewable resources should be excluded from the GHG Gap.

12. Conclusions of Law 1 should be revised to read:

The administrative allocation of allowances that we are proposing is facially neutral, as between interstate and intrastate commerce, and does not have a discriminatory purpose or effect. The allowances would be allocated based on ~~fuel-differentiated~~ fuel-neutral output, whether the generation of the electricity occurs in California or elsewhere.

13. Conclusions of Law 4 should be revised to read:

The use of an allocation based on ~~fuel-differentiated~~ fuel-neutral output-based criterion would not violate the dormant Commerce Clause.

14. Conclusions of Law 13 should be revised to read:

~~An historical emissions-based distribution of allowances to retail providers can be designed to recognize voluntary early actions these retail providers have taken to reduce emissions, consistent with Section 38562(b)(3). Section 38580(a) requires ARB to monitor compliance with, and enforce, the regulations it issues, but does not prohibit the use of out-of-state offsets or credits.~~

15. Ordering Paragraph 6 should be revised to read:

We recommend that, for 2012, ARB ~~distribute~~ auction 20% of the allowances allocated to the electricity sector ~~to retail providers, with a requirement that they sell the~~

~~allowances through a centralized auction, and distribute 80% of the allowances without cost to electricity deliverers.~~

16. Ordering Paragraph 7 should be revised to read:

We recommend that ARB increase the portion of allowances allocated to the electricity sector ~~that are distributed to retail providers~~ and sold at auction by 20% each year so that all of the electricity sector allowances are auctioned in 2016 and each year thereafter.

17. Ordering Paragraph 8 should be revised to read:

We recommend that for the portion of allowances distributed to deliverers, ARB distribute the allowances using a ~~fuel-differentiated~~ fuel-neutral output-based approach with distributions limited to emitting deliverers, as described in this decision.

18. Ordering Paragraph 10 should be deleted:

~~We recommend that, for electricity sector allowances that will be auctioned, ARB distribute all or almost all allowances to retail providers on behalf of consumers, with the requirement that retail providers sell the allowances in a centralized auction and receive the revenues.~~

19. Ordering Paragraph 11 should be deleted:

~~We recommend that ARB initially distribute electricity sector allowances to retail providers (which will be required to sell them at auction) in proportion to the historical emissions of the retail providers' portfolios, transitioning to a sales basis by 2020.~~

CERTIFICATE OF SERVICE

I, Judy Pau, 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 505 Montgomery Street, Suite 800, San Francisco, California 94111-6533.

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

COMMENTS OF CALPINE CORPORATION ON THE PROPOSED DECISION OF COMMISSIONER PEEVEY 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/ Judy Pau
Judy Pau

VIA EMAIL AND US MAIL

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