

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA AND THE
CALIFORNIA ENERGY COMMISSION**

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emission Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

Order Instituting Informational Proceeding – AB 32.

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**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
COMMENT ON PROPOSED DECISION**

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In accordance with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Southern California Public Power Authority ("SCPPA")¹ respectfully submits this opening comment on the Proposed Decision ("PD") of Commissioner Peevey that was mailed in the captioned proceedings on September 12, 2008. This comment is being submitted to both the CPUC and the California Energy Commission ("CEC") (jointly, "Commissions").

The PD identifies three key goals in implementing a cap-and-trade program:

Minimize increases in average retail rates and bills statewide.

Minimize wealth transfers among customers of different retail providers.

Avoid undue windfall profits for independent deliverers.

¹ SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Pasadena, and Riverside.

PD at 132-135. SCPPA supports these goals. SCPPA also supports several key features of the PD that are aimed at attaining the goals.

First, the PD correctly recognizes that while the electricity sector produces about 25 percent of California's GHG emissions, the Air Resources Board ("ARB") Draft Scoping Plan would have the electric sector contribute a proportionately greater share of the total GHG reductions that are needed to meet Assembly Bill ("AB") 32 goals. PD at 9. By undertaking aggressive energy efficiency programs, by obtaining 33 percent of California's energy from renewable resources, and by increasing reliance on combined heat and power facilities, the electric sector is expected to achieve greenhouse gas ("GHG") emission reductions that are greater than would be expected if each sector were to achieve reductions in proportion to its actual emissions.

In the interest of equitably distributing the electric sector's costs of achieving the proportionately greater emissions reductions that are to be contributed by the electric sector, the PD recommends that ARB initially assign allowances to the electric sector in proportion to the electric sector's share of actual historical emissions, including emissions attributed to electricity imports. PD at 12. In subsequent years, allowance allocations to the sectors covered by the cap-and-trade program would be reduced by equal percentages. As a result, the electric sector's costs of achieving disproportionately higher emission reductions would be shared among all capped sectors. PD at 12.

SCPPA supports the PD's determination that the electric sector should be allocated allowances in proportion to its share of historical emissions, with the allocation being reduced annually by an equal percentage that applies to all cap-and-trade sectors. This would assure that all sectors would bear an appropriate portion of the emissions reduction burden without the burden being disproportionately imposed on electricity ratepayers.

Second, the PD recognizes that to the extent to which allowances that are allocated to the electric sector are, in turn, administratively allocated to deliverers as the electric sector point of regulation under the cap-and-trade program, the number of allowances that are given to individual deliverers should be determined by using a fuel-differentiated, output-based allocation methodology with distributions being limited to the output from emitting generation resources. PD at 13. As a result of limiting the allocation to emitting resources and, further, fuel-differentiating the allocation to output, the recommended allocation methodology would mitigate the wealth transfers from customers of coal-dependent retail providers to customers of low-emission retail providers that would be likely to occur if a pure output-based allocation methodology were adopted. PD at 154. The PD correctly analyses the benefits of the fuel differentiated output-based allocation of allowances with the allocation being limited to emitting deliverers. SCPPA supports the PD's recommendation that the ARB adopt the methodology and, as discussed below, urges expanded use of the methodology.

Third, the PD correctly recommends that, at least at the outset of the cap-and-trade program in 2012, historical emissions should be the basis for allocating allowances ("auction allowances") to retail providers for subsequent auctioning to deliverers. Allocating auction allowances among retail providers on the basis of historical emissions minimizes wealth transfers from the consumers of retail providers that have higher emission portfolios to consumers of retail providers that have lower emission portfolios.

Although SCPPA supports these and various other features of the PD, SCPPA proposes several modifications to the PD. SCPPA's proposals are aimed at better achieving the PD's "three key goals." In summary, SCPPA recommends the following modifications:

- If the allocation of auction allowances to retail providers is to shift from being based on historical emissions to being based on sales, allocate auction allowances to retail

providers on the basis of *net sales* to exclude any allocation to sales that are supported by legacy investments in nuclear or large hydroelectric resources.

- Fuel-differentiate the allocation of auction allowances to retail providers to parallel the fuel differentiation of the allocation of allowances to deliverers.
- Extend the transition from an administrative allocation of allowances to deliverers to requiring that deliverers acquire 100 percent of their allowances through an auction so that the transition period ends no earlier than 2020 rather than in 2016.
- Permit deliverers that are also retail providers to pay only the net difference between the cost of the allowances they purchase through the centralized cap-and-trade auction and the revenues that are returned to them by the centralized auctioneer.
- Adopt a “price trigger” safety valve to prevent unforeseen price spikes that might jeopardize the viability of the cap-and-trade program.

I. THE ALLOCATION OF AUCTION ALLOWANCES AMONG RETAIL PROVIDERS ON THE BASIS OF GROSS RETAIL SALES SHOULD BE MODIFIED.

The PD recommends a transition from allocating auction allowances on the basis of historical emissions to retail providers in 2012 to allocating 100 percent of the auction allowances to retail providers on the basis of gross retail sales by 2020. Allocating auction allowances among retail providers on the basis of gross retail sales would conflict with commitment undertaken by the Commissions in their Interim Decision in this proceeding to take into account the circumstances of differently situated utilities. Decision (“D”) 08-03-018 (March 13, 2008). Also, the sales-based allocation would conflict with PD’s goal to “minimize wealth transfers among customers of different retail providers.” PD at 132. The allocation would result in unfair wealth transfers, and it would be counterproductive. Thus, the sales-based methodology for allocating auction allowances among retail providers should be modified.

A. An Allocation of Auction Allowances Among Retail Providers on the Basis of Gross Retail Sales Would Not Take into Account the Circumstances of Differently Situated Utilities.

In their Interim Decision, the Commissions stated that “it is not our intent to treat any market participants unfairly based on their past investments or decisions made prior to the

passage of AB 32.” D.08-03-018 at 8. The Commissions said they would “keep in mind that some deliverers of electricity to the California grid are also retail providers of electricity for consumers.” *Ibid*. The Commissions expressed their “openness” to taking “into account the circumstances of differently-situated entities in the electricity sector, to ensure that all obligated entities have a path for compliance at reasonable....” *Ibid* at 101.

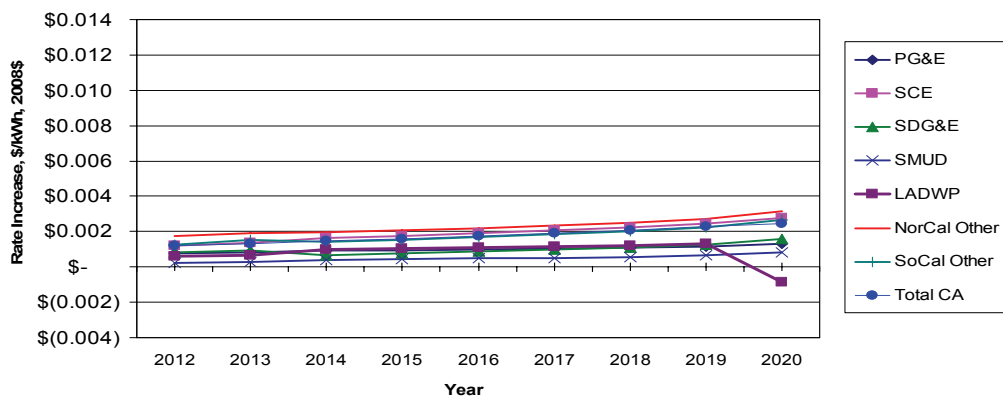
1. In California, Some Retail Providers Are Situated Differently from Others.

In California, some retail providers are differently situated from others. As a result of geographic and historical circumstances, retail providers such as the SCPPA members are encumbered by electrical generation resources that are predominantly carbon-based while other retail providers rely more heavily on zero-emitting resources such as large hydroelectric projects or nuclear facilities. Although the SCPPA members are aggressively pursuing renewable resource targets that are as high as 35 percent by 2020, the members are encumbered by long-term contractual commitments to coal-fired electrical generation resources, particularly, the Intermountain Power Project in Utah and the San Juan Project in New Mexico. Both of those projects are legacies of the 1970’s when Congress adopted the Power Plant and Industrial Fuel Use Act (“PIFUA”) prohibiting the development of new gas-fired base load resources.

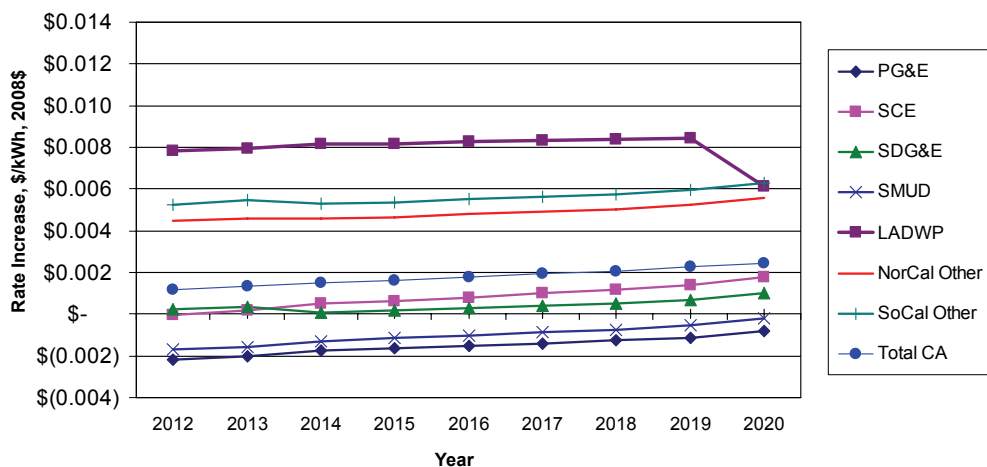
2. Under the PD, Consumers of Retail Providers Such as the SCPPA Members Would Be Treated Unfairly Based on Their Past Investments.

The PD contradicts the Interim Decision by treating retail providers such as the SCPPA members and their consumers unfairly based on the retail providers’ past investments. Under the PD, allowances that are to be auctioned to deliverers would first be distributed to retail providers. The retail providers would then sell the allowances to deliverers through a centralized auction. PD at 211. Initially, in 2012, the distribution of auction allowances to retail providers would be made on the basis of historical emissions. If auction allowances continued to be allocated to

retail providers on the basis of historical emissions for the entire period 2012 to 2020, California retail providers would be treated equitably, as shown by Figure 5-8 from the PD:



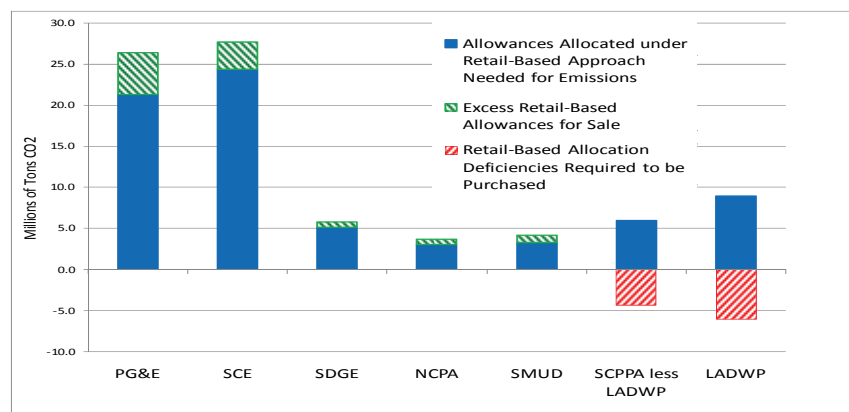
PD at 167. However, instead of allocating auction allowances among California retail providers on the basis of historical emissions for the entire period 2012 to 2020, the PD would have the allocation transition “to a 100 percent sales basis by 2020.” PD at 210. This would result in retail providers such as the SCPPA members being treated unfairly in contrast to other retail providers in California, as shown in Figure 5-10 from the PD:



PD at 212. Due to past investments in coal-fired resources, the consumers that are served by SCPPA members and other similarly situated retail providers would suffer a harsher rate impact than the consumers of retail providers that have less carbon intensive portfolios.

B. The Allocation of Auction Allowances Among Retail Providers on the Basis of Gross Retail Sales Would Cause Substantial and Unjust Wealth Transfers Among Customers of Different Retail Providers.

Additionally, the transition to a 100 percent allocation of auction allowances to retail providers on the basis of retail sales would result in a substantial wealth transfer from the SCPPA members. The following chart shows that the SCPPA members would receive far less allowances than they need to cover their emissions:



SCPPA Supplement to Opening Comment and Reply Comment on Allowance Allocation Issues, R.06-04-009 at 5 (November 14, 2007). Under the PD, the SCPPA members would have to make up the shortfall by buying allowances through the centralized auction with the proceeds going to the retail providers that would receive excess allowances.

1. The Commissions’ Staffs Cautioned Against Wealth Transfers.

The Commissions’ staffs cautioned against this sort of wealth transfer in their joint CPUC and CEC Staff Paper on Options for Allocation of GHG Allowances in the Electric Sector (April 16, 2008) (“Staff Paper”). The joint staffs took to heart the Commissions’ statement in D.08-03-018 that the Commissions did not intend to “treat any market participants unfairly based

on their past investments or decisions made prior to the passage of AB 32.” The joint staffs repeatedly emphasized the importance of “minimizing any transfers among customers of retail providers.” Staff Paper at 36. The joint staffs cautioned that a purely sales-based allocation of allowances among retail providers “might lead to a large redistribution from coal-dependent retail providers to less GHG-intensive retail providers.” Staff Paper at 38.

2. The PD Agrees that Wealth Transfers Should Be Minimized.

The PD actually agrees with the joint staffs about the importance of avoiding an allowance allocation methodology that results in a large redistribution of wealth among retail providers. In addition to stating that one of the “three key goals” is to “minimize wealth transfers among customers of different retail providers,” the PD cautions against “devising an allocation methodology that would create large transfers of wealth between customers of different retail providers” on the basis of “characteristics [that] are due to decisions made before AB 32....” *Ibid* at 133. The PD joins with the joint staffs in recognizing, specifically, the unfair effect of a purely output-based allocation of allowances among retail providers: “Distributions based on deliverers’ output or retail providers’ sales would reduce the allowances available to deliverers or retail providers with the highest compliance obligations.” PD at 199.

Nevertheless, in spite of joining with the joint staffs in recognizing that a “key goal” of any adopted allowance allocation methodology should be avoiding wealth transfers among the consumers of retail providers, the PD self-contradictorily recommends a transition to a 100 percent allocation of allowances on the basis of gross sales by 2020.

3. A Sales-Based Allocation Would Not Provide an Effective Incentive.

The sole and exclusive justification given in the PD for ignoring the commitments made in D.08-03-018, the admonitions of the joint staffs, and the explicit statements presented elsewhere in the PD about avoiding wealth transfers is that “transitioning to a sales basis would

provide long-term incentives for retail providers to reduce their reliance on high-emitting generation sources.” PD at 210.

The transition to a sales-based allocation of auction allowances among retail providers would not be effective as an “incentive” to SCPPA members to reduce their reliance on coal resources. Contractual commitments to resources, once made, cannot be undone until the commitments terminate. The imposition of a sales-based allocation of auction allowances among retail providers would accomplish nothing more than shift wealth from the consumers of the coal-dependent utilities to the consumers of other retail providers that have access to legacy large hydroelectric generation resources or nuclear generation resources. A sales-based allocation would be punishment for long-past decisions to enter into contractual commitments that were entirely justified by both economics and national policy at the time they were made.

4. The Sales-Based Allocation Would Be Counterproductive.

In addition to being unjustifiably punitive for past contractual commitments that cannot be undone, the allocation of auction allowances on the basis of gross retail sales would be counterproductive. Allocating auction allowances on gross sales would provide an incentive for retail providers to maintain and increase their sales volume. As a consequence, allocating allowances on gross sales would discourage energy efficiency efforts that would reduce sales. The PD’s only response to this negative effect of allocating auction allowances on the basis of gross retail sales is that “further analysis is needed.” PD at 215.

5. The Sales-Based Allocation Should Be Modified To Be Equitable.

One obvious remedy to the unfair and counterproductive consequences of allocating auction allowances among retail providers on the basis of gross sales would be to allocate the allowances on the basis of historical emissions throughout the entire 2012-2020 period. As shown by Figure 5-8 from the PD as reproduced above, allocating allowances among retail

providers on the basis of historical emissions for the entire 2012-2020 period would result in retail providers being treated equitably for the entire period.

However, SCPPA recognizes the PD's determination that there should not be an allocation of auction allowances among retail providers on the basis of historical emissions that extends over the entire 2012-2020 period. Accordingly, SCPPA recommends two modifications to the sales-based allocation methodology so that there could be a transition away from allocating auction allowances on the basis of historical emissions in 2012 while, at the same time, ameliorating the wealth transfer and other unjust consequences of a sales-based allocation methodology.

C. Allowances that Are Allocated Among Retail Providers on the Basis of Sales Should Be Allocated on Net Rather than Gross Sales to Exclude Any Allocation to Sales that Are Supported By Legacy Investments in Large Hydroelectric or Nuclear Resources.

The unfair consequences of transitioning to a 100 percent allocation of auction allowances on the basis of gross sales by 2020 would be substantially ameliorated by adopting the joint staffs' suggestion that the allocation be based on "net load" that is calculated by subtracting sales that are served by legacy investments in nuclear or large hydroelectric facilities: "Another option worthy of consideration would be to allocate ARRs on the basis of 'net load'—subtracting out load or sales that are served by legacy investments in nuclear or large hydroelectric facilities." Staff Paper at 39.

The PD recognizes the joint staffs suggestion that "the sales calculation be performed on a 'net load' sales basis (excluding large hydro and nuclear)." PD at 210. The PD observes: "It has been argued that a pure sales-based approach, unadjusted to exclude large hydro and nuclear, would distribute allowances to retail providers with non-emitting legacy hydropower and nuclear generation out of proportion to the financial impact of GHG compliance on their customers."

Ibid. Nevertheless, the PD rejects the joint staff's suggestion. The sole rationale is that the PD

seeks to provide a “strong incentive” for retail providers to rely on “all low- and non-emitting resources, including legacy generation.” PD at 210.

The PD’s rationale for rejecting the joint staffs’ suggested “net load” approach is unconvincing. Providing “strong incentives” for increased reliance on low-and non-emitting resources including legacy large hydroelectric and nuclear resources would be ineffective. First, the coal-dependent retail providers are contractually committed to their coal-fired resources for the term of the contracts. They cannot breach those commitments. Second, to the extent to which the sales-based allocation is intended to provide an incentive for coal-dependent retail providers to shift to taking services from legacy large hydroelectric and nuclear resources, it is unlikely that the coal-dependent retail providers would be able to gain access to those resources. The legacy large hydroelectric and nuclear resources are under the control of retail providers such as Pacific Gas & Electric Company (“PG&E”). Those retail providers are unlikely to share the zero-GHG output with retail providers like the SCPPA members. Allocating auction allowances on the basis of gross sales rather than net sales provides an “incentive” for coal-dependent retail providers to try to do what, realistically, cannot be done.

An allocation of auction allowances on the basis of gross retail sales would be punitive without any realistic possibility of a desirable consequence. The paragraph in the PD (at 210) that rejects the joint staffs’ suggestion that the sales calculation be performed on “net load” sales basis should be revised as follows so as to adopt rather than reject the joint staffs’ suggestion:

~~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). It has been argued that a~~ A pure sales-based approach, unadjusted to exclude large hydro and nuclear, would distribute allowances to retail providers with non-emitting legacy hydropower and nuclear generation out of proportion to the financial impact of GHG compliance on their customers. ~~However, 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.~~

1. Retail Providers that Own, Operate, or Control Legacy Hydroelectric and Nuclear Resources Would Receive Ample Benefits Without the Wealth Transfer They Would Receive if Allowances Were Allocated Among Retail Providers on the Basis of Gross Retail Sales.

Retail providers that own, operate, or control legacy hydroelectric and nuclear resources would receive ample benefits from those resources under a cap-and-trade regime even without the wealth transfer that they would enjoy if auction allowances were allocated on the basis of gross retail sales. As explained in the PD, zero emitting resources including the legacy hydroelectric and nuclear generation resources would receive the benefit of “clean generation rents.” The PD explains “clean generation rents” as follows: “Clean generation rents reflect the increase in producer surplus, and thus windfall profits, that occur for generation with emission rates lower than the emission rate of the marginal unit that sets the wholesale market price.” PD at 137. Legacy large hydro and nuclear resources would receive clean generation rents “because the wholesale electricity price increase exceeds their allowance costs.” PD at 139.

Legacy large hydro and nuclear resources tend to be owned and operated by regulated retail providers. If the overseeing regulatory agency, typically, the CPUC, directs that clean generation rents shall flow to the consumers of the retail providers that own the resources, the retail providers’ consumers would receive the benefits of the clean generation rents.

Alternatively, if the overseeing regulatory agency permits shareholders to reap the benefit of clean generation rents, the rents would flow to shareholders.

The clean generation rents that would be received by the retail providers that own or operate large hydro and nuclear facilities could be substantial, depending upon assumed allowance costs. Over one quarter of California’s electricity is produced by non-emitting generation. PD at 133. Currently, most of that electricity comes from legacy large hydroelectric and nuclear resources.

There is no plausible rationale for bequeathing benefits beyond clean generation rents on retail providers or the consumers of retail providers that own, operate, or otherwise have access to large legacy hydroelectric and nuclear resources. By definition, those resources are already in place. Providing additional benefits in the form of an excessive allocation of auction allowances would only provide further assurance that the entities that obtain the output from the facilities will make every effort to continue reaping the benefits of the output without sharing any of the output with others.

2. Legacy Large Hydroelectric and Nuclear Resources Are Not “Early Action” that Should Be Rewarded by an Allocation of Allowances.

Some participants in this proceeding have disingenuously attempted to argue the legacy large hydroelectric and nuclear resources constitute “early action” that should be rewarded by an allocation of allowances. *See* PD at 186. However, the legacy large hydroelectric and nuclear resources were undertaken for economic reasons without regard for whether or not they emitted GHG. There may be a legitimate argument for granting allowances to output for non-emitting resources that were constructed *after* the passage of AB 32. *See* PD at 183. However, it is spurious to contend that the large legacy hydro and nuclear facilities that were constructed years ago constitute “early action” within the meaning of Sections 38562(b)(1) (“encourage early action”) and (3) (“appropriate credit for early voluntary reductions”) of AB 32.

D. In Addition to Excluding Any Allocation of Auction Allowances to Sales Supported by Legacy Large Hydroelectric or Nuclear Resources, the Allocation of Auction Allowances to Retail Providers Should Be Fuel-Differentiated.

In addition to limiting the allocation of auction allowances to retail providers to exclude any allocation to sales that are supported by legacy large hydroelectric or nuclear resources, the allocation should be fuel-differentiated. Fuel-differentiating the allocation of auction allowances

to retail providers would parallel the fuel-differentiation of the administrative allocation of allowances to deliverers as recommended in the PD. PD at 207.

The rationale presented in the PD for fuel-differentiating the allocation of allowances to deliverers applies to the allocation of auction allowances to retail providers, as well. The PD states: “A central rationale for utilizing a fuel-differentiated output-based approach is to avoid undue economic harm to California electricity consumers whose retail providers are currently locked into a certain degree of dependence on coal.” PD at 208-209. A fuel-differentiated allocation of auction allowances to retail providers, coupled with an elimination of any allocation of auction allowances to sales supported by legacy large hydroelectric or nuclear resources, would substantially mitigate the wealth transfer among retail providers that would otherwise occur if there were a transition to allocating auction allowances among retail providers on the basis of gross retail sales without any adjustment.

SCPPA expects that the Los Angeles Department of Water and Power (“LADWP”) will present data demonstrating that all retail providers and their consumers would be treated equitably if allowances were allocated on a fuel-differentiated sales basis with no allocation to sales supported by large hydroelectric or nuclear resources. In fact, the treatment of retail providers would be approximately the same as depicted in Figure 5-8 in the PD (at 167) showing the effect on average retail electricity rates if allowances were allocated on the basis of historical emissions.

In order to achieve the PD’s “key goal” of minimizing wealth transfers among customers of different retail providers, SCPPA joins LADWP in urging that the PD be modified to provide that auction allowances be allocated among retail providers on the basis of fuel-differentiated sales with no allocation to sales supported by large hydroelectric or nuclear resources.

II. THE TRANSITION FROM DELIVERERS PURCHASING 20 PERCENT OF EMISSION ALLOWANCES FROM A CENTRALIZED AUCTION IN 2012 TO DELIVERERS PURCHASING 100 PERCENT THROUGH AN AUCTION SHOULD BE EXTENDED FROM 2016 TO AT LEAST 2020.

The PD recommends that in 2012, 20 percent of the emission allowances that are allocated to the electricity sector should be auctioned with 80 percent being distributed administratively for free to electricity deliverers. PD at 13. The number of allowances that would be administratively allocated to individual deliverers would be allocated by using a fuel-differentiated, output-based methodology with the distributions being limited to deliveries from emitting resources. *Ibid.* Under the PD, the percentage of allowances that would be auctioned to deliverers instead of being administratively allocated would increase by 20 percent each year so that 100 percent of electric sector allowances would be auctioned to deliverers by 2016. *Ibid.* The transition to 100 percent auctioning to deliverers should be extended, at a minimum, to 2020.

A. A More Gradual Transition Period Would Reduce the Double Burden on Deliverers of Paying for Allowances While Reducing Emissions.

A more gradual transition period would reduce the double burden on deliverers, particularly deliverers such as the SCPA members that are also retail providers, of paying for allowances while retooling their generation resource mix to reduce their GHG emission footprint. Currently, over 70 percent of the SCPA member generation resources are carbon based, with over 40 percent being coal fired generation. The shift away from carbon based generation to non-carbon resources is going to take time and is going to be costly. In addition, the SCPA members are planning to undertake substantial transmission projects in order to bring renewable energy to load centers in Southern California.

Absent an administrative allocation of allowances to deliverers, SCPA members would be exposed to bearing the massive costs of shifting from their historical reliance on carbon-

intensive resources while simultaneously bearing the cost of acquiring allowances through an auction. This double burden would be ameliorated to the extent to which allowances are administratively allocated to deliverers using a fuel-differentiated output-based approach with distributions being limited to emitting resources. PD at 207. Thus, SPCPA members support a lengthened period for transitioning to auctioning 100 percent of electric sector allowances to deliverers.

B. An Administrative Allocation of Allowances to Deliverers Would Be a More Secure Approach to Reducing the Double Burden Than Returning Auction Revenues to Retail Providers.

The PD envisions that the administrative allocation of auction allowances to retail providers with subsequent auctioning and a return of revenues to retail providers would ratchet up as the percentage of allowances that are administratively distributed to deliverers ratchets down: “As the percentage of allowances distributed to deliverers phases down, the percentage distributed to retail providers would increase by comparable amounts, lacking only those allowances that ARB retains for statewide purposes.” PD at 205. If auction revenues were returned to retail providers in 2012 on the basis of historical emissions with a transition to a fuel-differentiated allocation based on sales that exclude sales supported by legacy large hydroelectric and nuclear resources, the return of auction revenues to retail providers would cushion retail providers such as the SPCPA members that are also deliverers from bearing the double burden of paying for emission reduction measures while simultaneously paying for auctioned allowances.

However, SPCPA is extremely concerned that, one way or another, the return of auction revenues to retail providers in the electric sector that is envisioned in the PD will be reduced as auction revenues are siphoned off by legislative or administrative actions to serve other purposes. This year’s legislative exercise in developing a state budget demonstrates that legislators can be

uncannily creative in diverting dollars from intended purposes in order to achieve a balanced budget.

It is in the best interest of the electric sector as well as retail providers that are also deliverers such as SCPPA members to phase in auctioning to deliverers over a lengthened period of time so that there would be a longer period during which allowances would be administratively allocated to deliverers. The direct administrative allocation of allowances to deliverers avoids the problem of auction revenues being diverted away from the electric sector by avoiding a monetization of allowances that creates a pot of revenues that can be raided for other purposes.

C. A Lengthened Transition Period Would Recognize that the Electric Sector Is Capital-Intensive and Requires Long Lead Times.

A lengthened transition period would recognize that the electric sector is a capital-intensive industry in which long lead times are required to plan, finance, and construct new infrastructure. *See* PD at 202. Even longer lead times for adding new infrastructure may be required by the tightening of credit in national and world financial markets. A nine year or longer transition to auctioning allowances to deliverers rather than a five year transition would recognize the unique capital-intensive nature of the electric sector and also recognize the substantial changes that are occurring in financial markets.

D. A Lengthened Transition Period Would Allow More Time to Restructure Deliverer Contracts.

A lengthened period to transition to 100 percent auctioning of allowances to deliverers would allow more time for revision, if possible, or termination of deliverer contracts, including contracts that do not provide for pass-through of the cost of auctioned allowances.

E. A Lengthened Transition Period Would Allow More Time to Gain Experience with the Auctioning Process.

A lengthened period for the transition to auctioning would allow more time to gain experience with the auctioning process. Although SCPPA is confident that ARB will make every effort to develop an auctioning process that will be fair and efficient, there can be little doubt that the auctioning process will need to be fine-tuned as experience is gained with the process. This is particularly important insofar as there may be attempts at market manipulation and abuse. A lengthened period to transition to 100 percent auctioning of electric sector allowances to deliverers would allow more time to gain experience with the auctioning process and to adopt refinements in the interest of minimizing costs and minimizing the potential for market manipulation and abuse.

F. The Reasons Given in the PD for a Fast Transition to Auctioning Are Not Persuasive.

The reasons for a lengthened period of time for the transition to full auctioning of allowances to the electric sector deliverers are compelling. By contrast, the PD's reasons for a quick transition to full auctioning to deliverers by 2016 are not persuasive.

1. A Fast Transition Is Not Necessary to Assure Equal Access to Allowances.

The PD contends that a quick transition to full auctioning “would ensure that all deliverers have equal access to allowances, and would avoid the need for a set aside or other administrative accommodation for new entrants.” However, one of the primary benefits of adopting an output-based approach to allocating allowances to deliverers is that all deliverers, including new entrants, would have access to allowances during each allocation period. Unlike an emission-based allocation in which allowances would be allocated on the basis of an historical period, a key feature of an output-based allocation of allowances is that the allocation is updated each allocation period to reflect updated deliveries, including deliveries from new entrants.

Thus, the PD's argument that a quick transition to full auctioning is necessary to assure "equal access to allowances" is inapposite. The argument fails to recognize that equal access to allowances is a central feature of an output-based allocation of allowances.

2. The Need to Prevent Windfall Profits May Also Be Addressed by the Output-Based Allocation Methodology.

The PD contends that there is a need for a quick transition to full auctioning because "auctioning would preclude windfall profits due to allowance rents received by independent deliverers." PD at 201. However, while auctioning might preclude deliverers from reaping windfall profits, preventing windfall profits to deliverers is also an objective of an output-based allocation of allowances to deliverers. One of the joint staff's key arguments for adopting an output-based approach to administratively allocating allowances to deliverers is that an output-based methodology would reduce the potential for deliverers to realize windfall profits from an administrative allocation of allowances:

Unlike emission-based allocation, output-based allocation does not result in a large transfer of wealth from customers to deliverers. Under an output-based allocation, deliverers will find that they have an incentive to increase their delivery levels. Higher delivery levels ensure that deliverers will continue to receive valuable allowances in future years.

Staff Paper at 26. The PD recognizes that "fuel-differentiated and other output-based allocation distributions to deliverers may limit the increase in wholesale electricity prices, because they would provide generators with an incentive to maintain or increase their output." PD at 208. "We do not know the extent to which that may be the case, although the reasoning seems somewhat persuasive." *Ibid.*

3. An Administrative Allocation of Allowances as Well as Auctioning Can Result in a Liquid Secondary Market

The PD supports a quick transition to 100 percent auctioning of allowances to deliverers because full auctioning "would provide market liquidity, which would improve the accuracy of

price signals in the market.” The PD is confusing auctioning with the sale of allowances in a secondary market. Auctioning and the administrative allocation of allowances are two ways to make allowances available to deliverers initially. *Either* auctioning or administrative allocation can lead to creating a secondary market for allowances. *Both* auctioned allowances and administratively allocated allowances would be tradable in the secondary market. The liquidity of that market would be determined by the number of sectors that are involved in the cap-and-trade program and, hence, the total number of allowances that would be available for trading in the secondary market. Liquidity of the secondary market would be unaffected by the portion of allowances that are auctioned as opposed to being administratively allocated among deliverers.

None of the reasons given in the PD for a quick transition to full auctioning to deliverers are persuasive, while all of the arguments for a lengthened transition period are compelling. The PD should be revised to provide for a lengthened transition period to full auctioning to deliverers so that full auctioning does not occur until, at the earliest, 2020.

III. DELIVERERS THAT ARE ALSO RETAIL PROVIDERS SHOULD BE PERMITTED TO PAY THE NET DIFFERENCE BETWEEN THE COST OF ALLOWANCES AND THE REVENUES THAT ARE RETURNED TO THEM.

For retail providers that are also deliverers who, as the cap-and-trade point of regulation, must purchase allowances through a centralized auction, there may be a cash flow problem. The joint staffs observed:

We note that for retail providers with self-owned fossil-fired generation, particularly fully resourced utilities, payments for allowances successfully purchased at auction may present unproductive up-front cash flow problems as those same entities would be entitled to receive revenues from the auction as well. If the retail provider were actually required to submit payment for the entire block of allowances purchased, this could constitute a substantial payout for retail providers that are fully resourced, particularly those still dependent on coal facilities. This payment for allowances followed by the return of auction revenues to such retail providers from the reserve account would result in unnecessarily large payments by and to these utilities.

Staff Paper at 34. There is an easily available solution under the structure envisioned in the PD to address the cash flow problem. As recommended in the Staff Paper, “deliverers that are also retail providers [should] only pay for the net difference between their allowances purchased at auction and the revenues returned....” Staff Paper at 34. SCPPA requests that the PD be revised to adopt the joint staffs’ recommendation.

IV. A SAFETY VALVE SHOULD BE ADOPTED TO PREVENT UNFORESEEN PRICE SPIKES THAT MIGHT JEOPARDIZE THE VIABILITY OF THE CAP-AND-TRADE PROGRAM.

No matter how judicious the Commissions and ARB may be in designing the cap-and-trade market, that market will, like any market, be exposed to a potential for unforeseen price spikes. The price spikes might be caused by market manipulation and abuse as well as other unforeseen circumstances. Price spikes have occurred in two other markets with which the Commissions are familiar: the deregulated electricity market that suffered a meltdown during the 2000-2001 crisis and the South Coast Air Quality Management District (“SCAQMD”) RECLAIM market. Price spikes could jeopardize the viability of the entire cap-and-trade program.

Adoption of a safety valve is, most likely, just a question of time. Either the ARB can adopt the safety valve now in advance of a price spike crisis, or the ARB can wait to adopt a safety valve later in the midst of a crisis as the California Independent System Operator (“CAISO”) did for the electricity market in 2000. Given California’s experience with the electricity crisis in 2000-2001, it should be self-evident that it would be preferable to adopt a safety valve in advance of a price spike crisis instead of being forced to adopt a safety valve on an *ad hoc* basis in the midst of the crisis.

Surprisingly, given the Commission's experience with the electricity crisis, the PD rejects proposals that the cap-and-trade program incorporate a price trigger or safety valve. PD at 260-262. The PD gives three reasons for the rejection. None of the reasons are compelling.

A. A Safety Valve Would Not Discourage Emission Reduction Investments.

First, the PD argues that having a safety valve would create uncertainty that allowance prices would rise over time, and this uncertainty may discourage investments in emission reduction technologies:

We are convinced that price triggers and safety valves could very likely distort or defeat the cap-and-trade market by creating uncertainty that investments in emissions reduction technologies would achieve returns commensurate with the level of reductions needed to meet the State's emissions reduction goals. Market certainty is important because the knowledge that allowance prices are likely to rise as the cap ratchets down over time is necessary to encourage long-term investments in emissions reductions that may not pay off in the short-term but that would be profitable in the long-term as a result of prices going up.

PD at 262. This argument is unconvincing. Having a safety valve would not prevent allowance prices from rising as the cap-and-trade cap ratchets down over time. That is not the purpose of having a safety valve. Instead, the purpose is to prevent extreme price spikes that might threaten the viability of the entire cap-and-trade program as occurred with the electricity deregulation program in 2000-2001. A well-designed safety valve permits both normal market fluctuations in prices and a gradual rise in prices.

More fundamentally, the argument in the PD that having a safety valve could discourage investments in emission reduction technologies ignores the fact that investors need certainty that prices will not fall *below* the level at which their investment will be economic, not certainty that prices will go substantially higher. The threat that prices will fall to levels that would make an investment uneconomic is what compels major oil companies to desist from various investments in oil exploration or production activities even when oil prices are high.

B. A Safety Valve Need Not Result in Borrowing Allowances from Future Periods.

Second, the PD argues that there should not be a safety valve because “[s]uch a mechanism would make allowances in these future periods even scarcer and could seriously jeopardize the State’s ability to meet emissions limits during those periods.” PD at 212. This argument seems to assume that the safety valve would operate by borrowing allowances from a future period so as to make the allowances available during a current period. This objection is inapposite. It is an objection to borrowing, not an objection to having a safety valve.

Although a safety valve could be designed that would borrow allowances from the future in response to the occurrence of a price spike, that is not necessarily how a safety valve would operate. Instead of borrowing allowances from a future period, the overseeing regulatory agency could create new allowances and release them into the market to depress a price spike without any borrowing of allowances from the future. The PD’s objection that a safety valve could “make allowances in these future periods even scarcer” rests on an inappropriate assumption about the structure of the safety valve.

C. Other Cost Containment Measures Are Not Substitutes for a Safety Valve.

Third, the PD finds that having a safety valve is not necessary because there are other features of the program including multi-year compliance periods, banking and offsets that could constrain allowance prices: “We find that this form of cost containment is not necessary, provided that the system contains other design elements such as multi-year compliance periods, unlimited banking, and a well-designed offset program.” *Ibid.*

While multi-year compliance periods, banking, and offsets may, in the normal course, constrain allowance prices within the cap-and-trade program, and while they may make the occurrence of extreme spikes and allowance prices less likely, none of those features would prevent a price spike. A safety valve serves the purpose of being insurance against a devastating

price spike, should one occur. Like any insurance, there would be a hope that the safety valve would never have to be used. Taking measures to reduce the likelihood of the occurrence that gives rise to the need for the insurance does not obviate having the insurance.

While all of the cost containment measures mentioned by the PD should be undertaken, they still leave open a need to adopt a safety valve as insurance against extreme price spikes and the resulting adverse consequences for both California and the cap-and-trade program itself. Thus, SCPA urges that the text on page 262 of the PD that rejects safety valves be revised to adopt rather than reject price triggers and safety valves.

V. CONCLUSION

For the reasons set forth above, SCPA requests that the Commissions revise the PD as follows:

- If the allocation of auction allowances to retail providers is to shift from being based on historical emissions to being based on sales, allocate auction allowances to retail providers on the basis of *net sales* to exclude any allocation to sales that are supported by legacy investments in nuclear or large hydroelectric resources.
- Fuel-differentiate the allocation of auction allowances to retail providers to parallel the fuel differentiation of the allocation of allowances to deliverers.
- Extend the transition from an administrative allocation of allowances to deliverers to requiring that deliverers acquire 100 percent of their allowances through an auction so that the transition period ends no earlier than 2020 rather than in 2016.
- Permit deliverers that are also retail providers to pay only the net difference between the cost of the allowances they purchase through the centralized cap-and-trade auction and the revenues that are returned to them by the centralized auctioneer.
- Adopt a “price trigger” safety valve to prevent unforeseen price spikes that might jeopardize the viability of the cap-and-trade program.

In accordance with Rule 14.3(b) of the CPUC's Rules of Practice and Procedure, Appendix A contains Proposed Revisions to the PD's Findings of Fact and Conclusions of Law.

Respectfully submitted,

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Dated: October 2, 2008

Appendix A

Proposed Revisions to the PD's Findings of Fact and Conclusions of Law

Appendix A
Southern California Public Power Authority
Proposed Revisions to the Proposed Decision's Findings of Fact
and Conclusions of Law

Findings of Fact

1. Energy efficiency is the cheapest and most effective resource for reducing GHG emissions in the electricity and natural gas sectors.
2. Many non-price market barriers to energy efficiency investment exist and will continue to exist even if a GHG emissions allowance cap-and-trade program is implemented.
3. As the cost of GHG mitigation becomes reflected in the cost of energy, more energy efficiency opportunities should become cost-effective. However, as more “low-hanging fruit” energy efficiency is achieved, incremental energy efficiency options may become more expensive.
4. Achieving the goal of all cost-effective energy efficiency will require a continuation of existing direct regulatory/mandatory requirements, expansions of existing requirements and development of new ones where appropriate, and implementation of other innovative approaches such as market-based strategies.
5. Renewable mandates play an important role in achieving aggressive renewable energy penetration, since they provide a long-term signal that can lead to market transformation of new renewable technologies and potential cost reductions.
6. E3 estimates that GHG emissions reductions obtained through achievement of 33% electricity from renewables may have an average incremental cost of \$133 per ton, compared to the current 20% RPS mandate.
7. Renewable energy provides environmental co-benefits, including reducing other non-GHG pollutants, when sited in California.
8. Significant implementation barriers exist to the continued of renewable energy in California.
9. Increased renewable energy penetration would increase fuel diversity.
10. California’s longer term 2050 GHG reduction goals will require significantly reducing the GHG footprint of the electricity sector.

11. Having all retail providers deliver 33% renewable energy to their customers by 2020 would be an important first step in achieving this transformation.

12. It is reasonable for the State of California to set as a target that all retail providers deliver 33% renewable energy to their customers by 2020.

13. E3's approach and analysis to estimating costs from reducing GHG emissions are reasonable for the purpose of informing our recommendations to ARB.

14. E3 estimates that the Accelerated Policy Case would result in GHG emissions totaling 79 MMT CO₂e for the electricity sector in 2020.

15. We did not study the cost and rate impacts on consumers of increasing energy efficiency goals, renewable energy mandates, or levels of CHP beyond those in E3's Accelerated Policy Case. Prior to increasing these policies/mandates, the costs of additional reductions should be compared against the costs of mitigating GHG emissions across the California economy.

16. Linkage with a regional emissions trading system that includes all jurisdictions in the Western electricity grid would more likely result in coal-fired generators operating less, would significantly mitigate opportunities for deliverers to mask the carbon intensity of electricity through "contract shuffling," and may result in low-carbon generation displacing either coal or natural gas-fired generation depending on time and location.

17. The Western Climate Initiative has issued draft design principles that target an opening date of January 1, 2012 for a linked regional cap-and-trade program.

18. Linking with other state cap-and-trade programs through the Western Climate Initiative would remove or mitigate some of the challenges of a California-only approach.

~~19. Auctioning of allowances would provide market liquidity, ensure that all deliverers have equal access to allowances, and avoid the need for a set-aside or other administrative accommodation for new entrants.~~

~~20.19.~~ There is an expectation that if allowances are auctioned GHG compliance costs would be internalized in wholesale electricity prices, ~~sending more accurate price signals that would encourage participants in the electricity sector to reduce emissions.~~

~~21.20.~~ Auctioning allowances would result in entities with compliance obligations bearing the full financial responsibility for emissions associated with electricity that they deliver to the California grid.

~~22.21.~~ Auctioning would preclude windfall profits from allowance rents to independent deliverers.

~~23.22.~~ Distributing some free allowances to deliverers would reduce short-term impacts on generating resources, and would help generators adapt to the new regulatory environment.

~~24.23.~~ A slower transition to auctioning would help protect ratepayers if problems arise as ARB implements AB 32 and experience is gained with the auctioning process.

~~25.24.~~ A transition to 100% auctioning no earlier than by 2016 2020 would ~~ensure that any allowance rents would be short term and would~~ give existing high-emitting resources time to adjust their generation investments and allow time to gain experience with the auctioning process.

~~26.25.~~ It is reasonable to introduce auctioning in a phased approach, ~~with 100% auctioning by 2016, so that California can reap initial benefits from auctioning and, at the same time, to~~ provide some protection and stability while the cap-and-trade market develops and matures.

~~27.26.~~ A fuel-differentiated 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, constrain the impact on market clearing prices, and hold down consumer costs.

~~28.27.~~ A fuel-differentiated 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.

~~29.28.~~ 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.

~~30.~~ ~~If 100% auctioning is not implemented by 2016, an important longer term goal of deliverer distributions should be to provide strong incentives for GHG reductions.~~

~~31.~~ ~~It is reasonable that allowance distributions to deliverers transition toward an output-based approach that weights all types of generation equally, to be reached by 2020 if 100% auctioning is not achieved by that time.~~

~~32.29.~~ 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.

~~33.30.~~ 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.

~~34.31.~~ It is reasonable to require that retail providers sell any allowances they receive in a centralized auction, provided that the retail providers have received the allowances in their capacity as retail providers rather than deliverers.

~~35.32.~~ 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.

~~36.33.~~ A long-term priority Three key goals 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 regarding the value of low-emitting portfolios are to minimize increases in average retail rates and bills statewide, minimize wealth transfer among customers of different retail providers, and avoid undue windfall profits for independent deliverers.

34. 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~~ with the allocation being fuel-differentiated and excluding any allocation to sales that are supported by legacy large hydroelectric or nuclear resources.

~~35.~~ Deliverers that are also retail providers should be permitted to pay the net difference between their cost of buying auctioned allowances and the auction revenues that they receive.

~~38.36.~~ To meet the goals of AB 32, California is preparing to implement ambitious energy efficiency and renewable energy mandates.

~~39.37.~~ Meeting the targets for the electricity sector outlined in ARB's Draft Scoping Plan will require significant additional expenditures on energy efficiency measures and the development of new renewable resources.

~~40.38.~~ It is reasonable to require that all auction revenues be used for purposes related to AB 32 and that all auction revenues from allowances allocated to the electricity sector be used for the benefit of the electricity sector.

~~41.39.~~ Electricity delivered to the California grid by CHP facilities is indistinguishable from electricity delivered from non-CHP sources.

42.40. With respect to GHG emissions, all electricity generated by a CHP facility is identical whether the electricity is delivered to the grid or consumed on-site.

43.41. It is reasonable to use the same generating capacity size threshold as that used for other deliverers to determine which CHP facilities should be included in a multi-sector cap-and-trade program.

44.42. It is not necessary to attribute GHG emissions from CHP facilities to a unique CHP sector if the GHG emissions are included in a multi-sector cap-and-trade program.

45.43. CHP facilities deliver a portion of their electricity to the grid and, for GHG regulatory purposes, also should be treated comparable to deliverers for the portion of electricity that is consumed on-site.

46.44. It is reasonable to allocate allowances to CHP facilities using the fuel-differentiated output basis, as described in this decision.

47.45. To the extent that CHP facilities provide electricity that is consumed on-site, distributing allowances to CHP facility operators on the same basis as retail providers would provide equitable treatment for CHP facilities.

48.46. Linking California's cap-and-trade program with other trading systems would add liquidity and efficiency to California's trading market.

49.47. Bilateral linkage would allow California to ensure that any allowances accepted by California entities from other systems are of comparable quality to California allowances.

50.48. It is reasonable for California to pursue bilateral linkage with other local, regional, national, and international GHG cap-and-trade systems that have comparable stringency, monitoring, compliance, and enforcement provisions.

51.49. Unique characteristics of the electricity sector necessitate that the cap-and-trade market include a ~~reasonable~~ broad range of flexible compliance options in order to provide needed flexibility to the sector while maintaining the environmental integrity of the emissions cap.

~~52.50. Permitting entities with compliance obligations to borrow emission allowances would delay reductions and could make it more difficult to achieve AB 32's reduction goals. Other f~~
Flexible compliance measures offer the potential to aid obligated entities to manage their obligations with less risk to the program's environmental integrity.

~~53.51.~~ Price triggers and safety valves ~~could very likely distort or defeat the cap and trade market by creating uncertainty that investments in emissions reduction technologies will achieve returns commensurate with the level of reductions needed to meet the State's emissions reduction goals~~ provide insurance against unforeseen price spikes that could have a devastating effect in California and threaten the viability of the cap-and-trade program.

~~54.52.~~ Declining allowance prices over time are likely to indicate that the market is working to drive sufficient investment toward the required emissions reductions.

Conclusions of Law

1. 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 output from emitting resources, whether the generation of the electricity occurs in California or elsewhere.

2. The auctioning of allowances that we are proposing is facially neutral, as between interstate and intrastate commerce, and does not have a discriminatory purpose or effect.

3. Under *Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137, 142, a state enactment “will be upheld unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits.”

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

5. The auctioning of allowances would not violate the dormant Commerce Clause.

6. Under the California Constitution, Article XIII A, Section 3 a tax can only be enacted by not less than a two-thirds vote of the Legislature.

7. A regulatory fee does not require a Legislative vote of not less than two-thirds because it is enacted under a state's traditional police power, not its taxing authority.

8. Under *Sinclair Paint Co. v. State Bd. of Equal.* (1997) 15 Cal.4th 866, 875-876) regulatory fees imposed to pay for the expenses of a regulatory program or to defray the actual or anticipated adverse effects of the payer's action are not taxes imposed for revenue purposes.

9. Under *Sinclair Paint Co. v. State Bd. of Equal.*, (1997) 15 Cal. 4th 866, 870, fees must “bear a reasonable relationship to those adverse effects.”

10. Our recommendation that any revenue generated from initial purchases of allowances should be distributed to retail providers to be used to further the purposes and goals of AB 32,

and not deposited in the state's general fund ~~for non-AB 32 uses~~, does not violate Article XIII A, Section 3 of the California Constitution.

11. Our recommendation that revenue generated from initial purchases of allowances be reasonable in relationship to the adverse effects caused by the corresponding emission of GHGs, does not violate Article XIII A, Section 3 of the California Constitution.

12. Using auction revenues to provide rate relief to customers generally, or to low income customers who spend a larger proportion of their incomes on utility services, furthers the goals of AB 32, and is therefore a permissible use of auction revenues.

13. 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.

14. Section 38564 encourages linkage with the GHG-reduction programs of other states and nations.

15. AB 32 permits linkage to other GHG-reduction programs and the use offsets from outside of California.

16. Section 38562(b) describes things that ARB should do in “adopting regulations” “to the extent feasible.” It does not require each and every project carried out by private parties under those regulations to have the described effects.

17. Section 38570(b) requires ARB to do certain things “to the extent feasible” prior to the inclusion of any market-based compliance mechanism (such as offsets) in the AB 32 regulations.

18. Sections 38562(b) and 38570(b) require ARB to balance a number of potentially conflicting goals, including minimizing costs.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON THE PROPOSED DECISION OF COMMISSIONER PEEVEY** 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 October 2, 2008, at Los Angeles, California.

/s/ Sylvia Cantos

Sylvia Cantos

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