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)

California Energy Commission Docket #07-OIIP-01

REPLY COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC) AND THE UNION OF CONCERNED SCIENTISTS (UCS) ON THE JOINT COMMISSIONS' PROPOSED FINAL OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES

October 7, 2008

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I. INTRODUCTION AND SUMMARY

The Natural Resources Defense Council (NRDC) and Union of Concerned Scientists (UCS) respectfully submit these reply comments on the joint Commissions' Proposed Final Opinion on Greenhouse Gas Regulatory Strategies (PO) in accordance with Rules 1.9, 1.10 and 14.3 (d) of the California Public Utilities Commission's (CPUC) Rules of Practice and Procedure. NRDC/UCS also concurrently submit these comments to the California Energy Commission (CEC) in Docket #07-OIIP-01.

NRDC/UCS appreciate the opportunity to submit these reply comments to aid the Commissions' recommendations to CARB on a comprehensive approach for reducing greenhouse gas (GHG) emissions in the electricity and natural gas sectors. In summary:

- Most parties agree that energy efficiency and renewables should be the foundation of the strategies to reduce GHG emissions, with a well-designed cap-and-trade program layered on top to achieve additional reductions.
- A 33% renewable energy mandate is an achievable and indispensable strategy to reaching AB 32 goals.
- Many parties note that allocation to deliverers is more expensive for consumers than is distributing the allowance value to retail providers.
- Distributing allowance values to be invested by regulated retail providers on behalf of their consumers will protect the funds from being diverted for unrelated purposes.

- Fuel-differentiated allocation to deliverers who are not retail providers will not incentivize a transition to lower-carbon resources, and will not benefit consumers.

II. MOST PARTIES AGREE THAT ENERGY EFFICIENCY AND RENEWABLES SHOULD BE THE FOUNDATION OF THE STRATEGIES TO REDUCE GHG EMISSIONS, WITH A WELL-DESIGNED CAP-AND-TRADE PROGRAM LAYERED ON TOP TO ACHIEVE ADDITIONAL REDUCTIONS.

Most parties support the PO's overall strategy to use energy efficiency and renewables as the foundation of the overall strategy to reduce GHG emissions and layering a well-designed cap-and-trade program on top to achieve additional emissions reductions.[1] While some parties express concerns about a cap-and-trade program and whether California should move forward by itself rather than wait for a regional or federal program, [2] NRDC/UCS support the Commissions recommendation that CARB move forward to achieve the GHG emissions reduction required by AB 32 through a combination of direct regulatory policies and a well designed cap-and-trade program.

III. A 33% RENEWABLE ENERGY MANDATE IS AN ACHIEVABLE AND INDISPENSABLE STRATEGY TO REACHING AB 32 GOALS.

Several parties support a 33% renewable energy mandate as an integral strategy to achieve AB 32 goals. However, SCE claims that "The PD does not provide a credible basis for its 33% renewables recommendation,"[3] and urges the Commissions to "sound a cautionary alarm about the perils of a 33% renewable goal."[4] These claims are without merit, and should be rejected by the Commissions. The 33% renewables target has been a state energy policy goal endorsed by both Commissions and the Governor since 2005. Since then, the 33% renewables target has been thoroughly analyzed by both Commissions. The CEC's 2007 Integrated Energy Policy Report, which was the culmination of a two-year public proceeding, devoted 40 pages to discussing the feasibility of a 33% RPS, and concluded that "using renewable resources to provide 33% of retail sales by 2020 is feasible technically and economically, but concerted and coordinated support is needed from government, industry, and the public to make it happen."[5] This conclusion is reaffirmed by the PO, which states: "We believe a target of 33% renewables by 2020 is achievable if the State commits to significant investments in transmission infrastructure and key program augmentation."[6]

Even if, as SCE claims, the cost of achieving 33% renewables may exceed the cost of other GHG mitigation measures, there is a strong policy basis to move forward with a 33% RPS. As NRDC/UCS and other parties have repeatedly emphasized, the 33% RPS is an essential milepost on the path to achieving the much deeper GHG emission reductions that are required beyond 2020. Furthermore, the PO correctly recognizes that "there are other reasons to support a 33% renewables mandate besides GHG emissions mitigation,"[7] including fuel diversity, economic development, and air quality improvement. As such, the 33% RPS is fully consistent with AB 32, which requires CARB to "consider overall societal benefits, including reductions in air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health" in adopting GHG emissions reduction measures.[8] Accordingly, the Commissions should move forward with their recommendation that the state adopt a 33% renewables mandate for all retail providers.

IV. MANY PARTIES NOTE THAT ALLOCATION TO DELIVERERS IS MORE EXPENSIVE FOR CONSUMERS THAN IS DISTRIBUTING THE ALLOWANCE VALUE TO RETAIL PROVIDERS.

Many parties note that allocation to deliverers is more expensive for consumers than is distributing the allowance value to retail providers.[9] These parties correctly point out the results of the E3 model clearly showing this result. They, like NRDC/UCS, draw the logical conclusion that, if the Commissions wish to minimize costs for consumers, they should ***not*** recommend that allowances be allocated for free to deliverers. Rather, the Commissions should recommend that the value of allowances be distributed to retail providers on behalf of their customers. NRDC/UCS believe there are a number of possible ways that CARB can distribute the value of allowances to customers, but free allocation to deliverers does not accomplish this goal for most customers in the state.

V. DISTRIBUTING ALLOWANCE VALUES TO BE INVESTED BY REGULATED RETAIL PROVIDERS ON BEHALF OF THEIR CONSUMERS WILL PROTECT THE FUNDS FROM BEING DIVERTED FOR UNRELATED PURPOSES.

Directing the value of emissions allowances to regulated retail providers should resolve any concern that auction revenues could be seized by the legislature and diverted for purposes not related to AB 32, or purposes that will not benefit consumers in the sectors of the economy from with the funds originated.[10] NRDC/UCS believe that laying out clear criteria for auction revenues and adopting a strong “use it or lose it” mechanism that subjects retail providers to regulatory oversight and verification will make it more difficult to divert the money for purposes that do not meet AB 32 guidelines and help ensure the money is invested in a timely manner in ways that further the purposes of AB 32.[11]

Finally, we note again that the California Constitution prohibits auction revenue from being diverted for unrelated purposes. The auction revenue funds will be considered a regulatory fee, and will only be eligible to be used for purposes closely related to the purpose of AB 32. They may not be diverted into the general fund, as a tax could be.

VI. FUEL-DIFFERENTIATED ALLOCATION TO DELIVERERS WHO ARE NOT RETAIL PROVIDERS WILL NOT INCENTIVIZE A TRANSITION TO LOWER-CARBON RESOURCES, AND WILL NOT BENEFIT CONSUMERS.

Fuel-differentiation will result in more allowances being allocated to higher-emitting resources than to lower-emitting resources, and fails to provide incentives that favor cleaner generating technologies.[12] More importantly, free allocation to deliverers will benefit deliverers who are not also retail providers at the expense of consumers.[13] Given these pitfalls of fuel-differentiated allocation to deliverers who are not retail providers, we urge the Commissions to recommend distributing the value of allowances to retail providers. Free allocation of 80%, or any amount, of emissions permits to deliverers on a fuel-differentiated output basis would fail to reward a relatively cleaner fuel, such as natural gas.[14] Alternatively, allocating the value of emissions permits could be accomplished either through initial allocation to retail providers or through distribution of auction revenue to retail providers. In either case, if the investment of the auction revenue is subject to clear criteria and regulatory oversight and verification through the “use it or lose it” mechanism, consumers will benefit and the program will speed the transition to a lower-GHG emitting resource base. The distribution method recommended in the PO has not been modeled and, unlike allocation to retail providers, auction, or a pure output-based allocation to deliverers, the impacts are not clearly understood. NRDC/UCS urge the Commissions to recommend 100% auctions from the outset of the cap-and-trade because it will advance relatively cleaner technologies and minimize cost to consumers.

VII. CONCLUSION

We appreciate the opportunity to submit these reply comments on the PO. We urge the Commissions to consider our recommendations described above.

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[1] See, e.g., Pacificorp (p.4); LADWP (p.1); SEU (p.1-3); CEERT (p.2); Solar Alliance (p.2); SCE (p. 2-3); FPL (p. 2-3); Calpine (p.2). (Note: all references are to parties' Opening Comments submitted October 3, 2008, the Proposed Final Opinion, September 12, 2008, or as otherwise cited.)
[2] TURN (2);
[3] SCE (p.5)
[4] Ibid. (p.7)
[5] CEC 2007. *2007 Integrated Energy Policy Report*, p.142.
[6] PO (p.6)
[7] Ibid. (p.94)
[8] Health and Safety Code Sec. 38562(b)6
[9] See, e.g., PG&E (p. 3); SEU (p.4); SCPPA (p.9-10); LADWP (p.3); MSCG (p. 2).
[10] See, e.g. NCPA (p. 10). NRDC/UCS believe this plan resolves concerns that auction revenue will be used for purposes unrelated to AB 32. See, e.g., LADWP (p. 10)
[11] NRDC/UCS agree with WPTF (p.3-4) that auction revenue should not be distributed to regulated retail providers for discretionary use. However, we believe that the establishment of clear criteria for the spending of auction revenue along with a "use it or lose it" provision addresses the concerns raised by WPTF.
[12] If the Commissions have reason to believe that limited additional capacity; the GHG emissions performance standard and the short timeline for phasing in 100% auctions will eliminate the possibility of increased reliance on the highest emissions fuel-types, they should include that discussion in the final order.
[13] Several parties make this point: See, e.g., GPI (p.2); TURN (p.4) (stating that there is "absolutely no justification for free allocation to deliverers"); LADWP (p.3); PG&E (p. 3); The PO notes: "Like the historical emissions-based approach, a shortcoming of an output based distribution to deliverers is that it would not generate revenues to fund GHG emission reduction efforts by entities other than deliverers, or for customer rate relief." PO (p. 161)
[14] As the PO clearly states: "A fuel-differentiated output-based allocation could largely eliminate the incentives to increase generation from natural gas or decrease coal production, if the weighting factors approximate deliverers' emission rates." PO (p. 160)

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **"Reply Comments of the Natural Resources Defense Council (NRDC) and the Union of Concerned Scientists (UCS) on the Joint Commissions' Proposed Final Opinion on Greenhouse Gas Regulatory Strategies" in the matter of R.06-04-009** to all known parties of record in this proceeding by delivering a copy via email or by mailing a copy properly addressed with first class postage prepaid.

Executed on October 7, 2008 at San Francisco, California.

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