

**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)

**ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of: Order Instituting)
Informational Proceeding on a)
Greenhouse Gas Emissions Cap)

Docket 07-OIIP-01

DOCKET

07-OIIP-1

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**REPLY COMMENTS OF THE MODESTO IRRIGATION DISTRICT
ON FINAL OPINION ON GREENHOUSE GAS
REGULATORY STRATEGIES**

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October 7, 2008

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In accordance with Rules of Practice and Procedure of the Public Utilities Commission ("CPUC") of the State of California, the Modesto Irrigation District ("Modesto ID") hereby files these Reply Comments ("Comments") on the proposed "Final Opinion on Greenhouse Gas Regulatory Strategies" issued September 12, 2008 (the "Proposed Decision" or "PD") responding to various issues identified in the parties' opening comments filed October 2, 2008. Modesto ID also files these Comments with the California Energy Commission ("CEC") in Docket 07-OIIP-01. In these Comments, the CPUC and CEC will collectively be called the "Joint Agencies."

Opening comments generally acknowledge the efforts of the Joint Agencies but reflect a collective agreement that much work remains to be done before program design recommendations should be adopted and forwarded to the California Air Resources Board ("CARB"). Until the identified options and variables raised by such options, as documented within the PD and opening comments, are fully defined and analyzed the potential impact to consumer rates and system reliability cannot be ascertained and recommendations for action are premature. Mandates must be achievable and if a market system is adopted it must be financially sound in today's economy. The California electricity sector must not be set up for failure.

I. ELECTRICITY SECTOR SHARE OF EMISSION REDUCTIONS

As many commenters noted, the electricity sector is being asked to bear a disproportionate share of greenhouse gas (“GHG”) emission reductions. Program design recommendations must ensure that electric ratepayers and retail providers are not so unduly burdened with the costs of reduction obligations that they are unable to exist in today’s uncertain economy. Ratepayers are being asked to pay for increased investments in energy efficiency, increased renewable procurements, retirement of high emitting resources, emission allowances, administrative costs for CARB and the Joint Agencies and others, and increased reporting and verification requirements. Contrary to the arguments of electricity market participants that do not serve ratepayers directly, it is appropriate to provide program mechanisms to balance these costs. Furthermore, before such mechanisms are determined an analysis must be performed regarding the impact of current market conditions on the retail providers’ ability to finance all of the activities required to meet the above listed obligations.

II. MANDATES

The investor owned utilities (“IOUs”) argue that mandated programs such as energy efficiency investments and renewable portfolio standards must be applied in the same manner on all retail providers, concluding that requirements developed through CPUC proceedings for IOUs must likewise be imposed on publicly owned utilities (“POUs”) through CARB or other jurisdictional entities. (See, eg., Opening Comments of Southern California Edison Company on Proposed Final Opinion on Greenhouse Gas Regulatory Strategies, p. 4.) These parties argue that in order to meet their “fair share of GHG reductions” POUs must be “subject to the same performance standards and rules with regard to renewables, energy efficiency, and other regulatory requirements” as those implemented by IOUs through CPUC proceedings. (Id.)

The concept of “regulatory asymmetry” (Id. at p. 12) between IOUs and POUs is nothing more than rhetoric. No evidence is provided that regulatory programs will not be equitably enforced within the electricity sector simply because IOUs and POUs have different governance structures. As the Northern California Power Agency (“NCPA”) notes, governing boards of

POUs serve the same oversight role as the CPUC for IOUs. (Comments of the Northern California Power Agency on Draft “Final Opinion on Greenhouse Gas Regulatory Strategies” (“NCPA Comments”), p. 11.)

The call for identical application of mandates has several other flaws. First, POUs such as Modesto ID have borne their fair share of early emission reduction activity through programs implemented by their governing boards. Modesto ID serves in excess of 11% of its load from renewable resources – equal to the state average. Other POUs meet or exceed this average. Modesto ID also has implemented energy efficiency programs fully compliant with the CEC’s recommendations for it. Such programs are aligned with, though not identical to, those of PG&E. The proper measure of success for these programs is the relative degree of efficiency savings achieved not the amount of the investments made. Second, energy efficiency and renewable procurement goals must be relative to the unique characteristics of the utility. One size does not fit all and in fact is not necessary to ensure each utility bears its “fair share” of reductions. Third, requirements and other program mandates adopted by the CPUC through CPUC proceedings cannot be imposed on non-jurisdictional POUs. Should CARB or another jurisdictional entity choose to pursue related regulations an independent public process including POU participation must be undertaken.

As has been widely reported, even the IOUs are struggling to meet the existing goals and mandates. (Comments of the Division of Ratepayer Advocates on the Final Opinion on Greenhouse Gas Regulatory Strategies, pp. 8-9.) Because of these difficulties and the myriad of uncertainties associated with achieving even more stringent goals - will technologies be developed, can barriers to energy efficiency penetration and expansion of renewable portfolios be removed, how will regional and federal approaches impact a California-only system - as well as the uncertainties in today’s financial markets, it is critical that any program design build in flexibility and off-ramps. (See, eg., Opening Comments of Pacific Gas and Electric Company on Proposed Decision on Greenhouse Gas Regulatory Strategies, pp. 17-18.)

III. MARKET SYSTEM

Modesto ID supports those comments that urge a delay in the implementation of any mandatory cap and trade system in California. Programmatic approaches should be given the opportunity to succeed. If ultimately implemented, a market system should be voluntary and used only as a backstop should sufficient reductions be unobtainable otherwise. (NCPA Comments, p. 4.)

Modesto ID responds to the following comments regarding the design of such system:

- The system must be fully designed and the mechanisms to implement such system put in place prior to implementation. This includes defining the numerous items raised by various parties, such as the protections to be incorporated to avoid market manipulations, enforcement mechanisms, baselines, and other measurements.
- Minimal if any auction should be incorporated into the market design. If auctions are used, they should be phased-in very gradually and should not exceed the program proposals issued by the Western Climate Initiative (“WCI”). The proposed four year trajectory to 100% auction is too steep and should be smoothed out over a longer period up to 2020. (See, eg., Comments of the Sacramento Municipal Utility District on the Joint Commission Proposed Decision on Allowance Allocation, pp. 8-9.)
- Auction allowances should be allocated to retail providers to avoid diversion of revenue to increased administrative costs or general state purposes and away from investment in GHG reductions. Such allocations would help balance the multiple layers of obligations imposed on retail providers and help minimize rate impacts. The same generators that argue against allocations to retail providers also seek clarification that such other mandates won’t apply to them.
- Investment of auction revenues by retail providers should not be narrowly defined as proposed by The National Resources Defense Council (Comments of

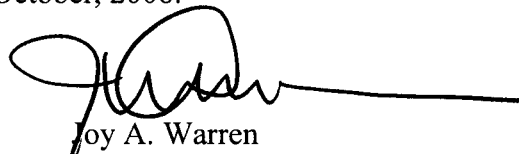
the Natural Resources Defense Council (NRDC) and the Union of Concerned Scientists (UCS) on the Joint Commissions' Proposed Opinion on Greenhouse Gas Regulatory Strategies, pp. 10-11.) Broad ability to invest in AB 32 reductions promotes innovative approaches that are more likely to result in the development of technology and removal of barriers. Modesto ID agrees with NCPA that the governing boards of POU's are the appropriate bodies to oversee the use of auction revenues by their respective POU's, and that there is no basis to support the PD's recommendation that POU's have their expenditures verified by a third party. (NCPA Comments, p. 11.)

- A price spike safety valve should be considered, at least during the initial phase-in stages of any new market system. (Southern California Public Power Authority Comment on Proposed Decision, p. 21.) No flexible compliance mechanisms should be eliminated at this point.

IV. CONCLUSION

The PD correctly recognizes it must balance many competing interests for the overall interests of the electricity sector and its ratepayers. Modesto ID appreciates the opportunity to review its concerns regarding the PD and urges the CPUC to clarify the issues identified in Modesto ID's opening comments and herein. The CPUC must ensure that program design recommendations it makes to CARB are fully designed to achieve compliance with AB 32 in the most cost effective manner and to avoid unnecessary or disproportionate impact to electricity sector ratepayers and entities.

Respectfully submitted, this 7th day of October, 2008.



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CERTIFICATE OF SERVICE

I, Linda Fischer, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On October 7, 2008, I served the attached:

**REPLY COMMENTS OF THE MODESTO IRRIGATION DISTRICT ON
FINAL OPINION ON GREENHOUSE GAS REGULATORY STRATEGIES**

on the service list for R.06-04-009 by serving a copy of each party by electronic mail, or by mailing a properly addressed copy by first-class mail with postage prepaid to each party unable to accept service by electronic mail.

Electronic copies and hard copies by first-class mail with postage prepaid were also sent to Administrative Law Judges Charlotte F. TerKeurst (cft@cpuc.ca.gov) and Jonathan Lakritz (jol@cpuc.ca.gov), and to Commissioner Peevey's advisor Nancy Ryan (ner@cpuc.ca.gov).

A copy was sent by first-class mail with postage prepaid to the California Energy Commission, Docket Office, MS-4, Re: Docket No. 07-OIIP-01, 1516 Ninth Street, Sacramento, CA 95814-5512. A copy was also served by email to the CEC docket office.

A copy of the service list is attached hereto.

Executed on October 7, 2008, at Modesto, California.


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