BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions.	Rulemaking 11-03-012 (Filed March 24, 2011)

THE DIVISION OF RATEPAYER ADVOCATES' REPLY TO PREHEARING CONFERENCE STATEMENTS

DIANA L. LEE
Attorney for the
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-4342
Email: Diana.Lee@cpuc.ca.gov

JORDAN PARRILLO
Regulatory Analyst for the
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1562
E-mail: Jordan.Parrillo@cpuc.ca.gov

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I. INTRODUCTION

Pursuant to Rule 7.2 of the Commission's Rules of Practice and Procedure, and the March 24, 2011 "Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emission" (OIR), the Division of Ratepayer Advocates (DRA) submits the following reply to prehearing conference (PHC) statements filed by other parties in this proceeding.[1]

During the course of this rulemaking, DRA will recommend that the revenue that utilities receive from their free allocation of greenhouse gas (GHG) allowances be used to provide customer bill relief to mitigate the increased costs of Assembly Bill (AB) 32 measures. DRA agrees with the OIR and Decision (D.) 08-10-037, which state that that any mechanism implemented to provide bill relief should be designed so as not to dampen the price signal resulting from the cap-and-trade program.[2] DRA expects to recommend ratepayer rebates that comport with this guidance, and the goals of AB 32.

DRA's reply will not address parties' specific proposals for use of the greenhouse gas (GHG) allowance revenue,[3] but will instead limit its comments to "the scope and

[1] Order Instituting Rulemaking to Address Utility Cost and revenue Issues Associated with Greenhouse Gas Emission, R.11-03-012, March 24, 2011 (OIR), p. 20.

[2] OIR, p. 5.

[3] See e.g. Prehearing Conference Statement of the California Large Energy Consumers Association; April 21. 2011, p. 8; Prehearing Conference Statement of Womens Energy Matters April 21, 2011, p. 8.

schedule of this proceeding, category, need for hearing and other procedural issues"[4] as directed by the OIR. There is uncertainty regarding which GHG related issues will be addressed in this Rulemaking as opposed to Rulemaking (R.) 10-05-006, Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans (LTPP), and therefore DRA's reply will focus on the scope of issues that should be addressed in this rulemaking.

- DRA continues to recommend that the scope of this proceeding include all GHG compliance and procurement issues so that the necessary resources can be devoted to consideration of these issues in a proceeding that will result in a Commission decision in the necessary time frame because there are fewer issues competing for consideration. The adopted upfront standards from this proceeding should be coordinated with the LTPP proceeding.
- The Commission should grant the requests of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) for an accelerated schedule addressing GHG procurement issues and GHG compliance issues only to the extent that the Utilities need limited authority to buy GHG compliance products.
- The Commission should not grant the request of PG&E, SCE, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E)[5] for an interim decision resolving the allowance revenue issues for 2012, but if necessary, should order the Utilities to establish GHG Revenue memorandum accounts until it issues a final decision in this proceeding.
- DRA recommends the Commission focus its attention on natural gas issues that require immediate resolution.
- DRA agrees with TURN that hearings may be necessary on the rate impact of returning the revenue to ratepayers.

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[4] OIR, p. 20.

[5] DRA's reply refers collectively to PG&E, SCE, SoCalGas and SDG&E as Utilities.

II. DISCUSSION

A. The Commission should consider GHG compliance and procurement issues in this OIR.

The Utilities recommend that the Commission develop guidance on issues related to management of their GHG compliance exposure in the long-term procurement planning proceeding (LTPP), Rulemaking (R.)10-05-006.[6] DRA recommends that the guidance be developed in the GHG rulemaking in close coordination with the LTPP proceeding. SCE claims that because utilities need the protection of AB 57 when using GHG products, it is preferable to develop rules for procuring those GHG products in the LTPP proceeding, where the development of upfront standards and criteria for overall procurement activities is already underway. While development of upfront standards for GHG products is an important part of the Utilities' procurement plans, the development of those standards need not take place in the LTPP proceeding, which already has numerous other issues pending. The upfront standards could be developed in this proceeding, and after the Commission adopts those standards, the Utilities would need to update their proposed bundled procurement plans, filed March 25, 2011, to ensure that their plans reflect the authorized GHG products, methods of procuring GHG products, and implementation strategies to comply with ARB's proposed cap-and-trade regulation.

Developing the upfront standards and guidance for GHG products in a proceeding dedicated to that issue would allow the Commission and parties to focus on the issues specific to the procurement of those products. SCE states that "GHG allowances and offsets are very similar, if not the same, as other commodities incrementally consumed in the generation and dispatch of electricity,"[7] Even if the Commission may ultimately determine that GHG compliance products are similar to commodities used to generate and dispatch electricity, DRA believes it is premature to presume that "the Commission's

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[6] Prehearing Conference Statement of Southern California Edison Company, April 21, 2011, (SCE PHC Statement), pp. 3-6; Prehearing Conference Statement of Pacific Gas and Electric Company, April 21, 2011, (PG&E PHC Statement), pp. 2-3; Prehearing Conference Statement of San Diego Gas & Electric and Southern California Gas Company, filed April 21, 2011 (SDG&E/SoCalGas PHC Statement), pp. 2-4.

[7] SCE PHC Statement, p. 4.

guidance related to the procurement of GHG compliance products… will not differ fundamentally from the guidance related to the procurement of non-GHG products."[8]

While the market for GHG compliance products shares some of the same market drivers as other commodities' markets, the most driving fundamental element of GHG markets is the declining cap on GHG emissions, or a decreasing supply of GHG products over time. This element differs from most other commodity markets,[9] and usually leads to a predictable upward price curve over time for GHG products. Based on this fact, the Commission may decide that the guidance it gives Utilities to procure GHG products and to assume GHG price risks is fundamentally different than for other non-GHG products. DRA believes it is appropriate to consider the fundamentals of a brand new and untested market in California separately in this proceeding. This will more likely identify the GHG issues and practices that need to also be considered and implemented in regards to developing the Utilities' overall procurement strategies.

SCE cautions that "[d]eveloping general procurement policies on the LTPP proceeding independent of policies pertaining to utility participation in the GHG allowance and offset markets would undermine the Commission's goal of developing a comprehensive set of procurement policies in an integrated fashion."[10] DRA supports the development of comprehensive and integrated procurement policies, including the procurement of GHG compliance products, but believes integrated procurement policies are best achieved are by close coordination between the current rulemaking and the LTPP proceeding.

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[8] SCE PHC Statement, p. 5.

[9] DRA recognizes that the market for sulfur dioxide (SO_2) allowances also was driven by a declining cap, but notes however that the size of the SO_2 market is significantly smaller.

[10] SCE PHC Statement, p. 4.

B. The Commission should grant the requests for an accelerated schedule addressing GHG procurement issues and GHG compliance issues only to the extent that the Utilities need limited authority to buy products.

SCE and PG&E recommend expedited consideration of GHG procurement and compliance issues.[11] DRA did not oppose approval of GHG product authorization and hedging plans in the LTPP rulemaking, prior to the issuance of the GHG OIR, however DRA expressed concern about considering the issues in an expedited manner without fully weighing the complexities of those products. DRA's PHC Statement filed on February 23, 2010 in R.10-05-006 noted the difference between authorizing physical GHG products and financial GHG products, namely that there is more associated with authorizing financial GHG products and risk management strategies.[12] DRA does not believe that the issues related to authorizing financial GHG products and GHG risk management strategies should be addressed on an accelerated schedule, in either the GHG rulemaking or the LTPP rulemaking.

DRA recognizes that the Utilities will need authority to procure physical GHG products to comply with CARB's Proposed Regulation as soon as February of 2012, when the first CARB auction of GHG Allowances is scheduled to take place. The uncertainty around the San Francisco Superior Court decision to enjoin ARB's proposed cap-and-trade regulation should not impact the process or schedule in which the Commission considers these issues. At this point, the Commission should assume the program will start on time, until there is a definitive indication otherwise, so that the Utilities are prepared to comply with the regulation when it is implemented.

Nevertheless, the issues around establishing upfront standards and guidelines for the Utilities' possible participation in GHG allowance and offset markets are complex and will require significant attention from parties, including several workshops and opportunities to comment. DRA is concerned that if the Commission attempts to address these issues too hastily in either proceeding, the issues will not receive adequate

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[11] SCE PHC Statement, p. 9; PG&E PHC, pp. 2-3.

[12] The Division of Ratepayers Prehearing Conference Statement in R.10-05-006, February 23, 2010, p.2.

attention. This concern would be exacerbated if the GHG compliance issues were subsumed in the LTPP proceeding.

DRA understands that the Utilities must be prepared to comply with ARB's proposed cap-and-trade regulation when it is implemented, however not at the cost of a rushed decision in either proceeding. If a decision that addresses all compliance issues is not issued before the start of the program in 2012, the Commission could issue an interim decision, authorizing interim authority for the Utilities to procure physical GHG allowances and offsets up to a defined limit. The limit could be set at each utility's expected 2012 GHG emissions level (expected 2012 compliance obligation) or at the expected 2012 compliance obligation plus the holding limit already established by ARB's proposed cap-and-trade regulation, and all costs related to procuring these GHG allowances and offsets would be recoverable in Energy Resource Recovery Account.

C. The Commission should not grant the Utilities' requests for an interim decision resolving the allowance revenue issues for 2012, but if necessary, should order the Utilities to establish GHG Revenue memorandum accounts until it issues a final decision in this proceeding.

The Utilities request that the Commission adopt an interim decision on the allocation of auction revenues by as early as September 8, 2011.[13] SDG&E contends that:

> "Because electric utility customers may incur significant rate increases relating to AB 32 cap-and-trade costs as early as January 1, 2012, SDG&E urges the Commission to act quickly to authorize the electric utilities to allocate the revenues associated with the AB 32 cap and trade program to their customers to offset those AB 32 costs"[14]

DRA agrees with The Utility Reform Network (TURN) that while that it is important

[13] PG&E PHC Statement, p. 4; SCE PHC Statement, p.10 (decision requested by November 15, 2011); SDG&E/SoCalGas PHC Statement, p. 8.

[14] SDG&E/SoCalGas PHC Statement, p. 8.

> "to resolve the question of how to use the proceeds, the Commission must not rush to allocate hundreds of millions of dollars without thoughtful consideration."[15]

The issue of allowance allocation should be decided as soon as feasible, while also recognizing the numerous competing views and complex ratemaking issues. Rather than rushing to decide how to allocate the auction revenues before the first auction, the Commission should instead order the Utilities to establish memorandum accounts, which would accrue interest at the three-month commercial paper rate. This would allow the parties and the Commission adequate time to determine the best way to refund the revenues to customers, especially given the Commission's determination that "bill relief be designed so as not to dampen the price signal resulting from the cap-and-trade program."[16]

D. The Commission should consider natural gas issues that require immediate resolution.

SoCalGas states that it has facilities, including compressor stations, that it believes are included in the ARB cap-and-trade program in the first compliance period beginning in 2012, with expected aggregate emission of about 250,000 metric tons per year.[17] If SoCalGas (and/or PG&E) has facilities that are in fact required to comply beginning in 2012, then DRA agrees the Commission should provide guidance and authority for participation in the GHG allowance market, and that this proceeding would be the appropriate forum for consideration of those issues.

SDG&E and SoCalGas also recommend that the Commission "provide authorization in this proceeding to gas utilities to participate in GHG allowance and offsets markets and provide risk management guidance to gas utilities"[18] even though natural gas utilities will not be required to acquire allowances until the next compliance period beginning in 2015. It is premature to consider these issues given the uncertainty of how GHG products and markets will work. The Commission should defer SoCalGas

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[15] Prehearing Conference Statement of TURN, April 21, 2011 (TURN PHC Statement) p. 3.
[16] D.08-10-037, p. 227.
[17] SDG&E/SoCalGas PHC Statement, p. 6.
[18] SDG&E/SoCalGas PHC Statement, p. 5.

and SDG&E's request for guidance regarding compliance by natural gas utilities, which would be better resolved after parties have gained experience with the operation of these products and markets.

E. DRA agrees with TURN that hearings may be necessary on rate design issues.

TURN notes that:

> "[t]he question of how to properly refund revenues to customers should be explicitly within the scope of this proceeding, rather than being left to individual utility rate design proceedings.[19]

DRA agrees that how to refund revenues to customers is within the scope of the proceeding, and also that hearings may be necessary on the issue of the type of rate relief or rate reductions.

III. CONCLUSION

DRA respectfully recommends that the Commission consider the recommendations summarized in this reply as will as its prehearing conference statement.

Respectfully submitted,

/s/ DIANA L. LEE

DIANA L. LEE
Staff Counsel

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-4342

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[19] TURN PHC Statement, p. 3.