BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

PRE-WORKSHOP STATEMENT OF THE JOINT PARTIES TO ADDRESS GREENHOUSE GAS ALLOWANCE REVENUE ALLOCATION FORMULAS

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1. Introduction

Decision (D). 12-12-033 (Decision Adopting Cap-and-Trade Greenhouse Gas Allowance Revenue Allocation Methodology for the Investor-Owned Electric Utilities) proposed greenhouse gas (GHG) revenue allocation formulas for emissions-intensive and trade-exposed (EITE) entities and small business customers, as defined in that decision, and directs Energy Division to initiate a public workshop process to finalize these formulas. In accordance with the Administrative Law Judge (ALJ) Semcer's Ruling *Administrative Law Judge's Ruling Setting Forth Procedural Schedule to Address Greenhouse Gas Allowance Revenue Allocation Formulas and Requesting Pre-Workshop Statements*, issued on January 23, 2013, the Natural Resources Defense Council, Sierra Club California, the Greenlining Institute, Union of Concerned Scientists, the Local Government Sustainable Energy Coalition, National Consumer Law Center, Climate Protection Campaign, and the California Housing Partnership Corporation (collectively "Joint Parties") respectfully offer the following pre-workshop statement in response to the questions set forth in Attachment A to the Ruling.

2. Parties

The Natural Resources Defense Council is a non-profit membership organization with more than 80,000 members in California and has a longstanding interest in minimizing the societal costs of the reliable energy services that Californians demand.

The Sierra Club is a national, California-based non-profit membership organization with 150,000 members in California, with an interest in increasing energy efficiency and renewable energy to reduce greenhouse gas emissions.

The Greenlining Institute is a national policy, organizing, and leadership institute working for racial and economic justice. The organization's mission is to empower communities of color and other disadvantaged groups through multi-ethnic economic and leadership development, civil rights, and anti-redlining activities.

The Union of Concerned Scientists is a national, non-profit, membership organization with over 14,000 members in California and is devoted to building a healthier environment and a safer world through the use of rigorous scientific analysis, innovative thinking and committed citizen advocacy.

The Local Government Sustainable Energy Coalition is the only statewide organization that formally represents the interests of local governments before California's energy and environmental regulatory agencies. Members are leaders among local governments in energy efficiency, renewable energy, climate action planning, sustainability and related issues.[1]

The National Consumer Law Center was established in 1969 with the mission of advocating on behalf of low-income consumers in the economic marketplace. In addition to

[1] The LGSEC is a statewide membership organization of cities, counties, associations and councils of government, special districts, and non-profit organizations that support government entities. Each of these organizations may have different views on elements of these comments, which were approved by the LGSEC's Board. A list of our members can be found at www.lgsec.org.

focusing on many other consumer issues, NCLC has long worked on a range of energy and utility issues, with the goal of ensuring that low-income households have access to essential utility services and to energy efficiency programs. NCLC actively participated in the public policy discussions around the Waxman-Markey bill and other climate change legislation that came before Congress, particularly on the issue of how to allocate sufficient revenues to low-income customers to address bill impacts and to mitigating the effects of climate change.

The Climate Protection Campaign is a California-based non-profit organization which focuses on public policy that will significantly reduce greenhouse gas emissions through increasing energy efficiency, developing renewable energy and other means.

The California Housing Partnership Corporation is a statewide organization dedicated to assisting nonprofit and government housing agencies to create, acquire, green, and preserve housing affordable for lower-income households, while providing leadership on housing preservation policy and funding. CHPC is also the convener of the Green Rental home Energy Efficiency Network (GREEN), a coalition of over 35 organizations committed to increasing access to energy efficiency resources for very low income residents of multifamily rental properties in California and ensuring that publicly assisted properties serving the state's lowest income households receive an equitable distribution of these resources.

3. EITE Allocation Methodology

3.1 Product-Based and Energy-Based Allocation Methodologies

3.1.1 Formulas

The Joint Parties continue to support the Commission's proposal to adopt revenue allocation methodologies for EITE customers that comport with ARB's determination of EITE industries and leakage risk assistance factors. The EITE allocation methodologies proposed in Appendix A to D.12-12-033 correctly base revenue allocation on the level of industry assistance determined by ARB's analysis of exposure to leakage and prevent discrepancies in allowance allocation between facilities with generation on-site and those that purchase electricity. ARB's qualification for leakage risk requires concurrent demonstration of both emissions intensity and trade exposure, and variable levels of assistance are assigned based on relative risk exposure. Industry assistance is provided to these entities to facilitate the transition to an economy that accurately values carbon emissions. Mirroring this process for the return of auction revenue using the proposed Product-Based Allocation Methodology formula is therefore reasonable, as this revenue mitigates the indirect emissions costs during this transition. The proposed Energy-Based Allocation Methodology is likewise reasonable to adopt as a fall-back approach limited to industries for which ARB has determined the product-output approach is not feasible. As the program progresses and the need for transition assistance abates, lower levels of industry assistance will be required for both direct emissions and indirect emissions from electricity purchases.

3.1.2 Variables

The broad range of renewable energy and distributed generation programs in place- including the 33% Renewable Portfolio Standard (RPS)- are reducing the emissions intensity of California's electricity mix. In order to accurately account for the indirect emissions of EITE customers from electricity purchases, the utility-specific emissions factor for electricity delivered should be updated frequently and reflected in the benchmark variable. ARB can provide this factor annually from the utility Mandatory Reporting of Greenhouse Gas Emissions (MRR) data.

3.2 Refinery Allocation Methodology

3.2.1 Formulas

The refinery allocation formulas proposed in Appendix A to D.12-12-033 parallel ARB's allowance allocation methodologies for refineries under the cap-and-trade program. While we support close alignment with ARB in principle, refineries warrant careful consideration as they are treated differently than other industrial sectors under ARB's allowance allocation and uncertainty still remains regarding the methodology for the second and third compliance periods. The Commission's current proposal adopts ARB's two-pronged approach, which first uses a simple output barrel metric to determine the total allocation to the sector as a whole, and then applies the complexity adjusted energy efficiency metric, the Solomon Energy Efficiency Index (EII), for individual allocation to complex refineries. While use of this metric has been criticized by stakeholders because it does not address GHG intensity,[2] the EII does account for energy efficiency and is arguably more suitable as a benchmark to allocate revenues to compensate for electricity purchases. However, not all refineries have an EII value, further complicating the already complex multi-step approach ARB has adopted for the first compliance period. The proprietary nature of EII also introduces a lack of transparency to the Commission's methodology. Additionally, beginning in the second compliance period, ARB will apply an updated approach for refinery benchmarking, bringing into question how the Commission should return revenues to the refining sector beyond the first compliance period.

As ARB's analysis of leakage risk continues, we recommend that the Commission make adjustments to the EITE revenue return formulas when ARB updates its allocation methodologies. Specifically for the refining sector, the current method of allowance allocation is subject to modifications beginning in the second compliance period. While these changes are anticipated, they have not been finalized, and we recommend that the Commission reevaluate the

[2] See comments in "Summary of Comments Made During the 45-Day Comment Period and Agency Responses" Section III.C. Allocation of Allowances, ARB, FSOR October 2011. Available at http://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf

appropriateness of new methodologies for the purpose of determining revenue allocations. ARB has disclosed its consideration (but not yet adoption) of the Carbon Weighted Tonne (CWT) metric for determining refinery benchmarks and allowance allocation in the second and third compliance periods. The Commission's electricity emissions benchmark and revenue allocation methodology adopted for refineries should incentivize efficiency and it is not clear that the CWT method would accomplish this. Furthermore, by prematurely assuming CWT will be adopted, the Commission risks removing the incentive for early action as CWT factors incorporate net energy consumption of fuel, heat and electricity of each refinery unit and would therefore reward refineries for complex, energy intensive units.

Finally, under the current refinery allocation provision in the cap-and-trade regulation, only costs associated with direct emissions and indirect purchased steam warrant free allocation, while indirect emissions from purchased electricity are compensated by the Commission's methodology for revenue return. The Commission's role in indirect compensation to refineries should be reevaluated subject to the changes ARB introduces for refinery allocation in the second compliance period. The primary consideration should be whether the Commission's adopted revenue return formulas compensate for leakage exposure from electricity purchases while correctly incentivizing indirect emission reductions. We look forward to exploring suitable options in the working group.

3.3 Method of Return

We continue to support returning allowance revenue to EITE entities in a manner that preserves the carbon price signal and maximizes incentives for efficiency improvements and indirect emission reductions. To best accomplish these objectives, we recommend the Commission provide annual allocations off-bill in the form of a separate check.

3.4 Opt-In Eligibility

The cap-and-trade regulation requires opt-in, covered entities who wish to participate in the program, and potentially receive free allocations, to submit a request form to ARB by March 1 of the calendar year preceding the first calendar year the entity wants to participate in the program, and to submit GHG emission data by April 1.[3] We recommend the Commission adhere to the same deadlines as ARB to maintain consistency and clarity.

We support the Commission's proposal to require EITE industries that do not meet ARB's threshold of 25,000 MTCO2e/yr to opt-in to the cap-and-trade program. This requirement ensures accurate reporting and verification, and supports the overall directive of the cap-and-trade program to incentivize economy wide emission reductions.

We recognize that certain facilities that emit less than 25,000 MTCO2e annually may be disproportionately affected by the inclusion of a carbon price in electricity prices. To the extent that presents a risk of leakage, we are amenable to considering other approaches that mitigate transitional costs while maintaining the incentive for increased efficiency at these facilities. However, if the Commission removes the opt-in requirement for facilities that emit less than 25,000 MTCO2e annually (and are therefore not 'emissions intensive' under the cap-and-trade regulation), and determines that certain industries are made leakage exposed due to the indirect emissions costs associated with electricity purchases, this finding should apply to all industries who receive revenue allocation. Therefore, if ARB's approach to EITE industries is rejected, then facilities that have a compliance obligation and are eligible for industry assistance under cap-and-trade would have to demonstrate that they face additional leakage exposure attributable to their indirect emissions. Furthermore, the emissions and product output data required by

[3] ARB, Chapter 4 of Cap-and-trade Regulatory Guidance Document available at http://www.arb.ca.gov/cc/capandtrade/guidance/chapter4.pdf

facilities who do not meet the compliance threshold would have to meet the cap-and-trade program requirements of accuracy and verification.

4. Small Business Allocation Methodology

4.1 Formulas

The Small Business Allocation Methodology proposed in Appendix B to D.12-12-033 is reasonable as the formula provides transition assistance for costs incurred to the customer as a result of the GHG cap-and-trade related cost to utilities, without fully muting the carbon price signal. The inclusion of the 'low' leakage risk assistance factor is appropriate given that most small businesses are not energy intensive, and subsequently incur relatively low energy-related costs.[4] The proposed methodology maintains the incentive for businesses to shift toward economic activities that result in fewer GHG emissions, while mitigating transition costs. The Joint Parties reject any proposals that result in pure volumetric returns for small business customers, as this would violate the Commission's guiding policy principle in this proceeding[5].

4.2 Method of Return

As with residential customers, we recommend small businesses receive allowance revenue returns in a manner that promotes visibility and public awareness. Returning the allowance credit 'behind-the-scenes' as a rate reduction contravenes the Commission's own guiding policy principle in this proceeding to preserve and transmit an accurate carbon price signal.[6] Unlike in the residential sector, there is no reason for the Commission to deviate from this principle. Similarly, the distribution of small business returns should be no more frequent

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[4] Id.
[5] PD p.4 ; PD at 114
[6] CPUC "Assigned Commissioner and Administrative Law Judge's Joint Scoping Memo and Ruling," R11-03-012, p. 9; PD at 114

than that of the climate dividend for residential customers. Lump-sum returns support customer engagement and do not conceal the carbon price unlike monthly volumetric rate reductions. At a minimum, the return should be a separate, semi-annual, line-item credit on a customer's bill.

5. Conclusion

We appreciate the opportunity to offer this pre-workshop statement and look forward participating in the working group.

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Respectfully submitted,

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