

Memorandum

To: Jody London, Local Government Sustainable Energy Coalition

From: Jennifer K. Berg

Date: 5/27/2011

Re: Summation of Comments & Replies re R11-03-012

I. Introduction

The Commission's March 24, 2011 Order Instituting Rulemaking ("OIR") seeks comments on "the use of GHG emissions allowance auction revenues that electric utilities may receive from the California Air Resources Board (CARB), the use of revenues that electric utilities may receive from the sale of Low Carbon Fuel Standard credits the electric utilities may receive from the ARB, and the treatment of potential GHG compliance costs associated with electricity procurement." OIR, at 26. The Commission has preliminarily determined that this is a ratesetting docket, and that the issues raised will be "resolved through a combination of workshops and filed comments." OIR, at 21.

Two main positions are advocated in the filed statements: 1. the revenues should be used exclusively for direct customer bill relief, and 2. the revenues must be allocated in a manner that levels the playing field between utility run and outside energy efficiency and renewable energy programs.

LGSEC's position, which echoes our comments in related CARB proceedings, is to highlight the value of innovative programs developed by local governments that have broad community impact; programs that are also in furtherance of California's goals of reducing green house gas emissions. This is in line with the recognition by CARB and the Commission, and expressed in this rulemaking, that a portion of the revenues from cap and trade should be allocated to local governments for investment in local communities' participation in statewide efforts to reduce GHG emissions.

Two important procedural events occurred during this rulemaking that may impact this proceeding. First, SCE, PG&E and SDG&E filed a joint motion seeking an interim decision authorizing a credit of allowance revenues to customers commencing January 2012. This means straight rate relief, and would not allow uses that we support and that are required by CARB. Second, an Order was issued by the Honorable Ernest Goldsmith of the San Francisco Superior Court enjoining the implementation of cap and trade, at least temporarily.

The delay of cap and trade should moot the IOU's request, and will also allow adequate time for the Commission to engage in a deliberative process regarding allocation of the allowance revenue.

II. Summary of OIR Statements.

A. The Revenues Should be Used for Customer Bill Relief.

The primary argument for the majority of interested parties is that the revenues should be used to provide customer bill relief to offset the costs associated with the implementation of AB32. Many of these parties represent ratepayer groups, either low income customers or high energy users in the manufacturing industry. These groups assert that there should be equity in distribution of the revenues, although some argue that there should be an emphasis on low income residents, while others take the position it credits should be distributed on a proportional basis. The proponents of primary revenue allocation towards customer bill relief are:

CA Manufacturers and Technology Ass.; Noble America's Energy Solutions; TURN; Shell Energy ; The Energy Producers and Users Coalition; Climate Protection Campaign (aka Telos Project), and The National Consumer Law Center.

B. Level the Playing Field for Investments in Energy Efficiency and Renewable Energy Programs.

The second primary theme of the comments is the assurance that revenues directed toward energy efficiency programs and investment in renewable energy be distributed equally among IOUs and outside entities; auction revenues used to finance these projects should not be used to tilt the competitive playing field or to distort the comparison between utility owned and independent projects. The groups advocating this position are: *Independent Energy Producers Association; Western Power Trading Forum; Marin Energy Authority; Women's Energy Matters* (because of the inherent conflict of interest, revenues must be "set free" of the utilities); *The City and County of San Francisco*, and *Shell Energy*.

C. Miscellaneous comments.

In addition to the general themes identified above, several parties presented additional suggestions that are of significance to LGSEC's position. *The Sierra Club* advocates for a comparative resource evaluation that examines all options prior to allocation of revenues. Further, the allowances should be pooled and then allocated to energy efficiency and renewable energy programs, working in concert with the Department of Energy. They also support projects that have health co-benefits to disadvantaged communities, such as

industrial energy efficiency. *CA Energy Efficiency Council* disputes all statements asserting that energy efficiency programs don't provide relief to customers and are therefore not a ratepayer benefit. Contrarily, "the use of allowance value for further investments in energy efficiency is appropriately within the scope of this proceeding" and have been expressly made so by CARB, as expressed in 12-16-10 resolution, and prior decisions of the CPUC.

D. The IOUs comments.

The statements submitted by PG&E, SDG&E and SCE were substantively similar, with few exceptions. All three concurred that procurement and compliance issues should be removed from rulemaking and determined solely in a LTPP. They also request revenue allocation to customer bill relief in order to mitigate increases in customers' bills due to GHG related costs; this would have the additional result of higher public support for the cap and trade program. By allowing direct customer bill relief, they argue, they will also be on equal footing with municipal utilities that are exempt from restrictions on their allowances.

III. Position of LGSEC in Relation to Other Parties.

LGSEC's position is most closely aligned with those parties that argue for allocation of revenue towards energy efficiencies and renewable energy projects. Indeed, these programs have a significant ratepayer (and community) benefit, while admittedly not as direct as bill relief.

Exclusive use of the revenues for customer bill relief is contrary to the policy of both CARB and the CPUC, which support distribution of the proceeds to be used *at a minimum* in a threefold manner: augment investments in energy efficiency and renewable energy projects *and* provide customer bill relief, as a means of offsetting the cost of AB32 implementation. (OIR, p. 4.)

An additional position that LCSEC should advocate concerns legislative mandates imposed on local governments related to GHG emission targets. Local governments are charged with compliance with AB32 as well as other climate related legislation, SB375 as an example, passed to benefit all Californians. Allocation of a proportion of the allowance revenues to local governments is in furtherance of these mandates. Government budgets have been slashed making it difficult to implement energy efficiency and renewable energy projects. Allowance revenue allocation to local governments would be a closed loop use of the revenues: revenues generated from AB32 cap and trade would be used to fund local government energy efficiency and renewable energy projects, resulting in benefits to ratepayers *and* all Californians. As highlighted in LGSEC's statement, CARB's Resolution No. 1042 "recognizes the importance of including local governments in the cap and program."

IV. Joint Motion Brought By PG&E, SCE and SDG&E/ Goldsmith Order.

On May 11, 2011, PG&E, SCE and SDG&E filed a joint motion seeking an interim decision authorizing the credit of AB32 allowance revenues to be paid directly to retail customers starting in January 2012. The basis for this request is that if the return of the cap and trade allowance value is delayed beyond January 2012, accrued costs will begin to be passed onto the customer. They argue that this request was contemplated by CARB as it allocated “allowances” to utilities to cover “cost burdens” associated with AB32.

On May 22, 2011, in the matter of *Association of Irrigated Residents, et. al. v. California Air Resources Board*, SFSC No. CPF 09 509562, an Order was issued by Judge Goldsmith of the San Francisco Superior Court¹, that will likely impact the joint motion. The Order effectively blocked the cap and trade provision of AB32 until a CEQA analysis has been completed.

Several parties filed comments in support of the utilities’ request, including large industrial customers. The key parties opposing the utilities’ request were the Natural Resources Defense Council and the Sierra Club. LGSEC did not submit comments. We will look for a way to convey that if the relief were granted, it would have the effect of issuing a decision regarding allocation of the revenues *prior* to the completion of the rulemaking. The IOUs’ request is a back door attempt to revenue allocation without the proper process. The Commission now has additional time to allow for a deliberative process regarding allocation of the revenues. Moving forward, we should propose that any revenues received by the IOUs prior to the implementation of cap and trade be placed in a memorandum interest bearing account until the Commission issues a final ruling regarding allocation.

¹ CARB has filed a Notice of Appeal of this decision. However, as of the date of this Memo, the order is in effect.