

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Review Climate Credits for Current Compliance with Statute and for Potential Improvements.

FILED
PUBLIC UTILITIES COMMISSION
MAY 7, 2020
SAN FRANCISCO, CALIFORNIA
RULEMAKING 20-05-002

ORDER INSTITUTING RULEMAKING TO REVIEW CLIMATE CREDITS FOR CURRENT COMPLIANCE WITH STATUTE AND FOR POTENTIAL IMPROVEMENTS

Summary

The Commission initiates this rulemaking to review the current customer climate credits the State provides through the California Air Resources Board's Cap-and-Trade Program. Currently, the majority of allowance proceeds the electric investor-owned utilities (Utilities) generate on behalf of their customers are allocated to ratepayers through three credits established by the Commission for these customers: 1) Residential California Climate Credit; 2) Small Business Climate Credit; and 3) California Industry Assistance. As these three customer climate credits were adopted by the Commission in 2012, the Commission opens this rulemaking to ensure that the credits are compliant with current statute and regulation. Where a credit is no longer compliant, the rulemaking will consider the steps the Commission should take to re-align the two. The rulemaking will also consider steps the Commission should take to improve crediting processes,

including streamlining administration and delivery. Finally, the rulemaking will look at current outcomes of the three customer climate credits and consider changes the Commission should take to improve these outcomes.

The following entities are named as respondents to this rulemaking: Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, PacifiCorp, California Pacific Electric Company, and Bear Valley Electric Service, a Division of Golden State Water Company.

We direct respondents and request stakeholders to review the attached *Staff Straw Proposal on Electric Investor-Owned Utility Cap-and-Trade Program Allowance Proceeds Use*. Respondents and stakeholders are to file comments, as instructed herein, no later than June 4, 2020. Reply comments are due on June 11, 2020.

1. Background

The genesis of the Commission's three customer climate credits is the Global Warming Solutions Act of 2006, otherwise known as Assembly Bill (AB) 32 (Stats. 2006, Ch. 488). AB 32 established limits on greenhouse gas emissions in California and designated the California Air Resources Board (CARB) as the agency responsible for designing a market-based mechanism to reduce emissions to 1990 levels by 2020.

In December 2011, CARB created the statewide Cap-and-Trade Program establishing limits, or caps, on the number of pollution permits, or allowances, available in a given year.¹ The CARB Cap-and-Trade Program applies to facilities that emit more than 25,000 metric tons of carbon dioxide equivalents per

¹ Title 17 California Code of Regulations (CCR) Sections 95800-96023.

year, as well as any facilities with lower emissions that opt-in to the program. These facilities include large electric power plants, large industrial plants, and fuel distributors (*e.g.*, natural gas and petroleum). Approximately 450 businesses are responsible for about 85 percent of California’s total greenhouse gas emissions and are, therefore, required to comply with the program.

CARB distributes allowances – the permits that allow a facility to emit one metric ton of carbon dioxide equivalent gases into the atmosphere and that they must surrender for compliance – differently to each of three capped sectors: industrial, transportation, and utility. For purposes of this rulemaking, we focus solely on the utility sector.² The utility sector receives some free allowances but electric investor-owned utilities (Utilities) must sell those allowances at auction within the year they are received³ and use the revenue to benefit their ratepayers, through one of several CARB-approved pathways.⁴ Participants in the Cap-and-Trade Program may also purchase allowances for compliance through quarterly state-administered auctions or through the private secondary market.

In 2011, the Commission initiated Rulemaking (R.) 11-03-012 to address utility cost and revenue issues associated with the Cap-and-Trade Program. Subsequently, the California Legislature amended Public Utilities Code Section 748.5 to require that the allowance “proceeds be credited directly to the

² The industrial sector currently receives about 90 percent of the allowances it needs at no cost based on output and efficiency to ensure that a producer is not penalized for making more goods and a producer who can make more goods with fewer emissions is rewarded. Transportation sector entities may purchase allowances through quarterly state-administered auctions or through the private secondary market.

³ 17 CCR Section 95892(c).

⁴ 17 CCR Section 95892(d)(3).

residential, small business, and emissions-intensive trade-exposed (EITE) retail customers of the electrical corporation.”⁵

Decision (D.) 12-12-033 established seven policy objectives for allocating the allowance proceeds: a) preserve the carbon price signal; b) prevent economic leakage; c) distribute revenues equitably; d) reduce adverse impacts on low-income households; e) correct for market failures leading to underinvestment in carbon mitigation activities and technologies; f) maintain comprehensive neutrality across load serving entities; and g) achieve administrative simplicity and understandability.

With these objectives in mind, D.12-12-033 adopted methods for allocating to residential ratepayers the greenhouse gas allowance revenues received from the Utilities, including small and multi-jurisdictional utilities, as part of California’s Cap-and-Trade Program. (Later decisions adopted methods for allocating revenues to EITEs (D.14-12-037) and small businesses (D.13-12-002). The Commission directed the three large Utilities (Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company) to allocate allowance revenues, including accrued interest to three separate customer classes: 1) EITEs, using a method designed to mirror CARB-developed compensation methods; 2) small businesses, using a volumetrically-calculated rate adjustment; and 3) residential customers, through a volumetrically-calculated rate adjustment with remaining revenues distributed on an equal per residential account basis as a separate on-bill credit provided twice a year. PacifiCorp and California Pacific Electric Company were directed

⁵ See AB 693 (Stats. 2015 Ch. 582, Sec 2).

to follow the same method but allow all residential rates to rise to reflect the price of carbon and return the residential portion of proceeds on a twice annual per residential account basis, as a separate on-bill credit. After 2015, the volumetric credit was discontinued for all Utilities when rate reforms across California's large Utilities allowed greenhouse gas costs to be fully incorporated into all customer rates.⁶ The Commission directed Bear Valley Electric Service (Bear Valley) to return 100 percent of its allowance revenue volumetrically to all ratepayers.

Additionally, D.12-12-033 adopted a customer education and outreach plan for 2013 by the Utilities on behalf of all customers. For years 2014 and beyond, the decision established a process for developing a more comprehensive and robust plan.

Subsequently, the Commission adopted several other decisions in R.11-03-012 to address the development of specific methods and administrative procedures for the customer climate credits. The issues of the proceeding being resolved, the Commission closed R.11-03-012 in D.16-07-007.⁷

Relatedly, CARB maintains and periodically updates the Cap-and-Trade program. Updates have occurred in 2012, 2013, 2014, 2016, and 2018. For example, effective October 1, 2017, CARB has expressly prohibited volumetric returns of allowance auction proceeds by Utilities.⁸ Further, effective

⁶ D.15-07-001 in R.12-06-013, the Commission's proceeding on residential rate reform.

⁷ R.11-03-002 was reopened with the filing of two separate petitions for modification, one of which was resolved by D.19-12-002. The remaining petition for modification involves a discreet issue with one entity.

⁸ 17 CCR Section 95892(d).

April 1, 2019, CARB placed additional restrictions on the general use of proceeds and on the use of proceeds for administration and outreach costs.⁹ CARB also increased reporting requirements, including itemized administrative and outreach cost reporting. Most recently, CARB was responsible for updating the program to comply with AB 398, which extended the State's Cap-and-Trade program through 2030 as the mechanism to meet Senate Bill 32's (Stats. 2016, Ch. 249) revised statewide emissions target of 40 percent below 1990 emissions levels by the year 2030.

2. Overview of Staff Straw Proposal

Attached to this Order Instituting Rulemaking (Order) is the *Staff Straw Proposal on Electric Investor-Owned Utility Cap-and-Trade Program Allowance Proceeds Use* (Straw Proposal), which is the basis for this rulemaking. After providing a description of the existing legislation, regulations, and Commission action that established limits and goals on how Utilities use proceeds from the granted allowances, the Straw Proposal outlines two short-term and four long-term topic areas potentially necessitating change by the Commission. The two short-term topic areas are 1) Small Business Climate Credit and 2) Bear Valley Electric Allowance Auction Proceeds. The four long-term topic areas are: 1) Large EITEs California Industry Assistance; 2) Small and Medium EITE California Industry Assistance; 3) Residential California Climate Credit; and 4) Residential California Climate Credit Distribution to Submetered Customers.

For each of the topic areas, the Straw Proposal presents its concerns and, in some topic areas, a proposed solution to the concern. The Straw Proposal also

⁹ 17 CCR Section 95892(d)(4).

identifies questions that remain for each of the topic areas. The answers to the questions will assist the Commission in developing the final solutions to the identified concerns.

Stakeholders are asked to review the Straw Proposal and comment on whether the Straw Proposal includes all appropriate topics that should be addressed in this rulemaking. Furthermore, the Straw Proposal identifies questions that remain; stakeholders should comment on whether there are additional questions the Commission should ask parties.

3. Preliminary Scoping Memo

As required by Rule 7.1(d)¹⁰ of the Commission's Rules of Practice and Procedure (Rule or Rules), this Order includes a Preliminary Scoping Memo. In the Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding.

This new rulemaking is opened to consider the six topic areas addressed in the Straw Proposal and perform a general review of the three customer climate credits: 1) Residential California Climate Credit; 2) Small Business Climate Credit; and 3) California Industry Assistance. As the original three customer climate credits were adopted by the Commission in 2012, the rulemaking will entail ensuring the three credits are compliant with current statutes and regulations. Where it is no longer compliant, the rulemaking will consider the

¹⁰ "Rulemakings. An order instituting rulemaking shall preliminarily determine the category and need for hearing and shall attach a preliminary scoping memo. The preliminary determination is not appealable but shall be confirmed or changed by assigned Commissioner's ruling pursuant to Rule 7.3, and such ruling as to the category is subject to appeal under Rule 7.6."

steps the Commission should take to re-align the two. The rulemaking will also consider steps the Commission should take to improve crediting processes, including streamlining administration and delivery. Finally, the rulemaking will look at current outcomes of the three customer climate credits and consider changes the Commission should take to improve these outcomes.

3.1. Proposed Issues

The following is a list of proposed issues the Commission should address in this rulemaking. Stakeholders should comment on the proposed list of issues in response to this Order.

1. How should the Commission convert the Small Business Climate Credit from a monthly volumetric return to comply with current regulations? What implementation steps should the Commission adopt?
2. Since Bear Valley's allowance allocation from CARB will rise substantially beginning in 2021 and through 2030, what procedures should the Commission adopt to return the proceeds of the consignment of these allowances at auction to Bear Valley customers, as required by regulation? What implementation steps should the Commission adopt?
3. Should the Commission streamline the process of crediting large EITEs for the Cap-and-Trade Program costs embedded in electricity purchases by transferring this process to CARB? What implementation steps should the Commission adopt?
4. Should the Commission revise the process for crediting small and medium EITEs with California Industry Assistance in order to simplify the administrative process and make the process more transparent? If so, should the Commission adopt one or more of the proposals to simplify calculation attestation processes for small and medium EITE facilities?

5. What improvements, if any, should the Commission make to the outreach for small and medium EITE recipients?
6. Does the current residential California Climate Credit meet the program objectives as outlined in D.12-12-033? If not, what process changes, including outreach processes, should be made to align with the program objectives?
7. What steps should the Commission adopt to ensure the California Climate Credits can adapt to new energy challenges and opportunities?
8. What changes to the California Climate Credits should the Commission make to improve communication and climate credit distribution to submetered households?

3.2. Categorization and Need for Hearing

Rule 7.1(a) requires that an Order Instituting Rulemaking preliminarily determine the category of the proceeding and the need for hearing. Aligning with the previous rulemaking, R.11-03-012, we determine that this proceeding is preliminarily categorized as ratesetting as defined in Rule 1.3(f) and 7.1(e)(2). We find that the short-term issues can be addressed through comments and replies and do not require evidentiary hearing. Further, the long-term issues can be addressed through workshops and subsequent comments and replies but also do not require evidentiary hearing.

Any person who objects to the preliminary categorizations of this rulemaking or to the preliminary hearing determination shall state their objections in the comments on this Order. After considering the comments, the assigned Commissioner will issue a scoping memo making a final category determination; this final category determination is subject to appeal as specified in Rule 7.6.

3.3. Proposed Schedule

We propose the procedural schedule in the table below. Stakeholders should comment on the proposed schedule in response to this Order. After considering the comments, the assigned Commissioner will include a final schedule in the scoping memo. The assigned Commissioner and Administrative Law Judge may make any revisions to the scheduling and filing determinations made herein as necessary to facilitate the efficient management of the proceeding.

Proposed Activities and Schedule	
Responses to Order Filed	June 4, 2020
Replies to Order Filed	June 11, 2020
Prehearing Conference Held	June 15, 2020 1:30 pm Commission Hearing Room 505 Van Ness Avenue San Francisco, CA 94102
Scoping Memo Issued	Approximately 2 weeks later
Responses to Questions on Straw Proposal Short-Term Topics Filed	14 days after issuance of Scoping Memo
Replies to Responses to Questions on Straw Proposal Short-Term Topics Filed	7 days after Responses Filed
Workshop on Straw Proposal Topics 3 through 7	November 2020
Ruling on Workshop Issued	December 2020
Comments on Ruling Filed	January 2021
Reply Comments Filed	January 2021

4. Service/Service List/Subscription Service

This Order will be served on the service list for R.11-03-012 and the previously listed respondents. Service of this Order does not confer party status

or place any person who has received such service on the Official Service List for this proceeding, other than respondents.

Additions to the official service list are governed by Rule 1.9(f) of the Commission's Rules. Respondents are parties to the proceeding.¹¹ Persons who file responsive comments become parties to the proceeding and will be added to the "Parties" category of the official service list upon such filing.¹²

In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the "Information Only" category as described above; they will be removed from that category upon obtaining party status. Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding.¹³ The request must be sent to the Commission's Process Office by e-mail (Process_Office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102). Include the Docket Number of this Rulemaking in the request.

With respect to subscription service, persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the official

¹¹ Rule 1.4(d)

¹² *Id.* at 1.4(a)(2)

¹³ *Id.* at 1.9(f)

service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at:

<http://subscribecpuc.cpuc.ca.gov/>.

5. Respondents

The following entities are named as respondents in this rulemaking: Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, PacifiCorp, California Pacific Electric Company, and Bear Valley.

6. Public Advisor

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415)-703-2074 or 1-(866)-849-8390, or e-mail public.advisor@cpuc.ca.gov. The TTY number is 1-(866) 836-7825.

7. Intervenor Compensation

Intervenor Compensation is permitted in this proceeding. Any party that expects to claim intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation within 30 days after the filing of reply comments, except that notice may be filed within 30 days of a prehearing conference as well.¹⁴ Intervenor compensation rules are governed by Public Utilities Code Section 1801 et seq. Parties new to participating in Commission proceedings may contact the Commission's Public Advisor.

¹⁴ *Id.* at 17.1(a)(2).

8. Ex Parte Communications

Pursuant to Rule 8.2(c), *ex parte* communications will be allowed in this ratesetting proceeding subject to the restrictions in Rule 8.2(c) and the reporting requirements in Rule 8.4.

O R D E R

IT IS ORDERED that:

1. This rulemaking is initiated on the Commission's own motion to review the Commission's three customer climate credits for current compliance with statute and for potential improvements to the credits.
2. The following public utilities are respondents to this proceeding: Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, PacifiCorp, California Pacific Electric Company, and Bear Valley Electric Service, a Division of Golden State Water Company.
3. The Executive Director shall cause this Order Instituting Rulemaking to be served on the respondents to this proceeding, and the service list for Rulemaking 11-03-012.
4. The preliminary category for this proceeding is ratesetting. *Ex parte* communications are permitted subject to the restrictions and reporting requirements in Commission Rules of Practice and Procedure Article 8.
5. Evidentiary hearings are preliminarily determined to be unnecessary.
6. Respondents shall and prospective parties may file and serve comments on the preliminary scope of this proceeding outlined in this document by no later than June 4, 2020. Reply comments may be filed no later than June 11, 2020. Pursuant to Rule 6.2 of the Commission's Rules of Practice and Procedure, parties shall include in their comments any objections regarding the category,

need for hearing, issues to be considered, or schedule. Comments shall be limited to no more than 25 pages per party.

7. Respondents and prospective parties may include, in the comments on the preliminary scope, comments on the *Staff Straw Proposal on Electric Investor-Owned Utility Cap-and-Trade Program Allowance Proceeds Use* (Straw Proposal) attached as Attachment 1; specifically: a) whether the Straw Proposal includes all appropriate topics that should be addressed in this rulemaking and b) whether there are additional questions, not identified in the Straw Proposal, that the Commission should ask parties.

8. Any party that expects to claim intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation no later than 30 days after any of the prehearing conferences related to their contribution to this proceeding.

9. A prehearing conference will be held on June 15, 2020 beginning at 1:30 pm in the Commission's Hearing Room at 505 Van Ness Avenue, San Francisco, CA 94102.

10. The assigned Commissioner or Administrative Law Judge may make any revisions to the scheduling and filing determinations made herein as necessary to facilitate the efficient management of the proceeding.

This order is effective today.

Dated May 7, 2020, at San Francisco, California.

MARYBEL BATJER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA

Commissioners

ATTACHMENT 1 – STAFF STRAW PROPOSAL