



# Greenhouse Gas Allowance Auction Revenues Possibly on Track to be Returned to Utility Customers

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On December 20, 2012, the California Public Utilities Commission ("CPUC") issued a decision directing the allocation of revenues generated by the investor-owned utilities' auctioning of greenhouse gas ("GHG") allowances pursuant to California's Cap-and-Trade program. This decision is highly controversial because of the magnitude of these revenues, which are estimated to be \$5.7 billion to \$22.6 billion between 2013 and 2020, and because California's Cap-and-Trade program is one of the first carbon markets to be launched in the United States.

While the CPUC's decision set a methodology for investor-owned electric utilities to return revenues generated from the sale of GHG allowances, many aspects of this process have yet to be determined. Interested parties should consider how California's Cap-and-Trade program may affect their interests as producers of GHG emissions and as utility ratepayers, and whether they wish to become involved in the decision-making process.

## California's Cap-and-Trade Program

AB 32, the Global Warming Solutions Act, was enacted by the California Legislature in 2006. The Act calls for California to reduce its GHG emissions to 1990 levels by 2020. The California Air Resources Board ("ARB"), in close cooperation with the CPUC and the California Energy Commission, established California's Cap-and-Trade program pursuant to AB 32.

Entities covered by the Cap-and-Trade program must account for their emissions by acquiring emissions allowances. As part of the program, ARB granted a direct allocation of allowances to electric distribution utilities in order to protect electric utility ratepayers. The investor-owned utilities are required to auction allowances on a quarterly basis; revenues from those auctions, the first of which was held November 14,

2012, are the subject of the recent CPUC decision.

### **The Allocation of Auction Revenues**

Recently enacted section 748.5 of the Public Utilities Code requires the CPUC to direct the allocation of GHG allowance auction revenues to residential, small business, and emissions-intensive and trade-exposed ("EITE") customers. The CPUC may also allocate up to 15% of auction revenues to clean energy and energy efficiency projects.

In light of the requirements of section 748.5, policy objectives, and comments from interested parties, the CPUC held that 100% of the auction revenues shall be allocated to EITE, small business, and residential customers. Therefore, the decision did not allocate any portion of the auction revenues to clean energy or energy efficiency programs. The decision directs investor-owned utilities to follow the below described methodology for allocating auction revenues:

1. **Return Revenues to EITE Entities.** After funding customer education and administrative expenses, the utilities must first return revenues to EITE customers to help mitigate economic leakage—the migration of businesses (and, hence, emissions) to other states due to competition with less-regulated competitors. An EITE entity is defined as an entity that qualifies for Industry Assistance under the Cap-and-Trade regulation. Further, the CPUC held that a customer in an industry identified by ARB as qualifying for Industry Assistance, but with emissions levels less than 25,000 MTCO<sub>2e</sub>, may also qualify as an EITE entity.
2. **Return Revenues to Small Businesses.** Second, the utilities must return revenues to small businesses as a form of transition assistance. The CPUC defined a small business as any non-residential customer that does not exceed 20 kW of electricity demand in more than three months within the previous twelve-month period.
3. **Offset GHG costs in residential rates.** Third, residential customers will received a distribution on a volumetric basis to neutralize the rate impacts of the Cap-and-Trade program.
4. **Return remaining revenues equally to all residential customers as a "climate dividend."** The remaining revenues will be returned equally on a per-residential account basis as a semi-annual, on-bill credit.

### **Key Next Steps**

First, the investor-owned utilities are directed to file advice letters regarding the tracking of GHG costs and revenues through balancing accounts. The CPUC held that Cap-and-Trade costs shall not be reflected in retail rates until the methodology for returning revenues is implemented. Meanwhile, the utilities will record estimated GHG costs for subsequent recovery in rates using a GHG sub-balancing account. GHG revenues must also be recorded and deferred in a GHG revenue balancing account.

Second, the CPUC will address each utility's forecast and reconciliation of GHG costs and revenues in a proceeding designated for that purpose. During the first three years of the program, the utilities must file applications by August 1 of each year setting forth forecasted GHG costs for EITE, small business, and residential customers for the subsequent year, and estimating GHG revenues to be distributed to these customer groups.

Third, within 60 days of the effective date of the decision, the Energy Division staff will begin a public workshop process to discuss the proposed formulations for returning revenues to EITE and small business customers.

Lastly, this decision only addressed track one of the proceeding. The second and third tracks of the proceeding, relating to the allocation of Low Carbon Fuel Standard credit revenue and GHG procurement, and revenue allocation for gas utilities, respectively, are currently under way.

Nossaman's public utility attorneys can help you effectively participate in the ongoing proceedings regarding the allocation of auction revenues and the CPUC's implementation of portions of California's Cap-and-Trade program.