



July 27, 2009

Christopher Calfee, Special Counsel
ATTN: CEQA Guidelines
California Natural Resources Agency
1017 L Street, #2223
Sacramento, CA 95814

Re: SB 97 CEQA GHG Guideline Rulemaking and Concerns for Siting Power Plants.

Dear Mr. Calfee:

This letter represents a consensus between the Independent Energy Producer's Association¹ ("IEP"), Pacific Gas & Electric ("PG&E"), San Diego Gas & Electric ("SDG&E"), and Southern California Edison ("SCE") (hereinafter collectively referred to as "the entities" or "we"). Collectively, the entities represent many, if not most, of the new applicants for power plants in the State of California. The three utilities serve approximately seventy percent of the electricity customers in California. We therefore play an integral role in California's energy and low-carbon future. We appreciate the importance of California's greenhouse gas ("GHG") goals and that California law now requires lead agencies to address GHG emissions under the California Environmental Quality Act ("CEQA"). The purpose of this letter is to suggest some changes to the proposed Guideline amendments that would more explicitly take account of the need to analyze effects of new power plants in the context of the dynamics of the electricity system. Our recommendations would also account for the effect California's renewable energy policy choices will have on greenhouse gas reductions.

The Warren Alquist Act provides that the California Energy Commission ("CEC") has jurisdiction and is the CEQA lead agency for siting thermal power plants that are 50 megawatts ("MW") or greater in size.² Local agencies are the CEQA lead agencies for thermal power plants that are less than 50MW in size ("0-50MW plants") and for non-thermal facilities of any size. The entities signed below have provided much input into the CEC's proceeding to address GHG emissions of new power plants, and we appreciate that a different challenge is faced by the

¹ IEP is a nonprofit trade association, representing the interests of developers and operators of independent, non-utility owned energy facilities and independent power marketers. www.iepa.com

² See Public Resources Code §§ 25500 and 25120.

California Natural Resources Agency (“Resources Agency”). While the CEC is able to develop policies specifically tailored to power plants, the Resources Agency is charged with developing policies that fit any project subject to CEQA. We are aware of this distinction and have tailored our recommendations accordingly. Below, we provide insights into some of the unique considerations that should be made when lead agencies site power plants. Our specific recommendations (see Attachment #1) are both consistent with existing legal requirements and general enough to apply to all projects.

New Power Plant Siting Poses A Unique Challenge

The electric grid operates as a single machine that is coordinated by system operators in real time. As a general rule, cumulative³ GHG emissions are directly associated with the operation of the entire electric grid as a whole. The system is dispatched in real time to meet instantaneous consumer demand as a whole. That real time dispatch is what governs the operation of individual power plants and which, in turn, governs the GHG emissions associated with the operations of the electric grid. When individual generating facilities do not operate or operate less, there is a reduction in GHG emissions. Generally, power plants are “dispatched” (i.e. ordered to operate by the system operator) based on their efficiencies. In other words, more efficient units typically have lower costs, lower emissions, and thus run more often. Electric facilities that are dispatched last are the least efficient. Thus, the majority, if not all power plants that are being proposed today with the best available technologies are placed in service with the understanding that they will displace less efficient, higher emitting power plants in the dispatch order.

Policy planning also plays an integral role in the amount of GHGs that are emitted during operation of the electric system. The electricity system operates according to a well defined and mandated “loading order”. The loading order was created by the California Energy Action Plan⁴ and guides procurement of electricity by the utilities. The objective of the loading order is to ensure that the state’s electricity system is developed in a cost-effective manner while meeting the long-term interests of consumers, society as a whole, and the environment. The priorities established by the loading order are energy efficiency and other demand-side resources, followed by renewable energy, distributed generation, combined heat and power systems, and finally conventional generation. This loading order is unique to the electricity system and we believe no other source of GHG emissions is regulated in a similar, system-wide manner.⁵

³ Under existing CEQA law, a cumulative impact is considered significant when that impact is “cumulatively considerable.” Applying this qualitative standard necessarily requires application of discretionary judgment based on the facts of a particular project subject to CEQA. As noted in the CEQA Guidelines, “the mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project’s incremental effects are cumulatively considerable.” See CEQA Guidelines Sec. 15064(h)(4).

⁴ California Energy Commission and California Public Utilities Commission *Energy Action Plan 2008 Update*, February 2008

⁵ Dr. Nancy Ryan, Deputy Director of the California Public Utilities Commission, stated at a recent CEC workshop on GHG issues that the ARB’s AB32 Scoping Plan requirements for the electricity sector are themselves based upon the Loading Order, which is already being applied to the IOU’s long term procurement planning.

Implementation of the State's loading order will almost certainly lead to substantial system-wide reductions in GHG emissions. Analyses undertaken in 2008 and referred to in the CPUC and CEC's Final Recommendations to the ARB on Greenhouse Gas Regulatory Strategies demonstrate that even under current policy (termed the "frozen policy" case) GHG emissions will remain level or decline slightly by 2020 (i.e., electricity sector emissions would meet the AB32 goal of achieving 1990 emissions). An increased energy efficiency and renewables case shows a substantial reduction in GHG emissions by 2020.⁶

As the State pursues more aggressive renewable energy goals, renewable power plants are being proposed in far greater numbers than ever before. To support more renewable facilities, many of which are remotely located and/or have variable operational characteristics (e.g. wind and solar), the state will require what are called "dispatchable" units, which are relatively clean fossil generators such as flexible combined cycle units and peaking units. Thus, the need for flexible, clean fossil generating units, generally fueled by natural gas, are directly linked to the state's implementation of an aggressive GHG goal through the expansion of clean renewable generation. These relatively clean natural gas generating units are particularly crucial to ensuring grid reliability as the State brings more renewable plants online. Importantly, both the new, relatively clean natural gas fired units and renewable facilities will displace the emissions of existing power plants, resulting in a net overall reduction in GHG emissions associated with the operations of the electric system in California. These phenomena must be accounted for by lead agencies when they site these facilities.

The Need To Analyze System GHG Emissions: Lead Agencies Must Fully Inform The Public

Our primary concern with the proposed CEQA Guideline Amendments is the need to clearly provide for analysis of GHG emissions of new power plants in the context of the entire electric system. For example, Section 15064.4(b)(1), which addresses how an agency will determine whether GHG emissions are significant, would provide that a lead agency may consider the extent to which a project may increase or reduce GHG emissions compared to the existing environmental setting. We believe Section 15064.4(b)(1) should be clarified to guide lead agencies to consider a project's impact in combination with related past, present, or future projects and activities. Our position is consistent with the fact that GHG emissions should be evaluated in the context of cumulative effects. As currently drafted, Section 15064.4(b)(1) could be read to only allow for projects' emissions to be assessed on an incremental or project specific basis. This result would be untenable for siting new power plants and have the unintended consequence of fostering greater GHG emissions than would otherwise occur. Without the systematic analysis, new power plants may be subject to unnecessary mitigation requirements, thereby discouraging and delaying the development of new, more efficient power plants. Less efficient plants would be run more, leading to the unintended consequence of system-wide increases in GHG emissions.

⁶ Final Recommendations to the ARB on Greenhouse Gas Regulatory Strategies, CEC-100-2008-007-F (October 2008), page 112, available at: <http://www.energy.ca.gov/2008publications/CEC-100-2008-007/CEC-100-2008-007-F.PDF>

IEP, PG&E, SDG&E, and SCE
Letter regarding SB 97 CEQA Guideline Amendments
July 27, 2009

If the fundamental fact that the electricity system operates as a whole is not accurately represented, and lead agencies erroneously assume that a new dispatchable power plant's emissions result in incremental increases in GHG emissions rather than result in overall system-wide reductions, then lead agencies would misinform the public of what the environmental impacts of new power plants are. This would ignore the effects of the State's well-established energy policy and regulatory environment and would be contrary to one of the fundamental purposes of CEQA: to accurately inform the public of any significant environmental impacts. Such misinformation would risk violating an important CEQA mandate, which may in turn subject new power plants to legal challenges.⁷

The SB 97 Amendments Could Be Counterproductive By Frustrating The State's RPS

We are also concerned that lead agencies could erroneously believe that they must require mitigation from projects that in fact have a significant benefit to the system from a GHG perspective. For example, as discussed above, dispatchable generating units designed to serve the peak load are needed to "firm" variable renewable resources such as wind and solar to maintain overall electric grid reliability. If these dispatchable power plants are not analyzed in the context of firming renewable power plants, and their role in displacing relatively higher emitting peaking units is also not considered, their emissions may instead be viewed as incremental. Siting these facilities will become exceedingly difficult. This in turn could jeopardize the reliability of the electric grid, drive up costs borne by ratepayers, and undermine attainment of the State's GHG goals through the implementation of an aggressive Renewable Portfolio Standard ("RPS"). Accordingly, we respectfully encourage the Resources Agency to consider our recommended changes to ensure that the Resources Agency's adopted guidelines do not create impediments to achieving the RPS nor undermine overall grid reliability.

Conclusion

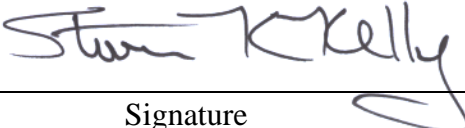
Attached are specific, recommended changes to the proposed SB 97 CEQA Guideline Amendments. These changes are geared towards accommodating an analysis of GHG emissions on a systematic, non-incremental basis. As discussed above, the GHG emissions of new power plants must be analyzed in the context of the entire electric system in order to accurately inform the public of the true environmental impact of new power plants. We may also follow up with additional comments within the current comment period. We welcome the opportunity to meet with you in person, and appreciate your consideration and attentiveness to these important matters.

⁷ CEQA Guideline § 15121; Public Resources Code § 21002.1


IEP, PG&E, SDG&E, and SCE
Letter regarding SB 97 CEQA Guideline Amendments
July 27, 2009

Sincerely,


Steven Kelly Policy Director July 27, 2009
Printed Name Title Date

 on behalf of Independent Energy Producers Association
Signature Entity Name

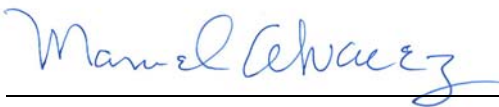
Mark Krausse Director, State Agency Relations July 27, 2009
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 on behalf of Pacific Gas and Electric
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Michael Murray Regional vice President, State Government Affairs July 27, 2009
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 on behalf of San Diego Gas and Electric
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Manuel Alvarez Manager of Regulatory Affairs July 27, 2009
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