August 27, 2009

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

RE: Addendum to IEP, PG&E, SDG&E, and SCE letter regarding SB 97 CEQA GHG Guideline Rulemaking and Concerns for Siting Power Plants.

Dear Secretary Chrisman:

This letter is an addendum to the SB 97 comment letter filed on July 27, 2009 by the Independent Energy Producers Association ("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"). As we discussed in our July 27 comment letter, greenhouse gas ("GHG") emissions of new power plants or transmission must be analyzed in the context of the entire electric system in order to accurately inform the public of their true environmental impact. We also expressed our understanding that the Natural Resources Agency must develop policies that fit any project subject to the California Environmental Quality Act ("CEQA"), and the system-wide analysis may not be appropriate for many projects that are not power plants or new transmission lines. Accordingly, we have revised our recommendations to more clearly enable lead agencies to utilize a system-wide analysis. Below, we also respond to some of the comments received at the August 18th and 20th SB 97 public hearings. Attached to the letter you will find a recent article from *Public Utilities Fortnightly* which provides further support for our assertions that GHG emissions must be addressed in the context of the entire electric system. The recommendations and comments contained herein are intended to be read in conjunction with, and do not supersede, our July 27 comment letter, unless otherwise noted.

Our Specific Recommendations (highlighted and strikethrough)

We offer the following recommendations for Section 15064.4(b) in lieu of the recommendations for 15064.4(b) which we provided in our July 27 comment letter. We urge you to continue to consider all other comments in the July 27 comment letter and attachments.

§ 15064.4. Determining the Significance of Impacts from Greenhouse Gas Emissions.

…

(b) In addition to the analysis that may be undertaken by a lead agency pursuant to section 15064(h)(3), a lead agency may ~~consider~~ include the following considerations when assessing the significance of cumulative impacts from greenhouse gas emissions on the environment:

(1) The extent to which the project, in combination with related past, present, or future projects and activities, may increase ~~or reduce greenhouse gas emissions as compared to the existing environmental setting;~~ the consumption of fuels or other energy resources, especially fossil fuels that contribute to greenhouse gas emissions;

(2) the extent to which the project or related projects may result in increased energy efficiency or a decrease in greenhouse gas emissions from other emitting facilities.

~~(2)~~ (3) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.

~~(3)~~ (4) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such regulations or requirements must be adopted by the relevant public agency through a public review process and must include specific requirements that reduce or mitigate the project's incremental contribution of greenhouse gas emissions, or the significance of such emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.

Rationale For Our Specific Recommendations

The recommendations listed above are necessary to allow lead agencies to undertake a system-wide approach to addressing GHG emissions of new power plants. Our recommendations for Section 15064.4(b)(2) would more specifically allow a lead agency to consider whether the construction of a proposed power plant or transmission line displaces the emissions of other facilities, thus resulting in an overall reduction in GHG emissions. It would also more specifically allow consideration of system-wide reductions from efficiency and renewable energy investments by electricity ratepayers. As we stressed in our July 27 comment letter, GHG emissions of new power plants must be considered in the context of the entire electric grid because new power plants built with the most efficient technologies are almost always

dispatched (ordered to operate) before less-efficient and higher-emitting facilities.[1] In addition, many new power plants will be needed to support intermittent renewable generation, which also leads to system-wide reductions in GHG emissions.

This system-wide consideration of GHG emissions is a prerequisite for lead agencies to accurately inform the public of the true environmental impact of new power plants and transmission. If their GHG emissions are not considered in the context of the electric system, and are instead viewed as incremental, lead agencies will misinform the public of the true environmental impact of new power plants and transmission.

We have carefully evaluated the Natural Resources Agency's draft language in Section 15064.4(b)(1). We believe that while a system-wide approach may be intended by this language, a lead agency may nevertheless not be able to consider system-wide GHG emissions. Use of the term "environmental setting" may create a hurdle to system-wide GHG analysis. The current version of Section 15125(a) defines the phrase "environmental setting" as " the physical environmental conditions in the vicinity of the project. . . from both a local and regional perspective." The use of the term "environmental setting" in Section 15064.4(b)(1) could be construed narrowly to mean areas immediately adjacent to the project site. In the context of new power plants, a narrow construction of the baseline for GHG emissions would be inappropriate because displacement of GHG emissions from new power plants will occur across a much larger geographical area. The electric grid is interconnected throughout the Western states and also includes two provinces of Canada and parts of Mexico. We therefore recommend not using the term "environmental setting" in assessing whether there is an increase or decrease in GHG emissions from a proposed project.

To avoid application of the system-wide approach to addressing GHG emissions to projects where it does not belong, we recommend dividing the consideration of a decrease and an increase in GHG emissions into two subsections: 15064.4(b)(1) and 15064.4(b)(2) (as noted above in our specific recommendations). Under this approach an agency will not necessarily consider an overall reduction in GHG emissions when it is considering an overall increase in GHG emissions. Rather, these analyses should be separate considerations that an agency can include or exclude in exercising its discretion, and thus tailor the system-wide analysis to situations where it is most appropriate.

An Agency Must Have Discretion To Utilize Qualitative and Quantitative GHG Emissions Assessments

At the August 18th and 20th SB 97 Public Hearings, some groups suggested that the Natural Resources Agency should either eliminate the qualitative approach to assessing significance or create a strong preference for a quantitative GHG emissions assessment. These changes would be contrary to the fundamentals of CEQA and untenable for many projects that will require a

[1] In support of this assertion concerning GHG emissions displacement, we have attached a recent study conducted by Navigant Consulting and published in *Public Utilities Fortnightly*, demonstrating how the dispatch of new power plants in various electric markets results in an overall reduction of GHG emissions.

qualitative analysis to accurately inform the public of the true environmental impact. Elimination of the qualitative approach to assessing significance of GHG emissions (Section 15064.4(a)(2)) of the Natural Resources Agency proposal) would be contrary to the existing CEQA Guidelines that recognize a lead agency's discretion in determining the significance of environmental effects. Specifically, Section 15064(b) of the existing CEQA Guidelines provides:

> The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting.

There is no "gold standard," as one court[2] put it, for determining whether a given impact may be significant. An agency must be able to consider a range of methods for describing and quantifying the GHG emissions attributable to a project, because the source and context of GHG emissions can vary greatly depending on the type of project. For example, a new shopping mall may be appropriately considered an incremental source of GHG emissions, and quantification would be a feasible method of assessing GHG emissions. On the other hand, a flexible power plant that supports renewable development would be much more difficult to quantify the net GHG emissions of the project because the net decrease in GHG emissions will be seen across the entire electric grid. Thus, describing this project in qualitative terms will provide a more readily accessible and accurate means for gauging its GHG emissions impact. In sum, maintaining agency discretion to undertake a qualitative or quantitative GHG emissions analysis is an important and legally necessary aspect of the SB 97 CEQA Guideline Amendments and must be maintained.

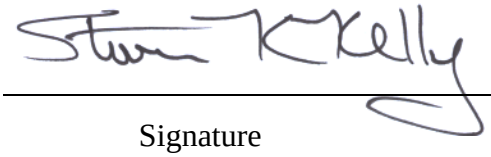
Conclusion

As discussed above and in our July 27 letter, 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. Attached to this addendum letter we have provided a recent article from *Public Utilities Fortnightly* confirming that new power plants displace the GHG emissions of less efficient power plants. We have also recommended specific changes to Section 15064.4(b) in this addendum letter. We appreciate the opportunity to comment here and wish to thank and acknowledge the Natural Resources Agency and OPR staff for their hard work on these important matters.

Sincerely,

[2] *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099, 1107 (3d Dis. 2004).

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



on behalf of Independent Energy Producers Association

Signature Entity Name

Mark Krausse	Director, State Agency Relations	August 27, 2009
Printed Name	Title	Date

on behalf of Pacific Gas and Electric

Signature Entity Name

Michael Murray	Regional Vice President, State Government Affairs	August 27, 2009
Printed Name	Title	Date

on behalf of San Diego Gas and Electric

Signature Entity Name

Manuel Alvarez	Manager of Regulatory Affairs	August 27, 2009
Printed Name	Title	Date

on behalf of Southern California Edison

Signature Entity Name