November 10, 2009

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

RE: SB 97 CEQA GHG Guideline Rulemaking and Concerns for Siting Power Plants; Comments

Dear Mr. Calfee:

This letter provides further comment 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") in response to the Notice of 15-Day Comment Period issued October 23, 2009. We appreciate the careful review by the Natural Resources Agency of issues related to the promulgation of CEQA Guideline amendments to address greenhouse gas matters. The revised text of the Guidelines addresses some of our previous comments, and we generally support their issuance. However, we have some remaining concerns. As noted in our previous comment letters submitted July 27 and August 27, 2009 ("previous letters"), our primary concerns relate to (1) the need to include electricity system-wide analysis in CEQA assessments, and (2) the importance of consideration of reductions through emission-reduction measures adopted by the Air Resources Board in implementation of its Scoping Plan under AB 32. We believe each of these considerations can be addressed in environmental documents prepared in accordance with the revised text of the CEQA Guideline amendments. However, we suggest that some additional clarification on these points be added to the Guideline text or possibly included in the Final Statement of Reasons. Further comments concerning some of the specific sections in the revised text are set forth below.

Section 15064.4

The Entities support all changes that were made in the text. In particular, we support the addition of the phrase "among others" in subsection (b). This clarification is consistent with the statement in the Initial Statement Reasons that "[n]otably, while subdivision (b) provides a list of factors that

may assist public agencies to consider all relevant information, other factors can and should be considered as appropriate."

As noted in our previous letters and the August 27 letter submitted by the California Energy Commission, the term “existing facilities" may be preferable to the term "environmental setting" in the context of electrical facilities. However, we also believe that the existing language in Section 15125 concerning the environmental setting is broad enough to consider the relevant area in the context of electrical generation and transmission facilities. As we noted in our previous letters, the electric grid is interconnected throughout the Western states and also includes two provinces of Canada and parts of Mexico. In addition, GHG and climate change are, of course, a global phenomenon. We also note that the lead agency retains discretion to define the environmental setting in the context of the area relevant to a particular project under the existing language of Section 15125 and applicable case law.

We have one additional change to suggest for subsection (b)(3). This provision references compliance with regulations for requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Federal legislation appears likely to eventually be enacted in addition to state and local requirements, and as to cap-and-trade, may preempt those requirements. Therefore we suggest the inclusion of the word “federal” in this subsection:

> (3) The extent to which the project complies with regulations or requirements adopted to implement a **federal**, statewide, regional, or local plan **or program** for the reduction or mitigation of greenhouse gas emissions.

Section 15126.4

In the most recent version of the CEQA Guideline amendments, the Natural Resources Agency proposes to add new language to Section 15126.4(c). This language would limit mitigation to significant effects, call for monitoring and reporting, and potentially limit mitigation to measures that are not otherwise required. The Entities are generally supportive of the first two amendments and are appreciative that the Natural Resources Agency included amendments to limit mitigation to “significant” effects, consistent with the Entities’ previous comments. However, the Entities are also concerned by and oppose the latter amendment (limitation of mitigation to measures not otherwise required). For the reasons detailed below, the Parties urge the Natural Resources Agency to delete the sentence stating “Reductions in emissions that are not otherwise required may constitute mitigation pursuant to this subdivision.”

The Entities urge the Natural Resources Agency to delete this sentence because it could be read to foreclose mitigation under CEQA for measures that *are* required by other laws. If this interpretation is the Natural Resources Agency’s intent, we urge the Natural Resources Agency to consider that this position is contradictory to existing CEQA law. There is no CEQA provision or judicial interpretation that invalidates a mitigation measure because the measure is also required by another law. So long as there is substantial evidence that the measure will reduce the

significant environmental effect, a lead agency may rely on that measure.[1] A lead agency may within its discretion adopt a mitigation measure that is required by another law.

In addition, this potential limitation on mitigation is impractical given the global nature of GHG emissions and climate change, and could result in paradoxical results. GHG emissions are not dangerous locally, but may become considerable on a global scale. As such, the Entities and numerous agencies have recognized that GHG emissions are best addressed through programmatic measures, such as general plans and AB 32.[2] For example, a California Energy Commission Siting committee report concluded that:

> [A] more comprehensive and programmatic Scoping Plan approach is preferable to a project-by-project analysis and mitigation of impact, as it allows CARB to require GHG reductions from all power plants, including existing ones. By contrast, CEQA provides the Energy Commission with very narrow authority to mitigate the cumulative contribution of impacts that are from the single power plant seeking licensing—often a far more efficient piece of infrastructure than the aging facility it could replace or displace in the utility dispatch order. Thus, requiring mitigation for a new efficient facility could have the paradoxical result of slowing or preventing the replacement of older, far less efficient generation that has higher GHG emissions, increasing the emissions of the system as a whole.

Further, California Energy Commission and California Public Utility Commission analyses show that the AB32 2020 goal (the cumulative impact reduction target) is currently and will continue to be achieved for the electricity sector because of current efficiency and renewable portfolio standard mandates. The emission reduction goal will be substantially exceeded with the addition of enhanced efficiency and renewable mandates adopted in the ARB Scoping Plan, according to the energy agencies' analysis.[3]

While the Entities recognize that some of the AB 32 programs, including cap-and-trade, have yet to be implemented, the Parties also believe that there is no reason to foreclose compliance with AB 32 as mitigation under CEQA. Not only will AB 32 achieve emission reductions at the sector level through a declining cap on emissions, AB 32 may also achieve reductions through use of cap-and-trade allowance revenue. Therefore, if a lead agency determines that substantial evidence supports the notion that programmatic reductions will reduce a potential significant environmental effect, compliance with AB 32 can and should constitute mitigation under CEQA.[4]

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[1] CEQA Guideline § 15126.4(a)(1); Federation of Hillside v. City of Los Angeles, 124 Cal. App 4th 1180 (2004).
[2] See for example California Energy Commission, *Committee Guidance on Fulfilling California Environmental Quality Act Responsibilities For Greenhouse Gas Impacts in Power Plant Siting Applications* , at P. 2 (March 2009), available at: http://www.energy.ca.gov/2009publications/CEC-700-2009-004/CEC-700-2009-004.PDF
[3] See California Energy Commission and California Public Utilities Commission, *Final Opinion and Recommendations on Greenhouse Regulatory Strategies*, P. 112 (October 2008); CEC-100-2008-007-F, available at: http://www.energy.ca.gov/ghg_emissions/index.html
[4] These same considerations must also be included in a lead agency's analysis of whether an electricity infrastructure project is "cumulatively considerable".

In sum, we urge the Natural Resources Agency to delete the aforementioned sentence from Section 15126.4(c) in order to remain consistent with existing CEQA law, and to avoid the paradoxical result of discouraging projects that may in fact have a beneficial greenhouse gas effect.

Sections 15130 and 15183.5

We support the addition of the word "significant" in these sections. This clarifies that mitigation measures are only required in the event that a lead agency has concluded that emissions from a project are cumulatively considerable. This change is consistent with subsection (a)(3) of section 15126.4. The inclusion of “significant” here is also consistent with the explanation in the Initial Statement of Reasons that a "zero threshold" is not legally required under proposed section 15064.4 (b)(1).

Appendix G

Appendix G in the revised text includes an introductory section concerning the evaluation of environmental impacts. This introductory section is in the current CEQA Guidelines, but apparently, the introductory section was inadvertently omitted from the proposed revisions. The introductory section is now included in the revised SB 97 Guideline Amendments. The entities suggest that subparagraph (2) be revised as follows:

> All answers must take account of **the impacts or benefits of** the whole action involved, including off-site as well as on-site, cumulative, as well as project level, indirect as well as direct, and construction as well as operational impacts.

Adding this additional language concerning impacts or benefits will more clearly encourage analysis of the overall context of a project, particularly in the case of cumulative impact analysis.

Section VII of the environmental checklist in Appendix G addresses greenhouse gas emissions. We suggest that this section be revised as follows to more specifically clarify that the relevant analysis should ask whether the project under review adds considerable greenhouse gas emissions to background greenhouse gas levels:

> Generate greenhouse gas emissions, either directly or indirectly, that may **be cumulatively considerable** ~~have a significant impact on the environment~~.

As noted throughout the Initial Statement of Reasons, the impact of a project’s greenhouse gas emissions is appropriately analyzed as a cumulative impact and the applicable test for significance is whether the impact is “cumulatively considerable”.

Thank you for considering these comments and for your careful consideration of the Entities' previous comments.

Sincerely,

Printed Name	Title	Date
Steven Kelly	Policy Director	November 10, 2009

Signature — on behalf of Independent Energy Producers Association (Entity Name)

Printed Name	Title	Date
Mark Krausse	Director, State Agency Relations	November 10, 2009

Signature — on behalf of Pacific Gas and Electric (Entity Name)

Printed Name	Title	Date
Michael Murray	Regional Vice President, State Government Affairs	November 10, 2009

Signature — on behalf of San Diego Gas and Electric (Entity Name)

Printed Name	Title	Date
Manuel Alvarez	Manager of Regulatory Affairs	November 10, 2009

Signature — on behalf of Southern California Edison (Entity Name)