



July 22, 2005

VIA U.S. AND ELECTRONIC MAIL

California Energy Commission  
Dockets Unit  
Attn: Docket No. 04-CCCA and Docket No. 04-IEP-1B  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

Re: Comments on Global Climate Change Staff Paper in Support of the  
2005 Integrated Energy Policy Report

The Center for Energy & Economic Development (CEED) submits these comments in response to the California Energy Commissions' June 2005 Staff Paper entitled "Global Climate Change" published "In Support of the 2005 Integrated Energy Policy Report."

CEED is a non-profit organization formed by the nation's coal-producing companies, railroads, a number of electric utilities, equipment manufacturers, and related organizations to educate the public, including public-sector decision-makers, about the benefits of affordable, reliable and environmentally compatible coal-fueled electricity. As an active participant in past California Public Utility Commission (CPUC) and California Energy Commission (CEC) workshops, we offer our comments on the Staff Paper in a sincere desire to participate with California in making voluntary contributions to greenhouse gas reductions as expeditiously and cost-effectively as possible. In order to accomplish this, CEED urges California agencies to "rethink" the need for a rule with the suggested extent of regulatory mandates contained in the current proposals.

The Staff Paper states that "while individual states cannot combat global warming alone, by acting together states can significantly reduce GHG emissions. State government leadership is necessary to reverse the trend in GHG emissions, and to achieve a sustainable, low carbon future in California." (Report, p.1, "Global Climate Change and California"). The Staff Paper indicates its primary purpose is to "guide the formulation of policy options ..... for addressing climate change, and recommended next steps." (Report, p.2). Chief among the Staff Paper's recommendations are "forging regional partnerships to address global climate change." (Report, p.18). The Report's stated "Options for Addressing Climate Change" are stated to have been developed exclusively from "research and analysis by the Center for Clean Air Policy (CCAP), the Tellus Institute, and other consultants funded through the Public Interest Energy Research (PIER) program to evaluate and rank these potential strategies." (Report, p. 21). Under the heading entitled "Power Sector Options," the Report states that:

"CCAP is exploring several measures to address power sector GHG emissions, drawing from experience with the Northeastern States and the European Union, including:

- Regional or statewide emissions caps.
- Emissions portfolio standards.
- Offset requirements.
- Cap on electricity production from load serving entities.”

CEED supports state discretion to choose whether and how Climate Change concerns are addressed, with a preference for actions that are consistent with the federal government’s carbon intensity reduction strategies.

This position is based partly due to the recent decision by the U.S. Court of Appeals for the D.C. Circuit concerning whether the U.S. Environmental Protection Agency may be compelled to regulate greenhouse gases (GHG) under the federal Clean Air Act (CAA). *See, Massachusetts v. Environmental Protection Agency*, No. 03-1361 *et al.* (D.C. Cir. July 15, 2005). The Court in *Massachusetts* reviewed a decision of the U.S. EPA denying a petition by a group of environmental organizations that asked EPA to regulate GHG emissions from new motor vehicles. EPA ruled that it did not have authority to regulate GHG emissions under the CAA and, even if it did, EPA would decline to exercise that authority on science and policy grounds. Although the environmentalists petition was directed to new motor vehicle regulation, it was widely understood that the petition potentially presaged GHG regulation of all significant sources.

The Court in *Massachusetts* upheld EPA’s denial of the petitions. The Court stated that it would not address the issue of whether the CAA grants EPA authority to regulate GHG emissions but would instead assume for the sake of argument that it did. The Court concluded that, even if the CAA authorized EPA to regulate GHG emissions, EPA correctly exercised its policy judgment to decline to exercise that authority.

The Court relied on CAA §202(a)(1), which directs EPA to regulate motor vehicle tailpipe emissions if “in his judgment” such emissions “may reasonably be anticipated to endanger public health or welfare.” The Court ruled that EPA had appropriately concluded that there is too much “scientific uncertainty” (slip op. at 13) to make this judgment. The Court’s decision includes an analysis of the National Research Council’s 2001 *Climate Change Science: An Analysis of Some of the Key Questions*, which is the principle scientific document on which EPA relied. The Court noted that this report concluded that “a causal linkage” between GHG emissions and global warming cannot unequivocally be established; that increases in CO2 levels have not always been matched by increases in temperature; that there is considerable uncertainty in current understanding of the climate system; and that assumptions about effects of future GHG emissions have proven to be erroneously high. Slip op. at 10-13.

The Court also ruled that, in exercising “judgment” in determining whether to regulate GHG emissions, EPA appropriately examined policy matters in addition to strictly scientific matters, citing *Ethyl Corp. v. EPA*, 541 F.2d 1 (D.C. Cir. 1976). The Court upheld EPA’s consideration of the fact that new motor vehicles are only one of many sources of GHG emissions; that unilateral U.S. GHG efforts might undermine international efforts; that the federal government was pursuing a GHG program, including voluntary efforts and technology-promotion; and that the Department of Transportation was pursuing fuel efficiency standards.

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We hope this information is helpful to the Commission and can be made part of any future Commission strategies.

Sincerely,

A handwritten signature in black ink that reads "Terry Ross". The signature is written in a cursive style with a large, sweeping "T" and "R".

Terry Ross  
West Region Vice President

DN:32109181.1