

**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

<b>DOCKET</b> <b>08-GHG-011-1</b>	
<b>DATE</b>	OCT 08 2008
<b>RECD.</b>	OCT 10 2008

**Informational Proceeding on Methods for )  
Satisfaction of California Environmental )  
Quality Act Requirements Relating to )  
Greenhouse Gas Emission Impacts of )  
Power Plants )**

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**Docket o. 08-GHG-01  
Order No. 08-1008-11**

**ORDER INSTITUTING INFORMATIONAL PROCEEDING**

**Introduction**

California has assumed a leadership role in the world's effort to avoid the adverse effects of global climate change, first through executive orders issued by Governor Schwarzenegger and then by the enactment and ongoing implementation of AB 32 (2006, Nunez). The California Attorney General has stated that agencies that perform environmental analyses required by the California Environmental Quality Act (CEQA) are required to consider the greenhouse gas (GHG) emission implications of their regulatory decisions. As lead agency for power plant siting under California law, the Energy Commission has licensing authority for all thermal power plants with capacity of 50 megawatts (MW) or more that are proposed for construction within the state (Public Res. Code § 25519 subd. (c)). The Energy Commission's licensing process, which includes extensive environmental impact review, has been certified as the functional equivalent of the CEQA environmental impact review (EIR) process (Public Res. Code § 25541.5). In those cases where the Commission exempts a project from the requirement to obtain certification (Public Res. Code § 25541), it must find that the project will either have no significant adverse environmental effect or has mitigated any such impact to a level of insignificance. Under some conditions, the Commission may certify a facility even if it does not fully conform to applicable laws on grounds of achieving public convenience and necessity (Public Res. Code § 25525).

The Energy Commission's Siting Committee asserts that this lead agency responsibility requires a reasonable effort be made to determine if such projects have a significant adverse environmental impact resulting from their contribution to atmospheric emissions of GHGs, and if so, to mitigate such impacts if feasible. A fundamental element of this determination will be the forthcoming requirements to be placed on all electricity generators - old or new - by the California Air Resources Board as it translates its broad "scoping plan" for the entire AB32 GHG mitigation effort into specific regulatory obligations. The Committee has thus proposed commencement of an informational investigation designed to assist the Commission in determining (1) how the GHG emission contribution of any proposed power plant, positive or negative, should be considered, (2) how the Commission should determine if a proposed

project's construction and/or operation will result in significant level of GHG emissions, (3) what, if any, mitigation is feasible, and (4) how this determination coordinates with forthcoming ARB requirements or other programmatic approaches for the same power plants.

### **Purpose of This Investigation**

The Commission seeks comment from interested stakeholders on how its responsibilities under CEQA to assess the GHG impacts of proposed new facilities should be satisfied. A series of questions intended to guide stakeholder input appears below.

The results of this proceeding will require a careful and thorough analysis of the total costs and benefits of permitting new generation. The Commission therefore looks to this investigation not only to develop information allowing the Commission to perform the required CEQA analysis for new project proposals at a reasonable cost, but also to do so with reasonable accuracy so that any required mitigation does not unduly discourage the development of efficient new generation that may be necessary. Examples of when a facility may be necessary include: (1) to assist in the integration of low-GHG emitting renewables, (2) to achieve other desirable environmental goals (e.g. the replacement of generators that use once through cooling), and (3) to ensure continued reliable service and accommodate load growth.

### **Procedure Going Forward**

The Siting Committee is authorized to conduct this information proceeding and then bring recommendations to the full Commission on how its lead agency obligations should be discharged. The Siting Committee will solicit written comment and conduct one or more public hearings to allow interested stakeholders to provide their views, recommendations and any information that may assist the Commission in performing its responsibilities. The questions provided below are intended to begin this discussion, though the Siting Committee is authorized to explore additional questions that may be developed during the course of this proceeding.

The Commission requests that all Siting Committee hearings under this proceeding be noticed to include attendance by commissioners who are not members of the Siting Committee who may choose to attend. The Commission requests that the Siting Committee endeavor to make recommendations to the Commission and its staff as soon as possible and provide at least an interim report on its progress at the Commission's Business Meeting of December 3, 2008.

The Commission anticipates that some of the issues raised in this OII may be considered in the Integrated Energy Policy Report (IEPR) and the Siting Committee is encouraged to refer such issues to the IEPR Committee when appropriate and to augment the IEPR record with materials from this proceeding as necessary.

### **Initial Questions to be Addressed**

1. GHG emissions have a cumulative impact on climate change that is global by nature. Are such global impacts appropriately subject to CEQA?



2. Assuming CEQA does apply, what should be the CEQA “threshold of significance” for GHG emissions from a given project?
  - A. CEQA requires that a cumulative impact be “cumulatively considerable” for it to be significant, and air districts typically set quantitative thresholds for criteria pollutants based on this concept. What GHG emission levels are less than “cumulatively considerable?”
    - power plant construction emissions?
    - “peaking” gas-fired power plants (however defined)?
    - Emissions from power plants that do not exceed limits set by AB 1368 regulations?
  - B. Have other agencies adopted thresholds of significance for GHG emissions?
3. What is the proper CEQA “baseline” for determining the significance of GHG emissions?
  - A. Are all new power plant projects with emissions that exceed some threshold level “cumulatively considerable” (so called “zero baseline”)?
    - If so, would the zero baseline apply to solar facilities that burn some natural gas for startup or for generation augmentation?
  - B. Alternatively, should the baseline be the current GHG emissions of the entire electricity generation “system” comprised of all in-state generation and all out-of-state imports? In other words, if the new power plant reduces the State’s overall GHG emissions, would this make the impact less than significant? If this “system” perspective has merit, what analyses might be required to demonstrate, to the degree appropriate, that there is no significant “system” impact from a facility?
  - C. Should certain generation technologies be considered categorically less than significant?
    - Solar or other renewable facilities?
    - Gas-fired peakers that help integrate renewables?
    - Re-powered coastal gas-fired facilities that are more efficient than existing facilities and eliminate once-through cooling impacts on the marine environment?
    - Gas-fired plants found needed to protect system reliability
4. If an individual power plant is found to have a significant cumulative impact due to GHG emissions, is it feasible to mitigate this cumulative impact? (CEQA defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, legal, and technological factors.”)

- A. Must mitigation meet the standards that apply to criteria pollutants—e.g., that such mitigation must be certain, enduring, and not duplicative of other measures.
  - B. Must mitigation be “pound for pound?”
  - C. What feasible mitigation should be required for power plants? [If net system increases from a project are too uncertain to be quantified, should this affect either the measure or the kind of mitigation?]
  - D. If the Commission were to find a power plant’s cumulative impact to be significant, and if impacts cannot feasibly be mitigated to a less than significant level, what if any basis should support CEQA “override” findings to allow project approval?
5. CEQA provides for the use of programmatic approaches for addressing cumulative impacts, such as for air quality criteria pollutant reduction plans, or water quality emission plans. Is it more appropriate to mitigate power plant GHG emissions case-by-case or with a more encompassing program?
- A. Could CARB’s AB 32 program be such a programmatic approach?
  - B. If a power plant is consistent with an adopted programmatic approach, should the Commission find that GHG impacts from such a facility are less than “cumulatively considerable?” (See CEQA Guideline Section 15064(h)(3).)
  - C. If CARB should require a “cap and trade” program pursuant to AB 32, should the adoption of such program change or negate Commission project-by-project mitigation?
    - Should the Commission be focusing on interim mitigation for the period prior to the operative effect of a CARB GHG emissions reduction program?
  - D. Should programmatic mitigation require GHG reductions from “load serving entities” such as utilities rather than from individual in-state power plants?
  - E. Are there other programs that should be considered?
6. The Commission is authorized to certify a facility (Public Res. Code § 25525) even if it does not conform to applicable state, local, or regional standards, ordinances or laws if it determines that the facility “is required for public convenience and necessity.”
- A. Should this general provision of law be understood to allow an override of unmitigated GHG emissions if the Commission believes the facility is “needed.”



- B. If "need" becomes a rationale for certification of unmitigated facilities, is there a limit on the amount of capacity "needed"?
  - C. If there is a quantitative limit on need, how might such a limit be established and periodically updated?
7. The Commission has licensed numerous power plants that have not yet been constructed, some of which have had licenses expire and others have been surrendered voluntarily. To what extent should such "failure" to construct and operate a licensed facility be taken into account in determining whether a power plant's emissions are significant?

### **Designation of Participants**

Section 1222(b) of the Resources Code states that in informational proceedings the Commission shall "require the presence and participation of such persons as the commission may direct, consistent with the nature and purpose of the proceedings." In this proceeding, we initially require all investor-owned and all publicly-owned electric utilities in California to participate. We invite the Governor's Office of Planning and Research, the CPUC, the ARB, the Attorney General and the CAISO to collaborate with us in this proceeding. Publicly-owned utilities may be represented by appropriate associations such as Northern California Power Authority (NCPA) and Southern California Public Power Authority (SCCPA). We also invite the participation of independent generation companies, particularly those who have applications for certification or exemption before the Commission or who anticipate filing such applications in the future. In addition, we also encourage participation by other stakeholders including customer advocates, environmental advocacy groups, industry associations, energy service providers, local government agencies and academic institutions. The Siting Committee may require or request the participation of other persons.

### **Public Participation**

The Energy Commission encourages full and free public participation. Petitions to intervene are not necessary. Although written comments are preferable, at any hearing, workshop, or other public event all persons shall be afforded a reasonable opportunity to make oral comments on the subject matter of the event. All written comments shall be addressed to:

Docket No. 08-GHG-1  
California Energy Commission  
1516 Ninth Street, Mail Station 4  
Sacramento, California 95814-5512

Nine copies of all written materials shall be provided unless it would impose an undue hardship. The Siting Committee shall establish deadlines for comments. The Executive Director, in conjunction with the Public Adviser, shall ensure that this order, and notice of the time and place for all hearings, are distributed to all interested persons. The Executive Director shall also ensure that drafts of proposed committee recommendations are made available to interested

persons and the Public Adviser sufficiently in advance of consideration or adoption by the Energy Commission to allow timely public participation.

The Energy Commission's Public Adviser is available to help any person who wants to participate in this proceeding. Please call (916) 654-4489 or toll-free in California at (800) 822-6288, or e-mail [pao@energy.state.ca.us](mailto:pao@energy.state.ca.us), for assistance.

October 8, 2008

ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

  
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