



October 24, 2008

California Energy Commission
Dockets Office, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET	
08-GHGOII-1	
DATE	OCT 24 2008
RECD.	OCT 24 2008

Re: Docket No. **08-GHG 0II-1**
Greenhouse Gas Emission Impacts of Power Plants

Dear Commissioners Byron and Douglas:

The AB 32 Implementation Group (AB 32 IG) represents large and small businesses that are vital to California's economy and that provide hundreds of thousands of jobs. Our mission is to be a constructive voice in the process to implement AB 32 to ensure that greenhouse gas emission reductions are achieved while maintaining the competitiveness of California businesses and protecting the interests of consumers and workers.

As requested in the CEC Siting Committee's notice of your workshop, the AB 32 IG is pleased to provide our initial comments on the initial questions outlined in the CEC's October 8, 2008 Order Instituting Informational Proceeding.

As you know, SB 97 (2007) requires the Office of Planning and Research (OPR) to develop guidelines for addressing GHG emissions under CEQA by July 1, 2009. OPR has requested CARB to provide input to that process, and the AB 32 IG has submitted comments to CARB in support of that effort. We have adapted those comments to answer many of your workshop questions below. We may submit additional comments on the October 28, 2008 workshop by your November 7, 2008 deadline.

Our initial comments, together with the corresponding initial CEC questions follow:

-- More --

Initial Questions to be Addressed *(with our initial responses in italics)*

2. Assuming CEQA does apply, what should be the CEQA “threshold of significance” for GHG emissions from a given project?

Response: In determining whether a proposed project’s GHG emissions may have a significant impact on climate change, the Commission should consider whether, among other factors, the project complies with emissions standards promulgated by the California Air Resources Board under the California Global Warming Solutions Act of 2006, the Air Districts, or by other state agencies or commissions applicable to new and existing greenhouse gas emissions sources. The Commission may determine that a project does not have a significant impact on climate if the project will meet applicable standards promulgated by CARB, Air District or other state agencies or commissions.

If no such standards currently are in effect, and as to projects that the Commission anticipates will be subject to regulations promulgated by CARB for the reduction of greenhouse gas, then the Commission may evaluate whether the project will result in a net increase in energy efficiency or decrease in the carbon intensity of the underlying economic activity or the state’s overall carbon footprint. If such a project results in a net improvement in energy efficiency or a net decrease in carbon intensity of the underlying economic activity or the state’s overall carbon footprint, then the Commission may determine that a project does not have a significant impact on climate.

Given the nature of GHG emissions and global warming concerns, determining the “significance” under CEQA of emissions from a single project is an area of uncertainty. A default rule based solely on a project’s overall emissions increase in numeric terms could have the counterproductive effect of driving highly desirable projects outside of California, with the further unintended effect of causing global GHG emissions to rise as the distance between energy supply and consumption increases. An imbalance between energy supply and consumption increases GHG emissions due to transmission losses (in the electricity sector) and increased transportation costs (in the fuels sector). Using a default “mass emissions” or “one molecule” approach to determining project significance would chill development of important state projects by adding costly mitigation that may be unnecessary and unjustified. Additionally, costly mitigation of projects that are desirable from an energy-efficiency perspective will unduly raise project costs, with a regressive impact, including a public health detriment, impact on education, significant job losses and chilling the building of affordable housing.

3. What is the proper CEQA “baseline” for determining the significance of GHG emissions?

Response: In evaluating the effects of the emissions of a greenhouse gas or gases (as defined in Health and Safety Code section 38505(g)), before the adoption by the California Air Resources Board of applicable regulations under the California Global Warming Solutions Act of 2006, the Commission should rely upon the existing conditions as a baseline from which any significant environmental effects can be determined, as set forth in Sections 15125 and 15126.2, subd. (a) of the CEQA Guidelines. Existing conditions may be based on a representative multiyear average.

The Commission’s approach should reflect a “current conditions” baseline for climate change and GHG emissions. “Current conditions” may be defined as a representative multiyear average. While AB 32 mandates certain reductions to 1990 conditions, CEQA guidelines and case law reflects that current conditions are the baseline for the evaluation of significant impacts of a particular project. See Guidelines, §§ 15125, 15126.2, subd. (a). Thus, in the context of GHG mitigation, the focus of mitigation should be new or net emissions above the existing baseline as a significant effect. Once AB 32 regulations are in place, the Commission may evaluate whether a project is consistent with those regulations, but that should not render the 1990 emissions level as the baseline for CEQA purposes.

- A. Are all new power plant projects with emissions that exceed some threshold level “cumulatively considerable” (so called “zero baseline”)?

Response: No, see above.

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.”)

Response: Compliance with regulations of the California Air Resources Board issued pursuant to the California Global Warming Solutions Act of 2006, and any consistent regulations of an Air District, to reduce carbon and other greenhouse gases in the environment, including participation in programs, market mechanisms, offsets and other methods to reduce global, national, state and regional greenhouse gas levels, may be relied upon by the Commission as

mitigation. Additionally, in determining what is feasible mitigation for the effects of greenhouse gas emissions of a proposed project, the Commission may consider as mitigation any combination of reducing emissions, providing carbon offsets, and making net improvements in energy efficiency or the overall reduction of the state's carbon footprint, without requiring a complete elimination or total reduction of emissions. Given the global nature of greenhouse gas effects, mitigation measures need not be limited to local programs, methods, offsets, credits or reductions.

In addition to reflecting a "current conditions" baseline, feasible mitigation for the effects of GHG emissions may include any combination of reducing emissions, providing carbon offsets, and making net improvements in energy efficiency and the overall reduction of the state's carbon footprint, as may be suggested in forthcoming CARB regulations and actions. Under CEQA, the mitigation of GHG emissions or the effects of GHG emissions does not require eliminating the emissions to "zero" (the so-called "zero" emissions approach). Additionally, compliance with AB 32 requirements should serve as mitigation. That is to say, agencies may be required to reduce GHG emissions as part of the AB 32 process, including by measures identified in the Scoping Plan by CARB. These measures may be direct regulatory requirements to reduce GHG, participation in a market mechanism, such as cap-and-trade program, contribution to carbon offsets, voluntary programs, or any combination of options to reduce GHG from activities in the state. Compliance with CARB's rules and regulations to reduce carbon and other GHG in the environment ultimately should satisfy CEQA mitigation requirements for Commission siting decisions. They should also reflect that appropriate mitigation measures are not required to be limited only to local credits and reductions.

Additionally, the Commission may also consider as mitigation for greenhouse gas emissions the use of local energy production, including co-generation processes and integrated combined heat and power systems that reduce the need for transmission and use of non-locally generated power. Co-generation, for example, capitalizes on existing project resources to generate power more efficiently and with less greenhouse gas emissions than would be produced if the project were to get its power off the grid.

- 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?

Response: Pursuant to section 21081 of the Public Resources Code in CEQA, where adequate mitigation or alternatives are infeasible, the Commission should consider the need to balance, as applicable, the economic, social, technological, or other benefits, which shall include environmental benefits and those relating to increased, improved and more efficient energy production, consumption or efficiency resulting from the project, against the impact of increased greenhouse gas emissions. If the specific economic, social, technological, environmental or other benefits of a proposed project outweigh the unavoidable increase in greenhouse gas emissions, the environmental effects may be considered "acceptable."

As it relates to local emissions of GHG and their contribution to overall global climate change, the concept of balance is vital to the question of whether unavoidable adverse effects should be tolerated. If a significant effect is determined to exist, there should be adequate room to evaluate and apply overriding considerations after adoption of all feasible mitigation. Current Guidelines provide for Overriding Considerations that recognize the balance concept and the weighing of benefits with adverse effects. Failure to allow a cost-benefit analysis as an analytical tool in the evaluation of GHG would necessitate potentially serious consequences to the economy and growth, including "smart growth" and "clean energy."

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?

Response: See responses to items 2 and 4 above.

- A. Could CARB's AB 32 program be such a programmatic approach?

Response: Yes. See responses to items 2 and 4 above.

- 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).)

Response: Yes. See response to items 2 above.

- 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?

Response: Yes. See response to items 4 above.

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.”

Response: See response to item 4D above.

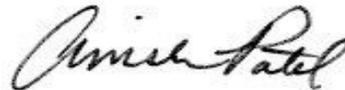
- A. Should this general provision of law be understood to allow an override of unmitigated GHG emissions if the Commission believes the facility is “needed.”

Response: See response to item 4D above.

Sincerely,



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