STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:	)	
	)	Docket No. 08-GHG OII-1
Informational Proceeding on Methods for	)	
Satisfaction of California Environmental	)	
Quality Act Requirements Relating to Greenhouse	)	
Gas Emission Impacts of Power Plants	)	
	)	

COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION

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Comments of the Independent Energy Producers Association

The California Independent Energy Producers Association ("IEP") is pleased to comment in the Order Instituting Informational proceeding on Greenhouse Gas ("GHG") Emission Impacts of Power Plants. IEP appreciates the importance of this proceeding and the goal of addressing how the Energy Commission should assess GHG impacts from proposed new power generation facilities. Responses to the questions posed in the Order follow.

Introduction and Summary

IEP recognizes the importance of achieving GHG reductions to address global climate change. Moreover, IEP supports power plant emission rules to address this problem which are technically and economically achievable, consistent with the state's overall GHG reduction program and do not produce regulatory overlap, conflict, duplication or inconsistency. Currently, IEP members achieve significant greenhouse gas emission reductions beyond "business as usual" scenarios by using the best available technologies and meeting emission performance standards set forth in SB 1368. These efforts should be recognized within California Energy Commission's review pursuant to the California Environmental Quality Act ("CEQA") and should be deemed sufficient for a finding of no significant adverse environmental impact. If further GHG emission reductions are going to be required by the CEQA processes, a programmatic perspective must be used. The Commission should take into account existing regulatory regimes in evaluating how to modify the CEQA review process.

The environmental advantages associated with new capacity additions must not be undermined by modifications to the CEQA review process. New capacity additions, by replacing and/or repowering older generating capacity from older power plants are in the State's interest. Therefore the Commission should consider both the positive and negative emission impacts that a proposed project will have on the entire system. Furthermore, repowered and new gas fired electric generation facilities are recognized by the California ISO and other state agencies as essential components of the State's mandated RPS standards and goals to reduce greenhouse gas emissions.

If GHG emissions impacts are to be considered without accounting for net GHG reductions that a proposed new capacity addition and/or repowering project will have by displacing older facilities' generation, then the new process will violate CEQA by misrepresenting the true environmental impacts of projects. Moreover, such an approach will misinform key policy decisions and have the unintended consequence of discouraging new capacity additions or repower projects in favor of continued operation of less efficient existing facilities. This result will have the perverse impact of causing greater GHG emissions. When evaluating feasible mitigation measures, the Commission should allow compliance with other laws regulating GHG emissions to count as mitigation of a significant environmental impact. The Commission should also consider the existing gap in the carbon control technologies. Until there is some form of commercially available and cost-effective means to eliminate carbon emissions, project developers have limited means to do so. Furthermore, the existing lack of protocols governing the use of offsets poses an additional hurdle that must be addressed.

Responses to Questions Posed in the Order

1. **Are Power Plant GHG Emissions Appropriate For CEQA Review?**

   Response: Power Plant GHG Emissions Are Appropriate For CEQA Review Provided That Existing Regulatory Regimes Covering GHG Emissions Are Taken Into Account.

California energy developers are facing several layers of greenhouse gas regulation. Both SB 1368 and AB 32, once implemented, will regulate GHG emissions. Now SB 97 implicitly recognizes that the impacts associated with GHG emissions are to be considered in a CEQA analysis. While the question of whether to address GHG emissions in a CEQA analysis may be moot, the resolution of how to evaluate GHG impacts in a CEQA analysis may pose a significant and costly layer of regulation. To avoid increased costs of regulation, the Energy Commission must be cognizant of existing regulations. Failure to do so could lead to increases in project development costs, discourage project development in state, and create a disincentive for repowering inefficient generation. If these effects occur, the efforts to amend the CEQA process may turn out to be counterproductive by discouraging the net emission reductions posed by new capacity additions and/or repowering projects that utilize efficient technologies.

Existing GHG regulatory regimes should be accounted for in a CEQA analysis when evaluating a proposed project's mitigation measures. If a project implements measures contained within the California Air Resources Board ("CARB") AB 32 Scoping Plan and/or complies with emission performance standards set forth by SB 1368, these measures should constitute mitigation of any alleged significant adverse cumulative environmental impact. If offsets are allowed for compliance with AB 32, the same offsets should be deemed available for mitigating an alleged significant environmental impact. By creating some cohesion between AB 32, SB 1368 and the Energy Commission's CEQA process, the Energy Commission will avoid the counterproductive outcome of discouraging new projects that reduce system emissions.

2. **What Should Be The CEQA Threshold Of Significance For GHG Emissions From A Given Project?**

   Response: In The Absence Of Clearly Defined Thresholds Of Significance for GHG Emissions, The Energy Commission Should Avoid Developing A Specific Numeric Threshold That Is Applied On a Project Specific Basis.

Since climate change occurs on a global scale, the exact quantity at which GHG emissions will lead to even a cumulative significant impact is uncertain. Absent certainty in this area, assigning a specific numeric threshold at which a particular quantity of emissions poses a significant impact could lead to the counterproductive results discussed in Question 1 without assurances that GHG induced impacts will be avoided.

The Energy Commission should consider existing GHG regulations in determining whether a project would create a significant impact. AB 32 sets statewide goals that will encompass both existing and future sources of GHG emissions. In doing so, AB 32 essentially creates a state-wide significance threshold for California's GHG emissions. Thus, the Energy Commission

could look to compliance with AB 32 as meeting a significance threshold for a given source. In the interim period before AB 32 is implemented, compliance with emission performance standards, progress towards achieving energy efficiency goals, use of renewable energy, and a net decrease in carbon emissions from siting a particular power plant are all bases upon which the significance of a power plant's emissions could evaluated.

2a. What GHG Emission Levels Are Less Than Cumulatively Considerable?

Response: Consistent With The AB 32 Scoping Process, The Energy Commission Should Implement A De-Minimis Threshold Below Which Emissions Are Not Considered Cumulatively Significant.

Projects that will create no significant cumulative GHG emissions impact should fall within a de-minimis threshold. If no de-minimis threshold is applied, the benefit these projects create will be forgone as a result of unnecessary CEQA analysis and mitigation of non-existent GHG impacts. Adopting a de-minimis threshold will avoid this result. At this time IEP is unable to recommend a specific de-minimis threshold. However, IEP recommends that a "no-less" than principle should apply between the agencies developing de-minimis thresholds such that there is consistency in treatment.

2b. Have Other Agencies Adopted Thresholds Of Significance For GHG Emissions?

Response: Both the CARB And South Coast Air Quality Management District ("SCAQMD") Are Developing Proposals For GHG Significance Thresholds.

At this early point, IEP is unable to endorse either proposal being developed by SCAQMD and CARB. However, one noteworthy aspect of the SCAQMD proposal is the attempt to integrate significance thresholds for GHG emissions with the AB 32 scoping measures. SCAQMD proposes a tiered analysis in determining whether a project's emissions are significant. One of the tiers (in part) allows a finding of non-significance if the project complies with AB 32 scoping measures.

3. What Is The Proper CEQA "Baseline" For Determining The Significance For GHG Emissions?

Response: CEQA Provides That Potential Impacts Should Be Measured Against Existing Environmental Conditions.

CEQA Guidelines § 15125(c) provide that an EIR include a description of the environmental conditions as they exist at the time the Notice of Preparation is published. This description forms the baseline from which the significance of an environmental impact is measured. In the context of GHG emissions, existing levels of GHG emissions should be used to determine the baseline from which a proposed project's GHG emission impacts are measured. The Commission should use a multi-year average to determine to determine current levels of GHG emissions.

3c. Should Certain Generation Technologies Be Considered Categorically Less Than Significant?

<u>Response</u>: There Should Be Categorical Exemption from a CEQA GHG Analysis for Renewable Energy, and Repower Projects to Promote California's Interests.

Since the effects of global climate change are not localized, net benefits to the entire grid would likely lead to net reductions in GHG emissions. When a renewable facility is sited, that facility replaces non-renewable capacity that would have otherwise been operated to meet load. In this regard, increased development of renewable energy has been referenced as an integral measure in achieving the AB 32 goals. The Commission should encourage development of these sources by streamlining the CEQA GHG analysis for renewable technologies.

Repowering projects (including both baseload and peaking projects) should also be treated as categorically exempt because of the net GHG emission reductions created by these projects. As discussed above, repowering projects are in the state's interest and result in both GHG emission reductions and many other environmental and economic benefits. In addition, new simple cycle natural gas power facilities are needed for system reliability and to support new, intermittent renewable generation. Such projects have been recognized by the Cal/ISO as necessary in meeting the RPS. If the GHG emissions of a repowering project are judged against a strict, inflexible standard that does not account for the net decrease in GHG emissions, these projects may be delayed or not undertaken at all. On the other hand, adopting a programmatic approach or, alternatively, an exemption from the GHG impact analysis will encourage repowering projects. Repowering of inefficient power plants is in the State's interest, and thus favorable treatment in a CEQA analysis is warranted.

If the Commission does not adopt a categorical exemption for repower projects, the Commission must not undermine these projects by adopting a project-by-project approach. Such an approach would thwart the important state interest in repowering projects by increasing regulatory costs. Instead, the net-benefit a repower project creates by not only displacing the on-site emissions, but also by increasing generating capacity system-wide are essential considerations in accurately assessing a repower project's overall environmental impact.

4. If an Individual Power Plant is found to have a Significant Cumulative Impact Due to GHG Emissions, is it Feasible to Mitigate Significant Cumulative Impacts?

<u>Response</u>: Gaps in carbon capture and storage technologies and the lack of protocols governing offsets limit feasible mitigation.

Projects that are being proposed by IEP members use the best, most efficient technologies available. Members meet performance standards and are planning for future regulations adopted by AB 32. In short, these modern proposed power plants already include all feasible GHG mitigation measures that are currently available. Additional mitigation would be feasible only if significant advances are achieved in carbon capture and storage technologies. In the absence of available carbon capture and storage technologies, the Commission should allow compliance with existing GHG laws as mitigation under CEQA.

Another hurdle in the achievement of further mitigation of GHG emissions is the lack of protocols governing the use of offsets. The lack of offset protocols not only stifles GHG emission mitigation efforts but also poses a barrier to investment in new generation. Without certainty in the use of offsets, some investment decisions may be delayed until protocols are developed. As stated in IEP's comments on the Joint Recommendations To CARB on GHG emission reduction strategies (California Public Utilities Commission ("CPUC") decision D.06-04-009), the principles that IEP views as necessary for a proposed offset program are: 1) offsets must be permanent and verifiable; 2) an offset representing a ton of GHG emission reductions should be equivalent to a ton of mitigated GHG emissions under CEQA; and ; 3) offsets should be tradable in other carbon reduction programs such as AB 32 and the Western Climate Initiative.

The development of protocols governing offset use is currently taking place in the AB 32 scoping process. The purpose of reiterating the comments IEP made to the Energy Commission and CPUC in D-06-04-009 is to emphasize the importance of offset protocols in CEQA mitigation efforts. Offsets that are used for compliance with AB 32 should also be able to be used for compliance with CEQA. This is because both AB 32 and CEQA propose to regulate the same emissions and sources. Failure to coordinate these efforts could result in the same emissions being required to be offset multiple times such that the project becomes uneconomic and none of the offsets occur. To encourage development of new projects and the associated, potential net-GHG reductions the Commission should recognize offsets from both regulatory arenas.

4d. 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: As Discussed Above, The Commission Should Strive For Cohesion Between Changes To The CEQA Analysis And Existing GHG Regulations. If The Commission Does Not Accept IEP's Argument That AB 32 and SB 1368 Should Support a Finding of No Significant Impact, Compliance With These Laws May Also Support The Exercise Of A CEQA Override.

CEQA Guidelines § 15093 provides that if economic or social benefits outweigh unavoidable adverse environmental impact, an agency may find that the impact is acceptable. The Energy Commission should exercise an override in the context of GHG emissions when the impact on global climate change is outweighed by the benefits of a project. Such benefits include when a project is reasonably need to maintain grid reliability or achieves other state interests.

As discussed above compliance with AB 32 and SB 1368 should support a finding of no-significant impact. If the Commission does not follow this position, compliance with these laws should be deemed a basis for assessing the relative severity of a project's impacts compared to the benefits of the project.

5. Is It More Appropriate To Mitigate Power Plant GHG Emissions Case-by-Case Or With A More Encompassing Review?

Response: The Commission Should Implement A More Encompassing Review.

IEP strongly supports a programmatic approach that evaluates system-wide emissions. As noted, global warming is not a local problem. There is no localized impact requiring that project specific impacts be weighed differently from the project's impacts on electric system emissions overall. A project-by-project approach would be counterproductive because such an approach would consider the emission impacts of a project while ignoring emission reductions. Without considering system emission impacts on a net-basis, the Commission could easily cause overall increases in emissions or, at a minimum, fail to achieve the optimal reductions in emissions from the electric system as a whole. Such a result would increase system costs while causing or failing to address the environmental impact at issue. Failure to account for these positive attributes may disincentivize projects that reduce California's overall GHG emissions.

The OII asks whether AB 32 is a programmatic approach that could be used in addressing cumulative impacts. A cap-and-trade program adopted pursuant to AB 32 would address the uncertainty of assessing net-impacts by making less-efficient facilities more costly to continue to operate. The Energy Commission has the expertise and tools to reasonably estimate the net impact on emissions a project will have by displacing less-efficient generation. Such an approach can be reasonably verifiable if conducted in a rigorous manner by an unbiased entity such as the CEC. The Commission can also assess the effect that a cap-and-trade program will have on the operation of the less-efficient facility. Demonstrating that an inefficient facility will eventually no longer be cost-effective to operate under even the most conservative load scenarios would create a reasonably accurate forecast in demonstrating the beneficial effect a project will have by displacing older generation.

For repower projects, the analysis is ever more straightforward as the reductions occur on-site and are a direct and certain result of the new facility. A net-impact analysis should certainly be conducted for re-power projects. The beneficial GHG impact a repower project will have is determinable since a repower project necessarily replaces the less efficient capacity.

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Respectfully submitted,

By _____

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