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November 7, 2008

VIA EMAIL AND U.S. MAIL

California Energy Commission
Dockets Office, MS-4
1516 Ninth Street
Re: Docket No. 08-GHG 0II-1
Sacramento, CA 95814-5512

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

Dear Commissioners Byron and Douglas:

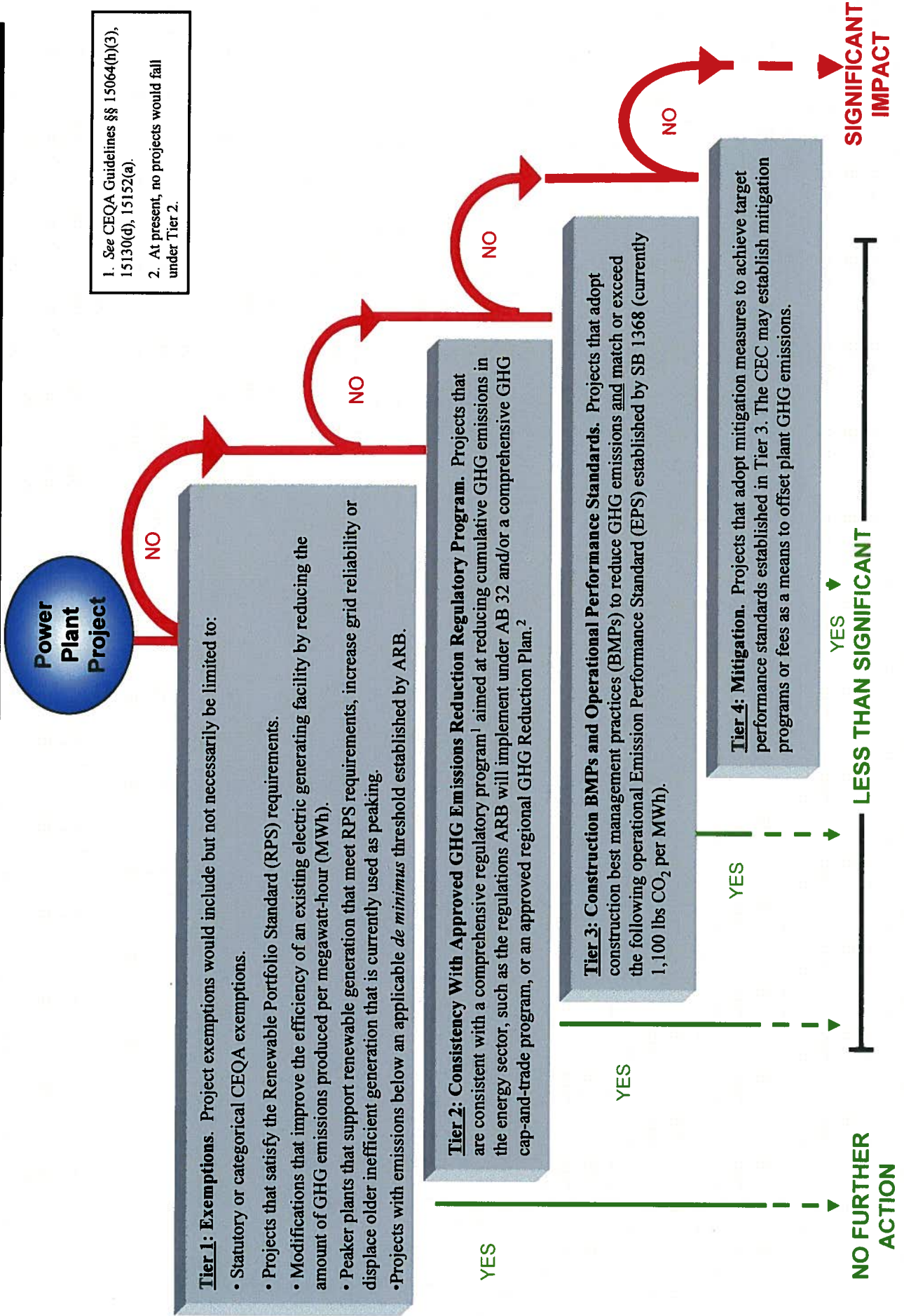
We appreciate the opportunity to provide these comments on the CEC's *Informational Proceeding on Methods for Satisfaction of California Environmental Quality Act (CEQA) Requirements Relating to Greenhouse Gas Emission Impacts of Power Plants*, Docket Number 08-GHG 0II-1, Order No. 08-1008-11 ("OII").

In these initial comments, we propose a framework for addressing greenhouse gas (GHG) emissions during the CEC's CEQA-equivalent licensing process. **Figure 1** on the following page illustrates a "tiered approach" that was based in part on our review of recent proposals by the California Air Resources Board (ARB) and the South Coast Air Quality Management District (SCAQMD) to adopt CEQA significance thresholds.¹ Under this tiered approach, the CEC could make a finding of less than significance for GHG emissions if a project falls within one of the applicable "tiers."

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¹ See California Air Resources Board, Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases under the California Environmental Quality Act (October 24, 2008), p. 7; South Coast Air Quality Management District, Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold (Oct. 2008), p. 3-10.

Figure 1: Tiered Approach to Evaluating the Significance of Greenhouse Gas Emissions During the CEC's CEQA-Equivalent Licensing Process



This tiered approach would satisfy the CEC's CEQA obligations. GHG emissions from power plants – like any other project – may contribute to a potentially significant cumulative environmental impact of global warming that directly and indirectly impacts California's environment. In other words, the GHG emissions from any given power plant are insignificant alone, but when combined with past, current, and future anthropogenic GHG emissions, may cumulatively add to a potentially significant impact.

Assuming that a significant cumulative impact does exist, CEQA does *not* mandate that every contribution to an existing significant cumulative impact be deemed *cumulatively considerable*. CEQA Guidelines § 15064(h)(4) states that “[t]he mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.” In other words, it is not necessarily true that any level of incremental contribution must be deemed cumulatively considerable, even where cumulative impacts are significant. *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 120; *see also Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 718.

Applying this well-established rule to the present context, every emission of GHG from a new or modified power plant does *not* necessarily constitute a *cumulatively considerable contribution* to the potentially significant cumulative impact of global warming. To the contrary, some GHG emissions may be necessary to improve the efficiency of California's energy system as a whole, by implementing critical GHG reduction goals such as increasing the Renewable Portfolio Standard (RPS) to 33 percent by 2020 or modernizing the system by displacing less-efficient or coal-fired power plants with state-of-the-art natural gas plants. The tiered approach summarized in Figure 1 provides a framework to determine which projects are not cumulatively considerable contributors of GHG emissions.

- **Tier 1** represents projects that will have little to no possibility of having a cumulatively considerable contribution to global warming, such as projects with categorical or statutory exemptions, or projects that meet the RPS requirements.
- **Tier 2** represents projects that fall under future comprehensive regulatory programs aimed at reducing GHG emissions in the energy sector, such as the regulations that ARB will implement under AB 32, or possibly a regional GHG Reduction Plan envisioned by the SCAQMD. *See* CEQA Guidelines §§ 15064(h)(3), 15130(d), 15152(a). At present, no power plants would fall under this tier.
- **Tier 3** represents projects that would not decrease the net efficiency of the energy generating system under the CEC's jurisdiction as a whole, and would likely further a number of essential GHG reduction goals to modernize the state's energy system by displacing less-efficient or coal-fired power plants with state-of-the-art natural gas plants. The Emissions Performance Standard (EPS) established by the CEC in conjunction with the California Public Utilities Commission (CPUC) pursuant to the mandate of Senate Bill 1368 (2006) is the appropriate operational performance standard for determining which power plant projects would have a cumulatively considerable contribution to global warming because the California Legislature

enacted SB 1368 to reduce the impact of GHG emissions from the energy sector. *See* SB 1368 § 1(a), (d), and (h).² Lead agencies often use performance standards adopted by regulatory agencies when determining the significance of a project impact, and a project's compliance with the standard can be presumed to provide an adequate level of protection for the environmental resources in question. *See, e.g., Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal. App. 4th 74, 106; *Riverwatch v. County of San Diego* (1999) 76 Cal. App. 4th 1428, 1453.

- **Tier 4** represents an option for plants that are unable to meet the requirements of Tiers 1-3 to avoid a significant impact by applying feasible mitigation measures that are shown to reduce their GHG emissions to achieve target performance standards established in Tier 3. The CEC may choose to implement a mitigation fee program that would fund proven GHG reduction programs.

Again, we appreciate the opportunity to comment on the OII and look forward to working with the CEC to develop the proper framework for addressing GHG emissions during the CEC's CEQA-equivalent licensing process.

Respectfully submitted,



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² The "establishment of...an emissions performance standard...is logical and necessary step to meet the goals...for reduction of emissions of greenhouse gases." SB 1368 § 1(h). Moreover, because "[g]lobal warming will have serious adverse consequences on the economy, health and environment of California...[t]o the extent energy efficiency and renewable resources are unable to satisfy increasing energy and capacity needs...the state will rely on clean and efficient fossil fuel fired generation...to provide reliability and consistency with the state's energy priorities."