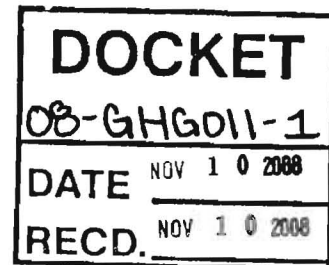


November 10, 2008

Ms. Angela Hockaday
California Energy Commission
Docket Unit
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512



Subject:

**PACIFIC GAS & ELECTRIC COMPANY (PG&E), SAN
DIEGO GAS & ELECTRIC (SDG&E) AND SOUTHERN
CALIFORNIA EDISON (SCE) COMMENTS IN RESPONSE
TO THE CEC ORDER INSTITUTING INFORMATIONAL
PROCEEDING ON METHODS FOR SATISFACTION OF
CEQA REQUIREMENTS RELATING TO GHG EMISSION
IMPACTS OF POWER PLANTS
DOCKET NO. 08-GHG OII-1**

Dear Ms. Hockaday:

Enclosed for filing with the California Energy Commission are one (1) original and five (5) copies of **PACIFIC GAS & ELECTRIC COMPANY (PG&E), SAN DIEGO GAS & ELECTRIC (SDG&E) AND SOUTHERN CALIFORNIA EDISON (SCE) COMMENTS IN RESPONSE TO THE CEC ORDER INSTITUTING INFORMATIONAL PROCEEDING ON METHODS FOR SATISFACTION OF CEQA REQUIREMENTS RELATING TO GHG EMISSION IMPACTS OF POWER PLANTS**, for the Greenhouse Gas Emission Impacts of Power Plants (08-GHG OII-1).

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott A. Galati".

Scott A. Galati



November 10, 2008

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

INTRODUCTION

Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric (SDG&E), and Southern California Edison (SCE) jointly submit these comments in response to the California Energy Commission (CEC) Order Instituting Informational Proceeding on Methods for Satisfaction of California Environmental Quality Act (CEQA) Requirements Relating to Greenhouse Gas Emission (GHG) Impacts of Power Plants (OII). We appreciate the opportunity to provide input to assist the Siting Committee in developing uniform guidance that appropriately satisfies the CEC's CEQA obligations without creating conflicting or duplicative regulatory requirements for power plant developers.

As load serving entities, our comments reflect three perspectives that are unique to a utility; as owner's of both renewable and conventional generation assets, purchasers of electricity pursuant to Power Purchase Agreements (PPAs) with independent energy producers, and entities that must develop and comply with long-term procurement plans that have been developed to provide the best reliable service at the lowest cost to consumers while simultaneously increasing the renewable portion of the energy portfolio.

SUMMARY OF POSITION

We believe that any required GHG mitigation for CEQA by the CEC should only occur during the interim years (2008 through 2011) until AB32 comes into effect in 2012. Once AB32's programs are implemented there should no further CEQA requirements since all power plants fall under the cap. A project should be found not to reach a significance threshold when the project meets all applicable AB 32 regulatory requirements.

Until 2012, we support a programmatic approach that does not require the setting of a quantitative threshold of significance but rather employs a qualitative approach as allowed by CEQA. The CEC should conduct an overall programmatic assessment that considers GHG reduction measures currently in place, including reductions associated with implementation of SB 1368, the Renewable Portfolio Standards (RPS), energy efficiency programs, and management, operation and investment into the transmission system. Until this programmatic assessment is completed, the CEC should quantify the potential range of GHG emissions, conclude that it is speculative to determine whether the emissions from an individual source are cumulatively considerable at this time, and impose feasible and practical best management practices¹ to reduce GHG emissions during construction and operation. A good model for this approach is provided by the Final Staff Assessment filed August 28, 2008 in the Chula Vista Energy Upgrade Project (07-AFC-4) CEC-700-2008-003-FSA (pages 4.1-55-56). An interim performance standard of 1,100 lbs/MWhr should also be applied for those facilities contemplated under SB1368. This performance standard was established by the California Public Utilities Commission (CPUC) and the CEC under Senate Bill (SB) 1368 as a “bridge” to more permanent emissions standards and measures to be set by AB 32 effective beginning in 2012. Thus, for siting cases that come before the CEC between now and when AB 32 regulations go into effect, the CEC should quantify the GHG emissions, and apply the SB 1368 1,100 lbs/MWhr standard as an interim mitigation measure under the same terms and conditions applied by the CPUC and CEC. In enacting SB 1368 the Legislature concluded that only certain facilities should be subject to interim GHG emissions performance standards during the period prior to AB 32 regulations, and so facilities that SB 1368 exempted from the interim emissions standard should be considered as insignificant sources during this interim period for purposes of CEQA compliance as well. In addition the interim approach should consider presumptive findings of insignificance for projects such as gas fired peaking plants because of the potential for such projects to reduce system-wide GHG emissions by firming renewable generation, displacing older generation, and/or increasing grid stability. Therefore no performance standard is necessary for these types of projects.

We provide the following comments to specifically address the Siting Committee’s OII questions.

¹ Best management practices can include limiting construction equipment idle time, requiring new efficient construction equipment, requiring storage of chemicals in a manner to prevent releases that could have greenhouse gas emissions, etc.

ANSWERS AND SPECIFIC COMMENTS

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

For purposes of CEQA, this question has been rendered moot with the passage of AB 32, SB 97, SB 1368, and the efforts already undertaken by the Attorney General, the Governor's Office of Planning and Research (OPR) and the California Air Resources Board (CARB).

While we may disagree that CEQA is the appropriate tool to reducing GHG emissions, we focus our response on acknowledging the limitations of a "CEQA-only approach". We believe that the broader approach that will be developed by CARB pursuant to AB 32 is the more effective and appropriate way to reduce GHG emissions. The regulatory requirements for new power plants addressed by the CEC and CPUC under SB 1368 and that will be developed by CARB under AB 32 require the CEC to defer to those programs and satisfy its CEQA obligations in future siting cases by ensuring compliance with those programs. The CEC currently employs this strategy with other nationwide, statewide or regional programs.² We provide the suggestions in these comments to assist the CEC in applying an interim approach.

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?

As discussed in our response to Question 1 above, we believe setting a quantitative threshold for power plants would be arbitrary without a comprehensive programmatic study that accounts for all of the GHG

² The National Pollutant Discharge Elimination System (NPDES) programs; the federal New Source Review (NSR) and Prevention of Significant Deterioration (PSD) air quality programs; the series of programs developed by the federal and state Occupational Safety and Health Agencies (OSHA) to protect worker safety

reductions associated with implementation of SB 1368, the Renewable Portfolio Standards (RPS), energy efficiency programs, and management, operation and investment into the transmission system. These combined programs will result in a net decrease in GHG emissions from the electricity sector. New power plants may displace older generation, may support development of renewable generation by providing peaking power to “firm” intermittent renewable sources, may affect net importing of electricity, and may stabilize the electric transmission system grid or reduce transmission congestion that results in net GHG reductions. CARB’s AB32 program will account for the operation of the grid as a whole and will ensure that a net GHG emission reduction occurs concurrent with the addition of new facilities.

To establish a quantitative threshold that is not arbitrary, the effects of these broader issues must be understood and it may ultimately result that if a new power plant is part of a utility’s overall long term procurement plan approved by the CPUC, the power plant may assist in the utility achieving its GHG reductions. Therefore we recommend that during the interim period prior to implementation of CARB’s AB 32 program, CEC adopt a qualitative approach that acknowledges the GHG emissions from each power plant and imposes a combination of feasible and practical performance standards and best management practices to reduce GHG emissions during construction and operation. The programmatic assessment could ultimately result in a quantitative threshold which could be useful for determining if emissions that may fall outside of AB32, such as those from construction, are insignificant.

As discussed in our response to Question 1 above, the Legislature has provided direction under both SB 1368 and AB 32 on the mitigation of GHG emissions. The Legislature acknowledged that GHG emissions from the electric sector are potentially significant and therefore established for the electricity sector the performance standard as the feasible mitigation. Under the draft scoping plan issued by CARB under AB 32, emissions from the electricity sector are proposed to be reduced by additional energy efficiency and renewable generation programs to be imposed by other agencies. In addition, new and upgraded power plants will be subject to an overall cap in the electricity sector under a “cap and trade” program requiring complying entities to procure and retire sufficient emissions allowances to meet the overall cap.

B. Have other agencies adopted thresholds of significance for GHG emissions?

We are unaware of any agency that has adopted quantitative thresholds of significance at this time although CARB and the South Coast Air Quality Management District are currently discussing and developing thresholds. However, while it may be appropriate for new emission sources in sectors that are not part of a sector-wide GHG reduction program to be restricted to a quantitative threshold, we believe it is not appropriate for the CEC to implement quantitative thresholds of significance at this time for power plants without a programmatic study because of the unique programs outlined above that are currently in place that effectively already significantly reduce GHG emissions. We are unaware of any other GHG emission sector that has similar programs.

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?

We do not support a “zero baseline” approach for the reasons articulated in the responses to Questions 1 and 2 above. A “zero-baseline” approach ignores the effects of the GHG emissions standards established by SB 1368 and AB 32 and would be contrary to the direction of the Legislature under those statutes. A “zero-baseline” approach also ignores the effects of the other electricity sector programs and the system wide impact of generation procurement plans which are designed to reduce GHG while still allowing the construction of new facilities. This would be fundamentally unfair.

- 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?**

We support the analysis described in this Question but believe that such analyses should be part of larger programmatic study and would be infeasible to conduct in individual power plant siting cases.

A programmatic study that takes into account the programs identified in our response to Question 2B above, would assist in establishing the framework under which individual projects would later be assessed. If a new power plant does not increase the electricity sector’s overall GHG emissions, the project’s GHG impact should be considered less than significant.

- 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

We do support the need to determine whether categories of projects such as those listed above should be considered categorically less than significant, and believe that a programmatic study would be helpful to further define the types of projects that may be found to support the overall program for GHG reductions in the electricity sector. For the interim period until such a study is completed, we support the list of categories of projects listed above as types of projects that can be considered as less than significant.

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?

As described above in our responses to Questions 1 through 3, the establishment and implementation of performance standards and related flexible and alternative compliance mechanisms under SB 1368 and AB 32 should be used. We are concerned that if the CEC begins imposing mitigation beyond performance standards and best management practices, such mitigation may conflict with the overall program developed by AB 32 and may deter development of newer cleaner generation during this period that is needed to displace older inefficient technology, support system reliability, and/or intermittent renewable resources.

Most new projects should be considered to incrementally add insignificant (not cumulatively considerable) emissions, as noted in previous responses. In the event that a project were found to present unavoidably significant impacts, the Commission should exercise the authority to support CEQA “override” findings to allow project approval as allowed by regulation. The Commission should consider CEQA “override” findings on a project-by-project basis.

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?

We support a programmatic approach as described in our responses to Questions 1 through 4 above and will provide an outline of the issues that should be studied in such a programmatic approach under separate cover for discussion at the next workshop.

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

We believe that ultimately the AB 32 and SB 1368 programs will be the programmatic program upon which the CEC can rely when licensing new projects and discharging its CEQA obligations. Once AB 32 is implemented, the CEC should not impose any additional GHG emission reductions. AB 32 provides a programmatic approach toward reducing GHG emissions through early measures implemented prior to 2012 followed by a mix of command-and-control measures and a cap-and-trade program beginning in 2012. We believe that this approach provides the appropriate framework for assessing the GHG emissions from new projects.

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).)

If a project is consistent with an adopted programmatic approach we believe compliance with that programmatic approach will ensure that impacts are fully mitigated and therefore no additional mitigation will be necessary. This is consistent with the way the CEC treats other federal, state, and regional programs designed to protect air quality, water quality and worker safety. We believe the CEC should perform a programmatic study to develop an interim program but that AB 32 will be the ultimate program upon which the CEC should rely.

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?

All emission sources covered by AB 32 and SB 1368 should not be found to be cumulatively considerable. For the electricity sector, CARB's AB 32 program and the SB 1368 program will mitigate the GHG impacts of the entire sector, including from all new projects via several command-and-control measures as well as a cap-and-trade system for additional emission reductions. Therefore, as discussed above, compliance with the SB 1368 and AB 32 programs will satisfy

the CEC's CEQA obligation thereby eliminating any need for further project mitigation.

D. Should the Commission be focusing on interim mitigation for the period prior to the operative effect of a CARB GHG emissions reduction program?

As discussed above, the CEC should impose the SB 1368 performance standard for those facilities contemplated under SB1368 and best management practices approach from now until the CEC can perform a broader programmatic study. The broader programmatic study should fully evaluate the electricity sector and all of the ongoing regulatory initiatives referenced in our response to Question 2.A that result in GHG reductions. Only after such a study should the CEC consider whether additional mitigation is necessary between completion of the study and implementation of AB 32.

E. Should programmatic mitigation require GHG reductions from "load serving entities" such as utilities rather than from individual in-state power plants?

We believe that a programmatic study should evaluate what if any programmatic mitigation beyond SB 1368 may be necessary during the interim period. A thorough evaluation would take into account many of the activities currently undertaken by the load serving entities including renewable procurement, and transmission investments, as well as efficiency and demand side management programs. If after a programmatic evaluation, the CEC determines that an individual power plant needs to implement further mitigation such mitigation should be the responsibility of the power plant proponent and not the load-serving entity. It should be noted, however, that the costs of such mitigation will likely be passed through to the load serving entity by the power plant developer and ultimately borne by the customer.

F. Are there other programs that should be considered?

See response to Question 2.A.

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.”**

We strongly discourage the CEC from resurrecting the statutory “need determination” eliminated by the legislature. The need is presumed by the long-term procurement plan process and is not appropriate in individual siting cases.

The CEC should not adopt anything that would inhibit its statutory ability under CEQA and the Warren-Alquist Act to make findings of override in individual siting cases. However, the evidentiary support for such findings should not be made part of siting cases in which a finding of override is unnecessary or not sought. The CEC has the authority to make a finding of override if it believes that GHG emissions are significant and cannot be mitigated. However, we believe that this subject is appropriately left for individual siting cases after implementation of the CEC programmatic approach.

- B. If “need” becomes a rationale for certification of unmitigated facilities, is there a limit on the amount of capacity “needed”?**

We do not believe that the CEC should attempt to place a limit on the amount of capacity “needed.” However, projects can be needed for many reasons other than capacity. Projects in specific locations may be also be required to provide black start capability, local area reliability, backstop or integration of intermittent generation resources, or for local grid stability purposes. Thus, the standard “required for public convenience and necessity” should be assessed on a case-by-case basis at the time this finding is made, including the specific circumstances under which no reasonable or cost-effective mitigation is available.

- C. If there is a quantitative limit on need, how might such a limit be established and periodically updated?**

We do not support a quantitative limit on need and urge the CEC to not resurrect the “need determination.”

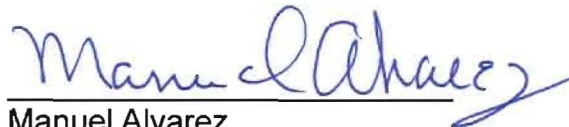
7. The Commission has licensed numerous power plants that have not yet been constructed, some of which have had licenses expire and others have been surrendered voluntarily. To what extent should such "failure" to construct and operate a licensed facility be taken into account in determining whether a power plant's emissions are significant?


Many of the power plants approved by the CEC and not constructed were power plants that were processed either before or while the first long-term procurement plans under the hybrid system were being developed. Now that the long-term procurement plan approval process is in place, the licensing of more plants than are being built may not be bad policy for the state as these plants can more readily be available to respond to electricity shortages and may gain an advantage in future procurement processes. In addition, if a plant is not constructed it never contributes GHG emissions and therefore by the very nature of not having any emissions it should not affect significance determinations.

In addition, this is not a relevant factor under the SB 1368 and AB 32 programs. GHG emissions for the utility sector are not a baseline with available "increments" for new power plants to consume. All significant power plant emissions are capped and reduced to levels set by SB 1368 and/or AB 32. Thus the failure to construct any single facility is already captured by the system.

Respectfully submitted,


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