



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Address Utility Cost
and Revenue Issues Associated with Greenhouse Gas
Emissions.

Rulemaking 11-03-012
(March 24, 2011)

**RESPONSE OF THE INDEPENDENT ENERGY
PRODUCERS ASSOCIATION TO MOTION TO AMEND
SCOPING RULING**

**INDEPENDENT ENERGY PRODUCERS
ASSOCIATION**

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Dated: July 6, 2012

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In its *Motion to Amend Scoping Ruling for Expedited Consideration of GHG Compliance Cost Responsibility for Contracts Executed Prior to AB 32*, filed on July 3, 2012, Panoche Energy Center, LLC (PEC) asks for expedited consideration of the issue of responsibility for the costs of complying with new greenhouse gas (GHG) requirements in contracts executed prior to the passage and implementation of Assembly Bill (AB) 32, which established California's GHG emissions reduction program.

The Independent Energy Producers Association (IEP) supports PEC's motion. IEP has for several years asked the California Air resources Board (CARB) and the Commission to address the plight of generators that find themselves in a situation similar to PEC's. While it does not appear that there are a large number of generators confronting this problem, the problem is very serious for this small group of generators. The Commission has shuffled this issue between proceedings, with the most recent direction being to take the issue up in this proceeding if 60 days of negotiations proved unsuccessful. PEC reports that its discussions with Pacific Gas and Electric Company (PG&E) have been unproductive and seeks a clear resolution from the

Commission before it must decide whether to participate in the auction of GHG allowances scheduled for November 2012.

PEC's motion describes how its contract with PG&E, negotiated and executed in March 2006, six months before AB 32 was signed by the Governor and five months before the current language of AB 32 was available in bill form, did not anticipate and could not have anticipated the final provisions of AB 32 and how those provisions would be implemented by CARB. Consequently, the contract is silent about how the costs of complying with AB 32 would be allocated between the parties. When the allocation of AB 32 compliance costs has been expressly considered by parties as part of negotiations of a contract or has been reflected in pro forma power purchase agreements, the costs are typically allocated to the purchaser to include in the retail costs of electricity, thus preserving a price signal to consumers about the costs of GHG emissions. If this issue is left unaddressed, however, generators similarly situated to PEC will face significant unreimbursed compliance costs that could jeopardize continued operations. PEC, for example, states that it will incur unreimbursed compliance costs of around \$5 million annually.

IEP agrees with PEC that the Commission must amend the scoping memo to clarify that this issue will be considered and resolved expeditiously in this proceeding. IEP also urges the Commission to expand the revision of the scoping memo on this issue to consider the allocation of GHG costs of all other generators who are similarly situated to PEC.

For these reasons, IEP respectfully urges the Commission to grant PEC's motion and to amend the scoping memo in this proceeding to state that the Commission will consider the issue of GHG compliance cost responsibility in contracts executed before the passage and implementation of AB 32 in R.11-03-012 and on an expedited schedule.

Respectfully submitted this 6th day of July, 2012 at San Francisco, California.

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