BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA
AND THE CALIFORNIA ENERGY COMMISSION

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Application of Pacific Gas and Electric Company (U 39), San Diego Gas & Electric company (U 902M), Southern California Edison Company (U 338 M), and Southern California Gas Company (U 904G) for Authority to Increase Electric and Natural Gas Rates and Charges to Recover California Air Resources Board Assembly Bill 32 Cost of Implementation Fee	Application 10-08-002 (Filed August 2, 2010)

PROTEST OF THE ENERGY PRODUCERS AND USERS COALITION AND THE COGENERATION ASSOCIATION OF CALIFORNIA

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September 1, 2010

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Application of Pacific Gas and Electric Company (U 39), San Diego Gas & Electric company (U 902M), Southern California Edison Company (U 338 M), and Southern California Gas Company (U 904G) for Authority to Increase Electric and Natural Gas Rates and Charges to Recover California Air Resources Board Assembly Bill 32 Cost of Implementation Fee	Application 10-08-002 (Filed August 2, 2010)

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Pursuant to Rule 2.6 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Energy Producers and Users Coalition[1] and the Cogeneration Association of California[2] (jointly, EPUC/CAC) protest the above-referenced Joint Application, noticed in the daily calendar on April 3, 2010 (Application). EPUC is an *ad hoc* coalition representing the electric end use and customer generation interests of combined heat and power (CHP) resources. CAC is an ad hoc coalition representing CHP and cogeneration operation interests. EPUC/CAC member companies will be impacted by the proposals submitted in the Application.

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[1] EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP West Coast Products LLC, Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, THUMS Long Beach Company and Occidental Elk Hill, Inc.

[2] CAC represents the combined heat and power and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

I. INTRODUCTION

On August 2, 2010, Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), Southern California Edison Company (SCE), and Southern California Gas Company (SoCalGas) filed a joint application to recover costs associated with CARB's AB 32 Implementation Fee. The cost allocation proposals require careful scrutiny and evaluation to address the following topics:

- ***Cost Allocation:*** Based on the information provided in the joint application, it remains unclear whether the methodologies proposed by the utilities would allocate AB 32 implementation fee costs based on consumption, as CARB intended.

- ***Double Payment of the Fee:*** PG&E's cost allocation proposal would require customers with two meters to bear a larger share of the fee than that associated with consumption.

- ***Impacts on Competition:*** Through this application, the utilities seek complete pass-through of the implementation fees associated with generation resources. Unless the Commission similarly assures cost recovery of the AB 32 costs for competing, non-utility generators, approval of the joint utility application will establish an uneven playing field for utility and non-utility owned generation.

These issues are discussed below.

II. THE IMPLICATIONS OF THE UTILITIES' PROPOSALS REQUIRE EXAMINATION

Additional information on cost allocation, double payment of the fee, and impacts on competition will be required for the Commission to review the merits of the Application. As noted below, the Application fails to provide the details needed to evaluate these issues.

A. Cost Allocation

CARB's AB 32 Implementation Fee regulations clarify that the fee is meant to be assessed based on consumption of natural gas. Based on the joint application, it remains unclear how the utilities' AB 32 costs will be passed through to bundled end-users and whether the pass-through will be based on consumption of gas. Discovery will be required to verify that the proposed allocation of costs is consistent with CARB regulations. EPUC has already served data requests on PG&E and SCE to secure this information.

B. Payment of the Fee In Excess of Electricity Use

The Commission must ensure that utility tariffs do not force industrial sites with CHP facilities to pay the AB 32 Implementation Fee in excess of the facility's use. CARB's AB 32 implementation fee regulations clarify that the fee should be allocated based on consumption. The mechanisms proposed to recover these costs must be consistent with CARB's intent.

Without changes to the proposed tariffs, CHP facilities that are not allowed to "net" meters will be forced to bear a larger share of the implementation fee than it should. While a generation facility is typically interconnected to the grid through a single meter, some CHP facilities may be interconnected to the grid through multiple meters to provide increased reliability in the event of grid failures. For these facilities, power may be simultaneously exported through one meter and imported across another. "Netting" the meters is required to ensure that a facility, like other end-users, only bears a share of the fee based on its actual electricity consumption. Otherwise, the facility bears AB

32 implementation fees both in the rates it pays for power consumed and for the offsetting power that is exported for someone else's consumption.

The following example illustrates how the failure to net meters will force industrial sites to bear a higher share of administrative fees. Consider an industrial site with 100 MW of CHP and two meters at its utility interface, Meter A and Meter B, that consumes 104 MW in total. Assume further that Meter A reflects 10 MW of imports and Meter B reflects 6 MW of exports. Under this scenario, the site could be required to pay an administrative fee for the fuels associated with the 100 MW generation and, through the electric utility, a fee embedded in the rate for the 10 MW of imported power, for a total of 110 MW. More appropriately, the site should directly pay the fee for its 100 MW of generation, while paying a fee indirectly to the utility for the "net" imports (4 MW,) so that its total obligation does not exceed its total electricity consumption.

To avoid double imposition of the fee, the utilities should provide a credit for the amount of any duplicative fees to industrial sites with multiple meters. If applied to the above example, the credit would reflect the administrative fee associated with 6 MW of exported power.

C. Impacts on Competition

Approving the utility application as requested would advantage utility-owned generation over other generation. Without further conditions, the Commission would authorize recovery of only a subset of AB 32 compliance costs -- for utility-owned generation; it would not provide similar assurances for other generation. Failure to provide for parity among generators presents a unique problem for CHP facilities, whose prices will be set administratively. According to D.07-09-040, issued prior to

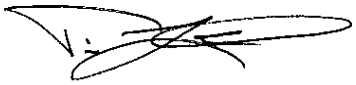
consideration of AB 32 implementation fees, CHP generators could not recoup these costs.

In order to ensure that approval of the Joint Application will not lead to an uneven playing field, the Commission should condition approval of this application on the inclusion of a similar pass-through provision to allow non-utility generators to pass through these same costs. Without this accommodation, the Commission would be approving a mechanism though which pass-through of these AB 32 incremental costs will depend solely on ownership of generation resources.

III. CONCLUSION

For all of the foregoing reasons, EPUC/CAC request that the Commission give consideration to the issues identified above.

Respectfully submitted,



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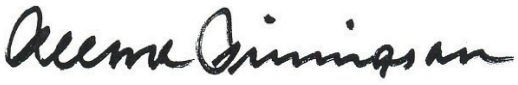


Evelyn Kahl
Seema Srinivasan

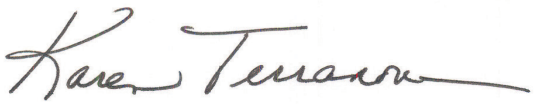
Counsel to the Energy Producers and Users Coalition

September 1, 2010

CERTIFICATE OF SERVICE

I, Karen Terranova hereby certify that I have on this date caused the attached **PROTEST OF THE ENERGY PRODUCERS AND USERS COALITION AND THE COGENERATION ASSOCIATION OF CALIFORNIA** in A.10-08-002 to be served to all known parties by either United States mail or electronic mail, to each party named in the official attached service list obtained from the Commission's website, attached hereto, and pursuant to the Commission's Rules of Practice and Procedure.

Dated September 1, 2010 at San Francisco, California.



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