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Ms. Jeannie Blakeslee
Ms. Edie Chang
Office of Climate Change
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments of the Energy Producers and Users Coalition and the Cogeneration Association of California on CARB's Proposed Changes to AB 32 Administrative Fee Draft Regulations

Dear Ms. Blakeslee and Ms. Chang:

The Energy Producers and Users Coalition¹ and the Cogeneration Association of California² (EPUC/CAC) submit these comments as owners and operators of cogeneration or combined heat and power (CHP) facilities in California. Members of these coalitions own and operate more than 2,000 MW of existing CHP generation in California, located primarily at refineries and enhanced oil recovery operations. Several coalition members are also considering efficiency upgrades, repowering or the installation of new CHP facilities. In the interest of maintaining existing facilities and further developing CHP capacity, EPUC/CAC offer the following comments:

- CARB must ensure that changes to draft administrative fee regulations will not financially disadvantage cogeneration facilities relative to other forms of electric generation;
- Draft AB 32 administrative fee regulations require additional clarification to ensure that cogeneration facilities will not be subject to duplicative regulation; and

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 Hills, 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.

- Treatment of cogeneration facilities outside the electricity sector for purposes of AB 32 administrative fee must not prejudice development of AB 32 greenhouse gas (GHG) regulations.

Changes to Draft AB 32 Administrative Fee Regulations Should Ensure Efficient Cogeneration is Not Financially Penalized When Compared to Other Forms of Electric Generation

CARB's new proposed changes will treat conventional generation in a different manner than cogeneration. While conventional generation will pay the administrative fee on the basis of MWh delivered to the grid, regardless of the associated emissions or the fuel they use, cogeneration facilities will pay the fee based on actual fuel use or emissions. Given this difference, CARB must ensure that cogeneration facilities are not penalized financially relative to other forms of electricity generation. To ensure comparable treatment, CARB should cap the effective charge per MWh for a cogeneration facility at the charge imposed on other electricity generators.

Proposed Changes to Draft AB 32 Administrative Fee Regulations Should Not Lead to Double Regulation of Cogeneration Facilities

Additional clarification is required to ensure that proposed changes to draft AB 32 administrative fee regulations will not subject cogeneration facilities to duplicative regulations. As illustrated through the following examples, current changes coupled with existing draft language risk imposing the administrative fee twice for the same emissions:

1. Under CARB's proposed changes, cogeneration facilities would be responsible for "*fuel use or total emissions.*" Rules must make clear that if a facility pays the administrative fee directly to CARB based on emissions, it should be exempt from any administrative fee surcharge imposed by the pipeline delivering its natural gas supply.
2. Cogeneration facilities associated with refineries could be subject to duplicative regulation if they are required to pay the administrative fee on refinery-produced fuels used in generation; refinery gas and coke use are already accounted for in the portion of the regulations that address the imposition of the administrative fee on a refinery.
3. Cogeneration facilities that have two separate meters, one for exported electricity and one for imported electricity, may be forced to bear duplicative fees unless CARB credits these facilities with the administrative fee that would be associated with exported power.

Each of these examples is discussed below.

A. CARB Must Clarify Administrative Fee Responsibility of Cogeneration Facilities

CARB proposes that cogeneration facilities be treated as industrial facilities, providing two alternative methods for assessing the fee: based on fuels or based on emissions. It remains unclear, however, how the fee will ultimately be determined.

The June draft of the AB 32 administrative fee regulations suggests that cogeneration facilities could pay the administrative fee:

- indirectly through a natural gas surcharge passed through from a local distribution company;
- directly as an end-user receiving natural gas supplies from an interstate pipeline; or
- indirectly through charges imposed by a non-utility, intrastate pipeline.

Alternatively, the current proposed changes indicate that a cogeneration facility could pay its administrative fee based on fuels *or* emissions. The proposed changes do not specify whether CARB or the cogeneration facility will determine whether fuel or emissions will serve as the basis for the administrative fee. Clarification is required to make sure that, if the cogenerator pays the fee directly to CARB based on emissions, it is not also surcharged by a natural gas distributor based on fuel use.

To prevent double regulation, CARB should provide additional information regarding the calculation of a cogeneration facility's fee responsibility by:

- Clarifying the circumstances under which a cogeneration facility pays its fee based on fuel use and/or emissions;
- Ensuring that a cogeneration facility's total AB 32 administrative fees do not exceed the value of the fees computed solely on the basis of actual fuel use;
- Providing additional information on how the emissions fee will be calculated to ensure that it does not disadvantage CHP paying the fee based on emissions relative to other generation;

- Ensuring that the emissions associated with a cogeneration facility are not defined in a manner that overlaps or conflicts with emissions that are the responsibility of a refinery; and
- Clarifying that cogeneration facilities paying the administrative fee, in whole or in part, as a surcharge on natural gas transportation are not also responsible for a separate fee based on the associated emissions from combustion of this fuel.

B. CARB AB 32 Administrative Fee Regulations Must Ensure that Cogeneration Facilities are not Subject to Duplicative Regulations As a Result of Existing Refinery Regulations

CARB's proposed changes create overlap and conflict with the existing draft regulations for emissions associated with refinery fuel and coke use. Under the draft regulations (presented in June), refineries would bear the responsibility to pay the administrative fee for emissions from the consumption of catalyst coke, petroleum coke or refinery gas:

(3) Refineries

Fees shall be paid on the amount of emissions by the owner or operator of any refinery that emits process emissions resulting from the steam methane reforming process, or the production or consumption of:

- (A) Catalyst coke;*
- (B) Petroleum coke; or*
- (C) Refinery gas.³*

In comparison, under the proposed changes, cogeneration would be charged the administrative fee for emissions from combusting the following fuels: "coal, natural gas, coke, and refinery gas." CARB should keep in mind that the owner of the cogeneration facility and the owner of the refinery may not be the same entity. Accordingly, the draft regulations must clarify that where the refinery takes responsibility for the emissions from refinery gas and coke combustion, the associated cogeneration facility does not bear the administrative fee obligation for these emissions.

CARB should also clarify how the administrative fee for refinery gas and coke would be calculated. The proposed MWh administrative fee proposed for non-cogeneration forms of electric generation is fuel-neutral and does not take carbon intensity of fuel into consideration. Consequently, it would disadvantage

³ See CARB Draft AB 32 Administrative Fee Regulations issued in June 2009, at § 95201.

cogeneration if the method used to determine the fee associated with emissions from refinery-produced fuels resulted in an effective MWh fee that exceeded the fee imposed on other generation.

C. CARB Must Ensure that Industrial Sites with Cogeneration Facilities Are Not Required to Pay the Fee for Electricity Generation in Excess of the Facility's Use.

While a generation facility is typically interconnected to the grid through a single meter, some cogeneration facilities may be interconnected to the grid through multiple meters to provide increased reliability in the event of grid disturbances. For these facilities, power may be simultaneously exported through one meter and imported across another. Without “netting” the meters, a facility could bear a larger share of the administrative fee than it should.

For example, consider an industrial site with 100 MW of cogeneration and two meters at its utility interface, Meter A and Meter B, and 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, or a total of 110 MW. More appropriately, the site should pay directly 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, CARB should provide industrial sites with multiple meters a credit for the amount of any duplicative fees. The credit would reflect the administrative fee associated with 6 MW of exported power.

AB 32 Administrative Fee Regulation Scheme Should Not Prejudge Treatment of Cogeneration in AB 32 GHG Regulatory Scheme

The regulatory scheme used for the AB 32 administrative fee should not prejudge the regulation scheme to be used for AB 32's GHG and the cap-and-trade programs. Unlike the AB 32 GHG regulations, the administrative fee is meant to promote administrative ease rather than determine responsibility in a cap-and-trade market. Given the difference in objectives, it would not be appropriate for the administrative fee scheme to be used to shape future GHG regulations.

Ms. Jeannie Blakeslee
Ms. Edie Chang
September 4, 2009
Page 6

EPUC/CAC looks forward to discussing these issues further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Seema Srinivasan". The signature is written in a cursive, flowing style.

Seema Srinivasan