



October 14, 2011

*E-Filing via
ARB's Cap-and-Trade Website*

Clerk of the Board
California Air Resources Board
1001 I Street
PO Box 2815
Sacramento, CA 95812

Re: Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company Comments on the California Air Resource Board's Proposed Amendments to the AB 32 Cost of Implementation Fee Regulation

Clerk of the Board:

Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas & Electric Company (collectively, the "Utilities") welcome the opportunity to submit these comments on the California Air Resource Board's ("ARB") August 31, 2011 Proposed Amendments to the AB 32 Cost of Implementation ("COI") Fee Regulation. The Utilities' comments address the following issues: 1) application of the fee to upstream entities; 2) requested amendments to the term "replacement electricity"; and 3) the need for a list of electricity generating facilities paying the fee directly to ARB to be provided to natural gas utilities prior to the reporting deadline.

I. THE SOURCES OF GREENHOUSE GAS EMISSIONS SHOULD PAY THE FEE AS REQUIRED BY AB 32.

AB 32 authorizes ARB to adopt "a schedule of fees to be paid by the sources of greenhouse gas emissions..." (Health & Safety Code, Section 38597; emphasis added). The Utilities support ARB's assessment of fees to recover the reasonable and necessary administrative costs associated with the implementation of AB 32 in a fair and equitable manner.

In the case of greenhouse gas emissions from the consumption of natural gas by entities other than power generators above the 10,000 MT CO₂e/year threshold, the current regulation is being

implemented under the assumption that the actual sources of those emissions are paying the fees because upstream gas distribution utilities are able to pass along the cost of the fee downstream to the actual sources of the greenhouse gas emissions, as required by AB 32.

At the time the original COI fee regulation was under consideration, ARB Staff chose to assess the fee upon gas utilities upstream of the actual emission sources because this approach could be implemented in a simple, low cost manner assuming that the upstream gas utilities could pass along the costs to the end users. As noted in ARB's staff report: "to address emissions from natural gas and transportation fuels, the proposed regulation is simply an administrative mechanism for efficiently collecting fees on downstream 'sources' of greenhouse gas emissions based on the assumption that the costs of the fees will be passed on to downstream end users who actually combust the natural gas and transportation fuel." (Initial Statement of Reasons, May 8, 2009, p. 35.)

During the original rulemaking at the ARB, the Utilities asked ARB if it had confirmed the above assumption regarding cost pass through with the California Public Utilities Commission ("CPUC") for the fees assessed on natural gas emissions sources. ARB staff stated orally at the time and later documented in their Final Statement of Reasons ("FSOR") that staff worked directly with the CPUC to "ensure that gas utilities will be able to recover the cost of the fee" (FSOR, May 6, 2010, pg. 205). On June 23, 2009, the CPUC confirmed ARB's assumptions regarding cost recovery associated with the natural gas portion of the fee in a letter to ARB from CPUC staff. The CPUC letter stated:

"Regarding the recovery of the fee costs, Energy Division believes that the CPUC can easily accommodate the gas utilities need to recover the costs of the fee from ratepayers." (Letter from Julie Fitch, California Public Utilities Commission to Mary Nichols, California Air Resources Board, dated June 23, 2011.)

The Utilities, however, have not yet been authorized to pass the cost of the fee through to the sources of gas-related emissions as was intended in the design of the original regulation, and as contemplated by the AB 32 statute. A proceeding is currently pending at the CPUC to address this issue. If the CPUC does not authorize the Utilities to recover the cost of the fee from the sources of emissions in this proceeding, the Utilities respectfully request that ARB re-assess the approach it has taken to collect the fee. We note that ARB previously shifted the point of regulation to end users of natural gas delivered by interstate pipelines responding to interstate pipeline owners' indication that they would have difficulty passing the cost of the fee on to end users. If natural gas utilities are likewise unable to pass the costs to end users, ARB should shift the collection of the fee to the ultimate sources of emissions, i.e. the customers of the gas utilities, in compliance with AB 32.

For these reasons, we also request that ARB reconsider the proposed fee regulation amendment that would impose the fee on the Utilities for an even larger number of customers than the original regulation. The ARB's proposal to collect the fee directly from electricity generators

who emit more than 10,000 MT CO₂e/year in contrast to the original proposal to collect directly from those who emit more than 2,500 MT CO₂e/year means that the Utilities will be expected to report emissions for a larger number of customers which are the direct emissions sources (since fewer are paying directly) and be responsible to pay a larger portion of the fee. As noted, until the Utilities are authorized to collect the fees from these direct emissions sources, ARB's approach for the current fee regulation and the proposed amendments runs contrary to the language of AB 32.

Additionally the CPUC has not yet approved cost recovery associated with the fees collected from electricity generating facilities. This issue is also being addressed in the pending CPUC proceeding. Regarding these fee costs, the ARB's staff report assumed the following: "electricity importers, cogeneration facilities, and natural gas fired power plants should be able to pass the fee costs on to the load-serving entities. The load serving entities can then recover the passed-through fee costs as a price increase over all their deliveries." (Id.) The CPUC agreed with these assumptions via the aforementioned letter as noted below:

"We do not foresee any impediment to retail providers' or marketers' ability to pass the costs of the fee downstream to subsequent purchasers or end users of imported electricity. To the extent the fee results in additional costs to investor-owned utilities, the CPUC will be able to allow them to recover the costs via appropriate regulatory proceedings. Thus, we are supportive of the approach to imported electricity as proposed." (Letter from Julie Fitch, California Public Utilities Commission, to Mary Nichols, California Air Resources Board, Id.)

II. ARB SHOULD AMEND THE DEFINITION OF REPLACEMENT ELECTRICITY TO BE CONSISTENT WITH THE SECOND 15-DAY CHANGES.

The Initial Statement of Reasons for the proposed amendments states that Section 95202(a)(115) "replacement electricity" is added for reporting consistency with the Mandatory Reporting Regulation ("MRR"). Although the term replacement electricity occurs in the context of the discussion in Section 95201(a)(4)(B)(2), the second 15-day proposed changes of the MRR no longer include this definition. The Utilities appreciate the intent of this language and request it be updated in the first 15-day change package of the proposed amendments to the COI regulation to reflect the most recent approach for accounting for out-of-state renewable energy (as described in the Cap-and-Trade and MRR). We also note that the ARB will need to modify the equation in Section 95203(b) associated with the quantity of emissions from electricity delivered in California to subtract out the electricity associated with these renewable transactions.

III. TO ENSURE TIMELY AND ACCURATE REPORTING THE ARB SHOULD AMEND THE REGULATION TO PROVIDE NATURAL GAS UTILITIES WITH A LIST OF CUSTOMERS WHO PAY THE FEE DIRECTLY.

Assuming that the Utilities are authorized to pass along the cost of the fee to their customers as requested above, we request that ARB amend the regulation to state that ARB will provide natural gas utilities with a list of electricity generators that will be subtracted from the natural gas utility reporting and fee obligation. As defined in the regulation, the fee associated with natural gas combustion does not apply to natural gas delivered to electricity generating facilities because they directly pay the fee based on emissions associated with megawatt-hours delivered to the California grid. We had previously requested that ARB limit the possibility for “double charging” entities that pay the fee directly to ARB by developing a list of those electricity generating facilities that need to be excluded from the natural gas utility fee payment responsibility as described in Sections 95201(a)(1)(A) and 95204(d)(1). ARB has since provided these lists to the natural gas utilities for reporting 2008, 2009 and 2010 data.

The current amendments, however, are unclear regarding whether ARB will continue to provide lists of electric generating facilities to exclude from the natural gas utilities’ reporting and fee payment obligation going forward. Additionally the amendments to the reporting section now require that natural gas utilities report both the quantity of therms of natural gas delivered at the meter to all end users and the “aggregate quantity of therms of natural gas delivered to electric generating facilities.” It is not clear in the regulation whether this second reporting requirement is referring to the list of electric generating facilities that are paying the fee directly to ARB which ARB had previously been providing to the natural gas utilities.

The Utilities request that ARB continue to provide the natural gas utilities with a list of the electric generating facilities paying the fee directly to ARB 6 weeks prior to reporting to ensure that we are able to report in a timely and accurate manner. The Utilities recognize that the emissions data necessary to determine which electric generating facilities are above the 10,000 MT CO₂e/year threshold will not be available to ARB until April 1 of each year. Accordingly, we recommend that ARB revise the reporting date for natural gas utilities to June 1 of each year to provide ARB sufficient time to review the data submitted, generate a list and then have the natural gas utilities adjust their report as needed.

Clerk of the Board
California Air Resources Board
October 14, 2011
Page 5

We appreciate the opportunity to comment on the ARB's proposed AB 32 Cost of Implementation Fee Regulation. Please contact us if you have questions about these comments or if we may be of further assistance.

Very truly yours,

Pacific Gas and Electric Company

Southern California Gas Company

San Diego Gas & Electric Company

JWB:kp

cc: Ms. Edie Chang
Mr. Bill Blackburn
Mr. Bruce Tuter
Mr. William Knox