

# INDEPENDENT ENERGY PRODUCERS

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December 2, 2009

Dr. Lawrence H. Goulder, Chair  
AB 32 Economic and Allocation Advisory Committee  
CALIFORNIA AIR RESOURCES BOARD  
P.O. Box 2815  
Sacramento, CA 95812-2815

RE: Allocation of Greenhouse Gas Emission Allowances.

Dear Dr. Goulder:

The Independent Energy Producers Association (“IEP”) represents independent power producers (IPPs). IPPs are independent of traditional regulated utilities and municipal-owned utilities, yet they represent approximately 25,000 MWs of installed electrical generation in California, i.e. approximately 30% of the statewide peak load. They include a full range of renewable electric generators (e.g. biomass, geothermal, landfill gas, solar, wind) as well as natural gas-fired and non-conventional fueled power plants. We are pleased to provide you our perspective related to the allocation of greenhouse gas emission allowances.

On November 23, 2009, the Joint Utilities<sup>1</sup> recommended that “a portion of the allowances be allocated directly to Local Distribution Companies (‘LDCs’) on behalf of their customers to help off-set the costs of AB 32 implementation that will be incurred in the electricity sector.” IEP appreciates this opportunity to respond to the Joint Utilities recommendation and raise a number of concerns regarding the Joint Utilities’ recommendation to allocate allowances directly to themselves.

IEP notes that allocating allowances directly to the LDCs would make more sense if the AB 32 compliance obligation was placed directly on the LDCs. However, the CARB Scoping Plan chose not to pursue this approach. Indeed, many of the Joint Utilities now advocating for a direct allocation of allowances to themselves advocated successfully to impose the AB 32 compliance obligation directly on the electric generators rather than LDCs, i.e. the so-called “First Deliverer” approach.

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<sup>1</sup> The Joint Utilities group is comprised of regulated utilities and municipal-owned utilities or associations thereof: Modesto Irrigation District, Northern California Power Agency, Pacific Gas and Electric Company, Sacramento, Municipal Utility District, Southern California Edison Company, and Southern California Public Power Authority.

As a result of the “first deliverer” approach, obligated entities include owners/operators of electric generators, including IPPs and utility-owned generation (“UOG”).<sup>2</sup> In order to operate, obligated entities will be required to obtain allowances to cover their reported GHG emissions. Thus, IPPs will be competing directly with utility UOG projects to (a) acquire allowances to operate existing generation and (b) to develop, own, and operate new generation assets in a carbon-constrained, AB 32 compliance environment. This IPP vs. UOG competition will occur in an environment in which allowances, treated as variable operating costs, will have significant competitive impacts.

In light of this direct competition, IEP is particularly concerned that the EAAC Committee not recommend, and that the CARB not adopt, a program in which one particular subset of the electric sector, namely our UOG competitors, are able to realize a significant competitive advantage by receiving directly or indirectly the benefits of allowance allocation. This will occur if the CARB adopts, as recommended by the Joint Utilities, a policy in which “a portion of the allowances be allocated directly to Local Distribution Companies (‘LDCs’) on behalf of their customers to help off-set the costs of AB 32 implementation that will be incurred in the electricity sector.”

If the LDCs are to receive compensation to help off-set the costs of AB 32 implementation, then this compensation should occur outside of any consideration of the design for allowance allocation. This implies two important considerations:

*FIRST*, to the extent that allowances are allocated in whole or in part via an auction, the LDCs should not play any role in the administration of any such auction, and all LDC owned electric generation should be required to compete in the auction in the same manner as IPPs. Clear conflicts of interest will arise if the LDCs have preferential, discriminatory access to allowances.

*SECOND*, to the extent that allowances are administratively allocated, LDCs should not be allocated allowances directly as this will tilt the competitive playing field in favor of UOG ownership and operation over IPP ownership and operation.

Should it be determined that LDCs customers warrant treatment to help off-set the costs of AB 32 implementation that will be incurred in the electricity sector, then IEP recommends that the EAAC and CARB consider providing any such compensation indirectly, outside of the design of the allowance allocation protocol, and that the LDC customers receive the *economic value* of an allowance allocation, rather than directly receive the allowances as recommended by the Joint Utilities.

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<sup>2</sup> Regulated utilities often have unregulated affiliates that also engage in project development, typically outside of the service territory of the host utility. Unregulated utility affiliates may be IPPs and are not included in the definition of UOG project development. Rather, UOG project development is conducted directly under the auspices of the regulated utility and the costs of such development typically recovered directly in rates as are all capital expenditures of the regulated utility.

Respectfully submitted,

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive style with a large, sweeping "K" and a long, horizontal stroke at the end.

Steven Kelly  
Policy Director

Cc: EAAC Members  
Ms Karen Douglas, Chair – California Energy Commission  
Ms Mary I. Nichols, Chair – California Air Resources Board  
Mr. Michael R. Peevey, President – California Public Utilities Commission  
Mr. James Goldstene, Executive Officer – California Air Resources Board  
Kevin M. Kennedy, Ph.D., Chief – Program Evaluation Branch  
– California Air Resources Board