



October 28, 2014

Chris Gallenstein  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

**Re: EPA Proposed Rules to Regulate Power Plants**

Dear Mr. Gallenstein:

The Energy Producers and Users Coalition<sup>1</sup> (EPUC) appreciates the opportunity to provide these comments as the Air Resources Board develops comments on the Environmental Protection Agency's (EPA) "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units Proposed Rule" (Proposed Rule). California is well positioned to present a compliance plan under the new rule. California's aggressive early action in developing energy efficiency, renewable generation and combined heat and power (CHP) generation will enable the state to leverage existing programs to meet the targets identified by the EPA. EPUC offers these comments to highlight considerations for ARB when developing the state's plan for compliance. Most importantly, in light of California's early action, ARB should avoid creating additional regulatory burdens for Electric Generating Units (EGUs) operating in California.

**1. California is Well Positioned for Compliance**

The EPA has proposed carbon emissions rules for new power plants, existing power plants and modified or reconstructed sources with the goal that the same power will be generated with less carbon pollution. Under the proposed rule, the total carbon emissions from the fleet of existing EGUs are expected to be cut by 30% below 2005 levels by 2030. The proposed rule directs states to file independent or multi-state plans to meet the targets established by the EPA. The plans can include measures both

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<sup>1</sup> EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, Chevron U.S.A. Inc., ExxonMobil Power and Gas Services Inc., Phillips 66 Company, Shell Oil Products US, Tesoro Refining & Marketing Company LLC, THUMS Long Beach Company, and Occidental Elk Hills, Inc.



directly impacting affected EGUs and other measures to limit emissions in the state. Any measure included in a state's compliance plan will become federally enforceable.

California has already taken significant steps to address climate change, including the adoption of foundational programs in the electricity sector:

- ✓ The Renewables Portfolio Standard (RPS), requiring 33% of California's electricity to be produced by a renewable source by 2020;
- ✓ Effective energy efficiency programs and targets aimed to reduce electricity consumption in the residential and industrial sectors; and
- ✓ Policies to promote CHP as an efficient form of gas-fired generation.

Reaching beyond the electricity sector, California implemented the Cap and Trade program (C-T), which places compliance obligations on emitting facilities and enables compliance through a carbon market.

The result of California's early emissions reductions actions is that the state is well positioned to meet the goal identified by the EPA for the state. In 2012, California's emissions baseline was 698 lbs CO<sub>2</sub>/MWh, placing the interim target for 2020-2029 at 556 lbs CO<sub>2</sub>/MWh and the final 2030 target at 537 lbs CO<sub>2</sub>/MWh. The compliance estimates provided by the California Energy Commission demonstrate the success of steps that California has already taken to regulate and reduce its emissions. Using the conservative estimates provided by the CEC reflecting current programs, California is projected to have emissions levels of 403 lbs CO<sub>2</sub>/MWh in 2030. These estimates suggest that California can meet the targets laid out by the EPA without adopting additional regulations for electrical generating units operating in the state.

## **2. California Should Prevent Unnecessary Regulatory Burdens**

Existing California programs reducing carbon emissions have been carefully crafted to meet California's climate goals, while mitigating potential trade and emissions leakage or other unintended consequences. The success of California's strategy reflects a delicate balance of regulation and market forces. The state's response to a new carbon pollution regulation must preserve this balance.

While the Proposed Rule provides California with the ability to capitalize on its prior emissions reductions measures, it also requires that any measure included in the California plan will be federally enforceable. Federal enforceability will impose an additional burden on facilities that are already subject to California regulations. Federal oversight may also leave California less flexible to adjust its regulations to address



changes in market conditions. Extreme care should be used designing California's program to avoid implementing additional burdens on facilities or exacerbating trade exposure caused by higher electricity prices.

To avoid duplicative or overly restrictive carbon regulation and maintain its flexibility, EPUC recommends that California:

- ✓ Include only the absolute minimum of measures or programs from the electricity sector in its compliance portfolio necessary to achieve the EPA target;
- ✓ Articulate the program design in a manner that maximizes the flexibility of program design and administration to avoid limiting future scope and design changes in those programs;
- ✓ Ensure the right to reformulate its plan as conditions change in California's carbon policy.

In addition, California should preserve the voluntary character of programs, such as energy efficiency and CHP, which today are voluntary for consumers or generators.

Particular caution is required, however, in considering Cap and Trade as a component of California's plan. The C-T program goes beyond the electricity sector, unlike the other emissions reduction programs. In addition, the success of the C-T program is a result of careful program design, and California benefits from the state's flexibility to modify the program as needed to protect both environmental and market goals. Subjecting C-T to federal enforceability may make the program more difficult to administer and could inadvertently subject the industrial sectors to 111(d) requirements. ARB should consider if it is even necessary to include C-T in its plan submitted to the EPA. Based on CEC's conservative estimates provided at the September 9 workshop, California is well situated to achieve the target emissions and inclusion of C-T could be avoided.

### **3. CHP Potential**

The Proposed EPA regulation seeks comment on the role of industrial CHP to avoid additional generation at affected electric generating units.<sup>2</sup> CHP, which is voluntarily employed by a range of California industries and businesses, plays an important role in helping California avoid less efficient generation and achieve greater emissions reductions. A voluntary CHP program should be included within a California plan.

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<sup>2</sup> Proposed Rule at 34924.



CHP is commonly, although not universally, used at industrial or other facilities where both electricity and thermal energy is required. As stated in the First Update to the Climate Change Scoping Plan:

*CHP continues to be the most efficient technological approach to meet large on-site thermal and electrical loads, especially with today's advancements in combustion technology, stationary fuel cells, and waste-heat recovery devices.<sup>3</sup>*

The First Update to the Climate Change Scoping Plan observes that while CHP offers these benefits, few additional CHP units have been installed in California since the original scoping plan was issued, and existing CHP capacity is declining.<sup>4</sup> The contraction of the CHP market has occurred despite the Scoping Plan's support of CHP and the CHP Settlement entered into in 2010. The ARB Focus Working Group on Energy issues highlights this contraction and identifies as a barrier to development the uncertainty that existing CHP units face.<sup>5</sup>

The EPA argues that due to the integrated nature of the electric system, measures that are already in use and capable of reducing emissions should be encouraged. The use of onsite CHP to serve electric load, allows for more efficient industrial processes and the avoidance of additional generation by less efficient generating sources.<sup>6</sup> For these reasons, California should consider how best to encourage CHP, without adding to the regulatory burden, with particular focus on identification and removal of existing barriers to CHP development and continued operation. It is important that California's compliance plan discourage the early retirement of existing facilities that provide efficient and reliable electric energy to industry and the state's consumers.

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<sup>3</sup> First Scoping Plan Update at 56.

<sup>4</sup> *Id.* at 55-56[CHECK].

<sup>5</sup> Focus Working Group on Energy at [].

<sup>6</sup> *Id.*



EPUC looks forward to working with ARB staff to develop these ideas further and draft the state compliance plans.

Sincerely,

A handwritten signature in black ink that reads "Katy Morsony". The signature is written in a cursive, slightly slanted style.

Evelyn Kahl  
Katy Morsony

Counsel to EPUC