City of Commerce

September 24, 2007

Tina Baca Del Rio
Mayor Pro Tem

Ms. Mary Nichols, Chairperson
Board Members
A.B. 32 Staff Members
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Re: Additional Proposed Early Action Measures Under A.B. 32

Dear Chairperson Nichols, Board Members, and Air Resources Board Staff:

The City of Commerce respectfully submits this letter in favor of an additional ARB "early action," to be implemented immediately, barring the construction and development of new criteria-pollutant and greenhouse-gas emitting power plants in environmental justice areas. In making this proposal, we echo the prior early action comments of the California Air Pollution Control Officers' Association (CAPCOA), the Environmental Justice Advisory Committee, and Communities for a Better Environment.

Interests of the City of Commerce in this Proceeding. The City of Commerce is located in the region of Southeast Los Angeles. It is part of the South Coast Air Quality Management District ("SCAQMD"), which has some of the worst air quality in the nation – specifically, according to SCAQMD figures, 51.7% of the total average annual PM 2.5 exceedances of the National Ambient Air Quality Standards for the entire nation, and almost 25 % of the exceedances of the 8-hour ozone standard nationwide. *See* SCAQMD, 2007 Air Quality Management Plan Presentation, *available at* http://www.aqmd.gov/aqmp/AQMPintro.htm ("staff presentation" link, slides 1 and 2). Commerce is, in fact, in one of the most impacted regions of the District that will not meet federal ambient air quality standards under present air quality plans. *Id.,* slide 19. According to draft Health Risk Assessments recently released for by the Board for the Commerce Union Pacific and BNSF Railroads, Commerce is also has some of the State's highest diesel particulate emissions in the State, considered by ARB to be responsible for 70% of the state's ambient air toxic cancer risks. Commerce is also located adjacent to a proposed new 934-megawatt combined cycle natural gas electric generation facility whose application is pending before the California Energy Commission for which the SCAQMD has now

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amended its rules to allow new access to the Priority Reserve under the federal Clean Air Act New Source Review Program.

I. <u>*Background*</u>

A. Air Resources Board's June 21 Direction to Staff.

At the June 21 meeting in which the Air Resources Board ("ARB") adopted several "early action" measures under last year's Assembly Bill 32, the Global Warming Solutions Act ("AB 32"), the Board faced criticisms that its proposed list of early actions did not do enough to reduce emissions of Greenhouse Gases (GHGs), and did not adequately address environmental justice concerns, as AB 32 requires. The Board directed staff to further evaluate the early actions adopted, and not adopted, so that it could revise or add to the list adopted at that meeting. Specifically, the Board directed staff to look at the comments provided by the Environmental Justice Advisory Committee ("EJAC"), CAPCOA, and SCAQMD. Staff issued a report (on Sept. 7) and presentation (on Sept. 17) responding to the specific proposals in the EJAC, CAPCOA, and SCAQMD letters.

B. Background on AB 32 and Early Action Requirements.

As you know, in general, AB 32 requires ARB to adopt rules so that the overall emissions of GHGs by the State fall to the levels they were at in 1990 by 2020. This overall reduction was to be achieved despite the near doubling in the State's population anticipated between 2006 and 2020 (from approximately 30 million to 50 million inhabitants). The Legislature made clear that ARB was to consider and require the achievement of emissions reductions from all sectors within the State, specifically including the generation and sale of electricity and the use of natural gas.[1] The statute mandates that the agency undertake to achieve those emissions reductions in two main steps: first, a list of "early actions," to be initially published by June 30, 2007, and adopted by enforceable rules on or before January 1, 2010, *see* Health & Safety Code §§ 38560.5(a), (b), and second, the use of a

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[1] *See* Health & Safety Code §§ 38530(b) (requiring reporting from electricity and natural gas utilities), 38570(c) (authorizing the use of market—based reductions approaches on regulated entities), 38562(b)(6) (providing that ARB's rules should consider overall societal benefits including the reductions in non-GHG pollutants and the "diversification of energy sources"), 38562(d)(2) (requiring that ARB's rules were to achieve reductions "*in addition to* any other greenhouse gas emission reductions that would otherwise occur.") (emphasis added). Thus, while Health & Safety Code § 38574 provides that ARB cannot alter any other agency program on greenhouse gases, it is clear that the whole purpose of AB 32 was to allow ARB to impose *additional* requirements.

rule or rules imposing direct emissions reductions measures or market mechanisms after the development of a scoping plan in 2009, resulting in a regulation published January 1, 2011, and enforceable on or before January 1, 2012. Health & Safety Code §§ 38561, 38562.

As the Board was aware when it ordered the consideration of additional early action measures, AB 32 provides that the Board "can adopt emissions limits or emissions reductions prior to" January 1, 2011 and enforceable before January 1, 2012. Health & Safety Code §38563. In other words, the Board has authority to adopt additional early action measures beyond those identified in the list before June 30, 2007, and it can impose regulations identified in the scoping plan before January 1, 2011.

Early Actions and Environmental Justice. AB 32 makes clear that, as between early actions and the longer-term regulations, it must design the regulations in a manner that "encourages early actions." Health & Safety Code § 38562(b)(1). Additionally, and of primary importance to Commerce and its residents, the Legislature ordered that environmental justice concerns were of primary concern in the regulatory scheme ARB was to implement. The Legislature required that ARB

Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

Health & Safety Code § 38562(b)(2) (emphasis added), and in particular ARB was required to

Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

Health & Safety Code § 38562(b)(4) (emphasis added). Finally, with regard to the long-term regulations issued after the scoping plan, the Legislature made clear that before ARB could include *any* market-based compliance mechanism, it was required to:

(1) Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, *including localized impacts in communities that are already adversely impacted by air pollution,* [and]
(2) Design any market-based compliance mechanism to *prevent **any** increase in the emissions of toxic air contaminants or criteria air pollutants.*

Health & Safety Code § 38570(b) (emphasis added).

Put simply, ARB

• *must not* achieve GHG reductions at the expense of communities like Commerce that face already disproportionately impacted air quality, and

• it *must* consider early actions to protect those communities if its cap and trade or other long-term market mechanism regulations would result in such impacts.

C. Additional Rules Relevant to Electricity Generation and the Diversification of Energy Sources

As you are also no doubt aware, last year the Legislature also mandated that the PUC develop a "greenhouse gas emissions performance standard" under S.B. 1386. The Public Utilities Commission has adopted as a standard that no new power plants may be built emitting GHGs at a rate *greater* than that of a combined-cycle natural gas power plant. However, as noted above, the Legislature anticipated that the GHG emissions performance standard would act as a floor, not a ceiling, because it adopted AB 32, requiring further GHG reductions, including from power plants, at the same time. Additionally, interpreting S.B. 1386 to authorize any and all construction of combined-cycle natural gas power plants would also violate the Renewable Portfolio Standard as enacted by the Legislature in SB 1078 and SB 107, which mandates that 20% of the State's energy must come from renewable sources by 2010 – a target we have not yet reached.

II. Why ARB Should Adopt CAPCOA's Proposal Number 3, and the Environmental Justice Advisory Committee's Proposal Number 27, to Mandate an Early Action Prohibiting the Construction of Additional Greenhouse-Gas and Criteria-Pollutant Emitting Power Plants in Environmental Justice Areas

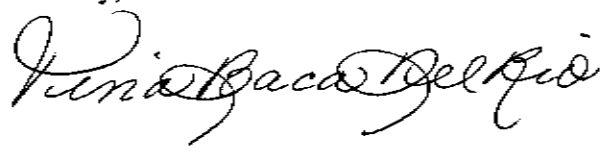
As discussed above, AB 32 mandates that ARB's actions to reduce GHGs must ultimately include limitations on the use of greenhouse-gas emitting natural gas power plants; and the environmental justice provision of AB 32 require that they be considered now if they are going to result in localized impacts on already adversely affected communities or if interim regulatory efforts interfere with other efforts to achieve and maintain state and federal ambient air quality requirements relating to criteria pollutants or toxic air contaminants. Health & Safety Code §§ 38562, 38570. Thus, natural gas power plants – of whatever sort – should not be allowed to be located in environmental justice communities.

The comments of CAPCOA and the Environmental Justice Advisory Committee, which prompted the Board to consider additional early action measures in this proceeding, also support this result. The Environmental Justice Advisory Committee recommended as measure 27 that the ARB require local air districts to phase out existing coal power plants in favor of clean technologies – we presume, contrary to staff, that the EJAC meant clean power, not natural gas power, which still generates GHGs and other emissions. And CAPCOA recommended the incorporation of GHG concerns in present local new source review programs – noting that local air districts should probably be concerned with GHG emissions anyway under CEQA.

We must respectfully note that the SCAQMD has just adopted amendments to its rules 1309.1 and 1315 which would allow the construction of the Vernon power plant – and about 11 other natural gas power plants in and around the District – and contravene all of the above principles. The plants now permitted to go forward would *increase* the State's GHG emissions by 35.4 billion pounds of carbon dioxide, or roughly 5% of California's current inventory. We believe AB 32 mandates that ARB preempt such unwise, and unjust, rule changes pursuant to its Early Action mandate under AB 32.

Please feel free to contact us should you have any questions regarding the above.

Sincerely,



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