STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

June 23, 2009

Ms. Mary Nichols
Chair, California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

Dear Ms. Nichols:

The staff of the Air Resources Board (ARB) has requested that the Energy Division of the California Public Utilities Commission (CPUC) consider the feasibility of implementing the AB 32 Fee Regulation in the manner described in the ISOR. I appreciate the opportunity to provide these comments and the CPUC staff would be happy to provide any additional information requested by ARB.

I note that our analysis focuses on the administrative aspects of imposing the fee on the retail providers and marketers of imported electricity and on the natural gas utilities, users, and pipeline owners and operators. These comments do not address any legal considerations concerning the applicability of the fee regulation.

Natural Gas Utilities, Users, and Pipeline Owners and Operators

Energy Division understands from ARB staff that the proposed regulations of May 8, 2009 will be revised to eliminate the requirement that a portion of the AB 32 administrative costs be collected from interstate pipeline companies regulated by the Federal Energy Regulatory Commission (FERC). Instead, responsibility for this share of the costs will be placed the on those California end users served directly by the interstate pipelines. With regard to crafting these revisions, ARB should be aware that a FERC regulated interstate pipeline company could directly deliver natural gas to a publicly-owned utility (e.g., the City of Susanville), and these cases may need to be explicitly accounted for in the applicability of the regulation.

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.

Retail Providers and Marketers of Imported Electricity

ARB staff proposes in the ISOR that any retail provider or marketer that is "the purchasing/selling entity at the first point of delivery in California of imported electricity" be subject to the fee regulation. This characterization of the entity obligated to pay the fee is consistent with the proposed point of regulation for a cap-and-trade program recommended in the joint decision issued by the CPUC and the Energy Commission. Marketers and retail providers that import electricity on transmission paths that cross the California border will need to incorporate the cost of the carbon fee into the power they sell. 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.

Respectfully submitted,

Julie A. Fitch
Director, Energy Division