



March 11, 2009

Ms. Jeannie Blakeslee
Ms. Edie Chang
Office of Climate Change
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments of the Indicated Producers on CARB AB 32 Administrative Fee Draft Regulations

Dear Ms. Blakeslee and Ms. Chang:

The Indicated Producers (IP)¹ is an *ad hoc* coalition representing the interests of in-state and other domestic natural gas producers, natural gas marketers, and large industrial end-users engaged in oil and gas production and refining. The proposed AB 32 administrative fee will impact IP members in their capacity as producers, marketers and end-users. While it is possible that application of an AB 32 administrative fee could be faced with legal challenges or challenges regarding the scope of applicability, IP does not address these issues in comments. Instead, IP offers the following observations and recommendations regarding the practical application of the draft regulations should CARB intend to move forward with the development of an administrative fee. In particular, the comments recommend modification of the draft regulations to:

- ensure consistency with AB 32 authorizing language;
- limit duplicative application of the fee; and
- ensure adequate notice of the fee will be provided to entities required to pay it; and
- exclude deliveries by pipelines from California to out-of-state delivery points.

Each of these points is discussed below.

¹ The Indicated Producers is an *ad hoc* coalition which includes, for the purposes of these comments, Aera Energy LLC, BP Energy Company, BP America Inc. (including Atlantic Richfield Company), ConocoPhillips Company, Chevron U.S.A. Inc., Midway Sunset Cogeneration Company (an affiliate of Aera Energy) and Occidental Energy Marketing Inc.

CARB Administrative Fee Must Lie as Close to the Source of Emissions as Possible as Intended by AB 32

Assembly Bill 32 authorizes CARB to implement an administrative fee to recover AB 32 implementation costs from “sources of greenhouse gas emissions”:

38597. The state board may adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to this division, consistent with Section 57001. The revenues collected pursuant to this section, shall be deposited into the Air Pollution Control Fund and are available upon appropriation, by the Legislature, for purposes of carrying out this division.²

In order to place the administrative fee on the sources of GHG emissions, it should be assessed on those entities that combust natural gas. Placing the fee directly on the emitter may pose a practical challenge, particularly with smaller combustion sources. To ensure consistency with AB 32 language, however, CARB should strive to place the administrative fee as close as possible to the entity actually generating GHG emissions. CARB should clarify this intent in the administrative fee regulations.

To reflect the intent to align the AB 32 administrative fee to AB 32 statutory language, the following modifications should be made to Sections 95201 and 95205:

95201 *Applicability*

(a) This article applies to the following sources of statewide greenhouse gas emissions, as defined in Health and Safety Code section 38505 and this Article.

- (1) Any operator of a public utility gas corporation operating in California on behalf of its end-use customers.*
- (2) Any owner/operator or entity ~~purchasing or~~ consuming natural gas in California that has been delivered transported directly by any interstate pipeline, and not delivered by a public utility gas corporation or in-state proprietary pipeline.*

² Ca. Health & Safety Code § 38597

- (3) Any owner/operator or entity that ~~consumes-produces~~ natural gas that is ~~transported~~ delivered by an in-state proprietary pipeline and is not otherwise included in subpart (1) or (2).
- (4) Any owner/operator or entity that ~~produces natural gas and~~ consumes ~~that~~ natural gas at the site of production and is subject to mandatory reporting regulations, Title 17, California Code of Regulations, sections 95100 et seq, provided that the owner/operator or entity is not otherwise subject to the fees imposed under this Article under subparts (1), (2) or (3).
- (5) Any other consumer of natural gas in California not otherwise included in subparts (1) through (4).

* * *

95205 Fees Imposed.

(a) Natural Gas Utilities and Users.

- (1) The fees prescribed under this Article shall be placed as close as is practically possible to the source of GHG emissions for which the fee is assessed.
- (2) (1) The fees of this Article shall be imposed upon all public utility gas corporations on behalf of their end-use customers. The fee shall be allocated by the public utility gas corporation to its end-users paid based on the number of therms of natural gas delivered to an end-user any person. Public utility gas corporations shall include therms delivered for residential and commercial end-use, industrial use, electricity generation, cogeneration and enhanced oil recovery in the fee to be paid. The fee shall be charged by the public utility to its end-use customers as a distribution surcharge.
- (3) (2) Fees shall be imposed upon all entities ~~purchasing or~~ consuming natural gas that has been directly transported by any interstate pipeline and not by a public utility gas corporation pipeline. A fee shall be paid for each therm of natural gas delivered by interstate pipeline and ~~purchased or~~ consumed by the entity.

Additional changes to Section 95205 are proposed below.

CARB's Administrative Fee Regulation Must be Designed to Limit Double Regulation

Further refinements to the draft regulations are needed to ensure that in-state producer gas will not be subject to duplicative fees. Under the draft regulation, producers transporting gas over proprietary pipelines would be assessed the administrative fee for the therms of natural gas transported.³ CARB will also assess the fee on public utilities delivering gas "to any person" and entities purchasing or consuming gas directly transported over interstate pipelines for the therms transported. If a producer's gas is first transported over a propriety pipeline and subsequently delivered into a utility or interstate pipeline system, this quantity of natural gas could be subject to duplicative application of the fee. To prevent the duplicative application of the administrative fee, CARB should make the following changes to the draft regulations:

95205 Fees Imposed.

(a) Natural Gas Utilities and Users:

~~*(4) (3) Fees shall be imposed upon all consumers that purchase or consume natural gas that has been directly transported by an in-state proprietary pipeline, provided that the natural gas is not otherwise transported by a public utility gas corporation or interstate pipeline. A fee shall be paid for each therm of natural gas delivered by an in-state proprietary pipeline and purchased or consumed by the entity. Fees shall be imposed on all natural gas producers that transport natural gas by any in-state pipeline to a consumer. A fee shall be paid for each therm of natural gas that is transported to a consumer and is not transported by a public utility gas corporation.*~~

~~*(5) (4) Fees shall be imposed on all California owner/operators that produce and consume natural gas at the site of production, to the extent not covered by subparts (2) through (4), and are subject to mandatory reporting regulations, Title 17, California Code of Regulations sections 95100 et seq.*~~

Finally, CARB should add a subpart to capture gas consumption by an entity receiving gas directly imported from an international pipeline or any other source not otherwise specified.

³ Section 95205(a)(3).

- (6) Fees shall be imposed on any other consumer of natural gas in California not otherwise specified in subparts (1) through (4).

CARB Should Apply Adopted Fees Prospectively From the Date of Adoption and Ensure There Is Adequate Notice of Fees

CARB must provide notice of the amount of the fee in advance of the billing year to ensure entities are able to pass through the costs associated with the AB 32 administrative fee in their product prices. Under the current draft regulations, the executive officer of CARB would notify entities of the amount of the administrative fee “no later than thirty days after the end of each calendar year”⁴ At the February 25, 2009 workshop CARB clarified that the fee calculation depended on legislative approval of the annual budget. Stakeholders expressed concern that notice of this fee could be significantly delayed. Sufficient and advance notice of the fee is critical to allow entities to plan for the billing year. Stated differently, without adequate notice of the fee in advance of the collection year, poor timing of the administrative fee may significantly hinder an entity’s ability to pass the cost through. For example, a fee determined and set as of July 1, 2010, should apply only to natural gas combusted on or after that date.

To ensure that entities assessed the administrative fee are provided sufficient notice and time to recover these costs, CARB must make the following changes to the regulations:

95206. Payment and Collection.

- (a) No later than ~~thirty days~~ six months after before the end of each calendar year, the Executive Officer shall provide a written fee determination notice to each affected entity of the amount due for the ~~current~~ calendar year commencing on or after that date, which shall be based on the reports submitted pursuant to section 95204.
- (b) Each entity that is notified by the Executive Officer that it must remit a specified dollar amount to the state board for the then-current fiscal year shall transmit that dollar amount to the state board for deposit into the Air Pollution Control Fund within sixty days of receipt the fee determination notice.

⁴ Section 95206(a).

CARB Should Exclude Off-System Deliveries Going Out of State from the Administrative Fee

CARB must exclude off-system deliveries going to another state. The draft regulations address natural gas produced in-state or delivered into the state but do not address off-system deliveries that originate in the state and go out of state. In general, natural gas deliveries that are made over a natural gas corporation or interstate pipeline from California to an out-of-state delivery point must be excluded from the scope of the administrative fee. Application of the fee to these deliveries would hamper the ability of entities making these sales in other markets not impacted by a similar administrative fee. CARB therefore should exclude these deliveries from the scope of the administrative fee by making the following change to the regulations:

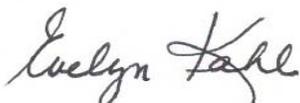
95201. *Applicability.*

- (a) *This article applies to the following source of statewide greenhouse gas emissions, as defined in Health and Safety Code section 38505 ...*
- (b) This article does not apply to natural gas transported over a public utility gas corporation or interstate pipeline within California but delivered to an out-of-state delivery point.*
- (c) ~~(b)~~ *This article does not apply to sources of statewide greenhouse gas emissions caused by combustion of the following fuels: . . .*

Recommendations

IP request that CARB refine the AB 32 administrative fee draft regulations consistent with the foregoing recommendations and look forward to discussing these issues further.

Very truly yours,



Evelyn Kahl