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March 13, 2009

Ms. Mary Nichols, Chairman  
Mr. James Goldstene, Executive Officer  
CALIFORNIA AIR RESOURCES BOARD  
1001 "I" Street  
Sacramento, CA 95814-2828

**Re: Pacific Gas and Electric Company comments on the ARB's Proposed  
Assembly Bill 32 Administrative Fee Regulation**

Dear Chairman Nichols and Executive Officer Goldstene:

Pacific Gas and Electric Company ("PG&E") welcomes the opportunity to provide comments on the ARB's Proposed Assembly Bill 32 ("AB 32") Administrative Fee Regulation. PG&E recognizes ARB's need to adopt a fee structure to recover administrative costs associated with the implementation of AB32. As provided in California Health and Safety Code, Section 38597, the ARB is authorized to adopt "a schedule of fees to be paid by the sources of greenhouse gas emissions, regulated pursuant to this section..." (HSC, Section 38597). As currently proposed, however, the draft regulation incorrectly defines upstream entities as sources of greenhouse gas ("GHG") emissions and requires these upstream entities to pay the administrative fee. PG&E provides these comments to address this aspect of the ARB's proposal. Additionally, we respond here to questions raised in the February 25<sup>th</sup> workshop concerning double counting of natural gas volumes and issues associated with not imposing the fee on GHG emissions from electricity imports.

**Definition of Sources of Greenhouse Gas Emissions**

The ARB's Draft Regulation Order (the "Draft Regulation") currently defines "any operator of a public utility gas corporation operating in California" as a source of statewide greenhouse gas emissions, as defined in California Health and Safety Code ("HSC"), Section 38505. Health and Safety Code Section 38505 defines greenhouse gas sources as "any source or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emission and monitor compliance with the statewide greenhouse gas emissions limit."



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As an upstream provider of natural gas, an operator of a public utility gas corporation is not a "source of statewide greenhouse gas emissions." A public utility gas corporation transports natural gas from a point of origin to end-users of that natural gas where combustion and emission of GHGs ultimately occurs. Except for small amounts of natural gas consumed in transport, limited fugitive emissions from pipelines and gas processing facilities, virtually all sources of GHG emissions from the gas sector are associated with the end users of natural gas.

PG&E therefore requests that the language in the Draft Regulation be clarified to state that a public utility gas corporation is an entity upstream from the source of GHG emissions, not the actual source of GHG emissions.

### **Upstream Fee Collection Proposal**

ARB staff acknowledged at the February 25<sup>th</sup> Administrative Fee workshop their intent to apply the fee upstream for administrative simplicity. ARB is relying on the assumption that upstream entities can pass through the fee to the actual sources of GHG emissions. As mentioned, public utility gas corporations are a small segment of the emission sources in California. In keeping with the language of AB 32, PG&E recommends that the ARB collect the fee directly from the emission sources. One alternative method for collecting the fee in this way would be to track the emissions sources identified in the ARB reporting regulation. As recommended by other stakeholders, the ARB could collect from entities identified in this regulation as well as sources of emissions that fall below the reporting threshold such as transportation and natural gas fuel users.

In the event, however, that ARB determines that public utility gas corporations will *collect* the fee from the emission sources based on the quantity of natural gas delivered to end users PG&E requests the following changes to the language in Section 95201(a) and Section 95205(a) (1):

Section 95201(a):

*This article applies to the following [entities for the collection of fees from the] sources of statewide greenhouse gas emissions, as defined in Health and Safety Code section 38505 and this Article.*



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Section 95205(a)(1):

*The fees of this Article shall be ~~imposed upon~~ [collected from end users by] all public utility gas corporations. The fee shall be ~~paid~~ [collected] based on the [metered] number of therms of natural gas ~~delivered to any person~~ [delivered to each end user].*

Also, we believe the regulation should be clarified to ensure it applies on equal terms to all natural gas utilities which deliver gas to retail end users. For this reason we request the following change to Section 95202 (a) (64):

*Public Utility Gas Corporation" is a gas corporation defined in California Public Utilities Code Section 222 that is also a public utility as defined in California Public Utilities Code Section 216 [, and any publicly owned utility that provides natural gas to retail end-users.]*

Finally, we request that the ARB re-evaluate the administrative fee upon implementation of the cap-and-trade program or due to other significant developments associated with the regulatory implementation of AB32. The proposed fee in its current form should be considered an interim funding mechanism and should sunset if the regulatory landscape changes significantly.

### **Double Counting of Natural Gas**

At the February 25<sup>th</sup> workshop, Staff noted that they were working to resolve outstanding issues including the potential to double count some natural gas volumes. PG&E appreciates ARB's acknowledgement of this issue and intention to resolve it prior to the adoption of the final regulation.

Double counting can occur in the following ways:

- Some natural gas is transported from one utility to another, and then delivered to an end-user. For example, PG&E transports gas off-system to SoCalGas, which then delivers the gas to its end-users. If the fee payment is based on gas "transported" as well as "delivered", double counting would occur under this scenario.



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- Some natural gas is also injected into underground storage facilities. This gas may be stored for several years, withdrawn and delivered to an end-user or withdrawn and transported off-system and even out of state. As in the preceding case, if the fee payment is based on gas transportation or deliveries of any kind, such natural gas therms would incur fees more than once.

To avoid double counting under the current approach, PG&E suggests that the ARB request a collection of fees based on the metered number of therms of natural gas delivered to end-users. This change will eliminate the potential for double counting associated with the scenarios described above.

### **Electricity Imports**

As required by AB 32, PG&E believes that electricity imports also must be included in this fee program. AB 32 requires ARB to “account for greenhouse gas emissions from all electricity consumed in the state, including ...electricity... imported from outside the state.” (Health and Safety Code 38530(b)(2))

The fee should be payable by the “deliverer” as defined in the CPUC/CEC “Interim Opinion on Greenhouse Gas Regulatory Strategies” (California Public Utilities Commission / California Energy Commission, D. 08-03-018, March 13, 2008). In that decision, the CPUC/CEC found that requiring delivers to account for the CO<sub>2</sub> embedded in electricity imports would not violate the Commerce Clause (*id.*, Conclusions of Law 19 and 20). ARB can implement and enforce such payments through the mechanisms being designed at the ARB and the Western Climate Initiative for cap-and-trade programs.

Fees can easily be levied on emissions from “specified” electricity imports where the source of the electricity can be assigned through Renewable Energy Certificates, ownership, or contracts.

A default emission rate can be assigned to “unspecified” resources, or those for which the source of electricity cannot be assigned, until such time as ARB has adopted, on the basis of an appropriate study and analysis, “default” emission rates to be applied to electricity from “unspecified” sources. PG&E suggests that ARB convene a workshop to discuss “default” emission rates to be applied to electricity from “unspecified” sources. WCI plans to address default rates in 2009, but may not develop recommendations for boundaries within the WCI, such as the California/Oregon border or the California/Arizona border.

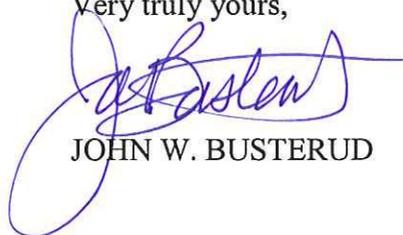


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PG&E appreciates the opportunity to comment on the ARB's draft regulation. Please feel free to contact us if you have questions about these comments or if we may be of further assistance.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'John W. Busterud', with a large, stylized flourish underneath.

JOHN W. BUSTERUD

cc: Edie Chang  
Jon Costantino  
Jeannie Blakeslee  
Bruce Tuter  
Bill Knox