



September 16, 2016

Clerk of the Board  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

**Re PUBLIC HEARING TO CONSIDER CALIFORNIA'S PROPOSED COMPLIANCE PLAN FOR THE FEDERAL CLEAN POWER PLAN**

Dear Members of the Air Resources Board:

The Energy Producers and Users Coalition<sup>1</sup> (EPUC) appreciate this opportunity to comment on the proposed compliance plan for the Federal Clean Power Plan, to be considered at the Board's meeting on September 22, 2016. The proposed plan would be improved with a specific process for determining annually which combined heat and power resources qualify (or do not qualify) for the exemption from Affected Electric Generating Units (EGU) status.

The Clean Power Plan Rule, as adopted by the US EPA, exempts most industrial cogeneration facilities from inclusion as Affected EGU. The final Existing Source Rule published in the Federal Register includes changes to Section 60.5850 which, among other facilities, excludes efficient topping-cycle Combined Heat and Power (CHP) from Affected EGU status.<sup>2</sup> The published version of the Existing Source Rule exempts CHP resources that have greater efficiency than the most efficient combined cycle gas turbine from Affected EGU status:

*EGUs that are combined heat and power units that have always historically limited, or are subject to a federally enforceable permit limiting, annual net-electric sales to a utility distribution system to no more than the greater of either 219,000 MWh or the product of the design efficiency and the potential electric output.*<sup>3</sup>

Notably, the Existing Source Rule does not define potential electric output, but directs parties to rely on definitions in the Clean Power Plan New Source Performance

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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., Phillips 66 Company, Shell Oil Products US, Tesoro Refining & Marketing Company LLC and California Resources Corp.

<sup>2</sup> Carbon Pollution Emissions Guidelines for Existing Stationary Sources: Electric Generating Units, 80 Fed. Reg. 64953 (published October 23, 2015) (to be codified at 40 CFR Part 60) (hereinafter Existing Source Rule).

<sup>3</sup> *Id.*



Standard (New Source Rule) for any concepts not defined in the Existing Source Rule.<sup>4</sup> Beyond providing the definitions necessary to determine the proper treatment of CHP units, the New Source Rule demonstrates EPA's intent to encourage the development of efficient industrial CHP.

The preamble to the New Source Rule provides a clear explanation of EPA's intent and considerations when developing the exemption for efficient, industrial CHP. As the Existing Source Rule follows the same calculation for exempting CHP from affected EGU status, this same intent would encourage the continued operation of existing, efficient industrial CHP facilities.<sup>5</sup>

Moreover, by its terms, the CHP exemption provides two mechanisms for an EGU to meet the relevant operational standard, namely, the CHP unit *either* (i) may have "always historically limited" its operations in a manner that meets the standard, *or* (ii) the CHP unit can qualify -- notwithstanding its historical operations -- if its current operations are "subject to a federally enforceable permit" that limits operations in a manner consistent with the CHP exemption standard.

As drafted, the proposed regulation in Section 95859 (b)(1) does not reflect the flexibility contemplated by the US EPA's exemption for industrial CHP. Specifically, it provides that once a generating unit becomes a regulated EGU, it must be registered in the Cap-and-Trade Program and "remain registered for the duration of CPP *regardless of cessation, annual emissions level, or any other factor.*" (emphasis supplied). Accordingly, it would appear to constrain the ability of a CHP generator that temporarily operates in a manner that does not qualify for the CHP exemption to later re-qualify for CHP exempt status.

The Board should provide for greater flexibility, consistent with the flexibility built into the CHP exemption of the Clean Power Plan Rule and other State CHP policies. Specifically, the possibility of variation in the operation of industrial CHP particular to California has developed under the QF/CHP Settlement approved by the California PUC.<sup>6</sup> The Settlement has created several alternatives for operation of generators that operate as CHP. One of those options is to curtail production of thermal energy to the industrial host and to generate electricity at the dispatch of the utility. Such units may not qualify for the exemption in any particular year in which they choose that option. With the options available under the Settlement, however, the generator may return to full production of both heat and power and will qualify for the exemption. The final compliance plan should recognize that optionality and provide some flexibility with

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<sup>4</sup> *Id.*

<sup>5</sup> Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Generating Units, 80 Fed. Reg. 64949 (published October 23, 2015) (to be codified at 40 CFR Part 60, 70, 71 et. al.) (hereinafter New Source Rule).

<sup>6</sup> The Qualifying Facility and Combined Heat and Power Program Settlement Agreement, October 8, 2010 (Settlement); adopted pursuant to CPUC Decision 10-12-035, as modified by Decisions 11-03-051 and 11-07-010.



regard to qualifying as an Affected EGU. The regulations should provide for an annual test of whether a CHP resource qualifies for the exemption.

The Board has the authority to implement this flexibility by leveraging the existing Title V permitting process. Title V permits can serve as the federally enforceable permit referenced in the New and Existing Source Rules. For example, a Title V permit for an existing source will include the Existing Source Rule as an applicable requirement and could include alternate compliance scenarios based on their operating status. An annual assessment of anticipated operating conditions would confirm eligibility for the exemption.

### **Conclusion**

The proposed amendments should be modified to provide for an annual assessment of whether a CHP resource meets the criteria for exemption.

Sincerely,

A handwritten signature in cursive script that reads 'Evelyn Kahl'.

Evelyn Kahl  
Don Brookhyser

Counsel to the  
Energy Producers and Users Coalition