

August 11, 2011

California Air Resources Board
1001 I Street
Sacramento, CA 95812

RE: Comments on Proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation

Chair Nichols and Members of the Board:

Renewable Northwest Project (RNP) and Bonneville Environmental Foundation (BEF) appreciate the opportunity to comment on the proposed 15-day modifications to the draft regulations for California Cap on Greenhouse Gas (GHG) Emissions and Market-Based Compliance Mechanisms (“Draft Regulations”).

RNP is a member-based public interest group whose mission is to promote the development of environmentally responsible renewable energy projects in the Northwest (Idaho, Montana, Oregon and Washington). RNP’s members are non-profit environmental organizations, consumer protection groups and private companies engaged in the renewable energy industry. BEF is a national, non-profit organization, based in Portland, Oregon, whose mission is to support the development of renewable energy and watershed restoration while empowering people to shrink their carbon footprint.

We strongly support California’s efforts to regulate greenhouse gas reductions, and we commend the Air Resources Board (ARB) on its design of a strong cap-and-trade program. We particularly appreciate ARB’s inclusion of a set aside for the voluntary renewable energy market.

However, RNP and BEF are concerned about the consequences that one element of the proposed regulations would have for the integrity of Northwest states’ renewable portfolio standards (RPS) and on Northwest states’ attempts to voluntarily reduce greenhouse gas (GHG) emissions. Specifically, we believe that § 95852(b) of the Draft Regulations could enable the double counting of GHG emissions reductions and therefore undermine GHG emissions reduction goals in the Northwest. However, this risk can be avoided through the adoption of a simple subparagraph within § 95852(b), the text which is provided below.

Unlike California, no Northwest state has enacted a cap and trade program for the purposes GHG emissions reductions. However, three Northwest states (Montana, Oregon and Washington) have established RPS programs in an attempt to garner the environmental benefits associated with renewable energy generation, including reduction

in GHG emissions and other objectives. Crucial to the integrity of these programs are their legal definitions of a renewable energy credit (REC); each state requires all of the environmental benefit associated with the generation of renewable energy to be transferred to the purchaser of an associated REC. (Full definitions are reproduced in Appendix A.) Without this requirement, the possibility would exist for renewable energy generators to claim or sell GHG reduction rights while simultaneously selling RECs to be used toward utility RPS compliance. If this occurred, the GHG reductions associated with the renewable energy generation would be double counted and therefore, the goal of reducing GHG emissions through RPS compliance would be undermined.

We are concerned that § 95852(b) of the Draft Regulations would subvert the legal definitions of RECs adopted by Northwest states, which require all environmental attributes—including GHG emissions reductions—to be transferred with the REC. By allowing electricity imports from a renewable energy facility to be treated as zero emissions without consideration of the contractual obligations associated with the facility's RECs, the Draft Regulations would enable the double counting of GHG emissions reductions and undermine the emissions reductions goals of a utility or voluntary customer purchasing those RECs. For example, under § 95852(b), a renewable energy generator outside of California selling RECs to a Northwest utility for RPS compliance could simultaneously export power to California, at which point the electricity importer could claim zero emissions simply by demonstrating the “direct delivery of electricity.” Alternatively, a California utility that purchases RECs and power from a renewable energy facility could sell the RECs to a Northwest utility or voluntary customer and still be able to claim zero emissions by demonstrating direct delivery of electricity. Again, this scenario would lead to the double counting of GHG emissions reductions.

Although these concerns are somewhat complex, we believe the aforementioned double counting could be avoided through the adoption of a simple subparagraph following § 95852(b). As have other groups, we recommend that a new section be created as 95852(b)(5) and that subsequent subparagraphs be renumbered accordingly. The new subsection 95852(b)(5) would read:

To report imported electricity from a specified source of renewable energy, the electricity importer must own all property rights to the emissions, or lack of emissions, associated with the imported electricity.

We believe this new subparagraph would signal that double counting of GHG emissions reductions is not permitted, while not conflicting with the intent or administration of the regulations or introducing a new compliance mechanism. Due to its heavy reliance on terms already defined in the Draft Regulations, the new subparagraph should be a seamless addition.

We appreciate the Board's consideration of our comments and urge the Board to take action to avoid the risk of double counting GHG emissions reductions. As written, §95852(b) of the Draft Regulations puts at risk the integrity of Northwest RPS laws and voluntary renewable energy markets. The adoption of the simple subparagraph suggested above would prevent double-counting from undermining those regulations and markets. We encourage the Board to take advantage of the opportunity to integrate this solution for the benefit of the Northwest states' and California's goals to reduce GHG emissions.

Sincerely,



Adam Schumaker
Policy Associate
Renewable Northwest Project



Megan Walseth Decker
Senior Staff Counsel
Renewable Northwest Project



Margie Gardner
Chief Executive Officer
Bonneville Environmental Foundation

Appendix A. Northwest States' Legal Definitions of Renewable Energy Credits

Montana¹

"Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and **includes all of the environmental attributes associated** with that 1 megawatt-hour unit of electricity production (emphasis added).

Oregon²

"Renewable Energy Certificate" (REC or Certificate) means **a unique representation of the environmental, economic, and social benefits associated with the generation of electricity from renewable energy sources** that produce Qualifying Electricity. One Certificate is created in association with the generation of one megaWatt-hour (MWh) of Qualifying Electricity. While a Certificate is always directly associated with the generation of one MWh of electricity, transactions for Certificates may be conducted independently of transactions for the associated electricity (emphasis added).

Washington³

"Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the **nonpower attributes** associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department (emphasis added).

"Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and **avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases** (emphasis added).

¹ Montana Code Annotated (MCA) 2009: 69-3-2003. Available at: <http://data.opi.mt.gov/bills/mca/69/3/69-3-2003.htm>

² Oregon Administrative Rules (OAR): 330-160-0015. Available at: http://arcweb.sos.state.or.us/rules/OARs_300/OAR_330/330_tofc.html

³ Revised Code of Washington (RCW): 19.285.030. Available at: <http://apps.leg.wa.gov/RCW/default.aspx?cite=19.285&full=true#19.285.030>