Department of Energy
Western Area Power Administration
P.O. Box 281213
Lakewood, CO 80228-8213

November 19, 2007

Mr. Doug Thompson
Manager, Climate Change Reporting Section
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Dear Mr. Thompson:

The public rulemaking process for the California Air Resources Board's (CARB) Proposed Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Proposed Regulation) was recently brought to my attention by our staff here at the Western Area Power Administration (Western). The Proposed Regulation would be added as a new Subchapter 10, Article 1, sections 95100 to 95133, title 17, of the California Code of Regulations.

Article 1, section 95101 (b)(5) of the Proposed Regulation states that greenhouse gas (GHG) reporting requirements will be applicable to "retail providers" of electric service as defined in section 95102(a). Section 95102(a) defines retail providers as:

...an operator that is any electric corporation as defined in Public Utilities Code Section 218, electric service provider as defined in Public Utilities Code 218.3, public (sic) owned electric utility as defined in Public Resources Code Section 9604, community choice aggregator as defined in Public Utilities Code Section 331.1, the *Western Area Power Administration*, or the California Department of Water Resources. [Emphasis added].

As you know, Western is a Federal agency. While Western respects the state's initiative to implement GHG regulations, Western is bound by federal laws and regulations. The Supremacy Clause of the U.S. Constitution does not allow a state to directly regulate the federal government without its consent. Western is unaware of any waivers of sovereign immunity relating to GHG.

In the past, Western has worked with other state agencies, such as the California Energy Commission, to provide information the state needs. In the event CARB would like to obtain information from Western, Western is willing to evaluate the request and

will work with CARB to provide certain information. However, Western can not consent to direct state regulation without a waiver of sovereign immunity.

If you have any questions, feel free to call me at 720-962-7017.

Sincerely,

Koji Kawamura
Attorney