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California Air Resources Board
Mary Nichols, Chair
1001 "I" Street
Sacramento, California 95812

Re: **Northern California Power Agency Comments on
October 15 Proposed Scoping Plan**

Dear Ms. Nichols:

The Northern California Power Agency¹ (NCPA) appreciates the opportunity to offer these comments to the California Air Resources Board (CARB) on the October 2008 *Climate Change Proposed Scoping Plan*, issued on October 15, 2008 (Proposed Scoping Plan).

SUMMARY

CARB is to be commended on the development of the Proposed Scoping Plan, and in keeping with the mandates of Assembly Bill (AB) 32, must adopt the final Scoping Plan by January 1, 2009. As drafted, the Proposed Scoping Plan is a useful outline of issues and recommendations to be addressed and further developed in the coming months. That said, the Proposed Scoping Plan is not a detailed, step-by step implementation plan, nor does it contain the necessary final economic analysis before CARB can adopt any of the recommendations contained therein. Once the Proposed Scoping Plan has been revised to acknowledge the preliminary nature

¹ NCPA members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, the Truckee Donner Public Utility District, and the Turlock Irrigation District, and whose Associate Members are the Plumas-Sierra Rural Electric Cooperative and the Placer County Water Agency.

of the analysis contained therein – including the preliminary economic assessment – and identify the shortcomings and deficiencies that define why the proposals set forth in the Scoping Plan are preliminary, the final Scoping Plan can be a useful tool to outline the issues to be addressed through detailed rulemakings and stakeholder meetings in the next two years.

ABOUT NCPA

Established in 1968, NCPA is a joint powers agency that provides support for the electric utility operations of seventeen member communities and districts in Northern and Central California. NCPA's membership is diverse; NCPA member utilities represent both large and very small communities and districts, are located within a wide range of geographic regions, and have unique socio-economic circumstances. The member utilities provide electric power to more than 700,000 customers, relying in large part on geothermal resources in Sonoma and Lake Counties, and hydroelectric resources in Calaveras County that are amongst the cleanest generating facilities in California. NCPA and its members have a long history of environmental stewardship, and have expended considerable resources to develop significant amounts of renewable electric generation resources and implement aggressive energy efficiency programs.

INTRODUCTION

NCPA understands that the Proposed Scoping Plan is intended to serve as a blueprint for the future by laying out the myriad of alternatives that will be more fully developed in subsequent CARB rulemakings. As written, the Proposed Scoping Plan does not actually require anything of the State's stakeholders, but rather suggests measures and programs that should be more fully reviewed and revised in the next two years. While the Proposed Scoping Plan sets out the potential for successful emissions reduction programs, it is the upcoming rulemakings that will be crucial in determining exactly how to deliver on the projected reductions without adversely impacting businesses and communities already detrimentally affected by current economic conditions. Because resolution of these central points are key to determining the eventual success of the various proposed measures and programs, NCPA looks forward to working closely with CARB and the various stakeholder groups contemplated in the Proposed Scoping Plan to address

the particulars necessary to fully develop programs that can successfully achieve the anticipated emissions reductions.

NCPA is concerned that the Proposed Scoping Plan – while comprehensive in the breadth of alternatives and programs discussed – lacks sufficient economic analysis and discussion regarding near and mid-term financial impacts.² The Proposed Scoping Plan notes that overall, the measures contemplated therein will result in a net-benefit to California’s financial and physical health by highlighting the long-term net result. In spite of the potential for long-term benefits, it is critical for the economic analysis to show more than just a snapshot of the economics in 2020. Since the Scoping Plan is just a tool to lay the groundwork for further review and investigation of the options and alternatives set forth therein in the coming months, it is not necessary for the final Scoping Plan to contain a detailed analysis of the interim financial impacts. It is imperative that the Proposed Scoping Plan be revised to emphasize the fact that the net-benefits discussed for 2020 ***do not*** include the analysis necessary to determine the incremental cost – and viability – of many of the proposed programs.

NCPA supports the comments of Board member d’Adamo that the Scoping Plan should at least acknowledge or provide a date certain for the provision of further details and numerical data regarding specific measures.³ Furthermore, NCPA believes that the final Scoping Plan should note that the upcoming rulemakings will include the detailed level of analysis that is necessary before CARB can comply with the mandates of AB 32 to adopt all cost-effective and technologically feasible measures to achieve the necessary emissions reductions.⁴ The final Scoping Plan has been commonly referred to as a “roadmap” for AB 32 implementation; in furtherance of that analogy, NCPA points out – as did many parties during the past two Board meetings – that the roadmap is devoid of details on *how* to get from plan to implementation.

² Overall, as noted herein and in the oral comments presented to the CARB Board during the October 23, 2008 and November 20-21, 2008 meetings, the Proposed Scoping Plan does a thorough job of presenting an outline of the panoply of alternatives that can be utilized across the State in developing measures to meet the mandated GHG reductions specified in AB 32.

³ Oral comments made during the November 20, 2008 Board meeting.

⁴ Cal. Health & Safety Code, §§ 38560.5(c), 38561(a) and (b), 38562(a).

While details regarding the *implementation* of specific issues should not be fully resolved in the Scoping Plan, the final draft should clearly set forth a detailed timeline for the package of rulemakings anticipated in the Plan to fully develop and implement the various measures discussed in the plan itself. The final plan should also include a reference to the analytical shortcomings of the Proposed Scoping Plan, as noted by various stakeholders, including the Peer Review⁵ and the Legislative Analyst Office (LAO).

In these comments, NCPA addresses proposed portions of the following sections of the Proposed Scoping Plan: (1) Cost-effectiveness, (2) Cap-and-Trade, (3) Energy Efficiency, (4) Renewable Portfolio Standards, (5) Local Governments, (6) Transportation; and the proposed process for moving forward with initiation of rulemakings.

COMMENTS ON THE COMPONENTS OF THE PROPOSED SCOPING PLAN

Cost-Effectiveness

The Proposed Scoping Plan should be revised to acknowledge the preliminary nature of the cost-effectiveness discussion, and to clearly state that no proposed program will be implemented until a complete cost analysis has been done to determine that the specific program at issue is cost-effective. While complete in its discussion of the potential costs and savings associated with most (but not all) of the various emissions reduction programs proposed therein, that discussion is based on a validation of the various programs conducted after the fact. As noted by the LAO in a November 17, 2008 letter to Assembly Member Niello (LAO November 17 Letter), the economic analysis was not actually used to inform development of the plan. (p. 16) The final Scoping Plan must include clear direction to all stakeholders involved in the upcoming rulemakings that economic analysis will not be abbreviated, and will be expanded beyond the initial review used to support the Proposed Scoping Plan.

The Proposed Scoping Plan presents a summary of the initial cost-effectiveness analysis of the various proposed reduction measures. Table G-I-2 of Appendix II (pp. G-I-6) shows that

⁵ Peer Review of the Economic Supplement to the AB 32 Draft Scoping Plan, Major Peer Review Comments and Air Resources Board Staff Responses, November 2008.

some programs recommended in the Proposed Scoping Plan are not cost-effective contrary to the provisions of AB 32 mandating that the measures adopted by CARB be cost-effective.⁶

Cost-effectiveness is not just a useful criterion that should be taken into account and considered when making final recommendations – it is a statutory requirement.⁷ NCPA urges CARB to implement revisions to the Scoping Plan to ensure that the positive financial impacts reflected in the Plan show the eventual outcome at the end of the program implementation. It should be clearly stated that the Scoping Plan, as written, does not discuss or reflect (1) interim impacts or (2) the fact that some sectors (such as the electricity sector) are likely to bear a greater portion of the interim costs. Indeed, as noted by the LAO, the Proposed Scoping Plan includes no details regarding the annual investments that will be needed to reach the stated reductions (LAO November 17 Letter, pp. 2, 16), nor the corresponding impacts on the businesses or sectors of the economy that will be called upon to make those investments. (*id.*, pp. 2-3) This information is of vital importance in order to make a reasoned determination regarding the efficacy of any given reduction measure.

NCPA also notes that the final analysis must be consistent in the treatment of various proposals. The Proposed Scoping Plan references this requirement of AB 32, yet determines that some measures, such as renewable portfolio standards (RPS) are “being implemented for energy diversity purposes, not just greenhouse gas reductions” and that the total cost reflected in Table G-I-2 “should not be used as a reference to define the range of cost-effective greenhouse gas measures.” (Proposed Scoping Plan, p. 84) Furthermore, the Proposed Scoping Plan notes that a number of measures included therein “provide greenhouse gas reduction benefits, but are being pursued for *other policy reasons*.” (*id.*, p. G-I-5, emphasis added) Based on this premise, the Proposed Scoping Plan concludes that “ARB is not contributing the costs or savings that result from these measures to implementation of AB 32.” (*id.*) Accordingly, several reduction measures show zero cost and zero savings. However, there is no substantive discussion in the Proposed Scoping Plan regarding how measures are evaluated to determine whether or not they

⁶ See Health & Safety Code §§ 38515, 38560, 38561, 38562; Proposed Scoping Plan, p. 84.

⁷ See generally, Health & Safety Code §§ 38515, 38560, 38561, 38562.

are being pursued for other policy reasons and why they should be excluded from consideration in the total cost-effectiveness analysis of AB 32 implementation.⁸

NCPA urges CARB to revise the Proposed Scoping Plan to include a discussion regarding the criteria to be applied in determining what proposed measures will or will not be included in the AB 32 cost-effectiveness discussion because they are designed to meet other policy objectives.

The Proposed Scoping Plan also includes a discussion regarding achieving the mandated goals “through a broad spectrum of measures” (*id.*, p. G-I-4) and notes that the “current estimates provide a range illustrating the cost per ton of the mix of measures that collectively meet the 2020 target.” (*id.*, p. 84) This statement implies that despite the mandates of AB 32, CARB is contemplating making an overall cost-effectiveness determination that is not based on the cost-effectiveness of individual measures. NCPA is concerned that such an analysis will disassociate the overall impacts of various measures on specific sectors or entities within those sectors, in the interest of obtaining “overall reductions.” Such a determination will result in a disproportionate financial impact on some sectors, including the electricity sector. In order to avoid such a disparate impact, it is imperative that the mandates of AB 32 be followed, and that each measure be found to be cost-effective.

Determination of cost impacts and cost-effectiveness cannot be based on a “total portfolio.” Rather, each program must be reviewed and the impacts on each applicable sector must be determined. NCPA urges CARB to ensure that the Proposed Scoping Plan is amended to clarify that, while a package of measures will be necessary to achieve the AB 32 reduction mandates, each measure must be cost-effective in accordance with the Statute.

⁸ The LAO noted that the disparate treatment of cost and savings associated with what it termed “non-AB32 measures” “substantially affects the ARB’s bottom-line economic projections for the plan,” and summarizes that “the scoping plan includes an inconsistent and incomplete evaluation of costs and savings associated with its recommended measures.” (LAO November 17 Letter, p. 12.)

Cap-and-Trade

The Proposed Scoping Plan includes a recommendation that California establish a cap-and-trade program (p. 15) and notes that the cap-and-trade program is “an essential component of the overall plan to meet the 2020 targets and provides a robust mechanism to achieve the additional reductions needed by 2050.” (p. 31)

There are several aspects of a cap-and-trade program that must be reviewed and analyzed by the stakeholders and CARB before a final recommendation can be made regarding the overall benefits of a California cap-and-trade program. These include: (1) sectors to be included in the initial compliance period; (2) integration with Western Climate Initiative (WCI) or other regional programs; (3) market structure and governance, including auctions; and (4) timing.

Included Sectors. According to the Proposed Scoping Plan, a cap-and-trade program will allow “covered sources, including producers and consumers of energy, to determine the least expensive strategies to comply.” (p. 30) A cap-and-trade program is further extolled in the Proposed Scoping Plan because “the ability to trade allows facilities to adjust to changing conditions and take advantage of reduction opportunities when those opportunities are less expensive than buying additional emissions allowances.” (*id.*) However, as proposed, the anticipated cap-and-trade program suffers from a fatal flaw in that the first portion of the program will essentially include only the electricity sector. (p. 31) While a well-designed, multi-sector cap-and-trade program may be able to meet CARB’s stated objectives, limiting the program to essentially one sector in its nascent stage diminishes the benefits achievable under a multi-sector program.⁹ Indeed, even Table 5 (p. 32, see also Appendix C, Table 1, p. C-17), used to illustrate the resultant benefits of a cap-and-trade program, looks only at the final 2020 figure, and includes the transportation sector in its final positive analysis. In fact, Table 5 really shows how ill-advised an electricity sector-only cap-and-trade program is by highlighting the fact that almost half of all 2020 business-as-usual emissions come from the transportation sector – which is not even included in the cap-and-trade program for the first compliance period. (p. 31)

⁹The LAO notes that “the effect of the cap-and-trade program on the scoping plan’s economic bottom line is unclear”; notably, this observation is based on review of the final cap-and-trade program and assumes inclusion of all four of the economic sectors with the largest emissions. (LAO November 17 Letter, p. 23.)

As drafted, the Proposed Scoping Plan does not distinguish between the proposed initial California-only program (which is essentially the electricity sector only) and a robust, viable, economy-wide cap-and-trade program. All of the lauded benefits of a cap-and-trade program are associated with the latter, and they do not necessarily carry over to an abbreviated cap-and-trade program that includes only one sector whose stakeholders will all be similarly situated and competing for the same resources.

A primary objective of a cap-and-trade program is to ensure that leakage is minimized and that real emissions reductions are achieved at the most efficient cost. The Proposed Scoping Plan notes that starting the program now will set the state on a “course to achieve further emissions cuts well beyond 2020 and ensure that California is primed to take advantage of opportunities for linking with other programs, including future federal and international efforts.” (p. 31) However, a California-only program, especially one that includes essentially one sector, will not achieve the goal of minimizing leakage as required by AB 32. (Health & Safety Code, § 38562(b)(8))

Integration With Regional Programs. Integration of a California cap-and-trade program with WCI is imperative – as the Proposed Plan notes, and NCPA applauds the Scoping Plan’s recommendation to that effect. (p. 30) A well-designed program that covers the broadest possible area will result in the greatest overall benefits in terms of achieving real emissions reductions. It also provides the greatest certainty to stakeholders by creating consistent rules for neighboring jurisdictions and providing much needed regulatory certainty. However, even with the release of the September 2008 WCI Recommendations,¹⁰ the WCI has acknowledged that there is still a great deal of work to be accomplished before the regional program will be ready for implementation. Working closely with WCI, as the Proposed Scoping Plan recommends, is imperative in the development of a viable, economy-wide, regional cap-and-trade program. (p. C-13)

While expanding to a regional program does diminish opportunities for leakage, it does not diminish the opportunities for market manipulation or other unintended harm. One potential

¹⁰ Western Climate Initiative Design Recommendations for the WCI Regional Cap-and-Trade Program, September 23, 2008 (WCI Design Recommendations).

for harm to the electricity sector involves the distribution of allowances. Indeed, the Proposed Scoping Plan recognizes the challenges of even a regional-wide program, and discusses “standardizing allowance distribution across specific sectors if necessary to address competitive issues.” (p. 34) However, it is important to note that while integrating and linking a California cap-and-trade program with the WCI program is crucial, there are no guarantees that WCI will be able to get its numerous member-partners to agree to a single allocation scheme. Further, the mere fact that WCI will need to consider standardizing the methodology by which allowances are allocated in various sectors indicates the high likelihood that some participants will be harmed; there is nothing in the Proposed Scoping Plan, nor in the WCI discussions to date, that address how this harm will be corrected and how injured sectors or entities will be made whole in the process.

NCPA supports the development of a regional program, rather than a single state program. However, it is ill-advised to initiate a California cap-and-trade program *in anticipation* of linking with a regional program before there has been a detailed analysis of the relationship between a California program and a regional program. California must also look closely at the viability of a regional program, and the implications of a WCI program that does not cover the entire western region. The Proposed Scoping Plan cannot – and should not – be revised to include a discussion that would resolve these issues. However, the final Scoping Plan can – and should – acknowledge the complexities and possible limitations inherent in the development of a regional cap-and-trade program. Not the least of these challenges is determining who will be charged with verifying a state’s or entity’s compliance with the WCI program rules, and how compliance will be enforced, in light of the fact that the WCI proposal is essentially a *recommendation* for each partner jurisdiction to adopt.¹¹ Furthermore, it is also important to note that WCI has not provided a recommendation regarding the value of implementing a cap-and-trade program.

¹¹ The LAO also recognizes this point by noting that “a program that operates beyond the state’s borders raises challenging enforcement issues from the state’s perspective.” (LAO November 17 Letter, p. 21.)

Market Structure and Governance. Market structure is a key issue, but despite the discussion in Appendix C,¹² it has not been given sufficient consideration in the Proposed Scoping Plan. NCPA agrees with the LAO, which notes that the program structure itself is still under development, including very controversial issues, such as the methodology for allocating allowances. (LAO November 17 Letter, p. 21)

The final Scoping Plan must include a discussion regarding the myriad details attendant to the structure, governance, and oversight of a cap-and-trade program. This discussion must not give short shrift to the very real market related obstacles that must be overcome before a well-designed cap-and-trade program can be implemented. The Proposed Scoping Plan only mentions concerns with market manipulation and potential abuses of market power in passing. Concerns with market manipulation have not been adequately acknowledged.

NCPA applauds the Proposed Scoping Plan's proposal for outreach to stakeholders and the development of a formal structure for ongoing involvement in the development of a cap-and-trade system. (p. C-23) As more fully discussed below, NCPA believes that CARB should establish targeted working groups and advisory groups on this subject, and that those groups should have a vital and ongoing role in development of all matters regarding the proposed cap-and-trade program.

Included in the category of market structure, design, and governance is the development of an allowance auction that is linked to the cap-and-trade program. A single reference to the need to further develop "the design of the auction" (p. C-23) does not fully convey the complexity of this issue. The final Scoping Plan need not address and resolve the entire list of issues attendant to the development of an auction, but it must at least acknowledge them. That includes distribution of allowances, linking allowance distribution with the WCI, costs of auction and program administration, and distribution of auction revenues. Many of these issues have been raised in the recommendations of the California Public Utilities Commission (CPUC) and California Energy Commission (CEC).¹³ However, virtually all of the contentious issues remain

¹² See pp. C-11- C-24.

¹³ Final Opinion on Greenhouse Gas Strategies, October 16, 2008.

unresolved. WCI, for example, has recommended a much smaller initial auction than that proposed by the Joint Commissions. Likewise, while the final recommendation to CARB by the Joint Commissions is to end with 100% auction in 2020, the final WCI recommendation is for a far lower percentage.¹⁴

Since the Scoping Plan is intended as a roadmap to be utilized by the State in moving forward with implementation of AB 32, the final Scoping Plan must not only set forth the final destination, but also the path that must be followed to get there.

Timing. The Proposed Scoping Plan indicates that AB 32 requires CARB to promulgate regulations for a cap-and-trade program by 2011, and implement the program beginning in 2012. (Proposed Scoping Plan, p. 30) According to AB 32, a market-based mechanism (such as a cap-and-trade program) is but one tool that may be considered by CARB for meeting the stated objectives of the legislation.¹⁵ While it is not necessary to delay further deliberations on the development of such a program, it is important to note that AB 32 does not *require* CARB to *implement* a cap-and-trade program by 2012.

Energy Efficiency

The Proposed Scoping Plan sets forth twelve key “strategies for maximizing energy efficiency.” (p. C-100) These twelve proposals present a good starting point, but should not be viewed as necessarily inclusive of all possible strategies. NCPA looks forward to the rulemaking and stakeholder process that will be developed to further review and analyze these proposed strategies. Specifically, each individual program must be evaluated for both cost-effectiveness and technological feasibility. Additionally, their impacts on each subject entity must be reviewed. This analysis may show that some programs are better suited to specific regions of the state or to specific entities. CARB’s final rules must not be so prescriptive that they actually thwart the very goals they are intended to achieve.

¹⁴ In contrast to the CPUC/CEC recommendation for 100% auction by 2020, the WCI recommends that a minimum of 10% of allowances be auctioned during the first compliance period, with the minimum percentage increasing to 25% in 2020. (WCI Design Recommendations, p. 8, § 8.6.)

¹⁵ Health & Safety Code, §§ 38561(b), 38570(a).

It is critical that the final rules and regulations mandated regarding implementation of energy efficiency programs be realistic. To that end, it is important to note that even the State's largest investor-owned utilities (IOUs) have not attained their energy efficiency goals. In November 2008, the CPUC's Energy Division issued a draft report regarding the IOUs' cumulative energy efficiency savings during the first year of the IOUs' three year program. While each of the three IOUs have projected that they will achieve their target reductions by the end of the three year program, none attained even 85% of their reduction target. Although the report has not been finalized, NCPA notes the preliminary results of this draft report to highlight the fact that the ambitious emissions reductions anticipated from energy efficiency may not be attainable during the timeframe contemplated in the Proposed Scoping Plan. Indeed, even the CPUC noted that the energy efficiency goals set forth represent "very ambitious stretch goals."¹⁶

Renewable Portfolio Standard

The recommendation to move forward with a statewide renewable energy mix of 33% is consistent with many stakeholder discussions, as well as the Governor's recent Executive Order, S-14-08, dated November 17, 2008.

The Proposed Scoping Plan must be revised to acknowledge – not resolve – a number of issues integrally linked with an increased RPS which must be part of any CARB rulemaking on the subject. These issues include: (1) eligible renewable resources; (2) ongoing processes for developing RPS rules; (3) total costs associated with renewable resources; (4) impacts associated with development of additional transmission facilities, firming resources, and electric grid reliability; and (5) the use of renewable energy credits and certificates.

Eligible Renewable Resources. The Proposed Scoping Plan includes a list of some of the many types of resources that can be utilized to achieve the overall State mix. It is imperative that discussions regarding renewable resources not lose sight of the State's overall goals of achieving reductions in GHG emissions, as well as diversifying the State's energy portfolio.

Ongoing Processes Developing RPS Rules. In moving forward with a rulemaking to

¹⁶ Oral comments of Nancy Ryan, Advisor to Commission President Peevey, made during the November 20, 2008 CARB Meeting.

address implementation of increased RPS, CARB should take note of ongoing legislative efforts to address this issue. The groundwork being undertaken by the state Assembly with the introduction of Assembly Bill 64, as well as other anticipated legislative action in this area by the State Legislature or Congress, should be considered by CARB in subsequent rulemakings.

Total Costs Associated with Developing Renewable Resources. In contrast to the Draft Scoping Plan's discussion regarding a specific RPS mandate for each individual retail provider, the Proposed Scoping Plan focuses on a statewide energy mix of 33% renewable resources. (Proposed Scoping Plan, p. 44) However, even as a State policy, the Scoping Plan should not only acknowledge the Governor's Executive Order, but it should also recognize that *it is not* the intent of California to develop renewable resources at any cost.

As discussed above, Table G-I-2 demonstrates that the 33% RPS results in a net cost to the State of \$133 per MTCO₂E. This figure, however, does not take into account the fact that this number is based on the increase to 33% from the current 20% mandate (Proposed Scoping Plan, Table 32, p. 105), and does not include the incremental costs necessary to achieve 20% from today's actual RPS levels. CARB's subsequent rulemaking must address and reconcile the total net cost associated with the recommendation to pursue this option for GHG reduction.

Transmission, Firming and Reliability. The Proposed Scoping Plan mentions the importance of building transmission and modernizing the current transmission and distribution system (p. C-92) to accommodate increased development of renewable resources, and acknowledges the ongoing efforts of groups such as the Renewable Energy Transmission Initiative (RETI). Further, since many renewable resources are intermittent resources, they cannot be counted on to deliver electricity at all hours of the day. Accordingly, the development and use of additional renewable resources also implicates the development of and use of traditional powerplants to the extent that they are necessary to facilitate delivery of renewable resources to the energy consumer. This also impacts electricity reliability. While these issues are barely touched on in the Proposed Scoping Plan, their importance cannot be understated. The final Scoping Plan should clarify how the subsequent rulemakings will be designed to work with groups such as RETI and the various control area or balancing authority operators throughout the

state to ensure that cleaner and greener energy resources do not adversely impact the ability of the state's retail electricity providers to deliver safe and reliable electricity.

Renewable Energy Credits and Certificates. The use of renewable resources also heightens the need to understand the role of renewable energy credits or certificates (RECs). This is a matter that must be resolved on a statewide basis, but which must also be integrated with the use of RECs regionally, and eventually nationally. WCI is also looking at the use of RECs for purposes of meeting both renewable energy requirements, as well as meeting GHG reduction goals. In their October recommendations to CARB, the CPUC and CEC also raised this issue, and subsequent CPUC deliberations continue to address the use of RECs for RPS compliance. The final Scoping Plan should address this issue and acknowledge how it will be resolved.

Local Government

The final Scoping Plan should include an acknowledgment that local governments' most important role will be to facilitate the processes necessary for other sectors to achieve the required reductions. The Proposed Scoping Plan correctly notes that local governments will play a key role in setting examples and partnering with others to effect emissions reductions. (Proposed Scoping Plan, pp. 26-27) NCPA recognizes that the preliminary recommendations for emissions reductions for local governments are deemed "goals" and not mandates (pp. 37, C-49). However, while local governments will clearly play a critical role in implementing AB 32, that role is not necessarily one that allows them to effect a 15% reduction in total emissions. Local government mandates should be tied to local government measures and actions that facilitate and support reduction measures from other sectors.

CARB has stated that after establishing an inventory for each local government, a final reduction mandate will be set. Local governments are unique in their geographic locations, socio-economic circumstances, and populations, making it imperative that these circumstances be taken into account before mandating a blanket reduction goal for each community.

It also important to note that very few – if any – GHG reduction measures can be achieved or attributed solely to local government. The Proposed Scoping Plan should be amended to acknowledge that emissions reduction measures for local governments often run up against or

overlap with mandates from other sectors, creating a high likelihood of double-counting or duplicative mandates. Accordingly, it is important that local government mandates be established in light of these considerations.

For example, the potential for double mandates occur in the context of encouraging greater renewable energy resources. One emissions reduction measure identified as a potential local government action is “achieve a minimum of 33 percent renewables portfolio standard for local government owned utilities.” (Proposed Scoping Plan, Table 3, Appendix C, p.C-51). However, this mandate is already proposed for the electricity sector. (pp. 44-46) All government owned utilities are separately required to meet emissions reductions targets through various measures, including RPS. There is no way to account for such reductions by the local government and the underlying utility without the potential for either imposing a duplicative mandate or double-counting the reductions achieved through these measures.

As it pertains to local governments and energy efficiency, CARB needs to be sure that energy related reductions are harmonized with similar reduction programs being mandated and/or implemented by local retail providers (this is true regardless of whether or not the local retail providers is an energy or water utility owned by the local government).

Transportation

Electrification of the Transportation Sector will Impact the Electricity Sector.

Electrification of the transportation sector is likely to have a profound effect on the electricity sector, an impact that should not be minimized or dismissed. For example, in Santa Clara County, the local transportation authority is advertising the use of their electric trains as a “zero-emissions” transportation alternative.

The Proposed Scoping Plan acknowledges that electrification of other sectors – including the transportation sector – will impact the electricity sector, but then attempts to downplay the significance of these impacts.¹⁷ The rationale for downplaying the significance of electrification is not relevant to the actual impacts that electrification of the transportation sector will have on the electricity sector.

¹⁷ See Proposed Scoping Plan, p. 40.

For instance, while the Proposed Scoping Plan advocates off-peak charging of electric vehicles, despite the fact that a vehicle may be charged during off-peak hours, when the electric vehicle is “plugged-in” it is drawing electricity from the grid. The fact that this may be done at night and that this will allow for “load leveling” is irrelevant, and does nothing to reduce the total demand for electricity. In order to achieve any benefits from load leveling, it is necessary to shave load off the peak, and merely increasing load during non-peak hours does nothing to reduce overall electricity consumption. Furthermore, electricity consumed during the night may in fact result in a greater demand on non-renewable baseload generation resources, resulting in even greater emissions because the resources that may be necessary for night generation will necessarily exclude solar resources, and will likely require the use of natural gas that was originally intended to be used by a generator for meeting peak or day-time load.

Accordingly, while it may be true that electric vehicles will be charged predominantly at night, the timing of the energy draw has absolutely no relevance to the increase in the need for electricity to meet the demand of this growing market.

Exclusion of the Transportation Sector from Cap-and-Trade Program Diminishes the Purported Benefits of such a Program. As more fully discussed above, NCPA is concerned that hasty implementation of a cap-and-trade program that is not economy-wide will adversely impact not only the anticipated success of such a program, but the electricity sector in particular. Exclusion of the transportation sector from any California-only cap-and-trade program, even in the first compliance period as suggested in the Proposed Scoping Plan, can clearly impact the perceived benefits of such a program.

PROCESS FOR MOVING FORWARD

With adoption of the final Scoping Plan in December, a new set of processes will begin in 2009, one that is likely to offer an even greater challenge than developing the Scoping Plan itself.

As noted on Page C-23 of the Proposed Scoping Plan Appendix, California now has approximately two more years to develop comprehensive regulations for emissions reductions measures. It has been noted by CARB Staff, Board members, and stakeholders alike that the most

important next step is to move forward with implementation of the Scoping Plan through a series of rulemakings. While this may sound like a simple next step, it is not. As noted herein, there are myriad details that must be organized and addressed in an orderly and non-contentious fashion before it is even possible to begin promulgating actual rules. In these comments, NCPA offers realistic suggestions about how CARB might procedurally move forward with implementation of the Scoping Plan.

Before moving forward, CARB must develop regulatory language for several key policy issues that are not yet resolved, including but not limited to allowance budgets, allowance distribution methods, auction design, structure of the cap-and-trade program, rules for the use of offsets (including the role of RECs in the electricity sector), and the connection between reporting and compliance. Clear policy conclusions must be determined by CARB for each of these issues, recognizing that these decisions will have significant impacts for those involved in the debate and for California consumers in general. While stakeholders are going to advocate for their own positions, the responsibility falls on CARB to balance the needs of stakeholders and the more global objectives of AB32.

Key Recommendation for Moving Forward

Stakeholder Workshops. NCPA suggests that initiation of the rulemaking process begin with a series of stakeholder workshops. These workshops, which should be held over the next 9-12 months, should be facilitated to bring resolution to many key policy issues, some of which are clearly controversial. The workshops should provide the forum for an intense series of discussions needed between CARB and stakeholders, and include clearly stated objectives, the results of which can be converted into regulations without additional policy debate.

In order to ensure that all stakeholders (and CARB Staff) are able to address the relevant issues in an orderly fashion, NCPA recommends that CARB focus on one topic at a time. Weekly or bi-weekly stakeholder meetings will be necessary, during which time staff and stakeholders debate and discuss the matter, resolve policy issues, and then proceed onto the next issue. This process will ensure that policies are resolved in advance of the actual development of regulations. Clearly, CARB is going to need a full year to design the regulations once policies are determined;

this type of process ensures that the development of regulations is not thwarted or delayed due to the resolution of underlying policy issues.

Key Issues to Address

Clarify the Compliance Obligation. First and foremost, CARB must be able to give Californians clear direction regarding what they are going to be required to do. Stakeholders must know what their specific compliance obligations will be. To date, there is no direction regarding how entities will be required to help the State meet the emission reductions goals set forth in AB 32 – stakeholder responsibilities are not articulated in document, and need to be defined.

For example, reporting regulations ask for information but do not necessarily ask each entity to report about its compliance obligation. Regulatory reporting should allow stakeholders and CARB to monitor progress toward meeting the 2020 GHG reduction goal, and how this is done needs to be clearly set forth.

Define the Use of Offsets. Next, CARB should clarify exactly how offsets will be used. With the ability to use offsets for up to 49% of the compliance obligation, clear offset policies must be addressed. The use of offsets is going to be a crucial tool in furthering both emissions reductions and technological innovations. However, development of offset protocols is going to take time, and stakeholders must have regulatory certainty regarding the use of this invaluable tool. CARB must also clarify the role of the Climate Action Registry and how that agency will be able to develop offset protocols. These clarifications should also address stakeholder concerns about the level of offset reliance being too high. Clear answers in this area will help stakeholders determine how they might react to various policies surrounding markets and allowance distribution, and allow stakeholders to determine the most efficient means of investing scarce capital resources in emissions reductions strategies.

The Role of RECs. RECs clearly have an important role in meeting RPS goals. As discussed in more detail above, while California has received the clear direction that renewables are a crucial tool in the overall AB 32 and emissions reductions strategies, the use of RECs – both

in tradable- and non-tradable forms – must be addressed and resolved. This is an important issue for the entire electricity sector, as well as local governments.

Market Design and Auctions. As more fully set forth above, a well-designed or ill-designed market will have irrevocable impacts on California's ability to meet the mandates of AB 32. Proper market design is key to safeguarding against market manipulation and ensuring that all stakeholders and participants are treated equitably. NCPA was encouraged to hear that the WCI subcommittee on Market Operation and Oversight will be headed by California Environmental Protection Agency's Michael Gibbs, and looks forward to participating in that process. However, as long as the State considers launching any form of a cap-and-trade program or any form of allowance auction, this issue must also be addressed for California. This includes the actual auction structure and governance, as well as matters associated with the distribution and use of auction proceeds. Finally, and possibly most important, is resolution of matters regarding the proper distribution of allowances. The best way to address these matters efficiently is to develop specific and targeted working groups.

Local Government's Role. CARB must clarify the role of local governments as it pertains to compliance obligations. As more fully set forth above, the obligation of local governments to effect real emissions reductions is closely tied to role of several other sectors. Indeed, the majority of the proposed emissions reduction strategies outlined for local governments are actually mandated or controlled by other sectors. To that end, CARB must clarify the role of the local governments in order to ensure that confusion does not ensue regarding compliance obligations. This clarification will also facilitate the development of regulations by removing the potential for double mandates or double counting.

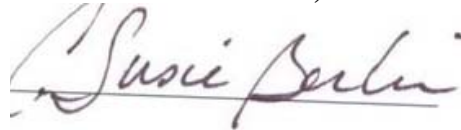
Coordination with WCI. As noted above, NCPA fully supports the fact that California intends to coordinate its cap-and-trade program with the WCI program. However, concerns remain that the WCI program itself is still not fully defined, and it is not clear how the final WCI partner programs will interact with the final programs implemented by CARB.

CONCLUSION

NCPA is committed to working with CARB Staff and other stakeholders in developing the regulations that will implement AB 32 and the Scoping Plan. With two years to implement AB 32, this project will be challenging – both in terms of resource and time commitments, yet, necessary if CARB is to timely comply with the mandates of AB 32. All stakeholders must be committed to this effort as a top priority and CARB should not hesitate to establish aggressive schedules and promoting intense policy discussions. Faced with the same staffing and resource constraints as many other stakeholders (and CARB itself), NCPA acknowledges that the frequency of meetings can be problematic. However, this effort must be a top priority for any stakeholder who is seriously involved in this process. NCPA recognizes this importance, and will continue to commit the resources needed to fully participate in this process.

NCPA appreciates the opportunity to provide these comments on the Proposed Scoping Plan. If you have any questions regarding these comments, please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com.

Sincerely,
MCCARTHY & BERLIN, LLP

A handwritten signature in cursive script that reads "Susie Berlin". The signature is written in dark ink and is positioned above the printed name.

C. Susie Berlin
Attorneys for the **Northern California Power Agency**