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

Re: Northern California Power Agency Comments on
Appendices to the June 26 Draft Scoping Plan

Dear Ms. Nichols:

The Northern California Power Agency¹ (NCPA) offers these comments to the California Air Resources Board (CARB) on the July 22, 2008 Appendices to the June 2008 Discussion Draft of the *Climate Change Draft Scoping Plan*.²

INTRODUCTION

In the Draft Scoping Plan, CARB sets forth a panoply of proposed emission reduction measures that would apply across all sectors of the State's economy. Many of the proposed reduction measures, however, were based on analysis and economic modeling that was not available in the original Draft Scoping Plan, and therefore parties were unable to review the basis upon which the recommended reduction measures were based.

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.

² On August 1, 2008, NCPA submitted comments to CARB (NCPA August 1 Comments) regarding the June 26, 2008 *Climate Change Draft Scoping Plan* (Draft Scoping Plan); these comments supplement those previously filed comments on the issues discussed herein.

In these comments, NCPA focuses on discussions regarding cap-and-trade generally and local government, as well as energy efficiency, combined heat and power, elimination of coal resources, and utilization of renewable energy resources specific to the electricity sector.³

As noted in the NCPA August 1 Comments, the Draft Scoping Plan provides an aggressive and well outlined, preliminary list of emission reduction measures that must be further reviewed and analyzed before formally being recommended for mandatory implementation. The Appendices go further toward reviewing proposed measures, but are in no way a complete analysis of all of the issues discussed therein. Even with the release of the detailed Appendices, further deliberations regarding the numerous details discussed therein, as well as the results of the State's ongoing economic analysis must be completed in order to ensure that the proposed emissions reduction measures are not only cost-effective, but also technologically feasible, as required by Assembly Bill (AB) 32. As it pertains to the electricity sector, making a determination that any reduction measures are technologically feasible must also include an analysis of whether or not such measures will adversely impact the reliable provision of electricity to the state's residents and consumers.

NCPA supports the goals and objectives set forth in the Appendices and the Draft Scoping Plan to the extent they are pursued in a workable manner. We look forward to working with CARB and stakeholders to further develop the Scoping Plan so that it can be utilized as a comprehensive road-map for implementation of the varied programs that will be necessary for the State to reach its mandated greenhouse gas (GHG) emissions reduction goals.

CAP-AND-TRADE

Appendix C discusses the proposed implementation of a cap-and-trade program that is linked to the Western Climate Initiative (WCI) (C-11). NCPA notes from the onset that implementation of market-based measures – such as a cap-and-trade program – should not be viewed as the primary means by which to effect the greatest emissions reductions, and should only be undertaken after the State has had an opportunity to evaluate the magnitude of the total

³ NCPA takes no formal position on any of the specific reduction measures or discussion thereof not addressed in these comments.

reductions derived from new and existing programmatic reduction measures.

If the State determines that utilization of a cap-and-trade program is a cost-effective means by which to affect GHG reductions without unduly burdening any one sector, then such a program should only be implemented as part of a regional or national program. However, nothing in the Draft Scoping Plan or the Appendices provides empirical data that would support such a conclusion.

Furthermore, as set forth in the NCPA August 1 Comments, while the WCI has been diligently pursuing the development of a regional cap-and-trade program, even with the July 23, 2008 release of the WCI's *Draft Design of the Regional Cap-and-Trade Program* (WCI Draft Design), several crucial details regarding the program have yet to be resolved, including : 1) allowance allocation, including key details about what level of auction, if any, may be required, and also how an auction would be structured, administered, and monitored to avoid potential abuses; and 2) treatment of costs associated with administering a cap-and-trade program.

The WCI Draft Design varies in several respects from the earlier recommendations released on May 16, 2008. One of the most important changes is that the July 23 WCI Draft Design does not recommend a minimum auction percentage, and rightly so. There are still significant impediments and unresolved issues to implementing a mandatory regional cap-and-trade program that includes an auction as an essential element, including details regarding the administration and governance of the auction. Any recommendation for a mandatory auction is problematic without first addressing the details regarding governance and administration, particularly specific means by which to address potential market manipulation and limitations on the entities allowed to participate in an allowance auction.

Additionally, at this time the WCI Draft Design does not contemplate the inclusion of the transportation sector in the cap-and-trade program until the second compliance period. With a proposed three-year compliance period, that means that the sector with the single largest emissions would not be a part of a mandatory cap-and-trade program until at least three years after launch of the program. As proposed in Appendix C, CARB would involve the transportation sector in the cap-and-trade program under the same requirements as the WCI (C-20). If the State determines that it is cost-effective to participate in a cap-and-trade program,

NCPA believes that such a program must include the transportation sector from the onset.

While CARB correctly recognizes that the cap-and-trade program is but one element of a successful emission reduction regime (C-15), it still contemplates the development of rules for a cap-and-trade program by the end of 2010, with proposed commencement in 2012. The implementation of any state cap-and-trade program should be coordinated to occur only when the WCI Partners are prepared to implement the regional program.

LOCAL GOVERNMENT ACTIONS AND REGIONAL TARGETS

Most stakeholders agree that there is a great deal that can be done by local governments to effect long-term emissions reductions. However, it is important to remain cognizant of the fact that local governments are unique in their structure, governance, constituents, and economic means, and these measures are not without significant costs, and impact on the local communities. For most local governments, reducing emissions is largely a matter of reducing electricity consumption. Appendix C notes that *community energy* is a direct way for local governments to reduce emissions, but the impacts of mandated reductions in energy consumption will be disproportionately felt by fast growing communities. NCPA is concerned that the Appendix is devoid of detailed discussion regarding the cost-impacts and implementation challenges regarding how such measures will be equitably applied to both fast-growing and economically challenged communities.⁴

The Draft Scoping Plan encourages local governments to quantify reduction limits and strive for regional reductions, but Appendix C neither defines “local governments,” nor explains how the regions will be developed or monitored. These issues must be addressed in order to complete the mandatory economic analysis that is going to be an essential part of determining exactly what measures should be employed by the local governments and their respective regions.

ELECTRICITY SECTOR

Energy Efficiency: As the first priority in California’s mandatory loading-order, energy efficiency is properly the cornerstone of California’s energy strategy, and should be the state’s

highest priority energy resource (C-55). At the same time, however, it is imperative that estimates for the total amount of achievable GHG reductions through energy efficiency be realistic. While the Draft Scoping Plan includes aggressive goals for achieving emissions reductions through energy efficiency programs, as noted in Appendix C, several factors challenge attainment of these goals, including population growth and energy consumption trends, electrification of transportation, and the effects of climate change on average temperatures across the state (C-56).

According to Appendix C, preliminary recommendations show that California should institute statewide energy efficiency targets of 32,000 gigawatt hours (GWh) and 800 million therms in energy demand reductions relative to business as usual projections for 2020 (C-59-60), and that CARB is evaluating increasing these numbers even more. NCPA is concerned that these projections are not substantiated by practical empirical data that can support the notion that this level of emissions reductions is technologically feasible during the next 10 years. Consider the following facts that present significant challenges to the ability of the state to reach these targets:

- There is little insight as to how the 32,000 GWh target was derived, except to note that the estimate represents “the high end of what the [California Public Utilities Commission (CPUC)] is currently considering for investor-owned utility energy efficiency target.” This is not supported by the current CPUC record, nor is it consistent with recent technical updates of energy efficiency savings included in Itron’s 2008 Potential Study and the pending update in the Database for Energy Efficiency Resources.
- CPUC Decision 08-07-047, issued July 31, 2008, adopts an interim energy efficiency savings goals of 16,000 GWh for the 2012-2020, roughly half the total proposed in the Draft Scoping Plan. With program implementation commencing in 2012, NCPA believes that the 16,000 GWh number is the appropriate number to use in the Scoping Plan. To the extent CARB desires to include the higher estimates, an early action credit should be considered.
- The CPUC’s Draft Energy Efficiency Strategic Plan⁵ is most likely the major input to the CPUC estimates; however, the Draft CPUC EE Strategic Plan is

⁴ These concerns are all raised in the context of the NCPA August 1 Comments.

⁵ The CPUC instituted Rulemaking 08-07-011 on July 10, 2008, and in that proceeding released its draft *California*

devoid of any cost/benefit analysis to support its conclusions and recommendations. While the recommendations of the Draft Scoping Plan are largely consistent with the policy recommendations contained in the California Energy Commission's (CEC) 2007 Integrated Energy Policy Report, state law cannot logically acknowledge full consideration of these measures until it is shown that such measures are cost-effective. NCPA supports a full economic evaluation of the cost-effectiveness of the proposed reduction measures, and cautions CARB about endorsing any conclusion without the appropriate analysis.

- CARB's total estimated savings projections for public power are not clear. In accordance with California state law, targeted savings for each publicly-owned utility (POU) were most recently adopted by their respective governing boards approximately one year ago, with 10-year savings estimates projected through 2016. Public power utilities are just beginning the process of updating these targets, an effort that will not be completed until 2010. However, that effort will be done concurrently with updates being undertaken for the IOUs, which will provide a much better and realistic estimate that could be relied upon by CARB before program implementation.

Clearly, there is great uncertainty surrounding the estimated savings attributed to energy efficiency programs. While fully committed to deploying all cost-effective energy efficiency programs, NCPA and its members remain concerned that the Scoping Plan might overstate the 15.6 million metric tons of carbon reductions expected from energy efficiency, committing the CARB program to an emissions reduction shortfall in 2020.

Turning to the general characterization of POU energy efficiency programs and statutory interpretation of key energy efficiency bills in the Scoping Plan, NCPA would like to clarify several mischaracterizations. First, Assembly Bill 2021 (Levine, Statutes of 2006) requires all POUs to establish 10-year energy efficiency goals on a triennial basis.⁶ It does not, however, give the CEC the authority to adopt such targets for POUs. That authority is appropriately provided to the local governing boards that regulate POU activities. Second, public power utilities have active and aggressive energy efficiency programs, consistent with Senate Bill 1037 (Kehoe,

Long Term Energy Efficiency Strategic Plan (Draft CPUC EE Strategic Plan).

⁶ In this regard, NCPA notes that on page C-63, Appendix C incorrectly states that AB 2021 obligates the CEC "to establish energy savings targets for the POUs."

Statutes of 2005), which codified the POU's long-standing commitment toward developing cost-effective energy efficiency programs. Through an extensive series of workshops and hearings at the CEC and the state legislature, public power accomplishments are widely acknowledged, including public acknowledgement by Assemblyman Lloyd Levine⁷ and the National Resources Defense Council.

Finally, in response to an Appendix C statement that CARB supports the establishment of mandatory levels of energy efficiency for POUs (C-63), NCPA notes that the energy efficiency levels lawfully adopted by the local regulatory authorities governing POUs are mandatory levels for the POU, directly analogous to the binding energy efficiency levels mandated by the CPUC for the IOUs.

When it comes to designing and implementing energy efficiency programs, retail providers must be allowed to utilize their limited resources in a manner that most effectively meets their own demographics. The most expedient and efficient reduction in overall GHG emissions will be achieved when individual utilities are able to adopt programs that fit the specific needs of their jurisdictions. The demand for electricity in California is expected to continue rising,⁸ either due to traditional load growth in expanding communities or increased electrification of other sectors, placing an even greater importance (and burden) on emissions reductions achieved through energy efficiency programs. Entities responsible for achieving the mandated emissions reductions should be given the greatest latitude possible to accomplish the required reductions in the most cost-effective manner possible.

⁷ In an October 10, 2007, letter to NCPA's General Manager, Levine recognized and thanked NCPA for its leadership during the first year of implementation AB 2021, and specifically noted his confidence that "with NCPA's help and continued leadership in the coming years, California can meet the goals set in this historic legislation."

⁸ In the 2007 IEPR Report, the CEC concludes that "[d]emand for electricity is forecast to grow at a steady pace, fed by a projected increase in population—currently more than 36 million and projected to grow to 42 million by 2020." (2007 IEPR, p. ES-5) See also, the CEC staff's *California Energy Demand 2008-2018* Report, which demonstrates, in Figure 3, that the commercial, residential, agricultural and industrial sectors will continue to see increases in electricity consumption through 2018 (at p. 14), and that statewide electricity consumption will continue to rise steadily through the 2008-2018 demand forecast period. (Table ES-1, at p. 3)

Cap-and-Trade: As more fully discussed above, the recommendation to include the electricity sector within a cap-and-trade program is based on preliminary information (C-59). CARB – as well as the WCI – must continue to diligently review the fiscal impacts associated with the inclusion of the electricity sector in a state-wide or regional cap-and-trade program. Furthermore, specifics on how to administer a first jurisdictional deliverer point of regulation have not been developed, nor the impacts that such a point of regulation will have on the electricity sector in the event that the WCI cap-and-trade program is not adopted and implemented by all of the Partner jurisdictions. Additionally, final targets and goals cannot be established for all members of the electricity sector until there has been a full vetting of this issue with all of the relevant regulatory bodies, including the boards and commissions that oversee the publicly owned utilities, as mandated by AB 32 (§38561(a)).

Appendix C does not address a means by which energy efficiency measures can be more fully incorporated into other sectors of the economy, or define a vehicle by which such state-wide programs would be implemented, administered, and enforced. The NCPA August 1 Comments referenced the CPUC recently initiated a proceeding on this issue, and the CPUC’s Draft Energy Efficiency Strategic Plan. NCPA believes it is appropriate for CARB to take the preliminary work set forth in the Draft CPUC Draft Energy Efficiency Strategic Plan and utilize that as the basis for further program development. This development, however, must include a cost-benefit analysis, discussion regarding strategies for implementation of aspects of the plan applicable to non-CPUC jurisdictional entities, and information regarding the state entity that will be responsible for implementation and enforcement of the measures set forth therein.

Combined Heat and Power (CHP): NCPA believes that the State should maximize the beneficial uses of CHP facilities, and indeed, several of its members are actively pursuing CHP facilities. In addition to being a viable tool for helping to meet emissions reductions mandates, CHP can be an attractive alternative since its proximity to the load served reduces the need for additional – and costly – transmission. However, the development of CHP itself can be costly, regardless of whether these costs are borne by the consumers that install them or the utilities. NCPA is concerned that the discussion of CHP in Appendix C does not support the preliminary

recommendation for an additional 4,000 MW of installed CHP by 2020, nor net annualized costs associated with these reductions. These concerns were further highlighted by the stakeholders attending CARB's first CHP Working Group meeting on August 20, making it clear that additional analysis will be needed to validate the 6.8 million metric tons assumed to result from the installation of CHP. Not validating the data will likely commit the CARB program to an emissions reduction shortfall in 2020.

Renewables Portfolio Standard (RPS): As noted in the NCPA August 1 Comments, achieving a 33% renewable portfolio is a laudable objective, and one that the State should strive to meet. However, those same comments noted that achieving this level of renewable energy will have significant impacts on costs and grid reliability. NCPA is pleased to see that Appendix C recognizes those challenges (C-77). However, the Appendix ultimately fails to address the feasibility or practicality of achieving this goal.

Appendix C incorrectly states that POUs are not currently obligated to meet the RPS requirement (C-76). In fact, Senate Bill (SB) 1078 (Chaptered September 12, 2002) and SB 107 (Chaptered September 26, 2006) require POUs to establish RPS programs – if they did not already have them in place – and set specific RPS targets. It is within these legislative mandates that AB 32 was adopted; the Legislature has acknowledged that the specific program requirements for POUs are best established by their lawful and constitutionally established governing bodies – these regulatory bodies are the legal equivalent of the CPUC. Accordingly, while the RPS goals of POUs may be different than those set by the CPUC for the IOUs, they are in no way lesser goals. In fact, NCPA members as a group are already above the 20% RPS threshold, and several NCPA member utilities already have California-eligible RPS levels that exceed the 33% threshold being considered as a *new* threshold value. One NCPA member even has a California-eligible RPS above 50%.

However, it is important to note that the IOUs, which are charged with achieving CPUC mandated RPS levels, have consistently failed to meet targeted levels of renewable deliveries. The 33% renewable goal must be moderated by technological, financial, and practical limitations – as noted in Appendix C.

In a related matter, there must also be further discussion clarifying the State's intent to recognize the benefit of all renewable resources – including large hydroelectric generation. These resources provide a great deal of reliable and GHG-free electricity to customers, and should continue to be viewed by the State as a valuable “green” resource.

Coal Emissions Reduction Standard: The proposed coal emissions reduction standard should not be a part of the State's Scoping Plan. While clearly not a “green” resource, existing coal contracts play a pivotal role in the provision of affordable and reliable electricity in California. GHG reduction measures that would interfere with current long-term contracts or ownership investments by requiring electric service providers to divest or otherwise mitigate portions of existing investments in coal-based generation, is ill-advised in that it: (1) would adversely impact reliability, (2) is duplicative of existing mandates on this issue, and therefore should not be a part of the Scoping Plan, and (3) is potentially illegal to do so.

Mandating the elimination of these contracts presents a significant risk to the reliable provision of electricity to customers across the State, and is not assured to actually reduce total emissions. Replacement energy must be procured, and the potential for significant financial harm to those entities with the long-term contracts could actually require the retail provider to forego investments in more expensive zero- and low-emitting resources in order to fill the gaps in its energy portfolio. All of the proposed emission reduction measures would have significant and adverse impacts. For example, requiring an entity to “forego a portion of its generation” under contract would leave an expensive asset essentially stranded – in contravention to the law. Additionally, owners and entities with long-term financial commitments in coal-fired generation should be given the greatest flexibility to facilitate the implementation of technologies that would mitigate the total emissions coming from those facilities. This challenge must be balanced with the fact that the underlying contracts at issue are usually complex multi-party, multi-state agreements. One party cannot simply mandate that certain measures be implemented, nor bear the financial burden of doing so singlehandedly.

Furthermore, as Appendix C notes, such a mandate would result in little more than leakage of emissions to other States, the cost of which would be borne solely by California's

ratepayers.

Additionally, the cost impacts and proposed benefits set forth in Appendix C are not substantiated. The list of “additional costs” that are not considered (C-80) are likely to be quite significant.

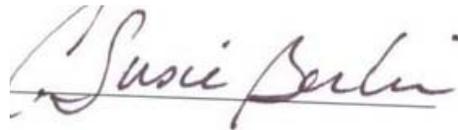
Such a measure would be duplicative, rather than complementary to SB 1368. Electric generators are already precluded from entering into procurements for electricity that do not meet the mandated EPS. Restrictions also exist for investments in existing high emitting resources, including coal-fired generation.

CONCLUSION

NCPA appreciates the opportunity to provide these comments on various portions of the Appendices to the Draft Scoping Plan and looks forward to continuing to work with CARB in the development of the Final Scoping Plan and in implementing the various measures that are going to be a vital part of achieving the GHG reductions mandated by AB 32.

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 and title.

C. Susie Berlin
Attorneys for the Northern California Power Agency