

BARRY F. McCARTHY
C. SUSIE BERLIN
SUSAN M. O'BRIEN

McCARTHY & BERLIN LLP
ATTORNEYS AT LAW
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE, CALIFORNIA 95113

Tel.: 408-288-2080
Fax: 408-288-2085
sberlin@mccarthyllp.com

Sent Via Electronic Transmission - ccplan@arb.ca.gov

October 9, 2007

Mr. Robert DuVall
Air Pollution Specialist
California Air Resources Board
1001 "I" Street
Sacramento, California 95812
rduvall@arb.ca.gov

Re: Scoping Plan Comments

Dear Mr. DuVall:

The Northern California Power Agency¹ (NCPA) appreciates the opportunity to offer these comments in response to the California Air Resources Board's (CARB) August 31, 2007 *Notice Requesting Public Input on Ideas to Reduce Greenhouse Gas Emissions* (Notice).

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 members provide electric power to more than 400,000 customers, relying in large part on geothermal resources in Sonoma and Lake Counties, and hydroelectric resources in Calaveras County that are among the cleanest generators in California. The carbon intensity from these facilities consistently falls well below 100 pounds of CO₂ emissions per megawatt hour of generation.

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. For years, NCPA's members have also implemented aggressive energy efficiency programs and have long-established renewable portfolio standards (RPS) that further member commitments to maximize the amount of energy the agency and its members obtain from low-carbon resources.

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.

Along those lines, NCPA has taken affirmative steps to work with the various state agencies responsible for AB32 implementation, including initiating an ongoing dialogue with CARB staff. NCPA is fully committed to continuing to work with the state agencies partnering in the development of strategies and program ideas that will maximize greenhouse gas (GHG) emissions reductions obtainable through implementation of AB32. NCPA's diverse membership includes entities representing multiple aspects of California's economy, making NCPA uniquely situated to contribute to the statewide collaborative effort.

IDEAS TO REDUCE GREENHOUSE GAS EMISSIONS

In the August 31, 2007 Notice, CARB solicited ideas to reduce GHG emissions. There are a broad range of ideas that can be utilized in concert to effect the reductions mandated by AB32 and beyond. Implementation of the state's global warming initiative cannot be achieved through a single method, nor should the state look to any **one** alternative for **the** answer.

NCPA's position is simple: implementation of AB32 will be a multi-faceted endeavor requiring integration of several separate and distinct program elements. This position is consistent with observations made by CARB Chairman Mary Nichols during a July 17, 2007, confirmation hearing that implementation of AB32 should not be viewed as requiring either a market-based or regulatory-based program, but rather that both options must be considered and utilized in order to maximize the net benefit to the state with the lowest overall impacts on the economy, and electricity customers. Consistent with the direction of the legislature, the emissions limits and reduction measures adopted in the regulations must be both technologically feasible and result in cost-effective reductions.² To that end, the information set forth in these comments is intended to provide an overall implementation "road map," as well as alternative routes that can be utilized to attain the same objective.

Programs designed to reduce emissions must be innovative and varied, and should address both long-term and short-term emission reductions. The state must look not only to achieving the primary objective of AB32 of reaching 1990 emissions levels by 2020, but also to developing a means by which overall GHG emissions can continue to decline beyond 2020 in the face of California's growing population and expanding economy, as required by the Governor's Executive Order S-3-05, signed June 1, 2005. The demand for electricity in California is going to continue to rise, either due to traditional load growth in expanding communities or increased electrification of other sectors.

Within the electricity sector itself, there are a number of different entities that will be responsible for emissions reductions, and in fact, many – like the members of NCPA – have already been striving to reduce their overall carbon footprint in advance of the legislative mandate. However, some of these programs will not result in immediate emissions programs, such as the development of wind resources and construction of the infrastructure necessary to move renewable power from where it is generated to where it can be used to serve the customer. Investments in these

² Health and Safety Code § 38562(a) and (b).

programs are no less crucial to the overall success of AB32 looking to 2020 and beyond. Entities in the electricity sector need to be able to develop and implement reduction plans that will provide a means by which they can continue to effect reductions in total CO₂ emissions, and not just a means by which to attain the initial 2020 reduction goal.

NCPA is confident that CARB will take into account the diversity within the electricity sector, as well as the mandates of AB32 to provide such reductions at the lowest possible cost to customers.³ Clearly, under these mandates, any successful implementation plan adopted by CARB must be multi-faceted and should allow individual entities the discretion and alternatives necessary to insure that the maximum reductions can be reached at the lowest total cost to the state's energy customers. With that in mind, NCPA offers the following overall "Implementation Program."

Two-pronged Implementation Program: Market and Regulation Components

The Implementation Program (IP) should consist of both "market-based" and "regulation-based" components.

In order to maximize the benefits of any GHG reduction program, those in the electricity sector responsible for emissions reduction should have the maximum flexibility to manage their own portfolios, implement emissions reduction programs, and otherwise direct the means by which they will achieve their reduction goals. To the extent entities cannot achieve 100% of their emissions reduction goals through this approach, market-based programs should be available. An effective market-based mechanism, such as a cap-and-trade program, can reinforce and advance the regulatory actions adopted by the state and local governing bodies achieving additional emissions reductions that may not be captured by regulatory actions alone.

Further, a successful IP should allow for the use of offsets so that entities may be encouraged to spend their scarce resources on the most economically efficient programs for reducing overall GHG emissions. The use of offsets should not be discounted or minimized due to concerns regarding administrative complexity; rather these issues should be explored and developed from the very outset of AB32 implementation to insure that the potential for effective long-term reduction measures are not dismissed simply because they do not yield immediate reduction results.

Direct Regulation

Direct regulation generally consists of two types of programs: (1) those that are mandated by either state or local regulatory bodies; and (2) those that are statewide law. NCPA expects this element of an IP to comprise 80-85% of the total program reductions, as it will allow for well thought out long-term reductions in line with regional policy goals.

The first category of reductions includes investments in energy efficiency, renewable resources, as well as effective implementation of demand response programs. The governing bodies (either

³ See Health and Safety Code §§ 38560 and 38562(a) and (b).

the California Public Utilities Commission (CPUC) or state legislature for CPUC jurisdictional entities or local boards and councils for publicly owned utilities) are responsible for defining these programs and setting specific program goals. These entities should be allowed to review the total emissions reductions that can be achieved through these programs and determine the extent to which any one program can be utilized in the most cost-effective manner to achieve the greatest possible reductions for that entity. Those that can attain higher reductions by going above and beyond any currently mandated minimum would do so.

The second group of programs should include such mandates as contained in Title 24⁴ Building Standards and Title 20 Appliance Standards.⁵ Reductions through these standards could be maximized through incentives for builders and building owners that may not necessarily be available from local utilities. For example, some retail electric providers provide incentives to those that meet the standards even if they are not required to do so, or otherwise mandate standards in excess of those contained in the code.

Retail service providers in California have existing programs that address regulatory mandates, both on a statewide basis and locally. To the extent such programs are already in place, they can be shaped to facilitate attainment of the AB32 reduction goals; it would not be necessary to reinvent new programs. However, flexibility in utilizing these various programs to achieve reductions is a central and crucial element of the IP. A program that achieves maximum reductions for one utility, may only result in minimal reductions for another. Therefore, it is in the best interest of California to provide each utility with the discretion to design a program that works the best for them. Key to this effort is the development of programs that consider varying degrees of socio-economic and climatic conditions.

To highlight this point, consider the fact that NCPA's 17 members are located in seven distinct Title 24 climate zones, from the coastal region of the Central Coast and Bay Area to the Central Valley, to the high Sierras. Each member has unique circumstances -- distinctive transmission limitations, load profiles, and resource availability limitations -- and programs designed at the local level to reflect these distinctions. The City of Lompoc, for example, combined with a coastal climate and specific socio-economic circumstances, has no air-conditioning demand and very limited air-conditioning need for commercial buildings. Accordingly, the city's electric utility focuses its energy efficiency resources on providing appliance rebates for customers. Redding Electric, on the other hand, located in the northern end of the Sacramento Valley, places strong emphases on air-conditioning rebates and high efficiency ratings, offering new construction incentives to building owners who exceed the state mandated Title 24 requirements by 20%.

Decreases achieved through direct regulation should build upon various state and local emissions reductions programs already in place, as well as the various programs supporting the state's energy loading order.⁶ The key to successful reductions under this prong of the IP is that each

4 24 California Code of Regulations (CCR) Part 6.

5 20 CCR §§ 1601-1608.

6 The California Energy Commission (CEC), CPUC, and the California Power Authority adopted a Joint Agency Energy Action Plan in 2003, established an energy resource loading order placing a preference on energy efficiency,

individual entity manages its electricity portfolio based on the unique circumstances it faces, and determines the extent to which maximum reductions can be achieved under any variation of these programs.

Market-Based Programs

Market-based programs provide both short- and long-term benefits to overall AB32 implementation goals. For entities planning extensive emissions reductions through long-term projects (such as building retrofits and development of renewable resources and infrastructure), a market-based program provides a short-term remedy where entities can obtain emissions credits until such time as their reductions levels are achieved. In the long-term, a market-based program provides a phased-in approach where emissions credits can be sold or purchased in a controlled environment in instances where entities have maximized their reductions through regulatory programs.

NCPA expects that market-based programs will comprise 15-20% of the total IP, including the use of a cap-and-trade program and some trading of renewable energy credits (REC).⁷ A cap-and-trade program should provide for the allocation of credits or allowances directly to those required to effect reductions, and all of these credits/allowances should be initially allocated at zero cost. Allocation of emissions allowances should ultimately be determined using a sales-based methodology. Doing so more effectively accommodates load growth and creates incentives for retail providers to stay competitive and reduce emissions. Such a mechanism also encourages energy efficiency and conservation, providing strong incentives for the development of low-emitting resources.

Another market-based mechanism that should be considered by CARB is the use of tradable-RECs. Under an unbundled REC regime, claim over the renewable attributes of energy produced by eligible renewable technologies can be transferred from the renewable generator to one retail service provider while the energy is delivered to another. In contrast, under a tradable REC regime, although the concept of selling the energy and claim over the attributes to different parties remains intact, RECs may be transferred from the renewable generator to any third party, not just obligated retail energy providers. In addition, these attributes can be resold subsequent to the initial sale.⁸ Tradable RECs may be utilized as an alternate means by which entities can comply with GHG emissions reduction requirements. At the present time, the CPUC and CEC are discussing the interaction between a potential carbon market and a REC market, and whether excess renewable power not used for RPS compliance could be used to show emissions reductions. Accordingly, interaction between these two markets could provide yet another flexible compliance mechanism allowing those responsible for emissions reductions an alternate means by which to attain the prescribed reduction goal.

demand response, renewable resources, and distributed generation.

7 The CPUC is considering the authorization of unbundled tradable RECs for compliance with RPS targets.

8 July 19, 2007 CPUC ALJ Ruling Requesting Pre-Workshop Comments on Tradable Renewable Energy Credits, p. 3, fn. 5; quoting the August 2005 Staff White Paper on Renewable Energy Credits, p.1, fn. 1.

A market-based program should avoid – or at the very least minimize – the use of a centralized auction. There are several impediments of an auction that would hinder, rather than facilitate, emissions reductions within the electricity sector. One such impediment is the fact that a centralized auction would effectively remove those most directly impacted by the costs associated with allowance purchases – the state’s electricity customers – from the benefits of the proceeds obtained from the auction. Alternatively, in order to justly compensate those that are forced to purchase allowances through an auction, proceeds from any auction should be distributed in a manner that maximizes the return to utility customer-owners. While distribution of auction proceeds to statewide projects aimed at reducing overall GHG emissions is a laudable goal, it is the utility customers of NCPA’s members and the other retail electric providers across the state that will bear the costs of emissions reduction programs and who should be able to receive the majority of any financial benefit obtained by virtue of those customer investments.

The greatest emission reductions can be most economically achieved through a combination of regulatory and market-based mechanisms, provided that entities are given an appropriate amount of discretion to utilize the tools they need. Such a method was clearly anticipated by the legislature in mandating that the reduction goals be achieved at the lowest possible cost to customers. Over-reliance of any market-based component of the IP increases the risk to consumers. As such, CARB must be sensitive to ensuring program stability that does not subject California consumers to huge cost fluctuations often associated with market price swings.

OTHER CONSIDERATIONS

Economic Growth and Carbon Intensity

A key aspect of successful AB32 implementation is the ability to measure the total GHG emissions and reductions. CARB, together with the CPUC, CEC, and stakeholders, has been working diligently in crafting reporting and verification protocols that will allow the state to do this. Load growth in California is inevitable, especially for the electricity sector by way of both an expanding population and growing economy, as well as due to transfers of emissions from other sectors (see below for further information on inter-sector emissions). The ultimate IP must account for this.

NCPA notes that while an emissions cap should be measured in tons, pounds of emissions per megawatt hour tied to carbon intensity should be used to measure overall progress, particularly in areas that are experiencing high load growth. By way of illustration, assume 1990 electricity sector CO₂ emissions of 90 million tons, equivalent to 1,000 pounds CO₂ per megawatt hour. If sales of electricity were to double from 1990 to 2020, the CO₂ intensity of electric sales in 2020 would need to be cut in half, to 500 pounds CO₂ per megawatt hour to achieve the level of 1990 emissions by 2020. This example illustrates that in some cases failure to consider load growth may require reduction levels that are simply unrealistic for growing retail providers. Artificial caps that do not account for growth and expanded energy needs may produce the unintended consequence of adversely impacting the reliability of the state’s electricity supply. In order to meet resource adequacy obligations, even while complying with the state’s emissions

performance standard,⁹ retail providers may be required to invest in resources higher in carbon intensity than their existing resources. While such investments may seem counterintuitive in the face of the mandates of AB32, investments in resources that insure the safe and reliable delivery of electricity to California's consumers remain a necessity.

Inter-Sector Impacts

While NCPA focuses these comments on implementation ideas for the electricity and electric generation sector, it is important to note that actions – even reductions – across all sectors will impact the electricity sector, some to a significant degree.

For example, the Bay Area Rapid Transit District (BART) operates high speed rail service throughout the San Francisco Bay area. Its fleet of electric trains moves 350,000 commuters each weekday. A proposal to successfully expand BART services will include more trains moving more passengers each day, resulting in a significant reduction in the number of automobiles on the road. While this will effect a significant reduction in transportation sector emissions, such a proposal will also result in an overall increase in GHG emissions attributable to the electricity sector as more electricity must be generated to operate the increased number of trains.

Likewise, CARB has indicated its desire to facilitate “port electrification” in the state in order to reduce emissions attributable to idling diesel engines. While the end result of this effort may vastly reduce the amount of GHG emissions attributable to diesel ship engines, in order to provide auxiliary power at the dock, an entity such as the Port of Oakland must procure more power to meet this new demand. In addition to being the fourth largest container port in the nation, the Port of Oakland provides resources and facilities to the Oakland Airport, commercial real estate, and seaport tenants and customers. Providing a means by which ships docking at the port to load and off-load cargo can “plug in” and receive electric power to run their vessels will greatly increase emissions attributable to the Port of Oakland, and the electricity sector as a whole.

These are just two examples of possible “sector transfer” that must be evaluated by CARB. By implementing innovative carbon reduction programs such as these, the state's **overall** GHG emissions should go down. However, since the electricity sector will necessarily incur an increase in load, the net reduction requirements imposed upon the electricity sector must include mechanisms by which CARB can address and account for these transfers. Further, to insure the highest level of accuracy in recognizing actual CO₂ reductions, emissions reductions should be measured in pounds of CO₂ emissions per megawatt hour of electricity produced. Measuring the reductions in this way will still enable the state to achieve reductions in total tons, but provide for greater certainty in comparisons between inter-sector emissions levels and address such items as load growth and migrating emissions.

⁹ An Emissions Performance Standard (EPS) of 1,100 pounds of CO₂ emissions per megawatt hour was adopted by the CEC as mandated by Senate Bill 1368 (2006). The final EPS is still pending final approval by the Office of Administrative Law.

Integration with Regional and Federal Programs

Successful reduction of GHG emissions will require more than just appropriate implementation of AB32; it will require proper integration of regional and federal programs as well.¹⁰ It is imperative these programs be compatible with and complementary to each other. The greater the extent to which California emissions reduction programs can be linked with other regional and federal programs, the greater the overall emissions reductions.

Several western states and western Canadian provinces are already collaborating on a regional program and are working towards a common scope and objective through the Western Climate Initiative (WCI).¹¹ WCI is committed to developing a multi-sector, market-based system for GHG reductions by August 2008, and has already adopted a regional CO₂ reduction goal of 15% below 2005 levels by 2020. Although these are laudable regional goals, California clearly remains at the forefront of emissions reduction efforts by seeking even more aggressive emissions reductions.

Federally, the debate continues as to what an emissions reduction program should look like, but several key elements are evident in the majority of the bills currently under discussion. For example, all of the bills include some kind of market-based mechanism. Combined with the fact that the majority of the federal proposals allow for the utilization of offsets and related flexible compliance mechanisms, it is clear that any federal plan will acknowledge the need for flexibility in the overall program. Furthermore, most of the federal proposals outwardly acknowledge that GHG reductions must be economy-wide; accordingly, even if it appears that one sector – such as the utility sector – provides the most direct and quantifiable means by which to track actual reductions, successful GHG reductions can only be achieved by incorporating all portions of the economy.

CONCLUSION

NCPA appreciates the efforts of CARB to develop innovative and effective means by which emissions reductions can be achieved in the most technologically feasible and cost effective manner. Implementation of any GHG reduction program will have inherent costs and benefits; NCPA urges CARB to remain cognizant of the direct financial impacts these programs will have on electricity customers across the state and fully consider those impacts when drafting the Scoping Plan. NCPA further urges CARB to ensure that economy-wide reductions that result in

10 In fact, AB32 provides, in Health and Safety Code § 38564, that “the [CARB] shall consult with other states, and the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control programs, and to facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.”

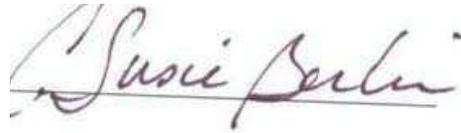
11 The WCI is a collaboration launched in February 2007 between the Governors of Arizona, California, New Mexico, Oregon and Washington to identify and evaluate cooperative ways to meet regional challenges raised by climate change. Each of the WCI partners has joined the newly formed GHG registry (The Climate Registry), which is expected to be operational by January 2008.

increased demand for electricity be quantified and recognized when determining the reductions that each sector will be required to make.

NCPA looks forward to a continuing dialogue with CARB and other state agencies as California moves forward with the implementation of Assembly Bill 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 dark ink that reads "Susie Berlin". The signature is written in a cursive style with a horizontal line underneath the name.

C. Susie Berlin
Attorneys for the Northern California Power Agency

cc: Kevin Kennedy - kmkenned@arb.ca.gov