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Electronically Submitted

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Steve Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Comments of the **Northern California Power Agency** on the May 4, 2012 First Deliverer Workshop

Dear Steve:

The Northern California Power Agency[1] (NCPA) appreciates the opportunity to provide these comments to the California Air Resources Board (CARB) regarding the May 4, 2012 *Public Meeting to Discuss Compliance Requirements for First Deliverers of Electricity* (May 4 Workshop).

Use of Allowances for Sales in the California ISO:

During the May 4 Workshop, Staff noted that the restriction regarding the use of freely allocated allowances and the value from those allowances for sales into the Cal ISO markets is necessary to ensure that all market participants (first deliverers of electricity) are treated equally and to ensure a timely price signal. NCPA appreciates staff's recognition of the concerns that stakeholders raised regarding the administrative burden associated with this restriction, and the implications that such a burden has on smaller publicly owned utilities (POUs). Specifically, the restriction set forth in § 95892(d)(5) will disproportionately impact the POUs, and limit the amount of allowance value available for the benefit of their retail customers. To be clear, it is not the requirement that the allowances must be monetized through the auction that causes this restriction to adversely impact the POUs. Rather, it is the fact that the POUs at issue have a smaller overall compliance obligation (with some entities at issue having a compliance obligation that is less than the minimum lot size of allowances to be sold in the auction), which increases the total administrative costs involved with participating in the auction market. These costs are exacerbated by the guarantees and other auction participation rules. For example, the collateral

1 NCPA is a not-for-profit Joint Powers Agency, whose 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, and the Truckee Donner Public Utility District, and whose Associate Members are the Plumas-Sierra Rural Electric Cooperative and the Placer County Water Agency.

requirements under the regulation are significant; given the fact that the POU will not be able to leverage the value of the allowances being auctioned, nor ensure the sale of the allowances bid into the auction, the cost of putting up collateral to support their bids for necessary allowances will be quite high.

It is also important to note that the impacts that result from this restriction cannot be harmonized with the policy position recognized by CARB regarding the fact that most POUs (unlike the IOUs) are vertically integrated. Furthermore, as the administrative costs are higher for the smaller entities implicated, NCPA appreciates Staff's recognition of this sensitivity and looks forward to continuing to work with Staff on a way to ensures that the objectives of § 95892(d)(5) are met, without unduly burdening the POUs, nor adversely impacting their electricity customers.

Definition of Resource Shuffling:

As Staff noted, it is important that the Cap-and-Trade Program result in real emissions reductions, and not just the appearance of reductions due to leakage or resource shuffling. Indeed, if the air quality in California is truly going to improve, it will require a far wider emissions reduction reach that the geographic boundaries of the state itself. However, it is also important to carefully define – and clarify – what resource shuffling is, and that legitimate transactions are not inadvertently included within the gambit of transactions that are deemed inappropriate. As several stakeholders noted during the May 4 Workshop, there are a number of transactions that fall within the list of those that are clearly resource shuffling – cherry picking, facility swapping, and laundering, and those that are deemed appropriate – changes in delivery due to state or federal rule changes or deliveries of emergency power. However, there are also other legitimate transactions that go beyond deliveries of emergency power.

Staff has suggested that other transactions be reviewed on a case-by-case basis, and that guidance can be provided to affected entities regarding Staff's view of the legitimacy of the transactions. However, even the certainty that would be provided on a case-by-case review is not entirely sufficient, since CARB staff noted that such an opinion would be advisory, and not binding. NCPA urges CARB to work with stakeholders to develop a more comprehensive list of scenarios that would continue to allow such transactions. Doing so would provide greater certainty in the market and avoid confusion and inconsistent outcomes that could result from after-the-fact review. While it will not be possible to define the entire universe of transactions that are legitimately not considered to be resource shuffling in advance, there is enough certainty based on existing and known contractual arrangements that can be reviewed in advance and addressed in the regulation as not being resource shuffling.

Definition of Qualified Exports:

NCPA believes that the Cap-and-Trade Program Regulation should retain qualified export exception. There is no sound policy reason for imputing a compliance obligation on transactions that have the same effect as wheeling power through California. Indeed, as was evidenced in the months of discussions that led up to the inclusion of the original exemption, these types of transactions serve a valuable function in the electricity market. In recognition of CARB's concerns regarding the ability to adequately "account" for such transactions, NCPA recommends that CARB allow these transactions, and closely monitor them during the nascent stages of the program. After collecting data on the use of the exemption, including the impacts – if any – on the market, CARB can review the continued use of the qualified export adjustment at that time.

Revisions to the RPS Adjustment:

Although not part of the May 4 Workshop agenda, stakeholders raised concerns regarding the current definition of the RPS Adjustment found in § 95852(b)(4), and the implications that the definition has on the rules being implemented for the 33% renewable portfolio standard mandate. Specifically, the current definition restricts the time in which a REC can be retired under the Cap-and-Trade Program. This limitation is not consistent with the multi-year compliance periods in SBX1-2, nor the 36-months allowed for retirement of RECs under the 33% RPS mandate. Accordingly, NCPA agrees with those stakeholders that raised this issue as one that should be addressed in the context of ongoing discussions between stakeholders and Staff in order to align these two complementary programs.

Conclusion:

NCPA appreciates the opportunity to provide these comments on the May 4 Workshop, and looks forward to continuing to discuss these issues further with CARB staff as potential revisions to the cap-and-trade program regulation are contemplated. 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

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