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

Re: Comments of the Northern California Power Agency on California Air Resources Board *March 30, 2012 Discussion Draft of Proposed Amendments to the Cap-and-Trade Regulation*

Dear Steve:

The Northern California Power Agency[1] (NCPA) appreciates the opportunity to submit these comments to the California Air Resources Board (CARB) on the *Draft Amendments for Linking California's and Quebec's Cap-and-Trade Programs* (Discussion Draft), released for public comment on March 30, 2012.

I. INTRODUCTION

NCPA was established in 1968, and is a California Joint Powers Agency. NCPA's members are publicly owned entities interested in the purchase, aggregation, scheduling, and management of electrical energy. NCPA and its member agencies support the goals and objectives of Assembly Bill (AB) 32, and have been active participants in proceedings before CARB in development of the Scoping Plan, various complementary measures, and the Cap-and-Trade Regulation itself. NCPA has exhibited a long tradition of environmental stewardship that began well before the passage of AB 32. NCPA is governed by a Commission comprised of

1 NCPA member are 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 Associate Members are the Plumas-Sierra Rural Electric Cooperative and Placer County Water Agency.

elected officials who share a strong commitment to reducing greenhouse gas (GHG) emissions, promoting energy efficiency, and increasing renewable power generation. As public officials, members of the NCPA Commission appreciate the high value their municipal ratepayers put on protecting the environment and place great emphasis on energy policies that promote the same environmentally-responsible investments envisioned by the statute.

NCPA supports the development of a cap-and-trade program that provides the greatest benefits to California's covered entities. The program adopted by CARB in October 2011 contains many of the earmarks of such a program, but admittedly, requires further revisions and refinements prior to full implementation. NCPA supports linking California's program to other jurisdictions that share the principles and values reflected in California's Cap-and-Trade Regulation, but only to the extent that the this linking can occur without compromising the integrity of the program that CARB and countless stakeholders worked so hard to develop.

II. COMMENTS

A. Market Monitoring Must Remain Vigilant

Ongoing market monitoring is a key element in the overall program design of California's Cap-and-Trade Program, and the integrity of that monitoring should not be diminished in any way. NCPA appreciates the CARB Board's recognition of the importance of ongoing market monitoring and oversight, and the crucial role that both the market monitor and CARB staff will play in overseeing the implementation and operation of California's nascent cap-and-trade market.[2] As California modifies its own program and makes accommodations to allow for linking with the Quebec program, the role of the market monitor becomes even more important. Since linking will still essentially entail two separate jurisdictional programs, it is imperative that the market monitor also track the direct impacts the Quebec markets and transactions have on California. This is especially important when one considers the fact that although the two programs adhere to a common set of principles, they are still unique in several material respects. (For example, California entities are required to make an annual surrender of compliance

2 CARB Board Resolution 10-42, Resolution 11-32.

instruments, notwithstanding the multi-year compliance periods.) The market monitor must look closely at the buying patterns and types of transactions occurring to ensure that there is no adverse impact on California entities associated with the nuanced ways in which the two programs differ.

In addition to ensuring robust monitoring and ongoing review of the linked markets, NCPA urges CARB to review the potential inclusion of a provision that would allow for an expedited end to the linking in the event that certain triggers occur. Clearly, CARB is moving forwarding with linking the California and Quebec programs with the desire and intent to succeed. However, even with well laid plans and the best of intentions, glitches may occur. The entities responsible for market surveillance and monitoring could outline a list of factors that, in a perfect storm situation, would result in irreparable harm to the California program. The factors would be well defined and clearly articulated at the onset of linking, so that all affected stakeholders – covered entities, third party marketers, government agencies, and interested parties – would be apprised in advance of what circumstances may lead to a delinking. In the event of such an occurrence, the Executive Director should have the ability to temporarily suspend the linked portion of the program to avoid harm to California markets and compliance entities.

B. Consolidated Accounts are Appropriate for Single Entities with Multiple Reporting Facilities

NCPA supports the proposed amendments that would allow entities with a direct corporate association to maintain a single, consolidated set of accounts. Many utilities have both utility-owned generation and electricity imports. Despite the fact that each of these functions is a separate "reporting facility" under the Mandatory Reporting Regulation, they are part of the utilities comprehensive procurement/resource planning activities. Without a provision that allows the utilities to hold a single set of accounts, utilities would not be able to manage their compliance instrument surrenders in a timely or efficient manner, and could end up with stranded excess instruments in one compliance account and a shortfall in another compliance account in any given compliance period. Such an outcome would not only place additional cost burdens on the utility, but could also result in driving up the cost of compliance instruments when entities seek to supplement their shortfall with allowances from the auction despite the fact that "extra"

allowances remain unretired in other compliance accounts. The proposed amendment would address this problem. However, further revisions are necessary to ensure that this provision clearly applies to local publicly owned electric utilities and joint powers agencies, each of which could have more than one "facility-level" compliance obligation. As drafted, the current provisions do not go far enough to ensure that POUs and JPAs readily qualify for the set of consolidated accounts defined in section 95833(e), since the entire notion of a percentage of ownership is inconsistent with the POU or JPA "corporate structure." POUs with separate facilities are not subject to the same "corporate ownership" and "controlling interest" structure that the current amendments are aimed at. By revising the regulation to specifically address this type of "direct corporate association," the regulation would continue to treat all similarly situated entities in the same manner, without impacting the intent of the original proposed amendments. Accordingly, NCPA recommends that a new provision be added to section 95833(a) to clarify and correct this apparent oversight:

> (a)(7) The operator of an electricity generating facility in California has a direct corporate association with the operator of another electricity generating facility in California if the same entity (for example a publicly-owned electric utility or joint powers agency) operates both generating facilities. The operator of an electricity generating facility in California has a direct corporate association with an electricity importer if the same entity (for example a publicly-owned electric utility or joint powers agency) operates the generating facility and imports electricity.

With the addition of this clarifying provision to the list of entities that meet the requirements of a direct corporate association, application of the consolidated account provisions set forth in section 95833(e) would readily be applied to these entities, without changing the intent of the proposed revisions.

C. Outstanding Issues Impacting the Electricity Sector Should be Addressed As Soon as Possible

During the October 2011 CARB Board meeting[3] , several issues that impact the electricity sector and utilities with a compliance obligation under the regulation were identified and flagged

3 Resolution 11-32.

for further review and resolution. According to the February 3, 2012 Workshop Presentation, resolution of those issues are scheduled to be presented to the CARB Board in the fall of 2012.[4]

In particular, details regarding the program restrictions and definitions for contract shuffling must be addressed. Also, the restrictions and discriminatory treatment of POUs located within the California ISO balancing authority vis-à-vis the use of the value from allocated allowances must be resolved. As it currently stands, there are both equity and market liquidity issues that have the potential to adversely impact the market and a large group of California electricity ratepayers.

NCPA urges CARB to address these matters concurrently with the provisions clarifying linking with other jurisdictions, as it is essential that the California market be as "fool-proof" as possible from the onset. At a minimum, all outstanding issues regarding the electricity sector should be addressed in the context of a Workshop, ideally one that is scheduled in the very near future. Notwithstanding the need to ensure that amendments specific to linking the California and Quebec programs are developed and approved right away, details regarding the impact of California's Cap-and-Trade Program on covered entities subject to a compliance obligation in the first compliance period must also be resolved expeditiously.

D. Registration Requirements Must be the Same for Canadian and California Participants

Fundamental registration and participant requirements in the market must be consistent for both jurisdictions. The Discussion Draft proposes several amendments to the Cap-and-Trade Program Regulation that are directly responsive to problems that have occurred in other jurisdictions. The "Get to Know Your Customer" requirements in section 95834 seek a great deal of information from registered entities and would involve sharing that information with CARB. In essence, CARB is asking for comprehensive background checks on all individuals that will be given access to the tracking system. The tedious nature of collecting and forwarding such extensive information is going to impact all covered entities and market participants, and may also result in limiting the number of individuals that would be willing to participate in the

4 February 3, 2012 Workshop Presentation, p. 7.

program, as they are forced to share very personal information with third parties.

During the April 9th Workshop, Staff indicated that Quebec has expressed support for these kinds of provisions, but that the current draft of the Quebec regulation does not include corresponding or similar provisions. It is important that all participants in the linked program be subject to the same requirements, and accordingly, that these same provisions be applied to registered entities from Quebec as well. Placing restrictions on just a portion of the individuals that will be participating in the program will distort the playing field and could adversely impact California entities.

Likewise, it is imperative that the same documentation and service agreements, as well as participation requirements be applied across both jurisdictions. Without providing specific comments on the three questions set forth in Staff's April 9th Presentation, NCPA notes that the final determinations made by CARB should also be reflected in the Quebec regulation. This is also true of any restrictions based on "criminal" or past activities, despite the fact that reconciling such a definition for two distinct jurisdictions could call for complex alignment efforts.

E. California Participants Should Not be Subject to Devaluation of the U.S. Dollar

Without a doubt, some of the most extensive revisions to the California regulation must address auction protocols and the need to reconcile the use of two different currencies in a single auction. One such amendment is section 95911(c)(3) regarding calculation of the Auction Reserve Price. NCPA shares the concerns raised by other stakeholders during the April 9th workshop about the potential devaluation of the U.S. dollar vis-à-vis the Canadian dollar with the application of this new section. Specifically, the provisions of section 95911(c)(3)(D) that provide for the Auction Reserve Price to be based on the higher of the two values should be further reviewed. Before finalizing the proposed amendments, CARB Staff should look closely at the potential impacts and unintended market consequences that could result and explore options and alternatives that may address such consequences in a fair and non- discriminatory manner.

III. CONCLUSION

NCPA appreciates the opportunity to provide these comments on the Discussion Draft and looks forward to continuing to work with Staff and other stakeholders in developing amendments to the Cap-and-Trade Program Regulation that not only facilitates linking California's program with partner jurisdictions, but also ensures that the integrity of California's program is not compromised. To that end, any amendments must result in a market that runs smoothly, efficiently, and for the benefit of California's covered entities and impacted residents and businesses. 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,
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