



December 15, 2010

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814
Submitted via the Web

To Whom It May Concern:

When Proposition 23 was defeated on the California state ballot in November, the people of California signaled their support for protecting the state's growing clean energy economy and implementing the Global Warming Solutions Act, the landmark law known as AB32. The Business Council for Sustainable Energy commends California voters for taking this step and appreciates the efforts of the California Air Resources Board (CARB) in moving forward with regulations to implement AB32.

The draft regulations recognize that significant progress can be made toward emission reduction goals by deploying existing clean energy technologies, greenhouse gas emission offsets, and improving energy efficiency. While all technologies at our disposal will be required to tackle the challenge of climate change, between now and 2020, it is existing clean energy technologies such as renewable energy, energy efficiency and natural gas that will be the first-phase solution to strengthen the economy, meet increasing energy demand, provide energy security, and reduce greenhouse gas emissions.

The Council believes a well-designed program – linked with emerging regional, national, and international programs – will allow California to meet its greenhouse gas emission reduction goals in a cost-effective manner. When adopted, we believe the California Cap-and-Trade Regulation will accomplish these objectives and can serve as a model for others to follow. However, we believe it can do so more effectively with clarifications in the following areas:

- The California program should be compatible with other state and regional programs in order to lay the groundwork for a national program
- The regulations should make every effort to contain costs of the program
- The investment of auction proceeds should facilitate near-term shifts to clean energy resources, applications, and technologies in order to save consumers money, reduce emissions, enhance energy security and create jobs in clean energy sectors
- The program should recognize and reward early actors
- Adjustments should be made to ensure a robust, high-quality carbon offset program that will drive new technology investments in uncapped sectors and contain costs
- Accurate and reliable reporting, made possible by competent third party reviewers, must be the cornerstone of greenhouse gas emission markets

The California program should be compatible with other state and regional programs in order to lay the groundwork for a national program

From an industry perspective, it is essential to have regulatory certainty and consistency in order to effectively tackle the challenge presented by climate change, lower the cost of compliance, and increase global market liquidity.

Therefore, the Council is encouraged that the California Air Resources Board envisions linking its cap-and-trade program with other Western Climate Initiative (WCI) Partners to create a regional market system. We are also encouraged by indications that California is discussing opportunities to link with the cap-and-trade program in the Regional Greenhouse Gas Initiative (RGGI) states. These linkages will be critical for consistency among programs and will facilitate what we hope will be an eventual transition to a national program.

However, the Council notes that the Air Resources Board may adopt an allowance allocation structure in the utility sector that is based on current, static, utility procurement plans. The Council does not believe that such an approach is

replicable at a national level, or after 2020 in California, as the development of procurement plans from the point of adoption onward - whether at a state level or nationally - will be altered if those doing the planning understand that their allocation of cap and trade allowances will be affected by how they do these plans.

The regulations should make every effort to contain costs of the program

Containing costs of the program will be critical to the health of the California economy. The draft regulations have incorporated a number of important measures to ensure that costs are contained such as banking, the use of offsets, and a scaled back auction.

It will be important for the Air Resources Board to closely monitor the cap-and-trade program, and the implementation of the Scoping Plan, to ensure the state meets AB32 emission reduction targets in a cost-effective manner. The Air Resources Board should include provisions in the cap-and-trade regulation establishing formal reviews of the regulation at least once each compliance period and should provide specific criteria to consider in these reviews.

The Air Resources Board should also create an independent market monitoring board responsible for monitoring the market and auction on a quarterly basis and recommending corrective action if needed. A more structured process and approach for evaluating the comparative cost-effectiveness of program measures, as well as the relative cost-effectiveness of those measures vis-à-vis the cap-and-trade program, should be established.

Provisions to expand the number and type of approved offset protocols are also key to ensure that offsets are available in sufficient quantities for use by covered entities beginning in 2012, helping to contain overall costs for those entities and all California residents. See more detailed comments below on the offset provisions.

The investment of auction proceeds should facilitate near-term shifts to clean energy resources, applications, and technologies in order to save consumers money, reduce emissions, enhance energy security and create jobs in clean energy sectors

California utilities are already leading, and are expected to continue to lead, the nation in the deployment of renewables and efficiency as they pursue the renewables and energy efficiency targets identified in the California Air Resource Board's Scoping Plan.

The immediate deployment of existing clean energy technologies such as renewable energy and energy efficiency will reduce greenhouse gas emissions and help mitigate consumer impacts. In this regard, the Council supports the proposed structure in the draft regulations where utilities that are provided allowances must use them for customer benefit consistent with the goals of AB32. While the Council does not offer an opinion on the option that the proposed California regulations proffer for publicly owned utilities that would allow these entities to simply use the allowances provided for compliance, the Council is concerned that the option could lead to reduced investment in AB 32 related activities by these entities, which could increase allowance prices for all in the long run.

In addition BCSE supports flexibility for utilities as they make decisions about how best to balance the substantial investments needed to meet the renewables and energy efficiency goals while participating in a cap-and-trade program.

The Council also supports the allocation for a voluntary renewable energy allowance set-aside.

The program should recognize and reward early actors

As the state of California transitions to a mandatory greenhouse gas emission reduction program, the Council believes it is critical to recognize early action taken by businesses and other entities to reduce emissions and to credit them for the prior investments that have been made to reduce emissions through the deployment of efficiency, renewables, and other measures.

Adjustments should be made to ensure a robust, high-quality carbon offset program that will drive new technology investments in uncapped sectors and contain costs

An adequate supply of offsets will be necessary to ensure that the goals of AB32 are achieved in a cost-effective manner and in a way that creates economic opportunities for companies and landowners in California. While the draft regulations increase the use of offsets from 4% to 8% of compliance obligation, this is still a fairly low level of offsets. Even so, the

Council expects that offset supply will fall far short of expected demand, particularly since only four compliance offset protocols are scheduled to be approved prior to 2011, and only four protocols have been recognized for early action offset crediting. Offset volumes to date for at least three of the four protocols – forestry, urban forestry, and livestock manure digesters – have been very limited.

The Air Resources Board's reliance on a single voluntary offset standards program to the exclusion of other comparable high-quality programs also raises questions regarding equal protection and interstate commerce. These concerns aside, competition would clearly provide additional opportunities for California farmers, forest owners and companies, and additional offset supply for covered entities.

The Council encourages the Air Resources Board to facilitate offset supply by approving additional protocols, both for development of compliance offset protocols under §95971 and for Early Action Offset Credits in §95990(b). Considering the timeframe required for protocol approval, California Environmental Quality Act (CEQA) review, offset project development and verification, this process should begin immediately and be as streamlined as feasible in order to ensure that adequate offset supply is available when most needed – at the start of the first compliance period in 2012. The Council also urges the Air Resources Board to propose a simple method to allow the carryover of unfilled rights to use offsets.

The record retention, conflict of interest requirements and re-verification of early action offsets will discourage offset project development. Modest changes are needed to the recordkeeping requirements and the conflict of interest requirements will need to be more flexible at the start of the program.

The Council also recommends that California work together with the RGGI states to ensure consistency among the programs where appropriate.

Accurate and reliable reporting, made possible by competent third party reviewers, must be the cornerstone of greenhouse gas emission markets

As greenhouse gas emission markets emerge in this country and abroad, greenhouse gas emission data needs to be indisputable and verifiable, otherwise the world's confidence in those markets will be lost to other more reliable ones. The transparent and verifiable data that is needed can only be obtained by using highly trained and competent third party verifiers.

The Council believes the proposed accreditation requirements for verifiers outlined in the proposed regulations are too weak and we encourage the Board to consider changes to the requirements as they are currently written. The proposed regulations do not assure the level of competency which is necessary to cultivate this market. Bad data, certified by inexperienced or unknowledgeable verifying bodies, could cause the public to lose faith in the credibility of those credits and could cause a collapse in the United States market for greenhouse gas emission credits.

If adopted, the requirements will undermine California's reputation as a world-wide leader in the field of climate mitigation especially on projects involving carbon offsets. In addition different sets of accreditation standards – one from the Air Resource Board and another from the American National Standards Institute (ANSI) – will lead to confusion, error and ultimately disputed findings. The California Air Resources Board should consider adopting the ANSI program which has grown from the initial seven certified verification bodies in 2009 to over twenty today.

Conclusion

The Council views the draft regulations for a California Cap-and-Trade Program as an important vehicle to reduce greenhouse gas emissions in the western region and the Council congratulates the state for its leadership and action.

We support the intent of the regulations to reduce greenhouse gas emissions while creating jobs, providing flexibility to reach emissions reduction goals, and protecting California's economy and we look forward to continue working with you as you refine and further develop the program.

If you have any questions or comments about the BCSE, please feel free to contact me or Ruth McCormick in the Council's offices.

Sincerely,

Lisa Jacobson, President
Business Council for Sustainable Energy

Attachment

Cc:

Lucille van Ommering (lvanomme@arb.ca.gov)

Sam Wade (swade@arb.ca.gov)

Kevin Kennedy (kmkennedy@arb.ca.gov)