BARRY F. McCARTHY
C. SUSIE BERLIN

McCARTHY & BERLIN LLP
ATTORNEYS AT LAW
100 W. SAN FERNANDO STREET, SUITE 501
SAN JOSE, CALIFORNIA 95113

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

Electronically Submitted

December 15, 2010

Mary D. Nichols, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Comments of the **Northern California Power Agency** on the *Proposed Regulation to Implement the California Cap-and-Trade Program*

Dear Mrs. Nichols:

The Northern California Power Agency[1] (NCPA) provides these comments on the *Proposed Regulation to Implement a California Cap-and-Trade Program* (Program), released by the California Air Resources Board (CARB) on October 28, 2010.

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 and related programs. 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 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.

Clearly, considerable effort has gone into development of the Program and the Proposed Regulation Order, *California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms* (Proposed Regulation), Appendix A of the *Staff Report: Initial Statement of Reasons*

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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.

(ISOR). NCPA understands that Staff will continue to work on fine-tuning the Program details, and that a great deal of pre-implementation work will need to be completed over the next 12 months before the Program can be officially launched in January 2012. NCPA offers these comments in the interest of furthering the development of the Proposed Regulation design features that require additional corrections and refinements before implementation of this landmark Program.

A. COMMENTS ON THE PROPOSED REGULATION

1. ELECTRIC SECTOR ALLOWANCES ARE PROPERLY ALLOCATED TO THE ELECTRICAL DISTRIBUTION UTILITIES FOR THE BENEFIT OF THEIR RATEPAYERS

A. Total Electricity Sector Allowances

"*Allowances available for allocation to electrical distribution utilities shall be 89 million multiplied by the cap adjustment factor in Table 9.2 for each budget year 2012-2020*." Section 95870(c)(1). NCPA believes that this number should be revised to include an additional 8.7 MMT from combined heat and power (CHP), for a total sector allocation of 97.7MMT. NCPA supports the use of 97.7 MMT as the minimum number allowances to be freely allocated to the Electrical Distribution Utilities.

NCPA recommends that § 95870(c)(1) be modified to also include 8.7 MMT of additional allowances that are attributable to CHP generation that is purchased by utilities (as opposed to used for industrial purposes). The 8.7 MMT is derived by taking a reported 2,562 MW of statewide CHP purchases by electric utilities, and using a 8125 Btu/kWh heat rate, which translates into 9.7 million metric tons of emissions, multiplied by 90%, which results in 8.7 million metric tons of additional allowances to address utility purchases of electricity from CHPs. The cost of CHP generation purchased by utilities is properly allocated to the electrical distribution utilities on behalf of their customers.

B. Free Allocation to Electrical Distribution Utilities is Appropriate

NCPA supports the Proposed Regulation's free allocation of allowances to Electrical Distribution Utilities. Electrical Distribution Utilities are best situated to deliver the benefits of

any allowance value directly to the State's retail customers and meet the stated objective of free allocation; that is "*to ensure that electricity ratepayers do not experience sudden increases in their electricity bills associated with the cap-and-trade regulation.*" (ISOR, p. II-28)

NCPA has long supported an allowance allocation methodology that recognizes electric utility investments in zero- and low-GHG emitting resources, including wind, solar, and hydro-electric, as well as investments in state-of-the art natural gas-fired electric generation facilities that emit far fewer harmful GHG emissions than their predecessor facilities. NCPA believes that any allowance allocation mechanism must recognize these investments, and should also create a program design that moves the entire state away from higher emitting resources. Clearly the move towards higher and higher renewable energy mandate one such tool, but others must also be employed.

C. Allowance Allocation Method to the Electrical Distribution Utilities Must be Established

Determining the appropriate allocation of allowances within the electricity sector is a crucial part of the total Cap-and-Trade Program. NCPA has been an active participant in the Joint Utility Group that has worked collectively toward developing a joint recommendation on allocation of electricity sector allowances. NCPA continues to work with the other members of the Joint Utility Group, as well as representatives from the California Environmental Protection Agency (Cal EPA) and CARB Staff and other stakeholders in the interest of developing an allowance allocation compromise that can meet the objectives of the State's environmental and economic goals. NCPA generally supports the direction of the allocation compromise that has been discussed with the utility stakeholders and Cal EPA during the last six weeks. This compromise is based on three important principles:

(1) Covering each Electrical Distribution Utilities' cost burden associated with the cap-and-trade program,

(2) Recognizing Electrical Distribution Utilities' early actions and investments in renewable electricity generation, and

(3) Recognizing the cumulative energy efficiency reductions of each Electrical Distribution Utilities'.

NCPA believes that it is appropriate for an allocation method that includes these three factors to provide lower-emitting utilities with more free allowances at the start of the program, as this demonstrates that it is possible for an allocation method to both cover a utilities' cap-and-trade related costs, as well as acknowledge the early investments in low-GHG emitting resources. The final consensus position that clearly meets each of the three discussed criteria must do so while still maintaining a total minimum allowance carve-out for the electric sector of 97.7 MMT (89 MMT referenced in § 95870(c)(1), plus an additional 8.7 MMT for CHP), and allocate those allowances freely to the Electrical Distribution Utilities as currently contemplated in the Proposed Regulation, including the right of the Electrical Distribution Utilities to retain the ability to utilize the value of the allowances for the benefit of retail ratepayers consistent with the goals of AB 32, and as directed by their governing bodies (local governing boards for the POUs or the California Public Utilities Commission for IOUs).

NCPA looks forward to continuing to work with CARB and Cal EPA on this pivotal issue and to providing more substantive comments on the verified data and updated proposal presented for formal Stakeholder comment in 15-day language.[2]

2. THE REGULATION SHOULD PROVIDE ADDITIONAL PROVISIONS AND CLARITY REGARDING AUCTION OVERSIGHT AND PROTECTIONS

Without a doubt, one of the greatest risks associated with the cap-and-trade program is inherent in the potential volatility of the cost of allowances. Even with a well-structured and closely monitored auction, the market can be unpredictable – as those that were a part of California's electricity market in 2000 can attest. While some businesses are structured to absorb such market risks, regulated utilities that provide essential services – such as electricity – to consumers cannot afford to be solely at the whim of market vagrancies. While utilities have

2 Prior to release of the Proposed Regulation, NCPA was part of a subgroup that brought forth a compromise allowance allocation proposal that would provide free allowances to the Electrical Distribution Utilities based on a percentage of historic emissions and retail sales, with the initial allocation being based on 25% retail sales and 75% historic emissions, with a transition by 2020 to 75% retail sales and 25% historic emissions. While NCPA supported this proposal for its recognition of all utility investments and the importance of transitioning to a sales-based allocation scheme that would automatically adjust for load growth due to economic development or electrification, in the interest of reaching a utility-wide consensus, NCPA is supportive of an allocation methodology that is based on the principles articulated in the proposal brought forth by Cal EPA staff, as more fully discussed above.

certain actions that they can take to help protect their customers and ratepayers from market fluctuations, they also need the certainty that the market in which they are operating also has such protections in place.

As currently drafted, the Proposed Regulation does not contain sufficient information regarding the administration, operations, or oversight of the proposed auction. While subarticle 10 of the Proposed Regulation includes information regarding the auction design and the sale of California allowances, including information regarding auction administration and registration, aside from general references to the oversight of the Executive Officer in § 95912(a), there is insufficient information regarding the specific market oversight body or market monitoring entity that will oversee the day-to-day administration of the Program. It is imperative that the Regulation include specific provisions regarding market design and Program oversight within the regulatory language, including potential impacts and interactions with the secondary market. The Program should include provisions for testing the efficacy of all auction functions, including bid monitoring and tracking platforms, and registration and tracking of auction participants prior to implementation. The Board should also direct Staff to conduct pre-implementation training and workshops, which would include a run-through of all market and auction operations. It is important that California not repeat the mistakes of the past and that this market-based mechanism not be implemented until it has been fully tested and deemed ready.

A. <u>Adequate Monitoring and Corrective Measures Must be Included</u>

CARB has clearly placed a great deal of importance on ensuring that there are "regulatory requirements that will provide the means to identify and ultimately prevent market manipulation," (ISOR, p. II-57) and even with registration and certain disclosures requirements, CARB has acknowledged that market failures may occur. The ISOR notes that "if market manipulation or other illicit activities are detected, ARB will work with the appropriate authorities to initiate enforcement activity and, if necessary, reevaluate regulatory requirements to avoid future incidents." (ISOR, p. II-57) However, the Proposed Regulation does not address the monitoring mechanisms that will be employed, nor does it identify a market oversight agency, or process by which identified shortcomings will be immediately addressed and corrected.

B. <u>Cost, Market Tracking, and Accounting Information Must be Addressed</u>

NCPA is concerned that despite the level of detail regarding disclosure and registration, as

well as pre-and post-purchase reporting activities, there are several programmatic shortcomings that should be improved before implementation. This includes more detailed information regarding closing and accounting procedures and timelines, and transaction costs associated with the mandatory participation in the CARB administered auction. The Proposed Regulation needs to ensure that operations will be conducted in an expeditious and transparent manner. Entities will have significant resources tied up in bid guarantees and letters of credit (which will have a significantly greater impact on smaller Covered Entities). Accordingly, it is imperative that quarterly auctions and sales from the Allowance Price Containment Reserve Account (Reserve Account) are settled in a timely manner. The Proposed Regulation is also devoid of specific information regarding monitoring and tracking, which should be included.

Further, the Proposed Regulation should clarify CARB's position that Covered Entities are not subject to transaction fees for their purchases and sales in the auction, including all allowances that are consigned for auction from the Limited Use Holding Accounts. While the auction may be a revenue source for obtaining additional monies for implementation of the State's AB 32 programs, those revenues should not be raised from the mandatory participation of entities with a Compliance Obligations, but rather by third parties voluntarily participating in the auction.

C. <u>Several Provisions of Section 95911 Should be Revised</u>

i. Section 95911(b)(3)

Allowances from the Limited Use Holding Accounts should be sold before allowances or offsets from suspended or revoked accounts. In order to ensure that Covered Entities in good standing are able to monetize their allowances, NCPA recommends that the order in which consigned allowances are used to fulfill winning bids be revised. CARB proposes to fulfill winning bids with allowances from the suspended or revoked accounts "because ARB may need to return unsold allowances to their source accounts [which is] not possible for allowances from closed, suspended, or revoked accounts." (ISOR, p. IX-69) However, rather than penalize Covered Entities that are looking to monetize their allowances by ranking allowances from limited use holding accounts second, the allowances from suspended or revoked accounts could be placed into the CARB Auction Holding Account until the next quarterly auction. Also, it is

appropriate for the number of allowances that are drawn from each entity's account to be proportionate. NCPA recommends the following revisions to § 95911(b)(3):

> § 95911(b)(3) If an auction settlement price equals the reserve price:
>
> (A) The auction operator will fulfill winning bids with allowances from consignment sources in the following order:
> (i) allowances consigned from limited use holding accounts pursuant to subarticle 5~~allowances consigned to auction pursuant to section 95910(d)(2)~~;
>
> (ii) allowances consigned to auction pursuant to section 95910(d)(2) ~~allowances consigned from limited use holding accounts pursuant to subarticle 5~~;
> (iii) allowances directly allocated by ARB to auction pursuant to subarticle 8.
> . . . .
> (B) When there are insufficient winning bids to exhaust the allowances from a consignment source in (A) above, the auction operator will sell an equal ~~number~~ percentage of allowances from each consigning entity in that source.

ii. Section 95911(b)(4)

NCPA recommends that the unsold CARB held allowances not be placed directly into the highest level of the Reserve Account, as contemplated in § 95911(b)(4). Rather, those allowances should be placed back into the CARB Auction Holding Account (defined in § 95831(c)(2)), or at a minimum, the allowances should be used to repopulate the first tier of the Reserve Account.

iii. Section 95911(b)(6)

Section § 95911(b)(6)(A) sets the Auction Reserve Price for auctions conducted during 2012 at $10 for allowances from the 2012 allowance budget year, and $11.58 for allowances from the 2015 allowance budget year. The Proposed Regulation also provides for a 5% plus consumer price index (CPI) annual increase in the Reserve Price. (§ 95911(b)(6)(B)) CARB states that the purposes of the annual increase is to "provide incentives for direct emissions reductions and the investments in offset credit projects," and that the "auction reserve prices would need to increase to reflect the increased marginal abatement cost and the inflation rate; otherwise, the reserve price would no longer support direct reductions and offset projects as intended." (ISOR, p. IX-71) NCPA does not believe that the increases are necessary to meet this objective, nor are they consistent with the purpose of a three-year compliance period.

NCPA recommends that § 95911(b)(6) be revised to strike the annual escalation of 5%.

Aside from CPI, there should be no increase in the ongoing Auction Reserve Price. The annual increase adversely impacts the utility of the three-year compliance period as a cost-containment tool by guaranteeing that allowance prices in the later years will be 5% higher. Furthermore, increases are not necessary to meet the objectives articulated in the ISOR, and should not be included.

iv. Section 95911(c)

The Proposed Regulation would apply the auction purchase limit to the first compliance period only, and the purchase limit for future compliance periods would be established in later rulemakings. (ISOR, IX-72) CARB believes that the purchase limit is needed "to ensure that a few entities do not obtain market power through purchases at the auctions." (ISOR, IX-72) NCPA agrees, however, NCPA believes that absent special circumstances that can be demonstrated by compliance entities, the purchase limits should apply throughout the term of the Program. The purchase limit should be set for the entire Program, and if, subject to a review of the Program it is determined that the limit should be modified, a subsequent rulemaking can be initiated to make the change at that time.

All of the reasons articulated by CARB to support sunsetting the purchase limit – developing a better understanding of the needs of larger compliance entities with additional data, more knowledge of a matured market as time passes, and greater understanding of the interactions between California's program and the Western Climate Initiative (WCI) partners – are valid reasons to review the purchase limit amount for subsequent compliance periods.[3] However, none of these reasons negate the need to include purchase limits as a market protection mechanism going forward. Accordingly, it would be far simpler – and safer – to include the purchase limit in the Regulation for the entire duration of the Program, with the understanding that it – like any other provision that does not work when reviewed in a maturing program – will be changed for subsequent compliance periods. NCPA recommends the following revisions to § 95911(c) :

> § 95911(c) Auction Purchase Limit. ~~For auctions conducted from January 1, 2012, through December 31, 2014, t~~The share of allowances of any vintage year offered at any quarterly auction which may be purchased by one entity or a group of

3 All of these same reasons also support a formal review process for the entire Regulation on a regular basis, at least once per compliance period, along with a formal process for making necessary changes to the program to correct or address any indentified program deficiencies.

> entities with a corporate association pursuant to 95914 shall be limited to less than: . . .

3. THE HOLDING LIMITS OF JPAs SHOULD NOT IMPACT THE HOLDING LIMITS OF ITS INDIVIDUAL MEMBERS

The Proposed Regulation would place a holding limit on the number of allowances that can be held by any one entity. (§ 95920) These limits have implications for entities with complex ownership interests, such as joint powers agencies (JPAs) under § 95914, which requires the disclosure of direct and indirect "Corporate Associations." For purposes of holding allowances for Program compliance, the Proposed Regulation should clarify that the holdings of a JPA are not counted when calculating the holding limit of any of its individual members, and likewise, allowances held by any of the individual members of a JPA shall not be included in calculating the holding limit of the JPA . NCPA generally supports the imposition of holding limits as a tool to help protect against market manipulation. However, as with all aspects of auction design, the implementation of the holding limit must be narrowly tailored as not to limit the ability of Covered Entities to cost-effectively manage their compliance burden.

4. THE REGULATION SHOULD INCLUDE A FORMAL PROCESS FOR REVIEW OF THE PROGRAM

Although there are other emissions trading programs in existence, this Program will be a first of its kind program for California, and for the entire region in many respects. The Program will also play a pivotal role in the ability of the State to meet its overall emissions reductions target as set forth in AB 32 and the Scoping Plan, while at the same time having a significant impact on the sectors and entities included within the program. This is especially true for the electricity and industrial sectors that will part of the "narrow scope" entities included in the first phase of the program. While it is clear that a great deal rides on the ability of this Program to operate as anticipated, there are no guarantees that this will happen.

CARB states that the "program is made up of many elements, must serve a large number of important objectives at the same time, and relies on the cumulative actions of a large number of participants operating in a complex market system." (ISOR, p. II-56) Noting these complexities, the ISOR goes onto address the need for CARB to monitor the program in order to determine whether,

"over time, the program is meeting all of the objectives set forth in AB 32" (*Id.)* NCPA agrees that ongoing monitoring of the Program is important. While CARB has stated that it is "committed to review and revise policies, protocols, and procedures as more information becomes available," (*Id.*) the Proposed Regulation itself is devoid of any references to the form and procedure for this monitoring, nor does it address the manner in which the necessary policy and procedure revisions will be carried out.

Since the ISOR contemplates CARB conducting evaluations in advance of each of the compliance periods with sufficient time to adjust the Program if warranted, NCPA recommends that the Proposed Regulation be revised to add language that would address a formal review process for the Program, which review would take place at least once each compliance period, with the first review to start mid-way through the first compliance period. While regulations generally include provisions applicable to regulated entities and not the regulator, those regulated entities must have some assurances regarding the viability and stability of the underlying program. That is especially important in the context of the new cap-and-trade program, where the State is dealing with the provision of essential services in a potentially volatile market. Accordingly, the Proposed Regulation should also include the provisions that would govern its review and necessary corrective actions. Such language would prescribe the review schedule, as well as the range of issues and criteria that would be considered during the review, and provide a vehicle to address necessary corrections. This is similar to the approach that was taken in the recently adopted *Regulation for a 33% Renewable Electricity Standard*. (*See,* Renewable Electricity Standard (RES) Regulation § 97011, which calls for periodic reviews of the regulation – including reviews of market factors – and reports to the Board regarding the viability of the program.)

Such a review process would better enable CARB to develop criteria and processes by which to undertake future adjustments, if necessary. The need for such adjustments can be evidenced by the changes already seen between the original Scoping Plan issuance and the current Program recommendations, which are based on the receipt of actual data. Furthermore, ideally, as California links with the WCI partner jurisdictions, the ongoing review of the State's own program would serve to support the administrative record that would be developed for purposes of linking rulemakings contemplated in §§ 95940, 95941, and 95942.

5. ALLOWANCE BUDGET ADJUSTMENTS SHOULD BE MADE TO ADDRESS OPT-IN COVERED ENTITIES

The provisions of § 95813 (Opt-In Covered Entities) and § 95841 (Allowance Budget) must be reconciled to reflect the stated reasons for the reduction in the Allowance Budget. The Proposed Regulation sets the 2020 allowance budget at 334.2 $MMTCO_2e$ – a 30.8 $MMTCO_2e$ reduction from what was originally included in the Scoping Plan. CARB notes that the allowance budget has been adjusted downward from the estimated 2020 cap of 365 $MMTCO_2e$ that was set forth in the October 2008 Scoping Plan, due to the fact that reported data has "allowed staff to develop a better estimate of the emissions from sources in the program," which as result has allowed CARB to better estimate which sources within a capped sector will actually be part of the Program. (ISOR, p. II-16)

If the allowance budget has been reduced to reflect entities within "covered sectors" that are not actually "covered entities" within the scope of the Program, then the allowance budget should be revised upward anytime one of those other entities is brought within the Program by electing to be an Opt-In Covered Entity. Under the current provisions of § 95813(e), no adjustments will be made to the allowance budget when an entity makes such an election. However, once an entity makes this election, that entity will need to purchase allowances the same as all other Covered Entities, which will constrain the market, as their need for allowances was not included in the original budgeted amount. For example, if taken to its extreme, if each and every eligible entity elected to be an Opt-In Covered Entity, the revised budget set forth in the Proposed Regulation could be nearly 31 MMT CO_2e short of allowances. Accordingly, NCPA recommends that the allowance budget be revised upward to reflect this potential, or that the provisions of § 95813(e) be revised to allow an increase in the budget consistent with the increased demand for allowances consistent with the inclusion of each Opt-in Covered Entity.

6. ELECTRIFICATION OF THE TRANSPORTATION SECTOR SHOULD BE ACKNOWLEDGED IN ELECTRICITY SECTOR ALLOWANCE ALLOCATION

The Proposed Regulation does not provide provisions to address updating the allowance allocation, and for the most part, this may be appropriate. However, there is an inherent tension in

one respect that necessitates a specific provision to look at updating the number of allowances allocated to the electricity sector. This involves a migration of emissions from the transportation or other sectors to the electricity sector due to electrification. Electrification of public transportation (ISOR, p. II-33), ports, and personal vehicles could have a net positive impact on the State's overall emissions reductions. However, this same impact is likely to result in an increase in the emissions associated with the electricity sector that are not accounted for in any of the current emissions accounting methods under consideration.

Electrification and the development of a more robust, secure, and reliable electric vehicle infrastructure are not simple matters. However, they are a real part of meeting the goals of AB 32 and will present real impacts for electric utilities' compliance with the Cap-and-Trade Program. Accordingly, NCPA urges the Board to direct Staff to work with Stakeholders to further review and address this issue, and provide 15-day proposed revisions for the public's consideration during the first quarter of 2011 for inclusion in the final Regulation.

7. ENFORCEMENT PROVISIONS SHOULD BE CONSISTENT WITH THE INTENT OF THE REGULATION AND NOT ADVERSELY IMPACT THE MARKET OR OTHER COVERED ENTITIES

A. Excess Surrender Requirement Should be Monetized

The excess surrender requirements of § 95857 (Untimely Surrender of Compliance Instruments by a Covered Entity), adversely impact all Covered Entities and not just those that are out of compliance by reducing the number of compliance instruments available for surrender. Such an outcome should be avoided.

NCPA recommends that the Proposed Regulation be revised to permit allowances to set the value for non-compliance, by requiring the non-complying entity to surrender the required number of allowances plus a payment valued at three times the amount of allowances in the most recent auction. If CARB requires actual allowances to be surrendered in excess of the compliance obligation, then CARB is penalizing all other market participants – particularly those with a compliance obligation – because the allowances will not be available for purchase at that time.

This concern is not mitigated by the fact that the allowances will be placed back into the market for two reasons. First, the allowances will come out of the market for some period of time and for Covered Entities seeking to buy allowances during that time period, the demand will be

greater as the entity that is trying to meet the out-of-compliance surrender obligation will be purchasing more allowances than what was contemplated in the allowance budget. Secondly, the excess allowances will be placed back into the market, but as currently drafted, these allowances will go into the Reserve Account. That means the allowances will automatically be valued at more than the Auction Reserve Price. Again, this results in increasing the compliance cost for *other* Covered Entities.

If the Proposed Regulation is not changed to monetize the value of the untimely surrender obligation for noncompliance, the provisions of § 95857(d) should be revised to ensure that the allowances from the excess surrender obligation are placed back into the auction at a non-discriminatory rate that does not adversely impact the remaining Covered Entities. Accordingly, the three-quarters of allowances used to meet the untimely surrender obligation should either be placed back into the CARB Auction Holding Account (defined in § 95831(c)(2)), or at a minimum, the allowances should be used to repopulate the first tier of the Reserve Account, and not placed into the highest tier, where they will only be available to all other Covered Entities at the highest possible price. Section 95857(d)(2)(A) should be revised accordingly.

B. <u>The End of the 30-day Cure Period Should Trigger the Provisions of Sections 96013 and 96014</u>

Pursuant to § 95857(c), the obligation to surrender allowances for untimely surrender is immediately due, and penalties can be pursued if the Covered Entity does not surrender sufficient allowances to meet this obligation within 30 days. NCPA recommends that the provisions of the Proposed Regulation be clarified to ensure that a Covered Entity that meets all of the obligations of § 95857 during the 30-day cure period is not also subject to additional penalties under the provisions of §§ 96013 and 96014.

C. <u>Violations and Penalties Must be Defined to Meet the Objective of the Regulation</u>

The enforcement provisions must be developed and administered in a way that does not adversely affect a Covered Entity's ability to comply with the Regulation going forward. Penalties must be assessed consistent with the principles of malfeasance and gross negligence,

and mitigating factors, including programmatic difficulties and sector-related constraints, must be carefully and fully reviewed by the Executive Officer and CARB before penalties are assessed.

NCPA has worked closely with CARB Staff, the electric utilities, and other stakeholders as part of the Renewable Electricity Standard (RES) Working Group, specifically discussing the appropriate approach for enforcement and penalties. The RES Working Group has recommended a balance with regard to the imposition of "daily penalties," that recognizes that meeting an annual compliance obligation of the nature created in the Proposed Regulation is somewhat unique in several respects, and accordingly recommends that the "daily penalty"[4] be calculated using a six month period.

Consistent with this methodology, NCPA recommends the following revisions to §§ 96013 and 96014:

> **§ 96013. Penalties.**
> Penalties may be assessed pursuant to Health and Safety Code section 38580 for any violation of this article. In determining whether to assess a penalty and any amount assessed, all relevant circumstances shall be considered.
>
> **§ 96014. Violations.**
> (a) If a covered entity fails to surrender a sufficient number of compliance instruments to meet its compliance obligation as specified in sections 95856 or 95857 there is a separate violation of this Article for each required compliance instrument that has not been surrendered.
> (b) There is a separate violation for each ~~day~~ six-month period or portion thereof after the compliance date that each required compliance instrument has not been surrendered.
> (c) Each ~~day~~ six-month period or portion thereof in which any other violation of this Article occurs is a separate offense.

4 AB 32 provides CARB the discretion to apply daily penalties in Health and Safety Code § 38580(3), which provide that: the state board **may** develop a method to convert a violation of any rule, regulation, order, emission limitation, or other emissions reduction measure adopted by the state board pursuant to this division **into the number of days in violation, where appropriate**, for the purposes of the penalty provisions of. . . ." (emphasis added).

8. ANY SET ASIDES FOR VOLUNTARY RENEWABLE ENERGY PROJECTS MUST BE STRICTLY LIMITED

The Proposed Regulation includes two separate sections that carve-out special treatment for allowances to address voluntary renewable energy projects. In § 95831(c)(6) the regulation would create an Allowance Set Aside Account for Voluntary Renewable Energy Credits and in § 95870(e) the regulation would address the means by which that account would be funded. CARB must ensure that the reduction in available allowances does not result in increased compliance costs for utilities and other compliance entities.

NCPA understands that CARB intends to continue to work with stakeholders that represent both the electric utility sector and the advocates of this specific provision in the coming months to develop language that would be used in the regulation. NCPA looks forward to working with Staff and other stakeholders on this important issue.

9. PUBLICLY OWNED UTILITIES SHOULD BE ALLOWED TO DESIGNATE FREELY ALLOCATED ALLOWANCES TO A LIMITED USE HOLDING ACCOUNT OR COMPLIANCE ACCOUNT

Section § 95892(b)(2) allows publicly owned utilities to make an annual designation to place their freely allocated allowances either into their Limited Use Holding Account or into their Compliance Account. NCPA supports this provision as a sound means by which to avoid needless transactions. As noted in the ISOR, this distinction is warranted due to the fact that "most POUs own and operate their own generation and do not compete with independent generators in the way IOUs do." (ISOR, p. II-32) Because of this, allowances directly allocated to POUs may either be consigned for sale at the general quarterly auctions or used directly to meet their compliance obligations. If a POU decides to auction some of its allowances at the general auction, the same auction rules apply to the POUs as those described above for the IOUs. (Id.) While there may be some concerns that this "option" limits the amount of revenue that a POU has to spend "*exclusively for the benefit of retail ratepayers . . . consistent with the goals of AB32*," as mandated by § 95892(d)(3) for the use of auction proceeds, this concern is unfounded. Like all electric utilities, POUs are required to meet any number of a programmatic measures under the Scoping Plan. The fact that a POU may not have to purchase allowances in the market

and receive the corresponding revenue does nothing to change the total amount of revenue available to the POU for AB32 related programs since the POU would most likely be both the original allowance seller and the most likely purchaser. As a practical matter, revenues not used to purchase allowances in the auction will be freed up for other AB 32 related expenditures, including savings from needless transactions costs, to be used for the benefit of the POU's retail customers consistent with the goals of AB 32.

A. Some Transfer of Allowances Between Compliance Accounts Should Be Allowed To Address Different Ownership Interests

NCPA is a JPA, organized and operated under the laws of the state of California. NCPA is also an entity with a compliance obligation under the Program, as are many of NCPA's individual members. It is imperative that the auction rules that place restrictions on the transfer of allowances and Holding Accounts not adversely impact the legitimate ownership interests of government entities such as NCPA and its members.

Accordingly, freely allocated allowances designated to Electrical Distribution Utilities whose generation resources are owned as part of a JPA arrangement in which the Electrical Distribution Utility is a member should properly be designated to either the Electrical Distribution Utilities' Compliance Account, as currently authorized under § 95892(b)(2), or into a Compliance Account held by the JPA.

Furthermore, NCPA believes that requiring the designation with regard to the next year's allowances during the timeframe contemplated by the Proposed Regulation is problematic. The "90 days prior" deadline falls on or about October 1, a month prior to the true-up for submittal of compliance instruments for the Triennial Compliance Obligation (§ 96856(f)). It also precludes entities from being able to utilize all of the gathered data from the previous year upon which to make a determination regarding the election. NCPA recommends that publicly owned utilities be required to make this election by no later than 30 days prior to the start of the allocation year (i.e., December 1).[5]

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5 If CARB determines not to change the election date, NCPA recommends that the election date in § 95892(b)(2) be changed from "at least 90 days prior" to a date certain of October 15, due to the fact that the deposit of allowances by CARB can occur "any time before January 1," (§ 95870(c)) which makes "at least 90 days prior" impossible to

Accordingly, NCPA offers the following revisions to § 95892(b)(2) and § 95831(a)(4):

> § 95892(b)(2): Publicly oOwned Electric Utilities. By no later than December 1 of each year, ~~At least 90 days prior to receiving a direct allocation of allowances~~, publicly owned electric utilities will inform the Executive Officer of the share of their allowances for the following calendar year that is to be placed. . .
>
> (A) In the publicly owned electric utility's compliance account or compliance account of a Joint Powers Agency in which the Electrical Distribution Utility is a member and with which it has a power purchase agreement, or
> (B) In the publicly owned electric utility's limited use holding account.
>
> \- - - -
>
> § 95831(a)(4) (A) A covered entity or opt-in covered entity may transfer compliance instruments to its compliance account at any time, or compliance account of a Joint Powers Agency in which the Electrical Distribution Utility is a member and with which it has a power purchase agreement.
> (B) Except as noted in subsection (A) above, a ~~A~~ compliance instrument transferred into a compliance account may not be removed by the covered entity.

10. THE RESERVE ACCOUNT SHOULD BE MAINTAINED AT ALL TIMES AND UNSOLD ALLOWANCES DESIGNATED FOR THE RESERVE ACCOUNT SHOULD BE PLACED IN THE FIRST TIER

As noted above, NCPA is supportive of program design features that help contain costs. Accordingly, NCPA fully supports the Allowance Price Containment Reserve Account (Reserve Account) and the restrictions that are placed on the entities that are allowed to purchase allowances from that account. The Reserve Account - § 95870(a), is a key tool toward mitigating potential adverse impacts on compliance entities due to the volatility of allowances prices.

NCPA recommends that the § 95913(d)(3) be revised to remove the annual 5% increase in the Reserve Account allowance prices. The annual increase – if any, should be no more than CPI, and there should be no other increase in the Reserve Price. Annual increases in the Reserve Account allowance prices adversely impacts two important cost containment tools – the Reserve Account itself, as well as the 3-year compliance period, by ensuing that the costs will be at least 5% higher each subsequent year. Furthermore, as with the Auction Reserve Price, annual

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determine.

increases in the price of allowances placed into the Reserve Account are not necessary to meet the objectives articulated in the ISOR, nor do they send additional positive market signals. Accordingly, they should be stricken.

Finally, § 95913(c)(1)(B) provides that Covered Entities must have "no compliance instruments in their holding accounts or limited use holding accounts" in order to purchase allowances from the Reserve Account. The ISOR supports this limitation based on the notion that the Reserve Account be available to ensure "that compliance may be achieved at a reasonable cost." (ISOR, p. IX-87) NCPA recommends that this limitation be revised to allow Covered Entities that hold offset instruments in their holding accounts to still purchase allowances from the Reserve Account due to the fact that the cost of offset projects can and should be distinguished.

11. OUT-OF-STATE RENEWABLE ENERGY CONTRACTS THAT ARE RPS AND RES COMPLIANT SHOULD HAVE ZERO GHG EMISSIONS

In order to ensure that the State's environmental objectives are consistently addressed, and to be consistent with the counting methodologies used in allowance allocation discussions, the Proposed Regulation must treat all renewable resources from existing California renewable energy programs as zero-emitting resources. Out-of-state renewable energy contracts that are currently valid renewable contracts for purposes of meeting the requirements of a existing renewable portfolio standard (RPS) program or are compliant with the recently adopted Renewable Electricity Standard (RES) regulation also contribute to the overall reduction of GHG emissions, and towards meeting the mandates of AB 32. Accordingly, they should be recognized as such in the context of the Cap-and-Trade Program, where appropriate.

12. ANY RESTRICTION ON THE OWNERSHIP INTEREST OF AN ALLOWANCE MUST BE NARROWLY TAILORED TO THE SURRENDER INSTRUMENT UNDER THE REGULATION

In creating a new program, CARB must also create surrender instruments to be used in the Program. Sections 95820 sets forth the general description of the "California Greenhouse Gas Emissions Allowances" and "offset credits." Section 95820(c) goes on to describe the

compliance instrument, and notes that "[a] compliance instrument issued by the Executive Officer does not constitute property or a property right." The rationale for this limitation is based on the premise that "property rights cannot attach to the compliance instruments because, in the event of federal preemption in the cap-and-trade market or other conditions, California must have the ability to revoke the compliance instruments without creating a loss to the people of California." (ISOR, p. IX-18) NCPA recommends that the Proposed Regulation clarify that an allowance – whether it is a California Greenhouse Gas Emission Allowance or offset credit – does not constitute a compliance instrument until such time as it has been surrendered to CARB pursuant to the provisions of § 95856.

13. LIMITATIONS SHOULD BE PLACED ON THE ABILITY OF NON-COVERED ENTITIES TO SURRENDER ALLOWANCES

The Proposed Regulation allows entities without a compliance obligation to surrender allowances.[6] Voluntarily associated entities (VAEs) (§ 95814(a)(1), may purchase, sell, hold, or voluntarily retire compliance instruments (§ 95814(a)(2)) and must comply with certain registration requirements pursuant to § 95830(c). VAEs are restricted from purchasing allowances from the Reserve Account (§ 95913 (c)(1)) and are not eligible for freely allocated allowances, but may participate in the quarterly auctions, where they may purchase up to 4% of the allowances offered for auction (§ 95911(c)(3)). NCPA is concerned that VAEs could have a detrimental impact on the ability of Covered Entities to obtain the allowances they need at costs less than the Reserve Account price.

The Proposed Regulation needs to ensure that VAE participation in the market is designed so that entities with a compliance obligation are not adversely impacted. As a practical matter, VAEs are entities without a compliance obligation, which means that they are participating in the market for other reasons. While not inherently wrong, such participation creates significant

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6 NCPA notes that § 95802(a)(207) defines "Voluntarily Associated Entity" as "any entity which does not meet the requirements of section 95811 in this article that intends to voluntarily retire compliance instruments in the cap-and-trade program," while § 95814(a)(2)(A) more broad defines the role of a Voluntarily Associated Entity as "an entity that does not meet the requirements of sections 95811 and 95813 that intends to purchase, hold, sell, or voluntarily retire compliance instruments." NCPA recommends that these definitions be reconciled so that they are consistent.

market power and market manipulation potential, and could have unintended consequences for compliance entities. While the ISOR advocates the inclusion of these entities as a means to allow entities without a compliance obligation to "voluntarily retire compliance instruments for the benefit of the environment" and believe that "allowing additional participants also increases market liquidity and creates a larger market," (ISOR, p. IX-15), this can still cause adverse consequences for Covered Entities. The general economic theory is that more market players will lower costs; however, that may not necessarily be the case in practice. For example, even those with the most altruistic intent and the financial means to affect their intent to simply retire emissions could wreak havoc on the price of available allowances for those that need them for a compliance obligation.

NCPA appreciates the limitations that have been placed on the number of allowances that can be purchased by the VAE and restrictions on their ability to purchase from the Reserve Account, but believe that these limitations fall short of adequately addressing the potential adverse impacts. NCPA recommends that participation by VAEs be further restricted to surrender of offset allowances only, and that all of the transactions conducted through § 95831(c)(3) be publicly noticed and transparent. In the alternative, NCPA recommends that VAEs be able to only voluntarily surrender no more than 1% of California GHG allowances annually.

NCPA also recommends that § 95830(d)(3) be revised to require a registration deadline for VAEs, as all other auction participants must register with CARB a certain number of days prior to the auction.

14. ENTITIES SHOULD BE ELIGIBLE FOR A DIRECT ALLOCATION OF ALLOWANCES PENDING CORRECTION OF VERIFICATION STATEMENTS

In order to be eligible for free allocation of allowances, Electrical Distribution Utilities must have a positive or qualified positive verification statement based on their Mandatory Reporting Regulation obligations (§ 95890(b)). NCPA supports the proposed revisions suggested by MID/REU/TID,[7] that would allow an entity to petition for eligibility pending correction of a verification statement. Accordingly, NCPA recommends that § 95890(b) be revised to read:

7 Memorandum from the Modesto Irrigation District, Redding Electric Utility, and Turlock Irrigation District regarding the Proposed Regulation Order for a California Cap on Greenhouse Gas Emissions and Market-Based

> (b) Eligibility Requirements for Electrical Distribution Utilities. An electrical distribution utility shall be eligible for direct allocation of California GHG Allowances if it has complied with the requirements of the MRR and has obtained a positive or qualified positive verification statement on its sales number for the prior year pursuant to the MRR. An entity that has not obtained a positive or qualified positive verification pursuant to the MRR may petition the Executive Officer for a direct allocation of California GHG Allowances if the entity is in the process of correcting the issues raised in the verification statement.

15. PROVISIONS REGARDING THE TREATMENT OF NEW ENTRANTS MUST BE RECONCILED

Section 95853(e) addresses the calculation of the triennial compliance obligation for new entrants, and notes that new entrants are eligible to receive allowances pursuant to both subarticles 8 and 9, which address allocation to both the Electrical Distribution Utilities and Industrial Facilities. However, this section also notes that allowances will be calculated pursuant to the provisions of § 95891, which deals only with the industrial sector.[8] In order to clarify exactly how new entrants will be treated, and how their treatment will impact other Covered Entities and the overall allowance Budget, NCPA recommends that this provision be clarified.

16. REGULATION MUST INCLUDE GUIDELINES REGARDING THE REVIEW PROCESS FOR EXECUTIVE OFFICER DISCRETIONARY ACTIONS

Throughout the Proposed Regulation, the Executive Officer is given considerable discretion. While NCPA does not dispute that the Executive Officer should have discretion to direct and monitor the Program, the Executive Officer's conduct should be based on clearly defined and articulated guidelines made clear to all entities subject to the Regulation, and these requirements must be clearly set forth in the final Regulation.

For example, in §§ 95831(b) and 96011, the Executive Officer may suspend, revoke or otherwise restrict registration and accounts of various entities, which prohibits participation in the auction and could impact the ability to purchase and hold allowances. In § 95912(e), if the

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Compliance Mechanism, dated December 10, 2010, p.9. NCPA notes that the MID/REU/TID comments reference § 95890(c), but should be subsection (b).

8 NCPA understands, however, that notwithstanding its placement within § 95891, Table 9-2 is intended to address both the industrial sector and electric sector Cap Adjustment Factors.

Executive Officer makes a determination regarding certain bidder activities, the bidder is subject to penalties and prohibition from future auctions. Because participation in quarterly auctions are going to be key to meeting annual compliance commitments, it is imperative that any such actions be taken only with full notice and an opportunity to be heard.

The Proposed Regulation should include specific provisions that address due process issues that arise in these provisions.

17. ELECTRICAL COOPERATIVES THAT PROVIDE ELECTRICITY TO END USERS IN CALIFORNIA SHOULD PROPERLY BE INCLUDED AS ELECTRICAL DISTRIBUTION UTILITIES

The primary purpose of allocating allowances directly to the Electrical Distribution Utilities is to provide the value of the allowances to California's electricity ratepayer. In this respect, the utilities are the conduit by which the value of the allowances are delivered to the State's retail electric customers, as the utilities are best situated to deliver emissions reducing program benefits to their customers. Such benefits come in many forms, such as increased energy efficiency and expanded renewable energy portfolios.

In the Proposed Regulation "'Electrical distribution utility(ies)' means an Investor Owned Utility (IOU) as defined in the Public Utilities Code section and 218, or a local publicly owned electric utility (POU) as defined in Public Utilities Code section 224.3, that provides electricity to retail end users in California." (§ 95802(a)(57)) This definition does not include a category of electric providers that are similarly situated to IOUs and POUs; Electrical Cooperatives. Electrical Cooperatives are defined in Public Utilities Code section 2776 as "any private corporation or association organized for the purposes of transmitting or distributing electricity exclusively to its stockholders or members at cost." As such, Electrical Cooperatives are a "hybrid" between a POU and IOU, in that they are owned by their members, but operate as a non-profit public service for end use members. Electrical Cooperatives in California are small utilities located in rural areas, facing high infrastructure costs and other obstacles as they strive to provide affordable and reliable electric service to their members. As non-profit, member-owned utilities governed by their locally-elected boards of directors, they must adhere to federal Rural Utility Service (RUS) guidelines, but are also subject to many of the same AB 32 mandates as IOUs and

POUs.

NCPA recommends that the Proposed Regulation be revised to provide that Electrical Cooperatives be included in the definition of § 95802(a)(57), and that those Electrical Cooperatives that serve retail customers be eligible to receive electric sector free allowances.[9] Including this small group of utilities within the definition of § 95802(a)(57) would not change the scope of the program, nor have an impact on the recent discussions regarding allocation of allowances to the electricity sector, and data from the Electrical Cooperatives should already be part of 89 million allowances available for allocation to electrical distribution utilities.

CARB notes that "free allocation of allowances to public utilities on behalf of their customers is designed to help offset the cost impacts of AB 32 policies." (ISOR, p. IX-55)[10] For purposes of this Program, Electrical Cooperatives have many of the same characteristics as POUs and IOUs, and further meet the requirements of § 95802(a)(57) for providing "electricity to retail end users" in California. Similarly, Electrical Cooperatives will be impacted by many of the same AB 32 obligations associated with mandatory programs established to meet the policies set forth in AB 32, as well as compliance costs associated with the Program. Accordingly, it is appropriate for them to also be eligible for the receipt of free allowances on behalf of their customers.

CARB notes that "electrical distribution utilities provide electricity to residential and small commercial customers" and proposes to allocate free allowances to them "because electrical distribution utilities are best situated to utilize the value of allowances for ratepayer benefit." (ISOR, p. II-32) Because Electrical Cooperatives also provide these same services with many of the same responsibilities and obligations as POUs and IOUs, and are also similarly situated to maximize the value of the allowances to deliver benefits to their ratepayers, Electrical Cooperatives are properly included within this definition. All of the reasons that CARB has articulated for allocating allowances to the electrical distribution utilities[11] and all the indicia of

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9 As a practical matter, NCPA notes that the publicly available data for the State's Electrical Cooperatives that serve retail end use customers in California has been included in the modeling conducted by the Joint Utility Group, and are reflected in the spreadsheet results provided by Cal EPA as part of the Cal EPA/Joint Utility Group discussions regarding allocation of allowances amongst the sector.

10 Throughout the ISOR, CARB notes that the distinguishing characteristic in the allocation of free allowances is the fact that the utility serves retail end-use customers and has a cost burden under the cap-and-trade program. (*See for example,* p. II-12, II-28, II-32).

11 "To ensure that electricity ratepayers do not experience sudden increases in their electricity bills associated with

an electrical distribution utility support the inclusion of California's Electrical Cooperatives therein.

In § 95892 (Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers), the Proposed Regulation specifically addresses the need to allocate allowances to Electrical Distribution Utilities "for the protection of electricity ratepayers." Electrical Cooperatives have electricity ratepayers, the same as all other Electrical Distribution Companies. However, unlike energy service providers, electrical cooperatives provide more than just the electricity transaction to their customers, therefore making them analogous to IOUs and POUs for the purposes of the Proposed Regulation. If the definition in § 95802 (a)(57) is not changed as described above to include the Electrical Cooperatives, the ratepayers of these entities will bear the total cost of the cap-and-trade regulation.

Accordingly, NCPA recommends that § 95802 (a)(57) be revised to read:

> "Electrical distribution utility(ies)" means an Investor Owned Utility (IOU) as defined in the Public Utilities Code section and 218, or a local publicly owned electric utility (POU) as defined in Public Utilities Code section 224.3, or an Electrical Cooperative as defined in Public Utilities Code section 2776, that provides electricity to retail end users in California.[12]

18. GHG EMISSIONS FROM GEOTHERMAL FACILITIES SHOULD NOT HAVE A COMPLIANCE OBLIGATION

NCPA supports the CARB's proposal not to create a compliance obligation for GHG emissions from geothermal facilities, as articulated in § 95852.2 of the Proposed Regulation. NCPA, a member of the Geothermal Energy Association[13] (GEA), also supports GEA's comments in this regard. As GEA notes, the geothermal energy industry is a leading provider of renewable energy in California, and reported data from California's geothermal facilities has

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the cap-and-trade regulation, staff proposes to allocate allowances for free to electrical distribution utilities on behalf of ratepayers. The proposed regulation stipulates that electrical distribution utilities must use the value associated with these allowances for the benefit of retail ratepayers of each electrical distribution utility, consistent with the goals of AB 32." (ISOR, p. II-32)

12 NCPA also notes that this revision to the Proposed Regulation will require the addition of a new subsection (c) in § 95892 (Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers).

13 Comments of the Geothermal Energy Association on the Proposed Regulation Order for California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanism Regulation, Including Compliance Offset Protocol, dated December 7, 2010.

clearly demonstrated that any GHG emissions associated with the generation of this electricity is de minimus. NCPA recommends proposed revisions to § 95852 (Emissions Categories Used to Calculate Compliance Obligations) and § 95852.2 (Emissions without a Compliance Obligation) that would clarify the intent of the Proposed Regulation that emissions from geothermal generation not be subject to a compliance obligation in the Program.

NCPA recommends the following revisions to these sections, as also articulated in the GEA comments:

> § 95852. Emission Categories Used to Calculate Compliance Obligations.
>
> (h) The compliance obligation is calculated based on the sum . . . ; and (v) all process and vented emissions of CO_2, CH_4, and N_2O as specified in the Mandatory Reporting Rule except for those listed in section 95852.2~~(a)(6)~~ (g) below.
>
> § 95852.2. Emissions without a Compliance Obligation.
>
> (f) Emissions from geothermal generating units and geothermal facilities, ~~Fugitive and process emissions from:~~
>
> (g) Fugitive and process emissions from:
> ~~(1) CO_2 emissions from geothermal generating units;~~
> ~~(2) CO_2 and CH_4 emissions from geothermal facilities;~~
> (1) CO_2 emissions from hydrogen fuel cells;
> (2) At petroleum refineries: asphalt blowing operations, equipment leaks, storage tanks, and loading operations; or
> (3) At the facility types listed in section 95101(e) of the Mandatory Reporting Regulation, Petroleum and Natural Gas Systems: leak detection and leaker emission factors, and stationary fugitive and "stationary vented" sources on offshore oil platforms.

19. LINKING WITH OTHER PROGRAMS

CARB should work with other jurisdiction to ensure that corresponding cap-and-trade programs can be efficiently linked with California's Program. However, the State should also ensure that such linking continues to protect the interests of California Covered Entities, and protect against leakage and allowance devaluation.

20. APPROVAL OF ADDITIONAL OFFSET PROTOCOLS SHOULD BE A PRIORITY FOR THE STATE

NCPA appreciates CARB's recognition of the important role that offsets will play in the California Program. However, as currently contemplated, there are an insufficient number of qualified offset project available to California compliance entities. CARB must move expeditiously towards approving additional offset protocols.

21. PROPOSED CORRECTIONS

NCPA offers the following proposed corrections to the regulation for Staff's consideration. NCPA understands that several of these revisions, which have already been discussed with Staff, will already be addressed in upcoming revisions to the Proposed Regulation, but offers them here for administrative ease.[14]

1. Correction to Remove Extra Word

§ 95802 (a)(57) "Electrical distribution utility(ies)" means an Investor Owned Utility (IOU) as defined in the Public Utilities Code section ~~and~~ 218, or a local publicly owned electric utility (POU) as defined in Public Utilities Code section 224.3, that provides electricity to retail end users in California.

2. Clarification regarding Role of Voluntarily Associated Entities:

§ 95802(a)(207) defines "Voluntarily Associated Entity" as "any entity which does not meet the requirements of section 95811 in this article that intends to voluntarily retire compliance instruments in the cap-and-trade program," while § 95814(a)(2)(A) more broad defines the role of a Voluntarily Associated Entity as "an entity that does not meet the requirements of sections 95811 and 95813 that intends to purchase, hold, sell, or voluntarily retire compliance instruments." NCPA recommends that these definitions be reconciled so that they are consistent.

3. Addition to Add Clarity:

§ 95820. Compliance Instruments Issued by the Air Resources Board
(2) Surrender of offset credits shall be subject to the quantitative usage limit set forth in sections 95854 and 95995.

4. Change to Clarify Draws from Compliance Account

§ 95856(f) Triennial Surrender:

(3) The Triennial Surrender obligation shall equal the Triennial Compliance

14 Additions are displayed in double-underline and text to be removed is shown in ~~strikeout~~.

Obligation calculated pursuant to section 95853 less allowances and offset credits already surrendered.

§ 95856(g) When the Executive Officer has determined the covered entity has met its surrender obligations, the Executive officer shall:
(1) Retire only the number of compliance instruments necessary to meet the Triennial Surrender Obligation of the covered entity pursuant to subsection (f) above ~~surrendered~~; and . . .

5. Correction Regarding Specific Account Designation for Disposition of Allocated Allowances:
§ 95870 Disposition of Allowances (c)(1) Electrical Distribution Utilities. The Executive Officer will place an annual individual allocation in the limited use holding account or compliance account, as appropriate, of each eligible distribution utility on or before January 15 of each calendar year from 2012-2020 pursuant to section 95892 . . .

6. Correction to Add Missing Words
§ 95890(b). "Eligibility Requirements for Electrical Distribution Utilities. An electrical distribution utility shall be eligible for direct allocation of California GHG allowances if it has complied with the requirements of the MRR and has obtained a positive or qualified positive verification statements on its sales number for the prior year pursuant to the MRR."

NCPA has also proposed that this section be revised to add the following language:

"An entity that has not obtained a positive or qualified positive verification pursuant to the MRR may petition the Executive Officer for a direct allocation of California GHG allowances if the entity is in the process of correcting the issues identified in the verification statement."

7. Clarification Regarding Description of Industries for Table 9-2
§ 95891. Allocation for Industry Assistance. Table 9-2: Cap Adjustment Factors for Assistance to Industry
"Cap Adjustment Factor (c) for Electric Sector and All Other Industries": clarify that despite the heading, the factors in this category apply to the electricity sector, too**.**

8. Correction Regarding References in Auction Purchase Limits:
95911(c)(2) Auction Purchase Limit. . . . "the auction purchase limit in ~~(A)~~ (1) does not apply. This subsection ~~(B)~~ (2) shall not be interpreted to . . ."

9. Correct word:
§ 95912(j) "At least 60 days prior to each auction the auction administrator shall publish ~~on~~ the following information:"

10. Change to Address Correct Section:
§§ 95922(a), 95922(b), 95922(d)(1):

All three of these sections refer to "section 95930," which is not part of the Proposed Regulation. NCPA understands CARB intends to reference § 95**8**30 regarding *registration with CARB* in these three sections addressing trading and banking of compliance instruments.

11. Change to Reference Correct Section
§ 95970. General Requirements for Offset Credits Issued by ARB.
(b) when used for compliance under this Article be subject to the quantitative usage limit pursuant to section ~~95855~~ 95854.

B. CONCLUSION

NCPA appreciates the opportunity to provide these comments on the proposed revisions to the *Proposed Regulation to Implement a California Cap-and-Trade Program*. 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

C. Susie Berlin
Attorneys for the Northern California Power Agency