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December 3, 2010

Clerk of the Board, Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments on proposed regulations regarding cap-and-trade of greenhouse gas emissions

Dear Board Members,

As a public institution of higher education, the University of California is vital to the state's long-term cultural and economic health. The University supports the creation of a greenhouse gas cap-and-trade program, but is concerned that it is being disproportionately impacted by the proposed cap-and-trade rule and that its compliance costs will ultimately be borne by students, researchers, and patients to the detriment of teaching, research, and healthcare activities. In light of these concerns, the University submits the following comments to facilitate creation of a cap-and-trade program that treats public higher education in a manner that is consistent with the treatment of other entities that are regulated under the proposed cap-and-trade rule. These comments supplement the multiple written and oral comments that the University has submitted to CARB staff over the course of the past year.

The University believes that there is no supportable basis for allocating free allowances to industrial facilities, such as heavy manufacturing, while not also allocating free allowances to the University and other public entities which operate sources covered by the regulations.

CARB's draft cap-and-trade rule provides two distinct rationales for allocating allowances to industrial sector facilities: transition assistance, and leakage prevention. According to the Initial Statement of Reasons, CARB intends to provide transition assistance to industrial facilities to prevent "sudden or undue short-term economic impacts" during the cap-and-trade program's initial compliance periods. The University agrees with CARB's rationale for transition assistance, but is concerned that under the Proposed Regulation Order, transition assistance will not be extended to public agencies that are regulated within the industrial sector. These public agencies, including University of California campuses and medical centers, and California State University campuses, are no less subject to severe financial impacts during initial compliance periods than are other facilities that are regulated in the industrial sector. Moreover, with multi-billion dollar budget shortfalls projected for California's foreseeable future, transition assistance is particularly important to public agencies since the increased costs of cap-and-trade compliance will coincide with continued decreases state funding. Because of the decreases in state funding, the University has already had to take drastic measures to meet its obligations during the last two years, including significantly increasing student fees and implementing a furlough program for its employees. Without transition assistance, the University may find it necessary to raise student fees again in the future to meet its obligations under the cap-and-trade program.

The University therefore advocates making the following additions in the high leakage risk category of Table 8-1, "Industry Assistance": Colleges and universities (NAICS 611310), and Hospitals (NAICS 622110). These institutions should receive an allocation of allowances for transition assistance according to the Thermal Energy Based Allocation Methodology described in § 95891, "Allocation for Industry Assistance," subsection C.

Regarding leakage prevention, the University does not believe that CARB's rationale for allocating allowances to some industrial entities is sound. In particular, the University believes that it is illusory to assert that capital-intensive industries or producers of heavy materials would actually be able to relocate production out of the state in the near or even distant future. This is because of several factors including the enormous capital investment in existing facilities and the high transportation costs for heavy goods. Based on these concerns, the University believes that transition assistance is the only valid rationale for allocating allowances to industrial sector facilities. If leakage prevention is retained, the University believes that it should receive allowance allocations based on possible competitive disadvantage from using University funds to purchase allowances that would otherwise be used for student education services, research support, or competitive faculty retention in the national higher education sector.

Independent of leakage-prevention or transition assistance issues, it should be noted that the proposed cap-and-trade program will both penalize the University for early action, and will curtail the University's ability to invest in projects that directly reduce its greenhouse gas emissions. The University is regulated under cap-and-trade largely because it operates five large combined heat and power (CHP) plants. But for these CHP plants, several UC campuses would likely fall below CARB's cap-and-trade compliance threshold and would not have to bear a carbon cost for natural gas usage until 2015. Thus, despite the fact that CHP plants meet campus electrical and thermal needs more efficiently than separate heat and power generation, and despite the fact that CARB identified increased deployment of CHP as an important mitigation measure in its AB 32 Scoping Plan, the proposed cap-and-trade program effectively penalizes some early adopters of CHP.

CHP is just one of the investments that the University has made to meet its long-standing commitment to mitigate its own greenhouse gas emissions. The University has adopted a policy goal of reducing emissions to year 2000 levels by 2014, and to year 1990 levels by 2020. The University is also a charter signatory to the American College and University Presidents Climate Commitment, which pledges the University to achieve carbon neutrality as soon as possible. To meet its ambitious GHG emission reduction targets, the University has made substantial investments in onsite renewable energy generation and has an aggressive energy efficiency program through which it is spending approximately $250 million on energy reduction projects over a three-year period ending in 2012, and plans additional spending on energy reduction and renewable energy projects after 2012. To comply with CARB's cap-and-trade program, the University will have to use its limited state-allocated funds to purchase allowances, rather than investing in projects that directly reduce greenhouse gas emissions. This problem could be corrected through an allocation of allowance value to the University, for the explicit purpose of investing in greenhouse gas mitigation projects. Such an allocation would enable the University to continue to implement mitigation projects, thereby simultaneously furthering the goals of AB 32 and reducing financial impacts on public higher education, following the model of what the University is already doing through the massive energy efficiency program referenced above.

The University appreciates CARB's continued engagement, and we urge CARB to devise a cap-and-trade program that treats the University fairly and allows us to meet our mission of offering an affordable, world-class education, conducting cutting-edge research, and providing high-quality medical training and patient care for the benefit of the citizens of California.

Sincerely,

Anthony Garvin
Senior Counsel, Office of the General Counsel
University of California, Office of the President

CC: Sam Wade, Office of Climate Change