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

December 14, 2010

Re: Proposed Regulation to Implement the California Cap-and-Trade Program

Dear Clerk of the Board:

NRG submits the following comments on the California Air Resources Board ("CARB") proposal to implement California greenhouse gas ("GHG") emissions cap-and-trade program under the California Global Warming Solutions Act of 2006 (Assembly Bill 32; Stats. 2006, Chapter 488) ("AB 32"). Specifically, NRG comments on a document titled "Proposed Regulation to Implement the California Cap-and-Trade Program, PART I, Volume I, Staff Report: Initial Statement of Reasons," released on October 28, 2010 (the "Proposed Regulations").

The Proposed Regulations contain a discussion of offset credits issued by CARB. *See* Proposed Regulations § III-1. NRG is supportive of an offset program that will increase compliance flexibility and help to contain costs associated with GHG reductions. NRG also supports inclusion of an offset protocol based on the destruction of Ozone Depleting Substances ("ODS"). *See* Proposed Regulations § III-5. However, NRG would like to comment on what it believes is an error in the Proposed Regulations governing ODS offsets projects in Mexico.

The Proposed Regulations currently recommend the following ODS offset protocol:

> U.S. Ozone Depleting Substances (ODS) Projects Protocol: Destruction of ODS from refrigerant and foam-blowing agents sourced from and destroyed within the United States. Production of ODS is being phased out through the Montreal Protocol, but there are significant banks from which these gases will be emitted in coming years unless they are destroyed. ODS destruction has stratospheric ozone benefits in addition to climate benefits.

Proposed Regulations § III-5. While this protocol initially applies only within the United States, the Proposed Regulations also state that that CARB staff plan "to evaluate how the four protocols being taken to the Board can be expanded to include projects in Mexico and Canada." Proposed Regulations § III-10-11. However, this proposed expansion is then apparently limited in the context of an ODS offset protocol by the following footnote:

> Staff does not intend to evaluate an ODS protocol for offset projects in Mexico because the substances covered under the protocol have not yet been completely phased out in developing countries.

Proposed Regulations § III-11, n. 35. NRG believes that this limitation is in error because ODS substances covered by current ODS offset protocols were phased out by Mexico in 2005, under the Montreal Protocol and corresponding agreements. In addition, Mexico's importation of CFCs ceased on January 1, 2010, inclusive of metered dose inhalers, because Mexico did not request an essential use exemption for any purpose.[1]

Under the Montreal Protocol, Article 5 countries, including Mexico, are required to phase out the production of certain ODS by January 1, 2010.[2] By that date, these countries were to cease production of Annex A - Group I substances, which covers Chlorofluorocarbons (specifically, CFC-11, CFC-12, CFC-113, CFC-114 and CFC-115). Accordingly, production of these ODS was to be phased out well before the Proposed Regulations will take effect. Moreover, Mexico has complied with this deadline early, by phasing out CFC production in 2005. Under an agreement with the Montreal Protocol Secretariat, Mexico received a grant of $31.85 million to accelerate CFC phase out.[3] Mexico fulfilled this obligation in August of 2005, when the last remaining CFC production facility in Mexico ceased production of CFCs.[4]

Currently, GHG offsets for ODS destruction are issued by the Climate Action Reserve ("CAR") for use within the United States.[5] On February 3, 2010, CAR issued an ODS offset protocol for the destruction of both domestic ODS[6] and ODS originating in Article 5 countries.[7] The Article 5 offset protocol allows the creation of offsets based <u>only</u> on ODS "listed under Annex A, Group I of the Montreal Protocol and used in refrigerant applications."[8] The protocol further recognizes that "these CFC have been fully phased out of production as of January 1, 2010."[9] Like CAR, the Chicago Climate Exchange ("CCX") has issued a protocol for offset

---

[1] *See* Attached Letter from Agustin Sanchez Guevara, Coordinator de la Unidad de Proteccion a la Capa de Ozono.- Mexico, dated May 6, 2010.

[2] *See* Montreal Protocol, Article 5. Non-Article 5 countries, such as the United States, are required to have phased out CFC production by January 1, 1996.

[3] Multilateral Fund for the Implementation of the Montreal Protocol, Secretariat Executive Committee Decision 40/54, *available at* http://www.multilateralfund.org/files/pms40.pdf.

[4] United Nations, Press Release UNEP/312 (Sept. 13, 2005) (recognizing "the closure of the Quimobasicos CFC production facilities" in Mexico, which resulted in "the total elimination of the country's CFC production"), *available at* http://www.un.org/News/Press/docs/2005/unep312.doc.htm

[5] The Voluntary Carbon Standard will also issue offset credits based CAR's ODS offset protocols.

[6] CAR, U.S. Ozone Depleting Substances Project Protocol Version 1.0 (Feb. 13, 2010), *available at* http://www.climateactionreserve.org/how/protocols/adopted/ods/current/.

[7] CAR, Article 5 Ozone Depleting Substances Project Protocol Version 1.0 (Feb. 13, 2010), *available at* http://www.climateactionreserve.org/how/protocols/adopted/ods/current/.

[8] *Id.* at § 2.3.

[9] *Id.* Similarly, CAR's domestic offset protocol limits offset generation based only on the destruction certain Annex A - Group I substances phased out as of January 1, 2010. *See* CAR, U.S. Ozone Depleting Substances Project Protocol Version 1.0, § 2.3.1.

generation through the destruction of ODS, limiting eligible substances to those "whose production has been phased out under the Montreal Protocol."[10]

By design, current offset protocols confine offset generation to the destruction of ODS that are no longer produced, assuring offset additionality. CARB should take a similar approach by allowing the use of offsets that are generated through the destruction of phased-out ODS sourced from Mexico, such as CFCs listed in Annex A - Group I of the Montreal Protocol. Mexico was required to phase out production of these CFCs by 2010, and actually achieved a complete phase-out of CFC production in 2005. Allowing offset generation from the destruction of any stockpiled ODS produced in Mexico before January 1, 2010, will provide significant additional reductions in GHG emissions while simultaneously realizing stratospheric ozone benefits. Further, such an approach would align the Proposed Regulations with the recently issued CAR offset protocol for the destruction of ODS. Accordingly, NRG hereby requests that CARB remove footnote 35 from the Proposed Regulations, which appears erroneous and unnecessary in light of Mexico's phase-out of CFCs in 2005. In addition, NRG requests that CARB include offsets based on ODS that have been phased out in Mexico, by adopting the methodology described in CAR's current Article 5 ODS offset protocol.

Respectfully submitted,

Brannen G. McElmurray
Director, Environmental Commodities
NRG Energy, Inc.

[10] CCX Offset Project Protocol: Ozone Depleting Substances Destruction § 5.6 (Dec. 10, 2009), *available at* http://www.chicagoclimatex.com/docs/offsets/CCX_ODS_Destruction_Final.pdf.

SUBSECRETARÍA DE GESTIÓN PARA LA PROTECCIÓN AMBIENTAL

DIRECCIÓN GENERAL DE GESTIÓN DE LA CALIDAD DEL AIRE Y REGISTRO DE EMISIONES Y TRANSFERENCIA DE CONTAMINANTES.

SECRETARÍA DE MEDIO AMBIENTE Y RECURSOS NATURALES

SEMARNAT

México, D.F. a 6 de mayo de 2010

To: [redacted]

From: **Agustín Sánchez Guevara**
Coordinador de la Unidad de Protección a la Capa de Ozono.- México

Dear [redacted]

With regard to your request for information on the import and use of Chlorofluorocarbons (CFCs) policies in México, I inform you the following:

1.- As you may know, México phased out its production of CFCs (11 and 12) since August 2005, since that date the production of CFC is banned as well as the imports of Carbon Tetrachloride (CTC) as feedstock.

2.- In México the imports of CFC has been phased out since January 1st of 2010, inclusive for the Metered Dose Inhalers, because México did not request essential use exemptions for any purpose. In México will be used the existing inventories for the production of MDI Turing 2010.

3.- Due to the above, México do not import any quantity of CFC since January 1st of 2010, and México do not have any available stocks for essential uses, so it is not possible to export to any possible and/or eligible Parties with permission to import CFCs.

4.- México has no regulation that requires the destruction of virgin or recovered stockpiles of any ODS, particularly CFCs.

Yours sincerely

Av. Revolución 1425, nivel 39, Col. Tlacopac Sn. Ángel, Del. Álvaro Obregón México, DF 01090
t. +52 (55) 5624 3500 y 02 www.semarnat.gob.mx