McCARTHY & BERLIN LLP

BARRY F. McCARTHY
C. SUSIE BERLIN

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

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Mary Nichols, Chairwoman
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Comments of the Northern California Power Agency on California Air Resources Board *Proposed Amendments to California Cap on Greenhouse Gas Emission and Market-Based Compliance Mechanism*

Dear Mary:

The Northern California Power Agency[1] (NCPA) appreciates the opportunity to submit these comments to the California Air Resources Board (CARB) on the *Proposed Amendments to California Cap on Greenhouse Gas Emission and Market-Based Compliance Mechanism* (Proposed Amendments) to the Cap-and-Trade Program Regulation and the *Staff Report: Initial Statement of Reasons* (ISOR), released for public comment on May 9, 2012.

I. INTRODUCTION

Established in 1968, NCPA is a California Joint Powers Agency. NCPA's members are publicly owned entities interested in the purchase, aggregation, scheduling, and management of electrical energy. NCPA and its member agencies support the objectives of Assembly Bill (AB) 32, and have been active participants in proceedings before CARB in development of the Scoping Plan, various complementary measures, and the Cap-and-Trade Program Regulation itself.

As noted in NCPA's April 13, 2012 comments on the March 2012 Discussion Draft, NCPA supports linking California's program to other jurisdictions that share the principles and

1 NCPA member are the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and Associate Members are the Plumas-Sierra Rural Electric Cooperative and Placer County Water Agency.

values reflected in California's Cap-and-Trade Program Regulation, but only to the extent that linking can occur without compromising the integrity of the program that CARB and countless California stakeholders worked so hard to develop. It is also imperative that CARB not rush development of any of the program elements in its desire to obtain a pre-ordained "go live" date. Instead, CARB should err on the side of caution and delay full implementation of the program and allowance auctions *if* such delay is necessary to ensure the integrity of the entire program over the long term.

II. COMMENTS

A. ACCOUNT REPRESENTATIVES AND KNOW-YOUR-CUSTOMER PROVISIONS ARE UNDULY RESTRICTIVE AND MUST BE REVISED

1. The provisions regarding account representative designations should be clarified and the onerous personal disclosure provisions set forth in § 95834 and Appendix A should be modified.

The Proposed Revisions create a new definition for a "primary account representative" that "*means an individual authorized by a registered entity through the registration process outlined in section 95832 to make submissions to the Executive Officer and the tracking system in all matters pertaining to this article that legally bind the authorizing entity.*" (§ 95802(a)(206))

Section 95830(c)(3) requires that an "*entity must designate a primary account representative, at least one and up to four alternate account representatives pursuant to section 95832."* If these individuals are going to have access to the tracking system, they are required to comply with all of the "Know-Your-Customer" (KYC) requirements set forth in section 95834.[2] Participants in the auction and allowance reserve auction are also required, pursuant to the Proposed Revisions in § 95912(d)(5)(B) and § 95913(c)(2), respectively, to comply with additional personal disclosure mandates.

The provisions regarding account representative designations should be revised to strike the requirements to submit the information from section 95835 and Appendix A. In addition, the

2 The new definition for "Alternate Account Representative" set forth in § 95802(a)(9) references a designation pursuant to section 95832. However, proposed revisions require the designation of an alternate account representative pursuant to section 95830, and the references to 95832 are redundant.

personal disclosure provisions set forth in § 95834 and Appendix A are onerous and should be modified. Instead of requiring individuals to provide CARB and its contractors with this information, registered entities should be required to attest to the identity of the individuals they have designated to act on their behalf. Such a solution would address all of CARB's concerns regarding ensuring the identity of individuals participating in the Cap-and-Trade Program, without subjecting these individuals to the needless disclosure requirements.

2. Disclosure of Employee or Agent Personal Information Is Unnecessary to Achieve the Stated Goals of the Regulation or Protect the Integrity of the Market.

NCPA understands and shares CARB's concerns with protecting the integrity of the Cap-and-Trade Program generally, and allowance transfers in particular. However, the provisions in the Proposed Revisions that require the disclosure of personal information about the individuals designated as primary and alternate account representatives are unreasonable and unnecessary.

3. Section 95832: Know-Your-Customer Requirements and Sections 95912(d)(5)(B) – Auction Participant Application Requirements and 95913(c)(2) – Purchases of Allowances from the Reserve Should be Stricken**.**

The Proposed Revisions would add section 95834, titled "Know-Your-Customer Requirements," to the regulation. Under these requirements, the "*accounts administrator cannot provide access to the tracking system to an individual until the Executive Officer has determined the individual applying for participation has complied with the requirements of this section.*" (§ 95834(a)(1))

The individual (not the registered entity!) must provide *notarized* documentation of all the following:

"(1) Name;

(2) The address of the primary residence of the applicant
(3) Date of birth;
(4) Employer name, contact information, and address;
(5) Either a passport number or driver's license number, if one is issued;
(6) An open bank account in the United States;

(7) Employment or other relationship to an entity that has registered or has applied to register with the California Cap-and-Trade Program if the individual is listed by an entity registering pursuant to section 95830;
(8) A government-issued document providing photographic evidence of identity of the applicant, and
(9) Any criminal conviction during the previous five years constituting a felony in the the [sic] United States. This disclosure must include the type of violation, jurisdiction, and year."

The Proposed Revisions also require that "*prior to participating in an auction, any primary or alternate account representative that will be submitting bids on behalf of entities eligible to participate in Reserve sales must have already: (A) Complied with the Know-Your-Customer requirements of section 95834; and (B) Submitted the additional information required by the financial services administrator contained in Appendix A.*" (§ 95912(d)(5)(B)) The same requirements apply to individuals participating in a Reserve sale pursuant to section 95913(c)(2).

In addition to the individual's full name and employer's information, Appendix A requires the following list of *personal* information: *personal* residence address, phone number, email, social security number, date of birth, citizenship, copies of government issued identification and a passport, and documentation of an open bank account.

These requirements constitute a significant invasion of privacy and are unnecessary. First, in general, the rationale for these requirements, as set forth in the ISOR, is the fact that the provision of this information is "to establish the identity of the person attempting to participate in the cap-and-trade program." (ISOR, pp. 148-150). However, the ISOR does not provide a sufficient rationale for why this much information is required, or why this information must be submitted to CARB (and, in the case of those participants that will be part of the Reserve auction or primary account representatives, the financial services administrator). There are significantly far less intrusive means by which CARB and its contractors can establish the identity of program participants. The most efficient and effective means of doing so is to require the registered entity to attest to the identity of the individuals they have designated as their primary and alternative account representatives.

Additionally, the ISOR states that the requirements of Appendix A are necessary to "ensure that all individuals participating in the financial transactions that accompany Reserve sales have completed identity verification procedures before committing the entities they represent to financial obligations." (ISOR, p. 177) Again, as noted above, it is the responsibility of the registered entity to verify the identity of its agents, and not CARB. If an entity is going to give authority for financial transactions to an individual, they must take responsibility for that individual, and can do so by providing CARB with an attestation of that person's identity. Ascertaining the identity of a registered entity's account representatives is not the responsibility of the auction administrator or CARB, but rather of the entity that registers with CARB.

The very title of section 95834 – "Know-Your-Customer" – is a misnomer, as the account representatives designated by the registered entities are not "customers," but rather employees or agents of that entity. As such, they have a direct and ongoing relationship with the registered entity, and are not merely purchasing goods or products on a periodic basis. As such, it is the responsibility of the registered entity to vet the background and necessary information of the individuals that it designates as its primary and alternate account representatives.

Second, in addition to being a significant invasion of privacy, in this age of identity theft and computer security breaches, the fact that this much personal information will be maintained in not one, but two additional databases poses a considerable security threat to the individuals. It is also a deterrent to the designation of qualified individuals that do not want to provide this level of personal information to CARB and the financial services administrator. There are neither references to security measures that will be employed to maintain the confidentiality of the information provided, nor restrictions on the uses of the information once it is disclosed. Provisions stating that the agency will maintaining the confidentiality of information "to the extent possible" (see section 95830(g)) are inadequate. It is neither CARB's, nor the auction administrator's, nor the financial services administrator's responsibility to collect and maintain this kind of information.

Third, the requirements are unnecessarily discriminatory. Is an individual without a passport, license, or a bank account precluded from being a designated representative? If so, what is the direct and necessary link between those two requirements and validation of the truthfulness,

honesty, or veracity of the individual? The ISOR provides no rationale for why this level of information is necessary to establish the individual's identity, nor its relevance to the ability to participate in the Cap-and-Trade Program.

Fourth, as it pertains to the Reserve Auction, the mere fact that these individuals are going to be participating in the Reserve Auction means that they are the designated representatives of entities with a compliance obligation. CARB has even greater recourse against covered entities under the regulation, and therefore, the amount of information required of entities participating in the reserve should be even less – not more – stringent than the information required of auction participants that may not even have a "stake in the game." It is not up to CARB to ensure the identity verification of the individuals binding an entity to a financial transaction, but rather that is the responsibility of the entity itself.

Fifth, this requirement is going to severely impact the number of individuals that would even be willing to participate in such a capacity, as many are likely to personally object to the required disclosures. In essence, CARB is asking for comprehensive background checks on all individuals that will be given access to the tracking system. These provisions seek a great deal of information from registered entities and individuals, and would involve sharing that information with CARB and its third party vendors. As a practical and legal matter, NCPA objects to the of the proposed revisions that would requirement participants to provide this information. The tedious nature of collecting and forwarding such extensive information is going to impact all covered entities and market participants, and may also result in limiting the number of individuals that would be willing to participate in the program, as they are forced to share very personal information with third parties. Many individuals will balk at being required to provide a third party with this level of personal information, which could distort the playing field and adversely impact California entities.

Furthermore, the provisions relevant to felony convictions are problematic in the potential to create disparate treatment between the linked jurisdictions. Section 95834(a)(4) provides that *"individuals with a criminal conviction in the five previous years constituting a felony in the United States are ineligible for registration and participation in the Cap-and-Trade Program."* Appendix A requires the documentation of any felony convictions during the previous 5 years. In

the ISOR, the rationale for this section provides that it is "needed to protect program participants from harm by preventing individuals with criminal activity from participating." (ISOR, p. 147) NCPA believes that the conviction of some crimes should reasonably preclude an individual from participating in a market. However, it is important to ensure that such provisions are applied in a way that gives appropriate consideration to situations where different partner jurisdictions might be governed by different penal systems.

Finally, it is imperative that California entities – especially covered entities that must acquire allowances or face significant financial penalties – not be prejudiced in their participating in the auction vis-à-vis Quebec participants. These kinds of requirements should be implemented only after there has been a demonstrated need for them. Such a need could be determined by the Market Simulation Group as they address various market behaviors.

B. PRIMARY ACCOUNT REPRESENTATIVES AND ALTERNATE ACCOUNT REPRESENTATIVES NEED NOT BE EMPLOYEES OF THE REGISTERED ENTITY, NOR SHOULD THEY BE REQUIRED TO PROVIDE KYC-LEVEL INFORMATION.

1. Primary Account Representatives and Alternate Account Representatives Need Not Be Employees of the Registered Entity.

The primary and alternate account representatives should be designated at the sole discretion of the account holder, and it should not be necessary for those individuals to be directly employed by the account holder. (Section 95832) There are many reasons why smaller entities will find it economically and administratively feasible to designate an outside entity to administer its allowance accounts, and the regulation should not include any prohibitions against such a designation. For example, several of NCPA's members are publicly owned electric utilities with minimal staff. The administrative burden associated with Cap-and-Trade Program compliance cannot be assumed by the current limited staff, nor it is feasible to hire new personnel. Instead, these smaller entities may want to take advantage of economies of scale and have their compliance instrument accounts administered by a third party, such as NCPA. Such an approach still provides direct accountability, but does not impose additional cost burdens on these smaller entities.

2. Account Representatives Should Not Have to Provide Personal Information to CARB.

In the proposed changes to section 95832(a)(1), the "business and primary residence addresses, e-mail addresses, and phone numbers" of primary account representative, any alternate account representatives and any viewing agents must be provided. For all of the reasons set forth above, the Proposed Revisions should be changed to strike the requirement to submit any personal information, including residence addresses, for all account representatives.

This is especially necessary for the newly created "account viewing agent," which is "an individual authorized by a registered entity to view all the information on the entity's accounts contained in the tracking system." (§ 95802(a)(1)) The ISOR notes that this "change is needed to ensure identification of the individuals involved in the tracking system." (ISOR, p. 129) As provided in section 95832(h)(1), however, the account viewing agent will only be able to view "information contained in the tracking system involving the entity's accounts, information, and transfer records" but has no "authority to take any other action with respect to an account on the tracking system." Accordingly, it is neither justified, nor necessary, for CARB to require any additional information regarding the account viewing agents.

C. MARKET SIMULATION AND MONITORING MUST INCLUDE BOTH JURISDICTIONS

1. Market Simulation Should be Expedited and Should Include Analysis of Quebec's Market and Ancillary Markets.

NCPA supports the creation of the Market Simulation Group (MSG) and encourages the simulation efforts of that group to be undertaken expeditiously, as it would be helpful to identify potential market problems in advance of CARB's first auction. The MSG should include a detailed analysis of ancillary markets that directly impact the cost of allowances in its review and analysis. Such an analysis should include the electricity market, for example, especially during the first compliance period when the electricity sector includes such a large percentage of the compliance entities participating in the market.

Furthermore, the Proposed Revisions – or at a minimum guidance and direction from the Executive Officer – should include direction regarding the scope of market simulation that will include the Quebec markets. As recently as the June 7, 2012 MSG Stakeholder meeting, it was not clear to what extent inputs from Quebec's program would be included in the market simulations to be conducted by the MSG. While California's allowances comprise a far greater percentage of the allowance market, a realistic simulation of the *entire* auction cannot be conducted absent an analysis of the entire market. Direction and clarification regarding the receipt and use of information regarding the Quebec market must be provided as soon as possible.

2. Market Monitoring Should Include Quebec's Market and Related Ancillary Markets

Ongoing market monitoring is a key element in the overall program design of California's Cap-and-Trade Program. Linking with Quebec – or any other partner – should not diminish the integrity of that monitoring. As California modifies its own program and makes accommodations to allow for linking with the Quebec program, the role of the market monitor becomes even more important. Since linking will still essentially entail two separate jurisdictional programs, it is imperative that the market monitor also track the direct impacts of the Quebec markets, and the implications of such transactions on California's market and market participants (particularly covered entities). This is especially important when one considers the fact that although the two programs adhere to a common set of principles, they are still unique in several material respects. For example, California entities are required to make an annual surrender of compliance, where the Quebec regulation does not include a similar requirement. Nuances such as these that create slightly different obligations for compliance entities between the two jurisdictions must be closely monitored and tracked.

3. The Regulation Should Include a Fail-Safe Provision for Delinking

Finally, NCPA continues to urge CARB to review the potential inclusion of a provision that would allow for an expedited end to linking with any currently active partner jurisdiction in the event that certain triggers occur. The entities responsible for market surveillance and monitoring could outline a list of factors that, in a "perfect storm" situation, would result in

irreparable harm to the California program. The factors would be well defined and clearly articulated at the onset of linking, so that all affected stakeholders – covered entities, third party marketers, government agencies, and interested parties – would be apprised in advance of what circumstances may lead to delinking. In the event of such an occurrence, the Executive Director would have the ability to immediately temporarily suspend the linked portion of the program to avoid harm to California markets and compliance entities, until such time as the full Board could review the situation and take any necessary actions.

D. A "DAY" MUST BE CONSISTENTLY DEFINED.

Throughout the Cap-and-Trade Program Regulation and in the Proposed Revisions, there are repeated references to the term "day". However, since a "day" for purposes of the Cap-and-Trade Program Regulation is not consistently defined, the Regulation should be revised to provide a uniform use of the term.

For example, in section 95830 there are references to both "calendar days" and "working days." In the proposed revisions, section 95830 refers to "working days" and "days." There are also references to "business days" (see § 95870(d)) in both the existing regulation and the Proposed Revisions. Different organizations and industries may have different interpretations of working and business days, which makes the multiple references problematic. Unfortunately, even the reference to the "business day in California" used in section 95911 is not without alternative interpretations. The different use of the term "day" leads to confusion and ambiguity, especially when California's program is linked with a program from a different country. Due to the nature of allowance trading and the various underlying markets, as well as the diverse business and cultural climates that are at play here, it is imperative that the Cap-and-Trade Regulation employ a single definition of all references to a 24-hour period, and use that definition throughout the document.

Likewise, the reference to "Pacific Standard" and "Pacific Daylight" times should be specifically linked to one jurisdiction, in the event that any partner jurisdictions do not observe pacific daylight time. (See § 95911(c)(4))

E. SECTION 95833(F) AND SECTION 95833(A)(5) APPROPRIATELY ALLOW THE CONSOLIDATION OF ACCOUNTS

NCPA supports the Proposed Revisions that clarify the relationship of POUs and JPAs relevant to corporate associations (§ 95833(a)(5)) and further allow for the creation of a single, consolidated set of accounts. (§ 95833(f)) The ability of covered entities that both own/operate electricity generation facilities and import electricity to be able to consolidate their accounts is going to be a crucial tool in cost and risk management for compliance purposes. Even though each of these functions as a separate "reporting facility" under the Mandatory Reporting Regulation, they are part of the utilities' comprehensive procurement/resource planning activities. Without a provision that allows the utilities to hold a single set of accounts, utilities would not be able to manage their compliance instrument surrenders in a timely or efficient manner, and could end up with stranded excess instruments in one compliance account and a shortfall in another compliance account in any given compliance period. Such an outcome would not only place additional cost burdens on the utility, but could also result in driving up the cost of compliance instruments when entities seek to supplement their shortfall with allowances from the auction despite the fact that "extra" allowances remain unretired in other compliance accounts. The proposed amendment would address this problem.

F. OUTSTANDING ISSUES IMPACTING THE ELECTRICITY SECTOR SHOULD BE ADDRESSED AS SOON AS POSSIBLE

During the October 2011 CARB Board meeting,[3] several issues that impact the electricity sector and utilities with a compliance obligation under the regulation were identified and flagged for further review and resolution. According to recent statements by CARB, resolution of those issues is scheduled to be presented to the CARB Board as proposed revisions to the Cap-and-Trade Program Regulation in the first part of 2013. NCPA urges CARB to move forward expeditiously with resolution of these matters, as they significantly impact compliance with the Cap-and-Trade Program for electrical distribution utilities and other electricity sector covered

3 Resolution 11-32.

entities.

In particular, details regarding the program restrictions and definitions for contract shuffling must be addressed, as well as restrictions and discriminatory treatment of POUs located within the California ISO balancing authority vis-à-vis the use of the value from allocated allowances must be resolved. As it currently stands, there are both equity and market liquidity issues that have the potential to adversely impact the market and a large group of California electricity ratepayers. Notwithstanding the need to ensure that amendments specific to linking the California and Quebec programs are developed and approved in a timely manner, details regarding the impact of California's Cap-and-Trade Program on covered entities subject to a compliance obligation in the first compliance period must also be resolved expeditiously.

G. CALIFORNIA PARTICIPANTS SHOULD NOT BE SUBJECT TO DEVALUATION OF THE U.S. DOLLAR

Some of the most extensive revisions to the California regulation must address auction protocols and the need to reconcile the use of two different currencies in a single auction. One such amendment is section 95911(c)(3) regarding calculation of the Auction Reserve Price. NCPA remains concerned that the provisions of section 95911(c)(3)(D) that provide for the Auction Reserve Price to be based on the higher of the two values could result in the potential devaluation of the U.S. dollar vis-à-vis the Canadian dollar. Before finalizing the proposed amendments, CARB Staff should look closely at the potential impacts and unintended market consequences that could result and explore options and alternatives that may address such consequences in a fair and non- discriminatory manner.

H. SPECIFIC PROVISIONS REQUIRE ADDITIONAL CLARIFICATION

1. Section 95892(c)(1).

Section 95892(c)(1) provides that electrical distribution utilities must offer one-third of the allowances placed in their limited use holding accounts into the auction. Because it could be read as limiting the number of allowances that may be consigned into the first auction to no more than one-third, NCPA recommends that this provision be revised to clearly state that electrical

distributions utilities must place "at least" one-third of the allowances from their limited use holding accounts into the auction. This revision would allow those utilities that want to consign more than a third of their allowances into the first auction to do so.

2. Section 95920(b)

The Proposed Revisions should be edited to clarify that the imposition of penalties pursuant to section 95920(b)(6) are only proper after the auction participant has had an opportunity to cure the violation pursuant to section 95920(b)(5).

III. CONCLUSION

NCPA and its members are committed to doing their part to reduce the State's GHG emissions and to working with CARB and other state agencies to do so in a cost-effective manner, without unduly harming California's residents and businesses. While CARB and stakeholders have invested considerable efforts in the Cap-and-Trade Program, it is important that the myriad implications of the proposed revisions be closely examined prior to initiating the first auction, and urges CARB to closely and carefully consider the concerns raised in this comments.

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,

C. Susie Berlin
MCCARTHY & BERLIN, LLP
Attorneys for the **Northern California Power Agency**

cc: Richard Corey, Deputy Executive Officer
Edie Chang, Assistant Chief, Stationary Source Division
Steve Cliff, Chief, Climate Change Markets Branch
Janette Brooks, Manager, Climate Change Program Planning & Management Branch