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Sent Via Electronic Transmission

July 9, 2013

Dr. Steven Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: *Comments of the Northern California Power Agency on the June 25 Cap-and-Trade Program Workshop*

Dear Steve:

The Northern California Power Agency[1] (NCPA) appreciates the opportunity to provide these comments to the California Air Resources Board (CARB) regarding the materials and proposals presented during the June 25, 2013 Cap-and-Trade Program Workshop (June 25 Workshop).

During the June 25 Workshop, CARB Staff asked stakeholders to provide feedback on several proposed changes to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Regulations), including proposals for the public dissemination of auction and trading instrument information, as well as the amount and type of information provided to CARB through the Compliance Instrument Tracking System Service (CITSS). NCPA is a covered entity under the Regulations with a mandatory compliance obligation, and is

1 NCPA is a not-for-profit Joint Powers Agency, whose 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, and the Truckee Donner Public Utility District, and whose Associate Member is the Plumas-Sierra Rural Electric Cooperative.

directly impacted by the proposed changes to the Regulations. NCPA recommends that CARB (1) not make any changes to the reporting and verification deadlines that would constrain the amount of time covered entities have to submit information to CARB or complete the verification process; (2) only publicly release compliance account balances in the aggregate; (3) modify the Regulations to include additional provisions that ensure the availability of allowances to covered entities without exceeding the highest price in the Allowance Price Containment Reserve Account; (4) clarify the data being sought regarding the type of transaction in the Compliance Instrument Tracking System Service; and (5) include a subcategory for the designation of allowances to be withdrawn from compliance accounts for retirement. As an active participant in CARB's development of the Regulations and Compliance Instrument Tracking System Service (CITSS), NCPA offers these comments in the interest of furthering the objectives of the State's greenhouse gas (GHG) emission reduction policies and goals, as well as ensuring the ability of covered entities to comply with the Regulations.

COMMENTS ON PROPOSED CHANGES

The Compliance Timeline Should Not be Changed

Highlighting the number of reporting and compliance related deadlines that converge in the fall of each year, Staff asked for stakeholders to provide feedback on whether or not it would be useful to change the existing verification deadline of September 1. If the verification deadline was moved up a few weeks – August 15 was proposed during the June 26 MRR Workshop – all compliance entities would need to calculate their current compliance obligation prior to the deadline to register for the last Allowance Price Containment Reserve Account (Allowance Reserve) sale. While compliance entities are faced with overlapping deadlines, shortening the amount of time allotted for emissions verification would not have a beneficial result. Verification is a considerable undertaking, and many covered entities have already experienced delays in the process. Furthermore, there is every reason to believe that an August 15 deadline would place even greater pressure on a limited number of verifiers to complete their reviews, right at a time when the number of compliance entities subject to verification will increase. Likewise, moving up the reporting deadlines by two weeks, as suggested during the MRR Workshop, is not a reasonable solution. NCPA is opposed to any change in the reporting

deadlines that allow covered entities less time to gather and report the mandated information. The final reporting obligation also represents a significant undertaking for covered entities, and one that requires considerable coordination and data collection. Restricting in any way the amount of time that covered entities have to complete this task would unduly burden covered entities such as NCPA and its members.

Accordingly, while NCPA understands Staff's desire to ensure that the third and fourth quarter deadlines are reconciled in such a manner as to ensure compliance entities the greatest access to all available allowance markets, shortening the amount of time for either verifiers to complete the necessary verification or for covered entities to submit their mandatory reports should result in more harm to covered entities than the benefit of resolving the current conflicting deadlines.

Compliance Account Balances Should Only be Released in the Aggregate

During the Workshop, Staff issued a proposal for the dissemination of auction and allowance-transfer related information. The objective is to release information associated with allowance transfers in order to provide transparency to the markets. With the exception of dissemination of entity-specific compliance account balances, NCPA is not opposed to Staff's proposal.

Dissemination of information to the public must be done in a way that does not jeopardize the ability of market participants – especially those like NCPA's members that provide retail electric service to California residents and businesses – to meet their compliance obligations in the most cost-effective manner. NCPA, like all compliance entities that spoke during the June 25 Workshop, has concerns regarding the dissemination of entity-specific, compliance account information. Based on the majority of comments previously filed with CARB on this issue, compliance entities are in agreement that releasing entity-specific account balances would jeopardize their market position.

Under no circumstances should CARB disseminate entity-specific compliance account balances, as this information can be used to manipulate the market and gain insights into allowance acquisition strategies of covered entities. While it is imperative that CARB be able to assure the public that the Cap-and-Trade Program is functioning properly and that covered

entities are complying with the Regulation, this desire for market transparency needs to come with assurances that the public release of information meets the objectives of public disclosure without compromising the ability of covered entities to meet their compliance obligations under the Regulation in the most cost-effective manner possible. While CARB appears to view the release of entity-specific information as an essential tool in ensuring market transparency, it fails to take into account how the release of this information could be used to ascertain a compliance entity's market position. This would likely increase the cost of allowances, and adversely impact the ability of covered entities to meet their Cap-and-Trade Program compliance obligations in the least-cost manner. Indeed, the release of account information could be utilized by third parties to gain insights into the market, and more specifically, into the potential allowance acquisition strategies of individual covered entities.

It is important to note that Section 95921(e)(4) does not require the dissemination of entity-specific compliance account balances. To the contrary, entity-specific information should be carefully guarded, and indeed, the entire discussion should occur within the framework of Section 95921(e) which provides:

> (e) ***Protection of Confidential Information***. The Executive Officer will protect confidential information to the extent permitted by law by ensuring that the accounts administrator:
>
> > (1) Releases information on the transfer price and quantity of compliance instruments in a manner that is timely and maintains the confidentiality of the parties to a transfer;
> >
> > (2) Except as needed for market oversight and investigation by the Executive Officer, protects as confidential all other information obtained through transfer requests;
> >
> > (3) Protects as confidential the quantity and serial numbers of compliance instruments contained in holding accounts; and
> >
> > (4) Releases information on the quantity and serial numbers of compliance instruments contained in compliance accounts in a timely manner.

This section does not require entity-specific disclosure. Rather, section 95921(e)(4) specifically provides that the "Executive Officer will protect confidential information to the extent permitted by law by ensuring that the accounts administrator: . . . (4) Releases information on the quantity and serial numbers of compliance instruments contained in compliance accounts in a timely manner." This disclosure by the account administrator is intended to be carefully

scrutinized by the Executive Officer to ensure that confidential information is protected. That confidential information pertains to the entity-specific balances. Disclosure – in an aggregate form – of the quantity and serial number of allowances in compliance accounts would provide the public with information regarding the vintage and amount of allowances in compliance accounts generally, without compromising the confidentiality of information that could be used to ascertain allowance acquisition strategies.

Market transparency is furthered by disclosure of the total amount of allowances that are being held in compliance accounts, since this does impact the potential availability of allowances in the market. However, in order for this transparency to facilitate market transactions, it is *not necessary* for that information to be disclosed in any form other than the aggregate. And while disclosure of entity-specific information may provide the public with information regarding that entity's compliance status, CARB has access to each compliance entities' balances, and at the end of each compliance period – annual or triennial – allowances that are retired to meet this obligation are already made public as part of the permanent retirement registry on CARB's website (Regulation Section 95831(b)(3)). Therefore, quarterly updates regarding individual compliance account balances only provides the public with hints as to the compliance entities' allowance acquisition strategy, and do nothing to help the public "verify" entities' compliance with the Regulations.

Any proposed disclosure of information in a non-aggregated form during the intervening years of a compliance period should be cautiously viewed. NCPA is not opposed to CARB's release of aggregate compliance account balances for all compliance entities. An option may be to release compliance account balances by sector, but this is still problematic in that the position of covered entities in sectors that are comprised of fewer covered entities would be discernible. Accordingly, as the Regulations do not require CARB to publish compliance account balances by individuals, that information should only be released in the aggregate.

Cost Containment Provision Should Address Ways to Ensure Covered Entities' Access to Reasonably Price Allowances

As a covered entity, NCPA is concerned with the long-term availability of reasonably priced allowances and fully supported a further analysis of options to ensure the containment of costs in the Cap-and-Trade Program, and the Board's direction in Resolution 12-51 regarding this matter. While the economic experts participating in the workshop were all in accord that the chances of exhausting the highest level of the Reserve Account were not high, they did not rule out that it was a possibility. Accordingly, it is imperative that this issue be addressed in advance, in order to ensure there are no market disruptions or adverse consequences for compliance entities.

NCPA appreciates CARB's thoughtful analysis of cost containment options set forth in the June 25, 2013 paper - *Policy Options for Cost Containment in Response to Board Resolution 12*-51. The Policy Paper lays out carefully considered alternatives that can be implemented should the highest tier of the Reserve Account be reached. While both the economic experts and CARB's paper focus on ways to address and avoid a depletion of the Reserve Account, NCPA supports proactive proposals, such as those set forth in the Joint Utilities Group (JUG) presentation during the Workshop, that address ways to reduce the likelihood that the Tier III Reserve Account "soft cap" is ever reached.

As set forth in the JUG presentation, CARB should continue exploring other options that increase the availability of allowances, and implement certain triggers that ensure covered entities will never be unable to purchase the necessary allowances at the highest price tier of the Reserve Account. Under such circumstances, the environmental integrity of the program can be preserved by expanding the use of offsets. As an example, CARB could allow covered entities to carryover any unused portion of the 8% limit into future compliance periods, or expand the scope of currently available offset protocols. In contrast, options that seek to generate corresponding environmental compensation by borrowing allowances from periods beyond 2020 should be avoided, as they would not adequately protect the near-term integrity of the program and invoke complexities associated with a post-2020 cap-and-trade program that are not addressed in the current Regulation.

Information Provided in CITSS Should be Further Clarified

Staff is proposing that data reported in CITSS be revised to provide more detailed information regarding types of allowance transfers. This level of detail would allow CARB to further analyze the kinds of transactions that are being used to transfer allowances, and ostensibly, give the agency greater insight into potential market violations. As a practical matter, NCPA is not opposed to providing more detailed information regarding contractual arrangements. Overall, having aggregate data regarding the types of transactions that are related to bilateral trades would be helpful to the program administrator. In order to ensure that the information gathered is meaningful in achieving CARB's stated objectives, the data must represent the whole market and must be properly defined. To that end, CARB has identified three "types" of transactions and has proposed collecting the following transaction-specific information.

Type of Transaction Agreement	**Required Information Specific the Transaction Agreement**

(1) Spot Bilateral Arrangements – no longer than 3 days from signing to delivery	- Date entered into transaction
	- Settlement date –
	  o If transfer if final term to be settled: date transfer request submitted
	  o If other terms to be settled after transfer: date other terms scheduled to be settled
	- Price

(2) Customized Bilateral – no less than 4 days from signing until delivery	- Date entered into transaction agreement - Date the agreement terminates - If the contract contains provisions for further transfers, frequency of transfers (e.g., quarterly) - If contract is "bundled" purchase of instruments and other products, identify other products (e.g., natural gas) - Price (fixed price or base plus margin)
(3) Exchange-Traded Contracts – spot and futures	- Name of exchange - Exchange code for contract - Type of contract (spot, future) - Date of close of trading for the contract - Price at close of trading

These three scenarios may not capture the different kinds of legitimate transactions that CARB is seeking data on. In order to fully and accurately define the transaction types, CARB should provide stakeholders with more detailed information regarding what the agency is looking to accomplish with the gathered information, as some of those desired data points may not

necessarily be captured in the proposed list. This additional information should also address what – if any – public disclosure may be accompanied with the increased data collection.

Order of Compliance Instrument Retirement Should Include an Additional Subcategory

During the Workshop, Staff noted that the Regulations do not currently specify the order in which allowances are withdrawn from an entity's compliance account in order to be retired. CARB has suggested that compliance instruments used to meet the annual compliance obligations would be retired in the following order: offsets, allowances purchased from the Reserve Account, all other allowances (earliest vintage first), and finally "true-up" allowances. Allowances used for the triennial compliance obligation would be removed in a similar order, except that the use of offsets would be subject to the existing 8% limitation.

It would be useful to define the order in which allowances are withdrawn from the compliance account in order to facilitate the planning and administration of an entity's compliance instruments. To that end, the order proposed by Staff generally represents a logical approach to retiring allowances. However, CARB needs to distinguish between allowances that are purchased and those that are freely allocated to electrical distribution utilities. This is because freely allocated allowances cannot be used for certain kinds of transactions, such as sales into the California ISO (Section 95892(d)(5)). If the vintage alone is used to determine allowances withdrawn from the compliance account, an electrical distribution utility that has placed its freely allocated allowances directly into its compliance account could be in a situation where allowances are retired for an unauthorized use. Therefore, the classification of allowances should be further defined to distinguish between freely allocated allowances and purchased allowances, and the withdrawal for retirement should take this designation into account before withdrawing allowances by vintage generally.

CONCLUSION

NCPA appreciates the opportunity to provide these comments to CARB on the June 25 Workshop. The issues raised during the Workshop will have profound and far reaching impacts on the Cap-and-Trade Program generally, and specifically on the cost of compliance for covered entities. NCPA urges CARB to only release compliance account balances in the aggregate, not

to shorten the amount of time allocated for verification or entity's reporting to CARB, and to implement measures that reduce the likelihood that the highest tier of the Allowance Price Containment Reserve account not reached.

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
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