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By E-Filing

Steven Cliff, Ph.D.
Chief - Climate Change Market Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95812-2828

Re: NRG Energy's Comments on May 1, 2013 Workshop Issues

Dear Dr. Cliff:

NRG Energy (NRG) welcomes the opportunity to submit these comments on the Air Resources Board's (ARB) workshop held on May 1, 2013 to address Universities, Legacy Contracts, and 'But For CHP' under the Cap-and-Trade Program. These written comments serve to memorialize oral comments that NRG made during the workshop. Specifically, NRG urges ARB to ensure that any compliance concessions that it provides universities do not hinder the ability of third-party CHP providers to offer services to universities. NRG also requests comparable treatment of public utility district energy service providers as proposed for covered entities that fall into the 'But For CHP' classification.

Universities and Third-Party CHP

NRG operates a subsidiary that focuses on the provision of CHP services to third-parties. As a third-party provider of CHP services, NRG typically finances, owns, and operates its projects. However, NRG will tailor its offerings to the needs of its customers.

In its role as a third-party provider of CHP services, NRG sells thermal energy and/or electricity to its clients under a long-term Energy Services Agreement (ESA). Such ESAs may have terms of 20 years or longer. NRG may structure CHP development opportunities through typical taxable financing or tax-exempt financing where appropriate.

The ownership of CHP projects by NRG has numerous benefits for its existing and new customers. NRG's customers can forego their own significant capital costs, while reducing annual energy costs. More importantly, NRG's CHP solutions realize efficiencies that reduce overall air emissions, including greenhouse gases. Reliability and professional management of NRG's CHP facilities also benefit its customers.

California universities are among the group of entities that can benefit from NRG's third-party CHP services. NRG can provide financially strapped universities with reliable, onsite clean generation through public-private partnerships.

California universities are now positioned to receive assistance from ARB in the form of allowance allocations to reward them for taking early actions and providing leadership to reduce GHG emissions. NRG urges ARB to ensure that in whatever way it implements the allowance allocation to universities, ARB ensures that it does not create roadblocks to the third-party provision of CHP. One way to ensure this outcome is to explicitly provide that universities may freely assign any allowances provided them by ARB.

Furthermore, the manner in which ARB allocates allowances to universities could impede third-party CHP. Based on the presentation used at the May 1st workshop, it is not absolutely clear how ARB will calculate the allowance allocation it makes to eligible universities. The applicable slide suggests that allowances will be based on an, ". . . average three year historical fuel use baseline . . .." Whether that three-year average is a rolling average or frozen in time could have an impact on the competitiveness of a third-party CHP offering.

For example, assume an eligible university does not currently employ CHP. Further assume that university decides to deploy CHP in 2016. If the three year average upon which the allocation is based is frozen for 2011-13, for example, then any new emissions resulting from CHP in 2016 will not be part of the calculation, and the university will be indifferent whether it operates the CHP facility or whether it relies on a third-party to provide the CHP. However, if the three year average is rolling, then the allocation to the university would tend to increase if the CHP is self-provided once 2016 and later emissions are covered in the calculation, while the allocation would not increase if a third-party were offering the CHP services. In this case, the cap and trade rules would create an impediment to third-party CHP. This is the kind of unintended consequence that NRG urges ARB to observe in setting its allowance allocation rules.

This allocation issue is not unique to universities. NRG faces this same dilemma in the context of providing CHP to energy-intensive, trade exposed (EITE) industries. Under the current cap and trade rules, EITE will be allocated allowances. Currently, third-party CHP providers are not allocated allowances, reducing third-party CHP's competitiveness for these entities. Therefore, the ability of third-party CHP providers to help California achieve its CHP goals is severely undermined. Accordingly, as ARB considers how to allocate allowances to universities in a way that does not interfere with third-party CHP's ability to compete in the marketplace, it should also consider how to remedy the same issue as it pertains to EITE allowance recipients.

Public Utility District Energy Service

District energy service produces steam, hot water and/or chilled water at a central plant to distribute underground to buildings connected to the system. Centralized production of these services creates efficiencies that reduce fuel consumption and, in turn, reduce the emission of GHGs.

An NRG subsidiary operates a district energy service in San Francisco. The operation is regulated as a public utility heat corporation by the California Public Utilities Commission. The San Francisco district energy operation relies on natural gas to provide its services and emits approximately 65,000 tons per year of GHG. As such, it is a covered entity under ARB's cap and trade rules. However, the San Francisco district energy operation actually displaces approximately 76,625 tons per year of GHG, meaning that it actually reduces GHGs.

While NRG's San Francisco district energy operation is currently required to pay for GHG allowances during the first compliance period, individual buildings burning natural gas for heat do not have the GHG allowance obligation until the second compliance period beginning in 2015. This disparity sends an economic signal to building owners to operate their own, less-efficient boilers in lieu of using district energy.

This situation presents a precise parallel to the 'But For CHP' classification for which ARB will provide relief during the first compliance period. Because natural gas use does not fall within cap and trade requirements until the second compliance period, ARB is going to exempt eligible CHP facilities from coverage in the first compliance period. Similarly, the building boilers against which district energy provides a competing service will not experience a GHG obligation until the second compliance period. It, therefore, follows that district energy should receive the same treatment as 'But For CHP'. Specifically, ARB should include any public utility district energy service provider operating in California within the definition of entities exempt from the allowance obligation during the first compliance period. Once natural gas users are covered in the second compliance period, the exemption for public utility district energy service providers can be lifted, just as it will be for 'But For CHP.'

Should you have any questions regarding the foregoing, do not hesitate to contact me.

Very truly yours,

Sean P. Beatty

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NRG Energy, Inc.