January 11, 2016

Ms. Rajinder Sahota,
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95812-2828

Filed Online

Subject: **Sonoma Clean Power and Marin Clean Energy Comments on December 14, 2015 Cap-and-Trade Workshop and Potential 2016 Amendments**

Dear Ms. Sahota:

Sonoma Clean Power ("SCP")[1] and Marin Clean Energy ("MCE")[2] provide the following comments on the December 14, 2015 Air Resources Board ("ARB") Staff Workshop ("Workshop") to discuss potential 2016 Amendments to the Cap-and-Trade Regulation. During the Workshop, the ARB staff discussed the possible elimination of the RPS Adjustment. This proposal would create a significant hardship for Community Choice Aggregators ("CCAs") through the imposition of ex post regulatory risks to certain transactions contemplated by California's Renewables Portfolio Standard ("RPS") program. Below, we explain why maintaining the RPS Adjustment is critical to CCA energy procurement options in light of attributes unique to CCAs' operations and how elimination of the RPS Adjustment would impede our ability to pursue lower cost RPS-eligible Procurement Content Category 2 ("PCC-2") energy imports.

We understand ARB's concerns regarding enforcement of the so-called "direct delivery requirements" and the need to ensure that out-of-state renewable resources that do not carry a GHG compliance obligation cannot be double counted. This problem arises because the "null

[1] Sonoma Clean Power (SCP) is a locally controlled Community Choice Aggregator in Sonoma County. SCP provides everyone in participating cities with the option of using environmentally friendly power, generated by renewable resources. SCP is a not-for-profit agency, independently run by the Sonoma County cities that have joined the program, including Cloverdale, Cotati, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, Sonoma, and the Town of Windsor, as well as all of the unincorporated areas in Sonoma County.

[2] Marin Clean Energy is a locally controlled CCA in Marin County. MCE serves Marin County, unincorporated Napa County or the cities of Benicia, El Cerrito, Richmond and San Pablo.

energy"[3] from the renewable resource backing a PCC-2 transaction is traded in the spot wholesale markets and ultimately sunk inside California. Apparently the ARB has rejected reporting of null power as "unspecified" since the e-tag shows the generating source to be a renewable, and the corresponding PCC-2 transactions are denied the RPS Adjustment because of the null power direct delivery.[4] Fortunately, there are a number of solutions to these issues, including but not limited to solutions proposed in response to the ARB's October 2, 2015 Workshop. As discussed below, the ARB's compliance concerns can be resolved within the legal parameters of AB 32 without eliminating the RPS Adjustment itself. We request that the ARB coordinate with impacted stakeholders by holding a joint workshop with the California Public Utilities Commission ("CPUC") and California Energy Commission ("CEC") to discuss potential solutions to the ARB's RPS Adjustment concerns.

DISCUSSION

1. The Removal of the RPS Adjustment Would Create A Significant Hardship For CCAs.

CCAs are locally-controlled load serving entities established under California law, which have a different business model than the large for-profit investor-owned utilities ("IOUs"). SCP started offering its alternative to PG&E's service in 2013 and has been adding load since that time as other local communities join its program. MCE started offering its alternative to PG&E's service in 2010. One of MCE and SCP's core values is providing reliable, low-cost and low-GHG energy. While customers have responded favorably to the CCAs' offerings, CCAs are effectively in competition with the local IOU service offerings in terms of retaining customers. The RPS Adjustment plays an important role in the CCAs' ability to provide eligible renewable power with a low-GHG profile as part of its competitive service offerings for two primary reasons.

First, under the CPUC-jurisdictional CCA program, local customers have the ability to join or opt-out of an established CCA program. Customers will look at the details of our service offering in terms of its renewables content and pricing when considering changes to their electricity commodity provider. Because the CCA load is subject to competition with the IOUs, and hence contestable over time, it is important to prudently build a portfolio and manage price risks. The ability to make PCC-2 transactions is an important tool for CCAs. To the extent a transaction is denied the RPS Adjustment after the fact, the economics of the transaction is turned on its head. Stated differently, if the parties to the PCC-2 transaction knew before the transaction is finalized that GHG compliance costs would attach to the import, then that deal would likely be rejected due to the additional costs. Moreover, because of the way MCE and SCP plans their

[3] "Null energy" or "null power" refers to the concept of an energy that has its environmental attributes removed by a commercial transaction such that entities taking title to the energy cannot also claim any benefits derived or arising from those environmental attributes. In the case of PCC-2s, the renewable production is bought on a bundled energy plus environmental attribute basis, but then the energy is resold as null power in the wholesale market and the environmental attribute is imported via a firmed and shaped scheduled import with an e-tag that includes the WREGIS RPS facility identifier.

[4] In such cases where the parties that are aware that environmental attributes from the PCC-2 transaction are reserved for later import, an attempt to honor the commercial commitments gives rise to two distinct reporting errors in the ARB's eyes. SCP and MCE believe that stakeholders have made proposals that will capture California's desire to see PCC-2 transactions count as GHG-free deliveries, which the RPS Adjustment accommodates.

resource procurement and establishes rates for energy, incurring costs long after the power has been delivered distorts the price signal to our customers.

On a longer term basis, MCE and SCP's resource plans include more reliance on in-state renewable generation, but keeping the PCC-2 procurement option is important for sourcing shorter-term commitments that can be used to accommodate load variability. Currently, out-of-state wind resources are some of the most cost-effective RPS-eligible procurement options available on a shorter term basis. The out-of-state wind imports are typically provided on a firmed and shaped basis as a way to handle limited transmission availability and the intermittency of the resource. The PCC-2 firming and shaping transaction mechanism allows the importing entity to schedule deliveries around resource intermittency and transmission constraints consistent with California law. If there is regulatory uncertainty around these transactions' eligibility for the RPS Adjustment, PCC-2 firming and shaping transactions will have too much regulatory risk. In that case, PCC-2 transactions will cease to be a cost-effective resourcing option since those PCC-2 imports denied the RPS Adjustment would be more costly than directly delivered RPS imports (assuming limited transmission availability does not foreclose availability). By denying the RPS Adjustment to entities who have purchased the environmental attributes from the renewable generation as part of the PCC-2 transaction, the ARB effectively eliminates the ability of the CCAs to secure this lower-cost renewable energy.

Second, because CCAs do not have guaranteed cost recovery for their commodity costs like the CPUC-jurisdictional IOUs, there are particular concerns about *ex post* cost increases occurring when the RPS Adjustment is denied for a valid PCC-2 transaction. IOU commodity costs are evaluated and adjusted through the annual Energy Resource Recovery Account ("ERRA") proceedings, while CCA commodity costs are balanced by the CCA itself and must be evaluated in the context of offering competitively priced energy in comparison to the incumbent IOU rates and surcharges. The CCAs entering into PCC-2 transactions rely on RPS Adjustment eligibility and have contracts priced based on the RPS eligibility premium and the benefit of the RPS Adjustment. Consequently, any after-the-fact changes to generation commodity costs (e.g., imposing carbon costs on a PCC-2 transaction because the RPS Adjustment is denied due to a direct delivery of null power) can have a significant impact on the CCA's annual commodity budget. Moreover, because the costs would arise after power delivery (as opposed to avoiding such risks by procuring higher cost renewables in-state or via direct delivery into California), the price signal to customers for consumption is skewed and under collections will occur.

The ARB's free allocation of allowances to the distribution utilities (which do not include CCAs) does not offset these additional costs. While the distribution utilities' allowance revenue is passed on to all customers, the revenue is passed on as a credit in IOU billing along with the transmission and distribution portion of CCA customers' rates. Free allocation of allowances to IOUs and the climate credits going directly to residential ratepayers does not help CCAs avoid increased commodity costs arising from the *ex post* denial of the RPS Adjustment. Accordingly, if the RPS Adjustment is denied (or eliminated), the CCAs will directly suffer a financial impact that may not be recoverable from customers should subsequent rate changes jeopardize the CCAs' ability to retain or expand its customer base.

In sum, the RPS Adjustment is more than just an optional mechanism associated with AB 32 compliance. It is an important structural element to the CCAs' renewable procurement

strategies. Furthermore, because of differences in the business models of CCAs and the CPUC rate-regulated utilities, the RPS Adjustment is critical to maintaining a level playing field.

2. <u>The Requirement To Address Statewide GHG Emissions In AB 32 Does Not Preclude The ARB From Addressing The Direct Delivery Requirements Through New Requirements For Specified Imports.</u>

Following the October 2, 2015 workshop on the scope of potential changes to the RPS Adjustment, stakeholders offered a number of proposals to address ARB's direct delivery concerns.[5] Additional proposals were provided during the December 14, 2015 Workshop. The ARB staff has yet to specifically respond to any of these proposals other than to apparently reject the proposal for requiring null power associated with a PCC-2 transaction to be reported as unspecified when imported in realtime. The ARB's position appears to be that AB 32 requires the ARB to reduce all statewide GHG emissions, including emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, and therefore, the ARB must track "actual" electricity consumed in California.[6] Accordingly, the ARB staff proposes to amend the Cap-and-Trade and Mandatory Reporting Regulations to require that any null power imports must be reported as specified based regardless of whether the importer can report the REC serials numbers generated by the resource.

---

[5] See, PG&E, SCE, and SDG&E October 19, 2015 Comment Letter, recommending that the ARB align REC ownership with emissions reporting, available at: http://www.arb.ca.gov/lists/com-attach/17-ct2016amendments-ws-VD1cNVMnVlpXMgdo.pdf

See, MID and TID October 21, 2015 Comment Letter recommending that the ARB align REC ownership with emissions reporting, available at: http://www.arb.ca.gov/lispub/comm2/bccomdisp.php?listname=ct2016amendments-ws&comment_num=25&virt_num=22

See, Powerex October 19, 2015 Comment Letter recommending that the ARB further clarify the specified source reporting requirements and allow private parties to ensure that transactions correctly account for when the RPS Adjustment can be claimed, available at: http://www.arb.ca.gov/lists/com-attach/22-ct2016amendments-ws-UmBQZlZmUDYKIlVk.pdf

See, Iberdrola October 6, 2015 Comment Letter recommending improvements in guidance language to clarify the relation of the meter data, e-tags, and the review of WREGIS reports, available at: http://www.arb.ca.gov/lists/com-attach/3-ct2016amendments-ws-BmVVPANvVGoLaABu.pdf

See, LADWP October 19, 2015 Comment Letter recommending changes in specified imports to require null power to be reported as unspecified or in the alternative allowing for private parties to address direct delivery concerns privately, available at: http://www.arb.ca.gov/lists/com-attach/13-ct2016amendments-ws-WjYCZQZjUnZXIQZZ.pdf

See, MSR October 19, 2015 Comment Letter requesting that the ARB schedule follow up workshops to discuss how the RPS Adjustment can be retained, available at: http://www.arb.ca.gov/lists/com-attach/21-ct2016amendments-ws-Am9XfFEjBHoCdlUK.pdf

[6] See ARB December 14, 2015 Presentation, Slide 3, available at: http://www.arb.ca.gov/cc/capandtrade/meetings/20151214/rpssb350.pdf

The proposal that null power associated with a PCC-2 transaction be reported as unspecified if imported in realtime is a simple solution that would retain the RPS Adjustment benefit, minimize staff time reviewing RPS Adjustment claims, and address the ARB's direct delivery concerns. This proposal was also broadly supported by stakeholders.[7] As a legal matter, the ARB is not precluded from adopting this change. AB 32 provides the ARB with significant discretion in constructing regulations and nothing in the Statute requires the ARB to track "actual electricity" delivered to and consumed in California. Rather, California Health and Safety Code Section 38530(b) requires the ARB to "[a]ccount for greenhouse gas emissions from all electricity consumed in the state, including transmission and distribution line losses from electricity generated within the state or imported from outside the state." Since PCC-2 transactions require the initial procurement of bundled power (i.e., both the environmental attributes and the energy), the ARB could interpret Section 38530(b) and 38505(m) to allow PCC-2 procurement to retain the emissions attribute of the contracted resource when the import ultimately occurs via the firmed and shaped transaction.

Should the ARB choose instead to interpret AB 32 to require the reporting of "actual electricity", then the ARB should endeavor to work with the other energy agencies to find an alternative and commercially viable solution that addresses stakeholders' unanimous calls to retain the RPS adjustment. In particular, California Health and Safety Code Section 38501(g) calls on the ARB to work with the CPUC in developing the ARB's emissions reductions measures. As discussed at the December 14, 2015 workshop, it is possible to refine the rules around the RPS Adjustment in a way that ensures that RPS obligated entities will not be able to claim the RPS Adjustment when the power has been directly delivered. For example, the CPUC and CEC could require null power imports to have a null power "flag" on the e-tag when the environmental attributes evidenced by WREGIS Certificates have not been transacted along with the generation imported in realtime. This null power flag could enable the ARB (and the entity buying spot market power for import that is incidentally sourced by a renewable) to know whether or not a direct delivery should be free from a compliance obligation or whether a later import that includes the WREGIS ID in the e-tag for the PCC-2 import should have a valid claim to the RPS Adjustment. Because of the broad industry interest in this issue and the number of relatively similar approaches previously outlined by stakeholders, a follow up public workshop should be convened with the experts from the ARB, CPUC, CEC, Load Serving Entities ("LSEs"), generators and marketers on the PCC-2 import issues.

3. <u>The ARB Should Not Eliminate The RPS Adjustment Solely Based On Its Experiences In Reviewing 2014 MRR Data.</u>

The ARB's contemplated elimination of the RPS Adjustment would disrupt regional RPS procurement and create a ratemaking hardship for CCAs (among other entities) that rely on the RPS Adjustment to net out GHG compliance costs on PCC-2 imports. We appreciate that considerable staff resources were spent reviewing RPS Adjustment claims and educating the energy industry on the regulatory requirements for the RPS Adjustment during and leading up to the verification period for the 2014 emissions year. This period was the first time the energy industry fully came to understand how the ARB currently implements the direct delivery requirements of the RPS Adjustment. As a result of the compliance questions arising during this

[7] See Footnote 4.

period, many parties have reevaluated how wind resources and other PCC-2 imports are transacted. Before making a decision to potentially eliminate the RPS Adjustment with such significant commercial implications for both LSEs and renewable suppliers, the ARB should evaluate the degree of compliance with the direct delivery requirement in the 2015 reporting period. MCE and SCP are optimistic that parties may find commercially viable approaches through contract structures, e-tagging options or financial settlement mechanisms to ensure that the RPS Adjustment is claimed only by entities who import for an entity with an RPS obligation.

CONCLUSION

The elimination of the RPS Adjustment would have a significant, detrimental impact on those CCAs like MCE and SCP that rely on the RPS Adjustment to procure cost-effective renewable energy on a short term basis. Removal of the RPS Adjustment would put CCAs at a disadvantage to the large incumbent IOUs that have CPUC-guaranteed recovery of commodity costs. The ARB should respond to the various proposals offered by the parties on the October 2, 2015 workshop. The ARB should also reevaluate its position that AB 32 requires the ARB to track "actual electricity" imports and consider having null power imported in realtime to be reported as unspecified as a simple fix that maintains the purpose of the RPS Adjustment while also addressing the ARB's direct delivery concerns. If the ARB does not make this change, then the ARB should hold a workshop with the CPUC, CEC and other interested entities to evaluate how the agencies can coordinate changes in the RPS and Cap-and-Trade programs to ensure that LSEs purchasing out-of-state RPS-eligible, zero GHG emissions resources can retain the full panoply of benefits associated with those resources without *ex post* regulatory risk. We appreciate the opportunity to submit these comments and look forward to further dialogue on this important topic.

Sincerely,

/s/

Debra Emerson
Director of Power Services
Sonoma Clean Power

/s/

Jeremy Waen
Senior Regulatory Analyst
Marin Clean Energy