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March 11, 2016

Ms. Rajinder Sahota
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SUBJECT: LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP) COMMENTS ON THE FEBRUARY 24, 2016 WORKSHOP REGARDING CLEAN POWER PLAN (CPP), CAP-AND-TRADE AND MANDATORY REPORTING REGULATIONS

The LADWP appreciates the opportunity to provide the following comments to the California Air Resources Board (ARB) on the February 24, 2016 ARB public workshop regarding proposed amendments to Mandatory Reporting and Cap-and-Trade Regulations.

The LADWP is a vertically-integrated publicly-owned electric utility of the City of Los Angeles, serving a population of over 3.8 million people within a 465 square mile service territory covering the City of Los Angeles and portions of the Owens Valley. The LADWP is the third largest electric utility in the state, one of five California Balancing Authorities, and the nation's largest municipal utility. The LADWP's mission is to provide clean, reliable water and power in a safe, environmentally responsible and cost-effective manner.

LADWP supports ARB's efforts in continuing to develop a state plan to implement the federal CPP through the Cap-and-Trade Program and encourages ARB to continue its efforts to work with other states that are interested in interstate emission credit trading programs in order to maximize the flexibility and efficiency of the State's greenhouse gas (GHG) regulatory program.

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GHG Mandatory Reporting Rule (MRR)

LADWP urges ARB to survey both reporters and verifiers to gather input on whether an earlier verification deadline is feasible.

LADWP understands that ARB staff would like more time to perform quality assurance checks in order to ensure that allowance allocations are accurate. In addition, ARB staff will have additional reports to process now that the Natural Gas and Transportation Fuels sectors have entered the Cap-and-Trade Program. However, we are concerned that shortening the verification timeline could lead to difficulties for both covered entities and verifiers.

ARB needs to allow sufficient time for the verifiers to provide good quality verification services; trying to rush the verification process under a shortened timeline may not allow enough time for verifiers to fully understand a facility or entity's organization and operations, and to work through questions that arise during verification. Moving the verification deadline forward to August 1 may be too much to ask, especially for the first year of a new Cap-and-Trade compliance period when full verification is required for all reports in the same year.

A limiting factor in the verification process is contracting with a verifier. ARB's regulations require reporters to change verifiers every 3 to 6 years. ARB needs to take the amount of work involved to change verifiers into account when setting the verification deadline. Public agencies such as LADWP have a lengthy bidding and contracting process. A great deal of effort goes into soliciting bids, reviewing and scoring proposals, interviewing references and selecting a verifier that is the best fit. Once the selection is made, the contract then needs to be approved by the Governing Board and City Council. Finalizing the contract can be delayed for numerous reasons including insurance and background checks. Since the verifier cannot perform any work until the contract is issued, it is not always possible to start verifying facility reports on April 11.

Last year, LADWP selected and contracted with a new verifier. The entire process took more than a year and encountered several delays to satisfy LADWP's procurement and insurance requirements. As a result, the new verifier could not start work until mid-June. If the verification deadline had been

August 1, the new verifier would not have had enough time to thoroughly verify our five reports.

For Electric Power Entities that must include renewable energy credit (REC) data in their report, an earlier verification deadline would be challenging. It typically takes four to six months between the time renewable electricity is generated and the buyer receives the RECs. Due to this delay, the rule allows Electric Power Entities until July 15 to finalize REC data. An August 1 verification deadline would afford the verifier only two weeks to verify this data, which is not sufficient.

LADWP recommends that CARB retain the September 1 verification deadline until it has sufficient evidence to show that moving the deadline forward would not create a hardship on reporters and verifiers. It must be feasible to meet the verification deadline. LADWP recommends that CARB survey both reporters and verifiers to gather data on whether an earlier verification deadline may be feasible. LADWP does not believe that interim deadlines that are enforceable will help ARB achieve its policy objectives. Rather, interim deadlines could restrict flexibility during the verification period and lead to additional bottlenecks. LADWP urges ARB to retain maximum flexibility during the verification process.

<u>Electricity Generating Units should not be subject to two different Missing Data Procedures</u>.

If CARB wishes to use the state measures approach to comply with the Clean Power Plan, then the monitoring, reporting and recordkeeping requirements for Electricity Generating Units in the *Regulation for the Mandatory Reporting of Greenhouse Gas Emissions* (MRR) need to be consistent with the monitoring, reporting and recordkeeping requirements for affected Electricity Generating Units specified in the federal regulations.

Currently, MRR section 95129(a) requires Part 75 Electricity Generating Units (EGUs) to use two different missing data procedures, one to calculate CO2 emissions and a different one to calculate CH4 and N2O emissions, even though CO2, CH4 and N2O emissions are all calculated from the same fuel (heat input) data. LADWP recommends streamlining section 95129(a) such that Part 75 EGUs are subject to the missing data substitution procedures in 40 CFR Part 75 only.

For Part 75 EGUs, the applicable missing data substitution procedures from 40 CFR Part 75 are programmed into the Continuous Emissions Monitoring System. In the event communication is lost between the fuel flow meter and the Data Acquisition and Handling System, the "missing" fuel flow data is substituted by the computer using the applicable missing data procedure from 40 CFR Part 75.

However, MRR section 95129(a) makes compliance more complicated than it needs to be by applying a different missing data procedure to CH4 and N2O emissions. In order to satisfy section 95129(a), CARB's missing data procedure would need to be applied manually to the hours with missing fuel flow data to calculate CH4 and N2O emissions. Manual application of missing data procedures significantly increases the chance of calculation error. This requirement is not practical and unnecessarily burdensome given the negligible difference in CH4 and N2O emissions that would result if CARB's rather than the Part 75 missing data substitution procedure were applied.

Part 75 EGUs are affected units under the Clean Power Plan. According to the Preamble to the Clean Power Plan, each state must demonstrate to the EPA that its affected EGUs are meeting the interim and final performance requirements included in the final rule through monitoring and reporting requirements. Affected EGUs must comply with emissions monitoring and reporting requirements that are largely incorporated from 40 CFR Part 75. Therefore, Part 75 EGUs should be subject to the missing data substitution procedures in 40 CFR Part 75.

LADWP recommends revising section 95129(a) as follows.

MRR 95129(a) Missing Data Substitution Procedures for Units Reporting Under 40 CFR Part 75. The operator of a unit that is reporting CO2 using 40 CFR Part 75 must follow the applicable missing data substitution procedures in Part 75 for CO2 concentration, stack gas flow rate, fuel flow rate, high heat value, and fuel carbon content~~, except as otherwise provided in this section~~. Paragraphs (b) through (g) of this section do not apply to these units. ~~for CO2 emissions, but do apply for CH4 and N2O emissions that are not de minimis if data required for calculating CH4 and N2O emissions are missing or invalid.~~

Cap-and-Trade Regulation and the CPP

ARB Proposal for Modifying the Cap-and-Trade Program Compliance Periods

ARB proposes to amend the Cap-and-Trade Program's compliance periods to align the California Cap-and-Trade Program with the federal CPP program.

While LADWP supports the alignment of the two programs, ARB's proposal does not take into account the fact that the first compliance deadline under the CPP will likely be delayed due to the Supreme Court's stay of the CPP.

The immediate effect of the stay is to toll (i.e., suspend) all of the deadlines and requirements of the CPP during the entire judicial review process, including the possible review by the Supreme Court. Moreover, the ARB overlooks the fact that – assuming that courts will ultimately uphold the CPP – it will likely be necessary for EPA to reset the CPP deadlines once the stay is lifted in order to ensure that status quo is maintained. Based on past precedent, it is likely that the deadlines will be extended by the same amount of time that the Supreme Court's stay remains in place. Due to these uncertainties with respect to ongoing CPP litigation and the need to coordinate with Quebec and other jurisdictions (including other Canadian provinces that have announced their intent to join the Cap-and-Trade program), LADWP recommends that this issue be deferred until the stay of the CPP is no longer in place.

In addition, LADWP believes that ARB may be unnecessarily taking an overly inflexible interpretation of state measures plan requirement codified at 40 C.F.R. Section 60.5770(d). This section provides:

> If your plan relies upon State measures in lieu of or in addition to emission standards for affected EGUs regulated under the plan, then the ***performance periods*** must be identical to the compliance periods for affected EGUs listed in paragraphs (c)(1) through (3) of this section. (Emphasis added.)

LADWP's interpretation of this section is that the periods over which the State's emission performance must be measured in a state measures plan must match (or be shorter than) the interim and final periods established in the emission guidelines for the State. However, this provision does not require the State's compliance periods set under its State's measures plan to be identical to the compliance periods generally established under the CPP. In other words, California's compliance with the CPP must be measured in performance periods that are equal to or shorter than the periods established in the emission guidelines. This requirement is satisfied as long as California submits a state

plan that identified 2022-2024, 2025-2027, etc. as "performance periods" for measuring the State's emissions.

However, this provision does not mean that all applicable compliance periods for EGUs under the state regulations which constitute the "state measures" must match identically the federal guideline periods. Rather, compliance periods under these state measures can be longer or shorter than the periods in the emission guidelines, so long as the state's cumulative emissions during the performance periods for measuring state emissions do not exceed the federal guideline.

For example, if the State were to opt to impose a carbon fee on electricity users or a Renewable Portfolio Standard (RPS) policy applicable to load-serving entities rather than the cap-and-trade program as the designated "state measures" for achieving the CPP emission reductions, it would make little sense for the State to make compliance periods under those carbon fee or RPS programs exactly match the CPP emission guideline periods since in those cases, the compliance obligation would not fall on affected EGUs at all. Rather, in LADWP's view, the state's implementation plan would be approvable so long as the state could demonstrate that the implementation of these state measures would ensure that *cumulative state-wide emission performance* during the federal guidelines' performance periods would not exceed the levels specified in the guideline.

Based on this interpretation of Section 60.5770(d), this provision is essentially a modeling and reporting requirement for the state, rather than a requirement that California and other states fundamentally change their existing state measures to match all requirements in the state programs to the federal guideline emission performance deadlines.

Under the CPP, covered electric generating units (EGU) must already report their emissions quarterly and annually. Thus, California should have no difficulty implementing the CPP requirement that the performance periods identified in California's state plan submission for measuring state-wide emission performance match the two- and three-year federal guideline periods. So long as ARB can demonstrate that the requirement to surrender allowances at the end of each three-year Cap-and-Trade Program compliance period will ensure that EGU

emissions will not exceed the federal guidelines during the applicable interim and final compliance periods, ARB will have satisfied its requirements under this section of the CPP. Thus, ARB should be able to retain the current three-year compliance periods under the cap-and-trade program while also complying with Section 60.5770(d) of the CPP.

For the above reasons, LADWP suggests that ARB rethink its current proposal for modifying the Cap-and-Trade compliance periods to facilitate compliance with the CPP.

Backstop measures under ARB's state measures plan approach.

ARB is proposing to maintain a set-aside pool of Cap-and-Trade Program allowances available only to affected EGUs from within the post-2020 caps equal to approximately 10 million metric tons CO_2 equivalent. In the event a backstop is triggered, the proposal would require each affected EGU to purchase and retire allowances proportional to their share of the sector's GHG emissions that exceed the federal limit. In addition, in the unlikely event that this initial pool of allowances is depleted, the proposal states that redirecting allowances from the cap-and-trade program's Allowance Price Containment Reserve would recharge the pool of allowances.

LADWP questions how ARB's set-aside proposal could meet the CPP backstop requirement for states developing state measures plans. The CPP regulations establish the following two key backstop requirements. First, states must establish federally enforceable emission standards that would apply to affected EGUs in the state once the backstop is triggered and that would ensure that EGU emission performance meets the requirements of the federal guidelines. And second, the state must have in place an additional regulatory control mechanism to ensure that the state makes up for the shortfall in CO_2 performance as expeditiously as possible.

LADWP is concerned that ARB's proposal does not appear to satisfy the first requirement—that is, the establishment of the backstop emission standards to assure that EGU emissions will not exceed the allowable emission levels under the federal emission guideline. Specifically, it is possible that under ARB's proposal, EGUs could purchase allowances from the supplemental pool and

continue emitting above the levels permitted by the emission guideline. Although requiring EGUs to purchase and retire extra allowances would raise the costs of generating electricity from affected EGUs, it does not appear to LADWP that the possibility of this added cost will assure that EGUs reduce their emissions sufficiently to fall below the emission levels specified in the emission guidelines.

Consequently, if ARB continues to view the Cap-and-Trade Program as the primary vehicle for complying with the CPP, staff may need to consider other approaches, such as a "nested emission cap" to limit CO_2 emissions from affected EGUs, which would only come into effect if the backstop was triggered. In contrast to ARB's proposed approach, a nested cap that places an absolute limit on EGU emissions but allows EGUs to engage in limited allowance trading with other sectors could satisfy the CPP's backstop requirements while also resulting in minimal disruption of the current cap-and-trade program's structure. LADWP would be pleased to provide ARB with further information about the key elements of such an approach and how it could be integrated into the cap-and-trade program.

In light of these concerns, LADWP requests that ARB provide more information on its analysis to demonstrate the State's compliance with the above stated requirements before adopting its proposed backstop concept. In addition, LADWP has identified additional issues with ARB's approach to the backstop. For example, ARB's proposal states that affected EGUs would need to purchase and retire allowances from the backstop pool of allowances to bring the State back into compliance with the CPP, including the revised glide path. However, the glide path is not yet set (although it appears that ARB is considering setting the interim targets at or near the final federal limit for each compliance period). It is also unclear whether a 10 million metric ton set aside of cap-and-trade allowances is the appropriate amount for the backstop.

LADWP supports ARB's evaluation of backstop designs that utilize the existing cap-and-trade program structure, are flexible, avoid duplicate regulation of CO_2 under federal and state CO_2 regulatory programs, can be phased in over time, and are designed to allow interstate emission trading of EGU allowances. LADWP looks forward to discussing these concepts further at the appropriate time with ARB staff.

Mechanisms to Prevent Leakage

As acknowledged in ARB's staff proposal of February 2016, the CPP has imposed requirements to prevent "leakage" of CO_2 emissions that could occur from existing EGUs to new EGUs in a mass-based approach since new EGUs would be subject to a less stringent rate-based standard under CAA Section 111(b). In particular, the CPP requires that state implementation plans (including state measures plans) that employ a mass-based approach demonstrate that they have addressed such leakage of CO_2 emissions. One presumptively approvable method of addressing leakage is for a state to place a limit on both existing and new units such that aggregate CO_2 emissions from all EGUs within the state do not exceed the mass-based target plus a "new source complement" that is designed to allow for additional emissions from new units to address demand growth. States can also employ allowance allocation incentives to minimize the potential for leakage by increasing the incentive to operate existing EGUs. Finally, state plans can make an "alternative demonstration" that leakage is unlikely to occur through implementation of other regulatory measures.

LADWP requests that ARB identify which of these methods the agency plans to use to demonstrate to EPA that the state plan will address leakage. Furthermore, LADWP requests that if ARB opts to use the first option—regulating emissions from new EGUs—ARB examine whether the CPP allows that agency to take a hybrid approach whereby the ARB—

- first places an emission cap on both new and existing EGUs under the cap-and-trade program,
- but then uses the CPP mass-based performance goals set for existing sources in order to demonstrate compliance with the CPP mass-based limitations (as ARB appears to be proposing).

LADWP believes that ARB can convincingly demonstrate that the state has addressed the potential for leakage through the implementation of the cap-and-trade program that applies to both new and existing EGUs. However, the CPP regulations are not clear on whether the ARB can rely on the first option for addressing leakage—which is predicated on limiting emissions from both new and existing EGUs to no more than the mass-based goal plus new source

complement—while at the same time measuring state performance against the mass-based goal for existing sources.

It appears to LADWP that the most straightforward approach to demonstrating that ARB has addressed leakage would be to continue to regulate new EGUs under the cap-and-trade program and to use the new source complement as the yardstick against which to measure the state's emission performance. Regardless of the approach ARB takes with regard to leakage, LADWP requests further clarification as to the following matters:

- How ARB will demonstrate compliance with the leakage requirements?
- Whether ARB will use the mass-based goal or the mass-based goal plus new source complement to measure the state's emission performance under the CPP; and
- Whether ARB will count all EGU emissions (including both new and existing EGU emissions) or only existing EGU emissions toward the state's achievement of its CPP goals.

Coordination with other states/interstate trading.

As stated in our October 19, 2015 letter, LADWP recommends that ARB continue to explore collaborations with other states during its development of California's plan and analyze the financial impacts of its existing cap-and-trade structure, including whether there would be a need for the existing allowance requirement for imported electricity, given that most all states will have a carbon emission compliance obligation under the CPP. Starting in 2022, if the existing cap-and-trade structure is in place, California electric utilities would be paying significantly more for electricity imported into California. Electric utilities would be subject to a carbon price imposed on the imported electricity per the California cap-and-trade regulation *plus* a carbon price imposed on the *same* imported electricity associated with the state that the power plant source is located.

LADWP requests clarification regarding GHG costs as they relate to imported electricity. ARB's February 2016 staff proposal, does not articulate any mechanism to mitigate the possibility that California load serving entities must pay the increased GHG costs associated with imported energy, which would

undoubtedly be incorporated into the price of the energy once other states adopt their respective plans, in addition to the GHG costs already applied to such energy in accordance with the current Cap-and-trade Regulation.

While LADWP understands and appreciates ARB's requirement to report imported energy, we urge ARB to adopt a mechanism to ensure California load serving entities will not be required to pay for both the GHG costs of such energy pursuant to the Cap-and-Trade Regulation in addition to any GHG-related costs imposed by other states. If ARB is contemplating such a mechanism, LADWP requests additional information on how this mechanism would be applied to imported energy from states adopting a rate-based approach, as well as to imported energy from states adopting a mass-based approach.

LADWP also proposes that imported energy from states adopting their own plans be exempt from the Resource Shuffling provisions of the current Cap-and-Trade Regulation. Federally enforceable limits placed on EGUs outside California would effectively mitigate the leakage of emissions from within California to such EGUs outside California.

Conclusion

The LADWP appreciates the opportunity to comment. If you have any questions or would like additional information, please contact Ms. Jodean Giese of my staff at (213) 367-0409.

Sincerely,

Mark J. Sedlacek
Director of Environmental Affairs

JG:vf

c: Ms. Jodean Giese