ALCANTAR & KAHL, LLP

April 25, 2016

Rajinder Sahota
Branch Chief
California Cap-and-Trade Program
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: March 29, 2016 Workshop Comments

Dear Ms. Sahota:

The Energy Producers and Users Coalition[1] (EPUC) appreciates the opportunity to provide comments on the March 29, 2016 California Air Resources Board (CARB) workshop on post-2020 allowance allocation.

The Cap-and-Trade (C-T) program was carefully designed to reduce emissions consistent with statewide goals while simultaneously preventing industry leakage. At the March 29 workshop, CARB staff expressed the intention to continue current, supportive industrial policies, specifically leakage assistance, beyond 2020. To date the program has successfully reduced emissions without negatively impacting the California economy. EPUC agrees that leakage assistance is key in this regard and supports the continuation of current industrial policies recognizing that some changes to overall program design may be in order. The continued success of the C-T program, however, requires any changes to C-T for future compliance periods to undergo the same careful scrutiny as the original program design.

[1] EPUC is an *ad hoc* group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, Chevron U.S.A. Inc., ExxonMobil Power and Gas Services Inc., Phillips 66 Company, Shell Oil Products US, Tesoro Refining & Marketing Company LLC and California Resources Corp.

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1. **EPUC Supports the Transfer of Authority for Allocations Attributable to Electricity Purchases to CARB**

Consistent with leakage prevention policies, AB 32 provides that Emissions Intensive, Trade Exposed (EITE) facilities receive both direct allocations for direct and indirect emissions. Currently, CARB distributes the direct allocations of allowances to EITE facilities, and the CPUC orchestrates compensation of EITE facilities for electricity purchases (or indirect emissions). At the March 29 workshop, CARB proposed shifting the responsibility for allocations for indirect emissions for EITE facilities from the CPUC to CARB. EPUC members welcome the shift in responsibility for indirect emissions to CARB in 2020, and to the extent possible, even earlier.

Transferring this responsibility will have no impact on the overall compliance obligation of any given facility. The CARB proposal will simply reallocate the allowances that would have been provided to EDUs for the ultimate benefit of industrial facilities directly to those facilities. The impact should be a simplified process for compensating EITE facilities. While some additional work will be required to establish the process for allocating allowances for electricity purchases, sufficient time remains before 2020 to develop and vet the process.

EPUC expects that shifting this responsibility to CARB will result in more timely allocation of allowances for indirect purchases. The CPUC adopted a process for the allocation of compensation for indirect emissions in D.14-12-037 adopted in December 2014. The CPUC has yet, however, to distribute any compensation pursuant to this decision. To date, EITE facilities have not received compensation for their 2013 indirect emissions, let alone 2014 and 2015. CPUC staff will be holding a workshop on May 3, 2016 to discuss compensation of EITE customers, but at this time it remains unclear when EITE customers of the utilities can expect to see compensation for 2013 and beyond.

The CPUC has limited staff available to gather the information and complete the calculations required to provide EITE compensation. Additionally, CPUC staff has to turn to CARB for much of the information required to make the EITE disbursements. Transferring this authority to CARB would alleviate some of the labor constraints and data processing pressures currently facing the CPUC and would result in more timely compensation to all EITE customers.

The original intent behind compensating industrial facilities for electricity purchases was to protect against the leakage risk resulting from the increased cost of electricity in California. The funds to be returned to these facilities are not insubstantial and may have a major impact on business planning and budgeting. Until these funds are distributed to industrial facilities, California industry is at a competitive disadvantage as compared to other states given the higher cost of electricity in California. Unless these facilities have some assurance that they will be compensated on a timely basis, leakage risk remains, despite all of the work to the contrary. CARB has both the data and staff available to ensure that, looking forward, EITE facilities are regularly compensated.

EPUC agrees that shifting this responsibility to CARB ensures that facilities in Investor Owned Utility (IOU) and Publicly Owned Utility (POU) territories will be treated equitably. Currently, a facility that is in a POU territory may receive less assistance than a similarly situated facility in an IOU territory, leaving that facility at a competitive disadvantage. This competitive disadvantage will undermine the ability of the C-T program to prevent industry leakage. Ultimately, it best serves the intent of C-T and AB 32 to ensure all EITE facilities statewide are treated similarly.

After the shift of responsibility to CARB, EITE facilities should be compensated for indirect emissions with additional allocation of allowances. There should be no limitation on how the facility uses those allowances, and facilities should be permitted to use the allowances to meet their own emissions requirements or sell them at auction. This would not represent any change from current treatment of allocations for these allowances. Under the current CPUC allocation plan, EITE facilities will receive monetary compensation for electricity purchases with no limitations on how the money is used. The money could be used to invest in energy efficiency and carbon reduction technologies, or, to purchase additional allowances in the C-T auction. Similarly, CARB should not introduce any limitations on how the additional allowances are utilized.

2. **Additional Consideration is Required of the Proposal to Adjust the Industrial Sector Benchmarks to Include Zero Emitting Sources**

CARB proposes to incentivize investment in “zero-emitting energy sources” by including zero emissions sources in statewide benchmark calculations set at the outset of the compliance period and used to determine industrial allocations. In theory, EPUC supports the development of additional incentives for the installation of new clean generation. In practice, however, it is not clear that the proposal will provide incentives sufficient to impact facilities’ behavior or drive investment in additional clean generation.

Rather than drive additional investment in clean energy resources, the proposed changes will simply dilute the sector benchmarks. CARB has suggested that the benefit of installing clean electric generation resources would lower the overall sector benchmark, reducing the total emissions reflected in the benchmark numerator.

Because the benchmark will encompass significant direct and indirect CO_2 emissions, however, it is likely that the impact of clean electric generation would be lost in rounding. Before pursuing the proposed plan to change the benchmark, CARB should explore alternatives that will provide a more direct incentive to covered entities.

3. CARB Should Rely on the Integrated Energy Policy Report High Demand Scenario to Estimate Industrial Load

As a result of CARB's proposal to allocate allowances to EITE entities for electricity purchases, the Electrical Distribution Utility (EDU) allocation of allowances will be reduced based on the potential allocation to EITE facilities. At the workshop, CARB staff sought input on how to estimate potential industrial load. EPUC submits that a potential source of this information could be the California Energy Commission estimations of load growth included in the Integrated Energy Policy Report (IEPR).

Industrial load tends to be highly variable and the IEPR includes high, medium and low forecasts. In order to ensure that sufficient allowances are retained to account for load variability, CARB should rely on the high demand case to withhold allowances from EDUs. To the extent that too many allowances are withheld, a true-up should occur with any over allocation returned to EDUs in the next distribution cycle.

4. Conclusion

EPUC appreciates CARB's consideration of these recommendations and looks forward to continuing to work with CARB to develop post 2020 C-T policy.

Sincerely,

Katy Morsony

Evelyn Kahl
Katy Morsony

Counsel to the
Energy Producers and Users Coalition