

May 21, 2013

Submitted Electronically to ARB's Website

California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

Re: **Public Meeting to Discuss Universities, Legacy Contracts, and 'But for CHP' under the Cap-and-Trade Program**

Dear ARB Staff:

This comment letter is being submitted in response to the California Air Resources Board's (ARB's) May 1 workshop where 'But for CHP' proposed changes to the California Cap and Trade Regulation¹ where discussed, in concept, by ARB staff. Specifically, this letter seeks clarification and provides two comments regarding applicability and exemptions for 'But for CHP' sources.

ARB Resolution 12-33 states² "that the board directs the executive officer...to *[start of what the Board requested as an action for applicable facilities]* develop a methodology that exempts the steam and waste heat emissions *[start of who this applies to]* for all facilities that would not be included in the cap and trade program 'but for' their investment in CHP." We interpret this request to have two parts: (1) applicability and (2) action.

Comment #1 – applicability

One part of the Board resolution stated above is an applicability assessment of whether a facility would be in cap and trade 'but for' their emissions from CHP (i.e., the applicability criteria for consideration under ARB Resolution 12-33 in the second part of the quotation above). Given the wording of the Board resolution, it seems that the applicability evaluation should be a simple comparison of the total GHG emissions from a facility's sources except from the CHP to the cap and trade regulatory threshold of 25,000 MT CO₂e. If a facility's GHG emissions are below 25,000 MT CO₂e when excluding the CHP emissions, but above the threshold when CHP emissions are included, then that facility would not be in the cap and trade program 'but for' their investment in a CHP. Therefore, such a facility would appear to qualify for the action part of the request made in ARB Resolution 12-33.

During the May 1, 2013 ARB presentation, ARB staff proposed two additional criteria beyond the request from the Board for a facility to "not be included in the cap and trade program 'but for' their investment in CHP": (1) Steam emissions alone do not exceed the threshold, and (2) Electricity emissions alone do not exceed the threshold. We believe these additional applicability criteria are beyond the applicability request made in ARB Resolution 12-33.

As such, we suggest that ARB remove consideration of the two additional criteria for a 'But for CHP' Facility proposed during the May 1, 2013 ARB presentation [i.e., (1) Steam emissions

¹ Title 17, California Code of Regulations Subchapter 10 Climate Change, Article 5, Sections 95800 to 96023.

² State of California Air Resources Board. California Cap and Trade Program. Resolution 12-33. September 20, 2012. Agenda item 12-6-1. Available online at: <http://www.arb.ca.gov/cc/capandtrade/res12-33.pdf>

alone do not exceed the threshold, and (2) Electricity emissions alone do not exceed the threshold]. Instead, we suggest that ARB apply a straightforward applicability test consistent with ARB Resolution 12-33 as follows: If a facility's GHG emissions are below 25,000 MT CO₂e when excluding the CHP emissions but above the threshold when CHP emissions are included then that facility would not be in the cap and trade program 'but for' their investment in a CHP; therefore, such a facility qualifies for the action part of the request made in ARB Resolution 12-33.

Comment #2 – action

Another part of the Board resolution, stated above, refers to what action the board requested for those facilities that meet the applicability test described in comment #1. For those facilities that meet the 'but for' comparison above, the Board requested that ARB "develop a methodology to exempt the steam and waste heat emissions" from the cap and trade regulation for each applicable facility. Thus, if a facility meets the simple applicability evaluation described above and has compliance obligations for the cap and trade regulation because their total GHG emissions with CHP is above 25,000 MT CO₂e, then any compliance obligations from the CHP steam and waste heat emissions should be exempt as requested in ARB Resolution 12-33. However, this does not appear to be the approach communicated by ARB during the May 1, 2013 presentation.

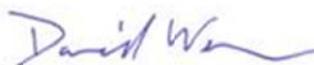
Furthermore, ARB staff asserted that this Board requested exemption only applies to the first compliance period and not subsequent periods, but that concept of not extending the exemption to future compliance periods is not found in the board resolution. The board resolution simply states "develop a methodology that exempts the steam and waste heat emissions for all facilities that would not be included in the cap and trade program 'but for' their investment in CHP".

As such, we suggest that ARB clarify that a 'But for CHP' facility that meets the applicability test described in comment #1 above will not have cap and trade compliance obligations for the GHG emissions directly related to the steam and waste heat generated by the facility's CHP. Furthermore, we request that ARB re-evaluate the Board's request in ARB Resolution 12-33 to clarify that the Board requested exemption of CHP steam and waste heat GHG emissions for 'But for CHP' facilities is not only for the first compliance period, but also for the second and third compliance periods covered by California's cap and trade regulation.

Sincerely,



Douglas Daugherty
Managing Principal



David Weaver
Senior Manager