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January 15, 2016

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Subject: Los Angeles Department of Water and Power (LADWP) Comments on California Air Resources Board (CARB) December 14, 2015 Workshop on Clean Power Plan Rules and Electricity Topics in the Cap-and-Trade Regulation

The LADWP appreciates the opportunity to provide the following comments on the December 14, 2015 CARB public workshop on Clean Power Plan Rules (CPP) and Electricity Topics in the Cap-and-Trade Regulation.

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.

The LADWP supports CARB's collaborative approach in working together with California energy agencies and all stakeholders that have an interest in developing an efficient and flexible program for reducing greenhouse gas emissions (GHG) in California and other states. The LADWP looks forward to working with CARB in that effort. The LADWP also encourages CARB to continue its efforts to work with other states that are interested in interstate emission credit trading programs.

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CPP Compliance Demonstration

During the December 14, 2015 workshop, CARB announced that a team comprised of California Energy Commission (CEC), California Public Utilities Commission (CPUC), and CARB staff members is considering scenarios for demonstrating California's compliance with the CPP. CARB also indicated that the scenarios are likely to be based on those developed in the Integrated Energy Policy Report (IEPR) process and that a "stress case" scenario, not part of the official CEC demand forecast, would be added to identify a worst-case emissions scenario. CARB acknowledges that modifications to the scenarios may be appropriate to reflect "Clean Power Plan needs, Scoping Plan analyses, SB 350 policies, etc."

CARB further indicated that the mid and high energy demand cases assume that Plug-In Electric Vehicles (PEV) will exceed the PEVs in CARB's Zero Emission Vehicles (ZEV) most likely scenario, to 2026. The stress case scenario assumes "more electrification" but it is unclear what the specific assumptions are and to what extent or whether CARB's assumptions about potential mobile source technology and fuel mixes per its Vision 2.0 planning tool are included. Since the Vision 2.0 planning tool is being used to develop CARB's draft Mobile Source Strategy for addressing air quality standards, achieving California GHG emission reduction targets, reducing petroleum consumption and decreasing health risk from transportation emissions, the LADWP recommends that Mobile Source Strategy's measure concepts/assumptions be incorporated into the joint agency CPP compliance demonstration analysis.

Regional and Linkage Considerations

With respect to regional and linkage considerations, the LADWP recommends a CARB, CPUC, and CEC analysis of an expanded market where California would be able to link with other western states given the inter-connected nature of the Western electricity grid. This region-wide approach mirrors the EPA methodology for setting CO₂ performance standards under the CPP. Notably, that methodology involved EPA determining the "best system of emission reduction" based on a region-wide analysis of the emissions reductions occurring within each of the three interconnects. The LADWP encourages CARB to work with other western states in developing a common approach that would allow emission trading among western states, which is consistent with its previous efforts through the Western Climate Initiative. The following comments are in response to CARB's request on specific regional/linkage issues.

Import/Export Allowances. During the December 14 workshop, CARB discussed the CPP import/export accounting for links between a broader multi-sector market and a CPP electric generating unit (EGU)-only market. EPA intended this accounting provision

to accommodate multi-sector markets, such as California's, that may want to link with EGU-only state markets. The LADWP supports the development of a framework that will allow the importation of allowances issued by other states as well as the export of the California Carbon Allowances (CCAs) or other compliance instruments issued under the California Cap-and-Trade program.

The importation of allowances should be relatively straightforward because, as EPA noted in the final CPP rule, the importation of valid CPP allowances from other states would only require the upward adjustment of California emission cap levels by the number of allowances imported into California. However, CARB would need to make minor changes to the cap-and-trade regulations in order to allow the conversion of the CPP allowances to CCAs that affected EGUs could use under the California program.

The exportation of allowances from California to other states appears to be a more challenging issue for CARB to address. Perhaps the most important issue will be for California to demonstrate that the export of allowances from its multi-sector cap-and-trade program will not jeopardize California's ability to achieve compliance with its CPP reduction goal. An approach may be to establish an EGU-only emission cap that is "nested" within the California Cap-and-Trade program and establish specific emission trading rules that will enable California to demonstrate compliance with its CPP reduction goal.

CPP and Cap-and-Trade Interactions. As noted by CARB during the December 14 workshop, EPA recognized in the final CPP rule that there are potentially available several options for linking the various types of state emission trading programs.¹ These options include the following:

- Linkages between EGU-only plans (including via "trading-ready" plans);
- Linkages between EGU-only plans and plans with "broader coverage" multi-sector emission trading programs; and
- Links between multiple state plans with broader coverage, multi-sector emission trading programs.

In light of many interstate emission trading options potentially available under the CPP, the LADWP urges CARB to develop a regulatory framework that maximizes the emission trading opportunities for California.

¹ Carbon Pollution Emission Guidelines for Existing Stationary Sources; Electric Utility Generating Units; Final Rule (Final CPP), 80 Federal Register at 64,893

State Measures Plan Design

In the CPP, a state can adopt a state measures approach which would rely upon state-enforceable measures to achieve state emission goals. Under this approach, states have flexibility as to how they achieve the goals and would not be required to have measures that impose direct obligations on the state’s affected EGUs. However, in exchange for this flexibility, a state measures plan must contain federally enforceable backstop measures that would apply to the state’s affected EGUs if the state measures fail to achieve certain emission performance milestones for those EGUs. Because of the flexibility provided in a state measures approach, the LADWP believes that amendments to CARB’s cap-and-trade and mandatory reporting regulations would not be required with respect to the reporting, verification and cap-and-trade compliance, compliance periods, and allowance borrowing. Rather, to gain EPA approval of its state measures plan, California would only have to demonstrate that the cap-and-trade program and other selected state measures will result in the California’s affected power plants achieving the mass-based goals for each compliance period. This means that there is no need to integrate many of the CARB cap-and-trade requirements, so that these requirements are consistent with the deadlines and requirements under the CPP rule.

Deadlines for Reporting, Verification, and Cap-and-Trade Compliance. If CARB chooses to incorporate the cap-and-trade regulation as part of a state measures plan, CPP-affected entities will be faced with additional GHG reporting compliance deadlines. The LADWP has identified the following GHG reporting deadlines as shown in the table below.

COMPLIANCE DEADLINE	CAP-AND-TRADE/MANDATORY REPORTING	EPA/CLEAN POWER PLAN GHG RELATED
January 30		Continuous emissions monitoring system (CEMS) quarterly report
February 1	Electric Power Entity Specified Source/RPS Adjustment Source Registration	
March 1		Facility Reports
April 1	California Facility Report	
April 30		CEMS quarterly report
May 1		True-up (for previous compliance period)
June 1	Electric Entity Report	

COMPLIANCE DEADLINE	CAP-AND-TRADE/MANDATORY REPORTING	EPA/CLEAN POWER PLAN GHG RELATED
June 30	EDU use of allowance value report	
July 1 – August 31	3 rd party verifier audit period	
September 1	Deadline for 3 rd part verifiers to determine status of reported emissions	
July 30		CEMS quarterly report
October 30		CEMS quarterly report

One of the key EPA reporting requirements associated with states using a state measures approach is that an annual state report is due to EPA on July 1 following the calendar year during the interim period.² The annual report to EPA must include emission performance checks comparing the carbon dioxide (CO₂) emission performance level identified in the state plan for the applicable interim step period versus the actual CO₂ emission performance achieved by the aggregate of affected power plants. The plant's mass CO₂ emissions levels and net generation information reported through their CEMS quarterly reports would be aggregated and used for the emission performance checks to EPA. CARB would be able to do the performance checks using EGU CEMS data without changing the existing cap-and-trade/MRR regulatory structure and timelines. Since the cap-and-trade and MRR regulations are state measures and not federally enforceable, but state-enforceable, there would no need to changes the deadlines. What would be required is that CARB, through the CEMS reports, demonstrate that the EGU emissions in aggregate, meet the multi-year interim period, interim period, and final state mass goals, as noted above.

Compliance periods. The final CPP rule establishes a final 2030 deadline by which and after which affected power plants must be in compliance with the final reduction targets, an interim period of 2022 to 2029 and three multi-year interim periods of 2022 to 2024, 2025 to 2027, and 2028 to 2029. The final rule states that if a State relies upon State measures in lieu of or in addition to emission standards for affected power plants regulated under the plan, then the performance periods must be identical to the compliance periods for affected plants for the interim period, each interim step, and each final reporting period. Further, in the proposed federal plan/modeling trading rule, EPA states that it "is not reopening for comment the compliance periods promulgated in the Clean Power Plan EGs."³ Again, the LADWP believes that CARB would not be

² Final CPP at 64,852

³ Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule (Federal Plan Proposal), 80 Federal Register at 65,013

required to amend the three-year compliance period structure set forth in the cap-and-trade regulation to comply with the CPP. CARB would only be required to demonstrate compliance with the CPP compliance period goals through information obtained from affected California EGUs' CEMS quarterly reports.

CPP and Borrowing of Future Year Allowances. CARB presentation states that the CPP does not allow borrowing of allowances from future compliance periods so believes that further analysis is needed to determine which cap-and-trade borrowing provisions are implicated by this prohibition.

The CPP does not directly address borrowing of allowances from future compliance periods but the proposed federal plan and model trading rule states "EPA is not proposing to allow allowance borrowing across compliance periods in the mass-based trading federal plans; however, the agency requests comment on the use of borrowing across compliance periods."⁴ This requirement, if finalized as proposed, would apply to those states that fail to submit an approvable plan to EPA; since it is unlikely that CARB will be subject to a federal plan, the requirement prohibiting borrowing would not apply.

Also, a State using a state measures plan would be able to use existing state programs (implemented and enforced as a matter of state law) so long as the state demonstrates that the selected measures will result in the state's affected EGUs achieving the mass-based goals for each compliance period.

Backstop in a State Measures Plan Approach. The state plan must specify the backstop that would apply federally enforceable emission standards to the affected power plants if the state measures plan does not achieve the anticipated level of CO₂ emission performance by affected power plants, or a state does not meet programmatic state measures milestones during the interim period. These federally enforceable emission standards must be designed such that compliance by affected power plants with the emission standards would achieve the CO₂ emission performance rates or state's rate- or mass-based interim and final goals for affected power plants. Key requirements include:

- Emission standard requirements must be quantifiable, verifiable, enforceable, non-duplicative and permanent;
- The backstop measure must specify CO₂ emission performance levels that would apply for the interim plan performance period (including specifying levels for each of the interim step 1 through step 3 periods) and the final two-year plan performance periods;

⁴ Federal Plan Proposal at 65,014

- The state measures plan must specify the trigger and conditions under which the backstop federally enforceable backstop emission standards would apply.
- In the event the backstop is triggered, such emission standards would be effective within 18 months of the deadline for the state's submission of its periodic report to the EPA on state plan implementation and performance.

The LADWP is still evaluating the overall regulatory framework and design elements for a backstop measure that would best serve California, including electric utilities and electric consumers within the State. However, the following are several key general principles that the LADWP recommends to guide CARB in the development of California's backstop measures. In particular, the backstop measure—

- Should be flexible, avoiding unit-by-unit obligations;
- Should rely to the extent possible on existing, familiar programs;
- Should be minimally disruptive to existing state programs and stakeholder expectations;
- Should not impose abrupt backstop regulatory obligations, but rather phase in those obligations overtime to the extent possible;
- Should attempt to allocate costs of the backstop regulatory program to most responsible entities;
- Should make sure that costs are spread fairly among all electric utilities within the state, including deregulated utilities that generally do not directly own affected generating units and public power entities that tends to own generating facilities within the State;
- Should address shortfall in future action, rather than having an automatic shortfall adjustment; and
- Should encourage or facilitate interstate trading of compliance instruments to the maximum extent feasible.

Imported Power. As stated in our October 19, 2015 letter, the LADWP recommends that CARB 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

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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.

Title V Permitting. During the December 14 workshop, CARB indicated that the Title V operating permits for affected power plants would be required to contain “conditions showing emissions unit compliance with federal requirements” and that “applicable emissions standards established by California’s CPP plan will be federal requirement.” If California chooses a state measures approach, the CPP rule does not require the cap-and-trade regulation’s requirements to also be federally enforceable. Rather, since these requirements would only be state-enforceable, it follows that they should be kept outside the Title V permits. However, in exchange with this flexibility, a state measures plan must specify federally enforceable backstop measures that would apply to the power plants if the state measures fail to achieve certain emission performance milestones for those EGUs. Making the state-enforceable requirements of the cap-and-trade regulation federally enforceable appears to be unnecessary given the establishment of federally enforceable backstop measures. Such an approach could impair the flexible and efficient administration of the cap-and-trade program by requiring adoption of a separate layer of federal regulation on the state program.

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:rs

c: Ms. Rajinder Sahota, CARB
Ms. Jodean Giese