



California Council for Environmental and Economic Balance

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March 18, 2016

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

RE: Potential 2016 Amendments to Cap-and-Trade Regulation

Dear Ms. Sahota:

On behalf of the members of the California Council for Environmental and Economic Balance (CCEEB), we thank the California Air Resources Board (ARB) for this opportunity to comment on the proposed regulation for potential amendments to the Cap-and-Trade Program, Mandatory Reporting Rule (MRR), and integration or compliance with the Clean Power Plan (CPP). CCEEB is a non-profit, non-partisan association of business, labor, and public leaders, which advances balanced policies for a strong economy and a healthy environment.

Clean Power Plan Timeline

CCEEB supports ARB developing a trading ready program for linkage with other states to implement CPP. We also support appropriate revisions to the MRR and Cap-and-Trade proceedings at this time. While working towards a consensus position within CCEEB we discovered that some of the staff proposed ideas revealed additional questions we believe could benefit from extra time and stakeholder engagement. With important amendments needed for both existing policies, the complications of the Federal overlay have clouded the process and are forcing stakeholders to move without considering all the possible consequences.

Additionally, the Scoping Plan, SB 350 implementation, and post-2020 policies will impact provisions of the Cap-and-Trade program which should be made separate from the CPP compliance rulemaking. With the current stay of the CPP by the Supreme Court, ARB has more time than currently planned to revise and implement its climate policy to incorporate CPP. Using this time to develop a trading ready program at this time could aid in eventual linkage with other states with or without implementation of the CPP. CCEEB reaffirms our support of AB 32 and the Cap-and-Trade program but does have concerns over rushing modifications to meet a changing deadline.

Changes to Accommodate Implementation of the Clean Power Plan

CCEEB is concerned about a number of the items proposed in the February 2016 staff whitepaper, “Addressing Clean Power Plan Compliance Through the Cap-and-Trade and Mandatory Greenhouse Gas Emissions Reporting Regulations”.

First, CCEEB does not support the backstop measure proposed by staff. Setting aside 10 million allowances could impose a substantial burden on all market participants, not just the affected electric generating units (EGUs). Without a better sense of the post-2020 cap decline, it is also difficult to determine the potential magnitude of the impact. This approach could result in demanding emissions reductions from non-electric sector entities.

Second, CCEEB worries that transitioning to two-year compliance periods could remove some of the compliance flexibility that the existing system provides. Executing viable procurement contracts for allowances and offsets is a time-consuming process. Modifying the length of compliance periods could limit entities’ abilities to procure sufficient compliance instruments and/or result in higher cost contracts. We ask that ARB continue its dialogue with EPA and communicate that ensuring the continued success of the Cap-and-Trade Program should be one of its top priorities.

Use of the Cap-and-Trade as a state measures plan would render parts of the program federally enforceable. A market may at times need emergency corrections and State Implementation Plan approval that a federally enforceable rule would require is a 9-12 month process. Additionally, CCEEB believes Title V implications need to be further explored by staff and stakeholders before making such decisions. CCEEB believes that staff should further explore the implications of changes to Title V permits.

Backstop Design

CCEEB does not believe that ARB’s proposed backstop design would fulfill the EPA requirements for a backstop under the Clean Power Plan. As we understand it, the backstop would be enacted when affected electric generating unit (EGU) emissions exceed the CPP designated glide path by ten percent or fail to achieve the interim or final goals. ARB is proposing to set aside a portion of the general cap and trade program allowances and, when the back stop is triggered, EGUs would be required to purchase these allowances. The allowances to be purchased by each EGU would be proportional to the actual emissions from that EGU. This proposed backstop design is unlikely to conform to EPA requirements.

The CPP is clear that the backstop must consist of emission standards for EGUs and emission standards must be set at such a level to meet the state’s emission goals. We do not believe that ARB’s current backstop proposal would be deemed to constitute an enforceable emission standard that assures EGU emissions achieve the CPP’s goals. While it would exert pressure on the broader cap-and-trade market and should thereby achieve additional reductions, it would not necessarily assure that EGU emissions conform within the CPP’s goals.

CCEEB is interested in working with ARB and other stakeholders to develop a more feasible approach to implementing the backstop in the unlikely event it would be triggered.

Verification Deadline/Declining Pool of Verifiers

While we understand ARB's rationale in terms of supporting the Cap-and-Trade allocation process, acceleration of the deadline poses several issues for compliance covered entities and their verifiers. There may be substantial unintended consequences from accelerating the deadline under these circumstances ranging from impacts to data quality to increasing the risk of unintentional noncompliance due to lack of qualified verifiers. To explore the issues and root causes and enhance the stakeholder process, CCEEB would like work with the ARB to host a technical workshop to work through the impacts the verification deadline change could bring, and other issues this proposal brings forth.

CCEEB would like to better understand the reasons for the diminishing pool of verifiers. The pool of ARB-accredited verifiers has declined annually since the MRR verifications were first required in 2010. In 2015, 25 companies verified over 500 MRR reports. With its proposal to advance the verification date to August 1st, ARB would further exacerbate the present challenges associated with completing the verification process in a timely manner. We are also concerned with the reduction in the pool of accredited verification companies as there may be insufficient skilled personnel available to perform verifications. ARB should explore ways to prevent further decline in the number of verifiers and bring additional verification bodies into the program. We believe it would be worthwhile if ARB invited some of the verifiers no longer in the market to provide input to help understand why they made the decision to discontinue providing these services. This information could help address the root cause of why companies are leaving the California programs and make adjustments, as appropriate. ARB should also reach out to the current pool of verifiers to hear their perspective on what changes might be needed to ensure the feasibility of any modifications to the verification deadline.

Before considering changes to the verification deadline, CCEEB would like to discuss, in a dedicated technical workshop, additional ways to streamline the verification process. For example, we think staff should consider upgrades to software, timing of reporting tool availability, extending the 6-year limit for verifiers, ARB and verifier issue arbitration the release of guidance documents during the verification process, and how certain decisions impact the MRR process.

Software upgrades to Cal-eGGRT system could ease the burden associated with reporting and verification for entities reporting on behalf of multiple subsidiaries and affiliates. This might include allowing for batch review and certification for multiple facilities, removal of the redundant password request for each report certification, data loading from the previous year's report, elimination of duplicate reporting from the Subparts, and the ability to upload one Excel sheet for gas-insulated switchgear (SF6) reporting for multiple affiliates and subsidiaries.

Additionally, covered entities have EPA reporting deadlines and even the earlier April 10th deadline that require resources to meet. These reporting deadlines coupled with the earlier verification deadline compresses the schedule too much for all the intermediate steps to occur without complication. With regard to EPA, unfortunately the reports are not similar enough to benefit from concurrent data collection. CCEEB believes all parties would benefit greatly from a technical working group to discuss this proposal from all angles.

Standardized Regulatory Impact Assessment

CCEEB requests that ARB provide the Department of Finance with additional options beyond a carbon fee and prescriptive regulations. There are a number of variations on Cap-and-Trade that CCEEB and others have requested with the potential to lower the costs of compliance that are known alternatives. These variations could be Cap-and-Trade programs similar to RECLAIM or the US/EPA Acid Rain Program, or a program where allowances are freely allocated. We believe consideration of an offset only program is a known alternative worth analyzing. We are concerned that passing off a carbon fee or prescriptive regulations has the appearance of simply "checking the box".

Conclusion

CCEEB thanks the ARB for considering our comments on the proposed amendments to the Cap-and-Trade regulation, mandatory reporting regulation, and the clean power plan. We represent a broad cross-section of the covered entities in California. As such, CCEEB is in a position to represent diverse industry sectors and would like to assist ARB in developing these ideas further.

CCEEB looks forward to playing an integral role in the future development and operability of California's Cap-and-Trade Program. Please contact me or Jackson R. Gualco, Kendra Daijogo or Mikhael Skvarla, CCEEB's governmental relations representatives at The Gualco Group, Inc. at (916) 441-1392 should you have any questions.

Thank you for considering our comments.

Sincerely,



GERALD D. SECUNDY
President

cc: Honorable Chairman and Members of the Air Resources Board
Mr. Richard Corey
Ms. Edie Chang
Mr. Steve Cliff
Mr. Bill Quinn
Ms. Janet Whittick
The Gualco Group, Inc.