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Submitted Via Electronic Transmission

February 14, 2014

Steve Cliff
Assistant Division Chief
Stationary Source Division
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: *Comments of the Northern California Power Agency on January 31, 2014 Discussion Draft*

Dear Steve:

The Northern California Power Agency[1] (NCPA) appreciates the opportunity to provide these comments to California Air Resources Board (CARB) Staff on the January 31 Discussion Draft of Proposed Amendments to the Cap-and-Trade Program Regulation (Discussion Draft).

During the October 2013 Board meeting, the CARB Board reviewed the proposed amendments to the Cap-and-Trade Program Regulation (Regulation),[2] and identified several areas for further deliberation and potential revisions.[3] Staff's January 31 Discussion Draft sets forth proposed changes to the previously released amendments for review and comment by stakeholders. NCPA is encouraged by the efforts that Staff has made to address the concerns raised by stakeholders and respond to the Board's direction to work with stakeholders to attempt

1 NCPA is a not-for-profit Joint Powers Agency, whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and whose Associate Member is the Plumas-Sierra Rural Electric Cooperative.

2 In addition to the *Notice of Public Hearing to Consider Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms*, CARB issued a *Staff Report: Initial Statement of Reasons* (ISOR), to which the proposed amendments were included as *Appendix E: Proposed Regulation Order* (Proposed Amendments).

3 Resolution 13-44, October 25, 2013: Draft http://www.arb.ca.gov/regact/2013/capandtrade13/res13-44.pdf; Attachment A to Resolution 13-44: http://www.arb.ca.gov/regact/2013/capandtrade13/attacha.pdf.

to resolve the outstanding issues. NCPA looks forward to continuing those efforts through the release of the "15-day" changes and prior to approval of the final amendments by the CARB Board.

Section 95830(c)(1) and 95830(f) – Employees With Control Over Compliance Instruments Transactions Should be Narrowly Defined

Proposed revisions to section 95830(c)(1) clarify the scope of employment implicated in allowance and compliance instrument transactions. As defined in the Proposed Amendments, the language was overly burdensome, sought information on a very broad range of employees, and did not clearly defined the scope of an employee's responsibilities as it pertains to allowance transactions. The proposed revisions set forth in the Discussion Draft would limit the reporting for CITSS registration to employees "who have clearance from the entity to approve, initiate, or review transaction agreements, transfer requests, or account balances involving compliance instruments in the Cap-and-Trade Program or any External GHG ETS linked pursuant to subarticle 12."

This revision should be incorporated into the Regulation. Likewise, the Discussion Draft's proposal to change section 95830(f) to allow for 30 days to report changes – rather than 10 days – should be adopted. These changes, together with revisions to section 95912(d)(5) more fully addressed below, would remove the unnecessary restrictions on auction participation and CITSS registration currently proposed.

Section 95912(d)(5) – Limitations on Auction Participation are too Restrictive

NCPA appreciates the proposed revisions to section 95830, but changes should also be incorporated into section 95912(d)(5) to address overly restrictive constraints on auction participation. Consistent with the direction set forth in Resolution 13-44, NCPA would like to work further with Staff and other similarly impacted stakeholders to address the concerns stakeholders have raised with regard to the current proposal. NCPA urges Staff to look closely at the restrictions that section 95912(d)(5) places on an entity's ability to both operate its core businesses and comply with the Regulation. Business changes should not preclude a covered entity from purchasing or selling allowances in the auction. As currently proposed, there are many instances under which such a change – occurring either 30 days prior or 15 days after an

auction – *may* result in the entity being denied the ability to participate in the auction (or, invalidating already-completed allowance transactions). Restrictions on entity changes that cover 45 days, four times a year, are unreasonable. At a minimum, this section should be clarified – or a new provision added – to note that changes occurring within 15 days after an auction and not initiated by the registered entity would have no impact on completed auction transactions.

Section 95912(g) – 10-Year Restrictions on Communications are Unreasonable.

The Discussion Draft includes significant proposed revisions to section 95912(g) that would place a 10-year restriction on any discussions regarding past bidding information. Specifically, the change would provide that: Individuals and entities registered in the tracking system, entities that have a direct or indirect corporate association with a registered entity pursuant to section 95833, and entities and individuals that have qualified as Cap-and-Trade Consultants or Advisors pursuant to section 95923 in the last ten years may not communicate any information on auction participation outlined in section 95914(c) with any entity that is not part of an association disclosed pursuant to section 95914, except as requested by the Auction Administrator to remediate an auction application."

The Discussion Draft inserts this expansive new restriction without any explanation or rationale for restricting past communications for a decade. The number of individuals involved could be extensive, and before adopting what appears to be an extremely draconian restriction, stakeholders should be further engaged in discussions regarding the need for such a provision.

Section 95856(h) – Retirement for Annual and Triennial Compliance Obligation

As proposed, the retirement of compliance instruments based solely on vintage could result in the Executive Director retiring allowances in a manner that would technically put electrical distribution utilities that designated freely allocated allowances directly into their compliance accounts in contravention of the prohibitions on the use of allowance value set forth in section 95892. The proposal in the Discussion Draft that would require retirement of compliance instruments for annual compliance obligations, rather than just an audit of the number of allowances available further complicates this problem. In order to address this problem, the Regulation should allow compliance entities to designate which allowances the

Executive Officer would withdraw for retirement or provide for a way to distinguish between freely allocated and purchased allowances.[4]

In the alternative, a new subsection should be added to section 95856(h) that recognizes the potential for the Executive Director's actions to inadvertently reflect a violation on the part of the electrical distribution utility. The following language would address this error:

> *New Section 95856(h)(4): Notwithstanding section 95856(h)(1) and (2), an electrical distribution utility will not be in violation of section 95892(d)(5) when the Executive Officer retires compliance instruments, provided that the electrical distribution utility has a quantity of compliance instruments not allocated to it pursuant to section 95870(d) in its compliance account that is at least equal to its compliance obligation for any transactions for which the use of allocated allowance value is prohibited under section 95892(d)(5).*

Section 95923: Disclosure of Cap-and-Trade Contractors

The requirements and definitions surrounding the disclosure by registered entities of consultants and advisors working on the Cap-and-Trade Program have had several iterations since their first introduction in the July 15, 2013 Discussion Draft of proposed amendments. Stakeholder calls for further clarity and definitions have been heard by both Staff and the CARB Board, and Attachment A to Resolution 13-44 notes that "*staff will coordinate with stakeholders to craft regulatory language to limit this disclosure requirement to contractors that have access to tracking system account information, compliance instrument procurement, and emissions obligations.*" The Discussion Draft properly strikes the requirement to include a brief description of the work performed by the consultants and advisors that are required by the registered entity. However, NCPA is concerned that the proposed changes set forth in the Discussion Draft, which invoke the conflict of interest provisions applicable to verification bodies and offset verifiers pursuant to Section 95979(b)(2) of the Regulation and section 95133(b)(2) of the Mandatory Reporting Regulation (MRR), further complicates the definition and incorporates a far broader – and unnecessary – scope of individuals. The current proposal also sets up a complex and cumbersome structure where the very advisors and consultants that

4 Both of these proposals were addressed in written comments submitted by NCPA on August 2, 2013 regarding the July 15, 2013 Discussion Draft (http://www.arb.ca.gov/lists/com-attach/50-cap-trade-draft-ws-VDpSN1MiAzEKU1Az.pdf) and on October 23, 2013 on the Proposed Amendments (http://www.arb.ca.gov/lists/com-attach/88-capandtrade13-BWtUMQFwV2UGX1Ix.pdf).

are the subject of section 95923 are defined in an entirely – and largely unrelated – section of the Regulation and MRR. It is also unclear if the definition is intended to apply to the list of services only, or also to the provisions in section 95979(b)(2) and MRR section 95133(b)(2) that references the relationships going back five years. Additionally, the list of 20 different types of "services" is not even confined to providing the "types of services" specifically related to the Cap-and-Trade Program. The list includes, among others, *any* bookkeeping services (95979(b)(2)(K)), service related to "information systems" (95979(b)(2)(L)), and legal service (95979(b)(2)(R)). This extensive list of definitions merely expands, rather than limits the types of disclosures required under the Regulation, and does so without a any connection between the discourse and the cap-and-trade program activities. Furthermore, as proposed, the definition still fails to distinguish between individuals that "advise and consult" with more than one participant in the Cap-and-Trade program, but that do not have access to information regarding trading or allowance instrument acquisition matters. Indeed, aside from the unwarranted restrictions and complicated manner in which this is structured, it creates a bureaucratic regime that will require full time staff just to monitor and cross-reference the myriad tangential relationships that could be deemed prohibited under the broad list of issues set forth in section 95979.

NCPA urges Staff to continue to work with stakeholders on this section, and to fully define and limit the disclosures required. Consultants and advisors can work with entities on a range of issues and matters, from advising on reporting deadlines to potential use of allowance values, none of which would involve "access to tracking system account information, compliance instrument procurement, and emissions obligations." Requiring reporting to CARB about all such individuals is not warranted unless those individuals have access to confidential or restricted information, or direct control over compliance instrument disposition. If CARB continues to have concerns about individuals participating in the cap-and-trade program that have access to information received from registered entities, the restrictions and disclosures required of individuals registering with CITSS should be revised, rather than placing additional requirements on covered entities.

Section 95914(c)(3) – Definition of Auction Advisor Should not be Expanded

The Discussion Draft would expand the definition of Cap-and-Trade Consultant or Advisor to include those providing advice on bidding strategies under section 95914(c)(3). This

proposed change would invoke a very broad definition for Cap-and-Trade consultants and advisors in the section that previously narrowed this disclosure to "bidding strategies." The Regulations should not include this expanded definition and all of the newly proposed revisions in 95914(c)(3) in the Discussion Draft should be removed.

While NCPA understands CARB's desire to track the conduct of individuals that are working with and for covered entities and participating in CITSS, the broad based definitions and restrictions are unduly burdensome and restrictive. As discussed above, utilizing the conflict of interest restrictions associated with verifiers and offset project verifiers provides little clarity to participants relevant to the role of Consultants and Advisors *for purposes of compliance or participation in the cap-and-trade program.* Applying these restrictions and the same broad-based definitions to individuals employed or retained for the *sole purpose* of providing bidding strategies invokes a cumbersome process that is wholly unnecessary. The definition and disclosures relevant to auction bidding advisors should not be changed.

Section 95893: Allowances to Natural Gas Sector should retain 2011 Benchmark

In the September 2013 Proposed Amendments, CARB utilized 2011 natural gas utility data to determine the allocation of allowances to individual natural gas suppliers. The Discussion Draft notes that Staff is evaluating the appropriateness of retaining this benchmark. NCPA supports the use of the 2011 data for the natural gas suppliers, and believes that the allocation proposal and methodology set forth in the Proposed Amendments should be adopted. Likewise, the value of these allocated allowances should be used exclusively for the benefit of retail ratepayers of each natural gas supplier, consistent with the goals of AB 32, but the Regulation should not include a prohibition on the return of the allowance value in a volumetric manner, as contemplated in section 95893(d)(3). Instead, each natural gas supplier should be able to determine the manner in which returning the allowance value to its ratepayers maximizes the benefits, and best meets the needs of its own constituents.

Cost Containment.

Finally, NCPA urges Staff to begin looking at further cost containment matters prior to the third compliance period. During the October 2013 Board meeting, several stakeholders: Resolution 13-44 provides that "pursuant to the draft update of the AB 32 Scoping Plan, the Board directs the Executive Officer to develop a plan for the post-2020 Cap-and-Trade Program,

including cost containment, before the beginning of its third compliance period to provide market certainty and address a potential 2030 emissions target." (Resolution 13-44, p. 4) NCPA understands that this does not require a change in the current draft of the regulation, but would like to see the Executive Director address this issue prior to the beginning of the third compliance period.

Conclusion

The Discussion Draft is a useful tool for furthering communications regarding proposed language for the formal 15-day changes to the amendments. NCPA appreciates the release of the draft and looks forward to further addressing the issues addressed herein with Staff prior to the release of the 15-day changes. If you have any questions regarding these comments, please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com.

Sincerely,

C. Susie Berlin
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