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Catherine H. Reheis-Boyd
President

January 4th, 2016

Chris Gallenstein
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95814

Dear Mr. Gallenstein:

Subject: WSPA comments on Development of State's Proposed Compliance Plan for US EPA's Clean Power Plan Rule

The Western States Petroleum Association (WSPA) representing 25 companies that explore for, develop, refine, market and transport petroleum and petroleum products in the Western U.S. appreciates the opportunity to comment on the CA Air Resources Board's (CARB) development of the state's compliance plan for US EPA's Clean Power Plan rule.

Submission of the Cap-and-trade Rule May Not be Necessary to Meet CPP Requirements
CARB proposes to submit California's cap-and-trade program as the centerpiece for compliance with the CPP under the "state measures" approach allowed by EPA. However, submission of the cap-and-trade program may not be necessary to meet the federal mandate. California's recently enacted 50% Renewables Portfolio Standard is one of the most stringent in the world. In addition, the state invests over $1 billion per year in energy efficiency upgrades. Taken together, these two measures alone may meet the federal requirements.

Recommendation: WSPA suggests that CARB model the GHG-reducing impacts of the more stringent RPS and energy efficiency programs to determine if they are adequate to meet the CPP glide path and final targets as a simpler alternative to including the cap-and-trade program in California's CPP submittal.

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Cap-and-trade Rules Must Remain State-Only and Flexible

The final CPP makes it clear that a "state measures" plan is enforceable only by the state, but requires federally enforceable backstop measures that apply only to the affected EGUs. EPA approval is required for whatever plan the state submits.

If CARB chooses to include the cap-and-trade program as part of a "state measures" plan for implementing the CPP in California, it is important that the state be clear in its submittal to EPA regarding the state-only nature of the cap-and-trade program and that the separate, federally enforceable backstop measures are applicable to only affected EGUs.

California's cap-and-trade program broadly covers 85% of the state's economy, including numerous sectors beyond the electricity sector that are not subject to the CPP rule. Flexibility is a key tenet of the cap-and-trade program, making it a most cost-effective option for achieving GHG reductions. However, the requirement for EPA approval of all CPP state plans, including state measures plans, means that submission of the cap-and-trade rule and/or other AB 32 rules to EPA as part of California's CPP plan may decrease or eliminate California's future flexibility to change its AB 32 programs. The final CPP rule did not clarify whether a state's changes to measures in its approved state measures plan could be implemented prior to EPA approval of those changes. As a result, the state CPP plan could restrict California's options in the future by potentially locking the submitted version of the cap-and-trade rule into place.

AB 32 provides flexibility for the Governor to make changes in the market mechanism that would be lost if changes to the cap-and-trade rule must be approved by US EPA prior to implementation. Both CARB and the Governor must have the flexibility to change the cap-and-trade program as needed based on market and economic indicators. California must preserve all of its current options to develop GHG measures and change course over the coming decades, since nobody can predict what will work and what won't work over that time frame.

In addition, particularly as CARB seeks to make even more dramatic reductions in statewide GHG emissions, it is essential that CARB not introduce new limitations impacting liquidity such as separate markets for some sources or restricted access to any linked market or other complicated schemes in order to align with the CPP.

Recommendation: We recommend that before including the cap-and-trade rule as part of the state's CPP plan, CARB complete the modeling described above, and exclude the cap-and-trade rule from the CPP plan if the RPS and efficiency measures are sufficient to meet the CPP limit on GHG emissions from EGUs. If CARB decides to include cap-and-trade as an element of the CPP submittal, it should either do so with a high-level description that retains the state's existing flexibility to change the program as may be needed in response to market and other factors, or if rule language is submitted, expressly state in the submittal that as a state-only measure CARB may amend the rule from time to time and will implement such amendments without waiting for EPA approval.

Industrial EGU Regulatory Status

We understand that CARB's initial CPP implementation proposal, discussed in the October 2, 2015 workshop, was based on the draft Clean Power Plan, which did not make the CPP's applicability to industrial EGUs clear. After that workshop, the final CPP regulation was published in the Federal Register on October 23, 2015. The final CPP makes clear that the intent is to regulate greenhouse gas emissions from one sector only – the electricity sector. Therefore, the final CPP rule exempts electric generation at refineries and other industrial sources (which is generally part of combined heat and power, a.k.a cogeneration) from the Clean Power Plan. We believe that CARB is also planning to make this applicability distinction clear. We agree.

Recommendation: We recommend that CARB clarify for all stakeholders the applicability of the CPP only to electricity sector EGUs and not to industrial cogeneration units, and apply the required federally enforceable backstop measures only to electric sector EGUs.

Initial State Plan Submittal

As described at CARB's December 15, 2015 workshop on "Clean Power Plan & Cap-and-Trade", if California is going to rely on cap-and-trade as a significant element of the state's CPP compliance strategy, numerous issues must be resolved. Depending on the nature of the resolution, regulatory amendments to the cap-and-trade and/or MRR rules may be necessary. Experience has shown that amendments to these rules can take 12 to 18 months, if not longer. Nevertheless, comments made by CARB staff suggest that the agency plans to submit a complete CPP plan to EPA on or before September 6, 2016. WSPA is concerned that the timeline imposed by efforts to finalize CARB's approach to the CPP by next September unnecessarily compresses the cap-and-trade and MRR regulatory timeline to the detriment of these other critical work products.

The final CPP allows states to submit a request for a two-year extension of the deadline for submission of a complete CPP plan, to September 6, 2018. 40 CFR §§ 60.5760(b); 60.5765(a). As described by EPA in an October 22, 2015 policy memo, an extension request "is simple and requires only that the state demonstrate it has taken certain preliminary and readily achievable steps towards the development of its plan." Further, "[o]ne purpose of the [CPP] initial submittal is to encourage planning and engagement with the public to facilitate the submission of an approvable and timely final state plan." In WSPA's view, this additional time is crucial to assuring that all of the issues already identified by CARB, as well as others that inevitably will appear are fully vetted and all stakeholders' views are considered.

Recommendation: Because of the overlapping time periods for preparation of CARB's scoping plan update, cap-and-trade and MRR rule amendments, and CARB's determination of how best to comply with EPA's CPP, WSPA suggests that CARB apply for the 2- year extension of the deadline for submission of a final state CPP plan. This additional time would enable CARB to properly evaluate its options under the CPP without detracting from the important and substantive work required for the scoping plan update and cap-and-trade amendments.

Thank you for this opportunity to provide comments. We will continue to participate going forward to work towards resolution of meeting the Federal CPP regulatory requirements without negatively impacting the AB 32 cap-and-trade program and its industrial capped entities. If you have any questions please contact me at this office, or Tiffany Roberts of my staff at (415) 235-8741.

Sincerely,

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