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September 19, 2016

Ricard Corey
Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

RE: Turlock Irrigation District Comments on the August 2, 2016 Amendments to the Cap-and-Trade Regulation

Dear Mr. Corey,

Turlock Irrigation District ("TID") respectfully submits its comments to the California Air Resources Board ("ARB") on its August 2, 2016 Proposed Amendments to the California Cap-and Trade Regulation ("Proposed Amendments"). TID has illustrated its support of the State's climate goals by investing in efficient natural gas plants and renewable energy prior to state mandates. TID supports the extension of the Cap-and-Trade post 2020 as a crucial component to help accomplish the state's 2030 GHG emissions goals. Cap-and-Trade is the most effective means of mitigating rate impacts to our customers. The ARB should ensure the post 2020 Cap-and-Trade program strikes an appropriate balance between the state's environmental goals and the utilities' responsibility to provide reliable power in a cost effective manner. TID appreciates the continued opportunity to work with the ARB staff on improving the Cap-and-Trade regulation and extending the program beyond 2020.

DISCUSSION

I. The ARB Should Retain The RPS Adjustment And Clarify Its Guidance Language To Require That the Direct Delivery of Null Power Be Reported As Unspecified Imports.

The RPS Adjustment is a critical component of the Cap-and-Trade Regulation that should not be removed. The RPS Adjustment ensures that utilities, like TID, that made early, voluntary investments in out-of-state renewables are able to utilize zero emissions resources without paying a substantial and unjustified carbon price that devalues the early investment and doesn't fairly recognize a zero net carbon emissions source. At the time that TID made its investment, the State encouraged "firming and shaping contracts" and allowed utilities to meet 100% of the RPS obligations with this contract structure. TID currently utilizes its "grandfathered resource"

to meet the vast majority of our RPS compliance obligation. Removing the RPS adjustment will considerably increase the cost to the District which is ultimately placed on our customers. The proposed allocation of allowances to electric distribution utilities would not adequately address this cost because the free allocation would decline over time, and as currently proposed, would not distinguish grandfathered resources. The ARB should therefore retain the RPS adjustment.

In order to address the ARB's concerns associated with meeting the "direct delivery" prohibition in the RPS adjustment requirements, the ARB should require that any "null power" (i.e., the energy sold from the resource that does not contain the green attributes), be assigned the "unspecified"[1] emissions rate. This would not require a regulatory change, but only require the ARB to enforce the requirement that electric power entities must report the REC serial numbers from eligible renewable resources. Enforcement of this requirement would ensure that California's ratepayers benefit from their purchase or investment in "green attributes" of out-of-state renewable resources.

TID does not agree with the suggestion that assigning an unspecified emissions factor to null power would constitute a violation of the Dormant Commerce Clause. A state law violates the Dormant Commerce Clause when the law discriminates against out-of-state competition to benefit local economic interest, or is unduly burdensome on interstate commerce.[2] The proposal to require null power be reported as unspecified is not an attempt to control prices on the face of the regulation and therefore is not a violation of the Dormant Commerce Clause. Moreover, California's interest in protecting and preserving its air quality justifies any incidental burden the enforcement of the REC serial number reporting requirement may pose for entities that knowingly purchase null power without the green attributes from a renewable energy resource.

If the ARB moves forward with its proposal to retract the REC serial number reporting requirement, TID will none-the-less take all steps possible to ensure that that energy which has been sold as null power will not be delivered back to California. Because TID owns its grandfathered resource, and is a scheduling coordinator, TID is able to view all e-tags to confirm how much, if any, null power has been delivered back to California. TID therefore opposes the removal of the RPS adjustment and its replacement with the flat allowance allocation to EDUs at the maximum PCC-2 limits.

II. **<u>The ARB Should Not Reallocate Cap-and-Trade Allowances From POU Electric Distribution Utilities to Emissions Intensive Trade Exposed Industries.</u>**

The Proposed Amendments would reallocate a certain amount of allowances from EDUs to Emission Intensive Trade Exposed ("EITE") industries. TID does not support this proposal and

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[1] That is, it should carry a carbon emissions rate as determined by the State recognizing the aggregate carbon intensity of the resources that are not specified and sold as renewable.

[2] See C&A Carborne, Inc. v. Town of Clarkstown, 511 U.S. 583 (1994); Pharmaceutical Research and Manufacturers of America v. Walsh et al, 538 U.S. 644 (2003); Maine v. Taylor, 476 U.S. 1138 (1986); Rocky Mt. Farmers Union v. Corey, 730 F.3d 1070 (2013).

does not agree with the two main rationales supporting the reallocation. First, we do not agree that customers in POU service territories are at a disadvantage to similarly situated customers in IOU service territories. While POUs do not have a requirement to return allowance revenue to EITE customers, many POUs, including TID, have undertaken substantial efforts to use the freely allocated allowances for the benefit of all their customers, EITE included. Many POUs may place allowances directly in their compliance account, thereby offsetting the costs of procuring allowances they would otherwise pass on to customers. POUs may also apply allowance revenue to programs that reduce GHG emissions and offset other regulatory costs (e.g., the RPS). We do not believe there is nor have we seen any evidence to support the contention that EITE customers in POU service territories are at a disadvantage to IOU customers.

Finally, the reallocation proposal would create a significant rate issue for POUs. Unlike IOU customers that will simply stop offering rebates and continue to pass on all allowance procurement costs, POUs will continue to use their allowances for compliance or for programs that benefit all customers. EITE customers will effectively benefit twice from the Cap-and-Trade (once through free allocation and again from the POU's use of freely allocated allowances). This situation will create a disparity among the POU's ratepayers. For these reasons, the ARB should not reallocate allowances from the electricity sector to EITE entities.

III. <u>In Calculating Allowance Allocations to EDUs, The ARB Should Account for the Individual Utility Load Growth Assumptions.</u>

Allowance allocation is perhaps the most important issue in the development of a post 2020 Cap-and-Trade program. The current methodology addresses the diversity in California's electricity sector. Since utilities are complex and affected differently by Cap-and-Trade, it is important to recognize that diversity in the allocation methodologies. The use of the S-2 forms takes an important step in fulfilling this objective. However, an assumption of flat load growth across the entire electricity sector does not address the variability among utilities. Utilities like TID that have territories with more affordable costs of living can reasonably expect to see load growth. Furthermore, by virtue of POUs smaller size, even a single new large customer can swing load growth more than 1%. The ARB should recognize some load growth variation in their allocation methodology.

IV. <u>In Calculating Allowance Allocations to EDUs, The ARB Should Allocate Allowances for Electric Vehicle Charging.</u>

The ARB should acknowledge the disproportionate burden borne by the energy sector as it leads the way to a cleaner more renewable future. There is no question that vehicle electrification and electrification of certain residential, commercial and industrial processes will play a critical role in the achievement of the State's ambitious climate targets. The 2015 IEPR recognizes the increasing role the electricity sector will play in achieving *state-wide* GHG emissions reductions:

> The electricity sector accounts for about 20 percent of statewide GHG emissions, with about half from electricity imported from out-of-state, whereas the transportation sector is the largest source of GHG emissions, accounting for about 37 percent.[3] Consequently, decarbonizing the transportation sector should be a primary focus of the state's climate goals, and policies in the electricity sector must build on policies to reduce emissions from the transportation sector. For example, new renewable procurement should go hand-in-hand with increased electric loads from electrification of the transportation sector. If they are not in lock-step, then California will not realize the full potential of the GHG reductions from decarbonizing the electricity sector.

> "Another way to reach ZNE is to replace natural gas appliances, such as gas stoves, water heaters, and space conditioning units, with electric appliances; such fuel-switching is called "electrification."[4]

Similarly, SB 350 recognizes this trend and directs the ARB to "identify and adopt appropriate policies, rules, or regulations to remove regulatory disincentives preventing retail sellers and local publicly owned electric utilities from facilitating the achievement of greenhouse gas emission reductions in other sectors through increased investments in transportation electrification. Policies to be considered should include, but are not limited to, an allocation of greenhouse gas emissions allowances to retail sellers and local publicly owned electric utilities, or other regulatory mechanisms, to account for increased greenhouse gas emissions in the electric sector from transportation electrification."[5]

The ARB should work with the CEC to build on the load growth estimates developed in the 2015 IEPR. The agencies should develop load growth estimates to 2030 that account for the trends in electrification of vehicles and other processes. Since the installation of new meters at every customer site with EV charging is infeasible (i.e., the only way to verify actual EV load growth), we believe that working with the CEC to develop load growth estimates is the only way to meet the statutory intent of Cal. Health and Safety Code Sec. 44258.5.

V. The ARB Should Not Amend The Existing Provisions That Provide Publicly Owned Utilities With the Option To Place Freely Allocated Allowances Into Their Compliance Account Or Consign The Allowances.

[3] See 2015 IEPR at p. 50.
[4] See 2015 IEPR at pp. 43 and 50, available at: https://efiling.energy.ca.gov/getdocument.aspx?tn=210527
[5] Cal. Health and Safety Code Sec. 44258.5

The POU option to consign allowances or place them in the compliance account is an important element of the Cap-and-Trade Regulation and should be retained for at least three reasons. First, because POUs are typically vertically integrated, POUs should have the flexibility to have more control over the compliance of their utility owned resources. Requiring POUs to purchase 100% of their allowances would increase the exposure of the POUs ratepayer owners to fluctuations in the Cap-and-Trade market in addition to the market exposure many POUs already have, being vertically integrated. Second, the pool of allowances the POUs would offer in consignment would not make a significant contribution to market liquidity. Third, the IOUs do not have this option in part because of concerns that merchant generation must be able to fairly compete with utility owned generation and allowing the IOUs the same option as POUs would create a competitive disadvantage for merchant generators. Since most POUs rarely if ever compete with merchant generators, there is no need to require POUs to consign 100% of their freely allocated allowances. While this issue was not addressed in the Proposed Amendments, TID takes this opportunity to make clear that it would strongly oppose any such proposal. Furthermore, TID would support allowing POUs more flexibility in managing allowances by removing the once-for-all and one-time-only annual requirements that POUs are currently under. Such changes implemented carefully we believe could increase positively basic market characteristics. For example, if POUs could choose which individual auctions to participate in nearer in time, they could withhold allowances based on market conditions and reduce oversupply and carry-over of volumes.

VI. The ARB Should Not Move Unsold Allowances Into The APCR In The Third Compliance Period.

The Proposed Amendment to Section 95911(g) would move unsold allowances from the quarterly auctions into the Allowance Price Containment Reserve ("APCR") starting January 1, 2018. While we appreciate the ARB's desire to send a signal to the market regarding the overall supply of allowances and the integrity of the Cap-and-Trade markets, we do not believe that signal is needed right now. We do not believe the state should tighten the supply of allowances because there may be longer term implications due to the aggressive GHG reduction goals set for 2030 and 2050. Moreover, between now and the start of the post-2020 program, there will be more certainty regarding the Cap-and-Trade market as the Chamber of Commerce lawsuit is resolved and as the Governor's office explores a November 2018 ballot initiative. If the auctions continue to undersell into the third triennial compliance period, the ARB should revisit this proposal, but only after the free allowance allocation rules for post 2020 have been approved by the Board.

VII. The ARB Should Encourage a Robust Offset Market.

The 8% offset usage limit is an important aspect of the Cap-and-Trade program. Offsets allow for investments in cost-effective emissions reduction and create a needed price signal for new innovative GHG emissions reduction technologies. The usage of offsets also serves as an

important cost containment measure in the event that an additional supply of compliance instruments is needed by obligated entities. The ARB should retain the 8% offset usage limit and continue to evaluate new opportunities for offset protocols, such as the REDD offset program.

VIII. The ARB Should Not Allow One Way Linkages With Other Cap-and-Trade Markets.

TID is very concerned that other jurisdictions may be able to draw on the supply of California allowances without creating an additional supply of allowances available to California obligated entities. While Washington State's use of allowances may be a relatively small demand, TID is concerned that as other states pursue GHG reduction policies, there could be a significant new demand for California allowances. In other words, the one-way linkages policy is a "slippery slope" for the integrity of California's program. In general, we believe linkages can be good for the market, but only when the linkages are two-way linkages that create an additional supply of allowances for California obligated entities.

CONCLUSION

TID is pleased to provide comments on the Proposed Amendments. TID supports the extension of Cap-and-Trade and believes that it has effectively driven and will continue to achieve meaningful reductions in GHG emissions. To date, Cap-and-Trade has proven to minimize the cost burden felt by TID's ratepayer owners, particularly those in disadvantaged communities. We applaud the ARB for the steps it has taken to recognize that in addition to furthering the State's important GHG objectives, utilities must also ensure that electricity is affordable and reliable for all of California's citizens. As the ARB refines the Proposed Amendments in 15-day language, it should recognize the cost exposure of California's ratepayers to out-of-state renewable resource procurement – particularly TID ratepayer's substantial exposure - and retain the RPS adjustment. Should the ARB drop the RPS adjustment, we would recommend a like mechanism to fairly address this issue. The ARB should also continue to acknowledge the disproportionate burden borne by the energy sector as it leads the way to a cleaner, more renewable future. TID looks forward to helping the state achieve our ambitious GHG targets and looks forward to actively participating in the ongoing discussions on these important objectives.

Respectfully Submitted,

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Ken R. Nold
Turlock Irrigation District