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Electronically Submitted

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Steve Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Comments of the **Northern California Power Agency** on the January 25 Workshop on *Public Information Sharing in California's Cap-and-Trade Program*

Dear Steve:

The Northern California Power Agency[1] (NCPA) appreciates the opportunity to provide these comments to the California Air Resources Board (CARB) regarding the materials and proposals presented during the January 25, 2013 Workshop, *Public Information Sharing in California's Cap-and-Trade Program* (January 25 Workshop) and the *Draft Cap-and-Trade Public Information Plan* (Draft Plan), dated September 20, 2012.

INTRODUCTION

During the January 25 Workshop, CARB Staff advocated for the broadest possible release of Cap-and-Trade Program and auction related information, ostensibly to enable the public to ascertain that the program is working properly and monitor the compliance of covered entities. It is important for CARB to be able to assure the public that the Program is functioning properly. It is also important for the public to know that covered entities are complying with the Regulation for *California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms.*[2] However, there needs to be assurances that the public release of information meets the objectives

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 Title 17, California Code of Regulations (CCR), Sections 95801-96022.

of public disclosure without compromising the ability of covered entities to meet their compliance obligations under the Regulation in the most cost-effective manner possible. Any proposed disclosure of information in a non-aggregated form during the intervening years of a compliance period should be cautiously viewed. On the other hand, information generally related to compliance at the end of a compliance period would be less sensitive. As more fully discussed herein, that information need not take the form of published "account information," but rather could be disseminated via an "Annual Auction Report" and post-auction analysis conducted by the market monitor.

NCPA and many of its members are covered entities under the Cap-and-Trade Program, and therefore are required to surrender compliance instruments each year to meet their compliance obligation.[3] As electric utilities, the costs associated with AB 32 compliance will be directly borne by our ratepayers – California's residents and businesses. For that reason, when NCPA and its members – indeed all electric utilities – look at the program and the disclosure of auction-related information, they do so with an eye towards ensuring the confidentiality of information that would otherwise facilitate manipulation of the market or provide third parties with information that can be used to ascertain a market position. Either of these occurrences would likely result in an increase in the cost of allowances, and adversely impact the ability of covered entities to meet their Cap-and-Trade Program compliance obligations in the least cost manner. It is within this context that NCPA offers the following comments on the September 2012 Draft Plan and the proposals presented by Staff during the January 25 Workshop.

COMMENTS ON THE DRAFT PLAN AND STAFF PROPOSALS

Allocation

Allocation to Industry – (Draft Plan, p. 2, Workshop Presentation, slide 8): CARB should disclose the total aggregate allocation to industry for each calendar year. NCPA agrees that the allocation of allowances to specific individuals should remain confidential, as proposed in both the Draft Plan and Workshop presentation. It would be useful, however, to have a summary of the total number of allowances allocated to industry by calendar year. This information should be

3 Section 95856.

provided in the aggregate, and should not include entity-specific information.

Allocation to POUs – (Draft Plan, p. 2, Workshop Presentation, slide 8): CARB should not disclose the designation of POU's freely allocated allowances. The total number of allowances allocated to POUs and IOUs each year is part of the Regulation, and therefore not confidential. Likewise, since the terms of the Regulation require the IOUs to place their freely allocated allowances into their limited use holding accounts[4], that information is also public. The Regulation allows POUs to designate allowances to their limited use holding accounts, to their compliance accounts, or to compliance accounts of a JPA or generator.[5] Each year, POUs submit a form to CARB that notifies the agency to which of these accounts the POU is designating its freely allocated allowances. During the January 25 Workshop, Staff proposed that the information contained in the form regarding this designation be made public. Specifically, Staff proposes that by December 1 (of each year, in this example 2013), CARB would "post POU distribution of 2014 vintage allowances and aggregate 2014 vintage industrial allocation on ARB website."[6] NCPA does not support the public dissemination of all the information contained on the POU allowance designation form. Public release of this information does nothing to further a robust auction, as the total number of allowances that will be available in the auction – the allowances placed into the limited use holding accounts – will be published by CARB and is already included in the Auction Notice. Rather, the public dissemination of any information regarding the balance of an entities' compliance account necessarily discloses (or at least provides significant insights into) that entities' allowance acquisition needs and strategies. The objective of providing the market with an indication of supply and demand is adequately met without having to disclose information regarding the number of allowances that a POU has designated to a compliance account, and specifically to whose compliance account. Accordingly, CARB should not change the disclosure of information regarding the POU allocation, and the content of the POU allocation disclosures each year should not be publicly disseminated.

4 Section 95892(b)(1).
5 Section 95892(b)(2).
6 See *Proposed POU Annual Allocation Posting Timeline (example).*

Auction Related Information

Ratio of Bids (Draft Plan, p. 10): NCPA is not opposed to publishing the total ratio of bids, as well as the qualified bids. However, it is not clear what the value is of this information, especially without information regarding why the bids were not qualified. Without knowing if the bids were disqualified due to purposeful malfeasance or mere error, the value of the data reported is questionable.

Annual Auction Report (Draft Plan, p. 13): CARB should develop an outline for the timing and content of the Annual Auction Report, as well as a Market Monitor Report on the Program. During the January 25 Workshop, Staff noted that the timing and content of the Annual Auction report and the scope of the Market Monitor Report is still under development. NCPA encourages CARB to initiate a workshop to discuss this specific topic. The Market Monitor is in a unique position to review confidential information, entity-specific information, and overall market progress, and then synthesize and disseminate that information in an aggregate format that can inform the public regarding the functionality of the Cap-and-Trade Program and covered entities' compliance with it. The Annual Action Report and Market Monitor Report are ideal tools for this purpose, and CARB should commence development of the timing and scope of these documents right away.

CITSS Registered Participants

Entity Names (Draft Plan, p. 14): Entities registered in CITSS should be made public without disclosure of individual information. The names of entities registered in CITSS are properly made publicly available. The only concern with regard to this publication is that the disclosure not include any specific information regarding the primary account representative or alternate account representatives of those entities, or otherwise compromise the integrity of the vast amount of confidential information that is also included as part of the CITSS registration process.

CITSS Account Balances (Workshop Presentation, slide 11): CARB should not provide disaggregated information regarding entities' Holding Account balances. The Regulation current

prohibits the publication of the quantity and serial numbers of compliance instruments contained in holding accounts.[7] The same rule should be applied to Limited Use Holding Account balances, as there is no demonstrated value in why this information would facilitate a more effective market or robust auction. Any information that compromises a covered entities compliance strategy should not be publicly released. Should CARB wish to ensure the public that entities are complying with the provisions of the Regulation, the Market Monitor Report can be used to discuss this compliance and the aggregate amount of allowances in these holding accounts.

Market Transaction Data

Types of Contracts, Contract Data (Draft Plan, pp. 14-15, Workshop Presentation, slides 14, 15): Overall, having aggregate data regarding the types of transactions that are related to bilateral trades would be helpful for market transparency. However, in order for this information to have any real value, it must represent the whole market and must be properly defined. At this time, this data is neither required to be reported, nor subject to a specified set of definitions. Attempting to pigeon hole the myriad types of trading transactions into a few "drop down" options could present a challenge, but failure to do so before requiring its disclosure and disseminating the data could result in information that is not meaningful, or even misinformation.

Trading Venue (Draft Plan, p. 16): As with information regarding the type and duration of contracts, the information regarding trading venue is only useful for market transparency purposes if that information is reported by all entities. Any dissemination of information from non-mandatory fields creates the potential for market confusion and misinformation.

Account Balances (Draft Plan, pp. 16, Workshop Presentation, Slide 11): CARB should not disseminate entity-specific compliance account balances, as this information can be used to manipulate the market and gain insights into allowance acquisition strategies of covered entities. One of the most problematic aspects associated with the release of account information is the way in which that information could be utilized by third parties to gain insights into the market, and more specifically, into the potential allowance acquisition strategies of covered entities. Section

7 Section 95921(d)(3).

95921(e)(4) does not require the dissemination of entity-specific compliance account balances. To the contrary, entity-specific information should be carefully guarded, and indeed, the entire discussion should occur within the framework of Section 95921(e)'s title – *Protection of Confidential Information*, which provides:

> Section 95921 Conduct of Trade.
>
> (e) Protection of Confidential Information. The Executive Officer will protect confidential information to the extent permitted by law by ensuring that the accounts administrator:
>
> (1) Releases information on the transfer price and quantity of compliance instruments in a manner that is timely and maintains the confidentiality of the parties to a transfer;
>
> (2) Except as needed for market oversight and investigation by the Executive Officer, protects as confidential all other information obtained through transfer requests;
>
> (3) Protects as confidential the quantity and serial numbers of compliance instruments contained in holding accounts; and
>
> (4) Releases information on the quantity and serial numbers of compliance instruments contained in compliance accounts in a timely manner.

Compliance is not determined by viewing Compliance Account Data. It is critically important to distinguish between instruments that are retired and those that are placed into compliance accounts, as these are not the same. Covered entities are required to surrender compliance instruments,[8] and once the Executive Officer has determined that the covered entity has met its compliance obligation, the compliance instruments are retired.[9] Only compliance instruments that have been surrendered are used to measure an entity's compliance with the Regulation, despite the fact that an entity is required to place allowances into its "compliance account" during certain intervals. Retired allowances by serial number are updated at the end of each compliance deadline and are made public as part of the permanent retirement registry on CARB's website (see Draft Plan, p. 18, Regulation Section 95831(b)(3)). The allowances in the permanent retirement registry represent an entities' compliance with the Regulation. The Draft Plan advocates the publication of entity-specific compliance account information to allow the public to verify compliance. However, compliance is not verified by disclosure of the balance in

8 Section 95856(a).
9 Section 95856(g).

a compliance account, so this rationale does not support a similar conclusion of compliance account balances.

Section 95921(e)(4) does not require entity-specific disclosure. Section 95921(e)(4) provides that the "Executive Officer will protect confidential information to the extent permitted by law by ensuring that the accounts administrator: . . . (4) Releases information on the quantity and serial numbers of compliance instruments contained in compliance accounts in a timely manner." This disclosure by the account administrator is intended to be carefully scrutinized by the Executive Officer to ensure that confidential information is protected. That confidential information pertains to the entity-specific balances. Disclosure – in an aggregate form – of the quantity and serial number of allowances in compliance accounts would provide the public with information regarding the vintage and amount of allowances in compliance accounts generally, without compromising the confidentiality of information that could be used to ascertain allowance acquisition strategies.

Publication of quantity and serial numbers of compliance instruments contained in compliance accounts should be done in aggregate on an annual basis. Section 95921(e)(4) requires the Executive Officer to protect the confidentiality of the information, but asks that the accounts administrator publish the information in a timely manner. NCPA believes that annual publication of this information – after the end of the annual compliance surrender[10] – would balance the public's desire to know the aggregate number of allowances that have been placed into compliance accounts with the unnecessary dissemination of information.

The Market Monitor Report can be a useful tool to disseminate compliance-related information without jeopardizing the integrity of a covered entity's compliance strategy. Staff has indicated that the content and timing of the annual auction report or report from the market monitor is still under development. As part of determining what should be included in that report, CARB should look at the kind of information that third parties are seeking and address that in the market monitor's submission. CARB will still be privy to the individual-specific information that

10 Section 95856(f).

must be reviewed in order to determine and ensure compliance, and to adequately monitor the market. However, it is not necessary for all of that information to be disseminated to the public in a disaggregated format; a summary of the information reviewed and the conclusions reached can be included in the report and used to advise the public as to the status of the program. The report that is issued at the end of the compliance period can also include entity-specific information regarding compliance with the regulation *for the compliance period just ended*, but again, that information should not include data that could compromise covered entities' positions moving forward.

CONCLUSION

NCPA appreciates the opportunity to provide these comments to CARB on the January 25 Workshop. Information disclosure and CARB's ability to assure market participants and non-market participants that the Cap-and-Trade program is working properly is an important element of ensuring the overall success of not only the Cap-and-Trade Program, but of meeting California's emission reduction goals for 2020 and beyond. However, as discussed above, the dissemination of information to the public must be done in a way that does not jeopardize the ability of market participants – especially those like NCPA's members that provide retail electric service to California residents and businesses – to meet their compliance obligations in the most cost-effective manner.

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,
MCCARTHY & BERLIN, LLP

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