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Via Email to ccworkshops@arb.ca.gov

Ms. Claudia Orlando
Office of Climate Change
California Air Resources Board
1001 I Street
Sacramento, CA 95812

**Re: Southern California Public Power Authority Comment on June 5, 2009
Workshop Including Imported Electricity in a California Cap-and-Trade
Program**

Dear Ms. Orlando:

The Southern California Public Power Authority (“SCPPA”)¹ appreciates this opportunity to comment on the issues discussed at the June 5, 2009 workshop on including imported electricity in a California cap-and-trade program.

One of the primary topics discussed at the workshop was establishing a common boundary for the Western Climate Initiative (“WCI”) jurisdictions instead of having individual state and provincial boundaries for monitoring and enforcing the compliance obligation for imported electricity. Having a common boundary for WCI might mitigate or avoid some problems that may arise if there were individual boundaries. However, SCPPA is concerned that having a common boundary may lead to unintended consequences if there were an assignment of the monitoring and enforcement functions for imported electricity to WCI Partners that are upstream in the imported electricity path and the apportionment of allowances among WCI Partners were linked to the assignment of the monitoring and enforcement functions.

A second workshop topic was emission factors for unspecified power. SCPPA supports establishing emission factors for unspecified power on the basis of marginal resources with a single default emission rate being established for the WCI region.

¹ SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Imperial Irrigation District, Pasadena, and Riverside.

I. ESTABLISHING A COMMON BOUNDARY INSTEAD OF INDIVIDUAL BOUNDARIES FOR WCI JURISDICTIONS.

The WCI's September 23, 2008 Design Recommendations for the WCI Regional Cap-and-Trade Program ("WCI Design Recommendations") suggest that WCI has adopted an individual boundary approach. There are some problems with having individual boundaries for the WCI Partner jurisdictions. The problems could be mitigated by having a common boundary for the WCI jurisdictions instead of individual boundaries. However, in order to avoid unintended consequences, the establishment of a common boundary and the resulting assignment of monitoring and enforcement functions should not drive allowance apportionment among the WCI Partners.

A. The WCI Design Recommendations Suggest that WCI Has Adopted the Individual Boundary Approach.

The WCI Design Recommendations provide that the point of regulation for the electricity sector shall be the First Jurisdictional Deliverer ("FJD"). The FJD is defined as follows:

The point of regulation is the First Jurisdictional Deliverer (FJD). For sources within WCI jurisdictions, the FJD is the generator. For power that is generated outside the WCI jurisdictions (or generated by a federal entity or on tribal lands) for consumption within a WCI Partner jurisdiction, the FJD is the first entity that delivers that electricity over which the consuming WCI Partner jurisdiction has regulatory authority.

Final Design Recommendations at 3, §2.2. The FJD concept is similar to the California Public Utilities Commission ("CPUC") and California Energy Commission ("CEC") recommendation that the point of regulation for the electricity sector should be the "first deliverer" of electricity to the California grid. CPUC Decision 08-03-018 at 126-127 (Findings of Fact 14-16) (March 13, 2008). The statement that "the FJD is the first entity that delivers that electricity over which the consuming WCI partner jurisdiction has regulatory authority" plus the parallel to the CPUC's "first deliverer" concept suggest that there would be a boundary around each WCI Partner and that each Partner would collect allowances from FJDs that import electricity into the Partner's jurisdiction.

B. A WCI Discussion Paper Suggests that Having Individual Boundaries Could Result in Problems that Could Be Mitigated or Avoided with a Common WCI Boundary.

The individual boundary approach was evaluated in a Discussion Paper on FJD Boundary Options for Regulating Electricity Imports ("Discussion Paper") that was authored for the WCI Electricity Subcommittee by Scott Murtishaw from the CPUC. The Discussion Paper is archived on the WCI website at <http://www.westernclimateinitiative.org/component/registry/function/startdown/31/>.

The Discussion Paper analyzed “four basic options to regulating the emissions associated with imports from non-WCI jurisdictions.” Discussion Paper at 2. According to the Discussion Paper: “The first option is an individual boundary approach as envisioned in the WCI Design Recommendations. The rest are variants of a common boundary approach that eliminates regulation of transmission paths crossing intra-WCI borders.” *Ibid.*²

The Discussion Paper found that having individual boundaries for the WCI jurisdictions was “problematic” for several reasons. *Ibid.* at 6. **First**, the “central problem” with having individual boundaries is that it would be “impossible for an entity to know its GHG allowance liability at the time of [its] transaction.” *Ibid.* The Discussion Paper explained:

[M]any power trades occur in the forward markets while scheduling isn’t done until a day before delivery. This will result in an unknown potential future allowance liability for any entity intending to wheel power across any intra-state WCI state line.

² The Discussion Paper describes the “four basic options” as follows:

1. Option 1 is an individual boundary approach whereby the purchasing/selling entity (PSE) holding title to non-WCI generated power when it is imported into the consuming jurisdiction (state or province) is financially liable for GHG allowances regardless of who first imported the non-WCI power into the WCI. The party that imports the non-WCI generated power into the consuming jurisdiction must surrender the appropriate quantity of GHG allowances to that jurisdiction. Each jurisdiction is responsible for monitoring transmission paths crossing its own borders and is responsible for collecting GHG allowances from liable entities.

2. Option 2 is a common boundary approach whereby the entity holding title to non-WCI generated power when it is initially imported into any WCI jurisdiction is finally liable for GHG allowances regardless of where within the WCI the power is ultimately consumed. The entity holding title to the non-WCI generated power when it is imported into the WCI must surrender the appropriate quantity of GHG allowances to the WCI jurisdiction where the power is consumed. The jurisdiction where the power is consumed is responsible for monitoring power delivered to its jurisdiction and is responsible for collecting GHG allowances from liable entities.

3. Option 3 is a common boundary approach whereby the entity holding title to non-WCI generated power when it is initially imported into any WCI jurisdiction is financially liable for GHG allowances regardless of where within the WCI the power is ultimately consumed. The entity holding title to the non-WCI generated power when it is imported into the WCI must surrender the appropriate quantity of GHG allowances to the WCI jurisdiction where the power is consumed. Unlike Option 2, the jurisdiction into which the power is initially imported into the WCI is responsible for monitoring whether non-WCI power has been delivered to a WCI jurisdiction, while the jurisdiction where the power is ultimately consumed is responsible for enforcing the collection of allowances associated with that power delivery.

4. Option 4 is a common boundary approach whereby the entity holding title to non-WCI generated power when it is initially imported into any WCI jurisdiction is financially liable for GHG allowances regardless of where within the WCI the power is ultimately consumed. The entity holding title to the non-WCI generated power when it is imported into the WCI must surrender the appropriate quantity of GHG allowances to the WCI jurisdiction into which the power is initially imported. The state/province where the power is initially responsible for monitoring whether non-WCI power has been delivered to a WCI jurisdiction and is responsible for collecting GHG allowances from liable entities.

Ibid. at 2-3.

Ibid. Insofar as “[p]rice certainty and transaction-finality are key attributes of a liquid and efficient power market,” having individual boundaries would tend to degrade the liquidity and efficiency of the wholesale electricity market.

Second, “in addition to market liquidity and efficiency concerns,” having individual boundaries would be likely to “result in higher administrative costs” because there would be an “added burden for market participants and regulators to monitor all internal WCI paths that connect two WCI jurisdictions.” *Ibid* at 8.

Third, the individual boundary approach would be likely to lead to attempts to pass the liability for surrendering allowances as far downstream as possible. As a result, “much of the non-WCI generated power will be scheduled into California as the furthest downstream geographic point....” *Ibid.* The Discussion Paper speculated: “Traders who schedule power into California may be particularly wary of accepting any power generated outside WCI.” *Ibid.* The traders’ reluctance to buy non-WCI electricity could “make non-WCI power extremely illiquid and difficult to trade.” *Ibid* at 9. The consequences would be negative:

Transfers between regions will be reduced and more efficient plants in non-WCI regions may not run when they should due to the lack of a market for their product. This runs counter to the longstanding benefits that have been gained through inter-regional trade.

Ibid. The clear message of the Discussion Paper was that the common boundary approach would be superior to the individual boundary approach.

The WCI Electricity Subcommittee discussed Mr. Murtishaw’s Discussion Paper at a workshop in Phoenix on January 15, 2009. Neither the Electricity Subcommittee nor the WCI Partners have, to date, taken further action on the issue.

C. Another Problem with the Individual Boundary Approach Is that It Could Result in Pancaked Compliance Obligations.

Another problem with the individual boundary approach is that it could lead to multiple WCI Partners imposing compliance obligations for the same electricity-related emissions. The WCI Design Recommendations state: “[T]he FJD is the first entity that delivers that electricity over which the consuming WCI Partner jurisdiction has regulatory authority.” Final Design Recommendations at 3, §2.2. That statement leaves the impression that a WCI Partner could impose a compliance obligation on *both* (1) emissions associated with the generation of electricity of sources within the Partner’s jurisdiction *and* (2) emissions associated with electricity that is imported into the Partners’ jurisdiction regardless of whether the electricity were generated within the WCI or elsewhere. This could result in multiple “pancaked” burdens being imposed on emissions associated with electricity that is transmitted from one Partner’s jurisdiction to another.

For example, both Utah and California are WCI Partners. If power were either generated in Utah or imported into Utah, Utah might impose a compliance obligation on the generator or importer to surrender emissions allowances to Utah. However, California might impose a compliance obligation on an importer of electricity from Utah. As a result, the emissions associated with electricity that was generated in or imported into Utah and then imported into California from Utah would be subjected to a double compliance obligation, once by Utah and again by California.

The pancaking of compliance obligations within WCI could be multiplied further. For example, Utah, Arizona, and California are WCI Partners. If electricity were generated in or imported into Utah, sold at wholesale to a purchaser in Arizona, and then resold into California, there would be a potential for trebling the obligation to surrender emission allowances.

The pancaking of compliance obligations would be patently unjust, unreasonable, and un-Constitutional. The WCI Partners apparently recognize the need to avoid pancaking. Accordingly, the WCI Partners stated in the Final Design Recommendations that they would agree to “an equitable solution” to avoid pancaking:

There are instances in which electricity is generated in one WCI Partner jurisdiction, but consumed in another WCI Partner’s jurisdiction, giving rise to the possibility of double-counting emissions. WCI Partner jurisdictions in such situations will agree to an equitable solution in the context of the WCI cap-and-trade program design.

WCI Design Recommendations at 5, section 7.1. Although the Partners’ commitment to reach an “equitable solution” to pancaking was released in September, 2008, the Partners have remained silent on the issue since then.

D. Having a Common Boundary Could Address both the Discussion Paper Problems and the Pancaking Problem.

As recognized in the Discussion Paper, having a common WCI boundary could address the problems with the individual boundary approach that were identified in the Discussion Paper. Having a common boundary could also address the pancaking problem. The Discussion Paper implicitly assumes that under the common boundary approach there would be a one-time-only imposition of a compliance obligation on emissions associated with electricity within WCI: “Once non-WCI power is imported into WCI, it can be traded interchangeably with WCI-generated power.” Discussion Paper at 10. However, in order to be sure that both the Discussion Paper problems and the pancaking problem are addressed with certainty, the common boundary should be adopted with an *explicit* statement that for electricity that is generated within or is imported into the WCI, a compliance obligation will be imposed once *but only once* on the emissions associated with the electricity.

E. While the Benefits of the Common Boundary Could Be Maximized by Moving the Point of Monitoring and Enforcement to the WCI Partner that Is Located at the Point of Importation, Allowance Apportionment Should Not Mechanically Follow the Point of Monitoring and Enforcement.

The three variants of the common boundary approach that were analyzed in the Discussion Paper differ in whether they assign the monitoring and allowance collection (“enforcement”) functions to the WCI Partners where imported electricity sinks or to the WCI Partners that are located at the point of importation into WCI. Insofar as the Discussion Paper regards the individual boundary approach as being Option 1, the three common boundary approaches are identified as Options 2, 3, and 4.

Under Option 2, both the monitoring and enforcement functions rest with the WCI Partner in whose jurisdiction the imported electricity sinks. Under Option 3, the monitoring function is moved upstream to the Partner to whom electricity is imported from outside WCI, but the enforcement function remains with the Partner where the electricity sinks. Under Option 4, both the monitoring and enforcement functions rest with the Partner located at the point of importation from outside WCI rather than the Partner where the electricity sinks. Discussion Paper at 2-3, 10-11.

The Discussion Paper appears to favor moving the points for monitoring and enforcement upstream to the Partner where electricity is imported from outside WCI. For example, the Discussion Paper states: “Options 3 and 4 may potentially reduce administrative costs by narrowing the set of transmission paths that must be monitored.” *Ibid* at 11.

However, while there may be merit to moving the points of monitoring and enforcement to the WCI Partners that are furthest upstream in an imported electricity path, the apportionment of allowances should not mechanically follow the points of monitoring and enforcement. Even if enforcement of the compliance obligation is entrusted to the WCI Partner that is located at the point of importation of electricity from outside of WCI, the “compliance obligation is still triggered by the fact that the power transaction terminates in the consuming state.” *Ibid* at 12. The “consumers of imported power will bear the brunt of the embedded GHG compliance cost because the GHG cost will be included in the price” of the imported electricity regardless of whether compliance is enforced by an upstream Partner or a downstream Partner. *Ibid*. The greatest impact would be on California because “much of the non-WCI generated power will be scheduled into California as...the region with the highest prices.” *Ibid* at 8. If allowances were apportioned to upstream Partners to match the emissions associated with imported electricity even though the compliance costs were borne by customers located in downstream Partners’ jurisdictions, the result would be a wealth transfer to the upstream Partners from the downstream Partners. Thus, SCPPA cautions against having allowance apportionment mechanically follow the assignment of the monitoring and enforcement functions within WCI.

The Discussion Paper is correct in finding merit in the common boundary approach. However, the issues about where to assign the monitoring and enforcement functions for imported electricity should be kept separate from the apportionment of allowances. As the

Discussion Paper observes: “Moving the point of regulation upstream to the common boundary point need not affect the apportionment of allowances related to non-WCI imports.” *Ibid* at 12.

F. Pancaking Compliance Obligations Should Be Avoided Between WCI and non-WCI Jurisdictions that Have Cap-and-Trade Programs as well as Within WCI.

There is a further problem that needs to be addressed by the ARB and the WCI: pancaking WCI emission allowance obligations on top of emission allowance obligations imposed outside of the WCI. For example, if a federal program were adopted and applied to states that do not have a cap-and-trade program, emissions associated with the generation of electricity in a non-WCI state such as Nevada would be subject to the federal program. A Nevada generator would be required to surrender allowances to the federal government. Assuming that state cap-and-trade programs such as California’s were not preempted by the federal program and that electricity that is generated in Nevada were imported into California, the importer would be required to surrender allowances to California. Thus, a compliance obligation would be imposed on the emissions associated with the generation of the Nevada electricity twice, once by the federal government and a second time by California.

The pancaking of WCI compliance obligations on top of compliance obligations that are imposed outside of WCI should be avoided just as much as pancaking within WCI. SCPPA was informed by WCI representatives on a June 18, 2009 WCI stakeholder teleconference that the Partners are aware of the problem and that a solution to the problem is a “work in progress.” SCPPA strongly urges both the ARB and the WCI to be diligent in addressing the pancaking of obligations to surrender allowances. As recognized by the WCI Partners in their Final Design Recommendations, “double-counting emissions” in applying compliance obligations would be inequitable.

II. EMISSION FACTORS FOR UNSPECIFIED POWER.

SCPPA supports the CPUC/CEC recommendation to use a single regional default emission rate for unspecified power of 1,100 lbs. CO₂e/MWh. The 1,100 lbs. of CO₂e per MWh is a good approximation for the emissions associated with generation resources that are likely to be the marginal resources that are operated to generate electricity for wholesale sales in interstate commerce. As the CPUC explains:

1,100 lbs. of CO₂e per MWh is above the weighted average of 2004-2005 data of emissions rates associated with a broad range of CCGT power plants of varying vintages, but lower than the emissions rates associated with the oldest, most inefficient “deemed compliant” CCGT power plants still in operation.

CPUC Decision 07-01-039 at 234-235 (January 25, 2007).

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June 26, 2009

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III. CONCLUSION.

As discussed above, SCPPA supports the adoption of a common jurisdictional boundary for WCI to address the problems raised in the Discussion Paper as well as the problem of WCI Partners imposing pancaked compliance obligations. More generally, pancaking compliance obligations between WCI and non-WCI jurisdictions should be avoided as well as pancaking within WCI. Lastly, SCPPA urges the ARB to adopt a common default emission factor for unspecified electricity that reflects the emissions associated with generation at a marginal resource.

Respectfully submitted,

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