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California Air Resources Board
Mary Nichols, Chair
1001 "I" Street
Sacramento, California 95812

Re: Northern California Power Agency Comments on
June 26 Draft Scoping Plan

Dear Ms. Nichols:

The Northern California Power Agency¹ (NCPA) appreciates the opportunity to offer these comments² to the California Air Resources Board (CARB) on the June 2008 Discussion Draft of the *Climate Change Draft Scoping Plan*, issued on June 26, 2008 (Draft Scoping Plan).

Established in 1968, NCPA is a joint powers agency that provides support for the electric utility operations of seventeen member communities and districts in Northern and Central California. NCPA's membership is comprised of diverse California communities; NCPA member-utilities represent both large and very small communities, are located within a wide range of geographic regions, and have unique socio-economic circumstances. The member-utilities provide electric power to more than 700,000 customers, relying in large part on geothermal resources in Sonoma and Lake Counties, and hydroelectric resources in Calaveras County that are amongst the cleanest generators in California. NCPA and its members have a long history of environmental stewardship, and have expended considerable resources to develop

¹ NCPA 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, the Truckee Donner Public Utility District, and the Turlock Irrigation District, and whose Associate Members are the Plumas-Sierra Rural Electric Cooperative and the Placer County Water Agency.

² As requested by CARB, these preliminary comments on the Draft Scoping Plan are being submitted before NCPA has had an opportunity to complete review of the Appendices, released on July 22, 2008, and may submit additional comments after reviewing the Appendices and still-pending economic analysis.

significant amounts of renewable electric generation resources. For years, NCPA's members have also implemented aggressive energy efficiency programs that further member commitments to maximize the amount of energy the agency and its members obtain from low-carbon resources.

I. INTRODUCTION

The Draft Scoping Plan is a well outlined, preliminary list of issues and items that CARB and the state must further discuss and review before moving forward with development of specific regulations, and ultimately, implementation of all aspects of Assembly Bill (AB) 32. NCPA fully supports the goals and objectives set forth in the Draft Scoping Plan, and looks forward to working with CARB and stakeholders to further develop the Scoping Plan so that it can be utilized as a comprehensive road-map for implementation of the varied programs that will be necessary for the State to reach its mandated greenhouse gas (GHG) emissions reduction goals. NCPA intends to supplement these comments based on a review and analysis of the information provided in the Appendices A-F, released on July 22, 2008.

These comments address several aspects of the Draft Scoping Plan, as more fully set forth herein.³ In addition, NCPA notes the following overarching issues:

- The Draft Scoping Plan should include a timeline for development of regulations.
- The Draft Scoping Plan should clarify that the focus of State efforts and resources will be on programmatic reduction measures.
- Modeling should be verified and complete before recommendations can be included in the Draft Scoping Plan.
- The Draft Scoping Plan should address a total cap on the reductions required of the electricity sector.

The Draft Scoping Plan Should Include a Timeline for Development of Regulations

Acknowledging that this *preliminary* Draft Scoping Plan is intended as a first step, and that the revised document expected in October will include further significant information, NCPA encourages CARB to further modify the Draft Scoping Plan to include a detailed timeline for implementing rulemakings and other regulatory proceedings necessary to advance the key policy objectives set forth therein. The focus of any AB 32 implementation program should never stray

³ NCPA concurs with CARB that a wide range of reduction measures should be supported and encouraged, but takes no formal position on any specific measure not addressed in these comments.

from the goal of achieving actual reductions; accordingly, resources (both in terms of personnel and financial commitments) should be focused on this goal. A comprehensive timeline included in the Final Scoping Plan will assist stakeholders in remaining focused on the ultimate goal.

The Draft Scoping Plan Should Clarify that the Focus of State Efforts and Resources will be on Programmatic Reduction Measures

The Draft Scoping Plan discusses a broad range of programs and measures that can be implemented to attain the mandated GHG reduction goals. While acknowledging that the majority of the initial reductions will be achieved by new and existing regulatory measures, the Draft Scoping Plan also calls for the vast majority of the State's emissions to be placed under a declining cap by 2020. (p. ES-3) Resource and financial commitments should be focused on programmatic efforts, rather than on development of market-based mechanisms, and the Draft Scoping Plan should be revised to reflect this. Real, long term reductions in GHG emissions will be achieved through innovative programs and initiatives, and not through mechanisms susceptible to the vagaries of the market, such as allowance auctions.

Modeling Should be Verified and Complete Before Recommendations Can be Included in the Draft Scoping Plan

California has expended a great deal of effort and resources on the creation of models that can be utilized to measure the cost-effectiveness of various emissions reduction measures. Due to the complexity of the issue – and the timeline established in AB 32 – the Draft Scoping Plan includes preliminary recommendations and proposals that are not substantiated by empirical data. While the need to include such recommendations at this stage is understandable, it is imperative that CARB proceed cautiously before commencing any additional proceedings until the economic modeling currently underway has been completed and verified. AB 32 mandates – in several places – that the GHG reducing measures adopted by the State be economically and technologically feasible. The only way to ensure that the State meets these important criteria is to finish the economic modeling that is currently underway, and weigh the various measures for cost-effectiveness. The State must meet the mandates of AB 32 to reduce overall GHG emissions. However, doing so “at any cost” will result in significant adverse impacts on the State's residents, businesses, and economy, and undermine the statutory mandate to ensure that implementation of AB 32 is economically feasible.

The Draft Scoping Plan Should Address a Total Cap on the Reductions Required of the Electricity Sector

The Final Scoping Plan should include a recommendation for an equitable cap on the total amount of reductions that the electricity sector is required to make. The Draft Scoping Plan includes a summary of the various recommendations for reduction strategies, and estimates the total tons of CO₂ reductions that can be achieved through each of those measures. When viewed in total, reduction strategies applicable to the electricity sector will account for *nearly 42%* of the total non-market based reduction measures.⁴ When the “additional emission reductions from capped sectors” are added in,⁵ the electricity sector is required to make *more than 50%* of the total statewide GHG reductions. CARB has stated that each sector will be called upon to make “equitable” reductions, but that “equity” will not necessarily mean each sector will be called upon to make **equal** reductions. However, even with this qualification, the reduction measures and total obligations being imposed upon the electricity sector cannot be termed equitable. This disproportionate share of the total statewide reductions will be affected by a sector that is already below its own 1990 levels. This issue is of paramount importance because any and all reduction measures – especially at the start of any program – will require “up-front” payment from the State’s residents and businesses in the form of program funding. The Draft Scoping Plan – and indeed CARB – should acknowledge this issue and ensure that the State’s electricity customers and utilities are not disproportionately impacted.

II. COMMENTS ON CHAPTER II.B - PRELIMINARY RECOMMENDATIONS FOR EMISSIONS REDUCTION MEASURES

Remaining cognizant of the fact that CARB intends the Scoping Plan to be just that – a *plan* (p. 6) – to the extent that the Scoping Plan is in fact the foundation of all future rulemakings and deliberations on technologically feasible and cost-effective emissions reduction measures necessary to fully implement the mandates of AB 32, the plan must present focused, verified, and

⁴ This number is based on the assumption that the majority – if not all – of the energy efficiency related emissions reductions attributable to the commercial and residential sectors will ultimately be addressed through the electricity sector.

⁵ This figure is based on the assumption that the transportation sector will not be part of the initial capped program.

feasible options. To that end, the following comments address several aspects of the proposed Preliminary Recommendations that warrant further consideration. This portion of NCPA’s comments addresses the following sections of Chapter II:⁶

- Section 1. Cap-and-trade
- Section 3. Energy Efficiency
- Section 4. Renewable Portfolio Standards
- Section 8. Water
- Section 11. Goods Movement
- Section 13. Local Governments

A. Section II.B.1: California Cap-and-Trade Program Linked to Western Climate Initiative.

The Draft Scoping Plan calls for a State program that is linked to the Western Climate Initiative (WCI) program: *“Implement a broad-based cap-and-trade program that links with other Western Climate Initiative Partner programs to create a regional market system. Ensure California’s program meets all applicable AB 32 requirements for market-based mechanisms.”* (p. 15)

NCPA applauds CARB’s recognition of the importance of a regional cap-and-trade program, one that will eventually transition to a federal program. Clearly, such a design was contemplated by the State’s legislature, as evidenced by Health and Safety Code § 38564, which specifically directs CARB to “consult with other states, and the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control programs, and to facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.” The Draft Scoping Plan does not, however, address the structure of the program, except to reference the WCI process. NCPA fully supports integrating the State’s GHG reduction measures with those of its neighboring jurisdictions, and has been actively involved in the ongoing efforts at WCI toward achieving such a goal. However, at a minimum, the Final Scoping Plan should include the fundamental requirements that must be incorporated into any cap-and-trade program applicable to the California markets, and which will set the boundaries for the subsequent rulemakings. The Final Scoping Plan should also include an outline of what a California-only cap-and-trade

⁶ Several topics addressed in these comments are also the subject of additional discussion in the Appendices; NCPA

program will look like in the event that there is an unforeseen delay in the launch of WCI's program. Finally, the CARB process has yet to address and/or resolve several important issues regarding the structure of a regional program, and this must be acknowledged before the Scoping Plan can be finalized.

1. The Final Scoping Plan must include overarching criteria to be incorporated into the State's cap-and-trade program.

Several key principles of a cap-and-trade program are so crucial to the continued viability of California's economy that they must be specifically set out in the Scoping Plan in order to ensure that any subsequent proceeding to implement a cap-and-trade program is able to do so with a clear sense of direction. The Final Scoping Plan must require that any cap-and-trade program (1) will be administered in such a way as to avoid market manipulation, (2) would limit participation solely to those with a compliance obligation under the cap, (3) recognize the inherent costs associated with an auction, and allocate allowances directly to entities with a compliance obligation, (4) assign free emissions allowances within the electricity sector to retail providers based on their current retail sales of electricity, and (5) be designed to ensure that if there is an auction, all auction proceeds associated with the acquisition of allowances for retail electric providers are directed back to those same providers to be used to affect future, additional, and permanent emissions reduction measures.

Any market-based program for the allocation of valuable emissions allowances creates an opportunity for gaming, and it is imperative that the Final Scoping Plan not only identify this potential problem, but include a recommendation on the means by which it can be addressed.

Unfortunately, history has shown us that California's markets are not immune to market manipulation. Proven examples of market manipulation have played out not only in California, but in electricity markets throughout the country; most recently with regard to the auction of financial transmission rights. Concerned that an allowance auction will be vulnerable to similar abuses, Senator Feinstein introduced the *Emissions Allowance Market Transparency Act of 2007* (S.2423, December 2007). This legislation, supported by the Consumer Federation of America and endorsed by a broad range of stakeholder groups representing more than 50 million customers, would protect consumers and the integrity of the market, as well as provide for

may address those issues in further comments to be filed on August 11.

sufficient oversight of the market and participants, as well as penalties for those that attempt to exploit the market. Although geared toward a federal program, the issues addressed by this legislation are just as relevant – perhaps more so – to regional and state programs that include fewer entities vying for the scarce resource, and ultimately a smaller customer base to bear the costs.

Before the WCI, NCPA, along with other stakeholders, has advocated for the development of an independent Market Oversight Subcommittee that would focus specific attention on the best approaches for designing and implementing safeguards against market manipulation and identifying and recommending mechanisms for market abuse mitigation. NCPA recommends that CARB also establish such a committee. At the nascent stages of market development, CARB (as well as the WCI) must focus not only on crucial elements of market oversight, but must also address and focus on mitigating the potential for abuse from the onset, as well as a means by which the rules of the market can be enforced.

If the State and WCI determine to move forward with an auction – no matter how small - it is imperative that all of the costs and market implications of an auction be fully addressed at the very start of any cap-and-trade program debate. The Final Scoping Plan should include principles that not only refer to what needs to be addressed in the design of a program (p. 15), but what minimum requirements will be mandated. For example, auctions are extremely costly to electricity consumers that will be called upon to bring about significant emissions reductions through non-market based mechanisms (more than 40% of the State’s total reduction targets), while at the same time also being required to fund the cap-and-trade program – initially as the sole sector involved. Additionally, to date there has been no meaningful discussion regarding the administrative costs associated with establishing and running an auction. There is no reason to believe that these costs will be insignificant or *de minimus*. CARB should state unequivocally that the electricity sector should not be subject to an emissions allowance auction. To that end, NCPA was pleased to see that the WCI revised its most recent recommendations to include significant revisions from earlier drafts that moved away from a statement that any program should include an initial auction of 25% to 75% of the emissions credits. While this issue still remains outstanding at the WCI, the debate has moved away from the initial conclusion that

“more auction is better.”⁷

A market-based program should avoid – or at the very least should minimize – the use of a centralized auction. There are several impediments associated with an auction that would hinder, rather than facilitate, emissions reductions within the electricity sector. One such impediment is the fact that a centralized auction would effectively remove those most directly impacted by the costs associated with allowance purchases – the State’s electricity customers – from the benefits of the proceeds obtained from the auction. Alternatively, as more fully set forth below, in order to fairly compensate those that are forced to purchase allowances through an auction, proceeds from any auction should be distributed in a manner that maximizes the return to utility customer-owners.

Within the electricity sector, the vast majority of allowances should be freely allocated. Free allocation is the best means by which to minimize costs and maximize the beneficial use of allowances within the sector. The free distribution of allowances would relieve entities with the compliance obligation from the need to expend unknown sums on the purchase of emissions allowances; instead allowing those entities to utilize all of their existing resources on rate mitigation and providing funds for investments that would reduce GHG emissions and avoid the need for future allowances.

A detailed groundwork regarding these issues must be included as core elements of the Final Scoping Plan.

2. Details regarding a possible California-only cap-and-trade program must be further developed.

Ideally, any market-based cap-and-trade program will be either a regional or federal program; this is consistent with the intent of AB 32 and is the preferred approach for addressing a problem that is not contained within specified geographic boundaries. The Draft Scoping Plan anticipates California’s participation in a collaborative cap-and-trade program currently being developed by the WCI, and further anticipates that a regional program will be fully functional when California is ready to commence participation.

⁷ California would also be well served to observe experiences from other jurisdictions, including the efforts of the Regional Greenhouse Gas Initiative (RGGI); RGGI’s auction – the focus of almost 6 years of stakeholder deliberations – is scheduled to commence on September 26, 2008. Lessons learned from other jurisdictions – both positive and negative – can help California to frame the best possible emissions reduction programs.

Despite the importance of a regional cap-and-trade program, it would be imprudent for California to rely solely on the launch of such a program by the deadline established in the Final Scoping Plan for commencement of trading in California. The Draft Scoping Plan correctly notes that the ultimate success of the WCI program is dependent upon significant commitments from a broad range of jurisdictions and entities (p. 17) – indeed, the success of any cap-and-trade program is only thwarted by those not participating in the program. However, as more fully discussed herein, there are several critical elements of the WCI’s *Draft Design of the Regional Cap-and-Trade Program* (WCI Draft Design) that are still in the nascent stages of development. Further, while new jurisdictions continue to join the WCI, implementation of a program across the western United States based on WCI’s Draft Design may fall years behind a California program. Given the speed with which California is moving forward with its own emissions reduction program, it is necessary for the State to anticipate a situation where California may be ready to launch its cap-and-trade program in advance of any of its WCI partners.

The Draft Scoping Plan is devoid of any guidance or recommendations on how such an eventuality would be handled. Matters relevant to such a program are not addressed at all in the Draft Scoping Plan. Issues that should be addressed include how a California-only plan that presumably would only include the electricity sector at the outset is even a viable and feasible option, and what the point of regulation would be for such a single-state plan.

Given the integrated nature of the various reduction measures envisioned in CARB’s preliminary draft, in order to avoid delays in implementation of the Final Scoping Plan, the Draft Scoping Plan should be revised to include guidance to the State on how to proceed with a California-only program in the absence of a functional regional market like that contemplated in the WCI Draft Design. Key elements of a California-only plan can – and should – include the same basic criteria as a regional plan, as more fully set forth above.

3. The WCI Draft Design is far from complete and leaves many key issues as yet unresolved.

In order to establish a region-wide, multi-sector, cap-and-trade program, WCI must address and overcome many challenges – challenges that the organization acknowledges, and which were further highlighted during the WCI’s Third Stakeholder Meeting on July 29. NCPA

applauds the efforts of the WCI to develop a regional program that will be an essential tool in meeting the climate change challenges the WCI partners are collectively facing, and believes that California's intent to design a program that incorporates a regional, and eventual federal, approach from the very beginning is key to the success of any cap-and-trade program.

With that said, it is important for CARB and all stakeholders to understand that the WCI Draft Design is not as fully developed as many would like, and several key issues not only remain outstanding (including final results from economic modeling), but will likely not even be resolved by the time that WCI releases its Final Design on September 22. Accordingly, these comments highlight some key areas of concern with the WCI Draft Design, and California's reliance on this document as the basis for its own plan.

i. Scope of the WCI Draft Design.

The WCI Draft Design would exclude significant sources of emissions from the initial compliance period, including transportation fuels. With transportation as the single largest source of GHG emissions, the exclusion of transportation fuels within the initial cap not only will require other sectors be called upon to make disproportionate reductions (which could reduce economic efficiencies), but will also result in opportunities for real emissions reductions being lost.

Despite the lack of conclusive modeling results from WCI about the value of including the electricity sector in a cap-and-trade program, and the fact that the Draft Design Recommendations provide no substantive guidance on a final recommendation for either a point of regulation or an allowance allocation methodology for the sector, WCI recommends that the electricity sector be included in the initial cap. Such a recommendation cannot be validated by the WCI without resolution of the allocation issues discussed in the Draft Design. In the face of a fully developed regional cap-and-trade program, it may be proper for the electricity sector to be included in the initial program. However, the WCI plan must ensure that the electricity sector is treated equitably, and that the total impacts of the proposed program on electricity consumers in California, and throughout the region, are fully considered and addressed prior to making any final recommendations.

ii. Point of Regulation.

The WCI Draft Design would adopt the first jurisdictional deliverer (FJD) as the point of regulation for the electricity sector under its proposed plan. NCPA agrees with the underlying premise that the point of regulation within the electricity sector should maximize coverage and minimize emissions leakage. However, while noting that there was no consensus on the point of regulation among the 60-plus parties that filed comments with the Electricity Subcommittee, the Draft Design proposed the FJD as the preferred point of regulation. NCPA does not believe that the FJD is a viable solution as a point of regulation for the electricity sector. Simply put, there continues to be unaddressed and potentially fatal infirmities inherent in the FJD approach, including: unreliable tracking mechanisms, impacts on grid reliability and the provision of reliable electricity to consumers when the point of regulation is focused on an entity that does not have an obligation to serve customers, and the additional administrative burdens associated with FJD.

iii. Distribution of Allowances.

The WCI Draft Design includes no details regarding the manner in which allowances will be distributed. NCPA believes that the distribution of allowances is a key issue that must be addressed early on in the development of any cap-and-trade program. Issues regarding the allocation of allowances are multi-faceted and complex. A single allocation scheme may not be suitable for each of the various sectors, or even for the same sectors in different jurisdictions. Each partner should retain the right to distribute allowances as it deems appropriate, based on the needs of its particular jurisdiction; however, partners should remain cognizant of the fact that different allowance distribution mechanisms could lead to leakage. The WCI partners should continue to monitor the impacts that alternate allocation schemes may have on the impacted sectors, and be prepared to address concerns as they arise, including the consideration of a region-wide, mandatory allocation methodology.

The WCI has committed to continue working on details regarding its proposed cap-and-trade program, yet several areas of concern raised by NCPA and other stakeholders have not yet been addressed. Questions regarding allowance allocations, the

use of allowances, and the distribution of allowance values have not been addressed or resolved. Likewise, concerns about the administration and governance of an auction, and how such an auction will be protected from market manipulation are absent from the proposal.

While the WCI has committed to further work on these issues, it must balance the desire to move forward with comprehensive design recommendations with the very real need to ensure that its recommendations are feasible and sustainable. The former cannot be accomplished until the latter has been determined. The same is true for California's adoption of such a program.

iv. Use of Auctions.

There exist significant impediments to implementing a cap-and-trade program that includes an auction as an essential element. The WCI has acknowledged there are details regarding the administration and governance of the auction that have not yet been addressed. In striking language from earlier drafts regarding mandatory minimum auction percentages, the WCI Draft Design acknowledged concerns raised by many parties – particularly with regard to the electricity sector – that auctions are problematic. NCPA continues to believe that any recommendation for an auction is premature without first addressing the details regarding governance and administration of an auction, including the costs to electricity customers and the impacts on the economies of the WCI partner jurisdictions.

After careful and thorough review of the myriad administrative questions regarding the implementation of an auction, including the means by which to mitigate the potential for market manipulation, should the WCI still determine that an auction should be implemented, such an auction should (1) be implemented with no more than 5% of allowances economy-wide and (2) exclude the electricity sector from the initial phase of auctioning allowances. Such a structure would allow the WCI to monitor the auction on a smaller scale, and facilitate the development of appropriate market power mitigation measures.

v. Economic Impact Analysis.

Conclusion of the WCI's ongoing Economic Impact Analysis would help address

some of the questions and concerns still pending regarding the total impacts of the Draft Design for the proposed regional cap-and-trade program. Completion of the economic analysis and publication of the results is a prerequisite to California's adoption of the WCI's recommendations, as the proposal must meet the requirements set forth in AB 32, including the mandate that CARB take into consideration "cost-effectiveness" when making its final program implementation recommendations. No matter how well intended, until a recommendation is shown to be cost-effective, it should not be implemented in California, nor in other WCI partner jurisdictions.

B. Section II.B.3 - Energy Efficiency.

The Draft Scoping Plan includes aggressive goals for achieving emissions reductions through energy efficiency programs, with the vast majority of these reductions being made by the electricity sector. These aggressive targets are laudable, yet are not proven to be either cost-effective or technologically feasible. The Draft Scoping Plan is devoid of details providing direction on key matters necessary to implement the plan, including, (1) the means by which CARB anticipates apportioning the mandatory reductions attributable to energy efficiency amongst the electricity sector stakeholders, and (2) the proposed enforcement mechanisms for failure to achieve the stated energy efficiency goals.⁸

As a preliminary matter, it is important for CARB to note that in order to ensure the most expedient and efficient reduction in overall GHG emissions, retail providers must be allowed to utilize their limited resources in a manner that most effectively meets their own demographics. It is important that individual utilities be able to adopt programs that fit the specific needs of their individual jurisdictions. The demand for electricity in California is expected to continue rising,⁹ either due to traditional load growth in expanding communities or increased electrification of

⁸ NCPA intends to address this and related issues in more detail in the August 11 filing on the Appendices.

⁹ In the 2007 IEPR Report, the CEC concludes that "[d]emand for electricity is forecast to grow at a steady pace, fed by a projected increase in population—currently more than 36 million and projected to grow to 42 million by 2020." (2007 IEPR, p. ES-5) See also, the CEC staff's *California Energy Demand 2008-2018* Report, which demonstrates, in Figure 3, that the commercial, residential, agricultural and industrial sectors will continue to see increases in electricity consumption through 2018 (at p. 14), and that statewide electricity consumption will continue to rise steadily through the 2008-2018 demand forecast period. (Table ES-1, at p. 3)

other sectors, placing an even greater importance (and burden) on emissions reductions achieved through energy efficiency programs. Entities responsible for achieving the mandated emissions reductions should be given the greatest latitude possible to accomplish the required reductions in the most cost-effective manner possible.¹⁰

The Final Scoping Plan needs to include this factor as an underlying premise in any programmatic mandates regarding energy efficiency programs. To that end, targets and goals cannot be established for all members of the electricity sector until there has been a full vetting of this issue with all of the relevant regulatory bodies, including the boards and commissions that oversee the publicly owned utilities, as mandated by AB 32 (§38561(a)).

The Scoping Plan should also address the extent to which energy efficiency measures can be more fully incorporated into other sectors of the economy, and define a vehicle by which such state-wide programs would be implemented, administered, and enforced. The California Public Utilities Commission (CPUC) recently initiated a new proceeding to address this very issue.¹¹ The purpose of this Rulemaking is to develop a CPUC-sponsored, statewide energy efficiency plan that can be utilized by CARB and incorporated into the Final Scoping Plan. The CPUC EE Strategic Plan presents a broad range of comprehensive energy efficiency measures to be implemented across all segments of the State's economy. While the goals and objectives set forth in the Draft CPUC EE Strategic Plan are commendable, they cannot be incorporated into the Scoping Plan without more information. The document is devoid of any cost-benefit analysis, discussion regarding strategies for implementation of aspects of the plan applicable to non-CPUC jurisdictional entities, or information regarding the state entity that will be responsible for implementation and enforcement of the measures set forth therein. NCPA is concerned that the process utilized by the CPUC to develop the proposed statewide plan does not provide all stakeholders with an equal opportunity to provide input on this crucial issue. In moving forward, the same concerns exist with regard to development of the actual programs themselves, as well as

¹⁰ NCPA notes that all of the State's retail electricity providers are required to meet energy efficiency targets. The only differences between investor owned utilities and publicly owned utilities in this regard is the regulatory body responsible for setting those goals.

¹¹ The CPUC instituted Rulemaking 08-07-011 on July 10, 2008, and in that proceeding released its draft *California Long Term Energy Efficiency Strategic Plan* (Draft CPUC EE Strategic Plan).

implementation, administration, and enforcement. As a critical issue of statewide concern and applicability, NCPA wants to ensure that the Draft CPUC EE Strategic Plan is viewed by CARB as a starting point for discussion, and not as a comprehensive recommendation. As with the various measures set forth in the Draft Scoping Plan, all aspects of the Draft CPUC EE Strategic Plan must be reviewed for cost-effectiveness and technological feasibility before a recommendation can be made to include them as part of the State's AB 32 implementation.

C. Section II.B.4 - Renewable Portfolio Standard (RPS).

The Draft Scoping Plan proposes that the State “*Achieve 33 percent Renewables Portfolio Standard by both investor-owned and publicly-owned utilities.*”¹² (p. 24) The objective to maximize the utilization of zero- and low-emitting renewable resources is admirable. However, such a plan must still meet AB 32's “cost-effective and technologically feasible” requirements. The Draft Scoping Plan is devoid of any discussion regarding the feasibility or practicality of achieving this goal.¹³ Even in “plan” form, such a conclusion must include at least preliminary direction to those implementing the plan regarding how such a goal should be met and why it is both cost-effective and technologically feasible.

Furthermore, this discussion must also emphasize the importance of maintaining the reliable provision of electricity to California's electricity consumers. Renewable resources are a great means by which to reduce GHG emissions, but they are not without their challenges, including the development of transmission infrastructure to deliver the electricity from sometimes remote regions to metropolitan centers where it is required, as well as firming the renewable resources to ensure electricity is still delivered to the State's customers even when the sun is not shining and the wind is not blowing. These are not insurmountable obstacles, but neither are they inconsequential, and the Draft Scoping Plan must address these issues in the context of both reliability and cost-effectiveness.

The Draft Scoping Plan must also recognize the benefit of existing renewable resources.

¹² NCPA intends to address this and related issues in more detail in the August 11 filing on the Appendices.

¹³ As with matters pertaining to the implementation of energy efficiency programs, the Draft Scoping Plan must take into account the relationship between emissions reductions measures and local governments. Publicly owned utilities are inexorably linked to their local jurisdictions, and as mandated by AB 32, CARB must consult with them in developing emissions reductions proposals applicable to them.

Many retail providers have long-term interests in large hydroelectric generation. These resources provide a great deal of reliable and GHG-free electricity to customers, and should continue to be viewed by the State as a valuable “green” resource. NCPA recognizes that existing large hydroelectric projects are currently not counted towards “statewide” RPS goals outlined by the CEC. However, that is not to say that large hydroelectric facilities – both new and existing – should not be considered a viable option and beneficial tool for achieving overall GHG reductions.

D. Section II.B.8 – Water.

Water pumping is currently included in the electricity sector; the final Scoping Plan must include some acknowledgement of the water sector impacts on the electricity sector. If water efficiency measures are implemented, their impacts on the electricity sector must be tracked and accounted for. The electricity sector should not be called upon to achieve duplicative reductions in this regard. (See § 38561(a)).

E. Section II.B.10 - Goods Movement.

The Draft Scoping Plan calls for the State to “*Implement adopted regulations for port drayage trucks and the use of shore power for ships at berth.*” (p. 29) In essence, significant efficiencies in goods movement will be achieved through electrification. To the extent that electrification is a means by which to reduce overall GHG emissions, it should be implemented across the State. However, it is important for the Final Scoping Plan to acknowledge that actions – even reductions – across all sectors will impact the electricity sector, some to a considerable degree.

For example, shore power – or “port electrification” – can be used to reduce emissions attributable to idling diesel engines. While the end result of this effort may vastly reduce the amount of GHG emissions attributable to diesel ship engines, in order to provide auxiliary power at the dock, an entity such as the Port of Oakland must procure more power to meet this new demand. In addition to being the fourth largest container port in the nation, the Port of Oakland provides resources and facilities to the Oakland Airport, commercial real estate, and seaport tenants and customers. Providing a means by which ships docking at the port to load and off-load

cargo can “plug in” and receive electric power to run their vessels will greatly increase emissions attributable to the Port of Oakland, and the electricity sector as a whole.

NCPA supports such measures to the extent that they are viable tools that can be utilized to achieve real GHG reductions. However, since the electricity sector will necessarily incur an increase in load, the net reduction requirements imposed upon the electricity sector must include mechanisms by which CARB can address and account for these transfers.

F. Section II.B.13 - Local Government.

The Draft Scoping Plan would “*Encourage local governments to set quantifiable emission reduction targets for their jurisdictions; recommend regional greenhouse gas emission reduction targets.*” (p. 31) Clearly, local governments are going to play a key role in facilitating the implementation of a large number of the emissions reduction measures contemplated in the Draft Scoping Plan, from building codes and standards, to urban land-use planning, transportation, and even electricity consumption and energy efficiency programs. This role is not limited to merely effecting reductions for its own operations.

In order to ensure that the local governments fully understand their charge, the Draft Scoping Plan should be revised to include a definition of “local governments.” Many of the proposed measures set forth in the Draft Scoping Plan would be carried out by local cities and counties, or special agencies charged with regional responsibilities. As a practical matter, local governments also include joint powers agencies (such as NCPA) and other collective agencies that are comprised entirely of individual local government members. The Final Scoping Plan should define exactly which local governments are subject to the various proposed measures in order to avoid confusion and inefficiencies regarding the proper entity charged with the various reduction measures.

The Draft Scoping Plan should be revised to provide guidance on how emissions reductions effected by the various local governments will be quantified and tracked (p. 32). It is important that the Final Scoping Plan take into account the nuances regarding steps already taken by various communities to reduce GHG emissions – both in terms of quantifying emissions reductions and establishing a benchmark for reduction goals moving forward. Because California’s population is so diverse, it may be necessary for evaluation criteria to differ based on the type of local government at issue; doing otherwise could inadvertently understate activities

being undertaken by fast-growing communities.

As an example, fast-growing communities like the cities of Roseville and Redding may experience growth that will basically result in a net increase in the total amount of GHG emissions produced in each community, despite the fact that these same communities and others are taking aggressive steps to control GHG emissions, and would otherwise have seen a significant increase in their total carbon footprint.

Different benchmarks must be developed to address GHG reduction progress being undertaken by fast-growing communities. While specific details surrounding these benchmarks and development of programs to measure them would be part of the 2009 and beyond implementation process, the Draft Scoping Plan should be revised to acknowledge them at this time. Doing so will enable stakeholders to begin these discussions now in order to ensure balancing commitments to reduce emissions and smart growth activities.

Some types of approaches which may be useful to consider may include (but are not limited to) the following:

- Measure emission impacts based on carbon intensity, carbon dioxide produced per megawatt of generation.
- Baseline year development with business-as-usual assumptions for purposes of comparing future year emission inventories. This would allow local governments to account for avoided emissions reductions realized through smart growth programs.
- City utilization of pilot projects that promote reductions in GHG emissions (i.e., advanced meters in the electricity industry).
- Educational outreach programs within the community (schools, large industry).
- Aggressive implementation of solar/energy efficiency programs that reduce consumption of electricity by specific levels.
- Adoption of local ordinances that require more energy efficient building standards.
- Local governing board approval of policies leading to reduction in GHG emissions.
- Use of local tax incentives to promote reductions in GHG emissions.
- Communities formally joining California Climate Action Registry, The Climate Registry, or similar organizations.

Finally, the Draft Scoping Plan should be revised to note that entities of a specific region may differ for purposes of setting regional targets depending on the specific emissions reduction measure at issue. (p. 33) For example, the communities in a region involved in transportation planning matters may, due to geography and climate, differ from the communities involved in

matters regarding air quality.

G. Section II.B.14 – High Speed Rail.

As with electrification of goods movement, the shift to greater use of high speed rail will also impact the electricity sector. For example, the Bay Area Rapid Transit District (BART) operates high speed rail service throughout the San Francisco Bay area. Its fleet of electric trains moves 350,000 commuters each weekday. A proposal to successfully expand BART services will include more trains moving more passengers each day, resulting in a significant reduction in the number of automobiles on the road. While this will result in extensive and much needed reductions in transportation sector emissions, such a proposal will also result in an overall increase in GHG emissions attributable to the electricity sector as more electricity must be generated to operate the increased number of trains. It is imperative that this correlation be recognized and addressed in the Final Scoping Plan.

III. COMMENTS ON CHAPTER II.C - PRELIMINARY RECOMMENDATIONS FOR OTHER MEASURES UNDER EVALUATION

A. Coal Emissions Reduction Standard.

The State's Scoping Plan should not include any mandates regarding the elimination of existing coal contracts used to provide electricity to California's customers. The Draft Scoping Plan proposes consideration of options to reduce GHG emissions attributable to coal contracts, including "requiring electric service providers to divest or otherwise mitigate portions of existing investments in coal-based generation." (p. 39) NCPA believes that such a proposal is ill-advised in that it (1) could adversely impact reliability, (2) is potentially illegal, (3) is duplicative of existing mandates on this issue, and therefore should not be a part of the Scoping Plan.

It is undisputed that California receives electricity from existing long-term contracts with coal-fired generation facilities. Electricity supplied under these contracts is part of the retail service providers' energy portfolio, and is factored into the amount of energy needed to continue the reliable operation of the State's grid. Mandating the elimination of these contracts presents a significant risk to the reliable provision of electricity to customers across the State, and is not assured to actually reduce total emissions. Replacement energy must be procured, and the

potential for significant financial harm to those entities with the long-term contracts could actually require the retail provider to forego investments in more expensive zero- and low-emitting resources in order to fill the gaps in its energy portfolio.

Furthermore, such a proposal to interfere with existing binding contracts is likely to invoke significant legal barriers. Long standing contracts for facilities owned by retail providers cannot be easily terminated without significant legal and financial repercussions.

Finally, California has already taken significant steps to address emissions attributable to investments in high-emitting resources with the adoption of Senate Bill (SB) 1368, and the subsequent development of an emissions performance standards (EPS) for all of the State's electric service providers. Signed at the same time as AB 32, SB 1368 specifically addresses emissions from electric generation sources, and directed the CPUC and CEC to adopt the EPS, which were adopted by the respective commissions in 2007. Electric generators are already precluded from entering into procurements for electricity that do not meet the mandated EPS. Restrictions also exist for investments in existing high emitting resources, including coal-fired generation.

A premature directive to simply "require divestiture of coal resources" is not advisable, and should not be a part of CARB's Final Scoping Plan.

B. Carbon Fees should not be Duplicative of Other Mandates.

While utilization of a carbon fee may be a viable option for those sectors not included within the cap, it is imperative that the fee structure be designed as to avoid imposing a duplicative cost on entities called upon to make reductions through other programs.

Fees should be carefully structured and specifically targeted to guarantee that they impact activities to reduce costs, and not just impose arbitrary fees. Carbon fees are attractive in their administrative simplicity, yet development of the fees in such a way as to ensure that the fees are not duplicative and result in behavioral changes that effect the targeted reduction may be more difficult. CARB must be careful that the relative simplicity of imposing a carbon fee does not result in duplicative fees on the same sector or customer groups. Carbon fees for the purpose of collecting revenues to administer the State's AB 32 implementation programs must be borne equally by all segments of the economy, and must not place a disproportionate burden on any one

sector.

Despite the fact that there is inherent uncertainty regarding total reductions that can be effected by imposing a carbon fee, a well designed fee can be a valuable tool to the State. For example, sectors not within the cap can still help reduce emissions through a carefully designed carbon fee that would reap net benefits. Such a fee would result in either a revenue stream that can be used to effect the reductions sought, or actual reductions resulting from behavioral changes.

C. Offsets Should be Encouraged.

NCPA fully supports the utilization of offsets to facilitate *global* emissions reductions and provide entities with the compliance obligation the greatest flexibility in meeting the mandated emissions reduction goals. The WCI Draft Design also supports the use of offsets and has presented some parameters for further developing a regional offset program. However, at CARB, there has been no significant discussion to date, or supporting documentation, that would justify limits on the use of offsets (p. 44). CARB must be open to the utilization of offsets as part of the solution; the greater the flexibility in the program, the greater the potential for reductions. As GHG is truly a global concern, it should be acceptable to develop “green” projects anywhere they are feasible and will result in the greatest overall emissions reductions.

Disallowance and strict limitations on the use of offsets creates obstacles to development of alternative GHG reduction solutions. The work undertaken by the WCI established a firm foundation upon which the WCI based its recommendation to allow at the use of offsets. The Scoping Plan should acknowledge the vital role that offsets will play in achieving GHG reductions; subsequent to issuance of the Scoping Plan, the details regarding the scope and kinds of offsets that should be utilized would be further developed and simultaneously addressed along with the ongoing development of the cap-and-trade program itself.

D. Possible Use of Revenues.

The Final Scoping Plan must provide guidance on appropriate uses of revenues derived from the various emissions reduction measures, and must clearly identify and prioritize those uses. As a starting point the Draft Scoping Plan includes a list of possible uses (p. 46) and invites

further comment on this issue.

Under any of the proposed revenue-making programs – auction under cap-and-trade, public goods charges, carbon fee – it is imperative that proceeds generated under any of the specific plans be used to help compensate the customers that ultimately paid for the allowances. For example, in the event of an auction that includes the electricity sector, revenues should be allocated to programs that go directly to the communities and customers impacted by the reduction obligations.

While these comments focus on examples that pertain to the electricity sector, the underlying premise is true of all segments of California’s economy. Within the electricity sector, anything other than the free allocation of emissions allowances creates a situation where electricity customers must pay twice to meet the objectives of AB 32; once through the actual emissions reductions being employed by the retail provider and again by purchasing allowances through the auction. Therefore, 100% of the auction revenues should not be placed into a common fund to be used only for broader policy objectives, such as research and development of low emitting resources, though a portion of the proceeds could be used for that purpose. Rather, a retail electric provider responsible for emissions reductions should have the ability to utilize the proceeds of an auction to effect even greater reductions within its service area, even if those funds are focused on the same kinds of programs.

One of the primary concerns raised by stakeholders in the CPUC/CEC Joint Proceeding was with regard to the determination of how emissions-related revenues (in that case, auction proceeds) would be spent, and concerns that the revenues would be diverted away from the customers that actually fund them.¹⁴ Distribution of revenues to an overarching governing body will substantially diminish the potential value that could be returned directly to consumers. Wide scale distribution of revenues to the “greater good” without consideration of the actual source of those funds is not acceptable. In the event of an electricity sector auction or electricity carbon fee, if allocation of revenues or proceeds are not prioritized to recognize the costs borne by electricity customers, with the majority of the proceeds being returned directly to the communities

¹⁴ See, for example, comments of the Sacramento Municipal Utilities District at p. 7 and the Southern California Public Power Authority at p. 27, in response to the Joint Commissions’ Proposed Decision on the *Interim Opinion on Greenhouse Gas Regulatory Strategies*.

that shouldered those cost burdens, the revenues will be little more than the functional equivalent of a tax.

If an auction is instituted, the structure must involve a process by which auction proceeds are allocated back to the entities purchasing the allowances. The greatest value to consumers occurs if decisions regarding the distribution of the proceeds are left to those that are most closely connected to the needs of local constituents – the retail electricity providers with the compliance obligation.

NCPA concurs with findings made by the CPUC and CEC that all proceeds derived from the electricity sector borne by the electricity sector consumers should be returned to those consumers.¹⁵ NCPA and several stakeholders commented in the CPUC/CEC Proceeding that revenues or income associated with allowances should remain with, or be returned to, the retail providers that incurred the costs of reduction on behalf of their customers; proceeds should go to load serving entities for the benefit of their customers. While it is generally acknowledged that bill reductions and rate subsidies may be legitimate uses for such auction proceeds, such a narrow interpretation of customer benefits should not be adopted. Low income and other special-needs customers will likely be severely affected by the economic impacts of AB 32 implementation, and those customers must be protected. However, distribution of revenues and proceeds back to the impacted customers – via their retail provider – can and should take many other forms, and a discussion of those uses should be fully addressed during the Scoping Plan implementation phase.

The Scoping Plan should ultimately set forth not only a list of possible uses for revenues derived from the various components of the proposed emissions reduction measures, but must also establish that an underlying principle upon which such distribution is based is to return those revenues to the customers that originally financed the costs of the reduction.

IV. CONCLUSION

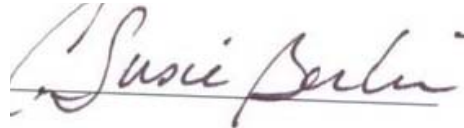
NCPA appreciates the opportunity to provide these comments on the Draft Scoping Plan and looks forward to continuing to work with CARB in the development of the Final Scoping Plan and in implementing the various measures that are going to be a vital part of achieving the

¹⁵ D.08-03-018; pp. 98-99, Finding of Fact 30, Ordering Paragraph 9.

GHG reductions mandated by AB 32.

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

A handwritten signature in cursive script that reads "Susie Berlin". The signature is written in dark ink and is positioned below the typed name of the firm.

C. Susie Berlin
Attorneys for the Northern California Power Agency