

***LAW OFFICES OF SUSIE BERLIN***

---

*1346 The Alameda, Suite 7, #141  
San Jose, CA 95126  
408-778-8478  
berlin@susieberlinlaw.com*

*Submitted electronically*

October 19, 2015

Rajinder Sahota  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95184

Re: ***Comments of the Northern California Power Agency on the Kick-Off for 2016 Cap-and-Trade Program Amendments Workshop***

Dear Ms. Sahota:

The Northern California Power Agency<sup>1</sup> (NCPA) appreciates the opportunity to submit these comments to the California Air Resources Board (CARB) in this early, pre-rulemaking phase of the proceeding, in order to help identify and define the scope of issues that will need to be addressed in amendments to the Cap-and-Trade Program regulation. While some of the potential amendments will only impact the 2018-2020 compliance period, amendments to the regulation that extend the program beyond 2020 will also overlap, and to a certain degree need to be coordinated with, both the Updated Scoping Plan target setting and CARB's own development of the State Plan to implement the US Environmental Protection Agency's Clean Power Plan (CPP).

NCPA offers these comments in full acknowledgement that regulatory agencies and compliance entities alike are faced with a number of uncertainties at this time regarding key issues that will shape the final Cap-and-Trade Program amendments, given that the emission reductions targets for each covered sector are unknown, as are the specific compliance obligations of covered entities, and added that a final determination regarding the form of the State Plan for CPP compliance has not been set. Each variable has a significant impact of what the final regulation will look like, influencing everything from compliance costs to cost containment measures. The 2016 amendments are also likely to be impacted by the State's ongoing work on the Scoping Plan, as outlined during the recent 2030 Target Scoping Plan Workshop.<sup>2</sup>

In these comments, NCPA focuses on key policy issues that must be addressed at the onset of this process. Due to the fact the Cap-and-Trade Program is such an integral part of the State's climate reduction strategy, its implementation – both under the current regulations and post-2020 – implicate myriad other climate reduction measures and programs. With the significance of

---

<sup>1</sup> 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. NCPA owns, operates, and maintains a fleet of power plants that is among the cleanest in the nation, providing reliable and affordable electricity to more than 600,000 Californians.

<sup>2</sup> NCPA's comments on the October 1 Scoping Plan Workshop can be found at <http://www.arb.ca.gov/lists/com-attach/29-2030targetsp-ws-B2kBZAR1UGILUGVm.pdf>.

developing the State Plan for implementation of the CPP, implementing the aggressive new emissions reduction measures articulated in Senate Bill (SB) 350 (Chapter 547, 2015), and the crucial role that the electricity sector holds with regard to each of these programs, the stakes are very high for NCPA and its members utilities, and NCPA looks forward to continuing dialogue with CARB, other affected State agencies and stakeholders as this process unfolds.

### **Setting the Post-2020 Cap**

The post-2020 Cap-and-Trade Program will be necessarily shaped by the emissions reductions that will be included under the cap. While CARB presented information regarding a potential cap for 2030, it was also noted that the agency is evaluating options for setting the post-2020 cap, including whether other covered entities may be brought into the program.<sup>3</sup> NCPA believes that the various options being explored by Staff should be publicly discussed, and that the process for establishing the post-2020 cap should be established before other post-2020 program elements and requirements are finalized. In that regard, CARB will need to review the program elements and their impacts with other complementary measures, and determine the extent to which certain policies might adjust previous program assumptions. For example, several stakeholders urged CARB to look at the impacts of electrification of the transportation sector on electric sector emissions, something CARB did not anticipate would significantly impact utility costs by 2020.<sup>4</sup> Since that time, the Governor marked reducing GHG emissions from the transportation sector as a cornerstone of the State's overall climate policy, electric vehicle penetration has increased exponentially, and the Legislature found that "widespread transportation electrification" is required to achieve the State's current and future emission reduction targets<sup>5</sup>; reducing emissions from all aspects of transportation through increased electrification will continue to expand under both long-standing and new policies and programs. These considerations must be factored into the overall cap, and addressed in the context of determining the compliance obligations for the various sectors, and particularly, the impacts this will have on the electric sector.

The final cap will impact such things as who will be a covered entity, what covered entities' compliance costs may be, and what sectors will be part of the program, as well as the available cost containment measures that may be employed<sup>6</sup>.

The overall statewide cap will also have an impact on implementation of the Clean Power Plan. As more fully addressed in CARB's Clean Power Plan Compliance Discussion Paper (White Paper) and NCPA's separate comments on the CPP, certain aspects of the State Plan will need to be federally enforceable, including certain emission standards within the State Plan that will apply specifically to affected existing fossil-fueled electric generating units (EGUs). It is important to understand how these measures will fit into, and be impacted by, the total emissions target the state sets for the Cap-and-Trade Program.

For all of these reasons, it is imperative that the total GHG emissions reduction target for the post-2020 Cap-and-Trade Program be established at the onset of these deliberations. NCPA is concerned that a single scheduled workshop for December may not allow CARB and stakeholders a sufficient opportunity to fully address these important issues. Indeed, while cap setting and cost

---

3 October 2 Staff Presentation, Discussion Workshop for Cap-and-Trade Regulation 2016 Amendments, p. 10.

4 California's Cap-and-Trade Program, Final Statement of Reasons (2011 FSOR), October 2011, p. 570.

5 SB 350, Public Utilities Code section 740.12.

6 October 2 Staff Presentation, Discussion Workshop for Cap-and-Trade Regulation 2016 Amendments, *Cost Containment and Market Data Publication*, pp. 6-10.

containment are inexorably linked, until a cap is set, it is not even possible to determine what types of cost containment measures may be available. NCPA urges CARB to make setting the post-2020 cap for the Cap-and-Trade Program a high priority.

### Allowance Allocation

Allowance allocation under the post-2020 Cap-and-Trade Program must also be addressed early in the development of the 2016 amendments. The manner and extent to which covered entities will be allocated allowances post-2020 is of vital importance to entities such as NCPA's publicly owned utility members. The allocation of allowances to electrical distribution utilities (EDUs) was a key part of the successful implementation of the Cap-and-Trade Program and the extent to which the state's electrical distribution utilities were able to meet their compliance obligations while providing direct benefits to their electricity customers and reducing GHG emissions.

Concluding in 2011 that California's electricity customers are ultimately responsible for a significant portion of the mandated reductions in the electricity sector, CARB allocated free allowances to EDUs in advance of the first compliance period.<sup>7</sup> Electrical distribution utilities have to meet compliance obligations under the Cap-and-Trade Program and simultaneously invest in programs and measures to meet ambitious renewable energy and energy efficiency mandates. The value derived from the allowances allocated to the EDUs directly benefits the state's electricity ratepayers by protecting them from what would otherwise be significant rate impacts. In adopting the Cap-and-Trade Program regulation, CARB stated that:

The electrical utility allocation is designed to protect electricity customers and reward these customers for utility investment in renewable energy and energy efficiency. Any allowance allocated to electrical distribution utilities must be used exclusively for the benefit of retail ratepayers of each electrical distribution utility, consistent with the goals of AB 32, and may not be used for the benefit of entities or persons other than ratepayers.<sup>8</sup>

The reasons and basis for freely allocating allowances to the electrical distribution utilities is just as true and relevant today as they were in 2011. Indeed, in the face of a tightening cap and increased compliance costs, free allocation of allowances to electrical distribution utilities, the value of which is used to directly benefit electric customers, is *even more important today* than it was in 2011. To date, the EDUs that received free allowances have used the value of those allowances to invest in GHG reducing measures and compliance cost mitigation that directly benefits their electric customers. These investments provide not only near term benefits in reduced electric bills, but also form the basis for long term reduction strategies that will be even more important as the cap tightens.

The allocation methodology ultimately adopted by CARB was subject to months of stakeholder discussions and meetings, and multiple rounds of comments. It was non-updating and based on cost burden, energy efficiency, and early action—as defined by investment in renewables during the period 2007-2011. In the end, CARB concluded that the adopted approach

“fairly apportions value to the electric distribution utilities in a way that compensates retail customers for their cost, providing transition assistance, while maintaining a strong incentive for distribution utilities to make investments toward lowering their emissions profile. We

---

<sup>7</sup> Cap-and-Trade Program Regulation, Section 95892(a), Table 9-3.

<sup>8</sup> 2011 FSOR, p. 215.

believe that this approach is replicable for the beyond 2020 horizon and at the regional or national level.<sup>9</sup>

Since 2011, the GHG reduction demands on the electric sector have increased. Since the first allowance allocation was made, the State has continued to enact greater emissions reductions measures, many of which are aimed at reducing petroleum usage in transportation fuels. Recognizing the potential impacts on the electricity sector of transportation electrification,<sup>10</sup> the Legislature directed CARB to identify and adopt policies rules or regulations that would remove barriers to electrification, including “an allocation of greenhouse gas emissions allowances to retail sellers and local publicly owned electric utilities, or other regulatory mechanisms, to account for increased greenhouse gas emissions in the electric sector from transportation electrification.”<sup>11</sup> The significance of this direction, as well as the overall implications of transportation electrification must also be factored into CARB’s final allowance allocation analysis.

From the schedule proposed during the October 2 Workshop, it appears that CARB has just one workshop on allocation schedule, and not until February of next year. Given the importance of this issue, NCPA urges CARB to initiate the stakeholder process right away to determine the appropriate number of allowances to allocate to covered entities in the electric sector.

### **Cost Containment**

NCPA has long advocated for inclusion of robust and meaningful cost containment provisions in the Cap-and-Trade Program regulation. NCPA appreciates that the current regulations provides for some protections in the Allowance Price Containment Reserve (APCR), but believes that the current cost-containment reserve will be insufficient to control compliance costs in a post-2020 program given the degree to which the total cap is expected to be ratcheted down. NCPA applauds CARB’s recognition of the importance of the cost containment provisions and commitment to review the various options at this time. The final cost containment tool that is ultimately employed will be impacted by both the ongoing and necessary economic analysis and the final post-2020 cap. Given the importance of the cost containment mechanisms and the extent to which these outstanding variables impact that discussion, it is unlikely that one workshop will allow CARB and stakeholders to adequately address this issue. During the October 2 Workshop, Staff reviewed three different cost containment proposals: the Emissions Market Advisory Committee (EMAC) recommendation for an APCR that is coupled with a price ceiling, and potentially borrowing allowances from post-2020 if necessary; the Market Simulation Group (MSG) recommendation for the APCR mechanism; and the Nicholas Institute 2010 Proposal for a “double cap,” and asked for stakeholder input on the design, size, and price(s) to be incorporated into any cost containment mechanism. (Slide 10) As noted above, NCPA supports a cost containment tool that is more robust than the current APCR, and recommends that CARB look into modifying the cost containment mechanisms or enhancing the APCR to include a price ceiling. While the initial proposal for a double-cap may have merit in incentivizing technological advances, it is highly contingent upon variables based on known and unknown technologies. The setting of an “aspirational cap” based on technological expectations creates a great deal of vagueness in a measure that is ideally designed to steady the market in the

---

9 2011 FOSR, p. 573-575.

10 Senate Bill 350 adds Section 237.5 to the Public Utilities Code, which provides that: “Transportation electrification” means the use of electricity from external sources of electrical power, including the electrical grid, for all or part of vehicles, vessels, trains, boats, or other equipment that are mobile sources of air pollution and greenhouse gases and the related programs and charging and propulsion infrastructure investments to enable and encourage this use of electricity.”

11 Senate Bill 350; Health and Safety Code Section 44258.5(b).

event of uncertainty. In order for CARB to make informed decision about the caps under such a program design, CARB will need to conduct assessments and determine the scope of various scenarios that would need to be modeled. These scenarios assessments and modeling work may be done in conjunction with the Scoping Plan Update and setting the 2030 targets, but must be conducted expeditiously in order to provide meaningful insights into this methodology as a viable cost containment option.

Whatever form the final cost containment measure – or measures – adopted by CARB take, they must ensure long term protections for compliance entities, and they must not buttress short term concerns at the expense of long term cost containment protections.

### **RPS Adjustment**

CARB should not eliminate the RPS Adjustment. During the October 2 Workshop, in response to stakeholder comments regarding the RPS Adjustment, CARB Staff indicated that the agency will be reviewing the RPS Adjustment to determine whether it should be retained as part of the Cap-and-Trade Program. The RPS Adjustment is an important cost-containment measures and a necessary tool to ensure that California's electricity ratepayers are not penalized for investments in renewable energy resources located outside of the state. The RPS Adjustment was intended to reduce the compliance obligation of first deliverers under the specific conditions set forth in section 95852(b)(4) of the regulation, essentially giving first deliverers credit against their compliance obligation for RPS electricity procured.

Staff has expressed concerns regarding the use of the RPS Adjustment, and has suggested that this "voluntary" option may need to be removed from the regulation. Whether voluntary or not, for those first deliverers with investments in renewable energy, the RPS Adjustment is an essential tool in managing Cap-and-Trade Program compliance costs, and protects electricity customers from paying GHG compliance costs for energy associated with zero-emission, renewable energy resources. As such, NCPA strongly urges CARB to work with stakeholders in a technical workshop to address Staff's concerns with the manner in which the RPS Adjustment is being utilized, and make certain that covered entities and verifiers are all aware of the same interpretations and expectations regarding its implementation. Amendments to the Cap-and-Trade Program Regulation and the Mandatory Reporting Regulation (MRR) can be crafted that address the apparent shortcomings and confusion associated with the current regulatory language. Amendments to the MRR would also ensure that the accuracy of the annual GHG emissions attributed to compliance entities. This is particularly important to electric utilities that are subject to a number of reporting and public disclosure requirements regarding their resource portfolios and carbon footprint, which reflect higher than warranted emissions when the full value of the emission free renewable resources are not properly attributed to the affected utilities.

Because workable and viable solutions are available, NCPA does not believe that administrative difficulties should serve as a basis for abandoning this important tool. NCPA looks forward to working with Staff and affected stakeholders to craft appropriate amendments to the Cap-and-Trade Program regulation and the MRR that allows for the continued utilization of this essential tool in a manner that protects the affected first deliverers (and ultimately, California's electricity customers), maintains the environmental integrity of the Cap-and-Trade Program, and provides an accurate accounting of the GHG emissions of covered entities.

### **Economic Analysis**

Although the Cap-and-Trade Program has been subject to economic analyses in the past, those analyses must be updated to reflect current market conditions, the extended length of the Cap-and-Trade Program, and implementation of the CPP. CARB is currently planning for economic analysis as part of its work on the 2030 Target Scoping Plan. However, since CARB anticipates completing the initial draft of the State Plan for CPP compliance and the 2016 Cap-and-Trade Program amendments on a faster schedule than the Scoping Plan update, NCPA urges CARB to accelerate the economic analysis so that the results can be meaningfully incorporated into CARB's development of the 2016 Cap-and-Trade Program amendments and inform the deliberations regarding the State Plan for implementation of the CPP.

### **Electricity Imports**

While AB 32 mandates the tracking of imported electricity, implementation of the CPP, linkage with other jurisdictions, and collateral arrangements with neighboring jurisdictions may result in the need to alter the existing tracking and reporting metrics for imported electricity. In the state's zeal for ensuring that electricity sector GHG emissions are acknowledged and subject to compliance obligation, it is important to ensure that the program does not result in a "double counting" the compliance obligation of California's electricity sector. CARB must look beyond just AB 32 and the Cap-and-Trade Program itself to ensure that any amendments contemplate and consider the impacts of CPP implementation – both in California and in neighboring states – on how imported electricity is counted and regulated. Further consideration must also be given to the potential impacts that an expanded ISO and the emerging energy imbalance market (EIM) may have on covered entities, including tracking and reporting imported electricity.

### **Streamlining Current Regulation**

NCPA fully supports Staff's efforts to streamline the existing regulation to capitalize on reporting efficiencies wherever possible. In particular, consolidating various regulatory provisions that address the same requirements would be very useful, as would coordinating and combining notice deadlines. NCPA also supports CARB's further review of the auction participation requirements to ensure that needless steps and excess time lags are removed wherever possible.

NCPA also urges CARB to closely review its current requirements, including the kinds and amount of information that it collects, to ensure that all of the data is reasonably necessary for the agency to carry out its market monitoring role.

### **Publication of Market Data**

During the October 2 Workshop, it was noted that Staff is currently evaluating its disclosure and publication of market data. The Cap-and-Trade Program regulation authorizes the publication of a great deal of market data, but does not always specify the manner in which that information is to be shared with the public. NCPA continues to urge CARB to review its publication policies in concert with protecting not only the market, but also market participants. This is especially true of covered entities that must participate in the CARB auctions, and must demonstrate the surrender of compliance instruments annually. To the extent that CARB publishes data regarding transfer prices and the quantity of compliance instruments, that information should remain aggregated and should never be submitted in form that would allow someone to discern the market position of covered entities.

### **Clean Power Plan**

Development of the State Plan for compliance with the CPP will impact the Cap-and-Trade Program and must be factored into discussions regarding the 2016 amendments. Because the electricity sector is such a significant part of the Cap-and-Trade Program, this will be true regardless of whether the state pursue as “state measures” plan or other option. As such, and stakeholders discussions and development of the State Plan must be coordinated with the Cap-and-Trade Program amendments. NCPA addresses this portion of the Workshop and Staff’s White Paper in separate comments.

### **Need for Electricity Sector Workshops**

Although not delineated in Staff’s October 2 presentation of potential 2016 amendments, several issues that directly impact the electricity sector were raised during the workshop, which Staff subsequently acknowledged would need to be addressed in separate workshops, some of which would need to be coordinated with CPP implementation. NCPA appreciates Staff’s willingness to have deeper and fully stakeholder discussions on these matters, and encourages CARB to schedule a sufficient number of workshops to enable a full and thorough vetting of the issues, including looking beyond 2020 and the initial implementation of the CPP to determine the best way to address potential “overlapping issues” between the State Plan for CPP implementation and the Cap-and-Trade Program. Those discussions will necessarily implicate GHG emission reduction measures other than the Cap-and-Trade Program, such as the RPS program. Electricity sector workshops will also need to address such matters as the allocation of allowances to EDUs post-2020 and amendments to the RPS Adjustment to ensure its full efficacy and continued viability.

### **Conclusion**

NCPA appreciates the opportunity to provide these comments to CARB on the issues that will need to be addressed in the 2016 Cap-and-Trade Program amendments, and looks forward to working with CARB Staff and stakeholders on these important matters. 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](mailto:scott.tomashefsky@ncpa.com).

Respectfully submitted,



C. Susie Berlin, Esq.

**LAW OFFICES OF SUSIE BERLIN**

1346 The Alameda, Suite 7, #141

San Jose, CA 95126

Phone: 408-778-8478

E-mail: [berlin@susieberlinlaw.com](mailto:berlin@susieberlinlaw.com)

Attorneys for the:

**Northern California Power Agency**