

LAW OFFICES OF SUSIE BERLIN

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

October 23, 2015

Craig Segall
Senior Staff Counsel
California Air Resources Board
1001 I Street
Sacramento, CA 95184

**Re: *Comments of the Northern California Power Agency on Clean Power Plan
Implementation and the Clean Power Plan Compliance Discussion Paper***

Dear Mr. Segall:

The Northern California Power Agency (NCPA)¹ appreciates the opportunity to provide these comments to the California Air Resources Board (CARB) regarding the October 2 Workshop Discussion on the State Plan for implementation U.S. Environmental Protection Agency's Clean Power Plan (CPP) and CARB's September 28 *Clean Power Plan Compliance Discussion Paper* (White Paper).

Development of the State Plan will impact more than just the affected EGUs, and as such, discussions regarding the CPP implementation are properly linked to the State's current work on the 2030 Target Scoping Plan and 2016 Cap-and-Trade Program Amendments.²

Form of the State Plan

The White Paper indicates a clear preference for pursuing compliance with the CPP under a "state measures" approach that allows the state to utilize existing programs to measure compliance with the Federal guidelines. NCPA was joined by many electricity sector ratepayers in asking the U.S. EPA to allow states the flexibility to explore such options, and was pleased to see that acknowledgment in the final rule. The option to pursue such an approach would allow California to continue to utilize the multi-sector, market based program that has already proven effective. However, prior to committing to a state measures approach, CARB should fully evaluate the economic and practical feasibility of the other options, including rate-based programs. NCPA agrees that a state measures plan presents a viable option for California's compliance strategy with

¹ NCPA is a not-for-profit Joint Powers Agency, whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and whose Associate Member is the Plumas-Sierra Rural Electric Cooperative.

² NCPA submitted comments to CARB on the October 1, 2015 "2030 Target Scoping Plan Workshop" (<http://www.arb.ca.gov/lists/com-attach/29-2030targetsp-ws-B2kBZAR1UGILUgVm.pdf>) and the October 2, 2015 "Kick-Off for 2016 Cap-and-Trade Program Amendments" Workshop (<http://www.arb.ca.gov/lists/com-attach/20-ct2016amendments-ws-UTJWPwFtUW9QMwRq.pdf>)

the CPP, but the state must ensure that other options are also assessed. It is important to determine if there are other options that would better contain costs, especially for California's electricity customers. CARB's proposed schedule for submitting the State Plan is aggressive, with myriad details that need to be assessed and resolved between now and September 2016. However, the constrained schedule should not deter California from fully evaluating all of its potential options, including the potential benefits that could be gained from coordinating with neighboring states or otherwise pursuing "trade ready" options. If additional time is needed to thoroughly assess the implications of the various alternatives, including potential arrangements with neighboring states or other jurisdictions, CARB should consider the option to pursue an extension to 2018 by making an initial submission by September 2016.

Assuming a state measures approach that utilizes the multi-sector Cap-and-Trade Program as the central point of reference to determine California's compliance with the CPP, it is important to note that the Cap-and-Trade Program alone cannot achieve the reductions necessary to meet the State's targets set forth in the CPP. As the White Paper notes, the success of California's climate strategy is dependent on the suite of complimentary measures that further contribute to emissions reductions. These important measures include the renewable portfolio standard mandates, energy efficiency programs and policies, and investments in emerging technologies such as energy storage and demand reduction programs. EGUs would be unlikely to meet the CPP mandated targets with the Cap-and-Trade Program alone, and the additional measures play a pivotal role in achieving the necessary reductions. NCPA strongly supports CARB's objective of ensuring that these state measures remain within the exclusive jurisdiction of the state, and are not subject to federal oversight or enforceability.

Federally Enforceable Standards for EGUs

A state measures plan would include a California enforceable program, with emissions standards applicable to affected EGUs that would be federally enforceable. The California plan would also need to include a federally enforceable backstop that would trigger in the event – no matter how unlikely – that emissions from affected EGUs fail to comport to the reduction glidepath that will be established in the State Plan. Because the backstop trigger is directly linked to the affected EGUs – essentially the compliance entities under the CPP – there is a need to fully assess and develop the specific emissions standards that would be applicable to the EGUs and how those state-based standards would be structured under a federally enforceable program. No matter how remote the possibility that the backstop would be invoked, it is imperative that all aspects of that part of the program be fully evaluated.

There are many outstanding issues regarding what the additional "limited federally enforceable overlay for affected EGUs" would look like. The process by which permitting and enforcement of the federally enforceable compliance conditions are developed is very important. EGUs should not be subject to "double regulation," nor should implementation of the CPP result in burdensome or duplicative reporting and compliance obligations for EGUs. Avoiding such an outcome must be a cornerstone of both the State Plan and the associated backstop measure.

Regional Interaction and Trading

The State needs to remain forward thinking when designing the State Plan for implementation of the CPP. CARB will need to contemplate how the current proposals will work when trading partners are brought on-board. California is already linked with Quebec, Canada and is looking to link with Ontario, Canada. As well, the state of New York recently committed to engage with California to explore the possibility of linking carbon markets. The current Cap-and-Trade Program

regulation contains robust provisions that protect the environmental integrity of the trading program, which must be maintained in order to ensure the program's success. However, to the extent that California's trading partners – either in the near or long-term – are governed by the CPP guidelines, the State Plan for implementation of the CPP and the amendments to the Cap-and-Trade Program regulation must assess whether different accounting mechanisms may be needed for trading with other U.S. states than with our Canadian partners.

Ongoing collaboration within the western region will be important throughout this process. This issue touches not only on matters regarding grid operations and reliability, but also on environmental integrity and business arrangements in the electricity markets. NCPA urges CARB to look into specific trading and partnership opportunities with California's neighboring states and throughout the region. At the same time, even in the absence of formal "linkage" between trading regimes, California must continue to collaborate with the states from which it buys and sells electricity to ensure that compliance entities are not "charged twice" for the same GHG emissions. While AB 32 requires California to account for emissions from power imported into the state, the way in which the state accounts for those emissions may need to be adjusted if the equivalent of a compliance obligation is already included in the transaction fee associated with the purchase of that imported power. Otherwise, California's consumers would be penalized – rather than benefit – from the state's leading role in accounting for GHG emissions. CARB needs to make certain that California's consumers are not charged twice for the same emissions.

While it is unlikely that a state plan fully linking all aspects of CPP implementation with a neighboring state can be developed, opportunities for regional partnerships on discrete issues present viable alternatives and should be fully and continually evaluated.

Reliability

A core function of NCPA members as publicly owned electric utilities is to provide safe and reliable electricity to its customers at affordable costs. Ensuring that the reliability of the electric grid is maintained in the face of changing resource portfolios and ever-increasing integration of intermittent energy resources is critical. NCPA advocated for greater accountability and recognition of the potential impacts that the CPP would have on reliability and is very pleased that EPA recognized this concern in the final rule. The CPP requires that state plans demonstrate that reliability issues have been considered as part of the compliance planning process. Unfortunately, California's own analysis is necessarily limited to reviewing its own proposed actions and how it believes that the rest of the grid will function. Because of the integrated nature of the electricity grid, even with this demonstration in the initial plan, regardless of the upfront planning and analysis done by California, changes enacted by other states will certainly impact California to some degree. For that reason, California will need to continue to work with its regional balancing authority, the Western Electric Coordinating Council and collaborate with its neighboring states and the North American Electric Reliability Corporation to ensure that the entire western grid remains reliable. Regional studies and ongoing coordination and planning will remain a critical part of the process, even after the State Plan is completed.

Impacts from Transportation Electrification

Transitioning California transportation away from fossil fuel is a high priority for the State and necessary for the State to meet its aggressive GHG reduction goals. The White Paper references pursuit of transportation sector reductions in fossil fuel usage through transportation electrification, as did the Staff presentation during the October 1 Scoping Plan Workshop. While this will inevitably result in net reductions in GHG emissions statewide, it also places upward pressure on

EGUs to generate the electricity that will be needed to fuel the transportation sector transition. Some of that generation will likely need to be provided by natural gas facilities. Despite efforts to decarbonize electricity generation and even with increased renewable energy procurement, natural gas will continue to be an important part of the safe and reliable provision of electricity across the state; natural gas is needed to address the intermittency of renewable resources and to provide additional generation as needed. This increased pressure must be factored into both the Cap-and-Trade Program cap-setting and implementation of the CPP.

Clean Energy Incentive Program

The U.S. EPA has proposed to develop a Clean Energy Incentive Program (CEIP) as an element of the Clean Power Plan. The CEIP is expected to offer incentives for investments in renewable energy and energy efficiency projects in 2020 and 2021, with adders for projects located in disadvantaged communities. Because the program itself is not fully developed, it is difficult at this time for stakeholders and states to fully weigh the pros and cons of participating in such a program. Until more information is forthcoming that would allow the CARB to analyze the costs and benefits of such a program, California should not commit to participating in the CEIP. However, neither does NCPA believe that the State should preclude its ability to explore the option of participating in the CEIP and CARB should investigate how the CEIP can be utilized to complement the State Plan. Unfortunately, many of the questions posed in the White Paper regarding the CEIP cannot necessarily be resolved until after the program is more fully developed by the U.S. EPA. In the interim, there should be no harm in submitting a nonbinding statement of interest in participating in the program and actively engaging in the EPA's process for developing the CEIP guidelines.

Reporting and Tracking

California agencies and stakeholders expended considerable time and resources in developing a comprehensive and robust reporting program for tracking GHG emissions, which is reflected in the Mandatory Reporting Regulation (MRR). California entities, even those that do not have a compliance obligation under the Cap-and-Trade Program, report detailed emissions information to CARB through the MRR on greenhouse gas emissions, as well as other pollutants. Compliance and reporting entities invested further resources into systems and programs that allow for the accurate collection and reporting of the necessary data. The information currently reported to CARB through the mandates set forth in the MRR is sufficiently rigorous to meet the federal program's tracking requirements. NCPA strongly endorses CARB's objective of integrating the State Plan and required CPP compliance with the existing Cap-and-Trade Program and MRR reporting and tracking requirements.

As identified in the White Paper, the current reporting deadlines in California's rules do not comport with the deadlines set forth in the CPP. Reconciling the reporting and compliance deadlines will be very important. To the extent that this will require changes to the California program, CARB should take action to integrate those changes as soon as practicable, so that the transition is completed well before 2022. It is also imperative that the reporting requirements and verification deadlines be uniform across all compliance entities, and throughout the MRR and Cap-and-Trade Program.

Parallel Processing

NCPA supports CARB's efforts to pursue "parallel processing" of the State Plan. Working closely with EPA Region 9 representatives as the plan development progresses will enable CARB and stakeholders alike to be aware of areas where the EPA may have concerns or need additional information regarding California's implementation strategy. Receiving that feedback and

information early in the process and on an ongoing basis, rather than after a “final” plan is submitted, will help provide greater certainty to CARB, stakeholders, and compliance entities. This parallel process will also be important for purposes of coordinating the necessary amendments to the Cap-and-Trade Program regulation in a timely fashion so that it is fully compatible with the State Plan and CPP implementation.

Conclusion

While California is already well poised to meet the reduction targets mandated in the Clean Power Plan with the suite of existing emission reduction measures, the manner in which the CPP is implemented will have significant impacts on the affected EGUs. NCPA appreciates the opportunity to comment on CARB’s preliminary thoughts on CPP compliance approaches and looks forward to the continuing dialogue with CARB, the California Public Utilities Commission, the California Energy Commission, and other stakeholders as the State Plan for implementation of the CPP is developed.

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.

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

Attorneys for the:
Northern California Power Agency

cc: Chris Gallenstein - cgallens@arb.ca.gov