

LAW OFFICES OF SUSIE BERLIN

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

Submitted electronically

January 11, 2016

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

Re: **Comments of the Northern California Power Agency on the *Workshop on Clean Power Plan Rules and Electricity Topics in the Cap-and-Trade Regulation***

Dear Ms. Sahota:

On December 14, 2015, the California Air Resources Board (CARB) hosted a workshop to discuss the State's implementation of the US Environmental Protection Agency's (EPA) Clean Power Plan (CPP) rules and related electricity topics in the Cap-and-Trade Program regulation. The issues addressed during the Workshop are of paramount importance to the Northern California Power Agency¹ (NCPA) and its member utilities, and NCPA appreciates the opportunity to provide CARB with these comments on the Workshop and ongoing development of the State's CPP implementation strategy.

NCPA and its member utilities are committed to working with CARB and its sister agencies in efforts to achieve the State's emissions reduction goals while continuing to provide clean, reliable, and affordable electricity to their customer-owners. As noted in NCPA's comments on the October 2 Workshop,² the stakes are very high for NCPA and its member utilities, as entities with affected EGUs will be impacted by the CPP, potential changes to compliance obligations under the Cap-and-Trade Program, and aggressive new emissions reduction measures articulated in Senate Bill (SB) 350 (Chapter 547, 2015). All of these programs and measures will work together to help California achieve its emission reduction and climate change goals, but they also place additional costs and obligations on California's electricity ratepayers that must be minimized to the greatest extent possible. NCPA offers the following comments as part of the ongoing and collaborative process between CARB and stakeholders in the interest of developing the optimal State Plan for CPP compliance that meets the State's laudable environmental objectives and ensures the continued provision of safe, reliable, and affordable electricity to California's businesses and residents.

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. 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.

² <http://www.arb.ca.gov/lists/com-attach/20-ct2016amendments-ws-UTJWPwFtUW9QMwRq.pdf>

NCPA appreciates CARB's outreach to stakeholders and the agency's presentation of initial issues to be addressed on the form and structure of various aspects of the State's implementation of the CPP and associated amendments to the Cap-and-Trade Program regulation. NCPA desires to work with CARB and other stakeholders in assessing potential proposals for California's plan for compliance with the CPP. As more fully addressed herein, at this time, the lack of specificity and analysis of the impacts for potential proposals precludes the detailed feedback that would most benefit the discussion. NCPA provides these comments in the interest of further highlighting and defining the scope of issues that must be addressed in potential proposals, and looks forward to continuing to work with CARB and its sister agencies in developing more detailed comments and feedback once those proposals have been proffered.

Clean Power Plan Modeling

During the workshop, Staff presented the initial modeling results under a Stress Case developed for purposes of demonstrating compliance with the CPP. Currently, the Stress Case Scenario is based on a modified version of the High-Demand Scenario used in the California Energy Commission's 2015 Integrated Energy Policy Report. While the Stress Case is being developed to identify the worst-case emissions scenario, it is important that the assumptions are based on realistic scenarios and expectations in order to meaningfully inform the outcome. As such, the assumptions of a 33% RPS through the 2015 to 2026 forecast period must be modified to reflect the mandates of Senate Bill 350 and the increased renewable generation that will result. Similarly, NCPA urges the agencies to revisit the scenarios to look at broader electrification across the state, and not limit the assumptions to transportation alone.

The compliance modeling should also give considerable attention to the cost of compliance for affected EGUs. California has adopted a suite of emission reduction measures, many of which fall on electric utilities to implement, facilitate, or comply with. While each of these measures is designed to further reduce the State's overall GHG emissions, they also have cost impacts for customers. All of the modeling to date demonstrates that California will be in compliance with the CPP, even under the Stress Case; however, compliance does not come without a cost to affected EGUs and utility customers, and the impacts of those costs should be quantified to the greatest extent possible, to inform the process moving forward. California's cost analysis should also address potential trading between existing trading partners. Even in the absence of specific direction on the manner in which neighboring states will implement the CPP, California's analysis should include – at a minimum – the impacts of continued electricity imports and exports with existing trading partners.

In looking beyond the requirements of AB 32 in the context of implementing the CPP, it is likely that CARB will need to revise the manner in which imported electricity is counted to ensure that California entities are not paying twice for the same compliance obligation. NCPA believes that the Cap-and-Trade regulation can be amended to address this issue without compromising the integrity of the California program and in a manner consistent the requirements of AB 32. As long as imported electricity is accounted for, there is no conflict with AB 32. The manner in which imports are accounted for will also be impacted by the emerging energy imbalance market (EIM) and potentially expanded California Independent System Operator (CAISO), and NCPA appreciates that

CARB is already working with the CAISO on this matter. NCPA encourages CARB to expand these discussions to include all of the State's balancing authorities (BAs) and not just the CAISO, as these other BAs will also be affected by the changed market dynamics and related impacts.

Staff stated that the agencies will continue to review model run results and updated data.³ The results of those model runs will help inform the process moving forward, and NCPA urges CARB to share the results of the continued model runs with stakeholders on an ongoing basis.

Use of Cap-and-Trade for CPP Compliance

NCPA understands CARB and the State's commitment to the Cap-and-Trade program, and while the existing trading program may present a viable tool for demonstrating compliance with the CPP, what was clearly demonstrated in Staff's presentation is that the extent to which the Cap-and-Trade program will need to be modified to accommodate such a role is significant.⁴ As noted during the Workshop, there are several key differences in program structure and timing that differentiate the State's program from the CPP, which differences – if not accommodated by the EPA – would necessitate amendments that would significantly alter the entire Cap-and-Trade program. As a practical matter, if the Cap-and-Trade program is utilized as the measure by which to demonstrate compliance with the CPP, the optimal outcome would be for California to work with the EPA to develop a framework by which the deadlines, timelines, and use of future vintage allowances set forth in the existing program can be utilized for CPP compliance. California's program has already demonstrated that it can successfully effect GHG reductions. As such, NCPA encourages CARB to continue its ongoing dialogue with EPA staff on acceptable implementation metrics within the Cap-and-Trade program that can accommodate the existing deadlines and timelines already incorporated into California's program.

Staff outlined three basic frameworks for using the Cap-and-Trade program as the CPP compliance vehicle, including: (1) use of Cap-and-Trade as a "state measure" under the CPP, with a federally-enforceable backstop, (2) use of Cap-and-Trade as a "state measure" with federally-enforceable "emission standard" for affected EGUs, plus a federally-enforceable backstop, and (3) separate state measures or CPP regimes that are accounted for in Cap-and-Trade to ensure environmental integrity.⁵ As noted during the Workshop, each of these would require amendments to both the Cap-and-Trade Program Regulation and the Mandatory Reporting Regulation (MRR), the extent of which would vary depending on the option adopted. In essence, the entire question comes down to three basic options for California: (1) not change the existing Cap-and-Trade Program at all, (2) make some changes to the Cap-and-Trade Program, or (3) change the existing program completely. The multitude of variances that can come out of these seemingly simple alternatives presents a significant challenge in attempting to put forth viable proposals. At this juncture, the implications of the various scenarios cannot be fully understood without additional analysis and modeling of the

³ December 14 Staff Presentation, pp. 21, 23;
<http://www.arb.ca.gov/cc/capandtrade/meetings/20151214/cppmodeling.pdf>

⁴ December 14 Staff Presentation, p. 4; <http://www.arb.ca.gov/cc/capandtrade/meetings/20151214/ctamendscpp.pdf>.

⁵ December 14 Staff Presentation, p. 2; <http://www.arb.ca.gov/cc/capandtrade/meetings/20151214/ctamendscpp.pdf>.

potential implications. For example, if the EPA is not amenable to altering the compliance periods and surrender deadlines set forth in the CPP to accommodate California's program, the Cap-and-Trade regulation would need to be amended to either: (1) change the deadlines for all compliance entities, (2) change the deadlines for the electricity sector only, or (3) change the deadlines for just affected EGUs. Even within these limited scenarios, variations could include adoption of interim reporting or surrender deadlines for the electricity sector, or just the affected EGUs. More significant revisions to the Cap-and-Trade Program could be changes to bifurcate the electricity sector (or just affected EGUs) from the other compliance entities and sectors, essentially resulting in two separate trading programs. Each of these scenarios, however, implicates not only the affected EGUs, but all compliance entities, and indeed the entire state, as the efficacy of the Cap-and-Trade program to meet the GHG emission goal is based on an *economy-wide program*.

Any changes in the deadlines for the Cap-and-Trade program would also require extensive changes to the MRR, and provisions relevant to verification. However, the implications are not limited to the Cap-and-Trade program, or even just to CPP compliance. Changes to deadlines and timelines associated with GHG reporting will also impact other state regulatory agencies and reporting obligations of the covered entities. In addition to the direct impacts on the MRR and verification deadlines, stakeholders must analyze and assess how any such changes will also impact the flow of information and reporting provided to other agencies.

These issues also have implications on setting the state's CPP glidepath, and ultimately, what the backstop will look like. Regardless of which basic "framework" is adopted, California must have a federally enforceable backstop. The extent to which the provisions of any portion of California's Cap-and-Trade program are federally enforceable will be inexorably tied to the manner in which the Cap-and-Trade program is amended.

The final design of California's implementation plan and resulting amendments to the Cap-and-Trade program also implicates trading and linkage issues; this is true not just with formally linked partners, but with other states in the region, with which California will continue to import and export electricity, even under the CPP. Despite the many uncertainties associated with designing program amendments and a CPP compliance plan that accounts for trading partners and linkage, NCPA strongly urges CARB to continue to explore options that would maximize the number of potential trading partners for California under the CPP compliance plan. Maximizing the number of trading partners provides California with the best opportunity to effect the necessary emissions reductions in the most economic manner possible, reducing the potential cost impacts on electricity customers.

In order to completely understand the full import of changes of this magnitude, the various scenarios must be modeled and likely outcomes assessed. The implications of various plan design options cannot be meaningfully reviewed without more detailed analysis, including scenarios that assess the impacts on the electricity markets and affected entities' compliance costs. NCPA understands that CARB will be continuing to model and evaluate CPP compliance options. It is imperative that a review of the implications of such extensive changes to the Cap-and-Trade program are included in that modeling before determining which option should be pursued for

California's CPP Compliance Plan. While these efforts may require additional time and resources, they are essential to determining the optimal approach for the State's compliance with the CPP.

Cap-and-Trade Program RPS Adjustment

During the October 2 Workshop, Staff raised concerns regarding the manner in which the RPS Adjustment was being utilized by compliance entities and proposed that this provision may be eliminated. Both written and oral stakeholder comments overwhelmingly favored retaining the RPS Adjustment and some stakeholders, such as the Joint Investor Owned Utilities, proposed revisions to the MRR and Cap-and-Trade Program Regulation that would address the concerns raised by Staff. During the December 14 Workshop, Staff presented further information regarding their concerns with the RPS Adjustment and sought stakeholder comments on the "future of the RPS adjustment."

Like most stakeholders, NCPA believes that CARB should not eliminate the RPS Adjustment. The RPS Adjustment is an important cost-containment measure, a necessary tool to ensure that California's electricity ratepayers are not penalized for investments in renewable energy resources located outside of the state, and an essential instrument in managing Cap-and-Trade Program compliance costs that protects electricity customers from paying GHG compliance costs for energy associated with zero-emission, renewable energy resources. Both the Cap-and-Trade program and the State's RPS program serve the same underlying purpose – to reduce the state's overall GHG emissions profile. Regardless of whether they do so as a cap on actual emissions or a requirement to utilize lower emitting electricity resources – the end result is the same. As such, it is imperative that the value of both programs be fully recognized and integrated for the benefit of the State's electricity customers. The adverse impacts associated with elimination of the RPS Adjustment would not be mitigated or alleviated by the allocation of free allowances to EDUs, as suggested by CARB staff. The value associated with the freely allocated allowances does not offset the higher compliance costs that will result if the RPS Adjustment is eliminated, nor is it an efficient use of allowance value to pay for the same emission reduction twice. Instead, in furtherance of the State's emission reduction goals – and the underlying objectives of both the Cap-and-Trade and RPS programs, the zero-GHG value of renewable resources should continue to be recognized in the Cap-and-Trade program.

Due to the importance of this tool, NCPA urges CARB to entertain amendments to the Cap-and-Trade program that retain the RPS Adjustment, protect the value of the RPS investments, reduce unnecessary compliance costs, and uphold the intent of both the Cap-and-Trade and RPS programs.

As such, NCPA supports the principles and recommendations set forth in the Joint Utilities' Comments on RPS Adjustment, dated January 12, 2016. In those comments, the Utilities suggest revisions to the Cap-and-Trade Regulation and Mandatory Reporting Regulation regarding the RPS Adjustment. The two simple amendments proposed by the Utilities would ensure the Regulations' existing terms are enforced and retain the value of the RPS Adjustment, such that:

- (1) only entities that meet existing criteria for delivered electricity from a renewable specified source, including the Renewable Energy Credit (REC), may report the electricity as specified power; and

- (2) no entity may make an RPS Adjustment claim for eligible renewable power properly reported as specified.

The Utilities' proposal recognizes the key role RECs play in meeting the State's GHG reduction strategy, and aligns the RPS and Cap-and-Trade programs in a way that achieves the objectives and integrity of both programs within the context of commercial practices and transactions that are an essential part of successfully meeting those GHG reduction goals. As the Utilities note, "the use of the REC as a validation tool under the Cap-and-Trade and MRR programs, as it serves under the RPS Program, will simplify the onerous verification process encountered by the ARB in the 2014 reporting year and, critically, will ensure that the GHG benefit from eligible renewable generation is accounted for once, and only once, and by the entity the state Legislature intended to receive such benefit."

Due to the importance of the RPS Adjustment and the proper accounting for RECs under both the RPS and Cap-and-Trade programs, NCPA encourages CARB Staff to pursue proposed amendments to the MRR and Cap-and-Trade Program Regulation consistent with the recommendations set forth in the Utilities' comments. NCPA also looks forward to continuing to work with CARB Staff and other interested stakeholders in ensuring that continued utilization of the RPS Adjustment provides the maximum benefits, without placing an undue burden on either CARB or utility personnel.

Setting GHG Emission Targets Under SB 350

The December 14 Workshop also included a presentation and discussion on the provisions of SB 350 relevant to target-setting for the integrated resource plans (IRPs) required by Public Utilities Code Sections 454.52 and 9621. Among other things, SB 350 requires publicly owned and investor owned utilities to prepare IRPs that address myriad different resource planning options, including the manner in which the plan will meet the GHG reduction targets established by CARB in coordination with other agencies. During the Workshop, Staff proposed establishing nonbinding targets that would not be part of the utility's compliance obligation under the State's Cap-and-Trade program. NCPA has concerns with establishing targets for individual load-serving entities (LSEs), as it is neither mandated by the statute, nor an efficient way to address emissions reductions and resource planning strategies. NCPA appreciates CARB's recognition that any such targets would not be binding on an individual load serving entity or the electricity sector in total and that the targets "must not disrupt the efficient operation of the economy-wide program or introduce opportunities for market manipulation."⁶ These targets are largely intended to provide a point of reference as utilities develop their IRPs, and must be viewed in the context of the entirety of SB 350 and existing climate policies and mandates. The IRP requires utilities to look at a wide range of issues in their resource planning, and not just meeting GHG reductions.⁷ As such, it is imperative

6 December 14 Staff Presentation, p. 18; <http://www.arb.ca.gov/cc/capandtrade/meetings/20151214/rpssb350.pdf>

7 The SB 350 targets for the electricity sector are necessarily differentiated from the compliance obligation and emission reduction targets under both the existing Cap-and-Trade program and under the CPP, since they will encompass factors and requirements that are not part of either of those programs. (See, PU Code Sections 454.52 and 9621) The IRPs are designed to provide long-term planning projections and roadmaps, and not just demonstrate how the utility plans to comply with the Cap-and-Trade program requirements. In this context, the value of the IRP is not in looking at annual or short-term projections related to a single program, but rather as a tool for establishing a forward-looking strategy for

that the scope of applicability of any non-binding target be narrowly defined to avoid implicating other programs or measures, and should not be based on a specific GHG reduction target. Additionally, SB 350 presumes the existence of a 2030 GHG reduction target percentage for the electricity sector as a whole and for individual LSEs, however, neither AB 32 nor SB 350 directs CARB to establish sector-specific GHG emission reduction targets.

Furthermore, setting a binding entity-specific or sector-specific reduction target would interfere with the overall objective of the IRP, as well as the underlying premise of AB 32 to achieve GHG reductions that are technologically feasible and cost effective. It is also important to recognize that not all of the State's utilities are subject to the provisions of Public Utilities Code section 9621, and therefore, attempting to establish LSE-specific targets would not align with an overall sector-wide target. Because the purpose of the IRP is to ensure that resource planning takes into account many different goals and objectives, and not just GHG reductions, NCPA supports CARB exploring cost metric targets that focus on ways that LSEs can minimize their total resource costs while achieving the State's policy goals.

Staff has asked stakeholders to comment on the manner in which such a target would be established.⁸ NCPA supports CARB forecasting post-2020 emissions reductions from existing measures – including cost-effective energy efficiency, the RPS, and cost-effective and feasible energy storage procurement – consistent with the data that is being utilized in the 2030 Target Scoping Plan Update. NCPA urges CARB to avoid complex and overly-time consuming processes when existing methodologies can be employed.⁹

Need for Additional Electricity Sector Dialogue and Workshops

Utilizing the Cap-and-Trade program as California's primary measure for demonstrating compliance with the CPP implicates all aspects of the State's trading program and the associated reporting requirements. As discussed throughout the Workshop, changes to the program – even those that would bifurcate or segregate the affected EGU – will impact all covered entities. In order to fully explore the myriad implications of these issues, NCPA urges CARB to continue to work with stakeholders and to ensure a full understanding of the impacts. Developing the State Plan for compliance with the CPP and the associated amendments to the Cap-and-Trade program will

meeting the specific resource needs of the utility in the context of meeting the State's overall climate goals in compliance with myriad programs, including not only the Cap-and-Trade program, but the RPS program, increased energy efficiency targets, and energy storage procurement goals.

8 December 14 Staff Presentation, p. 16; <http://www.arb.ca.gov/cc/capandtrade/meetings/20151214/rpssb350.pdf>

9 When setting the non-binding targets, CARB should also be mindful of the purpose of the IRP. SB 350 requires utility IRPs to be updated at least every five years. Although changes may be made more frequently, to the extent that these plans are designed to provide long-term planning projections and roadmap for complying with multiple procurement mandates, the forecasted GHG reductions should not be revised or updated more frequently. The forecasts should also take into account the impacts of electrification on the electric sector. Electrification of the transportation sector is not the only consideration that should be embodied in setting the electricity sector targets. Indeed, as the Scoping Plan Update anticipates, shifts from natural gas uses will also impact electricity sector emissions, despite record low prices for natural gas. Assumptions embodied in the nonbinding targets/forecasted-reductions regarding electrification must be clearly articulated, and in the event that electrification exceeds those assumptions, the targets must be modified or the resulting variances must be otherwise acknowledged.

necessitate additional stakeholder discussions and workshops in order to ensure a full and thorough vetting of the issues. CARB must allow sufficient workshops to address electricity sector issues that will impact the affected EGUs and compliance entities under the CPP and Cap-and-Trade program, including allowance allocation post-2020 and the final post-2020 cap.

Conclusion

NCPA appreciates the opportunity to provide these comments and articulate concerns regarding the critical issues that the State must resolve to implement the CPP, as well as associated amendments to Cap-and-Trade Program Regulation and MRR. NCPA and its member agencies look forward to continuing to work 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.

Respectfully submitted,



C. Susie Berlin, Esq.
LAW OFFICES OF SUSIE BERLIN

Attorneys for the:
Northern California Power Agency

cc: Craig Segall