

***LAW OFFICES OF SUSIE BERLIN***

---

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

*Submitted electronically*

March 11, 2016

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

Re: **Comments of the Northern California Power Agency on February 24  
Workshop on Proposed Amendments to the *Cap-and-Trade Program  
Regulation and Mandatory Reporting Regulation***

Dear Ms. Sahota:

The Northern California Power Agency<sup>1</sup> (NCPA) appreciates the opportunity to provide these comments to the California Air Resources Board (CARB) on proposed amendments to the Cap-and-Trade Program Regulation and the Mandatory Reporting Regulation (MRR), the February 2016 *Staff Proposal: Addressing Clean Power Plan Compliance Through the Cap-and-Trade and Mandatory Greenhouse Gas Emissions Reporting Regulations* (CPP Staff Proposal), and stakeholder discussions during the February 24 CARB Workshop.

During the Workshop, Staff introduced proposed amendments to the Cap-and-Trade Program Regulation and MRR that would be effective beginning in the third compliance period, as well as proposed changes to both sets of regulations to address implementation of the US Environmental Protection Agency's (EPA) Clean Power Plan (CPP), what would impact a post-2020 program. NCPA appreciated the thoughtful stakeholder discussion regarding the various suggested amendments to the regulations, and continues to review and assess their implications. At this time, as more fully addressed herein, NCPA recommends the following:

- ❖ The verification deadline should not be moved from September 1 to August 1, although regulatory amendments that refine the reporting and verification process without imposing interim deadlines or additional compliance obligations should be explored;
- ❖ Any proposed amendments contemplated in response to analysis of data regarding the Energy Imbalance Market and expanded markets should be thoroughly vetted with stakeholders;
- ❖ California should capitalize on the opportunity provided by the Supreme Court's stay of the CPP by taking the additional time it has afforded to work with stakeholders and the EPA in developing the State's CPP implementation plan;

---

<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.

- ❖ Any changes to the compliance periods should apply to all covered entities and should not begin until 2020 or upon the effective date of the CPP;
- ❖ Development of a CPP backstop measure must be assessed in the context of the entire Cap-and-Trade Program, including consideration of the total allowance budget and related implications for all covered entities;
- ❖ The RPS Adjustment should be retained as an essential tool to ensure that electricity customers do not incur GHG compliance costs for renewable energy imports; and
- ❖ The final budget and sector caps, and allowance allocation are key elements of the post-2020 Cap-and-Trade Program that must be addressed ahead of making final determinations regarding implementation matters.

## **GENERAL AMENDMENTS TO CAP-AND-TRADE PROGRAM AND MRR**

### **Amending the Verification Deadline**

Staff is proposing to move the verification deadline from September 1 to August 1, to better support the existing Cap-and-Trade Regulation. NCPA is concerned that such a drastic reduction in the time allowed to complete the necessary verifications would place a significant hardship on compliance entities. Shortening the time to complete the verification assumes that the only reason reports are not submitted earlier is due to inefficiencies in the current reporting and verification processes, presumably by both compliance entities and verifiers. However, that is not the case.

Preparing complete and accurate reports requires the compilation of data, some of which must be obtained from third parties. Delays beyond the control of the reporting entity can occur in obtaining accurate or necessary data for these third parties. Once all of the information is obtained and deemed accurate, the final reports are prepared and submitted. After submitting the necessary reports, the information must be verified pursuant to strict timelines and standards set forth in the Regulations. This includes site visits and review of the material, which are time-intensive processes, both for the reporting entity and verifiers. Coordinating schedules and ensuring the necessary individuals and facilities are available for third party visits can be restrictive. Even once that process begins, unforeseen delays can occur. For example, there are often instances where a series of exchanges between the verifier and reporting entity is necessary to clarify outstanding questions, or when additional data from another source or agency is necessary to complete the process. Shortening the time during which these exchanges and processes must be conducted increases the potential for error, diminishing the overall efficacy of the exercise. Decreasing the number of available days for compliance entities to work through verification would hinder the process, rather than facilitate it.

NCPA also has concerns with CARB's suggestion to develop interim deadlines to facilitate the shift to earlier verification submittals. Including interim requirements and deadlines would only add to the administrative burden associated with the reporting and verification process without providing any real change in the overall time necessary to complete these important and time consuming exercises. Added to this is the concern that new and accelerated deadlines would result in errors, which could actually require more time to resolve. For example, trying to accelerate the process may jeopardize the accuracy of the initial reports, requiring corrections and amendments after the fact.

### Amendments Affecting Electric Power Entities

Several amendments to the provisions regarding electric power entities were discussed during the Workshop and characterized as “clarifications” by Staff. Staff stated that the amendments would not change the current regulatory requirements or the point of regulation, but would incorporate the agency’s existing guidance on specific issues into the Regulation. This includes clarifications regarding: (1) the “lesser of” analysis; (2) reporting sales into the CAISO; (3) the definition of “first point of receipt”; and (4) power reporting requirements for generation providing entities. To the extent that the amendments add this guidance to the Regulation and do not make substantive changes to the reporting process or responsible party, their inclusion should be ministerial. However, in the event that the revisions go beyond the existing language found in the CARB guidance documents and substantively alter existing practices, a workshop specific to the impacts on electric power entities should be held to discuss those changes.

### Refining the RPS Adjustment

Following the December 14 Workshop, several parties submitted comments to CARB regarding the importance of retaining the RPS Adjustment, noting the important role that the Renewables Portfolio Standard (RPS) program plays in reducing GHG emissions and advancing the State’s climate change policies and objectives. Those comments included proposed revisions to the current regulatory language that would address the concerns raised by staff and stakeholders alike, without diminishing the value of the renewable resources at issue or imposing an additional compliance obligation on covered entities. The RPS Adjustment is an important and necessary tool to ensure that California consumers realize the full value of their investments in carbon-free resources. NCPA urges Staff to carefully consider those comments and engage in further discussions with stakeholders on proposed amendments to the regulations that retain the RPS Adjustment and ensure the integrity of the program. It is entirely appropriate for the Cap-and-Trade Program and the RPS Program to work in concert, and the RPS Adjustment is means by which they can do so.

### Monitoring the EIM and Potential CAISO Market Expansion

During the Workshop and in the Workshop Presentation, Staff noted that CARB is looking at data regarding the Energy Imbalance Markets (EIM) and issues associated with the potential expansion of the California Independent System Operator (CAISO). Although raised in the context of proposed amendments to the regulations, this discussion was not associated with any specific proposals for regulatory amendments. The California energy markets will see changes as a direct result of the expanded EIM and the CAISO’s changing role. Since those changes will directly impact electric power compliance entities, they may eventually necessitate adjustments to the Cap-and-Trade Program and MRR. To the extent that CARB is contemplating changes to the regulations based on its analysis of this data, or as a result of discussions with the CAISO, NCPA encourages Staff to share such proposals with stakeholders as soon as practicable. Ideally, any changes CARB is considering would be presented in the form of a position paper, and made available for stakeholder analysis and review in advance of workshops to discuss the topic.

### **CAP-AND-TRADE PROGRAM REGULATION AMENDMENTS FOR CPP**

CARB has indicated that the Supreme Court’s stay of implementation of the CPP pending disposition of the petitions for review in the DC Circuit will not change the focus of the State climate program. Even without a change in focus, this action does provide California with the opportunity to take more time to develop the State Plan. CARB can utilize the additional time to complete further analysis, continue to engage affected stakeholders, more thoroughly coordinate

CPP implementation matters with the ongoing work on the Scoping Plan Update, and continue discussions with EPA staff on key program elements; all of which will ultimately ensure a more comprehensive and well developed State Plan.

NCPA appreciates Staff's release of the Staff Proposal for regulatory amendments to address implementation of the CPP in advance of the workshop. Of the issues discussed in the Staff Proposal, the compliance period changes and structure/funding of the backstop have the greatest potential to impact compliance entities in all sectors, and raise the most questions regarding their potential implementation. As such, further analysis of these proposals is necessary before a final recommendation can be forthcoming. The following comments address areas of concern and matters that require additional information and deliberation before moving forward.

#### Post 2020 Compliance Periods

Staff proposes changing the Cap-and-Trade Program compliance periods to directly align with the CPP compliance periods. As such, after an initial bridge period, California's program will have two-year compliance periods with one three-year period during a transition period. NCPA understands that CARB wants to signal to potential trading partners that the state is willing to work towards intra-state trading. However, reducing the compliance period to two years will alter the program's dynamic, and could adversely impact the cost and availability of allowances in the market. The current three-year compliance periods were adopted based on an extensive record that demonstrated the benefits to compliance entities and the markets. Conversely, shorter compliance periods could put more stress on allowance markets and reduce flexibility for compliance entities. The existing structure has proven effective. Before making such a significant change to the program, NCPA encourages more discussion with EPA to explore ways the State can comply with the CPP requirements and trade with other jurisdictions, while retaining the basic California program structure that has been so successful.

If it is determined that changes to the compliance periods are warranted, all compliance entities should be subject to the same requirements; amending the program so that the electricity sector or just affected electric generating units (EGUs) are the only entities subject to shorter compliance periods would undermine the entire market structure basis of the existing program and put those entities at a competitive disadvantage in the market.

Additionally, the discussions regarding changed compliance periods must also include considerations of surrender obligations; the merits and impacts of a two-year compliance period cannot be fully assessed until it is determined how allowances would be surrendered in a shorter compliance period. While CARB staff does not anticipate any changes to the existing surrender requirements under the current program, the surrender requirements – if any – would be required in the first year of a compliance period.

#### Creating a CPP Backstop

The Staff Proposal recommends a two-part CPP backstop measure that consists of a specific set-aside of post-2020 allowances and shared responsibility amongst all EGUs in the event that the backstop is triggered. While CARB Staff has repeatedly stated that it is highly unlikely that the backstop will be triggered, no matter how slight the possibility, it is imperative that this program feature be well developed. As proposed, the backstop mechanism raises a number of questions that must be further explored prior to finalizing the design elements, including the impacts that the set-aside will have on the availability of allowances for the remainder of the program post-2020.

*Level of the Set-Aside:* The proposal set aside of 10 million metric tons CO<sub>2</sub> equivalent, has been characterized as equivalent to “roughly 20%” of the allowances for the sector. Staff has indicated that initial analysis show the State is projected to be below the EPA requirement of the 48 million short tons cap for California by approximately this amount. Additional analysis should more fully assess the relationship between the State’s own emission cap and emission projections, and the federal projection. Since the California cap is already characterized as “tighter” than the federal mandate, removing this many allowances from the State’s program could be excessive. Until the actual post-2020 cap is set, it is not possible to fully evaluate the implications of any proposed set-aside amount in the context of the impact it would have on the entire program.

*Source of the Set-Aside:* Staff has proposed that the set-aside come from post-2020 allowances. Assuming this approach is used, the set-aside should be funded from the entire allowance budget, and not counted solely against the EGUs or electricity sector.

*Cost Containment and Impacts of Set-Aside on Other Sectors:* During the Workshop, Stakeholders raised concerns regarding the impacts that the set-aside would have on the rest of the market and other covered sectors. This inquiry stresses the importance of discussing this issue in the context of the entire cap-setting discussion. The extent to which the post-2020 program will also employ the existing allowance price containment reserve must also be considered, as this will also have an impact on the number of allowances available in the market for compliance entities.

*Equal Responsibility for Exceedance:* Staff proposes that all EGUs share in the responsibility to bring the state back into compliance should the state fail to meet its emission reduction targets and the backstop is triggered. Staff notes that such an approach is appropriate because there are no entity-specific caps in the CPP, as the federal limit is not EGU-specific. However, this proposal could result in some entities – namely those that fully met their compliance obligations under the Cap-and-Trade Program – bearing a larger burden for bringing the state into compliance with the CPP. Before adopting such a measure, the following questions must be fully explored:

- How can CARB ensure that EGUs that met their full compliance obligation under the Cap-and-Trade Program do not pay for the same compliance obligation twice?
- If an entity fails to meet its Cap-and-Trade Program compliance obligation, can the additional allowances surrendered due to untimely compliance be designated to the set-aside?
- CARB expressed concerns that regional variabilities could cause changes in energy supply, which could impact the entire market if only EGUs in a certain region were accountable; if the shortfall in compliance can be attributed to specific EGUs, should the State explore a way to hold just those EGUs accountable?

## **ALLOWANCE BUDGETS AND ALLOWANCE ALLOCATION**

CARB is currently considering various options for setting the post 2020 budgets. The economy-wide allowance budget, sector cap-setting, and allowance allocation amongst covered entities within the various sectors are critical elements of the overall Cap-and-Trade Program that must be addressed as soon as possible. Resolution of these matters informs and impacts many proposed

amendments to the Cap-and-Trade Program, including the final CPP backstop proposal. NCPA looks forward to Staff's proposals on these key issues in advance of the March 29 workshop on this topic.

### **CONTINUED DIALOGUE AND WORKSHOPS ARE CRITICAL**

NCPA appreciates the time and resource commitment necessary to host a productive stakeholder workshop. Workshops present a unique opportunity for staff and stakeholders to engage in discussions on issues, and further develop concepts and ideas in real-time, rather than merely through reviewing and replying to written comments. The upcoming amendments will make significant changes to the existing Cap-and-Trade Program that go far beyond their compliance period that marks the end of the existing program under the current regulation. Those amendments mark the beginning of a new Cap-and-Trade Program for California's compliance entities, and will impact not only affected EGUs subject to the EPA CPP, but all sectors of the economy-wide Cap-and-Trade Program. Discussion of the final cap, allocation of allowances (both amongst the covered sectors and to compliance entities within those sectors), compliance periods, cost-containment measures, and reporting and verification deadlines, and linked partners are all interrelated issues. Because of the magnitude and breadth of the issues contemplated in the upcoming amendments, NCPA encourages CARB to provide discussions and policy proposals on each of these issues, and to schedule additional workshops so that stakeholders and staff can engage in the kind of fruitful and useful discussions.

### **CONCLUSION**

NCPA appreciates the opportunity to provide these comments and looks forward to working closely with Staff and other stakeholders as the State works through these important issues. 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**

Attorneys for the:  
**Northern California Power Agency**

cc: Craig Segall