LAW OFFICES OF SUSIE BERLIN

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

Submitted electronically

September 19, 2016

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

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

Dear Mary:

On August 2, 2016, the California Air Resources Board (CARB) released the Proposed Amendments to the Cap-and-Trade Program Regulation (Proposed Amendments). The Northern California Power Agency[1] (NCPA) appreciates the opportunity to provide these comments to the Board regarding potential revisions to the Cap-and-Trade Program Regulation.[2]

I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

Meeting California's aggressive greenhouse gas (GHG) emissions reduction goals requires statewide changes that will implicate all sectors of the economy, but none as much as the electricity sector. NCPA and its member agencies are committed to doing their part in helping California achieve its GHG goals and objectives, as demonstrated through the many actions already taken towards that end. NCPA, along with its members, have actively participated in proceedings before this agency, as well as the California Energy Commission (CEC), and at times the California Public Utilities Commission (CPUC), regarding many of the programs considered and adopted pursuant to the Scoping Plan, and particularly in the development of the Cap-and-Trade Program (Program). The Program, coupled with the myriad programmatic measures and specific mandates administered by other agencies, have resulted in

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 Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanism; Staff Report: Initial Statement of Reasons, dated August 2, 2016 (Staff Report).

emissions reductions throughout the state of California. However, those reductions have not come without a financial cost to California's utilities and their electric ratepayers. As additional mandates are imposed and greater reductions are sought, it is more important than ever that the state agencies charged with carrying out the various reduction mandates collaborate closely amongst themselves to ensure that implementation of programs and measures under their purview are aligned in such a way that the overall statewide objectives are being met collectively and without unduly burdening compliance entities with additional costs. This includes development of amendments to the Cap-and-Trade Program, as well as implementation of the federal Environmental Protection Agency (EPA) Clean Power Plan (CPP) also being considered by the Board on September 22. The Cap-and-Trade Program and any amendments to the Program must be administered in a manner that avoids inadvertent siloing of matters in order to ensure that impact of the Program changes do not impede the ability of a compliance entity to meet the mandates of programs being administered by CARB's sister agencies. The Program must operate in a manner that will allow the State to meet its GHG emission reduction goals without needlessly adding costs or adversely impacting the electrical distribution utilities' ability to comply with all of the climate mandates to which they are subject, while still ensuring that California residents and businesses receive safe, reliable, and reasonably priced electricity.

NCPA appreciates the efforts that have gone into drafting the Proposed Amendments and commends Staff for their willingness to meet with stakeholders and work through the various implications of the proposed amendments. NCPA and its member agencies look forward to continuing to work with Staff on development of several critical elements of the Proposed Amendments that are as yet unresolved.

In addition to the issues addressed herein, NCPA also supports the comments submitted by the California Joint-Utility Group, of which NCPA has been an active participant. In these comments, NCPA addresses the following key issues relative to the Proposed Amendments:

- The methodology for allocation of allowances to electrical distribution utilities (EDU) must be designed to address the EDU cost burden of meeting the State's climate policy objectives to mitigate the adverse rate impacts on California's residential and commercial electricity customers;

- Electrical distribution utilities are best situated to ensure that allowance value is directly returned to electricity customers of all customers classes;

- The Program should recognize the benefits of California's Renewable Portfolio Standard (RPS) Program in meeting the State's climate change policy objectives through continuation of the RPS Adjustment and implementation of the provisions for the benefit of the entities investing in renewable resources and the corresponding environmental attributes;

- Cost containment provisions must be strengthened in the face of tighter markets and the ever-decreasing cap;

- Linkages with other programs must be designed to provide the optimum benefit to California's program and not interfere or compromise the ability of California compliance entities to meet their obligations;

- Program changes to address GHG emission tracking associated with the California Independent System Operator (CAISO) Energy Imbalance Market (EIM) should not be implemented until sufficient data is available to verify the magnitude of the potential issue and assess the corresponding impacts of proposed changes to the Program;

- The Program is the appropriate vehicle to demonstrate California's compliance with the EPA Clean Power Plan, but the provisions of the proposed backstop measures should be given further consideration before adoption;

- Amendments to the Program properly set a declining emissions cap through to 2031 and should clearly signal continuation of the Cap-and-Trade Program beyond 2031, but it is premature and clearly not reasonable to adopt a specific formula for setting the emissions cap beyond 2031 at this time.

II. COMMENTS

A. Allowances Should be Allocated to Electrical Distribution Utilities to Help Mitigate the Cost Burden of GHG Reduction Measures on California Residents and Businesses

1. The Cost Burden to EDUs Associated with Meeting the State's Climate Policies Must be Clearly Recognized in the Allowance Allocation Methodology to EDUs.

The Proposed Amendments only discuss allocation of allowances to the electrical distribution utilities at a high level, and note that details regarding allowance allocation proposals will be forthcoming in 15-day revisions. NCPA appreciates and fully understands the complexities of determining the appropriate allocation methodology to help ensure that the cost burden of meeting California's aggressive GHG reduction objectives is not unduly borne by the residents and businesses of California's electric distribution utilities. The electric sector and EDUs in particular, bear a disproportionate share of the cost burden of meeting California's climate objectives. The allocation of allowances to EDUs has been a key part of the successful implementation of the Cap-and-Trade Program and the extent to which the state's EDUs were able to meet their compliance obligations while providing direct benefits to their electricity customers and communities, while simultaneously reducing GHG emissions.

The Staff Report does not include proposed allocations for EDUs post-2020. Rather, the Staff Report notes that "staff proposes to continue allowance allocation to EDUs after 2020 using an approach based in part on the methodology used for 2013-2020 EDU allocations. Under such

a proposal, the 2020 expected cost burden for each EDU would be the starting point for calculating post-2020 allowance allocations." (Staff Report, p. 41)

NCPA supports the continuation of the allowance allocation policies used to determine the number of allowances allocated to the EDUs prior to the first compliance period. 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 in 2011, 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.[3]

The reasons and basis for freely allocating allowances to the electrical distribution utilities are 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, many of 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 the form of reduced electric bills, but also provides the basis for long term reduction strategies that will be even more important as the cap tightens.

The allocation methodology ultimately adopted by CARB in 2011 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 believe that this approach is replicable for the beyond 2020 horizon and at the regional or national level.[4]

The key principles upon which the preliminary EDU allowance allocation was based included covering the distribution utilities' compliance cost burden, energy efficiency, and recognition of early investments.[5] The "purpose of allowance allocation to the electric utilities

3 California's Cap-and-Trade Program, Final Statement of Reasons, October 2011 (2011 FSOR), p. 215.

4 2011 FSOR, p. 573-575.

5 2011 FSOR, p. 575

is not for price mitigation, but to provide ratepayer relief while maintaining the price signal."[6] Allocation of allowances to EDUs for the benefit of their ratepayers has been demonstrated to be the best means by which to ensure that the value of the allowance continues to directly benefit electricity customers and the approach used in 2011 should be replicated moving forward.

Allocation of allowances to EDUs provides for the most direct means by which to help mitigate the cost impacts of GHG reduction policies on California residents and businesses. The electric sector, and in particular the EDUs, has already demonstrated significant emissions reductions, but those reductions came at increased electricity procurement and operational costs. The EDUs' cost burden for transitioning to lower or or non-GHG emitting resources and engaging in load reduction measures should be properly recognized in the context of the Program. Lower GHG portfolios and energy savings measures *directly* meet the objectives of the state climate policies. Procurement practices that move away from higher GHG resources should be recognized within the EDU cost burden because these actions taken to reduce GHG from the portfolio may ultimately result in compliance costs that exceed the cost of allowances. As such, defining the cost-burden properly is essential to determining the appropriate allocation of allowances to the EDUs. As noted by the California Joint-Utility Group, cost burden consideration should include:

- Recognition of early GHG reductions from increased investment in energy efficiency programs
- Recognition of GHG reductions associated with electrification that result in load growth due to fuel switching
- Recognition of carbon reduction activities undertaken by utilities between 2009 and 2015 above and beyond what was required under various state programs
- Early GHG reductions due to distributed renewable generation
- Continued recognition of Qualifying Facilities contracts and similar "priced at market" contracts
- Recognition of RPS contracts that have been accorded no GHG reduction value to the utility by CARB
- Allocation which recognizes other voluntary commitments (Examples include the Diablo Canyon plan for GHG-free replacement power, and JUG members exiting Intermountain Power Plant contract early)

NCPA urges the Board to ensure that CARB staff has sufficient time and resources to continue to work with stakeholders to develop the appropriate methodology for allocating allowances to the EDUs based on the existing core principles and inclusive of the cost burden associated with the climate change policies and programs discussed above. Furthermore, it is imperative that the stakeholders be given sufficient time to address this issue, including reviewing and assessing any proposed regulatory language. While the Administrative Procedure Act requires that any such revisions be subject to a minimum 15-day comment period ,[7] given

6 2011 FSOR, p. 2175
7 California Government Code, section 11340 et seq

the complexity of this issue, it may be appropriate to allow for more than the minimum time required by law. Just as the allocation of allowances to the EDUs prior to the first compliance period was an important element of the Program's initial success, so too shall be setting the appropriate allocation for EDUs for the period 2021 to 2031.

NCPA also believes that allowance allocations should be established during this Rulemaking for the entire period from 2021 to 2031. Regulatory certainty is critically important to compliance entities, and allocation of allowances should be clearly set in this rulemaking and should address the entire period covered by the current GHG Allowance budget.

2. The Impacts of Transportation Electrification on EDUs Must be Recognized within the Program

California has a clearly defined goal of increasing electrification of all aspects of the transportation sector. Added to this, the state is increasingly moving towards electrification of other sectors of the economy. Both of these objectives will have the benefit of reducing the state's overall GHG emissions and improving air quality. However, a consequence of meeting these objectives is an increase in the use of electricity throughout the state. While ideally increases in electric load would be met with zero and low-emitting generation resources, doing so will not always be feasible. As a result, the state's EDUs, such as NCPA's member utilities, could see increases in their emissions. However, the Proposed Amendments do not include changes to address the impacts of transportation electrification on the EDUs. This is despite the fact that the potential impact was recognized by the legislature in Senate Bill (SB) 350. In the Legislature's clear direction to encourage greater transportation electrification, there was also acknowledgment of the corresponding impact on electric retail sellers and publicly owned utilities (POUs) from such electrification.[8] 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,[9] 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

8 Health & Safety Code § 44258.5(b) The state board shall identify and adopt appropriate policies, rules, or regulations to remove regulatory disincentives preventing retail sellers and local publicly owned electric utilities from facilitating the achievement of greenhouse gas emission reductions in other sectors through increased investments in transportation electrification. Policies to be considered shall include, but are not limited to, 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.

9 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."

emissions in the electric sector from transportation electrification."[10] 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 at this time, and not be deferred to a future rulemaking. Allocation of allowances to EDUs will be a critical tool in helping to ensure that efforts and measures that increase electrification will continue without adversely impacting electric utility ratepayers.

During the March 29, 2016 Workshop, staff proposed that allowances can be allocated to EDUs to recognize the impacts of electrification through "evidence-based allocation." (3/29/16 Workshop p. 24) Staff expressed a desire to ensure that there is a verifiable basis upon which to base an allocation of allowances to the EDUs for increased emissions associated with transportation electrification. Since that time, it appears that the complexities of designing a metric that can be used to "quantify and verify increased load due to electrification"[11] have caused Staff to recommend that the issue not be addressed at all during this Rulemaking. NCPA does not agree with this conclusion and believes that CARB must be front facing and take on the issue of impacts associated with transportation electrification on the electric sector during this rulemaking and in the context of determining the appropriate allocation of allowances to the EDUs.

NCPA appreciates the importance of establishing the appropriate metric for measuring the impacts of this transition. However, that metric need not – and should not – be so cumbersome as to restrict practical acknowledgement of the impacts of transportation electrification. Accurate accounting must be ensured to the greatest extent feasible, yet should not include reporting or tracking requirements that are so burdensome that they result in significant additional costs for EDUs. NCPA notes that such an outcome would be particularly egregious for smaller POUs, many of which are located in the very areas where added incentives are necessary to encourage and spur electric vehicle deployment and the necessary electrical infrastructure.

Since transportation electrification is intended to play an increasingly significant role in moving the state towards its 2030 and 2050 emission reduction targets, it is important that the impacts of these changes be addressed sooner, rather than later. NCPA urges the Board to direct staff to continue dialogue with the affected stakeholders, as well as the CEC and CPUC, on potential methodologies that will accurately capture the emission ramifications of transportation electrification. These further deliberations and assessment of options should be conducted as part of this current rulemaking and proposed amendments to address the effects of transportation electrification on the EDUs should be included in 15-day changes to the regulation.

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

11 Staff Presentation, March 29, 2016 Workshop, p. 24.

3. The RPS Adjustment is an Important and Necessary Tool that is Properly Recognized in the Context of the Cap-and-Trade Program

The State's Renewable Portfolio Standard (RPS) Program is a critically important tool in meeting the state's emissions reduction objectives, and as part of meeting the requirements of the RPS mandate, California's EDUs have made considerable investments in renewable energy resources to serve their customers. Indeed, the 2008 Scoping Plan lists achieving a 33% renewable energy mix statewide as one of the "key elements of California's recommends for reducing its greenhouse gas emission to 1990 levels by 2020."[12] 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. Because of this common objective and shared role in helping the state meet its clean energy goals, it is imperative that the value of both programs be fully recognized and integrated for the benefit of the State's electricity customers. The Cap-and-Trade Program RPS Adjustment provides a means by which to ensure that the value of those investments is not diminished by attaching a GHG compliance obligation to zero-GHG resources. The loss of the RPS Adjustment will cost NCPA member utilities millions of dollars in additional compliance costs. The RPS Adjustment ensures that the compliance obligation of the affected EDU is not overstated by requiring deliveries of RPS-eligible resources to be counted as part of the compliance obligation. This concept has long been recognized by CARB, and articulated in the 2011 Mandatory Reporting Regulation Rulemaking when staff noted that while "RECs play no role in GHG accounting . . . RPS electricity should reduce the compliance obligation of a first deliverer."[13] 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.

The RPS Adjustment is also an important cost-containment measure that helps to ensure that California's electricity ratepayers are not penalized for investments in renewable energy resources located outside of the state. It is an essential instrument in managing Cap-and-Trade Program compliance costs that ensures electricity customers do not pay GHG costs for energy associated with zero-emission, renewable energy resources. NCPA asks that the Board direct staff to revise the Proposed Amendments to ensure that the RPS Adjustment remains in the Program beyond 2020. Eliminating the RPS Adjustment would impede compliance entities' ability to comply with the RPS Program without incurring added costs. It would also disrupt business practices in the electricity sector, as many commercial arrangements for renewable energy purchases are based on the utilization of the RPS Adjustment for their commercial viability; eliminating the RPS Adjustment will thus result in even greater disruption and costs for those entities. NCPA is concerned that the value and importance of the RPS Adjustment is marginalized by the perception that it is an "optional" measure, rather than an essential part of

---

12 Climate Change Scoping Plan, December 2008, pp. 16-17, see also p. 44.
13 MRR Amendments, Final Statement of Reasons, October 28, 2011, p. 107

the Program. The fact that the RPS Adjustment is an optional measure makes it no less important to the compliance entity utilizing it. It is a valuable tool that helps to bridge the gap between two critically important components of California's climate plan, and does so while ensuring that compliance entities that have made significant investments in clean energy resources are not forced to pay twice for the environmental benefits. This is critically important as those compliance entities, such as NCPA's member agencies, will be subject not only to increasing RPS mandates, but also a tightened GHG emissions cap and increasingly scarce allowances. The RPS Adjustment sends signals that the Cap-and-Trade Program and the RPS Program can work in concert – rather than against each other.

In lieu of continuing the RPS Adjustment, the Staff Report proposes to address RPS program impacts through allocation of allowances directly to the EDUs. Instead of the RPS Adjustment, post-2020, EDUs would get allowances "that accounts for RPS-eligible electricity that is purchased together with RECs but cannot be directly delivered to California." (Staff Report, p. 53) This alternative, however, is not a comparable substitute for the RPS Adjustment, nor does it reflect all of the same policy issues that were addressed by the RPS Adjustment. As such, the adverse impacts on EDUs associated with elimination of the RPS Adjustment would not be mitigated or alleviated by the allocation of free allowances to EDUs. The staff proposal would allocate allowances based on the maximum allowable quantity of Portfolio Content Category (PCC) 2 resources (as defined in PUC section 399.16(b)(2) and (c)). This proposal assumes that all utilities have the same amount of PCC 2 resources, which is not the case. The allocation under this proposal also fails to account for procurement of additional PCC 2 resources or amendments to existing contracts that would change the PCC 2 quantity acquired after the initial allowance allocation methodology is established. The Staff proposal is also insufficient due to the fact that it ignores those RPS-eligible resources authorized in PUC section 399.16(d) and deemed PCC 0. Unlike the RPS Adjustment which is directly tied to the actual quantity of renewable resources imported, the quantity of allowances that would be allocated to EDUs under the alternative proposal would be subject to the declining cap. At the same time, EDUs subject to the RPS mandate will be required to procure increasingly greater quantities of renewable energy, thus, over time, the allocation will not fully "account[] for RPS-eligible electricity that is purchased together with RECs but cannot be directly delivered to California." It is also worth noting that the potential expansion of the ISO and California's participation in a regional grid could also impact out-of-state RPS resources. The extent of those impacts could vary, as resources could be delivered into a larger grid under a regional ISO, altering electricity delivery, but not the underlying REC ownership. Allowance allocation to "replace" the RPS Adjustment must be based on actual purchases in order to align the renewable electricity purchase with the Cap-and-Trade program compliance obligation. NCPA is also opposed to the proposal to remove the RPS Adjustment and replace it with an allowance allocation because it results in an inaccurate depiction of the EDU's actual GHG emissions, overstating the emissions profile since GHG-free RPS resources would be assigned a GHG compliance obligation. 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 through the RPS Adjustment. NCPA supports the proposal for amendments to the Cap-and-Trade Program Regulation and Mandatory Reporting Regulation (MRR) set forth in the January 15, 2016 from a coalition of California utilities (California Utilities' January 15 Letter).[14] The California Utilities' January 15 Letter suggest revisions to the Cap-and-Trade Regulation and Mandatory Reporting Regulation that 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 power.

The California Utilities' January 15 Letter 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 these objectives and preserves the independent integrity of both programs within the context of commercial practices and transactions that are an essential part of the GHG reduction goals. As the California Utilities' January 15 Letter 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."

Furthermore, amendments to the MRR should not eliminate the requirement to report REC serial numbers; indeed, providing the REC serial numbers ensures that the entity entitled to the environment attributes (and the corresponding RPS Adjustment) can be verified.

For all of these reasons, and as set forth in the Joint Utility Group comments, given the importance of the RPS Adjustment and the proper accounting for RECs under both the RPS and Cap-and-Trade programs, NCPA asks that the Board direct CARB Staff to pursue proposed amendments to the MRR and Cap-and-Trade Program Regulation consistent with the recommendations set forth herein. NCPA looks forward to continuing to work with CARB Staff and other interested stakeholders in ensuring that continued utilization of the RPS Adjustment

14 The California Utilities' January 15 Letter is appended to the California Joint-Utility Group comments on the Proposed Amendments, dated September 19, 2016.

provides the intended benefits without placing an undue burden on either CARB or utility personnel.

4. EDUs Allowance Allocation Should Not be Adjusted for Covered Industrial Customers' Purchased Electricity

The Staff Report proposes to exclude the emissions associated with electricity sold to industrial covered entities from the calculation of each EDU's 2020 emissions cost burden, calculated using the average annual industrial covered entity purchased electricity from 2013 and 2014 data reported through MRR and an EDU-specific emission factor. These quantities are reduced by the cap decline factor for 2020, and then subtracted from the 2020 cost burden. The resulting total allocation is decreased on an annual basis with the cap adjustment factor. (Staff Report, p. 43) NCPA joins with the rest of the Joint-Utility Group in noting that this proposed change is unnecessary. This proposal presents a significant shift in the current policy and should be rejected. As CARB found in 2011,

> "Allocation to electricity utilities was chosen as the preferred method to return the allowance value to those affected by this program. Because most industrial facilities and Californians use electricity, returning allowance value via electricity utilities is the best alternative to reduce the cost burden of this program. We modified the regulation to include 95892 that demands electric utilities use allocation value to benefit ratepayers, which includes both industry and Californians."[15]

NCPA urges the Board to retain this policy preference.

NCPA understands that CARB is looking for a way to respond to the industrial covered entities' concerns about the past delay in the CPUC distribution of allowance proceeds to investor owned utilities' (IOUs) covered industrial customers, as well as what Staff has characterized as the potential for inconsistent treatment of energy-intensive, trade-exposed (EITE) covered entities in POU versus IOU service territories. However, while the initial delay in the CPUC's process for returning allowance value was one of the precipitating factors for this proposal, that should no longer be an issue moving forward, as the CPUC has now established the process and methodology for returning the allowance value and will be able to do so without delay in the future.

The Staff Report also notes that

> "Having a single agency distribute this value will ensure that allocation is done in a manner that is timely and consistent with the Regulation, and will ensure that POU and electrical cooperative (co-op) industrial covered entities are provided the same leakage protection as IOU customers (as no regulations or statutes require leakage protection for POU and co-op industrial customers). Staff has seen inconsistent carbon cost compensation for covered industrial entities that are

15 2011 FSOR, p. 567

> customers of POUs and electrical co-ops compared to customers of IOUs (as noted in the annual EDU use of allocated allowance value reporting required pursuant to section 95892(e) of the Regulation)."[16]

However, to the extent that this change would only impact EITE entities that are also covered entities, even this proposal will not result in absolute uniformity across all EITE entities in differing service territories. Furthermore, the use of allowance value form is not the sole measure by which to determine the extent of carbon cost compensation for covered industrial customers. NCPA member EDUs have multiple approaches to spread the allowance benefit for covered industrial customers, including value reflected in utility rate structures. . Adjusting the allocation of allowances for purchased electricity in the manner proposed would not result in the optimum benefit to the utility's EITE customers. All EDUs are required to use the value of their allocated allowances for the benefit of electric customers; the form of that allowance value need not be the same across all utility service territories. NCPA is also concerned that the methodology proposed for determining the number of allowances to credit to industrial customers differs from the projections that are contemplated for determining the allowances adjustments for EDUs. As such, the reduction in electricity sector allocations will not align with the industrial sector electricity purchases for which EDUs will not receive allowances. NCPA asks that the Board instruct Staff to retain the existing policy.

B. Cost Containment Provisions Must Be Strengthened in the Face of a Tighter Market and Ever-Decreasing Cap.

The tighter emissions cap will make Program compliance more challenging moving forward, as evidenced by several studies, including the PATHWAYS studies being used to assess the Scoping Plan impacts. NCPA understands that the issue of cost containment may seem far-fetched at this time, especially in light of the clearing price of allowances at the last few auctions. However, as the Program moves forward and the cap is tightened, it will be increasingly important that compliance entities be able to acquire the allowances they need to meet the mandates of the Program without severe financial hardship to the ratepayers and the California economy.

NCPA appreciates that the Proposed Amendments acknowledge the importance of cost containment and provide for continued funding for the Allowance Price Containment Reserve (APCR) post-2020. At this time, however, it is premature to transfer unsold allowances in CARB's Auction Holding Account into the allowance price containment reserve and remove them from the market generally. While the last few auctions have been undersold, CARB and stakeholders must be able to determine that this is not simply a reaction to perceived uncertainties regarding the Program, rather than pure market fundamentals. It is important that the APCR continue to be funded, but not at the risk of compromising the liquidity of the market in light of what may be transient market anomalies. NCPA recommends that the Proposed

16 Staff Report, p. 33

Amendment to section 95911(g) be removed at this time, and that this option be reviewed at a future time if there continue to be excess unsold allowances.

In Table 8-2, the Proposed Amendments set a declining allocation of allowances to the APCR from 2021 to 2031. However, the proposal would stop funding the APCR in 2029. Given that the allowance cap will continue to be tightened over the entire duration of the Program, it is more likely that compliance entities will need to rely on the APCR in those years. Despite the fact that the Program contemplates borrowing allowances from future compliance periods, NCPA encourages CARB to designate allowances in a sufficient quantity to ensure that the APCR continues to receive allowances through to the end of the period for which the current GHG budget is set. With the overlap between the CPP and the Program, it is especially important that compliance entities have assurances in the "out years" of the Program that they will have sufficient access to allowances for meeting their compliance obligations.

C. Linkages With Other Programs Must Be Designed to Provide the Optimum Benefit to California's Program and Not Interfere or Compromise the Ability of California Compliance Entities to Meet Their Obligations.

NCPA has long advocated for expanding California's Cap-and-Trade Program to allow for trading of compliance instruments with neighboring states and jurisdictions. Linking with other programs provides California's compliance entities with greater opportunities to seek out the most cost-effective emissions reductions possible. However, as the State has recognized, those partner jurisdictions must have programs that are equivalent to California's program. The provisions of Senate Bill (SB) 1018 set forth the minimum standards that all linked partner programs must meet. While the state should continue developing potential trading partners, actual linkages should only occur with other programs that meet *all* of the existing standards and provide California entities the same access to comparable compliance instruments from their jurisdiction as they would have to California compliance instruments. Linkages with other emissions-based programs that do not afford California compliance entities access to additional compliance instruments while allowing California compliance instruments to be retired for other than the Cap-and-Trade program should not be allowed. Further, all new linkages should continue to be subject to the same level of scrutiny, program review, and Board approval as currently exists under the Program.

Meaningful and mutually beneficial linkages provide benefits to all affected parties. However, one-way linkages have the potential to compromise the ability of California compliance entities to meet their compliance obligations and provide true value to ratepayers. In light of the tightening cap and California's uniquely aggressive and stringent climate policies, every precaution should be taken to ensure that sufficient allowances (and other compliance instruments) are available to compliance entities. Allowing those instruments to be used to meet compliance obligations totally unrelated to California's program would hinder access. Doing so also negates the value of linking as a meaningful measure to help contain program costs.

In order to ensure that linkages are indeed meaningful and would not result in unintended consequences for compliance entities, the proposed sections 95944 and 95945 must include additional direction to direct staff in evaluating a potential partnership and must also ensure that any new partners are only linked with California's program after a full review by the agency and approval by the Board. Any "Retirement-Only Agreements" with another emissions trading systems (ETS) should only be approved after California has done a comprehensive analysis of the potential impacts the additional demand could have on California's market, including putting upward pressure on allowance prices or contributing to scarcity. Any linkages under proposed new section 95945 should also be subject to frequent review to evaluate the ongoing impacts on the California market, particularly as the cap tightens, and provisions that allow California to suspend or revoke the arrangement must be part of any Retirement-Only Agreements.

Compliance entities will see additional benefits associated with interstate trading in the event the CPP is finalized and California's proposed plan for CPP compliance using the Cap-and-Trade Program is approved by the EPA. NCPA encourages CARB to actively seek trading arrangements that would allow California to "link" with sister states under the CPP as soon as practicable. Not only will linkages with sister states increase the ability to cost-effectively reduce GHG emissions; it will ensure that California entities are not forced to pay twice for the carbon costs associated with imported electricity.

D. Further Assessment is Needed before making any Program Changes Associated with the California Independent System Operator Energy Imbalance Market

The Proposed Amendments contemplate several changes to the Cap-and-Trade Program that are intended to address concerns with inaccurate accounting of emissions associated with transactions in the CAISOEIM. Staff has identified concerns that the EIM optimization model may not account for all GHG emissions "experienced by the atmosphere as a consequence of electricity consumed in California." The Staff Report describes the proposed changes as follows:

> To address these inconsistencies and ensure the Cap-and-Trade Regulation reflects the requirements of AB 32, ARB staff proposes to retain the current point of compliance of the CAISO participating resource scheduling coordinator, but to supplement that compliance obligation with a compliance obligation on entities that purchase from EIM ("EIM purchasers") to serve load in California. The total supplemental compliance obligation for all EIM purchasers would be calculated based on the annual metric tons of CO2e from electricity that is experienced by the atmosphere to serve California load through CAISO's EIM, but not otherwise accounted for by emissions reported by the EIM participating resource scheduling coordinators. Each EIM purchaser's compliance obligation will be calculated as the ratio of their EIM purchases (MWh-basis) to total EIM load to serve California (also measured in MWh). This accounting would ensure that the full emissions associated with serving California are accounted for, and attributed

entirely to entities that are engaged in serving California load. (Staff Report p. 52)[17]

Since this issue was first raised by CARB staff during the February 24, 2016 Workshop, there have been several meetings with CARB and CAISO staff, as well as a workshop specific to this issue on June 24, 2016. During these meetings and workshops, CARB staff and CAISO staff presented information explaining the potential leakage concerns CARB raised. While CARB is currently working on analysis to quantify the emissions from EIM transactions that may not be accounted for, the analysis is not yet available for stakeholder review. At the same time, the CAISO has also provided additional information and analysis that looks at the totality of the EIM GHG emission impacts. The information provided to date on this issue is not entirely reconcilable, and the various proposals that CARB and CAISO presented during past workshops to address the issue may not actually do so. While CARB's final quantification is still forthcoming, the CAISO preliminary results demonstrate that "EIM dispatch reduced GHG emissions by 291,998 M Tons for period January-June 2016."[18] Certainly, the totality of the impacts must be measured and the differences between the data assessment being conducted by CARB and the CAISO must be reconciled in order for stakeholders to have a meaningful opportunity to assess the magnitude of the issue and whether the proposed Program changes are either necessary or sufficient.

NCPA believes that it is important for CARB to ensure that GHG emissions associated with EIM transactions are accurately tracked and accounted for. However, given the current level of uncertainty regarding the appropriate measure for tracking these emissions, the lack of a definitive quantification of the emissions at issue, and the importance of ensuring that any actions taken relevant to the EIM are properly considered in the context of the potential regional CAISO, it is premature to make any regulatory amendments relevant to EIM transactions at this time. Furthermore, in light of the significance that any proposed amendments would have, this issue should be deferred to a new Rulemaking, rather than addressed solely through 15-Day changes.

E. Amendments to Implement the Backstop Measure for the State Plan for Compliance with the Environmental Protection Agency Clean Power Plan Should be Given Further Consideration Before Adoption.

Demonstrating California's compliance with the mandates of the Clean Power Plan, should it be approved and implemented, must be done in the manner that provides the greatest flexibility to affected electric generating units (EGUs) subject to the CPP mandates, while

---

17 The Proposed Amendments go on to define the "Energy Imbalance Market Purchaser" as one who holds the compliance obligation, pursuant to section 95852(b)(1)(b), for emissions not fully accounted for by CAISO's EIM cost optimization model. (Section 95802(a))

18 Energy Imbalance Market GHG Counter-Factual Comparison (Preliminary Results: January-June 2016), dated August 25, 2016, p. 5. http://www.caiso.com/Documents/EIMGreenhouseGasCounter-FactualComparison-PreliminaryResults_Jan-Jun_2016_.pdf

avoiding Federal jurisdiction over California's existing climate change policies and programs to the greatest extent possible. A "state measures" approach that utilizes the Cap-and-Trade Program is the logical and reasonable mechanism by which to do so.

NCPA supports this approach, despite the need to alter certain core provisions of California's existing Program. For example, while NCPA believes that the current three-year compliance periods best meet the needs of the State's compliance entities, transitioning the entire program to two-year compliance periods beginning in 2028 to comport with the CPP requirements is far more preferable than adopting separate compliance periods for affected EGUs only or even for the entire electricity sector. NCPA also supports the proposal to invoke this change only if the CPP State Plan is approved by January 1, 2019. However, NCPA believes that the specific provisions regarding implementation of the backstop measures require further assessment prior to adoption.

NCPA asks that the Board direct staff to provide more time for stakeholders to assess the implications of the backstop measure by flagging this issue as one that may be further modified in 15-day changes. Allowing stakeholders additional time to work through the proposal does not compromise the state's objective of moving forward with CPP implementation as soon as possible. Additional time, however, does provide California stakeholders with the opportunity to take more time to assess the backstop measure, including conducting further analysis on the impacts that triggering the backstop will have on affected EGUs that are also compliance entities under the Program. The backstop measure must be subject to further deliberations and clarification before being finalized; no matter how remote the possibility is that the backstop will be triggered, because the possibility exists, it is imperative that sufficient analysis has been done. As proposed, the backstop measure would require that all EGUs share in the responsibility to bring the state back into compliance should the state fail to meet the adopted CPP glide-path target identified in Appendix D of the Proposed Amendments 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. The Staff Report and related CPP Report[19] do not address how the backstop proposal avoids penalizing EGUs that met their full compliance obligation under the Cap-and-Trade Program through the mandate to surrender CPP compliance instruments if the backstop is triggered as set forth in proposed section 95859(c). If the shortfall in compliance can be attributed to specific EGUs, the backstop measures should also include – or at least CARB should further explore – options that would allow California to hold just those EGUs accountable.

Furthermore, incorporation of the CPP into the Cap-and-Trade program also necessitates a review of the manner in which imported electricity is counted to ensure that California entities

19 California's Proposed Compliance Plan for the Federal Clean Power Plan, dated August 5, 2016.

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 with 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 EIM and potentially expanded 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.

F. The GHG Emission Cap For 2031-2050 Should be Informed by the Most Recently Available Scoping Plan Update and Data Available After 2021.

The Proposed Amendments set the 2021 to 2031 allowance budget for the Cap-and-Trade Program. (Section 95841(a), Table 6-2)[20] Establishing the allowance budget for this time period is important to provide market certainty for the Program and to ensure access to potential future allowances should it be necessary to invoke those cost containment provisions at a later time. While the Proposed Amendments properly acknowledge that the Program will extend beyond 2031, establishing the GHG emission cap for 2032 to 2050 is premature at this time. The Staff Report recommends an approach for setting a formula for the post-2030 cap that reflects the expected 2050 Program emission cap, and the 80% share of that cap expected to come from the Cap-and-Trade Program. (Staff Report, p. 12) However, as the Staff Report also notes, the Scoping Plan is required to be updated every five years, and significant changes in programs and technologies are not only possible, but probable between now and 2030. For this reason, the Proposed Amendments should not include a specific formula for the post-2031 emissions cap that includes a cap decrease established at this time. Rather, CARB should address the proper modeling for establishing the 2032 to 2050 cap in a future rulemaking, and exclude the equation for setting the GHG allowance budgets for years 2032 to 2050 proposed in section 95841(b) in this rulemaking.

The current Scoping Plan Update is intended to look through to 2030. A future update may include additional programs or measures. Future updates will also include a review of the impacts and reductions from other plans and measures, which may change over time. Assessing the appropriate post-2031 cap for the Cap-and-Trade Program should be done after there has been an updated Scoping Plan analysis of the GHG reductions resulting from other State programs and measures in order to ensure that it reflects the most recent data and information available at that time.

---

20 The Staff Report - ISOR and Proposed Amendments in Appendix A are not entirely consistent in the manner in which the two documents refer to the future budget periods. The Staff Report-ISOR refers to the 2031 to 2050 (pp. 12-13) period, while the Proposed Amendments refer to the period 2032 to 2050. NCPA assumes that the correct periods are 2021 to 2031 and 2032 to 2050, as this comports with the established compliance periods defined in Section 95840 of the Proposed Amendments.

The Proposed Amendments to Section 95892(a) add two new allowance allocation periods for allocation of allowances to EDUs for the protection of their electricity ratepayers. Those new sections would establish allowances for the period 2021 to 2026 (section 95892(a)(2)) and for 2027 and beyond (95892(a)(3)). The Staff Report and Proposed Amendments also note that a methodology for this allowance allocation may be proposed in the rulemaking process, and would be part of 15-day changes. As noted above, it is important that the post-2020 allowance allocation be established during this rulemaking for the entire 2021 to 2031 period. Affected stakeholders and compliance entities need this regulatory certainty. NCPA does not recommend bifurcating or delaying the allowance allocation determination for years 2027 and beyond. To the extent that the GHG budget in the Proposed Amendments is firmly established through to 2031, so too should be the allowance allocation to EDUs.

G. Amendments to Sections 95912(j) and 95892(b) Would Help Improve Market Efficiencies

The Proposed Amendments would revise Section 95912(j) regarding bid grantees. Bid guarantees are an important part of ensuring that transactions can be successfully completed. However, bid deposit requirements increase transactional costs to market participants and compliance entities. CARB can help reduce the impacts of these additional costs by recognizing the differences between market participants that do not already hold allowances in the Compliance Instrument Tracking System Service (CITSS) and those that do. For those entities that already hold allowances in CITSS, the bid deposit requirements for each quarterly auction should be reduced. It is possible to do this without compromising the integrity or security of the market for several reasons. First, those entities that already have compliance instruments in CITSS can use those instruments as collateral to offset bid deposit requirements, in which case the value of the bid deposit remains unchanged. This would allow the market to operate more efficiently by reducing transactional costs, particularly for smaller entities. Similarly, when compliance entities are consigning allowances into an auction where they have signed up to participate as a buyer, they should be able to use the consigned allowances as collateral to offset bid deposit requirements that would otherwise be required. These minor adjustments to the bid deposit requirements in section 95912(j) would go far to increasing the efficiencies for compliance entities holding CITSS instruments.

Section 95892(b)(2) and (3) addresses the designation of allowances for consignment for POUs. Currently, the POUs designate the allowances that will be placed into the auction on September 1 for the following calendar year. In order to improve market efficiency, this section should be amended so that allowance designations are made two times per year, in September and March. This bifurcated allocation would facilitate smoother market operations by allowing sellers to respond to market price signals, which would be particularly useful for volatile years such as this one.

III. CONCLUSION

Balancing and assessing the trade-offs between different options and measures requires California's various agencies to look closely at the totality of the state's policies to ensure that agency preferences in one area are not inadvertently compromising the ability to achieve optimum GHG reductions in the most cost-effective manner. This assessment must necessarily continue through to implementation and administration of the climate-related programs. For example, this means that the Cap-and-Trade Program must acknowledge the actual physics of the electricity market operations, including RPS-eligible electricity imports. As noted above, it is possible for the CARB to accurately *count* GHG emissions without imposing a Cap-and-Trade Program compliance obligation on entities that lawfully own the renewable energy attributes of the imported electricity. Similarly, while CARB's primary focus is on accounting for GHG emissions associated with electricity that serves California load, that accountability is not compromised by Cap-and-Trade program provisions designed to acknowledge the importance of California's market structure, including programs that are designed to ensure the most efficient electricity dispatches under the EIM. In both of these instances, NCPA believes that CARB and its sister agencies must collaborate to ensure that there is accurate accounting for GHG emissions generated in the state and imported into California as mandated by H&S Section 38530(b)(2), without impeding the reliable operation of California's electricity markets. Similarly, various aspects of SB 350 will require ongoing coordination between the state agencies and may necessitate additional program changes to ensure the most efficient and effective execution of the state's climate policies.

NCPA believes that the Cap-and-Trade Program has played a critical role in thesuccess of California's climate change objectives. Regulatory certainty regarding the provisions and the Program for the period beginning January 1, 2021 is not only essential for all compliance entities, but also for market participants and affected entities across the state. The Cap-and-Trade Program is but one element of California's overall portfolio of climate change and clean energy programs that are all designed to ensure aggressive GHG reductions across the state over the coming decades. The electricity sector plays an instrumental role in meeting the state's environmental policy objectives as compliance entities in the Cap-and-Trade Program, as retail sellers and load serving entities subject to the RPS Program mandates, and as affected EGUs subject to the provisions of the EPA Clean Power Plan and various other state-mandated measures and programs that are designed to reduce the state's overall GHG emissions. Because of the myriad overlapping energy policies and the impacts that those policies have on the state's electricity customers, it is absolutely imperative that administration of the Cap-and-Trade Program not be done without consideration of the policy efforts being undertaken by other state agencies. Without question, meeting the state's aggressive GHG reduction targets requires unprecedented collaboration and coordination amongst the various state agencies and regulated entities. That collaboration and coordination will help guide the agencies to a better understanding of the intertwined nature of various programs and the associated impacts that may

not be readily foreseeable by the administering agency. NCPA commends Staff's outreach to stakeholders and appreciates their increased level of interaction with the other affected state and energy agencies, and encourages the ongoing collaboration and dialogue that is needed to ensure that the Proposed Amendments to the Cap-and-Trade Program can be crafted in a manner that continues the demonstrate the environmental integrity of the Program and allows the Program to complement, rather than hinder, the state's other complementary GHG and climate programs in areas where they overlap. To that end, NCPA urges CARB to continue to entertain potential amendments to the Program as necessary.

The Cap-and-Trade Program plays a significant role in California's climate program and in meeting the state's climate objectives. The program also has substantial impacts on California's utilities and their ratepayers. The impacts of these proposed amendments – including the significant details regarding allowance allocation and the treatment of imported electricity in the EIM that have yet to be fully disclosed and resolved – will be significant and far reaching. NCPA urges the Board to consider the comments set forth herein, and those echoed by other stakeholders, when considering amendments and in directing what further revisions should be made in 15-day changes. Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com if you have any questions regarding these comments.

Sincerely,

LAW OFFICES OF SUSIE BERLIN
Attorneys for the **Northern California Power Agency**