

LAW OFFICES OF SUSIE BERLIN

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

Submitted electronically

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

Re: *Comments of the Northern California Power Agency on December 21, 2016
Modified Text 15-Day to the Proposed Amendments to the Cap-and-Trade
Program Regulation*

Dear Chair Nichols:

The Northern California Power Agency¹ (NCPA) appreciates the opportunity to provide comments to the California Air Resources Board (CARB) on further proposed amendments to the Cap-and-Trade Program Regulation. In these comments, NCPA addresses the modified text and additional documents released on December 21, 2016 (15-Day Changes).² NCPA supports continuation of the Cap-and-Trade program (Program) and believes that it should remain a cornerstone of California's climate strategy.

I. Introduction

NCPA and its member entities have demonstrated their commitment to helping California achieve its greenhouse (GHG) goals and objectives, and remain committed to doing their share to reduce statewide GHG emissions. NCPA supports continuation of the state's landmark cap-and-trade program, inclusive of key design features such as the allocation of allowances directly to electric distribution utilities (EDUs) for the benefit of their ratepayers, as part of the state's strategy to achieve the desired climate changes and GHG reductions. As more fully discussed in

¹ NCPA is a nonprofit California joint powers agency established in 1968 to construct and operate renewable and low-emitting generating facilities and assist in meeting the wholesale energy needs of its 15 members: the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, Plumas-Sierra Rural Electric Cooperative, Port of Oakland, San Francisco Bay Area Rapid Transit (BART), and Truckee Donner Public Utility District—collectively serving nearly 700,000 electric consumers in Central and Northern California.

² The December 21, 2016 15-Day Changes referred to in these comments includes the agency's Notice of Availability; Attachment A – Modified Text for the Proposed Regulation Order; Attachment C - 2021–2030 Allowance Allocation to Electrical Distribution Utilities; and Attachment F - Analysis of the Energy Imbalance Market and Mandatory Greenhouse Gas Reporting and Cap-and-Trade Regulations.

NCPA’s September 19, 2016 comments on the Proposed Amendments, the electricity sector plays a crucial role in the state’s climate strategy and is responsible for effecting GHG reductions through different programs and measures.³ Achieving California’s laudable climate objectives is important, but ensuring the continued provision of safe, reliable, and reasonably priced electricity for the residents and businesses in NCPA members’ service territories is also important. For these reasons, while NCPA continues to view the cap-and-trade program as a critical tool to reduce GHG emissions in the most cost-effective manner, changes to the program that impact compliance costs for EDUs must be carefully addressed. In these comments, NCPA responds to the further proposed modifications to the cap-and-trade program set forth in the 15-Day Changes, including the proposal for allocation of allowances to EDUs for 2021 through 2030.

NCPA appreciates the efforts that have gone into drafting the Proposed Amendments and additional modified text. NCPA and its member agencies look forward to continuing to work with Staff on development of several critical elements of the Proposed Amendments and first 15-Day Changes that are as yet unresolved, and develop solutions to address the stated concerns that can be included in subsequent 15-day changes.

II. Summary of Key Recommendations

- Electrical distribution utility allowance allocation;
 - Appropriately Calculating the RPS Mandate
 - Customer Impacts of the EDU Cost Burden
 - Treatment of Transportation Electrification Impacts
 - Reductions for Industrial Covered Entities Purchased Electricity
 - Use of Alternate Public Data Sources
- Continuation of the RPS Adjustment;
- Program changes to address GHG emission tracking associated with the California Independent System Operator (CAISO) Energy Imbalance Market (EIM);
- Allowances unsold for 24-months should not be permanently designated to the Allowance Price Containment Reserve;
- Rules regarding allowance consignment for EDUs and the use of allowance value should not be changed.

III. Comments

A. Electrical Distribution Utility Allowance Allocation

The 15-Day Changes set forth the proposal for allocation of allowances to EDUs for their electricity ratepayers – the residents and businesses of California. Allocation of allowances to EDUs provides direct relief to California’s residents and businesses. This relief is critically

³ Comments of the Northern California Power Agency on Proposed Amendments to the Cap-and-Trade Program Regulation, September 19, 2016; <https://www.arb.ca.gov/lists/com-attach/89-capandtrade16-BWtdOFAhUWMLUgdk.pdf>. NCPA does not reiterate those comments herein, but notes that the 15-Day Changes do not address all the issues raised in the September 19 comments, and urges staff to continue to work with stakeholders on resolution of those outstanding issues, as well.

important because EDUs are called upon to effect emissions reductions through several different programs, all of which impact the cost of electricity to California ratepayers. In response to the high-level description of the allocation proposal set forth in the August 2 Proposed Amendments, NCPA provided comments regarding general principles for calculation of the allowance value. In those comments, NCPA noted that CARB’s original findings regarding the value of this direct allocation to EDUs remains as relevant today as it was in 2010, and is even more important in the face of potential electricity rate increases that come with additional climate mandates and the tightening program cap. NCPA fully supports CARB’s recommendation to continue to provide EDUs with allowances for the benefit of their electricity customers. Additionally, given the importance of regulatory certainty for compliance entities, NCPA supports use of an allowance allocation methodology that would assign allowances for the entire period 2021 to 2030, reflecting the period covered by the current GHG Allowance budget.

Attachment C to the 15-Day Changes addresses the methodology and rationale used by CARB staff to develop the EDU 2021 to 2030 allocation proposal. The proposal addresses some of the stakeholder comments that were raised in conjunction with the October 14, 2016 Informal Staff Proposal on EDU allowance allocation, the October 21, 2016 Workshop on proposed amendments, and in post-Workshop comments submitted by stakeholders. In particular, the methodology described in Attachment C reflects the use of retail sales rather than total load for calculating the renewable energy mandate, and addresses concerns raised by stakeholders regarding the appropriate inclusion of energy efficiency projections. However, as more fully discussed herein, there are errors in Attachment C that need to be corrected and further refinements that should be included to accurately apply the allocation methodology and ensure that EDUs receive a sufficient number of allowances to cover their cost burden and protect their electricity customers from undue rate impacts. Refinements to the allocation proposal set forth in Attachment C are needed to address the following:

- Appropriately Calculating the RPS Mandate
- Customer Impacts Associated with the EDU Cost Burden
- Treatment of Transportation Electrification Impacts on EDUs
- Reductions for Industrial Covered Entities Purchased Electricity
- Use of Alternate Public Data Sources
- Retail Sales Subject to RPS Mandate for the Port of Oakland

1. Appropriately Calculating the RPS Mandate

CARB’s allowance allocation methodology applies a straight-line reduction to the number of allowances allocated based on the “assumption that each EDU procures RPS-eligible power that increases from the mandated 33 percent in 2020 to 50 percent in 2030.”⁴ Staff determined the EDUs annual RPS requirement by applying a linear path from the 33% of retail sales in 2020 to 50% of retail sales in 2030.⁵ In responding to stakeholder comments regarding

⁴ Attachment C, p. 5.

⁵ *Id.*

the application of the RPS mandate, Attachment C states that “Staff proposed that the EDU allocation reflect increasing purchases of renewable electricity with SB 350 RPS requirements because this factor significantly reduces the Program cost burden. Staff believes that calculating annual cost burden must account for the significant decrease in cost burden that is associated with increasing renewable electricity purchases.”⁶ NCPA does not dispute that cap-and-trade program compliance costs for EDUs are directly impacted by the percent of the utility’s customers served by renewable energy resources. However, staff’s proposal is based on the erroneous assumption that the 50% RPS mandate set forth in SB 350 equates to the equivalent of 50% carbon-free resources in 2030. This is simply not the case.

Basing allowance allocation on a straight-line trajectory to 50% does not accurately reflect the true level of zero-emission resources that can be used to meet the RPS mandate. There are provisions in SB 350 that recognize that, for each compliance period, the RPS mandate may be met by other than zero GHG resources or addressed through optional compliance measures. This includes the use of unbundled renewable energy credits (RECs) or Portfolio Content Category 3 resources; retirement of RECs associated with excess procurement in a prior compliance period; justified delay of timely compliance due to statutory recognized limitation; and cost limitations. Furthermore, since the cap-and-trade program and the state’s RPS Program are not fully aligned, there are renewable resources that are used for compliance with the RPS mandate that are not counted as zero-emission resources under the cap-and-trade program.

*Unbundled Renewable Energy Credits*⁷: Retail sellers can meet up to 10% of their RPS compliance obligation with unbundled renewable energy credits. These unbundled RECs represent zero-GHG power that is not directly delivered to the utility’s customers. The utility purchases the unbundled REC and surrenders it for RPS compliance. However, that portion of their retail sales would be met with non-RPS resources. Assuming absolute adherence to the 33% to 50% trajectory for non-emitting resources does not recognize the explicit statutory exception and penalizes the EDUs that exercise this statutory right.

*Banking of Excess Procurement*⁸: The state’s RPS mandate also includes provisions that allow retail sellers and POUs to accumulate excess procurement from one compliance period and apply that renewable procurement towards meeting the RPS requirement for a future compliance period. Depending on the manner in which the underlying generation was utilized by the EDU when the excess procurement occurred, when the EDU uses excess procurement for RPS compliance but serves customers during that same compliance period with non-RPS resources, they would incur a cap-and-trade program compliance costs on the energy that is used to serve its customers equal to the

6 Attachment C, p. 4.

7 Public Utilities Code (PUC) sections 399.16, 399.30; see also Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Utilities (<http://www.energy.ca.gov/2016publications/CEC-300-2016-002/CEC-300-2016-002-CMF.pdf>), California Public Utilities Commission (CPUC) Rulemaking (R.) 11-05-005.

8 PUC sections 399.13, 399.30; see also Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Utilities (<http://www.energy.ca.gov/2016publications/CEC-300-2016-002/CEC-300-2016-002-CMF.pdf>), CPUC R.11-05-005.

amount of excess procurement applied to its RPS mandate. Since the proposal set forth in Attachment C does not recognize the ability of the EDU to meet its RPS compliance obligation with excess procurement, calculation of the EDU cost burden is understated.

*Delay of Timely Compliance and Cost Limitations*⁹: Renewable resources are often – although admittedly not always – located away from the load they are intended to serve. Recognizing the inherent complexities and potential delays associated with siting, permitting, and building renewable generation resources and the associated transmission infrastructure, the state’s RPS program also includes express provision that recognize timely compliance may be delayed. Likewise provisions that place limitations on the utilities’ expenditures for eligible renewable energy resources could excuse a utility from meeting the specified RPS mandate. In the event an EDU is faced with either of these circumstances, they may not be able to replace the affected resource with another renewable resource in a timely manner or be precluded from procuring renewable resources altogether. This would result in the use of additional generation resources with a cap-and-trade program compliance obligation that would not be recognized in the allowances allocated to the EDU to meet its program cost burden.

RPS Adjustment: The RPS Adjustment is intended to reduce an EDU’s compliance obligation by ensuring that deliveries of RPS-eligible resources are not counted as part of the compliance obligation. When an EDU utilizes the RPS adjustment, the share of zero-GHG resources reflected in their RPS portfolio is accurately reduced for purposed of calculating the cap-and-trade program compliance obligation. However, to the extent that accounting and tracking for those resources precludes an EDU from utilizing the RPS Adjustment, a cap-and-trade program compliance obligation is assigned to resources that are not counted toward the EDU’s compliance burden under the current proposal.

The cap-and-trade program should align to the greatest extent possible with other climate programs, and in particular when those other programs define and influence the policy direction of the cap-and-trade program as the RPS mandate does in this instance. As the above examples clearly demonstrate, by 2030, EDUs may be 100% compliant with their RPS mandate, but not necessarily be serving 50% of their retail load with non-RPS resources during that RPS compliance period; meaning that those resources would have a cap-and-trade compliance obligation that adds to the EDU’s cap-and-trade program cost burden that is not recognized in the number of allowances allocated to the EDUs. Because this can occur for several reasons that were clearly recognized by the legislature when the program was designed, and these factors should likewise be recognized in the allowance allocation calculation. Accordingly, to address these statutory provisions and ensure that the cap-and-trade program accurately recognizes these aspects of the state’s RPS mandate, the 50% straight line RPS trajectory should be adjusted.

⁹ PUC sections 399.15(b) and (c), 399.30(d)(2) and (3); see also Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Utilities (<http://www.energy.ca.gov/2016publications/CEC-300-2016-002/CEC-300-2016-002-CMF.pdf>), CPUC R.11-05-005.

Since the cap adjustment factor already applies a rate of decline that actually compounds the impact of the increasing RPS mandate relative to the calculation of allowance allocation, NCPA recommends that the RPS mandate be reflected in the allowance calculation by using a 33% trajectory through to 2030. Such a change is absolutely critical to appropriately address the cost burden of the climate program to California consumers.

Turning to specific impacts on NCPA members, Table 1 indicates that moving to a 33% trajectory to 2030 provides an additional 2.2 million allowances for NCPA members. Such a change provides at least \$50 million in cost burden protection to the nearly 700,000 customers served by NCPA member utilities. This estimate is actually conservative, assuming that the carbon price remains at the floor without any inflation adjustments throughout the ten-year period. To properly bound the range of potential relief, we also assumed that carbon prices rise to the Allowance Price Containment Reserve of \$60, NCPA the cost burden protection increases to \$131 million. If inflation is factored into the equation, the range of costs will increase even further.

Table 1
Allowance Allocation Estimates Under Different Scenarios
NCPA Members 2021-2030

33% RPS Factor Throughout											
NCPA Member	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total
Alameda	72,498	69,101	65,855	62,611	59,399	56,252	53,877	51,187	48,464	45,617	584,862
Biggs	2,495	2,388	2,283	2,179	2,075	1,972	1,885	1,795	1,702	1,605	20,379
Gridley	5,826	5,606	5,385	5,164	4,943	4,719	4,490	4,272	4,052	3,820	48,277
Healdsburg	19,194	18,451	17,828	17,110	16,462	15,809	14,922	14,169	13,407	12,612	159,964
Lodi	106,247	102,221	98,503	94,831	91,117	87,435	82,600	78,417	74,189	69,780	885,341
Lompoc	33,291	31,895	30,576	29,230	27,902	26,583	25,286	24,003	22,707	21,356	272,831
Port of Oakland	20,622	19,970	19,279	18,603	17,886	17,176	16,213	15,391	14,561	13,695	173,396
Palo Alto	149,557	142,618	136,298	130,013	123,332	116,837	112,119	106,743	101,272	95,520	1,214,308
Roseville	311,337	304,050	294,690	284,507	274,786	264,281	251,080	240,354	229,286	217,447	2,671,818
Shasta Lake	60,046	57,952	56,332	54,265	52,152	49,992	47,519	45,363	43,156	40,817	507,594
Ukiah	27,494	26,443	25,304	24,134	23,082	21,924	20,886	19,829	18,761	17,646	225,502
Plumas-Sierra	27,310	26,092	24,845	23,622	22,493	21,232	20,383	19,392	18,385	17,329	221,083
Redding	139,279	136,167	132,948	129,119	125,080	120,941	114,913	110,558	105,988	101,002	1,215,995
Silicon Valley Power	673,826	652,757	630,443	605,986	580,204	554,228	526,278	500,098	473,582	445,855	5,643,258
Truckee Donner PUD	49,329	47,636	45,915	44,165	42,387	40,580	38,897	37,012	35,098	33,089	414,109
NCPA Total	1,698,352	1,643,348	1,586,485	1,525,542	1,463,302	1,399,960	1,331,348	1,268,582	1,204,609	1,137,189	14,258,717
Original CARB Proposal											
NCPA Member	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total
Alameda	71,138	65,199	60,891	55,522	50,417	46,676	42,697	38,655	34,795	31,060	497,051
Biggs	2,432	2,208	2,054	1,850	1,658	1,526	1,366	1,212	1,067	929	16,302
Gridley	5,683	5,192	4,857	4,406	3,977	3,684	3,287	2,925	2,582	2,254	38,847
Healdsburg	18,877	17,526	16,648	15,398	14,288	13,485	12,216	11,135	10,098	9,088	138,759
Lodi	104,487	97,137	91,981	85,426	79,083	74,471	67,618	61,623	55,873	50,274	767,971
Lompoc	32,751	30,341	28,590	26,382	24,278	22,701	20,774	18,946	17,192	15,482	237,438
Port of Oakland	20,285	18,995	18,025	16,791	15,568	14,676	13,327	12,155	11,031	9,936	150,789
Palo Alto	145,720	131,598	122,250	109,902	97,836	89,633	80,381	71,166	62,471	54,195	965,152
Roseville	305,836	288,054	274,058	254,635	236,488	222,959	203,101	186,228	169,876	153,769	2,295,004
Shasta Lake	59,231	55,572	53,267	49,832	46,466	43,854	40,395	37,325	34,333	31,360	451,635
Ukiah	27,026	25,097	23,571	21,632	19,904	18,497	16,919	15,382	13,911	12,482	194,421
Plumas-Sierra	26,670	24,241	22,470	20,198	18,145	16,554	14,959	13,312	11,754	10,267	178,569
Redding	135,822	126,108	119,980	110,353	100,997	94,962	84,752	76,532	68,637	60,965	979,108
Silicon Valley Power	660,892	615,292	582,321	536,773	491,946	459,538	416,425	376,956	339,275	302,812	4,782,230
Truckee Donner PUD	48,702	45,821	43,585	40,807	38,095	35,962	33,536	30,984	28,502	26,041	372,037
NCPA Total	1,665,552	1,548,382	1,464,546	1,349,907	1,239,145	1,159,178	1,051,754	954,537	861,397	770,913	12,065,312

Clearly, the level of protection will fall somewhere within the ranges depicted in Table 1. As these numbers evidence, the potential impact is not *de minimus* and irrespective of the actual number, in all cases it is important to note that the vast majority of this added protection will occur after 2025, at exactly the time when cost protection is solely needed and uncertainties surrounding reaching the 2030 goal will be greatly tested.

Applying a 33% RPS trajectory through to 2030 better recognizes the EDU cost burden. Furthermore, doing so still ensures that the EDUs will continue to reduce overall emissions, but better aligns these two climate programs, and protects electricity ratepayers from an unwarranted additional cap-and-trade cost burden because of the RPS program.

2. Customer Impacts of the EDU Cost Burden

An overriding concern for NCPA is the ultimate impact that the increased reduction mandates and associated program compliance costs will have on the electricity customers of NCPA's member agencies. The proposed definition of the EDU cost burden does not reflect the true cost of compliance for EDUs, as it does not address the full range of emission reduction mandates that electricity customers are ultimately responsible for funding. As CARB notes, allowances are allocated to EDUs "because EDUs have direct relationships with retail customers. These relationships put EDUs in a position to use allocated allowances to benefit retail customers consistent with AB 32 goals."¹⁰

EDU compliance costs will continue to increase under the tightening emissions cap and increasing reduction mandates from other programs. Increased compliance costs results in increased electricity costs. The post-2020 cap-and-trade program is not merely a continuation of the current program, but one that includes a significant reduction in the total emissions cap. As such, it is entirely appropriate for some actions taken after initiation of the cap-and-trade program to be recognized as part of the cost burden, and "early actions" must be viewed in the context of the current program and the changes inherent in continuation of the program post-2020. 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.¹¹ Those early investments included emission reductions beyond those required of the EDUs at that time. In the context of the current program, many EDUs continued to make investments in emissions reductions beyond those that were mandated. Indeed, such investments were encouraged.¹² However, under the allocation proposal described in Attachment C, those investments are not recognized as part of the continuation of the cap-and-trade program. This is despite the fact that the post-2020 program connotes a new era of emissions reductions, including an even lower emissions cap that declines more rapidly than under the current program. The "EDUs' cost burden for transitioning to lower or non-GHG

¹⁰ Attachment C, p. 1.

¹¹ 2011 FSOR, p. 575

¹² The 2011 FSOR repeatedly notes that the allocation system "will encourage continued investments in efficiency and clean energy in the future." See, for example, p. 229, 230, 233, 1071.

emitting resources and engaging in load reduction measures should be properly recognized in the context of the Program.”¹³ EDUs that made investments in cleaner portfolios – such as through agreements to divest from coal-fired resources, purchases of additional renewable resources, or investments in energy efficiency – furthered the objectives of AB 32. Those investments may result in decreased cap-and-trade program compliance costs, but are not necessarily less costly to electric ratepayers than surrendering allowances.

Due to the differences in the way the allocations are calculated for 2021 to 2030, some EDUs will have a significant decrease in allocated allowances between 2020 and 2021, which will cause a corresponding increase in the electricity rates. The failure to recognize the impact of post-2020 investments in emissions reductions and the steeper rate of decline included in the proposed cap adjustment factor are key factors resulting in this “2021 cliff.” However, it appears that the true impacts of 2021 cliff and concern about the rapid escalation in compliance costs are not fully understood, as evidenced by Attachment C. In Attachment C, this potential rate shock is dismissed by suggesting that EDUs can plan for this event by “banking auction proceeds, passing the GHG cost through to their customers, and returning auction proceeds to ratepayers in a non-volumetric manner.”¹⁴ This suggestion, however, does not entirely address the problem for several reasons. For one thing, there is no way to pass along a “future” carbon cost to customers based on current carbon prices. Further, banking allowance value means that such value cannot be used to continue to fund existing emissions programs and measures, creating a shortfall in the near term. In order to protect ratepayers from the impacts of the updated cap-and-trade program, NCPA urges CARB to include a means to “smooth” this cliff. NCPA believes that this can be done, at least for an transition period, by recognizing EDU investments in additional carbon reduction practices that contributed to the 2020-2021 differential. Doing so ensures that some portion of those investments are recognized within the context of the cost burden, decreasing the 2021 cliff and the associated detrimental impacts on electricity customers.

3. Treatment of Transportation Electrification Impacts on EDUs

Failure to include any provisions for allocating allowances to the EDUs to address the impacts of transportation electrification is a fundamental flaw in the allocation proposal. Given the state’s clear direction to increase electrification of the transportation and other sectors, the impact on EDUs cannot be dismissed, nor “pushed down the road” for future consideration. NCPA supports CARB’s desire to ensure that the exact extent of those impacts can be uniformly quantified, and encourages ongoing work with the CPUC, CEC, and affected stakeholders on a long-term measure. However, as NCPA noted in the September 19 comments, while it is important to establish an appropriate metric for measuring the impacts of this transition, “that metric need not – and should not – be so cumbersome as to restrict practical acknowledgement of the impacts of transportation electrification.” It is inappropriate to simply ignore these impacts

¹³ NCPA September 19 comments.

¹⁴ Attachment C, p. 3.

on the EDUs pending development of such a methodology; it is not a question of “if” transportation electrification will impact the EDUs, but “how much” will they be impacted.

Furthermore, this is not a nascent issue; the impacts of transportation electrification on EDUs have been raised by stakeholders many times. As far back as 2010, stakeholders noted the demands that increased electric vehicle fleets would place on EDUs. CARB acknowledged the potential for impacts in the 2011 FSOR, but stated that “we do not expect that the growth in this electric load will significantly impact utility costs by 2020. We will monitor the electrification of transportation and will address this concern if it arises in the future.”¹⁵ Since then, not only has electrification of the transportation sector continue to expand, but electrification of other segments of the economy have also increased. Added to this, the Legislature has placed an even greater focus on greater transportation electrification.¹⁶ In light of the fact that transportation electrification is intended to play an increasingly significant role in moving the state towards its 2030 and 2050 emission reduction targets, NCPA believes that CARB should address this directive to remove barriers and recognize the impacts on EDUs now. Staff should continue to work with affected stakeholders, the CEC, and the CPUC on a feasible methodology that will accurately capture the emission ramifications of transportation electrification to the greatest extent possible. 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 subsequent 15-day changes to the regulation.

4. Covered Industrial Customers’ Purchased Electricity

The allocation proposal described in Attachment C includes a reduction in allocated allowances “equivalent to the emission resulting from power that serves that EDU’s industrial covered entities.” NCPA continues to oppose this adjustment as not only unnecessary, but ultimately detrimental to the affected customers serviced by the POUs. 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.”¹⁷

15 2011 FSOR, p. 570.

16 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.

17 2011 FSOR, p. 567

At that time, CARB also noted that the “CPUC and the POU governing boards will determine the most equal and fair way to redistribute the auction value back to its customers.”¹⁸ NCPA continues to believe that is the best way to ensure that the covered industrial customers receive the greatest total allowance value associated with their purchased electricity. Under CARB’s proposal, the transfer of allowances between the two sectors is not equivalent. As a result, the EDUs will not receive any allowances to cover the purchases electricity for their covered industrial customers, meaning that the full carbon price will need to be reflected in the customers’ rates. However, based on the current methodology, the allowances the covered industrial customers receive will not reflect this full value. In essence, the EDU’s covered industrial customers will see a diminution in their total allowance value when compared to the increased costs. NCPA is very concerned that this will detrimentally impact the economic viability of the very EITE entities that are supposed to be protected, and consequently the very communities in which they are located.

NCPA is also concerned that CARB’s basis for proposing this change is based on a perceived problem that does not actually exist, as reflected in the reference to the “**potential** inequity between IOU-customer industrial covered entities, which already see a GHG cost and receive distribution of IOU auction proceeds to prevent against emissions leakage, and POU-customer industrial covered entities that **may not** be protected from emissions leakage.”¹⁹ Just as electricity rates and services vary between the utilities, so to do the programs that are designed to provide GHG value to the electricity customers, including industrial covered entities. NCPA member EDUs may not have a uniform approach to returning allowance value to these customers, but such uniformity is not necessary to ensure that the customers receive value from the allocated allowances. The proposal to reduce the number of allowances allocated to the EDUs in this manner should be rejected.

5. Use of Alternate Public Data Sources

CARB’s allowance allocation proposal is based on the use of the California Energy Commission (CEC) data that “provide the most recent, publicly available projections of load and EDU resources, and thereby provide the most robust basis for estimating future cost burden.”²⁰ NCPA appreciates the need to use on publicly available information from which load projections can be made, but notes that the CEC forms are not going to be the “appropriate data source for each EDU’s projected generation.”²¹ There are factors that can have significant impacts on the load projections; one such example is PG&E’s proposal to close its Diablo Canyon Nuclear Generation Facility after it had submitted its load projections upon which the CARB allocation is based. To the extent that EDUs have clearly demonstrated and documented changes in the load forecasts that their allowance allocation was based on, NCPA encourages CARB to work with the stakeholder to determine an equitable means by which to address such circumstances.

18 2011 FSOR, p. 590

19 Attachment C, p. 5, emphasis added.

20 Attachment C, p. 4.

21 See Attachment C, Table 1, p. 7.

6. Retail Sales Subject to RPS Mandate for the Port of Oakland

NCPA reviewed the basic methodology employed by CARB staff to calculate the allocation of allowances to each NCPA member. In doing so, we highlight one place where the approach needs to be adjusted. In the case of the Port of Oakland, the spreadsheet incorrectly assumes a retail sales estimate that is considerably higher than what is traditionally the case.

In general, the spreadsheet adjusts “Energy to Serve Load” to account for utility transmission line losses ranging from 7-15%. In the event that the projected difference between retail sales and energy to serve load exceeds 15%, the model simply assumes a 7% adjustment, ignoring instances where the differential may exceed the 15% level. For the Port of Oakland, the differential between load and retail sales regularly exceeds 40%, well above the 15% threshold. Such a relationship is evident in the various Power Source Disclosure reports the Port of Oakland has filed with the California Energy Commission (CEC) over the past two decades, consistent with the definition of retail sales as defined by the CEC.

Since the CARB spreadsheet only provides a 7% adjustment to the Port of Oakland’s retail sales number, projected retail sales are overstated as well as the amount of load subject to the RPS, which ultimately reduced the amount of natural gas in the Port’s portfolio once California-eligible renewable generation is removed. In this case, the amount of natural gas remaining to serve load is understated, leaving Port of Oakland customers exposed to additional costs. NCPA does not believe this was CARB’s intent, and recommends that the following adjustment be made to accommodate this unique circumstance.

The adjustment itself is relatively simple: the retail sales number that is currently included in Row 4 of the spreadsheet should apply to Row 5 of the spreadsheet, ignoring the 15% limitation assumed in the methodology. Doing so will increase the number of allowances the Port of Oakland receive between 2021 and 2030 from approximately 173,000 to 209,000.

B. RPS Adjustment

NCPA appreciates CARB’s responsiveness to stakeholder opposition to eliminating the RPS Adjustment from the cap-and-trade program and the modified amendments that would re-insert this provision. As CARB has acknowledged, the RPS program is a key element of California’s recommendations for reducing its greenhouse gas emission to 1990 levels by 2020.²² Both the cap-and-trade program and the RPS program serve the same underlying purpose – to reduce the state’s overall GHG emissions profile; for that reason it is imperative that there be greater alignment between the two programs. In furtherance of this objective, and to avoid unnecessary compliance costs, NCPA encourages CARB to continue to work with stakeholders to address the articulated concerns regarding the manner in which the provision is implemented and the unintended impacts that have resulted. Amendments should also ensure that both the cap-and-trade program regulation and the Mandatory Reporting Regulation retain the

22 Climate Change Scoping Plan, December 2008, pp. 16-17, see also p. 44.

requirement for entities to report the REC serial number. Doing otherwise needlessly dissociates the two programs where they should be more explicitly aligned. NCPA encourages CARB to carefully review the proposal set forth in the Utilities' January 20, 2016 letter, and incorporate the necessary amendments into subsequent 15-Day Changes.

C. Unsold Allowances Should not be Permanently Designated to the APCR

The 15-Day Changes revise the proposed amendments to section 95911(g) to exclude allowances retired for the newly designated "EIM Outstanding Emissions" from the scope of the provision. Despite numerous stakeholder comments on this matter, the 15-Day Changes leave unaltered the proposal to permanently designate allowances that are unsold for more than 24 months into the Allowance Price Containment Reserve. For the reasons set forth in the September 19 Comments, NCPA urges CARB to reconsider this proposed amendment and ensure that allowances remain available to compliance entities without unnecessary restrictions.

D. Linkages With Other Programs are Appropriately Subject to Formal Review

The Proposed Amendments included new options for one-way linkages with other emissions reduction programs. As NCPA noted in the September 19 Comments, the state should continue developing potential trading partners, but actual linkages with other programs should only occur when those programs meet *all* 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.

The 15-Day Changes provide clarification to proposed new section 95945 regarding "Retirement-Only Agreements With External GHG Program." NCPA fully supports the inclusion of language in section 95945(a) that linkages with other emissions-based programs must be subject to stakeholder review and comment before the Board can approve them. To the extent that the 15-Day Changes do not address the remaining modifications discussed in the September 19 Comments, NCPA urges CARB to ensure that those additional revisions are reflected in subsequent 15-day changes before approving the new provisions.

E. California Independent System Operator Energy Imbalance Market

In the 15-Day Changes, CARB has proposed an "interim solution" to address the manner in which GHG emissions are accounted for in the CAISO EIM. 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."²³ In Attachment F, CARB outlines its proposed solution to addressing GHG accounting. CARB recognizes that the CAISO has a stakeholder process that is also reviewing this matter and that tariff amendments are being considered. However, unwilling to wait for the process to be completed at the ISO, CARB has proposed an interim solution. NCPA is concerned that the interim solution, based on CARB's assessment, does not provide an accurate or fair means by which to assign the GHG cost burden, does not present a market-based solution, and may have unforeseen consequences for the

²³ August 2, 2016 Staff Report p. 52.

expanding EIM. Rather than implement an interim solution of unspecified duration, CARB should continue forego revisions to the EIM GHG accounting metric until the CAISO process has been completed. In the interim, CARB and affected stakeholders should continue to work with the ISO on the proposed tariff changes to ensure that GHG emissions in the EIM are accounted for to the greatest extent feasible.

F. Consignment of POU Allowances and Use of Auction Proceeds Should not be Changed in this Rulemaking

Provisions in the cap-and-trade program regulation regarding EDU consignment of allowances and use of auctions proceeds should not be altered. Attachment C states that “Staff is also considering requiring POUs and co-ops to consign allocated allowances to auction and requiring that the auction proceeds be used for specific purposes” and notes that “additional proposed amendments would be proposed in a subsequent 15-day regulatory proposal.”²⁴

The current distinction between the provisions regarding POUs/co-ops and IOUs was based on an extensive record. In 2011, CARB acknowledged the different provisions, and noted that the distinction was justified because “POUs and IOUs operate differently with respect to electricity generation. POUs generally own and operate generation facilities which they use to provide electricity directly to their end-use customers. In order to minimize the administrative costs of the program to the POUs, and recognizing that directly allocating the allowances to the POUs does not distort their economic incentive to make cost-effective emissions reductions, we determined that it would be prudent to allow POUs to surrender directly allocated allowances without participating in the auction process.”²⁵ Furthermore, CARB acknowledged that all entities should have a reasonable means to comply with the cap-and-trade regulation in a manner that accommodates their respective business models and compliance strategies, and that imposing auction design features on vertically integrated POUs is an unnecessary additional step that does not provide any value to POU electric ratepayers, nor to California overall.²⁶ No changes are warranted, as the underlying rationale for the distinction remains unchanged.

Furthermore, NCPA notes that the scope of the current rulemaking does not include changes to the provisions regarding POU allowance consignment. Any such changes, even those intended to align use of allowance value among the different EDUs and natural gas suppliers, were not previously raised in the August 2 Proposed Amendments.²⁷ If there is a desire on the part of the agency to amend the provisions of the regulation related to the consignment of allowances, that issue should be properly raised and noticed in a future rulemaking.²⁸ Likewise, while the Proposed Amendments include changes to the provisions regarding the use of

24 Attachment C, p. 3.

25 2011 FSOR, pp. 564-565.

26 2011 FSOR, pp. 560-561.

27 It is telling that the Proposed Amendments did forecast changes to the provisions regarding the consignment of allowances for natural gas suppliers, yet makes no mention of consideration of consignment changes for EDUs. (August 2, 2016 Proposed Amendments, Initial Statement of Reasons, p. 45)

28 See Administrative Procedure Act, Govt Code section 11340, *et seq.*

allowance value, those amendments are referred to as “clarifications” and are explicitly termed “nonsubstantive changes.”²⁹ To the extent that CARB is now contemplating substantive revisions or new rules surrounding the use of allowance value outside of what was identified in the August 2 Proposed Amendments, they would be outside the scope this rulemaking.

Given the already significant issues under consideration in this rulemaking, the inclusion of additional changes at this late date should be avoided.

IV. Conclusion

The cap-and-trade program plays an important part in California’s climate program and in meeting the state’s climate objectives, but also has significant impacts on California’s utilities and their ratepayers. The allocation of allowances to EDUs for the benefit of their electricity customers is critically important for EDUs. NCPA urges the Board to carefully consider the issues addressed in these comments and revise the allocation methodology to accurately address the cost burden on EDUs and their electricity customers, and to direct that further revisions to the proposed amendments incorporate the corrections addressed herein. 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,

A handwritten signature in blue ink that reads "Susie Berlin".

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