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December 15, 2010

VIA ELECTRONIC MAIL

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814

Re: Comments of PacifiCorp Regarding the California Air Resources Board October 28, 2010 Proposed Regulation to Implement the Cap-and-Trade Program under Assembly Bill 32

Dear Board Members:

PacifiCorp respectfully submits these comments as requested in the October 28, 2010 "Notice of Public Hearing to Consider The Adoption of a Proposed California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms Regulation, Including Compliance Offset Protocols" (hereinafter "Proposed Regulation" or "Cap-and-Trade Program").[1]

While PacifiCorp maintains that a sector-based, technology-driven approach at the national level remains the most appropriate method for achieving cost-effective, long-term reductions in greenhouse gas ("GHG") emissions, the Company believes it is important to refine the California Cap-and-Trade Program so that the Assembly Bill 32 ("AB 32") goals are implemented in a manner that minimizes the cost impacts to PacifiCorp's customers. PacifiCorp appreciates the opportunity to submit these comments and is concurrently providing separate comments on the amendments to the Mandatory Reporting Regulation ("MRR").

I. INTRODUCTION

PacifiCorp is a multi-jurisdictional retail provider ("MJRP") that provides retail electric service to approximately 1.7 million retail customers located within the states of California, Idaho, Oregon, Utah, Washington and Wyoming[2]. In California, PacifiCorp serves approximately 46,500 customers in Del Norte, Modoc, Shasta and Siskiyou counties. Approximately 35 percent of its California customers are eligible for PacifiCorp's California Alternate Rates for Energy ("CARE") low-income assistance program.

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[1] See October 28, 2010 Notice of Public Hearing and associated rulemaking materials, available at: http://www.arb.ca.gov/cc/capandtrade/capandtrade.htm

[2] Please note that PacifiCorp is a regulated retail electricity provider in two states that are not linked to the Western Climate Initiative (Wyoming and Idaho).

As an MJRP regulated under each of the retail jurisdictions it serves, PacifiCorp faces unique challenges that differ from those faced by most of California's other electric utilities. For example, PacifiCorp operates two balancing authorities that span its six-state service territory. As a load-serving entity, however, it operates its multi-state territory as a single, integrated system.[3] Consistent with its integrated system operations, the bulk of its generating resources (both owned and purchased) are allocated across the entire system, rather than on a state-by-state basis.

At the national level, PacifiCorp and its parent, MidAmerican Energy Holdings Company, have advocated for a phased-in, technology- and policy-driven national approach to reduce long-term GHG emissions while minimizing the costs and risks to the economy. The transition to a low-carbon economy cannot take place overnight, and the Company has advocated for technology development, sector-specific emissions caps, and reduction goals using existing technologies. Regarding cap-and-trade proposals, PacifiCorp has opposed GHG emissions trading schemes that allocate free allowances using methods not based upon emissions. The success of such schemes is further impeded without cost-effective, commercial-ready technology to directly reduce carbon emissions from existing power plants and by the absence of a mature, liquid carbon offsets market.

In light of these reservations, PacifiCorp is pleased to provide comments on California's proposed Cap-and-Trade Program, which are informed by our experience in helping shape several similar state and regional policymaking endeavors. PacifiCorp's primary concerns with the structure of the allowance trading elements of the Cap-and-Trade Program involved ensuring that the Proposed Regulation's design provides sufficient flexibility to the MJRPs, given their unique structural and operational characteristics. As detailed below, the MJRPs require the same flexibility as the publicly-owned utilities ("POUs") in determining whether to sell their allowances in the auctions or to use the allowances to satisfy their own compliance obligation. As a vertically-integrated utility whose balancing control areas are not part of the California Independent System Operator ("CAISO") system or any other organized markets that determine resource dispatch, PacifiCorp is more akin to a POU than to the large California investor-owned utilities ("IOUs") for the purpose of greenhouse gas compliance. PacifiCorp also offers comments that provide regulated entities needed flexibility in meeting their compliance obligations, clarify the rules governing imported electricity and call for greater specificity regarding the situations when an entity will be considered a "first jurisdictional deliverer."

II. DISCUSSION

A. The Allocation of Emissions Allowances to Electrical Distribution Utilities Should Be Based on the Distribution Utilities' Projected Costs of Compliance.

The Proposed Regulation does not specify how allowances would be allocated among the Electrical Distribution Utilities that are eligible for direct allocation from the Air Resources Board

[3] The unique attributes of operating a MJRP service territory are further detailed in PacifiCorp's comments on the "Proposed Amendments to the Mandatory Reporting Regulation".

("ARB"). Assuming an allowance trading regime is included in the Cap-and-Trade Program, PacifiCorp supports ARB's separately-proposed methodology to allocate allowances based on the distribution utilities' projected compliance burden. Under this approach, a utility will receive allowances based on its forward-looking compliance obligation, which is primarily a function of the overall expected emissions attributable to serving the utility's customers, net of partial credit for greenhouse gas reductions due to early action with renewable resources and energy efficiency.

Though PacifiCorp continues to have significant reservations regarding the use of state- and/or regional-based allowance trading regimes as the principal means of reducing carbon emissions, the Company strongly supports ARB's adherence to an emissions-based allowance allocation methodology, as opposed to a sales-based approach. An emissions-based methodology will help mitigate increases in electricity costs attributable to the Cap-and-Trade Program for customers of utilities with higher emissions profiles, as they transition to a lower-carbon portfolio. Under ARB's proposal, these utilities would be allocated allowances to either (1) cover emissions from utility-owned generation or (2) be sold by the utility at auction, with proceeds used to offset the higher costs of energy purchased at market. This proposal also helps utilities like PacifiCorp with a significant share of customers under the CARE program manage the disproportionately-high rate impacts of the Cap-and-Trade Program to its low-income demographic.

PacifiCorp continues to advocate that if an allowance trading regime is to be implemented within a greenhouse gas compliance program, allowances should be allocated based purely on emissions, and the Company remains firmly opposed to a sales-based allowance allocation approach. A sales-based approach awards windfall profits to low- and zero-emitting utilities in the form of a wealth transfer from utilities like PacifiCorp with higher emissions profiles; this scheme would only further exacerbate the rate impact on PacifiCorp's low-income customers in California. In addition, PacifiCorp's preference is that ARB does not allocate allowances according to either early action with renewable resources or energy efficiency gains, as ARB currently proposes. However, PacifiCorp feels that ARB's proposed allocation method reflects a reasonable compromise among the California utilities.

B. The Proposed Regulation Should Provide Multi-Jurisdictional Retail Providers with the Same Compliance Flexibility That Is Granted to POUs.

The Proposed Regulation currently requires all IOUs (including MJRPs) to place all of their allowances directly into the auction.[4] In contrast, POUs would be able to directly use their allowances to meet their own compliance obligation and place the remainder into the auction. For the purposes of these regulations, MJRPs are more akin to POUs insofar as the MJRPs are vertically-integrated entities operating their own balancing authority areas. Furthermore, MJRPs are subject to regulatory jurisdiction by entities other than the California Public Utility Commission ("CPUC"), and are therefore subject to a different set of resource planning requirements than are the other California IOUs. Accordingly, to accommodate these structural

[4] See Proposed 17 Cal. Code Reg. § 95892, p. A-83.

distinctions and avoid direct conflict with its regulatory mandates under other jurisdictions, MJRPs should be granted the same compliance flexibility as are the POUs.

C. The Holding Limit Should Only Apply to California GHG Allowances, or MJRPs Should Be Exempted from the Holding Limit Requirements.

The Proposed Regulation provides that the holding limit applies to "compliance instruments," which includes offsets.[5] If the holding limit were to apply to both California allowances as well as allowances from other jurisdictions, this restriction could be especially problematic for an MJRP operating in multiple linked jurisdictions. PacifiCorp therefore urges ARB to amend the Proposed Regulation to apply the holding limit to *only* California allowances, such that a regulated entity could exceed the holding limit as long as its California allowances did not exceed the holding limit. Alternatively, PacifiCorp requests a limited exemption from the holding limit for MJRPs to ensure they can acquire sufficient allowances to meet their compliance obligations in all of the jurisdictions within which the MJRP operates.

D. The Proposed Regulation Should Provide Greater Flexibility in Meeting the Compliance Obligations by Providing Notice and an Opportunity to Cure a Compliance Shortfall before ARB Assesses the 4:1 Penalty.

Under the Proposed Regulation, a regulated entity will be penalized at a 4:1 ratio for every emissions allowance it fails to retire under its triennial or annual compliance obligations. The regulated entity would be required to retire four times the allowances within 30 days of the triennial or annual compliance deadline.[6] This penalty could be unduly onerous in situations where a regulated entity was either unable to procure a sufficient amount of allowances (despite diligent efforts) or where a shortfall resulted from unintentional accounting errors. The 4:1 penalty should only take effect after ARB provides notice and a reasonable opportunity to cure the shortfall. This is particularly important for the electric sector, where gross emissions are a function of electric demand that is not entirely within the direct control of the utility, but rather can be an outcome under their obligation to serve customers.

Furthermore, ARB should remove the limitation on the types of allowances that may be used to satisfy the 4:1 penalty shortfall; specifically, PacifiCorp believes that regulated entities should be allowed to use both allowances and offsets in this situation.[7] Since the certification provisions for offsets ensure that they meet ARB's additionality requirements, there is no reason why the Proposed Regulation should include this limitation on the use of offsets.

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[5] See Proposed 17 Cal. Code Reg. § 95914(f)(1), p. A-101.

[6] See Proposed 17 Cal. Code Reg. § 95857(b)(2), p. A-72.

[7] See Proposed 17 Cal. Code Reg. § 95857(b)(3), p. A-72.

E. The Proposed Regulation Should Not Create Potentially Overlapping Penalty Provisions.

The Proposed Regulation, in conjunction with the MRR, authorizes ARB to impose four separate penalty provisions for the same activity in parallel. First, the Proposed Regulation would impose a separate violation for each compliance instrument that is not surrendered to meet a covered entity's compliance obligation.[8] Second, regulated entities may be subject to a separate violation for each day after the compliance date that a compliance instrument has not been surrendered.[9] Third, the proposed amended MRR would apply penalties on a per-day, per-ton basis. Fourth, the Proposed Regulation would assess an excess emissions obligation of 4:1 for every allowance that should have been surrendered, but is not surrendered.

The overlapping penalty provisions under the Proposed Regulation would constitute a gratuitous enforcement action if more than one penalty were to be applied. We recommend imposing penalties only on a *per-ton* basis under the Cap-and-Trade Program, without any per-day multiplier. Per-ton penalties would meet the legitimate objective of ensuring that covered entities surrender the correct amount of compliance instruments to meet their surrender obligation. Furthermore, there should not be a violation if a regulated entity incurs an untimely excess emissions obligation and subsequently satisfies its excess emissions obligation within the 30-day period in the Proposed Regulation.[10]

F. The Price Floor for Allowances Should Not Increase by 5% Annually.

The Proposed Regulation would impose a price floor of $10 that would increase annually by 5% plus inflation.[11] The Initial Statement of Reasons ("ISOR") states that the intent of the 5% inflator mechanism is to reflect the expectation that marginal abatement costs will increase overtime as lower cost abatement measures are undertaken first.[12] This mechanism is unnecessary because the declining nature of the cap will ensure California reaches its AB 32 goals in spite of marginal abatement cost increases. Failure to delete this mechanism could result in unnecessary rate impacts on California's customers.

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[8] See Proposed 17 Cal. Code Reg. § 96014(a), p. A-180.

[9] See Proposed 17 Cal. Code Reg. § 96014(b), p. A-181.

[10] See Proposed 17 Cal. Code Reg. § 95857(c)(4), p. A-73.

[11] See Proposed 17 Cal. Code Reg. §95911(b)(6), p. A-87.

[12] See ISOR at. p. IX-71.

G. The Allowance Price Containment Reserve Should Start at $30.

The Proposed Regulation would prescribe allowance prices for the Allowance Reserve at $40, $45, and $50, with these prices to rise annually.[13] PacifiCorp urges ARB to lower the reserve price, so that the reserve prices are lower than allowances prices in high-cost scenarios. Since allowance prices are estimated to be roughly $15 in 2012[14], the reserve price should be set high enough above that price to ensure that the reserve is not simply used as an alternative source of supply. Setting reserve prices to start at $30, $35, and $40 would strike a reasonable balance, as these prices would be high enough to avoid interference with price discovery and low enough to contain prices within reasonable levels.

H. The Proposed Regulation Should Provide Greater Flexibility in Meeting the Compliance Obligations by Removing Some Temporal Restrictions on the Purchase of Allowances.

The Proposed Regulation would not allow a regulated entity to procure emissions allowances corresponding to a year later than when the emissions actually occurred.[15] This restriction could create a compliance hurdle in meeting the triennial compliance obligation, which is due in November of the first year following the end of the triennial period. If a regulated entity discovers it does not have enough emissions allowances at the end of the triennial period (e.g., after 2014), the regulated entity would only be able to procure emissions allowances in auctions that have a previous year's vintage (e.g., allowances from 2012-2014, but not 2015). While it is understandable that ARB would seek to limit unnecessary delays in compliance, there are legitimate reasons that a covered entity may need to secure some allowances in a subsequent annual period. Accordingly, ARB should not extend its temporal restrictions to the triennial compliance period.

I. ARB Should Clarify the Confidentiality Provisions to Ensure That Information Concerning Allowance Holding Accounts and Cap-and-Trade Transactions Remain Confidential.

The Proposed Regulation provides that emissions information is public information and is not confidential.[16] However, it is unclear whether information submitted under the MRR and information concerning the amount of allowances contained in a regulated entity's Holding Account could be made publicly available by ARB. This information is commercially sensitive,

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[13] See Proposed 17 Cal. Code Reg. § 95913(d)(2), p. A-96.

[14] See ISOR Appendix G at p. G-19.

[15] See Proposed 17 Cal. Code Reg. §95856(b)(2), p. A-70.

[16] See Proposed 17 Cal. Code Reg. § 96021, p. A-181.

particularly where there can be competition for securing allowances and also since non-covered entities participate in the market and can readily determine a covered entity's compliance position and extract economic value from that knowledge. ARB should specify that information related to allowances that have not been retired or retired ahead of the compliance deadline are not emissions information, and therefore will indeed be protected from public disclosure.

J. The Definition for "Electrical Distribution Utility" Should Be Clarified.

The definition for "electrical distribution utility" refers to IOUs as defined in Public Utilities Code § 218.[17] However, § 218 defines "electrical corporations". "Investor Owned Utilities" is not a term defined in the Public Utilities Code; rather, it is shorthand for entities that satisfy § 218 in conjunction with § 216, the definition for public utilities. As with the in-state IOUs like Pacific Gas and Electric or Southern California Edison, MJRPs meet the definitions of both §§ 216 and 218. To ensure that PacifiCorp is eligible for an administrative allocation of allowances, as is intended in the regulation, the definition for "Electrical Distribution Utility" should be clarified to include entities that satisfy both Public Utilities Code §§ 216 and 218.

K. The Definitions for "Electricity Importers" and "Purchasing-Selling Entity" Should Be Clarified to Distinguish the Purchaser-Seller from the Source/Sink, and to Account for Deliveries at the California Border.

E-tags and e-tag data simply do not offer the tracing mechanisms and delivery information that the Proposed Regulations would use to define "Electricity Importers." Defining electricity imports has been a challenging issue in multiple proceedings before the CPUC, the California Energy Commission ("CEC") and other agencies.[18] Here, as in other proceedings, care is needed to ensure that ARB obtains the necessary level of specificity in its regulatory definitions to allow for distinctions among different commercial circumstances in the power markets, and not rely on e-tags for sufficient data. The definitions for "Electricity Importers" and "Purchasing-Selling Entity" do not distinguish the purchaser/seller entity as that term is used on e-tags from the source or sink of the electricity, or from the purchaser and seller, or importer and exporter, of the electricity.[19] Often times, a North American Electric Reliability Corporation ("NERC") e-tag identifies an out-of-state balancing authority, but not the resource or resource type that is the source of the generation, even though that balancing authority (or owner of the resource that is the source of generation) is not the entity selling or importing the power.

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[17] See Proposed 17 Cal. Code Reg. § 95802(a)(57), p. A-14.

[18] See for example, November 24, 2010 PacifiCorp comments to CEC on Draft Fourth Edition of the Renewables Portfolio Standard Eligibility Guidebook, available at: http://www.energy.ca.gov/portfolio/documents/index.html#documents

[19] See Proposed 17 Cal. Code Reg. §§ 95802(a)(59), (165), p. A-14 and A-31.

While e-tags may in some cases provide reliable evidence regarding imports, e-tag data should not be relied upon in isolation for tracking imported power. Therefore, PacifiCorp suggests that ARB revise the definitions in the Proposed Regulation to use the actual act of electricity import into California as the primary basis for identifying the "first deliverer of electricity". Given that e-tags cannot automatically provide the data being sought in the Proposed Regulation, self-reporting by the importer will be required.

Furthermore, a "first deliverer of electricity" is defined in the Proposed Regulation as a generator or an "electricity importer",[20] and the "electricity importer"[21] is defined as the entity that takes receipt at a point located outside the state of California. However, these definitions do not account for a situation in which an importer takes title to power at the California border, which is a common practice in the wholesale marketplace. PacifiCorp recommends that ARB specifically account for this situation by updating the Proposed Regulation to define the "electricity importer" as the entity purchasing the power and delivering it into California.

L. The ARB Should More Proactively Address the Unavailability of Offset Credits, and Should Encourage Long-Term Offset Projects by Preserving the ARB's Discretion to Grant Crediting Periods Longer than 10 Years.

The current state of offset market development in California and elsewhere strongly suggests that there will not be enough offsets available in the context of California's Cap-and-Trade Program. This problem will be exacerbated by the Proposed Regulation, because the Proposed Regulation would provide for certification of a limited class of offset projects and place restrictions on projects that would get credited. For example, the Proposed Regulation would only allow ARB to credit a non-sequestration offset project for a period not to exceed 10 years.[22] PacifiCorp is concerned that this limitation would unnecessarily hamper long-term, high quality offset projects by creating a degree of uncertainty for potential investors. Investments in long-term offset projects would be less likely to occur given the realistic possibility that a future, discretionary decision by a regulatory agency will eliminate the investors' ability recoup the investment with a reasonable return. ARB should amend this provision to allow ARB to approve non-sequestration offset projects for a period of at least 7 years, and no more than 30 years; this would create additional incentives to invest in larger offset projects.

In addition, ARB should avoid placing unnecessary limitations on the use of sector-based offset credits, as are currently stipulated under the Proposed Regulation. Sector-based offsets are limited to 25 percent of the total amount of offsets in the first and second compliance period and

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[20] See Proposed 17 Cal. Code Reg. § 95802(a)(71), p. A-17.

[21] See Proposed 17 Cal. Code Reg. §§ 95802(a)(59).

[22] See Proposed 17 Cal. Code Reg. § 95973, p. A-112.

50 percent in the third compliance period.[23] Since sector-based offset crediting will be subject to the same detailed review as other offset programs, and Proposed Regulation sets forth specific criteria for sector based offsets, it is unclear why ARB would place such restrictions on sector-based offsets. Sector-based offsets are an important opportunity for ARB to develop high quality GHG reductions that are cost-effective and complimentary to the Cap-and-Trade Program. Accordingly, ARB should encourage the development of the offset market by deleting the limitations on sector-based offsets.

More broadly, ARB should enact certification protocols for a broader array of projects in the very near term to help ensure that a sufficient supply of offset credits will be available. Given the incipient nature of the offset market and its potential to achieve significant GHG emission reductions within California, nationally, and globally, we urge ARB to find ways to encourage the development of a robust offset market and not place seemingly-arbitrary restrictions on the use or certification of offsets.

M. ARB Should Enable Linkage of Voluntary Renewable Energy Set-Asides with WREGIS.

The Proposed Regulation provides for a Voluntary Renewable Energy Allowance Set-Aside Account.[24] PacifiCorp believes that additional provisions towards preventing adverse impacts on the voluntary renewable energy ("VRE") market would improve the Proposed Regulation. If ARB does include provisions for VRE allowance set-aside, the accounts to track VRE should be closely coordinated with the existing tracking mechanisms in WREGIS.

PacifiCorp also believes that if ARB removes allowances from the cap-and-trade market to reflect voluntary renewables, it should also preserve the environmental integrity of AB 32 and not increase compliance costs for utility customers and other participants. Any allowances removed for VRE should be linked to actual generation, not potential generation, and be based on a rigorous emissions reduction methodology associated with this renewable generation.

N. The Assertion of Jurisdiction Should Be Tailored to Circumstances In Which an Entity Has a Compliance Obligation under the Proposed Regulation.

The Proposed Regulation provides that the purchase or holding of a compliance instrument or receipt of proceeds from the sale of a compliance instrument constitutes consent to the jurisdiction of California and the ARB.[25] Jurisdiction should not extend to circumstances where California links with another jurisdiction and a compliance instrument originating in California is

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[23] See Proposed 17 Cal. Code Reg. § 95854, A-68.

[24] See Proposed Cal. Code Reg. § 95831(c)(6), p. A-52.

[25] See Proposed Cal. Code Reg. §§ 96010(b), (c), p. A-179.

traded in another jurisdiction. For example, if an entity sells an allowance originally created in California to another entity subject to a linked cap-and-trade compliance program, that transaction should not be subject to California law; the mere act of transacting does not in itself warrant jurisdictional claim. In other words, when the compliance instrument is used to satisfy another state's compliance obligation, the entity retiring the compliance instrument should only be subject to the jurisdiction of that state.

PacifiCorp recommends that the ARB should not assert jurisdiction whenever an entity uses a compliance instrument that was created in California. Specifically, the assertion of jurisdiction in § 96010(b) and (c) should be limited to transactions in California.

O. The Proposed Regulation Must Account for Shifts in Achieving GHG Emissions Reductions from the Transportation Sector to the Electricity Sector.

Transportation electrification is widely recognized as an important means for achieving net societal GHG emissions benefits, even though coal-fueled power plants provide some portion of the energy supply. However, a lower-carbon economy with greater reliance on electric vehicles will result in a commensurate increase in the demand for electricity as a transportation fuel.

Moreover, the burden created by this beneficial fuel switching will be borne disproportionately among different utilities. Increases in electricity demand driven by transportation electrification will not produce any greater compliance costs or obligations for deregulated utilities that have largely divested their fossil generation and primarily offer distribution services. In contrast, vertically-integrated utilities that still fall under traditional regulation will continue to operate and build new generating units to meet increases in electricity demand. The resultant electricity demand from such beneficial activities as transportation electrification will compound the existing GHG compliance obligations of these utilities.

PacifiCorp recommends that ARB include in its Proposed Regulation a robust, flexible mechanism for adjusting a utility's overall compliance obligation as the burden for achieving GHG emissions reductions from the transportation sector shifts to the electricity sector.

III. CONCLUSION

PacifiCorp commends the ARB and its staff for the significant time and effort taken to incorporate suggestions and comments from parties in revising the Cap-and-Trade Program. Most important, MJRPs have unique reporting and compliance challenges that need to be reflected in the rules, and the Proposed Regulation should strive to both acknowledge these circumstances and provide staff with the flexibility to adjust the rule requirements as warranted.

Once again, PacifiCorp appreciates the opportunity to provide these comments, and for the reasons set forth herein, urges the Commission to revise the draft Proposed Regulation in accordance with the recommendations set forth above.

Thank you for your consideration of these comments.

Dated: December 15, 2010

Respectfully submitted,

By

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