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Submitted electronically to <http://www.arb.ca.gov>

California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

To Whom it May Concern:

Re: Comments of CP Energy Marketing (US) Inc. pertaining to Cap-and-Trade Draft Regulatory Text For Linkage Comments.

CP Energy Marketing (US) Inc. ("CPEMUS") appreciates the opportunity to provide comments on the March 30, 2012 Discussion Draft of proposed amendments to California's Cap and Trade regulation.¹

CPEMUS strongly supports California's efforts to move forward with its cap and trade mechanism, as well as its efforts to broaden the market by allowing the use of compliance instruments issued by linked jurisdictions. Expanding the market to include Quebec, and hopefully additional markets in the future, will assist in creating a robust marketplace.

CPEMUS offers these limited comments for the California Air Resource Board's (the "Board") consideration in developing the proposed new regulations:²

1. § 95832. Designation of Authorized Account Representative.

CPEMUS supports the proposed changes to Section 95832 that allow for the designation of up to four alternative authorized account representatives. The availability of additional authorized account representatives may be necessary from time to time to ensure entities have sufficient personnel available to meet business needs on a real-time basis. This is particularly important given some of the timelines proposed in the regulations, such as the proposed 24-hour and 48-hour deadlines to comply with the Conduct of Trade requirements in Section 95921.

¹ Discussion Draft, Amendments to the California Cap and Greenhouse Gas Emissions and Market-based Compliance Mechanisms to Allow For The Use of Compliance Instruments issued by linked jurisdictions, March 30, 2012.
<http://www.arb.ca.gov/cc/capandtrade/draftregquebeclink.pdf>.

² CPEMUS reserves the right to take additional positions regarding various aspects of the regulations as may be appropriate in the future.

CPEMUS also supports the addition of allowing up to five account viewing agents. Allowing additional account viewing agents will promote corporate governance and allow for real-time audit of company positions. Allowing an entity to designate these persons as reviewers, as opposed to authorized account representatives, will promote transactional security.

2. § 95830(h) Linking.

CPEMUS supports clarification of registration requirements to reflect linking with other jurisdictions. However, CPEMUS submits that the draft language is unnecessarily restrictive and does not adequately meet future needs.

The draft regulations provide that an entity located in the United States may only register with California (§ 95830(h)(1)), and an entity located in Canada may only register with a GHG ETS operated by a Canadian Province to which California has linked (*i.e.*, Quebec) (§95830(h)(2)).

Entities may have valid business reasons for registering either in California or Quebec, regardless of their corporate headquarters. For example, CPEMUS is a U.S. entity, but is a wholly-owned indirect subsidiary of Capital Power Corporation, a Canadian entity. At this juncture, CPEMUS anticipates that it is the only entity within the Capital Power corporate group that will participate in California's cap and trade program, but that may change in the future. To the extent Capital Power (or some other, Canadian-based subsidiary) chooses to participate as well, it may prefer to be registered in California (along with its subsidiary), as opposed to separately registering in Canada. Given that an entity registering under the program agrees to submit to California jurisdiction (§ 96022) a requirement that a Canadian entity only register in Canada appears to add complications without significant benefits.

We note further that, although California currently is the only state participating in a GHG ETS system, this may not always be the case. Rather than require any entity located in the U.S. to register in California, the language should be modified to specify registration in California "or a U.S. State or Canadian Province to which California has linked pursuant to Subarticle 12."

3. § 95833 Disclosure of Corporate Associations.

CPEMUS supports the draft regulatory provision that allows for consolidation of accounts for corporate associations, but also allows for entities to opt out of account consolidation, as reflected in Section 98533(e)(3). There may be many legitimate business reasons for entities within a direct corporate association to maintain separate accounts, including affiliate compliance rules, corporate governance rules, and accounting issues. By way of example, Company A may own as an investment fifty-one percent of a petroleum refinery subject to registration as a Covered Entity, as well as fifty-one percent ownership of a cement manufacturer (also a Covered Entity). The remaining portions of each such Covered Entity may be owned by unaffiliated companies with divergent business interests. It may not be appropriate for such unaffiliated companies to have access to, or information about, the other entity's commercial activities.

As currently drafted, Section 98533(e)(3) provides that an entity must notify the Executive Officer by October 1, 2012 of a decision to opt-out of consolidation. CPEMUS recommends that the rules be clarified to reflect that an entity registering after that date (or that becomes associated

with another entity after that date) continues to have the option to elect to opt-out of consolidation of accounts.

4. § 95834 Know-Your-Customer Requirements.

CPEMUS is unclear about the intent and meaning of the newly proposed “Know-Your-Customer” requirements. CPEMUS anticipates that the intent of this provision is designed to apply in the circumstance where an *individual* (as opposed to a *business entity*) desires to participate in the cap and trade market, and that this provision is not intended to apply to each authorized account representative, alternate account representative and account viewing agent. Assuming so, CPEMUS acknowledges that some amount of due diligence on individuals is necessary and appropriate, but requests that the regulations be clarified accordingly. Even with this clarification, CPEMUS believes that many of the requirements, such as the “in person” validation requirement (addressed further below) are unnecessary and should be limited.

To the extent the proposed regulations are intended to apply to individual representatives of registered entities, CPEMUS submits that these requirements are intrusive, burdensome, unnecessary, and not reasonably tailored to the meet desired goals. Where an entity has registered, the Board already will have detailed information regarding the entity, including information regarding officers and directors, tax ID numbers, affiliates, and related matters. These entities are publicly known.

Given that the Board has full information regarding a registered entity, CPEMUS submits that the level of detailed personal information identified in the proposed “Know-Your-Customer” requirement – if applied to representatives of such registered entity – is intrusive and unnecessary. Actions by such representatives and agents are the responsibility of the corporation, and any action/inaction/malfeasance by such person is the responsibility of the entity. The regulations make it very clear that a registered entity is bound by the actions of its agent, and it should be up to the registered entity to ensure that it has fully vetted the persons entrusted with its account authorizations.

Moreover, the detailed level of information requested is in no way consistent with the value to be gained. For example, if a representative is an employee of a company, and all debts and obligations are the responsibility of the company, why would the employee need to provide details of a personal bank account?

CPEMUS particularly finds the requirement that verification of identity be done in person (§ 95834 (c)(1)) to be unreasonable, as is the requirement that documents be notarized “at least three months before submittal” (§ 95834 (c)(2)). CPEMUS is a Delaware Corporation. The Capital Power group of subsidiaries have staff located in Illinois, North Carolina, Connecticut, Maine, Massachusetts, Rhode Island and three Canadian Provinces. CPEMUS submits that a requirement to have CPEMUS executives travel to California to present documentation in order to meet its registration requirements is not appropriate nor beneficial.

In addition to being invasive, CPEMUS submits that the proposed rules are counterproductive. As a corporate entity, CPEMUS must be free to change its authorized representatives as necessary to meet business needs. At times, the need for a new representative may be outside of the control of a corporation, such as when an employee resigns. Corporations need the ability to nominate

new representatives in the normal course of business, without the need for personnel to travel or a three-month delay, as appears in the proposed draft rule.

5. § 95912 Auction Administration and Participant Application.

CPEMUS supports the clarifying change to Section 95912(i)(5) that specifies that (a) the names of bidders; (b) the auction settlement price, and (c) aggregated information on purchases (with entity name withheld) will be published at the conclusion of auctions. CPEMUS believes that one of the keys to a well-functioning market is access to relevant transactional information by all participants, and encourages fulsome disclosure of bids made (with entity name withheld).

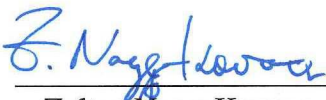
6. § 95921(a) Conduct of Trade – Transfers of Compliance Instruments Between Accounts.

CPEMUS requests that the Board reconsider the proposed switch from the “two key” process for trade execution to the “push-push-pull” process where two representatives from the transferor must sign off on each transaction (§ 95921(a)). CPEMUS believes that this issue is a matter for internal corporate governance, and not something that should be required by the regulations. The regulations specify that the a registered entity is bound by the actions of its representative (§ 95832(c)(2) and (3)); the Board does not need to add further control requirements.

Again, CPEMUS appreciates the opportunity to provide comments in connection with this matter and thanks the Board for its consideration of our comments.

Sincerely,

CP ENERGY MARKETING (US) INC.

Per: 

Zoltan Nagy-Kovacs
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