BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON PROPOSED REGULATION: CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS

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I. INTRODUCTION

The Southern California Public Power Authority ("SCPPA") [1] respectfully submits this comment on the proposed *California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanism* ("Cap and Trade Regulation") issued by the California Air Resources Board ("ARB") on October 28, 2010.

SCPPA will provide separate comments on the offsets program and on the administrative allocation of allowances under the Cap and Trade Regulation. SCPPA will also submit separate comments on the ARB's proposed revisions to the Mandatory Reporting Regulation ("Revised MRR").

SCPPA appreciates the efforts the ARB staff has made to accommodate the concerns of stakeholders and ensure that the cap and trade program will be effective, efficient, and equitable. SCPPA recommends various changes to improve and clarify the regulation in the interest of making the regulation easier to understand for compliance and enforcement purposes. SCPPA urges the ARB staff to take these comments into account when preparing the Board resolution adopting the Cap and Trade Regulation and urges the staff to consider SCPPA's proposed revisions during the "15-day" process after the ARB's December 16, 2010, hearing and vote on the regulation.

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[1] SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, the Imperial Irrigation District, Pasadena, and Riverside.

Our comments are presented in the order in which the issues arise in the Cap and Trade Regulation.

II. SUBARTICLE 2: PURPOSE AND DEFINITIONS

A. The definition of "California GHG Allowance" should be amended.

Section 95802(a)(27) (p. A-10 of the Cap and Trade Regulation) defines "California greenhouse gas emissions allowance" as "an allowance issued by ARB and equal to up to one metric ton of CO_2 equivalent." However, "allowance" is separately defined in section 95802(a)(5) (p. A-7) as a "limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent." Given the definition of "allowance," the definition of "California greenhouse gas emissions allowance" should be "an allowance issued by ARB under this Article" if not eliminated altogether as redundant:

> "California greenhouse gas emissions allowance" or "CA GHG Allowance" means an allowance issued by ARB under this Article~~and equal to up to one metric ton of CO_2 equivalent~~.

B. The definition of "First deliverer of electricity" should be clarified.

"First deliverer of electricity" is defined in section 95802(a)(71) (p. A-17) as "either the owner or operator of an electricity generating facility in California or an electricity importer." However, in section 95811(b)(1) (p. A-40), the *operator*, not the owner or operator, of an electricity generating facility in California is specified as being the covered entity for electricity generating facilities. The definition of "first deliverer of electricity" in section 95802(a)(71) implies that there is a choice about whether the owner or the operator of a facility will be the covered entity for an electricity generating facility, but allowing a choice may cause problems, given that the operator, not the owner, is required to report under the Revised MRR, given that the owner and the operator of a facility are different entities in many cases, and given that many generating facilities are jointly owned.

The Initial Statement of Reasons ("ISOR") for the Revised MRR notes (p. 135) the importance of avoiding ambiguity as to the entity with reporting obligations. It is even more important to avoid ambiguity as to the entity with cap and trade compliance obligations.

The simplest approach would be to follow section 95811(b)(1) and revise section 95802(a)(71) to refer to the operator only rather than to "either the owner or operator" of an electricity generating facility.

C. The definition of "imported electricity" should be amended.

The final sentence of the definition of "imported electricity" in section 95802(a)(97) (p. A-20) excludes electricity that is wheeled through California. Section 95802(a)(97) defines "electricity wheeled through California" as being "electricity that is delivered into California with final point of delivery outside of California."

"Electricity wheeled through California" is also defined in section 95102(a)(104) of the Revised MRR. SCPPA's comments on the Revised MRR will propose a change to that definition to include simultaneous electricity exchanges.[2] For consistency, the Cap and Trade Regulation should refer to the definition in the Revised MRR rather than including a slightly different definition of the same term.

In addition, electricity that is imported into California from a linked jurisdiction should be excluded from the definition of "imported electricity." Insofar as the emissions associated with electricity that is imported into California from a linked jurisdiction would not be included in a California covered entity's compliance obligation, that electricity should not be considered to be imported electricity.

[2] The MRR definition with SCPPA's proposed change is as follows: "'Electricity wheeled through California' means electricity that is generated outside the state of California and delivered into California with final point of delivery outside California. It includes power transactions in which imported power is simultaneously exchanged for exported power."

The proposed changes to section 95802(a)(97) are shown in markup below:

> "Imported electricity" means electricity generated outside the state of California and delivered to serve load inside California. ... Imported electricity does not include electricity wheeled through California, as defined in MRR section 95102(a)(104)~~which is electricity that is delivered into California with final point of delivery outside California~~. Imported electricity also excludes electricity imported into California from a jurisdiction in which a GHG emissions trading system has been approved for linkage by the Board pursuant to subarticle 12.

III. SUBARTICLE 3: APPLICABILITY

A. The level of emissions from a specified source should be correctly described.

The last sentence of section 95812(b)(2)(B) (p. A-41) refers to specified sources that emit 25,000 metric tons of CO2e per year. This provision is incomplete, as the treatment of facilities with emissions higher or lower than this level is not specified. This section should be corrected by adding the words "or more" as follows:

> The threshold for an electricity importer from a specified source which emits 25,000 or more metric tons of CO2e per year is zero.

B. Section 95812(d)(2) should be deleted.

Section 95812(d)(2) should be deleted. Under section 95812(b)(2)(B), revised as described above, the threshold for coverage of emissions from out-of-state specified sources is set at the same level set for in-state generating facilities: 25,000 or more metric tons of CO2e per year. As noted on page IX-11 of the ISOR for the Cap and Trade Regulation, this comparable treatment of in-state and out-of-state facilities is necessary to comply with the interstate commerce clause. Section 95812(d)(2) (p. A-42) would upset this comparable treatment of out-of-state and in-state generating facilities by changing the emissions threshold for coverage of out-of-state specified sources from 25,000 metric tons of CO2e to zero tons in 2015. No reason is given for this change, and it may be challenged under the interstate commerce clause. The same

threshold should be applied to in-state and out-of-state facilities for the duration of the cap and trade program. Therefore, section 95812(d)(2) should be deleted.

Apart from the inappropriate change of threshold, all other provisions in section 95812(d)(2) are contained in sections 95812(b)(2)(B) and (C). Thus, if the change in threshold is eliminated from section 95812(d)(2), the section is redundant.

Furthermore, section 95812(d)(2) is improperly located as a subsection of section 95812(d). Section 95812(d) relates to suppliers of natural gas, RBOB, and distillate fuels as specified in section 95851(b) (p. A-61), not first deliverers of electricity.

C. Opt-in covered entities should only be able to receive freely allocated allowances in the circumstances specified for industrial entities.

Section 95813(d) (p. A-43) allows opt-in entities to receive freely allocated allowances subject to subarticles 8 and 9. This is too broad. Given that opt-in entities are highly unlikely to be electrical distribution utilities, the cross-references should be more specific and should refer to the allowance allocation provisions applying to industrial entities, as follows:

> An opt-in covered entity may be eligible to receive freely allocated allowances ~~subject to subarticles 8 and 9~~under sections 95870(d), 95890(a), and 95891.

IV. SUBARTICLE 5: REGISTRATION AND ACCOUNTS

A. Limited transfers between compliance accounts should be allowed.

Section 95831(a)(4)(B) (p. A-49) provides that a covered entity may not remove compliance instruments from its compliance account. This may be problematic for SCPPA members.

SCPPA members are publicly-owned utilities ("POUs") that will receive an administrative allocation of allowances that will be deposited at their election into their compliance accounts under section 95892 (p. A-83). Several SCPPA members (Anaheim,

Burbank, Cerritos, Colton, Glendale, Pasadena) participate in a generating station, the Magnolia Power Project ("Magnolia"), which is operated by a SCPPA member, Burbank, and owned by SCPPA. The operator may have the compliance obligation, but the allocation of allowances will be to the SCPPA members. There needs to be an exemption from section 95831(a)(4)(B) to allow the SCPPA participants in Magnolia to transfer allowances from their compliance accounts to the compliance account of the plant operator.

In addition, there needs to be a provision in the regulation that would allow the operator of Magnolia, Burbank, to establish a separate compliance account for these allowances to avoid commingling of Magnolia allowances with the allowances that Burbank will hold to cover its own compliance obligation.

B. Holding account restrictions should only be imposed in certain circumstances and after notice.

Section 95831(b)(2) (p. A-50) provides that the Executive Officer may impose various restrictions on an entity's holding account. Such restrictions may have negative effects on the ability of the entity to meet its compliance obligation and may cause the entity to default under contracts for allowance transactions with third parties. While it may be appropriate for the Executive Officer to have the power to impose such restrictions, the Executive Officer should only be able to exercise that power in specific circumstances, for example, when the entity has committed an offense or the Executive Officer believes on reasonable grounds that the entity is about to commit an offense. Section 95831(b)(2) should specify these circumstances.

Furthermore, in the interest of procedural fairness, the Executive Officer should be required to notify the entity of the intended restrictions, their expected duration, and the reasons for imposing them, before any restrictions are placed on the entity's account.

Lastly, sections 95920(c) (p. A-106-107) and 96011 (p. A-179-180) as well as section 95831(b)(2) allow the Executive Officer to impose restrictions on an entity's holding account. Sections 95831(b), 95920(c), and 96011 should be coordinated with cross-references and perhaps even combined.

C. Reconsider references to "ownership interests" insofar as allowances are not property rights.

In section 95832(a)(3) (p. A-53) as well as other sections of the Cap and Trade Regulation, there are references to entities having an "ownership interest" in compliance instruments held in the account of other entities. It is unclear what form of "ownership interest" an entity can have in instruments that exist only as serial numbers in an account belonging to another entity without property rights attaching to the instruments. The references to "ownership interests" should be reconsidered. Although third party "ownership interests" are recognized in section 95832(a)(3), they are not recognized, for example, in section 95857(c)(3) (p. A-72), which allows the Executive Officer to remove instruments from the account of an entity with excess emissions without regard to whether those instruments may in some sense belong to a third party.

V. SUBARTICLE 6: CALIFORNIA GREENHOUSE GAS ALLOWANCE BUDGETS

A. If allowance budgets may change when linking occurs, this possibility should be noted in the regulation.

Table 6-1 in section 95841 (p. A-60) sets out California GHG Allowances Budgets for each year of the cap and trade program. The ISOR (p. II-17) states: "Each time California links to a WCI partner jurisdiction from which California imports electricity, staff will need to reevaluate these annual budgets." This important statement should be reflected in the regulation itself, either in section 95841 or in subarticle 12 on linkage to external greenhouse gas emissions

trading systems. If the amounts of freely allocated allowances may also change due to linking, this should also be mentioned in the regulation.

VI. SUBARTICLE 7: COMPLIANCE REQUIREMENTS FOR COVERED ENTITIES

A. Records should only be required to be retained for three to six years.

Section 95850(b) (p. A-60) requires covered entities to retain records for at least 10 years. This period is unreasonably long. By contrast, section 98.3(g) of the US Environmental Protection Agency's Mandatory Reporting of Greenhouse Gases Rule, 40 CFR Part 98 ("EPA Rule"), only requires records to be kept for three years. As the ARB is aiming to harmonize with as many of the provisions of the EPA Rule as possible, as discussed in the ISOR for the Revised MRR, a record retention period similar to that of the EPA Rule should be considered.

Records should be retained until the end of the compliance period following the compliance period in which the record was generated. As a result, records would be held from three to six years, depending upon the point in a compliance period at which a record was developed. For example, if a record were developed during the first year of a compliance period, that record would need to be retained by the relevant entity for the entire three-year duration of that compliance period plus the three years of the next compliance period, six years in total. Alternatively, if a record were developed at the end of a three-year compliance period, the record would have to be retained for the three years of the following compliance period as under the EPA Rule.

Section 95850(b) should be revised as follows:

> *Record Retention Requirements.* Each covered entity must retain all of the following records until the end of the compliance period following the compliance period in which the records were generated ~~for at least 10 consecutive years~~ and must provide such records within 20 calendar days of receiving a written request from the Executive Officer. ...

B. The provision establishing the compliance obligation for first deliverers should be redrafted.

Section 95852(b) (p. A-62) establishes the compliance obligation for first delivers of electricity. This is a key provision for first delivers of electricity, so it is important that it is clear and correct. However, as currently drafted, this provision suffers from several defects:

- Section 95852(b) states that there is a compliance obligation for every metric ton of CO2e for which a positive or qualified positive verification statement is issued. However, the report that a first deliverer of electricity is required to prepare and have verified under the Revised MRR contains information about more sources of emissions than those for which the reporting entity has a compliance obligation. (*See* for example the information required to be reported under sections 95111(a)(7), (c)(1), (c)(5) and (g)(5) of the Revised MRR.) The subset of verified emissions that form the compliance obligation should be clearly identified.
- Section 95852(b) states that, in addition to the emissions in the verification statement, the compliance obligation includes emissions from stationary combustion or from imported electricity. This incorrectly implies that there are emissions from stationary combustion or from imported electricity that are not included in the verification statement and do not need to be verified.
- Section 95852(b) should exclude from the compliance obligation emissions associated with facilities with emissions below 25,000 metric tons of CO2e per year, as those emissions are not covered under section 95812(b)(2) (p. A-40). The reference to the first deliverer of electricity being covered under section 95812(b)(2) is not sufficient, as a first deliverer may have one facility that exceeds the threshold and one that does not.

- Section 95852(b) should exclude from the compliance obligation CO_2 emissions from the combustion of biomass-derived fuels listed in section 95852.2 and verified in accordance with section 95131(i) of the Revised MRR.

Suggested changes to this section 95852(b) are set out below:

> First Deliverers of Electricity. A first deliverer of electricity covered under section~~s~~ 95811(b)~~ and 95812(b)(2)~~ has a compliance obligation ~~for every metric ton of CO2e emissions for which a positive verification statement or qualified positive verification statement is issued, and ~~for every metric ton of CO2e ~~of stationary combustion ~~emissions (subject to section 95852(h)) from electricity generating facilities in California, and~~or~~ emissions associated with electricity imported into California from a source in a jurisdiction where a GHG emissions trading system has not been approved for linkage by the Board pursuant to subarticle 12, in each case where the thresholds set out in section 95812(b)(2) have been exceeded and for which a positive or qualified positive verification statement is issued.

C. Limitations on biomass-derived fuels, if imposed, should be clearly set out.

Section 95852.1 (p. A-63) regarding the compliance obligations for biomass-derived fuels contains some wording that appears to be unnecessary and should be removed for clarity. (The summary of and rationale for this section in the ISOR, at IX-39 to 40, is also unclear and should be reviewed.)

Section 95852.1(b) refers to the biomass verification requirements in section 95131(i) of the Revised MRR. Section 95131(i)(2)(A) of the Revised MRR sets out very important (and detrimental) restrictions on the ability to treat emissions from biomass-derived fuels as zero-CO_2-emissions. Biomass-derived fuel purchased under contracts entered into after January 1, 2010, other than contracts for expanded production only, will not count as zero-CO_2-emissions.

SCPPA strongly opposes the restriction in Section 95131(i)(2)(A) of the Revised MRR and will discuss the restriction in its comments on the Revised MRR. However, if such a restriction is imposed, given its importance, it should be clearly set out in the Cap and Trade

Regulation, for example, in the definition of biomass-derived fuel or in section 95852.1 (directly rather than by cross-reference) rather than being included towards the end of a long and technical section headed “Requirements for Verification Services” in the Revised MRR.

For clarity, section 95852.1 should be revised as follows:

> An entity that has emissions from biomass-derived fuels is required to report and verify its emissions pursuant to Mandatory Reporting Regulation section 95131~~0~~ and has a compliance obligation for every metric ton of CO2e emissions from ~~biomass-derived fuels that would result from full~~ combustion ~~or oxidation~~ of all biomass-derived fuel from the categories ~~for emissions~~ identified below:
>
> (a) ~~Emissions from~~ source categories that are not listed under section 95852.2 below; or
>
> (b) ~~Emissions, from~~ source categories listed in 95852.2, without information and documentation necessary to establish the validity of the fuel as a biomass-derived fuel~~s~~ and which are therefore considered unverifiable pursuant to MRR section 95131(i).

D. Provisions on biomass-derived fuels should be clarified.

Section 95852.2 (p. A-64) identifies emissions that do not trigger a compliance obligation. The section contains some problematic provisions. First, the opening sentence refers to “Emissions” without qualification, although it appears from section 95852(h) (p. A-63) that only CO2 emissions from combustion of biomass-derived fuel are exempt. CH4 and N2O emissions will carry liability.

Second, in section 95852.2(a) there is a reference to combustion emissions from biomass-derived fuels, but in subsections (b), (c), (e), and (f) there is no reference to combustion of the fuels. SCPPA understands from discussions with ARB staff that this was an unintended consequence of a formatting error and that subsections (b), (c), (e), and (f) should instead be subsections (5) to (8) in section 95852.2(a).

Third, Section 95852.2(a) inappropriately excludes emissions from "biogas from digesters" from the category of emissions that do not trigger a compliance obligation. It appears that biogas from digesters is excluded from being considered zero-CO2-emissions because such gas may be from projects that earn offsets under the ARB's Compliance Offset Protocol for Livestock Manure (Digester) Projects ("Protocol"). However, the Protocol only applies to livestock manure digester projects. Digester gas can be collected from other sources that would not be covered by this Protocol.

More importantly, the Protocol awards offsets for avoiding methane emissions from livestock manure, not for avoiding fossil fuel emissions. The Protocol (p. 6) makes a clear distinction between the two types of emission reductions:

> This protocol does not account for carbon dioxide emission reductions associated with displacing grid-delivered electricity or fossil fuel use.

The Staff Report for the Protocol echoes this (on page 6 of the report):

> In addition, the use of biogas for producing power for the electricity grid or electricity for on-site use, thereby displacing fossil-fueled power plant GHG emissions, is considered a complementary and separate GHG project activity and is not included within the offset protocol accounting framework.

Insofar as the emission reductions from displacing fossil fuel with biogas are not covered by the Protocol, no offsets are awarded under the Protocol for those emission reductions. Offsets are only awarded for avoiding methane emissions. The Cap and Trade Regulation should recognize emission reductions from displacing fossil fuel with biogas by allowing biogas combustion to be treated as zero-CO2-emissions, regardless of whether offsets have been, or could be, issued for avoiding methane emissions.

Suggested changes to section 95852.2 are set out below:

> CO2 Eemissions from the following source categories as identified in sections 95100 through 9515899 of the Mandatory Reporting Regulation …
>
> (a) Combustion emissions from biomass-derived fuels (except biogas from digesters) from the following sources: …
>
> __(e8) Biogasmethane from the following sources:
>
> ___(A1) All animal and other organic waste; or
>
> ___(B2) Landfill, gas and wastewater, and digester gas.

E. The triennial compliance obligation should not be based on total verified emissions.

Section 95853 (p. A-67) states that triennial compliance obligations are calculated based on total verified emissions. However, as discussed in section VI.B above, several categories of emissions that are reported by a first deliverer of electricity and verified in a verification statement are not used to calculate that entity's compliance obligations. Thus, the term "total verified emissions" should not be used as a basis for computing an entity's compliance obligations. A different term such as "total verified covered emissions" should be defined with reference to section 95852 and then used throughout section 95853 in place of every reference to "total verified emissions."

Section 95853(a) should be revised as follows:

> … The covered entity's triennial compliance obligation in this situation is calculated as the total verified emissions specified in section 95852 as constituting a covered entity's compliance obligation ("covered emissions") from all three data years of the compliance period.

F. There should be no sub-limit on the use of sector-based offset credits.

Section 95854 (p. A-68) sets out the 8 percent offset limit and imposes a sub-limit on the use of sector-based offset credits. The use of sector-based offsets is limited to 25 percent of all offsets in the first and second compliance period and 50 percent in the third compliance period.

The only rationale provided in the ISOR for limiting the use of sector-based offset credits is that sector-based offset crediting programs are “new and evolving.” ISOR, p. III-25.

However, the sector-based offset crediting programs will be subject to the same rigorous review as all other offset programs before the ARB will approve them, and the Cap and Trade Regulation includes specific criteria for such programs. Once a sectoral program has satisfied these criteria and has been subjected to the full Board approval process, there is no valid basis for restricting the use of sector-based offsets to a greater degree than other types of offsets.

Sector-based offsets may provide a valuable source of real, cost-effective emission reductions that benefit the climate, the country of origin, and compliance entities in California, but this potential will be reduced by constraining the demand for such offsets even before sector-based programs have been finalized. The sub-limit on using sector-based offsets should be removed.

G. An annual compliance obligation should not be imposed in respect of the first year in which an entity becomes covered.

Section 95855 (p. A-69) provides that an entity has an annual compliance obligation for any year when it is a covered entity, unless it first becomes a covered entity in the third year of a compliance period. This exemption does not seem sufficient. There is only a short period between when an entity may first discovers that it has become covered and when the first annual compliance obligation becomes due. It may be difficult for a newly-covered entity to obtain compliance instruments in this period.

The exemption from the annual compliance obligation should be for the first year in which an entity becomes a covered entity, regardless of whether that year is the first, second, or third year of a compliance period.

In addition, section 95855(b) refers to "positive or qualified positive GHG emissions reported from the previous data year." This appears to be a reference to positive or qualified positive verification statements, which are separate from emissions reports. This should be clarified.

Suggested changes to section 95855 are set out below:

> (a) An entity has an annual compliance obligation for any year when the entity is a covered entity except for the year in which the entity initially exceeds the relevant threshold in section 95812. ~~condition specified in section 95853(d); and~~
>
> (b) The annual compliance obligation for a covered entity equals thirty percent of covered emissions reported in a positive or qualified positive verification statement for~~GHG emissions reported from~~ the previous data year.

H. The surrender deadline for the annual compliance obligation should be after verification statements are due.

Section 95856(d) (p. A-70) sets surrender deadlines of May 15 or July 15 for the annual compliance obligation. However, the annual compliance obligation is calculated based on "positive or qualified positive GHG emissions." Section 95855(b); *see also* the proposed changes above. Qualified or positive qualified verification statements are not due until September 1 or October 1. The surrender deadline for the annual compliance obligation should be changed to occur after the due date for verification statements. To align with the surrender deadline for the triennial compliance obligation, the due date for the annual compliance obligation should be November 1. For the third year of each compliance period, the annual compliance obligation and the triennial compliance obligation would be due together.

Suggested changes to section 95856(d) are set out below:

> Deadline for Annual Surrender. For any year in which a covered entity has an annual compliance obligation pursuant to section 95855, it must fulfill that obligation by November 1 of the following calendar year. For any year in which the covered entity's

> annual compliance obligation and triennial compliance obligation coincide, the obligations shall be satisfied coincidentally.~~:~~
>
> ~~(1) By May 15 of the calendar year following the year for which the obligation is calculated if the entity reports by April 1 pursuant to section 95103 of the MR;~~
>
> ~~(2) By July 15 of the calendar year following the year for which the obligation is calculated if the entity reports by June 1 pursuant to section 95103 of the MRR.~~

I. Either the Cap and Trade Regulation or the MRR should be revised to provide for a data review and reconciliation process.

After initially determining an entity's compliance obligation, the Executive Director should provide an opportunity for the entity to query the determination. Section 95856(e)(3) (p. A-71) appears to provide for such a process by referring to a "data review and reconciliation process, as stated in section 95104 of the Mandatory Reporting Regulation." However, section 95104 of the Revised MRR does not contain any provisions relating to data review and reconciliation. Provisions for such a process, incorporating an opportunity for covered entities to query determinations and present further evidence, should be drafted and included in the Revised MRR or the Cap and Trade Regulation, and there should be a correct cross-reference in section 95856(e)(3) to that new provision.

J. The triennial compliance obligation should be due after the Executive Officer has issued a final determination.

Section 95856(e)(3) provides for the Executive Officer to issue a final determination of a covered entity's triennial compliance obligation after a data review and reconciliation process. No timeframe for the Executive Office to issue these final determinations is specified. An entity should not be required to fulfill its triennial compliance obligation until after it has received the final determination. Section 95856(f)(1) (p. A-71) should be amended as follows:

> The covered entity must transfer sufficient valid compliance instruments to its compliance account to fulfill its triennial

> surrender obligation by the later of November 1 of the year following the third year of the compliance period, or 15 days after the covered entity receives the Executive Officer's final determination under section 95856(e)(3).

K. The triennial surrender obligation should exclude the instruments surrendered for the annual compliance obligations.

Section 95856(f)(3) (p. A-71) states that the triennial surrender obligation equals the triennial compliance obligation "less allowances and offset credits". This appears to be incomplete. The ISOR states (at IX-49) that "the triennial surrender obligation will account for compliance instruments already surrendered pursuant to the annual compliance obligation." To fulfill this intent, section 95856(f)(3) should be amended as follows:

> The Triennial Surrender Obligation shall equal the Triennial Compliance Obligation calculated pursuant to section 95853 less allowances and offset credits that have been surrendered to meet annual compliance obligations in the relevant compliance period pursuant to sections 95855 and 95856.

L. Clarify that only instruments equal to the compliance obligation will be retired.

Section 95856(g)(1) (p. A-71) states that the Executive Officer will retire the compliance instruments surrendered. "Surrender" is not defined. It should be clarified that the Executive Officer will only retire the number of compliance instruments equal to the compliance obligation, leaving any excess compliance instruments in the holder's compliance account for use against future compliance obligations. Section 95856(g)(1) should be amended as follows:

> Retire the number of compliance instruments equal to the triennial compliance obligation~~surrendered~~; and

M. Covered entities should be permitted to use offsets to meet an untimely surrender compliance obligation.

Section 95857(b)(3) (p. A-72) provides that a covered entity may surrender allowances but not offsets to fulfill an untimely surrender obligation. The ISOR states (p. IX-51) that this is

to ensure the obligation "results in further environmental improvement." However, the strict criteria for offsets will ensure that offsets, being "additional," also lead to environmental improvement. Thus, there should be no prohibition on using offsets to satisfy the untimely surrender compliance obligation, and section 95857(b)(3) should be deleted.

N. An entity should have until after the next auction to cover its untimely surrender obligation.

Section 95857(c)(4) (p. A-73) provides that an entity has 30 days to secure allowances needed to cover its untimely surrender obligation. This period may or may not include an allowance auction. If there were no allowance auction in this period, the entity may find it difficult to obtain enough compliance instruments. Section 95857(c)(4) should be revised to give the entity 30 days or, if later, five business days after the next allowance auction to obtain the needed compliance instruments as follows:

> If the Executive Officer is unable to retrieve sufficient allowances using the above process, the Executive Officer shall provide the deficient covered entity 30 days or, if later, five business days after the next auction to secure the compliance instruments~~allowances~~ needed to cover its untimely surrender obligation;

O. Limit the Executive Officer's ability to take allowances from non-defaulting entities.

Section 95857(c)(5) (p. A-73) provides that if an entity does not fulfill its compliance obligation for untimely surrender, the Executive Officer will take allowances from the holding accounts of affiliates to which the defaulting entity has transferred allowances. The ISOR states (at IX-52) that this provision is intended to address situations in which an entity takes steps to shield compliance instruments from retirement. However, under the current drafting this provision may have adverse consequences for innocent "affiliates" who purchased allowances from the defaulting entity in good faith. This provision should be carefully limited to avoid harming such entities. Various limitations should be considered, such as restricting the provision

to transfers of allowances made without reasonable compensation and transfers to entities that have reason to believe the transferring entity may default on its compliance obligations.

Section 95857(c)(5) is especially onerous insofar as "affiliates" is not defined. The Executive Director could construe the term to reach as broadly as "direct and indirect corporate associations," which are very broadly defined as discussed below. A definition of "affiliates" is required. The definition should not be too broad, given the possibility of adverse consequences for innocent entities.

P. If the allowance reserve is tiered, allowances for untimely surrender obligations should go to the lowest available tier.

Section 95857(d)(2)(A) (p. A-74) provides that three-quarters of the allowances used to fulfill an untimely surrender obligation will be transferred to the highest-priced tier of the Allowance Price Containment Reserve Account ("Reserve"). The ISOR states (at IX-54) that this provision is to ensure that fulfilling the untimely surrender compliance obligation does not overly reduce the supply of compliance instruments and consequently raise their price. However, there is no specific rationale for putting the allowances in the highest tier of the Reserve. If allowances are placed in the highest tier, they will be withdrawn from the market at market prices and will only be available at a price that is calculated to be significantly higher price that may never be reached.

SCPPA opposes having tiers in the Allowance Price Containment Reserve Account (see section IX.F below). However, if the allowance reserve must contain tiers, instruments added to the reserve should be added not to the highest tier but to the lowest-priced tier that has not yet been exhausted and closed.

VII. SUBARTICLE 8: DISPOSITION OF ALLOWANCES

A. Allocated allowances are not to be placed in holding accounts.

Section 95870(c)(1) (p. A-74) provides that allowances allocated to electrical distribution utilities are to be placed in the holding accounts of those entities. However, section 95892(b)(2) (p. A-74-75) provides that allowances to publicly owned electrical distribution utilities ("POUs") are to be placed in either limited use holding accounts or compliance accounts as designated by the utilities. Section 95870(c)(1) should be amended to refer to the option that will be available to POUs under section 95892(b)(2).

B. Allowances allocated to utilities should include an amount for cogeneration.

Section 95870(c)(1) provides that allowances allocated to electrical distribution utilities will start at 89 million. However, an additional amount of allowances will be allocated to utilities to reflect the utility share of cogeneration or "combined heat and power" ("CHP") emissions. The number of CHP-related allowances that are to be allocated to electrical distribution utilities should be specified in section 95870(c)(1).

C. Clarify that pro-rating of allowances applies only to industrial entities.

Under the heading "Allocation to Industrial Covered Entities," section 95870(d)(3) (p. A-75) provides for pro-rating of allowances allocated for the purposes of industrial assistance. However, there is a reference to pro-rating allowances across "all eligible covered entities." This is a broad term that could be construed to include entities in other sectors such as electrical distribution utilities. To avoid confusion, the term "all eligible covered entities" should be replaced with "all eligible industrial covered entities."

VIII. SUBARTICLE 9: DIRECT ALLOCATION OF CALIFORNIA GHG ALLOWANCES

A. The section on electrical distribution utility eligibility for direct allocation should be clarified.

Section 95890(b) (p. A-77) states that an electrical distribution utility will be eligible for a direct allocation of "California" in specified circumstances. Presumably the intended reference was to "California GHG Allowances". The missing words should be inserted.

Section 95890(b) also refers to an entity's "positive or qualified positive verification statement on its sales number." The term "sales number" is not defined. This term should not be used because a verification statement relates primarily to emissions, and liability is not determined by reference to electricity sales.

Section 95890(b) should be revised as follows:

> … An electrical distribution utility shall be eligible for direct allocation of California GHG Allowances if it has complied with the requirements of the MRR and has obtained a positive or qualified positive verification statement ~~on its sales number~~ for the prior year pursuant to the MRR.

B. Publicly owned utilities should be able to have allowances allocated to their compliance accounts.

Section 95892(b)(2) (p. A-83) allows POUs to have the Executive Director place their allocated allowances in either their limited use holding accounts or their compliance accounts. SCPPA supports this provision for the reasons set out in the ISOR at II-32. Unlike investor-owned utilities ("IOUs"), POUs such as the SCPPA members generate a significant proportion of the electricity they sell and should not be required to submit all their allocated allowances to auction.

IX. SUBARTICLE 10: AUCTION AND SALE OF CALIFORNIA GHG ALLOWANCES

A. If the allowance reserve is tiered, allowances unsold at auction should go to the lowest available tier.

Section 95911(b)(4) (p. A-87) provides for allowances that are unsold at auction to be transferred to the highest-price tier in the Allowance Price Containment Reserve Account.

SCPPA opposes having tiers in the Allowance Price Containment Reserve Account. *See* section IX.F below. However, if the allowance reserve must contain tiers, unsold allowances sent to the reserve should be added not to the highest tier but to the lowest lowest-price tier that has not yet been exhausted and closed. This will reduce the risk of allowances being transferred to a tier of the reserve that is never accessed.

The ISOR states, at IX-70, that the highest tier was chosen "because it is possible that all of the allowances in the lower tiers may be sold, at which point ARB will close those tiers to further sales." This objective can be achieved by transferring unsold allowances to the lowest-price tier that remains open.

B. The Auction Reserve Price should increase by inflation only.

Section 95911(b)(6)(B) (p. A-88) provides for the Auction Reserve Price to increase annually by five percent plus the rate of inflation as measured by the Consumer Price Index. The ISOR explains (at IX-71) that this is to reflect the rate of increase in marginal abatement costs, which is assumed to be seven percent per year. However, it is not clear why the rate of increase in marginal abatement costs should be assumed to be seven percent. Lower-cost abatement measures are expected to be undertaken first. AB 32 measures may lead to the development of new abatement opportunities and increased implementation of low-cost abatement measures (such as energy efficiency) over time, renewable energy costs may decrease, and low-cost sector-

based offsets may become available in later compliance periods. For these reasons, the rate of increase in marginal abatement costs may not be as high as seven percent per year.

The ISOR notes that "the reserve price will rise more slowly than the expected marginal abatement cost so that the reserve price does not make the program unnecessarily more expensive." ISOR at IX-71. As changes in the marginal abatement cost are difficult to predict, the ARB should avoid rapidly increasing the Auction Reserve Price and risking making the program unnecessarily more expensive. Instead, the Auction Reserve Price should increase by the rate of inflation only.

C. The auction purchase limit should not apply to any electrical distribution utilities.

Section 95911(c)(2) (p. A-88) provides that the auction purchase limit does not apply to IOUs. The ISOR (at IX-73) provides three reasons for this exclusion: IOUs may have large compliance obligations; IOUs must purchase the allowances they require at auction (or on the secondary market); and IOUs are regulated.

These three reasons may also apply to POUs. Depending on their size, POUs may have large compliance obligations. They may have to purchase allowances they require at auction (or on the secondary market) if they do not take advantage of the section 95892(b)(2) option to have their administratively allocated allowances deposited into their compliance accounts. And they are closely regulated by their governing boards.

Therefore, the exclusion from the auction purchase limit should be extended to all electrical distribution utilities, not just the IOUs. Section 95911(c)(2) should be revised as follows:

> For ~~investor-owned~~ electrical distribution utilities ~~receiving a direct allocation of allowances pursuant to 95892(b) and subject to the monetization requirement pursuant to 95892(c)~~: the auction purchase limit in subsection (~~A~~1) does not apply. This subsection

> (2~~B~~) shall not be interpreted to exempt ~~said investor owned~~ electrical distribution utilities from any other requirements of this article; and

D. Tie bids should be resolved pro-rata rather than with a random number process.

Section 95911(d)(5) (p. A-90) provides a complex process for resolving tie bids by assigning random numbers to each bundle of 1,000 allowances. A simple, familiar pro rata process should be used instead. The ISOR states (at IX-77) that a pro rata process was rejected on the grounds that it could result in awards of allowances in bundles of less than 1,000, "which would add to the auction's complexity." However, it may be more difficult to use the complex random-number process outlined in section 95911(d)(5) than to use a pro rata process and award allowances in bundles of less than 1,000. If desired, the numbers of allowances awarded under a pro-rata approach could be rounded up or down to an appropriate round number.

E. Define "qualification status".

Section 95912(d)(1)(A) (p. A-91) prohibits entities from publicly releasing their "qualification status." This term is not defined. In order to avoid inadvertent breaches of this requirement due to entities not being aware of what information not to release, "qualification status" should be defined in the Cap and Trade Regulation.

F. The Allowance Price Containment Reserve should not be divided into tiers.

Section 95913(d) (p. A-95) provides that the allowances in the Allowance Price Containment Reserve will be divided into three tiers, each with a different price. The ISOR provides no justification for the tiering. There are a few sentences on this issue in the last paragraph of Appendix G to the ISOR, at G-23: "If the first tier is exhausted quickly and purchases are made from the higher tiers, then a more significant imbalance is occurring…." However, it is not clear whether the use of tiers would provide significantly more information on

supply-demand imbalances than would be provided simply by observing the percentage of allowances sold from a single-tier reserve at any point in time.

Unless tiers can be shown to provide valuable information on imbalances that is not otherwise available, the tiers should be rejected as an unnecessary complication.

G. Allowance Price Containment Reserve allowance prices should start at $30.

Section 95913(d)(2) (p. A-96) sets out allowance prices for each tier of the Allowance Price Containment Reserve in 2012: $40, $45, and $50. The ISOR does not provide any detailed justification for setting the reserve prices at these levels.

The reserve price should be set higher than expected allowance prices so that it does not interfere with price discovery, but lower than allowances prices in high-cost scenarios (ISOR Appendix G at G-19).

As allowance prices are estimated to be approximately $15 in 2012 (according to Tables G-3 to G-5 in Appendix G of the ISOR), a reserve price that starts at $30, being double the expected 2012 allowance price. A reserve price that starts at $30 would start high enough to avoid interference with price discovery while being low enough to contain prices within tolerable levels.

H. Allowance reserve prices should increase by inflation only.

Section 95913(d)(3) (p. A-96) repeats section 95911(b)(6)(B) (p. A-88) and provides for the prices of allowances in the Allowance Price Containment Reserve to increase by five percent plus inflation each year. The ISOR states (at IX-91) that this is to take into account the assumed increase in marginal abatement costs and allowance prices over time. However, as discussed above in section IX.B, the rate of increase in marginal abatement costs is unpredictable. Without more justification for the assumed increase in marginal abatement costs, the five percent annual increase should be removed and reserve allowance prices should increase with inflation only.

I. Joint Powers Agencies should not be considered to be "corporate associations".

Section 95914(a) (p. A-99) defines "direct and indirect corporate associations." Section 95914(a)(1)(D) provides that an entity has a "direct corporate association" with another entity if the first entity "controls more than twenty percent of the other entity's affairs through some other means." This is overly broad and ambiguous: it is unclear how "controls" and "affairs" will be interpreted.

SCPPA is a joint powers agency, constituted in accordance with sections 6500-6536 of the California Government Code. It has ownership interests in several generating stations, including the Magnolia Power Project, from which its members obtain power. As a result of this relationship, it is possible that the members of SCPPA could be considered to have a "corporate association" with each other under section 95914(a)(1)(D).

The consequences of having a corporate association with other entities are significant. Under sections 95914(e) and (f) (pp. A-100-102), the purchase and holding limits would be applied to all entities with corporate associations with each other as if that group were one entity with no increase in the limits to reflect the size of the group. This may be problematic for SCPPA members, as some members will have high compliance obligations. For example, if the SCPPA members do not take advantage of the section 95892(b)(2) (p. A-83) option to have the Executive Director place their allocated allowances in their compliance accounts and, as a result, have to buy allowances through the auction, they could need to buy more than ten percent of the allowances offered in a given auction, exceeding the section 95911(c)(2) (p. A-88) purchase limit (assuming that section 95911(c)(2) is not revised to exempt POUs as well as IOUs from the purchase limit as SCPPA recommends in section IX.C above). The section 95920(b)(3) (p. A-105) holding limit of 6 million metric tons in 2012 and declining thereafter could also be a

problem for SCPPA members, given that one member alone has annual emissions that are more than twice that level.

Given the particular circumstances of POUs, with their high compliance burdens and close regulation by their governing boards, groupings of POUs in Joint Powers Agencies should be excluded from being "corporate associations" under section 95914(a). This can be achieved by adding a new section 95914(a)(1)(3) as follows:

> (3) Membership of a joint powers agency established in accordance with sections 6500-6536 of the California Government Code will not constitute a direct or indirect corporate association between members of the same joint powers agency.

J. The purchase limit should not apply to a group of entities that are exempt from the purchase limit.

Section 95914(e)(1) (p. A-100) provides that the purchase limit applies to a group of entities with a corporate association. It should be clarified that this does not apply to a group electrical distribution utilities that are exempt from the purchase limit under section 95911(c)(2) (p. A-88) (with section 95911(c)(2) being expanded to exempt POUs as well as IOUs from the purchase limit as discussed in section IX.C above). This needs to be made explicit because section 95911(c)(2) provides that the exemption "shall not be interpreted to exempt those entities from any other requirements of this article."

Section 95914(e)(1) should be revised as follows:

> The total number of compliance instruments which may be purchased in a single auction by a group of entities (other than electrical distribution utilities) with a disclosed corporate association is limited pursuant to section 95911(c).

K. The holding limit should apply to California GHG allowances only.

Section 95914(f)(1) (p. A-101) states that the total number of compliance instruments held by a group of entities with a corporate association must be less than the holding limit.

However, section 95920(b)(1) (p. A-105) provides that the holding limit applies to California GHG allowances rather than to compliance instruments, which includes offsets. Section 95914(f)(1) should be revised to be consistent with section 95920(b)(1) so that it applies to the total number of allowances rather than compliance instruments that are held by a group of entities with a corporate association, thereby precluding the limit from applying to offsets.

Section 95914(f)(1) should also be clarified to provide that the holding limit does not apply to allowances in limited use holding accounts and to provide that the section 95920(b)(4) (p.A-105) "limited exemption" for allowances that are in an entity's compliance account applies to each entity in the group.

If the holding limit stays the same regardless of the number of entities in the group or the size of their compliance obligations, this should be made clear by deleting the reference to the holding limit "of the group of associated entities."

Having a single holding limit for all SCPPA members together, if they are not exempted from corporate associations as requested in section IX.I, would be very restrictive. A higher limit (for example based on the sum of the group members' compliance obligations) should be considered.

Section 95914(f)(1) should be amended as follows:

> The total number of ~~compliance instruments~~California GHG Allowances held in holding accounts and compliance accounts (subject to each entity's holding limit exemption) by a group of entities with a disclosable corporate association must sum to less than the holding limit ~~of the group of associated entities~~ pursuant to section 59520(b).

L. The disclosure of bidding associations should not refer only to Canadian provinces.

Section 95915(a) (p. A-102) requires the disclosure of bidding associations with entities registered in GHG emissions trading systems ("ETS") "in Canadian provinces to which

California has linked," implying there is no need to disclose bidding associations with entities registered in GHG programs in other states, such as New Mexico. The ISOR does not include the limiting reference to Canada, and there does not appear to be any reason to require disclosure of bidding associations with entities registered in Canadian programs but not programs in other states. This provision should be amended to eliminate the reference to Canadian provinces as follows:

> Entities registering for the auction pursuant to section 95912 must disclose bidding associations with other entities also registered into the California cap-and-trade system or registered into one or more GHG ETS programs ~~in Canadian Provinces~~ to which California has linked.

M. The definition of "bidding association" should be narrowed.

Section 95915(b) (p. A-102) sets out a very broad definition of "bidding association." An entity would be in a "bidding association" if the entity had "any form of agreement with another entity" or "has agreed to provide assistance to the other entity in any way" except for investment or auction advisory services. The definition of "bidding association" should be narrowed to include only agreements or assistance relating to the allowance auctions:

> An entity has a disclosable "bidding association" with another entity if it:
>
> (a) Has any form of agreement with another entity relating to the allowance auctions; or
>
> (b) Is partnered with another entity for bidding purposes; or
>
> (c) Has agreed to provide assistance in relation to the allowance auctions to the other entity in any other way, with the exception of investment or auction advisory services ~~with the other entity~~.

N. Bidding association purchase limit provisions should be clarified.

Section 95915(e) (p. A-103) provides for the application of the purchase limit to entities in bidding associations, but the drafting is unclear. Under section 95915(e)(1), the purchase limit

will be applied to the bids submitted by the "recipient." However, if a purchaser is buying allowances on behalf of a recipient, the recipient may not enter any bids in the auction. Also, by referring to bids submitted by the recipient alone, section 95915(e)(1) would not include allowances purchased by a purchaser for a recipient in the recipient's purchase limit. According to the ISOR (at IX-102), the purpose of section 95915(e)(1) is to apply the purchase limit to the recipient and "not to the apparent purchaser." Section 95915(e)(1) needs to be revised to accomplish the stated purpose.

Further, it is unclear how section 95915(e)(3) (p. A-104) is intended to operate. Section 95915(e)(3) refers to "the sum of bids submitted by the entity or entities in the bidding association designated as the 'recipient.'" However, recipients may not submit any bids themselves if the bidding function is assigned to entities designated as "purchaser" in the bidding association.

X. SUBARTICLE 11: TRADING AND BANKING

A. Holding limits should not be applied to allowances in limited use holding accounts.

Section 95920(b)(2) (p. A-105) states that the holding limit will apply to each entity with a holding account. It is unclear from this provision whether the holding limit will be applied across all types of accounts (holding, compliance, and limited use holding accounts), or just holding accounts. Mr. R. Olsson, in a teleconference with SCPPA members on November 19, 2010, stated that the holding limit is intended to apply to allowances held in holding accounts and compliance accounts (subject to the "limited exemption" under section 95920(b)(4) (p. A-105) for allowances held in compliance account), but that the holding limit is not intended to apply to limited use holding accounts. This should be clarified by amending section 95920(b)(2) as follows:

> The holding limit will apply to the California GHG allowances in each entity's ~~with a~~ holding account and compliance account (subject to the Limited Exemption in section 95920(b)(4)).

B. The choice of method for calculating the holding limit should be explained.

Section 95920(b)(3) (p. A-105) sets out the method for calculating the holding limit in each year. There does not seem to be sufficient justification in the ISOR for the manner in which the holding limit is calculated. The ISOR refers (at IX-104) to the holding limit proposed by J. Harris in a paper prepared for the Western Climate Initiative. However, the analysis in that paper was unsatisfactory. The analysis relied heavily on controls for markets for agricultural products without explaining why agricultural products markets provide a good model for carbon markets.

Additionally, there does not seem to be sufficient justification in the ISOR for the level of the holding limit that would apply to covered entities that will need to accumulate allowances to meet their compliance obligation. The holding limit under section 95920(b)(3) would be 6 million metric tons in 2012, declining over time as annual allowance budgets decline. Although that holding limit might be appropriate for opt-in entities under section 95813 (p. A-43) or voluntarily associated entities under section 95814 (p. A-44), it is too low for very large covered entities. Some covered entities, including one of the SCPPA members, have annual emissions that are more than twice 6 million metric tons per year. The holding limit would preclude such large covered entities from banking a significant portion of allowances they would need, while smaller covered entities would be allowed to bank a multiple of their annual emissions.

Restricting banking by large covered entities by an overly tight holding limit would conflict with the policy establishing banking without restriction as a key cost-containment mechanism. ISOR (p. II-4). Unlimited banking allows covered entities to manage their acquisition and accumulation of allowances to control compliance costs.

Additionally, unlimited banking provides an incentive for covered entities to make early reductions by permitting the early accumulation of allowances in excess of a current compliance obligation to avoid higher future allowance prices. The tight section 95920(b)(3) limit on banking by large covered entities would reduce the efficacy of that incentive.

Section 95920(b)(4) (p. A-105) provides for a "limited exemption" from the holding limit for allowances that are held in a covered entity's compliance account that would be approximately equal to the compliance obligation that the entity had accumulated during a compliance period, but for a large entity the "limited exemption" would not provide meaningful relief. A large entity that had annual emissions that were twice the holding limit would be permitted to bank less than 20 percent of its total compliance obligation for a triennial period.

Prudent banking of allowances in early years of the program by covered entities should not be discouraged. The resolution that the Board will consider on December 16 should permit the staff to consider alternatives to the holding limit specified in section 95920(b)(3) as a change to the Cap and Trade Regulation that will be considered during the "15-day" revision process. The change should permit large covered entities to bank more allowances than under the currently drafted provisions.

XI. SUBARTICLE 15: ENFORCEMENT AND PENALTIES

A. Overlapping penalty provisions are excessive.

Under section 96014(a) (p. A-180), there will be a separate violation for each compliance instrument that is not surrendered to meet a covered entity's surrender obligation. Additionally, under section 96014(b) (p. A-181), there would be a separate violation for each day after the compliance date that each required compliance instrument has not been surrendered. These provisions for per-ton per-day violations should be considered in light of the penalties that may be applied under the Revised MRR – also on a per day, per ton basis – and the requirement in

section 95857 for the imposition and recovery of the untimely surrender obligation: four times the excess emissions. Without modification, these overlapping penalty provisions will constitute a grossly excessive burden.

It would be more appropriate to impose *per-day* penalties under the Revised MRR without any per-ton multiplier. Per-day penalties would meet the legitimate objective of ensuring that reports and verification statements are provided promptly. Conversely, *per-ton* penalties should be imposed under the Cap and Trade Regulation 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.

Additionally, there should not be a violation under section 96014 if an entity incurs an untimely surrender obligation and that obligation is met in full within the 30-day period provided in section 95857(c)(4) (p. A-73). The "compliance date" that is specified in section 96014(b) should be the end of that 30-day period.

The ARB recognized the issues with imposing per-day penalties in addition to penalties for each missing instrument in relation to the Renewable Electricity Standard ("RES") regulation. Similar concerns apply here and should be addressed during the "15-day" process.

XII. INCLUDE REVIEW PROVISIONS IN THE REGULATION.

Section II.Q of the ISOR (at II-56 and following) discusses the monitoring and review of the Cap and Trade Regulation. However, this is not set out in the regulation itself. It will be difficult to make long-term investment decisions based on a regulation that may change in unknown ways every three years. The Cap and Trade Regulation should contain a provision setting out the features that will be reviewed every three years to determine whether the regulation needs to be revised, and which sections may be revised. Even if these provisions are broad, they will provide useful indications of possible changes.

Apart from urgent changes, a notice period of at least one year should be given for all changes to the Cap and Trade Regulation that will require significant changes to the behavior of covered entities.

XIII. CONCLUSION

SCPPA urges the ARB staff to take these comments into account when preparing the Board resolution adopting the Cap and Trade Regulation and urges the staff to consider SCPPA's proposed revisions during the "15-day" process after the ARB's December 16, 2010, hearing and vote on the regulation.

SCPPA appreciates the opportunity to submit these comments to the ARB.

Respectfully submitted,

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