



August 10, 2011

Clerk of the Board
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Re: Joint Utilities’ Comments on 15-Day Language for Cap-and-Trade Regulation

Clerk of the Board:

The California Municipal Utilities Association, Liberty Energy, Los Angeles Department of Water & Power, Modesto Irrigation District, Northern California Power Agency,¹ Pacific Gas & Electric Company, PacifiCorp, Sacramento Municipal Utility District, San Diego Gas and Electric Company, Southern California Edison Company, Southern California Public Power Authority,² and Turlock Irrigation District (“Joint Utilities”) jointly submit this letter to the California Air Resources Board (“CARB”) regarding the proposed revisions to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (“Regulation”) issued on July 25, 2011 (“15-Day Language”). The Joint Utilities submit these comments to CARB in the interest of furthering the goals of AB 32, while ensuring that the state’s electrical distribution utilities are able to continue to provide reliable and cost-effective electric service to their customers.

The Joint Utilities support CARB’s proposed methodology for allocation of allowances to electrical distribution utilities and CARB’s proposal to delay enforcement of the compliance obligation until 2013. However, the Joint Utilities are concerned with key provisions of the 15-Day Language that have the potential to cause significant adverse impacts on utility operations,

¹ The members of the Northern California Power Agency include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, and the Bay Area Rapid Transit District, Port of Oakland, and Truckee Donner Public Utility District. Associate members are the Plumas-Sierra Rural Electric Cooperative and the Placer County Water Agency.

² SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water & Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon.

and indeed on the ability of the electrical distribution utilities to cost-effectively reduce GHG emissions.

The Joint Utilities – a diverse group of publicly owned and investor owned California utilities – limit the scope of these comments to these *key issues of common concern* in the interest of stressing the importance of the matters addressed herein.³

1. **Resource Shuffling (§ 95802(a)(245) and § 95852(b)(1))**: The Joint Utilities agree that any artificial attempts to distort the actual emissions reductions achieved by a first deliverer of electricity should be prohibited. However, the 15-Day Language on resource shuffling has the potential to negatively impact the state's electric system distribution and transmission operations and should be subject to additional stakeholder discussions and review. Each of the Joint Utilities feels very strongly that the definition of Resource Shuffling in § 95802(a)(245) and its application in § 95852(b)(1) must be changed. Individual utility comments will further address this issue.

2. **Replacement Electricity (§ 95802(a)(237))**: As drafted, the definition of replacement electricity would create inconsistencies with California's renewable portfolio standard, adding an unnecessary cost burden on top of the premium already being paid for renewable energy contracts. The Joint Utilities recommend that the definition of "replacement electricity" be revised to strike the requirement that the renewable energy resources be variable, and to remove the intra-balancing authority restrictions, as set forth in the mark-up included in Attachment A to this letter. The definition of "variable renewable resource" is therefore no longer required and should be deleted.

3. **Calculation of Covered Entity's Annual and Triennial Compliance Obligations (§ 95853 and § 95855)**: The calculation of the triennial and annual compliance obligations in these sections does not accurately reflect the manner in which the compliance obligations are calculated pursuant to § 95852. The Joint Utilities recommend that these sections be revised to reference § 95852 directly, as shown in Attachment A.

4. **Quantitative Usage Limit on Designated Compliance Instruments—Including Offset Credits (§ 95854)**: The Joint Utilities propose that the quantitative limits for the use of offsets be revised to account for all offsets submitted by an entity since the start of the cap and trade program and the total compliance obligation of the entity since the start of the cap and trade program, rather than looking at the compliance obligation for a single compliance period. The Joint Utilities' proposed revisions are shown in Attachment A.

5. **Penalty and Enforcement Provisions (§ 95857 and § 96014)**: The Joint Utilities are committed to meeting all of the compliance requirements of the cap and trade program and believe that provisions regarding consequences for non-performance should be both clear and concise, and should not be so onerous that an inadvertent or minor violation would result in the diversion of essential resources away from meeting the core goals of the

³ The purpose of this letter is to provide CARB with a brief description of the issues of common concern to the Joint Utilities. Individual utilities will be filing separate comments with CARB regarding these and other provisions of the 15-Day Language.

Regulations. The Joint Utilities suggest that § 95857(c) be revised to further clarify that the untimely surrender obligation modifies the entity's original compliance obligation and does not create an additional obligation. The provisions of § 96014 should be changed in several respects, including a return to the 45-day period for accruing a violation as set forth in the July Discussion Draft and referenced in the Notice of 15-Day Revisions. These and additional proposed revisions are in Attachment A.

6. **Offset Liability (§ 95985)**: The Joint Utilities believe that the provisions of § 95985 regarding "buyer liability" for post-issuance invalidation of offsets would hinder the ability of the offsets program to function efficiently and jeopardize the program's emissions reduction goals. Instead of imposing buyer liability, the Joint Utilities recommend that CARB apply a "buffer" account approach for all types of offset projects.

7. **Eligibility Requirements for Allowance Allocation (§ 95890)**: The eligibility requirements for an annual allocation of allowances to electrical distribution utilities in § 95890 (b) should be stricken. Rather than requiring electrical distribution utilities to "comply with the requirements of MRR" and obtain a positive verification before being allocated allowances, CARB should utilize the enforcement provisions set forth in the Regulation and in the Mandatory Reporting Regulation to address compliance with reporting requirements, and not restrict the eligibility of the electrical distribution utilities to be allocated allowances to be used for their ratepayers' benefit. A utility should be eligible to receive allocated allowances if it is identified in Table 9-3.

8. **Replenishing the Allowance Reserve (§ 95913)**: The Joint Utilities support the inclusion of the Allowance Price Containment Reserve ("Reserve") in the Regulation as an essential tool to address the potential for higher-than-expected allowance prices. Because a robust Reserve is necessary to ensure long-term market success under a wide range of plausible scenarios, we believe CARB should establish a procedure in the Regulation to automatically replenish the Reserve if it becomes depleted. With language in the Regulation identifying the triggering event and action to be taken, the market will have assurance that a timely and effective remedy will be in place.

Very truly yours,

THE JOINT UTILITIES

cc by e-mail:

Honorable Mary Nichols, Chairman
Mr. James Goldstene, Executive Officer
Mr. Bob Fletcher, Deputy Executive Officer
Mr. Richard Corey, Division Chief
Ms. Edie Chang, Assistant Division Chief
Dr. Steve Cliff, Manager

Attachment A
**Joint Utilities' Comments on 15-Day Language for Cap-and-Trade Regulation –
Proposed Changes to Regulation**

§ 95802. Definitions.

(a) (237) "Replacement Electricity" means electricity delivered to a first point of delivery in California to replace electricity from ~~variable~~ renewable resources in order to meet hourly load requirements. The electricity generated by the ~~variable~~ renewable energy facility and purchased by the first deliverer is not required to meet direct delivery requirements. ~~The physical location of the variable renewable energy facility busbar and the first point of receipt on the NERC E-tag for the replacement electricity must be located in the same Balancing Authority Area.~~

~~(272) "Variable Renewable Resource" means run-of-river hydroelectric, solar, or wind energy that requires firming and shaping to meet load requirements.~~

§ 95853. Calculation of Covered Entity's Triennial Compliance Obligation.

(a) A covered entity that exceeds the threshold in section 95812 in any of the three data years preceding the start of a compliance period is a covered entity for the entire compliance period. The covered entity's triennial compliance obligation in this situation is calculated as the total of the emissions ~~calculated in accordance with section 95852 that received a positive or qualified positive emissions data verification statement, or were assigned emissions pursuant to section 95131 of MRR~~ from all data years of the compliance period.

§ 95854. Quantitative Usage Limit on Designated Compliance Instruments – Including Offset Credits.

(b) The total number of compliance instruments identified in section 95854(a) that each covered entity may surrender to fulfill the entity's compliance obligation ~~for a compliance period~~ must conform to the following limit:

$$O_o/S \text{ must be less than or equal to } L_o$$

In which:

O_o = Total number of compliance instruments identified in section 95854(a) submitted since January 1, 2013 to fulfill the entity's total compliance obligation

~~for the compliance period through the current compliance year.~~

S = Covered entity's total compliance obligation beginning January 1, 2013 through the current compliance year.

L_0 = Quantitative usage limit on compliance instruments identified in section 95854(a), set at 0.08.

§ 95855. Annual Compliance Obligation.

- (a) An entity has an annual compliance obligation for any year when the entity is a covered entity except for the conditions s specified in sections 95853(d) and 95856(d)(3); and
- (b) The annual compliance obligation for a covered entity equals 30 percent of emissions ~~reported~~ from the previous data year ~~that received a positive or qualified positive emissions data verification statement, or were assigned emissions pursuant to section 95131 of MRR~~ calculated in accordance with section 95852.

§ 95857. Untimely Surrender of Compliance Instruments by a Covered Entity.

- (c) If an entity with an untimely surrender obligation fails to satisfy the obligation pursuant to section 95857(b)(4), then:
 - (1) ARB will determine the number of violations pursuant to section 96014;
 - (2) If a portion of the untimely surrender obligation is not surrendered as required, the entity will have a new untimely surrender obligation (replacing the previous surrender obligation calculated under section 95857(b)(2)) equal to the amount of the previous untimely surrender obligation which was not satisfied by the deadline stated in section 95857(b)(4) upon which the number of violations will be calculated pursuant to section 96014. The new untimely surrender obligation is due immediately; and
 - (3) The calculation of the untimely surrender obligation shall only apply once for each untimely surrender of compliance instruments per annual or triennial compliance obligation.

§ 95890. General Provisions for Direct Allocations.

- (b) ~~Eligibility Requirements for Electrical Distribution Utilities. An electrical distribution utility shall be eligible for direct allocation of California GHG allowances if it has complied with the requirements of MRR and has obtained a positive or qualified positive emissions data verification statement for the prior year pursuant to MRR.~~

§ 96014. Violations.

- (a) If an entity fails to surrender a sufficient number of compliance instruments to meet its compliance obligation as specified in sections ~~95856 or~~ 95857, ~~and the procedures in 95857(c) have been exhausted,~~ there is a separate violation of this article for each 1,000 required compliance instruments, or portion thereof, that haves not been surrendered, ~~or otherwise obtained by the Executive Officer under 95857(c).~~
- (b) There is a separate violation for each 45-day period or portion thereof after the date determined pursuant to section 95857(b)(4) end of the Untimely Surrender Period that each required 1,000 compliance instruments, or portion thereof, haves not been surrendered.