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June 18, 2012

Mr. Steve Cliff, Chief
Climate Change Program Evaluation Branch
California Air Resources Board
1001 "I" Street
Sacramento, California 95812

Dear Chief Cliff:

Subject: Los Angeles Department of Water and Power (LADWP) – Comments on California Air Resources Board (CARB) Amendments to California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

The LADWP appreciates the opportunity to submit these comments on CARB's amendments to its cap-and-trade regulation which addresses security and other implementation issues.

Section 95830. Registration with ARB

In Section 95830(c)(1) ARB now requires the names and addresses of the entity's directors and officers. Although the rule itself does not clearly state how an entity should decide which directors and officers are required to be registered, the Initial Statement of Reasons (May 9, 2012) states that the language is needed to ensure that delegations of account representatives and account viewing agents pursuant to Section 95832 are made by persons with *authority to legally bind an entity*. LADWP recommends that the Statement of Reasons include a statement that recognizes the governing structure of a municipal entity, such as the following: The General Manager of a Publicly Owned Utility (POU) will designate a person to represent the POU for registration into the cap-and-trade program. LADWP also recommends that in the Statement of Reasons, the ARB recognize that the proposed regulations will require this representative of the POU to exercise a certain level of discretion in the rule per California Government Code Section 820.2.

In addition, there are requirements that an entity provide corporate association information and list the names and contact information for persons controlling over 10 percent of the voting rights attached to all the outstanding voting securities of the entity. POU's such as LADWP are not incorporated entities but municipal utilities; thus,

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such requirements are not applicable to LADWP. For clarification, LADWP recommends that the following language be added as new provision 95830(c)(1)(j): The entity name, address and name of the representative of the POU complying with this requirement is sufficient.

95830(g) Information Confidentiality

The rule states that the registration information collected for individuals "will be treated as confidential by the Executive Officer and the accounts administrator *to the extent possible* [emphasis added], and except as needed in the course of oversight, investigation, enforcement and prosecution."

LADWP recommends that the proposed phrase "to the extent possible" be struck from the provision as the level of confidentiality CARB undertakes is not discretionary. SB 1386, as codified in California Civil Code Section 1798 requires agencies that store sensitive personal information, including government agencies engaged in business activities to notify California residents when that data has or may have been accessed without authorization. Civil Code Section 1798 also requires businesses that own or license personal information about a California resident to implement and maintain security procedures and practices to protect personal information from unauthorized access, destruction, use, modification or disclosure. Thus, there are specific requirements that CARB must implement in order to treat registration information as confidential.

Section 95831. Account Types

CARB proposes a new Section 95831(d) which enables the Executive Officer to create "additional accounts" to implement the cap-and-trade program. LADWP assumes this means that CARB could create a new type of holding account in addition to the Allocation Holding Account, Auction Holding Account, Retirement Account, Allowance Price Containment Reserve Account, Forest Buffer Account and Voluntary Renewable Electricity Reserve Account. LADWP believes that creation of a new type of holding account is a significant change in how CARB implements the regulation and could potentially affect the ability of a regulated entity to comply with the cap-and-trade regulation. As long as such a potential reasonably exists, this would warrant a new rulemaking process. LADWP recommends deletion of this broadly stated provision.

Section 95832. Designation of Representatives and Agents

Sections 95832(a)(6) and Section 95832(d) refer to attestation requirements of the primary account representative, alternate account representative and officers of an entity. During the second round of 15-day changes to the cap-and-trade regulation, the phrase "to the best of my knowledge" was deleted. CARB's response in the Final Statement of Reasons states, "...it appears that "to the best of my knowledge

and belief" was inadvertently deleted. Unfortunately, we cannot fix this at this time. However, the intent is to hold the Authorized Account Representative to the "best of my knowledge and belief" standard. We will correct this omission when the regulation is amended in the future."

Thus, LADWP recommends that CARB re-insert the phrase in Section 95832(a)(6) and Section 95832(d) as follows:

Section 95832(a)(6): "...I also certify under penalty of perjury of the laws of the State of California that to the best of my knowledge and belief all information required to be submitted to ARB is true, accurate, and complete."

Section 95832(d): "...Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge and belief the statements and information submitted to ARB are true, accurate, and complete."

Section 95833. Disclosure of Corporate Associations

LADWP supports CARB's inclusion of language which allows POU's to consolidate their facility and entity accounts into one account. Consolidation of accounts will alleviate the difficulty of POU's such as LADWP having to predict how to properly divide allocated allowances *prior to receiving their allowances*. Throughout a compliance year, emissions on a facility level could be significantly different than expected due to forced outage, planned outage, hydro conditions, renewables integration, etc. Having individual source compliance accounts would have introduced compliance challenges for POU covered entities if they were unable to transfer between compliance source accounts.

LADWP recommends that CARB clarify that those entities that opt to consolidate their accounts into one account also will have their compliance obligations consolidated. The Mandatory Reporting Rule verifies GHG emissions on a facility and entity level basis whereas the cap-and-trade rule ensures that the number of allowances an entity surrenders matches its GHG emissions.

Section 95834. Know-Your-Customer Requirements

LADWP recognizes the need to verify the identity of individuals who apply for accounts as part of registration in the cap-and-trade program. However, the type of information proposed to be requested, including date of birth, driver's license number, passport number and open bank account documentation would create significant liability both for employers and employees in the event of a breach of security. As discussed previously, CARB is required to undertake a significant task of adopting security procedures in order to protect this confidential information.

LADWP recommends that the level of information required from account representatives and agents be consistent with the United States Environmental Protection Agency's requirements under the Acid Rain program, which requires agents to answer several questions known only by the agent (e.g. in what city did you work your first job, what city was your high school located at, what is your favorite sport, etc.). This registration would be provided electronically and the individual would be required to provide this information once. Once registration is completed, the individual would receive a password and in order to change the password (Acid Rain Program requires password changes every 90 days), the individual would be prompted to answer one of the registration questions.

Section 95920. Trading

The proposed rule (Section 95892(b)(3)) revised the date that a POU informs the Executive Officer of the accounts in which the allocation is to be placed to account for the change to the first auction date. That date has been changed from June 1 to September 1, 2012. LADWP requests that Section 95920(d)(2)(B) on page 164 be revised similarly as follows in order to reflect the change to the first auction date:

On September ~~June~~, 1, 2012, the limited exemption will equal the annual emissions most recent emissions data report that has received a positive or qualified positive emission data verification date.

Section 95921. Conduct of Trade

Section 94921(a)(1) requires that transfers of allowances between different entity accounts be completed within three days instead of three business days. During previous stakeholder technical sessions, CARB staff indicated that there may be issues associated having the Compliance Instrument Tracking System Service (CITSS) available for 24 hour per day functionality and having a calendar day transaction process. LADWP believes that having both a 24-hour per day functionality and business day process can work together. Transactions submitted over the weekend can be processed starting at the next business day, for example. A calendar day transaction process could lead to fluctuations in the market in terms of pricing and a majority of allowance transactions could occur during the early part of the work week.

Section 95921(a)(3) states that the parties to a transfer will be in violation and penalties may apply if the transfer process is completed more than three days after the initial submission of the transfer request or more than three days after the settlement day of the transaction for which the transfer request is submitted.

LADWP believes that CARB should not impose penalties for entities that choose to withdraw from completing the transfer process and recommends that it include language to explicitly state this. There will likely be circumstances beyond the parties' control that warrant withdrawing from an allowance transaction within three days after

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the transfer request. LADWP recommends that CARB delete Section 95921(a)(3) and the last sentence of Section 95921(c)(1)(C). LADWP recommends the following be added to Section 95921(a)(3): "Within the three business day period of the initial transfer request, parties to a transfer may withdraw the transfer request and the Executive Officer will not process the transfer and impose penalties."

Thank you for consideration of these comments. If you need additional information, please contact Ms. Jodean Giese at (213) 367-0409.

Sincerely



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