



October 23, 2013

Steven Cliff, Ph.D.
Chief - Climate Change Market Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95812-2828

Re: Joint Utilities' Comments on the Air Resources Board 45-day Amendments to the Cap-and Trade-Program

Dear Dr. Cliff:

The California Municipal Utilities Association, M-S-R Public Power Agency¹, Northern California Power Agency², PacifiCorp, Pacific Gas and Electric Company, Southern California Public Power Authority³, Southern California Edison, San Diego Gas and Electric, Sacramento Municipal Utility District, and Turlock Irrigation District ("Joint Utilities") submit these comments to the California Air Resources Board (ARB) to address the 45-day Amendments to the Cap-and-Trade Program.

INTRODUCTION

The Joint Utilities' comments on the staff proposals are detailed below. The following summarizes the key issues:

- The Joint Utilities Encourage Staff To Continue Exploring Additional Mechanisms To Satisfy The Board Resolution

¹ M-S-R Public Power Agency (M-S-R) is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding.

² NCPA is a not-for-profit Joint Powers Agency, whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and whose Associate Member is the Plumas-Sierra Rural Electric Cooperative

³ 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.

- The Joint Utilities Support The Proposed Compliance Offset Protocol for Mine Methane Capture Projects
- ARB Should Not Unreasonably Restrict an Entity’s Auction Participation
- ARB Should Not Include Burdensome Staff Reporting Requirements
- Investigation Disclosure Language Should be Modified
- The Definition of Resource Shuffling Should Acknowledge That Not All Substitutions of Electricity Constitute Resource Shuffling
- Disclosure of Cap-and-Trade Consultants or Advisors
- ARB Should Not Impose Unreasonable Transfer Requirements Because The Current Regulation Provides Significant Transparency

A. Sections 95870 and 95913 – Cost Containment. The Joint Utilities Encourage Staff To Continue Exploring Additional Mechanisms To Satisfy The Board Resolution

The Joint Utilities appreciate the Board’s direction contained in Resolution 12-51⁴ and commend staff for engaging stakeholders and experts in an open dialogue about how to satisfy the Board Resolution. However, the staff’s proposal alone does not satisfy Board Resolution 12-51 and, therefore, should only be considered as one aspect of a larger cost containment package yet to be finalized.

The Joint Utilities agree with the three essential elements of Board Resolution 12-51 that must be satisfied to create a comprehensive cost containment solution.

1. Ensure that allowance prices will not exceed the highest price tier of the Allowance Price Containment Reserve (APCR)

In the Initial Statement of Reasons that accompanied the 45-day language, Staff states that “if unanticipated conditions create a long-term and persistent increase in the demand for allowances... the proposal would not ensure that allowance prices do not exceed the Reserve top tier price.”⁵

The Joint Utilities also point to the EMAC analysis,⁶ which demonstrates there is a “non-trivial possibility” that auction prices could reach unacceptably high levels due to a systemic imbalance in market fundamentals. The study’s conclusion warns “that there might be the potential for non-competitive activities by some market participants that could artificially inflate or depress the price.”

⁴ Resolution 12-51, page 2. California Air Resources Board, October 2010; <http://www.arb.ca.gov/cc/capandtrade/final-resolution-october-2012.pdf>.

⁵ Page 43 of ARB 2013 Initial Statement of Reasons: <http://www.arb.ca.gov/regact/2013/capandtrade13/capandtrade13isor.pdf>

⁶ Forecasting Supply and Demand Balance in California’s Greenhouse Gas Cap and Trade Market, March 12, 2013: <http://ei.haas.berkeley.edu/pdf/Forecasting%20CA%20Cap%20and%20Trade.pdf>

The Joint Utilities agree that the risk of allowance prices increasing above the 3rd-tier APCR price under all market conditions, foreseen or unforeseen, needs to be eliminated.

2. Maintain the environmental objectives of the program

The Joint Utilities maintain that there are reasonable options available for eliminating the risk of extremely high auction prices that maintain the environmental integrity of the program. Many of these options were presented by market experts and stakeholders in the June 25, 2013 workshop (including the Joint Utilities Group⁷).

The Joint Utilities agree that no solution would be complete if it didn't preserve the environmental integrity of the Cap-and-Trade structure.

3. Assure effectiveness during the period of 2013-2020

As 2013 is already coming to a close, it seems clear that staff's plans to implement a solution that ensures allowances prices remain reasonable will not be effective in the early part of the 2013-2020 period. Severin Borenstein, member of the EMAC, wrote in his September 30, 2013 blog, "[w]hile the proposed changes are a small step in the right direction, they don't go far enough to address the fundamental risk to the market from a surge in emissions that could cause the price of allowances to skyrocket."⁸ Delay in establishing a solid protection against prices increasing above the third tier of the APCR prolongs the market exposure to significant risks.

The Joint Utilities feel greater urgency is required to address the risks of unacceptably high cap-and-trade allowance prices in the 2014 to 2020 timeframe.

B. Appendix A: The Joint Utilities Support The Proposed Compliance Offset Protocol for Mine Methane Capture Projects

The Joint Utilities support the adoption of additional offset protocols to provide an adequate supply of offset credits to the Cap-and-Trade market. The use of high-quality offset credits is an effective cost-containment tool and an essential component of a successful Cap-and-Trade program; however without adequate supply, the cost-containment benefit of offset credits will not be fully realized.

Therefore, the Joint Utilities urge ARB to approve the proposed Mine Methane Capture (MMC) and forthcoming Rice Cultivation offset protocols, which will pave the way for additional offset credit supply. Approval of the MMC offset protocol is important because it can facilitate the generation of a significant supply of offset credits. While estimates vary, MMC projects have the potential to reduce tens of millions of tons of CO₂e from mines whose methane would

⁷ See Option 3 of the JUG proposal <http://www.arb.ca.gov/cc/capandtrade/meetings/062513/industry-present.pdf>

⁸ http://energyathaas.wordpress.com/2013/09/30/californias-cap-and-trade-market-still-needs-a-price-ceiling/?utm_source=Blog+Sep+30%2C+2013&utm_campaign=blog38&utm_medium=email

otherwise be released to the atmosphere. Additionally, the Joint Utilities support staff in their efforts to review and revise existing protocols, which will help to ensure technical accuracy and program integrity, and to maximize the supply of offsets from existing protocols.

C. Section 95912. ARB Should Not Unreasonably Restrict an Entity's Auction

Participation

The Joint Utilities oppose Section 95912(d)(5) of the proposed amendments, which may bar an entity from participating in an auction if there are changes to information provided in an entity's auction or account application 30 days before or 15 days after an auction. This proposal is unduly restrictive and should be removed or significantly modified. The activities described in the auction or account application cover a range of activities that a company may need to perform in the course of its business and simply cannot remain static for 180 days a year in order to participate in the Cap-and-Trade program.

For example, an entity may need to raise capital to finance its activities, impacting information provided in its auction application.⁹ Proposed Section 95912(d)(5) jeopardizes an entity's ability to participate in ARB auctions because of such an activity. Combined with the proposed revisions to section 95830, Section 95912(d)(5) unreasonably threatens an entity's auction participation based on changes to the list of employees, without regard for whether or not the change is within the control of the registered entity. This restriction is unnecessarily burdensome, and particularly so for large compliance entities with many employees working on Cap-and-Trade Program issues. It is unreasonable to assume an entity can prevent employee job functions from changing within each of these 45-day periods, or restrict employees from leaving and/or changing jobs.

While ARB staff has stated that Section 95912(d)(5) is intended to facilitate effective settlement of the auctions and support market monitoring, and is not intended to be overly burdensome, Section 95912(d)(5) should be rejected because it unnecessarily jeopardizes an entity's auction participation for activities associated with its normal business operations.

D. Section 95830. ARB Should Not Include Burdensome Staff Reporting Requirements

The Joint Utilities oppose the introduction of Section 95830(c)(1)(I), requiring the reporting of names and contact information for all persons employed by a registered entity that either has access to any information regarding compliance instrument transactions or holdings; or is involved in decisions regarding transactions or holding of compliance instruments. This provision is overly broad and unnecessary. It would require entities to track and report hundreds of individuals to ARB for large organizations, including those individuals who may inadvertently

⁹ See Section 95912 (d)(4)(a) identifying information concerning capital structure of an entity as among the auction participation application requirements

obtain information, and update such information within ten days of any changes. Due to the broad scope of individuals covered by Section 95830(c)(1)(I), administration of such a provision would undoubtedly prove burdensome and costly. Further, combined with Proposed Section 95912(d)(5), updates or changes to this information would unreasonably jeopardize an entity's auction participation.

The strict confidentiality requirements already provided for in the Regulation and the security requirements for access to and use of CITSS are sufficient to protect the Cap-and-Trade market from manipulation. The additional information currently required of individuals who register as voluntary associated entities (VAEs) in the amended regulation should prove sufficient to monitor conflicts of interest and the use of information gained on the job for personal benefit.

E. Section 95912. Investigation Disclosure Language Should be Modified

None of the Joint Utilities would want to violate the Cap-and-Trade Regulation due to a failure to report a minor administrative violation of a CFTC rule connected to its energy purchases, which would likely be unrelated to their Cap-and-Trade compliance. The Joint Utilities recommend ARB match the auction platform provisions more closely by revising Section 95912(d)(4)(E) to allow an entity to list any previous or ongoing investigations if it is not able to attest that there are no such investigations. ARB should also confirm that providing such a list will not prohibit an entity from participating in the auction.

F. Section 95852. The Definition of Resource Shuffling Should Acknowledge That Not All Substitutions of Electricity Constitute Resource Shuffling

To ensure that legitimate transactions that are not currently defined in the "safe harbors" are not later deemed to be resource shuffling, and acknowledging staff's own recognition that there are "several situations in which substitutions of low emission electricity for higher emission electricity may occur that are not undertaken to reduce compliance obligations,"¹⁰ the Joint Utilities recommend that section 95802(a)(252) be amended to read:

"Resource Shuffling" means any plan, scheme, or artifice to receive credit based on emissions reductions that have not occurred, involving the delivery of electricity to the California grid undertaken by a First Deliverer of Electricity to substitute electricity deliveries from sources with relatively lower emissions for electricity deliveries from sources with relatively higher emissions resources to reduce its emissions compliance obligation. Not all substitutions of electricity between sources with different emission levels are resource shuffling, and Resource shuffling does not include substitution of electricity deliveries from sources with relatively lower emissions for electricity deliveries from sources

¹⁰ ISOR, p. 30.

with relatively higher emissions resources when the substitution occurs pursuant to the conditions listed in section 95852(b)(2)(A).

G. Section 95923. Disclosure of Cap-and-Trade Consultants or Advisors

The proposed definition for a “Cap-and-Trade Consultant or Advisor” is too broad and could result in the waiver of attorney-client privilege. Attorneys are already subject to strict conflict of interest rules and therefore do not need to be captured in this definition. The Joint Utilities recommend Section 95923(a) explicitly exclude attorneys.

H. Section 95921. ARB Should Not Impose Unreasonable Transfer Requirements Because The Current Regulation Provides Significant Transparency

The Joint Utilities oppose ARB’s proposed amendments to Section 95921(a)(3) which impose penalties on parties to a contract involving a transfer of compliance instruments if the compliance instrument transfer occurs more than three days after the execution date or termination date of the transaction agreement, or more than three days from the date of “transfer of consideration from the purchaser of the compliance instrument to the seller.” Parties to contracts involving compliance instruments should be able to structure the transfer of allowances and payments (including deposits, guarantees and other early payments) in a manner appropriate to the underlying transaction.

The Joint Utilities are concerned that the proposed rules will have the unintended consequence of unduly complicating transactional structures for compliance instruments, resulting in increased costs of compliance. Moreover, we question ARB’s need to prohibit certain transactional provisions given the current robust suite of market monitoring tools provided in Section 95921, which provides the agency with sufficient information to monitor participants and the market without the additional requirements proposed under 95921(b)(3).