Pacific Gas and Electric Company

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Steven Cliff, Ph.D.
Chief - Climate Change Market Branch
California Air Resources Board
1001 I Street
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Re: Pacific Gas and Electric Company's Comments on the Air Resources Board Workshop to Discuss Compliance and Information Requirements

Dear Dr. Cliff:

Pacific Gas and Electric Company (PG&E) welcomes the opportunity to submit these comments on the Air Resources Board's (ARB) Workshop to Discuss Compliance and Information Requirements.

I. INTRODUCTION

PG&E's comments on the staff proposals are detailed in Section II below. The following summarizes the key issues:

- Public Information Sharing
  - Release of Individual Entities' Compliance Account Balances
  - Release of Retired Compliance Instrument Data
- Compliance Timelines
- Compliance Instrument Retirement Order
- New Information Reporting

II. DISCUSSION

A. Public Information Sharing

PG&E supports staff's desire to promote market transparency through providing additional information to the public, but observes that this priority should be balanced with attempts to avoid compromising an individual entity's ability to execute its compliance strategy. ARB's information sharing proposals may inadvertently increase the potential for market manipulation

because only entities with compliance obligations will be impacted by these changes. Not all market participants have compliance obligations (e.g., banks, marketers, and brokers).

PG&E fully supports the provision of all market data, on a confidential basis, to the Market Monitor and Emissions Market Assessment Committee (EMAC). A successful balance of these two principles, full disclosure to the Market Monitor and privacy of market-sensitive information, will minimize a market participant's ability to game or manipulate the market by taking advantage of a regulated entity's position. Striking this balance is of particular importance to PG&E because utilities' compliance obligations are directly tied to consumer demand, preventing them from simply lowering production as a means of meeting compliance obligations. This makes utilities like PG&E particularly vulnerable to market manipulation in the Cap-and-Trade market.

Release of Individual Entities' Compliance Account Balances

PG&E does not support ARB's current proposal to publish individual entities' compliance account balances on a quarterly basis. Doing so would not achieve ARB's objective of providing the public with information about whether entities are in compliance with the regulation, nor provide valuable information on potential market manipulation. It could, meanwhile, compromise an entity's negotiating position as it seeks to procure compliance instruments to meet its obligation, or even facilitate market manipulation.

As previously mentioned in PG&E's comments on the September 24, 2012 EMAC meeting and the February 2012 ARB Workshop to Discuss Public Information Sharing from the Cap-and-Trade Program, information sharing at a sufficiently aggregated level is beneficial and contributes to a well-functioning market. Aggregated data could be publicly distributed after market activity, providing greater transparency about how the market is functioning without disadvantaging specific participants. Limiting access to more detailed data to the EMAC and Market Monitor would still provide benefits to the Cap-and-Trade market as a whole as these entities are tasked with identifying and investigating market anomalies.

Section 95921(e)(4) merely mentions the release of "the quantity and serial numbers of compliance instruments contained in compliance accounts in a timely manner." The language references compliance accounts in the plural, suggesting this requirement could be met through a much higher level of data aggregation than proposed by staff. This can be achieved through supplying the market with information at appropriate levels of aggregation at times that would not reveal a regulated entity's position.

PG&E also suggests the following alternatives, which will both provide valuable information to market participants and preserve the confidentiality of market-sensitive information:

- Provide aggregate volumes by product type (allowance or offset) and allowance vintage
- If ARB prefers more granularity, release information quarterly if aggregated by sector only if the information does not violate a standard like the "15/15 Rule" (see description below).

California investor-owned utilities (IOUs) must abide by the "15/15 Rule" to protect customer confidentiality. The 15/15 Rule, adopted by the California Public Utilities Commission (CPUC) in Decision 97-10-031, requires that any aggregated information provided by the IOUs must be made up of at least 15 customers, and a single customer's load must be less than 15 percent of an assigned category. If the number of customers in the compiled data is below 15, or if a single customer's load is more than 15 percent of the total data, categories must be combined before the information is released. If ARB felt the need to release aggregate information for entities with a compliance obligation, similar logic could be applied to regulated entities' account information.

Revealing such commercially-sensitive details as an entity's compliance account balance, combined with information already publicly available, could provide insight into each participant's market position for others to exploit. An entity's account balance thus constitutes information that has commercial or economic value, is not generally known to the public and is therefore a "Trade Secret" as defined in Government Code Section 6254.7(d) and Civil Code 3426.1(d) (referred to in Evidence Code Section 1060). Revealing such trade secret or confidential information would also violate ARB's own policy and regulations.[1]

In addition, disclosing entity-specific compliance account information may, in effect, amount to misleading market information. Banks and marketers without compliance accounts could hold instruments that compliance entities already have under contract to meet their obligations, which would not be reported. Disclosing quarterly compliance account information at the entity-level could also affect market behavior and the actual information provided because entities might then decide to conduct transfers to their compliance accounts right before or after public information is collected to manipulate the information that is shared publicly.

Finally, releasing entity-specific compliance account information is not standard industry practice. This information is not released by any other existing GHG market, such as the Regional Greenhouse Gas Initiative (RGGI) and the European Union Emissions Trading System (EU ETS). To address the public's concern about regulated entities' compliance with AB 32,

[1] 17 CCR 91011 and ARB's Public Records Act FAQ at http://www.arb.ca.gov/html/pubrecsfaq.htm

ARB should instead publicize instances of non-compliance by regulated entities, the consequences of such non-compliance, and any corrective action taken by the offending entities.

Release of Retired Compliance Instrument Data

PG&E objects to the release of entity-level information on compliance instruments contained in ARB's retirement account for many of the same reasons that entity-level compliance account information should not be shared:

- The number of compliance instruments retired by an entity is not an accurate indicator of whether an entity will meet its compliance obligation, which could lead to a misunderstanding of an entity's position, and cause unnecessary politicization of an entity's progress towards meeting its obligation;
- It could, along with other information about entities' compliance activities, provide insight into each participant's market position for others to exploit, and compromise their negotiating positions;
- This information is not released in any other existing GHG market, such as RGGI and the EU ETS; and
- Like the compliance account balance information, retired instrument data constitutes trade secret and confidential information and should not be disclosed by ARB.

Also, since any type and vintage of eligible offsets can be used to meet any year's compliance obligation (as long as they were issued in the year of or prior to the year of the compliance obligation being met), detail on offset vintage and type is irrelevant, and does not need to be shared.

Therefore, PG&E recommends that ARB should only publicize instances of non-compliance by regulated entities, and annually release retired compliance instrument data by product type (allowance or offset) and allowance vintage, aggregated across regulated entities or by sector, if the information does not violate a standard like the "15/15 Rule."

B. Compliance Timelines

As noted on page 20 of ARB's presentation at the June 27th workshop, natural gas suppliers will not know their compliance obligations until after the registration period ends for the September APCR sale. Without an auction or APCR sale after its obligation is known but prior to the compliance obligation due date, PG&E and its customers will be more vulnerable to price risk since the company would be required to procure any additional compliance instruments to fulfill its obligation in the secondary market within less than a month. PG&E remains concerned about this issue and looks forward to working with ARB on how to address this problem.

C. Compliance Instrument Retirement Order

PG&E supports staff's proposals on the retirement order to meet the annual and triennial compliance obligations. Because entities can only meet up to 8% of their compliance obligation with offset credits, it is appropriate that they be retired first if they have already been placed in an entity's compliance account. Since APCR allowances are placed directly into compliance accounts, it is logical that they be retired next. Retiring the earliest vintages of allowances after offsets and APCR allowances is acceptable since the earliest vintages of allowances would apply the most broadly to an entity's compliance obligation.

PG&E appreciates ARB's clarification that the 8% quantitative usage limit for offset credits applies to the end of a compliance period, rather than on an annual basis. However, given that offset supply is still forecast to be insufficient, PG&E recommends that ARB relax the constraints on offset usage, without increasing the quantitative usage limit, to more fully access the cost containment benefit of offsets.

D. New Information Reporting

PG&E supports the proposal for all entities to specify a "zero price" for transfer. This will assist PG&E in recording its transfers to counterparties under tolling agreements.

PG&E would like to better understand ARB's goal in requiring information in CITSS on exchange-traded contracts, to ensure the requirements are designed to best support ARB's goal. In the June 25th presentation materials, it is not clear whether the information will be required only for physically-delivered exchange contracts as part of the delivery process via CITSS, or whether ARB seeks this information on all exchange transactions prior to delivery. Seeking information only upon physical delivery may help shed light on past transactions in the market, but it would not provide any information relative to positions being taken in the futures market.

III. CONCLUSION

Thank you for the opportunity to submit these comments. PG&E encourages ARB to carefully review these suggestions and adopt the recommended changes before pursuing further action. We look forward to continuing our work with ARB to ensure the successful implementation of the Cap-and-Trade Program.

Very truly yours,

/s/

Mark C. Krausse

cc: Rajinder Sahota, via email
Jakub Zielkiewicz, via email
Sean Donovan, via email
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