COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY TO THE CALIFORNIA AIR RESOURCES BOARD ON ITS PROPOSED 15-DAY MODIFICATIONS TO THE CALIFORNIA CAP-AND-TRADE REGULATION

JENNIFER T. SHIGEKAWA
NANCY CHUNG ALLRED

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6016
Facsimile: (626) 302-6962
E-mail: Nancy.Allred@sce.com

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I.

INTRODUCTION

Southern California Edison Company ("SCE") respectfully submits its comments to the California Air Resources Board ("ARB") on its Proposed 15-Day Modifications to the California Cap-and Trade Regulation[1] ("15-Day Modifications").[2] SCE appreciates this opportunity for covered entities to suggest modifications and improvements to the regulation. SCE's comments focus on the following:

- SCE requests modifications to ARB's proposed language to make investor-owned utility disclosures of auction information required by the California Public Utilities Commission ("CPUC") practicable;
- The ARB should narrow the requirement for entities to provide employee contact information when registering with the ARB;
- The ARB should remove the requirement for auction applicants to disclose information regarding market investigations concerning other entities with which they share a corporate association;
- The ARB should not be able to deny an entity's auction application solely due to the status change of a market investigation against the participating entity;
- The Compliance Instrument Tracking System Service ("CITSS") user terms and conditions should protect confidential information from public disclosure and should place liability with WCI, Inc. for the proper functioning of the CITSS web platform;
- In order to ensure consistency with Renewables Portfolio Standard ("RPS") rules, SCE requests additional modification to Renewable Energy Credit ("REC") retirement requirements for RPS adjustment claims; and
- The ARB should allow covered entities to select which compliance instruments they will use to meet their own compliance obligations, or clarify its current proposal.

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1 Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms ("Cap-and-Trade Regulation"), Cal. Code Regs., tit. 17, § 95856(f)(1).

2 California Air Resources Board, Cap-and-Trade Regulation 15-Day Modifications, March 2014 ("15-Day Modifications"), *available at* http://www.arb.ca.gov/regact/2013/capandtrade13/capandtrade13.htm.

II.

SCE REQUESTS MODIFICATIONS TO THE ARB'S PROPOSED LANGUAGE TO MAKE INVESTOR-OWNED UTILITY DISCLOSURES OF AUCTION INFORMATION REQUIRED BY THE CPUC PRACTICABLE

SCE supports the ARB's decision to modify Section 95914(c)(2)(D) of the Cap-and-Trade Regulation to allow disclosures of confidential auction information by investor-owned utilities as required by the CPUC. However, it is unnecessarily burdensome to require regulated entities to provide the ARB with a justification for the disclosure within 10 business days of each disclosure. The utilities regularly receive data requests from regulatory agencies relating to their procurement activity. Requiring the utilities to report each auction-related disclosure to the ARB and to provide statutory or regulatory references for each occurrence would be burdensome, impracticable and, in many cases, redundant. SCE, therefore, suggests the following changes to the second sentence of Section 95914(c)(2)(D) of the 15-Day Modifications, which, in essence, revert to language that the ARB proposed in its January 2014 Informal Discussion Draft on Proposed Amendments to the California Cap-and-Trade Regulation:

> In the event of a disclosure pursuant to this section, **upon request of the Executive Officer** the entity regulated by the agency must provide ~~to the Executive Officer within 10 business days,~~ the statutory or regulatory reference or the general order, decision, or ruling to ARB that requires the disclosure of the specific information related to bidding strategy **within 10 business days of such request**.[3]

Moreover, SCE encourages the ARB to continue to work with the CPUC to better understand disclosure requirements for investor-owned utilities.

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3 15-Day Modifications, Section 95914(c)(2)(D), at 248.

III.

THE ARB SHOULD NARROW THE REQUIREMENT FOR ENTITIES TO PROVIDE EMPLOYEE CONTACT INFORMATION WHEN REGISTERING WITH THE ARB

SCE appreciates the ARB's efforts to more specifically address which employee functions and responsibilities would necessitate covered entities to close contact information pursuant to Section 95830(c)(1)(I) of the 15-Day Modifications. However, SCE believes that the proposed language still captures far more employees than the ARB intends to capture, or needs to know about, in order to perform its market monitoring duties.

As currently proposed, the ARB would require registering entities to report the names and contact information for employees "with knowledge of the entity's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions)"[4] The requirements imposed by this language would result in reporting contact information not only for personnel who execute or oversee transactions involving compliance instruments, but also employees in risk control, settlements, accounting, compliance, legal, and various other job functions who have only tangential involvement in the market for cap-and-trade compliance instruments and no power to influence the entity's market transactions. As the roles and responsibilities of these employees may change frequently, this requirement would present an onerous administrative challenge for participating entities to maintain and update on a quarterly schedule.

SCE proposes the following language changes (in **bold**) to Section 95830(c)(1)(I) of the 15-Day Modifications: "Names and contact information for all persons employed by the entity with **the authority to initiate or approve transactions of compliance instruments** ~~knowledge of the entity's market position (current and/or expected covered emissions)~~." SCE's proposed language would relieve some of the administrative burden on participating entities while still

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[4] 15-Day Modifications, Section 95830(c)(1)(I), at 81.

allowing the ARB to collect contact information on employees with direct transactional or decision-making involvement in the market for compliance instruments.

IV.

THE ARB SHOULD REMOVE THE REQUIREMENT FOR AUCTION APPLICANTS TO DISCLOSE INFORMATION REGARDING MARKET INVESTIGATIONS CONCERNING OTHER ENTITIES WITH WHICH THEY SHARE A CORPORATE ASSOCIATION

As currently proposed, Section 95912(d)(4)(E) of the 15-Day Modifications would require entities applying to participate in an ARB auction to disclose "the existence and status of any ongoing investigation or an investigation that has occurred within the last ten years" for market rule violations committed by an entity with which the participating entity shares a direct or indirect corporate association. SCE appreciates the ARB's attempts to clarify these rules in the 15-Day Modifications. However, requiring this disclosure is unreasonable because existing rules that govern affiliate conduct and standard corporate protocols for information disclosure could prohibit employees of the participating company from accessing this information.

Many entities that participate in the ARB auctions, including investor-owned utilities such as SCE, operate as wholly-owned subsidiaries of parent companies, which may also own other commercial entities in whole or in part. These other subsidiary companies would fall under the ARB's definition of direct or indirect corporate associations as set forth in the Cap-and-Trade Regulation and, thus, would be included in the disclosure requirement in an auction application. However, affiliate conduct rules could prevent one subsidiary from knowing whether another subsidiary had been subject to a pending or completed legal investigations. Thus, the ARB cannot reasonably require that an entity applying to participate in the auctions to attest to

potentially sensitive legal information that it may not have access to about its affiliated corporate entities.

V.

THE ARB SHOULD NOT BE ABLE TO DENY AN ENTITY'S AUCTION APPLICATION SOLELY DUE TO THE STATUS CHANGE OF A MARKET INVESTIGATION AGAINST THE PARTICIPATING ENTITY

In Section 95912(d)(4)(E) of the 15-Day Modifications, the ARB revised auction application requirements to specify that the attestation associated with the application need only disclose the existence of any market investigations against the entity, rather than attesting to the absence of any such investigations. SCE applauds this change, which should provide compliance entities with more certainty regarding their ability to participate in the quarterly ARB auctions. However, to give participating entities full confidence in the auction application process, SCE urges the ARB to add the following language (in **bold**) to Section 95912(d)(5) of the 15-Day Modifications:

> An entity with any changes to the auction application information listed in subsection 95912(d)(4) within 30 days prior to an auction**, other than changes to the status of any investigation reported pursuant to subsection 95912(d)(4)(E) in which no conviction, penalties or fines have been assessed against the participating entity,** may be denied participation in the auction. For the purposes of changes to indirect and direct corporate associations, this section only applies to those corporate associates with entities registered in the tracking system.[5]

SCE's proposed language will give market participants greater assurance that the ARB would not unreasonably deny an entity's application to participate in an auction based solely on the opening or status change of an investigation against that entity, absent any conviction or penalty being assessed. The ARB already employs strong existing controls around auction

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5 15-Day Modifications, Section 95912(d)(5), at 233.

conduct and market monitoring; additional participation restrictions based on market investigations which may be completely unrelated to the entity's participation in the ARB allowance market[6] would provide no incremental benefit to the proper functioning and security of the ARB auction process.

Without SCE's proposed language, there is an increased risk that major market players may be excluded from participating in the auctions due to their disclosure of a change in the status of an ongoing market investigation occurring near the date of the auction. This unnecessary control measure could encourage these market players to forego the quarterly allowance auctions in favor of secondary markets, which tend to have significantly lower liquidity and lack ARB oversight. As a result, this provision could end up raising compliance costs for all entities and crippling the functioning of the entire allowance market.

VI.

THE CITSS USER TERMS AND CONDITIONS SHOULD PROTECT CONFIDENTIAL INFORMATION FROM PUBLIC DISCLOSURE, AND SHOULD PLACE LIABILITY WITH WCI, INC. FOR THE PROPER FUNCTIONING OF THE CITSS WEB PLATFORM

As currently proposed in Appendix B of the 15-Day Modifications, the CITSS User Terms and Conditions are inconsistent with industry standards for website reliability and the confidentiality of user information. SCE agrees that it is important to specify up front the terms and conditions under which participating entities agree to use the CITSS. However, SCE objects to terms that risk the disclosure of confidential information and do not guarantee the reliability of the system. Such terms may force participating entities to choose between obeying their risk

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6 It is common practice for regulators in power, natural gas, securities, and other markets to investigate the actions of many market participants in response to any abnormal functioning of the market. Such regulators do not always inform the market participants that they are being investigated, and the investigations frequently conclude with many, if not all, of the investigated entities cleared of any charges.

policies governing the use of Internet platforms or complying with the Cap-and-Trade Regulation, which provides for no alternative compliance mechanism outside of the CITSS.

The proposed language of the CITSS User Terms and Conditions provides inadequate safeguards around confidential information stored on the CITSS web platform by compliance entities and other users of the site. For example, the Terms and Conditions state that the ARB "may disclose Content to the public to the extent the disclosure is … [not prohibited] by California law," where Content is defined as "all information, data, text, or other materials that User provides to ARB or WCI, Inc. through use of CITSS." The proposed language thereby gives the ARB the discretion to release holding and compliance account balances held by compliance entities or other participants to the public. The release of this market-sensitive information to the public without a significant lag time (e.g., after the end of a compliance period) could encourage manipulation of the allowance market, as the public could gain insight into compliance entities' bid strategies and take advantage of any entity with a short position near the end of a compliance period.

Additionally, the CPUC Matrix of Allowed Confidential Treatment of Investor Owned Utility (IOU) Data protects the investor-owned utilities' net open position information as confidential due to its market-sensitive nature.[7] Position information stored in CITSS is clearly protected by regulations promulgated by another State agency.

In the ARB's current regulatory framework, CITSS is the only available mechanism for meeting compliance obligations. However, under Section 4.1 of the CITSS User Terms and Conditions, compliance entities are prohibited from seeking any legal damages against the ARB or WCI, Inc. arising from the failure of the CITSS platform. This provision is problematic because it appears to insulate the ARB and WCI, Inc. from liability if the CITSS platform were to fail and prevent compliance entities from meeting their compliance obligations in a timely manner. Thus, if the ARB levied penalties against a compliance entity for failing to meet a

7 R.05-06-040, Appendix 1.

compliance obligation by a mandated deadline, even if the failure was a direct result of the CITSS platform malfunctioning, that entity would have no recourse against the operator of the platform. The current industry standard for user agreements involving Internet platforms includes an availability guarantee on the part of the platform operator of 99 percent availability or more. Not only does the ARB fail to make any such guarantee of the availability of the CITSS, it places the burden of economic harm on compliance entities in the event its Internet platform malfunctions. In order to better meet the applicable industry standard, the ARB should revise the liability provisions of the CITSS User Terms and Conditions to specify that WCI, Inc., as the creator and operator of the platform, will guarantee the availability of the CITSS platform to registered users at least 99 percent of the time, and that the ARB will postpone compliance deadlines in the event of a failure of the CITSS platform at any point during the 72-hour period preceding a compliance deadline.

VII.

IN ORDER TO ENSURE CONSISTENCY WITH RPS RULES, SCE REQUESTS ADDITIONAL MODIFICATION TO REC RETIREMENT REQUIREMENTS FOR RPS ADJUSTMENT CLAIMS

SCE appreciates the ARB's attempts to clarify the REC retirement requirements for RPS adjustment claims. SCE suggests that the ARB adjust the language further to ensure consistency with the compliance timeframe established under California's RPS program. Specifically, SCE suggests the following modifications (in **bold**) to Section 95852(b)(4)(B) of the 15-Day Modifications:

> The RECs associated with the electricity claimed for the RPS adjustment must be placed in the retirement subaccount of the entity subject to the California RPS, and party to the contract in 95852(b)(4)(A), in the accounting system established by the CEC pursuant to PUC 399.25 ~~and designated as retired for the purpose of compliance with the California RPS program~~ within 45 days of the reporting deadline specified in section ~~95111(g)~~ **95103(e)** of **the** MRR for the year for which the RPS adjustment is claimed. **The RECs must be designated as retired for the purpose of compliance with the California RPS program on a schedule consistent with the rules governing that program.**

VIII.

THE ARB SHOULD ALLOW COVERED ENTITIES TO SELECT WHICH COMPLIANCE INSTRUMENTS THEY WILL USE TO MEET THEIR OWN COMPLIANCE OBLIGATIONS, OR CLARIFY ITS OWN PROPOSAL

A. SCE Continues to Support Retirement Flexibility as Proposed by Staff at the July 18 ARB Workshop

At the July 18, 2013 ARB Workshop, regulated entities expressed their opposition to the staff-proposed compliance instrument retirement order. To address these concerns, ARB staff suggested that they might allow covered entities to select which compliance instruments in their compliance account to retire prior to a compliance deadline. By allowing entities to self-select the compliance instruments they wish to retire, the ARB-proposed compliance instrument retirement order would only need to be exercised if a covered entity failed to select enough instruments to fulfill its compliance obligation. SCE supports this framework and urges the ARB to adopt such provisions in the Cap-and-Trade Regulation.

Retirement flexibility allows compliance entities to better manage their portfolios and reduces the administrative burden for the regulatory agency. By allowing covered entities to select compliance instruments for retirement, the ARB's regulations would also be in keeping with other environmental compliance trading programs, including the United States Environmental Protection Agency's Acid Rain Program and California's RPS program.

B. The 8% Annual and Triennial Offset Usage Limit Proposal Found in These 15-Day Modifications Needs Clarification

A previous cap-and-trade Discussion Draft would have allowed the ARB to take offsets from an entity's compliance account in excess of the current 8% offset usage limit. Staff indicated that excess offsets would not be returned to the compliance entity's account, nor would they be used for compliance anywhere within the cap-and-trade program. In these 15-Day Modifications, Staff has attempted to solve this problem by applying an 8% offset Quantitative Usage Limit to annual and triennial compliance obligations.[8]

SCE strongly believes that the Quantitative Usage Limit should apply to the total covered emissions of an entity in a given compliance period, regardless of how that entity may or may not have surrendered offsets to satisfy their previous annual compliance obligations. These 15-Day Modifications do not clearly state whether entities unable to surrender offsets in the early years of a compliance period can maintain the ability to turn in offsets totaling up to 8% of their covered emissions at the end of each compliance period. SCE urges the ARB to make this clarification explicit in the 15-Day Modifications to provide additional certainty to covered entities.

IX.
CONCLUSION

SCE appreciates the opportunity to comment on the 15-Day Modifications. SCE continues to urge the ARB to consider cost containment, confidentiality, and market design

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[8] 15-Day Modifications, Section 95856(h)(1)(A), at 136

issues as it develops the proposed amendments to the Cap-and-Trade Regulation, and encourages the ARB to make changes to the regulation in accordance with the language contained herein.

Respectfully submitted,

JENNIFER T. SHIGEKAWA
NANCY CHUNG ALLRED

/s/ Nancy Chung Allred
By: Nancy Chung Allred

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6016
Facsimile: (626) 302-6962
E-mail:Nancy.Allred@sce.com

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