

Comments of the Western Power Trading Forum on 15-Day Proposed Changes to the Cap and Trade Regulation
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The Western Power Trading Forum¹ (WPTF) appreciates the opportunity to provide input to the California Air Resources Board (CARB) on the Proposed Amendments to the California Cap and Trade Regulation.

WPTF provides substantive comments on the following issues in the order they appear in the regulation:

- Disclosure of Employees;
- The scope of “Corporate Associations”;
- Resubmission of Registration Information;
- Surrender of Compliance Instruments;
- The Renewable Portfolio Standard (RPS) Adjustment;
- Attestations Regarding Investigations
- Disclosure of Contractors and Advisors

In keeping with staff instruction provided in the “Notice of Public Availability”, WPTF has provided comments only on “noticed changes” in this 15-day version of the regulation. We have not repeated comments submitted on the 45-day proposed changes on areas that remain unchanged from that version, with the express understanding that CARB staff will fully address these earlier comments in the Final Statement of Reasons.

Disclosure of Employees

CARB has further revised language in Section 95830 (Registration with CARB) requiring CITSS entities to disclose names and contact information of certain employees. The language now requires disclosure only employees “with knowledge of the entity’s market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions).”

While we appreciate staff’s continuing effort to address stakeholder concerns regarding the breadth of this text, the new revision is several steps backward. As we have previously commented, we do not consider it appropriate for CARB to require disclosure of employees who have knowledge of entity’s holdings of compliance instruments simply because of their administrative and legal duties. Thus we strongly consider that the disclosure obligation should apply only to employees who both have knowledge of the entity’s compliance instrument market position and the ability to influence this market position through decision-making regarding compliance instrument procurement or transfer.

¹ WPTF is a diverse organization comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West. WPTF has over 60 members participating in power markets within California, western states, as well as other markets across the United States.

WPTF also considers the addition of new language that would extend the disclosure requirement to employees with knowledge of “current and/or expected covered emissions” to be inappropriate. First, it would cover all employees involved in the internal greenhouse gas inventory and reporting or mitigation efforts, regardless of whether those employees also manage holdings of compliance instruments. Second, for electricity importers, this provision would require disclosure of all employees involved in trading, scheduling, settlement or accounting of power transactions, as these individuals would have some knowledge of the emissions exposure created by those transactions.

We therefore urge that staff to modify section 95830(c)(1)(i) to read:

Names and contact information for all persons employed by the entity with knowledge of the entity’s market position (current and/or expected holdings of compliance instruments) ~~current and/or expected covered emissions~~ that are authorized by the entity to initiate or approve compliance instrument transaction agreements or transfer requests.

Scope of Corporate Associations

WPTF remains extremely concerned that this version of the regulation retains changes in section 95833 that expanded the scope of corporate associations to include other entities that are not subject to the cap and trade program; and changes proposed in January that would identify multiple covered entities whose compliance strategy is managed by a single account manager and treat these entities as having a direct corporate association. The wide net created by the proposed scope in combination with other regulatory requirements for disclosure of information regarding entities with which a registered entity has a corporate association, in particular the provision in section 95912 requiring an attestation of any investigation, creates a burdensome and possible unworkable standard.

We therefore urge CARB to narrow the scope of corporate associations so that it does not extend to entities that are not subject to the cap and trade program and to eliminate section 95833(f)(7).

Resubmission of Registration Information

WPTF appreciates the modification to section 95834 so that resubmission of information for individual registered in CITSS is only required upon request of the Executive Officer for such information. However, we believe resubmission of information should only be required in exceptional circumstances, and not as a matter of standard practice. Additionally, it would be extremely useful for registered entities and individuals to understand the circumstances for which registration information for individuals will be required to be resubmitted. We therefore reiterate our request that CARB clarify and limit the conditions under which resubmission and re-verification of information would be required.

RPS Adjustment

WPTF greatly appreciates the proposed modifications to language in section 95852(b)(4) regarding requirements for use of the Renewable Portfolio Standard (RPS) Adjustment. In particular, modification of the contractual requirements to allow an importer to have contract for renewable

electricity or a contract with an RPS obligated entity that has ownership or contract rights to the renewable electricity will better align with normal business practices under the RPS program.

Additionally, staff have modified the renewable energy credit (REC) retirement obligation so that the REC must be moved into the retirement subaccount of the RPS obligated entity within 45 days of the reporting deadline for the year for which the RPS adjustment is claimed. This change is helpful in that it would effectively allow an importer to import firming and shaping energy one year, then take the RPS adjustment in a later year when the REC is retired. However, we remain concerned that it would require 'carrying' of a carbon cost for firming and shaping energy until such a time that associated RECs are retired pursuant to RPS program rules. While carrying of the carbon cost may not be difficult for large utilities, it would be challenging for energy service providers and create an unnecessary disconnect between the reported carbon obligation and actual energy transactions.

Surrender of Compliance Instruments

CARB staff proposes to reinstate annual retirement of compliance instruments in section 95856(h)(1). WPTF's preference is to retain the approach taken in the 45-day text, which would have eliminated the annual retirement of compliance instruments and replaced it with provisions for CARB to evaluate annually whether each covered entity has sufficient instruments in its compliance account. The fact that this approach would obviate the need for an annual offset cap is the fundamental reason that we prefer to eliminate annual retirement.

If staff decides to retain annual retirement, then WPTF would oppose imposition of an annual 8% offset limit. Instead, we recommend that CARB implement a flag in CITSS that would notify a covered entity if it designates a quantity of offsets in excess of 8% of covered emissions to date for movement between its compliance account and the retirement account. At the end of the compliance period, any offsets that have been moved to the Retirement account in excess of the 8% limit for that period should be applied toward the entity's compliance in the subsequent compliance period. In no circumstances, should annual retirement of offsets in excess of 8% lead to an entity's loss of those offsets after the triennial retirement.

Lastly, we reiterate our request that CARB eliminate the mandated order of retirement instruments and instead build functionality into CITSS that would enable individual account holders to designate compliance instruments, by type and vintage, for retirement. If that functionality cannot be built into CITSS, WPTF suggests entities be given an opportunity to provide written instructions to the Executive Officer, a minimum of five (5) days prior to the annual and triennial surrender deadlines. If an entity fails to provide such instructions, the default retirement order would apply. WPTF believes that the Quantitative Usage Limit should apply in both instances, if an entity provides an order of retirement, or if the default retirement order is utilized. This will prevent the "over retirement" of instruments that may not contribute toward satisfying a compliance obligation.

Attestation regarding Investigations

CARB has proposed further modification of a provision in section 95912 that would require auction applicants to submit an attestation regarding previous or pending investigations. Whereas the earlier version would require the auction applicant to disclose investigation of any entity with whom the applicant has a corporate association, the proposed change would limit this to other entities with which the entity has a corporate association and that participate in carbon, fuel or electricity markets. Although we appreciate staff efforts to address stakeholder concerns regarding this disclosure requirement, that fact that the regulation casts such a wide net for corporate associations means that the limitation to other entities that participate in carbon, fuel or electricity markets will have little practical effect.

WPTF understands that CARB's objective in requiring such an attestation is to identify evidence of potential market manipulation. However, an ongoing investigation does not mean market manipulation has occurred. CARB should only be concerned with collecting information on actual convictions.

To address these concerns, and make compliance with this requirement feasible, we request staff to modify the investigation attestation so that it applies only to investigations that have resulted in a conviction and only to other entities with which the applicant has a direct corporate association and that participate in carbon, fuel or electricity markets, as follows:

An attestation disclosing the existence and status of any conviction ~~ongoing investigation or an investigation~~ that has occurred within the last ten years with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, environmental, or financial market for that the entity participating in the auction, and ~~all any other entity entities with whom the entity has a corporate association, direct corporate association, or indirect corporate association~~ pursuant to section 95833 that participates in a carbon, fuel, or electricity market. The attestation must be updated to reflect any conviction ~~change in the status of an investigation~~ that has occurred since the most recent auction application attestation was submitted;

Disclosure of Consultants and Advisors

CARB has slightly modified provisions first introduced in September that would require entities registered in the cap and trade program to disclose the names of individuals or entities providing services related to the cap and trade program. These modifications appear to expand the scope of this provision further, as the provisions is explicitly not limited to consultants providing offset or verification services.

WPTF notes that lists provided in section 95979(b)(2) of the regulation and 951333(b)(2) of MRR (which 95923 includes by reference) cover a broad range of services. We consider the breadth of these list to be appropriate given the need to identify possible conflicts of interest of staff for verification bodies. However, we do not believe that responsibility for identifying conflicts of interest in verification staff should also fall on covered entities. Therefore, we do not consider identification of potential conflicts of interest to be a valid objective for section 95923.

Rather, in keeping with the approach we recommend for disclosure of employees of registered entities in section 95839(I), WPTF considers that the objective of 95923 should be to identify

consultants and advisors with the ability to either influence an registered entities transactions of compliance instruments, or who have access to information on these holdings and transactions of compliance (and, because of their status as consultants and advisors, could be in position to share this information with other registered entities).

As with requirements for employee disclosure in section 95839(I), WPTF considers it inappropriate for CARB to require disclosure of consultants and advisors who provide services relating to GHG assessment or auditing, inventory development, internal mitigation projects, reporting, or similar. Such services are a normal and integral part of registered entities' business operations and would be conducted in the absence of the cap and trade program. Further, because information on entity's covered emissions will be made publicly available, a consultant or advisor's access to information related to these emissions will not convey any market advantage.

WPTF recommends that, rather than referencing section 95979(b)(2) of this regulation and 95133(b)(2) of the MRR, that staff modify section 95923 to designate an exclusive list of services, as follows:

95923. (a) A "Cap-and-Trade Consultant or Advisor" is a person or entity that is not an employee of an entity registered in the Cap-and-Trade Program, but is providing the services listed in ~~section 95979(b)(2) of the Cap-and-Trade Regulation or section 95133(b)(2) of the Mandatory Reporting Regulation in relation to the Cap-and-Trade Program or MRR~~ below specifically for the entity registered in the Cap-and-Trade Program, ~~regardless if the Consultant or Advisor is acting in the capacity of an offset or MRR verifier.~~

- (1) Services that result in the consultant or advisor having access to information on the entity's holdings or transactions of compliance instruments; and
- ~~(2)~~ Services that result in the consultant or advisor having authority to transact compliance instruments on behalf of the entity