Pacific Gas and Electric Company

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ARB's Cap-and-Trade Website

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

Re: Pacific Gas and Electric Company's Comments on the Air Resources Board's 15-day Amendments to the Cap-and-Trade Program

Dear Dr. Cliff:

Pacific Gas and Electric Company (PG&E) welcomes the opportunity to submit these comments on the Air Resources Board's (ARB) 15-day amendments to the Cap-and-Trade Program (proposed amendments).

I. INTRODUCTION

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

- PG&E Supports Natural Gas Allowance Allocation to Natural Gas Suppliers on Behalf of their Customers, to Gradually Introduce the Cost of Carbon Into Natural Gas Bills
- ARB Should Provide Natural Gas Suppliers an Allocation to Cover Emissions from "But for" CHP Facilities
- Changes to Section 95852.2(b)(4) Should Not Become Effective Until January 1, 2015 and ARB Should Clarify the Effective Date of Other Regulatory Changes
- With Clarification, PG&E Supports the Revised Confidentiality Protections for Bidding Information
- Natural Gas Suppliers Should Not Be Disadvantaged by a Potential Delay at the CPUC
- Additional Clarification on Staff Reporting Requirements Is Needed
- Penalties Should Be Proportionate to Violations
- ARB Should Adopt a Reasonable Investigation Attestation
- ARB Should Permit Changes to Auction Application Information That Are Beyond the Entity's Control

- Generators That Have Already Bargained for Costs Associated with GHG Regulation Should Not Qualify for Transition Assistance
- Other Recommended Changes
- PG&E Supports the Adoption of Additional Protocols

II. DISCUSSION

A. Section 95893. PG&E Supports Natural Gas Allowance Allocation to Natural Gas Suppliers on Behalf of their Customers, to Gradually Introduce the Cost of Carbon Into Natural Gas Bills

PG&E strongly supports the addition of Section 95893, which provides a fair allocation to natural gas suppliers, on behalf of their customers, with a balanced approach to the consignment of allocated allowances. The proposed allocation also establishes a framework for supporting the emissions reduction goals of AB 32. In addition, PG&E supports staff's proposal to use 2011 as the baseline year for the initial allocation of allowances. We truly appreciate ARB staff's extensive effort in working through technical issues related to the 2011 baseline year.

Section 95893(b)(1)(A) of the proposed amendments sets a consignment requirement for all natural gas suppliers while offering utilities the discretion to consign additional allowances, if needed for an entity's overall compliance strategy. The levels of consignment in the proposed regulation were designed to provide a balanced transition through 2020, mitigating market risk and reducing potential cost to customers. PG&E appreciates the time and effort the ARB put into the consideration and analysis for the proposed level of consignments through 2020.

B. Section 95851(c). ARB Should Provide Natural Gas Suppliers an Allocation to Cover Emissions from "But for" CHP Facilities

PG&E neither supports nor opposes changes to the proposed limited exemption for cogeneration facilities and district heating facilities clarifying that the natural gas supplier becomes the point of compliance for second and third compliance period emissions. However, PG&E is very concerned that the proposed amendment package does not allocate an incremental amount of allowances to natural gas suppliers to cover this additional compliance obligation. The record from the October 25, 2013 Board meeting reflects the following comments from staff on this issue: "What we've actually proposed in this attachment . . . to the Resolution this morning is that we would exempt but-for going forward. So they won't be a covered entity. In that vein, I don't think there is a need for transition assistance. You heard PG&E mention they saw this late. It essentially pushes the obligation upstream to the natural gas utility. And we have a proposal for allocation to the natural gas utility. I think that that should cover the issue with the but-for CHP."

ARB should act on this commitment to provide natural gas suppliers with allowances to cover "but for" CHP facilities' emissions, and clearly describe how the allocation is to be calculated and deposited into natural gas suppliers' accounts. Customers of natural gas suppliers should not be required to subsidize "but for" CHP facilities by requiring these customer to procure allowances to cover these facilities' emissions. If ARB's intention is to provide an incentive to support "but for" CHP facilities, ARB should provide the allocation staff represented would be provided.

PG&E urges the ARB to honor its commitment to provide allowances associated with "but for" CHP facilities to natural gas suppliers. To assist natural gas suppliers in planning for the increased compliance obligation imposed by the "but for" CHP facilities, PG&E requests the ARB include clarifying provisions in the Regulation to establish the process by which exempt facilities and their applicable emissions are identified. Specifically, PG&E requests that the regulation clarify:

- How and when the eligible "but for" CHP facilities will be identified to the natural gas utilities by ARB; and
- The process by which the ARB is to inform a natural gas utility of the increase in its emissions compliance obligation associated with these "but for" facilities.

PG&E also notes that natural gas suppliers are not subject to a compliance obligation until the second compliance period. The proposed amendments should clarify that the natural gas distribution utility is not responsible for "but for" facility emissions applicable to the first compliance period. The amendments should further clarify that generators that have executed contracts with investor owned utilities (IOUs) to provide compensation for GHG compliance costs should not receive a "but for" exemption. PG&E suggests the following revisions to Section 95851:

> (c) Operators of cogeneration facilities and district heating facilities that have been approved by the Executive Officer for a limited exemption of emissions from the production of qualified thermal output pursuant to section 95852(j), that meet or exceed the annual threshold in section 95812~~(d)~~(c) **and have not executed a power purchase agreement pursuant to the Combined Heat and Power Program Settlement Agreement approved by CPUC Decision 10-12-035 with a privately owned utility as defined in the Public Utilities Code section 216** will have ~~a~~no compliance obligation and are not covered entities ~~beginning with the second~~during the first, second, and third compliance periods. The compliance obligation **during the second and third compliance periods** for these exempt facilities will be held by the upstream natural gas supplier. Facilities that are not approved by the Executive Officer for a limited exemption of emissions will have a compliance

obligation. **The Executive Officer shall inform the upstream natural gas supplier of those facilities approved for an emission exemption pursuant to this Section 95852 (j) by no later than January 1, 2015. The Executive Officer shall provide the natural gas supplier with all verified emissions applicable to the exempt facilities attributable to the preceding budget year for which the natural gas supplier has a compliance obligation by no later than October 1, 2016 and each year thereafter.**

C. Section 95852.2. Changes to Section 95852.2(b)(4) Should Not Become Effective Until January 1, 2015. ARB Should Clarify the Effective Date of Other Regulatory Changes

The proposed amendments to Section 95852.2(b)(4) further limit which emission sources qualify for a compliance exemption under the Cap-and-Trade Program, causing vented emissions from underground storage facilities to count towards the inclusion threshold. This unexpected change may cause PG&E's largest underground gas storage facility to carry a compliance obligation for 2014. ARB first provided notice of this significant change in the draft 15-day amendments posted on January 31, 2014, which conflicts with the Administrative Procedures Act: "No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action."

Attachment A to the October Board Resolution suggested that staff would "propose to make a minor modification to clarify that only emissions that occur along the natural gas transmission and distribution networks are exempt when calculating a local distribution company's compliance obligation." PG&E sought clarification of this proposal and was informed by staff via email that the amendments would not affect the company's compliance obligation. This did not prove to be the case. ARB should clearly state that changes to the Cap-and-Trade Regulation's classification of covered emissions do not apply until January 1 of the year following the year in which the regulatory change is made; in this case, January 1, 2015. This will ensure that entities have adequate notice of changes and are able to procure sufficient compliance instruments and, for natural gas utilities regulated by the CPUC, establish the requisite cost-recovery mechanisms required under its regulatory structure to address a new or increased obligation.

In addition, due to the extensive number of changes and new reporting requirements that may be required of entities subject to the Cap-and-Trade Regulation, many of which pertain to auction participation, ARB should clarify the effective date of other provisions established under the new regulation and clearly communicate to stakeholders which auction will be subject to the new

requirements. This clarification will provide covered entities and other market participants regulatory certainty and will facilitate compliance with the amended regulation.

D. Section 95914(c). With Clarification, PG&E Supports the Revised Confidentiality Protections For Bidding Information

PG&E strongly supports the ARB's regulatory principle of protecting market-sensitive AB 32-related information, including bidding information, from disclosure that could lead to market manipulation or collusion among auction participants. PG&E appreciates that Section 95914(c) of the 15-day proposed regulations attempts to strike a careful balance between maintaining confidentiality and providing for very limited disclosure by order or authorization of the CPUC or other regulatory agency with direct jurisdiction over privately owned California utilities where the CPUC or other regulatory agency determines such disclosure is necessary under its procedural or substantive rules, orders or decisions. With some minor clarifications as follows, PG&E supports the ARB's balanced approach.

First, PG&E assumes that the reference to "auction participation" in Section 95914(c)(1)(A) references future auctions, not historical auction results, where the auction participants and results have previously been publicly disclosed. To confirm this interpretation, PG&E recommends the following clarification to Section 95914(c)(1)(A):

> (A) Intent to participate, or not participate, at **a prospective** auction, **prospective** auction approval status, maintenance of continued auction approval;

PG&E does not oppose reverting to language set forth in the draft 15-day amendments released on January 31, 2014, which required IOUs to provide such information upon the request of the Executive Officer. However, PG&E does oppose the requirement to provide ARB with a justification of permitted disclosures to the CPUC within 10 business days of each disclosure. For administrative efficiency and to reduce reporting burdens on the ARB, CPUC, and utilities, PG&E recommends that the Executive Officer reporting requirements for disclosures under Section 95914(c)(1)(D) be periodic and categorical.

Under PG&E's proposal, regulated entities would be required to maintain records of all such disclosures and such records would be available for inspection by the Executive Officer and ARB staff, similar to the language in the draft 15-day amendments released on January 31, 2014. To the extent that the CPUC requires or authorizes utilities to make periodic or recurring disclosures to entities other than the CPUC, such as to non-market participants, record-keeping of the actual disclosures should be sufficient and avoid confusion and unnecessary paperwork. The following amendment to the draft language would accomplish this burden reduction:

(D) When the release is by an entity regulated by an agency that has regulatory jurisdiction over privately owned utilities in the State of California ~~electric distribution utility~~ of information regarding compliance instrument cost and acquisition strategy and other disclosures specifically required or authorized by the regulatory agency ~~California Public Utilities Commission.~~ pursuant to any of its applicable rules, orders, or decisions. In the event of a disclosure pursuant to this section t**o entities other than the agency with regulatory jurisdiction**, the **regulated** entity must provide to the Executive Officer **the category of information and statutory or regulatory reference or the general order, decision or ruling that requires or authorizes such disclosure** within 10 business days **.** ~~related to bidding strategy.~~ **The entity shall maintain records of all such disclosures and shall make the records available for inspection by the ARB upon request.**

E. Section 95893(b)(1)(A). Natural Gas Suppliers Should Not Be Disadvantaged by a Potential Delay at the CPUC

The proposed amendments require each natural gas supplier to nominate the number of allowances that ARB should deposit in its limited use holding account and compliance account by September 1, 2014. If a natural gas supplier does not state a preference by this date, all allocated allowances will be placed in the limited use holding account for consignment. PG&E does not oppose this general nomination structure. However, for the purposes of the 2015 budget year allocation, this early deadline could prove problematic.

Specifically, the CPUC has opened an Order Instituting Rulemaking (OIR) to address natural gas distribution utility cost and revenue issues associated with the Cap-and-Trade Program. The CPUC indicated its interest in directing the utilities to consign allowances above the minimum requirement indicated in Section 95893(b)(1)(A). However, the CPUC has yet to establish a procedural schedule to suggest when the natural gas consignment issue would be resolved. Accordingly, PG&E requests that natural gas utilities be provided with flexibility concerning the nomination date applicable to the 2015 budget year and recommends the following changes to Section 95893(b):

(1) **For budget year 2015**, when a natural gas supplier as defined in section 95811(c) is eligible for a direct allocation, it shall inform the Executive Officer by **10 days following the issuance of a final CPUC Decision or Order establishing the percentage of natural gas allowances allocated for the purposes of ratepayer protection of the amount of allowances to be placed into its Compliance and Limited Use Holding Account. For budget years 2016 and thereafter, when a natural gas supplier as defined in section 95811(c) is eligible for a direct allocation**, it shall inform the Executive Officer by September 1, or the first business

day thereafter of the amount of allowances to be placed into its Compliance and Limited Use Holding Account with the following constraints. If an entity fails to submit its distribution preference by this deadline, ARB will automatically place all directly allocated allowances for the following budget year in the entity's Limited Use Holding Account.

F. Registration and Auction Participation

Section 95830(c)(1)(I). Additional Clarification on Staff Reporting Requirements Is Needed

PG&E supports the direction of proposed changes to Section 95830(c)(1)(I) as the language seeks to balance ARB's market monitoring efforts and the business operations of large compliance entities by tailoring the types of employees that must be reported to ARB. The proposed amendments require the name and contact information for all PG&E employees with knowledge of an entity's market position, which PG&E understands to be employees that have knowledge of both of the following:

- Current and/or expected holdings of compliance instruments; and
- Current and/or expected covered emissions

PG&E understands the term "holdings" to refer to the number of compliance instruments an entity has in each of its individual ARB account balances. To confirm this interpretation, and to facilitate compliance with the staff reporting requirement, PG&E requests the regulation define terms used by ARB. Specifically, PG&E recommends that ARB define "current holdings" and "expected holdings" and suggests the following language be added to Section 95802:

> **"Current Holdings" means the account balances set forth in each of the entity's accounts contained in the tracking system.**
>
> **Expected Holdings" means the account balances that will be in place in each of the entity's accounts contained in the tracking system after a transfer of allowances is made.**

Section 95830(f). Penalties Should Be Proportionate to Violations

PG&E appreciates the revisions made to Section 93830(f)(1), which generally provide entities the ability to update registration information within 30-calendar days of such change, or quarterly. However, in connecting proposed language in Section 95830(f)(3) with existing text in Section 95921(g)(3), ARB has created a disproportionate penalty for what may be an inadvertent error or omission by the registered entity. This amendment suggests that if changes to any of the information required by Section 95830(c) are made and an entity does not notify ARB within 30 days, the entity could have its registration revoked or suspended, which would result in a

requirement to voluntarily retire or sell all of its compliance instruments contained in the holding account. For 2015, the holding limit is approximately 11.7 million allowances. The sale or voluntary retirement of up to 12 million allowances has the potential to severely distort the compliance market, increase all market participants' compliance costs, and undermine the success of the Cap-and-Trade Program. This penalty is extreme and should be removed from the regulation as follows:

> 95830(f)(3) **~~Pursuant to section 95921(g)(3)~~**, ~~R~~registration **for the next auction** may be restricted if an entity does not update its registration **as required in section 95830(f)(1)**~~within 10 days of a change pursuant to section 95921(g)(3).~~

G. Auction Application

Section 95912(d)(4)(e). ARB Should Adopt a Reasonable Investigation Attestation

PG&E proposes that modifications to Section 95912(d)(4) include knowledge and materiality qualifiers to the ongoing investigation disclosure requirement for auction participation. For large compliance entities, knowledge and materiality qualifiers are essential for an entity's ability to provide the requested representation in a timely fashion. Moreover, the attestation should be limited to material violations of law and identify regulatory agencies of interest to the ARB. A reporting entity should not have its auction results jeopardized due to a failure to report a minor administrative violation of a Commodity Futures Trading Commission (CFTC) rule connected to its energy purchases, which would likely not be important information for ARB to carry out its market monitoring efforts. In addition, the required attestation should pertain only to those investigations that are currently pending before applicable entities. PG&E recommends the following modifications to Section 95912(d)(4):

> (E)~~(C)~~ An attestation disclosing **to the best of the participating entity's knowledge** the existence and status of any ongoing investigation or an investigation that has occurred within the last ten years **by the Securities and Exchange Commission or the Commodity Future Trading Commission** with respect to any alleged **material** 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 other entities with whom the entity has a corporate association, direct corporate association, or indirect corporate association pursuant to section 95833 that participate in a carbon, fuel, or electricity market. The attestation must be updated to reflect any change in the status of an **ongoing** investigation that has occurred since the most recent auction application attestation was submitted;

Section 95912(d)(5). ARB Should Permit Changes to Auction Application Information That Are Beyond the Entity's Control

While PG&E appreciates the changes to Section 95912(d)(5), the language contained in the proposed amendments could still bar an entity from participating in an auction if any changes are made to the information provided in an entity's auction application within 30-days of an auction. PG&E recognizes that Section 95912(d) is intended to facilitate effective settlement of the auctions and support market monitoring, and is not intended to be overly burdensome. PG&E proposes that 95912(d)(5) be further tailored to remove the possibility that changes beyond the entity's control could jeopardize auction participation. Specifically, a change to an item identified in the auction attestation, such as the resolution of an investigation, is beyond the entity's control and such change should not bar an entity from participating in an action. Moreover, such a change does not impede ARB's ability to settle the auction or monitor the marketplace for attempted manipulation. PG&E suggests the following minor revisions to Section 95912(d)(5) to achieve this objective:

> An entity with any changes to the auction application information listed in subsection 95912(d)(4) **(A)-(D) or subsection 95912 (d)(4) (F)** ~~or account application information listed in section 95830~~ within 30 days prior to an auction, ~~or an entity whose auction application information or account application information listed in section 95830 will change within 15 days after an auction~~ 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.

H. Sections 95802 and 95894. Generators That Have Already Bargained for Costs Associated with GHG Regulation Should Not Qualify for Transition Assistance

The proposed amendments inappropriately provide a free allocation of allowances to generators that: (1) had notice of the potential for future greenhouse gas (GHG) costs; and (2) bargained for the costs associated with cap-and-trade compliance in their contracts. PG&E therefore opposes ARB's proposed "legacy contract" definition to the extent that it provides a windfall generators have already been and continue to be compensated by PG&E customers. PG&E continues to propose simple revisions to the definition of "legacy contract" to ensure that generators that were aware of and agreed to assume responsibility for GHG compliance costs bear those costs.

1. Legacy Contract Definition Should be Revised to Prevent Windfalls to Generators Aware of GHG Costs

ARB should amend the date before which an executed contract qualifies as a legacy contract from September 2006 to August 15, 2005. The basis for the use of August 15, 2005, is also consistent with CPUC decisions interpreting whether generators foresaw the imposition of a

carbon price in the electric sector.[1] In fact, potential governmental action imposing GHG compliance costs on fossil fuel power plants in California was foreseeable *prior to* August 15, 2005.[2]

IOU counterparties and, presumably other generators, are sophisticated commercial parties with experienced commercial, regulatory, and legal teams aware of the potential for GHG costs prior to the actual date of passage of AB 32. To the extent the parties to the contract cannot either agree as to whether the generator knowingly assumed GHG compliance cost risk at the time the contract was executed or renegotiate their contract to further address GHG costs, the matter can be resolved by a court or arbitrator in a dispute resolution proceeding. Where a court or arbitration decision has found that GHG compliance costs are the responsibility of the generator, ARB simply should not provide free allowances to the generator. PG&E therefore recommends the following changes to the definition of a "Legacy Contract" laid out in Section 95802:

> (~~195~~197)"Legacy Contract" means a written contract or tolling agreement, originally executed prior to **~~September 1, 2006~~August 15, 2005**, governing the sale of electricity and/or Legacy Contract Qualified Thermal Output at a price, determined by either a fixed price or price formula, that does not provide for recovery of the costs associated with compliance with this regulation; the originally executed contract or agreement must have remained in effect and must not have been amended since **~~September 1, 2006~~execution** to change or affect the terms governing the California greenhouse gas emissions responsibility, price or amount of electricity or Legacy Contract Qualified Thermal Output sold, or the expiration date. For purposes of this regulation, legacy contracts exclude contracts that **~~have been amended to include~~ ~~gave rise to~~ are eligible to execute** a Legacy PPA Amendment, as defined in the Combined Heat and Power Program Settlement Agreement Term Sheet pursuant to CPUC Decision ~~number D-~~10-12-035, with a privately owned utility as defined in the Public Utilities Code section 216 (referred to as an Investor Owned Utility or IOU). ~~For the purpose of this regulation, Legacy Contracts include contracts that are considered non-standard QF contracts.~~ This definition of a "Legacy Contract" does not apply to opt-in covered entities. **For purposes of this regulation, Legacy Contracts also exclude contracts as to which a**

[1] D. 12-12-002 (citing August 15, 2005 as the date a firm cap on GHG emissions was introduced by the Legislature) i*available at* http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M041/K695/41695122.PDF D.12-04-046 stated contracts negotiated and executed when AB 32 was working its way through the legislature should have taken the potential impacts of AB 32 into consideration. Even those negotiating contracts shortly before then might also have reasonably foreseen that this issue could arise. D.12-04-046, page 61*available at* http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/164799.PDF

[2] For example, in 2004, the CPUC proposed a GHG Cap-and-Trade Program in an Order Instituting Rulemaking (OIR) and, in its comments on the OIR, the Independent Energy Producers Association mentioned independent generators internalizing the costs of GHG emissions reductions in offers submitted into the utility procurement processes. AB 32 was introduced into the California Legislature in December 2004. In June 2005, GHG emissions reduction targets were established for California by the Executive Order S-3-05.

court or arbitrator(s) in a dispute resolution proceeding between the parties to the agreement finds that, at the time the agreement was executed, the seller understood that if there were a future change in the law that imposed a cost on the facility because of its greenhouse gas emissions, the seller would be responsible for paying that cost.

2. The Renegotiation Provision Should Be Reinstated

The removal of provision 95891(f)(4), would provide free allowances to any legacy contract generator even if the contract is renegotiated to include consideration of GHG costs following ARB's approval of a legacy contract generators' allowances for a particular budget year. This section should be reinstated to ensure legacy contract generators are not provided a windfall under the cap-and-trade program. In addition, Section 95894(a)(5) could be modified as follows:

> If, subsequent to the submittal of the foregoing information and supporting documentation, there is any material change in the information and statements provided to the Executive Officer, the party who submitted such information and statements shall submit a supplemental attestation and supporting materials addressing any such material change to the Executive Officer within 30 days after the change occurs. **If the Executive Officer receives information demonstrating that the Legacy Contract was renegotiated to include consideration of greenhouse gas costs, the Executive Officer shall prorate any allocation to include only emissions prior to the date of renegotiation.**

3. Transition Assistance Should Be Limited to Compliance Period 1

Extending legacy contract transition assistance through 2017 removes any incentive for generators to agree to contract negotiations until 2017, and prolongs the windfall for generators that have already been and continue to be compensated by PG&E customers. PG&E urges ARB to limit the transition assistance to 2013 and 2014 and therefore recommends the following conforming regulatory changes:

> 95870 (g) Allowances will be allocated to legacy contract generators for budget years 2013 ~~and~~ through 2014**~~4~~7** for transition assistance. The Executive Office will transfer allowance allocations into each eligible generator's limited exemption holding account by October ~~15~~24, 2014 for eligible Legacy Contract Emissions pursuant to the methodology set forth in section 95894, and by October 24th of ~~**each subsequent year**~~ **2015 for the 2014 compliance year.**
>
> 95891(a) Opt-in covered entities are not eligible for transition assistance due to legacy contract emissions. To be eligible to receive a direct allocation of allowances under this section, the primary or alternate account representative of a legacy contract generator

> shall submit the following in writing via certified mail to the Executive Officer by June 30, 2014 or within 30 days of the effective date of this regulation for allocation in 2014, whichever is later, and by June 30th of **2015~~each subsequent year~~** when applicable

4. ARB Should Partially Allocate Allowances to Legacy Contract CHP Facilities with PPAs Addressing Generation-Emissions

Some of the generators eligible for a Legacy Contract allocation are CHP facilities with thermal host contracts that do not address GHG compliance costs. However, these generators may be compensated for GHG costs associated with electricity sales through power purchase agreements (PPAs) with separate entities. Should a CHP legacy contract generator require transition assistance for their thermal sales and is compensated for GHG costs associated with electric sales, ARB should not provide the entity with an allocation associated with the electricity contract. To do so would be a windfall where generators are already compensated for GHG costs associated with its electricity sales. Accordingly, where applicable, ARB should implement 95894(c) of the proposed amendments to provide this category of generators with zero allowances associated with an entity's electricity sales. This methodology would appropriately provide a facility allowances associated with its thermal sales for which it is not compensated, and not provide allowances associated with its PPA where GHG costs are addressed.

I. Other Recommended Changes

In addition, PG&E recommends the following minor modifications:

Provide Entities With Adequate Notice of Changes to Auction Dates:
Revisions to Section 95910 provide the ARB with flexibility for the auction schedule to be adjusted. PG&E does not oppose this change, but requests that auction participants be provided with 30 days' notice prior to such change to accommodate auction preparation activities that may be impacted by such change.

Use of Expected Termination Date Should not be Inconsistent:
The description of what should be entered as the Expected Termination Date set forth in Section 95921(b)(3) appears to contradict the definition of Expected Termination Date in Section 95802. The definition set forth in Section 95802(139) carves out contingencies, but 95921(b)(3)(B) inserts contingencies. To harmonize Section 95921(b)(3)(B) with the definition, PG&E proposes the following revision:

> 95921(b)(3)(B) Expected Termination Date of the transaction agreement. If completion of the transfer request process is the last term of the transaction agreement to be completed, the date the transfer request is submitted should be entered as the Expected Termination Date. If there are financial, **~~contingency,~~** or other terms **excluding**

> **contingencies,** to be settled after the transfer request is completed, the date those terms are expected to be settled should be entered as the Expected Termination Date. If the transaction agreement does not specify a date for the settlement of financial, contingency, or other terms that would be completed after the transfer request is completed, the entity may enter the Expected Termination Date as "Not Specified."

H. PG&E Supports the Adoption of Additional Protocols

PG&E would like to reiterate its support for the adoption of additional protocols to provide an adequate supply of offset credits to the cap-and-trade market. PG&E also appreciates the incorporation of stakeholder feedback into the offset-related sections of the amended regulation and the latest draft of the Mine Methane Capture (MMC) protocol. 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, as previously stated in PG&E's comments, without adequate supply, the cost-containment benefit of offset credits will not be fully realized.

Approval of the MMC 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 CO_2e from mines whose methane would otherwise be released to the atmosphere. With regard to whether MMC projects would enable more coal mining than would otherwise occur, PG&E concurs with ARB that MMC projects would not contribute to additional mining because of the small returns on MMC projects and because coal is an increasingly global commodity whose production is predominately influenced by market fundamentals. Because U.S. MMC projects can reduce methane emissions without increasing mining, and in doing so generate a significant supply of offset credits to help contain costs for California businesses, PG&E strongly supports the approval of the MMC protocol.

III. CONCLUSION

Thank you for the opportunity to submit these comments. PG&E urges ARB to carefully review these suggestions and make the recommended changes before pursuing further action. We look forward to continuing our work with ARB.

Very truly yours,

/s/

Mark C. Krausse

cc: Rajinder Sahota, via email (rsahota@arb.ca.gov)