



P.O. Box 4060 • Modesto, California 95352 • (209) 526-7373

April 4, 2014

Mary D. Nichols, Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: M-S-R Comments on 15-Day Changes to the Cap-and-Trade Program Regulation Proposed Amendments

Dear Ms. Nichols:

M-S-R Public Power Agency (M-S-R)¹ appreciates the opportunity to address the California Air Resources Board (CARB) regarding the 15-Day Changes to the Cap-and-Trade Program Regulation (Regulation) Proposed Amendments.²

M-S-R urges the Board to adopt new section 95856(h)(4) that clarifies the applicable provisions regarding the withdrawal of allowances from electrical distribution utility compliance accounts for compliance purposes. M-S-R also asks that the Board approve the clarified provisions regarding the definition of Cap-and-Trade Consultants and Advisors (sections 95923 and 95914), and with a few minor revisions. Changes to the proposed definition of employees involved in matters regarding the acquisition and disposition of compliance instruments (section 95830(c)(1)(I)) should also be adopted after adding a few clarifications. Finally, the Board should direct that the definition of resource shuffling be monitored in order to ensure that it does not adversely impact compliance entities subject to the State's Emissions Performance Standard and are seeking to lawfully divest of coal-fired electric generation facilities.

¹ Created in 1980, the M-S-R Public Power Agency is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R is authorized to acquire, construct, maintain, and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its members.

² On September 4, 2013, CARB released the *Notice of Public Hearing to Consider Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms* and a *Staff Report: Initial Statement of Reasons (ISOR)*, including *Appendix E: Proposed Regulation Order (Proposed Amendments)*.

Section 95856(h)(4) – Recognition of Allowances Withdrawn for Retirement

The 15-Day Changes include a significant and much needed change to the provisions regarding the treatment of allowances withdrawn from the compliance accounts of electrical distribution utilities (EDUs) for retirement to meet a compliance obligation. M-S-R appreciates the recognition that the methodology for withdrawal of allowances for retirement purposes could result in a violation of the provisions of 95892(d)(5), despite the fact that the EDU at issue has a sufficient number of eligible allowances to meet its compliance obligation. In order to address this concern, the 15-Day Changes would add 95856(h)(4) to the Regulation, which provides:

“An electric distribution utility will not be in violation of section 95892(d)(5) when the Executive Officer retires compliance instruments, if the electric distribution utility has a sufficient quantity of eligible compliance instruments not allocated pursuant to section 95870(d) in its compliance account, at the time the timely surrender of compliance instruments by a covered entity is due pursuant to section 95856, that is at least equal to its compliance obligation for any transactions for which the use of allocated allowance value is prohibited under section 95892(d)(5).”

This language would avoid potentially forcing an EDU into violating the provisions of section 95892(d)(5), which places restrictions on the use of allocated allowances, and should be adopted.

Section 95914(c) – Revised Definition of Auction Advisor

The 15-Day Changes clarify an earlier proposal to revise the definition of auction advisor that would have greatly expanded the applicability of the provision to include individuals and companies that provide services to a registered entity totally unrelated to bidding strategies. M-S-R supports the currently proposed definition in Section 95914(c)(3) that limits the scope of advise to Cap-and-Trade Consultants and Advisors that provide advice on “auction bidding strategy,” and that likewise limits the required disclosures in section 95914(c)(3)(C) to Cap-and-Trade Consultants and Advisors providing bidding advice. The Regulation properly includes this clarifying term in section 95914(c)(3) regarding the applicability of the section 95923 definition for Cap-and-Trade Consultants and Advisors.

Section 95923 – Cap-and-Trade Consultants and Advisors

The need to collect data about individuals consulting and advising registered entities on matters regarding the Program must be balanced with unduly broad reporting and disclosure

requirements. Just as the scope of entities reported under 95914(c) should be directly linked and limited by the bidding counsel provided, so should the definition of Cap-and-Trade Consultants and Advisors be limited to “*contractors that have access to tracking system account information, compliance instrument procurement, and emissions obligations.*”³ M-S-R appreciates the additional refinement of the definition set forth in the 15-Day Changes that further limit the disclosure of Cap-and-Trade Consultants and Advisors to those companies and individuals that provide counsel “**in relation to the Cap-and-Trade Program or MRR, specifically for the entity registered in the Cap-and-Trade Program . . .**” The 15-Day Changes also properly remove the provision in the earlier proposal that would have required registered entities to provide a description of the services being provided by the Consultant or Advisor (section 95923(b)(2)).⁴

Section 95830(c)(1)(I) – Employees with Trading Information

M-S-R supports the language in the 15-Day Changes that revise the scope of responsibilities that an employee must have in order to warrant reporting and disclosures to CARB, but urges the Board to direct that further refinements be added to ensure that employees with access to publicly available information are not included in the definition. Any additional reporting and disclosure requirements must be tempered to ensure that they do not impose unduly restrictive and burdensome requirements on registered entities, or mandates that may simply be unenforceable. The proposed language in the 15-Day Changes that requires the reporting of “names and contact information for all persons employed by the entity **with knowledge of an entity’s market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions)**,” narrows the scope of the requested information previously sought, but remains a concern in that information regarding current or expected covered emissions is generally publicly available. M-S-R asks that the Board direct that this definition be further refined to clarify that “knowledge” regarding covered emissions must be coupled with knowledge regarding expected holdings, and that such knowledge is gained during

³ Resolution 13-44, October 25, 2013: Draft <http://www.arb.ca.gov/regact/2013/capandtrade13/res13-44.pdf>; Attachment A to Resolution 13-44: <http://www.arb.ca.gov/regact/2013/capandtrade13/attachA.pdf>.

⁴ As currently drafted, the Regulation contains inconsistent provisions regarding the ability of Cap-and-Trade Consultants and Advisors to participate in the Program as voluntarily associated entities, which must be reconciled to avoid confusion and potentially disparate treatment of individuals. See sections 95814(a)(3) and (6).

the course of the employee's employment responsibilities, rather than simply having access to publicly available information. Accordingly, section 95830(c)(1)(I) should be revised to read:

“names and contact information for all persons employed by the entity **with knowledge of both an entity's market position (which includes both current and/or expected holdings of compliance instruments and current and/or expected covered emissions) and tracking system account information that is not publicly available.**”⁵

Resource Shuffling Definition Must Protect Legitimate Divestitures.

M-S-R urges the Board to continue to monitor the application of the resource shuffling definition in section 95852(b)(2) to ensure that the State's broader and long-term goal of encouraging divestiture of coal-fired generation is not impeded. As previously noted, this is an important issue to M-S-R and other entities with ownership interests in coal-fired generation that are subject to the provisions of the California Emissions Performance Standard. M-S-R supports incorporation of the resource shuffling guidance language into the Regulation, but remains concerned that the definition may not adequately accommodate complex or non-traditional transactions that may result in a covered entity reducing its compliance obligation from out-of-state resources. It is important that covered entities not be penalized for legitimate business transactions that merely result in a reduction in the covered entity's compliance obligation.

Conclusion

The Cap-and-Trade Program remains an integral and essential part of California's climate reduction plan and M-S-R supports CARB ongoing review of implementation matters relevant to the Program. M-S-R urges the Board to adopt the amendments proposed in September 2013 and revised in the 15-Day Changes, subject to the refinements and comments set forth herein in and in the previously filed written comments of M-S-R.

Respectfully submitted,



Martin Hopper
General Manager
M-S-R Public Power Agency

⁵ Should the Board adopt the proposed Section 95814(a)(7), which would prohibit all employees of registered entities from becoming voluntarily associated entities, the provisions of section 95830(c)(1)(I) should be stricken.