M S R Public Power Agency

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

February 14, 2014

Steve Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: **M-S-R Comments on Cap-and-Trade Program Discussion Draft**

Dear Steve:

M-S-R Public Power Agency (M-S-R) provides these comments to the California Air Resources Board (CARB) on the January 31, 2014 Discussion Draft (Discussion Draft) of the Proposed 15-Day Amendments to the Cap-and-Trade Program Regulation (Regulation).[1]

In these comments, M-S-R addresses the problems that may arise for electrical distribution utilities (EDUs) associated with the order in which compliance instruments are proposed to be withdrawn from compliance accounts and retired by the Executive Officer; the overly broad and cumbersome definition of cap-and-trade advisors and consultants; and the need to ensure that the definition of resource shuffling does not adversely impact compliance entities that are also subject to the Emissions Performance Standard.

Provisions for Withdrawing Allowances for Retirement Must Recognize the Difference Between Purchased and Freely Allocated Allowances.

The Discussion Draft includes provisions for the Executive Officer to withdraw allowances from a covered entity's compliance account to meet the annual and triennial compliance obligations. The provisions of 95856(h)(1) and (2) specify the order in which

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.

allowances are retired from a covered entity's compliance account, but do not provide for a distinction between allowances that are allocated to covered entities and those that are purchased. As M-S-R has noted in previous filings, this distinction is necessary to avoid potentially forcing an EDU into violating the provisions of section 95892(d)(5), which placed restrictions on the use of allocated allowances. Section 95892(d)(5) prohibits EDUs from using the allocated allowances for anything other than the exclusive benefit of electric ratepayers, including purchases into the Cal ISO markets. If the current language is retained, when the Executive Officer withdraws allowances solely by vintage, and an EDU has sales into the ISO for which a compliance obligation was created, the allowances retired could technically be those that were freely allocated, notwithstanding the fact that the EDU had separately purchased allowances to offset this compliance obligation. Distinguishing between allocated and purchased allowances, and only retiring allocated allowances for obligations associated with the non-restricted transactions would avoid the EDU being "forced" into noncompliance with section 95892(d)(5).

If the provisions of 95856(h)(1) and (2) are not revised to make this distinction, M-S-R recommends that a new subsection be added to section 95856(h) that recognizes the potential for the Executive Director's actions to inadvertently reflect a violation on the part of the electrical distribution utility. The following language would address this error:

> *New Section 95856(h)(4): Notwithstanding section 95856(h)(1) and (2), an electrical distribution utility will not be in violation of section 95892(d)(5) when the Executive Officer retires compliance instruments, provided that the electrical distribution utility has a quantity of compliance instruments not allocated to it pursuant to section 95870(d) in its compliance account 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).*

Cap-and-Trade Consultants and Advisors Definition Should be Clarified

The Discussion Draft includes revisions to section 95923, regarding the disclosure of Cap-and-Trade Consultants and Advisors. M-S-R supports removing section 95923(b)(2) which would have required the registered entity to provide a description of the services being provided by the Consultant or Advisor. As currently proposed, the registered entity must identify the Consultant or Advisor, and provide certain contact and employment information. On their face,

the disclosure requirements are not problematic. However, it is the proposed definition of Consultants and Advisors that must be further refined. As proposed in the Discussion Draft, the definition for Cap-and-Trade Consultants and Advisors includes anybody that provides one of 20 different types of services to a registered entity, regardless of the relationship of that work to the Cap-and-Trade program. M-S-R urges Staff to review this section, and simplify the requested information. Linking the advisors/consultants referenced under section 95923 to the conflict of interest provisions applicable to verification bodies and offset verifiers pursuant to Section 95979(b)(2) of the Regulation and section 95133(b)(2) of the Mandatory Reporting Regulation (MRR) expands the definition of these individuals far beyond what is reasonable. Resolution 13-442 provides that "*staff will coordinate with stakeholders to craft regulatory language to limit this disclosure requirement to contractors that have access to tracking system account information, compliance instrument procurement, and emissions obligations.*" However, the proposed revision does the opposite, in that it vastly expands the scope of the necessary disclosure far beyond those that have access to the tracking system, compliance instrument procurement, and emissions obligations. Especially problematic is the reference to relationships going back 5 years (which was before the Cap-and-Trade Program was even implemented), and whether or not this is also intended to apply to the definition, and the broad nature of the proposed definition that does not limit reporting to entities providing the services *related to the Cap-and-Trade program,* which would require the disclosure of all of a registered entity's advisors and consultants that perform any bookkeeping, legal, or information systems services for the registered entity. M-S-R urges Staff to further coordinate with stakeholders in order to ensure that the disclosures at issue are indeed limited to contractors and advisors that have access to "tracking system account information, compliance instrument procurement, and emissions obligations," and not adopt this expansive list of services referenced in section 95979.

Resource Shuffling Definition Must Protect Legitimate Divestitures.

The definition of resource shuffling should clearly protect legitimate transactions that may happen to result in a shift in emissions associated with electricity imports. Although not a new issue, it is one that is of considerable import to M-S-R and other entities with ownership interests in coal-fired generation that are subject to the provisions of the California Emissions

2 Board Resolution 13-44, Attachment A, October 25, 2013.

Performance Standard adopted pursuant to the provisions of SB 1368. M-S-R appreciates the CARB's recognition of the many "safe harbor" provisions that will not be deemed resource shuffling, but continues to be concerned that the definition does not 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. In order to provide this assurance to affected entities, M-S-R recommends that section 95802(a)(252) be amended to read:

> "Resource Shuffling" means any plan, scheme, or artifice ~~to receive credit based on emissions reductions that have not occurred, involving the delivery of electricity to the California grid~~ undertaken by a First Deliverer of Electricity to substitute electricity deliveries from sources with relatively lower emissions for electricity deliveries from sources with relatively higher emissions resources to reduce its emissions compliance obligation. *Not all substitutions of electricity between sources with different emission levels are resource shuffling, and* ~~R~~resource shuffling does not include substitution of electricity deliveries from sources with relatively lower emissions for electricity deliveries from sources with relatively higher emissions resources when the substitution occurs pursuant to the conditions listed in section 95852(b)(2)(A).

Conclusion

M-S-R appreciates Staff's attentiveness to the issues raised by stakeholders, and looks forward to working with Staff on changes to the proposed amendments that can be presented to the Board for approval.

Respectfully submitted,

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