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California Air Resources Board
1001 I Street
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Re: Pacific Gas and Electric Company's Comments on the Air Resources Board Workshop to Discuss Proposed 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) Workshop to Discuss the Proposed Amendments to the Cap-and-Trade Program.

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 Staff's Cost Containment Proposal and Encourages Staff to Continue Exploring Additional Mechanisms to Satisfy the Board Resolution
- PG&E Supports Natural Gas Allowance Allocation to Natural Gas Suppliers on Behalf of their Customers, to Allow a Balanced Approach to Transitioning the Cost of Carbon Into Natural Gas Bills
- ARB should not provide transition assistance to Generators That Have Already Been Provided Opportunities to be Compensated for GHG Costs
- Resource Shuffling "Safe Harbors" Should Include (1) Activities Required to Comply With Rules, Orders, or Decisions Issued By A Governmental Authority And (2) Activities Resulting from Participation in Energy Imbalance Markets
- ARB Should Modify the Holding Limit to Ensure Equitable Treatment of Regulated Entities
- PG&E Opposes the Release of Individual Entities' Compliance Account Balances
- PG&E Remains Concerned About the Triennial Surrender Timeline and Looks Forward to Working with ARB to Develop a Solution Suitable for All Parties
- PG&E Recommends Several Changes to Sections that Address Registration with ARB

- Offsets Retired Beyond the Triennial 8% Usage Limit Should Be Returned to the Entity's Compliance Account
- PG&E Recommends Several Clarifications to Emissions without a Compliance Obligation
- Auction Participation and Limitations
- Prohibitions on Trading Should Be Clarified
- Allowances Allocated to an Entity that Closes Should Be Consigned by ARB to the Quarterly Auction
- Modifications to the CITSS User Terms and Agreement are Needed

II. DISCUSSION

A. Sections 95870 and 95913. PG&E Supports Staff's Cost Containment Proposal and Encourages Staff To Continue Exploring Additional Mechanisms To Satisfy The Board Resolution

PG&E continues to maintain that an auction price ceiling would improve the Cap-and-Trade program while preserving the environmental integrity of the program. The written and oral comments shared by ARB staff, market experts, and other stakeholders at the June 25, 2013 workshop also support the development of an auction price ceiling. The price floor has proven to be an effective tool, but a corresponding price ceiling is also needed to ensure that the Cap-and-Trade program remains sustainable and is not undermined in the event of unacceptably high allowance prices.

PG&E supports the staff cost containment proposal contained in the discussion draft as an effective step toward addressing short-lived price increases in the Cap-and-Trade market. However, this mechanism cannot *ensure* prices do not exceed third tier Allowance Price Containment Reserve (APCR) prices, as Board Resolution12-51 requires. PG&E therefore urges ARB to implement additional cost containment mechanisms to address potential longer-term, structural market imbalances. The mechanism could take one of two forms:

1. Further development of the current regulatory amendment language to make allowances from post-2020 period available in the 2013-2020 timeframe
2. Adoption and implementation of the Joint Utility Group (JUG) proposal (attached)

<u>Board's Intent</u>

PG&E appreciates the Board's direction contained in Resolution 12-51. The intent of the resolution is clearly stated and contains two primary objectives:

1. Ensure allowance prices will not exceed the highest price tier of the APCR
2. Maintain the environmental objectives of the program

PG&E commends staff for engaging stakeholders and experts in an open and transparent dialogue about how to satisfy the Board Resolution. The draft language is a step in the right direction, but falls short of the Board's direction of providing an absolute price cap.

Potential for APCR to be Exhausted and Likely Consequences

PG&E points to the results of the Emission Market Assessment Committee's (EMAC) analysis, which demonstrates there is a non-trivial possibility that auction prices could reach unacceptably high levels due to a systemic imbalance in market fundamentals.

There are several possible events that individually or combined could result in temporary allowance shortage conditions due to unexpectedly high emissions. These events include:

- Low precipitation
- Temporary unavailability of carbon-free resources
- Technological advances required to achieve emissions reductions from complementary measures occur more slowly than expected

Systemic allowance shortage conditions could also exist under a number of plausible scenarios, including:

- Economic recovery is more robust than expected resulting in sustained stronger-than-expected demand growth for energy
- Insufficient development of offset credit supply
- Consistent underperformance of major program measures in covered sectors

Staff's proposal serves as an effective tool for the first set of temporary conditions, but does not address the fundamental market shifts inherent in the second set of circumstances.

ARB Staff Proposal

Staff's current proposal allows for limited borrowing and does not increase overall allowance supply. Therefore, Staff's proposal in the Discussion Draft will not prevent the market from reaching unacceptably high prices. In addition, future allowances available to be used through the proposed cost containment mechanism will decline as 2020 approaches. It is unclear how prices would be contained once there were no remaining allowances available to sell at future APCR sales possibly leaving the market exposed to significant regulatory risks.

PG&E Recommendations

PG&E recognizes the difficulty of establishing an auction price ceiling while abiding by the legal requirements of Assembly Bill (AB) 32. However, PG&E maintains that there are mechanisms

available to prevent allowance prices from exceeding the third tier of the APCR in response to structural imbalances that would not compromise the environmental integrity of the program.

PG&E recommends further modifying the 2013 amendments to the Cap-and-Trade Regulation in one or both of the ways described below.

1. Extend the program beyond 2020
2. Adopt and implement the Joint Utility Group (JUG) proposal (attached)

Extending the program beyond 2020 is required to make the proposed changes effective in the later years of the 2013-2020 timeframe. Without a defined program beyond 2020, the proposed regulatory amendments would lose their effectiveness fairly quickly as they would not take effect until 2015 and current allowance budgets only extend through 2020.

The JUG has proposed an approach to achieving ARB's objective of ensuring that, even under stressed market conditions, allowance prices will not exceed the highest tier APCR level while maintaining the environmental integrity of the program. The JUG proposals can be combined with the staff proposal.

The JUG proposal contains a list of measures to enhance the supply and circulation of compliance instruments in the market – promoting market liquidity. Among these measures is a proposal that ARB make additional allowances available to the market, if needed, and use the additional funds to find and fund projects or measures that will achieve additional emissions reductions. This element of the JUG proposal ensures the long-run success of both the cap and trade market and California's greenhouse gas emission reduction goals even under persistent adverse market conditions and provides the means to preserve the environmental integrity of the program. In addition, the JUG proposal provides additional support for the offset market and promotes linkage with other programs.

PG&E also recommends the language and references in the Staff proposal be clarified to avoid misinterpretation. Below are PG&E's recommended line-item changes.

> Section 95870(~~f~~j)(1) Beginning in 2015, 10% of all ~~remaining~~ allowances from each **future budget year** ~~vintage~~ not allocated for uses specified in section 95870(a) are eligible to be sold pursuant to section 95913(f).
>
> (~~1~~2) All remaining allowances not allocated for uses specified in sections 95870(a) through (~~e~~**i**) will be designated for sale at auction. The proceeds from the sale of these allowances will be deposited into the ~~Air Pollution Control Fund~~ Greenhouse Gas Reduction Fund created pursuant to Government Code section 16428.8, and will be available for appropriation by the Legislature for the purposes designated in California Health and Safety Code sections 38500 et seq. and consistent with the requirements of

Chapter 4.1 (commencing with Section 39710) of Part 2 of Division 26 of the California Health and Safety Code and Article 9.7 (commencing with Section 16428.8) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

Section 95913(~~e~~f)(5) This provision only applies to the Reserve sale immediately preceding the compliance obligation instrument surrender on November 1. Pursuant to section 95870(~~f~~**j**)(1), **additional** allowances ~~in the Auction Holding Account~~ will be made available at the highest price tier of the Allowance Price Containment Reserve if the amount of accepted bids at the highest price tier exceeds the number of allowances in that tier.

(B) If the quantity of allowances from section 95870(a) allocated to the highest price tier plus the allowances defined in section 95870(~~f~~**j**)(1) is equal to or greater than the quantity of accepted bids in the highest price tier then all accepted bids for the highest price tier will be filled.

(E) The allowances defined in section 95870(~~f~~**j**)(1) will be sold beginning with the ~~latest~~ vintage **furthest in the future** ~~in the Auction Holding Account~~ and then the preceding vintages, from **furthest in the future** ~~latest~~ to **closest to the present** ~~most recent~~, until all accepted bids **at** the highest price tier are filled or until all the allowances defined in section 95870(~~f~~**j**)(1) have been sold. The allowances defined in section 95870(~~f~~**j**)(1) sold pursuant to this section shall first reduce the quantity of allowances defined in section 95870(b) if available and then will reduce the quantity of allowances defined in section 95870(j)(2).

B. Section 95893. PG&E Supports Natural Gas Allowance Allocation to Natural Gas Suppliers on Behalf of their Customers, to Allow a Balanced Approach to Transitioning the Cost of Carbon Into Natural Gas Bills

PG&E appreciates the transparent and constructive process managed by ARB leadership and staff on natural gas allowance allocation. PG&E supports the addition of Section 95893 to allocate allowances to natural gas suppliers on behalf of their customers. The proposal provides a fair allocation to natural gas suppliers, on behalf of their customers, with a balanced approach to the consignment of allocated allowances. In the discussion below, we raise two issues about specific aspects of Section 95893 to improve implementation.

PG&E finds it problematic to use 2013 as the baseline year and urges the ARB to consider using 2011 as the baseline year for allocation to natural gas suppliers. Using 2013 as the base year could create unnecessary confusion and may not reflect an average consumption year. 2011 emissions have already been verified and made publicly available; 2013 emissions however, will not be verified until September 2014, only months before the natural gas compliance obligation begins. In addition, utilities' emissions as natural gas suppliers will not be known until after

ARB has reviewed covered entities' verification reports and provided that information to natural gas suppliers. With very little time between the provision of this information and action required by utilities on behalf of their customers to purchase compliance instruments, the ability of these utilities to procure forward and effectively manage their compliance obligations will be reduced, which could impact their ability to mitigate costs to customers.

Furthermore, the use of 2011 emissions would facilitate a proceeding at the CPUC regarding procurement authority, cost recovery, and revenue allocation as the number of allowances associated with each of those categories would be known sooner.

Limitations on the Use of Auction Proceeds and Allowance Value

This section specifies that any revenue returned to ratepayers must be done in a non-volumetric manner. The CPUC has exclusive jurisdiction over investor-owned utility ratemaking under the California Constitution. Likewise, the governing boards of publicly owned utilities have jurisdiction over POU retail rate design. The natural gas utilities suggest that 95893(d)(3) be modified to parallel the electric utility language in 95892(d)(1) and95892(d)(2) to avoid jurisdictional conflicts with other state and local agencies.

Also in section 95893, PG&E assumes staff intends allowances allocated to natural gas suppliers to be placed in both the Limited Use Holding Account (LUHA) and the Compliance Account of each entity. The amount placed in the LUHA would mirror the percentages outlined in Table 9-4 and would be consigned to auction with the remainder of allowances placed in the Compliance Account to be used directly for compliance. If this is true, a slight alteration to Section 95893(b)(1)(B) may be needed. PG&E recommends the following change:

> (b)(1) 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:
>
> > (A) The quantity of allowances placed into the Limited Use Holding Account will equal at least the amount of allowances provided in section 95893(a) multiplied by the applicable percentage in Table 9-4.
> >
> > (B) The remaining allowances from the allowances allocated in section 95893(a) ~~and the allowances placed into the Limited Use Holding Account in section 95893 (b)(1)(A)~~ will be placed into the Compliance Account.

C. Section 95890. The Potential for Allowance Withholding Should be Explicitly Stated and the Penalty Should Be Tailored to the Nature of the Violation

Section 95890(b) suggests ARB has the authority to withhold the allocation of an electric distribution utility upon the utility's failure to comply "with the requirements of MRR." This language is vague, overly-broad, and could potentially allow ARB to withhold significant quantities of allowances without any showing of wrongdoing by the utility. Moreover, the language does not limit the amount of the withholding to the alleged under-reporting. ARB should not be permitted to withhold allowances in excess of those attributable to the non-compliant report.

To resolve these issues, PG&E proposes the following changes:

> Section 95890(b) An electric distribution utility shall be eligible for direct allocation of California GHG allowances if it has complied with the requirements of MRR **by obtaining** ~~and has obtained~~ positive or qualified positive emissions data verification statement**s for its electric power entity reports (in accordance with §95112 and §95115) and retail electric transactions report (in accordance with §95111)** for the prior year pursuant to MRR. **If an electric distribution utility knowingly submits an inaccurate data verification statement for its electric generation power entity report or retail electric transactions report, ARB may withhold direct allocation of California GHG allowances up to an amount equal to the Assigned Emission Level(s) (AEL) attributable to the non-compliant report(s).**

In addition, ARB should detail how these withheld allowances would be recirculated back into the marketplace to avoid a sudden increase in the cost of compliance instruments.

D. Generators That Have Already Bargained For The Costs Associated With This Regulation Should Not Qualify for Transition Assistance

A Contract Should Be Considered A Legacy Contract Only if Executed Prior to August 15, 2005

ARB should amend the date before which an executed contract qualifies as a legacy contract from September 2006 to August 15, 2005. CPUC Decision 12-12-002[1], dated December 20, 2012, cites August 15, 2005 as the date the potential for future GHG costs was first introduced:

> In its comments, PEC requests removal of the discussion concerning the August 15, 2005 threshold date for considering whether parties to power purchase contracts could have foreseen the imposition of a carbon price in the electric sector[2]. The August 15, 2005 version of AB 32 marked the first reference to a firm cap on emissions in AB 32. That version

[1] http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M041/K695/41695122.PDF
[2] PEC's petition for modification was rejected by the PUC

> proposed adding Section 42877(a)(1) to the Health and Safety Code, which would have required the Secretary of the California Environmental Protection Agency to implement a "greenhouse gas emissions cap for the electrical power, industrial, and commercial sectors" by January 1, 2008. While this date is not singularly dispositive, it is relevant and may be considered along with other factors affecting the OMEC PPA and other similarly situated contracts. Thus, we decline to modify the proposed decision as requested.
>
> However, had this contract been executed after AB 32 was amended to include language regarding broad limits on GHG emissions (see AB 32 as amended on August 15, 2005; http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_32_bill_20050815_amended_sen.pdf), it would be less appropriate to allow these costs to be passed through as proposed, without some adjustment in the contract price or some other term to compensate ratepayers for assuming this additional cost.

CPUC Decision 12-04-046[3], dated April 4, 2012, also states, "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."

IOUs' counterparties, and presumably other generators, were sophisticated commercial parties with experienced commercial, regulatory and legal teams and were well aware of the potential for GHG costs prior to the date of the actual passage of AB32. The CPUC agrees with this assessment; we urge ARB to provide a consistent conclusion.

<u>The Definition of Legacy Contract Should Exclude Contracts with respect to which the Seller Agreed to Assume Responsibility for GHG Costs</u>

It is unreasonable for ARB to provide transition assistance to those generators that foresaw the possibility of GHG compliance costs and knowingly agreed to assume responsibility for those costs in their contracts. Providing transition assistance to generators who believed that their contracts were sufficiently lucrative to justify accepting GHG compliance cost risks would amount to a bailout. To the extent the parties to the contract disagree as to whether the generator knowingly assumed GHG compliance cost risk at the time the contract was executed, the matter can be resolved by a court or arbitrator in a dispute resolution proceeding, as already has occurred in one dispute. PG&E therefore recommends the following changes to the definition of a "Legacy Contract" laid out in Section 95802: It is unreasonable for ARB to provide transition assistance to those generators that should have foreseen GHG compliance costs while negotiating

[3] http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/164799.PDF

contracts. PG&E therefore recommends the following changes to the definition of a "Legacy Contract" laid out in Section 95802:

> "Legacy Contract" means a written contract or tolling agreement governing the sale of electricity and/or qualified thermal energy from an electric generating facility or cogeneration facility at a price, determined by either a fixed price or price formula, that **was originally executed prior to August 15, 2005** ~~does not allow for recovery of the costs associated with compliance with this regulation~~. For purposes of this regulation, **L**egacy **C**ontracts exclude contracts with a privately owned utility as defined in the Public Utilities Code section 216 (referred to as an Investor Owned Utility or IOU) for contracts already addressed under the Combined Heat and Power Program Settlement pursuant to CPUC Decision number D-10-12-035, and only include contracts that have remained in effect and have not been amended since **execution** to change the terms governing the California greenhouse gas emissions responsibility, price or amount of electricity or Qualified Thermal Output sold, or the expiration date. 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 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 was 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.**

Allowances Should Be Allocated Following A Public Process

To the extent that the legacy contracts are eligible to be allocated allowances, PG&E requests that assistance to legacy contract generators be allocated following a transparent, public process, similar to the current process amending allocations to other entities. Accordingly, PG&E recommends that ARB publicly notice the information required under Section 95834 (a) specifying the applicant's eligibility for transition assistance and provide for a limited public comment period concerning such availability. In addition, Section 95834 requirements should be amended to require the applicant to provide any administrative or legal determinations, including judgments of any court or dispute resolution proceeding made with respect to the contract. ARB should then consider public comments concerning the allocation prior to making a determination regarding the applicant's eligibility for transition assistance.

The Regulation Should Not Assume Transition Assistance is Available

Because Legacy Contract Generators must meet specific criteria to receive transition assistance, a revision is necessary to Section 95870 (h) to clarify that such allowances may be provided to eligible Legacy Contract Generators only if specific criteria are met.

> Section 95870(h) Allocation to Legacy Contract Generators. Allowances ~~**will**~~ **may** be allocated to legacy contract generators for 2013 and 2014 for transition assistance. The Executive Office will transfer allowance allocations into each eligible generator's holding account by October 15, 2014 for eligible Legacy Contract Emissions pursuant to the methodology set forth in section 95894.

Allowances Should Not Be Allocated To Entities Covered By CPUC Decision D-10-12-035

PG&E appreciates ARB's clarification that "Legacy Contract" excludes "contracts already addressed under the Combined Heat and Power Program Settlement pursuant to CPUC Decision number D-10-12-035." However, the Regulation should also exclude generators that were eligible to execute contracts or amendments, but chose not to pursue this option. This change will clarify that assistance is not available to a party that intentionally bypassed an established process to provide reasonable means to recover GHG costs. Specifically, Section 95894 should be adjusted to include this restriction:

> (YYY) "Legacy Contract Generator" means a covered entity which **is ineligible to execute a contract or amendment under the Combined Heat and Power Program Settlement pursuant to CPUC Decision 10-12-035 and** operates a stand-alone electricity generating unit or a cogeneration facility system and sells electricity or thermal energy pursuant to one or more legacy contracts.

E. Section 95852. Resource Shuffling "Safe Harbors" Should Include (1) Activities to Comply With Rules, Orders, or Decisions Issued By A Governmental Authority; (2) Activities Resulting from Participating in Energy Imbalance Markets

PG&E appreciates ARB's efforts to enumerate categories of substitutions that do not constitute resource shuffling. Complying with rules, orders, or decisions issued by a governmental authority such as Least Cost Dispatch (LCD) or participating in the California Independent System Operator (CAISO) and Pacificorp Energy Imbalance Market (EIMs) or similar market requirements do not appear to qualify as resource shuffling based on the draft amended regulations. However, clear language in the regulations is needed to affirm this interpretation.

First, PG&E recommends revisions to the draft regulations to clarify that market activities consistent with PG&E's legal and regulatory requirements fall under the "safe harbors" and would not be considered resource shuffling. PG&E's proposed revisions are necessary because PG&E is required to meet its electric load obligations consistent with the CPUC "Least Cost Dispatch" (LCD) requirements.[4] PG&E economically dispatches its resources, subject to regulatory, legal, operational, contractual, and financial requirements. To meet its LCD requirements, PG&E is required to dispatch resources or purchases energy with the lowest incremental cost of providing energy. Accordingly, PG&E recommends a change to Section 95852(b)(2)(A)(2):

> "Electricity deliveries made for the purpose of compliance with state or federal laws and regulations, including the Emission Performance Standard (EPS) rules established by CEC and the CPUC pursuant to public utilities code section 8340 et. seq. **or other rules, orders, or decisions by a state or federal governmental authority.**"

PG&E also recommends conforming revisions to "safe harbor" 10 below.

Revisions to "safe harbor" 10 are also necessary to clarify that participation in an EIM does not constitute resource shuffling. Resource shuffling involves a plan, scheme or artifice knowingly undertaken by a First Deliverer of electricity to reduce emissions compliance obligation by engaging in an impermissible substitution of higher emissions resources with relatively lower emission resources. In contrast, an EIM involves an automated system over which participants cannot exercise control and the participants may or may not be the actual "First Deliverers" as defined in Section 95802. To ensure ARB's intent is clearly communicated to all EIM participants, PG&E recommends the following additions to "safe harbor" 10:

> Short-term transactions and contracts for delivery of electricity with terms of no more than 12 months **or any transaction made for the purpose of complying with rules, orders or decisions by a state or federal governmental authority**, or resulting from an economic bid, self-schedule**, award or similar mechanism** that clears the CAISO **or other** day-ahead or real-time market **or is generated in EIM**, for either specified or unspecified power, based on economic decisions including implicit and explicit GHG costs and congestion costs, unless such activity is linked to the selling off of power from, or assigning of a contract for, electricity subject to the EPS rules from a power plant that does not meet the EPS with which a California Electricity Distribution Utility has a contract, or in which a California Electricity Distribution Utility has an ownership share, that is not covered under paragraphs 11, 12 or 13 below.

[4] CPUC Decisions mandate that PG&E dispatch its portfolio of existing resources, allocated California Department of Water Resources contracts, and market purchase to meet its electric load obligation in a least-cost manner. *See* CPUC Decisions 02-10-062, 02-12-069, 02-12-074, 03-06-076, 04-07-028 and 05-01-054.

Finally, section 95852(b)(2)(A)(9) and (10) reference short-term contracts for deliveries of electricity with terms of no more than 12 months. However, it is possible for an entity to sign a contract with terms greater than 12 months, but with actual deliveries of 12 months or less. To clarify that these transactions would not qualify as resource shuffling PG&E recommends the following change to Section 95852(b)(2)(A)(9) and (10):

> "Electricity deliveries pursuant to contracts for short term delivery of electricity ~~with terms of~~ **for** no more than 12 months **in total**."

F. ARB Should Modify the Holding Limit to Ensure Equitable Treatment of Regulated Entities

By imposing the same holding limit calculation on all registered entities, regardless of operational size and relative compliance obligations, the current regulation unfairly and unnecessarily discriminates against larger regulated entities, effectively forcing them to procure at higher costs that are then passed on to their customers. The holding limit calculation permits smaller entities to comply at lower costs by effectively allowing them to bank a higher proportion of lower-cost instruments for their compliance obligation. While the current holding limit/ limited exemption allows larger entities to procure allowances to meet their obligation over time, it fully limits the cost containment aspects of banking allowances.

The limited exemption allows covered entities an additional opportunity to bank allowances more proportionally as it is based on the entities' previous year's emissions rather than the fixed holding limit. However, the regulation and its amendments require entities to move allowances to their compliance account to receive this benefit. This removes allowances banked through this mechanism from the market that might otherwise have been available for trading at some point. By reducing the number of allowances available for trading, the current limited exemption construct may reduce market liquidity and lead to increased costs compared to a more flexible alternative and could increase the likelihood of market manipulation, undermining ARB's original intent in constructing this provision.

PG&E's Proposed Solution

Retain the standard holding limit for all entities registered with ARB. In addition to the standard holding limit:

- Entities with a compliance obligation may apply their limited exemption to allowances held in their holding account and/or compliance account; and
- Allowances in a compliance account would not count against the holding limit.

Effect of Proposal

This minor modification to the rules will provide regulated entities with the flexibility and planning opportunities that any successful carbon market should have. The proposal would only impact entities with compliance obligations, enabling them to maintain more banked allowances in their holding accounts, thus increasing the number of allowances they have available to trade or transfer, reducing operational risks, and improving market liquidity. The proposal also enables larger compliance entities to more effectively utilize the banking provision currently available in the regulation, and provides greater flexibility to manage compliance costs. At the same time, by allowing entities to place more allowances in their compliance accounts, ARB would in effect make those allowances usable only for compliance purposes, reducing the possibility of market manipulation with respect to those allowances. Also, this proposal does not interfere with or undermine the suite of market manipulation prevention tools already in place (purchase limits, continuous market monitoring, an extensive registration process, and personal attestations).

In addition, PG&E suggests the following clarification to sections 95920(d)(2)(C) concerning changes to the calculation of the limited exemption. While ARB staff noted at the July 18 workshop that the amended regulation would not go into effect until later, the current language still appears to skip the inclusion of 2011 from the limited exemption, and the proposed language appears to skip the inclusion of both 2011 and 2012 from the limited exemption. To address this issue, PG&E recommends ARB change section 95920(d)(2)(C) to read as follows:

> "Beginning ~~in 2015,3 prior to the last quarter auction~~ **on October 1, 2012** ~~of each year~~**, and thereupon each year prior to the last quarter auction**, the limited exemption will be increased by the amount of emissions contained in the most recent emissions data report that has received a positive or qualified positive emissions data verified statement during that year."

G. Section 95921. PG&E Opposes the Release of Individual Entities' Compliance Account Balances

While ARB has not proposed a regulatory amendment to clarify its intent in this matter, PG&E would like to reiterate that it strongly opposes publishing individual entities' compliance account balances on a quarterly basis. Doing so would not achieve ARB's objective of providing the public with information about whether entities are in compliance with the regulation, nor provide valuable information on potential market manipulation. It could, meanwhile, compromise an entity's negotiating position as it seeks to procure compliance instruments to meet its obligation, or even facilitate market manipulation.

As previously mentioned in PG&E's comments on the September 24, 2012 EMAC meeting and the February 2012 ARB Workshop to Discuss Public Information Sharing from the Cap-and-Trade Program, information sharing at a sufficiently aggregated level is beneficial and contributes to a well-functioning market. Aggregated data could be publicly distributed after market activity, providing greater transparency about how the market is functioning without disadvantaging specific participants. Limiting access to more detailed data to the EMAC and Market Monitor would still provide benefits to the Cap-and-Trade market as a whole as these entities are tasked with identifying and investigating market anomalies.

Section 95921(e)(4) merely mentions the release of "the quantity and serial numbers of compliance instruments contained in compliance accounts in a timely manner." The language references compliance accounts in the plural, suggesting this requirement could be met through a much higher level of data aggregation than proposed by staff. This can be achieved through supplying the market with information at appropriate levels of aggregation at times that would not reveal a regulated entity's position.

PG&E suggests the following alternatives, which will both provide valuable information to market participants and preserve the confidentiality of market-sensitive information:

- Provide aggregate volumes by product type (allowance or offset) and allowance vintage
- If ARB prefers more granularity, release information quarterly if aggregated by sector only if the information does not violate a standard like the "15/15 Rule" (see description below).

California investor-owned utilities (IOUs) must abide by the "15/15 Rule" to protect customer confidentiality. The 15/15 Rule, adopted by the California Public Utilities Commission (CPUC) in Decision 97-10-031, requires that any aggregated information provided by the IOUs must be made up of at least 15 customers, and a single customer's load must be less than 15 percent of an assigned category. If the number of customers in the compiled data is below 15, or if a single customer's load is more than 15 percent of the total data, categories must be combined before the information is released. If ARB felt the need to release aggregate information for entities with a compliance obligation, similar logic could be applied to regulated entities' account information.

Revealing such commercially-sensitive details as an entity's compliance account balance, combined with information already publicly available, could provide insight into each participant's market position for others to exploit. An entity's account balance thus constitutes information that has commercial or economic value, is not generally known to the public and is therefore a "Trade Secret" as defined in Government Code Section 6254.7(d) and Civil Code

3426.1(d) (referred to in Evidence Code Section 1060). Revealing such trade secret or confidential information would also violate ARB's own policy and regulations.[5]

In addition, disclosing entity-specific compliance account information may, in effect, amount to misleading market information. Banks and marketers without compliance accounts could hold instruments that compliance entities already have under contract to meet their obligations, which would not be reported. Disclosing quarterly compliance account information at the entity-level could also affect market behavior and the actual information provided because entities might then decide to conduct transfers to their compliance accounts immediately before or after public information is collected to manipulate the information that is shared publicly.

Finally, releasing entity-specific compliance account information is not standard industry practice. This information is not released by any other existing GHG market, such as the Regional Greenhouse Gas Initiative (RGGI) and the European Union Emissions Trading System (EU ETS). To address the public's concern about regulated entities' compliance with AB 32, ARB should instead publicize instances of non-compliance by regulated entities, the consequences of such non-compliance, and any corrective action taken by the offending entities.

H. PG&E Remains Concerned About the Triennial Surrender Timeline and Looks Forward to Working with ARB to Develop a Solution Suitable for All Parties

As noted on page 20 of ARB's presentation at the June 27th workshop, natural gas suppliers will not know their compliance obligations until after the registration period ends for the September APCR sale. Without an auction or APCR sale after its obligation is known but prior to the compliance obligation due date, PG&E and its customers will be more vulnerable to price risk since the company would be required to procure any additional compliance instruments to fulfill its obligation in the secondary market within less than a month. PG&E remains concerned about this issue, with particular regard for the end of the second compliance period, and looks forward to working with ARB on how to address this problem.

I. PG&E Recommends Several Changes to Sections That Address Registration with ARB

Staff Reporting Requirements

PG&E opposes the introduction of Section 95830(c)(1)(I), requiring the reporting of names and contact information for all persons employed by a registered entity that will either have access to any information regarding compliance instruments, transactions, or holdings; or be involved in decisions regarding transactions or holding of compliance instruments.

[5] 17 CCR 91011 and ARB's Public Records Act FAQ at http://www.arb.ca.gov/html/pubrecsfaq.htm

This provision is overly broad and burdensome to monitor. As such, it would require PG&E to track and report hundreds of individuals to ARB, including those individuals who may inadvertently obtain information, and update such information within ten days of any changes. Due to the broad scope of individuals covered by Section 95830(c)(1)(I), administration of such a provision would undoubtedly prove burdensome. Moreover, it is not clear how such a requirement would contribute to the success of the Cap-and-Trade program or how ARB would analyze and make use of this information.

The strict confidentiality requirements already provided for in the regulation and the security requirements for access and use of CITSS are sufficient to protect the Cap-and- Trade market from manipulation. The additional information required of consultants and individuals who register as VAEs in the amended regulation should prove sufficient to monitor conflict of interest and the use of information gained on the job for personal benefit, an activity already strictly prohibited by PG&E. Additional controls are not needed. As such, PG&E recommends that this requirement be removed.

Contractor Reporting Requirements

PG&E proposes modifications to Section 95830(c)(1)(J) to reflect terms defined elsewhere in the regulations and to reference rather than duplicate requirements reflected in Section 95923 of the regulations. Additionally the new requirement that each individual contractor must provide a notarized letter from his or her employer may be overly burdensome with little value to ARB, if the employer is required to vouch for the identity and authority of the employee pursuant to Section 95923. Specifically, PG&E proposes the following:

> (J) Information required under section 95923 for individuals serving as **Cap-and-Trade Contractors for the registered entity** ~~consultants and bid advisors for entities participating in the Cap-and-Trade Program. An entity already registered in the tracking system must provide the notarized letter from their employer no later than January 31, 2015~~. Failure to provide such ~~a letter~~ **information** by ~~the deadline~~**, January 31, 2015,** will result in suspension, modification, or revocation of his/her tracking system account.

Consolidation

PG&E seeks clarification from ARB on the intended purpose of the new language regarding consolidation by facility operators. PG&E also seeks confirmation that the use of the term "entities" is intended, rather than "facilities."

Section 95830(b)(1): An entity must qualify for registration in the Tracking System pursuant to section 95811, 95813, or 95814. If an entity is registering pursuant to section 95811 or 95813, the facility operator identified in section 95101(a)(3) of MRR must register pursuant to this section and meet all applicable requirements of this article. If the facility operators choose to consolidate accounts pursuant to Section 95833, then at least one facility operator of the ~~facilities~~ **entities** in the direct corporate association must be identified pursuant to this section and meet all applicable requirements of this article for all ~~facilities~~ **entities** included in the consolidated account.

Registration

PG&E assumes ARB's intention in requiring tracking system registrations for individuals is to capture those individuals acting on behalf of an entity, such as the primary account representative. In order to act in such capacity, the individuals must have authority from the entity to act, as ARB has made clear in other sections of the Cap-and-Trade Regulations. PG&E has attempted to include language to bridge the gap between individuals and those individuals acting on behalf of registered entities or an entity.

Section 95830(c)(7): Any individual ~~who~~**acting on behalf of and with authorization of a registered entity, which individual** requires access to the **T**racking **S**ystem, including the primary account representative, alternate account representatives, or account viewing agents must first register as a user in the tracking system.

(D) An individual registering in the tracking system must agree **on behalf of the registered entity** to the terms and conditions contained in Appendix B of this article.

The draft regulation denies an individual's ability to register based on particular circumstances. Given the consequences for breach of the regulations, PG&E believes that it is prudent and reasonable to give an individual or entity the ability to cure an error or omission prior to such registration restrictions. PG&E proposes the following revision:

Section 95830(c)(8): An individual may be denied registration, **in each case after the individual has been notified of the failure and given an opportunity to correct the error or omission, as needed**:

Change in Ownership

PG&E seeks clarification from ARB on the intent of the changes to Section 95830(i), specifically whether "facility" rather than "entity" is the correct reference. PG&E notes that ARB's "Summary of Proposed Changes" suggests the provision was intended to apply to

changes in ownership of covered entities and not facilities, but the proposed regulation next references "when the ownership of a facility changes…" PG&E also suggests the removal of subpart (5), which requires original signatures of the officer or directors of the entity being purchased. PG&E does not see a need for this provision.

> 95830 (i) Change of ownership **due to merger or acquisition.** When the ~~ownership of a facility changes~~ **registered entity is acquired by or merged into another entity,** the following information must be submitted **by the surviving or new entity** within 30 days of finalization of ownership change:
>
> > ~~(5) Original signatures by a Director or Officer from the entities being purchased and the purchasing entity, authorizing the change of ownership.~~

Corporate Associations

The draft regulation's use of "second entity" should be amended to serve a wider audience. For example, it is possible for more than two entities with a 20% interest to be subject to the regulations. PG&E recommends the following changes:

> Section 95833(a)(1)-(3): An entity has a corporate association with another entity, regardless of whether the ~~second~~ other entity is subject to the requirements of this article, if either one of these entities:
>
> > (2) An entity has a "direct corporate association" with another entity, regardless of whether the ~~second~~ **other** entity is subject to the requirements of this article, if either one of these entities:
> >
> > (3) An entity has a "direct corporate association" with ~~a second~~ **another** entity, regardless of whether the ~~second~~ **other** entity is subject to the requirements of this article, if the two entities are connected through a line of more than one direct corporate association.
>
> Section 95833(a)(3)(B): An entity with a "direct corporate association" with a**nother** registered entity has a direct corporate association with any registered entity with whom the **other** registered entity has a direct corporate association.

The proposed language in Section 95833(f)(6) unnecessarily constrains an entity's ability to update information regarding corporate associations. This proposal fails to recognize the sophisticated corporate structures of many of the entities regulated under the Cap-and-Trade program. These structures are unlikely to remain stagnant over the course of a year and as such, these entities should be permitted to engage in normal business activities without limitations imposed by this Section. Given that ARB holds quarterly auctions and an entity must submit an application, which includes information regarding corporate association, to participate, entities

should be permitted to change their corporate association accounts including whether or not to consolidate at this time. PG&E recommends the following change to Section 95833(f)(6):

> (6) Entities with a direct corporate association may change their decision to consolidate accounts or opt-out of consolidation **provided the entity reports such changes at least 30 days prior to an auction in accordance with Section 95912(d)(2)**~~only once each compliance period.~~

J. Section 95852. PG&E Recommends Several Clarifications to Emissions without a Compliance Obligation

Qualified Exports Adjustment

PG&E recommends that the current Qualified Exports (QE) adjustment calculation be amended to enable it to achieve its intended purpose of allowing a reduction in the compliance obligations of importers who simultaneously import and export electricity. The current calculation results in a QE adjustment equal to zero if there is any zero-emissions generation within an hour. For example, assume PG&E imports 100 MWh in an hour and exported 100 MWh in that same hour. If the imported electricity was 99 MWh of unspecified electricity and 1 MWh of solar, and the exported electricity was all unspecified, PG&E could not claim any QE adjustment, as the QE adjustment would be zero. PG&E recommends changing section 95852(b)(5)(A)(2) to:

> "The lowest **non-zero** emission factor of any portion of the qualified exports or corresponding imports for the hour."

This amendment would be administratively simple to implement and would result in entities being able to use the QE adjustment as intended.

RPS Adjustment

PG&E suggests ARB clarify the intent of revisions to Section 95852(b)(4)(A) concerning the Renewable Portfolio Standard (RPS) Adjustment. Specifically, the RPS adjustment is available to electricity importers to reduce overall compliance obligation for RPS-eligible electricity generated outside of California that is not directly delivered to the state. The draft Regulation should clarify that an electricity importer is not restricted from re-selling the underlying electricity associated with the eligible renewable energy resource.

> Section 95852(b)(4)(A) The electricity importer must have ~~either:~~
>
> 1. Ownership or contract rights to procure the electricity and the associated RECs generated by the eligible renewable energy resource **provided that the electricity**

importer may resell the underlying electricity generated by the eligible renewable energy resource; or

K. Offsets Retired Beyond the Triennial 8% Usage Limit Should Be Returned to the Entity's Compliance Account

PG&E appreciates the clarification regarding retirement order, and does not feel the need for ARB to enable entities to specifically designate instruments to be retired from a Compliance Account. However, PG&E opposes ARB's proposal to the extent it requires offsets retired beyond the 8% usage limit to lose their value. If an entity placed offsets in its Compliance Account for retirement during one year at an amount equal to 8% of its forecasted compliance obligation for the compliance period, but shut down or was curtailed during the next two years, it should not have to lose the value of the offsets it submitted in good faith for compliance based upon the best available information at the time. In addition, if offsets are in short supply in the second compliance period as is currently forecast, the removal of offsets from the market that could be used to meet future compliance obligations would further exacerbate offsets supply shortages, reducing the benefit of offsets for cost-containment. Moreover, the proposal will expose regulated entities and their customers to increased costs.

Instead, PG&E recommends excess offsets be returned to an entity's Compliance Account, or remain in the Retirement Account and be eligible to meet subsequent compliance obligations. Accordingly, section 95856(h)(4) should read:

> "If an entity used any offsets to meet its annual timely surrender pursuant to section 95856(d) and the cumulative offsets retired by the Executive Officer exceed the quantitative usage limit pursuant to section 95854 at the time of the triennial timely surrender pursuant to section 95856(f), the offsets already retired will ~~remain in the Retirement Account~~ **be returned to the entity's Compliance Account** and the entity must ensure ~~they~~ **that** it has sufficient compliance instruments other than offsets to meet its triennial timely surrender pursuant to section 95856(e)."

In the event the functionality to transfer allowances back into the Compliance Account is unavailable to ARB, Section 95856(h)(4) could be amended as follows:

> "If an entity used any offsets to meet its annual timely surrender pursuant to section 95856(d) and the cumulative offsets retired by the Executive Officer exceed the quantitative usage limit pursuant to section 95854 at the time of the triennial timely surrender pursuant to section 95856(f), the offsets already retired will remain in the Retirement Account **and be eligible to meet subsequent compliance obligations.** ~~and t~~**T**he entity must ensure ~~they~~ **that** it has sufficient compliance instruments other than offsets to meet its triennial timely surrender pursuant to section 95856(e)."

During the July 18 workshop, staff suggested the only alternative to their current proposal would be to introduce an annual usage limit. An additional annual limitation is not necessary and would

only serve as another compliance requirement to an already complex program. With the retirement order now proposed, compliance entities can plan accordingly. PG&E does not see the need for an additional limitation on the amount of offsets that can be retired from a Compliance Account at an annual compliance showing. Either of PG&E's recommended changes to Section 95856 (h)(4) would alleviate the issue of lost offset value for entities that end up having transferred an excess amount of offsets to their Compliance Account for retirement.

Finally, PG&E recommends ARB incorporate the following clarification into Section 95856(h)(1)(A) to ensure entities will bear less compliance risk:

> Offset credits specified in section 95820(b) and sections 95821(b) through (d) with oldest credits **for which the invalidation period has lapsed or for which the registered entity has designated for retirement shall be** retired first and without consideration of the quantitative usage limit set forth in section 95854;

L. Auction Participation and Limitations

Investigation Disclosure Requirements

PG&E proposes the following modifications to the ongoing investigation disclosure requirement for auction participation. For a company as large as PG&E, the knowledge and materiality qualifiers are essential to PG&E's ability to provide the requested representation. PG&E would not want to violate the Cap-and-Trade regulations due to its failure to report a minor administrative violation of a CFTC rule connected to its energy purchases, which would likely be unrelated to PG&E's Cap-and-Trade compliance.

> 95912(d)(4)(E)~~(C)~~: **To the best of the entity's knowledge**, the identification of any ongoing ~~pending~~ investigation **by the U.S. Securities and Exchange Commission** or the Commodities Futures Trading Commission, **or the state equivalent of either such entity**, with respect to any alleged **material** violation of any ~~rule, regulation, or~~ **law applicable to commodities trading** ~~associated with any commodity, securities, or financial market,~~ including a change in the status of an ongoing investigation;

Auction Participation Restrictions

Revisions to Section 95912(d)(5) barring an entity from participating in an action if there are any changes to the entity's Auction Participation Application are unduly restrictive. For example, an entity may need to update an obvious error or omission. Instead of barring an entity from auction participation, the Regulation should require an entity to update reporting materials after an auction if any changes to the auction application requirements occur in the 15-day period following the auction. PG&E proposes that Section 95912(d)(5) be revised:

> An entity with any changes to the auction application information listed in subsection 95912(d)(4) 30 days prior to an auction, or an entity whose auction application information ~~will~~ change**d** 15 days after an auction **shall update the information listed in 95912(d)(4) within 15 days of such change**. ~~will be denied participation in the auction.~~

If ARB cannot agree to remove the above provision, PG&E requests that ARB identify the specific information of concern and limit the restriction on modification only to the identified items.

Likewise, PG&E suggests changes to 95914(a), concerning the ability of ARB to cancel or restrict auction participation based on certain determinations. Given the consequences of violating Section 95914(a), PG&E requests that an entity that has provided inaccurate information or omitted required information be given an opportunity to correct such error or omission before the Executive Officer rejects or restricts that entity's participation in the auction. While PG&E appreciates ARB's need for accurate and complete information, the impact on PG&E and its ratepayers for what may be an administrative failure is not justified.

> Section 95914(a): The Executive Officer may cancel or restrict a previously approved auction participation application or reject a new application if the Executive Officer determines, **in each case after the individual has been notified of the failure and given an opportunity to correct the error or omission, as needed,** that an entity has:

Access to Procurement Information

PG&E appreciates ARB's attempt to further refine the prohibition on sharing auction participation- related information. PG&E recommends this language be further modified to expressly exempt any information provided by electric or natural gas utilities to their Procurement Review Groups (PRG) required by the CPUC pursuant to Decision 02-08-071. Specifically, the Commission requires each utility to establish a PRG whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utility and review the details of the utility's:

1. Overall procurement strategy;
2. Proposed procurement processes including, but not limited to, RFOs; and
3. Proposed procurement contracts, before those contracts are submitted to the Commission for review

Restricting access to procurement related information could jeopardize regulated entities cost recovery. Moreover, there should be no requirement for a utility to report each disclosure to its PRG to the ARB. The PRG is entitled to all of PG&E's procurement related information and it would be administratively burdensome to update the ARB on such disclosures. In addition,

PG&E proposes the following amendment to clarify that natural gas utilities are protected under 95914(c)(2)(D):

> When the release is by an electric **or natural gas** distribution utility of information regarding compliance instrument cost and other disclosures specifically required by the California Public Utilities Commission **pursuant to any applicable rules, orders, or decisions.** ~~In the event of a disclosure pursuant to this section, the electricity distribution utility must provide the specific statutory reference or to ARB that requires the disclosure of the information.~~

Finally, with respect to Section 95921(b)(4)(G) concerning Information Requirements for Transfer Requests, the Regulation should allow for instances where no transfer price exists, rather than limiting "zero price" to instances where it simply is not specified in the agreement.

Disclosure of Cap-and-Trade Advisors

Because the amendments do not define "advisors," PG&E has provided an "advisor" definition for ARB's consideration.

> Section 95914(c)(3): If an entity participating in an auction has retained the services of **an advisor, which means a firm or an individual not employed by the entity for the purpose of advising the entity on auction bidding strategy**, then…
>
> Section 95914(c)(3)(A): The entity must ~~**ensure**~~ **caution the advisor against** ~~the advisor~~ transferring information to other auction participants or coordinating the bidding strategy among participants…

Disclosure of Cap-and-Trade Contractors

PG&E seeks to distinguish bid strategy advisors from "Cap-and-Trade Contractors" who are defined as consultants under contract for the purpose of assisting with an entity's overall compliance with the Cap-and-Trade program. PG&E invites ARB to distinguish further between the two third-party contractors. PG&E would like ARB to detail how it will obtain information from and monitor advisors, particularly with regard to the assurances and information required pursuant to Section 95914(c)(3)(D).

PG&E seeks clarification on the intended purpose of the new Cap-and-Trade Contractor regulations. While PG&E does not oppose the addition of the "Cap-and-Trade Contractor" provisions, PG&E seeks to confirm that the contractor is intended to a third-party contractor rather than an employee. PG&E also seeks confirmation that the contractor may fulfill either role as set forth in subpart (1)(A) or (B) of the new regulation and need not function in both capacities. PG&E recommends the following change to Section 95923(a)(1):

A "Cap-and-Trade Contractor" is a contractor ~~employed~~ **retained under contract by a registered entity for which it is not an employee** ~~by an entity registered in the cap-and-trade program~~ to work on **C**ap-and-**T**rade compliance if the contractor**, is not an adviser pursuant to Section 95914(c), but the contractor:**

(A) Verifies the entity's emissions as part of ARB's Mandatory Reporting Regulation**; [or][and]**

(B) Advises or consults with the entity regarding compliance with the Cap-and-Trade Program, and receives information from another registered Cap-and-Trade participant;

M. Section 95921. Prohibitions on Trading Should Be Clarified

The changes to Section 95921(f) listed below are intended to better clarify which trading activities are prohibited and which are permitted. In addition, the new subsection "C" should be applicable to the general prohibition, not just the two activities described in (A) and (B).

(1) An entity cannot acquire allowances and hold them in its own holding account on behalf of another entity. ~~Including~~ **This prohibition shall restrict** the following ~~restrictions~~ **activities**:

(A) An entity may not hold allowances in which a second entity has any ownership or financial interest.

(B) An entity may not hold allowances pursuant to an agreement that gives a second entity control over the holding or planned disposition of allowances while the instruments reside in the first entity's accounts, or control over the acquisition of allowances by the first entity.

(C) ~~These~~ This prohibition~~s~~ do**es** not apply to agreements that only specify a date **or time period** to deliver a specified quantity of allowances and that **do not** include ~~no~~ terms applying to allowances residing in another entity's account.

~~(C)~~**(D)** An entity may purchase and hold allowances for later transfer to members of a direct corporate association.

N. Allowances Allocated to An Entity That Closes Should Be Consigned by ARB to the Quarterly Auction

Section 95812(f) contains a request from Staff for feedback regarding the disposition of free allowances when facilities close. PG&E recommends that these allowances be consigned by ARB to auction to increase liquidity.

O. Modifications To The CITSS User Terms and Agreement Are Needed

PG&E submits the following comments on the CITSS User Terms and Agreement for ARB's consideration. If it would be helpful, PG&E would be willing to provide an edited form of the agreement for ARB's consideration.

Section 1.4: PG&E requests ARB and WCI provide notice to PG&E prior to disclosure of the Content.

Section 1.5: PG&E requests ARB or WCI notify Users immediately of a breach of security on the CITSS system, including breach of stored information on data servers for the system.

Section 2.3: The entity using CITTS should receive written notice of a User's alleged violation and be offered an opportunity to correct the problem before the Agreement is terminated.

Section 4.1: PG&E recommends ARB and WCI introduce a limitation of liability provisions that protects the entity using CITTSS and its Users.

Section 5: This provision should be removed as it is duplicative of the restrictions in Section 2.2 (See Sections 2.2(b), 2.2(k) and 2.2(g)).

Section 6: The last sentence in this provision should be removed.

Request for additional Provisions:

- Add provision to inform Users of measures being taken to secure information processed or provided through the CITSS system.
- ARB and WCI's use of the Content should be restricted.
- WCI needs to provide warranties regarding its ability to perform the services, ensure data security, etc.

P. Miscellaneous

The following Sections contain references to the "tracking system" and should be amended to read, "Tracking System:" 95830(b)(1-3), 95830(c)(1-2), Section 95830(c)(7)(A)-(C), and 95830(i)(2)-(3).

Section 95802(XX) "Early **A**~~a~~action **R**~~r~~reporting **P**~~p~~eriod" means a reporting period in which GHG reductions and/or GHG removal enhancements are reported under an Early Action Offset Program.

Section 95802(YYY) Over-the-Counter" means the trading of ~~carbon~~ **C**~~c~~ompliance **I**~~i~~nstruments, **or** contracts or other instruments not listed on any exchange.

Section 96022(c): A**n entity** ~~party~~ that has rights and protections under the Foreign Sovereign Immunities Act consents to civil enforcement of the laws, rules and regulations pertaining to this article in California's courts, subject to the rights and protections afforded to entities subject to the Foreign Sovereign Immunities Act, including removal to federal court.

PG&E believes that ARB intended to use the word "entity" rather than "party." Please confirm that PG&E's understanding of Section 96022(c) is correct.

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

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