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Re: Sacramento Municipal Utility District's Comments on Discussion Draft July 2013 Amendments to California's Cap-and-Trade Program

SMUD appreciates the opportunity to comment on the Discussion Draft July 2013 (Discussion Draft) amendments to California's Cap-and-Trade program. SMUD supports the concept of 'fine-tuning' the Cap-and-Trade regulations at this time, and believes that most of the proposed revisions in the Discussion Draft make sense. However, SMUD does have comments on some of the proposed revisions, and recommends other revisions that were not included in the Discussion Draft, as described below.

I. ARB Should Include Amendments To The Cap-and Trade Regulations That Allow Flexibility In CITSS Account Participation.

Currently under the Cap-And-Trade regulations, Primary and Alternative Account Representatives register in CITSS and have the authority to transfer allowances among accounts as a "settlement" function per the definitions of these roles in § 95802(9) and (206), along with the registration structure established in §95832. These CITSS participants are also allowed to participate in the quarterly auctions per § 95912 – in fact, a PAR or AAR CITSS registration is required to participate in these auctions (as well as the APCR auctions, when held).

However, in SMUD, and in many other companies, these "settlement" and "trading" or auction participation functions are strictly and explicitly separated for transaction integrity reasons, so the broad authority provided to PARs and AARs in CITSS is problematic. The Cap-And-Trade regulations should be modified to provide entities the flexibility to designate the proper roles in CITSS for entity personnel. This can be very simply accomplished by adding the following ending clause to the definitions in § 95802(9) and (206):

"… as designated by the entity."

This simple change is all that SMUD believes is required in the Cap and Trade regulations, and SMUD urges ARB to include the modification, for two reasons. First, it is important to SMUD and other market participants, and second – it just does not seem that complicated of a change.

Of course, SMUD also desires that the CITSS structure be altered to clearly accommodate the new functionality. SMUD suggests that the CITSS structure be altered to include "flags" that can be checked upon registration so that the authority of each PAR and AAR with respect to CITSS account transfers and auction participation is clear and functional in CITSS. For example, these flags could read:

	CITSS Edit Ability?	**Auction Participant?**
PAR:	**Y**	**N**
AAR1:	**Y**	**N**
AAR2:	**Y**	**N**
AAR3:	**Y**	**N**
AAR4:	**N**	**Y**
AAR5:	**N**	**Y**

Here, any entity that wants all staff to have all access would merely put a "Y" by everyone in both fields, or if the entity wants a particular CITSS participant to have full authority, then they would put a "Y" in both fields for that participant. SMUD does not believe that this solution restricts any other entities from the current full authority their CITSS participants have, creates an appreciable administrative burden, or requires that additional PARs/AARs or other CITSS roles be created and defined. It is simply a matter of adding a couple of extra boxes to a registered entity's profile.

SMUD understands that this "second part" – the CITSS structure change proposal – is not a regulatory change – rather it is an "implementation" change that is separate from the forthcoming formal Cap and Trade rulemaking. However, this change to the CITSS structure is also important, and while SMUD recognizes that it may take additional time to implement in the CITSS releases schedule, SMUD would prefer that this change in CITSS structure be made as soon as feasible.

II. It May Be Premature For ARB To Include Provisions Relating To An Energy Imbalance Market

SMUD appreciates that there are discussions and proposals for an Energy Imbalance Market (EIM) in the Western Interconnect, and that should such a market structure be established, there would likely be associated short-term electricity imports with associated emissions. However, SMUD believes that such a market is at present by no means certain. It is premature to include provisions in the Cap and Trade regulations that aim to prepare for such an eventuality. These provisions can wait until such a structure is in place or at least has a greater likelihood of being established.

III. SMUD Supports The Proposed Changes To Provide Allowances For Legacy Contracts

SMUD appreciates the proposed changes that will provide 2015 allowances to cover 2013 and 2014 emissions associated with "legacy contracts" – electricity or qualified thermal output contracts that were signed prior to the Cap and Trade program and that have not been able to be altered to include compensation for the compliance instrument costs associated with the contracts. SMUD supports these changes being included in the forthcoming regulatory language and eventually adopted as part of the Cap and Trade structure.

IV. SMUD Believes That Voluntary Renewable Energy Provisions Should Be Further Modified

Under the RPS, a covered entity can reduce its reported emissions and hence compliance obligation either by procuring directly delivered renewables, which come with zero or near zero specific source GHG emission factors, or by procuring firmed and shaped renewables along with substitute energy delivered to the state, and taking advantage of the "RPS adjustment" to reduce the emissions associated with the substitute energy. Both instances reduce the covered entity's reported emissions and hence allow commensurate emissions elsewhere under the cap. ARB's voluntary renewable energy (VRE) set-aside provisions recognize that the Cap acts to reduce the incentive to procure renewables for a voluntary program (as GHG emissions are not altered under the Cap), and therefore sets aside some allowances that can be retired to ensure that GHG reductions actually occur with these voluntary programs, despite the existence of the cap.

However, the Cap and Trade regulations currently reserve the use of the VRE program for only directly delivered renewables, not covering the "RPS adjustment" pathway. SMUD continues to recommend that the Cap and Trade Regulations allow use of the VRE provisions for renewable energy that *could* take advantage of the RPS Adjustment *if* the procurement was associated with an entity's RPS obligation.

Note that SMUD is not asking for application of the VRE to any type of renewables that is not eligible for the RPS – SMUD accepts that ARB wishes to preserve the VRE adjustment to only those renewables that are RPS eligible. SMUD is in fact requesting greater equivalency for the voluntary program to how renewables are treated for the RPS, allowing both directly delivered *and* RPS adjustment provisions in the VRE context to lead to GHG reductions through allowance retirement from the VRE.

SMUD also understands that the ARB established a direct delivery requirement for the VRE in order to implement a VRE that is based on "the location of the renewable generator" rather than the location of the VRE purchaser. With this structure, even a non-obligated entity under the Cap and Trade – for example, someone that sells RECs to customers outside of California -- can ensure GHG reductions for the purchasers of its

voluntary renewable product – even for those renewable generators located within the capped geography.

SMUD believes that our proposed expansion to also include in the VRE structure those RPS-eligible firmed and shaped resources that would typically use the RPS Adjustment if used for the RPS is fully consistent with this location related concept for directly delivered renewables. Just like directly delivered renewables under the Cap, RPS procurement of renewables via the RPS Adjustment yields a GHG benefit to the procuring entity, a reduction of their GHG obligation under the Cap, that then allows for other obligated entities to fill the room left under the Cap by this transaction. Hence, just like a voluntary procurement of directly delivered renewables, a voluntary procurement of RPS Adjustment eligible renewables can yield no change in overall GHG emissions – in those cases where the procuring entity is a covered entity under the Cap, such as for California utility green-pricing programs. SMUD agrees that the VRE structure should not be extended to renewable purchases not directly delivered for non-covered Cap and Trade entities.

In the FSOR for the Cap and Trade regulations, ARB staff suggested that: " … If electricity under SMUD's green pricing program meets the established [CEC] RPS requirements, then it will be allowed to take the RPS adjustment." (FSOR, page 2132). However, the regulations as drafted would limit the RPS Adjustment to only situations of actual RPS compliance, thereby constraining its use for green pricing programs that are not subject to RPS compliance. The following changes in red would allow resources that would normally count for the state's RPS to also be fully viable for voluntary program customer needs for an covered Cap and Trade entity, without incurring a compliance obligation or challenging the GHG benefits expected from voluntary renewable procurement.

> 95841.1(a) Program Requirements: The end-user, or VRE participant acting on behalf of the end-user, must meet the requirements of this section. Generation must be new and not have served load prior to July 1, 2005. Allowance retirement for purposes of voluntary renewable electricity will begin in 2014 for 2013 generation. Voluntary renewable electricity must be directly delivered to California, or part of a transaction that uses the RPS adjustment. RECs, if created, must be retired within the year for which VRE retirements are requested.

> 95852(b)(4)(B) The RECs associated with the electricity claimed for the RPS adjustment must be placed in the retirement subaccount of the entity party to the contract in 95852(b)(4)(A), in the accounting system established by the CEC pursuant to PUC 399.13 and designated as retired for the purpose of compliance with the California RPS program or to supply a green pricing program operated by a covered entity ~~used to comply with California RPS requirements~~ during the same year ~~in~~ for which the RPS adjustment is claimed.

V. SMUD Supports The Proposed Modifications To The Eligibility Requirements for Biomass-Derived Fuels In Section 95852.1.1

SMUD appreciates the proposed modifications to the provisions in the section describing eligibility requirements for biomass-derived fuels. Fuels that meet the requirements in this sector do not incur a compliance obligation under the Cap-and-Trade Program. SMUD believes that the proposed changes continue to prevent “resource shuffling” with respect to biomass-derived fuels, while clarifying that new sources of these fuels, and those sources that were previously delivered to California, do not have compliance obligation.

VI. The ARB Should Include Additional Modifications To Address Cost Containment Pursuant To Board Resolution 12-51

SMUD welcomed the Air Board Resolution 12-51 asking ARB staff to develop proposals to prevent allowance prices in the Cap-and-Trade program from rising above the price in the 3rd tier of the APCR, while preserving the environmental integrity of the Cap-and-Trade structure, and being reasonably available in 2013-2020. To SMUD, this second part of the resolution is as important if not more important than the first part – we desire costs to be as low as possible, but more importantly, we want to achieve our GHG reduction goals. SMUD believes that the third part of the Resolution implies that ARB should act during the 2013 Cap-and-Trade update rulemaking to enact further cost containment measures.

However, the proposed modifications in the Discussion Draft do not go far enough, in SMUD’s opinion, to address the goals of the Board’s resolution. The Discussion Draft only includes a provision to “borrow” a finite number of allowances from future vintages and make these available at the highest price tier of the APCR, and only at limited times. Should this limited amount of additional allowances be insufficient at any time, or should high prices ensue during and auction other than those identified in the Discussion Draft, the Cap- and-Trade Program has provisions that would ration procurement from the APCR, implying the potential for market prices rising above the level suggested in Board Resolution 12-51. In addition, should the envisioned borrowing of allowances from future vintages be pervasive or occur multiple times, it is clear that fewer and fewer allowances will be made available through the proposed modification, meaning that it clearly does not achieve the Board Resolution goals in cases where there is a long-term change in demand/supply characteristics of the Cap-and-Trade market.

ARB staff may feel that the proposed limited borrowing is sufficient to address the Board’s Resolution because the scenarios in which demand/supply conditions lead to 3rd Tier APCR prices are unlikely.   However, SMUD points out that there is a bill in the legislature that would significantly limit the supply of carbon offsets in the Cap and Trade program if enacted. SMUD has seen market analysis that suggested that there was a measurable probability of such enactment, and indicated that the result would be significantly higher prices in the Cap and Trade market – in some cases well above the APCR 3rd Tier price. SMUD points out that this would represent a reduction in overall supply of compliance

instruments of less than 8%, since that is the offset usage limit. SMUD can imagine a scenario where demand for allowances is 8% higher than expected, through a combination of factors.

SMUD believes that to achieve the goals of the Board Resolution the ARB should include additional cost limitation provisions in the 2013 Cap and Trade update. In addressing the Board Resolution, ARB staff has focused only on a measure that would be triggered once a price crisis is already happening. A broader reading of the Board's Resolution would embrace provisions that would help to prevent the price crisis from happening in the first place. The ARB should add provisions in the forthcoming 2013 regulatory language to further address cost containment, drawing from all three program elements mentioned in the Joint Utilities' white paper provided as part of the cost-containment workshop. The proposed limited borrowing from future vintages at the highest price APCR level, in limited circumstances, is not sufficient, in SMUD's view, to achieve the Board's goals.

Hence, SMUD suggests revisiting the basic structure of the Joint Utilities proposal, with the three main categories of cost containment measures:

> A) Measures which take effect now and gradually over time reduce the likelihood of prices rising above the APCR in the future by: 1) reducing demand for compliance instruments; 2) increasing the supply of compliance instruments; and 3) ensuring that compliance instruments are accessible in the marketplace.
>
> B) Measures that, when triggered, would quickly alter compliance instrument demand/supply dynamics and constrain upward pressure on market prices for a period of time. An example trigger is a percentage level of depletion of the APCR.
>
> C) Measures that, when triggered, would keep allowance prices at the third tier of the APCR regardless of current demand, while preserving the environmental integrity of the Cap and Trade Program over time.

SMUD contends that the limited borrowing measure in the Discussion Draft is essentially from category B – it would quickly alter compliance instrument supply and demand dynamics for a period of time, and is triggered when the APCR is essentially 100% depleted. ARB has not, in SMUD's mind, included a measure that is from category C, nor has it included a measure from Category A in the current cost-containment proposal.

SMUD recommends that ARB include additional Category A and B measures in the 2013 Cap and Trade amendments, while signaling that a Category C measure that would fully meet the intent of the Board's resolution is being further examined. Here, SMUD would recommend a research analysis to confirm that emission reductions are available to fully offset any amount of additional allowances that may be necessary to achieve compliance at prices no higher than the APCR third tier price, along with describing viable mechanisms for quickly accessing these commensurate emission reductions.

With respect to additional Category A and B measures, SMUD suggests that the ARB include, but not limit consideration to, the following additional measures:

1) Measures to ensure that the allowed 8% of compliance from offsets is fully available to the market, by:
   - Avoiding the loss of this potential if entities do not use their full offset allocation, allowing carryover of the offset limit on an entity specific basis or by spreading unused amounts over the broader market.
   - Avoiding the loss of this potential if entities mistakenly place offsets into their compliance accounts in the initial years of a compliance period in an amount beyond the 8% limit that would be enforced for the compliance period as a whole. Here, rather than enforce the 8% limit on the 30% annual surrender (an equivalent of 2.4% of actual annual emissions), SMUD suggests that ARB follow the principle proposed to be used for the compliance period surrender – only remove offsets from an entities compliance account up to 8% of the actual emissions for the prior year (to which the 30% is applied). Here, then, one's annual surrender might be comprised of 27% offsets from one's compliance account (with any additional offsets held in the compliance account left for future compliance), and 73% from other compliance instruments as proposed in the surrender order in the Discussion Draft. Alternatively, ARB could remove offsets in one's compliance account equal to a simple and reasonable estimate of the actual limit for a compliance period – for example, up to 8% of double the measured emissions for 2013 and 2014 and triple the proposed emissions for 2015 through 2020. There appears to be no valid policy reason to add to the potential for higher compliance costs by enforcing the offset limit in the manner proposed, where potential mistakes by obligated entities would reduce compliance period supply.
   - Quickly pursuing and adopting new, rigorous offset protocols, and expanding the geographic scope of existing protocols. SMUD has seen market analysis indicating that even with eventual adoption of the proposed two new protocols for mine methane capture and rice cultivation, offset supply given the current geographic scope of the offset protocols in place will not be sufficient to provide the full "room" under the 8% offset limit. SMUD encourages the quick adoption of the two proposed protocols; refocused effort on developing and adopting additional protocols; including REDD+ protocols; and consideration of expanding existing protocols to all of North America and beyond if feasible (geographic expansion to North America is allowed under the Cap-and-Trade regulations without a rulemaking).

2) Measures that will act to reduce demand for compliance instruments over the long term. Here, for example, a measure that fostered greater electrification beyond a baseline expected amount would reduce demand for allowances because the reduction in emissions on the fuel side would be greater than the increase in emissions on the electricity side. One factor here would be consideration of how to incentivize this electrification, which currently presents a Cap-and-Trade "cost" to an electric utility – an additional compliance obligation, and a Cap-and-Trade "benefit" to a distributed fuel provider – a reduced need to purchase or allocate administratively provided allowances for compliance.

3) Measures that would act to increase supply of compliance instruments over the long term. For example, the ARB could exempt from the offset limit any offsets that

provide in-state ancillary environmental benefits similar to actual reductions at capped sector facilities. One way to structure this would be to exempt offsets from the 8% limit if they could prove one or more of the following:

- a direct reduction or avoidance of any criteria air pollutant in California,
- a direct reduction or avoidance any impacts on water quality in California,
- a direct alleviation of a local nuisance within California associated with the emission of odors;
- direct environmental improvements to land uses and practices in California's agricultural sector;
- direct environmental improvements to California's natural forest resources and other natural resources;
- a direct reduction of the need for mitigation of the impacts within California of rising global greenhouse gas emissions;

4) Additional limited borrowing, but triggered earlier than that proposed in the Discussion Draft, where the sole cost-containment measure is triggered when the APCR is essentially fully depleted. SMUD contends that the ARB should include measures that are triggered earlier than the full depletion of the APCR, in order to gain time to avoid the more severe price crisis. The "door" to consideration of limited borrowing has been cracked ajar by the ARB's proposed cost-containment measure in the Discussion Draft. SMUD reiterates that the ARB should adopt a provision that when 40% of the allowances in the APCR have been purchased, entities are allowed to use allowances for compliance from the next vintage year. An extra year's worth of eligible compliance instruments in the market pulls supply of allowances temporarily back into a better balance with demand, providing time for technology or other measures to reduce demand in the following year and beyond.

VII. The ARB Should Alter The Proposed Compliance Instrument Retirement Protocols To Preserve Offset Utilization

The ARB should alter the proposed compliance instrument retirement protocols to avoiding the loss of offsets if entities mistakenly place offsets into their compliance accounts in the initial years of a compliance period, in an amount beyond the 8% limit that would be enforced for the compliance period as a whole. ARB has stated that they are not intending to enforce the offset limit for annual compliance, and hence would simply take all offsets in a compliance account as the first contribution to the 30% annual surrender requirements. ARB has indicated that this means that if there are offsets in an entity's compliance account that total greater than the eventual 8% offset limit for a compliance period, any ARB-retired offsets beyond this 8% limit would be simply lost – to the compliance entity and to the market. SMUD suggests that the ARB find a way to avoid the confiscatory and supply-reducing implications of this proposal. SMUD sees no valid policy reason to add to the potential for higher compliance costs by enforcing the offset limit in the manner proposed, where potential mistakes by obligated entities would reduce compliance period supply.

Rather than enforce the 8% limit on the 30% annual surrender (an equivalent of 2.4% of actual annual emissions), SMUD suggests that ARB follow the principle proposed to be used for the compliance period surrender – only remove offsets from an entities compliance account up to 8% of the actual emissions for the prior year (to which the 30% is applied). Here, then, one's annual surrender might be comprised of 27% offsets from one's compliance account (with any additional offsets held in the compliance account left for future compliance), and 73% from other compliance instruments as proposed in the surrender order in the Discussion Draft. Alternatively, ARB could remove offsets in one's compliance account equal to a simple and reasonable estimate of the actual limit for a compliance period – for example, up to 8% of double the measured emissions for 2013 and 2014 and triple the proposed emissions for 2015 through 2020.

With respect to the remainder of the proposed retirement protocol, SMUD notes that the Discussion Draft proposed retiring APCR-procured allowances last, similarly to the presentation at the July 18th workshop. SMUD supports this ordering, but notes that ARB indicated that their intent was to match the retirement order shown in the earlier June 25th workshop, which had APCR allowances second in line behind offsets in the proposed retirement order. At the July 18th workshop, ARB staff explained that the rationale for placing APCR allowances second in the retirement order was that they were the only allowances for which future vintages could be used for current compliance, so represented an additional tracking burden (additional vintages) as long as they remained in the "system". SMUD does not believe that this is sufficient rationale for the proposed order, and notes that a tracking structure must be in place anyway, even if no APCR allowances are in the market because they have not yet been sold (which is the current case), or if they have been sold, but are retired by ARB, because there is always the prospect of APCR allowances entering or reentering the market. SMUD also does not believe that the additional vintage tracking represented by held APCR allowances is a significant marginal burden.

VIII. SMUD Supports The Provision Of Allowances To University Sources

SMUD appreciates the modification proposed in the Discussion Draft to provide allowances to public and private university covered parties. SMUD believes that the provision will reduce the incentives of such entities to forego their combined heat and power systems in order to reduce their compliance obligations or even avoid being a covered entity altogether.

IX. ARB Should Modify Its Provision Of Allowances To Natural Gas Distribution Utilities

SMUD understands the need to address how allowances will be allocated to natural gas distribution utilities, and that there are considerations similar to those addressed for electric distribution utilities involving providing benefits to utility ratepayers from allowance value and protection for utility ratepayers from unwarranted rate impacts. SMUD believes, however, that the ARB should modify the proposed allocation structure for natural gas distribution utilities. The ARB has proposed allocations based on each natural gas suppliers measured 2013 emissions. SMUD has contended historically that allocations

should be based, where possible, on a product benchmark such as used in most industrial sectors, in order to provide incentives for emission reductions per unit of product and avoid rewarding the highest historical emission entities. SMUD recognizes that for natural gas distribution suppliers there would be little to no initial difference between an administrative allocation based on sales or average number of customers versus an allocation based on historical emissions, since there is not the variety of fuel sources and emission signatures found for example in the electricity sector. Since there would be little difference, SMUD believes that the ARB should follow the general principle of basing allowance allocations on a product benchmark basis, in this case sales of the basic product or therms of natural gas or some measure of gas sales per average customer, rather than historical 2013 emissions. To the extent there is a difference, attributable perhaps to better control of methane leakage in one system versus another, the benchmark based system provides the proper signals for the future.

SMUD contends that one benefit of using a product benchmark basis rather than a historical emissions basis is the precedent set for post-2020 Cap and Trade policy (ARB staff have indicated that they envision the Cap and Trade Program continuing beyond 2020 in the 2013 Scoping Plan Update process), and for potential linkage partners to the California/Quebec Cap and Trade structure. To the extent that future natural gas system emissions can be reduced through procurement and delivery of renewable natural gas, reduction in methane leakage, and improvements in the efficiency of gas usage, a product-based benchmark provides covered entities with the right incentives to pursue such measures.

XI. The ARB Should Slightly Expand Ability Of POUs To Place Allowances In Other Compliance Accounts To Cover Retail Sales Obligations

The current Cap and Trade regulation allows a POU to designate what amounts of administratively provided allowances that the Executive Director should place in the POUs limited use holding account or in the compliance accounts of: 1) an electrical generating facility operated by the POU; 2) an electrical cooperative; or 3) a JPA in which the POU is a member and with which it has a power purchase agreement.

SMUD suggests adding a fourth component to the allowable compliance accounts that can be designated, as follows:

> 4) a federal power authority.

The Discussion Draft recognizes the instances where a federal power authority imports power on the behalf of retail customers of POUs, by explicitly allowing the entry of a zero price in a CITSS transfer agreement if "… <u>the proposed transfer is from a public utility to a federal power authority to cover emissions associated with imported power</u>". (among other allowed cases. Discussion Draft, page 215). SMUD would prefer the convenience and

flexibility of an option to simply place allowances in the federal power authority's compliance account in these cases.

XII. SMUD Believes That The ARB Should Modify The Limited Exemption To The Holding Account So That The Limited Exemption Is Independent Of Allowances Included In Entity Compliance Accounts

The Discussion Draft clarifies that the limited exemption for any entity is developed as a function of their emissions obligation as it increases through a compliance period (with additional year's emissions) minus the compliance obligation at the end of a compliance period (Section 95920(d)(2)(A) through(J). Basically, an entity can hold allowances it is expected to need for actual current or ongoing compliance without considering the holding limit, as these allowances must be held by the entity if it wishes to comply, so should not be subject to the holding limit. Previously, the Cap and Trade regulations had implied that the limited exemption could be higher than that amount if more than that amount of allowances were transferred to an entity's compliance account.

The clarifications solidify that the maximum limited exemption is an entity-specific number that is independent of where that entity holds allowances. The clarifications go on to say, however, that an entity can only access their limited exemption to the extent that they place allowances into their compliance account, creating a secondary limit on the use of the limited exemption. SMUD advocates removal of this secondary limit, leaving the basic limited exemption in place for each entity. To the extent that the secondary limit on the limited exemption causes entities to place allowances into their compliance accounts before necessary for compliance, in order to access their allowed limited exemption, SMUD believes that the secondary limit on the limited exemption will reduce market liquidity, by removing allowances from holding accounts before necessary.

If an covered entity desires to or must access it's limited exemption, and the larger covered entities are more likely to need access to their limited exemptions, then removing the secondary limit does not allow that entity to hold more allowances, it merely alters in which account those allowances are held. On the other hand, smaller entities do not necessarily need access to their limited exemption, so requiring transfer to compliance accounts for access likely will not affect their behavior. SMUD believes market liquidity is enhanced if entities may access their limited exemption with allowances in holding accounts, as well as compliance accounts. Hence, SMUD suggests removing the secondary limit on the limited exemption – this can be done by simply removing Section 95920(d)(2)(A) in its entirety. SMUD does not see a negative impact on the market or the concept of a holding limit by removing this subsection.

XII. ARB Should Carefully Consider Any Proposed Changes to Reporting, Verification, and Compliance Timelines.

Although it is somewhat unclear due to differences between the Discussion Draft and the July 18th presentation, SMUD believes that ARB is contemplating moving reporting and verification deadlines approximately two weeks earlier in the Cap and Trade Program, while moving the third APCR auction a little bit later, so that an entity's final compliance obligation is known prior to the closing of the application window for participation in the third APCR auction for the year. As mentioned in SMUD's previous comments on this issue, SMUD believes that moving reporting deadlines two weeks earlier is problematic, leading to conflicts with Federal GHG reporting tasks and unintended impacts on Federal reporting requirements. In addition, moving verification deadlines earlier by two weeks will cause significant strains in the verification function – there is simply limited time available for this process and removing two weeks from the timeline may cause verification failures.

SMUD again encourages the ARB to consider other changes to compliance timelines or other regulation aspects to accomplish the intended goal, rather than moving the reporting and verification dates forward.

XIII. The Cap-And-Trade Regulations Should Be Modified To Clarify That Release of Entity-Specific Compliance Account Balances Is Not Required, and ARB Should Only Release Aggregate Compliance Account Data

SMUD has weighed in on the issue of compliance account balance disclosures twice in the past year, in comments for the initial information disclosure workshop on January 25th, 2013, and comments on the June 25th, 2013 workshop. SMUD understands the need for a balance between transparency and protection of market sensitive information in the Cap-and-Trade program. SMUD believes that a proper balance here is achieved without revealing entity-specific compliance account balances. Implicit in the ARB staff discussion of this issue is a continued assertion that entity-specific compliance account information is required to be released publicly by the current Cap-and-Trade regulations. SMUD continues to assert that the Cap-and-Trade regulations do not require release of entity-specific compliance account data in the first place, for reasons explained in our June 25th workshop comments. However, in order to clarify this provision, SMUD recommends that Section 95921(e)(4) be modified as follows:

(4) Releases information on the aggregated quantity ~~and serial numbers~~ of compliance instruments contained in compliance accounts in a timely manner.

XIV. The Discussion Draft Proposed Modification To Bid Guarantees That Are Not Cash Should Be Altered

The Discussion Draft includes a new provision on page 191 that states that any bid guarantee that is not provided in the form of cash must be able payable within one business day of a payment request. While SMUD understands that the ARB desires swift payment protocols in order to facilitate settlements, one business day is restrictive for many forms of bid guarantee still allowed by the Cap and Trade regulations. For example, a certified letter of credit is normally payable in 2 business days, and at times it may take 3 business days to complete the transaction. It is unclear to SMUD why settlements from a quarterly auction must be finalized so quickly as the modification in the Discussion Draft suggests. SMUD recommends that the time period allowed for this be modified as follows:

95912(j)(3): A bid guarantee submitted in any form other than cash must be payable within three ~~one~~ business days of payment request.

XV. The Cap And Trade Regulations Should Be Modified To Explicitly Include Option 2 As A Viable Method Of Meeting the Know Your Customer Requirements

As the ARB began implementation of the Cap and Trade Program last summer, the Know Your Customer requirements raised significant concerns among covered entities. ARB responded at that time with guidance providing a second option for meeting the KYC requirements, involving much of the sensitive information being held by the covered entities themselves, and available for ARB inspection as required.

SMUD appreciated the Guidance provided at that time, and understands that this guidance continues to be in place. Nevertheless, SMUD was under the impression that eventually changes would be made to the Cap and Trade regulations to clarify that option 2 was an explicit choice for the KYC requirements. The Discussion Draft did not include any modifications to reflect this expectation, and SMUD urges the ARB to include language in the official regulatory package for July 2013 Cap and Trade update rulemaking to address this issue.

SMUD again appreciates the opportunity to comment on the Discussion Draft July 2013 proposed modifications to the Cap-and-Trade Program.

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cc: Corporate Files