BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON THE PROPOSED CHANGES TO THE REGULATION FOR THE MANDATORY REPORTING OF GREENHOUSE GAS EMISSIONS

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I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority ("SCPPA") [1] respectfully submits this comment on the proposed changes to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions ("Regulation") released by the California Air Resources Board ("ARB") for 15-day public comment on July 25, 2011 ("Proposed Changes").

SCPPA appreciates that many of the Proposed Changes improve the Regulation and address issues raised by SCPPA in previous comments to the ARB. However, some further changes are required. In summary, SCPPA recommends that:

- The definition of "facility" should be revised so that where there are different electricity generating units or sets of units on the same site with common operational control but different ownership, the operator should be permitted to classify the units or sets of units as separate facilities for reporting purposes. This will enable emissions liability to be appropriately assigned to facilities.
- The definition of "Replacement Electricity" should not be limited by balancing authority area or to variable renewable energy.
- The definition of "Variable Renewable Resource" is too narrow and unnecessarily restricts the ability to use replacement electricity. This definition should be deleted.

[1] SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, the Imperial Irrigation District, Pasadena, Riverside, and Vernon.

- In order to reflect the ARB's summary of the Proposed Changes and provide a more appropriate penalty regime, § 95107(a) should be amended to remove the daily violations for inaccurate or incomplete reports. These are sufficiently penalized in later subsections.
- Penalties should not be imposed under § 95107(b) for minor errors that are identified and corrected during the verification process. Penalties should be imposed only for errors in verified reports, because only errors in verified reports will result in incorrect calculations of compliance obligations.
- Section 95107(c) should allow for use of missing data substitution procedures without penalty.
- The formula for calculating covered emissions in § 95111(b)(5) should be revised for clarity.
- The formula for calculating the replacement electricity adjustment in § 95111(b)(5) should be revised to properly define terms and to correctly calculate the deduction for high-emitting sources of replacement electricity.
- The adjustment for qualified exports is not sufficiently defined in § 95111(b)(5). A formula for this adjustment should be included, similar to the formula for the replacement electricity adjustment.
- It should be clarified that the additional reporting requirements for retail providers in § 95111(c) refer only to out-of-state sources.
- Delivery tracking conditions in § 95111(g)(3) should be revised to accommodate the fact that renewable electricity may not be "received" directly.
- The specified source reporting requirements in § 95111(g)(4) should be revised for clarity and to avoid unduly limiting the ability to count specified sources.

- To report the information on energy input and output required under § 95104(d) and § 95112(a), vertically integrated utilities may need to install new meters. This can be time-consuming and expensive. These new reporting requirements should either be deleted or delayed until data year 2013.
- Assessments of material misstatement in § 95131(b)(12) should only include covered emissions.
- Reporting entities should be given at least five working days to review and comment on the emissions level assigned to them under § 95131(c)(5).
- We have submitted separate comments on the provisions on biomass-derived fuels in the Regulation and the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation ("Cap and Trade Regulation").

II. REVISIONS TO CERTAIN DEFINITIONS IN SECTION 95102(a) ARE REQUIRED.

A. "Compliance Period" definition should reflect new two-year period.

"Compliance period" is defined in § 95102(a)(84) (p. 21) of the Regulation as a three-year period. However, the first compliance period under the Cap and Trade Regulation is now a two-year period, 2013-2014, under § 95802(a)(55) (C&T p. 11). The definition in the Regulation should be revised to match the definition in the Cap and Trade Regulation.

> **§ 95102. Definitions.**
>
> (a)(84) "Compliance period" means the three-year period for which the compliance obligation is calculated for covered entities pursuant to the Cap-and-Trade Regulation, except for the first compliance period. The compliance obligation for the first compliance period only considers emissions from data years 2013 and 2014.

B. "Facility" definition should allow for separation based on different ownership.

"Facility" is defined in § 95102(a)(140) of the Regulation. Changes to this definition are needed to permit separate reporting for generation facilities for which the emissions liability will be met ultimately by different parties even though the facilities are located on a contiguous piece of property.

Electricity generating units can have complex ownership and operational structures. The owner of the land on which a unit stands, the owner(s) of the unit, and the owner(s) of the power generated by that unit, may be different entities or groups of entities. The operator of the units may be one of those owners or another entity altogether. Units on the same property may be owned by different entities.

Several SCPPA members (Anaheim, Burbank, Cerritos, Colton, Glendale, and Pasadena) participate in a generating unit, the Magnolia Power Project ("Magnolia"). Magnolia is owned by SCPPA. Magnolia is adjacent to other generating units that Burbank Water & Power ("Burbank") owns and operates for its own account at the generating station complex in Burbank, California. Burbank operates Magnolia for the benefit of the SCPPA participants. Power is delivered from Magnolia to the participants in accordance with their participation agreement. Fuel (natural gas) is provided to Magnolia by each participant in proportion to the amount of power Magnolia generates for the account of that participant.

Burbank may have the direct compliance obligation for Magnolia under the Cap and Trade Regulation, but SCPPA members that obtain power from Magnolia will be responsible for transferring allowances to Burbank to cover the compliance obligation for the portion of Magnolia emissions associated with the power they obtain from Magnolia. SCPPA is also submitting comments on the Cap and Trade Regulation regarding such transfers.

The emissions liability that Burbank may have for Magnolia as the operator of Magnolia should be distinguished from the emissions liability that Burbank will have for the other Burbank units at the Burbank generating station site. To do this, Burbank as operator of Magnolia should be permitted to submit separate reports for Magnolia rather than reporting Magnolia as part of Burbank's reports for Burbank's own units.

The definition of "Facility" in § 95102(a)(140) of the Regulation would not allow such separate reporting. The definition treats structures located on contiguous or adjacent properties that are under common ownership *or* common control as one facility. Only operators of military installations are given the option of classifying their installations as more than a single facility based on distinct functional groupings. Similar flexibility should be extended to the operators of generating units to allow for the kinds of ownership and operational arrangements that are exemplified by Magnolia.

Therefore the definition of "Facility" in § 95102(a)(140) (p.28) of the Regulation should be amended as follows:

§ 95102. Definitions.

(a)(140) "Facility" means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations or electricity generating units may classify such installations as more than a single facility based on distinct and independent functional groupings or based on differences in ownership within contiguous ~~military~~ properties.

C. "Replacement Electricity" should not be limited by balancing authority area or to variable renewable energy.

SCPPA appreciates the Proposed Changes providing for Replacement Electricity to have the emissions factor of the renewable energy for which it substitutes. However, the definition of "Replacement Electricity" in § 95102(a)(336) (p. 57) is too restrictive.

First, the definition restricts Replacement Electricity to energy that replaces renewable energy that meets the narrow definition of "Variable Renewable Resources" (§ 95102(a)(394), p. 65). That definition excludes many sources of renewable energy such as small hydroelectric projects at impoundments, geothermal projects, biomass projects, and biogas combustion. The production of renewable energy from such excluded sources may vary over time even though the sources may not be traditionally classified as variable or intermittent. In addition, although other types of excluded renewable resources may have relatively stable output given current technologies, the purchaser may nevertheless need to obtain replacement energy to accommodate transmission constraints or to shape the renewable energy, for example, to meet seasonal load requirements.

Energy from any type of renewable resource may need to be firmed and shaped. The Regulation should recognize that such efficient transactions involve the purchase of zero-emissions renewable energy. The definition of "Replacement Electricity" should be broadened by deleting the word "variable" from the definition and severing any tie to the restrictive definition of "Variable Renewable Resources."

Second, the last sentence of the definition restricts replacement energy to energy from the balancing authority in which the renewable resource is located. That sentence should be deleted. There should be no requirement for the replacement electricity to come from the same Balancing Authority Area as the renewable energy. The restriction would unreasonably reduce the

flexibility that utilities require to cost-effectively obtain renewable energy, and will unnecessarily drive up the cost of meeting policy objectives. For example, when the import of renewable electricity from the Bonneville Power Administration Balancing Area in the Pacific Northwest is inhibited by transmission constraints, the acquiring utility should be allowed to use replacement energy from another Balancing Authority.

The definition of "Replacement Electricity" in § 95102(a)(336) (p. 57) should be revised as follows to eliminate these two undue restrictions:

> **§ 95102. Definitions.**
>
> (a) (336) "Replacement Electricity" means electricity delivered to a first point of delivery in California to replace electricity from ~~variable~~ renewable resources in order to meet hourly load requirements. The electricity generated by the ~~variable~~ renewable energy facility and purchased by the first deliverer is not required to meet direct delivery requirements. ~~The physical location of the variable renewable energy facility busbar and the first point of receipt on the NERC E-tag for the replacement electricity must be located in the same balancing authority area.~~

D. The definition of "Variable Renewable Resource" should be deleted.

For the reasons discussed above, the term "Variable Renewable Resources" as defined in § 95102(a)(394) (p. 65) is too narrow for the purposes of "Replacement Electricity". This term should not be used in the definition of "Replacement Electricity" or elsewhere in the Regulation, and should be deleted.

All references to "Variable Renewable Resources" in the Regulation should be replaced with references to "renewable resources."

> **§ 95102. Definitions.**
>
> (a) ~~(394) "Variable renewable resource" means run-of-river hydroelectric, solar, or wind energy that requires firming and shaping to met load requirements.~~

III. SECTION 95107 ON VIOLATIONS SHOULD BE AMENDED.

A. Paragraph (a) should not provide daily violations for inaccurate reports.

Section 95107(a) (p. 88) provides for daily violations for reports with incomplete or inaccurate information. However, page 6 of the ARB's notice and summary of the Proposed Changes ("ARB summary") states that the ARB's modifications to § 95107 clarify that "violations based on each unreported metric ton ... and violations based on the failure to measure, collect, record or preserve information ... are not also subject to a daily violation." The ARB summary appears to recognize – correctly – that the total financial penalties that would result from having per-day, per-ton penalties under these provisions are excessive and unwarranted.

However, the Regulation is inconsistent with the ARB summary. Unreported tons of emissions would be subject to daily violations under § 95107(a) as the relevant report would necessarily be "incomplete or inaccurate." To properly reflect the statement in the ARB summary, § 95107(a) should be amended to delete the reference to incomplete or inaccurate information.

Section 95107(a) also provides for a violation if a report is submitted late or if it remains unsubmitted. If a report is unsubmitted by the due date, it is submitted late. There is no need to include both expressions. Doing so could lead to confusion if covered entities or the ARB later try to determine whether there is a practical distinction between the two expressions.

Section 95107(a) should be revised as follows, to reflect the ARB summary and remove redundant wording:

> **§ 95107. Enforcement.**
>
> (a) Each day or portion thereof that any report required by this article remains unsubmitted ~~or, is submitted late~~after the due date~~, or contains information that is incomplete or inaccurate~~ is a separate violation. For

purposes of this section, "report" means any emissions data report, verification statement, or other record required to be submitted to the Executive Officer by this article.

B. Paragraph (b) should refer only to verified reports.

Penalties should not be incurred for minor errors that are identified and corrected during the verification process. Penalties should only be incurred for errors in verified reports, because those are the only errors that will result in incorrect calculations of compliance obligations.

The Regulation envisages that errors will be found and reports will be corrected during the verification process. Section 95131(b)(9) (p. 220) provides for a revised report to be submitted after the verifier has checked data and prior to completion of verification. Under the redrafted § 95855 of the Cap and Trade Regulation (C&T p. 96), the 30 percent annual compliance obligation as well as the triennial compliance obligation will be calculated on verified emissions. No compliance calculations will be based on unverified reports. However, § 95107(b) (p. 88) as currently drafted would result in penalties being applied for errors that are corrected in revised reports submitted pursuant to § 95131(b)(9), even though those errors would not affect the calculation of an entity's compliance obligation under the Cap and Trade Regulation. That would be inconsistent with at least one of the purposes of the verification process, which is to assure that compliance obligations are calculated on the best available data. If penalties are applied for errors that an entity corrects during verification, entities will be less willing to identify and correct errors, resulting in less reliable verified reports.

For these reasons, § 95107(b) should be amended to provide for per-ton penalties to apply only for errors in verified emissions data reports.

§ 95107. Enforcement.

(b) ~~Each~~A metric ton of CO2e emitted but not reported in a verified emissions data report as required by this article is a ~~separate~~ violation.

C. Paragraph (c) should allow for use of missing data substitution procedures.

Section 95107(c) (p. 88) as currently drafted would result in penalties being applied if monitoring equipment malfunctions, as there would be a failure to "measure" information as required by this Regulation, even if the missing data substitution procedures are applied so that there is no under-reporting of emissions. This is not appropriate. It should not be a violation for entities to use procedures that are set out in the Regulation.

The missing data substitution procedures in § 95129 (p. 200) are punitive in themselves, as they are designed to result in an over-estimation of the unrecorded emissions, increasing liability under the cap-and-trade program. This provides a sufficient incentive for facility operators to maintain their monitoring equipment to minimize any failures. Additional penalties should not be applied under § 95107(c) for failing to measure information if the missing data substitution procedures are implemented.

Furthermore, it is unclear how the number of violations would be calculated under this section for failures to measure or record information. If one piece of monitoring equipment that covers two units at a facility malfunctions, is this one "failure" or two? Section 95107(c) could be interpreted in a way that results in many separate violations with high total penalties. This should be clarified.

Suggested changes to § 95107(c) are set out below:

> **§ 95107. Enforcement.**
>
> (c) ~~Each f~~Failure to measure, collect, record or preserve information required by this article for the calculation of emissions or that this article otherwise requires be measured, collected, recorded or preserved constitutes a ~~separate~~ violation of this article except to the extent the missing data substitution procedures in section 95129 are applied.

IV. SECTION 95111 ON ELECTRIC POWER ENTITIES SHOULD BE AMENDED.

A. The formula for calculating covered emissions in § 95111(b)(5) should be revised for clarity.

SCPPA appreciates the insertion of § 95111(b)(5) (p. 109), setting out the calculation of covered emissions relating to electricity imports. This provision is very helpful in clarifying which of the many categories of reported emissions lead to a compliance obligation. However, as this provision is so important it would benefit from some further changes for increased precision.

The first paragraph of § 95111(b)(5) refers to § 95852(c) of the Cap and Trade Regulation. However, that section addresses the compliance obligation of suppliers of natural gas. The correct cross-reference appears to be to § 95852(b), the section of the Cap and Trade Regulation that addresses the compliance obligation of first deliverers of electricity.

The definition of each term in the formula should include a cross-reference to the sections of the Regulation and/or the Cap and Trade Regulation setting out the details of the calculation of the relevant category of emissions. Such a cross-reference would help to clarify the exact meaning of "$CO_2e_{\text{specified-not covered}}$." Presumably this term refers to emissions from the combustion of biomass-derived fuels (C&T § 95852.2, p. 89).

The definition of "$CO_2e_{\text{VRR adjustment}}$" in § 95111(b)(5) refers to replacement electricity associated with variable renewable electricity purchases. For the reasons set out in section II.C above, replacement electricity should not be limited to variable renewable electricity. Proposed changes to the formula for calculating the $CO_2e_{\text{VRR adjustment}}$ are discussed in the following section IV.B.

"$CO_2e_{\text{qualified exports}}$" is defined in § 95111(b)(5) only by reference to the definition of "qualified exports" in § 95102(a)(318) (p. 54). There is no separate section on qualified exports in the body of the Regulation. For clarity, a formula for calculating the qualified exports

adjustment should be included, similar to the formula for calculating the replacement electricity adjustment. A proposed formula is set out in section IV.C below.

The definition of "CO_2e $_{linked}$" in § 95111(b)(5) refers to "emissions recognized by ARB pursuant to linkage under subarticle 12 of the Cap-and-Trade Regulation." This wording does not seem to be correct. Subarticle 12 does not refer to recognizing emissions but, instead, to "linking with an external GHG ETS" (C&T § 95941, p. 166). Additional wording for this definition is proposed below.

§ 95111. Data Requirements and Calculation Methods for Electric Power Entities.

(b)(5) *Calculation of covered emissions for compliance obligation under Cap-and-Trade Regulation*. For imported electricity with covered emissions subject to a compliance obligation pursuant to section 95852(b~~e~~) of the Cap-and-Trade Regulation, the electric power entity must calculate annual CO_2 equivalent mass emissions using the following equation:

$$CO_2e_{\,covered} = CO_2e_{\,unspecified} + (CO_2e_{\,specified} - CO_2e_{\,specified\text{-}not\ covered}) - CO_2e_{\,VRE\ adjustment} - CO_2e_{\,qualified\ exports} - CO_2e_{\,linked}$$

Where:

CO_2e $_{covered}$ = Annual CO_2 equivalent mass emissions with a compliance obligation pursuant to the Cap-and-Trade Regulation (MT of CO_2e).

CO_2e $_{unspecified}$ = Annual CO_2 equivalent mass emissions from unspecified imported electricity (MT of CO_2e), calculated pursuant to section 95111(b)(1).

CO_2e $_{specified}$ = Annual CO_2 equivalent mass emissions from imported electricity that meets the requirements in section 95111(g) for specified electricity (MT of CO_2e), calculated pursuant to section 95111(b)(2).

CO_2e $_{specified\text{-}not\ covered}$ = Annual CO_2 equivalent mass emissions from imported electricity that meets the requirements in section 95111(g) for specified electricity and is explicitly listed as not covered pursuant to section 95852.2 of the Cap-and-Trade Regulation (MT of CO_2e).

CO_2e $_{VRE\ adjustment}$ = Annual CO_2 equivalent mass emissions adjustment for replacement electricity associated with ~~variable~~ renewable electricity

purchases ~~defined in section 95102(a)~~ (MT of CO_2e), calculated pursuant to the formula set out below.

CO_2e $_{qualified\ exports}$ = Annual CO_2 equivalent mass emissions adjustment for qualified exports ~~as defined in section 95102(a)~~ (MT of CO_2e), calculated pursuant to the formula set out below.

CO_2e $_{linked}$ = Annual CO_2e mass emissions from imported electricity generated in linked jurisdictions recognized by ARB pursuant to ~~linkage under~~ subarticle 12 of the Cap-and-Trade Regulation (MT of CO_2e).

B. Revise the formula for calculating the replacement electricity adjustment in § 95111(b)(5) to correctly address high-emitting sources of replacement electricity.

The formula for calculating the "CO_2e $_{VRR\ adjustment}$" in § 95111(b)(5) should be revised. The references to "variable" should be deleted for the reasons set out in section II.C above.

The term "MWh_{VRR}" should be defined.

The term "$EF_{unspecified}$" is not defined. Presumably it has the same meaning as "EF_{unsp}" in § 95111(b)(1). Similarly, "$EF_{specified}$" is not defined. Presumably it has the same meaning as "EF_{sp}" in §95111(b)(2). These terms should be clarified.

Most importantly, the adjustment does not correctly address the situation in which replacement electricity is specified and its associated emissions factor is greater than the default emission factor for unspecified electricity. According to the primary formula in § 95111(b)(5), the replacement electricity adjustment is a *deduction* from the total covered emissions, not an addition. The deduction should be equal to the default emission factor times the relevant megawatt hours, resulting in the reporting entity *remaining liable* for the emissions from the replacement electricity that exceed the default emission factor.

Proposed changes to this formula are set out below.

§ 95111. Data Requirements and Calculation Methods for Electric Power Entities.

(b)(5) *Calculation of covered emissions for compliance obligation under Cap-and-Trade Regulation. ...*

CO_2e ~~*VR*~~*RE adjustment* = MWh~~*VR*~~*RE* x *AF*

Where:

CO_2e ~~VR~~RE adjustment = Annual CO_2 equivalent mass emissions adjustment for replacement electricity associated with ~~variable~~ renewable electricity purchases ~~defined in section 95102(a)~~ (MT of CO_2e).

MWh_{RE} = Megawatt hours of replacement electricity (as defined in section 95102(a)(336)) imported by the reporting entity in the data year.

AF = $EF_{unspecified}$ (as defined in section 95111(b)(1)) when replacement electricity is unspecified (MT CO_2e/MWh).

AF = $EF_{specified}$ (as defined in section 95111(b)(2)) when replacement electricity is specified and its associated emission factor is less than or equal to the default emission factor for unspecified power (MT CO_2e/MWh).

AF = ~~$EF_{specified}$~~ — $EF_{unspecified}$ (as defined in section 95111(b)(1)) when replacement electricity is specified and its associated emission factor is greater than the default emission factor for unspecified power (MT CO_2e/MWh).

C. Include a formula for calculating the adjustment for qualified exports in § 95111(b)(5).

As discussed in section IV.A above, "CO_2e qualified exports" is not sufficiently defined in § 95111(b)(5) or elsewhere. Questions have arisen as to whether, for example, qualified exports need to be subtracted from associated imports on an hourly basis, which would be prohibitively data-intensive and difficult to verify. For clarity, a formula for calculating the qualified exports adjustment should be included, similar to the formula for calculating the replacement electricity adjustment.

§ 95111. Data Requirements and Calculation Methods for Electric Power Entities.

(b)(5) *Calculation of covered emissions for compliance obligation under Cap-and-Trade Regulation*. ...

$CO_2e_{\text{qualified exports}} = MWh_{QE} \times AF$

Where:

$CO_2e_{\text{qualified exports}}$ = Annual CO_2 equivalent mass emissions adjustment for qualified exports (MT of CO_2e).

MWh_{QE} = Megawatt hours of qualified exports (as defined in section 95102(a)(318)) made by the reporting entity in the data year.

AF = EF_{unsp} (as defined in section 95111(b)(1)) when the qualified exports are from unspecified sources (MT CO_2e/MWh).

AF = EF_{sp} (as defined in section 95111(b)(2)) when the qualified exports are from specified facilities or units (MT CO_2e/MWh).

D. Additional retail provider reporting requirements in § 95111(c) should be clarified.

Section 95111(c)(3) (p.110) appears to be intended to relate only to facilities or units located outside California in jurisdictions in which there is no cap-and-trade program linked to California's program. This should be clarified as follows:

§ 95111. Data Requirements and Calculation Methods for Electric Power Entities.

(c)(3) For facilities or units located outside California in a jurisdiction where a GHG emissions trading system has not been approved for linkage by the Board pursuant to subarticle 12, that are fully or partially owned by a retail provider, and that have GHG emissions greater than the default emissions factor for unspecified imported electricity based on the most recent GHG emissions data report submitted to ARB or U.S. EPA…

E. Revise delivery tracking conditions in § 95111(g)(3) to accommodate renewable and replacement electricity.

Section 95111(g)(3) (p. 118) sets out delivery tracking conditions for claiming imports of electricity from specified sources, relating both to direct delivery and to renewable electricity

with replacement electricity. The second condition, § 95111(g)(3)(B), requires the importer to have a contract to "receive" the electricity generated by the facility. This is not appropriate for renewable electricity that requires replacement electricity for firming and shaping purposes. Depending on the type of firming and shaping arrangements the importer has in place, the availability of transmission and other factors, the importer may not physically receive the electricity generated by the renewable resource. The Regulation should not require the importer to physically receive the renewable energy. This would restrict the ability of utilities to cost-effectively obtain renewable energy products.

This section should be revised as follows:

> **§ 95111. Data Requirements and Calculation Methods for Electric Power Entities.**
>
> (g)(3) *Delivery Tracking Conditions Required for Specified Electricity Imports*. Electricity importers may claim a specified source when the electricity delivery meets any of the criteria for direct delivery of electricity defined in section 95102(a), or the claim requires replacement electricity for ~~variable~~ renewable resources as defined in section 95102(a), and meets one of the following sets of conditions:
>
> (A) The electricity importer is a GPE; or
>
> (B) The electricity importer has a written power contract for~~to receive~~ electricity generated by the facility or unit.

F. The specified source reporting requirements in § 95111(g)(4) should be revised.

Section 95111(g)(4) (p. 119) sets out additional reporting requirements for specified sources that appear to relate to resource shuffling. If certain information reported under these provisions could lead to the importer being charged with resource shuffling under the Cap and Trade Regulation, this should be clarified.

SCPPA has significant concerns with the resource shuffling provisions in the Cap and Trade Regulation and recommends that these provisions be deferred to another proceeding in

which they can be more properly evaluated. However, if the resource shuffling provisions are retained, § 95111(g)(4)(A) ("Electricity historically consumed in California"), appropriately revised, should form part of the definition of resource shuffling in § 95802(a)(245) of the Cap and Trade Regulation.

The final sentence of § 95111(g)(4)(A) should be revised. It addresses a situation in which more than 80 percent of net generation from a specified facility was imported into California in 2009. This raises questions about the treatment of specified facilities from which less than 80 percent of net generation was imported in 2009. The implication is that unless 80 percent of net generation from a specified source was purchased by a California entity in 2009, the source cannot be claimed as a specified source. This is an unreasonable limitation on sources that otherwise fit the definition of specified sources and are not involved in resource shuffling.

Furthermore, the 80 percent requirement seems arbitrary and is very high, considering that any one California importer may take only a small fraction of the electricity generated by a large out-of-state facility. This part of section (A) should also apply if the share or quantity of generation imported from the relevant facility (even if it less than 80 percent) has not increased since 2009. Similar language is included in the second sentence of section (A) and in section (C).

This provision should be revised as follows:

§ 95111. Data Requirements and Calculation Methods for Electric Power Entities.

(g)(4) Additional Information for Specified Sources. …

(A) … Without limiting the ability of sources to be claimed as specified sources in accordance with the other provisions of this subarticle, ~~W~~when imported electricity from a specified facility reported in a 2009 data year is greater than 80 percent of net generation from that facility in 2009~~that year~~, or the share or quantity of net generation imported from that facility has not increased since 2009, any subsequent GPE for the facility or purchasing-selling entity with a written power contract may claim it as a

specified source for up to the full amount of net generation measured at the busbar in the current data year;

V. ENERGY INPUT AND OUTPUT REPORTING REQUIREMENTS FOR FACILITIES SHOULD BE DELETED OR DELAYED.

Sections 95104(d) (p. 83) and 95112(a) (p. 128) contain extensive new reporting requirements relating to facility level energy input and output. Since vertically integrated utilities operate generating stations that are connected to the utility's own grid, it is not necessary for these facilities to have metering in place to measure energy input and output. To report the information required under § 95104(d) and § 95112(a), such utilities may need to install new meters. Installing new meters can be time-consuming and expensive. If a facility needs to install new meters, it would be difficult to report as required under § 95104(d) and § 95112(a) from the date on which the revised Regulation becomes effective.

Furthermore, the information collected pursuant to these sections does not appear to be essential to determining liability under the Cap and Trade Regulation. For these reasons, these new reporting requirements should either be deleted, or facility operators should not be required to comply with those requirements until the 2013 data year (for reports due in 2014). This would allow time for meters to be installed and tested.

VI. SECTION 95131 ON VERIFICATION SHOULD BE AMENDED.

A. Assessments of material misstatement in § 95131(b) should only include covered emissions.

Section 95131(b)(12) (p. 221) provides a formula for assessing whether an emissions data or product data report contains a material misstatement. In the previous version of this Regulation, emissions without a compliance obligation were excluded from this calculation, but that language has been stricken from the current version.

In contrast to the current drafting of the Regulation, informal communications received from ARB staff in July 2011 indicated that the intention was only to use the emissions with a compliance obligation calculated in accordance with § 95111(b)(5) to assess material misstatement for electric power entities. This approach is greatly preferable. It focuses attention on accurate reporting of covered emissions and does not expose the reporting entity to the risk of receiving an adverse verification statement for issues with peripheral reporting items that do not affect the entity's compliance obligation. (There are many such items that vertically integrated utilities must report under sections 95111 and 95112.)

Section 95852 of the Cap and Trade Regulation is the most comprehensive section setting out covered emissions in all covered sectors. The material misstatement provisions should only apply to covered emissions as defined in that section.

§ 95131. Requirements for Verification Services.

(b)(12) *Assessment*. Assessments of material misstatement are conducted independently on total reported GHG emission sources (metric tons of CO_2e) that give rise to a compliance obligation pursuant to section 95852 of the Cap and Trade Regulation ("covered emissions"), and total reported product data (units from the applicable sections of this article).

~~(A)~~ In assessing whether an emissions data report contains a material misstatement, the verification team must separately determine whether the total reported covered emissions and total reported product data contain a material misstatement using the following equation: …

Where:

"Discrepancies" means any differences between the reported covered emissions/ product data and verifier calculated covered emissions/product data for a data source or product data subject to data checks in section 95131(b)(8).

"Omissions" means any covered emissions or product data the verifier concludes must be part of the emissions data report, but were not included by the reporting entity in the emissions data report.

"Misreporting" means duplicate, incomplete or other covered emissions the verifier concludes should, or should not, be part of the emissions data report or duplicate, incomplete or other product data the verifier concludes should not be part of the emissions data report.

"Total reported emissions/product data" means the total annual reporting entity CO2e covered emissions reported for the emission sources or total reported product data for which the verifier is conducting a material misstatement assessment.

B. Provide time for reporting entity to comment on assigned emissions level under § 95131(c).

Section 95131(c)(5) (p. 226) sets out the procedure for the Executive Officer to develop an assigned emissions level for a reporting entity. Section 95131(c)(5)(C) (p. 227) previously provided reporting entities at least five days to review and comment on the assigned emissions level, but that language has been stricken from the current version of the Regulation. Given the importance of an assigned emissions level to a reporting entity, the entity should be given some time to review it. The deleted language in § 95131(c)(5)(C) should be reinstated. For consistency with the time periods in other parts of section (c)(5), the time period should be changed to five working days.

§ 95131. Requirements for Verification Services.

(c)(5) *Assigned Emissions Level*. …

(C) The Executive Officer shall assign the emissions level for the reporting entity using the best information available, including the information in section 95131(c)(5)(A) and methods in section 95131(c)(5)(B), as applicable. The Executive Officer shall include an assigned emissions level in the decision made pursuant to section 95131(c)(4)(B), if applicable. The reporting entity shall be provided at least five working days to review and comment on the assigned emissions level.

C. Please see our separate comment on biomass-derived fuel provisions.

SCPPA appreciates the efforts made by ARB staff to accommodate our concerns with the provisions on biomass-derived fuel in § 95131(i) of the Regulation and in the Cap and Trade

Regulation. As biomass-derived fuel provisions are included in both regulations, our remaining concerns on those provisions are set out in a separate comment that addresses biomass-derived fuel provisions only.

VII. CONCLUSION

SCPPA urges the ARB to consider these comments in finalizing the amendments to the Regulation. SCPPA appreciates the opportunity to submit these comments to the ARB and looks forward to working with the staff of the ARB to further refine the Regulation.

Respectfully submitted,

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