BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON PUBLIC INFORMATION SHARING IN CALIFORNIA'S CAP-AND-TRADE PROGRAM

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TABLE OF CONTENTS

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I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority ("SCPPA") [1] respectfully submits this comment on the issues discussed at the workshop on Public Information Sharing in California's Cap-and-Trade Program, held on January 25, 2013 ("Workshop").

SCPPA considers that certain information-sharing proposals by California Air Resources Board ("ARB") staff at the Workshop go too far. The release of commercially sensitive information can harm the market just as much as, if not more than, limiting the release of information. A balance needs to be struck. While it is helpful for the functioning of the market as a whole to release some information on market positions and activity, this information should be released on an aggregated basis only. Releasing information on each entity's holdings and transactions makes individual entities vulnerable to manipulation. Aggregating information will help ensure that market participants are not able to identify and take advantage of weaknesses in other participants' positions.

In summary, SCPPA considers that:

- The ARB should not publish the details of each publicly-owned utility's ("POU") distribution of its allocated allowances.

[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.

- It is inappropriate and unnecessary to publish annual compliance obligation data, given that annual emissions are already published and that compliance with the Regulation[2] is on a compliance period basis.
- Compliance account balances should only be published in the aggregate to avoid releasing sensitive information and increasing the risk of market manipulation. This approach is consistent with the Regulation.
- Holding account balances should not be published.
- To avoid confusion, auction reports should be based on qualified bids only, not all submitted bids.
- Transfer data should be reported in aggregation only. Average prices should be calculated for allowances and offsets, separately, ignoring any instruments transferred at a price of zero.

These issues are discussed in more detail below.

II. POU DISTRIBUTION OF ALLOCATED ALLOWANCES SHOULD NOT BE PUBLISHED.

At the Workshop, the powerpoint presentation by ARB staff ("Workshop Presentation") noted a new proposal to "Post annual allocation detail for POUs" (slide 8). This was later elaborated in a supplemental powerpoint slide: the ARB proposes to "post POU distribution of 2014 vintage allowances ... on ARB website" in December 2013.[3] It appears that this would involve specifying, for each POU, how many of its allocated allowances were put into its

[2] *California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms*, Title 17 California Code of Regulations, Subchapter 10, Article 5 ("Regulation").

[3] Slide headed "Proposed POU Annual Allocation Posting Timetable (example)", available at: http://www.arb.ca.gov/cc/capandtrade/meetings/01252013/example-pou-alloc-timeline.pdf.

compliance account, its limited use holding account, and the compliance account of an electrical generating facility pursuant to Regulation § 95892(b)(2).

SCPPA strongly opposes this proposal. The purpose of publishing this detailed, sensitive information is unclear. This disclosure is not required by the Regulation and was not proposed in the ARB's Draft Cap-and-Trade Public Information Plan dated September 20, 2012 ("Draft Plan"). Although it would be useful for the generators receiving allocations from other POUs to have easier access to information on the source of the allocations through the Compliance Instrument Tracking System Service ("CITSS"), there is no need for this information to be made publicly available.

Publishing this detailed information while it is still current – the proposal is to provide the information before the start of the year for which the allowances were allocated – would tend to reveal each POU's current position and strategy for the year ahead. For example, if it is known that a particular POU consigned a large proportion of its allocated allowances to auction, that POU will be expected to purchase allowances in the coming year. This is conceptually inconsistent with the prohibition on revealing information relating to auction participation. Under Regulation § 95914(c)(1), an entity must not release any confidential information related to its auction participation.

If the ARB determines that information on the distribution of POUs' allocated allowances must be released, it should be released in aggregate only, across all POUs, and should be released after the end of the year for which the allowances were allocated, not before.

III. THERE IS NO NEED TO PUBLISH ANNUAL COMPLIANCE OBLIGATION DATA.

Slide 9 of the Workshop Presentation proposes to "Post annually compliance obligation by CITSS entity on ARB website." Given that the ARB already publishes reported and verified

greenhouse gas emissions by facility, and this data comprises the compliance obligation, there does not appear to be a need to separately publish annual compliance obligation figures.

If the ARB considers that the reported greenhouse gas emissions data does not provide sufficient information, the ARB could publish each entity's compliance obligation after the end of a compliance period, on or after the due date for surrendering compliance instruments for that period.

IV. COMPLIANCE ACCOUNT BALANCES SHOULD ONLY BE PUBLISHED IN AGGREGATE.

A. ARB staff proposes to publish compliance account balances frequently.

Slide 11 of the Workshop Presentation notes that "Compliance Account balance is public by Regulation" and asks how often compliance account balances should be published – continuously, monthly, quarterly? The ARB staff proposal is to update compliance account balances monthly on the ARB website, moving to weekly updates at a later date.

B. Regulatory language on releasing compliance account balances is in context of protecting confidential information.

The relevant provision of the Regulation is § 95921(e)(4):

> Protection of Confidential Information. The Executive Officer will protect confidential information to the extent permitted by law by ensuring that the accounts administrator: ...
>
> (4) Releases information on the quantity and serial numbers of compliance instruments contained in compliance accounts in a timely manner.

Subsection (e)(4) must be interpreted in the context of section (e) as a whole, which deals with the protection of confidential information. Reading subsection (e)(4) in this way, the subsection means that information on compliance account balances should only be released if it is done in a manner that "protect[s] confidential information to the extent permitted by law."

That is, rather than being a requirement to release information, subsection (e)(4) is a limitation on how such information can be released. This interpretation is supported by statements in the Final Statement of Reasons for the Regulation, released in October 2011 ("FSOR") – see below.

The wording of § 95921(e)(4) does not require individual account balances to be released. To the contrary, releasing such information would violate § 95921(e) as it would constitute the release of confidential information. The provision would however be satisfied, in its context of protecting confidentiality, if compliance account balances were reported in the aggregate.

C. The importance of protecting confidential information is recognized in the Final Statement of Reasons.

The FSOR provides additional context for this provision. The FSOR states in relation to § 95921(e) (previously § 95921(d)) that:

- "New section 95921(d) was added to provide provisions on the protection of confidential market information."[4]
- "What data will be released and when is a question of implementation. ARB appreciates the complexity of protecting confidential business information and its relationship to the integrity of the allowance market."[5]
- "New section 95921(d) (Protection of Confidential Information) was added to address many stakeholders concerns regarding the confidentiality of information reported on the transfer request. At the same time, section 95921(d)(1) was added to ensure that information needed by the market would be released, with the added protections of the restrictions imposed in the rest of the section. Regular release of holdings of individual firms may reveal commercially sensitive information on trade strategies that could increase the vulnerability of a participant or the market as a whole to manipulation."[6]

[4] FSOR page 30.

[5] FSOR page 1636.

[6] FSOR page 1658.

D. Frequently publishing individual compliance account balances would be detrimental.

If, as proposed, the compliance account balance of each covered entity were published weekly, covered entities would face exactly the issues noted in the FSOR (excerpted above) – the increased vulnerability of each entity and the market as a whole to manipulation.

For many covered entities, publication of current compliance account balances will provide a good indication of the entity's total holdings, short or long position, and compliance strategy, leaving it open to manipulation. This is particularly the case for entities that do not wish to or are not permitted to engage in complex secondary market transactions such as options or other derivatives. For example, the California Public Utilities Commission has imposed strict limits on how investor-owned utilities are able to procure compliance instruments and how many they can procure, with a ban on options, swaps or other derivatives of allowances.[7] The governing boards of POUs may impose similar restrictions for risk-management purposes.

E. Compliance account balances should be reported in the aggregate.

For the reasons discussed above, there is no requirement to report compliance account balances on an individual basis. To do so would be detrimental to covered entities and the market as a whole as it would increase the potential for manipulation, as well as being in violation of the confidentiality requirements of Regulation § 95921(e).

Instead, the ARB could comply with the confidentiality provisions of Regulation § 95921(e) by publishing compliance account balances in aggregate, across all covered entities. This would provide a useful indication of liquidity, i.e. the number of allowances in circulation compared to those sequestered in compliance accounts, without disclosing sensitive information about each entity.

[7] CPUC Decision 12-04-046 (approved on April 19, 2012) in Rulemaking 10-05-006.

This aggregated information should be published annually or, at most, quarterly. There does not appear to be any need to publish this information on a more frequent basis. This is consistent with the Regulation, which refers to "timely" publication. The word "timely" does not mean that balances must be published very frequently. Webster's dictionary defines "timely" as "well-timed; opportune." SCPPA considers that annual or quarterly publication would be opportune in these circumstances.

F. The Regulation should be revised to clarify the reporting requirements.

SCPPA considers that the approach outlined above is in compliance with the wording of Regulation § 95921(e)(4) as it currently stands. However, as further changes to the Regulation are to be considered later this year, it would be helpful to take that opportunity to explicitly limit the release of information in § 95921(e)(4) as set out below. All references to serial numbers should be deleted as serial numbers will not be published.

> Protection of Confidential Information. The Executive Officer will protect confidential information to the extent permitted by law by ensuring that the accounts administrator: ...
>
> (4) Releases information only on the aggregate quantity ~~and serial numbers~~ of compliance instruments contained in all compliance accounts in a timely manner.

V. HOLDING ACCOUNT BALANCES SHOULD NOT BE PUBLISHED.

Slide 11 of the Workshop Presentation asks, "Should Holding Accounts balances be public?" Under no circumstances should holding account balances be published. This would breach Regulation § 95921(e)(3), which requires the accounts administrator to "Protect as confidential the quantity and serial numbers of compliance instruments contained in holding accounts."

The issues discussed above in relation to the publication of compliance account information apply, to an even greater extent, to the publication of holding account information. The FSOR discussed this issue. In response to a query as to the need to keep holding account information confidential, the ARB provided the following justification:

> If a potential manipulator is unaware of who has allowances in holding accounts, that entity will not be able to estimate the probability of success of a manipulative scheme. The manipulator would also be unable to estimate whether covered entities are short and would need to buy even at higher prices.[8]

If compliance account balances were published, the potential for market manipulation would increase considerably.

There is no need to publish holding account balances, even in the aggregate, to provide an indication of market liquidity. Compliance account balances, published in the aggregate as SCPPA recommends above, will indicate liquidity.

Therefore, holding account balances should not be published.

VI. AUCTION REPORTS SHOULD BE BASED ON QUALIFIED BIDS, NOT ALL SUBMITTED BIDS.

Slide 13 of the Workshop Presentation includes, as part of the auction summary data that will be published, "Total Submitted and Qualified Bids Divided by Total Allowances for Sale." SCPPA considers that the auction data that is released should be based on qualified bids only, ignoring bids that were submitted but not qualified. As unqualified bids are not valid and play no part in determining the auction settlement price, they should not be included in the reported statistics.

[8] FSOR page 1657.

For the November 2012 allowance auction, the release of results based on all submitted bids, followed by a separate release of results based on qualified bids, caused confusion. This precedent is not binding and should not be followed.

The Regulation does not require the release of information based on all submitted bids. Section 95912(j)(5) only requires the ARB to publish the names of the bidders, the auction settlement price, and "Aggregated or distributed information on purchases with the names of the entities withheld." This provides ARB with some flexibility to choose the most appropriate auction data to report. The ARB should take advantage of this to select the data that is most useful and least confusing to stakeholders.

The Draft Plan does not envisage the release of information based on all submitted bids. The Draft Plan proposes that, when reporting the ratio of the total quantity of allowances bid to the total number of allowances available for sale, the "total quantity of allowances bid would be for qualified bids and would not include any rejected bids."[9] The Draft Plan also notes that the summary statistics on bid prices would be calculated for qualified bids only.[10] SCPPA supports this approach.

VII. TRANSFER DATA SHOULD BE AGGREGATED AND PRICES SHOULD BE AVERAGED.

Slide 15 of the Workshop Presentation asks what information on compliance instrument transfers is useful for an efficient and transparent market, providing a series of options. One option is to report "All aggregate volume and price information." SCPPA supports this approach, with certain modifications. Volumes should be aggregated across all allowance transfers over a reasonable time period, for example one year or one quarter, to prevent the release of sensitive

[9] Draft Plan page 10.

[10] Draft Plan page 12.

current information. However, offset transfers should not be aggregated with allowance transfers. It would be useful to keep these two categories separate, given that offsets and allowances have different characteristics.

The average price of the transferred allowances should be reported, calculated on a volume weighted basis, excluding from the calculation any allowances that are transferred at a price of zero. Again, offset prices should be averaged separately from allowance prices. It may be helpful to calculate and report average prices for each type of contract separately (forward, future, spot, and other). Different types of contracts are likely to have quite different prices, and averaging prices across all contract types may produce a misleading result. The ARB should exclude from its price calculations any transfers where these fields are not completed (as they are optional fields).

This aggregated reporting approach is consistent with the Regulation and would not require a change to Regulation § 95921(e)(1).

Individual transactions should not be reported, even with account names and numbers redacted, for two reasons. First, it may be possible to deduce which entities made which transfers based on this information in combination with other public information. Individual transfer information is sensitive and should be protected pursuant to Regulation § 95921(e)(1):

> Releases information on the transfer price and quantity of compliance instruments in a manner that is timely and **maintains the confidentiality of the parties to a transfer**. [Emphasis added.]

Second, reporting a long list of individual transactions would be less helpful to market observers than publishing aggregated information, as it would be difficult for an entity to draw useful conclusions from a list of transfers without taking the step of aggregating the information itself.

VIII. CONCLUSION

SCPPA appreciates the opportunity to submit these comments to the ARB and urges the ARB to consider these comments.

Respectfully submitted,

/s/ Lily M. Mitchell

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