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Via email: http://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=jan-25-info-share-ws&comm_period=1

Dr. Steve Cliff
Air Resources Board
1001 I Street,
Sacramento, CA

Re: Comments on Air Resources Board January 25, 2013 Workshop to Discuss Public Information Sharing from the California Cap and Trade program

Dear Dr. Cliff,

Chevron has been a California company for more than 130 years and is the largest Fortune 500 Corporation based in the state. As a key stakeholder, Chevron has actively participated in hundreds of meetings and discussions with the Air Resources Board (ARB) and its staff since AB 32 was signed into law to develop a workable program that achieves the state's emission reduction goals while avoiding negative economic impacts at a time when Californians are least able to absorb them.

Chevron participated in the January 25th "Workshop to Discuss Public Information Sharing from the California Cap and Trade Program." We appreciate the open dialogue between ARB staff and market participants and are happy to take this opportunity to comment.

In response to both the presentation and the dialogue in the workshop, we would like to share the following views and concerns:

- Releasing program wide aggregate totals of compliance account data supports program integrity and data disclosure without advantaging or disadvantaging any particular participant. Conversely, releasing specific facility or individual company compliance account data information invites market manipulation and collusion.

- The value of data transparency must be balanced with the goals of AB 32 to provide a flexible, cost-effective market mechanism without burdening it with other public policy goals that can be achieved thorough more direct means.

- ARB's existing regulation supports release of compliance account data in aggregate, and does not require release of individual entity data per se nor does it require mid compliance period release of data . Chevron fully supports releasing aggregated compliance account data.

- ARB's current prohibition on release of individual holding limit data provides necessary market confidentiality critical to avoid negative market behavior and price gouging.

In summary

Chevron fully supports the disclosure of information that furthers the understanding, efficiency and fairness of the cap-and-trade program. We support this disclosure because it will benefit all market participants and program stakeholders and we believe it is fully consistent with the cap-and-trade regulations.

We are concerned however that the proposal to release the disclosure of individual company positions in holding and compliance accounts and of individual transaction information prior to the close of the final compliance period will allow competitors and traders to identify long and short positions. Knowing a competitor's current allowances relative to its compliance obligation on a certain date can risk undermining the integrity of the entire program by providing an opportunity for market collusion and market manipulation. In addition to undermining the integrity of the market over time, this information will lead to unnecessary higher prices with no environmental benefit.

The risks of anticompetitive behavior that would result from providing market sensitive information were recently summarized by the U.S. Department of Justice as follows in a February 1, 2013 filing with the Federal Energy Regulatory Commission:

The [U.S. Department of Justice] urges the [Federal Energy Regulatory Commission] to carefully consider the potential adverse effect of transparency on competition, as required by the [Natural Gas Act]. It is widely understood that transparency can have pro- and anticompetitive effects. Transparency can increase efficiency in production, consumption, and investment, thereby lowering prices for consumers. Transparency also can facilitate market monitoring by the Commission and the public. However, transparency can increase the likelihood of an exercise of market power by facilitating coordination among suppliers, thereby raising prices for consumers. (Emphasis added)

As illustrated in this proceeding, the value of transparency must be balanced with the goals of the program as a whole to be cost-effective and to prevent market inequities that encourage collusion and manipulation discussed above. Once entity specific data is available, marketers do not need to actively coordinate a collusive strategy. As individual marketers are able to better identify individual entity positions, they can effectively act in concert to exploit this market sensitive information. Fortunately, there is no need to release market sensitive information and jeopardize the integrity of the market, raise costs, and place compliance entities in a disadvantaging position to demonstrate the effectiveness of the cap-and-trade program.

In addition, the release of these data is not commonly disclosed in today's market place. Commodities markets and major environmental markets do not publicly disclose holdings, positions or individualized transaction records, recognizing that the costs of maximum transparency can exceed the benefits, and that maximum transparency is not necessary to maintain market integrity.

Finally, the existing regulation is broad and does not mandate the release of individual compliance account data nor require early release of compliance account data prior to retirement. Section 95921 (e)(1) states that "transfer price and quantity of compliance instruments" will be released "in a timely manner". Compliance with this section can be achieved by disclosure of retirement information from

compliance accounts to demonstrate that the program works or aggregated compliance account data after the close of the compliance period. ARB can lead with a balanced approach by taking this reasonable interpretation of the regulations: by releasing aggregated compliance account data after retirement and maintaining the current holding limit confidentiality, it will reduce the potential for market manipulation and avoid unnecessary costs that have no environmental benefit.

The attachment to this letter provides detailed comments on the issues above.

Sincerely,

via e-mail

Stephen D. Burns

Attachment

Attachment 1

Detailed Comments

1. Monitoring Markets and Enforcing the Program

Unlike financial intermediaries and speculators, emitters cannot exit the carbon market if market conditions worsen or if concerns over any wrongdoing arise. Accordingly, it is crucial for the regulated entities under the program that ARB takes all necessary steps to properly monitor the market, swiftly investigate potential wrongdoings and, where necessary and appropriate, aggressively enforce program rules. To this end, Chevron supports full and broad disclosure of information by ARB to the market monitor and to relevant enforcement agencies as necessary to maintain the integrity of the market. The market monitor's role assuring that the market is operating correctly and entities are in compliance with market rules is essential. We would support quarterly, monthly, or real time public release of market monitor reports using aggregate data without disclosing individual company balances or other market sensitive data. We also support simple disclosure of the parties engaged in the auction.

2. Retirement Information

Based on comments made by ARB staff at the January 25 workshop, Chevron understands that certain groups have informally expressed the desire to have access to retirement information to ensure compliance and to identify companies that are not complying early. To the extent that disclosure of compliance furthers the understanding of the program and demonstrates that the program works, Chevron does not object to such a proposal. Specifically, Chevron would have no objection if ARB released information about the total number of allowances and total number of offsets being surrendered by individual compliance entities as required by the rule for compliance. This information could include serial numbers that would confirm to the public that there is no double-counting in the system. This information could be released annually, at the retirement deadline for each annual and triennial compliance period. Crucially – and unlike the real-time disclosure of account balances discussed below – the disclosure of retirement information will demonstrate compliance to the public without providing any information that could be used by market participants to collude and exercise market power on individual entities with short position prior to the end of the compliance period.

3. Holding Account Information

Disclosing Holding Account Positions Will Permit Entities with Long Positions to Exercise Market Power on Entities with Short Positions. Chevron is concerned that the disclosure of holding account balances could result in collusion and market power, which would undermine the integrity of the program. To function properly, markets must be competitive and markets cannot be competitive if each market participant knows the position of all other participants. To the contrary, if there is full disclosure of positions, entities with long positions would know exactly who to collude with and who to target in market manipulation schemes. The U.S. Department of Justice described such concerns in a February 1, 2013 filing with the Federal Energy Regulatory Commission as follows:

The [U.S. Department of Justice] urges the [Federal Energy Regulatory Commission] to carefully consider the potential adverse effect of transparency on competition, as required by the [Natural Gas Act]. It is widely understood that transparency can have pro- and anticompetitive effects. Transparency can increase efficiency in production, consumption, and investment, thereby lowering prices for consumers.

Transparency also can facilitate market monitoring by the Commission and the public. However, transparency can increase the likelihood of an exercise of market power by facilitating coordination among suppliers, thereby raising prices for consumers. (Emphasis added)

Position Information is Not Disclosed in Commodities and Major Environmental Markets. The Commodity Futures Trading Commission (CFTC) does not require disclosure of the individual holdings of any commodity market participants. The CFTC has long published aggregated data on commodities futures markets in its weekly "Commitment of Traders" reports while keeping individual traders' positions confidential. All major environmental markets' disclosure policies also protect market participants' confidential information. The only active major cap-and-trade programs for carbon emissions – the EU-ETS and RGGI – disclose neither the holdings nor transaction records of market participants. The same is true of the renewable energy credit (REC) markets in the US and the market for RINs under the EPA's Renewable Fuel Standard program.

4. Compliance Account Information

ARB has requested comments on how often to disclose compliance account information under Section 95921(e)(4) of the Regulations.

The Intent of Section 95921(e)(4) is to Ensure that Information on Instruments Retired for Compliance is Available to the Public. Chevron believes it is appropriate to interpret the provision's reference to "compliance instruments contained in compliance accounts" to refer *only* to those compliance instruments retired by ARB, at the time they are selected by ARB for retirement from the compliance account. This reasonable interpretation would be consistent with the tenor and spirit of Section 95921(e) as a whole and the goal of public disclosure of retirement information that has guided the discussion throughout the development of the cap-and-trade program. In this context, "in a timely manner" would refer to the annual and triennial compliance deadlines.

***Section 95921(e)(4) can be Interpreted to Require Disclosure at Compliance Deadlines and on an Aggregate (Market-Wide) Basis*.** Alternatively, Section 95921(e)(4) could be interpreted as requiring the disclosure of the quantity of instruments placed in compliance accounts on an aggregate basis (market-wide). In this context, "in a timely manner" would also refer to the annual and triennial compliance deadlines. In the absence of any further direction (and the regulations do not provide any), this interpretation would appear to be entirely reasonable and it would strike a balance between protection of confidential information and the public's need for transparency.

Interpreting Section 95921(e)(4) as Requiring Disclosure of Individual Entities' Balances in Compliance Accounts Creates a Risk of Collusion and Market Manipulation. Under the current holding limit restrictions, large emitters will have to move allowances in their compliance account ahead of the compliance deadline. If individual entities' compliance account information is disclosed, it will be possible to estimate fairly accurately the positions of large compliance entities by adding the positions in the compliance account to the holding limit (by assuming that the positions in the holding account have been maxed out to the limit). Accordingly, under this proposal, the positions of large emitters will be known to the entire market. For the reasons discussed above, Chevron is concerned that this would provide an opportunity for speculators to prey on large compliance entities. The result will be increased compliance costs and reduced program effectiveness.

5. Transaction Information

Transaction Information must be Aggregated to Comply with Section 95921(e)(1). Transaction information, if disclosed, must be aggregated and cannot permit the identification of individual parties or any other sensitive commercial information. Otherwise, market manipulators will be able to reconstruct entities' holdings and compliance strategies and take advantage of compliance entities with short positions, as discussed in the Department of Justice Filing discussed above. Even the disclosure of anonymized individual transactions would pose an unacceptable risk of market manipulation, given the relatively limited number of parties in the market, which would violate 95921(e)(1)'s requirement to maintain confidentiality of the parties to a transfer. Chevron supports disclosure on an aggregated volume and weighted average price basis no more often than annually. In addition, it may not be appropriate to disclose transaction information at all if the secondary market has been so inactive that such disclosure runs the risk of violating the parties' confidentiality in violation of Section 95921(e)(1).