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April 13, 2012

Mr. Steve Cliff, Branch Chief  
Climate Change Markets Branch  
Stationary Source Division  
California Air Resources Board  
1001 "I" Street, Sacramento, CA, 95812

Dear Mr. Cliff:

Subject: Comments of the Los Angeles Department of Water and Power (LADWP) on The March 30, 2012 Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions

The LADWP appreciates the opportunity to submit these comments on the proposed amendments to link California's and Quebec's Cap-and-Trade Programs. In addition to linking the two programs, the proposed amendments would allow corporations to consolidate compliance instrument accounts, establishes new "know-your-customer" requirements and makes various changes related to auction participation.

### § 95833. Disclosure of Corporate Associations

The draft amendments provide for the consolidation of compliance instrument accounts held by corporate associations. Thus, a group of entities with a direct corporate association can opt to have one set of accounts, rather than each entity having a separate set of accounts per Section 95833(e). However, the definition of "corporate association" does not cover Publicly Owned Utilities (POU) and their facilities. The LADWP supports Southern California Public Power Association's (SCPPA) suggestion to add a new subsection 95833(a)(7), that would create a new definition of "corporate association" to cover all facilities operated by the same POU, as well as electricity imported by that utility as set out below:

(a)(7) "The operator of an electricity generating facility in California has a direct corporate association with the operator of another electricity generating facility in California if the same entity (for example a publicly-owned electric utility or joint powers agency) operates both generating facilities. The operator of an electricity generating facility in California has a direct corporate association with an electricity importer if the same entity (for example a publicly-owned electric utility or joint powers agency) operates the generating facility and imports the electricity."

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Although the current rule language, as adopted in October 2011, does not give an impression that covered entities would be required to register each of its facilities as well as its imported electricity per Section 95830(b)(2) "An entity qualified to register cannot apply for more than one registration," the LADWP believes that the SCPA recommended language will clarify the consolidation of accounts issue for POU. Consolidation of accounts will alleviate the difficulty of POU having to predict how to properly divide allocated allowances *prior to receiving their allowances*. Throughout a compliance year, emissions on a facility level could be significantly different than expected due to forced outage, planned outage, hydro conditions, renewables integration, etc. Having individual source compliance accounts could introduce compliance challenges for POU covered entities if they are unable to transfer between compliance source accounts.

#### **§ 95834. Know Your Customer**

The LADWP recognizes the need to verify the identity of individuals who apply for accounts as part of registration in the cap and trade program. However, the type of information proposed to be requested, including date of birth, driver's license number, passport number and open bank account documentation would create significant liability both for employers and employees in the event of a breach of security.

The proposed language also requires that verification of the information would be through hard copy documentation presented in person by the individual at a location designated by the Executive Officer. Also, the documents must be certified by a notary public identified by the Executive Officer at least 3 months before submittal. These requirements would result in significant time and expense for entities to send up to ten of its staff to Sacramento to present the documents in person.

The LADWP recommends that the level of information required from account representatives and agents be consistent with the United States Environmental Protection Agency's requirements under the Acid Rain program, which requires agents to answer several questions known only by the agent (e.g. in what city did you work your first job, what city was your high school located at, what is your favorite sport, etc.). This registration would be provided electronically and the individual would be required to provide this information once. Once registration is completed, the individual would receive a password and in order to change the password (Acid Rain Program requires password changes every 90 days), the individual would be prompted to answer one of the registration questions.

#### **§ 95911. Format for Auction of California GHG Allowances**

Section 95911(e)(5)(B) (on page 142) states: "The auction administrator will calculate the number of allowances distributed to each bidding entity by multiplying the bidding entity's share calculated in section 95912(e)(4)(A) above by the number of allowances in the tier, rounding the number down to the nearest whole number." Since the proposed rule does not contain a Section 95912(e)(4), it is unclear how resolution of bids will be calculated.



Section 95911(f)(2) (on page 143) states, "When there are insufficient winning bids to exhaust the allowances from a consignment source in section 95911(b)(3)(A), the auction operator will sell an equal proportion of allowances from each consigning entity in that source." There is no section 95911(b)(3)(A) in the proposed amendments so the LADWP recommends that the correct cross reference be inserted.

#### **§ 95912. Auction Administration and Participant Application**

Section 95912(i)(2) (on page 148) states: "The amount of the bid guarantee must be greater or equal to the maximum value of the bids submitted. (A) The value of a set of bids, evaluated at any potential auction settlement price, equals the quantity of bids submitted at or above that price times that price. (B) The maximum value of a set of bids is the highest value of a set of bids calculated at any potential auction settlement price."

The rule requires that bid guarantees be submitted to the California Air Resources Board (CARB) prior to the auction. However, the proposed language is unclear and appears to require that the bid guarantee be based on an auction settlement price which has not been established yet. This situation would make it impossible for the bidder to know in advance how much money to set aside for the bid guarantee. Thus, the LADWP recommends that CARB use the following language, as adopted in October 2011, with respect to determination of the bid guarantee: "The amount of the bid guarantee must be greater than or equal to the sum of the value of the bids submitted by the auction participant."

#### **§ 95914. Auction Participation and Limitations**

This section (on page 157) gives the Executive Officer the authority to cancel or restrict a previously approved auction participant's application for a number of reasons, including a violation of *any part of the auction rules*. Banning a participant from an auction could result in the participant's inability to provide sufficient allocations to cover its emissions which would result in a second and more serious violation of the regulation.

The LADWP is concerned that a relatively minor infraction, such as an administrative error, could result in a cascade effect wherein a single minor violation triggers other more serious violations which result in severe legal and financial repercussions. Since covered entity restriction from participating in CARB's auctions would likely to lead to serious violations of an entity's compliance obligation, the LADWP proposes that CARB state which specific violations could result in cancellation or restriction from the auctions to ensure that minor infractions do not inadvertently result in serious violations.

#### **§ 95920. Trading**

The proposed rule (Section 95892(b)(3)) revised the date that a POU informs the Executive Officer of the accounts in which the allocation is to be placed to account for the change to the first auction date. That date has been changed from June 1 to September 1, 2012. The

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LADWP requests that section 95920(d)(2)(B) (on page 164) be revised similarly as follows in order to reflect the change to the first auction date:

On ~~September~~ June, 1, 2012, the limited exemption will equal the annual emissions most recent emissions data report that has received a positive or qualified positive emission data verification date.

#### § 95921. Conduct of Trade

Section 94921(a) outlines the requirements for transfers of compliance instruments between accounts. Section 94921(a)(3) state that transfers between a single entity's holding and compliance accounts do not require confirmation pursuant to section 95921(a)(1)(B) only. Transfer between a single entity account, however, requires a transfer request and confirmation from multiple account representatives to be sent to CARB's account administrator "within 48 hours of settlement of the transaction for which the transfer request was submitted." Thus, the LADWP recommends that an authorized account representative be able to transfer compliance instruments between a single entity's accounts as long as it provides the following information: holding account number, compliance account number, serial numbers of the compliance instruments being transferred.

Thank you for consideration of these comments. If you need additional information, please contact Ms. Jodean Giese, of my staff at (213) 367-0409.

Sincerely



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Director of Environmental Affairs

BM:db

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