

August 11, 2011

California Air Resources Board  
1001 I Street  
Sacramento, California 95812

Subject: Comments on the Proposed 15-Day Modifications to the Regulation to Implement the California Cap-and-Trade Program (released July 25, 2011)

---

## **I. Introduction**

These comments are submitted by a collaborative team of eight small publicly-owned electric utilities (hereinafter, Eight Utilities) serving retail customers in California.<sup>1</sup> Each of the Eight Utilities is an Electrical Distribution Utility (EDU) as defined in Section 95802(a)(82) of the Air Resources Board's (ARB) proposed regulations.

## **II. Comments**

### **A. Recommendation on Section 95814 – Expressly provide that small EDUs are classified as “Voluntarily Associated Entities.”**

The Eight Utilities are not Covered entities since none are First Deliverers of Electricity as described in Section 95811(b) nor do they operate any facilities listed in Section 95811(a). Similarly, none of the Eight Utilities come under Section 95813 pertaining to Opt-In Covered entities since they don't meet the requirements of section 95811. Accordingly, none of the Eight Utilities have a compliance obligation in the proposed cap-and-trade program.

Even though the Eight Utilities don't have compliance obligations, they will incur increased costs for the electricity they procure to serve their retail customers as a result of the ARB cap-and-trade program. Each of the Eight Utilities has the ratemaking authority to pass on the increased costs to their retail electricity customers. Accordingly, ARB has deemed the Eight Utilities eligible to receive allowance allocations pursuant to Section 95870(d).<sup>2</sup> These allowances and the resulting value will be used exclusively for the benefit of the Eight Utilities' retail customers as required by section 95892.

The purpose of these comments is to request greater clarity in the proposed regulations concerning the process by which the Eight Utilities will register with ARB, receive allowances into their respective holding accounts, consign allowances to the auction, and receive the allowance value.

---

<sup>1</sup> The Eight Utilities are the Cities of Cerritos, Corona, Moreno Valley, Needles, Rancho Cucamonga, and Victorville, the Eastside Power Authority, and the Power & Water Resources Pooling Authority.

<sup>2</sup> See Table 9-3: Percentage of Electric Sector Allocation Allocated to Each Utility.

Section 95814(a) of the proposed regulations defines “Voluntarily Associated Entities (VAE) [as a]n entity not identified as a covered entity or opt-in covered entity that intends to hold California compliance instruments . . . .” Section 95814(a) lists types of entities that “*may* qualify as voluntarily associated entities” including “[a]n entity that does not meet the requirements of Sections 95811 and 95813 that intends to purchase, hold, sell, or voluntarily retire compliance instruments.”<sup>3</sup>

The Eight Utilities fall squarely within the definition of section 95814(a)(1). Pursuant to the regulations, they plan to apply to the Executive Director for approval as VAEs.<sup>4</sup> Due to the importance of the allowance allocation process, however, the Eight Utilities recommend that ARB add the following underlined language in order to provide greater clarity for these entities which are directly affected by this regulation.<sup>5</sup>

**§ 95814. Voluntarily Associated Entities and Other Registered Participants.**

(a) Voluntarily Associated Entities (VAE). An entity not identified as a covered entity or opt-in covered entity that intends to hold California compliance instruments may apply to the Executive Officer pursuant to section 95830(c) for approval as a voluntarily associated entity. The following entities may qualify as voluntarily associated entities:

...

(4) An Electric Distribution Utility that receives an annual allocation of allowances pursuant to section 95870(d) but does not meet the requirements of sections 95811 and 95813.

Based on the Eight Utilities’ review of the proposed regulations, all EDUs registering as VAEs would be subject to the proposed regulations involving entity registration, allowance allocations, allowance consignment, the use of allowance value, and annual reporting. A flow chart of the Eight Utilities’ understanding of the regulatory process for VAE EDUs (shown by the green boxes) is included as Exhibit 1 to these comments.

//

//

//

//

//

---

<sup>3</sup> Section 95814(a)(1) (emphasis added).

<sup>4</sup> Section 95814(a) provides that entities that are neither covered entities nor opt-in entities “may apply to the Executive Officer pursuant to section 95830(c) for approval as a voluntarily associated entity.”

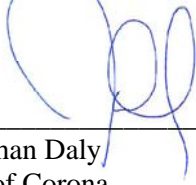
<sup>5</sup> See Cal. Gov’t Code § 11349.1(a)(3). “‘Clarity’ means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

### III. Conclusion

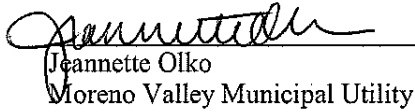
The Eight Utilities thank ARB staff for evaluating and considering the foregoing comments.



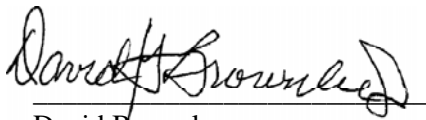
Vince Brar  
City of Cerritos



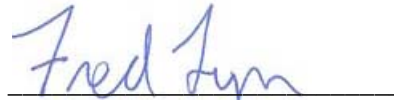
Jonathan Daly  
City of Corona



Jeannette Olko  
Moreno Valley Municipal Utility



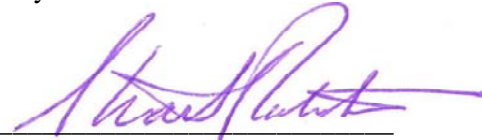
David Brownlee  
City of Needles



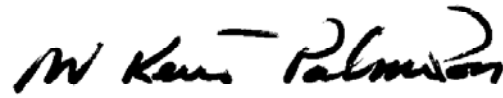
Fred Lyn  
City of Rancho Cucamonga



Jenele Davidson  
City of Victorville



Stuart Robertson  
Eastside Power Authority



W. Kent Palmerton  
Power & Water Resources Pooling Authority

EXHIBIT 1

Cap-and-Trade Process Flow Chart for Electric Distribution Utilities (EDUs) that are not Covered Entities

