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August 11, 2011

Chairman Mary D. Nichols and Members of the Board
California Air Resources Board
1001 "I" Street
Sacramento, California 95812

Subject: Los Angeles Department of Water and Power - Comments on the California Air Resources Board Proposed 15-Day Modifications to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation Under AB 32 (Dated: July 25, 2011)

Dear Chairman Nichols and Members of the Board:

The Los Angeles Department of Water and Power (LADWP) commends the California Air Resources Board (ARB) for achieving yet another milestone in the implementation of AB 32 with the release of proposed modifications (15-Day Modified Text) to the regulation for a California economy-wide Cap-and-Trade program. LADWP appreciates its working relationship with CARB and applauds ARB's commitment to implement AB 32 in a manner that will achieve the greatest direct emission reductions in a cost effective manner for the benefit of all Californians.

The City of Los Angeles and the LADWP reaffirm their strong support for AB 32 and the goal of reducing greenhouse gas (GHG) emissions back to statewide 1990 levels in a manner that, among other things, protects California consumers, keeps California businesses competitive, encourages early action to reduce GHG emissions, and minimizes impacts to low income communities. LADWP respectfully submits for your consideration these written comments on the 15-Day Modified Text of the proposed regulation, including a technical redline strikeout of specific sections as an attachment.

LADWP is the nation's third largest electric utility in the state and the nation's largest municipal utility serving a population of over four million people with annual sales exceeding 23 million megawatt-hours (MWhs). LADWP's service territory covers 465 square miles in the City and most of the Owens Valley. The transmission system serving the territory totals more than 3,600 miles that transports power from the Pacific Northwest, Utah, Wyoming, Arizona, Nevada, and California to Los Angeles. LADWP will replace 90% of the energy resources over the next 25 years that it has relied upon for the last 70 years, as a result of combined regulatory mandates for increased renewable energy, emissions performance standards on fossil fuel generation, energy efficiency, solar roofs, reductions in GHG emissions, and the elimination of using once-

through cooling for coastal power plants. At the same time, LADWP is implementing a long-term power reliability program to replace aging infrastructure and accommodate the integration of increased levels of renewable energy resources and distributed generation.

LADWP must carefully balance its historic transformation in a manner that maintains reliability and is sensitive to the financial and environmental impacts on its customers. Californians will bear the financial burden of transforming California's energy supply at a time when California is experiencing an unprecedented economic recession and record levels of unemployment. LADWP's low-income customer base has increased to approximately 260,000. California must keep its greenhouse gas emissions policy synchronized with its energy policies to ensure that ratepayers receive the full environmental and emission benefits associated with the initiatives they will financially support.

1) LADWP Is Achieving Substantial Reductions In Its Greenhouse Gas Emissions

LADWP has made great strides in reducing its GHG emissions as illustrated by its early actions well ahead of the launch of the Cap-and-Trade program, which have resulted in a 29% drop below its 1990 system carbon intensity level (lbs/MWh) as of 2010, despite an overall 8% increase in generation (MWh) over the same timeframe.[1] LADWP embraces its responsibility to make portfolio-wide GHG emission reductions on behalf of its customers, and has set a goal of reducing carbon emissions to 35% below 1990 levels by 2020 in a manner that is economically sustainable. It plans to accomplish that goal by moving away from coal, expanding energy conservation and efficiency, investing in renewable energy resources and transmission, replacing and upgrading its in-basin natural gas generation, and using smart grid technology and dynamic scheduling to expand its demand response capacity.

LADWP achieved a major milestone by the end of 2010 – providing 20% of the Los Angeles' power from renewable energy (wind, solar, geothermal, biofuel, and small hydro). This is an enormous undertaking for a fossil-based electric utility that had just 3% renewable energy in 2003. Looking ahead to the 33% RPS, there are complex operating challenges to expanding renewables on LADWP's system, such as accommodating a transition to a greater increase in distributed solar resources (rooftop photovoltaic and concentrated solar), meeting in-state versus out-of-state requirements under SBX1 2, completing transmission additions to deliver renewables into Los Angeles, and most importantly, getting approvals for electric rates and cost recovery that match LADWP's investments during this transition. Each of these challenges requires substantial coordination, and it is imperative that the Cap-and-Trade program support the transformation of California's energy supply and enable electric utilities, like LADWP, to continue major capital investments in real and

[1] CO2 reduction from 1990 to 2010 of LADWP's total system CO2 carbon intensity (lbs/MWh) from owned and purchased generation, and change in total owned and purchased generation (MWh) from 1990-2010.

permanent emission reductions. To this end, LADWP remains fully committed to working with the ARB and other stakeholders to ensure that the Cap-and-Trade program is fully aligned with other state policy objectives, so that ratepayer dollars are used efficiently and GHG emission reduction goals are met.

2) LADWP Supports ARB's Decision For a More Reasonable Compliance Timeline That Starts in 2013 [§95840, page A-73]

LADWP supports ARB's decision to begin compliance obligations after all the program components are in place and adequately tested. Because the proposed Cap-and-Trade market rules impact the electric market and delivery, continued policy refinement and pre-test are critical. LADWP recommends that ARB provide a detailed work schedule for activities that will take place in 2012, including market simulation and testing by market participants, as well as corrective measures if and when defects or deficiencies are identified. This work schedule should include a deadline for the ARB Board to make a formal determination of market readiness at least sixty days in advance of the program "going live" with the first auction.

3) LADWP Supports the Administrative Allocation to Electric Distribution Utilities [§95892, page A-120; Appendix A]

LADWP supports the ARB's apportionment of allowances to the electric sector starting at 95.8 MMT of allowances in 2013 and declining linearly to 83.1 MMT in 2020. LADWP also supports the administrative allocation of allowances to individual utilities on the basis of ratepayer cost burden, projected cumulative energy efficiency, and early investments in qualifying renewable resources during the period 2007-2011. This administrative allocation to electric distribution utilities recognizes that electric distribution utilities (EDUs) are in the best position to utilize the value of allowances for ratepayer benefit. LADWP, along with other electric distribution utilities, will be making significant investments in renewable energy and energy efficiency improvements through 2020 that will help ARB attain the GHG emission goals of AB 32.

ARB indicates in Appendix A that staff has created an ARB allocation model based on the Joint Utilities' 2010 database. LADWP understands that the ARB's allocation model is yet to be made publicly available for review and validation. LADWP agrees that it would be beneficial to have the ARB allocation model outputs validated to ensure that any unintended formula errors are identified and corrected. Additionally, LADWP recommends that the final allocation schedule, as corrected, be incorporated directly into the regulation in §95892.

In §95890 (page A-109), ARB proposes that an EDU is eligible to receive a direct allocation of allowances "if it has complied with the requirements of the Mandatory Reporting Regulation (MRR) and has obtained a positive or qualified positive emissions data verification statement on its sales number for the prior year pursuant to MRR." While LADWP has every intention to comply with the requirements of MRR, it appears

that this provision is vague and potentially unnecessarily punitive. If a covered entity has failed to comply with the emissions reporting requirements, penalty provisions are available to ARB within the MRR itself. ARB also has the ability to assign emissions to a covered entity in the absence of verified emissions. LADWP requests clarification as to the intent of this requirement to ensure that eligibility for a direct allocation cannot be obstructed by a minor or temporary setback associated with MRR verification, and that enforcement provisions for emissions verification are separated from the allocation rules.

4) LADWP Supports the POU Direct Surrender Option [§95892(a)(2), page A-121]

The ARB proposes an option for publicly owned utilities (POUs) that would allow them to directly surrender allowances to meet compliance without monetizing them through the auction. LADWP strongly supports this provision as it recognizes that a vertically integrated POU – that acts as both the electric distribution utility and the generator – would otherwise have to sell allocated allowances at auction only to repurchase them to surrender for emissions associated with serving native load. Without this provision, the regulation would impose unnecessary market risks and costs, as well as an additional administrative burden and increase costs with no clear benefit to the POU ratepayer. LADWP is committed to working with ARB to further refine reporting protocols for the use of allowance value.

5) LADWP Urges the ARB to Temporarily Remove Resource Shuffling Provisions and Seek Public Comment as Part of a New 45-Day Comment Period [§95802 Definition (245), page A-40; and §95852(b)(1), page A-80]

The inclusion of the new resource shuffling provisions requires a significantly more thorough review process to allow ARB staff and stakeholders an opportunity to better understand the intent of the language and to properly vet the potential implications for the electricity sector. The 15-Day Modified Text of the proposed regulation includes a new concept of resource shuffling that has been added as a definition in §95802 (page A-40) that includes the following statement:

> *"Resource Shuffling means any plan, scheme, or artifice to receive credit based on emissions reductions that have not occurred, involving the delivery of electricity to the California grid…"*

The resource shuffling provision and related attestation requirement are included in §95851(b)(1) (page A-80) as they relate to the emission categories used to calculate compliance obligations for first deliverers of electricity. It includes the following statement:

> *"Resource shuffling is prohibited, is a violation of this article and is a form of fraud. ARB will not accept a claim that*

> *emissions attributed to electricity delivered to the California grid are at or below the default emission factor for unspecified electricity specified pursuant to MRR section 95111 if that delivery involves resource shuffling..."*

It appears that resource shuffling is a provision that has been added for the first time to the Cap-and-Trade regulation as part of the 15-Day Modified Text. LADWP is concerned that this resource shuffling provision needs to be further vetted with stakeholders in order to have a collective understanding of how it would be implemented. Vetting would also help to identify any potential unintended consequences. As currently written, LADWP is concerned that this resource shuffling provision may create a disincentive for an early transition away from coal. LADWP requests that ARB study the issue further to determine the best approach.

a) LADWP's Efforts to Move Away from Coal Would be Hindered

The inclusion of the resource shuffling provisions can impede LADWP's aggressive efforts to make an early transition away from coal. It is unclear from this resource shuffling provision how LADWP or other electricity importers with long-term take-or-pay power contracts for out-of-state coal generation are expected to undertake the expensive transition away from those resources without a full recognition by ARB that such actions constitute emission reduction benefits for California's ratepayers. LADWP is not positioned to shut down or retire the out-of-state coal generation in which it has only a limited ownership interest, but it can take early action to reduce demand for this type of generation by investing in and procuring cleaner replacement power. The potential outcome would be to penalize LADWP for early coal divestiture.

LADWP request clarification in §95802 (245)(B) that early action to divest of coal prior to when the Emissions Performance Standard requires compliance would not be treated as resource shuffling. Without that clarification, the regulation could be interpreted such that LADWP's early divestiture of Navajo Generating Station (Navajo) prior to 2019 may be considered resource shuffling.

b) Grid Reliability Should Take Precedence Over Emissions

The inclusion of the resource shuffling provision does not necessarily coincide with the normal and emergency operations of the grid required by Federal Energy Regulatory Commission (FERC) reliability standards. From an operational perspective, it is unclear how a first deliverer would know in advance if and when it was engaged in resource shuffling. California is one of fourteen Western states along with the provinces of Alberta and British Columbia and the northern portion of Baja California, Mexico that make up the Western Interconnection. The priority for grid operators is, first and foremost, coordinating and promoting bulk electric system reliability to avoid costly regional power outages that risk life and property. There are thousands of transactions that involve millions of North American Reliability Corporation (NERC) E-tags for

movement of electricity in and out of California on an annual basis. Those transactions do not include consideration of the emissions attribute of electrons that are imported into California for the purposes of identifying resource shuffling.

Additionally, the resource shuffling provision does not take into consideration power emergencies. LADWP and other California EDUs have agreements with the Western Electricity Coordinating Council (WECC) to support other utilities within the Western Interconnection in emergency situations to keep the electrical grid operating smoothly. Conversely, the practice of mutual assistance ensures that California EDUs may also receive assistance from utilities outside California in cases of emergency outages (fires, earthquakes, storms, heat waves). The resource shuffling provision does not appear to take into account the existing WECC agreements for mutual assistance and would impose heavy penalties on first deliverers. This approach would have the unintended consequence of compromising the reliability of the overall interstate grid. The Federal Power Act preempts state regulation of wholesale electricity transactions. Such operational and reliability issues should be well understood by all stakeholders.

c) The Resource Shuffling Attestation Is Excessive [§95852(b)(1)(A)], pg. A-81]

The resource shuffling attestations in §95852(b)(1)(A) (page A-81) place the burden of proof on an individual person representing a first deliverer that is unreasonable, and for which compliance would be impossible, especially for a large utility. The attestations should be deleted. No individual person would have the full knowledge required to know that the entity he or she represents did not engage in resource shuffling for each and every power transaction. For LADWP, there are approximately 1,000 NERC E-tags that are generated per day for scheduling electricity in and out of LADWP's Balancing Authority area. When combined with the account representative attestation, the annual resource shuffling attestations could be interpreted to apply personal penalties, including the possibility of fine or imprisonment. This is not workable.

6) Eligibility Requirements of Biogas Contracts Should Align with the 33% RPS [§95852.1.1.(a)(2), page A-88]

The Notice of Public Availability of Modified Text, on pages 12-13, states that resource shuffling provisions have been applied to biogas contracts:

> *"...to prevent contract shuffling through which contracts are being diverted to California by entities seeking to avoid a compliance obligation for fossil fuels. Contract shuffling could allow fossil emissions to increase in states where the biofuel was previously combusted, resulting in a potential no net change in emissions and emissions leakage."*

ARB proposes that no emissions compliance obligation would apply to biogas contracts in effect prior to January 1, 2012 that meet specific requirements for delivery and verification. Biogas contracts executed after January 1, 2012 would carry an emissions compliance obligation equivalent to unspecified natural gas (943 lbs/MWh), unless they were the result of a biofuel producer's increased capacity, new production, recovery, or if the biogas could be tracked to a previously eligible contract.

LADWP requests that ARB eliminate the January 1, 2012 deadline altogether, so that the California Cap-and-Trade program is more closely aligned with the 33% RPS. At minimum, the deadline should be shifted to January 1, 2013 to align with the start date of the compliance obligations under the Cap-and-Trade program. Increasing renewables from 20% to 33% represents a total of 11.4 MMT in emission reductions statewide after deducting emission reductions associated with tradable renewable certificates (TRECs). The RPS includes specific eligibility guidelines for the injection and delivery of biomethane into natural gas pipelines, but does not impose contract eligibility deadlines. To the extent that ARB does not recognize emission reductions associated with biogas contracts used for compliance with the 33% RPS, the ARB will not fully achieve the projected emission reductions (11.4 MMT) associated with this measure, and additional demand will be placed on the supply of allowances, driving up the cost of allowances for all market participants.

7) Replacement Electricity Should Not Be Restricted To The Same Balancing Authority [§95802: Definition (237), page A-39]

ARB includes provisions for replacement electricity associated with variable renewables including a requirement that it originate from *within* the same Balancing Authority. It is assumed that ARB intends to assign default emissions (943 lbs/MWh) to replacement electricity that does not meet this requirement. LADWP has existing contracts for firming and shaping of variable renewables that do not stipulate that the replacement electricity originate from the same Balancing Authority as the renewable resource. As such, these contracts for replacement power may be assigned emissions equivalent to the default emission factor for unspecified natural gas, rather that the emission factor of the renewable resource it is replacing. ARB should provide regulatory relief for such existing contracts and not penalize utilities with legal contracts that do not contemplate these regulatory burdens.

Replacement electricity is, for the most part, unspecified and can come from anywhere within the WECC region under the 33% RPS. It is problematic for existing firming and shaping contracts that do not include this requirement, as well as for future contracts to the extent that adequate transmission is not available from the same Balancing Authority, such as in the Pacific Northwest region. LADWP is concerned that firming and shaping entities would not support a contract requirement to provide replacement electricity from within the same Balancing Authority, because compliance may be physically impossible. It could have the unintended consequence of increasing the costs for firming and shaping services. This provision is not a requirement for the 33% RPS

from an operational perspective. ARB should not distinguish between unspecified power that comes from one Balancing Authority or another, as the same default emission factor is applied to all unspecified power. It appears that there is no added emission benefit or environmental integrity from requiring that it come from the same Balancing Authority. Such requirement should not limit or preclude development of renewable resources.

8) ARB Should Conduct Additional Workshops and Issue Second 15-Day Package

This multi-year rulemaking has involved several agencies, hundreds of stakeholders, and numerous workshops and meetings to collectively develop a program that best meets all the policy objectives of AB 32. It would be beneficial to host additional workshops to consider a number of important, complex issues including:

- offset protocols,
- compliance cycle and penalties,
- reporting requirements for electricity deliverers, voluntary renewable energy, long-term electricity contracts,
- allowance allocation, holding and purchase limits, corporate association reporting requirements, and
- auction design, market oversight and penalties.

At the public workshop held on July 15, 2011, ARB staff indicated that ARB is considering the release of a second 15-Day Modified Text package for public comment before submitting the Final Statement of Reasons (FSOR) to the Office of Administrative Law by the October 28, 2011 deadline. LADWP supports ARB on this effort and would appreciate an opportunity to review a second 15-Day Modified Text package. LADWP recognizes that the objective of this process is to fine-tune the regulation for clarity and is available to meet with ARB staff to discuss issues related to proposed changes to the regulation to make it workable and enforceable.

Conclusion

LADWP congratulates the ARB for reaching a major milestone for AB 32 and thanks the ARB for this opportunity to provide comments on the Cap-and-Trade regulation. LADWP urges the ARB to reconsider provisions that are inconsistent with other statewide energy policies to ensure that California's electric ratepayers are not unduly financially burdened at a time when every ratepayer dollar is being carefully scrutinized. LADWP will continue to do its part to reduce emissions and help California achieve its emission reduction goal. LADWP's suggested technical amendments to the 15-Day Modified Text of the proposed regulation are included as an attachment to this cover letter. LADWP looks forward to working with ARB staff, other utilities, and stakeholders during the coming year to refine the regulation during the 15-Day comment period and

Conclusion (continued)

ensure that AB 32 is implemented in a manner that achieves the greatest emission reductions while being sensitive to the financial and environmental impacts on California's electric utility customers.

Sincerely,

Lorraine A. Paskett
Sr. Assistant General Manager
Sustainability Programs & External Affairs
LP:LJK:cr
Attachment
c: Mr. Daniel Sperling, ARB Board Member
Mr. Ken Yeager, ARB Board Member
Ms. Dorene D'Adamo, ARB Board Member
Ms. Barbara Riordan, ARB Board Member
Mr. John R. Balmes, M.D., ARB Board Member
Ms. Lydia H. Kennard, ARB Board Member
Mr. Sandra Berg, ARB Board Member
Mr. Ron Roberts, ARB Board Member
Mr. Ronald O. Loveridge, ARB Board Member
Governor Jerry Brown
Ms. Nancy McFadden, Office of the Governor
Mr. Cliff Rechtschaffen, Office of the Governor
Mr. Ken Alex, Office of the Governor
Mr. Michael Picker, Office of the Governor
Honorable John A. Peréz, Speaker of the Assembly, California State Assembly
Honorable Darrell Steinberg, Senate President Pro Tem, California State Senate
Honorable Alex Padilla, Chair, California Senate Energy
Utilities & Commerce Committee
Honorable Steven C. Bradford, Chair, Assembly Utilities & Commerce Committee
Mr. Matthew Rodriquez, Secretary for Environmental Protection, CalEPA
Mr. Michael Gibbs, Deputy Secretary for Climate Change, CalEPA
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Los Angeles Department of Water and Power
Suggested Technical Amendments to Article 5: California Cap On Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (California Cap-and-Trade Regulation)
(15-Day Modified Text of Proposed Regulation, released by ARB on July 25, 2011)
August 11, 2011

Note: The following technical amendments are suggested by LADWP based on the text of the 15-Day Modified Text that was released on July 25, 2011. These amendments are made to a clean version of the 15-Day Modified Text in which ARB's modifications have been incorporated.

SUBARTICLE 2 – DEFINITIONS

§ 95802 Definitions: (68) Direct Delivery (pg. A-13)

(68) "Direct Delivery of Electricity" means electricity that meets Public Utility Code Sections 399.16(b)(1)(A) and 399.16(b)(1)(B) as interpreted by the California Public Utilities Commission and the California Energy Commission ~~any of the following criteria:~~
~~(A) The facility has a first point of interconnection with a California balancing authority;~~
~~(B) The facility has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area;~~
~~(C) The electricity is scheduled for delivery from the specified source into a California balancing authority without replacement electricity from another source; or~~
~~(D) There is an agreement to dynamically transfer electricity from the facility to a California balancing authority.~~

Explanation: The CPUC and CEC have commenced regulatory proceedings for the implementation of the 33% RPS as authorized under SBX1 2. In these proceedings, stakeholders are vetting the details for various definitions, including what does or does not constitute "direct delivery" of electricity. It would be appropriate for ARB to reference the CPUC and CEC as the entities that will ultimately establish the criteria for what constitutes "direct delivery of electricity" to ensure that treatment is consistent with the regulations that will implement SBX1 2.

§ 95802. Definitions: (150) Long-Term Contract (pg. A-25)

150) "Long-Term Contract" means a contract for the delivery of electricity entered into ~~before January 1, 2006~~ for the term of five years or more.

Explanation: Proposed Amendment: Long-term contracts are not restricted to just to those that existed prior to January 1, 2006. This should be deleted from the definition for clarity. If there is reason to limit the provision for Beneficial Holdings to long term contracts in place prior to a specific date, then that date should be included in that section of the regulation where it is applied. In this case, §95834(2)(A) makes reference

to "long-term contracts" as it relates to an electrical distribution utility's beneficial holding relationship with a provider of electricity.

§ 95802. Definitions: (218) Qualified Export (pg. A-36)

> *(218) "Qualified Export" means emissions associated with electricity that is exported in the same hour as imported electricity ~~and documented by NERC E-tags~~. Only electricity exported within the same hour and by the same PSE as the imported electricity is a qualified export. It is not necessary for the imported and exported electricity to enter or leave California at the same intertie. ~~Emissions associated with qualified exports may be subtracted from the associated imports. Qualified exports shall not result in a negative compliance obligation for any hour.~~*

Explanation: LADWP requests clarification on this provision. NERC E-tags are used only when electricity crosses between Balancing Authorities, which is not always aligned with imports and exports across the physical California border. LADWP recommends that the documentation requirement for NERC E-tags be stricken from this definition as verification can be handled through other types of documentation, such as contracts and settlement data. Additionally, it is unclear under Mandatory Reporting Regulation (MRR) whether qualified exports are calculated hourly or annually. LADWP is concerned that reconciliation on an hourly basis for 8,760 hours in a calendar year will be administratively burdensome for the covered entity and the verification body. More detailed comments are included in LADWP's comments on the MRR 15-Day Modified Text.

§ 95802 Definitions: (237) Replacement Electricity (pg. A-39)

> *(237) "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 Western Electricity Coordinating Council ~~same Balancing Authority Area.~~*

Explanation: LADWP supports the Joint Utilities position that the definition of replacement electricity should not result in a compliance obligation for renewable resources that meet all the state's requirements under SBX1 2. This would create an unnecessary cost burden for LADWP's ratepayers, especially for existing renewable energy contracts that do not include requirements for sourcing replacement power from the same Balancing Authority as the renewable being replaced. LADWP also recommends that the definition of "replacement electricity" be revised to strike the requirement that such resources being replaced be variable. There are instances when transmission outages may warrant replacement of non-variable renewable resources.

§ 95802. Definitions: (245) Resource Shuffling (pg. A-40)

~~*(245) "Resource Shuffling" means any plan, scheme, or artifice to receive credit based on emissions reductions that have not occurred, involving the delivery of electricity to the California grid, for which:*~~

~~*(A) An emission factor below the default emission factor is reported pursuant to MRR for a generation source that has not historically served California load (excluding new or expanded capacity). And, during the same interval(s), electricity with higher emissions was delivered to serve load located outside California and in a jurisdiction that is not linked with California's Cap-and-Trade Program; or*~~

(B) ~~*The default emission factor or a lower emissions factor is reported pursuant to MRR, for electricity that replaces electricity with an emissions factor higher than the default emission factor that previously served load in California; except when the replaced electricity no longer serves California load as a result of compliance with the Emission Performance Standards adopted by the California Energy Commission and the California Public Utilities Commission pursuant to Senate Bill 1368 (Perata, Chapter 598, Statutes of 2006).*~~

Explanation: As noted in LADWP's cover letter, the resource shuffling provision is a new concept that should be further vetted. There are potential unintended consequences that may create a disincentive for early coal divestiture. LADWP requests that the ARB study this issue further to determine the best approach that would provide the appropriate incentives for early action, avoid legal infirmities, and ensure continued reliability of the electrical grid.

§ 95802. Definitions: (267) Tolling Agreement (pg. A-43)

~~*(267) "Tolling Agreement" means an agreement whereby a party rents a power plant from the owner. The rent is generally in the form of a fixed monthly payment plus a charge for every MW generated, generally referred to as a variable payment.*~~

Explanation: The regulation includes a definition for tolling agreement, but it is not a term that is found in the regulation. LADWP recommends that this definition be deleted.

SUBARTICLE 3 – APPLICABILITY

§ 95810 Covered Gases (pg. A-47)

This article applies to the following greenhouse gases: carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O). ~~*,sulfur hexafluoride (SF6), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), nitrogen trifluoride (NF3), and other fluorinated greenhouse gases.*~~

Explanation: Covered gases for the Cap-and-Trade regulation currently include SF6 and other fluorinated gases. However, high Global Warming Potential (GWP) gases are

regulated separately from the Cap-and-Trade program under the AB 32 Scoping Plan (http://www.arb.ca.gov/cc/scopingplan/sp_measures_implementation_timeline.pdf) and should not be included as covered gases in the Cap-and-Trade regulation. Although they are typically included in the definition of "CO2e" (or carbon dioxide equivalent), these fluorinated gases are not reported under the MRR, and therefore would not carry a compliance obligation under the Cap-and-Trade program.

§ 95814(b) Other Registered Participants (pg. A-53 to A-54)

~~*(b) Other Registered Participants.*~~
~~*(1) The following entities do not qualify to hold compliance instruments but may qualify as a Registered Participant:*~~
~~*(A) An offset verifier accredited pursuant to section 95978;*~~
~~*(B) A verification body accredited pursuant to section 95978;*~~
~~*(C) Offset Project Registries; or*~~
~~*(D) Early Action Offset Programs approved pursuant to subarticle 14.*~~
~~*(2) To qualify as a Registered Participant the entity must obtain registration approval from the Executive Officer pursuant to section 95830 (c).*~~

Explanation: LADWP recommends that this provision be deleted. The term "Registration" in §95814 is specifically required for holding any type of account and holding compliance instruments. It does not specify any other purpose. The type of participants listed as "other participants" includes independent third party entities that are involved in emissions verification for covered entities or offset verification for offset projects. By the very nature of their independent role, they should not be involved with the Cap-and-Trade program as a registered participant as this would introduce a potential conflict of interest, which could harm or invalidate the verification process for the projects and emissions they verify. There are other mechanisms in the MRR and Cap-and-Trade regulation that would allow ARB to certify or track entities involved in verification without including them as a registered participant.

§ 95831(a)(4)(B) Account Types (pg. A-59)

(B) A Publicly Owned Electric Utility may transfer compliance instruments from its compliance account to the compliance account of a Joint Powers Agency in which the POU is a member or to the compliance account of a deliverer of electricity or with which it has a power purchase agreement, pursuant to section 95892(b)(2) for electricity that serves retail load only.

Explanation: For a POU that is a member of a JPA or that has a contractual relationship with a deliverer of electricity used to serve retail native load, LADWP recommends that a provision be added that allows a POU to transfer allowances directly from its compliance account to the compliance account of the JPA or deliverer of electricity. POUs need flexibility to move allowances to the entity that has the compliance obligation to surrender allowances associated with the emissions related to serving native load. This provision would not result in the transfer of allowances to cover emissions associated with wholesale electricity sales.

§ 95831(b)(2) Account Types

Auction Holding Account (pg. A-60)

> *(2) A holding account to be known as the Auction Holding Account into which allowances are transferred to be sold at auction from:*
> *(A) The Allocation Holding Account;*
> *(B) The holding accounts of those entities for which allowances are being auctioned on consignment pursuant to section §95831(a)(3) ~~95921(e)(3)~~; and*
> *(C) The limited use holding accounts of those entities consigning allowances to auction pursuant to section 95910subarticle 8.*

Explanation: This is an incorrect cross reference. It appears both (B) and (C) are referring to the same consignment allowances from EDUs per §95831(a)(3). §95921(e)(3) does not exist.

§ 95831(b)(6) Account Types

Reserve Account for Voluntary Renewable Energy (pg. A-62)

> *(6) Reserve account for Voluntary Renewable Energy Allowance Electricity Set-Aside Account. A holding account to be known as the Voluntary Renewable Electricity Reserve Account, which will be closed when it is depleted of the following originally allocated allowances:*
> *(A) Into which the Executive Officer will transfer allowances allocated pursuant to section 95870(c); and*
> *(B) From which the Executive Officer may retire allowances pursuant to section 95841.1.*
> *(C) From which the Executive Officer may transfer allowances to the Auction Holding Account if it is determined 1) the Allowance Containment Reserve has been depleted, and 2) participation by VRE participants is less than the original forecast.*

Explanation: LADWP supports voluntary renewable energy (VRE). However, it is unclear whether the amount of allowances set-aside is consistent with forecasts for participation in VRE. This receives a set-aside of about 7 MMT for 2013-2020. LADWP recommends that ARB retain the option for the Executive Officer to transfer unused allowances under extreme circumstances when the supply of compliance instruments is severely depleted.

§ 95832(a)(4) Designation of Authorized Account Representative (pg. A-63)

> *(4) The authorized account representative and any alternate authorized account representative must attest, in writing, to ARB as follows: "I certify ~~under penalty of perjury under the laws of the State of California~~ that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to compliance instruments held in the account. I certify that I have all the necessary authority to carry out the duties and responsibilities contained in title 17, article 5, sections 95800 et seq. on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the accounts administrator or a court regarding the account;";*

Explanation: CARB states that inclusion of "under penalty of perjury" is necessary to ensure that all information submitted is true and complete. However, typical EPA and SCAQMD certifications do not include this language. The underline/strikeout language makes this attestation more consistent with SCAQMD language for Title V operating permit certification. The alternate recommendation is for ARB to preserve its previous language.

§ 95832.(d) Designation of Authorized Account Representative

Attestation (pg. A-64)

> *(d) Each submission concerning the account shall be submitted, signed, and attested to by the authorized account representative or any alternate authorized account representative for the entities that own compliance instruments held in the account. Each such submission shall include the following attestation statement by the authorized account representative or any alternate authorized account representative: "I certify ~~under penalty of perjury under the laws of the State of California~~ that I am authorized to make this submission on behalf of the entities that own the compliance instruments held in the account. I certify ~~under penalty of perjury~~ that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on information and believe formed after ~~my~~ inquiry of those individuals with primary responsibility for obtaining the information, I certify ~~under penalty of perjury~~ under the laws of the State of California that the statements and information submitted to ARB are to the best of my knowledge and belief true, accurate, and complete. ". I consent to the jurisdiction of California and its courts for purposes of enforcement of the laws, rules and regulations pertaining to title 17, article 5, sections 95800 et seq., and I am aware that there are significant penalties for submitting intentionally false statements and information or intentionally omitting required statements and information, including the possibility of fine or imprisonment."*

Explanation: The draft regulation requires that any submission is absolutely true, accurate and complete. Submissions will include unverified emissions reports that will

undergo verification where errors would be found. This draft also specifically deletes "to the best of my knowledge and belief…" which recognizes that the account representative is limited to his knowledge. There are enforcement provisions that would address violations that warrant higher penalties for misconduct.

§ 95833. Disclosure of Direct and Indirect Corporate Associations. (pg. A-69)

> *(a) Entities registered pursuant to section 95830 must disclose direct and indirect corporate associations with other registered entities.*
> *(1) An entity has a "direct corporate association" with another entity if either one of these entities:*
> *(A) Holds more than twenty percent of any class of listed shares, the right to acquire such shares, or any option to purchase such shares of the other entity;*
> *(B) Holds or can appoint more than twenty percent of common directors of the other entity;*
> *(C) Holds more than twenty percent of the voting power of the other entity; or*
> *~~(D) Controls more than twenty percent of the other entity's affairs through some other means.~~*

Explanation: LADWP recommends that subparagraph (D) be deleted as the term "through some other means" is too vague. LADWP is a member of the Southern California Public Power Authority and the Intermountain Power Authority. LADWP is a significantly larger utility in comparison to its sister POUs in SCPPA and IPA that will also be registered entities under the Cap-and-Trade program. LADWP seeks clarification from ARB in the regulation that these types of POU associations would not constitute a corporate association, insofar as the POUs each have their own separate governing body and rate setting structure, regardless of their participation in these types of Joint Power Authorities.

§ 95834. Disclosure of Beneficial Holding. (pg. A-71)

LADWP seeks clarification on the disclosure of beneficial holdings and would appreciate further discussions with ARB staff regarding how this provision is proposed to be implemented.

SUBARTICLE 7 – COMPLIANCE REQUIREMENTS

§ 95850 General Requirements (pg. A-77)

> *(b) A covered entity's compliance obligation is based on the emissions ~~number~~ for every metric ton of covered emissions (CO2e) as calculated in Subarticle 2 of MRR for which a positive or qualified positive emissions data verification statement is issued, rounded to the nearest whole ton, or for which there are assigned emissions pursuant to MRR. A covered entity's compliance obligation excludes emissions that are reported as part of a verification statement but that are subtracted from the calculation of covered emissions.*

Explanation: The verification statement includes emissions that do not carry a compliance obligation. Only the metric tons associated with the portion of the

verification statement that carries a compliance obligation should be applicable here pursuant to Subarticle 2 of MRR.

§ 95852(a) Operators of Facilities (pg. A-80)

> *(a) Operators of Facilities.*
> *(1) An operator of a facility covered under sections 95811(a) and 95812(b)(1) has a compliance obligation for every metric ton of covered emissions (CO2e) as quantified under Subarticle 2 of MRR for which a positive or qualified positive verification statement is issued per section 95131(c)(5) of MRR or for which there are assigned emissions, both for process emissions and stationary combustion emissions. If ARB has assigned emissions for the sources subject to a compliance obligation under sections 95852 and 95852.1, the facility will have a compliance obligation equal to the value of every metric ton of CO2e assigned emissions. The entity's compliance obligation will be assessed at the facility level unless otherwise noted under section 95812(c).*

Explanation: Same explanation as above for §95850.

§ 95852(b) First Deliverers of Electricity (pg. A-80)

> *(b) First Deliverers of Electricity. A first deliverer of electricity covered under sections 95811(b) and 95812(c)(2) has a compliance obligation for every metric ton of covered CO2e emissions as calculated in Section 95111(b)(5) of MRR. ~~subject to section 95852(b)(1) from a source in California or in a jurisdiction where a GHG emissions trading system has not been approved for linkage by the Board pursuant to subarticle 12~~. And, where the thresholds set out in section 95812 have been reached and for which a positive or qualified positive emissions data verification statement is issued or there are assigned emissions.*

Explanation: A first deliverer's compliance obligation is for a subset of emissions that are reported and included in a positive or qualified positive verification statement. This amendment is intended to clarify that the compliance obligation is based on covered emissions identified in the MRR that carry a compliance obligation. LADWP also proposes that references to the resource shuffling provision (§95852(b)(1) be removed until further vetting. It appears that §95852(b)(2) through (7) are intended to clarify compliance obligations for first deliverers of electricity. LADWP recommends that these subsections be further clarified and aligned with the MRR. The MRR §95111 includes several formulas for quantifying various types of emissions, but it appears there is no single "grand total" that can be pointed to in the MRR for first deliverers. It would be helpful for ARB to establish a clear cross reference from this regulation to the emissions calculated in MRR that carry a compliance obligation.

§ 95852 (b)(1) Resource Shuffling (pg. A-80)

~~*(1) Resource shuffling is prohibited and is a violation of this article. ARB will not accept a claim that emissions attributed to electricity delivered to the California grid are at or below the default emissions factor if that delivery involves resource shuffling. Resource shuffling is a form of fraud. The following attestations must be delivered to ARB annually in writing, by certified mail only:*~~
~~*(A) "I certify under penalty of perjury of the laws of the state of California that [facility or company name] has not engaged in the activity of resource shuffling to reduce compliance obligation for emissions, based on emission reductions that have not occurred."*~~
~~*(B) "I understand I am participating in the California Greenhouse Gas Cap-and-Trade Program under title 17, Cal. Code of Regs. article 5, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of California as the exclusive venue to resolve."*~~

Explanation: LADWP recommends that the resource shuffling provisions be deleted until there is further vetting of this very complex issue. Please see cover letter.

§ 95852 (b)(2) Criteria for Claim of a Facility-Specific Emission Factor (pg. A-81)

(2) The following criteria must be met for first deliverers for imported electricity from specified sources:
~~*electricity deliveries to calculate their compliance obligations based on an ARB facility specific emission factor specified pursuant to MRR section 95111 less than the default emission factor for unspecified electricity specified pursuant to MRR section 95111:*~~
(A)) Electricity deliveries must meet the requirements of ~~*be reported to ARB pursuant to*~~ *MRR section 95111(a)(4);*
(B) Claims for specified imported electricity must be calculated pursuant to MRR section 95111(b) and meet the requirements in MRR section 95111(g)
~~*The first deliverer must be the facility operator or have ownership or contract rights to electricity generated by the facility or unit claimed;*~~
(C) First deliverers must report electricity from specified sources to ARB using the ARB specified source identification number assigned to the source pursuant to MRR; and
~~*(D) If there are other parties within the contract chain of custody, then the original source of generation and quantity of MWhs to be delivered under the original contract must be identified within the entire contract chain. The quantity of electricity delivered, and for which an ARB facility specific emission factor specified pursuant to MRR section 95111 is claimed, cannot exceed the original amount under ownership or contract rights reported pursuant to section 95852(b)(2)(A).*~~

Explanation: It appears that this provision paraphrases the MRR sections that cover reported emissions from specified imported electricity. LADWP recommends clarifying the cross references to the MRR, including general requirements §95111(a)(4), calculations for specified facilities in §95111(b)(2), and §95111(g) for requirements for claims to specified sources of imported electricity and associated emissions.

LADWP recommends that subparagraph (D) be deleted since the MRR requires reporting of all fuel types under §95111(g)(1)(L), including variable renewables, hybrid facilities, fossil fuel, nuclear, small and large hydro, geothermal, cogeneration, co-fired fuels, renewables, municipal solid waste combustion, and others.

With regard to managing renewable resource imbalance, the CPUC and CEC are currently vetting how best to account for renewable resources, including the scenario when a resource produces more renewable energy than originally anticipated or scheduled. It appears that subparagraph (D) could be interpreted to preclude EDUs from receiving the emissions benefits associated with overgeneration received from a renewable resource. This approach is incorrect insofar as the overgeneration of a zero emitting specified renewable resource would still displace emitting fossil fuel generation, thereby avoiding GHG emissions. Under these circumstances, the quantify of non-emitting electricity delivered could exceed the amount under ownership or specified in a contract, and should not be assigned GHG emission penalties.

§ 95852 (b)(3) Replacement Electricity (pg. A-82)

> *(3) Replacement electricity that substitutes for electricity from a ~~variable~~ renewable resource qualifies for the ARB facility specific emission factor specified pursuant to MRR section 95111 of the ~~variable~~ renewable resource under the following conditions:*
> *(A) First deliverers of replacement electricity have a contract, or ownership relationship, with the supplier of the replacement electricity, in addition to a contract with a supplier of the variable renewable resource; and*
> *(B) The amount of the reported replacement electricity does not exceed the amount for the reported annual ~~variable~~ renewable resource.*

Explanation: LADWP recommends that ARB not limit this provision to replacement electricity for variable renewables only.

§ 95852.1.1.(a)(2) Eligibility Requirements for Biomass-Derived Fuels (pg. A-88)

> ~~*(a) Contracts for biogas and biomethane must meet one of the following criteria. Only the portion of the fuel that meets these criteria will be considered a biomass-derived fuel and is not subject to a compliance obligation if the emissions are reported as biomass CO2 in an emissions data report that has received a positive or qualified positive emissions data verification statement:*~~
>
> ~~*(1) The contract for purchasing any biomass-derived fuel must be in effect prior to January 1, 2012 and remain in effect or have been renegotiated with the same California operator within one year of contract expiration;*~~
>
> ~~*(A) Physical transfer of the fuel must begin no later than 90 days after a signed contract; and*~~
> ~~*(B) If physical transfer of the fuel begins more than 90 days after the contract is signed then for the purposes of this provision the first date of physical fuel transfer shall be considered the contract signing date;*~~
>
> ~~*(2) The fuel being provided under a contract dated after January 1, 2012*~~

~~*must only be for an amount of fuel that is associated with an increase in the biomass-derived fuel producer's capacity, new production or recovery of the fuel that was previously destroyed without producing useful energy transfer. Increased capacity is considered any amount over the average of the last three calendar years production;*~~

~~*(3) The fuel being provided under a contract dated after January 1, 2012 is for a fuel that was previously eligible under (1) or (2) above, and the verifier is able to track the fuel to the previously eligible contract;*~~

~~*(4) Once a certification program is in place, a fuel which meets the requirements of sections 95852.1.1(a)(1) and 95852.1.1(a)(2) will always be considered to have met the requirements in section 95852.1; or*~~

~~*(5) If the biogas or biomethane is used at the site of production, and not transferred to another operator thus not requiring a contract, the operator must demonstrate one of the following:*~~
~~*(A) The fuel has been combusted in California prior to January 1, 2013 2012; or*~~
~~*(B) The fuel was not previously used to produce useful energy transfer.*~~

~~*(b) As part of a biomass-derived fuel's eligibility to avoid a compliance obligation no party may sell, trade, give away, claim or otherwise dispose of any of the carbon credits, carbon benefits, carbon emissions reductions, carbon offsets or allowances, howsoever entitled, attributed to the fuel production that would prevent the resulting combustion from not having a compliance obligation. Generation of Renewable Energy Credits is allowable and will not prevent a biomass-derived fuel that meets the requirements in this section from being exempt from a compliance obligation.*~~

Explanation: LADWP recommends that this provision for eligibility for biogas contracts be stricken from the draft regulation until further vetting on resource shuffling takes place. At minimum, LADWP recommends that ARB delete the contract date in order to be aligned with 33% RPS, which has no contract date requirement. If biogas is an eligible renewable after January 1, 2012, then it should be considered beneficial for both RPS and AB 32 compliance. Biogas contracts are treated as zero emission only if they are in place by 1/01/2012. If they are in place after that, they will be assigned emissions equivalent to natural gas (943 lbs/MWh), unless they are for new capacity, new recovery, or previously flared. Biogas is a beneficial reuse. Contract restrictions related to shuffling unnecessarily discriminate against biogas with no apparent environmental gain.

§ 95852.2. Emissions without a Compliance Obligation (pg. A-89)

(a)(13) Replacement electricity pursuant to section 95852(b)(3).

Explanation: Insert a new category: Replacement electricity. Replacement electricity is not distinguished from regular market purchases. The compliance obligation should net

out the emissions from unspecified imports that are actually replacement power for imported renewables.

§ 95854 Quantitative Usage Limit on Designated Compliance Instruments—Including Offset Credits. (pg. A-95)

> *(a) Compliance instruments identified in section 95820(b) and sections 95821 (b), (c), and (d) are subject to a quantitative usage limit when used to meet a compliance obligation.*
>
> *(b) The total number of compliance instruments identified in section 95854(a) that each covered entity may surrender to fulfill the entity's compliance obligation for ~~a compliance period~~ must conform to the following limit:*
>
> *O_O/S must be less than or equal to LO*
>
> *In which:*
> *O_O = Total number of compliance instruments identified in section 95854(a) submitted since January 1, 2013 to fulfill the entity's total compliance obligation ~~for the compliance period~~ through the current compliance period.*
> *S = Covered entity's total compliance obligation beginning January 1, 2013 through the current compliance year.*
> *LO = Quantitative usage limit on compliance instruments identified in section 95854(a), set at 0.08.*
> *(c) The number of sector-based offset credits that each covered entity may surrender to meet the entity's compliance obligation for a compliance period must not be greater than 0.25 of the LO for the first compliance period and not more than 0.50 of the LO for subsequent compliance periods.*

Explanation: ARB proposes a quantitative usage limit of 8% for offsets (i.e. a covered entity can meet up to 8% of its compliance period obligation with offsets). LADWP recommends that the offset limit be calculated on a cumulative basis as opposed to a compliance period basis. This would ensure that a covered entity's use of offsets for compliance in any given period does not exceed 8% of covered emissions.

§ 95855(b) Annual Compliance Obligation (pg. A-96)

> *(b) The annual compliance obligation for a covered entity equals 30 percent of emissions ~~reported~~ from the previous data year ~~that received a positive or qualified positive emissions data verification statement, or were assigned emissions pursuant to section 95131 of MRR~~ calculated in accordance with §95852.*

Explanation: This amendment is to clarify that not all reported emissions carry a compliance obligation, but only those that are identified in §95852.

§ 95856(b)(1) Timely Surrender of Compliance Instruments (pg. A-96)

> *(b) Compliance Instruments Valid for Surrender.*
> *(1) A compliance instrument listed in Subarticle 4 §95820 and §95821 may be used to satisfy a compliance obligation.*

Explanation: There is no reference to a specific subarticle. This is important to know as this section is referenced in the holding limit provisions (section 95920(c)(2).

§ 95856(b)(2) Timely Surrender of Compliance Instruments by a Covered Entity (pg. A-96)

> *(2) To fulfill any annual compliance obligation, a compliance instrument must be issued from an allowance budget year within or before the year for which the compliance obligation is calculated, unless:*
> *(A) The allowance was purchased from the Allowance Price Containment Reserve pursuant to section 95913; or*
> *(B) The allowance is used to satisfy an excess emissions obligation.*
>
> *(3) To fulfill a Triennial Obligation, compliance instruments from any compliance year within a compliance period may be transferred to a covered entity's compliance account .*

Explanation: The 3-year compliance period is intended to "smooth" out fluctuations in emissions from year-to-year. Allowances should be fungible for all years within a 3-year compliance period. LADWP recommends that subparagraph (3) be added to clarify that allowances issued during the compliance period may be used for emissions from that same period for the final triennial compliance surrender.

§ 95857(c) Untimely Surrender of Compliance Instruments by a Covered Entity Failure to Satisfy Untimely Surrender (pg. A-99)

> *(c) If an entity with an untimely surrender obligation fails to satisfy this obligation pursuant to section 95857(b)(4), then:*
> *(1) ARB will determine the number of violations pursuant to section 96014;*
> *~~(2) If a portion of the untimely surrender obligation is not surrendered as required, the entity will have a new untimely surrender obligation equal to the amount of the previous untimely surrender obligation which was not satisfied by the deadline stated in section 95857(b)(4) upon which the number of violations will be calculated pursuant to section 96014. The new untimely surrender obligation is due immediately; and~~*
> *(3) The calculation of the untimely surrender obligation shall only apply once for each untimely surrender of compliance instruments per annual or triennial compliance obligation.*

Explanation: LADWP requests clarification. Subparagraph (2) appears to be duplicative. If an entity fails to timely surrender allowances, then the penalties should be imposed on the amount that was not surrendered. This provision also refers to §96104 which would

apply a daily violation for each compliance instrument not surrendered by the end of the Untimely Surrender Period.

SUBARTICLE 10 – AUCTION

§ 95912. Auction Administration and Registration: Bid Guarantee (pg. A-140)

> *(i)(h) Registrants must provide a bid guarantee to the auction financial services administrator at least one week prior to the auction.*
> *(1) The bid guarantee must be in one or a combination of the following forms:*
> *(A) A bond issued by a financial institution with a United States banking license.*
> *(B) Cash in the form of a wire transfer or certified funds, such as a bank check or cashier's check.*
> *(C) An irrevocable letter of credit issued by a financial institution with a United States banking license.*
> *(D) If California participates in a joint auction with one or more Canadian Provinces pursuant to section 95912 (b) then bonds or irrevocable letters of credit issued by a financial institution with a Canadian banking license will be acceptable.*
> *(2) 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.*
> *(3) A POU may submit documentation for its most recent high bond rating of "AA" or greater in lieu of a bid guarantee.*

Explanation: The Cap-and-Trade regulation requires that registrants of an auction provide a bid guarantee to the auction administrator at least one week prior to auction. The bid guarantee must be in one or a combination of the following forms: 1) a bond, 2) cash in the form of a wire transfer or certified funds, 3) an irrevocable letter of credit. Most municipal utilities carry bond covenants and restrictions that limit their ability to post assets as collateral, plus the cost for a letter of credit is significant. For electric distribution utilities, LADWP's preferred alternative to the ARB's bid guarantee requirements is to rely on a high bond rating as the basis for creditworthiness, such as "AA" or above to qualify an entity to participate in a quarterly auction. There are also creditworthiness provisions outlined in master agreements such as those available through the Western Systems Power Pool (WSPP) or Edison Electric Institute (EEI) that could be used as the basis for participation by utilities in a quarterly auction. ARB has tools available through enforcement and penalties for any default that might occur.

§95920(d)(2)(B) Trading, Holding Limit (pg. A-159)

LADWP seeks clarification in the regulation to ensure that the holding limit is able to account for and accommodate annual fluctuations in emissions associated with electricity consumption. Per ARB's staff report, the purpose of having a holding limit is "to prevent a market participant, or a group of market participants that can coordinate their buying and selling, from gaining too large a share of the goods in a market. The limits are common features in commodity markets." However, the holding limits proposed can present a problem for compliance entities in the case where a previous year's emissions are significantly less than the next year's compliance obligation. For

example, if an entity's 2012 emissions were 8 MMT, the limited exemption from the holding limit is 8 MMT after this amount is placed in the entity's compliance account. ARB's staff report states that the limit to the transfer of allowances added to an entity's compliance account is equal to the verified emissions reported for the entity for the previous year. So, for example, if that entity's allocation is 12 MMT, then 4 MMT is in the holding account and only up to 0.271 MMT can be purchased. If that entity projects that it will be short such that more than 0.271 MMT needs to be purchased, then it will likely face violations.

§ 95921(a)(1)(A) Conduct of Trade (pg. A-161)

> *(A) Except when the transaction is undertaken by the Executive Officer, the cap-and-trade program will not register a change in ownership of a compliance instrument until:*
> *(A) The two parties to the change in ownership report the transaction to the accounts administrator within (7) calendar days of settlement of the transaction agreement;*

Explanation: ARB does not define "settlement of transaction agreement." ARB does distinguish between "settlement date and time" and "transaction agreement date and time" by allowing these two types of information to be sent to the accounts administrator, but these terms are also not defined. It could be difficult for entities to comply with a 3 calendar day requirement if the settlement of a transaction occurs on a Friday and report of the transaction requires specific signatures. Seven calendar days is more reasonable.

Energy Efficiency and Co-Benefits Audit Regulation

ARB's public workshop notice states that, "Staff is also investigating ways to ensure that large industrial sources subject to the recently finalized Energy Efficiency and Co-Benefits Audit regulations be required to take all cost-effective action identified under those audits." It appears that ARB is now proposing to make implementation of the audit recommendations a requirement, subject to penalties, for facilities that are also subject to the Cap-and-Trade program. LADWP recommends that this separate, but very closely related and important regulation, be publicly vetted in a separate public comment period and workshop from this specific 15-Day Modified Text comment period. The draft regulation that is currently being publicly reviewed does not include any provisions that relate to the Energy Efficiency and Co-Benefits Audit regulation.

LADWP recognizes the importance of ensuring that the ARB consider the potential for direct, indirect, and cumulative emission impacts from the Cap-and-Trade program on communities that are already adversely impacted by air pollution. LADWP requests that ARB give full time and consideration to any amendments of the Energy Efficiency and Co-Benefits Audit regulation without the restrictions of this current 15-Day rulemaking comment period.