



MEMORANDUM

TO: California Air Resources Board

FROM: Modesto Irrigation District
Redding Electric Utility
Turlock Irrigation District

SUBJECT: Proposed Regulation Order for a California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

DATE: December 10, 2010

The Utilities

Modesto Irrigation District (“MID”), Redding Electric Utility (“REU”), and Turlock Irrigation District (“TID”), collectively the “Utilities,” appreciate the opportunity to comment on the “Proposed Regulation Order for a California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms” (PRO) developed by the California Air Resources Board (CARB).

MID, REU, and TID are local publicly owned electric utilities. MID and TID are irrigation districts located in the Central Valley, while REU is a municipal utility within the City of Redding. MID serves over 111,000 electric customers with a peak load of over 620 Megawatts (MW). REU serves 42,000 customers with a peak load of 247 MW. TID serves about 100,000 electric customers with a peak load of approximately 600 MW. The Utilities maintain similar resource mixes, including hydroelectric, eligible renewable resources and fossil fuel sources. MID anticipates it will meet about 18% of its retail sales with eligible renewable energy in 2010 and will begin to meet over 27% of its retail energy sales with renewable energy in 2011. REU has long-term contracts to provide 31% of its energy from eligible renewable resources. TID is currently meeting 27% of its retail load with eligible renewable energy. In addition to the foregoing state-defined eligible renewable resources, the Utilities have ownership and/or contractual interests in large hydroelectric resources that meet up to 21 percent of their retail load. The Utilities also share similar challenges in implementing CARB’s Renewable Energy Standard, including weather patterns, demographics and local economics. The Utilities have consistently supported the goals of AB 32 and participated in many of CARB’s proceedings in

an effort to ensure that these goals are adopted in a manner where the regulations and implementing strategies promulgated under AB 32 consider the impacts on the electric ratepayers of California and include appropriate protections for consumers.

Introduction

The goal of the California Global Warming Solutions Act of 2006 (AB 32, Nuñez, Chapter 488, Statutes of 2006) is to reduce greenhouse gas (GHG) emissions in a cost-effective manner. The AB 32 Scoping Plan (adopted on December 12, 2008) lays out a comprehensive program to scale back the State's GHG emissions to 1990 levels by 2020. The PRO sets forth CARB's plan for implementing the cap-and-trade element of the Scoping Plan.

As stated in the Initial Statement of Reasons (ISOR, page ES-1) accompanying the PRO, "The cap-and-trade program is a key element of this overall strategy ... and affords covered entities flexibility to seek out and implement the lowest-cost options to reduce emissions." The Utilities support efforts to implement AB 32 in a manner that protects California's economy and ratepayers. The Utilities are generally pleased with the design of the cap-and-trade program, and offer the following comments on the PRO.

Subarticle 2: Purpose and Definitions

The Utilities have no comments on this section at this time.

Subarticle 3: Applicability

§ 95812. Inclusion Thresholds for Covered Entities.

The Utilities request clarification of Subsection 95812(b) and how the entity and facility thresholds operate together. How are facilities that do not exceed the facility threshold factored in determining an entity's threshold and compliance obligation? The confusion occurs given the use of the word "aggregated." The language is circular but seems to indicate that only facilities that exceed the facility threshold are to be counted in the aggregation (however this reading makes the concept of aggregation redundant since one facility would tip the entity over the threshold).

An example raising this question would be an entity with three facilities which emit only 10,000 metric tons of CO₂e each. The three facilities do not meet the threshold individually, however, if the entity aggregates its emissions, would it now meet the threshold and have a compliance obligation requiring allowances? If so, which of the facilities would be counted since all are below the threshold?

Another example to this effect would be an entity with three facilities, one that emits 25,000 metric tons of CO₂e and the other two that each emits 10,000 metric tons CO₂e. The first facility would clearly meet the threshold and trigger a compliance obligation for the entity. Would the entity's other two facilities be aggregated and need allowances as well? The Utilities request further clarification and an example of how this would be calculated within the ISOR.

§ 95813. Opt-in Covered Entities.

- (a) *An entity that meets the requirements of section 95811(a), but does not exceed the inclusion thresholds set forth in section 95812 (b)(1) may elect to voluntarily opt-in to the cap-and-trade program.*
- (d) *An opt-in covered entity may be eligible to receive freely allocated allowances subject to subarticles 8 and 9 95891.*
- (e) *Opt-in participation shall not affect the allowance budgets set forth in subarticle 6.*

The Utilities appreciate CARB's desire to encourage reductions in emissions from entities without compliance obligations and understand that Opt-in Covered Entities are intended to come only from the Industrial Sector. The Utilities recommend the above changes to further clarify this intent. If such clarification is not provided and the Opt-in provision is too broadly interpreted, Opt-in Covered Entities from the electric sector could skew the allowance allocation for electric distribution utilities with a mandated compliance obligation, which would obviate the cost effectiveness of the cap-and-trade program. No entity would be excluded from participating in the cap-and-trade program through the changes recommended by the Utilities above because non-obligated entities that desire to participate in the emission reduction goals can participate as Voluntary Associated Entities (VAEs).

In addition, the Utilities recommend that Subsection 95813(e) be deleted and that the allowance budgets be adjusted accordingly for inclusion of Opt-in Covered Entities. Inclusion of Opt-in Covered Entities shifts the emissions associated with those entities from outside the cap to under the cap. If the allowance budgets are not adjusted in accordance with this increase in emissions, the allowance market will be unnecessarily and artificially constrained as the allowance cap is effectively lowered.

Subarticle 4: Compliance Instruments

§ 95820. Compliance Instruments Issued by the Air Resources Board.

- (b) *Each compliance instrument issued by the Executive Officer represents a limited authorization to emit up to one metric ton in CO₂e of any greenhouse gas specified in section 95810, subject to all applicable limitations specified in this article. No provision of this article may be construed to limit the authority of the Executive Officer to terminate or limit such authorization to emit. For the purposes of this regulation only, a compliance*

instrument issued by the Executive Officer does not constitute property or a property right.

The Utilities believe that the statement regarding a compliance instrument not being a property right should be limited for the purposes of this regulation only.

Subarticle 5: Registration and Accounts

§ 95831. Account Types.

(a)(4) Compliance Accounts

The Utilities request clarification regarding the operation of the Compliance Account. The Utilities are unclear as to the process where, accidentally or due to circumstances varying from forecasts, a compliance entity transfers more compliance instruments into its Compliance Account than are required to meet a compliance obligation (as opposed to the process for “excess emissions” which is clearly defined in Section 95857). Subection 95831(a)(4) of the PRO states that once a compliance instrument is transferred into the Compliance Account it may not be removed by the covered entity, and Section 95856 states that compliance instruments transferred into the Compliance Account will automatically be retired at the appropriate surrender date. What is unclear is what occurs when the number of compliance instruments transferred to an entity’s Compliance Account exceeds the entity’s surrender obligation.

The Utilities request clarifying language to be included in Section 95856 articulating a process for truing up these excess compliance instruments. Compliance instruments in excess of the surrender obligation could be transferred by an account administrator back into the covered entity’s holding account, or alternatively, held in the covered entity’s compliance account until the next surrender deadline. In other words, the Utilities request language set forth in our comments under Subarticle 6 below, clarifying that CARB would not retire any compliance instruments in excess of the surrender obligation unless specifically requested by the covered entity.

(c)(3) A holding account to be known as the Retirement Account...

The voluntarily retirement of compliance instruments must be done in an open and transparent way as this action directly impacts those covered entities that have a compliance obligation. Since the retirement of allowances by VAEs results in a reduction of the overall cap level and increases the cost burden for covered entities, the Utilities strongly support a provision whereby VAEs would only be allowed to retire offsets; we make this recommendation in our comments to Section 95922 below. This adjustment would provide VAEs with a direct GHG reduction opportunity through the creation and retirement of CARB qualified and approved offsets. In addition, such an approach would protect consumers from an unjustified price escalation due to an unduly constrained allowance market.

(c)(6) Reserved for Voluntary Renewable Energy Allowance Set-Aside Account.

The Utilities appreciate that CARB has deferred action on the Voluntary Renewable Energy Allowance Set-Aside (VRE) and agree that it is important to allow the market to develop fully before this program element is considered. The Utilities continue to have concerns with the inclusion of a set-aside account. If this set-aside is eventually added to the cap-and-trade program it will, by design, remove compliance instruments from the market leaving fewer allowances available for covered entities, which in effect reduces the cap below the goal set by AB 32. This would also increase the overall costs of compliance and the compliance burden for covered entities. The Utilities recommend revisiting this issue after the end of the first compliance period so as to have a sufficient base case for analysis, and at that time determine whether this type of option can be viably integrated into the cap-and-trade program without unintended consequences.

Subarticle 6: California Greenhouse Gas Allowance Budgets

§ 95841. Annual Allowance Budgets.

The Utilities would like clarification regarding the Revised 2020 Allowance Budget as presented in Section 95841 (Table 6-1). The AB 32 Scoping Plan included a preliminary allowance budget estimate of 365 million metric tons (MMT) in 2020; however, the PRO includes a substantially lower allowance budget of 334.2 MMT in 2020. The Scoping Plan clearly articulated that the primary goal of AB 32 is to reduce GHG emissions to 1990 levels, which CARB established in its 2004 GHG inventory as being 427 MMT. Subtracting 57 MMT of emissions from sectors outside of the cap, plus a safety margin of 5 MMT, creates the annual allowance budget cap of approximately 365 MMT. In order to justify this change in the 2020 Allowance Budget, the emissions outside of the cap would have to have increased from 57 MMT to 85 MMT (427 MMT – 334 MMT). The Utilities would like more justification from CARB in the ISOR as to why the emissions outside of the cap are expected to increase by so much more than originally projected and request that this analysis explain the differences between the original and updated forecasts.

The Utilities also request that CARB address the potential for increased use of plug-in electric vehicles and the impact of this on all aspects of the cap-and-trade program. The Utilities believe additional allowances should be made available to electric distribution utilities commensurate with the covered entity's growth in emissions due to infiltration from the vehicles, as further identified by the California Public Utilities Commission in a recent white paper.¹

Subarticle 7: Compliance Requirements for Covered Entities

§ 95850. General Requirements.

¹ CPUC, Policy and Planning Division, Staff White Paper: "Light -Duty Vehicle Electrification in California: Potential Barriers and Opportunities. May 22, 2009.

(c) In unusual circumstances, the time limit for providing records prescribed in this section may be extended by the Executive Officer, upon written request by the covered entity setting forth the reasons for the extension and the date on which the documents are expected to be dispatched. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

Covered entities are required to retain records for at least 10 years and in some cases up to 100 years. Entities are likely to accumulate significant amounts of records over these extended periods. The Utilities believe it is important to allow flexibility for circumstances whereby the covered entity may require more than 20 calendar days to compile all of the records being requested. Such flexibility is provided under similar requirements in the California Public Records Act (Government Code section 6250 *et seq.*) We are suggesting that the PRO include the above language similar to the Public Records Act, whereby the Executive Officer would have the ability to extend the time for providing documents in appropriate circumstances.

§ 95853. Calculation of Covered Entity's Triennial Compliance Obligation.

The Utilities request additional clarification of how Subsection 95853(e) applies to new entrants from the electric sector. While Section 95812 includes the threshold for covered entities, which specifically includes electric generation facilities as well as the first deliverers of electricity, the amount of free allowances a new entity is eligible to receive is calculated based on Section 95891 in the PRO which outlines a calculation for allowance allocation only for the industrial sector.

§ 95855. Annual Compliance Obligation.

The Utilities would like clarification as to how the Annual Compliance Obligation is calculated in the event of a “non-qualified verification” per CARB’s Mandatory Reporting Regulations (MRR) for the previous year’s emissions report.

§ 95856. Timely Surrender of Compliance Instruments by a Covered Entity.

(d) Deadline for Annual Surrender. For any year in which a covered entity has an annual compliance obligation pursuant to section 95855, it must fulfill that obligation by November 1 of the calendar year following the filing of an entity's reports pursuant to section 95103 of the MRR.

(1) By May 15 of the calendar year following the year for which the obligation is calculated if the entity reports by April 1 pursuant to section 95103 of the MRR.

(2) By July 15 of the calendar year following the year for which the obligation is calculated if the entity reports by June 1 pursuant to section 95103 of the MRR.

The Utilities have developed a timeline showing the various proposed deadlines for electric utilities that are covered entities; the timeline is included as Attachment A to these comments. The Utilities have submitted a request to CARB staff working on the changes to the MRR that the verification deadlines be consolidated to October 1 each year for both operators and suppliers and electric power entities². Similarly, the Utilities are requesting here that the annual and triennial surrender deadline be consolidated to November 1 in an effort to increase administrative simplicity and harmonization for the covered entity, especially given that these deadlines are subject to enforcement action. Further, the Utilities believe that the annual surrender dates must follow verification, further justifying a November 1 date.

In addition, the Utilities request clarification in Subsection 95856(f)(3) regarding the proper calculation of the triennial surrender obligation. To be clear on what allowances and offsets are being factored, the Utilities suggest the following language:

(f) Triennial Surrender.

(3) The Triennial Surrender obligation shall equal the Triennial Compliance Obligation calculated pursuant to section 95853 less allowances and offset credits already transferred to the covered entity's compliance account for the Compliance Period.

As previously discussed herein, the Utilities are seeking clarification regarding treatment of excess compliance instruments compliance instruments in a compliance account that exceed the entity's surrender obligation. We provide the following language for consideration:

(g) When the Executive Officer has determined the covered entity has met its surrender obligations, the Executive Officer shall:

² The Utilities comments to the CARB Mandatory Reporting Regulation Revisions will be submitted prior to December 16, 2010.

(1) Retire the compliance instruments surrendered, provided, however, in the event the number of compliance instruments contained in a compliance account at the end of the compliance period exceeds the entity's surrender obligation, the Executive Officer shall retain the excess instruments in the compliance account unless the entity requests the excess instruments be retired or returned to the entity's holding account; and

§ 95857. Untimely Surrender of Compliance Instruments by a Covered Entity.

(c) Allocation to Public Utilities.

(4) If the Executive Officer is unable to retrieve sufficient allowances using the above process, the Executive Officer shall provide the deficient covered entity 30 100 days to secure the allowances needed to cover its untimely surrender obligation;

The Utilities greatly appreciate CARB's inclusion in the PRO of a time period within which covered entities may resolve excess emissions issues. However, as shown in Attachment A, there is no opportunity for a covered entity to purchase the required allowances to fulfill the excess emissions requirement at either auction or the reserve following the November 1 surrender deadline. The same argument applies to the proposed annual surrender deadline of May 15 for facilities (please note that the Utilities recommend changing the annual surrender deadlines to November 1 for both operators and suppliers and electric power entities above). Thus, the Utilities would recommend the cure period be extended to 100 days to provide an opportunity for covered entities to access the auction.

(d)(2)(A) Three fourths to the highest-lowest priced tier of the Allowance Price Containment Reserve Account; and

The Utilities request that those allowances surrendered for excess emissions destined for the Allowance Price Containment Reserve be allocated to the lowest tier within the Reserve. Focusing the allowance on the highest tier only serves to penalize the other covered entities that must purchase from the reserve, the majority of which have not had an excess emissions occurrence. Alternatively, putting these allowances into the lowest tier provides covered entities with an ability to purchase these allowances without unduly increasing the cost burden and the covered entity's avoided costs are more likely to be spent on AB 32 reduction activities. In contrast, the revenue from allowances bought at the Reserve is directed to the State's General Fund, and there is no guarantee that these monies will be spent on AB 32 reducing activities.

(b)(2) The covered entity's compliance obligation for untimely surrender is calculated as four two times the entity's excess emissions; and.

(b)(3) The covered entity's compliance obligation for untimely surrender may only be fulfilled with CA GHG allowances of allowances issued pursuant to subarticle 12.

Offsets shall be allowed to cover excess emissions by deduction from the covered source's compliance account equal to three times the number of the source's emissions (3x the allowances shortage).

The Utilities continue to have concerns regarding the effect of imposing a penalty that would require the submission of multiple allowances for each excess emission. This approach appears to be counterproductive, setting the covered entities and the AB 32 cap-and-trade program up for failure. While the Utilities appreciate that the additional allowances will be available to covered entities through the Reserve if needed for compliance obligations, the exclusion of using offsets to meet this penalty will essentially have the effect of penalizing the covered entities by constraining the future of the market. Thus, the Utilities recommend the above changes.

Subarticle 8: Disposition of Allowances

§ 95870. Disposition of Allowances.

(c)(1) Electrical Distribution Utilities. The Executive Officer will place an annual individual allocation in the limited use holding account of each eligible distribution utility on or before January 15 if each calendar year from 2012-2020 pursuant to Section 95892. Allowances available for allocation to electrical distribution utilities shall be 89 million multiplies by the cap adjustment factor in Table 9.2 for each budget year 2012-2020.

The Utilities strongly support CARB's decision to allocate free allowances to the electrical distribution utilities. As the Utilities have previously asserted in prior comments to CARB, the electrical distribution utilities are in the best position to assist California's ratepayers with the cost burdens associated with the cap-and-trade program. The Utilities recommend the minor change above for clarification.

Subarticle 9: Direct Allocations of California GHG Allowances

§ 95890. General Provisions for Direct Allocations.

(c) Eligibility Requirements for Electrical Distribution Utilities. An electrical distribution utility shall be eligible for direct allocation of California allowances if it has complied with the requirements of the MRR and has obtained a positive or qualified positive verification statement on its sales number for the prior year pursuant to the MRR. An entity that has not obtained a positive or qualified positive verification pursuant to the MRR may petition the Executive Officer for a direct allocation of California allowances if the entity is in the process of correcting the verification issues.

In some instances, a covered entity may be in the process of correcting a verification issue up until the deadline for direct allocation disbursements (which is on or before January 15 of each calendar year). If such is the case, the Utilities propose that the said entity be allowed to petition the Executive Officer to receive their allotted allowance allocation, should the verification issue be resolved to a positive verification.

§ 95892. Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers

(a) Reserved for allocation to electrical distribution utilities.

The Utilities are participants in the Joint Utility Group (JUG) and support the intra-utility allocation recommendation developed by the JUG and CARB. The Utilities believe this recommendation adequately accounts for the cost burden of each electrical distribution utility, incorporates an appropriate amount of energy efficiency as well as early action. The Utilities believe it is important to have a set allowance allocation methodology in place and active prior to the start of the cap-and-trade program as this will assist with the Utilities' long-term planning and budgeting in order to make the clean investments necessary to achieve the AB 32 reduction strategies.

The intra-utility allowance allocation recommendation brought forward by CARB is a compromise that the Utilities are supporting because of the fairness and balance it creates for all the electric distribution utilities in California. The recommendation appropriately recognizes the cost burden that will incur on every electric ratepayer from the entire AB 32 program while effectively rewarding early action toward renewable energy and energy efficiency investments. The Utilities appreciate all of the work CARB has done to develop this recommendation and looking forward to working with staff over the next year on refinement of the data.

(b)(2) Publicly Owned Utilities

The Utilities support the provision that will provide publicly owned utilities (POUs) with the flexibility of either consigning their freely allocated allowances for sale at general auctions or applying them directly to meet cap-and-trade compliance obligations. As electric distribution utilities are diverse, this provision provides an important recognition in that covered entities should have a reasonable means to comply with the cap-and-trade program in a manner that accommodates their respective business models and compliance strategies. The Utilities agree with CARB's rationale for this provision in that POUs are largely vertically integrated, and in addition points out that some POUs may be disproportionately impacted if required to participate in quarterly auctions due to significant capital needed, and the transaction costs expected to participate.

(e) Reporting on the Use of Auction Proceeds. Following approval pursuant to 95892(d)(1) or 95892(d)(2), and no later than June 30, 2013, and each calendar year thereafter, each electrical distribution utility shall submit a report to the Executive Officer describing the disposition of any auction proceeds received in the prior calendar

year. The Executive Officer shall use these reports for informational purposes only. This report shall include:

- (1) *The monetary value of auction proceeds received by the electrical distribution utility.*
- (2) *How the electrical distribution utility's disposition of such auction proceeds complies with the requirements of this section and the requirements of California Health and Safety Code sections 38500 et seq.*

POUs are governed by their locally electric or appointed bodies. The required reports would be appropriately prepared and submitted to these local governing bodies for approval. The Utilities suggest that, once approved, each POU covered entity would then submit a copy of the approved report to CARB. The Utilities understand that CARB did not intend for these reports to be used for enforcement actions, thus the Utilities offer the above additions to ease in this clarification.

Subarticle 10: Auction and Sale of California Greenhouse Gas Allowances

§ 95910. Timing of Auction of California GHG Allowances.

The Utilities are unclear as to how future budget years will be distinguished for their separate auctions; will this be done by year, compliance period, or otherwise? Thus, the Utilities request additional clarification of Subsection 95910(c) to state what the Utilities understand to be CARB's intent that there will be separate auctions held each quarter.

§ 95911. Format for Auction of California GHG Allowances.

(b) Auction Reserve Price Schedule.

(6) Method for Setting the Auction Reserve Price

(B) For auctions conducted in calendar years after 2012 the Reserve Prices shall be the Auction Reserve Prices for the previous calendar year increased annually by 5 percent plus the rate of inflation as measured by the Consumer Price Index for All Urban Consumers.

The Utilities are comfortable with the need to adjust the Auction Reserve Price for inflation as measured by the CPI. However, we do not believe that there is justification for adding an additional 5%; nor has CARB identified the need or use for this additional revenue. As stated above, a covered entity's avoided costs are more likely to be spent on AB 32 reduction activities. In contrast, revenue from allowances bought at the Reserve will be directed to the State's General Fund and appropriated by the Legislature, thus there is no guaranty that these monies will be spent on AB 32 reduction activities.

(c) Auction Purchase Limit. For auctions conducted from January 1, 2012, through December 31, 2014, the share of allowances of any vintage year offered at any

quarterly auction which may be purchased by one entity or a group of entities with a corporate association pursuant to 95914 shall be limited to less than:

- (1) *For covered entities and opt-in covered entities: ten percent of the allowances offered for auction, provided, however, that upon a showing of good cause by a covered entity, the Executive Officer may grant a limited extensions of this limit during the final year of the Compliance Period where due to unforeseen circumstances beyond the entity's control the entity requires additional purchase limit to meet its surrender obligation.*
- (2) *For investor owned electrical utilities...the auction purchase limit in (A1) does not apply. This subsection (B2) shall not be interpreted...*

The Utilities support the concept of applying Auction Purchase Limits as set forth in the PRO. However, the Utilities are concerned that unforeseen circumstances could result in the need for an amount of allowances exceeding a covered entity's Purchase Limit during the last year of a Compliance Period. The Utilities request that the PRO include a provision authorizing the Executive Officer to grant exceptions to the Purchase Limit for good cause, on a case by case basis.

In addition, the Utilities agree that the Purchase Limit should be reviewed and appropriately adjusted for the later two Compliance Periods, as indicated in the ISOR (page IX-72). However, the Utilities believe that the Purchase Limit is a critical component of ensuring the operation of a sound allowance market and thus would propose that the PRO extend the Purchase Limit throughout the program. ARB would still have the ability to revise the limit in subsequent Compliance Periods to account for market adjustments and allowance distributions.

§ 95912. Auction Administration and Registration.

(d) Protection of Confidential Information.

- (1) *An entity approved for auction participation shall not publicly release confidential information related to its auction participation, except as otherwise required by law, including:*

The Utilities are concerned there could be a conflict between this section and various existing laws affecting POUs, such as the Public Records Act, and request the above language be added for clarification.

(e) If the Executive Officer determines that a bidder has provided false or misleading information, or has withheld pertinent information in its application, or has violated any part of the auction rules, the bidder may be prohibited from participating in any future auctions. This prohibition shall be in addition to any other penalties, fines, and additional remedies available at law.

The Utilities are concerned that Subsection 95912(e) lacks the necessary due process for allowing a bidder, after the Executive Officer has determined that they are in violation, to present

information that may controvert or mitigate that determination. The Utilities suggest such a process be included in this section. Such process should include an opportunity to have those materials considered prior to the Executive Officer's determination, as well as a process for appealing any violation determination prior to imposition of a penalty.

- (i) *Registrants must provide a bid guarantee to the auction administrator at least one week prior to the auction.*

The Utilities are concerned that the bid guarantee election is more difficult for smaller utilities with less capital and credit. The Utilities believe that bids should be settled quickly so that any money, letter of credit, or other cash equivalent that is given for the guarantee is not tied up for extended periods of time. Furthermore, to protect these funds, guarantees should be placed in an escrow account separate from any funds of the State. In addition, the Utilities request additional guidance within the PRO as to the timeline and process for settling the auction and reserve sales, including how winning bidders will be required to provide cash if they are guaranteed with a substitute, and when CARB will return the guarantee back to unsuccessful bidders.

§ 95913. Sale of Allowances from the Allowance Price Containment Reserve.

- (c) *Timing, Eligible participants, and Limitations.*
 - (1) *Eligible participants*
 - (B) *Only covered entities (including opt-in covered entities) which hold no allowances ~~compliance instruments~~ in their holding accounts or limited use holding accounts may purchase allowances from the Allowance Price Containment Reserve.*

The Utilities believe that covered entities should be allowed to participate in the Reserve if their holding account contains excess offsets because the entity has transferred the maximum amount of offsets into their Compliance Account (8%). A covered entity should be allowed to hold offsets in their holding account and maintain access to the Reserve.

- (c)(3)(B) *Subsequent sales shall be conducted ~~three weeks~~ 45 days after each quarterly allowance auction pursuant to 95910.*

The Utilities recommend that the timing of Reserve sales be split equally between quarterly auctions to provide covered entities with a sufficient amount of time to transfer compliance instruments into their Compliance Accounts and to assess needs before participating in the Reserve sale. Thus, the Utilities recommend Reserve sales occur 45 days following each quarterly allowance auction.

In addition, as mentioned below regarding Subsection 95913(e), the submittal date for the various documents required to participate in the Reserve sale is one week following each quarterly auction. This presents too little time for a covered entity to fully assess its need

following the Auction and to develop the required bid guarantee documents for the Reserve. If the Reserve sales are conducted 45 days following each Auction, there is no need to change the timing of submittal for Reserve documents.

(d) *Reserve Tiers.*

- (3) *Increase in Release Prices. In calendar years subsequent to 2012, allowances from each tier shall be offered at prices equal to the offer price for each tier from the previous calendar year increased by 5 percent plus the rate of inflation as measured by the Consumer Price Index for All Urban Consumers.*

As articulated in the Utilities' comments to Section 95911 above, the Utilities are comfortable with the need to adjust the Auction Reserve Prices for inflation as measured by the CPI; however, we do not believe that there is justification for adding an additional 5%.

(e) *Submission of Bids to Purchase. At least two one weeks prior to the scheduled sale, a covered entity shall submit to the reserve sale administrator:*

As currently proposed in the PRO (and identified in Attachment A), the submittal date for the various documents required to participate in the Reserve sale is one week following each quarterly auction. The Utilities are concerned that this presents too little time for a covered entity to fully assess their need from the Reserve and to develop the required bid guarantee documents. Thus, the Utilities propose an extra week be allowed for covered entities to submit the required documents. Please note that if CARB elects to change the timing of Reserve Sales to 45 days following each quarterly auction, as the Utilities propose above in our comments to Subsection 95913(c)(3)(B), the proposed change for Subsection 95913(e) is no longer necessary.

§ 95915. Identifying Disclosable Bidding Associations.

The Utilities request further explanation of Subsection 95915(b) as to the description of what a disclosable bidding association is. As currently written in the PRO, the definition of a "bidding association" is vague and further clarification of the types of agreements and assistance being referred to is needed. For example, the ISOR (page IX-101) appears to indicate coverage only for entities that provide advisory services (presumably although not explicitly stated) related to allowance auction bids; however, Subsection 95915(b)(3) refers very broadly to any "assistance". Thus, the Utilities request that Subsection 95915(b) be revised to define the realm of agreements and assistance that would create "bidding associations".

Subarticle 11. Trading and Banking

§ 95922. Banking, Expiration, and Voluntary Retirement.

(d) *Voluntary Retirement of Compliance Instruments.*

- (1) *An entity registered pursuant to section 95930 may voluntarily submit offsets ~~any compliance instrument~~ for retirement.*
- (2) *To voluntarily retire an offset compliance instrument, the registered entity submits a transaction report to the accounts administrator listing its account number, the serial numbers of the offsets instruments to be retired, and the ARB Retirement Account as the destination account.*

As previously stated in the Utilities' comments to Subsection 95831(c)(3)(C) above, the Utilities strongly encourage CARB to restrict the voluntary retirement of compliance instruments to offsets only. The voluntary retirement of allowances by non-covered entities results in a reduction of the overall cap level for covered entities. A restriction on voluntary retirement to offsets only would provide a direct GHG reduction opportunity through the creation and retirement of CARB qualified and approved offsets while not increasing the cost burden to covered entities.

Subarticle 12: Linkage to External Greenhouse Gas Emissions Trading Systems

The Utilities have no comments on this Section at this time.

Subarticle 13: Offset Credits Issued by ARB

The Utilities are members of the Offsets Working Group (OWG) and refer to comments submitted by the OWG.

Subarticle 14: Recognition of Compliance Instruments from Other Programs

The Utilities are members of the Offsets Working Group (OWG) and refer to comments submitted by the OWG.

Subarticle 15: Enforcement and Penalties

§ 96013. Penalties.

Penalties may be assessed pursuant to Health and Safety Code section 38580 for any violation of this article. In determining whether to assess a penalty and any amount assessed, the Executive Officer shall take into consideration all relevant circumstances, including but not limited to those identified in Health and Safety Code section 42400.8.

The Utilities acknowledge that compliance is a critical component of any cap-and-trade program and understand that CARB, under AB 32, is directed to use existing penalty provisions. Health and Safety Code Section 38580 references penalty provisions in Article 3 of Chapter 4 of Part 4,

commencing with §42400, and Chapter 1.5 of Part 5, commencing with §43025, of Division 26. CARB is given authority to develop a method to convert a violation into the number of days in violation, where appropriate (Section 38350 (b)(3)). Designated maximum criminal and civil penalties are then set forth for each type of violation. In each case a list of relevant circumstances are required to be considered in setting the level and amount of penalty. (See, for example, Health and Safety Code section 42400.8.) The Utilities believe it is critical to the protection of the State's electric ratepayers that such circumstances be expressly included in the PRO penalty provisions.

The Utilities want to ensure fairness in determining compliance and recognition of the numerous extenuating circumstances that can affect an entity's ability to comply. We do believe that it is necessary to ensure that any penalty to be imposed is proportionate and relative to the nature of the non-compliance. The circumstances of the non-compliance as well as existing barriers to the compliance must be taken into account. The Utilities believe that attention has to be paid to circumstances outside the control of utilities such as the availability of transmission, the availability of low emitting technologies that are feasibly implemented, the shifting of emissions from other sectors (such as through the electrification of vehicles), the responsibility of electric utilities to maintain grid reliability, the cost effectiveness of available compliance tools, and other mitigating circumstances such as unusual weather, hydro and economic conditions. Thus, a provision for dealing with extenuating and unforeseen circumstances must be included in any program design.

§ 96014. Violations.

- (a) *If a covered entity fails to surrender a sufficient number of compliance instruments to meet its compliance obligation as specified in sections 95856 or 95857 there is a separate violation of this Article for each required compliance instrument that has not been surrendered.*
- (b) *There is a separate violation for each day or portion thereof after the compliance surrender date that each required compliance instrument that has not been surrendered.*
- (b) *For each six month period after the surrender date, there is an additional, separate violation of this Article for each required compliance instrument that has not been surrendered.*
- (c) *Each day or portion thereof in which any other violation of this Article occurs is a separate offense. In determining whether to assess a penalty and any amount assessed, all relevant circumstances shall be considered.*

Treating each individual compliance instrument not surrendered as well as each day each instrument is not surrendered as separate violations could likely lead to penalties that go beyond incenting compliance and would create unnecessary roadblocks to the achievement of AB 32 goals. This is particularly true in light of the proposals for annual compliance obligations. The Utilities have participated in discussions regarding enforcement provisions in CARB's proposed Renewable Electricity Standard regulations, and support what the Utilities understand to be the direction Staff is recommending in that arena. We believe a similar approach could be employed

in the PRO. The proposed revisions mimic draft language recently circulated by CARB for the Renewable Electricity Standard.

Subarticle 16: Other Provisions

The Utilities have no comments on this Section at this time.

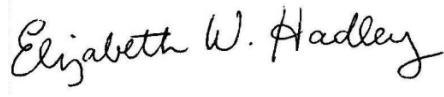
Conclusion

The Utilities appreciate the opportunity comment on the PRO, and would welcome the chance to discuss these concepts further.

Respectfully submitted,



Joy Warren
MODESTO IRRIGATION
DISTRICT



Elizabeth Hadley
REDDING ELECTRIC UTILITY



Dan Severson
TURLOCK IRRIGATION
DISTRICT

Attachment A

	January	February	March	April	May	June	July	August	September	October	November	December
Facilities	Reporting				1-Apr							
	Verification								1-Sep			
	Annual Allowance Surrender				15-May							
	Triennial Allowance Surrender (2015, 2018, 2021)										1-Nov	
	Report of Auction Proceeds from Previous Yr				15-May							
	30 day cure ends					15-Jun						1-Dec
First Deliverers	Reporting				1-Jun							
	Verification								1-Oct			
	Annual Allowance Surrender						15-Jul					
	Triennial Allowance Surrender (2015, 2018, 2021)										1-Nov	
	Report of Auction Proceeds from Previous Yr				15-May							
	30 day cure ends							15-Aug				1-Dec
Auction	Free Allowances Distributed	15-Jan										
	POU Option Registered with Exec Officer									17-Oct		
	Auctions (except 2/14/12)	12-Jan			12-Apr			12-Jul		1-Oct		
	Register for Auction 30 days prior		12-Mar			12-Jun			1-Sep			12-Dec
	Bid Guarantee Due 1 week prior to Auction	2-Jan										
	Reserve Sale 3 wks after Auction (except 3/4/12)		2-Feb		3-May			2-Aug			22-Oct	
	Bid Guarantee Due 2 weeks prior to Reserve Sale	19-Jan		19-Apr		19-Jul					8-Oct	