

VIA ELECTRONIC FILING

July 9, 2013

Dr. Steve Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 "I" Street
Sacramento CA, 95814

**Re: Comments of PacifiCorp Concerning the June 28, 2013 ARB Workshop and Market
Related Reporting Requirements**

Dear Dr. Cliff:

On June 28, 2013 Staff of the California Air Resources Board ("ARB") held a workshop to discuss market-related reporting related to California's Cap-and-Trade program. As part of that workshop, Staff discussed its proposal ("Staff Proposal") to significantly expand the scope of publicly disseminated information on the ARB website. Staff requested comments on the proposal by July 9, 2013. Pursuant to Staff's request, PacifiCorp¹ provides the following comments concerning the Staff Proposal.

The Staff Proposal to increase public dissemination of market sensitive information related to an individual entity's Cap-and-Trade compliance position will have the unintended consequence of creating an environment ripe for the exercise of market power to the detriment of California energy consumers. While certain information regarding the existence of an individual entity's Compliance Instrument Tracking System Service ("CITSS") accounts, including, entity name, CITSS Account Number and Compliance Account Information may be relatively insignificant, the Staff Proposal to also collect (for the first time) and disclose, on a quarterly basis, each regulated or voluntarily associated entity's market-sensitive compliance account information, including both the price and the number of California Carbon Allowances ("CCAs") the entity has permanently retired to satisfy an annual or triennial compliance

¹ PacifiCorp is a multi-jurisdictional retail provider ("MJRP") that provides retail electric service to approximately 1.7 million retail customers located within the states of California, Idaho, Oregon, Utah, Washington and Wyoming. In California, PacifiCorp serves approximately 45,000 customers in Del Norte, Modoc, Shasta and Siskiyou counties. Approximately 38 percent of its California customers are eligible for PacifiCorp's California Alternate Rates for Energy ("CARE") low-income assistance program.

obligation (due in November of each year), will effectively disclose the entity's current compliance position and willingness to pay. This data is market sensitive because the entity's current compliance-related information can be compared to its historic emissions (and hence its compliance obligation), thus disclosing its "net market position." Disclosure of prices paid by the individual entity will be harmful in terms of undermining its negotiating position in the bilateral markets. Disclosure of market position will result in the entity losing a competitive business advantage and create an increased risk of others' exercise of market power when the entity must buy CCAs, or a potential lost market opportunity if the entity is seeking to bilaterally sell surplus CCAs. It is critical for a well-functioning market that any involuntary disclosure of market-sensitive information by ARB not be made before the close of a multi-year compliance period in order to avoid harming market participants to the extent their market position (including specific demand for compliance instruments) would be readily disclosed to all potential sellers in the bilateral market.

In PacifiCorp's case, the ARB should consider how existing California and federal law treats data that can impact prices for electricity provided to California customers. For example, Public Utilities Code § 454.5(g) directs the California Public Utilities Commission to protect "market sensitive" data which is interpreted to be data that would have the potential to materially affect an electricity buyer's market price for electricity.² Such data is not disclosed to market-participating parties. Additionally, because an entity subject to a compliance obligation may consider the prices paid for CCAs, its current CCA holdings, and its compliance position to be trade secrets (particularly for data relevant during an active or future compliance period), Public Records Act provisions would provide a basis to assert confidentiality. PacifiCorp urges the ARB to maintain such protections for individual or related entities' information. In the context of federal programs where confidential price data is provided to the regulatory body, there is a serious criminal penalty to the unauthorized disclosure of the data. For example, the Dodd-Frank Act, which requires provision of certain pricing data, provides confidentiality to that data and establishes sanctions against the unauthorized disclosure or use of such confidential information.³ If ARB is to begin requiring mandatory provision of pricing data from individual

² See, CPUC Decision 08-04-023.

³ See, e.g., Sec 746 of the Dodd-Frank Act, amending Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) whereby unauthorized disclosure of non-public data that "may affect or tend to affect the price of any commodity in interests commerce"

entity bilateral transactions, in addition to providing for the continued confidentiality of such information, ARB should also show its method of assuring serious penalties for unauthorized disclosures or for use of such data by third parties.

At present, PacifiCorp has not seen the justification in the Staff Proposal for the collection of pricing data and the disclosures of market-sensitive data. PacifiCorp believes requiring such disclosures may create an undesirable environment which may create the improper exercise of market power in the bilateral markets and potentially drive up prices in the ARB auctions.

In addition, the ARB can provide the public with useful data regarding overall program compliance and related costs from aggregated data without the risk of causing an individual entity's loss of competitive advantage or harm to their customers. The ARB can disclose the auction price and estimate compliance costs based on its system data during a compliance period, and then provide post-compliance period data regarding the extent of compliance in a sector on a historical basis without creating unnecessary market risks for participants and their customers.

Moreover, certain elements of the Staff Proposal may have unintended jurisdictional problems. For example, seeking pricing disclosure for "bundled" products in the electricity sector may have issues with the exclusive domain of the Federal Energy Regulatory Commission ("FERC"). PacifiCorp urges the Staff to explore this potential conflict with the exclusive wholesale power jurisdiction of FERC where the authority over rates is held.⁴

PacifiCorp will continue to study the Staff Proposal for its impact on various types of transactions, including wholesale electricity market transactions, and short-term bilateral transfers of CCAs. We appreciate the opportunity to provide feedback on Staff's initial proposal, and look forward to commenting further on this issue when informal rulemaking materials are released.

Sincerely,

A handwritten signature in black ink, appearing to read 'Etta Lockey', with a long horizontal flourish extending to the right.

Etta Lockey

⁴ See Staff Proposal, slide number 42, (posted at www.arb.ca.gov/cc/capandtrade/meetings/062513/arb-cr-mrr-present.pdf)