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Steven Cliff, Ph.D.
Chief - Climate Change Market Branch
California Air Resources Board
1001 I Street
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RE: Proposed Regulation Order's Modifications to Article 5: California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms

Dear Dr. Cliff:

San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) appreciate the opportunity to submit comments on the Proposed Regulation Order's Modifications to Article 5: California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions (Proposed Regulation). SDG&E and SoCalGas request adoption of the proposed regulation governing allocation of allowances for natural gas suppliers for the benefit of their customers under the cap and trade program. The companies also request deletion of proposed provisions that are overly burdensome and unnecessary to maintain the integrity and functioning of the cap-and-trade program. Furthermore, SoCal Gas and SDG&E strongly support the California Air Resources Board's (ARB) efforts to develop new offset protocols to increase offset supply and provide cost containment benefits.

SDG&E and SoCalGas are compliance entities under the cap-and-trade program, and the Proposed Regulation will impact these companies. SDG&E serves 3.4 million consumers through 1.4 million electric meters and more than 840,000 natural gas meters. SDG&E has a compliance obligation for the electric generation facilities that it owns, electricity that it imports, and electricity contracts for which it has the obligation to procure greenhouse gas (GHG) compliance instruments. SDG&E also has a compliance obligation for one of its natural gas compression facilities used to transport natural gas. SDG&E will have an additional compliance obligation as a natural gas supplier beginning in 2015. SoCalGas operates the nation's largest natural gas distribution utility and serves a population of 20.5 million through 5.7 million natural gas meters. SoCalGas has a compliance obligation for its natural gas compression facilities used to transport and store natural gas. SoCalGas will have an additional obligation as a natural gas supplier beginning in 2015.

As an initial matter, SDG&E and SoCalGas support the following in the Proposed Regulation:

- The addition of a section on Natural Gas Suppliers, providing an allocation of allowances to natural gas suppliers for the benefit of their customers.
- Changes to Industrial Assistance, providing a greater level of assistance while additional studies on leakage are completed.
- Changes to the electricity section to remove the requirement to submit attestations regarding resource shuffling and incorporating the guidance language to clarify the scope of resource shuffling.
- Changes to the requirements for the annual compliance obligation
- Changes to include more offset protocols

SDG&E and SoCalGas would also like to reiterate the request in their previous comments that ARB address cost containment, eliminate jurisdictional conflicts, delete requirements that are overly burdensome and unnecessary for further efficient market monitoring, and make other changes to provide consistency and clarity in the Proposed Regulation.

1. **The Cost Containment Provisions Should Address Long-Term Demand and Supply Imbalance**

SDG&E and SoCalGas support the changes in the Proposed Regulation providing additional protections from short-run price fluctuations of compliance instruments. However, the Proposed Regulation does not include changes to address long-term demand and supply imbalance and as such does not comply with ARB's direction in Resolution 12-51. To comply with ARB's direction to "ensure that allowance prices do not exceed the highest price tier of the Allowance Price Containment Reserve," ARB should place a price cap on the auctions before triennial surrenders. If an imbalance occurs, then additional measures to ensure environmental integrity can be instituted using the funds from the sale of allowances from the Price Containment Reserve and the Cap-and-Trade Investment fund. SDG&E and SoCalGas therefore propose the following change to Section 95913(h)(1)(B).

Modification to Section 95913(h)(1)(B) (Sale of Allowances from the Allowance Price Containment Reserve)

Pursuant to section 95913(f), the Reserve sale immediately preceding the compliance obligation instrument surrender on November 1 will continue until all accepted highest price tier bids are filled ~~or the allowances made available pursuant to section 95870(j)(1) are sold pursuant to section 95913(f).~~

2. **The Provisions on Auction Proceeds Should Eliminate Jurisdictional Conflict**

Section 95893(d)(3) places limitations on the use of auction proceeds to be returned to the customers of natural gas suppliers. The new section proposes that any revenue return to gas utility ratepayers must be accomplished in a "non-volumetric manner." The California Public

Utilities Commission (CPUC) has exclusive jurisdiction over ratemaking for investor-owned utility under the California Constitution. The governing boards of publicly-owned utilities (POU) have jurisdiction over POU natural gas retail rate design. Section 95893(d)(3) therefore creates a jurisdictional conflict with other state and local agencies. Section 95893(d)(3) should be modified as follows to parallel the electric distribution company language in Sections 95892(d)(1) and 95892(d)(2).

Modification to Section 95893(d)(3) (Allocation to Natural Gas Suppliers for Protection of Natural Gas Ratepayers)

Auction proceeds and allowance value obtained by a natural gas supplier shall be used exclusively for the benefit of retail ratepayers of each natural gas supplier, consistent with the goals of AB 32, and may not be used for the benefit of entities or persons other than such ratepayers. ~~Any revenue returned to ratepayers must be done in a non-volumetric manner.~~

3. Overly Burdensome Requirements that Are Unnecessary for Market Monitoring Should Be Deleted

Many of the proposed provisions on market monitoring are overly burdensome and unnecessary for effective market monitoring. The following changes to the Proposed Regulation would ensure effective and efficient market compliance without being overly burdensome or disrupting the market.

Section 95830(c)(1)(I): Registration with ARB

Proposed Section 95830(c)(1)(I) requires disclosure of the name and contact information of all employees that have "access to information on compliance instrument transactions or holdings." The proposed section is vague and overly burdensome because "access" and "information" can be broadly interpreted. SDG&E estimates that more than 100 SDG&E employees have access to information on compliance instrument transactions or holdings, given the extensive reporting requirements of compliance instrument purchases and holdings to government agencies such as the CPUC and to Sempra Energy, which is SDG&E's parent company. SoCalGas also estimates that more than 100 employees will have access to information on compliance instrument transactions or holdings, again because of extensive reporting requirements of compliance instrument purchases and holdings to government agencies and to Sempra Energy.

The SDG&E and SoCalGas employees subject to this proposed requirement work in multiple departments, such as risk management, accounting, regulatory compliance, billing, legal counseling, procurement, and environmental compliance. These employees would include administrative personnel.

Section 95830(f)(1) requires updates to the name and contact information of all employees disclosed under Section 95830(c)(1)(I) within 10 working days of a change.

Submitting updates on changes in the many different departments at SDG&E and SoCalGas every 10 working days would be extremely burdensome and not useful for market monitoring.

The purpose of Section 95830(c)(1) is to provide separate information on voluntary associated entities (VAEs). This section should therefore be modified to include only employees registered as VAEs who change jobs and have access to aggregate transactions data or holdings information. The employer is aware of all VAEs as a result of new Sections 95814(a)(3) and 95814(a)(4). This data will yield the necessary information to enforce Section 95814(a)(6) without requiring the employer to provide the extensive employee information required under Section 95830(c)(1)(I). Section 95814(a)(6) should also place the burden on the VAEs to report any change in the employment relationship.

SDG&E and SoCalGas request the following modifications:

Modification to Section 95830(c)(1)(I) (Registration with ARB)

Names and contact information for all individuals registered as a voluntary associated entities persons who are employed by the entity and whose employment relationship has changed so that they have access to information on compliance instrument transactions or holdings, or involving them in decisions on compliance instrument transactions or holdings.

Modification to Section 95814(a)(6) (Voluntarily Associated Entities and Other Registered Participants)

Individuals identified by registered entities pursuant to sections 95830(c)(1)(B),(C),(I), and (J) are not eligible to register as voluntarily associated entities. Individuals with a change in status making them ineligible to register are required to provide notification of the change within 10 working days of the change.

Section 95830(f)(1): Timing of Registration Updates

The proposed modifications to Sections 95930(c)(1)(H) and 95833 require that covered entities disclose changes in corporate associations **regardless of whether the associated entities participate in the cap-and-trade program**. For large entities like Sempra Energy, which is the parent company of SDG&E and SoCalGas, the hundreds of subsidiaries are constantly changing. The requirement in Section 95830(f)(1) that covered entities update ARB within 10 working days of **any** changes to associated entities, including entities that do not participate in the cap-and-trade program and entities outside the United States that cannot participate in the cap-and-trade program, is overly burdensome and unnecessary for effective market compliance. Section 95833(e)(4) already requires disclosure of any changes to associated entities by the registration deadline for each auction. Thirty day is also referenced in this section as the disclosure time frame, and it is unclear which time frame applies.

In addition, Section 95830(f)(1) requires updates to registration information within 10 working days of **any** change to registration information. This timing requirement is overly burdensome given the provisions in Section 95830(c) requiring disclosure of all changes in corporate associations and all changes in employee positions with any knowledge of the entity's transactions or holdings. ARB should modify the Proposed Regulation to change the deadline for updates listed in Section 95830(c) to the deadline for the auction participation application. For consistency, Section 95833(e)(3) should be deleted as well.

Modification to Section 95830(f)(1) (Registration with ARB)

Registrants must update their registration information as required by any change to the provisions of 95830(c) no later than the auction registration deadline established in Section 95912. ~~within 30 days of the changes becoming effective. When there is a change to the information registrants have submitted pursuant to 95830(c), registrants must update the registration information within 10 working days of the change.~~

Modification to Section 95833(e) (Disclosure of Corporate Associations)

~~Within 30 days of a change to the information disclosed on corporate, direct and indirect corporate associations; and~~

Section 95912(d): Auction Administration and Participation Application

Section 95912(d)(4)(e) is problematic as written because it appears to deny auction participation to entities with a "corporate association, direct corporate association, or indirect corporate association pursuant to section 95833" that has been subject to "any previous or ongoing investigation with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, or financial market, including a change in the status of an ongoing investigation." This does not seem to be ARB's intent and is not reflected in the Initial Statement of Reasons (ISOR) for the regulatory change. Section 95912(d)(4)(e) should be modified to be consistent with the ISOR so that information on current investigations is reported on the auction participation application.

Modification to Section 95912(d)(4)(e) (Auction Administration and Participation Application)

An attestation that the entity participating in the auction, and all other entities with whom the entity has a corporate association, direct corporate association, or indirect corporate association pursuant to section 95833, is has not been subject to any previous or ongoing investigation, whether previously identified or not, with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, or financial market, including a change in the status of any ongoing investigation; or, if there is an ongoing investigation, provides required information on the investigation:

Section 95912(d)(5): Auction Administration and Participation Application

Section 95912(d)(5) should be narrowed. As written, it is overly broad and extremely burdensome. The section appears to preclude SDG&E and SoCalGas from allowing hundreds of employees, including officers, to change jobs roughly six months (45 days for four auctions = 6 months) and could preclude SDG&E and SoCalGas from auction participation for circumstances outside the companies' control. For example, SDG&E or SoCalGas could be precluded under the proposed regulation if any of the following occurred: (1) employees or officers leave the entity, (2) Sempra Energy acquires or sells a subsidiary, or (3) the State of California assigns a new business number.

This provision could also disrupt the auction if a change were to occur after the auction results were released and then a participant was precluded from participation. Section 95912(d)(5) should be narrowed to avoid these problems and to be more consistent with the rationale in the ISOR for processing applications. As long as the information in an auction application is accurate at the time of its submittal, an entity should be allowed to participate in the auction unless it changes as an entity. ARB would still have Section 95914(a) as proposed to use for enforcement if information in Section 95830 was false or misleading in a material way.

Modification to Section 95912(d)(5) (Auction Administration and Participation Application)

An entity with any undisclosed changes to the auction application information listed in subsection 95912(d)(4)(A) ~~or account application information listed in section 95830~~ within 30 days prior to an auction, or ~~an entity whose auction application information or account application information listed in section 95830 will change within 15 days after an auction~~ but prior to public disclosure of auction results, may be denied participation in the auction.

Section 95914(c)(1): Non-Disclosure of Bidding Information

The Proposed Regulation includes a new subsection Section 95914(c)(1)(A) that prohibits disclosure of "intent to participate at auction, auction approval status, [and] maintenance of continued auction approval." This provision is highly burdensome for regulated utilities because it entails extensive reporting and requires disclosure of substantial information filed confidentially at the CPUC. For compliance entities, disclosure of the information listed in Section 95914(c)(1)(A) would not harm market integrity because compliance entities are likely to participate in auctions to meet their compliance obligations. Knowledge of participation by compliance entities will not foster coordinated activities, contrary to statements made in the ISOR. The following requested modifications avoid coordinated activities without being overly burdensome.

Modification to Section 95914(c)(1) (Auction Participation and Limitations)

Intent to participate at auction, auction approval status, maintenance of continued auction approval if a voluntary associated entity;

Section 95921(b)(4)(E-G): Transfer Requests

Section 95921(b)(4)(E-G) require that entities enter complex pricing information on transfer requests into the cap-and-trade tracking system. This information has no value to market monitoring and will require a burdensome effort for entities to fit non-standard information into the standard format in the tracking system. Section 95921(b)(4)(E-G) should be deleted.

Modification to Section 95921(b)(4)(E-G) (Conduct of Trade)

~~(E) — If the transaction agreement specifies a fixed price for the compliance instruments, provide the price in U.S. dollars or Canadian dollars.~~

~~(F) — If the transaction agreement sets the price as a cost base plus a margin, then provide the cost base and the margin.~~

~~(G) — If the transaction agreement does not specify the price using one of the above formats, provide a brief description of the pricing method.~~

3. Other Changes Will Enhance the Clarity of the Proposed Regulation

Section 95814(a)(3): Voluntarily Associated Entities and Other Registered Participants

Section 95814(a)(3) should be expanded to include employees of government oversight agencies and interveners in government oversight proceedings with access to carbon market data provided by regulated compliance entities. This change would be in line with the intent of the section as described in the ISOR.

Modification to Section 95814(a)(3) (Voluntarily Associated Entities and Other Registered Participants)

An individual employed by an entity subject to the requirements of MRR, or employed by an entity subject to the Cap-and-Trade Regulation, or by an organization providing consulting services related to those Regulations, or by a government agency with oversight of compliance entities, or by an intervener in government oversight proceedings who chooses to register as a voluntarily associated entity in the tracking system, must provide a notarized letter from the individual's employer stating the employer is aware of the employee's plans to apply as a voluntarily associated entity in the Cap-and-Trade Program and that the employer has conflict of interest policies and procedures in place which prevent the employee from using information gained in the course of employment as an employee of the company or agency and using it for personal gain in the Cap-and-Trade Program.

Section 95870: Disposition of Allowances

Section 95870(e)(2) provides an allowance allocation to eligible covered entities in Table 8-1. Proposed Section 95891(a)(3) allows opt-in of entities with the first three digits the same as

Table 8-1 to receive an allocation of allowances. Table 8-1 should be modified to include Polystyrene Foam Product Manufacturing, NAICS Code 926140. The ARB leakage analysis in appendix K to the ISOR in 2010 and the adopted cap-and-trade regulation in 2010 included this industry as subject to leakage. However, the 2011 adopted regulation deleted the industry without explanation. Even if the single firm in Polystyrene Foam Product Manufacturing, NAICS 926140, is no longer operating in California, the industry should be added back so that other entities in NAICS 926 would have the ability to opt-in to mitigate leakage risk.

Modification to Table 8-1: Industry Assistance

Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity(a)	Industry Assistance Factor (AF _i)		
				by Budget Year		
				2013-2014	2015-2017	2018-2020
Medium	Polystyrene Foam Product Manufacturing	926140				

Section 95890: General Provisions for Direct Allocations

Section 95890, as proposed, would permit ARB to withhold allowances from compliance entities that fail to comply with the GHG Mandatory Reporting Rule (MRR). However, the regulation is unclear if the withholding is permanent or temporary. The regulation should be clarified to eliminate the possibility that ARB would impose a second penalty above the significant daily penalties already authorized under Section 95107 of the MRR for non-compliance. Withholding the entire direct allocation permanently would be a disproportionate penalty for potentially minor violations of the MRR.

To clarify, SDG&E and SoCalGas propose the following change to Section 95890 by adding a new Section 95890(i):

Modification to Section 95890 (General Provisions for Direct Allocations)

- (i) If an entity submits an inaccurate data verification statement, ARB may withhold from the direct allocation an amount equal to the amount of unverified emissions only until such time as the entity has obtained a positive or qualified positive emissions data verification statement.

Section 95914(c)(2)(D): Permitted Disclosure of Auction Participation

Section 95914(c)(2)(D) should be modified so that the section applies not only to electric distribution utilities but also to other entities regulated by the CPUC that are compliance entities. The CPUC has not established an oversight process for natural gas suppliers but may use a structure similar to that of the electric distribution utilities.

Section 95914(c)(2)(D) should also be modified to acknowledge that the CPUC requires disclosure of information not only under specific statutory provisions but also under general orders and rulings pursuant to the authority conferred to the CPUC by the California Constitution and by statute. The modifications are as follows:

Modification to Section 95914(c)(2)(D) (Auction Participation and Limitations)

When the release is by ~~an electric distribution utility~~ an entity regulated by the California Public Utilities Commission of information regarding compliance, instrument cost and other disclosures specifically required by the California Public Utilities Commission. In the event of a disclosure pursuant to this section, the ~~electricity distribution utility~~ entity regulated by the California Public Utilities Commission must provide the specific statutory or regulatory reference or the general order, decision or ruling to ARB that requires the disclosure of the information.

Section 95921(a)(3): Transfer Requests

Sections (B) and (C) of 95921(a)(3) should be deleted to reflect consistency with the proposed changes in 95921(b)(4). The latter section acknowledges that there can be transaction agreements that involve multiple transfers of compliance instruments over time and which "take place more than three days from the date the parties enter into the transaction agreement." Further, Section 95921(f)(1)(B) expressly allows forward market transactions where transfer of compliance instruments may be well after the transfer of consideration. Deleting Sections 95921(a)(3)(B) and 95921(a)(3)(C) would acknowledge that there are agreements where the timing of the transfers of consideration and compliance instruments may not match.

Modifications to 95921(a)(3)(B) and 95921(a)(3)(C) (Conduct of Trade)

- ~~(B) — More than three days after the execution date or termination date settlement day of the transaction agreement for which the transfer request is submitted; or,~~
- ~~(C) — More than three days after the transfer of consideration from the purchaser of the compliance instrument to the seller as provided by the transaction agreement; or~~

Section 95923: Disclosure of Cap-and-Trade Consultants and Advisors

Section 95923 has improved from the discussion draft, but the section should identify attorneys as separate from consultants and advisors. To protect attorney client privilege, attorneys should be excluded from providing data in Section 95923(b)(2) as follows.

Modifications to 95923 (Disclosure of Cap-and-Trade Contractors)

- (a) A "Cap-and-Trade Attorney, Consultant or Advisor" is a person or entity that is not an employee of an entity registered in the cap-and-trade, but is paid for information or advice related to the Cap-and-Trade Program specifically for the entity registered in the Cap-and-Trade Program.
- (b) An entity employing Cap-and-Trade Attorneys, Consultants or Advisors defined per 95923(a) must disclose the following information for each

Cap-and-Trade Attorney, Consultant or Advisor, unless already disclosed pursuant to section 95914(c)(3):

- (1) Information to identify the Cap-and-Trade Attorney, Consultant or Advisor, including:
 - (A) Name;
 - (B) Contact information;
 - (C) Physical work address of the Cap-and-Trade Consultant or Advisor; and
 - (D) Employer, if applicable.
 - (2) A brief description of the work performed by the Consultant or Advisor, to include information sufficient to explain the entity's evaluation of the measures contained in section 95923(a) used to determine the Consultant or Advisor relationship, to the extent disclosure of such a description does not violate any other rules under which the Consultant or Advisor may be required to observe.
- (c) The entity must disclose the information pursuant to section 95923(b) to the Executive Officer:
- (1) When registering pursuant to section 95830;
 - (2) At any time after registering when a Contractual agreement pursuant to section 95923(a) is created;
 - (3) Within 30 days of a change to the information disclosed on Attorneys, Consultants or Advisors.

SDG&E and SoCalGas appreciate the opportunity to comment and look forward to discussing these comments with ARB Staff.

Yours sincerely,

Tamara Raspberry