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California Air Resources Board
1001 I Street
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RE: Discussion Draft of Potential Amendments to the California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms

Dear Board Members:

San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) appreciate the opportunity to submit comments on the Discussion Draft of Potential Amendments to the California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms (Discussion Draft). As an initial matter, SDG&E and SoCalGas supported most of the 45-day changes proposed last fall, including the addition of a section on Natural Gas Suppliers, and providing an allocation of allowances to natural gas suppliers for the benefit of their customers. The Discussion Draft makes additional improvements including changes to the attestation in Section 95912(d)(4)(e) and a broadening of the language in 95914(c)(2)(D). SDG&E and SoCalGas appreciate the changes made, but request changes where the Discussion Draft either falls short in providing clear compliance direction to entities or does not succeed in reducing the regulation's burdensome reporting requirements.

1. Modification of Burdensome Requirements for the Purpose of Market Monitoring

Many of the proposed provisions to enhance market monitoring in the 45-day Proposed Regulation were overly burdensome and unnecessary. The Discussion Draft proposed changes that attempted to address these issues, but in several cases these changes fell far short of the goal. Each of these cases is discussed below.

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

The proposed changes to Section 95830(c)(1)(I) are still overly burdensome since the term "who have clearance" does not reduce the number of positions compared to "capacity giving them access." Indeed, there are many positions at SDG&E and SoCalGas that are at a level that would have "clearance" to review compliance data even if they have no desire to exercise that "clearance." SDG&E and SoCalGas still estimate that more than 100 employees in each company would have "clearance" to review account balances, given the extensive reporting requirements of compliance instrument purchases and holdings to various government agencies, including the California Public Utilities Commission (CPUC), and to Semptra Energy, SDG&E and SoCalGas's parent company. These employees work in multiple departments, such as risk management, accounting, regulatory compliance, legal counseling, procurement, and environmental compliance, and also include administrative support personnel. Updating the name and contact information of all the employees in these different departments as job changes take place is burdensome and not useful for purposes of market monitoring.

SDG&E and SoCalGas understand this section is designed to assist in market monitoring of individuals who have knowledge of a compliance entity's market position. As stated above, the current language will result in the reporting of names of people who do not have market position knowledge. To

avoid unnecessary reporting, this section needs to be modified to ensure that employees without market position knowledge are not inadvertently included in the reporting requirement. Proposed modifications are underlined below with a dotted line.

Modification to Section 95830(c)(1)(I)

Names and contact information for all persons employed by the entity in a capacity giving them access to information on compliance instrument transactions or holdings, or involving them in decisions on compliance instrument transactions or holdings who have clearance from the entity to approve, initiate, or actively review trading strategies, open positions, transaction agreements, transfer requests, or account balances involving compliance instruments in the Cap-and-Trade Program or any External GHG ETS linked pursuant to subarticle 12.

Section 95830(f): Timing of Registration Updates

Sections 95930(c)(1)(H) and 95833 require that covered entities must disclose changes in corporate associations regardless of whether the associated entities participate in the cap-and-trade program. For large entities like Sempra Energy, the parent company of SDG&E and SoCalGas, its roster of subsidiaries is constantly changing with new ones being formed and others being dissolved on a monthly basis. Consequently, the requirement in Section 95830(f)(3) that covered entities update ARB within 10 days of **any** changes to associated entities including entities that do not participate in the cap-and-trade program and entities not located in the United States who cannot participate in the cap-and-trade is burdensome and unnecessary for effective market compliance. Indeed, such a requirement is also attorney-intensive as it entails the use of three attorneys to represent the three entities individually whenever corporate changes occur. There is no reason related to effective market monitoring that such reporting is required within 10 days (or even 30 days as proposed in Section 95830(f)(1)). The Auction Participation Application already requires this disclosure in section 95912(d)(4)(B). It is unnecessary for purposes of market monitoring to update changes to associated entities any more frequently than the registration deadline for each auction as required by 95833(e)(4). Therefore, SDG&E and SoCalGas propose the changes below:

Modification to Section 95830(f)(1)

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 30 days of the change. Registrants must update their registration information within 10 working days of changes to the information listed in section 95830(c).

Modification to Section 95830(f)(3)

Pursuant to section 95921(g)(3), Registration may be revoked, or suspended, or restricted if an entity does not update its registration by the auction registration deadline established in Section 95912, within 10 days of a change pursuant to section 95921(g)(3).

Deletion of Section 95833(e)(3)

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

Section 95912(d): Auction Participation Application Requirements.

The Discussion Draft's proposed changes to Section 95912(d)(5) are inadequate and confusing. For example, one change reduces to 30 days the restrictions related to Section 95912(d)(4), yet retains the 45 day restrictions related to information in Section 95830. Since the information in Section 95912(d)(4)(B), as currently written, is the same as required by Section 95830, the regulation effectively bars an entity from participating in an auction if there are changes to information provided in an entity's registration information 30 days before the auction or changes in registration information any time after

the auction application up to 15 days after an auction. The proposed change does not resolve any of the problems associated with the 45-day language. The proposal itself remains unduly restrictive and should be significantly modified. For example, the activities described in the account application cover a range of activities that a company may need to perform in the course of its business and simply cannot remain static for 180 days a year in order to participate in the Cap-and-Trade program.

For example, Section 95912(d)(5) unreasonably threatens an entity's auction participation based on changes to the list of employees or changes in a parent company's subsidiaries, without regard for whether or not the change is within the control of the registered entity. It is unreasonable to assume that a registered entity can prevent its parent company from consummating an acquisition of companies outside the cap-and-trade program or outside the United States within each of these 45-day periods, or restrict employees from leaving and/or changing jobs.

While ARB staff has stated that Section 95912(d)(5) is intended to facilitate effective settlement of the auctions and support market monitoring, it should be modified to prohibit only changes to associated entities who are in the cap-and-trade program. Section 95912(d)(4) should be limited to associated entities who are in the cap-and-trade program and Section 95912(d)(5) should be restricted to changes in relationships of those associated entities in the cap-and-trade program and not to all registration information in Section 95830.

Modification to Section 95912(d)(4)

- (B) The existence of any direct or indirect corporate associations of entities subject to the requirements of this article from pursuant to sections 95833 and 95914(d);
- (C) An allocation of the purchase limit among associated entities as defined in section 95912(d)(4)(B). 95833, or change in the existing allocation of the purchase limit among associated entities, if applicable;
- (D) An allocation of the holding limit among associated entities as defined in section 95912(d)(4)(B). 95833, or a change in the existing allocation of the holding limit among associated entities, if applicable;

Modification to Section 95912(d)(5)

An entity with any changes to the auction application information listed in subsection 95912(d)(4) 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, may be denied participation in the auction.

2. Additional Changes in Discussion Draft

Definitions

It is unclear why a change is being made to the definition of the "first point of receipt," but the proposed definition is unclear. It could be changed back to the original language, by deleting "the" and "where."

Modification to Definition

- (140) "First Point of Receipt" means the the location from which a Generator delivers its output to the transmission system (the closest POR to the generation source) generation source specified on the NERC e-Tag, where defined points that have been established through the NERC Registry. When NERC e-Tags are not used to document electricity deliveries, as may be the case within a balancing authority, the first point of receipt is the location of the individual generating facility or unit, or group of generating facilities or units. Imported electricity and wheeled electricity are disaggregated by the first point of receipt on the NERC e-Tag.

Section 95856 (h): Annual and Triennial Compliance Instrument Requirements

SDG&E and SoCalGas recommend using the language that was introduced in the 45-day Proposed Amendments last fall, and rejecting all proposed changes to section 95856(h) in the Discussion Draft. In this way, the offsets percentage for the annual obligation would be a moot question. Since the regulation does not contemplate being able to move compliance instruments out of the compliance account, there is no need for this Discussion Draft revision.

Section 95852(b)(4): RPS adjustment.

For the RPS Adjustment, Section 95852(b)(4)(B) should be changed from 45 days to 60 days to better align the RPS Adjustment with the RPS deadline of August 1st. The choice of 60 days after the MRR reporting deadline of June 1st would place both the RPS Adjustment deadline at roughly the same day as the RPS deadline of August 1st.

Modification to Section 95852(b)(4)

(B) The RECs associated with the electricity claimed for the RPS adjustment must be placed in the retirement subaccount of the entity party to the contract in 95852(b)(4)(A), in the accounting system established by the CEC pursuant to PUC 399.25 and designated as retired for the purpose of compliance with the California RPS program used to comply with California RPS requirements within 45, 60 days of the reporting deadline in section 95103(e) of MRR ~~during the same year in for the year in which the RPS adjustment is claimed.~~

Section 95852.2(b)(4): Emissions without a compliance obligation

Vented and fugitive emissions can only be excluded for industry segments “onshore natural gas transmission compression” (95152(e)) and “natural gas distribution” (95152(i)). Vented and fugitive emissions for underground natural gas storage (95152(f)) are not included in this exemption because ARB assumes that the injection and withdrawal meters are located downstream of injection/withdrawal compressors. Downstream metering excludes gas vented at a compressor and therefore these emissions must be accounted for. Injection meters at SoCalGas are located upstream of the compressor and therefore inclusion of venting emissions will be double counting. Compressors are not used for withdrawing gas from storage, so withdrawal meter location is not an issue.

Modification to Section 95890

- (4) Vented and fugitive emissions for the following industry segments by local distribution companies that report under section 95122 of MRR;
 - (A) 95152(e) and 95152 (i) of MRR
 - (B) 95152(f) of MRR if injection and withdrawal meters are located upstream of an injection or withdrawal compressor

3. Issues previously raised by SDG&E and SoCalGas that are not addressed in Discussion Draft

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 MRR regulations. 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

- (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 95870: Disposition of Allowances

Section 95870(e)(2) provides an allowance allocation to eligible covered entities in Table 8-1. Table 8-1 should be modified to include Polystyrene Foam Product Manufacturing, NAICs code 326140. 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. Since the CPUC is relying on Table 8-1 for distribution of allowance auction revenues, even if the single firm in Polystyrene Foam Product Manufacturing, NAICs 326140, above the emissions threshold is no longer operating in California, the industry should be added back so that other entities in NAICs 326140 would have the ability to mitigate leakage risk related to electricity use.

Modification to Table 8-1: Industry Assistance

Leakage Risk Classification	NAICS Sector Definition	NAICS Code	Activity(a)	Industry Assistance Factor (AF _a)		
				by Budget Year		
				2013-2014	2015-2017	2018-2020
Medium	Polystyrene Foam Product Manufacturing	326140				

Definitions

Finally, SoCalGas and SDG&E would like to suggest a change to the definition of “Compressed Natural Gas or CNG” set forth in section 95802(a)(71). The proposed 45-day definition is: “‘Compressed natural gas’ or ‘CNG’ means natural gas in high-pressure containers that is highly compressed (though not to the point of liquefaction), typically to pressures ranging from 2900 to 3600 psi.” This is not technically correct. In order to inject CNG into NGV CNG tanks that are certified at either 3000 or 3600 psi, so-called “fast fill” compressors at CNG stations operate at pressures up to 5,000 psi so that they can fill up these tanks within a few minutes. Once these tanks reach their certified 3000 or 3600 psi capacity, the CNG station stops refueling the vehicle in question.

Modification to Definitions

(71) “Compressed natural gas” or “CNG” means natural gas in high-pressure containers that is highly compressed (though not to the point of liquefaction), and delivered to natural gas vehicles at pressures typically ranging from ~~2900~~ 3000 to 3600 psi.

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

Yours sincerely,

