

April 28, 2017

Clerk of the Board
California Air Resources Board (CARB)
1001 "I" Street
Sacramento, CA 95814

Subject: Los Angeles Department of Water and Power's Comments on Proposed
Second 15-Day Amendment Text – Cap-and-Trade Regulation

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments to the California Air Resources Board (ARB) on the proposed second 15-day amendments to the Cap-and-Trade Regulation.

LADWP, the largest municipal electric utility in the nation and the third largest electric utility in California, will be making unprecedented major capital investments over the next ten years that will result in significant greenhouse gas (GHG) emissions reductions.

In submitting these comments, LADWP reaffirms its strong support of the Assembly Bill 32 and Senate Bill 32 goals of expeditiously achieving substantial GHG emission reductions in a cost-effective manner that protects its ratepayers and minimizes impacts to low-income communities.

I. LADWP Supports ARB's Proposed Allocation to Electrical Distribution Utilities for Protection of Electricity Ratepayers

LADWP supports ARB's proposed allocation to Electric Distribution Utilities (EDUs) as described in the second 15-Day Amendment text and appreciates ARB staff's time in working with the LADWP and other EDUs to develop an allowance allocation methodology that protects electricity ratepayers and recognizes the investments and efforts EDUs such as LADWP are making to significantly reduce their GHG emissions. Over the next decade, LADWP intends to replace all existing coal resources with non- or low-emitting replacement generation, meet the 50 percent renewable portfolio standard (RPS) by 2030, modernize its Los Angeles basin power plants, continue its

efforts to improve end-use energy efficiency, invest in electric transportation infrastructure to assist in reducing mobile source emissions, and develop increased capacity for energy storage.

LADWP supports ARB's decision to allocate allowances to each EDU based on the consumer cost burden, as determined by expected electric load to be served by each EDU and the electric resource mix that each EDU expects to rely on to serve its future load. The allowance allocation methodology included in the proposed second 15-day amendments better reflects the consumer cost burden goal by eliminating the cap adjustment factor. Specifically, ARB's proposal to remove the cap adjustment factor in the allocation methodology correctly recognizes that EDUs are already required to reduce their GHG emissions by substantial amounts to comply with RPS, SB 1368 and other regulatory requirements.

II. Publicly-Owned Utility Use of Allowances for Compliance

The Public Notice states:

"Staff proposes to pair the aforementioned changes with increased consignment requirements for publicly owned utilities (POUs); these changes would be proposed in a future rulemaking...consignment incentivizes GHG emissions reductions by end-users and benefits energy-efficient ratepayers."¹

As LADWP has stated in its previous comments on the 45-day and first 15-day proposed Cap-and-Trade Regulation amendments, LADWP supports ARB's existing regulatory structure that allows POUs to surrender directly allocated allowances without consigning their allowances to auction. Under the existing Cap-and-Trade Regulation, LADWP has been able to focus on direct GHG reductions without the additional risk to the City of Los Angeles created by being forced to consign allowances through an auction process. Unlike investor owned utilities (IOUs), POUs operate for the exclusive benefit of their communities. POU-owned generation also is generally used only to serve POU customers as part of a vertically integrated electric utility system. Unlike IOUs, POUs do not have subsidiaries that can profit from selling power on the market from their merchant generators. Rather, they have a legal obligation to serve their communities and customers by providing

¹ Second Notice of Public Availability of Modified Text and Availability of Additional Documents and/or Information (April 14, 2017)

reliable and clean electricity at the most affordable cost. Therefore, the concerns that led to ARB's 2010 decision to require IOUs to consign allowances to auction while not applying to POUs remains valid.² Therefore, LADWP recommends that POUs continue to be able to place its allocated allowances into their compliance accounts.

III. ARB Proposed Amendments to the Limited Exemption Provision

ARB proposes revisions to the Cap-and-Trade Regulation provisions specifying the holding account limit limited exemption. LADWP supports ARB's efforts to update the limited exemption regulatory provisions in order to harmonize with the exemption used in linked markets without annual compliance obligations. However, LADWP is concerned that the proposed changes introduce uncertainty and may unintentionally result in significant adverse changes to the calculated limited exemption for covered entities.

Section 95920(d)(2)(B)

ARB has proposed changes to section 95920(d)(2)(B) in an effort to "clarify the process for initially calculating the limited exemption." In the second 15-day notice, ARB suggests that the intent of section 95920(d)(2)(B) as amended is similar to the purpose of the section under the current regulations: to establish a baseline limited exemption for registered entities.³ However, LADWP is concerned that the proposed amendments to section 95920(d)(2)(B) introduce new uncertainty.

² See ARB, Staff Report: Initial Statement of Reasons at IX-62 (Oct. 28, 2010), <https://www.arb.ca.gov/regact/2010/capandtrade10/capisor.pdf> [hereafter "2010 ISOR"] ("Rationale for Section 95892(c). Monetization of allowances through auction is intended to ensure that the amount of value given to distribution utilities is transparent to the public, and that this value is used on behalf of electricity ratepayers. This practice will also ensure that freely allocated allowances to a distribution utility will not impact competition in the electricity generation market (where utilities compete with merchant power producers)."); *Id.* at II-32 ("By requiring IOUs to put their allowances up for auction, the regulation maintains the current competitiveness of the deregulated California electricity market. In this way, utility-owned generation and independent generation have equal access to allowances."); ARB, Final Statement of Reasons at 342 (Oct. 2011), <https://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf> [hereafter "2010 FSOR"] ("In order to minimize the administrative costs of the program to the POUs, and recognizing that directly allocating the allowances to the POUs does not distort their economic incentive to make cost-effective emissions reductions, we determined that it would be prudent to allow POUs to surrender directly allocated allowances without participating in the auction process.").

³ Second Notice of Public Availability at 16 ("Section 95920(d)(2)(B) is modified to further clarify the process for *initially* calculating the limited exemption from the holding limit") (emphasis added).

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First, whereas the current regulatory text and the proposed 45-day amendment is clear that this section applies only for a limited period of time by specifying the dates for which it applies, ARB's current proposal does not. The proposed section makes clear that it applies to entities that have registered as of January 1, 2017, but does not appear to contain any text that limits its application to the calculation of the limited exemption as of a particular date. In particular, by stating that the limited exemption "is the sum" of a formula whose values can change over time ("most recent," "now," and "oldest"), the proposed text suggests this section is intended to determine the limited exemption at all times and is not only intended to set the initial or baseline conditions of the exemption. LADWP does not believe that ARB intends for section 95920(d)(2)(B) to be used to set the size of an entity's limited exemption throughout all compliance periods, and requests that ARB revise the provision to better reflect the intended scope of application of that section.

Second, LADWP requests that ARB further clarify which emissions reports can be used to form the basis of the initial limited exemption under the revised Cap-and-Trade Regulation. ARB's proposed language is that the relevant emissions are those "emissions contained in the most recent annual emissions data reports . . . for which the entity now has a compliance obligation plus the amount of emissions in the oldest emissions report for which the entity now has a compliance obligation." However, the "most recent" and "oldest" compliance reports will depend on the time of year at which an entity calculates its baseline limited exemption, before or after September 1st when the prior year's emission reports have been submitted and verified. Even with a specified date by which the baseline limited exemption is calculated, this section results in multiple potential meanings. By using the plural "reports" in the first clause, this provision could be read to include all emissions for which an entity has a compliance obligation for the compliance period as of the applicability date for this section (e.g., if the applicability date is September 1, 2017, an entity's 2015 and 2016 emissions). In the alternative, this provision could be read to include only the *most recent report* (i.e., if the applicability date is September 1, 2017, 2016 emissions). Further specification, and in particular reference to emissions specific from reporting years, would help clarify this provision.

Finally, LADWP requests that ARB further clarify the proposed text "less the amount of any annual compliance obligations already due in the current compliance period." As

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discussed above, what emissions are "already due" will depend on whether the baseline limited exemption is calculated before or after September 1st and before or after November 2nd (when annual allowances should have been surrendered). In addition, "already due" could refer to compliance obligations that have accrued but for which allowances need not be surrendered until the end of the compliance period. Or "already due" could refer to compliance obligations that were already required to have been surrendered (i.e., for annual compliance obligations, 30 percent of emissions from the previous data year).

Section 95920(d)(2)(F)

Comparison between the current regulation, the 45-day amendment, and the second 15-day amendment indicates that the adoption of the second 15-day amendment will result in an overall reduction of the limited exemption during years without compliance period obligations. Under current regulation, an entity's limited exemption is not reduced when the entity surrenders allowances to cover its annual compliance obligation. However, under section 95920(d)(2)(F), as amended by the second 15-day amendment, the limited exemption for covered entities could be significantly reduced depending on whether it is the beginning or the end of a compliance period. LADWP urges ARB to abandon this proposed change. ARB has not provided an explanation for why this change is necessary. This change will reduce the flexibility by which compliance entities manage their supply of allowances.

IV. Closing

If you have any questions, please contact me at (213) 367-0403 or Ms. Jodean Giese at (213) 367-0409.

Sincerely,



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Director of Environmental Affairs

JG:dms

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