BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON PROPOSED CHANGES TO CAP AND TRADE REGULATION RELEASED ON JANUARY 31, 2014

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SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON PROPOSED CHANGES TO CAP AND TRADE REGULATION RELEASED ON JANUARY 31, 2014

I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority ("SCPPA")[1] respectfully submits this comment on the discussion draft of potential amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation ("Regulation") released for informal public comment on January 31, 2014, by the California Air Resources Board ("ARB").

SCPPA commends the ARB for many of the proposed changes to the Regulation. In particular, SCPPA supports: endeavoring to limit the employees who must be reported to the ARB; providing additional time to update this information; providing an attestation regarding investigations rather than being excluded from auctions for having any such investigations; limiting the information that must not change 30 days before an auction; deleting parts of section 95921(a) on contract-related time limits for compliance instrument transfers; and deleting the requirement to describe the work performed by Cap-and-Trade Consultants and Advisors.

However, revisions to some of the proposed changes are required for clarity and to avoid burdensome outcomes for covered entities. In summary, SCPPA considers that:

- Under section 95830(c)(1)(I), covered entities should only have to report employees who have clearance to approve or initiate compliance instrument agreements, transfers or account balances – not those who only "review" them.

[1] SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, the Imperial Irrigation District, Pasadena, Riverside, and Vernon.

- For consistency with the 30-day deadline in section 95830(f)(1), section 95830(f)(3) should be revised to provide 30 days to update registration information before any penalties apply.
- The proposed changes to the REC retirement provisions in section 95852(b)(4) require some clarifications in relation to the retirement deadline.
- In section 95856, if compliance instruments are retired annually without applying the 8% offset limit, there is a risk that excess retired offsets would become worthless. This would negatively affect the market. Excess retired offsets should be carried over to the next compliance period.
- In section 95856 and surrounding sections, the inaccurate and undefined term "surrender" should be replaced with phrases that better describe the actual process of compliance. Clarify that compliance instruments in excess of an entity's compliance obligation will remain in the entity's compliance account for later use.
- In section 95856(h), a new subsection should be included to specify that the application of the set retirement order will not (in itself) result in POUs inadvertently breaching the rules on the use of allocated allowance value in section 95892(d)(5).
- Section 95912(d)(5) should be revised so that changes to the status of an investigation around an auction and changes to account application information in the 15 days following an auction do not prevent auction participation. The same revisions should be made to section 95913(e)(2) on Reserve sales. In addition, section 95912(e) on maintenance and modification of auction approval should be clarified.
- Section 95914(c)(3)(C) on reporting Cap-and-Trade Consultants and Advisors who are bidding advisors should be deleted, as it overlaps with section 95923.

- In section 95923, the definition of Cap-and-Trade Consultants and Advisors should be limited to advisors on cap-and-trade issues only, and the deadline for reporting information on new advisors should be clarified. A simple online tool to report and update this information should be provided.

These issues are discussed in more detail below in the order in which these issues arise in the Regulation.

II. THE CHANGES TO EMPLOYEE REPORTING RULES IN SECTION 95830(c) ARE WELCOME BUT SHOULD BE REFINED.

SCPPA appreciates the proposed revisions to section 95830(c)(1)(I) of the Regulation. The revisions narrow the categories of employees whose contact details must be reported to the ARB to those employees:

> who have clearance from the entity to approve, initiate, or review transaction agreements, transfer requests, or account balances involving compliance instruments in the Cap-and-Trade Program...

This is greatly preferable to the previous, unworkably broad draft of this provision that required reporting of all individuals employed:

> 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.

SCPPA continues to consider that the ARB's concerns about employees taking advantage of knowledge gained from their employment to trade privately would be more suitably addressed by strengthening section 95814(a)(3). This section addresses the requirements employees must meet when registering for their own accounts.

However, if section 95830(c)(1)(I) must be retained, the proposed revisions are helpful. SCPPA considers that one change to the drafting would further improve this provision. The reference to employees who "review" agreements, transfers, or account balances extends the

application of this section quite far, increasing the reporting burden, depending on the meaning given to the word "review." The key functions are approving and initiating agreements, transfers, and account balances; there is no need to include people who merely review them.

To ensure that only the relevant employees must be reported to the ARB, reducing the burden on covered entities to report and regularly update this information, section 95830(c)(1)(I) should be revised as follows:

> (I) Names and contact information for all persons employed by the entity who have clearance from the entity to approve~~,~~ or initiate~~, or review~~ 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.

See also section VII below on changes to this information in the weeks surrounding auctions and Reserve sales in sections 95912 and 95913.

III. FOR CONSISTENCY, REVISE SECTION 95830(f)(3) TO PROVIDE 30 DAYS TO UPDATE REGISTRATION INFORMATION.

Proposed changes to section 95830(f)(1) allow registrants 30 days to update their registration information after a change to the information. SCPPA appreciates this change as the previous deadline, 10 working days, would have been very difficult to meet. However, section 95830(f)(3), which provides the very punitive penalty of revocation of registration if information is not updated by the deadline, still refers to the 10-day deadline rather than 30 days. Given the extremely undesirable consequences (revocation of registration) of failing to update information on time, it is important to ensure that the deadlines are consistent in all relevant sections.

Therefore, for consistency with section 95830(f)(1), the deadline in section 95830(f)(3) should be changed to 30 days as set out below:

> (3) Pursuant to section 95921(g)(3), registration may be revoked or suspended if an entity does not update its registration within ~~10~~30 days of a change.

IV. THE CHANGES TO REC RETIREMENT PROVISIONS IN SECTION 95852(b)(4) REQUIRE SOME CLARIFICATIONS.

SCPPA's preferred position continues to be that the ARB should not require RECs to be retired to claim the RPS Adjustment. REC retirement is a crucial part of the RPS program administered by the California Energy Commission. To avoid interfering with that program and to avoid making it more difficult for utilities to meet its challenging goals, no other agencies should require RECs to be retired. The ARB should adopt the same approach to RPS Adjustment RECs as it proposes for specified source RECs: reporting rather than retirement.

However, if this solution cannot be adopted, SCPPA appreciates the proposed changes to section 95852(b)(4)(B) to provide additional time in which RECs can be retired. This section is proposed to be amended to require RECs to be retired:

> within 45 days of the reporting deadline in section 95103(e) of MRR for the year which the RPS adjustment is claimed.

Some clarifications to these proposed changes are necessary. First, the phrase "within 45 days of the reporting deadline" is ambiguous as to whether the RECs must be retired within 45 days before, or after, the deadline, or perhaps only within a 45-day window surrounding the deadline (and no earlier). SCPPA understands that the intention is to allow RECs to be retired at any time up until 45 days after the deadline, consistent with the RPS adjustment reconciliation deadline in section 95111(g) of the Mandatory Reporting Regulation ("MRR"). This section of the MRR is clearer than the proposed change to section 95852(b)(4)(B) of the Regulation, as it uses the phrase "within 45 days *following* the emissions data report due date." The drafting of the deadline in section 95852(b)(4)(B) should be revised for clarity.

Second, section 95103(e) of the MRR provides two reporting deadlines: April 10 for facility operators and suppliers and June 1 for electric power entities. An entity claiming the RPS adjustment may (particularly for publicly owned utilities) be both a facility operator and an

electric power entity, submitting separate reports on each deadline. Therefore, for the avoidance of doubt section 95852(b)(4)(B) of the Regulation should specify the appropriate deadline – the one for electric power entities.

Third, it appears that a word is missing in the phrase "for the year which the RPS adjustment is claimed." Logically and grammatically, the missing word could be either "for" or "in": "for the year [*for / in*] which the RPS adjustment is claimed." Each of these two words would lead to different outcomes, as the year *in* which an RPS adjustment is claimed is the year following the data year (as reports on one year's emissions are due in the following year), whereas the year *for* which an RPS adjustment is claimed is the data year itself. Based on discussions with ARB staff on February 10, 2014, SCPPA understands that the missing word is intended to be "for" and SCPPA agrees that this is the best approach. The missing word "for" should be inserted for clarity.

Finally, it is worth noting that the proposed amendments, interpreted as discussed above, give an entity some flexibility as to the year for which it will claim the RPS adjustment for RECs it has retired. For example, if an entity retires RECs in February 2014, it would have the option of claiming them in the RPS adjustment for 2013 (as they were retired before the deadline for the 2013 RPS adjustment of mid-July 2014), or in the RPS adjustment for 2014 (as they were retired before the deadline for the 2014 RPS adjustment of mid-July 2015), or even in later years. This flexibility is welcome. As RECs have serial numbers that must be reported when claiming the RPS adjustment under section 95111(g)(1)(M)(1) of the MRR, this flexibility does not give rise to any potential for confusion or double-counting.

SCPPA's proposed changes to section 95852(b)(4)(B) of the Regulation, showing the clarifications discussed above, are set out below:

(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 at any time until~~within~~ 45 days following~~of~~ the electric power entity reporting deadline in section 95103(e) of MRR for the year for which the RPS adjustment is claimed.

V. IN SECTION 95856, ENSURE THAT EXCESS RETIRED OFFSETS DO NOT BECOME WORTHLESS AND AVOID USING THE INACCURATE TERM "SURRENDER."

The proposed changes to sections 95856(g) and (h) provide for compliance instruments to be retired upon each annual compliance deadline, not just after the triennial compliance deadline as in the draft of the Regulation released in September 2013. SCPPA supported the September 2013 changes to remove the annual retirement, and would prefer a return to this position.

However, if the ARB considers that compliance instruments must be retired after each compliance deadline, the issue of offsets in excess of 8% of an entity's compliance obligation must be addressed in a way that does not risk excess offsets being rendered worthless.

A. Currently-proposed drafting leads to risk of worthless offsets.

Proposed section 95856(h)(1)(A) provides that on the annual compliance deadline, all offsets in an entity's compliance account would be retired (as offsets are the first type of compliance instrument in the set retirement order), without consideration of the 8% limit. The ARB then specifically seeks comment on whether or not there should be an 8% offset usage limit on the annual compliance obligation.

If the currently-proposed drafting is adopted, without an annual 8% limit, entities run the risk of inadvertently retiring offsets equal to greater than 8% of their triennial compliance obligation. When the 8% limit is imposed on the triennial compliance deadline pursuant to section 95856(h)(2)(A), the excess retired offsets would not count towards the triennial compliance obligation and would be rendered worthless.

B. Risk of worthless offsets would negatively affect the market.

It would be possible for an entity to use offsets while reducing or avoiding the risk of having them become worthless. For example, an entity could avoid putting any offsets into its compliance account until the triennial compliance deadline. However, the possibility that offsets could become worthless would tend to further reduce the already low likelihood that entities will seek to use their full 8% share of offsets, and further disadvantage the struggling offsets market. Entities that are contemplating procuring offsets will see this risk as one more reason not to invest money and staff time in buying offsets, understanding the rules applying to offsets, and developing and implementing strategies to minimize offset risks (including buyer liability for retroactive invalidation). Entities that do procure offsets will be very cautious when putting offsets into their compliance accounts, and will tend to use fewer rather than more offsets if the ARB's proposal is implemented.

The diminished use of offsets would have the effect of increasing the cost of compliance with the cap and trade program as a whole, given the important cost containment benefits of offsets as shown by the ARB's own studies.

C. Excess retired offsets should be carried over to the next compliance period.

To avoid increasing cap-and-trade costs, offsets should not be rendered worthless if too many are in an entity's compliance account on an annual compliance deadline. Instead, the excess surrendered offsets should be counted towards the entity's compliance obligation and its 8% offsets limit in the next compliance period. This would maintain the value of offsets without violating the 8% limit in each compliance period. The number of offsets that are counted towards the next deadline could be tracked in the Compliance Instrument Tracking System Service ("CITSS") so the entity would be aware of the status of these offsets.

D. Avoid using the inaccurate term "surrender."

In section 95856 and surrounding sections, the term "surrender" is frequently used in relation to an entity meeting its annual and triennial compliance obligations. This term should be reconsidered and replaced with more appropriate phrases that convey the actual nature of meeting a compliance obligation.

The word "surrender" is not defined in the Regulation, but it indicates that an action must be taken by the covered entity, such as retiring or moving compliance instruments, or nominating compliance instruments to be retired. But no such steps are necessary. The covered entity merely needs to ensure it has sufficient valid compliance instruments in its account on each compliance deadline. The ARB takes all other steps that need to be taken – evaluating the number and types of compliance instruments in the compliance account (section 95856(g)(1)), and retiring the appropriate number of compliance instruments in the set retirement order (section 95856(h)).

The word "surrender" does not adequately describe this situation, and nor does it convey the crucial fact that the ARB should only retire the number of instruments equal to each entity's compliance obligation, leaving any remaining instruments in the entity's compliance account for later use. Nowhere in section 95856 is this important piece of information clearly set out.

Suggested revisions to section 95856 to address these issues were set out in SCPPA's October 18, 2013 comments on the draft Regulation, and can be provided again upon request.

VI. SPECIFY THAT THE APPLICATION OF THE SET RETIREMENT ORDER WILL NOT RESULT IN POUS BREACHING SECTION 95892(d)(5).

The retirement orders for compliance instruments proposed in sections 95856(h)(1) and (2) raise the prospect of conflicts with existing section 95892(d)(5) on the prohibited uses of

freely allocated allowances. A new sentence should be added to section 95856(h) to address this issue.

POUs are not permitted to use the allowances freely allocated to them by the ARB to cover compliance obligations arising from the generation of electricity that is sold into the CAISO markets (effectively, wholesale sales). Section 95892(d)(5) provides:

> Use of the value of any allowance allocated to an electrical distribution utility, other than for the benefit of retail ratepayers consistent with the goals of AB 32 is prohibited, including use of such allowances to meet compliance obligations for electricity sold into the California Independent System Operator markets.

Proposed new section 95856(h) sets out mandatory retirement orders for compliance instruments on annual and triennial compliance obligation deadlines: offsets, Reserve allowances, normal allowances with earlier vintages retired first, and lastly true-up allowances.

The application of this retirement order may result in conflicts with section 95892(d)(5). This could occur if the POU's retail sales for a year turn out to be lower and its wholesale sales for the year turn out to be higher than expected when the POU distributed its freely-allocated allowances for that year between its compliance account and its limited use holding account.[2]

Presumably setting the retirement order was not intended to cause these issues. This should be clarified by inserting a new section 95856(h)(4) stating that the retirement of freely-

[2] For example, assume a POU receives (for simplicity) 100 free allowances for 2014. It expects to have 90 tons of emissions from power used to serve its native load in 2014, so it directs 90 of the allowances into its compliance account. The POU expects to have 10 tons of emissions from wholesale power in 2014, for which it cannot use its free allowances, so it sends 10 allowances to its limited use holding account. However, by the end of 2014 it turns out that the POU's emissions from power used to serve its native load were only 80 tons, and its emissions from wholesale power were 20 tons. Assuming that the POU's allocation of free allowances for 2013 matched its native load emissions, and that its governing board has not approved the purchase of offsets, it has 10 too many free allowances in its compliance account for the first compliance period. Even if it purchases 20 allowances at auction to cover its wholesale power emissions, the POU has no way to ensure only 80 of the free allowances are retired. If all 90 are retired, the POU will have inadvertently used free allowances to meet part of its wholesale power emissions liability, breaching section 95892(d)(5).

allocated allowances is not a breach as long as the utility has procured enough other compliance instruments to cover its wholesale power emissions liability.

SCPPA's proposed new section 95856(h)(4) is set out below:

> (4) Notwithstanding sections 95856(h)(1) and (2), an electrical distribution utility will not be in violation of section 95892(d)(5) when the Executive Officer retires compliance instruments, provided that the electrical distribution utility has a quantity of compliance instruments not allocated to it pursuant to section 95870(d) in its compliance account that is at least equal to its compliance obligation for any transactions for which the use of allocated allowance value is prohibited under section 95892(d)(5).

VII. REVISIONS TO SECTION ON INFORMATION THAT MUST NOT CHANGE AROUND AN AUCTION ARE WELCOME BUT NEED REFINEMENTS.

SCPPA appreciates the proposed change to section 95912(d)(5): account application information listed in section 95830 no longer needs to remain unchanged in the 30 days prior to an auction. This addresses a key concern of SCPPA members. However, there are two additional changes that need to be made to this section for consistency and to prevent entities from being unreasonably excluded from auctions. The same changes also need to be made to section 95913(e)(2) on information that must not change in the weeks surrounding a Reserve sale.

A. Changes to the status of an investigation around an auction should not prevent auction participation.

Section 95912(d)(4)(E) now requires auction participants to provide an attestation disclosing the existence and status of certain ongoing investigations or investigations that occurred within the last 10 years. SCPPA appreciates the proposed changes to this section. However, many auction participants will have several such investigations, and the status of these investigations may change unexpectedly, for reasons beyond the auction participant's control. For example, the investigating agency may decide to drop the investigation. Section 95912(d)(5) would not allow an entity to participate in an auction if the status of an investigation changes within 30 days prior to or 15 days after an auction. This provision could unreasonably prevent

entities from participating in auctions, merely because (for example) an investigation has been terminated within the relevant 45-day period (amounting to nearly half the year if all four auctions are considered).

Therefore, section 95912(d)(5) should be revised to exclude changes to the status of investigations from the list of changes that prevent auction participation, for both 30 days before and 15 days after auctions. Suggested drafting is set out in section VII.B below.

B. Changes to account application information in the 15 days following an auction should not prevent auction participation.

As noted above, the phrase "or account application information listed in section 95830" has been deleted the first time it appears in section 95912(d)(5), in relation to information that must not change in the 30 days prior to an auction. This change is very welcome. However, the same phrase also occurs later in section 95912(d)(5), in relation to information that must not change in the 15 days after an auction. For consistency, the phrase should be deleted here as well, so that changes to account application information within 15 days after the auction will not prevent auction participation. If this change cannot be made, the account application information that must not change within the 15 days after an auction should be limited to crucial information affecting the accounts into which an entity's allowances would be distributed.

SCPPA's proposed changes to section 95912(d)(5) are set out below:

> (5) An entity with any changes to the auction application information listed in subsections 95912(d)(4)(A) to (D) within 30 days prior to an auction, or an entity whose auction application information listed in subsections 95912(d)(4)(A) to (D) ~~or account application information listed in section 95830~~ will change within 15 days after an auction, may be denied participation in the auction.

C. Clarify section 95912(e) regarding maintenance and modification of auction approval.

Section 95912(e)(1) states that once an entity is approved for an auction, it does not need to submit an application for future auctions unless:

> there is a material change to the information contained in the approved application, there is a material change in the entity's Cap-and-Trade Program registration pursuant to section 95830 …

If a change in the status of an investigation reported under section 95912(d)(4)(E), or the arrival or departure of an employee reported under section 95830(c)(1)(I), constitute a "material change", large entities would have to complete full auction applications for virtually every auction. Furthermore, given that changes to account application information listed in section 95830(c) must be promptly reported pursuant to section 95830(f) (failing which registration may be revoked – a stringent penalty), there is no need to require additional reporting of such changes under section 95912(e).

Section 95912(e)(1) should be revised to exclude changes to the status of an investigation and changes to account registration information. SCPPA's proposed changes to section 95912(e)(1) are set out below:

> (1) Once the Executive Officer has approved an entity's auction participant application, the entity need not complete another application for subsequent auctions unless there is a material change to the information contained in the approved application pursuant to subsections 95912(d)(4)(A) to (D), ~~there is a material change in the entity's Cap-and-Trade Program registration pursuant to section 95830,~~ or the Executive Officer has made a determination restricting an entity's auction participation pursuant to section 95914.

Section 95912(e)(2) provides that:

> An entity approved for auction participation must inform the Auction Administrator at least 30 days prior to an auction when reporting a change to the information disclosed, otherwise the entity may not participate in that auction. …

The purpose of this section is unclear. From section 95912(e)(1), it appears that if an entity has a material change to the relevant information since it was previously approved for an auction, it must complete another full auction participant application pursuant to section 95912(d)(4). Is the report to the Auction Administrator under section 95912(e)(2) intended to be in addition to, or in substitution for, a full auction participant application?

If a full auction participant application is required, an additional report (with the same deadline) under section 95912(e)(2) seems unnecessary, and this section should be revised to direct the applicant to comply with section 95912(d)(4) again.

If this report is in substitution for a full auction participant application, section 95912(e)(1) should be amended to make this clear. In addition, section 95912(e)(2) should be amended to clarify that a "change to the information disclosed" does not include changes to the status of an investigation or account registration information, as per the proposed changes to section 95912(e)(1), above.

D. Revise section 95913(e)(2) on information that cannot change in the 35 days surrounding a Reserve sale.

Section 95913(e)(2) provides that an entity with auction application information listed in section 95912(d)(4), or account application information listed in section 95830, that changes 20 days prior to or 15 days after a Reserve sale may be denied participation in that Reserve sale. To avoid unreasonably preventing entities from participating in Reserve sales, this section should be revised consistently with the proposed changes to the equivalent section on auctions, section 95912(d)(5), including the modifications suggested above.

SCPPA's proposed changes to section 95913(e)(2) are set out below:

(2) An entity with any auction application information listed in subsections 95912(d)(4)(A) to (D) ~~above or account application information listed in section 95830~~ that changes within 20 days prior to a

reserve sale, or within 15 days after a reserve sale, may be denied participation in a reserve sale.

VIII. SCPPA APPRECIATES THE DELETION OF PARTS OF SECTION 95921(a).

Sections 95921(a)(1)(E) and 95921(a)(3)(B) to (D) are proposed to be deleted. These sections imposed impracticable and unnecessary limits on the transfer of compliance instruments, and SCPPA strongly supports the deletion of these sections.

Section 95921(a)(1)(E) of the Regulation required compliance instrument transfer requests to be completed within three days of "settlement" of the transaction agreement for which the transfer request is submitted. Section 95921(a)(3) provided that entities will be in violation and penalties may apply if compliance instrument transfer requests are completed:

> (B) More than three days after the execution date or termination date 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
>
> (D) More than three days after the execution of the underlying trade on an exchange or other trading platform.

These provisions were problematic from a policy perspective and a practical perspective. It was unnecessary and inappropriate for the ARB to impose a transfer deadline relating to the transaction agreement. Transaction agreements themselves will contain provisions on the dates by which transfers must be completed, and they will also contain penalty provisions if these dates are not met. It should not be relevant to the ARB whether an entity completes a transfer request by the date specified in the transaction agreement or within a certain time of the transfer of consideration, or completes it later, as the ARB does not enforce transaction agreements.

Section 95921(a)(3)(C) was particularly problematic, as it would have prohibited all types of down payments, advance payments, deposits or early lump sum payments. This would

have unnecessarily restricted the ability of contracting parties to enter into agreements that suit them. Issues would have arisen in relation to agreements that incorporate compliance instrument transfers with purchases of other products (such as electricity), and agreements that do not specify a price for transfers of compliance instruments.

Concerns relating to one entity holding compliance instruments on behalf of another entity are addressed in section 95921(f)(1), and do not need to be addressed by means of timing restrictions relating to transfers of consideration and compliance instruments.

Therefore, SCPPA considers that sections 95921(a)(1)(E) and 95921(a)(3)(B) to (D) have been appropriately deleted, and do not need to be replaced with any redrafted provisions of a similar nature.

Section 95921(a)(3), with the proposed changes, is now consistent with the provision in the Quebec "Regulation respecting a cap-and-trade system for greenhouse gas emission allowances" on emission allowance transactions, with the requirement to complete a transfer within three days of the start of the transfer process.[3]

IX. SECTION 95923 ON CAP-AND-TRADE CONSULTANTS AND ADVISORS REQUIRES SOME FURTHER REVISIONS.

SCPPA appreciates some of the changes to section 95923 on the disclosure of Cap-and-Trade Consultants and Advisors – in particular, the deletion of section 95923(b)(2) that required a description of the work performed. This requirement may have led to a waiver of attorney-client privilege.

However, the proposed new definition of Cap-and-Trade Consultants and Advisors is too broad and must be revised, and the deadline for providing information on new advisors should be clarified.

[3] Section 26 of the Quebec regulation.

A. Clarify that only advisors on cap-and-trade issues must be reported.

The proposed new definition of Cap-and-Trade Consultants and Advisors includes all people or entities that are not employees of registered entities, but provide registered entities with:

> the types of services listed in section 95979(b)(2) of the Cap-and-Trade Regulation or section 95133(b)(2) of the Mandatory Reporting Regulation.

The lists of services in these sections are similar, and very extensive. For example, they include all legal services, information systems services, appraisal and valuation services, audit services, and bookkeeping services.

Importantly, nowhere is it specified that these services must relate to the Cap and Trade Program (unlike the previous definition of Cap-and-Trade Consultants and Advisors, which referred to "information or advice related to the Cap-and-Trade Program"). Thus, all contractors providing these services, even on issues with no connection to the Regulation or the program as a whole, would need to be reported under section 95923. Every entity would have a multitude of contractors performing such services. To report them all would be burdensome for registered entities and would provide the ARB with a large amount of irrelevant information.

The definition of Cap-and-Trade Consultants and Advisors should therefore be restricted to people or entities who provide the listed services in relation to the Cap-and-Trade Program.

SCPPA's proposed changes to section 95923(a) are set out below:

> (a) A "Cap-and-Trade Consultant or Advisor" is a person or entity that is not an employee of an entity registered in the Cap-and-Trade Program, but is providing the types of services listed in section 95979(b)(2) of the Cap-and-Trade Regulation or section 95133(b)(2) of the Mandatory Reporting Regulation in relation to the Cap-and-Trade Program and specifically for the entity registered in the Cap- and-Trade Program.

B. Clarify the deadline for reporting information on new advisors.

Section 95923(c)(2) has been revised to require entities to disclose information on their Cap-and-Trade Consultants and Advisors:

> Within 30 days of registering when a contractual agreement pursuant to section 95923(a) is created.

The intended operation of this section is unclear. An entity may wish to enter into a contract with a Cap-and-Trade Consultant or Advisor at any time after the entity registers under the Cap-and-Trade Program – why restrict such contracts to 30 days after registration (a time period that has already expired for most currently-registered entities)?

This section should be revised to give an entity 30 days to disclose its new advisor after it enters into the contract, without reference to the date of registration.

SCPPA's proposed changes to section 95923(c)(2) are set out below:

> (2) Within 30 days of entering into a contract with a Cap-and-Trade Consultant or Advisor; ~~registering when a contractual agreement pursuant to section 95923(a) is created.~~

C. Provide a simple way to report and update this information.

To reduce the reporting burden a simple online form should be developed, perhaps in the tracking system, for an entity to use when it engages a Cap-and-Trade Consultant or Advisor and when there is a change to the information disclosed.

D. Delete section 95914(c)(3)(C) as it overlaps with section 95923.

Section 95914(c)(3)(C) requires an entity that has retained the services of a Cap-and-Trade Consultant or Advisor regarding auction bidding strategy to provide certain information to the ARB. This information is the same as the information that already has to be provided about all Cap-and-Trade Consultants and Advisors under section 95923(b): name, employer and

contact information. Therefore, section 95914(c)(3)(C) adds nothing, is unnecessary, and should be deleted. The reference to this section in section 95923(b) can then be deleted also.

X. CONCLUSION

SCPPA appreciates the opportunity to submit these comments to the ARB and urges the ARB to consider these comments when preparing revisions to the Regulation for formal 15-day public comment. If further information is required, we would be happy to discuss any of the proposals in these comments with ARB staff. We look forward to continuing to provide input to the ARB as these revisions to the Regulation are finalized.

Respectfully submitted,

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