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March 28, 2014

Dr. Steve Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 "I" Street
Sacramento, California 95812

Dear Mr. Cliff:

Subject: Los Angeles Department of Water and Power (LADWP) Comments Formal 15-Day Changes to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

The LADWP appreciates the opportunity to submit the following comments on California Air Resources Board's (CARB) amendments to its cap-and-trade regulation released on March 21, 2014.

1. §95802(138) and (139) Clarify Definitions of "Expected Settlement Date" and "Expected Termination Date"

The 15-day changes propose the following new definitions (with emphasis added):

- "Expected *Settlement* Date is a date specified in a transaction agreement on which all requirements in the transaction agreement are expected to be *settled*, exclusive of any contingencies specified in the agreement."

- "Expected *Termination* Date is a date specified in a transaction agreement on which all requirements in the transaction agreement are expected to be *completed*, exclusive of any contingencies specified in the agreement."

The only difference between the two definitions is that "Expected Settlement Date" uses the word "settled" whereas "Expected Termination Date" uses the word "completed" with respect to the requirements to a transaction agreement. It is not clear what the difference between settling versus completing an agreement is or why CARB decided to develop two distinct definitions for what appears to be the same action. LADWP requests that either the two definitions be merged with additional language to define what "settled" or "completed" means or that the difference between the two definitions be explicitly explained in the definitions themselves.

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2. §95802(147) Definition of First Point of Receipt – Recommend Reinstatement of January 31, 2014 Draft Language to be Consistent with the Mandatory Reporting Regulation (MRR)

LADWP supported CARB's proposed changes in its discussion draft released on January 31, 2014 which clarified the definition of First Point of Receipt as the generation source specified on the NERC e-tag. The proposed definition would have been consistent with the definition of First Point of Receipt in the MRR and as CARB stated in its Final Statement of Reasons for the MRR, the revised definition would also result in consistent reporting between 2012 and 2013 compliance years.

The First Point of Receipt definition in the formal 15-day changes appears to be inadvertently changed such that key words used to define the term are now missing. Please reinstate the language per the January 31, 2014 discussion draft.

3. §95802(187) The Proposed Definition of Imported Electricity Should Treat All California Balancing Authorities Equally

As LADWP has stated before in its previous comments, the emergency assistance provision in the definition should not only apply to the "Independent System Operator" but all California balancing authorities. Exempting the GHG obligation associated with emergency energy imported by the California Independent System Operator (CAISO) unfairly shields the utility members of CAISO from reporting a GHG burden associated with such occurrences, whereas utilities in other California balancing authorities will be required to report their GHG emissions associated with imported emergency energy. There are a number of other balancing authorities in California including Los Angeles Department of Water and Power (also known as LDWP) that are also subject to the emergency preparedness and operations reliability standards of the NERC and the Western Electricity Coordinating Council. CARB should treat all balancing authorities equally.

Thus, LADWP recommends the following language in underline/strikeout format:

> "Imported Electricity does not include electricity imported into California by an ~~Independent System Operator~~ Balancing Authority to obtain or provide emergency assistance under applicable emergency preparedness and operations reliability standards of the North American Electric Reliability Corporation or Western Electricity Coordinating Council."

This recommended change would not require additional language defining "Balancing Authority" as it is already defined in §95802(30) whereas "Independent System Operator" is undefined.

4. LADWP Supports Addition of §95814(a)(7) for Voluntarily Associated Entities (VAE)

LADWP supports CARB's action to strengthen the VAE provisions. LADWP believes that the proposed requirement prohibiting individuals employed by a covered entity from registering as a VAE would address CARB's concern that individuals with access to potential market-related data would use that information for personal gain.

5. §95830(c)(1)(I) Registration with ARB Should Be Deleted as the VAE Provision's New Requirement Prohibits Individuals Employed by Covered Entities from Participating in the Market

Since proposed §95814(a)(7) prohibits any individual employed by an entity subject to the MRR or the Cap-and-Trade Program from registering as a VAE, LADWP believes that there is no need for §95830(c)(1)(I) which requires covered entities to provide a list of names and contact information for all persons employed by the entity with knowledge of the entity's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions).

The proposed requirement of §95830(c)(1)(I) would involve a significant number of employees at a large entity such as LADWP. Implementation of the requirement would be time consuming, very difficult to keep the information updated even on a quarterly basis, and unnecessary. Thus, LADWP recommends deletion of §95830(c)(1)(I).

6. §95830(f)(1) and (f)(3) Updating Registration Information – Reference to §95830(c)(1)(I) Should be Deleted

As mentioned above, LADWP believes there is no need for inclusion of §95830(c)(1)(I) as individuals who are employed by an entity covered under the MRR or Cap-and-Trade Program would be prohibited from registering as a VAE and participating in the cap-and-trade market. Thus, the following sentence in §95830(f)(1) should be deleted: "Updates of information provided pursuant to section 95830(c)(1)(I) may be updated each calendar quarter instead of within 30 calendar days of the change."

7. § 95831(a)(6) Annual Allocation Holding Account

CARB proposes to create an annual allocation holding account for an entity that receives a direct allocation to prevent an entity from violating its holding limit with future year vintage allowances that are deposited prior to the compliance year (e.g. to prevent CARB's deposit of an entity's 2015 allowance allocation in its account on October 24, 2014 from leading to a violation of the entity's holding limit). LADWP supports this action as it would be unreasonable for an entity to incur a violation of its holding limit for a regulatory agency deposit of future year allowances.

LADWP also recommends that CARB monitor the holding limit issue closely to determine if it should be increased and/or if other mechanisms should be in place (e.g. allowing entities to surrender compliance instruments at any time) to ensure that the holding limit is not a barrier for an entity's compliance with the cap-and-trade regulation.

8. § 95852(b)(4)(B) RPS Adjustment

LADWP appreciates CARB's efforts over the past year to work with electric utility entities to modify the timing with respect to an entity claiming the RPS adjustment such that electric utility entities will not be required to prematurely retire their Renewable Energy Credits (RECs) under the California Energy Commission's Renewable Portfolio Standard (CEC RPS) Program. Although CARB's latest amendment adopted by its Board on October 24, 2013 no longer requires an electric utility to prematurely retire its RECs, LADWP believes that the RPS Adjustment credit should be claimed based on REC serial numbers reported under the MRR, rather than retirement of the RECs. LADWP outlined the reasons for the appropriateness of using REC serial numbers in its February 14, 2014 comment letter.

LADWP proposes the following changes to proposed §95852(b)(4)(B):

> *The RECs associated with the electricity claimed for the RPS adjustment must be reported and verified pursuant to MRR. ~~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 within 45 days of the reporting deadline in section 95103(3) of MRR for the year which the RPS adjustment is claimed.~~*

If CARB proceeds with their current approach (tying the RPS Adjustment credit to retirement of RECs), the restriction on when RECs can be retired (within 45 days of the reporting deadline in §95103(3) of MRR) should be removed. Per CEC RPS Program rules, RECs may be placed into the retirement subaccount *anytime during the year* but must be retired within 36 months of the month the renewable electricity was generated. For example, a REC generated in January 2013 must be retired by January 2016. The proposed amendment "within 45 days of the reporting deadline in section 95103(e) of MRR" can be interpreted such that this requirement is too restrictive allowing only RECs retired during the April 15 to July 15 window for the RPS Adjustment, but would exclude RECs retired outside of that window (July 16 to December 31 and January 1 to April 14). A strict interpretation of this amendment would not satisfy the intent of the RPS Adjustment, which was to offset the compliance obligation for renewable energy that is not directly delivered into California, regardless of when the RECs are retired. All eligible RECs should be recognized for the RPS Adjustment, regardless of what time of year they are placed into the retirement subaccount.

In addition, LADWP believes that RECs for renewable electricity imported for voluntary green power programs should also receive credit to offset the cap-and-trade compliance obligation. By limiting the RPS adjustment credit to only RECs that are retired in the CEC's RPS accounting system, it will create a disincentive to having voluntary green power programs in California because paying the cap-and-trade compliance obligation on imported renewable energy would increase costs to the electric utility and its customers.

LADWP proposes the following alternative language for proposed §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 at any time until ~~within~~ 45 days following ~~of~~ the electric power entity reporting deadline in section 95103(e) of MRR during the same year for the year for which the RPS adjustment is claimed. If the RECs were created through voluntary renewable programs, the REC serial numbers must be reported and verified pursuant to MRR.*

9. §95852(b)(4)(A)(2) and §95852(b)(4)(C) RPS Adjustment Should Include Transmission Loss Correction Factor and Renewables from Voluntary Green Power Programs

There are additional issues related to the RPS adjustment provision that LADWP believes should be addressed to 1) fulfill the original intent of the RPS adjustment provision and 2) recognize renewable electricity imported on behalf of green power program customers.

If the RPS Adjustment is intended to neutralize the GHG emissions reported for imported Bucket 2 renewable energy (so that it is treated as zero GHG emission energy under the cap-and-trade program), the credit needs to include both the default GHG emission factor (0.428 MT CO2e/MWh) *and* the 2% transmission loss factor so that the difference between the reported GHG emissions for the imported electricity and the RPS Adjustment credit is equal to zero. Currently, the RPS Adjustment gives credit only for the default GHG emission factor but does not provide credit for the 2% transmission loss factor that is applied along with the default GHG emission factor when the imported Bucket 2 renewable energy is reported under the MRR. The result is a 2% deficit in the RPS

Adjustment credit such that the credit does not completely cover the reported GHG emissions for the imported Bucket 2 renewable energy. The consequence of not including credit for the 2% default transmission loss factor in the RPS Adjustment is

assigning cap-and-trade compliance costs to renewable energy for default GHG emissions that are not real.

To provide full credit for renewable energy, LADWP proposed the following revision to section 95852(b)(4)(C)

> *The quantity of emissions included in the RPS adjustment is calculated pursuant to MRR as the product of the default emission factor for unspecified sources, the transmission loss correction factor for unspecified sources, and the reported electricity generated (MWh) that meets the requirements of this section, 95852(b)(4).*

In addition, an electric utility may procure and import renewable energy on behalf of its green power customers, who are not "entities subject to the California RPS."

Thus, LADWP proposes the following language for §95852(b)(4)(A)(2):

> *A contract with an entity subject to the California RPS that has ownership or contract rights to the electricity and associated RECs generated by the eligible renewable energy resource, as verified pursuant to MRR or a contract to procure electricity generated by an eligible renewable energy resource and the associated RECs on behalf of California electric utility customers that participate in voluntary green energy programs as verified pursuant to MRR..*

10. § §95856(f)(1) Timely Surrender of Compliance Instruments – Restrictions to Compliance Account Access

This provision requires covered entities to transfer sufficient compliance instruments to their compliance accounts by November 1, 5 p.m. Pacific Standard Time following the final year of the compliance period. CARB proposes new language stating that transfers to compliance accounts may be restricted during the time the tracking system is processing the surrender of the triennial compliance obligation. While freezing the compliance accounts while CARB conducts its reconciliation process would not be unlike what is current being done in the EPA Acid Rain Program, the Acid Rain Program does not have holding limits. Thus, freezing the compliance accounts could adversely impact entities that are near their holding limit and have no opportunity to transfer compliance instruments into their compliance account for a period of time, which CARB has not defined. LADWP recommends that CARB: 1) define the period of time that it will restrict entities' access to their compliance accounts; and/or 2) temporarily lift the holding limit requirement until the compliance account restriction is removed.

11. 95856(h)(4) Compliance Instrument Retirement Order – LADWP Supports New Language Clarifying the Provision's Relationship with §95892(d)(5)

LADWP supports the new language that clarifies that an electrical distribution utility (EDU) will not be in violation of §95892(d)(5) when the Executive Officer retires compliance instruments per its proposed surrender order as long as CARB and the EDU have the same resulting account balance. The new language addresses LADWP's concern that although the EDU's and CARB's accounting of the compliance account balance would be the same in terms of the number of allowances, the EDUs' accounting of allowances by vintage and date procured would not match CARB's because EDUs are prohibited from using the value of their allocated allowances to meet compliance obligations that do not benefit its retail ratepayers consistent with the goals of Assembly Bill 32.

12. §95856(h)(1)(A) Annual and Triennial Compliance Instrument Requirements/Offset Usage Limit

CARB is proposing to retire compliance instruments from an entity's compliance account on an annual and triennial basis. On an annual basis, CARB would retire 30 percent of a covered entity's compliance instruments correlated to its compliance obligation reported from the previous data year that received a positive or qualified positive emissions data verification statement, or were assigned emissions pursuant to §95131 of MRR. While this amendment would alleviate potential violation of an entity's holding limit, LADWP recommends that entities be provided the opportunity to request retirement of a larger percentage of its compliance instruments on an annual basis.

The 15-day changes state that CARB will retire offset credits up to eight percent of the emissions with a compliance obligation. LADWP supports this change, as entities would be able to use offsets contained in their compliance account in excess of the eight percent limit for compliance in future years.

13. §95912(d)(4)(E) Auction Attestation

The proposed 15-day language consists of an attestation "disclosing the existence and status of any ongoing investigation or an investigation that has occurred within the last ten years with respect to any alleged violation of any rule, regulation, or law associated with any commodity, securities, environmental, or financial market for the entity participating in the auction…"

As written, the requirement is broadly written, does not have a materiality or knowledge qualifier and covers alleged violations. It would be very difficult for LADWP to obtain and attest to the information over the time period specified, due to staff turnover and especially if the investigation did not result in an actual violation. Also, in §95912(d)(5), any change, even though the change results in a determination of no violation, to an entity's auction application information could result in the entity being denied auction participation. LADWP believes that the proposed revision would unnecessarily disqualify entities from participating in an auction.

Thus, LADWP urges CARB to further limit the scope of the attestation to previous investigations in which a violation was determined. LADWP recommends that §95912(d)(4)(E) be amended to read as follows:

> *An attestation disclosing investigations that have occurred within the last ten years which resulted in violations of any rule, regulation, or law associated with any commodity, securities, or financial market for the entity participating in the auction, and all other entities with whom the entity has a corporate association, direct corporate association, or indirect corporation association pursuant to section 958333.*

14. <u>§ 95912(d)(5) Auction Administration and Participant Application and §95913(e)(2) Reserve Sale Intent to Bid Notification Requirements</u>

LADWP supports the deletion of the provision that any changes to an entity's auction application 15 days after an auction could result in the entity's participation in the auction. As LADWP expressed in its February 14, 2014 comment letter, this requirement would lead to unnecessary administrative burden as fifteen days after an auction, the entity would have already submitted its bid guarantee, participated in the auction, and in the case of a purchase of allowances, gone through the administrative task of ensuring that the required funds were transferred to CARB in a timely manner.

LADWP recommends that §95912(d)(5) be amended as follows such that any change in the status of an investigation per §95912(d)(4)(E) does not result in denial of auction participation as a change in status is out of the control of the entity:

> *" An entity with any changes to the auction application information listed in subsection 95912(d)(4)(A) through (D) or subsection 95912(d)(4)(F) within 30 days prior to an auction may be denied participation in the auction."*

Similarly, with respect to Reserve Sales' intent to bid notification requirements, LADWP recommends §95913(e)(2) be amended as follows:

> *"An entity with any auction application information listed in subsection 95912(d)(4)(A) through (D) or subsection 95912(d)(4)(F) that changes 20 days prior to a reserve, may be denied participation in a reserve sale."*

15. §95914(c)(3)(A) and §95923 Should be Consistent With Each Other to Focus Disclosure of Cap-and-Trade Consultants and Advisors to Those Involved with Auction Bidding Strategy

Proposed §95914(c)(3)(A) states that "If an entity participating in an auction has retained the services of a Cap-and-Trade Consultant or Advisor, as defined in section 95923, *regarding auction bidding strategy* [emphasis added], then the entity must take specified actions to prevent transfer of bidding strategy to other auction participants or coordinating bidding strategy among participants. LADWP supports this proposed language.

Proposed §95923 requires disclosure of cap-and-trade consultants and advisors that provide services listed in section 95979(b)(2) of the cap-and-trade regulation or section 95133(b)(2) of the MRR. Although Section 95979 is related to conflict of interest requirements for verification bodies and offset verifiers for verification of offset project data reports, the proposed reference to 95979(b)(2) in section 95923 would require an entity to disclose cap-and-trade advisors and consultants that have provided *non-offset verification services over the past five years* and there is a list of *twenty* non-offset verification services that would apply. Per this proposed definition, this could include attorneys and consultants who provide services unrelated to the cap-and-trade program. The provision should only apply to consultants and advisors who are aware of an entity's compliance instrument position or strategy with respect to procurement or sale of compliance instruments similar to §95914(c)(3)(A).

Thus, LADWP recommends that §95923 be clarified as follows:

> *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 in relation to the registered entity's Cap-and-Trade Program auction bidding strategy in section 95979(b)(2) of the Cap-and-Trade Regulation or section 95133(b)(2) of the Mandatory Reporting Regulation specifically for the entity registered in the Cap-and-Trade Program.*

16. Conclusion

LADWP appreciates this opportunity to comment and looks forward to working with CARB staff on these important issues. If you have any questions or require additional information, please contact me at (213) 367-0403 or Ms. Jodean Giese at (213) 367-0409.

Sincerely,

Mark J. Sedlacek
Director of Environment and Efficiency

JMG:lr
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