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July 31, 2013

Dr. Steven Cliff  
Chief, Climate Change Program Evaluation Branch  
California Air Resources Board  
1001 I Street  
Sacramento CA 95814

**RE: Discussion Draft of 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), collectively "Semptra Energy utilities" (SEu), appreciate the opportunity to submit comments on the Discussion Draft of Modifications to Article 5: California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms (Draft Regulation). The following comments focus on clarifying and streamlining compliance requirements to strengthen the integrity and functioning of the cap-and-trade program.

As an initial matter, SEu supports the following changes in the Draft Regulation:

- Changes to Industrial Assistance, providing a greater level of assistance while additional studies on leakage are completed.
- 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 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.
- Clarification for reporting requirements for renewable energy credits from a specified source and requirements to use the Renewables Portfolio Standard adjustment.
- The addition of a checkbox for zero price for transfers of certain types specified in the Draft Regulation.
- Changes to Disposition of Allowances, making an additional source of allowances available for the Price Containment Reserve.
- Additional information and conflict of interest provisions for voluntarily associated entities.
- Draft Order for Surrender of Compliance Instruments, specifying the order of retirement of compliance instruments in the compliance account.

SEu also has the following suggestions on cost containment; verification timing; effective and efficient market compliance; and a few other issues relating to allocations, auction administration, and transfer requests.

**1. Cost Containment**

SEu supports the changes in the Draft Regulation providing additional protections from short-run price fluctuations. As the Joint Utilities Group has noted, however, the Draft Regulation does not include changes to address long-term demand and supply imbalance. SEu recommends addressing this issue, or at a minimum, placing

a hard cap on the price in the auction before triennial surrender. 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, even if not specified in the Draft Regulation. Specifically, SEu proposes the following change to Section 95913(h)(1)(B) (Purchase Determinations):

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(f)(1) are sold pursuant to section 95913(f).~~

## **2. Verification Timing**

During the workshop on the Draft Regulation held on July 18, 2013, California Air Resources Board (ARB) Staff indicated in Slides 44 and 45 that the verification deadline will change to August 15 of each year. This change in verification timing is unnecessary for the integrity of the cap-and-trade program and places an unrealistic timing constraint on compliance entities and verifiers. For example, natural gas suppliers do not need to know their verified compliance obligation before the deadline for applications to participate in the Price Containment Reserve Auction. Since participation in Price Containment Reserve Auction does not require buying allowances, natural gas suppliers can apply to participate and simply decide not to bid if they later determine that they do not need additional allowances.

The verification deadline should remain September 1. For the Price Containment Reserve Auction before the triennial compliance period surrender, ARB should provide natural gas suppliers with their verified obligation at least three days before the Price Containment Reserve Auction, preferably by the bid guarantee date. This time frame, which would apply only once every three years, is reasonable and will allow for sufficient time for verification for all compliance entities each year. SEu supports moving the Price Containment Reserve Auction to October for the year in which the triennial compliance period surrender is due. SEu therefore recommends making this change in Appendix C of the Draft Regulation.

## **3. Suggestions for Effective and Efficient Market Compliance**

Several of the provisions on market compliance in the Draft Regulation are burdensome and unnecessary for ensuring compliance and robust market monitoring. The following suggestions ensure effective and efficient market compliance.

### **Section 95830(c)(1): Employee Information**

Proposed Section 95830(c)(1)(I) requires disclosure of the name and contact information of all employees that have “any access to any information regarding compliance instruments, transactions, or holdings.” Section 95830(f) then requires updates to this information within 10 working days of any changes.

This requirement is excessive and is not a requirement for any other markets that SDG&E and SoCalGas participate in. For example, SDG&E estimates that more than 100 SDG&E employees have access to compliance information, given the requirements to report purchases and holdings to various agencies, including the California Public Utilities Commission. These employees work in multiple departments, such as departments responsible for risk management, accounting, regulatory compliance, legal counseling, procurement, and environmental compliance. Updating the name and contact information of all the employees in these different departments every 10 working days would be extremely burdensome. SEu therefore recommends Section 95830(c)(1)(I) be eliminated. The attestation proposed below would effectively address market compliance while being far less burdensome.

The second half of Section 95830(c)(1)(I) states: “Failure to provide such a letter by the deadline will result in suspension, modification, or revocation of his/her tracking system account.” This text seems to shift the burden to the employee who is registered as a voluntarily associated entity (VAE) and seems duplicative of Section 95814(a)(3) (VAEs & Other Registered Participants). If the second half of Section 95830(c)(1)(I) seeks to apply Section 95914(a)(3) to entities already participating in the cap-and-trade program, the text should be moved to Section 95814(a).

Section 95830(c)(1)(J) is problematic because bid advisors and consultants are not employees of the compliance entity. The information required for bid advisors and consultants should be limited to that listed in Section 95914(c)(3)(D).

Providing more information and conflict of interest provisions for VAEs is prudent and would seem to capture all the information that is requested of compliance entities in Section 95830(c)(1). ARB may achieve a better result by deleting Section 95830(c)(1)(I)-(J) and instead requiring an attestation of individuals during the VAE registration process. VAEs could be required to state what access they have to bidding strategies, transactions data, or holdings from entities in the cap-and-trade program and be required to update the information within a reasonable amount of time of any changes.

### **Section 95833(e)(3): Corporate Association Updates**

The modifications to Section 95833 confirm that covered entities must disclose corporate associations regardless of whether the associated entities participate in the cap-and-trade program. Given this clear direction, SEu proposes deleting Section 95833(e)(3), which requires that covered entities update ARB within 30 days of **any** changes to associated entities, including entities that do not participate in the cap-and-trade program and entities that are not located in California or the United States.

Sempra Energy is the ultimate parent company of SDG&E and SoCalGas. Large corporations such as Sempra Energy have hundreds of subsidiaries that change continually. Updating ARB within 30 days of **any** changes to associated entities is burdensome and is unnecessary for effective market compliance. Notably, Section 95833(e)(4) already requires disclosure of any changes to associated entities by the registration deadline for each auction. Deleting Section 95833(e)(3) and following Section 95833(e)(4) would reduce the number of updates on associated entities to four per year instead of within 30 days of any change and would still ensure the integrity of the auction process.

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

As discussed above, Section 95830(f)(1) requires updates to registration information within 10 working days of **any** change. This timing requirement is burdensome and directly conflicts with other provisions in the Draft Regulation. For example, Section 95830(c)(1)(H) requires disclosure of all corporate associations. Section 95830(f)(1) therefore appears to require updates to corporate associations within 10 working days of any change. Section 95833(e)(3), however, requires updates to all corporate associations within 30 days of any change. SEu proposes that ARB modify the Draft Regulation to clarify the deadline for updates to each component of registration information.

Furthermore, Section 95830(c)(1)(B) requires disclosure of a covered entity’s officers and directors. Section 95830(f)(1) therefore appears to require updates to officers and directors within 10 working days of any change. This time frame is burdensome. Updates to officers and directors should be quarterly, before each auction. Compliance will remain effective while also becoming more efficient.

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

Section 95914(c)(1) addresses non-disclosure of bidding information. The Draft Regulation includes a new subsection (c)(1)(A), which prohibits disclosure of “intent to participate at auction, auction approval status, [and]

maintenance of continued auction approval.” SEu suggests modifying subsection (c)(1)(A) to apply only to entities that are not compliance entities. For compliance entities, disclosure of the information listed in subsection (c)(1)(A) would not harm market integrity because compliance entities are likely to participate in auctions to meet their compliance obligations. Auction participation patterns can also be discerned because ARB releases the list of Qualified Bidders after each auction.

SEu notes that Section 95914(c)(1) does not explicitly prohibit disclosure of an entity’s market price forecasts. ARB previously indicated that this information should remain confidential. SEu recommends including “market price expectations” in the list of prohibited disclosures under Section 95914(c)(1).

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

SEu suggests a slight modification to Section 95914(c)(2)(D) so that the section applies not only to electric distribution utilities but also to other entities regulated by the California Public Utilities Commission. The modification is as follows:

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 reference to ARB that requires the disclosure of the information.

#### **Section 95923: Disclosure of Cap-and-Trade Contractors**

Section 95923(a)(1) should clarify that a “Cap-and-Trade Contractor” works in a non-legal role. If the definition of “Cap-and-Trade Contractor” does not exclude outside legal counsel, the Draft Regulation should clarify that there should be no disclosure of information protected by attorney-client privilege, attorney work product, or other confidentiality doctrines.

Please also note that Section 95923(c) references “Section 95923(d),” but Section 95923 currently does not contain a subsection (d).

### **4. Comments on Allocations, Auction Administration, and Transfer Requests**

#### **Section 95893: Allocation to Natural Gas Suppliers on Behalf of Customers**

SEu strongly supports the addition of Section 95893 to allocate allowances to natural gas suppliers on behalf of their customers. SEu recommends two minor modifications to strengthen Section 95893.

First, the use of 2013 emissions in the equation in Section 95893(a) creates interpretation problems in conjunction with Table 9-2. The factor “c” accounts for the cap decline. Applying a cap decline figure to an allocation in the same year is confusing. Specifically, if 2013 emissions are used as the base in the equation in Section 95893(a), the cap decline should also not be applied. As the gas distribution utilities have noted, using 2011 emissions as the base is beneficial because 2011 emissions will be known well before the allocation in October 2014. An alternative is to specify that all years after 2013 in Table 9-2 would be divided by the 2013 cap adjustment factor of 0.981. Changes in the cap would then be relative to 2013.

Second, SEu asks ARB to examine whether it has authority to specify how to return allowance revenue to the customers of natural gas distributors. Rate design is in the jurisdiction of local governing boards and the California Public Utilities Commission. SEu therefore suggests that Section 95893(d)(3) be modified to parallel the

language in Section 95892(d)(1)-(2) for electric distribution utilities to avoid jurisdictional conflicts with other state and local agencies.

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

Section 95912(d)(5) denies auction participation to entities with any changes to the information in their auction applications that will occur within 30 days before or 15 days after the auction. SEu recommends deleting this section because it penalizes entities that have acted in good faith and nonetheless have changes to their auction 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.

**Section 95921(b)(4)(D-G): Transfer Requests**

Section 95921(b)(4)(D-G) require that entities enter complex information on transfer requests into the cap-and-trade tracking system. This information has little apparent value to market monitoring and will require significant effort for entities to fit non-standard information into the standard format in the tracking system. SEu therefore recommends deleting Section 95921(b)(4)(D-G).

**Section 95911(d): Auction Purchase Limits**

Sections 95911(d) sets purchase limits for entities participating in the ARB quarterly auctions. In the current regulation, the purchase limits expire on December 31, 2014. SEu is concerned that the removal of auction purchase limits for non-covered entities could lead to allowance shortages if non-covered entities purchase large quantities of allowances. SEu urges the ARB to consider limiting how much non-covered entities can purchase at auctions for the duration of the program.

SEu appreciates the opportunity to comments on the Draft Regulation and looks forward to discussing these comments with ARB Staff. Should you have any questions, please feel free to contact Chris Terzich, Regulatory Policy Manager, at (858) 654-1228.

Yours sincerely,

A handwritten signature in black ink that reads "Mitch Mitchell". The signature is written in a cursive, flowing style.