COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY TO THE CALIFORNIA AIR RESOURCES BOARD ON ITS DISCUSSION DRAFT OF PROPOSED AMENDMENTS TO THE CAP–AND-TRADE REGULATIONS

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I.

INTRODUCTION AND EXECUTIVE SUMMARY

Southern California Edison Company ("SCE") respectfully submits its comments to the California Air Resources Board ("ARB") on its July 2013 Discussion Draft on Proposed Amendments to the California Cap-and Trade Regulation[1] ("Discussion Draft").[2] SCE appreciates the opportunity to work with ARB staff on making improvements to the Discussion Draft. SCE's comments focus on the following points:

- The ARB should not delay increasing the size of the limited exemption to the holding limit to 2015;
- The proposed increases to the Allowance Price Containment Reserve ("APCR") supply is a good first step but is not sufficiently responsive to Board Resolution 12-51;
- Releasing individual compliance account balances will unfairly expose sensitive position information for compliance entities and could lead to a less competitive market;
- The ARB should allow covered entities to select which compliance instruments they will use to meet their compliance obligations;
- The ARB should not amend the regulation language to incorporate the proposed Energy Imbalance Market ("EIM") until the California Independent System Operator's ("CAISO's") EIM proposal is finalized;
- The ARB should amend Resource Shuffling Safe Harbor #10 for added clarity;
- Recent clarifications regarding Renewable Energy Credits ("REC") retirement for the Renewables Portfolio Standard ("RPS") adjustment should be reflected in the regulation;
- The ARB should modify its regulatory language requesting employee contact information; and
- SCE supports the measures taken to equitably compensate Combined Heat and Power ("CHP") facilities.

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1 Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms ("Cap-and-Trade Regulation"), Cal. Code Regs., tit. 17, § 95856(f)(1).

2 California Air Resources Board, Cap-and-Trade Regulation Discussion Draft July 2013 ("Discussion Draft") (*available at* http://www.arb.ca.gov/cc/capandtrade/meetings/071813/ct_reg_2013_discussion_draft.pdf).

II.

THE ARB SHOULD NOT DELAY INCREASING THE SIZE OF THE LIMITED EXEMPTION TO THE HOLDING LIMIT TO 2015

Currently, the limited exemption to the holding limit for compliance entities is scheduled to increase annually, starting on October 1, 2013, by the amount of emissions contained in the most recent verified emissions data report.[3] The Discussion Draft would amend the regulation to delay the increase in the limited exemption until 2015. SCE understands that delaying the initial increase in the limited exemption was not the intent when the Proposed Amendments were published. SCE anticipates that language directing the initial increase in 2013 will be included when the draft regulation is released for comment.

Delaying the increase in the limited exemption until 2015 is inconsistent with its purpose. The limited exemption was designed to allow compliance entities to hold enough allowances in their compliance accounts to cover their historical emissions beginning with the start of the first compliance period, which occurred on January 1, 2013, and leading up to triennial compliance surrender events. A delay will restrict this allowance holding flexibility for all compliance entities until the start of the second compliance period.

In its July 18, 2013 Workshop to discuss Proposed Amendments to the California Cap-and-Trade Program ("July 18 Workshop"), ARB Staff was asked why it had proposed this change. ARB Staff responded that its proposed amendment would not become effective immediately, and thus no change to the calculation methodology for the limited exemption would be realized until 2015. Staff's rationale was that the Proposed Amendments would not be voted into effect until the ARB's Board Meeting on October 24-25, 2013, after the scheduled 2013 increase to the limited exemption had already occurred. However, Staff's rationale is insufficient for two reasons. First, it does not address the October 2014 increase to the limited

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[3] Cap-and-Trade Regulation, Section 95920(d)(2)(c).

exemption, which would be eliminated under the Proposed Amendments. Second, the Discussion Draft also states that "On June 1, 2012 the limited exemption will be calculated as ~~equal~~ the annual emissions determined from the most recent emissions data report,"[4] which raises the possibility that the limited exemption could revert to this amount (*i.e.* one year's worth of emissions only) when the Proposed Amendments take effect in late 2013.

Changing the calculation methodology for the limited exemption in 2013 and 2014 could constrain the compliance strategies of entities with annual emissions greater than the amount of the holding limit, because these entities could not hold allowances to cover a full two years' worth of emissions at the end of the first compliance period in 2014. Imposing such restrictive limits could make it challenging or impossible for them to meet the full volume of their compliance obligation for the first compliance period. Restrictive limits on holding allowances were also found in an independent study to limit "opportunities for risk management," contribute to "higher price variability," and lead to "delayed reductions in greenhouse gases" as a result of reduced allowance banking by compliance entities, which could create adverse outcomes for all market participants.[5]

SCE recommends that the ARB retain the calculation methodology for the limited exemption established by the current version of the Cap-and-Trade Regulation, which states:

> Beginning in 2013 on October 1 of each year the limited exemption will be increased by the amount of emissions contained in the most recent emissions data report that has received a positive or qualified positive emissions data verified statement during that year.[6]

Retaining this language in the Cap-and-Trade Regulation is consistent with the methodology for recalculating the limited exemption that is scheduled to occur before the

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4 Discussion Draft, Section 95920(d)(B), at 208.

5 Power & Energy Analytic Resources, (PEAR) Inc., "*Investigation of the Effects of Emission Market Design on the Market-Based Compliance Mechanism of the California Cap on Greenhouse Gas Emissions.*" (Feb. 12, 2013).

6 Cap-and-Trade Regulation, Section 95920(d)(2)(C).

Proposed Amendments take effect. The existing language also avoids imposing unnecessary constraints on the compliance strategies of high-emitting entities that would result in reduced market efficiency for all participants.

III.

THE PROPOSED INCREASES TO THE APCR SUPPLY IS A GOOD FIRST STEP BUT IS NOT SUFFICIENTLY RESPONSIVE TO BOARD RESOLUTION 12-51

A. SCE Supports the Approach that Staff Has Identified for Borrowing Allowances, But Borrowing Allowances Is Not a Long-Term Cost Containment Mechanism and Does Not Satisfy Board Resolution 12-51.

SCE supports Staff's proposal to facilitate allowance borrowing from future compliance years to fill the third tier of the ACPR for cost containment purposes.[7] Such an approach can act to moderate short-term price fluctuations and help promote a more smoothly functioning allowance market. SCE has consistently advocated that regulated entities should be able to borrow allowances from future compliance years as a means of reducing short-term price volatility. Utilizing the APCR ensures that only regulated compliance entities will be able to procure borrowed allowances and that borrowed allowances are used directly for compliance. Additionally, borrowing allowances first from the most distant vintage year in circulation allows the allowance market the greatest amount of time to address price volatility.

However, as a stand-alone proposal, this borrowing mechanism is insufficient to provide assurance to the market that allowance prices will not rise above the highest price tier of the APCR,[8] and therefore does not satisfy Board Resolution 12-51.[9]

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7 Discussion Draft, Section 95913(f)(5)(E), at 196-97.

8 The APCR is created by taking allowances from the program's allowance budget across all three compliance periods. The allowances in the APCR are made available for sale at a pre-established price once each quarter to covered entities.

9 California Air Resources Board, Resolution 12-51, Oct. 18, 2012, at 2 (*available at* http://www.arb.ca.gov/cc/capandtrade/final-resolution-october-2012.pdf).

Resolution 12-51 directs staff to develop mechanisms to ensure that allowance prices do not exceed the highest price of the APCR. The approach proposed in the Discussion Draft provides no such assurance. Borrowing is important to reduce short-term price volatility, but under a stress-case scenario where demand for allowances exceeds supply for a prolonged period of time, the APCR could be exhausted, which could cause prices to exceed the highest APCR tier price.[10] The Discussion Draft states that if the quantity of accepted bids at the highest price tier of the APCR exceeds the available allowances, including any allowances that have been borrowed from future vintage years, the reserve sale administrator will distribute the available allowances among bidders on a pro-rated basis, causing each bidder to receive fewer allowances than its original bid.[11] In this scenario, if compliance entities are not able to procure all of the allowances they need for compliance at the price of the highest tier of the APCR, it is reasonable to assume that prices in the secondary market would move higher than that price level as well.

B. A Robust Portfolio of Cost Containment Measures Will Serve to Reduce Price Volatility and Provide True Cost Containment, Satisfying Board Resolution 12-51.

SCE supports the cost containment proposal offered by the Joint Utilities Group.[12] That proposal established three categories of cost containment measures: (1) measures to take effect immediately; (2) measures that would be triggered when the market moves closer to the highest APCR price; and (3) an approach to address compliance instrument availability when the APCR is exhausted. SCE's recommendations for each of these three categories of cost containment measures are described in more detail below.

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[10] For example, if strong economic growth results in reported emissions significantly above expectations for several consecutive years, the volume of allowances in the available future vintage years that are eligible for borrowing under Staff's proposal may be insufficient to keep allowance prices below the level of the highest APCR tier.

[11] Discussion Draft, Section 95913(h)(5), at 200.

[12] Joint Utility Group presentation at the June 25 ARB Cost Containment Workshop (*available at* http://www.arb.ca.gov/cc/capandtrade/meetings/062513/industry-present.pdf).

1. Measures That Would Take Effect Now

SCE recommends that the ARB adopt certain measures that would take effect now. These measures would – over time – reduce the likelihood of prices rising above the APCR in the future by: (1) reducing demand for compliance instruments; (2) increasing the supply of compliance instruments; and (3) ensuring that compliance instruments are accessible in the marketplace. Specifically, SCE suggests that the ARB:

1. Approve more offset protocols to increase the supply of offsets.
2. Exempt offsets from projects within California from the 8% offset limit.
3. Allow each covered entity to carry over any unused portion of its 8% offset limit to use for future compliance.
4. Address constraints imposed by the current holding limit.
5. Hold an additional auction after the end of each compliance period. The ARB should redistribute allowances between auctions to allow for one additional auction per compliance period, and/or acquire more allowances for auction. This auction should be held between September 1 of the year following the end of a compliance period, when verification statements for prior-year emissions are due,[13] and November 1, when compliance entities are required to demonstrate compliance.[14]

2. Measures That Would Be Triggered When the Market Approaches the Highest APCR Price

SCE recommends that the ARB adopt certain measures that, when triggered, would quickly alter compliance instrument demand/supply dynamics and constrain upward pressure on market prices for a period of time. Borrowing of allowances is included in this category. One

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[13] Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, Cal. Code Regs., tit. 17, § 95103(f).
[14] Cap-and-Trade Regulation, § 95856(f)(1).

example of a trigger is a percentage level of depletion of the APCR. Specifically, SCE suggests that the ARB adopt the following proposals:

a. **Unused Offset Proposal**: Currently, a compliance entity is limited in its use of offsets to 8% of its compliance obligation per compliance period. Under the Unused Offset Proposal, when the trigger is reached, the ARB would calculate the program-wide shortfall of unused offsets from earlier compliance periods, and allow compliance entities to apply the difference to later compliance periods. This in effect will increase the quantitative usage limit for entities in a single compliance period, thus reducing upward price pressure on allowances in the short term, while maintaining the quantitative usage limit over the entire term of the program.
b. **Compliance Account Proposal**: When the trigger is reached, the ARB could allow covered entities to transfer surplus allowances from their compliance accounts to their limited use holding accounts. This would allow entities that have built up a bank of excess allowances to re-inject those allowances in the market, which will improve market liquidity.
c. **Limited Borrowing Proposal**: When the trigger is reached, the ARB could allow covered entities to surrender current-year vintage allowances and next-year vintage allowances (not applicable post-2020).[15]
d. **Offset Geographic Scope Proposal**: When the trigger is reached, the ARB could increase the number of compliance-grade offsets by expanding the geographic scope of the approved offset protocols to North America.
e. **Offset Project Start Date Proposal**: When the trigger is reached, the ARB could increase the number of compliance-grade offsets by changing the Offset Project

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[15] Currently, the compliance obligation surrender date is always one year after the last vintage year of allowable allowances.

Commencement date established in Sections 95973(a)(2)(B) and (c) of the Cap-and-Trade Regulation to an earlier date.

3. Measures That Would Keep Prices at the Third Tier of the APCR When the APCR Is Exhausted

SCE recommends that the ARB adopt certain measures that, when triggered, would keep allowance prices at the third tier of the APCR regardless of current demand, while still preserving the environmental integrity of the cap-and-trade program over time. Upon depletion of the highest tier of the APCR, the Executive Officer should make available (through the APCR sale mechanism) additional allowances, in excess of the cap, necessary to satisfy the demand of compliance or opt-in compliance entities at the price set for the highest tier of the APCR in the relevant year. The Executive Officer could then use the funds raised by the sale of these additional allowances to ensure greenhouse gas ("GHG") reductions equal to or larger than the number of additional allowances sold. For example, the Executive Officer could:

- Commission a third party to obtain and retire high-quality offsets not otherwise eligible to satisfy the compliance obligations of compliance entities;
- Commission a third party to purchase and retire allowances from emissions trading programs outside of California and linked jurisdictions;
- Commission a third party to invest funds in emission reduction projects outside the capped sectors; or
- Mandate emission reductions in sectors not covered by the California Cap-and-Trade Regulation.

IV.

RELEASING INDIVIDUAL COMPLIANCE ACCOUNT BALANCES WILL UNFAIRLY EXPOSE SENSITIVE POSITION INFORMATION FOR COMPLIANCE ENTITIES AND COULD LEAD TO A LESS COMPETITIVE MARKET

Consistent with its previous comments,[16] SCE strongly opposes the ARB's proposal to release information about individual account balances. At the June 25th Workshop, ARB Staff suggested that releasing individual compliance account balance information will lead to better public knowledge of market fundamentals and a more efficient market generally. This is an incorrect interpretation of market fundamentals. The fundamental principles of supply and demand require transparency surrounding aggregate market supply and aggregate market demand. Markets become more efficient as accurate information regarding aggregate supply and demand is provided to all market participants. However, releasing individual entity allowance supply data, either from the holding account or the compliance account, does not in any way improve market efficiency as compared to releasing aggregated data for the allowances held in these accounts. As SCE has stated in previous comments, releasing such information into an imperfectly competitive market could lead to a less competitive market.[17] Releasing entity-specific compliance account balances puts a covered entity at a competitive disadvantage because other market participants would be able to estimate its net position and adjust auction bidding behavior and market prices accordingly. This disadvantage would be exacerbated for highly regulated entities such as investor-owned utilities ("IOUs"), which are restricted by the California Public Utilities Commission in the financial positions they may take and products they may procure in the secondary market.

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16 Comments of Southern California Edison Company to the California Air Resources Board on the January 25, 2013 Information Sharing Workshop, Feb. 5, 2013, at 1-7 (*available at* http://www.arb.ca.gov/lists/jan- 25-info-share-ws/1-2013-02 05_sce_comments_on_arb_information_sharing_workshop.pdf).

17 *Id*.

SCE continues to advocate the release of aggregated compliance account holdings combined with compliance surrender information. SCE believes that no regulatory change is required for the ARB to release aggregated compliance account holdings as opposed to individual account information. However, in the interest of clarity, SCE recommends that the ARB make the following change to Section 95921(e) of the Cap-and-Trade Regulation:

> The Executive Officer will protect confidential information to the extent permitted by law by ensuring that the accounts administrator: […]
>
> (4) Releases aggregated information on the quantity ~~and serial numbers~~ of compliance instruments contained in all compliance accounts in a timely manner."

V.

THE ARB SHOULD ALLOW COVERED ENTITIES TO SELECT WHICH COMPLIANCE INSTRUMENTS THEY WILL USE TO MEET THEIR COMPLIANCE OBLIGATIONS

A. SCE Supports Retirement Flexibility as Proposed by Staff at the July 18 Workshop

At the July 18 Workshop, regulated entities expressed their opposition to the staff-proposed compliance instrument retirement order. To address these concerns, ARB Staff suggested that they might allow covered entities to select which compliance instruments in their compliance account to retire prior to a compliance deadline. By allowing entities to self-select the compliance instruments they wish to retire, the ARB-proposed compliance instrument retirement order would only need to be exercised if a covered entity failed to select enough instruments to fulfill its compliance obligation. SCE supports this framework and urges the ARB to adopt provisions in the Cap-and-Trade Regulation for compliance entities to self-select compliance instruments for retirement. The ARB should also continue exploring operational changes to the Compliance Instrument Tracking System Service ("CITSS") system to allow for this elective transfer of compliance instruments for retirement.

Retirement flexibility allows compliance entities to better manage their portfolios, reduces the administrative burden for the regulatory agency, and reduces the risk of an unlawful taking of property if compliance instruments are removed from an entity's account without being used toward the entity's compliance obligation (e.g., if offset credits in excess of the 8% limit are taken during the annual compliance surrender as discussed in Section B). By allowing covered entities to select compliance instruments for retirement, the ARB's regulations would also be in keeping with other environmental compliance trading programs, including the United States Environmental Protection Agency's Acid Rain Program and California's RPS program.

B. The ARB Should Never Retire Any Compliance Instruments if Doing So Would Exceed a Compliance Entity's Compliance Obligation

The Discussion Draft changes could allow the ARB to take offsets from an entity's compliance account in excess of the current 8% offset usage limit. Staff has indicated that excess offsets would not be returned to the compliance entity's account, nor would they be used for compliance anywhere within the cap-and-trade program. The ARB should create a means to return excess offsets or other compliance instruments to the specific regulated entity from which they were taken. Staff informally suggested that this problem could be solved by applying an 8% offset usage limit to each annual compliance obligation. While SCE agrees that the excess taking of offsets does present a problem, this is not a reasonable approach. Instead, ARB staff should develop an approach where any offsets taken in excess of the limit for a compliance period would be returned to the regulated entity and be eligible in a future compliance period.

Moreover, it is critical that these compliance instruments remain available for compliance to contain costs. In Resolution 12-51, the Board directed staff to develop a mechanism to ensure that prices would not exceed the price of the third tier of the APCR. The possibility of removing excess offsets from the program altogether would needlessly restrict the supply of compliance instruments and result in upward pressure on prices.

VI.

THE ARB SHOULD NOT AMEND THE REGULATION LANGUAGE TO INCORPORATE THE PROPOSED ENERGY IMBALANCE MARKET UNTIL THE CAISO'S ENERGY IMBALANCE MARKET PROPOSAL IS FINALIZED

The Energy Imbalance Market ("EIM") is a newly-proposed electricity market design that, if implemented, will allow more economic real-time dispatch of generation in participating balancing authorities. As SCE stated in its comments on the June 26 MRR Workshop, it is premature to incorporate regulations addressing the CAISO's EIM until after the EIM design is complete.[18] The EIM is still undergoing design changes, with the latest proposal published in early July.[19] The proposal is expected to go through several iterations before it is completed in early 2014.[20] The ARB should not modify the definition of "Electricity Importers"[21] or add a new definition for "EIM Participating Resource Scheduling Coordinator"[22] to address the EIM until the EIM design is approved by FERC.

The ARB did not include the proposed EIM language from its June 26 Workshop in the subsequent July 17 Mandatory Reporting Regulation proposed regulation changes, which SCE appreciates.[23] However, the ARB still included EIM language in the Discussion Draft.[24] SCE encourages the ARB to wait until the EIM GHG design is finalized before adding regulation language specific to the EIM. If in the future, the ARB would like to explicitly identify EIM

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18 *See* Comments of Southern California Edison Company to the California Air Resources Board on the Workshop to Discuss Potential Revisions to the Regulation for Mandatory Reporting of Greenhouse Gas Emissions, at 4 (July 10, 2013).

19 *See* California Independent System Operator, Energy Imbalance Market 2nd Revised Proposal (July 2, 2013), http://www.caiso.com/Documents/SecondRevisedStrawProposal-EnergyImbalanceMarket-Jul2_2013.pdf.

20 The CAISO has established a schedule for EIM proposal development through the end of 2013, after which the proposal will be taken to the FERC for approval. California Independent System Operator, Energy Imbalance Market 2nd Revised Proposal, July 2, 2013, at 7, http://www.caiso.com/Documents/SecondRevisedStrawProposal-EnergyImbalanceMarket-Jul2_2013.pdf.

21 Discussion Draft, Section 95802(a), at 16.

22 *Id.* at 17.

23 California Air Resources Board, Potential Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, July 17, 2013 (*available at* http://www.arb.ca.gov/cc/reporting/ghg-rep/revision-2013/July-discussion-draft-MRR.pdf).

24 Discussion Draft, Section 95802(a), at 16-17.

participants as Electricity Importers, it will have ample time to do so after the EIM design is complete and before it goes live; the EIM design should be complete in early 2014[25] while the EIM will likely not begin until the end of 2014.[26] Accordingly, the ARB can and should wait to update its regulation to include provisions specifically for the EIM.

VII.

THE ARB SHOULD AMEND RESOURCE SHUFFLING SAFE HARBOR #10 FOR ADDED CLARITY

SCE thanks the ARB for incorporating resource shuffling safe harbors into the Discussion Draft.[27] SCE believes that these safe harbors provide appropriate clarity to the industry in determining whether substitutions of electricity deliveries from a lower emission resource for electricity deliveries from a higher emission resource would constitute resource shuffling. However, the ARB should further modify Safe Harbor #10 to explicitly clarify that selling utility-owned power from a high-GHG resource that was first bid into the CAISO markets to serve that utility's own load, but that was not scheduled through CAISO due to least-cost dispatch, would not be considered resource shuffling. SCE requests the following changes to Safe Harbor #10:

> 10. Short-term transactions and contracts for delivery of electricity with terms of no more than 12 months, or resulting from an economic bid or self-schedule that clears the CAISO day-ahead or real-time market, for either specified or unspecified power, based on economic decisions including implicit and explicit GHG costs and congestion costs, unless such activity is linked to the selling off of power from, or assigning of a contract for, electricity subject to the EPS rules from a power plant that does not meet the EPS with which a California Electricity Distribution Utility has a

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25 California Independent System Operator, Energy Imbalance Market 2nd Revised Proposal at 7 (July 2, 2013) http://www.caiso.com/Documents/SecondRevisedStrawProposal-EnergyImbalanceMarket-Jul2_2013.pdf.

26 The EIM would go live after market simulations, which are not planned until August or September of 2014. California Independent System Operator, Energy Imbalance Market Memorandum of Understanding, Feb. 12, 2013, at Exhibit B (*available at* http://www.caiso.com/Documents/ISO-PacifiCorpMOU_Effective20130212.pdf).

27 Discussion Draft, Section 95852(b)(2)(A), at 94.

contract, or in which a California Electricity Distribution Utility has an ownership share, that is not covered under paragraphs 11, 12 or 13 below. Selling off of power from, or assigning of a contract for, electricity subject to the EPS rules from a power plant that does not meet the EPS with which a California Electricity Distribution Utility has a contract, or in which a California Electricity Distribution Utility has an ownership share, would not constitute resource shuffling if such power was first bid into the CAISO day-ahead or real-time markets at the unit cost including GHG but did not clear the market and was subsequently sold outside of California.

VIII.

RECENT CLARIFICATIONS REGARDING REC RETIREMENT FOR RPS ADJUSTMENT SHOULD BE REFLECTED IN THE REGULATION

At the July 18 Workshop, SCE raised again the issue of REC retirement for the RPS adjustment, because the proposed regulation language was still not clear as to when RECs would have be retired. SCE is pleased that the ARB clarified that the regulations will allow the RPS adjustment for out-of-state renewable energy that is not imported into California, as long as the corresponding RECs are deposited in the Western Renewable Energy Generation Information System ("WREGIS") "retirement sub-account" in the year they were generated, even though the actual retirement of such RECs for RPS compliance purposes may occur later as part of the RPS compliance window set by the California Energy Commission. This is an important clarification because the ARB's language previously suggested that in order to claim the RPS adjustment, the retirement for compliance with the RPS program must also occur in the same year that the RECs were created. SCE greatly appreciates this clarity and urges the ARB to make changes in its final regulations reflecting the clarification provided by Staff. Specifically, SCE suggests the following change to Section 95852(b) of the Cap-and-Trade Regulation, as well as associated changes to the Mandatory Reporting Regulation in Section 9511(g)(1)(M):

> 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 399.13 ~~and designated as retired for the purpose of compliance with the California RPS program used to comply with the California RPS requirements~~ during the same year ~~in~~ for which the RPS adjustment is claimed (and during the year in which those RECs were created). The RECs must be designated as retired for the purpose of compliance with the California RPS program on a schedule consistent with the rules governing that program.

IX.

THE ARB SHOULD MODIFY DRAFT REGULATION LANGUAGE REQUESTING EMPLOYEE CONTACT INFORMATION

As currently proposed, the Discussion Draft is requesting names and contact information for "all persons employed by the entity that will have either access to any information regarding compliance instruments, transactions, or holdings; or be involved in decisions regarding transactions or holding or compliance instruments; or both."[28] The requirements imposed by the proposed language in Section 95830(c)(1)(I) are unclear[29] and could present an onerous administrative challenge.

The requirements of Section 95830(c)(1)(I) are particularly onerous for large market participants, as many large covered entities may have hundreds of employees with knowledge of compliance instruments and holdings, most of whom have no role in transaction decision-making.[30] The roles and responsibilities of these employees change frequently, so managing and updating this list would be burdensome and would require an unnecessarily large and sustained administrative effort.

In addition, the consequences for not submitting this information appear to be directed at Voluntary Associated Entities ("VAEs") and individual tracking accounts, making the implications unclear for large covered entities such as SCE. The ARB's efforts to prevent

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[28] Discussion Draft, Section 95830(c)(1)(i), at 65.

[29] For example, it is not clear what "access" or "involved in" would mean in this proposed section.

[30] Taken to the extreme, covered entities would have to include contact information for administrative assistants that type up contracts, file clerks, or even IT personnel responsible for data systems.

conflicts of interest would be better addressed by focusing its efforts on VAEs and consultants hired as market advisors.

X.

SCE SUPPORTS THE MEASURES TAKEN TO EQUITABLY COMPENSATE CHP FACILITIES

The Discussion Draft includes a number of new sections that address special treatment for certain CHP facilities, specifically "Legacy Contract Generators," "University Covered Entities," and other facilities afforded limited exemptions. "Legacy Contract Generators" are defined as CHP parties with an unamended contract signed prior to 2006 with a counterparty other than an IOU.[31] SCE supports this distinction, as it accurately responds to the amendments offered to all IOU-contracted CHP parties in 2012 pursuant to the CHP Settlement.[32] Due to these "Legacy Amendments," any IOU-contract CHP facility was given the opportunity to amend its existing contract to include payment for GHG. It would be inappropriate to allow a facility who was offered but did not accept one of these options - presumably to retain the higher payment structure under their Legacy Agreement - to "double dip" from the ARB and receive additional payment for its GHG obligations. SCE also supports the ARB's new allocation of allowances to University Covered Entities, which will help these facilities transition to the new GHG-inclusive marketplace.[33] Finally, the limited exemption[34] offered to "but for" CHP facilities - i.e., those facilities whose CHP operations push the site over the emissions compliance threshold of 25,000 metric tons CO_2e - represents a correction of incentives for CHP and an equitable balance of environmental integrity of the cap-and-trade program and equal treatment for industrial facilities with and without CHP.

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31 Discussion Draft, Section 95802, at 28.

32 Information on the CHP Settlement, adopted by D.10-12-035, and the associated Legacy Amendments, can be found *at* http://www.cpuc.ca.gov/PUC/energy/CHP/.

33 *See* Discussion Draft, Section 95870(f), at 127; *see also* Section 95891(e), at 159.

34 *See* Discussion Draft, Section 95851(c), at 93; Section 95852(j), at 104; and Section 95870(g), at 127.

XI.

CONCLUSION

SCE appreciates the opportunity to comment on the Discussion Draft. SCE continues to urge the ARB to consider cost containment, confidentiality, and market design issues as it develops the proposed amendments to the Cap-and-Trade Regulation this fall, and encourages the ARB to make changes to the regulation in accordance with the suggestions contained herein.

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