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Dr. Steve Cliff
California Air Resources Board
1001 I Street, P.O. Box 2815
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Re: Comments on Proposed Amendments to the California Cap-and-Trade Program Regulations

These comments are submitted on behalf of Sempra Generation ("SGEN") concerning the proposed amendments to the California Cap-and-Trade Program Regulations ("Regulations") published by the CA Air Resources Board ("ARB") on July 15, 2013.

Inconsistent Timing Requirements

There is an inconsistency between the timing requirements for updating information pursuant to section 95830(f)(1) and section 95833(e)(3), which became apparent when reviewing the proposed amendments to section 95830(c)(1)(H) and section 95833.

Under the current Regulations, pursuant to section 95830(c)(1), an entity registering for an account in the tracking system must provide certain information to ARB including, among other things: "Identification of all other entities registered pursuant to this article with whom the entity has a corporate association, direct corporate association, or indirect corporate association pursuant to section 95833 . . ." Section 95830(c)(1)(H). Further, under section 95830(f)(1), an entity is required to inform ARB within 10 working days if there are any changes to the information provided as part of the registration process under section 95830(c)(1).

Section 95833 provides very broad definitions for what is considered by ARB to be an entity's direct or indirect corporate associations. The proposed amendments to that section are apparently intended to make it clear that this disclosure of direct and indirect corporate associations applies regardless of whether the direct or indirect corporate association is subject to the requirements of the Regulations. Under section 95833(e)(3), a registered entity is required to disclose within 30 days any change of information regarding its direct and indirect corporate associations.

The proposed amendment to remove the reference to "registered" in section 95830(c)(1)(H) would create an irreconcilable inconsistency between section 95830(f)(1) and section 95833(e)(3) by requiring entities to inform ARB of changes in information concerning all direct and indirect corporate associations within 10 working days of a change. This would render the 30 day rule of section 95833(e)(3) superfluous and confusing. In addition, a requirement to

provide this information within 10 working days of a change is unduly burdensome and without a corresponding purpose with respect to the Cap-and-Trade program. Many registered entities, such as SGEN, do not have immediate access to information regarding corporate associations that have nothing to do with the registered entity's business and may even be located in other states or countries. Requiring entities to report all changes to its indirect corporate associations not subject to the Regulations within 10 working days is unworkable as a practical matter, and puts registered entities at a constant risk of non-compliance. It is unclear why ARB would need, or even want, to have this information in 10 days versus 30 days after a change to information regarding corporate entities that are not subject to the Regulations in any event.

If section 95830(c)(1)(H) is not amended as proposed and "registered" remains in the text, section 95830(f)(1) could reasonably be interpreted to apply the 10 day rule to only those corporate associations that are themselves registered and subject to the Regulations, while changes in information regarding corporate associations that are not registered are required to be submitted to ARB within 30 days of a change pursuant to section 95833(e)(3). Leaving in place the word "registered" would also make the additional amendments to section 95833, which add in numerous places the phrase "regardless of whether the second entity is subject to the requirements of this article" make more sense.

Therefore, "registered" should not be deleted from section 95830(c)(1)(H). Should staff move forward with that proposed change, however, SGEN requests that ARB reconcile the code sections by adding appropriate language to make clear that registered entities are required to report information disclosed as to direct and indirect corporate associations within 30 days of a change as stated in section 95833(e)(3), not within 10 working days.

Requirement to Inform ARB of an Advisor

Under the current requirements, an entity participating in an auction that has retained the services of an advisor regarding bidding strategy is required to ensure that the advisor will not transfer information to other auction participants, nor will an advisor coordinate bidding strategies among participants. ARB proposes to amend section 95914(c)(3)(C) to include the requirement that any entity that has retained the services of an advisor regarding bidding strategy must inform ARB of the advisor's retention, "and identify the advisor, the advisor's employer, the advisor's contact information, and provide an attestation by the Primary Account Representative of the entity retaining the advisor of the completeness of the disclosure."

While the purpose and intent of this section is clear, SGEN suggests that ARB revise the proposed amendment to accept this notification not only from the Primary Account Representative, but from the Alternate Account Representative, or Director or Officer who is responsible for the conduct of the entity. SGEN therefore suggests the following amendments to this section:

> Any entity that has retained the services of an advisor must inform ARB of the advisor's retention and identify the advisor, the advisor's employer, the advisor's contact information, and provide an attestation by the Primary Account Representative, the Alternate Account Representative, or Director or Officer who is responsible for the conduct of the entity.

Overbroad Disclosure of Employees and Contractors

ARB has proposed new requirements for entities to provide information on employees or contractors involved with compliance with the Cap-and-Trade Regulations at sections 95830(c)(1)(I) and 95923(a)-(c). While it is understandable that ARB wants to be aware of those actively engaged in the Cap-and-Trade Program, the language, as proposed, will require entities to provide information on any individual with even a minor, non-substantive administrative role in the Program.

The language of section 95830(c)(1)(I), which refers to "all persons employed by the entity that will either have access to any information regarding compliance instruments, transactions or holdings; or be involved in decisions regarding transactions or holding of compliance instruments, or both" is overly broad. This proposed addition to the Regulations would impose a significant administrative burden on large companies where various departments and numerous employees are involved in the administrative aspects of the Program. Examples of such employees would include accounts payable employees that process requests for collateral used to post a bid guarantee, or accountants that report the value of the compliance instruments an entity holds in its CITSS account. These administrative duties are performed by employees not involved in any substantive decisions related to the Program. Indeed, sometimes these types of jobs are performed by contract or temporary employees. We assume that ARB is most interested in the identity of those individuals developing an entity's overall compliance instrument procurement strategy, and/or those participating in the quarterly auctions.

Thus, SGEN suggests the following revision to the proposed amendment to section 95830(c)(1)(I):

> Names and contact information for all persons employed by the entity that ~~will either have access to any information regarding compliance instruments, transactions, or holdings; or be~~ are actively involved in, or are privy to, the decisions regarding compliance instrument procurement, the transfer of compliance instruments, or the entity's holdings of compliance instruments. An entity already registered in the tracking system must provide the notarized letter from their employer no later than January 31, 2015. Failure to provide such a letter by the deadline will result in suspension, modification, or revocation of his/her tracking system account.

The proposed amendment to the Regulations to include section 95923(a)-(c) raises several concerns. The language in section 95923(a)(1)(B) of this added section appears to be aimed at gathering information on individuals that provide services outside of those detailed in section 95814(c)(3). While ARB has a justifiable interest in 'contractors' who provide entities with market intelligence used to develop bidding strategy, it is not reasonable that ARB should require an entity to disclose its relationship to a 'contractor' that merely advises an entity on establishing an internal compliance program that encompasses the Cap-and-Trade Regulations outside of the requirements specific to bid strategy for participation in the quarterly auction.

Further, the language of 95923(a)(1)(A) is duplicative of the notification an entity is required to provide under the Mandatory Reporting Regulations at section 95131.

Should ARB retain the language added to the Regulations at section 95923(a)-(c), SGEN suggests the following amendment to section 95923(a):

(1) A "Cap and Trade Contractor" is a contractor employed by an entity registered in the cap and trade program to work on cap and trade compliance if the contractor:
~~(A) Verifies the entity emissions as part of ARB's Mandatory Reporting Regulation;~~
(B) Advises ~~or consults with~~ the entity regarding bidding strategy, carbon-related transactions, or assessment of the entity's holdings of compliance instruments ~~with the Cap and Trade Program, and receives information from another Cap and Trade Participant~~.'

"Known" Changes to an Auction Application

ARB has included within section 95912(d), at subsection 5, that:

> An entity with any changes to the auction application information listed in subsection 95912(d), 30 days prior to an auction, or an entity whose auction application information will change, 15 days after an auction, will be denied participation in the auction.

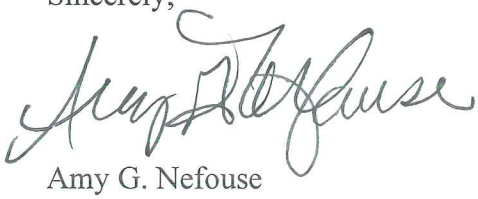
While a Program participant can ensure that it has informed ARB of any and all amendments to its direct and indirect corporate associations prior to the auction, it is often the case that the existence of a corporate association, albeit direct or indirect, is well beyond the control, and knowledge, of the entity that is registered to participate in an auction. Given the complexities that exist in large corporations, program participants very well may not be aware if, within the panoply of affiliates, an entity is *created* within 15 days after an auction, or if the creation or dissolution of an entity is even contemplated.

Should the ARB retain the proposed language at 95912(d)(5), SGEN suggests that ARB revise that language as follows:

> An entity that is aware of changes to the auction application information listed in subsection 95912(d)(4) is required to inform ARB of all known changes. If an entity fails to notify ARB of any changes occurring 30 days prior to an auction, or if an entity fails to inform ARB of changes which the entity has been made aware of which will likely occur within 15 days after an auction, the entity will be denied participation in the auction.

Thank you for this opportunity to comment on the proposed amendments.

Sincerely,



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