

**Comments of the Western Power Trading Forum on Informal Proposed Changes to the Cap
and Trade Regulation**
February 14, 2014

Clare Breidenich

WPTF GHG Committee Director

Email: cbreidenich@aciem.us

The Western Power Trading Forum¹ (WPTF) appreciates the opportunity to provide input to the California Air Resources Board (CARB) on the Informal Proposed Amendments to the California Cap and Trade Regulation.

WPTF substantive comments on the following issues in the order they appear in the regulation:

- Information requirements for employees;
- The expanded scope of “Corporate Associations”;
- Resubmission of Know Your Customer information;
- Procedures for retirement of compliance instruments;
- The Renewable Portfolio Standard (RPS) Adjustment;
- Resource-shuffling;
- Limited Exemption from holding limits;
- Information required for compliance instrument transfers; and
- Information requirements for contractors.

Information Requirements for Employees

In our October comments (<http://www.arb.ca.gov/lists/com-attach/32-capandtrade13-W2pQZld7VjQHNwcq.pdf>) submitted on CARB’s 45 day proposed changes, WPTF raised concerns about proposed new requirements for entities to provide information on employees or contractors involved with compliance with the cap and trade regulation in sections 95830(c)(1)(i). We greatly appreciate staff modification of this language in the new proposed draft, but are concerned that the requirement to disclose employees who review transaction agreements is still too broad. As drafted, this section would require entities registered in CITSS to disclose employees who perform legal or administrative contracts-management functions to ensure that agreements are commercially consistent in terms or conditions. We therefore recommend that staff modify section 95830(c)(1)(i) to read:

(l) Names and contact information for all persons employed by the entity with knowledge of the entity’s market position that are authorized have clearance from by the entity to initiate or approve 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, or are otherwise involved in decision-making regarding compliance instrument procurement, the transfer of compliance instruments, or the entity’s holdings of compliance instruments.

¹ WPTF is a diverse organization comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West. WPTF has over 60 members participating in power markets within California, western states, as well as other markets across the United States.

WPTF supports the staff proposal to increase the timeframe for updating registration information for individuals from 10 days to 30 days.

Revisions to provisions for Corporate Associations

In October, we commented on our opposition to CARB's expansion of corporate association provisions to include affiliated entities "regardless of whether the second entity is subject to the requirements of this article". We continue to oppose this expansion as unnecessary and overly burdensome.

Additionally, we are concerned by staff's proposed new text in this version that would identify multiple covered entities whose compliance strategy is managed by a single account manager, and treat these entities as having a direct corporate association. This additional language is very problematic in that it could severely limit and unreasonably complicate the management and advisory services that companies have traditionally provided to participants in existing markets. WPTF therefore recommends that proposed section 95833(f)(7) be removed.

Verification of Know-Your-Customer-Requirements

WPTF raised concern in our October comments regarding the proposed addition to section 95834(c)(2) requiring individual's registered in the CITSS to re-submit registration information every two years to enable re-verification of this documentation. We appreciate that staff have modified this language so that re-submission of documentation is no longer automatically required of all CITTS registered individuals, but only required upon request of the Executive Officer. While WPTF considers this a significant improvement, we seek clarity as to when resubmission of documentation would be required. We request staff to further modify the regulation to limit and explicitly state the conditions under which an individual would be required to re-submit documentation for re-verification.

RPS Adjustment

WPTF reiterates our concerns regarding requirements for claiming the RPS adjustment in Section 95852(b)(4). As we have stated previously, these provisions should be modified to enable renewable energy credits (REC) retirement to occur in accordance with RPS program rules, and to allow the importer of firming and shaping power (who will not necessarily have procured the associated RECs) to use the RPS adjustment.

Resource shuffling

WPTF remains concerned that the revisions proposed in the 45- day version to section 95852(b)(2) do not yet provide sufficient clarity around rules for resource shuffling. We refer staff to our October submission for detailed discussion of these concerns, but would specifically highlight the need for clarification on what constitutes a linked transaction for short term trading, use of historic procurement patterns, and around market transactions that are not tied to legacy coal.

Compliance instrument retirement

CARB staff proposes to reinstate annual retirement of compliance instruments in section 95856(h)(1). WPTF's preference is to retain the approach taken in the 45-day text, which would have eliminated the annual retirement of compliance instruments and replaced it with provisions for CARB to evaluate annually whether each covered entity has sufficient instruments in its compliance account. The fact that this approach would obviate the need for an annual offset cap is the fundamental reason that we prefer to eliminate annual retirement.

If staff decides to retain annual retirement, then WPTF would oppose imposition of an annual 8% offset limit. Instead, we recommend that CARB implement a flag in CITSS that would notify a covered entity if it designates a quantity of offsets in excess of 8% of covered emissions to date for movement between its compliance account and the retirement account. At the end of the compliance period, any offsets that have been moved to the Retirement account in excess of the 8% limit for that period should be applied toward the entity's compliance in the subsequent compliance period. In no circumstances, should annual retirement of offsets in excess of 8% lead to an entity's loss of those offsets after the triennial retirement.

Lastly, we reiterate our request that CARB eliminate the mandated order of retirement instruments and instead build functionality into CITSS that would enable individual account holders to designate compliance instruments, by type and vintage, for retirement. If that functionality cannot be built into CITSS, WPTF suggests entities be given an opportunity to provide written instructions to the Executive Officer, a minimum of five (5) days prior to the annual and triennial surrender deadlines. If an entity fails to provide such instructions, the default retirement order would apply. WPTF believes that the Quantitative Usage Limit should apply in both instances, if an entity provides an order of retirement, or if the default retirement order is utilized. This will prevent the "over retirement" of instruments that may not contribute toward satisfying a compliance obligation.

Attestation of ongoing investigations

WPTF opposed modifications introduced in the 45-day version at section 95912(d)(4)(E) that would have required auction applicants to submit an attestation identifying any previous or ongoing pending allocation with respect to any alleged violation of a rule, regulation or law associated with any commodity. Staff's proposes change to limit this disclosure requirement to investigations that have occurred within the last ten years is not sufficient to alleviate our concerns. ARB should be cognizant of the business reality that many large corporate structures involve dozens (if not hundreds or thousands) of affiliates and subsidiaries, which operate largely independently from one another. Hence, one entity may not have readily available access to information regarding the others with whom the only relationship they share is that of having the same ultimate corporate parent.

WPTF therefore recommends that section 95912(d)(4)(E) be modified as follows:

~~"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, or financial market for that the entity, participating in the auction, and all other entities with whom the entity has a corporate association, direct corporate association, or indirect corporate association pursuant to section 95833”

Changes to an Auction Application

The September version introduced language in section 95912(d)(5) that would put an auction applicant at risk of being denied participation in an auction if, within 30 days of an auction or within 15 days after an auction, its application information would change. Despite the minor changes in the staff proposal, this language remains problematic, because of the inclusive reference to 95912(d)(4)(b) (The existence of any direct or indirect corporate associations pursuant to sections 95833 and 95914(d)”). Because of CARB’s broad definition of corporate associations, a entity is not likely to be immediately aware of ‘new ‘ corporate association with another other entity that is not a direct association and is not a participant in the cap and trade program. It would be unfair to deny entity’s participation in an auction that may be critical for the entity’s ability to comply with the program, simply because of the timing in changes of corporate associations over which the entity has no control. We therefore request CARB to change this provision to create a duty to *notify* CARB of any known changes as a condition of auction participation:

An entity that is aware of any changes to the auction application information listed in subsection 95912(d)(4), which are anticipated to occur within 30 days prior to an auction, or within 15 days after an auction, must report those changes within 10 days of the effective date of the change, or the entity may be denied participation in the auction. ~~or an entity whose auction application information or account application information listed in section 95830 will change within 15 days after an auction, may be denied participation in the auction~~

Information Required for Compliance Instrument Transfer Requests

In our October submission, WPTF provided detailed comments regarding our concerns regarding the proposed expanded information requirement for compliance instrument transfers in the CITSS in section 95921(b). We continue to believe that these new information requirements are burdensome and unnecessary.

WPTF’s strong preference is to retain the transaction information requirements that are currently in effect, rather than any of the proposed amendments introduced this year. If CARB retains the expanded information requirements, then it is incumbent upon staff to provide a clear explanation of how information collected will be utilized, why the collection of this information is necessary and how confidentiality will be maintained.

General Prohibitions on Trading

Staff has further modified an exemption in section 95921(f) to the general prohibition against holding allowances on behalf of another entity. The language now states “Provisions specifying a date to deliver a specified quantity of compliance instruments, or specifying a procedure to determine a quantity of compliance instruments for delivery and/or a delivery date, do not violate the prohibition.”

While we appreciate staff efforts to further clarify this provision, we are concerned that it is still overly broad and would restrict legitimate transactions that support entity compliance. Holding a financial interest in allowances is not coincident with the transfer of title to compliance instruments. Rather, title transfer is dictated by the terms of the contract. Until transfer of title, the compliance instruments belong to the seller – thus there can be no holding on behalf of the buyer.

WPTF therefore recommends striking the following modifications to section 95921(f)(1):

- (1) An entity cannot acquire allowances and hold them in its own holding account on behalf of another entity. Including the following restrictions:
 - (A) An entity may not hold allowances in which a second entity has any ownership or financial interest.
 - (B) An entity may not hold allowances pursuant to an agreement that gives a second entity control over the holding or planned disposition of allowances while the instruments reside in the first entity’s accounts, or control over the acquisition of allowances by the first entity. Provisions specifying a date to deliver a specified quantity of compliance instruments, or specifying a procedure to determine a quantity of compliance instruments for delivery and/or a delivery date, do not violate the prohibition. An entity may acquire and/or hold allowances subject to a purchase and sale agreement for future delivery to a purchaser, provided that the purchase and sale agreement does not allow the purchaser to gain an ownership interest in allowances until they are transferred to the purchaser’s account.
 - (C) An entity may purchase and hold compliance instruments for later transfer to members of a direct corporate association.

Disclosure of Cap and Trade Consultants and Advisors

Staff have narrowed a provision added to section 95923(a) in the 45 day version that would have required entities to disclose consultants who provide information or advice related to the cap and trade program. WPTF understands the revised language to mean that this disclosure requirement

is limited to consultants who provide (or have provided) offset verification or mandatory reporting verification services under the cap and trade program to the entity.

We consider the revised language to be a significant improvement over the previous version. However, the term ‘type of services’ is problematic, as it could potentially include any individual who provide services for the entity related to GHG accounting and reporting, but does not actually provide verification services for the entity. Examples of such services are

- Designing, developing, implementing, conducting an internal audit, consulting, or maintaining an internal GHG emissions reduction program;
- Preparing or producing greenhouse gas-related manuals, handbooks, or procedures specifically for the reporting entity; and
- Appraisal services of carbon or greenhouse gas liabilities or assets;

WPTF therefore requests that CARB strike the phrase ‘types of’ in section 95923(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 specifically for the entity registered in the Cap-and-Trade Program as a staff member of a Verification Body, or any related entity.