BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON PROPOSED REVISIONS TO THE REGULATION FOR THE MANDATORY REPORTING OF GREENHOUSE GAS EMISSIONS

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I. INTRODUCTION AND SUMMARY

The Southern California Public Power Authority ("SCPPA") [1] respectfully submits this comment on the Proposed Revisions to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions ("Revised MRR") released by the staff of the California Air Resources Board ("ARB") on October 28, 2010.

SCPPA provided separate comments on the proposed regulation, *California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms* ("Cap and Trade Regulation"), on December 1, 2010.

SCPPA's key recommendations include the following:

- Multiple penalties should not be imposed for the same error. In particular, penalties should not be imposed for each metric ton of emissions emitted but not reported, given the per-day penalties for late or inaccurate reports and the per-day, per-ton penalties in the Cap and Trade Regulation for excess emissions.
- The information reported by electric power entities under section 95111 that leads to compliance obligations under the Cap and Trade Regulation should be distinguished from information that does not. Emissions or other information reported for informational purposes but without a compliance obligation should not be subject to verification if the Cap and Trade Regulation will impose "a compliance obligation for

[1] SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, the Imperial Irrigation District, Pasadena, and Riverside.

every metric ton of CO2e emissions for which a positive verification statement or qualified positive verification statement is issued…."

- The January 1, 2010, deadline for contracts for biomass-derived fuels should be redrafted or removed altogether. This provision is overly broad and will negatively affect the market for biomass-derived fuels.

In addition, SCPPA recommends various changes to improve and clarify the regulation and to make the regulation easier to understand for compliance and enforcement purposes.

The comments below follow the order in which the issues arise in the Revised MRR.

II. SUBARTICLE 1: GENERAL REQUIREMENTS FOR GREENHOUSE GAS REPORTING

A. Define "Electric Power Entities."

Section 95101(d) (p. 4) provides a list of entities under the heading, "Electric Power Entities." This term is important, and it is used in several places in the Revised MRR. However, it is not included in section 95102, Definitions, in the Revised MRR. A definition of "electric power entities" should be included in section 95102 to make it easy to find the meaning of the term. A new section 95102(a)(99) should be inserted as follows:

"Electric power entity" means an entity listed in section 95101(d).

B. "Electricity wheeled through California" should include simultaneous exchanges.

Section 95102(a)(104) (p. 18)of the Revised MRR defines "electricity wheeled through California." This definition should be clarified to include transactions where electricity is imported into California and simultaneously exchanged with electricity that is exported from California. Such simultaneous exchanges are functionally equivalent to wheeling electricity through California, and they do not result in an increase in the amount of electricity consumed in

California. Thus, they should not be subject to a compliance obligation under the Cap and Trade Regulation.

The similarity between simultaneous exchanges and wheeled power was recognized in the AB 32 Cost of Implementation Fee Regulation ("Fee Regulation"), which defines "imported electricity" to exclude both simultaneous exchanges and wheeled power. Fee Regulation, Section 95202(a)(56).

To be consistent with the Fee Regulation, section 95102(a)(104) of the Revised MRR should be amended as follows:

> "Electricity wheeled through California" means electricity that is generated outside the state of California and delivered into California with final point of delivery outside California. It includes power transactions in which imported power is simultaneously exchanged for exported power.

C. The definition of "imported electricity" should be revised.

Although "electricity wheeled through California" is defined in section 95102(a)(104), the term is defined again in the definition of "imported electricity" in section 95102(a)(170). Instead of re-defining a term that is already defined, section 95102(a)(170)should refer to the definition of "electricity wheeled through California" in section 95102(a)(104). This would avoid the confusion that might arise if there are two slightly different definitions in different places in the regulation.

Section 95102(a)(170) of the Revised MRR should be amended as follows:

> "Imported electricity" … Imported electricity does not include electricity wheeled through California, as defined in section 95102(a)(104)~~which is electricity that is delivered into California with final point of delivery outside California~~.

D. The cross-reference in the definition of "Other Biomass-Derived Fuel" should be corrected.

The definition of "Other Biomass-Derived Fuel" in section 95102(a)(231) contains a cross-reference to section 95852(g) of the Cap and Trade Regulation. However, that section of the Cap and Trade Regulation refers to suppliers of carbon dioxide. It appears that the correct reference should be to section 95852.1 of the Cap and Trade Regulation, Compliance Obligations for Biomass-Derived Fuels.

E. "Unspecified sources of electricity" should only refer to imported power.

Section 95102(a)(328) defines "Unspecified sources of electricity." It should be clarified that this term refers only to imported power for purposes of the reporting regulation.

> "Unspecified source of electricity" or "unspecified source" means electricity generation originating outside California that cannot be matched to a specific facility or unit that generates electricity or matched to an asset-controlling supplier recognized by the ARB.
> …

F. Records should not be required to be retained for ten years.

Section 95105(a) (p. 49) requires covered entities to retain records for ten years. This period is unreasonably long. By contrast, the U.S. Environmental Protection Agency ("EPA") Mandatory Reporting of Greenhouse Gases Rule ("EPA Rule"), 40 CFR Part 98, only requires records to be kept for three years. EPA Rule, section 98.3(g). According to the Initial Statement of Reasons for the Revised MRR ("ISOR"), the ARB is aiming to harmonize the MRR with as many of the provisions of the EPA Rule as possible. In the interest of harmonization, the MRR record retention period should be similar to the period that is required by the EPA as much as possible.

SCPPA recommends that records be retained until the end of the compliance period following the compliance period for which the record is relevant. The result would be that

records would be retained for three to six years, depending upon the point in a compliance period at which a record was developed. For example, if a record were developed during the first year of a three-year compliance period, the record would need to be retained by the relevant entity for the duration of that compliance period plus another three years until the end of the subsequent compliance period, up to six years in total. Alternatively, if a record were developed at the end of a three-year compliance period, the record would have to be retained until the end of the following compliance period, approximately three years in total, similar to the EPA's requirement.

Retaining records for three-years following the end of the compliance period would be consistent with existing cap and trade programs such as Acid Rain, 40 CFR section 75.57(a), and RECLAIM, Rule 2012(i).

This rule should apply uniformly to all reporting entities, not just those that are covered under the Cap and Trade Regulation, insofar as the circumstances of non-covered entities might change so that they become covered entities.

Section 95105(a) should be revised as follows:

> *Duration*. Reporting entities ~~with a compliance obligation under the Cap-and-Trade Regulation in any year of the current three-year compliance period~~ must maintain all records specified in 40 CFR §98.3(g), and records associated with revisions to emissions data reports as provided under 40 CFR §98.3(h), until the end of the compliance period following the compliance period in which the record was generated.~~for a period of ten years from the date of emissions data report certification~~. The retained documents, including GHG emissions data and input data, must be sufficient to allow for verification of each emissions data report. ~~Reporting entities that do not have a compliance obligation under the Cap-and-Trade Regulation during any year of the current three-year compliance period must maintain such records for a period of five years from the date of certification.~~

G. "Level of reproducibility of a test or measurement method" is unclear.

Section 95107(a) (p. 50) on "enforcement" refers to information that is inaccurate "within the level of reproducibility of a test or measurement method." It is unclear what this phrase will mean in practice, and the ISOR provides no explanation. A reasonable margin of error must be allowed insofar as the reproduction of a test will never give exactly the same results as the first test. It would be preferable to use a defined term such as "material misstatement" as defined in section 95102(a)(194) rather than "within the level of reproducibility of a test or measurement method" for determining whether a submitted report is inaccurate.

H. Minor errors in a report that are identified and corrected during verification should not be considered violations.

Section 95107(a) would impose daily penalties for inaccurate or incomplete reports. It is inevitable, however, particularly in the early years of reporting, that an entity's reports will contain various errors that are identified and corrected during the verification process. Egregious or repeated errors and deliberate misstatements should be penalized, but minor errors that are identified during verification such as accidental calculation mistakes, errors arising from the late settlement of electricity transactions, and errors relating to the interpretation of unclear provisions should not be subject to penalties. Such errors would not lead to an under-surrender of compliance instruments under the Cap and Trade Regulation because compliance obligations are calculated based on verified emissions rather than reported emissions. Errors or non-conformances in a report that do not lead to material misstatements as defined in section 95102(a)(194) and that are corrected as provided for in section 95131(b)(10) should not be considered violations.

Furthermore, there should be no penalties for reports that are submitted late due to technical issues with the reporting tool or for missing data where the missing data substitution procedures are followed.

I. Daily penalties for inaccuracy should only be imposed after the inaccuracy is identified.

If a report is found to be inaccurate, daily penalties under section 95107(a) should only be imposed for the days between the date when the inaccuracy is identified and the date when the corrected report is re-submitted. It would not be appropriate to impose daily penalties starting from the date the report was first submitted if the reporting entity submitted its report on time in good faith believing it to be correct and complete.

J. Overlapping penalty provisions are excessive.

Section 95107(c) (p. 50) would impose a separate violation for each metric ton of CO2e emissions emitted but not reported on top of the separate daily violations for each day a report is late, incomplete, or inaccurate under section 95107(a). These provisions should be reconsidered, particularly in light of the per-day, per-ton penalties that may be applied under the Cap and Trade Regulation. Without modification, these overlapping penalty provisions would constitute an excessive potential liability burden. Investors look at total potential liabilities when determining whether to invest in a project or purchase bonds. Inordinately high and uncertain potential penalties may have an adverse effect on the ability of entities subject to the AB32 regulations to raise capital for emission reduction projects.

It is inappropriate to impose per-ton penalties for unreported emissions at the same time as imposing per-day penalties for an inaccurate report under the Revised MRR and while imposing per-ton, per-day penalties for excess emissions under the Cap and Trade Regulation. This would constitute multiple penalties for a single reporting error.

It would be appropriate to impose *per-day* penalties under the Revised MRR to ensure that reports and verification statements are provided promptly and to impose *per-ton* penalties under the Cap and Trade Regulation to ensure that sufficient compliance instruments are surrendered to cover emissions.

The ARB recognized the issues with imposing per-day penalties in addition to penalties for each missing instrument for the Renewable Electricity Regulation and is revising the enforcement language to rectify the excessive penalties. The same should be done here.

Section 95107(c) should be deleted:

> ~~Each metric ton of CO2e emitted but not reported as required by this article is a separate violation.~~

III. SUBARTICLE 2: REPORTING REQUIREMENTS AND CALCULATION METHODS FOR SPECIFIC TYPES OF FACILITIES, SUPPLIERS, AND ENTITIES

A. Information reported by electric power entities that carries a compliance obligation under the Cap and Trade Regulation should be clearly distinguished from information that does not.

Section 95111 (p. 53) sets out many different reporting requirements for electric power entities. Not all of the reported data is intended to carry a compliance obligation under the Cap and Trade Regulation. Some information may be collected for other purposes. For example, information required under sections 95111(a)(7), (c)(1), (c)(5) and (g)(5) may not be needed for Cap and Trade Regulation compliance purposes. However, it is not clear which categories of information reported under the Revised MRR will give rise to compliance obligations under the Cap and Trade Regulation. The Revised MRR does not specify which categories of reported information will give rise to compliance obligations, and the compliance obligation calculation provisions in the Cap and Trade Regulation are unclear.

It is crucially important to clearly distinguish which information reported by electric power entities will carry a compliance obligation under the Cap and Trade Regulation and which information will not. A simple method of accomplishing this would be to include a new section 95111(h) listing each subsection of section 95111 that does not give rise to a compliance obligation under the Cap and Trade Regulation.

B. Reporting requirements that do not give rise to compliance obligations should be kept to a minimum and should not be subject to verification.

Serious consideration should be given to deleting the reporting requirements in section 95111 that do not give rise to compliance obligations under the Cap and Trade Regulation ("non-compliance information"), considering the extensive reporting burden that is imposed on electric sector entities under this regulation and other AB 32 regulations such as the renewable energy and sulfur hexafluoride regulations.

If the ARB determines that it has a real need for the non-compliance information, and the information cannot be obtained from other sources, the non-compliance information should be clearly distinguished from compliance information and should not be subject to verification. Verification is necessary for information that forms the basis of a compliance obligation, but the same standard should not apply to non-compliance information. This distinction is necessary because the Cap and Trade Regulation often refers to compliance obligations being calculated on the basis of metric tons of emissions for which a verification statement is issued.

C. Electricity imports and exports under exchange agreements should be reported as linked transactions.

Section 95111(a)(8) requires energy exchanges involving the swap of electricity with an out-of-state counterparty to be reported as a separate import and export with nothing to indicate the import and export are related. Reporting energy exchanges in this manner will result in a double compliance burden because the California electric power entity will bear the emissions

liability (direct or indirect) for both the imported electricity as well as the power generated in-state and exported. To avoid this double liability, energy exchanges should instead be reported as linked transactions, and the liability of the California electric power entity should be limited to the emissions associated with the imported power that exceed the emissions associated with the exported power.

SCPPA members are involved in a variety of economic exchange arrangements with counterparties that are, in many instances, located outside of California. Under these exchange arrangements, the exchange counterparty delivers electricity to a SCPPA member when the counterparty's marginal cost of electricity generation is lower than the SCPPA member's marginal cost of generation. The SCPPA member returns electricity to the counterparty at another time when the SCPPA member's cost of generation is less than the counterparty's cost of generation.

An exchange arrangement permits each electric power entity to maximize the efficient use of generating resources by generating electricity non-coincidentally with demand in its service territory instead of generating coincidentally with demand. Even though the timing of generation is changed so that generation occurs at a time that is non-coincidental with demand, each electric power entity still produces only one kilowatt hour of electricity to meet one kilowatt hour of demand in a typical exchange situation.

The amount of electricity that is consumed by the SCPPA member's customers and the counterparty's customers and the associated emissions are no different compared to a situation where no energy exchange occurs. The benefit of the energy exchange is that it reduces the net cost of serving the customers. The result is a more efficient use of generation resources and a socially beneficial reduction in the overall cost of serving consumers' demand for electricity.

Section 95111(a)(8) in the Revised MRR would tend to discourage energy exchanges with out-of-state counterparties, as they would result in a compliance obligation on the California electric power entity for both the imported and exported power. If an electric power entity meets a kilowatt hour of its local demand using its own local generation, then the compliance obligation would be imposed only on the emissions associated with generating one kilowatt hour of electricity. However, if an electric power entity enters into an exchange arrangement with an out-of-state counterparty, the electric power entity would have *two* compliance obligations: one when electricity is imported into California and another when electricity is generated in California to return the energy to the out-of-state party.

The double compliance obligation would diminish the economic benefits of exchanging energy with out-of-state counterparties and unfairly penalize the California electric power entities and their ratepayers for realizing the efficiencies that can be gained from entering into exchange agreements.

Given the societal benefits of economic exchange arrangements, it would be good public policy for the ARB to facilitate rather than discourage such arrangements. To that end, the Revised MRR should be amended to provide that energy exchanges with an out-of-state counterparty may be reported as linked import and export transactions. The emissions from the imported power should carry a cap and trade compliance obligation only to the extent those emissions exceed the emissions from the power generated in-state and exported. This will avoid a double emissions liability under the Cap and Trade Regulation.

Section 95111(a)(8) should be revised as follows:

> *Exchange Agreements*. The electric power entity must report delivered electricity under power exchange agreements as linked transactions rather than as separate imports and exports. Emissions from the imported electricity and the exported electricity are to be

calculated as provided in section 95111(b). The emissions from electricity imported under an exchange agreement will form part of the reporting entity's compliance obligation under the Cap-and-Trade Regulation only to the extent to which those emissions exceed the emissions from the electricity exported under the exchange agreement.~~consistent with imported and exported electricity requirements of this section. Electricity delivered into the state of California under exchange agreements must be reported as imported electricity and electricity delivered out of California under exchange agreements must be reported as exported electricity.~~

D. Section 95111(c) on retail providers should be revised.

Section 95111(c) (p. 61) contains some provisions that should be revised. The ISOR states (p. 170) that the retail sales information required under section 95111(c), presumably subsections (1) and (2), does not need to be verified. This should be indicated in the Revised MRR itself, which currently requires all reported information to be verified.

It is unclear why subsections (3) and (4) are included in section 95111(c). The requirements in those sections duplicate information that is covered elsewhere in section 95111.

Section 95111(c)(5) requires retail providers to report electricity imported by other electric power entities to serve their load. A retail provider may not know the source of electricity provided by other electric power entities and may not even know whether that electricity was imported. Retail providers should not be required to report this information. The information should be reported by other entities (the importers). If retail providers are required to provide this information, it should not be subject to verification and should not give rise to a compliance obligation for the Retail Provider.

Section 95111(c) should be revised as follows:

GHG Emissions Data Report: Additional Requirements for Retail Providers, excluding Multi-jurisdictional Retail Providers. Retail providers must include the following information in the GHG emissions data report for each report year, in addition to the

information identified in section 95111(a)-(b). This information is not subject to verification.

(1) Retail providers that serve California load must report California retail sales.

(2) Retail providers may elect to report the subset of retail sales attributed to the electrification of shipping ports, truck stops, and motor vehicles if metering is available to separately track these sales from other retail sales.

~~(3) Retail providers that serve California load must claim as specified electricity all electricity imported from facilities or units in which they have an ownership share or written contract to procure electricity.~~

~~(4) For facilities or units that are fully or partially owned by a retail provider that have GHG emissions greater than the default emission factor for unspecified imported electricity based on the most recent GHG emissions data report submitted to ARB or U.S. EPA, the retail provider must include:~~

~~(A) The facility name, ARB facility identification number and generating unit identification number as applicable, percent ownership share at the facility level, ownership share at the generating unit level as applicable, both net and gross nameplate capacity, and both net and gross power generated in the report year;~~

~~(B) The quantity of electricity sold by the retail provider or on behalf of the retail provider from the facility or unit having a final point of delivery outside California, as measured at the busbar.~~

~~(5) Retail providers that report as electricity importers also must separately report electricity imported from specified and unspecified sources by other electric power entities to serve their load, designating the electricity importer.~~

E. Section 95111(g)(6) on low-emitting resources should be revised.

Section 95111(g)(6) (p. 65) requires entities to report emissions for zero-emitting hydro and nuclear resources unless they meet certain conditions. A compliance obligation may result under the Cap and Trade Regulation. The section 95111(g)(6) reporting requirement is inappropriate. Section 95111(g)(6) requires a deliberate falsification of emission reports by

reporting entities and an artificial increase in emissions liability that is disconnected from reality. Section 95111(g)(6) should be revised so that it does not require reports of non-existent emissions..

Additionally, section 95111(g)(6)(A) should be revised to include renegotiated contracts for smaller shares or quantities of generation, and section 95111(g)(6)(D) should be revised to clarify that it covers the redistribution of power from Hoover Dam under the Hoover Power Allocation Act that is currently being considered by Congress or any similar act.

Low GHG-Emitting Existing, Fully Committed Resources: Nuclear and Large Hydroelectric Resources. ~~An emission factor of zero MT of CO2e/MWh may only be used when~~Electricity importers must identify any electricity imported into California from a specified hydroelectric generating facility with nameplate capacity greater than 30 MW or a nuclear facility that was operational prior to January 1, 2010 that does not meet~~s~~ one of the following conditions:

(A) Electricity purchased with a written contract in effect prior to January 1, 2010 that remains in effect or has been renegotiated for the same facility for the same or a smaller share or quantity of net generation within one year of contract expiration;

(B) Electricity purchased that does not meet the first requirement that is associated with an increase in the facility's generating capacity due to increased efficiencies or other capacity increasing actions;

(C) Electricity purchased from hydroelectric generating facilities during a "spill or sell" situation where power not purchased is lost;

(D) Electricity purchased that does not meet the first requirement due to federal power redistribution policies for federally owned resources and not related to price bidding, including the Hoover Power Allocation Act or any similar or replacement act.

~~If none of the conditions in (A) through (D) above are met, apply the default emission factor for unspecified electricity pursuant to section 95111(b).~~

IV. SUBARTICLE 4: REQUIREMENTS FOR VERIFICATION OF GREENHOUSE GAS EMISSIONS DATA REPORTS; REQUIREMENTS APPLICABLE TO EMISSIONS DATA VERIFIERS

A. Full verification should not be required for both 2011 and 2012 data years.

Section 95130(a)(1) requires full verification in 2012 for the 2011 data year and again in 2013 for the 2012 data year (for entities covered under the Cap and Trade Regulation). Full verification is an expensive and time-consuming process – particularly the site visits – and should not be required for two consecutive years. Entities that have obtained full verification under the current provisions of the MRR within the last two years should not be required to obtain full verification again in 2011.

Section 95130(a)(1)(A) should be revised as follows:

> The emissions data report is for the 2011 data year, and the reporting entity has not obtained full verification of data reports for either the 2009 or 2010 data years;

B. Time periods in section 95131 should be adjusted.

Section 95131(c)(5)(B) (p. 112) provides a reporting entity only five days to comment on an assigned emissions level calculated by the Executive Officer. Given the crucial importance of the assigned emissions level under the Cap and Trade Regulation, this period is too short to allow for sufficient review and comment. Ten working days should be allowed, in line with other provisions in section 95131, for example, subsections (c)(4), (f), and (g).

Section 95131(e) (p. 112) allows a reporting entity only 90 days to have an emissions data report re-verified by a different verification body. This is not enough time for entities with strict procurement guidelines (such as publicly-owned utilities) to select a new verifier and to go through the contracting process, and it does not allow the verifier sufficient time to re-verify the report. A period of at least 120 days should be allowed plus a 30-day extension if necessary.

C. The biofuel verification provisions should be clarified.

Section 95131(i) (p. 112) sets out extensive new requirements for the verification of biomass-derived fuels. SCPPA understands the need to ensure that biofuels are properly verified and are not double counted. However, some requirements in section 95131(i) are overly broad or should be clarified.

This section is designed to address biofuel transactions between two or more parties, rather than biofuel that is produced and combusted by the same entity within California. The verification requirements for such entities should be clarified. For example, such entities may not have contracts to which section 95131(i)(2)(A) could be applied.

The reference to an accredited certifier of biomass-derived fuels should be clarified to avoid confusion with the California Energy Commission certification process. SCPPA agrees that a biofuel certification program of the kind outlined on page 37 of the ISOR would be useful, and SCPPA members would be happy to assist in the development of such a certification program.

The first paragraph of section 95131(i) should be revised as follows:

> (i) *Verifying Biomass-derived Fuels.* This section sets out ~~R~~requirements for providing verification services for biomass-derived fuels not subject to a compliance obligation as set forth in title 17, California Code of Regulations, Section 95852.2. In the absence of certification of the fuel in accordance with a certification system for biomass-derived fuels that has been approved by the Executive Officer~~by an accredited certifier of biomass-derived fuels~~, the verification body shall conduct the following requirements to verify a biomass-derived fuel that will not be subject to a compliance obligation:

D. Entities with title to biofuel rather than custody of it should be verified.

Section 95131(i) requires verification procedures for each entity in the chain of custody of the biofuel. While several pipeline entities may have custody of the biofuel, these entities have

no concern with the type of gas they transport and would not be willing to be subject to verification. It would be more appropriate to require information from the entities that hold title to the fuel, as these entities will be concerned with the type of fuel they own and may be more amenable to verification. References to "chain of custody" should be changed to "chain of title" throughout section 95131(i), for example in section 95131(i)(1):

> (1) The verification body shall provide information assessing its potential for conflict of interest as set forth in section 95133(b), (c) and (d) with the reporting entity and each biomass-derived fuel entity in the chain of ~~custody~~title for that fuel as part of the conflict of interest submittal requirements in 95133(e).

E. Biofuel suppliers should not be subject to multiple site visits each year.

There are a limited number of biofuel suppliers but many potential purchasers. Suppliers are very unlikely to agree to separate verifications on behalf of each purchaser. Each verification requires time and resources from the entity being verified, particularly in relation to the site visits. Allowing for each supplier to be visited once on behalf of all or several purchasers from that supplier (for each year in which full verification is required) would significantly reduce the burden on both suppliers and purchasers. The verification provisions as currently drafted do not appear to allow for this.

Section 95131(i)(2) should be revised as follows:

> (2) At least one accredited verifier in the verification team, including the transactions sector specialist, shall at a minimum make one site visit, during each year full verification is required, to each biomass-derived fuel entity in the chain of titl~~ecustody~~ for that fuel. One member of the verification team must visit the headquarters or other location of central data management when the biomass-derived fuel entity is a marketer, distributor, or supplier and does not physically store or produce the fuel on-site and conduct the site visit as required in section 95131(b)(4) for each biomass-derived fuel entity in the chain of titl~~ecustody~~ for that fuel. Where more than one purchaser obtains biomass-derived fuel from the same supplier, the purchasers may choose to nominate a verifier to make one site visit to the supplier on behalf

of a number of purchasers in each year in which full verification is required.

F. The biofuel contract eligibility requirements should be revised.

The requirements in section 95131(i)(2)(A) are overly broad, given that the apparent aim of this provision as set out in the ISOR at page 228 is to avoid contract shuffling. This issue should be addressed in a more targeted way to minimize adverse affects on the limited market for biofuels.

Changing from one California buyer of biogas to another California buyer should not preclude the biogas from being considered zero-emissions. Furthermore, the ARB should not preclude California entities buying biofuel that is available because a previous contract expires or is terminated for default, bankruptcy, or because the previous purchaser reduced its fuel demand, because this fuel is on the market for reasons other than the incentive under the California cap and trade program.

In the proposed changes to section 95131(i)(2)(A) set out below, biofuel from contracts that do not meet the criteria for "Replacement Contracts" would be zero-emissions, subject to the other verification requirements:

(A) The verification team members shall examine biomass-derived fuel contracts to determine that the contracts are not Replacement Contracts. Biomass-derived fuel purchased under Replacement Contracts will give rise to a compliance obligation under title 17, California Code of Regulations, section 95852.1. A "Replacement Contract" is a contract for the purchase of biomass-derived fuel entered into after January 1, 2010, as a result of the termination of a previous contract for biomass-derived fuel from the same facility, where both~~one~~ of the two following conditions have~~s~~ been met:

1. Under the previous contract the biomass-derived fuel was combusted outside California; and

2. The previous contract was terminated without fault by agreement between the parties, and not as a result of bankruptcy, changes in fuel production levels, reduced demand for fuel, or

expiration of the contract in accordance with the originally specified term of the contract.

~~1. That the contract for purchasing any biomass-derived fuel was in effect prior to January 1, 2010 and remains in effect or has been renegotiated for the same California operator within one year of contract expiration;~~

~~2. That the fuel being provided under a contract dated after January 1, 2010 is only for an amount of fuel that is associated with an increase in the biomass-based fuel producer's capacity. If a contract includes both fuel that does and does not meet this condition, then only the portion of the fuel that does meet this condition will be considered biomass-derived fuel.~~

G. Offsets from avoided methane emissions should not be precluded.

Section 95131(i)(2)(B) would not allow biofuel combustion to be considered zero-emissions if offsets have been created in respect of the use of that fuel. It should be clarified that only offsets for emissions avoided due to fossil fuel displacement, for example, biofuel being used in place of fossil fuel, are precluded. Offsets for avoided methane emissions from the biomass waste fall into a separate category of emission reductions, and should not preclude the biofuel being treated as zero-emissions when combusted.

The ARB Compliance Offset Protocol for Livestock Manure (Digester) Projects addresses only the avoided methane emissions from livestock manure, not avoided emissions from fossil fuel displacement. The protocol makes a clear distinction between the two types of emission reductions, as it specifies (on page 6 of the protocol) that:

> This protocol does not account for carbon dioxide emission reductions associated with displacing grid-delivered electricity or fossil fuel use.

The Staff Report for the protocol echoes this (on page 6 of the report):

> In addition, the use of biogas for producing power for the electricity grid or electricity for on-site use, thereby displacing fossil-fueled power plant GHG emissions, is considered a

complementary and separate GHG project activity and is not included within the offset protocol accounting framework.

As the emission reductions from displacing fossil fuel with biogas are not covered by the protocol, no offsets are awarded under the protocol for those emission reductions. Therefore the Revised MRR and the Cap and Trade Regulation should recognize those emission reductions by allowing biogas combustion to be treated as zero-CO2-emissions, regardless of whether offsets have been, or could be, issued in respect of the avoided methane emissions.

Biogas combustion should only be treated as having CO2 emissions if offsets have been issued in respect of the displaced fossil fuel as well as the avoided methane emissions.

Section 95131(i)(2)(B) should therefore be clarified as follows:

(B) The verification team shall determine that no entity in the chain of title~~custody~~ has applied for or received an offset credit through a voluntary or regulatory program for the combustion~~use~~ of biomass-derived fuel as a substitute for fossil fuel~~in offset credits or any other credit for greenhouse gas reductions in another voluntary or regulatory project~~. …

H. Recognize that actual biofuel molecules will not reach the reporting entity.

Sections 95131(i)(2)(E) and 95131(i)(4) appear to require that the reporting entity receives the actual molecules of biofuel that it has purchased. This is not practicable as the molecules of pipeline-quality biogas are indistinguishable from those of the natural gas with which the biogas becomes blended once it is injected into a natural gas pipeline.

In addition, delivery of gas may take different forms under different procurement arrangements. The key requirements are that the biofuel is produced and consumed, and the reporting entity should not be required to demonstrate that it is the entity that has consumed the biogas. Sections 95131(i)(2)(E) and 95131(i)(4) should be revised as follows:

(2)(E) The verification team must be able to track the exact amount of fuel indentified in contracts or invoices from the producer to the

reporting entity, and have reasonable assurance that the reporting entity is the only customer receiving that amount of fuel. …

(4) To verify that the amount of biomass-derived fuel reported by a reporting entity is free of a material misstatement, the verification team shall determine whether there is reasonable assurance that the reported amount of biomass derived fuel ~~purchased~~ was actually produced and consumed on-site~~delivered~~, or injected into a ~~transmission~~ pipeline for delivery to the point of consumption~~to the reporting entity~~, and any errors, omissions, or misreporting of the biofuels emissions do not result in a material misstatement. To assess conformance with this article, the verification team shall review the methods and factors used to calculate and report biomass-derived fuel amounts for adherence to the requirements of this article.

V. CONCLUSION

SCPPA urges the ARB to consider these comments in finalizing the revisions to the MRR. SCPPA appreciates the opportunity to submit these comments to the ARB.

Respectfully submitted,

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