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LEG 2011-0448

August 11, 2011

Clerk of the Board
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Re: Sacramento Municipal Utility District's Comments on Proposed 15-Day Modifications to Regulation for Mandatory Reporting of Greenhouse Gas Emissions

Clerk of the Board,

The Sacramento Municipal Utility District (SMUD) offers the following public comments to the ARB Staff's proposed modifications to the regulation of the mandatory reporting of greenhouse gas emissions (MRR). SMUD has been an active stakeholder in the ARB's public process leading up to and following adoption of the initial reporting regulation in December 2007. SMUD has freely offered its expertise for the Electric Sector with the intent to assist ARB in fulfilling the legislative mandate of Section 38530 of the Health and Safety Code. SMUD has been impressed with the willingness of ARB Staff to listen to our concerns and modify the reporting regulations to achieve these goals in a cost-effective way. We trust that Staff will continue its openness in this final round of public comments.

A. Summary

SMUD's primary outstanding concern with the proposed revisions relates to the incompatibility of the MRR and cap and trade program with one of the State's primary carbon reduction measures, the Renewables Portfolio Standard (RPS). The RPS is one of the largest and most expensive policies the State has enacted under the umbrella of AB 32. The emissions it is designed to displace are the same emissions that are covered under California's electricity sector in the cap and trade. Yet in two important ways, the cap and trade program limits the flexibility required under the RPS to maintain its affordability. Specifically, the ARB creates a new tracking system for renewable energy that does not make use of existing definitions of renewable energy credits (REC) in California, other Western states, WREGIS, and the voluntary market. The system

creates a double-counting issue where there was none before. Secondly, the ARB is choosing to limit the flexibility envisioned in the California Energy Commission (CEC) RPS eligibility guidelines and in the State legislative process by discouraging contracting with out of state baseload renewable energy sources. SMUD strongly recommends that the ARB make an effort to align its cap and trade and reporting programs with the State RPS program by recognizing the role of REC's in tracking purchases of renewable energy, and by recognizing the eligibility of those resources designated as eligible by the CEC in the MRR. Without this change, Californians will pay for emissions reductions that go unreported, which runs counter to the mandate in Section 38530.

SMUD is also concerned with a provision in the enforcement section, § 95107, that creates a separate violation for each metric ton of CO_2e emitted but not reported. SMUD submits that by adding an extra violation for each metric ton of GHGs emitted but not reported, CARB is creating an unnecessary penalty and is not "promot[ing] consistency among the programs established pursuant to this part and other programs…." (See Health & Safety Code § 38530[c][2].) By counting each ton unreported as a separate violation and subjecting each unreported ton to heightened penalties (e.g., for negligence), ARB is splintering a single reporting error into countless, additional violations beyond what is needed to incentivize compliance.

Another concern is the excessive burden of reporting all power deliveries by point of receipt, as prescribed in § 95111(a)(2). SMUD previously commented that this information was unnecessary because most points of receipt from a particular state will have the same emissions factor. Given that the point of receipt and balancing authority provide the ARB with no additional useful information for the purpose of determining an emissions or compliance obligation, it is unclear why the ARB is requesting it. Fewer unnecessary reporting requirements will reduce the reporting and verification burden on reporters.

SMUD has also included several suggestions below to clarify calculation of emissions from the combustion of biomass-derived fuels and reporting by operators of intrastate pipelines. We will explain our comments in greater detail next.

B. The reporting regulation should ensure that the purchaser of non-emitting renewable energy for delivery to California, which meets the CEC's eligibility guidelines, does not require the purchaser to also hold an allowance for that purchase.

The State RPS is one of the largest and highest cost complementary measures found in the AB 32 Scoping Plan. It is one of the most effective methods for reducing the State's long-term greenhouse gas emissions. Given its high cost, and the challenge with constructing new transmission lines, both the CEC and the California Public Utilities Commission (CPUC) have recognized the need for flexibility mechanisms, such as the

use of REC's and flexible delivery requirements to enable more new renewables to be constructed in the WECC. These flexibility mechanisms have been the source of substantial public process and debate to balance the policy needs of a diverse set of stakeholders. By choosing to ignore these policies in its regulation, the ARB risks the integrity of the program by unnecessarily increasing costs on Californians.

The ARB should recognize that just as a new out of state wind-farm indirectly benefits California's climate, so does a new out of state geothermal or biomass plant. Distinctions should not be made on the nuances of resource availability or load factor as to whether the renewable resource provides climate benefit – what is important is the energy actually generated, causing a displacement of energy and GHG emissions from a fossil resource. If the ARB recognizes the value of replacement power in maximizing the use of our transmission infrastructure and enabling construction of new renewable facilities, it should also recognize that value for both variable and baseload resources that lack firm transmission to California. Doing otherwise will increase costs, and limit the capacity of the RPS to contribute to meeting AB 32 goals.

Proposed Section 95111(g)(3) creates rules for importers of electricity to claim the emissions profile of a specified source. If the reporting entity does not meet the criteria, the source is assigned a default emission factor of an unspecified resource, whether the source is a non-emitting renewable or a gas-fired power plant. One way for Covered Entities to reduce their compliance burden is to procure competitively priced renewables from out of state. However, as ARB staff is well aware, renewable resources must be developed where the wind blows best or where geothermal energy flows close enough to the Earth's surface to be accessible at reasonable cost. This reality is acknowledged in part by the clause in Section 95111(g)(3) that permits an importer to claim as a specified source a *variable* renewable resource that requires replacement energy, as defined. However, both the definition of "replacement electricity" and this section limit claims to non-emitting renewables to variable resources, like wind and solar. By limiting claims this way ARB ignores the fact of transmission constraints, which are well-documented, especially for energy trying to make its way south from the Pacific Northwest during the summer months. The ARB should remove the qualifier of "variable" in both the definition of "replacement electricity" in Section 95102(a) and in 95111(g)(3).

Further, the ARB should recognize the role that REC's play in California's RPS, other states' RPS's, and in the voluntary market. All of these forums use definitions for REC's that contain all of the environmental attributes. And all of these forums, as well as federal law, prevent the seller of renewable energy, devoid of its REC, from making any claims about the nature of that energy. The decision to ignore these legal definitions threatens the REC market, a market that serves as a key piece of infrastructure for facilitating the addition of renewable energy to the region's electricity grid.

The MRR should be revised to require purchases of renewable energy to be accompanied by a WREGIS certificate or REC. It should also be revised to allow for replacement power for any CEC eligible renewable energy source, not to exceed the number of WREGIS certificates generated by the renewable resource in question that the seller holds. If these RECs are held by the reporting entity in their WREGIS accounts at the time of the mandatory reporting regulation closing period, then they could be traded at a later date amongst California entities for RPS compliance.

C. Defining each metric ton of CO_2e emitted but unreported as a separate violation is unnecessarily harsh and fails to promote consistency with similar reporting programs.

The proposed regulations contain very strict enforcement powers. Section 95107(a) creates a separate violation for each day a required report is late or contains information that is incomplete or inaccurate, and Section 95107(c) makes each failure of many requirements in the MRR a separate violation. These two paragraphs already subject a reporting entity to substantial fines for errors in a single emissions data report. For example, if an operator of an Electricity Generating Unit (EGU) fails to accurately calculate emissions from fossil fuel combustion, as required by 40 CFR Part 98, then that single error is a separate violation for each day a timely report goes uncorrected. (See Proposed §§ 95112 and 95107a]) However, if the report also contains incorrect data related to fuel consumption, carbon content or heat value collected and reported under Section 95112, no matter how inadvertent, each additional error is a separate violation and is multiplied for each day it goes uncorrected. It doesn't require much imagination to see how a single erroneous emissions data report can quickly balloon into multiple violations, particularly if the errors are undiscovered and go uncorrected for any length of time.

The fines for daily violations for each reporting error can also escalate if the error involves more culpable conduct. The MRR would allow the following potential daily civil penalties for reporting violations:[1]

- Up to $1,000 strict liability in any case;
- Up to $10,000 strict liability (unless proven that the violation was not negligent or intentional) for violating any regulation issued pursuant to Health and Safety Code sections 39000-42708;
- Up to $25,000 for a negligent reporting violation;[2]

[1] The MRR provides that penalties may be assessed pursuant to Health and Safety Code 38580. (See Proposed § 95107[f].) Health and Safety Code section 38580 provides:

> Any violation of any…regulation…or other measure adopted by the state board pursuant to [the California Global Warming Solutions Act ("AB 32")] may be enjoined pursuant to Section 41513, and the violation is subject to those penalties set forth in Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26.

- Up to $40,000 for a knowing reporting violation; and
- Up to $75,000 for a willful and intentional reporting violation.

(See Health & Safety Code §§ 42402, 42402.1, 42402.2, and 42402.3) Therefore, subparagraphs (a) and (c) of Section 95107, in combination with Section 42402 et seq. already enable the ARB to levy a broad range of fines for a broad range of erroneous conduct.

Some would argue that these "tools" in the toolbox are already excessive since daily penalties were originally intended to bring emitting sources back into compliance for public health reasons and thus are inappropriate to deter reporting behavior. While SMUD believes that this view has merit, we also recognize that daily penalties for late reporting are now the norm and have been upheld by the courts. Whatever our views on the appropriateness of daily penalties for reporting violations, we believe that the penalties listed above are more than enough to encourage honest and careful reporting such that the inclusion of a "per ton" penalty is simply excessive. Indeed, the addition of a per ton multiplier, as a practical matter, subjects reporting violations to much higher penalties than the 4:1 surrender obligation for a shortfall in compliance instruments.

In addition, AB 32 requires ARB, in developing its regulations, to "[r]eview existing and proposed international, federal, and state greenhouse gas emission reporting programs and make reasonable efforts to promote consistency among the programs established pursuant to this part and other programs…." (Health & Safety Code § 38530[c][2]) The addition of Section 95107(b)'s per ton multiplier is indeed inconsistent with other AB 32 reporting requirements, national GHG reporting requirements, and other air emission regulatory programs.

For example, the federal mandatory GHG reporting regulation provides in pertinent part:

> Any violation of any requirement of this part shall be a violation of the Clean Air Act, including section 114 (42 U.S.C. 7414). A violation includes but is not limited to failure to report GHG emissions, failure to collect data needed to calculate GHG emissions, failure to continuously monitor and test as required, failure to retain records needed to verify the amount of GHG emissions, and failure to calculate GHG emissions following the methodologies specified in this part. Each day of a violation constitutes a separate violation.

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[2] Section 38580 of the Health and Safety Code provides that "[a]ny violation of any…regulation…or other measure adopted by the state board pursuant to this division shall be deemed to result in an emission of an air contaminant for the purposes of the penalty provisions of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26." Therefore, the penalty provisions applicable to air emissions violations also apply to reporting violations.

(40 C.F.R. § 98.8 [emphasis added])

Similarly, the federal Clean Air Act imposes penalties for emissions exceedances on a per day (not per ton) basis. The Clean Air Act authorizes the Administrator to issue an administrative penalty of up to $25,000 per day for violations of any requirement or prohibition of a state implementation plan, or of any other requirement or prohibition of certain subchapters (which include the National Emission Standards for Hazardous Air Pollutants program). (See 42 U.S.C. § 7413[d].) The per day penalty has stood the test of time at the federal level and has been more than adequate to provide a deterrent to violations of federal standards.

Similar to the EPA's definition of a reporting violation, ARB's other reporting regulations find violations on a per day (not per ton) basis. ARB's AB 32 administrative fee regulation provides that "[e]ach day or portion thereof that any report required by this subarticle remains unsubmitted, is submitted late, or contains incomplete or inaccurate information, shall constitute a single, separate violation of this subarticle." (See 17 C.C.R. § 95206[c]) "Report" means any information required to be submitted by section 95204. (*Id.*) Since this information must typically include "the same information that is required to be submitted under the Mandatory Reporting Regulation," reports also include emissions data. (See 17 C.C.R. § 95204[g]) Yet there is no per ton multiplier for inaccurate data.

ARB's reporting requirement related to the regulation for reducing sulfur hexafluoride, provides in pertinent part, "[e]ach day or portion thereof that any report…remains uncommitted, is submitted late, or contains incomplete or inaccurate information, shall constitute a single, separate violation…." (17 C.C.R. § 95344[d]) Similarly, regulations requiring annual reporting of sulfur hexafluoride emissions from gas insulated switchgears (17 C.C.R. § 95358[b]), and methane emissions from municipal solid waste landfills (17 C.C.R. § 95472[c]), include this language. None of these reporting requirements create a separate violation for each pound or other unit of measure of sulfur hexaflouroide emissions.

Various other regulations implementing climate change measures also create a separate violation for each day a required report contains inaccurate information. None of these other reporting requirements impose a per ton or per quantity multiplier. Section 95107(b) stands alone in this regard.

ARB's regulations requiring the submittal of an energy efficiency and co-benefits assessment for large industrial facilities also provide that "[f]ailure to submit any report or to include in a report all information required by this article, or late submittal of the report, will constitute a separate violation of this article for each day that the report has not been submitted beyond the required submittal date…." (17 C.C.R. § 95611[b]) Again, no per quantity multiplier.

ARB's Title 17 regulations include various other provisions that define violations for its different air programs. ARB's alternative control plan requirements for consumer products and aerosol coating products[3] provide that "failure to report accurately is a single separate violation for each day after the applicable deadline until the requirement is satisfied." (17 C.C.R. § 94546[d]) Similarly, ARB's hairspray credit program, which addresses false reporting of information in applications to use hairspray emission reduction credits (HERCs), indicates that false reporting is "a single, separate violation…for each day" of the applicable period. (17 C.C.R. § 94573[c]) Again, there is no per unit or per quantity multiplier.

Even ARB's airborne toxic control measure for marine auxiliary diesel engines similarly indicates that "a violation of the recordkeeping and reporting[4] requirements in this section shall constitute a single, separate violation of this section for each day that the applicable recordkeeping or reporting requirement has not been met." (17 C.C.R. § 93118.3[h][3]) No per quantity multiplier here either.

As discussed above, AB 32 requires ARB to "make reasonable efforts to promote consistency" among the programs established under AB 32 and other international, federal, and state greenhouse gas emission reporting programs. By adding an unnecessary and duplicative violation for each metric ton of GHGs emitted but not reported, CARB has failed to satisfy this mandate. To make the MRR consistent with AB 32, and with CARB's numerous other violation provisions discussed above, subsection (b) of section 95107 should be stricken in its entirety.

D. It is an unnecessary and excessive burden to require reporting of power transactions from first point of receipt.

As SMUD has pointed out before, Section 95111(a)(2) continues to require reporting entities to report each import of delivered electricity according to the first point of receipt. Given that differing points of receipt from a particular state will have no difference in emissions factor, and given the interconnected nature of the electricity grid, this level of specificity does not provide useful information for estimating a Covered Entity's emissions. Nevertheless, sorting and classifying transactions by this criterion creates additional reporting burden and cost for SMUD. SMUD would prefer a requirement that reports deliveries by the state of origin of the purchase. This change would reduce the reporting and verification burden while still providing necessary information for the Cap and Trade program to function.

[3] This regulation requires VOC content and LVP (low vapor pressure VOC) content to be reported.
[4] The reports referenced in this section do not include emissions, but this language still helps demonstrate that CARB has taken a relatively uniform approach in imposing "per day" violations.

E. The definition of "replacement electricity" should be modified to remove the word "variable" throughout the definition in Section 95102(a), and to remove the artificial constraint of limiting replacement electricity to coming from the same balancing authority as the underlying renewable resource.

As SMUD points out in comments to the 15-day modifications of the cap-and-trade regulation, limiting the definition of "replacement electricity" to association with variable renewable resources is inconsistent with the RPS, which currently allows substitute energy to be associated with renewables whenever there is a need for such energy, regardless of the intermittent or non-intermittent nature of the renewable resource. Using "firming and shaping", or substitute electricity, to effectively bring renewable energy into California with efficient use the transmission network is often needed for intermittent resources such as wind power. However, there are circumstances where the underlying electricity from a baseload resource cannot always or easily be transmitted directly from the source, especially a remote source, into California, and substitute energy is used in those cases for compliance with the RPS. For example, SMUD currently has a contract for biomass power in the state of Washington, but cannot always get firm transmission through intervening balancing authorities to directly deliver the power to California. There is no reason why this kind of "firming" – using substitute energy to bring firm baseload power to the state, should not be considered to have zero or reduced GHG emissions for the associated energy delivered, as the action is functionally equivalent to the firming and shaping necessary for intermittent resources.

In addition, there is no need for the replacement electricity being used in these circumstances to be sourced from the same balancing authority of the underlying renewable resource. The RPS allows firming and shaping resources to be procured and associated with renewable procurement as necessary without consideration of the location of these resources. Entities are free to procure the least cost firming and shaping energy on the market, or to supply firming and shaping from their own resources. Since the default emission rate is the same for any unspecified electricity imported, and this rate is the calculated reduction in GHG emissions allowed for replacement electricity, it does not matter from an emissions perspective which balancing authority the replacement power comes from. In fact, a dynamic scheduling agreement approved by CAISO implies that any firming and shaping necessary for an intermittent renewable resource will occur within CAISO, not from the balancing authority in which the resource is located.

Accordingly, SMUD recommends the following change to the definition of "replacement energy":

> (237) "Replacement Electricity" means electricity delivered to a first point of delivery in California to replace electricity from ~~variable~~ renewable resources in order to meet hourly load requirements. The electricity generated by the ~~variable~~ renewable energy facility and purchased by the first deliverer is not required to meet direct delivery requirements. ~~The physical location of the variable renewable energy facility busbar and the first point of receipt on the NERC E-tag for the replacement electricity must be located in the same Balancing Authority Area.~~

F. To coincide with SMUD's comments to delete "variable" in the definition of "replacement energy", the concept should be deleted from the reference to replacement energy in Section 95111(g)(3).

Proposed Section 95111(g)(3) raises the same issue as described above for the definition of replacement energy. Section 95111(g)(3) sets forth the conditions to claim the emissions profile of a specified source. The reporting entity must meet the criteria in order to claim the low- or non-emissions profile of a renewable resource, or the source is assigned a default emission factor of an unspecified resource. As explained above, the underlying electricity from a baseload resource cannot always or easily be transmitted directly from the source, especially a remote resource, into California, which requires in those instances substitute energy for compliance with the RPS. In order to be consistent with the change SMUD proposes to the definition of replacement energy in Section 95102(a), the word "variable" should also be deleted to allow firming of non-variable renewable energy facilities with transmission constraints.

Accordingly, SMUD recommends to following change to the first sentence of Section 95111(g)(3):

> (3) *Delivery Tracking Conditions Required for Specified Electricity Imports.* Electricity importers may claim a specified source when the electricity delivery meets any of the criteria for direct delivery of electricity defined in section 95102(a), or the claim requires replacement electricity for ~~variable~~ renewable resources as defined in section 95102(a), and meets one of the following sets of conditions: …

G. ARB should clarify procedures for calculating CO_2 emissions from combustion of biomass-derived fuels at Subpart D electricity generation facilities reporting under 40 CFR Part 75.

Section 95103(j) provides that operators of facilities must separately identify, calculate, and report all direct emissions of CO_2 resulting from the combustion of biomass-derived fuels as specified in Section 95115. Although not stated explicitly in the rule language,

SMUD understands this to include electricity generation sources subject to Subpart D of 40 CFR Part 98. This understanding is supported by the fact that Section 95112, Electricity Generation and Cogeneration Units, only includes procedures for calculating CO_2 from fossil fuel combustion in 95112(c), while the former provisions in 95112(e) for biomass emissions for units reporting under 40 CFR Part 75 were removed from the rule language. As such, for electricity generation and cogeneration units, Section 95115 now provides the procedures for calculating emissions from combustion of biomass-derived fuels

SMUD reports emissions from electricity generation sources that combust biomass-derived gaseous fuels in the form of biomethane and biogas. These biomass-derived gaseous fuels are combusted by co-firing with or mixing with pipeline natural gas. As Subpart D facilities, they already monitor, record, and report total CO_2 emissions to USEPA under the Acid Rain Program and its implementing regulations, 40 CFR Part 75, which do not specify the Tier calculation methods of 40 CFR Part 98. SMUD believes that it is important for the MRR to acknowledge that the starting point for Subpart D facilities is to rely on the same total CO_2 emissions data as is reported to USEPA under 40 CFR Part 75. This is consistent with the provisions of 40 CFR §98.43(a). However, in lieu of 40 CFR §98.43(b), for ARB's purposes, the calculation of separate biogenic CO_2 emissions and the determination of anthropogenic CO_2 emissions by difference then follows using the Tier calculation methods of 40 CFR §98.33(a)(1) through (a)(4). Using the Tier calculation methods for biomethane and biogas results in more accurate biogenic CO_2 emission estimates than relying on 40 CFR §98.43(b), which specifies the non-Tier calculation methods in 40 CFR §98.33(e). In fact, USEPA responded to a SMUD question posed to their GHG Reporting Rule website that biogenic CO_2 emissions from combusting biomethane should not be separately reported under the federal mandatory reporting rule.

Subparagraph (e)(4) provides in pertinent part, "When calculating emissions from a biomethane and natural gas mixture using Tier 4, the reporting entity must calculate the biomethane emissions as described in subparagraph (3) of this section…", which employs the Tier 2 method from 40 CFR §98.33(a)(2). This is a problem for operators of Subpart D facilities that do not use a Tier 4 equivalent method to measure CO_2.[5] The problem is easily solved by revising this language to acknowledge other, approved CO_2 reporting methods in USEPA regulations under 40 CFR Part 75. SMUD recommends modifying subparagraph (e)(4) as follows:

> (4) When calculating emissions from a biomethane and natural gas mixture using Tier 4, or other method to calculate emissions under 40 CFR Part 75 for facilities subject to Subpart D of 40 CFR Part 98, the reporting entity must calculate the biomethane emissions as described in subparagraph (3) of this section, with the remainder of emissions being natural gas emissions.

Subparagraph (e)(5) provides in pertinent part, "When calculating emissions from a biogas and natural gas mixture using Tier 4, the reporting entity must calculate biogas

emissions using a Tier 3 method as described in 40 CFR §98.33(a)(3) …" This is a problem for operators of Subpart D facilities that do not use a Tier 4 equivalent method to measure CO_2.[5] The problem is easily solved by revising this language to acknowledge other, approved CO_2 reporting methods in the USEPA regulations under 40 CFR Part 75. Thus, SMUD recommends modifying subparagraph (e)(5) as follows:

> (5) When calculating emissions from co-firing or a biogas and natural gas mixture using Tier 4, or other method to calculate emissions under 40 CFR Part 75 for facilities subject to Subpart D of 40 CFR Part 98, the reporting entity must calculate biogas emissions using a Tier 3 method as described in 40 CFR §98.33(a)(3), with the remainder of emissions being natural gas emissions.

H. ARB should ensure that procedures for determining the compliance obligation of intrastate pipelines do not introduce errors and discrepancies due to differences in emission calculation methodologies and measured fuel consumption and fuel characteristic data between the intrastate pipeline operator and end user facilities.

SMUD owns and operates an intrastate gas pipeline, which supplies natural gas to four electricity generation/cogeneration facilities that will have compliance obligations, and one industrial facility that may not have a compliance obligation. SMUD expects to report emissions and related data to ARB in accordance with Section 95122 of the MRR as a supplier of natural gas. Section 95122 of the MRR and Subpart NN of 40 CFR Part 98 contain the data reporting requirements including measured fuel data and emission calculation methods required for intrastate pipelines. It is SMUD's understanding from the ARB's Initial Statement of Reasons for Rulemaking (October 28, 2010) that SMUD's compliance obligation as a fuel supplier will be determined by the difference between the intrastate pipeline emissions and the reported emissions from the end-user facilities that are subject to compliance obligations. In SMUD's case, the end-user facilities are reporting emissions and fuel data in accordance with Section 95112 of the MRR, and are using different emission calculation methods and different fuel gas metering systems relative to reporting for SMUD's intrastate pipeline. For example, SMUD measures the total natural gas fuel delivered to each end user facility in a pipeline meter station, whereas the end user facility measures fuel consumption using meters on each individual combustion source. Emission factors for fuel suppliers are determined using Section 95122 of the MRR and Subpart NN of 40 CFR Part 98, whereas emission factors and calculation methods for the end user facilities on SMUD's pipeline are based on Subpart D of 40 CFR Part 98 and 40 CFR Part 75. These differences in emission calculation methods and metered fuel data will introduce discrepancies into the determination of compliance obligations for a natural gas fuel supplier operating an intrastate pipeline, which could lead to substantial penalties for a reporting entity under Section 95107. SMUD recommends that ARB ensure that the emissions and related

[5] In lieu of continuous stack CO_2 concentration monitoring, CO_2 emissions from gaseous-fueled units may be based on measured fuel use and heat input in accordance with Appendix G of 40 CFR Part 75.

data for natural gas fuel suppliers and end user facilities are harmonized for the purposes of determining the compliance obligations of the fuel supplier.

I. Closing

SMUD has been pleased with the fine work of ARB staff on the MRR. We think that Staff has gotten it right in most respects. However, there are a few important problems in the MRR that should be corrected if the Cap and Trade Program is to work as planned and compatibly with the RPS program. Most importantly, the MRR needs to recognize the role of REC's in tracking purchases of renewable energy, or Californians will pay for emissions reductions that go unreported. The decision to ignore accepted legal definitions of RECs, which includes "all renewable and environmental attributes associated with the production of electricity from an eligible renewable energy resource"[6] threatens the REC market. Also, the addition of a violation for each ton of GHGs emitted but not reported is simply unnecessary and is inconsistent with AB 32's requirement to "make reasonable efforts to promote consistency" among the emission reporting programs. SMUD respectfully requests ARB to revisit these and the other reporting issues described above.

Respectfully submitted,

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cc: Mr. Doug Thompson
Corporate Files

[6] Pub. Util. Code §399.12(h)(2).