Pacific Gas and Electric Company

Mark C. Krausse
State Agency Relations
Senior Director

1415 L Street, Suite 280
Sacramento, CA 95814

(916) 386-5709
(916) 995-6827 Mobile
MCKd@pge.com

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ARB's Cap-and-Trade Website

Steven Cliff, Ph.D.
Chief - Climate Change Market Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95812-2828

Re: Pacific Gas and Electric Company's Comments on the Air Resources Board 45-day Amendments to the Cap-and Trade-Program

Dear Dr. Cliff:

Pacific Gas and Electric Company (PG&E) welcomes the opportunity to submit these comments on the Air Resources Board's (ARB) 45-day Amendments to the Cap-and-Trade Program.

INTRODUCTION

PG&E's comments on the staff proposals are detailed in Section II below. The following summarizes the key issues:

- PG&E Supports Staff's Cost Containment Proposal and Encourages Staff To Continue Exploring Additional Mechanisms To Satisfy The Board Resolution
- PG&E Supports Natural Gas Allowance Allocation to Natural Gas Suppliers on Behalf of their Customers, to Gradually Introduce the Cost of Carbon Into Natural Gas Bills
- The Potential for Allowance Withholding Should be Explicitly Stated and the Penalty Should Be Tailored to the Nature of the Violation
- ARB Should not Unreasonably Restrict an Entity's Auction Participation
- PG&E Supports The Adoption Of Additional Offset Protocols
- Generators That Have Already Bargained For Costs Associated With GHG Regulation Should Not Qualify for Transition Assistance
- Holding Limit Should Ensure Equitable Treatment of Regulated Entities
- ARB Regulations Should Not Conflict with CPUC Requirements
- Prohibitions on Trading Provisions Should Be Modified
- Investigation Disclosure Language Should be Modified
- Resource Shuffling "Safe Harbors" Should Include (1) Activities to Comply With Rules, Orders, or Decisions Issued By A Governmental Authority; (2) Activities Resulting from Participating in Energy Imbalance Markets

- ARB Should Not Include Burdensome Staff Reporting Requirements
- PG&E Recommends Several Changes to Sections That Address Registration with ARB
- PG&E Recommends Changes to the Calculation of Natural Gas Suppliers' Compliance Obligation to Ensure Emissions without a Compliance Obligation are Properly Excluded
- PG&E Recommends Changes to the Draft Amendments to Prevent Double-Counting the Compliance Obligation Associated with LNG Deliveries to Other Covered Entities
- PG&E Recommends Several Clarifications to Emissions without a Compliance Obligation
- Vented and Fugitive Emissions Should Not Be Classified as "Covered Emissions"
- Modifications To The CITSS User Terms and Agreement Are Needed

I. DISCUSSION

A. Sections 95870 and 95913. PG&E Supports Staff's Cost Containment Proposal and Encourages Staff To Continue Exploring Additional Mechanisms To Satisfy The Board Resolution

PG&E Recommendations

PG&E appreciates the Board's direction contained in Resolution 12-51 and commends staff for engaging stakeholders and experts in an open and transparent dialogue about how to satisfy the Board Resolution. PG&E would like to see the Board direct staff to continue efforts with stakeholders in 2014 to complete the task of establishing the highest price tier of the APCR as an auction price ceiling effective under all market scenarios. PG&E further recommends that the Emissions Market Assessment Committee (EMAC) be charged with tracking this market for indications of price run-ups and be offered the option to petition the Board for timely and effective action, if needed.

PG&E recommends the scope of this continued work include a price ceiling for California Cap-and-Trade allowance auctions that will effectively maintain prices at or below the highest price tier of the APCR under any circumstance and at any time, regardless of future allowance budgets and the expected duration of the program. PG&E recommends the timeline allow for this price ceiling mechanism to be designed, approved, and incorporated into the Cap-and-Trade Regulation no later than the beginning of the second compliance period, January 1, 2015.

Need For a Clear Price Ceiling As Soon As Possible

PG&E maintains that an auction price ceiling would improve the Cap-and-Trade program and could be implemented in a manner that preserves the environmental integrity of the program.[1]

[1] See Option 3 of the Joint Utility Group proposal http://www.arb.ca.gov/cc/capandtrade/meetings/062513/industry-present.pdf

The written and oral comments shared by ARB staff, market experts, and other stakeholders at the June 25, 2013 workshop support developing an auction price ceiling. The price floor has proven to be an effective tool and a corresponding price ceiling is needed to ensure that the Cap-and-Trade program is neither vulnerable to market manipulation nor undermined by unacceptably high allowance prices.

Linkage is widely regarded as the means to achieve needed emissions reductions on a global scale. A program with an admitted vulnerability to unstable high prices will give prospective partners pause. Addressing this issue before opportunities for additional linkages arise will be easier and will instill confidence in other jurisdictions that a larger Cap-and-Trade program will be successful. The size of California's Cap-and-Trade market alone will expand dramatically in 2015 when natural gas suppliers and transportation fuel distributors come under the cap. It would be prudent to address the market vulnerability of extreme price increases in advance of any further market expansion.

PG&E supports the staff cost containment proposal contained in the draft regulation as an effective addition to address short-lived price increases in the Cap-and-Trade market. However, this mechanism cannot *ensure* prices will not exceed the third tier Allowance Price Containment Reserve (APCR) price, as Board Resolution12-51 requires. Staff concedes this point in the Initial Statement of Reasons that accompanied the 45-day language: "However, if unanticipated conditions create a long-term and persistent increase in the demand for allowances through 2020, the proposal may not be sufficient to fill all accepted bids at the highest price tier. Under these circumstances, the proposal would not ensure that allowance prices do not exceed the Reserve top tier price."[2] Staff also acknowledges that "the effectiveness of the staff proposal is reduced as the program approaches 2020." Furthermore, borrowing from future allowance budgets without an auction price ceiling, may have the unintended consequence of increasing prices to unacceptable levels in later years when combined with the incremental reductions in the cap and increased possibility of economic recovery. PG&E therefore urges ARB to provide stakeholders with a specific plan and accelerated timeline for addressing "the policy objective of ensuring that allowance prices will not exceed the highest price tier of the [APCR]" (Board Resolution12-51) in response to persistent structural market imbalances.

Potential for APCR to be Exhausted and Likely Consequence

PG&E points to the results of the EMAC's analysis,[3] which demonstrates there is a "non-trivial possibility" that auction prices could reach unacceptably high levels due to a systemic imbalance

[2] Page 43 of ARB 2013 Initial Statement of Reasons:
http://www.arb.ca.gov/regact/2013/capandtrade13/capandtrade13isor.pdf
[3] Forecasting Supply and Demand Balance in California's Greenhouse Gas Cap and Trade Market, March 12, 2013:
http://ei.haas.berkeley.edu/pdf/Forecasting%20CA%20Cap%20and%20Trade.pdf

in market fundamentals in the 2013 to 2020 timeframe. The study's conclusion warns "that there might be the potential for non-competitive activities by some market participants that could artificially inflate or depress the price."

Staff's current proposal allows for limited borrowing, but does not allow for the increase of overall allowance supply to address unexpected increases in allowance demand. Therefore, Staff's proposal cannot prevent the market from reaching unacceptably high prices in a reasonable range of plausible conditions during the period of 2013 to 2020. Leaving the market without firm protection against prices increasing above the third tier of the APCR would expose the market to significant risks. This circumstance would pose a real and significant obstacle to the on-going successful operation of the program and could force compliance entities to choose between paying excessive allowance prices or facing non-compliance penalties.

PG&E believes the EMAC study referenced above is a credible study that has anticipated unacceptably high-priced market conditions and that it would be inadvisable not to be adequately prepared. As Severin Borenstein, member of the EMAC, wrote in his September 30, 2013 blog, "While the proposed changes are a small step in the right direction, they don't go far enough to address the fundamental risk to the market from a surge in emissions that could cause the price of allowances to skyrocket."[4]

B. Section 95893. PG&E Supports Natural Gas Allowance Allocation to Natural Gas Suppliers on Behalf of their Customers, to Gradually Introduce the Cost of Carbon Into Natural Gas Bills

PG&E supports the addition of Section 95893, which allocates allowances to natural gas suppliers on behalf of their customers. The proposal provides a fair allocation to natural gas suppliers, on behalf of their customers, with a balanced approach to the consignment of allocated allowances. The proposed allocation also establishes a framework for supporting the emission reduction goals of AB 32. In addition, PG&E supports staff's proposal to use 2011 as the baseline year for the initial allocation of allowances. We appreciate ARB staff's effort to address our concerns through its recommended change to the baseline year.

Limitations on the Use of Auction Proceeds and Allowance Value

Section 95893(d)(3) specifies that any revenue returned to ratepayers must be done in a non-volumetric manner. The California Public Utilities Commission (CPUC) has exclusive jurisdiction over investor-owned utility ratemaking under Article XII of the California Constitution. In the 2010 Final Statement of Reasons, ARB recognizes the CPUC's jurisdiction

4 http://energyathaas.wordpress.com/2013/09/30/californias-cap-and-trade-market-still-needs-a-price-ceiling/?utm_source=Blog+Sep+30%2C+2013&utm_campaign=blog38&utm_medium=email

for electric distribution utilities: "We acknowledge that electrical distribution utility proceeds from the sale of allowances at auction will be subject to limitations imposed by either the CPUC or by the governing bodies of publicly owned utilities, and that these entities have exclusive electricity ratemaking authority. Based on these grounds, we removed the language that the commenter refers to as 'fixed rebate' language."[5] PG&E therefore recommends that Section 95893(d)(3) be modified as follows to parallel the electric utility language in 95892(d)(3) to avoid jurisdictional conflicts with other state and local agencies:

> Auction proceeds and allowance value obtained by a natural gas supplier shall be used exclusively for the benefit of retail ratepayers of each natural gas supplier, consistent with the goals of AB 32, and may not be used for the benefit of entities or persons other than such ratepayers. ~~Any revenue returned to ratepayers must be done in a non-volumetric manner.~~

Additionally, PG&E assumes staff intends allowances allocated to natural gas suppliers to be placed in both the Limited Use Holding Account (LUHA) and the Compliance Account of each entity in amounts consistent with the calculation in Section 95893(a). The amount placed in the LUHA would mirror the associated percentages outlined in Table 9-4 and would be consigned to auction while the remainder of the allocated allowances would be placed in the Compliance Account to be used directly for compliance. However, the use of "and" in Section 95893(b)(1)(B) suggests that both the consigned allowances and the allowances for direct compliance will be placed into the Compliance Account. PG&E recommends the following correction to Section 95893(b)(1):

> (B) The remaining allowances from the allowances allocated in section 95893(a) ~~**and the allowances placed into the Limited Use Holding Account in section 95893 (b)(1)(A)**~~ will be placed into the Compliance Account.

C. Section 95890. The Potential for Allowance Withholding Should be Explicitly Stated and the Penalty Should Be Tailored to the Nature of the Violation

The proposed Section 95890(f) appears to permit ARB to withhold allowances from natural gas suppliers that fail to comply with the MRR regulations and would thereby potentially impose a "double" penalty on natural gas suppliers and their customers over and above the significant daily penalties already authorized under section 95107 of the MRR. Such allowance withholding also discriminates against entities that receive direct allocations by punishing these entities and not parties that have purchased allowances or are subject only to the reporting obligation and associated penalties. This issue is compounded for combined utilities with electric and gas

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5 Page 1907 of ARB's 2010 Final Statement of Reasons: http://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf

service due to the possibility under the current regulation of having an electric allocation withheld for an error in a natural gas report, and vice versa.

The proposed Section 95890(f) could also potentially allow ARB to withhold significant quantities of allowances without any showing of wrongdoing by the natural gas supplier and would not limit the amount of allowances withheld to the alleged under-reporting. ARB should not be permitted to withhold allowances in excess of those attributable to the non-compliant report.

To resolve these issues, PG&E proposes the following changes:

> Section 95890(f) A natural gas supplier that is a covered entity shall be eligible for direct allocation of California GHG allowances if it has complied with the requirements of **the** MRR **by obtaining** ~~**and has obtained a**~~ positive or qualified positive emissions data verification statements for **its individual GHG MRR report in accordance with section 95103(f) and section 95103(l) for** the prior year pursuant to **the** MRR. **If a natural gas supplier submits an inaccurate data verification statement for its individual GHG MRR report, ARB may withhold direct allocation of allowances up to an amount equal to the unverified tons within the Assigned Emission Level for the non-compliant report until such time as the natural gas supplier has obtained a positive or qualified positive emissions data verification statement regarding the non-compliant report.**

In addition, ARB should detail how these withheld allowances would be recirculated back into the marketplace to avoid a sudden increase in the cost of compliance instruments. Finally, we encourage ARB to make conforming amendments to section 95890(b) addressing allowance withholding for electric distribution utilities as follows:

> Section 95890(b) An electric distribution utility shall be eligible for direct allocation of California GHG allowances if it has complied with the requirements of MRR **by obtaining** ~~and has obtained~~ positive or qualified positive emissions data verification statements **for its electric power entity reports (in accordance with §95112 and §95115) and retail electric transactions report (in accordance with §95111)** for the prior year pursuant to MRR. **If an electric distribution utility submits an inaccurate data verification statement for its electric generation power entity report or retail electric transactions report, ARB may withhold direct allocation of California GHG allowances up to an amount equal to the Assigned Emission Level(s) (AEL) attributable to the non-compliant report(s).**

D. Sections 95912 and 95914. ARB Should not Unreasonably Restrict an Entity's Auction Participation

1. Auction or Account Changes Should Not Jeopardize Auction Participation

PG&E opposes Section 95912(d)(5) of the proposed amendments, which may bar an entity from participating in an auction if there are changes to information provided in an entity's auction or account application 30 days before or 15 days after an auction. This proposal is unduly restrictive and should be removed. While this restriction may pose a challenge for any compliance entity, large compliance entities are especially impacted by this provision due to the size and complexity of their business operations. The activities described in the auction or account application cover a range of activities that a company may need to perform in the course of its business and simply cannot remain static for 180 days a year in order to participate in the Cap-and-Trade auctions.

For example, an entity may need to raise capital to finance its activities, impacting information provided in its auction application.[6] Proposed Section 95912(d)(5) jeopardizes an entity's ability to participate in ARB auctions because of such an activity. Further, the proposed amendments modify an entity's registration requirements, including a comprehensive contact list of employees involved in decisions, or with access to information, concerning Cap-and-Trade compliance instrument transactions or holdings. Section 95912(d)(5) unreasonably threatens an entity's auction participation based on changes to this list. This restriction is unnecessarily burdensome for large compliance entities with many employees working on Cap-and-Trade Program issues. It is unreasonable to assume an entity can prevent employee job functions from changing within each of these 45-day periods.

While ARB staff acknowledges that Section 95912(d) is intended to facilitate effective settlement of the auctions and support market monitoring, and is not intended to be overly burdensome, Section 95912(d) should be rejected because it unnecessarily jeopardizes an entity's auction participation for activities associated with its normal business operations. If the ARB does not remove this provision, PG&E suggests that ARB instead require the entity to update reporting materials within 10 days of changes to the auction or account application information. PG&E proposes that Section 95912(d)(5) be revised as follows:

> An entity with any changes to the auction application information listed in subsection 95912(d)(4) or account application information listed in section 95830 within 30 days prior to an auction, or an entity whose auction application information or account application information listed in section 95830 ~~will~~ changed ~~within~~ 15 days after an

[6] See Section 95912 (d)(4)(a) identifying information concerning capital structure of an entity as among the auction participation application requirements

> auction **shall update the information listed in 95912(d)(4) within 10 working days of such change.** ~~**may be denied participation in the auction.**~~

PG&E's proposal is consistent with Section 95830 (f), which requires registrants to update changes to registration within ten working days of changes. Notification of such change, and updated auction and/or account information would provide ARB the information it requires to effectively monitor each auction without jeopardizing an entity's participation, facilitating the intent of ARB staff in proposing Section 95912(d)(5). If ARB will not reject or revise the above provision, the Regulation should at a minimum identify the specific information of concern set forth in Section 95912(d)(4) and Section 95830 that would preclude auction participation.

2. Entities Should Have an Opportunity to Correct Errors or Omissions Prior to Auction Cancellation

Likewise, PG&E suggests changes to Section 95914(a), concerning the ability of ARB to cancel or restrict auction participation based on certain determinations. PG&E requests that an entity that provided inaccurate information or omitted required information be given an opportunity to correct such error or omission before the Executive Officer cancels or restricts that entity's participation in the auction. ARB provides similar flexibility to entities to correct errors concerning transfer requests,[7] and offset validation processes.[8] While PG&E understands ARB's need for accurate and complete information, the impact on PG&E and its ratepayers for what may be an administrative error is not justified. Accordingly, it is reasonable and consistent with ARB regulations to provide similar flexibility to the auction process.

> Section 95914(a): The Executive Officer may cancel or restrict a previously approved auction participation application or reject a new application if the Executive Officer determines, **in each case after the individual has been notified of the failure and given an opportunity to correct the error or omission, as needed,** that an entity has…

E. PG&E Supports The Adoption Of Additional Offset Protocols

PG&E supports the adoption of additional protocols to provide an adequate supply of offset credits to the cap-and-trade market. The use of high-quality offset credits is an effective cost-containment tool and an essential component of a successful cap-and-trade program. However, as previously stated in PG&E's comments, without adequate supply, the cost-containment benefit of offset credits will not be fully realized.

With the forthcoming linkage of California and Quebec's cap-and-trade programs, offset credit supply is expected to play an even larger role in cost-containment. PG&E's analysis found that compliance costs are forecast to be higher if offset credit supply in California and Quebec is

[7] See Section 95921(c)
[8] See Section 95977.1(b)(3)

lower. At the same time, several analyses, including our own, indicate that a supply of offset credits equivalent to the 8% Quantitative Usage Limit will not be available in Compliance Periods 2 and 3 unless additional protocols are adopted. Therefore, PG&E urges ARB to approve the MMC and Rice Cultivation protocols, which will pave the way for additional offset credit supply.

Approval of the Mine Methane Capture (MMC) protocol is important because it can facilitate the generation of a significant supply of offset credits. While estimates vary, MMC projects have the potential to reduce tens of millions of tons of CO2e from mines whose methane would otherwise be released to the atmosphere. With regard to leakage, ARB, CAR, and EPA analyses[9] note that revenues from coal mining are sufficient to incentivize mine drainage, that mine ventilation is already required by US regulation, and that methane recovery and destruction does not typically take place when it is not economic to do so. Because US MMC projects can generate emission reductions without leakage and also meet ARB's criteria of being real, additional, quantifiable, permanent, verifiable, and enforceable, PG&E strongly supports the approval of the MMC protocol.

While the Rice Cultivation protocol is not expected to support the generation of a significant volume of offset credits, its continued development and ultimate approval are important to the adoption of additional agricultural protocols by ARB. Agriculture is a major industry in California and reducing greenhouse gas (GHG) emissions from this industry is important to helping the state meet its longer-term GHG reduction goals.

In parallel to ARB's review of new offset protocols, we understand staff is planning to update existing protocols as needed. We fully support staff in these efforts and look forward to opportunities for collaboration. For example, the ozone-depleting substances (ODS) destruction protocol was originally developed in 2009. Since then, baseline scenarios have changed for both refrigerants and foam blowing agents, which should be reflected in a revised protocol. The livestock protocol should also be revised to take into account more recent data. Revisions to these protocols in particular are important to ensure technical accuracy, program integrity, and the maximization of supply from existing protocols.

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[9] See ARB Staff Report and Proposed Compliance Offset Protocol, Mine Methane Capture Projects: http://www.arb.ca.gov/regact/2013/capandtrade13/capandtrade13isorappa.pdf
See CAR Coal Mine Methane Project Protocol FAQs: http://www.climateactionreserve.org/how/protocols/coal-mine-methane/faq/
See EPA Coalbed Methane Outreach Program FAQs: http://www.epa.gov/cmop/faq.html#eight

F. Sections 95802 and 95894. Generators That Have Already Bargained For Costs Associated With GHG Regulation Should Not Qualify for Transition Assistance

The Proposed Regulation inappropriately provides a free allocation of allowances to the Panoche Energy Center (PEC), a generator that: (1) had notice of the potential for future GHG costs; and (2) bargained for the costs associated with cap-and-trade compliance in their contracts. PG&E opposes ARB's proposed "legacy contract" definition to the extent that it would provide PEC a windfall by allocating allowances to the generator at the expense of California taxpayers after the generator has already been and continues to be compensated by PG&E customers. PG&E proposes simple revisions to the definition of "legacy contract" so that generators like PEC that were aware of and agreed to assume responsibility for GHG compliance costs bear those costs.

1. The Definition of Legacy Contract Should Exclude Contracts in Which the Seller Agreed to Assume Responsibility for GHG Costs

It is unwise policy for ARB to provide transition assistance to generators like PEC that foresaw the possibility of GHG compliance costs and knowingly agreed to assume responsibility for those costs in their contracts. This opinion is also consistent with the CPUC direction, which defers to the parties as to whether their contracts addressed GHG costs.[10] The CPUC previously stated that it is "not in the business of bailing unregulated market participants out of their own past missteps."[11] PG&E is concerned that ARB's proposed assistance is doing just that.

To the extent the parties to the contract cannot agree whether the generator knowingly assumed GHG compliance cost risk at the time the contract was executed or are unable to renegotiate their contract to further address GHG costs, such matters can be resolved by a court or arbitrator in a dispute resolution proceeding. Where a court or arbitration decision has found that a generator foresaw the possibility of GHG compliance costs and knowingly agreed to assume responsibility for those costs in their contracts, ARB should not provide free allowances to the generator.

2. Only Contracts Executed Before August 15, 2005, Should be Considered Legacy Contracts

ARB should amend the date before which an executed contract qualifies as a legacy contract from September 2006, to August 15, 2005, because amendments to AB 32 as of August 15,

[10] See D.12-04-046, page 61: "parties are in a better position to address… whether the existing contract may have taken the passage of AB 32 into consideration." *Available at* http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/164799.PDF and Rulemaking (R.) 11-03-012, page 16: "a dispute about whether a given contract already includes a GHG costs either explicitly or otherwise raises a factual question that is more appropriately determined for each contract through the contract's dispute resolution processes." *Available at* http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M040/K631/40631611.PDF

[11] See D. 12-04-046, page 61 *available at*: http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/164799.PDF

2005, included broad limits on GHG emissions. The basis for the use of August 15, 2005, is also consistent with CPUC decisions interpreting whether generators foresaw the imposition of a carbon price in the electric sector. In fact, potential governmental action imposing GHG compliance costs on fossil fuel power plants in California was foreseeable *prior to* August 15, 2005. [12]

For example, CPUC Decision 12-12-002[13], dated December 20, 2012, cites August 15, 2005, as the date a firm cap was introduced by the Legislature. Similarly, CPUC Decision 12-04-046, dated April 4, 2012, states that "contracts negotiated and executed when AB 32 was working its way through the legislature should have taken the potential impacts of AB 32 into consideration. Even those negotiating contracts shortly before then might also have reasonably foreseen that this issue could arise."[14]

IOU counterparties and, presumably other generators, are sophisticated commercial parties with experienced commercial, regulatory, and legal teams aware of the potential for GHG costs prior to the actual date of passage of AB 32. The CPUC agrees with this assessment; and we urge ARB to provide a consistent conclusion. PG&E therefore recommends the following changes to the definition of a "Legacy Contract" laid out in Section 95802:

> "Legacy Contract" means a written contract or tolling agreement governing the sale of electricity and/or qualified thermal energy from an electric generating facility or cogeneration facility at a price, determined by either a fixed price or price formula, that **was originally executed prior to August 15, 2005** ~~does not allow for recovery of the costs associated with compliance with this regulation;~~ the originally executed contract or agreement must have remained in effect and must not have been amended since ~~September 1, 2006~~ **~~August 15, 2005~~ execution** to change or effect the terms governing the California greenhouse gas emissions responsibility, price or amount of electricity or Qualified Thermal Output sold, or the expiration date. For purposes of this regulation, Legacy Contracts exclude contracts that ~~give rise to~~ **are eligible to execute** a Legacy PPA Amendment, as defined in the Combined Heat and Power Program Settlement Agreement Term Sheet pursuant to CPUC Decision number D-10-12-035, with a privately owned utility as defined in the Public Utilities Code Section 216 (referred to as an Investor Owned Utility or IOU). This definition of a "Legacy Contract" does not apply to opt-in covered entities. **For purposes of this regulation, Legacy Contracts also exclude contracts as to which a court or arbitrator(s)**

[12] For example, in 2004, the CPUC proposed a GHG Cap-and-Trade Program in an Order Instituting Rulemaking (OIR) and, in its comments on the OIR, the Independent Energy Producers Association mentioned independent generators internalizing the costs of GHG emissions reductions in offers submitted into the utility procurement processes. AB 32 was introduced into the California Legislature in December 2004. In June 2005, GHG emissions reduction targets were established for California by the Executive Order S-3-05.

[13] D. 12-12-002 is *available at* http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M041/K695/41695122.PDF

[14] D.12-04-046, page 61 *available at* http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/164799.PDF

in a dispute resolution proceeding between the parties to the agreement finds that, at the time the agreement was executed, the seller understood that if there were a future change in the law that imposed a cost on the facility because of its greenhouse gas emissions, the seller would be responsible for paying that cost.

3. ARB Should Clarify that Entities Covered by CPUC Decision D-10-12-035 are Ineligible

PG&E understands that ARB does not intend for transitional assistance to be provided to entities eligible to execute standard contracts pursuant to the Combined Heat and Power Program Settlement approved by CPUC D. 10-12-035. Above, PG&E also suggests an edit to "Legacy Contract" to clarify this understanding.

G. Section 95920. Holding Limit Should Ensure Equitable Treatment of Regulated Entities

By imposing the same holding limit calculation on all entities, regardless of operational size and relative compliance obligations, the regulation unfairly and unnecessarily discriminates against larger regulated entities, effectively forcing them to procure at higher costs that , in the case of utilities, are then passed on to their customers. Below, PG&E outlines its holding limit proposal which would address this inequity. In addition, changes to the Proposed Regulation between the July discussion draft and the 45-day language inadvertently impact the limited exemption to the holding limit, effectively decreasing the quantity of allowances dedicated for compliance that are exempt from the holding limit. PG&E also proposes a simple modification to address this issue.

1. Allowances in a Compliance Account Should not Count Against the Holding Limit

The holding limit calculation permits smaller entities to comply at lower costs by effectively allowing them to bank a higher proportion of lower-cost instruments for their compliance obligation. While the current holding limit/ limited exemption allow larger entities to procure allowances to meet their obligation over time, it fully limits the cost containment aspects of banking allowances. PG&E proposes that ARB retain the standard holding limit for all entities registered with ARB. In addition to the standard holding limit:

- Entities with a compliance obligation may apply their limited exemption to allowances held in their holding account; and
- Allowances in a compliance account would not count against the holding limit.

This minor modification will provide compliance entities with flexibility and planning opportunities that any successful carbon market should have. The proposal would only impact entities with compliance obligations, enabling them to maintain more banked allowances in their holding accounts, thus increasing the number of allowances available to trade or transfer, reducing operational risks, and improving market liquidity. The proposal also enables larger compliance entities to more effectively utilize the banking provision currently available in the

regulation, and provides greater flexibility to manage compliance costs. At the same time, by allowing entities to place more allowances in their compliance accounts, ARB would in effect make those allowances usable only for compliance purposes, reducing the possibility of market manipulation with respect to those allowances. Also, this proposal does not interfere with or undermine the suite of market manipulation prevention tools already in place (purchase limits, continuous market monitoring, an extensive registration process, and personal attestations).

95920(d)(2) Limited Exemption from the Holding Limit. ~~A Limited Exemption from the Holding Limit is calculated as:~~

(A) The limited exemption from the holding limit (limited exemption) is the maximum number of allowances which can be held in an entity's **holding account** that will not be included in ~~are exempt from~~ the holding limit calculated pursuant to section 95920(c)(1). ~~To qualify for inclusion within the limited exemption, A~~llowances ~~must be~~ placed in ~~the~~ **a Covered E**ntity's Compliance Account **are (1) exempt from the holding limit calculated pursuant to section 95920 (c)(1); and (2) are exempt from the limited exemption from the holding limit calculated pursuant to this section 95920 (d)(2).** ~~Calculation after they are transferred by a covered entity or an opt-in covered entity to its compliance account.~~

2. Removal of The Annual Compliance Obligation Should Not Decrease an Entity's Limited Exemption from the Holding Limit

The Proposed Regulation's removal of the annual compliance obligation inadvertently decreases an entity's limited exemption from the holding limit because those otherwise-retired annual allowances remain in the compliance account and count toward the limited exemption. This outcome introduces an additional constraint because under the current Regulation, those allowances associated with an annual compliance obligation are retired and removed from the compliance account, effectively increasing the limited exemption by the amount of the retirement. To address this issue, PG&E proposes that ARB increase the limited exemption calculation by the annual compliance obligation that otherwise would have been retired under the current Regulation. With this change to Section 95920(d)(2) , ARB's regulatory changes intended to preserve the value of offsets, do not negatively impact an entity' limited exemption amount.

Section ~~(F)(H)~~ **On November 1 of the calendar year following the year a covered entity has an annual compliance obligation pursuant to section 95855, the limited exemption will be increased by the sum of the entity's annual compliance obligation over that year.** On December 31 of the calendar year following the end of a compliance period, the limited exemption will be reduced by the sum of the entity's compliance obligation over that compliance period.

3. Limited Exemption Calculation Prior to October 2014 Should Remain Intact

The Proposed Regulation deletes all references to the calculation of the limited exemption prior to October 2014. Compliance entities should not be denied their limited exemptions in the event that processes to codify the amended regulation are completed prior to October 1, 2014; we assume it is not ARB's intent to do so. Accordingly, PG&E recommends maintaining existing references to the limited exemption calculation in Section 95920(d)(2):

> (B) **On October 1, 2012, the limited exemption will equal the annual emissions of the most recent emissions data report that received a positive or qualified positive emissions data verification statement for emissions that generate a compliance obligation pursuant to section 95851(a). On October 1, 2013, the limited exemption will be increased by the amount of emissions contained in the most recent emissions data report that has received a positive or qualified positive emissions data verified statement during that year for emissions that generate a compliance obligation pursuant to section 95851(a).** On October 1, 2014 the limited exemption will be calculated as the sum of the annual emissions data reports received in 2012, 2013, and 2014 that have received a positive or qualified positive emissions data verification statement for emissions that generate a compliance obligation pursuant to section 95851(a).

H. Section 95914. ARB Regulations Should Not Conflict with CPUC Requirements

The Proposed Regulation should be revised to be consistent with CPUC requirements concerning confidentiality and disclosure of GHG and electric procurement-related information in CPUC proceedings. PG&E proposes that ARB modify Section 95914(C)(2)(D) to recognize that investor owned utilities (IOUs) have a variety of procurement-related confidentiality and disclosure obligations pursuant to CPUC statutes, rules, orders, or decisions.

For example, pursuant to Public Utilities Code Section 454.5(g) and Senate Bill (SB) 1488, the CPUC has adopted specific rules to protect the confidentiality of market sensitive information while at the same time allowing interested parties access to such information under strict confidentiality protocols and protective orders in formal CPUC proceedings for due process purposes. In addition, the CPUC has adopted protocols governing disclosures of similar market sensitive information concerning the procurement activities of electric and natural gas utilities to its Procurement Review Groups (PRG) pursuant to CPUC Decision 02-08-071. These disclosures are not expressly ordered by statute, but are required by CPUC orders and decisions. Moreover, CPUC Decision 12-04-046 orders IOUs to report all GHG compliance transactions at quarterly procurement review group meetings and in quarterly compliance reports. Prohibiting access by interested parties in CPUC proceedings or PRG access to GHG-related information under different confidentiality rules, or other disclosures required by the CPUC, could conflict with and violate the due process rights of interested parties and also jeopardize regulated entities' cost recovery. Further, the CPUC has recognized the need for

consistency in the Confidentiality Protocols relating to GHG information, and recently requested consultation on such protocols among all interested parties, CPUC staff, and ARB staff as part of the CPUC's pending AB 32 GHG cost recovery proceedings. PG&E's proposed revisions to the ARB's regulations are intended to ensure consistency between the ARB's confidentiality rules and the CPUC's confidentiality rules.

Finally, ARB should not require a utility to report each disclosure that is required under the CPUC rules. For example, the PRG is entitled to all of PG&E's procurement related information and it would be administratively burdensome to update the ARB on each such disclosure. PG&E also proposes amending this section to clarify that natural gas utilities are protected under 95914(c)(2)(D):

> When the release is by an electric **or natural gas** distribution utility of information regarding compliance instrument cost and other disclosures specifically required **or authorized** by the California Public Utilities Commission **pursuant to any of its applicable rules, orders, or decisions.** ~~In the event of a disclosure pursuant to this section, the electricity distribution utility must provide the specific statutory reference or to ARB that requires the disclosure of the information.~~

I. Section 95921. Prohibitions on Trading

1. ARB Should Not Impose Unreasonable Transfer Requirements Because The Current Regulation Provides Significant Transparency

PG&E opposes ARB's proposed amendments to Section 95921 (b)(3) which impose penalties on parties to a contract involving a transfer of compliance instruments if the compliance instrument transfer occurs more than three days after the execution date or termination date of the transaction agreement, or more than three days from the date of "transfer of consideration from the purchaser of the compliance instrument to the seller." Parties to contracts involving compliance instruments should be free to structure transfers of allowances and payments in a manner appropriate to the underlying transaction.

ARB's Proposed Regulation unreasonably prohibit certain commercial structures. PG&E understands ARB's underlying concern of preventing fraud and/or market manipulation. However, ARB incorrectly assumes that the transfer of compliance instruments between parties at a particular time suffices as intent to manipulate the compliance instrument market. This is just not the case. PG&E is concerned that the proposed rules will have the unintended consequence of unduly complicating transactional structures for compliance instruments, resulting in increased costs of compliance. Moreover, PG&E questions ARB's need to prohibit certain transactional provisions given the current robust suite of market monitoring tools provided in Section 95921.

In addition, ARB's proposal is too vague to be effectively implemented. For example, the transfer of allowances more than three days from the transfer of "consideration" is prohibited. Consideration can include any exchange of value and can be in the form of money, goods, services, commodities or other promises or forbearances. Requirements for the transfer of compliance instruments based on any exchange of any form of consideration is simply infeasible. The proposed regulation would restrict parties from structuring transactions to include provisions including advance payments, letters of credit, guarantees, and other forms of consideration which will only serve to increase the cost and the complexity of compliance with the Cap-and-Trade program and will not provide for additional transparency or market monitoring.

Furthermore, proposed revisions to Section 95921 (a)(3)(B) should be rejected because they conflict with existing and proposed modifications to Section 95921. Existing Section 95921 (a)(1)(E) requires *completed* transfer requests to be received by the administrator no more than three days following the date of *settlement* of the transaction agreement. This provision conflicts with Proposed Section 95921 (a)(3)(B) which imposes penalties if allowance transfers are completed three days after the *execution date.* Section 95921 (a)(3)(B) also conflicts with Proposed Section 95921 (b)(2)(B) and Proposed Section 95921 (b)(4) because those provisions contemplate over-the-counter agreements with delivery taking place more than three days from the date the parties *enter* into the transaction agreement. The consistency and clarity of ARB's requirements is critical for parties to structure their compliance instrument transfers and related transactions and comply with the Regulation.

Existing Section 95921 provides ARB with significant market transparency, allowing the agency to see and approve the transfer of the compliance instruments and track each compliance instrument transaction. For example, Section 92921 (a)(E) establishes a process that requires compliance instrument transfers to be completed following three days of a settlement of the transaction agreement. Existing Section 95921 (b) requires parties to the transfer request provide substantial information about the transaction agreement. In addition, ARB's proposed revisions to Section 95921 (b) will provide ARB with a vast amount of information concerning the transactions, including the original and destination accounts, the type, quantity and vintage of compliance instruments, the type of transaction agreement, the delivery structure, and other commercially sensitive data concerning the underlying, including price of the underling compliance instrument and any ancillary product.

If the restrictive provisions are upheld, ARB should explicitly exempt the application of Section 95921 (a)(3)(B) and (C) to those agreements that are exempt from the prohibitions on holding allowances on behalf of other entities. The ISOR explains that Section 95921 (a)(3)(C) was added to comport with restrictions of holding allowances on behalf of other entities. While PG&E does not agree that conveyance of forms of consideration necessarily create an interest in one entity's compliance instruments on behalf of another, at a minimum the regulation should

not apply to those transactions exempted from holding restrictions. Specifically, PG&E proposes the following modification to Section 95921 (a)(3)(C):

(C) More than three days after the transfer of consideration from the purchaser of the compliance instrument to the seller as provided by the transaction agreement, **provided that this prohibition does not apply to transactions described in Section 95921(f)(1)(B)**; or

2. Prohibited and Permitted Trading Activities Should be Clarified

The changes to Section 95921(f) listed below are intended to better clarify which trading activities are prohibited and which are permitted.

(1) An entity cannot acquire allowances and hold them in its own holding account on behalf of another entity. ~~Including~~ **This prohibition shall restrict** the following ~~restrictions~~ **activities**:

(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.

~~These s~~ **This Section 95921(f)(1) do**es not **prohibit** agreements that only specify a date **or time period** to deliver a specified quantity of allowances and that **do not** include ~~no~~ terms applying to allowances residing in another entity's account **or**~~(C~~an entity **from** purchas**ing** and hold**ing** allowances for later transfer to members of a direct corporate association.

J. Section 95912. Investigation Disclosure Language Should be Modified

Finally, PG&E proposes the following modifications to the ongoing investigation disclosure requirement for auction participation. For a company as large as PG&E, knowledge and materiality qualifiers are essential to PG&E's ability to provide the requested representation. PG&E would not want to violate the Cap-and-Trade regulations due to its failure to report a minor administrative violation of a CFTC rule connected to its energy purchases, which would likely be unrelated to PG&E's Cap-and-Trade compliance. In addition, the required attestation should pertain only to those investigations that are currently pending before applicable entities.

(E)~~(C)~~ An attestation that **to the best of** the **participating** entity**'s knowledge, 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, has not been~~ **is not aware** ~~subject to~~ ~~The identification~~ of any ~~previous or~~ ongoing ~~pending~~ investigation **by the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission,** with respect to any alleged **material** violation of any ~~rule, regulation, or~~ law ~~associated with any~~ **applicable to** commodities **trading** ~~y, securities, or financial market, including a change in the status of an ongoing investigation~~; and

K. Section 95852. Resource Shuffling "Safe Harbors" Should Include (1) Activities to Comply With Rules, Orders, or Decisions Issued By A Governmental Authority; (2) Activities Resulting from Participating in Energy Imbalance Markets

Complying with rules, orders, or decisions issued by a governmental authority such as Least Cost Dispatch (LCD) requirements, or participating in the California Independent System Operator (CAISO) and PacifiCorp Energy Imbalance Market (EIM) or similar markets do not appear to qualify as resource shuffling based on the draft amended regulations. However, clear language in the Regulation is needed to affirm this interpretation.

First, PG&E recommends revisions to the draft regulations to clarify that activities consistent with PG&E's legal and regulatory requirements fall under the "safe harbors" and would not be considered resource shuffling. PG&E's proposed revisions are necessary because PG&E is required to meet its electric load obligations consistent with the CPUC LCD requirements.[15] PG&E economically dispatches its resources, subject to regulatory, legal, operational, contractual, and financial requirements. To meet its LCD requirements, PG&E is required to dispatch resources or purchase energy with the lowest incremental cost. Accordingly, PG&E recommends a change to Section 95852(b)(2)(A)(2):

> Electricity deliveries made for the purpose of compliance with state or federal laws and regulations, including the Emission Performance Standard (EPS) rules established by CEC and the CPUC pursuant to public utilities code section 8340 et. seq. **or other rules, orders, or decisions by a state or federal governmental authority.**

PG&E also recommends conforming revisions to "safe harbor" 10 below. Revisions to "safe harbor" 10 are also necessary to clarify that participation in an EIM does not constitute resource shuffling. The EIM involves an automated system over which participants cannot exercise control. To ensure ARB's intent is clearly communicated to all EIM participants, PG&E recommends the following additions to "safe harbor" 10:

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[15] CPUC Decisions mandate that PG&E dispatch its portfolio of existing resources, allocated California Department of Water Resources contracts, and market purchase to meet its electric load obligation in a least-cost manner. *See* CPUC Decisions 02-10-062, 02-12-069, 02-12-074, 03-06-076, 04-07-028 and 05-01-054.

> Short-term transactions and contracts for delivery of electricity with terms of no more than 12 months **or any transaction made for the purpose of complying with rules, orders or decisions by a state or federal governmental authority**, or resulting from an economic bid, self-schedule, **award or similar mechanism** that clears the CAISO **or other** day-ahead or real-time market **or is generated in EIM or similar automated market**, for either specified or unspecified power, based on economic decisions including implicit and explicit GHG costs and congestion costs, unless such activity is linked to the selling off of power from, or assigning of a contract for, electricity subject to the EPS rules from a power plant that does not meet the EPS with which a California Electricity Distribution Utility has a contract, or in which a California Electricity Distribution Utility has an ownership share, that is not covered under paragraphs 11, 12 or 13 below.

Finally, section 95852(b)(2)(A)(9) and (10) reference short-term contracts for deliveries of electricity with terms of no more than 12 months. However, it is possible for an entity to sign a contract with terms greater than 12 months, but with actual deliveries of 12 months or less. To clarify that these transactions would not qualify as resource shuffling PG&E recommends the following change to Section 95852(b)(2)(A)(9) and (10):

> Electricity deliveries pursuant to contracts for short term delivery of electricity ~~with terms of~~ **for** no more than 12 months **in total**.

L. ARB Should Not Include Burdensome Staff Reporting Requirements

PG&E opposes the introduction of Section 95830(c)(1)(I), requiring the reporting of names and contact information for all persons employed by a registered entity that either has access to any information regarding compliance instruments, transactions, or holdings; or is involved in decisions regarding transactions or holding of compliance instruments. This provision is overly broad and unnecessary. It would require PG&E to track and report hundreds of individuals to ARB, including those individuals who may inadvertently obtain information, and update such information within ten days of any changes. Due to the broad scope of individuals covered by Section 95830(c)(1)(I), administration of such a provision would undoubtedly prove burdensome. Further, combined with Proposed Section 95912(d)(5), updates or changes to this information would unreasonably jeopardize an entity's auction participation. Moreover, it is not clear how such a requirement would contribute to the success of the Cap-and-Trade program or how ARB would analyze, make use of, or benefit from this information.

The strict confidentiality requirements already provided for in the regulation and the security requirements for access and use of CITSS are sufficient to protect the Cap-and- Trade market from manipulation. The additional information required of consultants and individuals who register as VAEs in the amended regulation should prove sufficient to monitor conflict of interest

and the use of information gained on the job for personal benefit, an activity already strictly prohibited by PG&E. Additional controls are not needed, would be unduly burdensome for covered entities to prepare, and administratively burdensome for ARB to review, monitor and enforce. As such, PG&E recommends that this requirement be removed. If ARB cannot agree to remove this requirement, the Regulation should narrowly tailor its applicability to those employees who are primary account representatives, alternate account representatives, and account viewing agents.

M. Sections 95830, 95833, 95914, and 95923. PG&E Recommends Several Changes to Sections That Address Registration with ARB

1. Consolidation

PG&E seeks clarification from ARB on the intended purpose of the new language regarding consolidation by facility operators. PG&E also seeks confirmation that the use of the term "entities" is intended, rather than "facilities."

> Section 95830(b)(1): An entity must qualify for registration in the Tracking System pursuant to section 95811, 95813, or 95814. If an entity is registering pursuant to section 95811 or 95813, the facility operator identified in section 95101(a)(3) of MRR must register pursuant to this section and meet all applicable requirements of this article. If the facility operators choose to consolidate accounts pursuant to Section 95833, then at least one facility operator of the ~~facilities~~ **entities** in the direct corporate association must be identified pursuant to this section and meet all applicable requirements of this article for all ~~facilities~~ **entities** included in the consolidated account.

2. Registration

PG&E assumes ARB's intention in requiring tracking system registrations for individuals is to capture those individuals acting on behalf of an entity, such as the primary account representative. In order to act in such capacity, the individuals must have authority from the entity to act, as ARB has made clear in other sections of the Cap-and-Trade Regulations. PG&E has attempted to include language to bridge the gap between individuals and those individuals acting on behalf of registered entities or an entity.

> Section 95830(c)(7): Any individual ~~who~~**acting on behalf of and with authorization of a registered entity, which individual** requires access to the Tracking System, including the primary account representative, alternate account representatives, or account viewing agents must first register as a user in the tracking system.

(D) An individual registering in the tracking system must agree **on behalf of the registered entity** to the terms and conditions contained in Appendix B of this article.

The draft regulation denies an individual's ability to register based on particular circumstances. Given the consequences for breach of the regulations, PG&E believes that it is prudent and reasonable to give an individual or entity the ability to cure an error or omission prior to such registration restrictions. PG&E proposes the following revision:

Section 95830(c)(8): An individual may be denied registration, **in each case after the individual has been notified of the failure and given an opportunity to correct the error or omission, as needed**:

3. Change in Ownership

PG&E seeks clarification from ARB on the intent of the changes to Section 95830(i), specifically whether "facility" rather than "entity" is the correct reference. PG&E notes that ARB's "Summary of Proposed Changes" suggests the provision was intended to apply to changes in ownership of covered entities and not facilities, but the proposed regulation next references "when the ownership of a facility changes…" PG&E also suggests the removal of subpart (5), which requires original signatures of the officer or directors of the entity being purchased. PG&E does not see a need for this provision.

95830 (i) Change of ownership **due to merger or acquisition.** When the ~~ownership of a facility changes~~ **registered entity is acquired by or merged into another entity,** the following information must be submitted **by the surviving or new entity** within 30 days of finalization of ownership change:

~~(5) Original signatures by a Director or Officer from the entities being purchased and the purchasing entity, authorizing the change of ownership.~~

4. Corporate Associations

The draft regulation's use of "second entity" should be amended to serve a wider audience. For example, it is possible for more than two entities with a 20% interest to be subject to the regulations. PG&E recommends the following changes:

Section 95833(a)(1)-(3): An entity has a corporate association with another entity, regardless of whether the ~~second~~ other entity is subject to the requirements of this article, if either one of these entities:

(2) has a "direct corporate association" with another entity, regardless of whether the ~~second~~ **other** entity is subject to the requirements of this article, if either one of these entities:

(3) has a "direct corporate association" with ~~a second~~ **another** entity, regardless of whether the ~~second~~ **other** entity is subject to the requirements of this article, if the two entities are connected through a line of more than one direct corporate association.

Section 95833(a)(3)(B): An entity with a "direct corporate association" with **another** registered entity has a direct corporate association with any registered entity with whom the **other** registered entity has a direct corporate association.

The proposed language in Section 95833(f)(6) unnecessarily constrains an entity's ability to update information regarding corporate associations. This proposal fails to recognize the sophisticated corporate structures of many of the entities regulated under the Cap-and-Trade program. These structures are unlikely to remain stagnant over the course of a year and as such, these entities should be permitted to engage in normal business activities without limitations imposed by this Section. Given that ARB holds quarterly auctions and an entity must submit an application, which includes information regarding corporate association, to participate, entities should be permitted to change their corporate association accounts including whether or not to consolidate at this time. PG&E recommends the following change to Section 95833(f)(6):

(6) Entities with a direct corporate association may change their decision to consolidate accounts or opt-out of consolidation **provided the entity reports such changes at least 30 days prior to an auction in accordance with Section 95912(d)(2)**~~only once each compliance period.~~

5. Disclosure of Cap-and-Trade Consultants or Advisors

PG&E suggests minor changes to Sections 95914 and 95923 concerning Cap-and-Trade Consultants and Advisors to clarify applicable provisions in the proposed Regulation. PG&E also suggests that ARB globally replace references to "consultants" and "advisors" with "Cap-and-Trade Consultants or Advisors" to ensure the consistency of the Regulation.

Because the amendments do not define "advisors," PG&E has provided an "advisor" definition for ARB's consideration.

Section 95914(c)(3): If an entity participating in an auction has retained the services of **an Cap-and-Trade Consultant or Advisor, which means a firm or an individual not employed by the entity for the purpose of advising the entity on auction bidding strategy**, then…

Section 95914(c)(3)(A): The entity must ~~ensure~~ **caution the Cap and Trade Consultant or Advisor against** ~~the advisor~~ transferring information to other auction participants or coordinating the bidding strategy among participants…

PG&E also recommends the following change to Section 95923(a)(1):

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, but ~~is paid~~ **retained under contract by an entity registered in the Cap-and-Trade Program** for **the purpose of providing** information or advice related to the Cap-and-Trade Program specifically for **such entity. Cap-and-Trade Consultants and Advisors do not include attorneys.**

N. Section 95852. PG&E Recommends Changes to the Calculation of Natural Gas Suppliers' Compliance Obligation to Ensure Emissions without a Compliance Obligation are Properly Excluded

Section 95850 describes the general requirement that an entity's compliance obligation results from emissions subject to a compliance obligation. Section 95852.2 then details the types of emissions that do not count towards a compliance entity's compliance obligation. However, ARB's method for calculating a natural gas supplier's compliance obligation does not mention deducting emissions without a compliance obligation. PG&E recommends ARB indicate that "emissions without a compliance obligation" listed under Section 95852.2 will be deducted. PG&E also requests that ARB include a process for notifying natural gas suppliers of entities in their service territories producing "emissions without a compliance obligation" and the corresponding emissions quantities of each entity. This will enable natural gas suppliers to more accurately attribute costs to the appropriate customers.

Accordingly, PG&E recommends the following changes to Section 95852(c):

Suppliers of Natural Gas. A supplier of natural gas covered under sections 95811(c) and 95812(d) has a compliance obligation for every metric ton CO_2e of GHG emissions that would result from full combustion or oxidation of all fuel delivered to end users in California contained in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned, less the fuel that is delivered to covered entities **and the fuel delivered to facilities that generate emissions without a compliance obligation as described in Section 95852.2**, as follows:

(1) Suppliers of natural gas shall report the total metric tons CO_2e of GHG emissions delivered to all end users in California pursuant to section 95122 of MRR;

(2) ARB shall calculate the metric tons CO_2e of GHG emissions for natural gas delivered to covered entities **and to facilities that generate emissions without a compliance obligation** which are customers of the supplier. The emissions will be calculated according to section 95122 of MRR using the reported deliveries (in mmBtu) contained

in natural gas supplier in emissions data reports that received a positive or qualified positive emissions data verification statement. Natural gas received data (in mmBtu) contained in covered facility emissions data reports that received positive or qualified positive emissions data verification statements will be used to cross check delivery data reported by natural gas suppliers, and will serve as a second source of data in ~~instances of missing supplier data. In~~ the event that a natural gas supplier receives an adverse verification statement~~s~~. ARB will use the **method**~~provisions~~ described in section 95131(c)(5) of the MRR to calculate the supplier's assigned emission level; or the assigned emissions from natural gas delivered to the covered entity by the supplier of natural gas;

(3) ARB shall provide the supplier of natural gas a listing of all customers and aggregate natural gas (in mmBtu) and emissions calculated from the supplier's natural gas delivered to covered entities;

(4) ARB shall provide the supplier of natural gas a listing of all reporting customers and customer-specific natural gas (in mmBtu) and emissions calculated from the supplier's natural gas delivered to facilities that generate emissions without a compliance obligation and are not covered entities; and

(**5**) The Executive Officer shall calculate the metric tons CO_2e for which the supplier will be required to hold a compliance obligation based on the supplier's reported emissions less ARB's calculated emissions from deliveries to covered entities **and to facilities that generate emissions without a compliance obligation** which are customers of the supplier. The Executive Officer shall provide this value to the supplier of natural gas within 30 days of the verification deadline in section 95103 of MRR.

O. Section 95852. PG&E Recommends Changes to the Draft Amendments to Prevent Double-Counting the Compliance Obligation Associated with LNG Deliveries to Other Covered Entities

ARB's proposed approach for calculating the compliance obligation of liquefied natural gas (LNG) suppliers, under Section 95852(l) does not include adjustments for LNG deliveries to other covered entities (e.g., natural gas suppliers). As a result, some LNG (e.g., LNG purchased by natural gas suppliers that is injected into the natural gas pipeline and accounted for in natural gas suppliers' GHG reporting) could be double-counted for compliance purposes.

PG&E recommends the following amendments to Section 95852(l) to ensure that GHG emissions obligations associated with LNG deliveries to other covered entities are not double counted:

(l) Suppliers of Liquefied Natural Gas. A supplier of liquefied natural gas covered under sections 95811(g) or 95812(d) has a compliance obligation for every metric ton CO_2e of GHG emissions included in an emissions data report that has received a positive or qualified positive emissions data verification statement or for which emissions have been assigned that

would result from full combustion or oxidation of the quantities on liquefied natural gas or compressed natural gas imported into California, except for products for which a final destination outside California can be demonstrated **or products delivered to other covered entities as calculated by the Executive Officer.**

P. Section 95852. PG&E Recommends Several Clarifications to Emissions without a Compliance Obligation

Qualified Exports Adjustment

PG&E recommends that the current Qualified Exports (QE) adjustment calculation be amended to enable it to achieve its intended purpose of allowing a reduction in the compliance obligations of importers who simultaneously import and export electricity. The current calculation results in a QE adjustment equal to zero if there is any zero-emissions generation within an hour. For example, assume PG&E imports 100 MWh in an hour and exported 100 MWh in that same hour. If the imported electricity was 99 MWh of unspecified electricity and 1 MWh of solar, and the exported electricity was all unspecified, PG&E could not claim any QE adjustment, as the QE adjustment would be zero. PG&E recommends changing section 95852(b)(5)(A)(2) to:

> "The lowest **non-zero** emission factor of any portion of the qualified exports or corresponding imports for the hour."

This amendment would be administratively simple to implement and would result in entities being able to use the QE adjustment as intended.

RPS Adjustment

PG&E suggests ARB clarify the intent of revisions to Section 95852(b)(4)(A) concerning the Renewable Portfolio Standard (RPS) Adjustment. Specifically, the RPS adjustment is available to electricity importers to reduce overall compliance obligation for RPS-eligible electricity generated outside of California that is not directly delivered to the state. The draft Regulation should clarify that an electricity importer is not restricted from re-selling the underlying electricity associated with the eligible renewable energy resource. Section 95852(b)(4)(A) should be amended as follows:

> The electricity importer must have ~~either:~~
>
> 1. Ownership or contract rights to procure the electricity and the associated RECs generated by the eligible renewable energy resource **provided that the electricity importer may resell the underlying electricity generated by the eligible renewable energy resource**; or…

Q. Vented and Fugitive Emissions Should Not Be Classified as "Covered Emissions

To clarify ARB's intent that vented and fugitive emissions from compressor stations and underground storage stations are not to be included in the calculation of an entity's "covered emissions," PG&E recommends the following change:

Section 95852.2(b)(4) Vented and fugitive emissions reported under **Subarticle 5 ~~section 95153~~** of MRR by local distribution companies that report under section 95122 of MRR.

R. Appendix B. Modifications To The CITSS User Terms and Agreement Are Needed

PG&E submits the following comments on the CITSS User Terms and Agreement for ARB's consideration. If it would be helpful, PG&E would be willing to provide an edited form of the agreement for ARB's consideration.

Section 1.4: PG&E requests ARB and WCI provide notice to PG&E prior to disclosure of the Content.

Section 1.5: PG&E requests ARB or WCI notify Users immediately of a breach of security on the CITSS system, including breach of stored information on data servers for the system.

Section 2.3: The entity using CITTS should receive written notice of a User's alleged violation and be offered an opportunity to correct the problem before the Agreement is terminated.

Section 4.1: PG&E recommends ARB and WCI introduce a limitation of liability provisions that protects the entity using CITTSS and its Users.

Section 5: This provision should be removed as it is duplicative of the restrictions in Section 2.2 (See Sections 2.2(b), 2.2(k) and 2.2(g)).

Section 6: The last sentence in this provision should be removed.

Request for additional Provisions:

- Add provision to inform Users of measures being taken to secure information processed or provided through the CITSS system.
- ARB and WCI's use of the Content should be restricted.
- WCI needs to provide warranties regarding its ability to perform the services, ensure data security, etc.

II. CONCLUSION

Thank you for the opportunity to submit these comments. PG&E urges ARB to carefully review these suggestions and make the recommended changes before pursuing further action. We look forward to continuing our work with ARB.

Very truly yours,

/s/

Mark C. Krausse

cc: Michael Gibbs, via email (mgibbs@arb.ca.gov)
Rajinder Sahota, via email (rsahota@arb.ca.gov)
Ray Olsson, via email (rolsson@arb.ca.gov)
Elizabeth Scheehle, via email (escheehl@arb.ca.gov)
Emily Wimberger, via email (ewimberg@arb.ca.gov)