APPEARANCES

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Supervisor Phil Serna
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Mr. Alberto Ayala, Deputy Executive Officer
Ms. Edie Chang, Deputy Executive Officer
Ms. Lynn Terry, Deputy Executive Officer
Ms. Ellen Peter, Chief Counsel
Ms. La Rhonda Bowen, Ombudsman
Mr. David Allgood, Air Pollution Specialist, Climate Change Program Evaluation Branch Stationary Source Division
APPEARANCES CONTINUED

STAFF

Mr. Richard Bode, Chief, Health and Exposure Assessment Branch

Mr. Dave Edwards, Manager, Climate Change Reporting Section

Mr. Tim Hartigan, Air Pollution Specialist, Planning and Regulatory Development Section, MSCD

Ms. Joelle Howe, Emissions Quality Assurance Section

Ms. Rajinder Sahota, Chief, Climate Change Program Evaluation Branch, SSD

Mr. Erik White, Division Chief, Mobile Source Operations Division

ALSO PRESENT

Mr. Grant Aguinaldo, Lunday-Thagard Co.

Mr. Craig Anderson, Solar Turbines

Mr. Steven Arita, Chevron Corporation

Mr. Greg Arnold, CE2 Capital

Ms. Susie Berlin, Northern California Power Agency

Mr. Will Barrett, American Lung Association

Mr. Brian Biering, Turlock Irrigation District

Mr. Jerry Bloom, OLS Energy Chico, LLC

Ms. Lisa Bowman, USW

Mr. Tony Brunello, California Strategies & Advocacy, LLC
APPEARANCES CONTINUED

ALSO PRESENT

Mr. Bill Buchan, Cardinal Cogen, Inc.
Ms. Julia Bussey, Chevron Corporation
Mr. David Campbell, USW Local 675
Mr. Frank Caponi, LA County Sanitation Districts
Mr. Dan Consie, Crockett Cogeneration
Mr. Jon Costantino, Coalition for Fair and Equitable Allocation
Mr. Michael Cote, Ruby Canyon Engineering
Mr. Angus Crane, NAIMA
Mr. Danny Cullenward
Mr. Taku Futamura, Wildflower Energy
Mr. Gary Geno, Climate Action Reserve
Ms. Maureen Gorsen, Loma Linda
Ms. Kassandra Gough, Calpine Corporation
Mr. Gary Grimes, Paramount Petroleum
Mr. Jerry Gureghiam, Green Holdings
Mr. Tim Haines, State Water Contractors
Mr. Frank Harris, Southern California Edison
Ms. Barbara Haya, Stanford Law School
Ms. Melina Hicks, Kern Oil & Refining Co.
Mr. Roger Isom, CCGGA/WAPA
Mr. Alex Jackson, NRDC
ALSO PRESENT

Mr. Steven Kelly, Independent Energy Producers
Ms. Erica Kent, United Steekworkers
Mr. Mark Krausee, PG&E
Mr. John Larrea, California League of Food Processors
Mr. Johnny Lee
Mr. Ronald Liebert, Wheelabrator Norwalk
Ms. Debbie Lloyd, Gas Utility Group
Mr. Bob Lucas, CCEED
Mr. Bill Magavern, Coalition for Clean Air
Mr. Graeme Martin, Shell Energy
Mr. Edward Moreno, Sierra Club
Mr. Paul Morrow
Ms. Barbara Toole Oneil
Ms. Elise Paeffgen, Alston & Bird
Ms. Cindy Parsons, LADWP
Mr. Mark Parsons, Metropolitan Water District Southern California
Ms. Tanya Peacock, Southern California Gas and Electric
Mr. Norman Pedersen, SCPPA
Mr. Leonard Pettis, California State University
Mr. Bruce Ray, Johns Manville
Ms. Amber Riesenhuber, IEP
APPEARANCES CONTINUED

ALSO PRESENT
Ms. Emily Rooney, Agricultural Council of California
Ms. Dorothy Rothrock, CMTA
Mr. Samir Sheikh, San Joaquin Valley Air District
Mr. Mike Smith, United Steekworkers Local 5
Mr. Nico Van Aelstyn, Beveridge & Diamond PC
Ms. Beth Vaughan, California Cogeneration Council
Mr. Thomas Vessels, Vessels Coal Gas, Inc.
Mr. Derek Walker, Environmental Defense Fund
Mr. Michael Wang, WSPA
Ms. Gail Welch, Qualcomm, Inc.
Mr. Peter Weiner, Paul Hastings, LLP
V. John White
Ms. Stephanie Williams, Phillip 66
Ms. Ellen Wolfe, Western Power Trading Forum
INDEX

<table>
<thead>
<tr>
<th>ITEM 13-9-7</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acting Chairperson Riordan</td>
<td>3</td>
</tr>
<tr>
<td>Executive Officer Corey</td>
<td>4</td>
</tr>
<tr>
<td>Staff Presentation</td>
<td>6</td>
</tr>
<tr>
<td>Mr. Sheikh</td>
<td>17</td>
</tr>
<tr>
<td>Mr. Isom</td>
<td>20</td>
</tr>
<tr>
<td>Mr. Magavern</td>
<td>22</td>
</tr>
<tr>
<td>Motion</td>
<td>26</td>
</tr>
<tr>
<td>Vote</td>
<td>28</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ITEM 13-9-9</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acting Chairperson Riordan</td>
<td>28</td>
</tr>
<tr>
<td>Executive Officer Corey</td>
<td>31</td>
</tr>
<tr>
<td>Staff Presentation</td>
<td>33</td>
</tr>
<tr>
<td>Mr. Haines</td>
<td>55</td>
</tr>
<tr>
<td>Mr. Parsons</td>
<td>57</td>
</tr>
<tr>
<td>Mr. Caponi</td>
<td>60</td>
</tr>
<tr>
<td>Ms. Gough</td>
<td>61</td>
</tr>
<tr>
<td>Mr. Buchan</td>
<td>63</td>
</tr>
<tr>
<td>Mr. Costantino</td>
<td>64</td>
</tr>
<tr>
<td>Ms. Hicks</td>
<td>65</td>
</tr>
<tr>
<td>Ms. Parsons</td>
<td>67</td>
</tr>
<tr>
<td>Ms. Berlin</td>
<td>70</td>
</tr>
<tr>
<td>Mr. Cote</td>
<td>72</td>
</tr>
<tr>
<td>Ms. Cullenward</td>
<td>75</td>
</tr>
<tr>
<td>Ms. Rothrock</td>
<td>77</td>
</tr>
<tr>
<td>Mr. Futamura</td>
<td>79</td>
</tr>
<tr>
<td>Mr. Crane</td>
<td>80</td>
</tr>
<tr>
<td>Mr. Vessels</td>
<td>82</td>
</tr>
<tr>
<td>Ms. Lloyd</td>
<td>84</td>
</tr>
<tr>
<td>Mr. Biering</td>
<td>86</td>
</tr>
<tr>
<td>Mr. Aguinaldo</td>
<td>88</td>
</tr>
<tr>
<td>Mr. Arnold</td>
<td>88</td>
</tr>
<tr>
<td>Mr. Bloom</td>
<td>91</td>
</tr>
<tr>
<td>Ms. Vaughan</td>
<td>91</td>
</tr>
<tr>
<td>Mr. Weiner</td>
<td>94</td>
</tr>
<tr>
<td>Mr. Morrow</td>
<td>96</td>
</tr>
<tr>
<td>Ms. Oneil</td>
<td>97</td>
</tr>
<tr>
<td>Mr. Anderson</td>
<td>99</td>
</tr>
<tr>
<td>Mr. Liebert</td>
<td>100</td>
</tr>
<tr>
<td>Ms. Haya</td>
<td>101</td>
</tr>
<tr>
<td>Name</td>
<td>Page</td>
</tr>
<tr>
<td>------------------</td>
<td>------</td>
</tr>
<tr>
<td>Mr. Consie</td>
<td>103</td>
</tr>
<tr>
<td>Ms. Peacock</td>
<td>104</td>
</tr>
<tr>
<td>Ms. Riesenhuber</td>
<td>105</td>
</tr>
<tr>
<td>Mr. Strong</td>
<td>107</td>
</tr>
<tr>
<td>Ms. Paeffgen</td>
<td>110</td>
</tr>
<tr>
<td>Mr. Walker</td>
<td>111</td>
</tr>
<tr>
<td>Mr. White</td>
<td>113</td>
</tr>
<tr>
<td>Mr. Gureghiam</td>
<td>115</td>
</tr>
<tr>
<td>Mr. Harris</td>
<td>117</td>
</tr>
<tr>
<td>Mr. Krausse</td>
<td>120</td>
</tr>
<tr>
<td>Mr. Ray</td>
<td>122</td>
</tr>
<tr>
<td>Mr. Wang</td>
<td>123</td>
</tr>
<tr>
<td>Mr. Magavern</td>
<td>124</td>
</tr>
<tr>
<td>Ms. Rooney</td>
<td>126</td>
</tr>
<tr>
<td>Mr. Pettis</td>
<td>128</td>
</tr>
<tr>
<td>Mr. Moreno</td>
<td>129</td>
</tr>
<tr>
<td>Mr. Pedersen</td>
<td>130</td>
</tr>
<tr>
<td>Mr. Larrea</td>
<td>132</td>
</tr>
<tr>
<td>Mr. Brunello</td>
<td>134</td>
</tr>
<tr>
<td>Ms. Welch</td>
<td>136</td>
</tr>
<tr>
<td>Mr. Geno</td>
<td>138</td>
</tr>
<tr>
<td>Ms. Bussey</td>
<td>140</td>
</tr>
<tr>
<td>Ms. Kent</td>
<td>141</td>
</tr>
<tr>
<td>Mr. Smith</td>
<td>143</td>
</tr>
<tr>
<td>Ms. Bowman</td>
<td>144</td>
</tr>
<tr>
<td>Mr. Campbell</td>
<td>145</td>
</tr>
<tr>
<td>Ms. Williams</td>
<td>147</td>
</tr>
<tr>
<td>Ms. Gorsen</td>
<td>151</td>
</tr>
<tr>
<td>Mr. Barrett</td>
<td>152</td>
</tr>
<tr>
<td>Mr. Lee</td>
<td>153</td>
</tr>
<tr>
<td>Mr. Grimes</td>
<td>154</td>
</tr>
<tr>
<td>Mr. Jackson</td>
<td>157</td>
</tr>
<tr>
<td>Board Discussion</td>
<td></td>
</tr>
<tr>
<td>Motion</td>
<td>215</td>
</tr>
<tr>
<td>Vote</td>
<td>215</td>
</tr>
</tbody>
</table>

Item 13-9-8
Chairperson Nichols  217
Executive Officer Corey 217
Staff Presentation 217
Mr. Pedersen 223
<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Van Aelstyn</td>
<td>225</td>
</tr>
<tr>
<td>Mr. Larrea</td>
<td>228</td>
</tr>
<tr>
<td>Mr. Biering</td>
<td>228</td>
</tr>
<tr>
<td>Ms. Parson</td>
<td>229</td>
</tr>
<tr>
<td>Ms. Berlin</td>
<td>232</td>
</tr>
<tr>
<td>Mr. Kelly</td>
<td>233</td>
</tr>
<tr>
<td>Mr. Harris</td>
<td>235</td>
</tr>
<tr>
<td>Ms. Paeffgen</td>
<td>237</td>
</tr>
<tr>
<td>Mr. Wang</td>
<td>237</td>
</tr>
<tr>
<td>Mr. Martin</td>
<td>239</td>
</tr>
<tr>
<td>Ms. Wolfe</td>
<td>240</td>
</tr>
<tr>
<td>Mr. Lucas</td>
<td>243</td>
</tr>
<tr>
<td>Mr. Arita</td>
<td>245</td>
</tr>
<tr>
<td>Board Discussion</td>
<td>247</td>
</tr>
<tr>
<td>Motion</td>
<td>257</td>
</tr>
<tr>
<td>Vote</td>
<td>257</td>
</tr>
<tr>
<td>Recess</td>
<td>258</td>
</tr>
<tr>
<td>Reporter's Certificate</td>
<td>259</td>
</tr>
</tbody>
</table>
PROCEEDINGS

ACTING CHAIRPERSON RIORDAN: Good morning. This is the public meeting of the Air Resources Board. It's a continued meeting.

And Madam Clerk, I'll ask you to call the roll, please.

BOARD CLERK JENSEN: Dr. Balmes?
BOARD MEMBER BALMES: Here.
BOARD CLERK JENSEN: Ms. Berg?
Mr. De La Torre?
Mr. Eisenhut?
BOARD MEMBER EISENHUT: Here.
BOARD CLERK JENSEN: Supervisor Gioia?
BOARD MEMBER GIOIA: Here.
BOARD CLERK JENSEN: Mayor Pro Tem Mitchell?
BOARD MEMBER MITCHELL: Here.
BOARD CLERK JENSEN: Mrs. Riordan?
ACTING CHAIRPERSON RIORDAN: Here.
BOARD CLERK JENSEN: Supervisor Roberts?
Supervisor Serna?
BOARD MEMBER SERNA: Here.
BOARD CLERK JENSEN: Dr. Sherriffs?
BOARD MEMBER SHERRIFFS: Here.
BOARD CLERK JENSEN: Professor Sperling?
Chairman Nichols?
ACTING CHAIRPERSON RIORDAN: She will be here shortly. I'm going to begin the meeting at her request and I want to make a few announcements.

This is a continued meeting, but we'd like to remind people to sign up with the Clerk for our presentations if you're wanting to present your thoughts and testimony today. If you have signed up through the Internet, you simply need to let the Clerk know you're here. Otherwise, fill out a slip and hand them into the Clerk. And we will take you in the order as they will appear on the agenda.

There are some things that I think are important for today. We're going to have a slight change in today's agenda order. Following the first item, which is 13-9-7, the regulation for SIP credit from mobile agricultural equipment, we will hear Agenda Item Number 13-9-9, amendments to the California cap on greenhouse gas emissions and market based compliance mechanisms. And then our last item will be 13-9-8, amendments to the regulation for mandatory reporting of greenhouse gases.

If you are aware, and many of you have testified before, we do keep to a three-minute time because of the length of our agendas. And if you are making your points in three minutes, you know that you need to speak directly to the Board. We will accept your written testimony, but
your testimony in your own words is much better. And then we have the written testimony that will be made part of the record.

Also, just another reminder, for safety reasons, please note the emergency exits to the rear and to my right and left side of this room. In the event of a fire alarm, we are required to evacuate this room immediately and go down the stairs and out of the building. And then when an all-clear signal is given, we can return to the hearing room and resume the hearing.

All right. Moving along to the first item on our agenda, that's 13-9-7. This is the item for the State Implementation Plan credit from mobile agricultural equipment.

Since 2008, the agricultural industry, in partnership with the U.S. Department of Agricultural Natural Resources Conservation Service and the San Joaquin Valley Air Pollution Control District have invested over $200 million in public and private investments by participating in voluntary incentive programs that have replaced over 2,500 tractors and other pieces of mobile agricultural equipment with the goal of cleaning the air to meet the air quality goals in the San Joaquin Valley.

This regulation, in conjunction with the San Joaquin Valley Air Pollution Control District recently's
adopted Rule 9610, will ensure that the reductions achieved from these valuable investments will be eligible to receive credit in the State Implementation Plan to continue progressing towards meeting the region's air quality goals.

Mr. Corey, would you like to introduce this item, please?

DEPUTY EXECUTIVE OFFICER COREY: Yes. And good morning, Mrs. Riordan.

California is home to the world's most productive agricultural region, producing over 400 different commodities from farms and ranches. Diesel powered off-road mobile agricultural equipment is an essential part of everyday practices for growing and producing these commodities. And as you know, while the San Joaquin Valley has made great progress, it still has significant challenges to overcome in order to achieve healthy air quality for those living and working within the valley.

The San Joaquin Valley is classified as extreme non-attainment for ozone for 1997 and 2008 ozone national ambient air quality standards.

The Clean Air Act requires that State Implementation Plans, or SIPs, demonstrate how national ambient air quality standards will be met by the applicable deadlines.
The 2007-08 hour ozone SIP developed to address the 1997 ozone national ambient air quality standards include a measure for mobile agricultural equipment in the San Joaquin Valley. The agricultural industry has made significant progress in reducing air pollution in the valley by accelerating turnover of older dirtier mobile agricultural equipment with the cleanest available technologies through voluntary participation in local, State, and federal incentive programs.

In 2010, a Statement of Principles was signed by ARB, the San Joaquin Valley Air Pollution Control District, U.S. EPA, and the United States Department of Agriculture. This Statement of Principles recognizes the benefit of the air quality achievements being made through these voluntary incentive programs and set the foundation for a partnership between the agencies to develop a administrative mechanism to ensure SIP credit for the investments being made in the San Joaquin Valley to clean up mobile agricultural equipment.

The regulations staff is proposing today is the outcome of that Statement of Principles, compliments the San Joaquin Valley Air Pollution Control District's recently adopted Rule 9610, and meets the 2007 SIP commitment to clean up mobile agricultural equipment by providing the administrative mechanism for SIP credit.
Looking ahead, staff has already begun the development process for an even more comprehensive strategy to achieve additional reductions from mobile equipment in the San Joaquin Valley through further acceleration of the cleanest engine technologies.

Staff is currently working with stakeholders on potential strategies and plans to present a proposal to the Board by early 2016.

Tim Hartigan with the Innovative Strategies Branch will now present the proposed regulation. Tim.

(Thereupon an overhead presentation was presented as follows.)

AIR POLLUTION SPECIALIST HARTIGAN: Thank you, Mr. Corey.

Good morning, Board members.

I'm presenting a proposed regulation for State Implementation Plan credit from mobile agricultural equipment. This proposed rule is designed to be the statewide administrative mechanism to ensure that emission reductions resulting from incentive projects from this sector in the San Joaquin Valley are eligible to be credited for State Implementation Plans, or SIPs. Throughout this presentation, when speaking of mobile agricultural equipment or mobile ag, I'm referring to
self-propelled diesel-powered equipment over 25 horsepower that is used primarily for agriculture.

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AIR POLLUTION SPECIALIST HARTIGAN: For an overview of my presentation, first, I'll present the underlying air quality needs in the San Joaquin Valley. Then I'll discuss how incentive programs are providing needed emission reductions from mobile ag projects in the San Joaquin Valley.

Next, I'll show how stakeholders are working with U.S. EPA to ensure these emissions reductions are eligible to be credited to the SIP.

I'll then discuss the requirements and the benefits of the proposed rule that is the outcome of these efforts.

Finally, I'll present staff's recommendations and lay out a path forward that addresses the Valley's longer-term air quality needs.

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AIR POLLUTION SPECIALIST HARTIGAN: The San Joaquin Valley is the most productive agricultural region in the world and a significant contributor to the state's economy. Unfortunately, the region is also home to some of the worst air quality in the nation and is currently designated as extreme non-attainment for ozone for both
the '97 and 2008 national ambient air quality standards. Emissions from mobile ag contribute to the region's air pollution problem, amounting to about 14 percent of the entire emissions inventory.

The 2007 ozone SIP for the San Joaquin Valley includes a commitment for an ARB measure to accelerate the penetration of the cleanest available technologies into the mobile ag fleet. This commitment recognized the important role of incentives to achieve near-term reductions that could be credited to the SIP.

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AIR POLLUTION SPECIALIST HARTIGAN: The 2007 SIP also identified a goal to reduce emissions of oxides of nitrogen, or NOx, from this sector by five to ten tons per day by 2017.

In 2009, ARB partnered with the agricultural industry to survey California's producers, first processors and custom operators, to better understand the mobile ag fleet and the emissions inventory in the state and San Joaquin Valley. A survey update was presented in a public workshop in March of this year.

In 2010, the San Joaquin Valley Air District, ARB, Natural Resources Conservation Service, and U.S. EPA agreed in a Statement of Principles to work collaboratively to develop an administrative mechanism to
provide SIP credit for emissions reductions from mobile ag through incentive programs in the San Joaquin Valley.

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AIR POLLUTION SPECIALIST HARTIGAN: Since 2008, incentive programs in the valley, which include funds from local, State, and federal sources, have successfully replaced over 2,900 pieces to date of old, high-polluting equipment with the cleanest available technologies.

With the passage of the 2008 Farm Bill, new federal funds were made available to California and the San Joaquin Valley for mobile ag incentive projects. These new federal funds enhanced the local and State funding already in place and together represent public funding of over $130 million, which has been matched by more than $120 million of private funds from the agricultural industry.

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AIR POLLUTION SPECIALIST HARTIGAN: In addition to the substantial investment in cleaner equipment that has already occurred, the region has earmarked at least another $20 million in the coming years to continue the cleanup of mobile ag equipment. And the Governor recently signed Assembly Bill 8 into law, which extends full Carl Moyer Program funding through 2023, ensuring the continued investment in state incentive dollars for mobile
agriculture projects within the San Joaquin Valley.

Recognizing the significant numbers of old, high-polluting equipment being replaced, it is important that our air quality plans formally reflect the emission reductions that these incentive programs have already achieved, and the emission reductions that are expected from future investments.

Overall, staff estimates that current and future investments in mobile ag incentive projects will reduce NOx emissions by at least five to ten tons per day by 2017, meeting the 2007 SIP goal.

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AIR POLLUTION SPECIALIST HARTIGAN: To continue the momentum already underway to reduce mobile ag emissions, staff is proceeding with a two-stage strategy to address the near-term and long-term air quality goals in the San Joaquin Valley. The proposed rule today is the first step of this strategy.

The long-term air quality needs in the San Joaquin Valley will require going beyond the 2007 SIP strategy. Turnover to the cleanest available technologies will need to begin when Tier 4 final equipment becomes widely available for this sector in the 2020 time frame.

In developing this long-term strategy, staff will continue to work with stakeholders to ensure that it
maximizes emission reductions, while providing a pathway for incentives to continue to play an important role.

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AIR POLLUTION SPECIALIST HARTIGAN: Staff's proposed rule builds on the 2010 Statement of Principles and is complementary to the San Joaquin Valley air district's Local Rule 9610, which was adopted in June. Rule 9610 is the local piece of this administrative mechanisms to ensure local, State, and federally funded projects in the district will be eligible for SIP credit.

The proposed rule today compliments Rule 9610 by formalizing the statewide administrative framework to ensure that mobile ag projects implemented using Carl Moyer program guidelines are eligible for SIP credit.

Both the district's Rule 9610 and this proposed rule ultimately be submitted for approval to U.S. EPA as a part of the SIP.

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AIR POLLUTION SPECIALIST HARTIGAN: The proposed rule applies only to the San Joaquin Valley Air District and requires that to ensure SIP credit eligibility, mobile ag projects must follow the Carl Moyer Program guidelines so that the resulting emission reductions are surplus, quantifiable, enforceable, and permanent.

In addition, the district must annually report
emissions-related data to ARB and U.S. EPA, maintain project documentation, and make the emissions-related documentation available to the public. To ensure program integrity and proper expenditure of public funds, the district must conduct project monitoring on an annual basis and allow ARB to also conduct program reviews.

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AIR POLLUTION SPECIALIST HARTIGAN: The proposed rule specifies that mobile ag projects must follow the Carl Moyer Program guidelines that have set the standard since 1998 for programs that provide financial incentives for equipment owners to voluntarily retrofit or replace older, high polluting equipment with cleaner equipment and it has been a model for other incentive programs throughout the state and the nation.

Carl Moyer program emission reductions are surplus, meaning they are not otherwise required by federal, State, or local rules or mandates. Carl Moyer program emission reductions are both quantifiable and enforceable, meaning they can be verified independently. The emissions data is public, and legally binding agreements identify the responsible parties to ensure that reductions are achieved. And the emission reductions are permanent, because older, high-polluting equipment is destroyed or other measures are taken to ensure permanent
reductions.

Finally, the program's emission reductions also meet U.S. EPA's guidance for SIP credit from voluntary incentive programs, which similarly call for emissions to be surplus, quantifiable, enforceable, and permanent.

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AIR POLLUTION SPECIALIST HARTIGAN: While this proposed rule applies directly to the San Joaquin Valley Air District, it includes a provision to allow other California air districts to opt in by notifying the ARB Executive Officer of their intention to participate. They must also adopt a local rule similar to Rule 9610 that meets the requirements of this proposed rule and submit their rule to ARB and the U.S. EPA for approval.

While most of the the requirements of the proposed rule ultimately will be applied at the district level, ARB must annually report to U.S. EPA the appropriate program and project data in order to ensure their eligibility for SIP credit.

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AIR POLLUTION SPECIALIST HARTIGAN: We propose two minor modifications to the rule language for 15-day comments. Based on input from U.S. EPA, we recommend inserting the specific sections of the Carl Moyer program guidelines that apply. As those guidelines are updated,
this rule will also be updated to specify the new applicable sections.

We also recommend specifying that opt in air districts must submit their local rule to U.S. EPA for its approval in addition to submitting to ARB. These modifications clarify our original intent.

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AIR POLLUTION SPECIALIST HARTIGAN: Working in tandem with Rule 9610, the proposed rule establishes the statewide administrative mechanisms to ensure that emissions benefits of the successful mobile ag incentive programs in the San Joaquin Valley and those from other air districts that opt in are eligible for and accurately credited to the SIP.

In doing so, the proposed rule will ensure that NOx reductions that are being achieved to meet the 2007 SIP goal are appropriately credited.

And by ensuring that their actions count toward SIP attainment, the proposed rule should encourage the agricultural industry to continue to participate in incentive programs.

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AIR POLLUTION SPECIALIST HARTIGAN: Staff evaluated the environmental and economic impacts of the proposed rule and determined that it is administrative in
nature and thus does not result in any significant adverse impacts. Rather, there will be positive impacts on the environment and economy through continued emission benefits from the operation of cleaner technologies that will be deployed through the continued investment of incentive funding.

Finally, compliance with the proposed rule will impose no additional costs on ARB, the San Joaquin Valley Air District, or other air districts that opt in because it adds no additional costs to administering local incentive programs.

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AIR POLLUTION SPECIALIST HARTIGAN: Through the development of the proposed rule, two main stakeholder issues arose. First, environmental advocacy groups have commented that reductions from voluntary incentive programs are not enforceable. Staff has evaluated this concern and determined that the Carl Moyer Program guidelines ensure that reductions are enforceable because they are independently and practically verifiable for the duration of the project life through inspections, monitoring, and other mechanisms. Furthermore, violations are defined through legally binding agreements that identify the parties responsible for achieving emission reductions. Funding recipients are also obligated to
provide all emission reduction records, and those records must be available for public access.

Environmental advocacy groups also commented that ARB should require turn over of mobile ag equipment in the San Joaquin Valley to Tier 3 now and later to Tier 4 when it becomes available. However, staff estimates that voluntary incentive programs are already working to increase penetration of cleaner technologies that accelerate air quality progress and meet the 2007 SIP NOx emission reduction goal. And that developing a long-term strategy that builds on the availability of the cleanest Tier 4 technology is the best way to ensure that both near-term and long-term emission reductions are achieved in a way that does not require equipment to be replaced more than once.

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AIR POLLUTION SPECIALIST HARTIGAN: Staff will continue to work with stakeholders on potential strategies to transform the mobile ag fleet as part of the upcoming SIP development effort in the San Joaquin Valley. In doing so, ARB is also committed to continuing incentive programs in the valley as an important tool in reducing emissions, while also exploring new strategies such as equipment trade up programs that assist farmers who may not traditionally qualify for incentive programs to...
destroy their old equipment and move to cleaner used equipment.

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AIR POLLUTION SPECIALIST HARTIGAN: Staff recommends the Board approve the proposed rule for State Implementation Plan credit from mobile agricultural equipment with the proposed minor changes posted for 15-day comments.

Moving forward, staff will continue to work with stakeholders to identify opportunities and successful strategies to address longer term air quality needs in the San Joaquin Valley and the additional reductions needed from mobile agriculture equipment.

This concludes my presentation.

ACTING CHAIRPERSON RIORDAN: Thank you very much. Forward members, we have three who have signed up to testify. Then I will take your questions. But you may have some questions before. No. All right.

Let's do our -- Samir Sheikh from the San Joaquin Valley Air District, Roger Isom, and Bill Magavern.

MR. SHEIKH: Good morning, members of the Board. My name is Samir Sheikh. I'm representing the San Joaquin Valley Air District.

I'd like to start off by really expressing my gratitude to Lynn Terry, Lucina Negrete, Karen Magliano,
Sam Gregor, and a number of other staff that have been really been working closely with us in developing the concepts that are before you today with the proposed regulation. We fully support ARB's proposed regulation for recognizing the significant reductions from ag equipment that have been achieved through these voluntary incentive programs that we've all worked so hard to develop.

The most recent chapter of this story regarding these voluntary incentives did start as the presenter mentioned earlier with that Statement of Principles and MOU that was signed back in December of 2010. We all really came together to launch this really tremendous voluntary inventive program as agencies and decided that we really needed to come up with a mechanisms for ensuring that credit for those reductions that would be achieved through that program were fully recognized in the State Implementation Plan process.

In these past several years, the district, ARB, EPA, and NRCS has worked together and spent hundreds if not thousands of staff hours talking about the various issues involved and how we run these programs and how we ultimately make sure that we deal with the various issues that are related to State Implementation Plans. We've come up with a framework that does ensure solid process
for ensuring those reductions are creditable. Enforceability is something that has come up in the past as a concern. I can tell you with the way these programs have been designed and are implemented, these reductions are about as real as they get. They're truly enforceable. I think staff can attest to the various things that are done in monitoring those projects to ensure those reductions are truly occurring.

I'd like to close by really just talking about the story of the ag equipment program. As we've all stated here this morning, we all came together with the ag community to really launch that a number of years ago back in 2009. And with support from your staff in developing the guidelines for that program and also providing some funding towards that, we reduced really a lot of emissions through that program. We've actually put over $300 million. The slides mentioned over $200 million. If you include the projects that were contracted recently, it's over $300 million of investment coming in from both public and private. And we've achieved our goal -- our 2017 goal of over five tons per day of NOx.

We are committed to continuing investing in this program through funding and other efforts to make sure that we're continuing to reduce emissions from the ag sector and look forward to working with your staff through
this rule and through the longer-term planning process for
ensuring that happens. Thank you very much for your time.

ACTING CHAIRPERSON RIORDAN: Thank you. Thank
you for your testimony.

Roger Isom.

MR. ISOM: Good morning, Mrs. Riordan, members of
the Board.

My name is Roger Isom. Here today on behalf of
the California Cotton Ginners and Growers Association and
the Western Agricultural Processors Association
representing tree nut haulers and processors including
almonds, walnuts, pecans, and pistachios.

I'm here to support this rule and want to make it
clear, you know, there is a lot of issues that we can
fight and argue on between us and regulatory agencies and
environmentalists. This is not one of them. The
incentive program we are talking about today is not only
important. It's absolutely necessary. Unlike the
construction rule, the truck rule, the other diesel
programs you have, agriculture cannot pass along its cost.

Agriculture has to absorb 100 percent of the cost of any
regulatory program that we face.

This program has not only been successful, we
have actually not only -- and we've not only met the SIP
requirements from the previous SIP. By the end of this
year, we will have exceeded them. The five to ten tons of NOx per day the previous SIP called for that ARB mentioned in their presentation, at the end of this year, we will have exceeded that. And as mentioned, we have not stopped there. In two weeks, we are going back to Washington, D.C. to try to lobby to make sure the NRCS farm bill funding element of this program is continued. That's to the San Joaquin Valley has been roughly $15 million or more per year in addition to the Carl Moyer funding. And we're going after things that the construction rule and the truck rule would not have. There's exemptions in there. And the ARB staff mentioned the trade-down program or trade-up program, whichever way you want to look at it. We're going after tractors that would otherwise have been exempted when a rule -- a formal regulatory rule that's out there.

In fact, just two weeks ago, did the first prototype if you will of that rule and replaced a tractor with a higher tier tractor that would otherwise have been exempt. We're going to create reductions from top to bottom. So based on that, we would ask that you support this program as well. Thank you.

ACTING CHAIRPERSON RIORDAN: Thank you very much. Thank you, Roger.

Bill Magavern. And we had something sign up a
little bit later, Edward Moreno following Bill.

MR. MAGEVERN: Good morning, Bill Magavern with Coalition for Clean Air.

We have joined with several other groups concerned about the air quality in the San Joaquin Valley. We joined through our Fresno office in the ten-page comment letter that you've received drafted by Earth Justice. And those folks who are in the San Joaquin Valley are more familiar with this issue than I am personally, but I will try to summarize for you the gist of that letter, which is essentially that voluntary incentives alone are not sufficient to get the air quality improvements that we need to get from this sector. You're all well aware of the way that people living in the San Joaquin Valley are suffering because the bad air quality, one of the two worst polluted air basins in the country. Asthma rate is almost 17 percent. It's higher among some populations.

And we support incentives. We support the Moyer program. That's part of the solution. But it needs to be coupled with binding standards the same way that you have done in many other areas.

We think that this approach that is proposed today is legally suspect, and the letter goes into that rational in great detail as to why it does not meet the
requirements under the Clean Air Act.

So in addition to having a voluntary incentive program, we think you need to have a regulatory program that that's what was envisioned back in 2007 and that the proposal presents conclusions for why regulations are not needed, but does not present the data necessary to support those conclusions.

So we ask the Board to reject this proposal and direct staff to come back a regulatory proposal. Thank you.

CHAIRPERSON NICHOLS: I think we have one more witness signed up for this item. Ed Moreno from the Sierra Club. I don't see him.

This is the list. It's all over by the time I arrived.

BOARD MEMBER RIORDAN: The Board hasn't commented yet, and I'm sure our San Joaquin Valley members would perhaps like to talk.

CHAIRPERSON NICHOLS: Absolutely. Before they do comment though is there an opportunity for staff to weigh in and have you discussed this voluntary versus -- I know you gave your original staff report, but terms of the staff, speaker's comments, is there my response to that Ms. Terry?

DEPUTY EXECUTIVE OFFICER TERRY: Yes. Just a
point of clarification that the 2007 SIP that has been approved by EPA thorough description of the measure, and it discussed very clearly the technology issues which is the timing for availability of Tier 4 engines, which we now know will be 2020 and later. So that's what our mobile source control staff just described as the long-term regulatory strategy. And then that is combined with the near-term strategy that is being implemented since 2009, which is the incentive program. And the measure did explicitly discuss the goal of securing additional federal funding to complement the Moyer and other local dollars that would be spent to achieve early reductions by 2017.

We have tracked all of the funding to date, and we are on track to meet the at least five tons goal. And when we look at the money that is already available and committed, we do believe we will exceed the minimum estimate of five tons by 2017.

CHAIRPERSON NICHOLS: Thank you. And just to be clear, if the engines are available in 2020, the rulemaking process has to start quite a long time before 2020; correct? Can you give any indication of when you're going to start to work on developing that regulation?

DIVISION CHIEF WHITE: I'm pleased to say we've already begun that effort with stakeholders, with the San
Joaquin Valley, with the other stakeholders in the Valley. We anticipate maybe late 2015, early 2016 having a proposal to the Board. And it will address not only the long-term needs, the 2032 needs we talked about, but really looking for opportunities of emissions reductions toward the 2023 standard as well.

CHAIRPERSON NICHOLS: So this is not just a hypothetical we might get around to it some day. You're actually allocating resources to this?

DIVISION CHIEF WHITE: That is right.

CHAIRPERSON NICHOLS: Let's turn to the Board then for comments. Who wants to -- they're pointing at each other. Dr. Sherriffs, in order the seniority.

BOARD MEMBER SHERRIFFS: In the order of seniority, I should speak first.

BOARD MEMBER BALMES: Are we talking about age?

CHAIRPERSON NICHOLS: No. Time and service on the Board.

BOARD MEMBER SHERRIFFS: We'll compare birth certificates at our next breakfast.

I think, as has been said, we would strongly agree. Strong regulations are a very important part of this, but we have an extraordinary opportunity where there ha been a lot of collaboration, a lot of working together to make these incentives work. And I think that sets a
very good tone for the difficult negotiations on the regulations. So I think it's very important that we support this. And also as the representative of the San Joaquin Board which unanimously supported this, I certainly would be in favor of this.

CHAIRPERSON NICHOLS: Thank you. Mr. Eisenhut.

BOARD MEMBER EISENHUT: Thank you.

I urge support of this staff recommendation. I think I have some personal experience. And I need to disclose that I've been vetted and appropriately allowed to participate in this discussion and this vote. But without going into detail, I'm aware and I can testify to its impact and its effectiveness. And I think that's enough and --

CHAIRPERSON NICHOLS: I'm going to take that as a motion and a second for the Resolution. And I'm going to call on Dr. Balmes and then on Supervisor Roberts.

BOARD MEMBER BALMES: So I actually do research in the San Joaquin Valley, Fresno in particular, with regard to children's health. And I've studied asthma in Fresno. Currently funded a study whether air pollution impacts, obesity, and diabetes among children in the Fresno area. I would just agree with Mr. Magavern that it's a very big problem. The air pollution in the Central Valley we need to be doing more about it. I'm
wholeheartedly in support of this proposal, and I look forward to seeing a long term regulatory strategy.

CHAIRPERSON NICHOLS: Thank you.

Supervisor.

BOARD MEMBER ROBERTS: Just a quick question. When the grants are awarded, are older pieces of equipment taken out of circulation? It wasn't clear from the presentation.

PLANNING AND REGULATORY DEVELOPMENT SECTION MANAGER GREGOR: Yeah. When a farmer participates, they have an older piece of equipment they've been using and they replace it with a newer piece of equipment, the older piece of equipment is destroyed.

BOARD MEMBER ROBERTS: There's always a one and one and we know for a fact those are gone.

PLANNING AND REGULATORY DEVELOPMENT SECTION MANAGER GREGOR: Yes.

CHAIRPERSON NICHOLS: They're not turning up on the black market in Arizona.

BOARD MEMBER ROBERTS: I was hopeful that was the answer. That's exactly what I was concerned with.

BOARD MEMBER SHERRIFFS: Refer you to slide 15. I think Lynn Terry was present for the --

BOARD MEMBER RIORDAN: I think the Carl Moyer Program sort of sets the bar there so you know things are
taken care of.

I just want to commend the district and those people who went out and sought the moneys to be able to do this. I think it's really very positive. And having just driven through the San Joaquin Valley and noted all of the agricultural efforts that are going on right now that not only take care of us in California but probably world, we need to do whatever we can to assist our farmers. And I'm hopeful that the farm bill gets passed, because that certainly will be a major step to extending funding hopefully.

So good luck, Roger. I hope you have a lot of support there to move that farm bill.

CHAIRPERSON NICHOLS: All right. Any further comments? If not, I'm going to call the question here. All in favor of the resolution in support of the SIP credit plan for mobile agricultural equipment, please say aye.

(Ayes)

CHAIRPERSON NICHOLS: Any opposed? Any abstentions?

All right. Very good. Thank you all very much.

The next item on today's agenda is a set of proposed modifications to the cap and trade regulation. This action will be to consider the proposed regulatory
amendments, including proposals to provide additional
transition assistance for covered entities, add a new set
of offset protocols, incorporate additional cost
containment features, and enhance implementation and
oversight of the Cap and Trade Program.

As we discussed yesterday during the end of the
day when we were getting our first look at the Scoping
Plan, the Cap and Trade Program is a key part of the
comprehensive set of programs outlined in the initial
scoping plan to help California reach the 1990 greenhouse
gas emissions target by 2020 and create the framework for
ongoing action to cut emissions beyond 2020. It's not the
biggest piece of the program, but it is the capstone
literally.

By establishing the hard cap, the program ensures
that California will meet its 2020 emissions target while
giving businesses flexibility to choose the lowest cost
approach to reducing emissions. In doing so, it creates a
powerful economic incentive for investment in cleaner more
advanced technologies.

The Cap and Trade Program was adopted in 2011
after a multi-year public stakeholder process and is off
to a smooth start. As with all of our programs, we
continue to monitor very closely and make adjustments and
refine it as needed to ensure successful ongoing
The proposed amendments before us today are designed to enable the program to continue operating smoothly. These proposed amendments were developed using the same type and quantity of public engagement that we had throughout this process, including eleven public workshops.

I would also like to note that as called for under the regulation, we are on track to formally link our program with Quebec beginning January 1st, 2014. Next week, we will be providing the Governor with a report detailing our assessment of readiness to link. Quebec and California have taken a leadership role in establishing a model that will encourage others to join us in taking action to reduce greenhouse gas emissions.

Through the leadership of our Governor and a number of agreements and activities with China, Australia, west coast states and others, California is actively working with other jurisdictions to share what we've learned and to develop a list of best practices to learn from one another and expand global action to cap and reduce greenhouse gas emissions.

China is launching seven pilot Cap and Trade Programs at the provincial level in the coming months which collectively are about twice as big as the
California program and could lay the groundwork for a national program there in the future.

Just last week, the Governor of Washington state, Governor Inslee, indicated he would like to see a statewide emissions cap in Washington. And Europe, South Korea, Mexico, northeastern states through the Regional Greenhouse Gas Initiative and others continue to develop or to implement similar or related programs in the general area of cap and trade.

I want to particularly thank the staff who have spent hundreds of hours I know on the phone and in one-on-one meetings with stakeholders and members of the public working to ensure that these amendments that we're considering today will foster a Cap and Trade Program that continues to meet the goals of AB 32.

Mr. Corey, would you please introduce this item?

DEPUTY EXECUTIVE OFFICER COREY: Yes, thank you, Chairman Nichols.

As you indicated, staff will present a set of proposed amendments to the cap and trade regulation collectively. These modifications to the program will provide additional details to clarify implementation, address stakeholder concerns, respond to Board direction of various topics, and enhance the ARB's ability to oversee and implement the regulation.
We'll be asking that you direct staff to continue to work to finalize these amendments that would enhance the effectiveness and clarity of the regulation. If you so direct, final adoption of these amendments would be considered next spring following staff's response to comments on the environmental analysis and any 15-day comment periods.

Last fall, two Board Resolutions directed staff to propose modifications to the regulation. These amendments are in response to your direction in those and prior Resolution as we continue to implement this first-in-the-nation economy-wide Cap and Trade Program.

Over the past two years and in response to these Board directives, staff began to identify and assess areas of the regulation that might require amendments. During this time, staff was in constant communication with industry stakeholders and members of the public ensure an open and transparent rulemaking process, including workshops and regular meetings with stakeholders.

As the Chair mentioned, we're actively working in partnership with other jurisdictions on the Cap and Trade Programs. In spring 2013, the Board approved amendments to link California Cap and Trade Program with that of Quebec.

Now David Allgood from the Climate Change Program
Evaluation Branch will begin the staff presentation.

David.

(Whereupon the following slide show presentation was given.)

AIR POLLUTION SPECIALIST ALLGOOD: Thank you, Mr. Corey.

Good morning, Chairman Nichols and members of the Board.

This presentation will focus on the proposed amendments to the California cap on greenhouse gas emissions and market-based compliance mechanisms regulation, also known as the Cap and Trade Program.

These amendments include: Additional transitional assistance for covered entities, the addition of one new offset protocol, and the incorporation of an additional cost containment mechanisms.

Staff is also proposing some technical amendments to help with implementation and further enable comprehensive oversight of the market program.

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AIR POLLUTION SPECIALIST ALLGOOD: For this presentation, I will begin by providing background on AB 32 and the goals of the Cap and Trade Program. I will also discuss recent milestones and program updates since we last presented to the Board.
I will then describe the amendments staff is proposing to the cap and trade regulation and with a focus on the most significant modifications as directed by Board resolutions.

The final portion of this presentation will discuss the next steps for rulemaking process and present staff's recommendations for Board approval of the resolution.

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AIR POLLUTION SPECIALIST ALLGOOD: AB 32, the Global Warming Solution Act of 2006, put a statewide greenhouse gas emissions goals into law. As you heard yesterday, AB 32 mandated that the ARB develop a Scoping Plan to lay out the path for achieving these reductions. The associated measures and policies are shown on this slide. The Cap and Trade Program is a key measure towards achieving our goals. You heard yesterday from staff on the progress towards implementing the Scoping Plan and considerations for further reduction needs as we tackle climate change.

The Cap and Trade Program is one of a suite of measures to reduce greenhouse gas emissions under AB 32. Under the Cap and Trade Program, ARB places a statewide limit or cap on the emissions from all covered sources within California. The cap begins the expected business
as usual emissions and then gradually declines at two to
three percent per year until the 2020 goal is reached.
The total number of permits to emit, or allowances, issued
each year is equal to the cap.

Covered entities can buy and sell allowance and
must have enough to equal their total emissions. The
transfer of allowances between market participants is
referred to as a trade. By allowing trades, the program
provides covered entities with the flexibility to make
reductions at their facility or trade with others for
allowances.

Greenhouse gas emissions reductions that occur
due to direct regulation are also recognized as reductions
under the Cap and Trade Program. In this sense, direct
regulations and the Cap and Trade Program work together to
reduce the State's overall greenhouse gas emissions.

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AIR POLLUTION SPECIALIST ALLGOOD: Cap and trade
places a price on carbon emissions to incentivize
reductions, thereby spurring innovation in low emissions
and energy efficient technologies.

The program is designed to complement other
existing programs to reduce air quality emissions. And by
setting and enforcing a strict cap on greenhouse gas
emissions, the Cap and Trade Program ensures that the AB
32 goals are realized.

It's important to note that the Cap and Trade Program is technology neutral in that it doesn't mandate the use of one specific emissions reduction technology. Thus, the program allows entities the flexibility to comply with the regulation in the most cost effective manner.

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AIR POLLUTION SPECIALIST ALLGOOD: As mentioned previously, ARB places an aggregate limit or cap on the emissions from all covered sources within California from 2013 to 2020. Unlike traditional air permitting programs, there are neither specific caps for individual facilities nor facility level reduction targets.

The cap covers approximately 85 percent of California's greenhouse gas emissions. The program begins with a narrow scope, which only includes emissions from large industrial sources that emit greater than 25,000 metric tons of CO2 per year and electricity generation and imports.

Beginning in 2015, the program will cover emissions from the combustion of natural gas used in residential, commercial, and small industrial sectors and will cover the combustion of gasoline and diesel.

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AIR POLLUTION SPECIALIST ALLGOOD: Once above the threshold, an entity has an emissions compliance obligation for all of its covered emissions. An entity's emissions must be matched with an equal number of compliance instruments that are surrendered at the end of a compliance period.

There are two types of compliance instruments that may be used to satisfy a compliance obligation. The first of these are allowances. Each allowance represents one metric ton of carbon dioxide equivalent and can be acquired in one of three different ways: Via free allocation from ARB if the entity is in an eligible category, via the auction, or via a trade with another market participant.

Allowances do not expire and are thus considered bankable, and there is no limit on the amount of allowances that can be used to satisfy a compliance obligation.

Second, there are ARB-issued offset credits, which represent a real and verifiable voluntary emissions reduction of one metric ton of carbon dioxide equivalent from uncapped sectors. Offsets can be purchased directly from an offset project developer or through a trade conducted on the secondary market. Offsets are bankable, but can only be used to satisfy up to eight percent of an
entity's compliance obligation. The voluntary reductions must meet the AB 32 criteria of real, enforceable, quantifiable, verifiable, and permanent. And they must be additional. Meaning, they are beyond regulation or what would have otherwise already occurred. Offsets are also subject to stringent monitoring and verification requirements.

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AIR POLLUTION SPECIALIST ALLGOOD: The cap and trade regulation was developed over a three-year period through an extensive consultation process. The Board initially considered the proposed regulation in December of 2010 and the Board officially adopted the regulation in October of 2011. Staff has since proposed two sets of amendments; one set related to implementation and the other link to Quebec.

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AIR POLLUTION SPECIALIST ALLGOOD: To date, ARB has successfully held four quarterly State-run auctions, and the next auction will be held November 19th of this year. The first direct allowance allocation to eligible entities occurred in November of 2012, and the first compliance obligation for covered entities began January of this year.

Last month, ARB issued the first compliance-grade
offset credits, marking another important milestone.

Staff is currently working to develop a linkage readiness report in preparation for linkage with Quebec. This will be presented to the Governor on November first.

Finally, the first compliance surrender date for the program will occur next year on November 1st, of 2014.

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AIR POLLUTION SPECIALIST ALLGOOD: Since the adoption of the Cap and Trade Program in 2011, the Board has issued three resolutions directing staff to review items and propose changes as needed. The Board direction is summarized on this slide.

Many of the amendments we will discuss today are a direct result of Board direction.

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AIR POLLUTION SPECIALIST ALLGOOD: Staff conducted an extensive public process to develop these proposed amendments. In the past year, staff has held eleven public workshops on the topics included in this slide. Staff also released a draft document that helped inform the 45-day package.

I will now walk through a summary of the proposed changes.

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AIR POLLUTION SPECIALIST ALLGOOD: This slide
provides a summary of the proposed changes to prevent leakage. By leakage, staff is referring to the decrease in emissions in state that result in emissions increasing outside of California.

Staff is proposing new and modified product benchmarks. Product-based benchmarks will allow businesses to grow and receive allowances based their efficiency relative to other facilities in that sector. Staff is proposing to change the refinery allocation from the carbon weighted ton, known as CWT, to a complexity weighted barrel, known as CWB. This CWB was proposed by the Western States Petroleum Association and uses an approach similar to the CWT, but is more reflective of California data. The benchmark is still in development, and we request direction from the Board to continue working with stakeholders to finalize this methodology.

The most significant of the leakage prevention allocation changes is the shift in assistance factors. As ARB-funded studies are still underway, staff is proposing to shift the first decrease in assistance factors to 2018 to provide certainty to regulated entities and time to complete and review our studies. Staff may propose additional shifts in the transition factors after reviewing the results of the studies.

Staff is proposing amendments related to
allocation for new entrants and clarification of dates for the opt-in facilities.

Staff is also proposing changes to the true up mechanism so that these allowances can be used for the compliance year that those allowance are truing up for.

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AIR POLLUTION SPECIALIST ALLGOOD: Staff is proposing further amendments to allowance allocation for additional sectors. Staff is proposing to allocate to the natural gas suppliers on behalf of their rate payers similar to how allowances are already allocated to electrical distribution utilities.

This methodology allocates allowances to suppliers for most of their emissions and requires suppliers to cosign a portion of these allowances to the auction. The revenue generated from these allowances is required to be used on behalf of the rate payers. In 2015, suppliers would be required to cosign 25 percent of their allowances to auction, with the amount cosigned increasing at five percent a year.

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AIR POLLUTION SPECIALIST ALLGOOD: With regard to legacy contracts, staff is also proposing to allocate to generators that are engaged in contracts made prior to AB 32. Although some have renegotiated, staff is proposing
to allocate to those remaining contracts. This methodology would redistribute allowance allocation from the industrial source to the generator for the life of the contract. For contracts where no party is currently receiving industrial allocation, the proposal limits allocation to the first compliance period.

To reward early action in energy efficiency, staff is proposing to allocate to universities and public service facilities, and we will require entities to report on the use of this allowance value.

Lastly, staff is proposing to allocate to public wholesale water entities that have direct emissions associated with moving water.

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AIR POLLUTION SPECIALIST ALLGOOD: Staff is proposing amendments to covered entities to include new sectors not previously covered and exempting some existing sectors.

Staff is also proposing to exempt facilities that would not have been covered but for their investments in combined heat and power. This proposal is for the first compliance period only.

Staff is modifying this proposal in the 15-day changes to extend it through 2020.

Staff is proposing to exempt waste to energy
facilities for the first compliance period and retire those allowances associated with these exempt emissions.

A multi-agency draft report was recently released that includes a comprehensive look at waste diversion streams and their related greenhouse gas emissions. And ARB will consider this final report and decide if additional changes are needed for the waste to energy facilities.

Staff is proposing extending the exemption to national security facilities since greenhouse gas mitigation strategies are already in place.

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AIR POLLUTION SPECIALIST ALLGOOD: Let me now turn to electricity generation. Staff is proposing language to clarify resource shuffling provisions based on the guidance issued in November of 2012 developed jointly by ARB and the utilities. The guidance described activities that are not considered resource shuffling. And although resource shuffling is still prohibited, there is no attestation requirement. Staff is also proposing some technical amendments related to the retirement of RECs to avoid double counting under the voluntary renewable energy program.

Staff is also proposing modifications to ensure REC retirement requirements are consistently applied to
both in state electrical generation facilities as well as facilities that import electricity.

Lastly, staff is proposing clarifications to the RPS adjustments for imported electricity.

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AIR POLLUTION SPECIALIST ALLGOOD: Compliance offset credits can only be generated using Board-approved offset protocols. To date, ARB has adopted four of these offset protocols. Staff is proposing a fifth compliance offset protocol for mine methane capture, which I will discuss later in this presentation.

A sufficient offset supply will incentivize GHG reductions that otherwise have not occurred and will also provide cost containment under the Cap and Trade Program. We are also proposing some minor amendments related to the implementation of offsets to streamline and clarify the project review process.

And staff is strengthening the conflict of interest provisions. Finally, staff is proposing changes to make liability in the event of invalidation consistent for all project types as was originally intended. This change corrects a loophole which previously did not apply buyer liability to forestry offsets. This ensures that covered entities do their due diligence when purchasing compliance offsets. Staff has given ample signals to the
marketplace that this change will be made.

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AIR POLLUTION SPECIALIST ALLGOOD: Staff is proposing changes to the surrender of allowances. Staff changed the mechanisms to no longer retire allowances during the annual compliance, but instead simply checked that the entity was holding sufficient compliance instruments in their compliance account to cover its emissions obligation.

This change was to address stakeholder concerns about possible errors in the submittal of compliance instruments.

Staff is also proposing changes to the triennial compliance obligation to specify the order that instruments are retired from a covered entity's compliance account. The methodology takes instruments that do not have a vintage first, such as offsets and reserve allowances, and then moves to the earliest vintage allowances. This retirement order maximizes the use of offsets up to its limit and removes compliance instruments in order of most to least challenging to liquidate at an auction if ARB were forced to close an account.

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AIR POLLUTION SPECIALIST ALLGOOD: From the beginning, ARB has believed a comprehensive market
oversight is essential for fair and equitable access to compliance instruments for all market participants. During the implementation, staff has encountered several situations where individuals have tried to register as a voluntary entity, but also work for another covered entity as an employee or contractor.

This potentially creates an opportunity for fraudulent behavior and to ensure that staff, and the market monitor understand all of these relationships, staff is proposing amendments related to the auction advisors and contractors.

Staff is also proposing additional amendments required for the types of contracts that support transfers. Understanding the terms of contracts can help staff provide meaningful aggregate data on market transactions and help monitor the market for manipulation.

Staff is also proposing to clarify which types of trades are prohibited in the program. These prohibitions also ensure that contracts that hide true ownership of allowances are prohibited, as these types of contracts could be used to exert market power.

Staff has heard stakeholder concerns on these issues and is proposing to continue to work with stakeholders on this.

Our goal is to ensure that these changes are not
made overly broad, but are sufficient for staff and the
market monitor to understand the market participants
relationships and the types of trades taking place.

-Air Pollution Specialist Allgood: Staff is also
proposing an additional cost containment mechanism that
increases the availability of allowances at the highest
price tier of the price containment reserve. Maintaining
the availability of a sufficient offset supply of
allowances to satisfy the demand of the reserve sale will
be effective in ensuring that allowance prices do not
exceed the highest priced tier. Staff's proposal makes
ten percent of allowances from each vintage eligible for
sale at the highest price tier if the quantity of accepted
bids exceeds the quantity of allowances available in this
tier.

If needed, eligible allowances will be sold
beginning with the budget year furthest in the future,
currently 2020, and then the preceding budget years until
all accepted bids are filled or all eligible allowances
are sold.

Staff feels that this mechanism is sufficient for
near-term price spikes, but it does not address the
sustained price spikes or those that might occur in later
years. As presented in the Resolution before you, ARB has
made a commitment into looking at cost containment in the
context of a post 2020 Cap and Trade Program.

The last major amendment is to add mine methane
capture protocol. This protocol quantifies the greenhouse
gas emissions associated with the capture and destruction
of fugitive methane.

If adopted, this protocol will allow the issuance
of offset credits for these reductions that would
otherwise have been released into the atmosphere as a
result of mining activities at active and abandoned mines.

These offsets represent real, rigorously
quantified, greenhouse gas emission reductions that would
otherwise be vented into the atmosphere. If adopted, each
of these projects done under this protocol would be
subject to the rigorous program requirements such as
reporting, verification, and auditing.

Staff reviewed data from three existing projects
developed under a voluntary offset protocol and compared
their performance to the coal production data provided by
the U.S. EPA.

Staff determined that the net profits of these
offsets, assuming a $10 a ton value, was less than one
percent of the net profit of those mines. Based on this
assessment, we do not believe that this offset protocol
will encourage or prolong the life of existing mines.
The potential offset supply of these types is about 60 million metric tons. This represents one of the largest domestics supplies of offsets for which there is a rigorous quantification methodology.

Finally, the adoption of any offset protocol does not preclude any regulatory agency from developing future regulations to reduce greenhouse gas emissions.

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AIR POLLUTION SPECIALIST ALLGOOD: Moving now to the environmental analysis, ARB prepared an environmental analysis, EA, for the proposed amendments and the offset protocol as part of the staff report according to the requirements of ARB's certified program under the California Environmental Quality Act, CEQA. The EA concluded that compliance responses from the proposed amendments would result in no adverse environmental impacts.

It also concluded that the implementation of the mine methane capture projects could result in potentially significant impacts to biological resources and cultural resources related to landscape disturbance caused by construction of these facilities and infrastructure.

Project-specific impacts and mitigation would be identified during the environmental review by agencies with regulatory authority over specific projects.
AIR POLLUTION SPECIALIST ALLGOOD: Staff is proposing additional modifications to the regulation. The full regulatory text proposed for each modification will be made available for a 15-day comment period.

I have mentioned some of these modifications in my presentation, but I'll summarize them here. As part of the 15-day changes, staff will propose modifications and additions to product benchmarks. In the refining sector, industry proposed that allocation to refineries in the second and third compliance period be calculated using the complexity weighted barrel approach, or CWB. Staff found that the CWB approach is a reasonable basis upon which to calculate allowance allocation to the refiners. As a result of continued stakeholder discussions, staff will also propose to extend the transition assistance for legacy contracts through the second compliance period instead of what's currently going to end at 2014.

As indicated earlier, staff will work with stakeholders to clarify the requirements around transfer requests reporting, and information on disclosure for contractors and advisors. Staff will also address stakeholder concerns from what data must remain static for auction participation and how often registration information must be updated.
Staff will also propose to extend the but-for exemption beyond the first compliance period. The compliance obligation associated with these emissions would just then be moved to the point of the natural gas supplier.

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AIR POLLUTION SPECIALIST ALLGOOD: The cap and trade environmental analysis completed in 2010 concluded that increases in localized air pollution or forest related impacts caused by this regulation or the U.S. forest protocol are unlikely. However, ARB could not determine with certainty that there would not be increases in these impacts. As a result, ARB established an adaptive management process to monitor for possible adverse impacts to localized air quality and forest impacts.

Following Board approval of an adaptive management plan in 2011, staff began working with air districts, universities, and other experts to identify monitoring methods and response procedures for localized air quality and forest impacts. Staff will release additional information on monitoring procedures for forest impacts this winter and are continuing to work with air districts and the EJAC on local air quality impacts. Staff anticipates that additional updates on the adaptive
Staff also is in the process of finalizing the linkage readiness report and provide this to the Governor on November 1st.

Staff has also been working on a rice cultivation offsets protocol, which we expect to bring to the Board in spring of 2014. Staff is awaiting final research data for model calibration and an assessment of the potential environmental impacts of this protocol.

Staff has also initiated an interagency contract to make the modeling tool used more user friendly.

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AIR POLLUTION SPECIALIST ALLGOOD: In conclusion, staff recommends that the Board approve the resolution before you. This resolution directs staff to continue to work on cost containment to develop and release a 15-day changes as described in my presentation and Attachment B, and to prepare response to any comments received on the EA and to return to the Board that you can consider the approval of the CEQA responses and the final rule making package.

So thank you very much for your consideration.

CHAIRPERSON NICHOLS: Thank you.

I said something nice about staff in my opening remarks, which I don't always do. Because you get enough
praise from other people. In this instance, I want to say something about the presentation and the work that went into it.

I think it's fairly obvious that we're dealing with issues here that effect businesses, livelihoods and many different sectors in California. Every one of them, no matter how narrow and technical it may seem, is worth a lot to somebody, oftentimes many somebodys.

In addition to that, we have created here in California an actual market which is functioning as we speak. There is a live market in California compliance instruments and in offsets as well.

So one of the things I wanted to mention -- and if I'm repeating something, I apologize. But the Resolution that you all are proposing actually was posted this morning, not long in the advance of the meeting simply because if it leaked out in bits and pieces or had gone out early, there might have been some competitive advantage to some group or another. So just handling the physical release of a document like this was in and of itself an important sensitive task of very well trained people to manage it.

I'm extremely proud of the fact we have had a year's worth now of this program under our belt and that none of the terrible things that people alleged might
happen did and moreover that we've already seen many good things happening as a result of this program. But the fact that we have been so successful so far obviously is attributable in large part at least to an enormous amount of vigilance and care on the part of everybody who's been involved in managing this program, as well as in the great assistance that we've had, great response that we had from the communities that were subject to this regulation. So it's been really an amazing, an amazing performance to date.

I want to congratulate Mr. Allgood on that presentation, because if you look at it, the number of specific items that are in front of us today, each of which has probably got several people who are going to comment on it, is quite extraordinary. But you know, it's a package. Each piece of it I think hangs together and was explained. And we're going to now hear from a lot of people who are going to explain why we should have done it differently or better or whatever. And of course, we need to listen and to take all of that into account before we make any final decision.

So I'm suggesting that you fasten your seat belts and get ready for what's going to be quite an interesting set of presentations. But overall, I really just wanted to say that to be here today with a package of -- I can't
call them minor because to somebody they're major. But
relative to the size of the whole program, these are fixes
that we're making to improve the overall smoothness and
operation of a program which is already working well. So
I just wanted to kind of lay the ground work with that.

I know we have more than 41 names that are in
front of me right now, but that's a good start. So I'm
hoping that we can do our usual three minute allocation to
people. But if it starts to get out of hand we may end up
having to shorten that as time goes on. But anyway, the
day is young. So we'll start with the three minutes per
speaker and begin.

Can you post these up on the the wall the way you
have in the past? Yes. I'm going to try to read three
names in a row. But it's easier if you look and see where
you are on the list.

We're going the start with Tim Haines, Mark
Parsons, and Frank Caponi.

MR. HAINES: Good morning, Madam Chair.

Nice to see familiar faces and soon new friends
on the Board.

I'm Tim Haines with the State Water Contractors.
We are an association of water agencies that receive water
from the DWR's State Water Project. We distribute that
water to 25 million businesses and families throughout the
state. 750,000 acres of agricultural land as well. The customers of the State Water Project pay all of the costs that are associated with delivering that water, and that includes the cost of cap and trade.

In 2011, the Board passed Resolution that directed the Executive Officer to work with the wholesale water agencies in order to be able to address inequities that arise as a result of using wholesale power to deliver power to move water throughout the state. In the ensuing three years, we made significant progress. What we've been able to demonstrate with the staff is that the Electric utilities do not, in fact, provide retail power to the pumps that we use.

We've also shown that the water customers of the State Water Project incur a similar cost as to the electric customers that was mitigated by the Air Resources Board and the allocation free allowances.

What we've also been able to do is demonstrate that the cost burden of the electric utilities is similarly diverse as it is to the State Water Project customers, some that exceed free allowances, do not have a surrender obligation is one example of a similarity.

The State Water Project is estimated to incur about $20 million in cap and trade costs in 2013. We project that that cost will be on the order of about $220
million between now and the end of 2020.

In comments that were submitted by the Department of Water Resources yesterday, what they did was confirmed that they are actually buying emission allowances in the past. They will participate in the next carbon market. And they will continue to participate in the markets going into the future.

They've also found no prohibition from the Air Resources Board being able to allocate emission allowances to the State Water Project DWR.

The Resolution -- there's a lot more work to be done. And what we like to be able to do is continue that through the amendment process. We've offered some more precise Resolution language that we have past along, have made it available. And what we'd be like to do is work with the Board and staff to reflect the progress that's been made in the resolution in order to be able to set the stage for being able to make future progress that we're hoping for.

CHAIRPERSON NICHOLS: Thank you.

Mark Parsons.

MR. PARSONS: Good morning, Chair Nichols and members of the Board.

I'm Mark Parsons, Senior Deputy General Counsel, and I'm speaking on behalf of the Metropolitan Water
District. Metropolitan is the nation's largest wholesale provider of drinking water. We distribute water from the Colorado River and the State Water Project to our 26 member agencies and supply the water used by more than half of the roughly 19 million people in the coastal plains of Southern California.

As noted by Mr. Haines the wholesale water utilities have been before your Board a number of times to request the same sort of cost mitigation for their customers that you have given to the customers of the electric utilities. MWD appreciates the work of your Board and staff in addressing their issues and are heartened your stated intent in a draft Resolution to continue working with Metropolitan to further development methodology for our allowance allocation.

As this process moves forward, we request that you consider Metropolitan's unique attributes and circumstances in refining the allowance allocation calculation.

While the impact of AB 32 compliance costs are felt by all utilities customers, mitigating those costs for each utility requires a recognition of different resource mixes and regulatory requirements. As an example, Metropolitan obtains much of its energy from large federal hydroelectric projects under contracts that
will continue for at least the next 50 years. By ignoring the fact that Metropolitan obtains the preponderance of its energy from this emissions-free resource, the regulation as drafted underallocates allowances to Metropolitan for its supplemental energy needs.

Your Board has made accommodations for similarly situated utilities, and we request you do so for MWD.

With respect to the State Water Project, Metropolitan pays more 70 percent of the project's energy cost and is very concerned about the $220 million cost burden that the cap and trade regulation will impose. The fact that the cost burden imposed by the project primarily involves increased energy costs rather than the cost of purchasing allowance is not a valid basis for determining that the project should not receive any allocation for free allowances.

Every dollar that a publicly-owned water or electric utility pays for AB 32 compliance will ultimately be paid by an in-use utility customer. By denying the State Water Project allowances simply because it does not have an obligation to purchase and surrender them, the draft regulations would penalize the project and its customers solely because it does not import or generate energy.

This is contrary to the Board's stated purpose of
freely allocating allowances to the electric utilities,
which is to offset the rate impacts of the cap and trade
regulation.

Finally, MWD supports the written comments of the
Department of Water Resources and the written and oral
comments of the State Water Contractors as well as the
draft Resolution circulated by Mr. Haines. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Caponi.

MR. CAPONI: Good morning, Madam Chair, members
of the Board.

My name is Frank Caponi with L.A. County
Sanitation District. I'm here today to speak in support
of this limited waste-to-energy exemption that's provided
as an amendment to the regulations that are before you
today.

As staff indicated in their presentation, this is
consistent with a couple of Board resolution, the most
recent of which require that the exemption be provided
while the situations debated in the waste sector plan
which I spoke of yesterday in my testimony. So we look
forward to debating that in 2014.

You made hear some come up and say that waste
incineration is not appropriate. It's horrible. These
are interesting speeches, but not relevant to the item
that's before you today. These will be debated as part of
the waste sector plan that will be going down that path in
2014. Thank you.

CHAIRPERSON NICHOLS: Thank you.

The next three Kassandra gough, Bill Buchan, and
Jon Costantino.

MS. GOUGH: Good morning, Chair Nichols and Board
members and staff.

My name is Kassandra Gough. I'm the Director of
Governmental Affairs for CalPine. We're one of the
state's largest independent power producers. We own and
operate over 6,000 megawatts of clean efficient gas
generation in the state, and we have 725 megawatts of
geothermal, making us the larger provider of renewable
energy in the state.

Today, my husband and I are celebrating our 17th
wedding anniversary. And I tell you that because I'm in a
reflective mood and how our marriage is similar to my
relationship with CARB. Seven years ago, as we were
negotiating the final version of AB 32, I had just given
birth to my third and final child. So I always know how
old these regulations are because I do remember his
birthday. But like a marriage at the end of the day when
we all adopted AB 32, we were feeling invincible and
powerful and life was going to be perfect. And like a
marriage, reality sets in and sometimes it's hard. And
it's not always been easy putting together these
regulations and working together.

But I believe a successful marriage is based upon
respect and communication and a willingness to really
listen to what the other person and understand what their
needs are and where they're coming from.

And I think that's what we've done here. We've
had bumps in the roads. We've had disagreements, but
we've always had open communication. Sometimes even on
weekends, probably not to either of our liking, but it
happened because it needed to be done.

And we've gotten to a very good place because of
all of this. I'm here to say thank you. Staff
particularly on the long-term contract issue worked with
us. We didn't like where they had come to originally, but
really listened to us. We really listened to them and
what they were trying to achieve in terms of the integrity
of the program, and we think we've gotten to a very good
place on that. The majority of our contracts are covered
while maintaining the integrity of the program.

Also, increasing the auction purchase limit was
very important to us. We're very hopeful that that
increase to 20 percent will occur in time for the last two
auctions of this year.
So I really want to thank Chair Nichols, your staff, Board Members Berg and Sperling who aren't here today, former Board Member DeeDee D'Adamo who was very helpful. Richard, Edie, Steve, Rajinder, and all the other people that they probably forced to work that I don't even know. But thank you.

And so like a good marriage, there's still some issues we have to work on. And there's some technical and legal issues we have to work on here. But because we've established this pattern of really positive communication, I think we're going to make it. Thank you.

CHAIRPERSON NICHOLS: Thank you very much. Well done. And it's going to set the stage for the rest of the day.

MR. BUCHAN: Chair Nichols and members of the Board, good morning.

My name is Bill Buchan representing Cardinal Cogen, a 48 megawatt power plant providing stream power and chilled water to Stanford University. We operate under a legacy contract that was put in place well before AB 32. We negotiated and we were unable to pass on any of the cost, which are considerable, under cap and trade.

While the current regulation does not address legacy contracts, the new proposal that staff provided on October 16th and we urge support of this. It provides
transition assistance through the end of the second compliance period and does so on in fair way amongst combining power plants as well as relative to other covered entities. This is something that the original draft regulations that went out in July did not do.

So we urge support of the October 16th proposal by staff for legacy contracts. And if approved, we at Cardinal Cogen pledge to work with staff to develop a detailed regulation with staff. We have submitted our comments in writing. And thank you for the opportunity to testify.

CHAIRPERSON NICHOLS: Thank you. Mr. Costantino.

Mr. COSTANTINO: Hello. Good morning.

Jon Costantino. Today, I'm representing the Coalition for Fair and Equitable Allocation. It's actually a group of five operators of small refineries in the state. And we have submitted written comment. The five refiners are Phillips 66, Alon, Kern, Taggart, and San Joaquin Refining.

And the reason we formed the coalition was to address the issue of benchmarking and how one product, one benchmark could possibly negatively impact the smaller refineries. So I'm here today to support the fact that we were able to reach resolution on a number of issues, complexity weighted barrel, the second compliance period
assistance factor, the establishment of an atypical benchmark, and actually the metrics for that atypical we certainly think satisfy what a small refinery is. And there is a difference between a small refiner and small refinery. We think atypical focuses on small refinery.

One last concern is the issue of a jointly operated concept of a small refinery is somehow attached to a larger refinery that you have to allocate the allowances as one big group. We think that's counter to the definition of atypical. And the reason something is atypical with integration and other issues. We will certainly be working with staff to figure out what that definition actually means, because we haven't seen it yet. But that's our one remaining issue as a coalition.

I know individual members saw some stuff they will be speaking to on their own. But as a coalition, we were able to come together and work with staff and get through this supportable position. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Melinda Hicks, Cindy Parsons, and Susie Berlin.

MS. HICKS: Good morning, Chairman Nichols and Board members.

My name is Melinda Hicks. I'm the Environmental health and Safety Manager for Kern Oil and Refining Company, a small publicly-owned refinery in Bakersfield,
California.

Kern appreciates the opportunities to come before you today and show our support for the proposed amendments to the Cap and Trade Program, amendments that have significant potential to severely impact Kern's business if not done right.

Kern appreciates and supports staff's proposal to use the complexity weighted barrel for refinery benchmarking, including the considerations for all the process units, off-site adjustments, and notably the establishment of a separate benchmark for atypical refineries.

The diversity of the California refinery sector makes applying a single benchmark problematic. And staff's proposal most recently largely addresses concerns that we previously have regarding these competitive disadvantages and inequalities of refinery allocations.

Kern appreciates staff's in-depth analysis of California refineries that identify the typical refineries whose structural constraints, lack of economies of scale, and lack of opportunities for heat integration justified this separate benchmark.

We look forward to the release of the actual draft regulatory language and working with staff over the next several weeks in approach of the subsequent 15-day
amendment package. We're pleased with the strides that have been made so far and confident this can be done right.

Lastly, I want to express our support for the amendments that will increase the assistance factor in the second and third compliance period and also the allowance for limited borrowing of true up allowances.

Thank you for the opportunity to address you today.

CHAIRPERSON NICHOLS: Thank you.

MS. PARSONS: Good morning, Board.

My name is Cindy Parson with the Los Angeles Department of Water and Power. We have filed written comments, and I'd just to like highlight a few of them.

The first is regards to a new condition for participating in the auction. The amendment would change a disclosure requirement into an attestation requirement. We're concerned that this is a significant change in the rules. We're participating in an auction. And if an entity has any kind of an investigation, whether it's warranted or not, that that could bar that entity from participating in the auction.

We would prefer to see that this amendment be limited to either eliminate the attestation or limit the scope of the attestation so that it would cover fewer
possible investigations.

The second item is the application for participating in the auction. And this proposal is really broadly written and such that any changes in an entity's auction or account application will result in denial of the entity's ability to participate in the auction. We believe this requirement is too restrictive and recommends that CARB work to define what constitutes a change that would lead to denial of an entity to participate in an auction.

It would be extremely difficult for an entity to have no changes at all in an entity's directors and officers within the time period stated, especially if the entity plans to participate in all four quarterly auctions.

And then lastly, with regards to what staff brought up during the presentation with the RPS adjustments, from an accounting perspective, it makes sense for the credit for the RPS adjustment to be taken in the same year as those -- that electricity was imported. When you're doing the report and you're reporting the import, the credit should be tied to that same year. But unfortunately, with the REC requirement that the RECs aren't going to be retired for two to three years down the road, if that credit is tied to REC retirement, the credit
is going to be -- it's going to be disjointed.
So you report the emissions in one year, and you claim credit in years down the road. That's really not the best way to do it from an accounting perspective. So we actually would encourage ARB to consider an alternative way to enable entities to claim that RPS adjustment credit in the same year that you're actually reporting the electricity. So that way from an inventory perspective it makes a lot more sense.

Thank you very much.

CHAIRPERSON NICHOLS: Okay. Thank you.

Can I just ask a question while Ms. Berlin is coming up? If I understood the testimony, the concern would be that let's say hypothetically this Mayor of Los Angeles were to remove a commissions and replace one at the Department of Water and power that that could invalidate their ability to participate in an auction; is that correct?

ASSISTANT DIVISION CHIEF CLIFF: That's not the intent. The intent of that language is to ensure that we have information about participants in auction that remain static during a defined period of time, such that there is not a change in ownership or that sort of thing.

The type of thing that Cindy has laid out we don't think is actually something that could occur. But
what we've said is that we're going to work with
stakeholders during 15-day -- during the 15-day comment to
try to refine that language to better define the intent
and ensure that we're getting what we need and it's also
something that we can --

    CHAIRPERSON NICHOLS: Thank you.
    Ms. Berlin.
    MS. BERLIN: Good morning, Chairman Nichols,
members of the Board.

    My name is Susie Berlin. I'm representing
Northern California Power Agency and the MSR Power Agency.
We are publicly-owned utilities, joint powers agencies
that are comprised of public-owned utilities.

    I want to start by thanking staff for all their
efforts on the proposed amendments, and especially for the
time they took to work with stakeholders and address a lot
of the concerns we raised as reflected in the proposed
resolution.

    We would like to highlight a couple key issues
regarding cost containment, resource shuffling, allowance
surrender designation.

    On cost containment, the resolution directs the
creation of a plan for cap and trade post-2020. We think
this is a great idea. We believe cost containment should
be a pivotal part of that plan. We urge that proposal be
amended slightly so that the staff and the Executive Director can begin working on that right away and not wait until the third compliance period.

There are planning issues and, indeed, the acknowledgement that the proposal for cost containment as set forth in the regulation to be adopted today doesn't address long-term price spikes, and these kinds of matters should be addressed immediately. So we hope that post 2020 plan can be developed sooner rather than later.

On the issue of resource shuffling, we fully support including all of the provisions for the safe harbors in the body of the regulation. We just ask for a slight additional modification to address instances where there are transactions that we don't know what the form or shape they're going to take right now, but they're clearly not undertaken for purposes of avoiding a compliance obligation. And we want to ensure that down the road and after the fact review of these transactions will not cause an entity to be in violation of the resource shuffling provision.

On the allowance surrender designation, we ask that the entities be allowed to designate which allowances are surrendered for retirement. And specifically, that there be a distinction between the allowances that are freely allocated to electrical distribution utilities and
those that are purchased.

The reason for this is because there are restrictions in the regulation on the use of freely allocated allowances. And without an ability to ensure that the allowances that are drawn out of an account simply by vintage could result in a POU that has placed their freely-allocated allowances into their compliance account being found in violation, if those allowances aren't clarified to show that the ones that were withdrawn are the ones that were purchased and not freely allocated.

And finally, with regard to the employee disclosures and the contractors, we appreciate the proposed revisions or staff's acknowledgement that they want to continue to work with stakeholders and ask that you adopt that portion of the resolution.

And on facility shut downs on Section 95812, we just ask that you clarify those provisions are applicable to the industry sector and perhaps move them into that part of the regulation instead of under allowance allocation generally.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Next three are Michael Cote, Danny Cullenward, and Dorothy Rothrock.

MR. COTE: Good morning, Chairman Nichols and
Board members.

My name is Michael Cote, the President of Ruby Canyon Engineering. We are a Colorado-based small business greenhouse gas consultants, coal mine methane experts, and also ARB verification body.

I just wanted to offer support for the protocol. And in fact, we believe that it will achieve its goal of reducing greenhouse gas emissions in addition to effecting what we consider to be an institutionally and culturally difficult sector, the coal mine methane sector.

We've been working for the EPA's Climate Change Division coal mine methane outreach program since 1998 to try to effect the projects world wide. What we've seen in countries that offer incentives like China and Germany and Australia, we've seen the most projects developed in those countries. And whereas, countries like Ukraine and Russia and the United States where no incentives are offered, we're seeing very little development in that sector. So with the point being we really feel like the incentives are effective in this space.

I also wanted to point out that most of the coal mine methane development we have ever seen is always done by small businesses. They're also energy developers, technology vendors, equipment suppliers, technology consultants, and many of these are actually based in
California and provide these services to coal mines in the U.S.

What we've also seen that the coal mines themselves are not the main beneficiaries of these type of projects. The fact that the two large scale ventilation air projects currently going on in the U.S. right now, Jim Alta Resources and Consol Energy, neither of those mines invested in each of those projects. They're being done solely by small business development.

We also want to say we also feel like the voluntary price signal is not enough to effect any more of these ventilation air methane projects. We think the protocol could help see more of these projects roll out in the future and really have a positive impact on eventual regulation and VACT for coal mine methane emissions.

But currently, the technology is in its infancy in its application for coal mine methane emission. There's only ten of these projects worldwide and there are severe limits on the ranges in which they can operate. Currently, two-thirds of the coal mines in the U.S. that are gassy are below .3 percent methane where these projects can't be deployed. Many of the projects are above the flows that are limited to this technology. So we feel like by using this vehicle of offset mechanisms, we can see many of these projects be rolled out and the
technology become more mature so it can actually accelerate VACT feature. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Cullenward.

MR. CULLENWARD: Good morning, members of the Board and staff.

My name is Danny Cullenward. I'm here today in my personal capacity. By way of background, I have a law degree and a Ph.D. from Stanford where I worked on the policy for about ten years. I'm now a research fellow at the Berkeley Energy and Climate Institute.

CHAIRPERSON NICHOLS: Where are you a researcher?

MR. CULLENWARD: At the Berkeley Energy and Climate Institute.

One more thing about my background. I've not spoken before this body before, but I was very pleased to be involved in the litigation of a Rocky Mountain farmers union where I represented a group of scientists and very glad to see that the Ninth Circuit has upheld the California's use of the best available environmental science in their climate policy.

With that as background, I'm here to talk about a very serious concern about I have about the resource shuffling provisions in the staff proposal today. I'd like to point out that those are almost word for word
identical to what the Board had issued as a directive to staff.

My concern is that these provisions are so broad and vague, they essentially swallow the prohibition on resource shuffling and very easy to put basically any transaction into the safe harbors. The problem with this outcome is almost all economists who have looked at this area agree if there is no effective rule on resource shuffling, the amount of leakage that could come from that is comparable to the scale of the mitigation expected under the cap and trade market through 2020.

Let me say a few more words on this problem. I don't think anybody has really thought about what this kind of leakage would mean when the system links with Quebec. I don't think that waiting on EPA regulations for existing sources is a wise policy going forward.

The existing source rule under 111(d) of the Clean Air Act at this point is speculation. The Obama Administration has promised it by next year. If you look at the litigation possibilities there as well as the delays in the SIP calls, I think it's extremely unlikely we would see effective action from the EPA on existing sources before 2020 when you look again at how the SIP process works out and how long it takes to get attainment and compliance through the SIP process.
So I think it would be a huge mistake to permit significant amounts of resource shuffling with the staff proposal that's been submitted before you. I strongly urge you to reach out to people to look for alternative ways of structuring this process. There are many solutions out there. I've written one. There are many other economists that have other ideas. I strongly encourage you to focus on the market integrity.

One last word. The statute under AB 32 requires this Board to minimize leakage in the design of the market-based regulations. I cannot see how a vague and broad set of safe harbors that essentially would upend the prohibition on resource shuffling would be consistent with that. And I urge you to -- strongly urge you to revisit the recommendation before you. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Ms. Rothrock, is it your anniversary, too?

MS. ROTHROCK: No, but I have something to say about marriages.

My name is Dorothy Rothrock with the California Manufacturers and Technology Association. I also Chair the AB 32 Implementation Group. And despite those very sobering comments you just heard, I actually have nothing but positive things to say today. I'll just let that linger a little bit.
It's tough. As you know, manufacturers do face huge challenges in California, but we really do want to thank the staff for recommending that the industry assistance factor be increased in the second compliance period. And that we should all recognize with the efficiency benchmarks, we're still seeing and we will be seeing reductions in the manufacturing sector in a cost effective and technologically feasible way with 100 percent allowance allocation up to these efficiency benchmarks.

Also want to thank staff for all the work they've been doing to adjust those benchmarks and make sure they really reflect what's accurate and appropriate for the industries covered. It's a huge task. They'll really had to get into the nitty gritty of these companies. And I'm hearing back there's some very good relationships being built, and I think it really is going to help us going forward.

Looking forward to the third and potentially later compliance periods as this program goes forward, I think we're looking forward to working together in good faith. But I think picking up on Kassandra's marriage discussion, I think we're in marriage counseling. And I think it's just going -- we're going to keep working together in a good faith manner to make sure we can get
through this and all succeed.

Finally, just want to also thank you. It's happening again and again here, for the mine methane offset protocol. Of course, increasing the option in cap and trade is going to keep the cost down for everybody. Thank you very much.

Next time I speak, I hope I'm this positive. But I can't guarantee it. Thank you.

CHAIRPERSON NICHOLS: Angus Crane.

MR. FUTAMURE: Good morning, Chair Nichols, Board members and staff.

My name is Taku Futamura. I'm the asset manager for Wildflower Energy. I'm here today to indicate our support to transitional assistance to legacy contract. Wildflower Energy has pre-AB 32 legacy contract with a third power marketer that's not explicitly address greenhouse gas costs.

Wildflower owns two fast starting peaker plants in Southern California and that are covered by pre-AB 32 legacy contract. Over the past four years, Wildflower has been unsuccessful in its efforts to renegotiate the legacy contract. And as a result, Wildflower faces serious economic risk without by the ARB today. We believe that the staff's proposal is fair and will achieve the ARB's policy objective of encouraging parties to renegotiate
their contracts.

I also want to take a second to thank the ARB staff for their hard work on this issue and taking into account the various interests and issues faced by a very diverse group of stakeholders. We request that the ARB approve the proposed revisions to Section 95894 today.

Thank you.

CHAIRPERSON NICHOLS: Thank you.


MR. CRANE: Good morning, Chair Nichols and California Air Resources Board.

My name is Angus Crane. I'm Executive Vice President and General Counsel for the North American Insulation Manufacturers Association, or NAIMA. NAIMA is the trade association for manufacturers of fiberglass and rock and slag wool or mineral wool insulation.

We have in the state of California, NAIMA members of four manufacturing: CertainTeed Corporation in Chowchilla; Johns Manville in Willows, California; Knauf Insulation, Shasta Lake; and Owens Corning in Santa Clara. And NAIMA greatly appreciates in opportunity to support California Air Resources Board proposed reclassification of the mineral wool manufacturing trade exposure leakage risk.
I would also like to particularly express our appreciation to Steve Cliff and the Air Resources staff that we met with multiple times in presenting our case. Essentially, what had happened is that the glass industry has three sectors; a flat glass, bottle glass, and the fiberglass. When the assistance factors were assigned, the other two glass sectors were given 100 percent allowances for all three compliance periods. Fiberglass was only given 100 percent the first, and then second and third we were significantly reduced.

We went in and we sat down with the California Air Resources Board. They explained to us why there was a differentiation. It was because of foreign competition rather than domestic competition. What was very gratifying for us is we were able to sit down with Steve Cliff and his team multiple times and explain to them domestic leakage was far more relevant than foreign leakage. And we had at California's border in Arizona two manufacturing plants that could easy take care of the California market. We also had two additional plants in Utah and four manufacturing plants in western Canada.

We were then able to demonstrate to the Air Resources Board that this capacity within our industry could enable the plants in California to shut down and we would still be able to supply the California market in
addition to all the other markets. We had that much capacity.

What was very gratifying is California Air Resource Board heard us. They listened to us. We understood what we were saying and we are now here supporting the changes that have been made.

So we're grateful for this opportunity. We support what they have done because they have been very thorough in their analysis. They looked at all of the data. And it also is consistent with the information that we provided. So we're very grateful. And we thank you for this opportunity to support your decision.

CHAIRPERSON NICHOLS: Thank you.

Thomas Vessels.

MR. VESSELS: Good morning, Chairman Nichols and Directors of the California Air Resources Board.

Thank you for giving me the opportunity to speak in support of your amendment regarding the mine methane capture, Cap and Trade Program.

We support the amendment because it gives value to a waste product that is currently venting to atmosphere. This will encourage the development of technology and innovations to both detect the methane, capture it, and in some cases convert it to beneficial and economic use. This could encourage other states to pay
more attention to methane emissions both from mines and in general. And perhaps other states even could be encouraged to look positively at participating with California and Quebec and the Western Climate Initiative or some other type of program.

Thank you again very much.

BOARD MEMBER BALMES: Could I ask one question? Sir, I have a question.

So you said that some of the methane capture under this protocol could be used for commercial purposes. So would that -- I understood this was low concentration methane that was being released and captured. If it's valuable, I don't understand why we would be giving credit for it.

MR. VESSELS: Well, the methane I'm referring to is not currently of value. Or presumably it would have been captured and put to use.

But with more attention given to the reduce due to having a value in the cap and trade system, it could be captured to probably at least destroy it, combust it. But once it's captured and is being combusted, it at least could be potentially at one location where innovation could take place to use it.

Just, for instance, as a billboard advertisement, if you see a large frame of a methane being combusted, it
does occur to people that's wasted energy resource. Does that answer your question?

BOARD MEMBER BALMES: Yes.

CHAIRPERSON NICHOLS: Okay. Thanks.

MS. LLOYD: Good morning, Chair Nichols and members of the Board and staff. My name is Debbie Lloyd. I work for the city of --

CHAIRPERSON NICHOLS: Could you move the microphone down a little so we can hear you?

MS. LLOYD: Today I'm here on behalf of the natural gas distribution companies. That includes the investor-owned utilities of Southern California Gas Company, Pacific Gas and Electric, San Diego Gas and Electric, Southwest Gas Corporation, and also the publicly-owned utilities includes Palo Alto and the cities of Long Beach and Vernon.

We have submitted written comments and I'm here just to highlight a few of them. First of all, we'd like to say we appreciate the CARB staff's willingness to engage in dialog with us and the willingness to hear our concerns regarding our customers and the impacts of the Cap and Trade Program on them.

We believe we've been good citizens in implementing aggressive energy efficiency programs and developing sustainable solutions. A few of us also are
electric utilities, so we are already engaged in cap and trade and some of the solutions there.

We would like to express support for the allocation of allowances, which will help mitigate and phase in the rate impact to our customers, the use of the 2011 base year for calculating the emissions cap. And we also encourage CARB's offset protocol review and the adoption of additional protocols, which will expand the offsets available and give the natural gas distribution utilities additional tools for reducing greenhouse gas emissions. We believe the use of these high quality offset credits is an effective cost containment measure.

We do ask CARB to reconsider a couple items. One is on holding allowances which results in double penalty when in non-compliance with reporting requirement. We have in our written comments submitted some suggested language that would clarify the intent of holding only the amount of allowances that are out of the reporting compliance.

We also request clarification on how any withheld allowances will be recirculated into the market to avoid price strikes.

And thank you for the opportunity to address you today.

CHAIRPERSON NICHOLS: Thanks.
MR. BIERING: Good morning. My name is Brian Biering. I'm with Ellis and Schneider and Harris here today on behalf of the Turlock Irrigation District.

First of all, I'd like to express our appreciation on behalf of the district for the openness and willingness of staff to work with the very diverse group of stakeholders. I think both the 45-day rulemaking package, Appendix A to the Board resolution today and staff's presentation all reflect the staff's willingness and openness to work with the stakeholders.

The issues that we'd like to comment on today relate to allowance transfer issues and specifically trading restrictions. It's identified in Appendix A as one of the issues that the ARB is going to continue to work on next year. And we're hoping that staff will take a hard look at whether or not the requirements are overly broad and whether or not some of the new requirements, specifically the collection of allowance transfer information, may impose new additional transactional costs on parties engaging in allowance transfers.

The other issue I'd like to comment on is with respect to the cost containment provisions. One of the things that we've advocated for in our written comments is an expansion of the offset rules. And we agree certainly with the inclusion of new offset protocols. But the other
side of the equation is how to encourage offset demand. And specifically, the eight percent offset usage limit we believe should be expanded such that an entity can bank that going forward. That would send a market signal in the near term as to the potential demand for offsets in the later parts of the program.

The next issue I'd like to comment on is with respect to flexibility in determining the retirement order for allowances. There's some provisions in the regulation or the 45-day rules that will provide additional flexibility with respect to the allowance transfer -- excuse me -- the annual retirement obligation that we believe there should be more flexibility with the triannual compliance obligation and specifically allow regulated entities to determine the order in which they retire their allowances.

And finally, I'd like to speak to the issue of resource shuffling. We certainly don't share the concern by the gentleman from U.C. Berkeley about the potential adverse effects of the resource shuffling prohibitions. With you we do agree there is some remaining ambiguity and ask the Board reconsider its decision to not provide advisory opinions on this issue and provide stakeholders with a little bit more certainty on a question of resource shuffling provision by allowing for advisory opinions if
stakeholders bring questions to the ARB.

Thank you for the opportunity to speak today.

CHAIRPERSON NICHOLS: Thanks.

MR. AGUINALDO: Good morning Madam Chair, members of the Board.

As one of California as smallest petroleum companies, Lunday-Thagardtag Company appreciate the opportunity to comment on your staff's proposal to the refinery sector allocations.

First, we support staff's proposal to adopt the complexity weighted barrel methodology, inconclusive of the adjustments for off sites, non-crude sensible heat, as well as the non-energy utilities.

Secondly, we support the staff's proposal to benchmark atypical refineries such as us separate from our more typical counterparts.

And third, we support staff's proposal to define a California atypical refinery as one of those having less than twelve process units and processing less than 20 million barrels of crude per year.

We look forward to working with your staff on the development of the actual language.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

MR. ARNOLD: Good morning, Madam Chair, Board
members, staff.

My name is Greg Arnold, President of CE2 Carbon Capital, a San Diego-based funder and developer of Carbon emission reduction projects for the Cap and Trade Program. We're also an industry intervener on ARB's behalf in the offsets lawsuit and its ongoing appeal.

We'd like to thank the ARB staff today for their hard and thorough work to understand the value and evaluate the technical merits of the mine methane capture protocol and for taking the care to delve into the facts and data on a very complex subject.

We're here today to voice our support for staff's recommendation to include the MMC protocol as part of the Cap and Trade Program. The substantial offsets supply the MMC protocol can deliver is an important part of meeting the cost containment efforts of the program.

With two years left, in compliance period one, we're not quite at the halfway point for the offset requirements projected for the program. These emissions reductions are a critical part of the cost containment, not only for covered entities, but for rate payers as well.

Today, methane emissions at cold mines are unregulated by the federal government, a situation that is likely to remain into the foreseeable future. As a
result, most mine methane emissions are released into the environment. Without revenues from carbon offsets, there is no economic incentive to mitigate them. You can see how this has played out in the landfill gas methane capture sector as the mitigation is being curtailed now that compliance-grade offsets are no longer an economic incentive.

You'll hear criticisms today and may have heard some in the past that this protocol will lead to additional coal mining. We disagree. Coal competes in a global marketplace and its dominance and power generation is being eroded by the low price and abundant supplies of natural gas.

The revenues from mine methane capture projects are only a small part, not a material driver, of the economics of the coal mining operation. They are, however, the critical piece that funds emissions controls.

I would like to note that certain critics overstate mine economics because their analysis considers only project revenues without factoring in the substantial costs, capital included, long paid backs, and risks of developing coal mine methane capture projects.

To be frank, some of the critics just don't like offsets. What the Board is really considering today is whether or not to create an incentive to fund additional
emissions control projects that will otherwise not take place and whether California will exert its traditional leadership role at the vanguard of U.S. Environmental policy. We believe you should and we hope that you will. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Bloom.

MR. BLOOM: Good morning. I'm appearing on behalf of OLS Energy Chino. We operate a 30 megawatt CHP facility at the California Institute for Men in Chino, California. Since 1988, OLS has provided Southern California Edison with 26 megawatts of power under a legacy PPA.

The modified staff proposal issued on October 16th provides transition assistance through the second compliance period for the legacy contract holders.

OLS is very appreciative of all the efforts of staff and others to come up with this proposal, and we greatly support it. We're also appreciative of the efforts of staff on this regard.

OLS also submitted in its written comments some tweaks to the definition of legacy contract to remove any ambiguity. We ask that you take these into consideration as you go forward. Thank you very much.

MS. VAUGHAN: Good morning, Chair Nichols and
Board members.

My name is Beth Vaughan, Executive Director of the California Cogeneration Council. And I've appeared before you on this issue of legacy contracts.

Within our membership, we have a number of combined heat and power projects between the thermal host and the third-party cogenerator. And these contracts do not have provisions to enable the recovery of GHG compliance costs.

The modified staff proposal providing transition assistance to the end of the second compliance period solves the problem for I believe the majority of the 20 eligible legacy contracts that have been identified by ARB staff. And I'm happy to say almost all of mine. It includes all but one of my member contracts.

To put that into perspective, three years ago, when the draft regulation came out October 28th of 2010, I remember my dates too, not by the birth of my children. And at that time I believe we identified within our membership about twelve of these legacy contracts. When I appeared before you a year ago, we were down to six. And now we only have one where the regulation does not solve for them.

So I'd like to thank the ARB Board and members with whom I've met on this issue and all the staff who
have been working very hard over a very long period of
time for proposing this change in addressing what I
believe is significant issue for those affected companies.
However, as I mentioned, the modified staff proposal does
not solve for one of our facilities and this is Crockett
Cogen. This is because the thermal contract between
Crockett and C&H sugar extends beyond 2013.

Crockett Cogen is the only facility on ARB's list
of 20 eligible generators in the unique situation where
the industrial host meets the definition of energy
intensive trade exposed entity but is not covered by the
cap and trade regulation. In this case, C&H sugar
refinery is not an industrial covered entity because it
did not emit greater than 25,000 metric tons. This is
solely because Crockett Cogen combusts natural gas it
supplies all the thermal energy used in the production of
the sugar, and it provides the steam that C&H uses to run
its two steam turbines to produce on-site electricity.

But for Crockett Cogen, C&H would be an
industrial covered entity receiving an allocation of free
allowances under the regulation. If C&H emitted above the
25,000 metric tons threshold, it would receive the free
allowances that could be transferred to Crockett Cogen as
per the 45-day proposed amendment.

Our recommendation is to make an exception for
Crockett because of this unique situation and to provide transition assistance for the term of its legacy contract. Thank you.

MR. WEINER: Madam Chair and members of the Board, I'm Peter Weiner from Paul Hastings. I'm here to speak on two different issues today.

First, I'd like to thank all the Board members and staff for your attention to legacy contracts. We support the proposal that was issued on October 16th and very much appreciate it. It recognizes the reality in the marketplace for these generators.

We would ask on that that as staff goes to develop the 15-day proposal that they consider the levelling of the playing field for those legacy contracts that are addressed here with those that have industrial counterparties so that the base year and the true-up provisions are the same. These are meaningful in the amounts of millions of dollars for these entities. And we submitted written comments on that.

The rest of the time I'd like to devote to something else. And by the way, we do think the Resolution as prepared on the legacy contracts can include this kind of technical amendment.

The other thing I'd like to speak about is that I'm here also on behalf of the CSP Alliance, which are
developers and operators of solar thermal energy
facilities. And of course, solar energy displaces
greenhouse gas emissions in our electrical sector and is
much to be desired. But these solar thermal facilities do
use a small amount of gas, a diminimous amount, to help
stabilize the energy source to heat up water so it's ready
for solar or to keep turbines so they won't crack in the
cold at night in the desert.

And the Energy Commission prompted by Assembly
Member Skinner's Bill AB 1954 has recognized that this
diminimous use of gas should be still included in the
definition of renewable energy. So we've asked in written
comments that the Board consider that as an amendment.
You've done so on geothermal. You've done it on fuel
cells. We think this is a similar technology that should
be recognized in that way.

We would ask that, if possible, that the
Resolution be amended, if necessary, to include a
direction to staff to look at this issue. We have to
discussed with staff a couple of different ways this could
be accomplished and we would quarterly come further
discussions with them. But we do think including it in
the Resolution would be very useful. If you have any
questions, be happy to answer them. Thank you very much.

CHAIRPERSON NICHOLS: Okay. Thank you.
George Morrow.

MR. MORROW: Good morning, Chair Nichols and Board members.

I'm George Morrow, Director of Azusa Light and Water. We're a member of the Southern California Public Power Authority and one of the owners of San Juan generating station through SCCPA. There's five of us. As many of you in this room know, we're working very hard to find an exit strategy for San Juan. It's very tough negotiations. Going to be very extensive for us. We're basically leaving 25 years of an asset out there and we still have debt to pay. Kind of like if you have a car. You have a five-year payment and you shut it down after three years and let it sit in the garage, you're still making the payments. We're moving in the direction and I think it can be accomplished.

Our concern today is that there's some language in Section 95812 that says if a facility that receives allowances is shut down, then those allowances would be returned to the CARB.

Now talking with staff, we understand that might be a bit of a ministerial error that that language really only intended to apply to industrial facilities, not to the electric utilities. Of course, this whole program cap and trade is to give in large part utilities and other
entities incentives to do the right thing, to reduce greenhouse gases. And walking away from San Juan is one of the things we're doing to reduce our greenhouse gas footprint.

So it becomes a disincentive if we think we have that risk. So we're asking that be relocated to Section 95891. That will give us the clarity we need to -- what's going to be a very tough business case to at least provide a bit of benefit economically as we proceed.

Thank you for your time.

CHAIRPERSON NICHOLS: Thank you.

I'm trying to keep score and notes and I hope others are, too, of all these comments. We'll have to wrap them up at the end. Ms. Oneil.

MS. ONEIL: My name is Barbara Toole Oneil. I'm a consultant. I've worked in energy and environmental issues for most of my professional life. I worked in environment and fuels.

I'm here to speak on behalf of the mine methane and capture protocol. I'm in support of the protocol and I commend the Board and the staff that have worked on the protocol. They were very engaging. They worked very hard to understand the issues.

California's been a leader for many, many things. And I think this is an opportunity for California to
continue its leadership particularly for mine methane protocol. California has many riches, but one of the things California doesn't have is coal. They don't. So it's difficult to understand the mining industry, to understand that since it is not within our state boundaries.

In the coal industry, mining industry, as previous speakers have mentioned, people worry about producing the coal and the coal has provided historically a quality of life that we enjoy today.

Coal also has the moniker of being dirty. It has all sorts of other things. And we're moving ahead. One of the things that happens when you mine coal all the time is that you get methane emissions. This is an opportunity to address an environmental issues that is unlikely to be regulated at the federal level, to incentivize the companies that spoke here, like CE2 Capital, to develop projects that will reduce a true environmental issue and reduce the methane and perhaps be able to flare it or use it for on site and beneficial use or cobenefit. I think it's a great opportunity.

And again, I commend the staff. They did an excellent job of listening.

CHAIRPERSON NICHOLS: Thank you. Thanks for coming.
MR. ANDERSON: Thank you, Chair Nichols and members of the Board.

My name is Craig Anderson, and I represent solar turbines. We've been manufacturing in California for 87 years. And we have 5,000 employees in the San Diego region.

While their business leaders remain concerned about the long-term ability to expand our businesses under the Cap and Trade Program, we sincerely appreciate the effort made by staff to understand our concerns. Steve and his group has worked with us extensively, and we thank him for that.

We are particularly thankful for the personal visits that were made by Supervisor Roberts and Chair Nichols to our factory down in San Diego. We look forward to working with the staff on the leakage exposure assessments.

For today, we urge the Board to adopt the proposed amendments to the assistance factors for the first three compliance periods.

Chair Nichols, as you personally saw, our products are used worldwide by governments and businesses to reduce their greenhouse gas emissions through the application of combined heat and power. Many of our customers are here in California, several of them are here...
We recommend that the ARB support the application of CHP by providing full allowance assistance throughout the compliance periods for covered entities using CHP.

Again, thank you for your consideration and we lack forward to working with the Board in the future.

CHAIRPERSON NICHOLS: Thank you.

MR. LIEBERT: Good morning. My name is Ron Liebert with the Law Firm Ellis Schneider and Harris. I'm here on behalf of the Wheelabrator Norwalk.

Wheelabrator Norwalk is a non-standard QF that provides steam to a State hospital. The Norwalk facility is operating under a pre-AB 32 legacy contract that does not take into account for greenhouse gas costs.

We, therefore, support the staff proposal to provide transitional assistance to legacy contracts for the second triannual compliance presented to ensure that legacy contract generators are not detrimentally burdened financially as a result of the inability to pass through GHG costs.

We believe the staff proposal is a fair and balanced approach. We also request that the ARB adopt the 45-day language today so that legacy contract generators will have certainty that they need that they will qualify for transitional assistance. Thank you.
CHAIRPERSON NICHOLS: Thank you.

MS. HAYA: I'm Barbara Haya, a research fellow at the Stanford Law School.

Thank you for the opportunity to speak today about the proposal mine methane capture protocol.

Over the last six months, as a participant in the Mine Methane Capture Protocol Working Group, I saw Board staff work for make sure the methods of measuring emissions reductions from individual projects under the protocol are accurate.

But I'm here today because several broader scale issues remain unaddressed. There was large scale over-crediting unless preventative measures are taken. California's offsets program follows pretty dismal experience thus far with other offsets programs that have largely failed to deliver the reductions they claim.

California has the opportunity to do this right. Doing it right requires solid analysis and conservative decisions about project eligibility which ensure the wider effects of the incentives created by the protocol are positive and the credits represent real additional emissions reductions.

And let me briefly mention three key concerns. One: By allowing all new methane capture from abandoned mines to participate in the protocol, it is possible and
perhaps likely the majority of these credit from abandoned mines will be from non-additional projects that were already being built. These are projects that would be subsidizing projects that would have been built without the offsets protocol. To avoid this, the Board should exclude sub-categories of abandoned mines most likely to implement mine methane capture projects on their own.

Secondly, there is a risk of weakening implementation of the Clean Air Act rules with respect to greenhouse gas emissions from new and expanded coal mines. This can be solved by refining eligibility criteria by this relatively small portion of possible participating projects, at least until there is more certainty about what these Clean Air Act rulings will look like.

Third, we understand that the income generated by offsets credits can substantially improve the profits of some participating mines. I've done an analyses of ten mines and find much larger possible impacts on mine profits than the Board staff has found, particularly at drainage wells and at the gaseous mines where the cost of implementing the mine methane capture projects are the lowest.

And given the seriousness of increasing the coal mine methane projects, I believe more refined and especially transparent analysis is needed by the Board.
So I urge the Board to only adopt this protocol and any other new proposed offsets protocols after adequate analysis has been done to ensure the protocol will not infuse California's Cap and Trade Program with substantial numbers of false carbon credits. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Dan Consie.

MR. CONSIE: Good morning Chair Nichols and the Board members.

My name is Dan Consie, I'm the Asset Manager for Crockett Cogeneration. We are 240 megawatt combined cycle cogeneration facility, and we supply the thermal load for the C&H Sugar Refinery in Crockett, California.

We supply C&H with approximately two million MMBTU of steam annually. Were C&H to self-supply this steam, they may be facing a compliance obligation of approximately 135,000 metric tons annually.

However, as Ms. Vaughn mentioned earlier, C&H is not a covered entity under the Cap and Trade Program. The entire compliance obligation associated with the thermal load is borne by Crockett Cogeneration. There is no mechanism in the thermal scales contract to pass through that cost of compliance to C&H.

I'd like to thank the Board and the staff members for considering the issues that those of us with legacy
contracts are facing. I also appreciate the modified staff proposal that just was released that extends transition assistance through the second compliance period for entities such as Crocket Cogen. However, as Ms. Vaughan said earlier, our thermal contract with C&H extends beyond the third compliance period.

And therefore, I'm here to request transition assistance for Crockett Cogeneration through the remaining term of its thermal sales contract. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Tanya Peacock.

MS. PEACOCK: Good morning, Chair Nichols, members.

I'm Tanya Peacock representing Southern California Gas Company and San Diego Gas and Electric. And first, I'd like to add my appreciation to staff's open and collaborative rulemaking approach. We really appreciate all the time and effort they've spent listening to our concerns and responding.

In particular, we support and ask you to approve the new section on natural gas suppliers that provides an allocation of allowances to gas utilities on behalf of our customers. We also support changes to industrial assistance, the addition of the resource shuffling guidelines, and the new offset protocols.
We do remain concerned about some of the market monitoring provisions. We have submitted written comments discussing our concerns in detail, but I would just say there is a section that appears to preclude SoCal Gas and SDG&E from auction participation due to circumstances outside of their control. And I note in the Resolution that staff is going to continue to work with compliance entities to resolve some of these issues, and we appreciate that effort.

I also note in the Resolution and we support the direction to develop a cost containment plan. But we feel that 2018 would be too late. So we encourage that that plan be developed earlier in the second compliance period.

So thank you very much for the opportunity to present these comments. And we look forward to continuing to work with staff to make the cap and trade program a success. Thank you.

CHAIRPERSON NICHOLS: Thank you.

MS. RIESENHUBER: Good morning, Board and member. My name is Amber Riesenhuber with the Independent Energy Producers Association. IEP is a trade association of independent power producers representing over a 26,000 megawatts of in-state generation. We're here today to speak to you regarding legacy contracts. This has been a longstanding issue for EIP, so we're pleased to say we
appreciate the staff and Board's movement on this issue. Specifically, we support the proposal to provide relief to legacy contracts with industrial counterparties that are receiving a free allocation. This coverage is designed to provide coverage throughout the duration of the contract. We think that's appropriate.

Second, we support the revised staff proposal to provide transition assistance through 2017 rather than 2014 as originally proposed. We think this is a substantial improvement to addressing contracts without reasonable cost recovery that are pre-AB 32 contracts.

So we support the Board's approval of the revised staff proposal and we agree with the staff that we can address these changes through a subsequent 15-day comment period.

I'd just really like to thank the Board especially over the past few months in working with us on this issue. And we really look forward to working with staff going forward. Thank you.

CHAIRPERSON NICHOLS: Thank you.

I'm just going to point out that we are about to take up witness number 30, and I now have the third page of the list of people who have asked to testify and that brings us to 60. So I'm going to do two things. First of all, I'm going to cut off new speakers
from this item. People can come speak on the public
comment period if they absolutely feel that they must
speak. But I think 60 witnesses covering every interest
group and every issue is sufficient. If there is some
hardship case that somebody wants to make to the clerk,
they can do that. But they're going to have to come to
me, because I really feel you've had enough time to decide
if you want to speak or not. And hopefully we will hear
all points of view.

Secondly, people have been using their -- not
everyone has used their full three minutes, and we
appreciate that. But for those of you who have not spoken
yet, I'm going to stipulate that you thank the staff.
I'll consider that every single person here thanks the
staff for their good work on these issues because it's
obvious they did a good job. And anything else you can do
in all seriousness to tighten up the testimony would be
much appreciated. Thank very much.

MR. STRONG: Good morning. My name is Aaron
Strong from Stanford University.

I'd like to start by thanking the staff for their
incredible work. And in all honesty, I've been working
with the staff very closely for the last six months
participating in the technical working groups that have
been used to help develop the mine methane offset
compliance protocol.

And I participated in this process with goal of helping the ensure the environmental integrity of both this protocol and of the Cap and Trade Program as a whole through careful analysis, research, and devoted attention to detail.

I'm not from an advocacy organization, nor do I have any financial interest in outcome of the protocol. I'm here in my academic capacity.

I participated in the process out of the firm and profound belief that where many other carbon offsets schemes in other cap and trade programs have failed or been ineffective due to flaws in their initial design that California is in a unique position to finally get this right by ensuring that the market does not become flooded with junk credits that do not represent real reductions.

In the technical working group, we discussed the details of hyperbolic declining curves used to estimate base line emissions from abandoned coal mines and the global warming potentials of non-methane hydrocarbons leaking from mines.

As a doctoral student with an amazing opportunity to engage with Board staff on these scientific questions, I have to tell you being part of this process was humbling and inspiring. In writing the rules to address many of
these issues, the staff conducted conservative analyses that erred on the side of caution in order to avoid crediting emissions reductions that aren't real. We applaud this effort and commend staff on their tremendous attention to detail.

Having participated in this process actively and having seen the impressive work of the staff in preparing this protocol, I'm here today to say simply we aren't there yet. In my academic opinion, this protocol is not quite ready for adoption. My message put succinctly is this: More work needs to be done to assess the strong possibility of the parole increasing emissions by making coal mining more profitable at some mines and truly conservative business as usual assumptions need to be made when setting eligibility criteria for projects at abandoned mines in order to avoid generating substantial non-additional credits. The details of our analyses and suggestion are included in our submitted written comments.

Now, I'm not an offsets opponent. I love offsets. I think they're great. My concern is that three years a now I don't want to see a scientific paper come out that says half of the offsets being generated from this protocol are junk. Let's take more time to get it right. Take the time to make sure we're crossing every T, dotting every I. And we can do this. So I urge the Board
not to adopt this draft yet and ask staff to draft the
full analysis necessary to ensure the program's long-term
integrity.

Thank you so much.

MS. PAEFFGEN: Good morning, Chair Nichols, members of the Board, staff.

My name is Elise Paeffgen. I'm from Alston & Bird.

I'd also like to begin my thanking the staff particularly for increasing --

CHAIRPERSON NICHOLS: I'm sorry. I think everyone misunderstood me. I was saying you don't need to
do it. Cut it out. That will cut ten seconds for every speaker. That will add up to an hour at the end of the
day. May be you can wave to them. Blow them a kiss. Bring them gifts. Thumbs up. Thumbs up.

BOARD MEMBER BALMES: I don't think they understood stipulate.

MS. PAEFFGEN: We are very grateful particularly for the increase in the industry assistance factor.

And I'm here to talk specifically about the leakage risk classification for new entrants. We're grateful that new entrants have an opportunity to have a leakage risk classification factor assigned to them. If they're not currently in the program, and they come in and
are not listed in Table 8.1 but they have the first three digits of a NAX code in that table, they will be put into the low leakage risk classification.

This is helpful to an extent because they are able to get an industry assistance factor. But we are concerned because there's language that states that they'll be in the low leakage risk classification until a leakage risk classification is added for that sector. And we'd just like a bit more clarity on how factor will be assigned to that sector with the process going forward. This presents a concern for industry that is considering increasing production in California, whether they become a new entrant and how they will be treated and how many allowances they all be allocated. Thank you.

CHAIRPERSON NICHOLS: Thanks.


As Chair Nichols alluded to earlier, California's program is making a huge difference in places near and far. In fact, on Monday, Governor Brown and his counterparts from Washington, Oregon, and British Columbia will sign and make an historic announcement on a joint partnership to address several issues, including a price on carbon.

We agree with most of today's proposed
amendments, which taken together will bolster the
long-term viability of this program. We have filed
extensive comments, with emphasis on our support for a
cost containment mechanism, a rice offsets protocol, which
I heard discussed earlier, which includes aggregation, and
a reasonable allocation and consignment auction for
entities in the natural gas sector.

There is, however, one element of today's package
that creates tremendous concern for us. That is the
extension of transition assistance to the refining sector.
We believe that this decision is premature as research has
not been finalized to demonstrate its necessity. In fact,
WSPA's own analysis found that 100 percent transition
assistance is unnecessary, not to mention that it won't
make much of a difference to these very large petroleum
companies.

We have excerpted WSPA's analysis in our written
comments that we filed to the Board.

What's more, the extension of this transition
assistance amounts to between a 550 million and $750
million give away, money that could be invested to improve
the environment and public health in communities that have
suffered for decades from the effects of air pollution
from refineries. We urge the Board to reject this
extension of transition assistance.
In closing, I want to strongly commend the language in the resolution today that asks the Executive Officer to begin working on post 2020 cap and trade along with cost containment. This is an essential piece in maximizing the overall economic and environmental benefits of this historic program. Thank you very much.

CHAIRPERSON NICHOLS: Thanks.

MR. WHITE: Good morning. Madam Chair and Board members.

I'm John White with the Center for Energy Efficiency and Renewable Technology. We are here today to express our strong opposition to the mine methane protocol. I want to leave to others the discussion about subsidies and details for the coal industry and the practical aspects of the protocol, because my plea to you is to consider this is the cart before the horse. And we have other work that's more important that needs to be done with respect to getting a handle on methane.

One of the disappointments that we have with the implementation of AB 32 has been the failure until very recently to get to work on short-lived pollutants, particularly methane. This is a complicated subject. It's also reflective of updated science. Methane is a pollutant. It's an air pollutant that causes ozone. It should be regulated and treated as such, starting with
California but also EPA.

We think that there are available technologies. But more importantly, in terms of leadership and in terms of sending the right signals to the market, we think that this Board should step back from this protocol until it has developed a comprehensive framework for the control, the measurement, and the reduction in addition of methane in California.

We think that the context of that comprehensive plan, which we believe is within sight. We're pleased as we said yesterday that it is on the agenda for consideration. But we think that all the support for this mine methane protocol should be deferred until that day when we have a complete plan for the measurement and the regulation and the reduction of emissions of methane. And to send a signal to EPA that it's long past time they eliminated the exemption from methane as an air pollutant. This originated because in the early days of air pollution science, it was thought that methane was non-reactive with respect to the formation of ozone. We now know based on the most recent evidence that is not the case. It causes ozone for slowly. It's less reactive, but still reactive and causes rural ozone, in some cases, significant amounts.

So we think it's time to reboot and readjust our
planning and our regulatory strategy to focus on methane as an air pollutant and a very powerful global warming agent, and then consider this protocol once we've done that work. Thank you for your consideration.

CHAIRPERSON NICHOLS: Thank you.

Jerry Gureghiam followed by Frank Harris and Mark Krausse.

MR. GUREGHIAM: Good morning, Madam Chairman, members of the Board.

My name is Jerry Gureghiam. I'm the Chief Executive Officer of Green Holdings, a Los Angeles based developer of mine methane capture projects.

Thank you for providing me with the opportunity to speak in support of the mine methane protocol today.

I've been authorized to make these comments on behalf (inaudible) and Quebec's biothermica which are also in the business of developing MMC projects.

Our companies will be responsible for the largest share of off sets that will be generated as a result of adopting this protocol.

Madam Chair, I'd like to take the brief time allotted to me address an issue which has been raised in the past which may still be of concern to some members in adopting the MMC protocol. Namely, will MMC projects create unwanted subsidies for the coal industry or give a
new lease of life to coal mines which should otherwise be shut down.

Simply put, MMC is not the source of municipal profits for coal mine operators. Why? For these reasons:

Number one: They are coal companies, not offset project developers. They lack the necessary skills and expertise to develop these projects and have no strategic reason to build that capability.

Secondly, these projects do not represent the source of material profits. Even at an extremely gassy mine, each 100 tons of coal releases enough gas for just one offset.

Under any reasonable assumptions about pricing and margins, there just isn't enough bang for the buck in the offsets of MMC project to impact the economic fortune of coal mines.

For these and other reasons, mines are not going to develop MMC projects on their own. I've spent the last several years trying to convince mine operators to allow us to develop these projects. Believe me, it's tough enough to sell when I'm offering to pay for all the cost and do all the work. There is a reason you won't find a single MMC project that's been developed to date without an offset project developer.

The task of developing these projects and...
delivering large offset volumes needed to contain carbon prices rests with companies like ours, entrepreneurial and willing to take a chance on our uncertain outcome.

Madam Chair, we are small companies and we have more in common with Silicon Valley start-ups than with big coal. Any revenue we can generate from the sale of offsets will be used to pay for significant capital outlays such as project require and to hopefully earn a little profit for us on the costs we incur to develop and operate the projects. Some of the funds will be used to delve new materials, new skills and processes, or new equipment, which will find its way in other pollution control applications in California.

Madam Chairman, members of the Board, by voting to approve the MMC project today, you'll be creating an incentive for innovation and entrepreneurship when none exists. You'll be reducing emissions from significant sources that will otherwise go unaddressed. You'll assure the supply of offsets which everybody agrees is crucial and you will most definitely not be able enabling the coal industry.

Thank you.

CHAIRPERSON NICHOLS: Thank you

MR. HARRIS: Hello, Chair Nichols, members of the Board. My name is Frank Harris. I'm here to represent
Southern California Edison. We submitted detailed comments, and I want to just highlight a few items from those comments.

Particularly, I want to encourage staff to continue to clarify the information, submission, and attestation requirements to enable auction participation and program compliance. And this includes the treatment of confidential information and the release or provision of information to other regulatory agencies such as the Public Utilities Commission.

I also want to encourage staff to continue efforts to address cost containment goals established by the Board in Resolution 1251. We absolutely support the cost containment measure that has been proposed to date. We don't think that it's complete. We don't think it's efficient. And we encourage the staff to continue to work on that.

As I said, there are a number of other comments that are included in our written comments that I'll leave up to staff to review. I wanted to, however, just congratulate staff on the mine methane protocol and offer our support for that protocol. It's a appropriate the Board reviews this protocol along with dialog and cost containment. All of the economic forecasts that have been used in developing the rules and the processes here for
the Cap and Trade Program included the full provision of offsets in terms of the forecasting for the price.

Indeed, the study showed allowance cost would increase significantly without the use of offsets. So we have to look at the mine methane protocol as a significant part of the cost containment program.

Further, there is a great example of a way to reduce emissions from an existing economic activity. It's hard for me to understand how moving backwards would help to reduce the release of methane. You have in front of you a protocol that can go a long way towards pulling a great amount of methane out of the atmosphere. Not approving this is not going to help that.

As the staff indicated in their presentation, the protocol does not in any way rule out future regulatory action on the part of the EPA or any states or regions where the protocol might be applied.

So I encourage the Board to approve the protocol. Finally, once again, this would also show that California can demonstrate how to provide incentives to reduce a potent greenhouse gas in a way that works for both the environment and the business community.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

MR. KRAUSSE: Good morning, Chairman Nichols,
Board members.

Mark Krausse on behalf of Pacific Gas and Electric Company.

I want to begin by stating our strong support for the amendments that you have before you. The inclusion of the natural gas sector into cap and trade was I think a subject with potential but working with staff and with Board members we appreciate the help and we think we got it just right.

So support the regulation. If I want to pick up where Frank left off on the mine methane protocol. PG&E supported cap and trade and supported this program in large part because of where we saw offsets playing a valuable role in bringing prices -- keeping prices contained. So mine methane is an area of very potent greenhouse gas that we think the Board's protocol is doing exactly the right thing. We urge your support on that.

I want to just echo also a point that the gas utility group representative made about withholding, the withholding provision in the regulation. This is an issue where for a late report or under-report of number of tons, a handful of tons perhaps, a utility could lose their entire allocation. It's not clear in the rule at all that wouldn't happen for even if it's gas report, perhaps for the electrification and vice versa.
So we propose language that gas utility group mentioned as well in there our joint letter to provide some proportionality if you have a report that's late, you would withhold the allowances only for that. That's one issue.

I would say probably the most important I think, well, for a number of us, certainly for Pacific Gas and Electric is cost containment. The staff's resolution on cost containment gets it right. Staff admitted that they haven't gone far enough on developing cost containment. We're concerned about APCR in the out years. But solving that in the out years doesn't do anybody any good in terms of reducing angst. If that could be approached sooner rather than later and we would propose bring it back to the Board in January of 2015. That's the beginning of the second compliance period. That's when we all have concern about how the next round of cap and trade begins to look. We urge the Board to put that date, January 2015, into the resolution.

I think that's most of it. We were caught a little unaware by Resolution language on but for CHP. It appears that compliance obligation is going to shift back to the utilities. We'll work with staff, but this morning is the first we saw of it.

So I thank you. And I'll stop.

MR. RAY: Chairman Nichols, members of the Board, good morning.

My name is Bruce Ray. I'm with Johns Manville, we're a Berkshire Hathaway company making among other things many different forms of insulation, including building insulation. We have one of our flagship North American manufacturing locations. It's in Willows in Glenn County about an hour north of here where we make fiberglass building insulation.

I think as you know, energy efficiency is one of the cheapest and quickest ways to achieve greenhouse gas emission reductions. And one of the best ways to achieve that energy efficiency is improving buildings with additional insulation.

You heard Mr. Crane speak earlier. We endorse his comments. We are a member of NAIMA and also endorse the written comments submitted by NAIMA. We just want to drive home the Johns Manville support for the staff recommendation to move our industry category from a medium risk to a high leakage risk category. And as explained in the NAIMA comments, there are two principle reasons for this. One is the presence of many additional fiberglass
building insulation manufacturing locations in the western United States, including just outside the border of California.

And the other reason that's explained in detail in the written comments is the continuing generally low level of capacity utilization in the fiberglass building insulation industry. This is due to unfortunately the continuing low level of new housing starts in the United States. So ask that you support the staff recommendation in this regard. And unless you have any questions, I thank you for letting me address you.

CHAIRPERSON NICHOLS: Thank you.

Mike Wang.

Mr. WANG: Good morning. Mike Wang with the Western States Petroleum Association.

WSPA has been a long-time supporter of market mechanism and cap and trade and we continue to do so. This morning I want to highlight five issues from our written comments.

First, we support the coal mine methane offset protocol. As you know, offsets are a critical cost containment process so additional protocols are important. We support ARB's use of the CWB, and we support the changes to the MRR that would support the change to the CWB.
We support the ARB's proposal to increase the industry assistance factor for the second or third compliance period. We are encouraged that the Board will continue to study the issue of trade exposure and leakage and look forward to the results when they come up with respect to a third compliance period.

We have continuing technical concerns that have been raised associated with hydrogen plant, the treatment of a hydrogen plant, electricity and steam and metering requirements.

These could impact allowance allocations and facility operations. So we think that important that we continue to work with staff in the 15-day package and in the ensuing weeks and months to try to get resolution on these issues.

Finally, we recognize that staff is planning to make changes to reduce or remove administrative burden, and we support those efforts as well. Thank you.

CHAIRPERSON NICHOLS: Thanks.

Bill Magavern.

MR. MAGAVERN: Good morning. Bill Magavern with the Coalition for Clean Air.

I promise this is the last time you'll hear from me this month. I just want to focus on three areas where we suggest the Board make changes to the proposal.
The first is we oppose the continued give-away of allowances to the industrial sector. The primary beneficiaries are the big oil companies. These are among the biggest polluters in the state and among the most profitable companies in the entire world. The Expert Economic Advisory Committee that ARB charged with advising on the allocation process recommended auctioning virtually all the allowances and specifically warned against over allocating the transition allowances.

We, of course, agree that you need to minimize leakage. That's a good idea. It's required by AB 32. But in this case, there's been no demonstration that these facilities are at risk for leakage. So we urge you to end that transition assistance and not give away this valuable public asset that the value of which should be used for the benefit of the public, not for those companies.

Secondly, we oppose the exemption for the incinerators. There's no reason to give any special privileges for garbage burning when instead we should be following the State's adopted hierarchy which emphasizes first reducing, reducing, recycling, and composting.

And thirdly, we oppose the adoption of the mine methane protocol. Others have testified as to the technical reasons why it shouldn't be adopted. I would just ask you to look at fundamentally what's happening
here if this is adopted. You have a law which requires California to reduce California's greenhouse gas emissions. If this is adopted, then instead, what will happen is the state's polluters, instead of reducing their own pollution here in California, will send money out of state to the companies that mine coal, which can then use that money to dig up more coal, our dirtiest energy source, so it will be burned in other states and possibly other countries very much against what we're trying to do to reduce CO2 emissions. I would ask is that really the direction you want to go implementing this law.

    Thank you.

    CHAIRPERSON NICHOLS: Thank you.

    Ms. Rooney.

    MS. ROONEY: Good morning. Chair Nichols and members of the Board, my name is Emily Rooney. I'm with Agricultural Council of California. Ag Council represents approximately 15,000 farmers across the State of California representing from small farmer-owned businesses to some of the world's best known brands, including food processors and cooperatives. Our comments are consistent with the comments we submitted back in August on one of the original drafts of this proposed regulation.

    Regarding the industry assistance factor, Ag Council is working with the Air Resources Board and its
private contractors to work on a leakage analysis for the food processing industry. And we're also working on the product-based emissions benchmark. So this process has taken a little bit longer than anticipated. But we are slowly working through that process so we appreciate the extension of free allowances through the second compliance period.

Regarding the new natural gas program, we also support the language which would provide free allowances for suppliers to sell on the market for natural gas. I'm trying to abbreviate my comments here.

There is one area of concern, and we're just seeking clarification as to the need to publish the efficiency benchmarks in the regulation. There are a number of single operators that will be setting some of those benchmarks in the regulation. And so we're concerned that this could -- this information could end up being provided to some of their competitors. But we will work with staff to get through this process as well.

But overall, we are looking forward to working through the leakage analysis and the benchmarks. And we just appreciate the time that everybody has taken. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

With had a slight shuffling of the order I guess,
and I left out Leonard Pettis from Cal State.

MR. PETTIS: Good morning, Chair Nichols, Board members, staff.

Leonard Pettis, California State University.

We stand in support of the resolutions, particularly the ones for but for combined heat and power and legacy contracts. Those are significant to us. And I think most of us here can appreciate the California State University. We have at least three members of the Board who have metriculated through our university system. And if our numbers are right, at least one in ten of my colleagues behind me are from the system.

So as taxpayers, let us all be aware that we've already spent ten million in purchasing allowances. So that we can continue to operate these plants. So we are very committed to managing our budgets, and at the same time being responsible for our environment and providing a clean, safe, and healthy environment for our students to live and work in.

So we're pleased with the fact that the staff listened to us. We've learned a lot from you and hopefully that you have learned a lot from us. Special thanks to Steve Cliff and Trish Johnson who stayed late many nights and helped us navigate through the complex application process so that we could participate in the
auction process. We want to continue to do that.

We want to continue to work with you. We hope we can revive some of our canceled studies that we have done for combined heat and power plants on campus, because those are contributors to relieving stress on the grid. We know this Board is also in a larger effort coordinating with the Energy Commission and the Public Utilities Commission to solve the grid constraints as a result of closing over 8,000 megawatts of once-through cooling plants. So all of this ties directly into our environmental concerns.

We appreciate again what has been done. We look forward to working with you in the future. Thank you.

CHAIRPERSON NICHOLS: Thanks.

Ed Moreno.

MR. MORENO: Good morning. Ed Moreno with Sierra Club California.

As you will hear, Sierra Club shares NRDC's concerns about the coal mine methane protocol. We want to underscore two points. One is technical. We believe the protocol isn't ripe and needs additional analysis. The difference between the Stanford's researcher's analysis and the staff CARB analysis are significant enough to warrant a more careful review and consideration.

For instance, there are significant differences
in the assumption about how this protocol will be applied and how the coal mining industry works and will respond.

Another simply is policy choices. Is devising a protocol for offsets that will keep coal mines open really what California legislators had in mind when they passed AB 32? Is this of the best or right way at the moment to reduce overall greenhouse gases? We don't believe it is.

And therefore, on behalf of the Sierra Club, I respectfully ask that you reject the protocol as designed. Thank you.

CHAIRPERSON NICHOLS: Thank you.

MR. PEDERSEN: Good morning. Norman Pedersen for Southern California Public Power Authority.

SCPPA submitted a written comment on over 20 topics. I'll hit some highlights. First, SCPPA appreciates a proposed provision that would make additional allowances available through the allowance price containment reserve if there were a short-term price spike. However, the new provision would not be sufficient to contain allowance prices if there were a long-term supply/demand imbalance. More work needs to be done.

Second, SCPPA appreciates the new section included in the regulation the resource shuffling save harbors that were developed in 2012. However, SCPPA recommends a couple of clarifications, particularly a
clarification that there may be other legitimate
transactions that aren't captured by the safe harbors.

Third, there is a provision in the 45-day
language requiring that directly allocated allowances must
be surrendered if a facility shuts down or ceases
production.

We understand, as I think George Morrow mentioned
earlier, that the staff intends for this provision to
apply only to industrial facilities, not electric
distribution utilities that shut down fossil fuel
generation. However, the phrase of the section is
ambiguous. The section should be clarified.

Fourth, there is a new requirement that renewable
energy credits or RECs must be retired in order to claim
an RPS adjustment.

The CEC and the CPUC administer the RPS program.
The CEC and the CPUC have established rules governing the
retirement of RECs for POUs and IOUs respectfully. The
ARB should not be developing REC retirement rules that may
be at odds with CEC or CPUC rules and which make it more
difficult for utilities to meet their RPS goals. The ARB
should adopt the same approach for the RPS adjustment RECs
as for specified source RECs, namely, require the RECs
serial numbers to be reported without requiring that the
RECs be retired in the same year for which the RPS
adjustment is claimed.

Fifth and lastly, a new section would bar an entity's participation in an auction if the information provided in the entity's auction or account application changes 30 days before or 15 days after an auction. If an entity wanted to participate in all four auctions each year, the entity would have to make sure nothing in its auction or account application changed for 180 days out of the year. That's excessive and should be changed. We hope to see 45-day language that makes provisions consistent with these comments and our written comments.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

MR. LARREA: John Larrea with the California League of Food Processors. Thank you.

And Madam Chair, I'm sorry, but I'm just going to have to violate the stipulation for staff because many of our members are family-owned businesses. And those that aren't any more still retain that characteristic within the corporate identity. And David Allgood in working with us over the past three years has had the unenviable task of walking into the living rooms of the families and telling you cannot longer do business in the way you've been doing it and you have to change. That was tough.

But over these three years, he has really
obtained the trust and the respect of our corporate businesses to the point where I didn't even think he could get that far. So we are looking forward to working with you to continue to work on the benchmarks. I had to get that in.

CHAIRPERSON NICHOLS: We'll penalize you with a donation to Charity.

MR. LARREA: In his name. Maybe we'll name a can of beans after him.

With regards to the staff proposal, we think the staff proposals reflect an increasingly deeper understanding of the impacts of this program on businesses and how hard it is for us to be able to comply in a manner that is going to be acceptable. We think these current proposals make this program much stronger, make it less costly, and make it more efficient.

And in that regard, I think it also gives us a step towards making it more transportable, more attractive to other states and other countries so they may adopt it. We think it has a long way to go still. However, we're more than willing to continue to work with staff and with the ARB to try to make this program the best it can be and actually be a program that other states and other countries can adopt. Thank you.

CHAIRPERSON NICHOLS: Thank you so much.
MR. BRUNELLO: Board members, staff, my name is Tony Brunello. I represent CE2 Carbon Capital and several other offset providers.

I had other comments prepared, but I want to hit on two key points. One is about this is in support of the mine methane protocol. First, I've heard quite a few comments that it would be better to have an academic peer review process for the mine methane protocol moving forward and potentially delay.

I would say I'm amazed at how long it has taken to get to today to pass the coal mine methane protocol. At this time back in 2009, we assumed there would be dozens of offset protocols that would be approved through ARB. The last time that protocols were approved was 2003. The amount of scrutiny that has gone into this existing protocol has been unprecedented in my mind. Much of the material that has gone into this was developed back as late as 2007-2008.

Staff have been more open than I've ever seen and transparent and trying to bring in as many parties. And even proactively working with some of the groups that have talked today to give even more and as much information as possible and go out of their way to help them. I really commend the staff. I know that's what we want to say. It's been amazing over the last couple years on that. I
think all of you should be commanded. Obviously, there are base lines and additionality components and of course whatever is going through is going to be additional from what has been done anyway.

My second point is leadership. And I really think that if this protocol is adopted, it's something California should be proud. Of last time I read the paper, the coal mine industry is not doing very well across the United States. I think the Air Resources Board has played a key role, whether it renewable portfolio standards, clean cars, et cetera. This protocol you cannot have an influence in other states, but you can have some voluntary efforts in coal mines across the United States. I think it's something that ARB should be proud of to be able to highlight the fact there's over 70 million tons of methane being released from coal mines across the United States each year and not much is being done about it.

So I would agree with NRDC and many other parties something needs to be done with this nationally. This is a great pathway to try to help in that effort and send a signal to the U.S. something needs to be done. So thank you.

CHAIRPERSON NICHOLS: Thanks.

MS. WELCH: Good morning, Madam Chair, members of
the Board and staff.

My name is Gail Welch. I'm with Qualcomm telecommunication company headquartered in San Diego, California. We submitted comments online.

We are in the Cap and Trade Program because of our investment in combined heat and power to power our campus offices, labs, and data centers. We came here today looking actually to address the 2013 and '14 first compliance period exemption on but for CHP, which as you know has been recognized for industrial energy Efficiency and reducing greenhouse gases. Our regional intent was to tell you for the issue of allowances beyond 2015, we felt it was necessary to treat all but for CHP equitably whether it was a public university, public or private entity.

This morning, we did find out that the CARB will not be adapting the reg as proposed and just released some amendments that would we feel extend the uncertainty as CARB continues to work a solution. We would like to work more closely with you to better understand the impact of today's amendment that was released. And we continue to be concerned until the regs are adopted particularly for the near term 2013 the uncertainty may force us to unnecessarily incur a significant cost to purchase allowances in order to meet our current CARB requirements.
As the registration currently stands, we are as well as other but for CHP facilities covered entities without an allowance allocation.

With respect to 2013-14, we appreciate CARB providing a patch for these but four facilities for the first compliance period through the limited exemption for thermal emissions, but we feel this doesn't solve the issue for Qualcomm and other but for entities.

One of the reasons is because the formula only works for smaller CHP systems and actually discourages CHP investment to meet additional new growth.

Our other concern with 2013 is with requiring the application process. We addressed this in our comments. We feel CARB already has this information from our annual reporting to approve entities for the exemption.

I would like to point out that the California Clean Distributed Generation Coalition has submitted comments online in support of our comments here today.

And in closing, we urge CARB to respond to our concerns and in particular to provide an equitable solution to provide allowances beyond 2015 to all but four entities, whether public or private, who have demonstrated early action and energy Efficiency in reducing greenhouse gas.

Thank you. We look forward to increased
communication with the Board, the staff. And thank you for your time.

CHAIRPERSON NICHOLS: Okay. Thank you.

Gary Geno, Julia Bussey, Erica Kent.

MR. GENO: Good morning. And thank you for the opportunity.

My name is Gary Gero, the President of the Climate Action Reserve. We're very pleased to be here today to support the adoption of the mine methane protocol. And also very pleased that it's based on work that we did at the Climate Action Reserve. I was just looking back at the dates to see an anniversary in light of Kassandra. It was almost to the day, just one day off, four years ago that we adopted our version of this protocol.

Our protocol was really based on a deep analysis of the circumstances regarding mining. We brought together technical experts from around the country, looked at mining operations, and really did a deep dive into determining what is truly additional in these circumstances and our protocol that is now forming the basis of the ARB protocol really sought to limit and provide exclusions to keep out non-additional projects.

We are very happy to be part of the ARB's technical work group in this regard as well and help
inform that process. And I think that this is, in fact, a very good protocol because the reductions can be very accurately measured. They are, in fact, permanent emission reductions. The ownership of those reductions is always very clear. And as you've heard, there is a large potential. All of those things are the things that you want in an offset protocol.

I will also say that the destruction of the low concentration methane from ventilation air systems, which is a component of this protocol, is a new and innovative application of technology. That's exactly what AB 32 is looking to do is to drive new and innovative applications of technology and certainly one of the key benefits of offsets themselves. So I think there is a lot of good reason to support this protocol.

I'll say that we have heard a number of comments about the economics and whether, in fact, this will drive additional mining. I guess the short -- my short response to that would be that if there are profitable economic opportunities for mines, mine operators today don't lack the capital or the access to capital to implement those opportunities. So any additional revenue -- and this is going to be small relative to the overall revenue for a mine -- is not going to drive them into unprofitable activities. They're already capturing those profitable
With that, I want to say thank you for the opportunity. We do strongly support the adoption of this protocol today. And I will seed my 30 seconds.

CHAIRPERSON NICHOLS: Thank you. Much appreciated.

Ms. Bussey.

MS. BUSSEY: Thank you. My name is Julia Bussey. I'm representing Chevron today.

Chevron is very pleased that ARB is considering adoption of several new policies that represent significant improvements in the Cap and Trade Program, the first of which is industry assistance. This industry assistance factor recognizes the competitive environment that refining and other energy intensive and trade-exposed industries faced. And if left unchanged, that competitive disadvantage could lead to leakage and significant impacts on California's economy. We believe this change is really a wonderful and important change to make. We also look forward to working with the Air Resources Board on the studies that are being done to evaluate trade exposure next year.

Secondly, we would like to offer some support -- a lot of support for cost containment measures. The cost containment measures that are considered will go a long
way towards addressing our concerns regarding potential high prices in the short term. We agree with many of the other companies that have stated that we do think that cost containment measures should be considered earlier than 2018. And we trust that we will be able to work through and figure out really a better way to address cost containment in the long term.

Lastly, we support the mine methane capture protocol. And we are puzzled why there are parties who think that this protocol is problematic. We have worked in great depth with the Air Resources Board staff to ensure that this protocol is robust. We believe that it is very technically sound. And we believe that it introduces an incentive to destroy methane very simply that would not otherwise be captured. It's very hard to understand why that could be a bad thing to do.

And then lastly, we would like to raise that we are concerned with some of the proposed changes regarding market and administrative burden. But we notice those will be addressed in 15-day changes, so we look forward to working with you.

And I seed my 47 seconds.

CHAIRPERSON NICHOLS: Thank you.

Erica Kent, Mike Smith, Lisa Bowman.

MS. KENT: Good morning. My name is Erica Kent.
On behalf of the United Steel Workers and our ten unionized oil refineries, we offer the following observations and recommendations for the Board and CARB staff to consider in the implementation of the Cap and Trade Program. California has a strong tradition of demonstrating that a healthy environmental and strong economy can work hand in hand. And we are confident it can do the same with the Global Warming Solutions Act. We would like to see more effort at addressing imports of intermediates and finished fuel products into the state. CARB needs to create a mechanism which provides an obligation for all entities importing petroleum and non-petroleum transportation fuels equal of those in-state refiners currently regulated as station source GHG emitters.

Currently, only in-state refineries are obligated to pay for stationary source GHG emissions. To prevent leakage of GHGs emissions associated with the manufacture of petroleum and intermediates to out-of-state refineries, a program must be put in place. Until such time, the typical benchmark required for larger refineries must remain fair, allowing reductions equally from every facility.

A benchmarking scenario where some refineries get all free allowances and some refineries must buy 25
percent of their allowance is opposed by the steel workers and will not get the GHG emissions down to the target the State has set.

I work for Phillips 66 oil refinery. I represent as a union leader all of the oil refiners in L.A. basin. We are not interested in losing any more of our California refiners in this state. The USW has supported the Global Warming Solutions Act and AB 32 from the very beginning. I was a statewide coordinator for that program for the USW in California. The reason that we were able to support it so unilaterally was because we believed it was going to create a strong economic, new green workforce development in California. If we lose jobs as a result of this, it doesn't take care of those needs we have in terms of job creation and reducing emissions. Thank you.

CHAIRPERSON NICHOLS: Thank you.

MR. SMITH: Good morning, Chair Nichols and Board.

My name is Mike Smith. I'm representing United Steel Workers Local 5 out of Martinez, California. We represent the oil refineries in Northern California.

We're concerned with the benchmarking or the new comments or the new changes of the benchmarking of the oil refineries. We represent workers at oil refineries of all sizes and configurations. If CARB doesn't do this the
right publicly and include our input, it will give an unfair competitive advantage to some in-state and all out-of-state importers of intermediates and finished products. Any small refinery should be looked at on its face. Don't look at it as a refiner. Look at the size and configuration of the existing site.

Sufficient time for careful review and analysis of this morning's new proposal and a subsequent dedicated Board hearing since refinery benchmarking methodology does not take place under a new methodology until 2014 is needed. USW wants to hear this, and we are being denied active participation in this process. We feel that this is very important to ensure our good union jobs that we have today and into the future. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Lisa Bowman, are you here?

MS. BOWMAN: Good morning, again to the Board and Chairman Nichols.

I, too, just as the last two individuals, are part of the United Steel Workers Union. I'm out of southern California Local 675.

Back in 2011, I actually addressed you guys on this issue. And I recall coming up -- you guys came up with a resolution at the time. Well, I'm here again, and we were once up against a deadline. And that's when you
guys actually came up with that resolution. Now we have
one hour to seek changes. New concepts that further
disadvantage smaller refineries have been introduced and
you are considering voting on this.

We didn't find this out until we were actually on
the plane. We almost missed this hearing.

So from a personal perspective, from a union
perspective, from a union steward's perspective to
represent several hundred workers within my facility, I
would ask that you guys take a step back and allow us
the opportunity to be able to address the changes that you
proposed that we found out about this morning. We think
some other things should be done. We think some Q and A
should be done. We have some questions. And I'm sure my
group has more questions than I can even think of. So
that's basically what we are asking. This is a
disadvantage from the perspective in which we see it.

Thank you.

CHAIRPERSON NICHOLS: Thank you.

David Campbell.

MR. CAMPBELL: Madam Chair, Board members and
staff. It's barely good morning, but still morning. I'll
try to be as short as possible.

I'm Dave Campbell, Secretary Treasurer for United
Steel Workers Local 675 in Southern California. Like Mike
Smith from Local 5, we represent workers in refineries in a range of sizes and configurations.

Lisa is correct. These changes under atypical and typical benchmarks we were not aware of until this morning after we get off the plane. And the schedule was such that we almost missed this hearing.

We're concerned about the issue of leakage. If the small refiners maintain all of the cost of under benchmarking for carbon credits, we're concerned that the cost of barging intermediate finished product from Washington state and also the cost of the shipping by tanker finished products from Asia are going to be less than the cost for meeting these requirements to the small refiners. And we're concerned that approximately half of the jobs in the refining sector in California are threatened by that.

So we would request, as Lisa said, that that part of this proposal be subject to a longer hearing process of 40 -- I thought I heard somebody say it was a 45-day process, but we would request that you consider separating out that part and giving all the parties a little longer time to consider all that.

Thank you.

CHAIRPERSON NICHOLS: Thanks.

Stephanie.
MS. WILLIAMS: Good afternoon. My name is Stephanie Williams, and I'm the Governmental relations Manager for Phillips 66. And it's a pleasure for me to be here today.

We would like to offer our support for much of the publicly-vetted items contained in the 45-day proposal. They're really going ahead in the right direction, and we appreciate the work that they've done.

We also include our support of other comments, those of the Western States Petroleum Association, the Coalition for Fair and Equitable Allocation, and the Blue Green Alliance.

Phillips 66 has significant operations in California that are included under the program, including four separate refining facilities and four different cities and a petroleum coker cal signer.

Phillips 66 has proactively participated in every opportunity under the rule making process -- many of you have seen me in your offices -- since 2008. We have met with staff, Board members. We provided Board members and staff company-sensitive information. We brought our refineries managers who work with us. We've done every thing possible to get our story out to the Board and the staff. And --

CHAIRPERSON NICHOLS: You've done a good job.
MS. WILLIAMS: Thank you. This is all for a specific purpose to help craft a workable regulation that does not cause inequities within the state which could disproportionately harm certain refiners -- that would be us -- including our California operations, all five sites.

So the benchmarking allocation issues need to be thoroughly discussed and will require adequate time for evaluation and comment.

On top of creating in-state competitive issues, any cost burden added to a California refinery makes it less competitive versus refineries outside of California who can import into California without Cap and trade compliance cost. Without any protection from imports or finished and intermediate products, the real world barge shipping costs to import fuel in California are only about three to six cents. You could see how that could be a problem. You can barge from Washington state. We have a refinery into Washington state. You can barge from Canada right into Los Angeles. You can barge from Asia right into Los Angeles.

So this is very critical on -- the marine terminals are privately owned. You don't know what's coming in and what's going out. We have our own marine terminals. So do our competitors. So we have concerns that certain benchmarking proposals will have unintended
consequence and tilting the in-state competitive balance. If CARB proceeds with the current single typical benchmarking proposal, some in-state refiners will be required to purchase 25 percent of their allowances, while other refiners will have virtually no obligation to purchase in the program, because most of their allowances will be given to them for free.

And I'm said this like five times. We're still here saying it.

So we have participated in the last issues, and we just want to put those issues out on the table and let you know we want to be here. We want you to make that happen.

CHAIRPERSON NICHOLS: I found your way to extend your time. There's a question.

BOARD MEMBER GIOIA: I have one question on one of the issues you've raised. I'm familiar with it, coming from Contra Costa. I know that issue of jointly operated facilities.

MS. WILLIAMS: Phillips 66 amendment, yes.

BOARD MEMBER GIOIA: So I'm familiar that this effects only Phillips 66.

MS. WILLIAMS: Yes, it does. Both refineries.

BOARD MEMBER GIOIA: Chevron has a refinery in Southern California and one in Contra Costa. They're not
considered jointly operated. They're separate. Phillips 66 happens to have a refinery in Contra Costa, refinery in Southern California. Because they're jointly operated, even though they're different facilities, they would be combined. So I want to ask staff later a question, but I wanted to give you a chance to --

MS. WILLIAMS: I'd like to detail what that looks like.

BOARD MEMBER GIOIA: Let me ask the question.

I'm trying to understand --

CHAIRPERSON NICHOLS: Before you answer.

BOARD MEMBER GIOIA: I'd trying to be helpful because I'm trying to understand.

I know the situation. I hear about it all the time. So just make for me the case why you think that jointly operated really clearly why the jointly operated facilities because in this particular case because there are two separate facilities in two parts of the state, not unlike Chevron, which is not jointly operated, should be treated separately. Just so I understand. I think I do, but I want to make sure I understand it.

MS. WILLIAMS: Let's take for example my Rodeo in Contra Costa and Santa Maria, which is San Luis Obispo near Avila Beach. They're jointly connected by pipeline, but the pipelines aren't direct. The pipeline from Rodeo,
which is very small, smaller from of the atypical. That's why we're in that group. The pipeline is a common carrier pipeline. Anybody can get on it. We happen to own a lot of pipeline because we're a pipeline company. Takes you to San Joaquin Valley and then takes a bus stop, gets on another pipeline and goes to our facility. If you call that jointly operated, you pretty much have the entire state jointly operated.

BOARD MEMBER GIOIA: Your concern is this term jointly operated will combine you and take you out of the small refiner class?

MS. WILLIAMS: It completely eliminates just me. It's a Phillips 66 amendment and it's supported by Valero. When you start seeing oil refineries supporting and opposing things that are competitive, I have to wonder what's going on.

BOARD MEMBER GIOIA: Thanks. I'll ask staff questions later on.

CHAIRPERSON NICHOLS: Thank you.

MS. GORSEN: Maureen Gorsen with Alston & Bird. We're representing Loma Linda Hospital and Medical Center. Loma Linda is an educational health sciences institution in Riverside County offering degrees to over 4,000 students in medicine, dentistry, nursing, pharmacy, and public health. They also operate a medical center, a
nonprofit medical center, and a 900 bed hospital.

This is where I'll just blow kisses to staff.

Loma Linda not be subject to cap and trade but for the fact that it installed a combined heat and power system to more efficiently meet its energy needs. We support the amendments to provide transition assistance to Loma Linda University and support the 100 percent transition assistance through the second compliance period.

At one point, Loma Linda had estimated its cost to purchase allowance to be in excess of $750,000 a year. That would be an incredible hardship. Loma Linda admits more than 33,000 inpatients and serves over 500,000 out-patients, and over 70 percent of its patients are on Medicare or Medicaid. They cannot pass on those costs. We urge CARB to adopt the amendments.


MR. BARRETT: Good afternoon. My name is Will Barrett with the American Lung Association of California.

I'd just first like to start by echoing the comments and concerns made by the coalition for clean air regarding the ongoing allocation of allowances under the program.

Also wanted to briefly get into -- the echo also
many of the comments related to the impacts of methane mine protocol and think more time is needed to evaluate the concerns raised today by several of the groups and academics that testified.

At the national level, the American Lung Association supports the phase out of coal and a transition to cleaner energy sources for the climate air quality and localized public health benefits or damages associated with all phases of the coal use. We believe additional time is needed to review the protocol and urge you to take that time to do so just to ensure that any projects under that protocol do not incent more coal or probably result in non-additional projects going forward.

So thank you very much.

CHAIRPERSON NICHOLS: Okay. Johnny Lee and then Gary Grimes and last all ex Jackson.

MR. LEE: Hello, Board members and, members of the public.

My name is Johnny Lee. I'm from San Jose. I'm a member of the public. And I'm here to talk about the cap and trade program. I followed it silently over the past few years and seen it develop. I was here last month at the cap and trade hearing meeting when we called it the new offset compliance protocol meeting. And I think that they're on a great path of allowing more offset protocols
to be introduced into cap and trade.

But I think the problem is that instead of helping out a lot of the small companies with innovative idea to get off the ground, like the cap and trade should be doing, we are just giving a lot of money to the big companies who either own landfills or coal mines. We're just taxing the people, putting a tax on energy, and giving to multi-million dollar companies.

I think this cap and trade program, if you do it effectively, should be helping out small company with the innovative ideas.

Next time when you guys allow offset compliance protocols, consider allowing the VCS methodologies, which is a list of verified carbon standard that has off site compliance protocols that are currently being used by other cap and trade programs. I think that we can benefit by having small companies get more from the Cap and Trade Programs instead of giving more money to big multi-million dollar companies. Thank you.

CHAIRPERSON NICHOLS: Okay. Thanks.

Gary Grimes

MR. GRIMES: Good afternoon, Chairman Nichols and Board members.

My name is Gary Grimes. I'm the Director of Technology for Paramount Petroleum. My company is a small
independent oil refinery with three small oil refineries in California: Paramount, Long Beach, and Bakersfield. We're a member of the small refinery coalition that Jon Costantino talked about earlier, so I will not repeat his statements, but I will echo his appreciation for the final outcome reached in the quest to be equitable to all parties. However, we are concerned from something we first saw this morning that the staff is proposing to make unidentified changes to the current true up language where there has been a decrease in production. We believe any new changes in the true up provisions must be coupled with recognition that facilities may have emissions without having proportional CWB.

We're in the process of reconfiguring our California refineries. These unspecified rule changes can have significant impact on us and similarly situated entities. These clarifications have never been mentioned or discussed in any of the staff's previous notices on this rule making package before today. We believe fundamental fairness requires businesses be given a full comment period to review and comment on any staff proposals.

Moreover, we believe that under the Administrative Procedures Act, any such changes must go through a full comment period since they were never
mentioned or discussed in any of the staff's previous notices on this rule package.

To fully appreciate the challenge staff faces on our industry, one only needs to look at the wide diversity of refineries remaining in California.

Next slide.

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MR. GRIMES: I'd like to call your attention to the slide that shows all the refineries in California's bubble. The size of the bubbles is proportional to their CO2 emissions. My company's refineries are the three red bubbles in the lower left-hand corner. A perfect metaphor for these smaller refineries is that we are like mice in a field full of dancing elephants. We are continuously in danger of being squished by our much larger competitors.

Oil refining is complicated and hazardous commodity business with very thin margins and a few pennies a gallons means a difference between profit and loss and job or no job for many people at these companies.

One product that distinguishes these refineries is that many of them produce asphalt. Asphalt is made from the heaviest bitumen part of a barrel of oil.

Asphalt refineries don't have expensive and very energy intensive processes the big bubble refineries use to crack these launching molecules of gasoline and diesel fuel.
Although the CWB methodology addresses the thermal efficiency of refinery processing, it does not address the processing efficiency of the simple barrel approach used partly in the first compliance period.

I'd also like to comment on the refiner leakage risk. Much of the bitumen used to grease asphalt today in California is imported from mid-continent rail, the resulting increase CO2s emission. These refineries should be considered at high risk of leakage since much of it has already leaked from the state. Asphalt refineries in contrast to the big bubble refineries compete in two industries: Fuels and materials. Although we believe our polymer road asphalts which effectively sequester crude oil make the smoothest quietest highways. We must compete on price with cement manufacturers who have the highest allocation factors and special adjustment.

CHAIRPERSON NICHOLS: Excuse me. Your time is up, sir.

MR. GRIMES: Thank you for the opportunity to address you today.

CHAIRPERSON NICHOLS: We do have your written testimony also. So thanks. Okay.

MR. JACKSON: Good afternoon, Chair Nichols and members of the Board.

Alex Jackson on behalf of the Natural Resources
Defense Council. Thanks for bearing with me through 58 other commentors.

CHAIRPERSON NICHOLS: We were waiting for you.

MR. JACKSON: Great. I hope I don't disappoint.

In March 2012, Dallas Berkshaw, a member of the EACC, current member of EMAC, and I'm sure future member of all other panels that end in AC testified before the Senate Select Committee that ARB had developed the best designed Cap and Trade Program anywhere in the world. That was true then. It is true now. And it will be true after today.

But from our perspective, if the Board moves forward with the current list of amendments before it, unmodified, it will be a little less true. That's for three main reasons:

First, the proposal to dramatically increase free allocation to industry for leakage prevention on the basis of no evidence that additional assistance is required.

Second, to loosen the rules prohibiting resource shuffling, which is a form of leakage.

And third, to add an offset protocol that will send new revenue to out-of-state coal mines with the benefit of containing allowance prices that are not in need of additional containment.

First on transition assistance. This is a small
change on paper. Simply shifting one number in allocation formulas for industry with a huge impact. On the order of 60 million allowances by 2020, which could be upwards of a billion dollars. The lion's share of that is going to the cash strapped oil industry, which somehow found $43 million to lobby in Sacramento alone since 2009 but hasn't found the time to invest in emission reductions.

What has been the industry response? More, please. More, please. Already, the lobbying has begun to extend transition assistance against in the third compliance period. Who can blame them? As long as stall, delay, and obstruction continue to earn reward, that's only a rational response.

We ask the Board to instead uphold its commitment to transitioning toward allocating allowance value through an auction process that is open to all comers, transparent, and ensures the benefits of allowance value accrue to all Californians.

Second on resource shuffling, we ask the Board to tighten the rules. We appreciate and recognize the ultimate and best solution is to get other jurisdictions on board. Certainly thank California and ARB in particular for everything it is doing to help and encourage that along. We also recognize in combination with other AB 32 policies California is having outside
impact on emissions well beyond its borders, but well within its legal limits, of course.

In the mean time, as we heard from Mr. Cullenward who has studied this issue, resource shuffling is a trap door that can severely undermine the effectiveness of the program. At a minimum, we ask the Board to direct staff to ensure it retains its authority to prohibit transactions it has long considered resource shuffling, such as laundering and contract swapping, despite the presence of the safe harbor. I have comments I will submit to that effect today.

CHAIRPERSON NICHOLS: We note you've expressed your views on the mine issue in the press this morning. So I think probably people have seen that as well.

MR. JACKSON: Fair enough. Thank you for your time.

CHAIRPERSON NICHOLS: Okay. That was the end of the list of people who signed up to speak on this item. I'm going to close the public hearing at this point and move to discussion with the Board. And in the interest of organizing the discussions since there is a lot of us and a lot of issues, my suggestion is that we take note of the fact if you use the presentation that the staff gave this morning, which you all have in a written form as a way to kind of organize this, there may be some
better way to do it.

But I went through my list and I'm very pleased to say that the vast majority of items on the list either weren't commented on at all or were pretty much unanimously supported, which is very nice. However, there are a number that I think do require some further discussion.

So I'm going to sort of give my quick list. And then if others want to add to that, but let's do that first and then we can kind of discuss them in a somewhat orderly fashion. So the first one on my list is the refinery allocation and whether we properly considered small refiners. And then I go to the water entities and how we're treating water. Then the offset protocol. And then I go to -- at least I have a question I think about the information disclosure, the information people have to provide for trading. And if that's unduly burdensome or how the staff is going to deal with that.

And those -- other than the sort of overarching issue, which is very important one -- I shouldn't neglect it -- of the transition assistance and whether it's right to be doing it the way we're doing it, proposing to do it. Those were the main issues on my agenda. Does that cover the basic topics that other people had flagged also?

BOARD MEMBER GIOIA: Did you include the resource
CHAIRPERSON NICHOLS: Yes. I guess that goes into compliance. So but yes, resource, it's an issue of its own. Resource shuffling.

So with that, can we get staff to maybe quickly give us their responses on these and then sort of pursue the questions? John, did you have a better --

BOARD MEMBER Balmes: Should we do it one at a time?

CHAIRPERSON NICHOLS: That's fine.

BOARD MEMBER DE LA TORRE: Chair, I had one other one that's sort of a brief clarification on the penalties for not reporting properly and then the scale of those penalties.

CHAIRPERSON NICHOLS: Okay. I get that's an item unto itself I think.

Any others?

BOARD MEMBER ROBERTS: I'm not sure how it fits in. There was a comment made about the need to use some gas from the thermal production. And it's a little like one I'm more familiar with, and that's solar testing for their -- on turbines. I don't know if those are directly related. They seem like a similar product, situation and I'd like --

CHAIRPERSON NICHOLS: The solar industry that
needs to preheat their facilities with using some gas and how we're handling that.

BOARD MEMBER ROBERTS: And then the solar industry, not single products. But one was a thermal industry. I'm talking about actually company Solar Industries and their use of gas also --

CHAIRPERSON NICHOLS: Solar turbines?

BOARD MEMBER ROBERTS: The testing of their engines, the turbines. It's not clear to me we resolved that. I'm still very concerned about that.

DEPUTY EXECUTIVE OFFICER COREY: As we working through the list of items, we can go to the solar thermal issue that was raised and discuss it.

BOARD MEMBER ROBERTS: Solar thermal and solar industries two different things.

It sounds like, but it's not clear to me, for the cogen issues other than the universities, maybe we're working towards a solution.

CHAIRPERSON NICHOLS: Everyone is happy, I would say. Peace has broken out, as far as I can tell.

So if we were going to start at the beginning, maybe somebody else can --

DEPUTY EXECUTIVE OFFICER COREY: I'll have Steve Cliff work through the list and discuss the issues. Because of some of the comments made I heard, I wanted to
underscore the fact there is not a vote today. I think there's some confusion about action and many of the elements that are being discussed fall under the 15 day process. Steve will be calling those out.

CHAIRPERSON NICHOLS: We're giving direction to staff to go back and develop things as part of the second round of the 15-day proposal process. So there will not be any final vote.

DEPUTY EXECUTIVE OFFICER COREY: That's correct.

CHAIRPERSON NICHOLS: On any of this taken today. That we're just trying to -- thank you for the clarification. We're trying to solidify our direction to staff. Thanks. Yes.

BOARD MEMBER SERNA: I don't know if is in your list or not, but I'd like staff to respond. This is more of a process subject than a substantive one I think. But there were some clear concerns expressed about last-minute noticing of some of the rulemaking by the Steel Workers and others. I'd like you to be prepared to respond to that as well.

DEPUTY EXECUTIVE OFFICER COREY: We'll cover that as part of the discussion. Steve can clarify -- each of those items were actually have been part of a process. And the reference was to the release of the Resolution. And the Resolution reflected a 15-day process and ongoing
stakeholder dialog. We will clarify on each of the points we walk through.

CHAIRPERSON NICHOLS: All right. Let's begin then.

ASSISTANT DIVISION CHIEF CLIFF: Thank you. The but for CHP Qualcomm brought up, I want to make a clarification. I was going to add that.

I appreciate the chance to address you today. As several had mentioned, there's sort of a process question I think is worth at least addressing at a high level and I'll try to touch on those at each individual one.

We released a proposed Resolution this morning with several items that staff was proposing to take up in 15-day changes. The process there is that we would continue to work with stakeholders, draft language, and then put out that language in an official notice that would be out for comment for at least 15 days. And so that's similar to what we did with this package where we have a 45-day public comment period. Anything that's within the scope of the current notice we could put out again for changes. And that would be for a subsequent 15 day period.

We'd be coming back to the Board at the end of that process, finalizing the environmental document, and then asking for your approval on the 45-day amendments...
that we proposed that are in front of you today, as well
as the subsequent 15-day amendments.

So many of those items that we put out today are
what we would propose to do in 15 day amendments. Those
are sort of subsequent to this.

I know several have raised concern that this is
their first chance to see that. We're trying to give them
a preview of what will be coming. It's a good chance for
them to know that it's coming up and we'll continue to
work with them. There will be an official notice when
each of the changes comes out at a later date.

I guess in no particular order, I'm going to use
the list that Chairman Nichols first started with and
we'll go through these various ones.

The first one that was mentioned is the refinery
allocation. Up until now, we've been working with
refineries to develop a new proposal for allocating
allowances starting in the second compliance period. The
current regulation as finalized would allocate allowances
using a carbon dioxide weighted ton approach, similar to
what's used in the European Union.

Going forward, we're proposing to use the
language using a complexity weighted barrel approach.
They have similar outcomes. But the refineries have made
a case, and we've analyzed the data and support changing
to this new approach. That it's easier for them to report and verify. It provides an equitable outcome for the various refineries.

In that, as we go forward and actually propose language, we did put out -- we did have a workshop back in August to discuss this with refineries and -- or sorry -- in October -- early October to discuss this with refineries. And several issues were brought up. So we're going to continue to work with stakeholders to refine our proposal before we put out the actual language.

CHAIRPERSON NICHOLS: Steve, just to be clear, is the Steel Workers Union or other stakeholders also included in these discussions? Or is it only the refiners?

ASSISTANT DIVISION CHIEF CLIFF: I don't believe the Steel Workers have attended our workshops. They're certainly welcome. We of course those via list serve and publicly notice those in the web cast workshops. We invite their participation. For the folks where we have the contact information, we're glad to reach out to them.

CHAIRPERSON NICHOLS: I think that's part of the point here is when people been involved and then they feel surprised. Whether they could have found out or not isn't really the right question. I think we should be making a little extra effort at outreach here as we move forward.
ASSISTANT DIVISION CHIEF CLIFF: Maybe I can ask for Stephanie William's help.

CHAIRPERSON NICHOLS: I'm sure she would be happy to.

BOARD MEMBER BALMES: I think it's a little disingenuous. I'm totally supportive of involving the Steel Workers early. But I think Stephanie, she was able to bring them here today. She could have informed them about things earlier.

CHAIRPERSON NICHOLS: Fair enough. But we err on the side of over inclusivity.

Yes, question.

BOARD MEMBER RIORDAN: May I ask a question? In this process of the additional comment and working with stakeholders and in this particular area of refineries, can they deal with what was brought up I think towards the end of testimony about those refineries that are producing asphalt components that people rely on for the building industry, which has, quite frankly, in Southern California been very slow. And now they may be ramping up a little bit. Is that the time they can come to you and talk to you about that?

ASSISTANT DIVISION CHIEF CLIFF: Absolutely. I think the asphalt industry would be covered under the refinery allocation. We look forward to their
participation. Many of the refineries -- those that produce asphalt have been very involved in our allocation process so far.

Within the general allocation, this question of general typical versus atypical. We have proposed that the typical refinery would get a benchmark and an atypical refinery would get a benchmark. In that case, what's at issue and that Phillips has brought up is that these refineries that they have which operate essentially as one, even though they're in different cities and they're different facilities, would be using the benchmark that is for a family typical refinery rather than an atypical refinery.

Staff believes that's appropriate because, first, Phillips has made a case in the first compliance period to allocate based on the assumption that those refineries work together and they can't be separated for the purposes of allocation in the first compliance period.

Secondly, they made a case to the Energy Information Administration to consider those refineries essentially as one for the purposes of reporting to the Department of Energy. So staff believes it's appropriate to treat them the same way in our process.

I want to make clear that they would get allowances for their facility in Santa Maria. They would
be using the same sort of reporting as any of the other refineries.

The only thing in question is whether or not they get the higher or the lower benchmark for these refineries that are operating in different cities, but essentially are linked together in terms of how they operate. So we're certainly willing to continue to work with Phillip 66 trying to understand those issues.

But all of the information that we've been provided in the public reports and what they previously indicated to us suggest they're operating really as a linked unit. And that's why staff made the proposal to treat them as such in the 15-day amendments that we suggested this morning.

CHAIRPERSON NICHOLS: John, do you want to --

BOARD MEMBER GIOIA: You said there's going to be further discussion exploring that issue and what it really means to jointly operate two facilities; right?

ASSISTANT DIVISION CHIEF CLIFF: That's correct.

BOARD MEMBER GIOIA: That are located in two parts of the state, because I know there are other refinery companies that have similar types of facilities.

I don't know how they operate. They don't call them jointly operated.

CHAIRPERSON NICHOLS: I think they call them
whatever is convenient at the time.

BOARD MEMBER GIOIA: There's going to be further
discussion on that issue to flush out the meaning of joint
operation.

ASSISTANT DIVISION CHIEF CLIFF: That's correct.
There will be. We have a process to go through and then
we would actually put out language. At this point, we've
sort of written our proposal, but it's not in regulatory
language.

BOARD MEMBER GIOIA: Can you just tell us what --
in a nutshell, not long, what's at the heart of the joint
operation of facilities that get different feedstock with
different -- what does that really mean?

ASSISTANT DIVISION CHIEF CLIFF: Essentially,
what it means is that the Santa Maria refinery provides an
intermediate product that is then shipped to the Rodeo
refinery in order to finalize that for products that would
be saleable in California. So sort of without the Rodeo
refinery, that Santa Maria refinery would not be putting
product onto the market.

In terms of thinking about them as a different
unit, in fact, they need to be operated together in order
to get the product that's made at Santa Maria to be
salable.

CHAIRPERSON NICHOLS: The Santa Maria refinery is
not selling that product to other companies, other than their own refinery.

ASSISTANT DIVISION CHIEF CLIFF: That's correct. In all fairness, they said to us more recently, well, if we don't own that refinery and it was selling to someone else, how would it be considered? I think that's an important point we need to continue to evaluate.

BOARD MEMBER SHERIFFS: Are they actually selling their own products to themselves?

MS. WILLIAMS: I could tell you.

CHAIRPERSON NICHOLS: Could we have some order here?

Stephanie, you'll be called on if you need to be. Let's hear from staff.

ASSISTANT DIVISION CHIEF CLIFF: They are linked via pipeline.

BOARD MEMBER SHERIFFS: Are they selling --

ASSISTANT DIVISION CHIEF CLIFF: As we understand it, it's essentially one unit. They aren't selling it.

BOARD MEMBER SHERIFFS: The sale is at the end of the Rodeo treatment.

ASSISTANT DIVISION CHIEF CLIFF: That's correct.

CHAIRPERSON NICHOLS: I called on John Eisenhut first. I'm going to try to get you guys to raise a hand or something.
BOARD MEMBER EISENHUT: Steve, the allocation methodology or the proposed change in allocation methodology, will that result in a redistribution within the industry or in addition to the industry allocation?

ASSISTANT DIVISION CHIEF CLIFF: It wouldn't be a redistribution within the industry. There is no -- in the second compliance period -- starting in the second compliance period, there is no pre-defined amount of allowances for this sector. So they would receive allowances based on their total production, which in this case would be carbon complexity weighted barrel. They would either get the benchmark for an atypical refinery or a benchmark for the typical refinery in the way we've been discussing it. So it doesn't redistribute allowances among the various refineries.

The way this works out is if this particular refinery were to get more allowances, that would come out of a pool of allowances that hasn't been earmarked for anything else. The way we think about that is essentially those allowances would otherwise go to auction.

BOARD MEMBER EISENHUT: Is it your preliminary analysis that the recalculation will result in higher allowances to the industry in total?

ASSISTANT DIVISION CHIEF CLIFF: It would result in higher allowances to the industry in total, yes.
CHAIRPERSON NICHOLS: So the petroleum industry will be getting more allowances for free.

BOARD MEMBER EISENHUT: A material number? A material number? Or a diminimous number?

ASSISTANT DIVISION CHIEF CLIFF: I'm not sure offhand.

BOARD MEMBER EISENHUT: I think to me that's an important part of the calculation.

ASSISTANT DIVISION CHIEF CLIFF: Okay. That's good. Thank you.

CHAIRPERSON NICHOLS: All right. Supervisor Serna.

BOARD MEMBER SERNA: Thank you, Madam Chair. I guess I share the same theme of curiosity that Supervisor Gioia has in terms of really understanding what we think jointly operated facility really means.

I want to understand -- is it because the pipeline -- my understanding is the pipeline is actually owned by Phillips, but it's used by other refineries that don't obviously own the pipeline, that that is what staff is holding your hat on in terms of saying that is a linked facility? In addition to the fact you've got raw product at one end and refined product at the other. Is it because of the -- basically the ownership disposition of the pipeline that, in part, that we're concluding at least
at this point that it's a joint facility?

    ASSISTANT DIVISION CHIEF CLIFF: That's a really
good question. From our perspective, as you mentioned
that the issue of what would happen if, for example, the
Santa Maria refinery weren't owned by the same company or
say they weren't linked by that pipeline. That's
something we still have to evaluate.

    In our mind, it's not really about the pipeline,
per se. It's about how these facilities are operated.
It's our understanding from what we've been told by
Phillips and their representatives that the refinery
manager at the Rodeo facility is directing the operation
of the refinery in Santa Maria. There are separate
refinery managers, but the operations are essentially at
the direction of the Rodeo facility.

    So many of the "typical" facilities have those
processes integrated at one facility, within one boundary,
one fence line. In this case, it happens that they don't
have them at one facility. And so from our perspective,
even though they are at separate facilities because
they're operating as one, they are really a typical unit.

    An atypical refinery produce is a refinery product
which is product that would be saleable in commerce in
California. But they do so with a much lower complexity
and a much lower overall throughput.
That's not really the case here. There really --
the input product to the Rodeo facility is made at a
different facility, but they operate together as a typical
refinery. The facility in Santa Maria is not producing
primary refinery product as defined by the regulation.
From our perspective, that makes it appear as though it's
typical because it's reliant upon the Rodeo facility to
finish that product and sell it into commerce.

CHAIRPERSON NICHOLS: If I may, I think the
bottom line here is that one California company operating
in California feels itself to be significantly
disadvantaged by this approach. And this has been an
issue for quite some time now. They feel that a system
that worked for the rest of the industry pretty much
didn't work for them. They're looking for a way to
resolve that issue, which is not unreasonable. It's
appropriate for them.

The question is if this isn't the right way to
analyze their business, what is the right way to analyze
their business? Because we know that the refinery
industry is competitive. We've seen this time and time
again. It's appropriately so, I guess. But it's very
difficult with us for us to try to come in and design a
system that works perfectly for everybody. But I think
the staff is committed to keep talking about this, at
least to see if there is a way to make it better and hopefully it will. Yes.

BOARD MEMBER BALMES: Just a short informational question. So I heard Steve say that with the original allocations to the refinery industry that Phillips said they were -- this was one operation. And to another branch of government, Department of Energy, I believe, they also said that. And now they're saying they're separate. I actually don't know what's the right answer, but seems to me it's one way or the other. You can't have it both ways.

CHAIRPERSON NICHOLS: Okay. Well, I think we're not going to try to answer that question at this moment. But let's move on to the rest of your list.

ASSISTANT DIVISION CHIEF CLIFF: The next one on the list is water. We have a proposal to allocate allowances in the 45-day package to municipal water agencies or public water agencies. We did put out this morning in our 15-day change a list that we're looking at the possibility of increasing the number of allowances through some additional analysis that we're doing.

I know that Tim Haines from the State Water Contractors had suggested some language for the Resolution. I think, you know, staff is certainly interested in continuing to work with the water
contractors and with the water agencies to see what the
most equitable solution is. I think we've come a long way
in the several years we've been working on a very
difficult issue, and we're committed to continuing to work
on this issue with them.

CHAIRPERSON NICHOLS: Okay.

BOARD MEMBER ROBERTS: You're going to be meeting
with them see, if we can get this are solved?

ASSISTANT DIVISION CHIEF CLIFF: We meet with
them regularly, yes. We'll continue to work with them. I
don't know if we have anything calendared yet. We've had
a few meetings over the last several weeks.

CHAIRPERSON NICHOLS: Back to the opening comment
from Kassandra Gough, we meet with people until they feel
like they're married to us. They have no choice.

BOARD MEMBER MITCHELL: I would just encourage
you to keep meeting with the water agencies and water
district, Metro Water, L.A. Department of Water and Power.
This is an important issue for them as well as for the
public. And so I think it's important that we work that
out. Thank you.

CHAIRPERSON NICHOLS: Hectar.

BOARD MEMBER DE LA TORRE: One specific thing
with regard to the water folks is their use of
hydroelectric power in their systems. And to me, it's
pretty clear that hydro by definition is not polluting. So that should not be included in whatever formula, whatever mechanism that we use to get them to do offsets. They shouldn't need to deal with hydro. If it's electricity from a power plant, et cetera, et cetera, obviously. But I think the hydro component should be subtracted from whatever it is that we're asking them to do to mitigate.

And whatever that number is, staff can come up with some kind of formula based on the low mark for how much hydro they've gotten in any given year for the last several years or the median of the last several years or the average in the last -- whatever metric you want to chose that's a reasonable number for how much hydro they've gotten over the last several years on a going forward basis they should not have to offset that or mitigate that.

CHAIRPERSON NICHOLS: I think the issue, if I could reframe it a little bit, is just how do we make sure we're offsetting Carbon that's associated with their activities, pumping and moving water. We're not trying to change the way they do business or penalize them certainly for using hydro when they can. It's a question of how do we account for the carbon they are generating or creating by the way we they move water around.
I know as agencies that deal directly with retailers and with the public, they're very concerned as is everybody about rates and how they can account for those rates. And that's I think where we've been trying to work with them to find a way to make sure that doesn't disadvantage anybody unnecessarily.

BOARD MEMBER ROBERTS: You know, from the start, it's almost like there's been an oversight here. We didn't grant them allowances. It's like we're struggling to catch up. I hope we do. But there should have been some different considerations I think going back to the very start of this.

CHAIRPERSON NICHOLS: Well, I think before this gets resolved at the end we're going to have to have one more discussion, you know, between staff and the Board about how we're approaching each one of these issues where they're really complicated policy questions inbedded in it, just to make sure everybody is satisfied what we're doing is as straightforward and transparent as it can be. Okay.

ASSISTANT DIVISION CHIEF CLIFF: I was going to slip in my issue on the but for. I think there is actually a misunderstanding about what we proposed. I wanted to clarify that.

Qualcomm requested transition assistance in the
form of allowances starting in the second compliance period. What we've actually proposed in this attachment to the attachment to the Resolution this morning is that we would exempt but for going forward. So they won't be a covered entity. In that vein, I don't think there is a need for transition assistance. You heard PG&E mention they saw this late. It essentially pushes the obligation upstream to the natural gas utility. And we have a proposal for allocation to the natural gas utility.

I think that that should cover the issue with the but for CHP. Essentially an exemption through 2020.

CHAIRPERSON NICHOLS: Just to be clear, this reflects the overall state policy which is to encourage cogeneration. So we're trying to be part of making sure that we're not doing anything that causes there to be a disincentive for cogen.

ASSISTANT DIVISION CHIEF CLIFF: I'm happy to follow up with Gail after to be sure this is clear.

BOARD MEMBER ROBERTS: Would this be a time to introduce the companies that are producing equipment like solar?

CHAIRPERSON NICHOLS: You talk want to talk about your solar turbines people? Our solar turbines people.

BOARD MEMBER ROBERTS: If the but for is applicable.
CHAIRPERSON NICHOLS: They're in a different situation.

ASSISTANT DIVISION CHIEF CLIFF: I think what you're referring to is whether or not there's a way to account for the emission reductions associated with the turbines that they produced.

BOARD MEMBER ROBERTS: I sent a letter some time ago to pose the question. We have companies that are producing equipment that significantly reduces greenhouse gas. And in the testing of that equipment to shipment, we're penalizing them.

And it just seems in not crediting them for what the ultimate benefits are, which are absolutely hugely significant.

CHAIRPERSON NICHOLS: It's a valiant argument, but it's a tool for analysis. It leads you to want to give free allowances to anybody who manufactures anything that improves energy efficiency, of which there are many kinds of companies in California.

I think in all fairness to the staff, they have worked very closely with the solar turbines people to find every way they could to work the rules to their benefits so they had minimal -- as minimal as possible costs associated with compliance with this program. But there are some. And I don't think there's, for me, any way
around that. So that, unfortunately, I think that's sort of -- that's where the discussion lies at this point. There is no specific avenue we can pursue to just exempt them completely from the program.

ASSISTANT DIVISION CHIEF CLIFF: I'd note that the proposal to provide more transition assistance to all of the industrial covered entities through the second compliance period is also a benefit to the solar turbines. Their industry is listed as medium leakage risk. Rather than having a 75 percent assistance factor starting in 2015, they would remain at 100 percent if that part of the amendments is approved ultimately by the Board.

CHAIRPERSON NICHOLS: If we pass, just to be clear, they would through 2015.

ASSISTANT DIVISION CHIEF CLIFF: Through 2017 remain at 100 percent.

CHAIRPERSON NICHOLS: Remain at 100 percent assistance factor. So no additional liability for them. They're in the program, but their allowances are free.

ASSISTANT DIVISION CHIEF CLIFF: That's correct.

CHAIRPERSON NICHOLS: They could reduce their emissions and sell their allowances if they wanted to.

ASSISTANT DIVISION CHIEF CLIFF: Or bank them for future use.

What I'll say on resource shuffling is that we
work really closely with the industry both the importers of electricity, the utilities in California, our federal counterparts, the California ISO, and other stakeholders to develop the provisions to determine what is and what is not resource shuffling at the direction of the Board last year. So we spent many months developing these provisions and ultimately we came up with the safe harbor. So what I want to say is that resource shuffling is prohibited by the regulation. When resource shuffling happens, if it does and we identify it, then we will enforce that provision of the regulation very strongly.

We have listed out what are the safe harbors and those safe harbors are things we don't see as resource shuffling. Those are the types of things that are transactions need to occur, not because they're trying to avoid a compliance obligation in our program or that would be termed as leakage, but rather something that's being done because it's needed in the electricity market in order to ensure the flow of electrons into California.

We did a really good job trying to craft the right type of policy where we're prohibiting resource shuffling when it exists. We're minimizing leakage in accordance with AB 32, but we also have to realize we can't regulate all those outside of California so we're not able to tell power plants outside of California that
they must not produce coal power any more, for example. We're responsible for the emissions here in California. And I think that we've done a really good job trying to prevent those.

And the reason that I'm saying I think we did a good job in part is because we worked really closely with the ISO to ensure that we have a safe and reliable supply of electricity while still getting reductions in the electricity sector.

It seems like what's at question and from some of the comments that came up today really is about can California ensure that emissions in the entire WEC go down. And I think that, in fact, they will. That emission in the WEC are going to go down through California policies. Not only cap and trade, but also the renewable portfolio standard that's under law.

So we will see emission reductions in the WEC as a result of California's policy. We will see emission reductions in the California as a result of those policies. Could there be more? Certainly. And the way we would see more is through a broader program through these national programs or through new national standards, which we hope to see strong national standards that we hope the EPA will continue to work on.

CHAIRPERSON NICHOLS: Okay. It's obviously a
difficult issue. I agree I've probably spent more time on this than most people have. And we understand that there's this risk. We also understand there is an equal, if not greater, risk of doing something that would really have a negative impact on the whole electricity market and the ability for people to buy and sell electricity freely as they do. That's been something they've been worried about from the very beginning of this program and spent a lot of time and energy trying to make sure we didn't cause.

So giving people a clearer indication of what will not be covered does provide some greater degree of certainty, but it doesn't do anything to weaken the overall prohibition. And I think just helps focus attention on the big coal contracts, which are the things we always were the most concerned about to begin with. So I'm not too worried about that.

BOARD MEMBER SHERIFFS: Can I ask a question? Do we have a good mechanisms to be tracking this that it actually is moving the way we hope we are having those positive impacts or --

ASSISTANT DIVISION CHIEF CLIFF: We do. Our reporting regulation requires very stringent reporting of all electricity imports into California. There is information about the type of electricity that's produced
throughout the west from the Energy information Administration and other reporting mechanisms. So we're able to track electricity as it's produced and as it's imported into California. And you know, we're able to see as we move along whether or not those emissions are continuing to decrease.

To the extent that there could be refined proposals, we're certainly welcome -- we certainly welcome those from stakeholders. But at this point, given how many work we did with respect the various stakeholders on this issue, I think we're not certain there is any more that really could be done. We did spend a long time trying to nail down these provisions.

CHAIRPERSON NICHOLS: All right. But the issue of potential areas of abuse is being monitored by a number of different entities, including the Federal Energy Regulatory Commission and the Commodity Futures Trading Corporation. There are a lot of people looking at electricity contracts out there to see if there's violations going on as well.

Okay. You had a couple of smaller ones on penalties, important. But what kind of discretion there is on awarding penalties and whether the fears that were expressed by PG&E and others are things that we should be dealing with in terms of making sure that there is
proportionality if somebody commits a relatively minor or inadvertent violation of the rules on reporting.

ASSISTANT DIVISION CHIEF CLIFF: There were actually two issues that came up under this general theme. One the SCPPA and LADWP brought up. There is a particular provision in our regulation which indicates that if an entity shuts down, they would have to give back the free allowances that they're provided.

I think there is a misread of the regulation there. The concern among SCPPA and LADWP is if they shut down a facility, they could lose allowances. Utilities are freely provided allowances to minimize the cost burden on their rate payers. The intent of that provision and the language of that provision is clear that if the utilities shut down and the utilities shut down their account, they would have to give back those allowances. That's not really a case that I think is likely, although there have been some small utilities that have sold to other entities. A utility like LADWP isn't going to shut down.

In the case of a facility shut down, we would not be taking allowances away from what would have otherwise been provided. As SCCPA and LADWO said, that would be an incorrect incentive where we want them to shut down high emitting facilities. I think that is a misread of that
I've gone back and reviewed this section. It's 95812 in our regulation. I think the language is clear, and I've indicated that to them in conversations. They've asked for some clarification. You know, I think this is really as much clarification as we can provide. It's very difficult for us to anticipate every possible situation in the regulation. So sometimes provisions are written a little bit broadly specifically for that reason.

We've tried to come up with language that is really an entity shuts down, then they have to give us the allowances back. So I think it correctly is written. But we'll continue to work with them and see if there is some sort of specific wording that might give more comfort there.

The other issue that was identified by PG&E is a provision in our regulation which says if you're not in compliance with the mandatory reporting regulation, then we can't give you free allowances. And that provision is specifically put in the regulation in order to ensure that we get good data before we're giving out allowances. We think that's a really important thing to continue to do.

The concern that's come up is, well, what if we didn't comply with the regulation on the gas side. Would we lose our electricity allowances or vice versa. What
we've said and how we operationalized this is you've got
to come into compliance. You have to make sure and give
us good data. Until that time, we can't provide the free
allowances. Otherwise, if we don't have that provision,
the regulation would simply say on November 1st each year
or going forward on October 15th each year, you get your
allowances no matter what we do. We don't think that is a
good provision to have in there. So we have this in there
to ensure they come into compliance with our reporting
regulation and to have it to provide us good data as
required by those regulations.

We can't again anticipate every situation again.
But how we've operationalized this is once we get those
data, once everything is in compliance, then the
allowances have been provided.

CHAIRPERSON NICHOLS: Okay. By my read, that
brings us to mine methane capture and the protocol. Have
I missed anything else? If so, if that's true, I'm going
to saw a few words about that before launching into the
discussion.

ASSISTANT DIVISION CHIEF CLIFF: There were just
two others that came up. One was on the solar thermal and
on the information disclosure and those sorts of things.

Can I just say quickly on the solar thermal, it's
something we're interested in continuing to work with
stakeholders on. We didn't make any proposal in this —
under this notice to exempt those types of facilities. So
that sort of exemption wouldn't be in the scope of the
current regulatory amendments. But we will continue to
work with that industry to try to see if the incentives
are incorrect for the types of good behavior that they're
suggesting, which is to do renewables that do have some
emissions associated with it. So we'll continue to work
with them on that.

CHAIRPERSON NICHOLS: Is there an actual problem
for real world solar facilities at this point?

ASSISTANT DIVISION CHIEF CLIFF: We don't believe
it is. The one in particular that came up today is a
facility that construction is underway. So it's not on
line yet.

CHAIRPERSON NICHOLS: So we have a little time to
work on it?

ASSISTANT DIVISION CHIEF CLIFF: That's right.

CHAIRPERSON NICHOLS: Okay. On the information
disclosure, I'm going to ask Rajinder to talk about that.

CHIEF SAHOTA: On the information disclosure,
that's to ensure we have adequate information to
comprehensive oversight of the entire market program.
Before the market program began, we had a lot of critics
saying you're going to have a lot of situations like
Enron. Markets are not the way to handle greenhouse gas reductions.

In implementation of the program for the last 20 months in working with our market monitor, coordinating with federal regulators like the CFTC, FERC, and coordinating with the State agencies, we realize we needed additional information or more comprehensive information. The amendments proposed in the 45-day package are to help us have adequate oversight to ensure the integrity of the program is there for all participants.

We understand the stakeholder's concerns that some of the wording could be more precise and the scope of the reporting could be a little better defined. We agree to keep working with them because we think that is true in some cases when we went back and reviewed the language. We're committed to finding a middle ground here where we have enough information to adequately monitor the market and ensure that we're not overly reaching for information without these entities, their contractors, or about their officers and directors when it's not necessary. So we are committed here to keep working as part of the 15-day process.

CHAIRPERSON NICHOLS: Any further Board comments or questions on that one? Judy.

BOARD MEMBER MITCHELL: I think that what we
heard in the testimony was that we'd like to see that language tightened up. And it appears you're going to do that. As an attorney, I know when you see over broad language, you can use it in many ways that were unintended. And I think it's really important that you get that right.

CHIEF SAHOTA: We absolutely agree. In certain situations, we can do our best to get it right and will work with our legal staff to do that and the State Attorney General's office because they are a resource to us on this particular area in terms of market oversight.

One of the things that we always do with our rulemaking is if there's questions or concerns, we provide guidance as part of the rulemaking. And so, you know, we always want to clarify our intent here. And we'll do our best in the regulatory text. But we can always provide guidance this goes along with that text.

CHAIRPERSON NICHOLS: Okay. Thank you.

Any additional items on the list then? No. Okay. So the protocol issue, I wanted to make a couple comments before asking other members to weigh in here.

First of all, this is a reminder that we are not actually adopting anything today. Whatever it is we say, whether it's pro or con, we're not saying yea or nay. We can't. We have to go through additional process here.
Secondly, in terms of where the comments are sort of converging, we are hearing two very distinct kinds of comments from those who oppose as well as from those who support this protocol.

I, myself, have been in the camp of those who are frustrated that we don't have more protocols. As staff knows because they've heard from me regularly on this, why does this take so long? Why is this so hard? Especially why don't we have more protocols that directly effect things that happen in California?

And I know that the next one that's up for -- looks like it's going to make it to finish line is one that deals with rice growing, which at least has potential, you know, for helping some folks directly in California. And I was actually thrilled to hear today, which I did not know, there are companies in California that are in the business of doing the mine methane capture projects because I had not heard that before.

Having said all of that, however, you know, we made a commitment when we adopted the Cap and Trade Program that we would work to assure that there was an adequate supply of offsets available to keep prices moderate. We've been very lucky that for a variety of different reasons prices didn't go through the roof yet, but were also very early in the program. Somehow or
another, you need to find that perfect balance between
having too many offsets in which case people don't go out
and develop those projects and you don't get the emissions
reductions from them versus having not enough offsets, in
which case the prices go up and they're not very useful in
terms of their intended functions.

We knew from the beginning that California was
going to be a tough place to provide offsets from because
we regulate pretty much anything. If it looks like it's a
promising area for regulation, we're going to require it
to be cleaned up. So it's going to be very hard to come
up with an offset project.

But still, we have to keep searching for them I
think or we are not being true to our primary mission,
which is obviously to benefit the state of California.
However, when you look at the Cap and Trade Program, I
think some of the opposition to offsets is fundamental to
dislike cap and trade. There are people, and some of
those we've certainly heard from, who are going to find a
reason to dislike any offset protocol that comes to us.
No question about that. We've heard a number of those
reasons.

I am satisfied that the staff is beyond
meticulous and careful in their review of these protocols
to try to make sure that there is no hole in them when it
comes to being real and enforceable and verifiable and excess of regulatory requirements. However, having said that, when we're dealing with the coal industry, there is something that makes a lot of people nervous that we're somehow doing something in an area that we're not comfortable with in California. We don't use coal in California to any significant extent at all, and certainly we don't have any coal mines in California because we don't have coal.

So there is a lot of I think appropriate concern that we be able to fully explain why it is that what we're doing in this area does not do anything that's going to somehow encourage, prop up, incentivize, whatever, an increase or even a continuation of coal mining activities beyond what's already absolutely necessary.

And staff has presented a number of comments when I've questioned them about this and probably other Board members have asked you some of these questions, too, about why you feel this is something we don't really need to be worried about. But I'd like to give them an opportunity to maybe say a little bit more about why they came to the conclusion that this thing was ready for prime time.

CHIEF SAHOTA: So there are a couple themes, like you said, that came through on the protocol. One was incentives for the coal industry. Another was technical
merits related to additionality.

On the technical merits, we can safely say from the staff perspective we addressed all the concerns to ensure the protocols meet the AB 32 criteria. We approached the development of this protocol the same way we approached the development of the four existing protocols. We feel like they're technically sound documents and they will deliver real reductions for our offset potential.

In terms of the incentives for coal mines, we've looked at data from U.S. EPA. We've looked at data from existing projects. And we've compared those numbers with what was presented by the folks from the Stanford Law Clinic and some of other commentors here today. When we've looked at the data which really looks at the real recoverable amount of methane at these projects, the amount of potential price for these offsets in the market, the capital costs that can be anywhere in the several millions to ten million for capital development, and factored all that into the net profits of the mines on an annual basis in the U.S., it's always come out to less than one percent of the potential profit.

In addition to that, we've realized these projects are not being undertaken by the mine companies themselves. You heard today from several commentors
they're California-based entities doing these projects. It's really people who see an opportunity to deploy new infrastructure and new technology to come up with some kind of agreement contractually to have the mine host those projects and then get some small revenue stream from those projects.

When you think about the transactional cost from the point of capital costs for development, the transactional costs for bringing those to market, and what potential small percentage might end up at the mine, it's even less than one percent of one percent.

So looking at that data, we feel very confident this is not going to somehow support new mines or expansion of existing mines only because there is now an offset revenue stream available to these folks.

CHAIRPERSON NICHOLS: So what about the issue of EPA or other regulations that might come along that would require this to be done and whether we're going to be sitting here with a pool of offsets that we've created when, in fact, in the future these wouldn't even be allowable as offsets of regulation come into effect?

CHIEF SAHOTA: Currently, there is no plan for EPA to regulate fugitive methane from mines. If they were going to regulated that, it would be several years before
those regulations would be in a place or take effect. If we were to adopt a protocol as part of this rulemaking, which would be sometime next year, and a project was developed beginning the day after that protocol came into being, those projects would be eligible to generate offsets.

But let's say two years from now EPA decides they're going to regulate mine methane. After that point of that regulation, no new projects could come into California because those would be required reductions under our regulation. And they would no longer be additional and no longer be common practice. They would be required reductions. So existing projects before that development of that federal regulation would continue to get some revenue for a defined period. New projects would not be eligible after that period.

CHAIRPERSON NICHOLS: What is the defined period that they could keep on getting revenue?

CHIEF SAHOTA: The defined period is ten years. It's referred to as a crediting period, the same as what we have our digester protocol. This is really to ensure folks that make investments in these projects they have a period for investment return on those upfront costs for developing the projects.

CHAIRPERSON NICHOLS: Those are my major
questions. And I have a proposal to maybe do a little bit more work in that area before this comes back. But I think others Board members may wish to comment. Judy.

BOARD MEMBER MITCHELL: Thank you, Madam Chair.

My concern, and we heard it from some of the comments, was the issue of junk offsets. And so that gets back to the fact that this has to be quantifiable and verifiable. And we've heard some other people that it is. But how does ARB know that it is? What oversight do we do in such an operation to get that information? If you have a company that is capturing the methane, they have an obvious motivation to inflate that because they're going to get money off the sale of the offset. We need to be in the minimum in the loop there to intervene when something like -- some enterprise such as this.

CHIEF SAHOTA: That's a really great question, and I think that goes to the overall design of the offset program for the cap and trade regulation. We have vigorous reporting requirements. You have to report data on your operations associated with that project annually to ARB. If you are a project located outside the state of California, you have to submit yourself voluntarily to the jurisdiction of the state of California for enforcement potential.

We also have a third party audit program where
third party verifiers of those emissions reports are trained and accredited by the Air Resources Board. And they have to take exam to demonstrate they understand our regulatory requirements and they understand the fundamentals of that offset protocol they're reviewing.

The auditors, the verifiers, are subject to ARB oversight. ARB staff also is on the ground to monitor some of these projects when the verifiers goes out there. We have traveled to Maine. We have traveled to South Carolina to look at forestry projects. So we have a very well developed audit program in addition to the third party verifier program.

If we find that an offset is fraudulent or invalid and it has already been used for compliance, the entity that used that offset for compliance has to replace it with a valid allowance or offset to ensure the environmental integrity of the program.

Having said that, nothing precludes the state of California from pursuing enforcement action, criminal and financial, against anyone that provides false misinformation to the state of California.

CHAIRPERSON NICHOLS: If anything, we get accused of being so rigid and so different to deal with, nobody really wants to try to present offsets.

Mrs. Riordan and then Mr. De La Torre, Dr.
Balmes, and Mr. Serna.

BOARD MEMBER RIORDAN: Two things that I think are important. And some day maybe we could just have a tutorial, a little bit about verification and third party verification. Some of us have have had some experience with that. But I think it's helpful to maybe remind the Board about verification and what it entails and how we go about doing that.

The other part of this that makes me feel comfortable with this protocol is again more of a third party involvement. And that's the Climate Action Reserve. I think their input -- again, maybe we could have a quick tutorial on that entity. To know that there are people -- professional people who have no vested interest in other than having a protocol that is a good protocol that will serve us well to be involved.

So when Gary testified, it's very helpful to anybody who understands their role in this development of a protocol. And when they put their sort of stamp of approval on it, that gives me some comfort. If you don't know the Climate Action Reserve, that doesn't mean as much. So I think it could be very helpful just to understand what the process is, some of the fundamentals.

CHAIRPERSON NICHOLS: Great testimonial.

Hector, did you have a comment? Yes.
BOARD MEMBER DE LA TORRE: First of all, clarification on the point about the ten years. That starts from the beginning, and it's ten years. It's not ten years from when the regulation would kick in.

CHIEF SAHOTA: That's right. Ten years from the date the project actually commences.

BOARD MEMBER DE LA TORRE: All right. And then the follow-up question I had is: Who does it now? Who is doing methane capture and in mines now? And why are they doing it? If it's not being regulated, why are they doing it?

CHIEF SAHOTA: There are some folks who are in mines that have drainage methane, which is removing methane ahead of areas where they're excavating. It has to be removed so you don't have a safety issue when you move into that mining area.

That methane is rich enough you can inject it into a pipeline and get useful energy out of it and you can sell it on the transmission line. Those projects are occurring. They're financially viable on their own without offset credit. Those are not allowed because the business-as-usual protocol and are economically viable on their own.

When we talk about what's under this protocol, we're talking about projects that there is no end put from
that methane because it's so low in concentration you
can't use it for useful energy. So the projects that have
occurred to date are really under the voluntary protocols.
The Climate Action Reserve has a protocol. The verified
carbon standard has a protocol. So folks have done these
projects in the hopes of getting some offset credit to
sell into the voluntary marketplace. That's what we're
seeing here.

BOARD MEMBER DE LA TORRE: It's venting.

CHIEF SAHOTA: It's vented methane for health and
safety reasons. It's vented for ensuring the integrity of
the mine area where you're going to be excavating for the
worker safety. It's all pure vented emissions.

BOARD MEMBER DE LA TORRE: And for the question
of abandoned mines, clearly, if it's a working mine, that
venting is going to be much more than an abandoned mine.
So when they -- this issue of whether someone would use
the credit money to double back and go back in and re-up
with the mining operation using this revenue as the
trigger point, what's your response on that?

CHIEF SAHOTA: So the idea that you would take an
abandoned mine and restart it for the purpose of this
protocol, it begs the question would you expend more money
and effort into restarting the mine based on the potential
revenue you could get from that offset?
When you look at abandoned mines, they have sharp decline curves for how fugitive methane is vented out of those. If you think this is going to be something that's viable in the next year or the next two or three years, then you're probably not going to shut that mine down.

But as we looked at the evidence and the data from U.S. EPA and the project data and the market data and offset prices, the offset itself is not going to be more than one percent of the net revenue for that mine as a working mine. To restart that to sell a commodity for which you already shut that mine down doesn't seem to make economic sense.

BOARD MEMBER DE LA TORRE: Could we put something into this protocol that prohibited closed mines from qualifying for it?

CHAIRPERSON NICHOLS: I think the closed mines are one of the best options for getting projects done, as I understand it.

CHIEF SAHOTA: Right. Gives an incentive or some kind of return once you close the mine if you're not able to make some kind of economic benefit on keeping the mine open. To us, it's a benefit as mines close as a phase out incentive to keep providing some revenue from that mine. We can certainly discuss and talk about this --

BOARD MEMBER DE LA TORRE: The reason I say that
is -- and you said that the venting is so much less after it's closed. So of the eleven percent of U.S. methane emissions that are coming from mines, that's from our statistics I imagine, the lion's share is from active mines, not from these closed ones. I guess that we want to capture everything we want. But we can't.

But having something there that gets to this question of closed and a disincentive to -- it may never happen. And the economics may not work, et cetera. But you may want to make it tough.

CHAIRPERSON NICHOLS: I think I'm going to ask John to do his questions. And let's get our questions done and then think about what we want staff to do.

BOARD MEMBER BALMES: So I'm going fairly long-winded on this one, but I promise to be short on the other.

I'm going to violate your stipulation and say staff has been incredibly responsive to me. What I shook the tree and I got a lot of fruit back. And I appreciate Richard, Steve and Rajinder for educating me about this. I knew nothing about coal mine gas capture a couple weeks ago, and now I know probably than I want to.

I also would say just as an aside is that I wrote a chapter for a book, which the Chairman knows about because she wrote the forward, where I had the praise our
Cap and Trade Program before it was launched. And I feel very good. The book just came out and I feel very good.

CHAIRPERSON NICHOLS: They didn't send me a copy of it.

BOARD MEMBER BALMES: So that said, I'm very conflicted about this protocol. But I'm not conflicted about the technical merits of the program. Staff has reassured me that we can verify the emissions, that we can enforce the protocol, and there is additionality.

I first thought abandoned mines didn't admit that much methane. But I think they do, they'll -- Mr. De La Torre's question was a good one in terms of how much.

So my problem, the reason I'm conflicted, is on principle. I agree with my environmental health advocate colleagues that have testified that supporting the coal industry in any way, shape, or form is problematic to me.

It was mentioned by Will Barrett of the Lung Association that the Lung Association has a specific policy to get us to stop using coal for power generation in this country and around the world. And the American Thoracic Society, which is the professional link to the Lung Association, I'm Chair of the Environmental Health Policy Committee, and we had a meeting where we decided to endorse the Lung Association position and work to stop the combustion of coal.
So I have a little bit of a problem being in favor of this protocol on that principle. Ms. O’neill in testimony said coal was dirty. That’s true. But it’s beyond dirty. Coal emissions kill people. I just want to make that clear. Coal emissions kill people. We get all excited about Fukushima and the people that might be harmed by radiation from that power plant disaster.

But coal kills thousands -- tens of thousands of people per year around the world and in the country as well. So I have trouble being supportive of the coal industry.

That said, I think that staff has convinced me I’m going to hold any nose and probably be supportive of this. And you know, I guess I need to be a little bit more convinced as we talk that we need offset protocols outside of California to maintain the integrity of the program. I’m more impressed with the fact we can capture a lot of methane with this protocol. That’s good for the climate. But in general, I have problems with offsets outside of California. I realize we have other ones, deforestation.

CHAIRPERSON NICHOLS: I was just reminding myself how to say something, which I then decided I shouldn't but I will anyway. When we adopted our first set of offset protocols related to forestry and which did allow for
offsets in California, the meeting room was packed with people dressed as trees and carrying banners and claiming that we were incentivizing clear cutting. So none of these things are free of controversy.

BOARD MEMBER BALMES: I understand. It's the co-benefits issue that was important to me. I'd like to see protocols where disadvantaged communities are benefited in terms of decreased exposure to criteria pollutants.

CHAIRPERSON NICHOLS: I think we all would. As I've said before, there is a constant tension between regulating things and allowing them to be used as offsets. There are lots of things that could become potential offsets if you didn't think that you should just ban them or restrict them.

Most of the things that I think everyone would like to see happen in terms of reduced emissions from things like diesel are things that we wouldn't allow to be offsets, because we would think they should be permitted if they're really bad. But there may be ideas out there that we have not thought of. I'm quite sure we're not top of of everything.

BOARD MEMBER BALMES: I would like to see RED move forward, but that's a different story.

In any event, I am, like I said, persuaded that
the climate benefit of this protocol is the reason I'm going to hold my nose and being supportive.

CHAIRPERSON NICHOLS: I'm sorry to be factitious. I think your thoughts and ethical concerns about this are appropriate.

BOARD MEMBER BALMES: The last thing I would like to ask for Rajinder to respond to was whether or not -- I think it was Aaron Strong that the doctoral student from Stanford, if I got that correct. He commended the staff for the work they've done but said we needed to do more. Could you respond to his concerns?

CHIEF SAHOTA: I think it depends on what areas that the commentor thinks we need to do more work on. When it comes to some of the technical equations and some of the emission factors in the protocol, staff would like to make strategic changes there.

When it comes to the overall process, how we assess additionality, which is, is this activity beyond business as usual. Is it activity that wouldn't commonly occur? The process we deploy there is the same process we used for the four existing protocols. That process has been successfully litigated by the ARB and the State Attorney General's office in a lawsuit brought on a group in California that's opposed to all offsets.

The question of is this business as usual, is
this not business as usual, something that's always going
to be a question there. We use the same process we used
before and we feel confident it's a legal and sound
process.

BOARD MEMBER BALMES: I would just close by
saying that that's the kind of response I've been getting
from Rajinder all along and it's very reassuring inform
me.

I just wanted to echo what Mrs. Riordan said. I
think the verification is really a key issue here.

CHAIRPERSON NICHOLS: Okay. Mr. Serna.

BOARD MEMBER SERNA: Thank you, Madam Chair.

For the most part, Dr. Balmes hit on most of what
I wanted to get some answers on.

Specifically, some of the commentary testimonial
information today about missing information or what hasn't
been done. You obviously asked that. I'm not going to go
so far as to say I'm holding my nose to go along with MMC
protocol, but I was I have to admit a bit torn in my
thinking in terms of what it all means. I mean, we're
getting pretty drastic differences of opinion on this
particular subject today. And it was probably one of the
most common threads or themes we heard of concern or
support.

I'm feeling confident at this point, given the
discussion with staff in the last several minutes about it, that we are doing our due diligence to make sure we are moving forward with the offsets that are defensible. I certainly appreciate as a new member -- a relatively new member of the Board that the frustration that the Chair acknowledged early on that, you know, we do need to move forward with acknowledging the offsets that make up the eight percent of the compliance obligation instruments we're asking entities to consider.

I appreciate all the work of staff. Certainly appreciate all the testimony on both sides of the subject today. And hopefully moving forward, there's going to be some refinement on the subject. But again, appreciate my colleague's comments. I think this is probably one of the more important parts of the amendments we are considering today and that you presented. Appreciate it. Thank you.

CHAIRPERSON NICHOLS: Yes.

BOARD MEMBER SHERRIFFS: Dr. Balmes, I'm glad you get fruit when you shake the tree. I get a little methane sometimes.

Anyway, yeah, this is a difficult one in some ways to swallow. But if we can have a positive impact on this greenhouse gas that otherwise would be emitted and not managed, I think that's tremendous.

One question is that -- was great to hear the
California businesses are really in the forefront and stand to be the first in line in terms of being involved in this if it comes to pass.

Is there a way to give -- because physically these things are happening out of state. Is there a way to give extra credit within the credit process for businesses that are centered in California, even though the process may not be happening in California. That's one way to bring it to California.

The other question as I was thinking about these offset credits being created, what a huge need there is within the methane. Is there a danger of these out-of-state credits pushing the development of California credits aside. Because it's a little harder to think of where these credits are going to come in California for reasons that have been discussed. So a concern. Because there is a cap on credits in a sense. A zillion credits out there, but only eight percent of it be used.

CHAIRPERSON NICHOLS: Well, I think the questions that you're asking, just if I may at this point bring it back to hopefully where we can actually takes action and give our court reporter a break after five hours and decide what we're doing next.

I think that this is an issue which has been so contentious on the part of people whose support and
interest in this program is obviously sincere and positive that I think we owe it to ourselves to ask our staff to do some additional work on this issue before it comes back. And I think they've indicated they are willing to do that, to both meet with and perhaps in a workshop format but also in writing respond to the suggestions that have been made in terms of additional technical work that should be done to make the protocol absolutely air tight. And then also to respond to -- there is a lot of numbers that have been thrown around out there by economists. And not all numbers are created equal. To try to give some additional support to the belief that we have that there is no incentive encompassed in this. There is nothing in it that will be adding to the burden of additional coal mining going on.

I do think that one of the things we always need to look at when -- and we've said we would and I think we have to date when we look at a protocol is this going to be the toughest protocol literally ever. We want this to be the gold standard and benchmark for others. We want others to use it, not just in the California program but elsewhere in the world. Because the methane that's being emitted in coal mines in the United States pales by comparison to the methane that's being emitted from other places. So anything we can do to make sure that our
protocol is something that we will be able to literally export I think is important.

So I'd like to give some direction to the staff as part of the Resolution, otherwise which I think is in pretty good shape that they would come back to us with some additional work on this one issue. But, you know, within the general context of understanding that for all the reasons that people have stated, we recognize that this is one that we're probably going to be moving forward with. Is that sufficiently clear?

Okay. With that, are we prepared to propose the Resolution and vote on it at this time? Yes? Would anybody like to do that? Who wants to be first?

BOARD MEMBER RIORDAN: Madam Chair, I would be happy to move the staff recommendations Resolution with some of the input that has been talked about and I think is pretty clear to the staff. If staff needs more clarification, you can ask after we conclude our meeting.

BOARD MEMBER BALMES: I'll second that.

CHAIRPERSON NICHOLS: Thank you, sir.

All those in favor, please say aye.

(Ayes)

CHAIRPERSON NICHOLS: Opposed?

Abstentions?

Okay. Thank you so much. This has been a long
process, but it's been I think overall a very positive one.

Before we take a break, which I know we need to do, could I just get an estimate of the time that people think is needed for the mandatory reporting rule? This is a mandatory regulation, so we have to hold a hearing. We have to act. We have to have a quorum for it. And we've got people with other obligations in their lives. Would like to get a sense of what we're talking about here.

DEPUTY EXECUTIVE OFFICER TERRY: Staff presentation should be no more than 15 minutes. And I don't know how many people have signed up to.

BOARD CLERK JENSEN: Ten people have signed up.

CHAIRPERSON NICHOLS: Ten.

Can we take a brief lunch break and stretch and all of that? Half an hour for lunch and then come back at 2:00. Okay.
CHAIRPERSON NICHOLS: Welcome back, everybody from our short break. Thanks to all who were so prompt. We're ready to resume the meeting. We're going to be moving into the public hearing to consider amendments to the regulation for mandatory reporting of greenhouse gas emissions. This rule is really at the very heart of our entire climate program because without the data, we wouldn't have the ability to develop the Scoping Plan or all of the rules and regulations under AB 32. So it's been important from the beginning, and it now is in need of some further amendment. And I think at this point, I'm going to turn this directly over to the staff.

DEPUTY EXECUTIVE OFFICER COREY: All right. Thank you, Chairman Nichols. Staff's proposing limited amendments, and it will be Dave Edwards that's giving the presentation on proposed amendments to the mandatory reporting regulation. Dave.

MANAGER EDWARDS: We're going to have Joell Howe give the presentation for us.

DEPUTY EXECUTIVE OFFICER COREY: Two things I was trying to accomplish. One, I was trying to get it done relatively quickly. Two, to the right person.

CHAIRPERSON NICHOLS: Nice hand off.
(Thereupon an overhead presentation was presented as follows.)

MS. HOWE: Good afternoon, Chairman Nichols and members of the Board.

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MS. HOWE: The proposed amendments discussed today are targeted to three main categories. They are necessary to ensure continued robust implementation of the program. The first category is applicability and will make through new facilities subject to the reporting regulation. The second category is to support the benchmarking and allocation of allowance in the Cap and Trade Program. Lastly, the proposed amendments address a number of technical changes and clarifications.

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MS. HOWE: The mandatory reporting regulation was first approved by this Board in December 2007 with annual reporting beginning in January 2009. It was the nation's first program for mandatory reporting of greenhouse gases. Amendments approved in 2010 harmonized with the new U.S. EPA GHG reporting rule and to support the data needs of the newly proposed Cap and Trade Program. Amendments were approved in 2012 to further support the Cap and Trade Program.

Each year, mandatory reporting has approximately
700 entity that report their emissions and product data. The reporting entities subject to this regulation fall into three main categories.

The first is stationary facilities whose GHG emissions are greater than 10,000 metric tons of carbon dioxide equivalent or CO2 E per year.

The second is suppliers of fuels with emissions over 10,000 metric tons. This includes transportation fuels, natural gas, and other fuels. All electricity importers must report under the requirements of this regulation. There is no minimum threshold for these entities.

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MS. HOWE: To ensure consistent reporting, entities submit all GHG emissions data and product data through the California Electronic Greenhouse Gas Emissions Reporting Tool or, Cal e-GGRT. This online reporting tool is consistent with the U.S. EPA's GHG reporting tool in order to minimize the burden on reporters.

Of the 713 facilities that reported to us this year, only two were out of compliance. That equates to over 99 percent compliance rate. This was a very successful year for mandatory reporting program.

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MS. HOWE: Now I will explain the amendments
which staff is proposing. First, changes to the applicability requirements. Staff is proposing to add lead production sector to the applicability requirements. Previously, they reported only combustion emissions to the program. Staff is proposing to add full reporting requirements for this sector, which includes process emissions.

Additionally, staff is proposing to include all industrial sectors identified in the U.S. EPA GHG rule subject to the reporting regulation. This eliminates the need to update the regulation whenever new industrial sector comes online in California.

Lastly, the proposed amendments include added requirements for in-state producers of liquefied natural gas, or LNG. This adds one new facility to the reporting program.

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MS. HOWE: Staff is proposing to add several new product data types to the regulation to support the cap and trade allowance allocation and benchmarking. This includes products from the food processing industry and the newly identified lead production sector. As discussed during the cap and trade hearing, the carbon dioxide -- proposed amendments include data needed for complexity weighted barrel requirements.
Finally, staff is proposing flexibility that allows reporting entities to still receive allowance allocations on the portion of data that does meet accuracy requirements rather than risk losing all the allocation if some of this data does not meet accuracy requirements. However, the reporting entities will still have to provide an estimate for their excluded product data.

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MS. HOWE: Staff has proposed changes to the various technical requirements. The proposal includes the reporting of the activity data associated with hydraulic fracturing, or fracing. Staff is proposing to add additional data reporting from the natural gas fuel suppliers to support the cap and trade covered emissions calculation.

Next, staff is proposing adding requirements to ensure specified sources of electricity are accurately claimed in our program by adding language requiring sellers of imported specified source power to guarantee the power source by contract.

Staff is also proposing to add a requirement to report CO2 emissions from stationary fuel cells to help track the installation of fuel cell technology in California.

Staff is proposing the reporting of activity data
to assess the basis for yearly changes in greenhouse gas emissions to support cap and trade's adaptive management initiatives.

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MS. HOWE: Yesterday, staff released suggested modifications to the proposed amendments. Based on discussion and comments received today, these will be a part of our 15-day package of modified text.

Oil and gas stakeholders were concerned about the feasibility and cost of the oil well work over and completion data requirement. Staff is proposing to change this to require non-metered activity data. This change still allows for a valid estimation of emissions but greatly reduces the implementation cost. This modification reduces about 98 percent of the total estimated cost of the proposed amendments.

Language to fully implement the complexity weighted barrel reporting to support benchmarking and allocations is reflected in the 15-day language.

Originally proposed electric power entity amendments regarding system power and treaty power are being withdrawn.

Finally, the original proposed language for reporting the qualitative basis for year over year emissions changes included a reference to criteria and
toxic emissions. With the 15-day language, the requirement would be to only report changes in GHG emissions.

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MS. HOWE: Staff recommends the approval of the proposed amendments to the regulation for the mandatory reporting of greenhouse gas emissions, which also includes the 15-day change described today.

Thank you for your time. Are there any questions?

CHAIRPERSON NICHOLS: I don't see any questions now. There may be some after we hear from the public. This is a public hearing item. I think we should move directly into that.

We'll start with Norman Pedersen and then Nico Van Aelstyn and John Larrea.

MR. PEDERSEN: Good afternoon. Norman Pedersen, Southern California Public Power Authority. SCPPA commends three changes in the 45-day language that we saw in the 15-day changes that the staff released yesterday.

First, the 15-day changes would remove the multiple new provisions regarding imports of system power that were in the 45-day language. The 45-day provisions would have burdened actually the staff with the need to
develop system emission factors for all system power
suppliers. I think that was a good change.

Second, the staff in the 15-day changes would
eliminate the retroactive effect of a 45-day rule change
about reporting imports from asset controlling suppliers.
Making the rule change that was proposed in the 45-day
language effective retroactively to the beginning of 2013
would have unfairly harmed importers whose contracts do
not specify the asset controlling suppliers system as a
source of imported electricity.

Third, the 15-day changes revise a provision that
was in the 45-day language requiring operators of certain
facilities, including power plants, to report on the
reason for changes in the release of criteria pollutants.
This will be changed to apply to just changes in the
release of greenhouse gases. This is a appropriate. The
MRR is under authority of AB 32. The enabling legislation
for the MRR AB 32 refers to reporting greenhouse gas
emissions, not criteria pollutants.

We applaud these changes in the 15-day changes
that we saw yesterday. However, we are concerned about
particularly one of the 15-day changes. The 15-day
language would unfortunately reverse what we saw as a very
helpful rule change that was in the 45-day language and
that we applauded in our comments on the 45-day language.
We did submit written comments. We commented on ten issues.

The 45-day language would have deleted a troublesome provision in the MRR that requires an electric power entity to retain hourly metered data for specified sources and renewable energy sources and use the data for verification purposes. Tracking and verified detailed hourly data would be burdensome and would be unnecessary. Since MRR reports are for annual periods, hourly information should be irrelevant so long as annual figures are accurate. We believe the deletion of the hourly metered data requirements should not be reversed.

Thank you.

CHAIRPERSON NICHOLS: Great. I was wondering if you were going to be able to wrap that up.

Mr. Van Aelstyn and then Mr. Larrea.


I'm here this afternoon to speak on behalf of the Powerex Corporation reservation. I don't know the morning's stipulation still stands.

CHAIRPERSON NICHOLS: It's been lifted.

MR. VAN AELSTYN: Well, then, I will just add my word of thanks to the staff for all their good hard work over the last many months.
So very briefly, Powerex is the wholly-owned marketing subsidiary of the British Columbia Hydro and Power Authority, which is a Provincial Crown corporation owned by the government of British Columbia. Powerex sells wholesale power in the United States pursuant to market based rate authority granted by the Federal Energy Regulatory Emission.

Powerex has been a reliable source of electricity in California for many years and fully intends to continue to be so.

Powerex appreciates the effort ARB and ARB staff have put into developing the Cap and Trade Program, which we believe serves to fulfill AB 32's mandate to reduce greenhouse gas emission and combat climate change. The program is built on the foundation of the mandatory reporting rule. It came first. Let's not forget.

The program and the MRR now and the program -- the amendments to the MRR now before the Board ensuant to be before the Board in the 15-day rule changes do achieve progress toward achieving the goals of AB 32 in our view.

With these changes, we believe that ARB is generally on the right track. The development of the greenhouse gas reporting program has been a learning process for all of us during the last several years and improvements continue to be made, including today.
We welcome the proposals now before the Board that further clarify that buyers and sellers in the wholesale power markets must be very clear when contracting for the delivery of specified power. That intention must be embodied in a written power contract and the delivery must then be confirmed in the NRC e-tag.

In particular, we support the proposal's extension of this principle of clear intent to asset controlling suppliers by specifying that they can determine when they are selling specified power and when they are not. It is only with this kind of clarity that the carbon price signal can do what it's intended to do, which is to incentivize the development of clean power generation.

Again, we believe ARB is generally going in the right direction on these and other issues. That said, we do believe there are further refinements to be made to clear up residual confusion within the wholesale power markets. We look forward to continuing to engage with ARB staff with respect to the draft 15-day rule changes that were issued yesterday. We understand these changes were likely drafted without the benefit of all those stakeholders, including us, that submitted comments this week. But we do think that the changes would benefit from a review of the stakeholders' comments that have been submitted on the 45-day rule changes.
CHAIRPERSON NICHOLS: Thank you.

Mr. Larrea and Brian Biering and Cindy Parson.

MR. LARREA: John Larrea with the California
League of Food processors. Just here to again
congratulate staff on the MRR proposal. We are very
pleased with the definitions we've been able to work out
associated with our processes and the food processing
definitions that are needed for the benchmarking.

There are still a few that need to be tweaked.
So we just want to make sure that staff is going to
continue to work with us on those to get those as accurate
as possible. And also just to thank staff for their
patients in terms of our ability to be deliver the data
that they need in order to do the benchmarks. As you
know, we have our seasons at odds with most others and we
are very intensive and it kind of helps to give us just a
little bit of extra time to get back together to focus on
it. So we should have that for you by early next year.

Thank you.

CHAIRPERSON NICHOLS: Thanks.

MR. BIERING: Brian Biering with Ellis and
Schneider and Harris on behalf of the Turlock Irrigation
District.

I'm going to quickly second a comment that Norm
Pedersen from SCPPA made with regard to changes in the
45-day language that was subsequently reversed through proposed 15-day language changes which were released just yesterday.

What the issue really relates to is the retention of meter data for out-of-state power plants when imported from out-of-state power plant. The usual way of verifying the imports from that source are through the e-tags. The been changed to require importers to retain meter data that the facility generates. And the reason that this change is potentially problematic is it would basically require the importers to go through and compare the metered data, the e-tags by an hourly basis all hours of the year. And that I think particularly for smaller POUs could create a pretty significant administrative burden with very little upside in terms of improvement of accuracy for the reporting.

So we are generally supportive of most of the changes that are proposed in the 15-day changes, except for that one. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Cindy Parsons and Susie Berlin and Steve Kelly.

MS. PARSONS: Hi, again. Cindy Parson with Los Angeles Department of Water and Power. And I'd actually like to provide some detail as far as what Norman and Brian spoke about as far as this meter data issue.
We were actually the one who brought it to ARB staff's attention as far as it being problematic. Basically, nobody knew what to do with it. It was in the rule. We didn't know how it was supposed to be applied. So we pointed out that it was a problem. We asked them to remove it. Removing it would allow verification on an annual basis. So this is an annual report. You're reporting an annual report based on e-tags. And you could take the annual generation data from the facility and compare the two. As long as it's within a few percentage, you're good.

So initially, staff agreed and they struck it out in the 45-day language. A few weeks ago, they contacted us and said they wanted to put it back in. And their expectation for putting it back in is that they want us to do this hour by hour comparison between the meter and the e-tag and to report the lesser of the two.

They also asked us to actually do an exercise, which we did. Took is 20 hours of staff time to do this exercise for one month. Very labor intensive. It required a lot of data manipulation because you have to line up the hours, and you have to make adjustments for time zone changes and all that. So when all is said and done, the difference was 1.6 percent. So huge labor cost, very small improvement in accuracy.
So basically what we would like to do is retain the original amendment, which is to strike out that language. We also did the exercise of comparing annual versus annual. The result was 1.59 percent. So much less labor intensive to do the annual comparison. So we ask that the Board retain the original amendment and that's for 9511(g)(1)(n).

The second item I'd like to address briefly has to do with reporting specified imports of asset controlling supplier power. The amendment could result in assigning default emissions to this low GHG energy. For the past two years, all energy provided by asset controlling suppliers has received a low GHG emission factor, regardless of the type of contract. Now you have to have a specified contract. As a result, higher emissions will be reported for some of this energy.

Our concern is what impact is that going to have on the statewide greenhouse gas emissions inventory and what impact is that going to have on the Cap and Trade Program when all of a sudden you have higher emissions for low GHG power. And in addition, it's not accurate. So if you're concerned about accuracy on the specified imports, why not also be concerned about accuracy for the asset controlling supplier. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

J&K COURT REPORTING, LLC (916)476-3171
MS. BERLIN: Good afternoon. Susie Berlin for the MSR Public Power Agency.

Just have a few brief comments. I want to express appreciation for some of the amendments that are reflected in staff's proposed modifications, specifically the removing the requirement to report differences in criteria pollutants and striking all references to system power and also the reference to not having to have the decreases or increases of five percent or more in the GHG emissions verified.

And I was also going to speak briefly or maybe not as briefly as I will about the hourly verification in Section 95111(g) requirements. But I'm instead going to echo the issues that were raised by SCPPA, TID, and LADWP that the hourly matching is a very, very labor intensive task and the members of MSR have undertaken efforts to try to come up with the order of magnitude and what that would cost in additional resources. And it's extremely intensive. So we urge the revisions to the -- we urge the original amendment to be retained and not to reinsert the language that would require the hourly matching.

Thank you.

CHAIRPERSON NICHOLS: Thanks.

Steve Kelly.
MR. KELLY: Thank you, Mr. Chair and Board.

I'm Steven Kelly, the Policy Direct for the Independent Energy Producers Association, which is a trade association of non-utility-owned electric generators primary located in California.

I do have members who are located out of state, but the bulk of our generation, about 26,000 megawatts is located in the state. We produce jobs and tax revenues to the local economies in doing that. And our goal from the beginning is to make sure that AB 32 was essentially competitively neutral in terms of generation types that were bidding into the California independent system operator and forth.

And the primary reason for that is because generation located in California reports its emission out the stack. That means we have an obligation to buy allowances for 100 percent of the emissions that we produce. And we're particularly interested in making sure everybody else shares the burden.

One of the concerns that we have had and continue to have is the methodology for calculating the default emissions rate for unspecified system power. And we believe that the current methodology that has been used over the last year creates reverse incentives. It fosters resource shuffling as people move from specified resources
to create unspecified resources so they can get around a specific -- the actual emissions that they have, and fosters leakage. And more importantly, it undermines the environmental improvement that we are all trying to achieve.

Recently, IEP submitted comments on the 45-day language supporting the changes the staff are proposing to make more specific what the emissions rate would be associated with unspecified system power imported into California. And included in those comments, we actually did a study of one of the out-of-state entities that delivers unspecified system power to California. And that analysis suggests that their actual emissions based on EPA-reported data for 2009 and 2012 is anywhere between 16 and 40 percent higher than the default emissions factor that is used today by your agency.

That creates a huge competitive advantage. And it harms in-state generators that are providing jobs and tax base.

We supported the 45-day language and filed comments on that. We have concerns about the decision released yesterday to remove the effort to try to perfect the calculation of the default emissions factor. We ask the staff and this agency to continue its efforts in moving towards being getting more accurate representation
of the emission factors associated with power imported into California, reinstate the 45-day language that was proposed to remove for the 15-day language. Because if you don't do this, otherwise, we're looking at competitive imbalance and reverse incentives, which I think we're all trying to remove. Thank you.

CHAIRPERSON NICHOLS: Thank you.

Mr. Harris and then Elise Paeffgen and Michael Wang.

MR. HARRIS: Thank you very much. Frank Harris with Edison.

And I want to thank this opportunity to thank staff and I want to thank them retroactively. I mentioned to Steve it was the Chair's fault I couldn't thank him last time I testified. So here we are.

The revisions to the mandatory reporting regulation by their very nature are complicated and the issues don't readily sort of lend themselves to the three minutes of testimony. We have been working with staff quite a bit on these issues. And I think that how we would like to frame it up falls into three main buckets in terms of when we would like to see out of reporting regulations. First of all, they should coordinate well with the requirements of other regulators so that as we are recording in one -- from one regulation, that
coordinates well with how we have to report for others. Reporting requirements should recognize how existing markets operate and how data is developed and provided. And then finally, the reporting requirements should facilitate flexibility as market structures emerge and develop. Sort of three overarching guidelines that we kind of look for.

As such, Edison supports removing the designation of system power in the proposed amendment, the 15-day language. We absolutely support the most fully and completely accurate evaluation of system power non-specific imports into California. We think that is something that needs to be continually pursued and kept up to date so that California knows the nature of the energy that's being delivered into the state to the best it can.

The problem with the system power designation as it was is that it creates perverse incentives and does not coordinate well with the way that the electricity trades occur in the short-term market. So we support the 15-day package that was released yesterday.

Finally, I'll just close with this. We suggest that the staff recognize proposed changes related to the future energy imbalance market that's being developed by the CAISO and recognize that might require further alteration of this regulation. We think that the CAISO's
proposal is not fully baked yet, not completely mature. So we suggested its immature for the ARB to develop a regulatory treatment of that structure until we're clear on which direction the CAISO is going. Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

MS. PAEFFGEN: Good afternoon. I'm a Elise Paeffgen from Alston & Bird.

The rules, as we all know, are complicated and changing. And entities, particularly new entrants, are really struggling to understand the requirements and how changes impact them. So we're wondering how much compliance assistance will the Board provide to these entities and what happens if an honest mistake is made?

Thank you.


Over the past years, we've trod a smooth path to your offices and burned up staff's phone lines as we've come to understand your needs and you've become to understand our operating requirements.

We appreciate and support many of the changes that were proposed in the 15-day package that was released yesterday because they support the CWB that you all talked
about earlier today. We also support and appreciate the change in the provision that calls for reporting only GHG emissions if they change by more than five percent plus or minus from the previous year.

At this point, we do want to point out some issues that we think the Board would be interested in.

First, we proposed a series of definitions and edits to terms in the MMR definitions that were critically important to ensure the integrity and consistency of the product weighted approach. Staff's adopted most of them. But some edits we think might have been missed inadvertently. For example, the ARB did not include a CWB factor for hydrogen.

We realize that the staff has looking at a series of alternatives and we'd like to make sure that as part of the work going on with the 15-day package that the factors used in the hydrogen plants in the Solomom method be reviewed within those alternatives. We think that's important and critically important for the integrity of the CWB.

We have a specific request in two areas of the proposal. We ask the Board to not act on the strike out on page B15 Section K11 and also not act on Section E on page B22. We ask the Board not act on these changes because this is, to us, relatively new change and
proposals may have serious ramifications on facilities
operations up to and including the unit shut down for
metered calibration. If after consultation with
stakeholders ARB remains convinced that these changes need
to be made, they could be done -- achieved at that time.

Thank you.

CHAIRPERSON NICHOLS: Okay. Thanks.

Mr. Martin.

MR. MARTIN: Good afternoon. Graeme Martin from
Shell Energy.

We are a retail electric provider in the state of
California and an energy importer in the Cap and Trade
Program.

Shell Energy is very supportive of staff's
recommendation in the reporting rule to maintain the
requirement that obligated entities maintain metered data
and report power imports as directly delivered. The
California RPS statute requires only renewable energy
imported without substituted energy from another source
can be counted.

Staff's proposal is fully aligned with the
statute and language to ensure no system power can be
claimed as a specified emissions rate.

The way power is schedule, if an ARB specified
source is generating less than the import schedule in any
hour, the controlled area keeps the schedule whole with system energy and requiring obligated entities to only claim the eligible specified energy actually delivered maintains the integrity of the emissions data related to imports.

As a CARB and regulated entity, Shell Energy believes maintaining the language staff has proposed will ensure more accurate emissions accounting. And we'd be happy to work with other stakeholders to explain how this information could be easily tracked and reported.

Thank you so much.

CHAIRPERSON NICHOLS: Thank you.

Ellen Wolfe and then Steve Larrea and Tim Tutt.

MS. WOLFE: Thank you, Chairman Nichols and Board members.

My name is Ellen Wolfe. I'm providing comment today on behalf of the Western Power Training Forum. WPTF is a diverse organization of over 60 power marketers, generators, investment banks, public utilities, and energy service providers that transact in the California energy markets. We submitted some written comments and wish to provide additional oral comments today on three issues pertaining to the regulation.

First, I'll offer respectfully a counter position to some of the commentors before me to reinstate the
language that would require retention of meter data to
demonstrate that electricity generated by a specified
resource at that time that electricity is delivered to
California.

Throughout the evolution of this regulation, CARB
staff has consistently strived to ensure the accuracy of
the reported emissions. Elimination of the language
requiring matching of generation to delivery would
undermine this objective and result in overcounting of low
emissions imports.

When electricity is scheduled for delivery from a
generating resource the balancing area in which the
generator is located typically commits to provide
contingency reserves. This means in the event a committed
generator is unavailable in an hour, the host balancing
area will provide energy from its own system to ensure the
volume of energy scheduled is met. In this situation, the
volume of delivered energy exceeds the volume of energy
actually produced by the generator in that hour.

In recognition of this, both the CPUC and the CEC
require that for RFS standard procurement category one
that is energy directly delivered from renewable energy
sources, only the lesser of energy generated or scheduled
may be counted towards RPS targets.

WPTF believes that the same approach should be
used under greenhouse gas reporting program to ensure the accounting of the renewable imports under the Cap and Trade Program will be accurate. And it will be aligned with that under the RPS program.

We also recommend that the approach be applied symmetrically to all imported electricity and not just renewable energy. To do otherwise would be discriminatory towards renewable generation as it would apply a stricter standard for renewable imports than for other low emission imports.

Because generation meter data is already collected and utilized for financial settlement of electricity transactions, requiring importers to retain such data to document that the imported electricity was generated by the facility at the time the power was directly delivered does not create a significant burden on generators or importers.

Our second area of concern is with respect to requirements for specification of imported electricity. WPTF considers as a matter of principle the owners of a low emission generating source should control whether electricity from that source is specified and should appropriately capture the economic benefit of avoided greenhouse gas emissions.

We have one final concern related to the efforts
to improve the regulation with respect to clarifications being made. And we're concerned some of the modifications in 95103(H)(G) may be applied retroactively. And we request that the staff issue implementing guidance on the applicability of these changes for electricity importers to explicitly ensure the proposed changes to requirements for specified sources do not apply for electricity delivered pursuant to contracts executed prior to January 1st, 2014.

CHAIRPERSON NICHOLS: We have your written testimony also.

Steve Arita and Tim Tutt.

MR. ARITA: Good afternoon, Chairman Nichols, members of the Board.

My name is Steve Arita. I'm with Chevron Corporation. And I'd just like to start by expressing our thanks to staff, in particular, Edie and Richard Corey. And I've probably been camped out on Richard Bode's office for the last three months or so with Steve and dealing with all of the proposed revisions to the mandatory reporting reg.

We appreciate the fact that they listened to us and they hear our concerns. In particular in regards to the criteria and the TAC reporting requirement and making those revisions, we appreciate those. As well as the
other changes that were proposed on the oil well testing
requirement. We totally appreciate those revisions.

I would like to raise though there are two issues
that are still of a concern to us. They are Section 95103
and 95113. These were changes that while we have been in
discussions with staff, some of the changes we just saw as
of yesterday when this release -- the 15-day revisions
came out, we talked extensively with the staff. We
understand I think each other's concerns and where we're
coming from.

I think the important thing that I just want to
emphasize is that -- we've always emphasized this. We, as
Chevron, we understand the importance of getting accurate
data. It feeds up through the Cap and Trade Program. We
totally understand that, and we realize the importance of
that. In fact, we advocate for strongly and make sure we
have accurate data for all reporters.

I think the concern though that we have is that
we believe also because we are such a very complex
industry that there has to be a recognition that there can
be other ways of quantifying and determining data
accuracy. And I think that's probably where there's some
disagreement we have the staff. We notice you have it
listed in the 15-day draft comments that we can continue
those discussions. But Madam Chair again, I think we
understand we have to get accurate data. That's number one. But I think what we'd like to see is if staff can recognize there are other ways, many different ways, to determine data accuracy, data collection, and make sure that we're at 95 percent accuracy, which is what the MRR calls for. So, again, I would urge the Board and Madam Chair if we can recognize that. That would go a long ways to helping from an operational flexibility standpoint.

Thank you very much.

CHAIRPERSON NICHOLS: Thank you.

Mr. Tutt.

MR. TUTT: Thank you. Good afternoon, Madam Chair, staff, Board.

My name is Tim Tutt representing the Sacramento Municipal Utility District. And we, too, appreciate the 15-day changes for the most part. There were items in there that we really appreciated being added by staff. There was one item that we wished would have been added and another item that we're kind of nervous has been added.

The item that we wish had been added involves our SMUD pipeline. We're kind of in a unique situation in that we have a 75-mile pipeline that only serves our power plants that are all obligated entities. We have a compliance obligation for those power plants. We also
have a reporting obligation for the pipeline, which is calculated on different metrics than the compliance obligation for the power plants.

So we're nervous that at some point we can get into a situation where we have an extraneous compliance obligation from the pipeline side that we shouldn't have. Because our obligation is on the power plants, not on the gas we're delivering to those plants.

It's also an additional burden for us to be reporting on the pipeline and then reporting on the power plant side.

The issue that we're a little nervous about has been raised a lot today. That's the question of this hourly comparison of the metered versus schedule data. It is true that on the CEC and the CPUC, they have required this hourly comparison. And there are times -- we procure renewable generation from a counterparty at a certain amount, and then it's scheduled. And the generation at any hour can vary from the schedule. It can be lower or higher.

But what we're seeing at the CEC is they're only counting the lower part and not counting the higher part in any hour as by content category one. But that other amount that we contracted for is still renewable and is still then presumably a zero emission obligation.
We're not sure how that's going to be treated in the mandatory reporting regulations. We might have a clear renewable procurement at the CEC and have it be treated as having an emission obligation here. That's inconsistent.

We think that there is some work that needs to be done to make sure that this all works seamlessly together. And we also think that what will happen in the market with both the policy at the CEC and now this potential policy here is that parties will have a tendency to over-schedule to make sure they get the generation counted as category one and not have any emission obligation for it. So that over-scheduling basically implies that the transmission system is being inefficiently used because you don't need to schedule that much power. You're just doing it to avoid the complications of all the machinations of these mechanisms that are being set up. So we do think there needs to be more thought that needs to go into these policies, both at the CEC and here. Thank you.

CHAIRPERSON NICHOLS: Thank you.

That concludes the list of witnesses I have. Was there anybody else who intended to testify on this item and did not? Okay.

Then I think we can close the record as far as public hearing is concerned. I would like to hear back
from staff since you gave a pretty bare bones presentation. And I appreciate you were responding to our obviously desire for conciseness here. But there have been a couple of points raised. This hourly matching thing obviously came up a few times, the possibility of alternative ways to verify data. And there's some other points as well. But could we hear back on your response to those?

DEPUTY EXECUTIVE OFFICER TERRY: Chairman, maybe I can kick it off, because we did shorten on the Executive Officer's statement a bit. And the reason we have Steve Cliff sitting with the staff who work on mandatory reporting is that it is essential that the product data change and be done and in effect by January for the Cap and Trade Program. So I wanted to make sure that the Board was aware of that. And that's --

CHAIRPERSON NICHOLS: No, I don't think -- I don't have any desire to prolong this. I'm just trying to make sure we answered the question.

DEPUTY EXECUTIVE OFFICER TERRY: Point two is that we are proposing to put 15-day changes out next week related to product data. Some of the other questions before staff go into them, I just wanted the Board to be aware that they don't to be resolved in this 15-day process for the January deadline. So if the Board has
concerns about some of these, Steve is here to answer the question about the relevance to the cap and trade in the January deadline. I just wanted that preface.

CHAIRPERSON NICHOLS: Okay.

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:

This is Richard Bode.

And let me address three of these things which I think you identified. One was this reporting hourly data. So as the mandatory reporting regulation is written now, it requires that for verification purposes that they remaining document their meter generation data and basically demonstrating document that as this power is generated is actually delivered to California as well.

So we actually had heard a comment from the stakeholder, actually it was LADWP, which brought up this administrative burden to do this and it could be done in more of a monthly averaging way methodology. So we felt a need to make a change. And we opened it up. We got quite a few stakeholder comments back and addressed the issue of data accuracy it wasn't kept as it was for.

The administrative burden as well, we've talked a little bit to other stakeholders, and we think this is maybe something we can work out with quite a few of these municipal utilities to reduce the administrative burden of doing this kind of tracking of this information. But
probably with the stakeholder comments we got, we thought it was better -- if we want to do this, we should open it up to a broader group of stakeholders and do it. But at this time for data accuracy needs, we need to keep it where it was.

CHAIRPERSON NICHOLS: Well, what actual data are you looking at in this situation?

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE: We're looking at the database -- it's the data of what's scheduled to come to California and what actually gets delivered to California. And it's done at the time that power is generated. And that tracking is usually done at the most on an hourly basis.

CHAIRPERSON NICHOLS: That's done by whom? By the generator?

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE: That's done by the person that actually receives the power as well.

CHAIRPERSON NICHOLS: So I'm still -- I mean, I'm trying to picture a big computer sitting somewhere and what it's collecting, who's doing this.

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE: So actually the data is being generated. The data is being created by, of course, the one that's generating the power and as that power is being delivered into California
itself. And the one that receives the power has to
document that. They do -- right now, they do it on an
hourly basis.

CHAIRPERSON NICHOLS: It's data they're
collecting now.

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
Data they're collecting now on an hourly basis. So the
request was to actually ease that because of
administrative burdens. We think because of the comments
about the accuracy of how you account for that data as you
move away from the hourly basis that it was better at this
time to stay with what we have.

CHAIRPERSON NICHOLS: Instinctively it seems to
me creating some new more generalized weekly, monthly,
whatever is actually more prone to create mistakes than
just using whatever it is they collect today and having
that available. I may be missing something.

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:
I think you're right. When we look at some of the -- how
the data can be changed and manipulated, that was another
concern as well that you did not come up with the same
tools. I think LADWP brought up some examples they had.
They ended up with different tools as well.

CHAIRPERSON NICHOLS: Okay. I realize that we
need to move on with this, but there are other questions
that were raised.

    Yes, Ms. Mitchell.

BOARD MEMBER MITCHELL: Just on that issue, I understand that there is a need to do the annual report. You're requiring hourly data for what is going to be turned into an annual report. I am concerned about the administrative burden on that. And if the difference is only the 1.5 percent, I think we need to look carefully at that and see how can that be resolved. That's all.

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE: I think this is one we'd like to work with the stakeholders, too. Because as we talk to others, they've said they can minimize that administrative burden templates that we can device and work with stakeholders. So I think that's one of the things we do out of this is actually sit down with LAWDP and others who brought this up to see how we can minimize this burden.

CHAIRPERSON NICHOLS: Just talk about the process moving forward because, you know, we talked quite a bit in the last item about how we were going to go about working through the items to get to the 15-day changes and then what happens after that. So how is that going to happen with respect to this regulation?

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE: So for all the changes or --
CHAIRPERSON NICHOLS: Well, no.

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE: Or just this one here?

CHAIRPERSON NICHOLS: You're going to be doing something next week apparently. What is that going to be and what happens after that?

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE: We'll take the changes we've heard today and prepare modified text for 15-day review and put that through.

And I think what we also heard was some comments that are going to be making won't result in regulatory changes. And those of which will -- we do this quite a bit through the year. We provide guidance for the interpretation of the regulation or provide guidance in how to minimize administrative burden.

And I think that's something we probably -- you know, we always work with stakeholders on. And that is a something that we put together between now and the beginning of the reporting season, which starts next year. And at the beginning of next year, we'll have guidance available. We will work with the stakeholders how to implement that guidance and make sure that we're all understanding what we're doing.

CHAIRPERSON NICHOLS: Okay. Any other comments or questions from the Board?
HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:

Do you want me to go into the system power?

CHAIRPERSON NICHOLS: Yes.

HEALTH AND EXPOSURE ASSESSMENT BRANCH CHIEF BODE:

So system power was the other issue that we had initially proposed. It was another comment that was brought to us by a stakeholder that would be used in a very limited fashion for a different type of power to basically define how a group of facilities would define the carbon intensity of their power.

When we actually proposed it, we heard quite a few comments from stakeholders, some strong comments, and realized it basically interfered with the design of electricity market as it was originally developed. Also with the input that we received from a number of different California State agencies, the Energy Commission, the California Public Utilities Commission, as well as quite a few other stakeholders.

This is another one where we put our toe in the water and realized this it was an issue we have to work at before we develop this kind of system power definition. It would have to be done with a much bigger group and looking at its impact on the whole electricity market.

So at that time, we decided we're going to withdraw that. It really only -- might have affected one
facility at most. At that, had really limited application. So it seemed pretty wise we actually pull this one back.

As we heard today, we have had some that are opposed -- quite a few in support. Some that are opposed because they're hoping to use it. And I think Mr. Kelly's comment about the default emission factors actually applied to this system power. That was idea that was the concerns, too. People thought we were trying to change the default unspecified system power value that had been created through a multi-party stakeholder process back two or three years ago. It seemed wise we pull that one back, too.

As you can hear, the electricity market has quite a few different stakeholders, in state and out of state stakeholders. I think before we move on these things, we need a much bigger stakeholder process.

CHAIRPERSON NICHOLS: Okay. Obviously, this is an extremely technical regulation. And it has been from the beginning and maybe even getting more that way as time goes on.

Seems like the major changes of importance are the additions of new types of data and new facilities that weren't being captured before under our rule. So from my perspective, those are the things that are most
concerning. To the extent stakeholders all seem to have a few little things they'd like to see changed, I just want to make sure that we are open to those kinds of considerations on an ongoing basis.

I realize that's very difficult because inevitably any change in how you collect data is going to be threatening to some as well as maybe provide opportunities for others. But I hope this is going to be some -- there's going to be some sort of regular check-in on how this is all going so that there are opportunities to improve the regulation as time goes on.

DEPUTY EXECUTIVE OFFICER TERRY: And actually, each time we look at the cap and trade regulation, the staff is working with the mandatory reporting staff to see the interplay. Because every change to cap and trade, you know, potentially has an impact on reporting and vice versa. So if there is anything the Board would like staff to look at, follow up on, we can come back in the spring and report on mandatory reporting status, along with the finalizing cap and trade issues as well.

CHAIRPERSON NICHOLS: Clearly, you're continuing to talk to the stakeholders. They seem to be liking the experience of camping out at your offices. So that's fine.

I just want to make sure that as a Board that
we're keeping an eye on this thing sufficiently so that if it's having a negative impact as is suggested and there are better alternatives that we're not unable to consider those kinds of improvements. So I'm hoping that would be the case and that we can just move on.

DEPUTY EXECUTIVE OFFICER COREY: I just wanted to underscore the periodic reporting back. Really what you're getting at is how is it going? Are there outstanding issues? We will continue to make adjustments going forward. That's what's been demonstrated here and will continue to be.

CHAIRPERSON NICHOLS: Okay. In that case, I think we can probably move the resolution and get this adopted. So do I have a motion?

BOARD MEMBER ROBERTS: So moved.

CHAIRPERSON NICHOLS: So moved by Supervisor Roberts.

BOARD MEMBER RIORDAN: Second.

CHAIRPERSON NICHOLS: Seconded by Mrs. Riordan. Any further comments or discussion? If not, all in favor please say aye.

(Aye)

CHAIRPERSON NICHOLS: All opposed? Any abstentions?

Okay. I think we've got this underway and you
can move onto the 15-day changes.

Did we get anybody sign signing up for public comment?

Okay. I think that is it then for our agenda. I don't think I made the announcement. Our agenda showed an executive session. We did not have an executive session. There was no need for it. We put it on the agenda every Board meeting so we have the ability if we need to have a discussion of legal issues. We did not need that. So there was not one. With that, we're adjourned.

(Whereupon the Air Resources Board meeting adjourned at 3:02 PM)
CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of November, 2013.

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TIFFANY C. KRAFT, CSR, RPR
Certified Shorthand Reporter
License No. 12277