BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON THE MAY 4, 2012 WORKSHOP ON ELECTRICITY SECTOR ISSUES IN THE CAP AND TRADE REGULATION

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I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority ("SCPPA") [1] commends the California Air Resources Board ("ARB") for holding the workshop on May 4, 2012 ("Workshop") on electricity sector issues in the *California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms* regulation, Title 17 California Code of Regulations ("Cap and Trade Regulation"). SCPPA respectfully submits this comment in response to the issues raised at the Workshop.

In summary, SCPPA considers that:

- The definition of "resource shuffling" in the Cap and Trade Regulation should be clarified. The ARB should also establish a process for making up-front, publicly-available determinations about whether a specific transaction would constitute resource shuffling.
- It is important to retain the adjustment for Qualified Exports, in order to avoid imposing liability on power that is not consumed in California. The Qualified Exports provision should be revised according to the Southern California Edison Company ("SCE") "lowest first" proposal.
- The ARB should not require renewable energy certificates ("RECs") used for the RPS Adjustment to be retired in the year in which the associated renewable energy is

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

generated. Requiring RECs to be retired in the year of generation restricts utilities' options for compliance with the Renewable Portfolio Standard ("RPS") and conflicts with the direction of the California Energy Commission ("CEC") not to retire RECs. These issues are discussed in more detail below.

II. RESOURCE SHUFFLING PROVISIONS SHOULD BE REVISED.

A. The definition of "resource shuffling" should be clarified in the regulation.

The definition of "resource shuffling" in section 95802(a)(251) of the Cap and Trade Regulation is not clear enough to enable utilities to confidently avoid resource shuffling while transacting in the complex, fast-moving wholesale electricity market. The lack of clarity could dampen the liquidity of the market. Additionally, the definition is not clear enough to allow a utility employee to sign an attestation that the utility has not engaged in resource shuffling pursuant to section 95852(b)(2), in the knowledge that there will be legal consequences for that employee if the attested statement is found to be incorrect. Utility employees will, with good reason, be reluctant to sign these attestations.

To address these concerns, the definition of resource shuffling should be revised to provide greater certainty as to what transactions do and do not constitute resource shuffling. Given the importance of this issue and the potential for penalties for both individuals and utilities for breaching the resource shuffling provisions of the Cap and Trade Regulation, the definition of resource shuffling should be revised in the Cap and Trade Regulation itself, rather than merely by providing clarification in supplementary guidance documents which do not have the same legally binding status as the regulation.

Despite the difficulties noted by ARB staff at the Workshop, it is possible to develop a definition that provides greater certainty to utilities than the current vague definition. The version of the Cap and Trade Regulation that was released on July 25, 2011, included a more detailed

definition of resource shuffling. Working from the concepts set out in the July 25, 2011 definition, and incorporating changes to that definition as proposed in SCPPA's comments of August 11, 2011, SCPPA proposes the following amendments to the definition of resource shuffling in section 95802(a)(251) of the Cap and Trade Regulation:

> (251) "Resource Shuffling" means any plan, scheme or artifice to receive credit based on emissions reductions that have not occurred, involving the delivery of electricity to the California grid, where:
>
> (A) the delivered electricity was generated outside California in a jurisdiction where a GHG emissions trading system has not been approved for linkage by the Board pursuant to subarticle 12; and
>
> (B) an emission factor below the default emission factor is reported for the delivered electricity pursuant to MRR; and
>
> (C) the delivered electricity was generated at a generation source that is not electricity historically consumed in California, as defined in section 95802(a) (excluding electricity from new or expanded capacity); and
>
> (D) during the same interval(s), electricity with emissions equal to or higher than the default emission factor was delivered to serve load located outside California in a jurisdiction where a GHG emissions trading system has not been approved for linkage and that load was previously served by the delivered electricity now used to serve load in California.
>
> Resource Shuffling does not include:
>
> (E) delivering electricity to the California grid to replace electricity that no longer serves California load as a result of actions taken to comply with the Emission Performance Standards adopted by the CEC and the California Public Utilities Commission pursuant to Senate Bill 1368 (Perata, Chapter 598, Statutes of 2006), whether those standards currently require such action or whether the action was taken for early compliance with those standards; or
>
> (F) delivering electricity to the California grid to replace electricity that could not be delivered to the California grid due to transmission outages; or
>
> (G) a first deliverer selling electricity outside California that is surplus to the first deliverer's load in California.

The following definition of "Electricity Historically Consumed in California" should be included in section 95802(a) of the Cap and Trade Regulation to support the definition of resource shuffling:

> (a)(X) "Electricity Historically Consumed in California" means electricity from a specified source of electricity located outside California that was reported in a 2009 verified data report and either:
>
> (A) The electricity is claimed for the current data year by the same electricity importer that imported electricity from that specified source in 2009, based on a written power contract or status as a generation providing entity (as defined in MRR) in effect prior to January 1, 2010 that remains in effect, or that has been renegotiated for the same facility or generating unit for up to the same share or quantity of net generation within 12 months following prior expiration; or
>
> (B) The electricity is claimed for the current data year by a different electricity importer than the entity that imported electricity from that specified source in 2009, but at least the same share or quantity of net generation from that specified source was imported into California in 2009 (as reported in a 2009 verified data report).

B. The ARB should make up-front, publicly-available determinations about whether a specific transaction would constitute resource shuffling.

In addition to revising the definition, the ARB should establish a process by which it will provide, on request from a first deliverer, an up-front determination about whether a specific transaction would constitute resource shuffling. Individual determinations should be made publicly available, following the model of the ARB's mobile source manufacturers advisory process or the public bulletin board used in the US EPA's Clean Air Act Title IV, thereby providing a "living" public guidance document. Confidential information regarding the specific transaction and the parties to it can be excluded from the public document if the first deliverer so requests.

If determinations in relation to specific transactions are not made publicly available, a risk arises that inconsistent determinations may be made and that some entities may gain a competitive advantage from more-favorable determinations.

III. THE QUALIFIED EXPORTS PROVISION SHOULD BE RETAINED AND REVISED ACCORDING TO SCE'S PROPOSAL.

At the Workshop ARB staff stated that they had concerns about the adjustment for qualified exports ("QE Adjustment") in section 95852(b) of the Cap and Trade Regulation. The staff stated that their preferred option would be to delete the QE Adjustment (Option 1 on slide 29 of the staff presentation at the Workshop).

SCPPA considers that the QE Adjustment is a necessary part of the calculation of covered emissions for electricity importers in section 95852(b) and should be retained. Without this provision, liability would be imposed on power that is not consumed in California, contrary to Health and Safety Code section 38505(m) (the definition of "Statewide greenhouse gas emissions") and section 38530(b)(2) (on accounting for greenhouse gas emissions from all electricity consumed in the state), introduced by Assembly Bill 32 (2006).

SCPPA supports Option 4 on slide 29 of the Workshop presentation. The calculation of the QE Adjustment should be amended to adopt the recommendations of SCE in section III of its comments to the ARB dated September 27, 2011 (briefly referred to on slide 28 of the Workshop presentation). Specifically, a "lowest-first" calculation should be used, whereby megawatt-hours of qualified exports are assigned an emissions factor based on the emissions factors of that hour's imports, in sequence, starting with the lowest emissions imports first, rather than applying the lowest emissions factor of all imports and exports in the hour. This change is necessary to avoid disincentives to import renewable or low-emissions energy. In addition, the QE

Adjustment should reflect a transmission loss factor for exports as well as imports, as SCE proposes.

If the ARB cannot implement SCE's recommendations under Option 4 at this stage, SCPPA recommends Option 3: retain the QE Adjustment provision and monitor its market impacts. Such monitoring may provide evidence of the need to adopt, in a later rulemaking, changes of the kind recommended by SCE.

IV. THE ARB SHOULD NOT REQUIRE RECS USED FOR THE RPS ADJUSTMENT TO BE RETIRED IN THE YEAR OF GENERATION.

Section 95852(b)(4)(C) of the Cap and Trade Regulation provides the following requirement for the RPS Adjustment:

> The RECs associated with the electricity claimed for the RPS adjustment must be used to comply with California RPS requirements during the same year in which the RPS adjustment is claimed.

Thus, if a utility claims an RPS Adjustment, it must retire the RECs associated with the renewable energy claimed for the adjustment in the same year it claims the adjustment, as RECs must be retired in order to be "used to comply" with the RPS. SCPPA members have no objection to reporting and claiming the RPS Adjustment in respect of the same year as the year in which the REC is retired.

However, during the electricity reporting webinar on April 26 and on a teleconference with SCPPA on May 1, 2012, ARB staff went further and stated that in order for a utility to count renewable energy towards its RPS Adjustment, the utility must retire the RECs in the same year in which the renewable energy was generated, on the grounds that the RPS Adjustment can only be claimed in the emissions report for the year in which the renewable energy was generated.

A. Requiring RECs to be retired in the year of generation restricts utilities' options for compliance with the RPS.

Requiring a utility to retire a REC in the year in which the associated renewable energy was generated, for the purposes of the RPS Adjustment, effectively reduces the "life" of a REC to one year. This is a substantial restriction when compared to the current law that provides 36 months after generation before RECs need to be retired for compliance with the RPS program (California Public Utilities Code section 399.21(a)(6)).

The one-year limit imposes unnecessary restrictions on a utility's options for compliance under the RPS program. The retirement of RECs has an impact on compliance with the RPS program's quantitative requirements, portfolio content category requirements, and excess procurement carry-over requirements. There should be careful consideration – including discussions with the California energy agencies implementing the RPS – before restrictions are imposed on utility activities in relation to the ambitious and challenging RPS program, as restrictions will increase the costs of complying with this program.

Utilities should have the option to retire RECs, and count the generation towards the RPS Adjustment, in a year later than the year the renewable energy was generated. (This would be no later than three years after the year of generation, given the 36-month limit.)

B. Requiring RECs to be retired in the year of generation conflicts with CEC requirements.

As an additional concern, the fifth edition of the CEC's RPS Eligibility Guidebook, adopted on May 9, 2012, explicitly requests utilities not to retire RECs until the sixth edition of the guidebook is adopted,[2] which may not occur until late 2013.

[2] See for example the following statements in the RPS Eligibility Guidebook:

Page 109: "RPS Procurement for 2011 should not be retired or reported until the sixth version of the RPS Eligibility Guidebook is finalized, which will provide instructions on reporting 2011 and later data."

However, under section 95111(b)(5) of the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions ("MRR"), utilities may claim the RPS Adjustment in their electricity reports for 2011 (due June 1, 2012) and for 2012 (due June 1, 2013). To report the RPS Adjustment, utilities would be required to retire RECs. Therefore, there is a direct conflict between the requirements of the ARB (to retire RECs) and those of the CEC (not to retire RECs).

To address this conflict, ARB MRR staff proposed, in a meeting with SCPPA members on May 4, 2012, that utilities should not be required to report the RPS Adjustment for 2011, and should have the flexibility to report it, and retire the relevant RECs, in a following year. SCPPA supports this solution.

C. Neither the Cap and Trade Regulation nor the MRR explicitly requires RECs to be retired in the year of generation.

Furthermore, SCPPA does not consider that section 95852(b)(4)(B) of the Cap and Trade Regulation, or any section of the Mandatory Reporting Regulation, clearly requires that RECs be retired in the year of generation in order to count the generation towards the RPS Adjustment. Section 95852(b)(4)(B) of the Cap and Trade Regulation only requires that the RPS Adjustment be claimed in the year in which the RECs are retired, which under RPS rules could be any time up to 36 months after generation. If, despite the above issues, the ARB maintains the position on REC retirement expressed at the electricity reporting webinar on April 26, 2012, the Cap and Trade Regulation should be amended to more clearly state this requirement.

Page 113: "The Energy Commission plans to provide detailed instructions about using WREGIS and submitting documentation to verify the procurement requirements under SB X-1 2 in the sixth edition of the RPS Eligibility Guidebook, and until then retail sellers and POUs should not retire or report procurement for 2011 or 2012 unless necessary."

Appendix A page 1: "The Energy Commission advises load-serving entities not to retire RPS procurement for 2011 or thereafter unless necessary to meet RPS retirement timing requirements. If such retirement is necessary, load serving entities should contact Energy Commission staff before proceeding."

V. CONCLUSION

SCPPA urges the ARB to consider these comments in preparing further revisions to the Cap and Trade Regulation. SCPPA appreciates the opportunity to submit these comments to the ARB and looks forward to providing further input on electricity sector issues in future workshops.

Respectfully submitted,

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