



Department of Energy

Bonneville Power Administration
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GENERAL COUNSEL

August 1, 2011

In reply refer to: LP-7

Clerk of the Board, Air Resources Board
1001 I Street
Sacramento, California 95814
(Submitted electronically via CARB's online comment form)

**RE: (1) 15-day Comment Period on Proposed Amendments to the Regulation for the Mandatory reporting of Greenhouse Gas Emissions
and;
(2) 15-day Comment Period on Proposed Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation**

Dear Members of the Board:

Bonneville Power Administration (BPA) previously submitted written comments on these two matters. BPA did so prior to the California Air Resources Board's (ARB's) public hearing on December 16, 2010. BPA's concerns were similar in both matters and, therefore, BPA combined its comments in one letter, which BPA submitted in both dockets.

ARB has not acknowledged or responded to BPA's comments. Western Area Power Administration (WAPA) submitted similar comments, which ARB has also failed to address. Accordingly, BPA hereby re-submits its comments in both dockets and requests that ARB act on them.

As BPA has previously discussed with ARB staff, it is BPA's intent to voluntarily report on GHG emissions as an out-of-state Asset Controlling Supplier. BPA will do so as a service to our California customers who would like to claim a BPA-specific emission rate for their purchases from BPA (note that BPA is statutorily prohibited from making specified sales from a particular generating unit – it may *only* sell system power).

BPA strongly disagrees with ARB's suggestions in its greenhouse gas reporting rules and cap & trade rules that it has "authority" to regulate BPA and that BPA is "required" to comply. §§ 95101(d)(5), 95102(a)(118), 95802(a)(84). BPA wishes to make clear that BPA is participating in California's GHG reporting program and cap & trade program purely on a voluntary basis, and BPA is not conceding that California has any jurisdiction over BPA. Sovereign immunity may prevent BPA (and similarly WAPA) from being subject to these regulations. Despite ARB's position that the Clean Air Act waives sovereign immunity, it is questionable whether that waiver would cover BPA because it is purely a marketer that is not engaged in an activity

that discharges pollutants. Further, although BPA intends to *voluntarily* comply with these regulations, BPA is concerned that *mandatory* regulations could interfere with its existing contracts and conflict with the marketing scheme established by Congress in BPA's governing statutes.

In any event, these two rulemaking proceedings are not well-suited as forums for resolving these issues. Moreover, because BPA is willing to voluntarily comply, it is not necessary for ARB to include these jurisdictional assertions in its rules. Doing so could unnecessarily raise complicated legal issues that are unnecessary to full and timely implementation of the greenhouse gas reporting rules and/or the cap & trade program.

Accordingly, BPA urges ARB to modify sections 95101(d)(5), 95102(a)(118), and section 95802(a)(84) (same definition of "Electricity importers" as the definition used in § 95102(a)(118)) in one of two ways. Either by simply deleting the unnecessary language entirely, as indicated in ~~strike through~~. Or, by modifying it as indicated in underline. The excerpts below illustrate both options for each of the three sections.

DELETE OPTION FOR § 95101:

§ 95101 Applicability.

(d) *Electric Power Entities*. The entities listed below are required to report under this article:

- (1) Electricity importers and exporters, as defined in section 95102(a);
- (2) Retail providers, including multi-jurisdictional retail providers, as defined in section 95102(a);
- (3) California Department of Water Resources (DWR);
- ~~(4) Western Area Power Administration (WAPA);~~
- ~~(5) Bonneville Power Administration (BPA).~~

OR MODIFICATION OPTION FOR § 95101:

§ 95101 Applicability.

(d) *Electric Power Entities*. The entities listed below are required to report under this article:

- (1) Electricity importers and exporters, as defined in section 95102(a);
- (2) Retail providers, including multi-jurisdictional retail providers, as defined in section 95102(a);
- (3) California Department of Water Resources (DWR);
- (4) Western Area Power Administration (WAPA), unless it voluntarily reports under these regulations;

(5) Bonneville Power Administration (BPA), unless it voluntarily reports under these regulations.

DELETE OPTION FOR § 95102:

§ 95102. Definitions.

(a) For the purposes of this article, the following definitions shall apply:

(118) “Electricity importers” are marketers and retail providers that hold title to imported electricity. For electricity delivered between balancing authority areas, the entity that holds title to delivered electricity is identified on the NERC E-tag as the purchasing-selling entity (PSE) on the tag’s physical path, with the point of receipt located outside the state of California and the point of delivery located inside the state of California. ~~Federal and s~~State agencies are subject to the regulatory authority of ARB under this article and include ~~Western Area Power Administration (WAPA), Bonneville Power Administration (BPA), and~~ California Department of Water and Power (DWR). When PSEs are not subject to the regulatory authority of ARB, including tribal nations, the electricity importer is the immediate downstream purchaser or recipient that is subject to the regulatory authority of ARB.

OR MODIFICATION OPTION FOR § 95102:

§ 95102. Definitions.

(a) For the purposes of this article, the following definitions shall apply:

(118) “Electricity importers” are marketers and retail providers that hold title to imported electricity. For electricity delivered between balancing authority areas, the entity that holds title to delivered electricity is identified on the NERC E-tag as the purchasing-selling entity (PSE) on the tag’s physical path, with the point of receipt located outside the state of California and the point of delivery located inside the state of California. ~~Federal and s~~State agencies are subject to the regulatory authority of ARB under this article and include ~~Western Area Power Administration (WAPA), Bonneville Power Administration (BPA), and~~ California Department of Water and Power (DWR). Federal agencies, including Western Area Power Administration (WAPA) and Bonneville Power Administration (BPA), may voluntarily report under these regulations. When PSEs are not subject to the regulatory authority of ARB, including tribal nations, the electricity importer is the immediate downstream purchaser or recipient that is subject to the regulatory authority of ARB.

DELETE OPTION FOR § 95802:

§ 95802. Definitions.

(a) Definitions. For the purposes of this article, the following definitions shall apply:

(84) “Electricity importers” are marketers and retail providers that hold title to imported electricity. For electricity delivered between balancing authority areas, the entity that holds title to delivered electricity is identified on the NERC E-tag as the purchasing-selling entity (PSE) on the tag’s physical path, with the point of receipt located outside the state of California, and the point of delivery located inside the state of California. ~~Federal and s~~State agencies are subject to the regulatory authority of ARB under this article and include ~~Western Area Power Administration (WAPA), Bonneville Power Administration (BPA), and~~ California Department of Water and Power (DWR). When PSEs are not subject to the regulatory authority of ARB, including tribal nations, the electricity importer is the immediate downstream purchaser or recipient that is subject to the regulatory authority of ARB.

OR MODIFICATION OPTION FOR § 95802:

§ 95802. Definitions.

(a) Definitions. For the purposes of this article, the following definitions shall apply:

(84) “Electricity importers” are marketers and retail providers that hold title to imported electricity. For electricity delivered between balancing authority areas, the entity that holds title to delivered electricity is identified on the NERC E-tag as the purchasing-selling entity (PSE) on the tag’s physical path, with the point of receipt located outside the state of California, and the point of delivery located inside the state of California. ~~Federal and s~~State agencies are subject to the regulatory authority of ARB under this article and include ~~Western Area Power Administration (WAPA), Bonneville Power Administration (BPA), and~~ California Department of Water and Power (DWR). Federal agencies, including Western Area Power Administration (WAPA) and Bonneville Power Administration (BPA), may voluntarily participate under these regulations. When PSEs are not subject to the regulatory authority of ARB, including tribal nations, the electricity importer is the immediate downstream purchaser or recipient that is subject to the regulatory authority of ARB.

BPA strongly urges ARB to make these changes.

Sincerely,

/s/ J. Courtney Olive

J. Courtney Olive
Special Assistant United States Attorney
Bonneville Power Administration

cc: Koji Kawamura, WAPA Office of General Counsel (via email)