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August 11, 2011

VIA ELECTRONIC MAIL

Robert Fletcher
Deputy Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Comments of PacifiCorp Regarding the California Air Resources Board July 25, 2011 Proposed 15 Day Modifications to the Regulation for Cap and Trade

Dear Mr. Fletcher:

PacifiCorp is a regulated multi-jurisdictional retail provider (MJRP) serving 1.7 million retail electricity customers, in Utah, Oregon, Wyoming, Washington, Idaho and California. PacifiCorp owns, or has interests in, 78 thermal, hydroelectric, wind-powered and geothermal generating facilities, with a net owned capacity of 10,623 megawatts. PacifiCorp owns, or has interests in, electric transmission and distribution assets, and transmits electricity through approximately 16,200 miles of transmission lines and 62,800 miles of distribution lines. PacifiCorp also buys and sells electricity on the wholesale market with public and private utilities, energy marketing companies and incorporated municipalities as a result of excess electricity generation or other system balancing activities. In California, PacifiCorp serves approximately 46,500 customers in Del Norte, Modoc, Shasta and Siskiyou counties. Approximately 35 percent of its California customers are eligible for PacifiCorp's California Alternate Rates for Energy (CARE) low-income assistance program.

PacifiCorp has participated extensively in the California Air Resources Board (ARB) rulemaking process for both the Mandatory Reporting Rule (MRR) and the Cap and Trade Rule (CT), and is submitting these comments to supplement its previously filed comments. PacifiCorp also submitted comments on the MRR and requests that these comments be read in conjunction with PacifiCorp's MRR comments. PacifiCorp has worked closely with ARB staff and would like to commend them for their openness and professionalism. Further, PacifiCorp will make available its technical staff to assist ARB if needed. PacifiCorp's comments are detailed below.

General Comments

PacifiCorp supports ARB Staff Proposal for Allocating Allowances to the Electric Sector

PacifiCorp supports ARB's proposed methodology to allocate allowances based on the distribution utilities' projected compliance burden. Though PacifiCorp continues to have significant reservations regarding the use of state-and/or regional-based allowance trading regimes as the principal means of reducing carbon emissions, the Company strongly supports ARB's adherence to an emissions-based allowance allocation methodology, as opposed to a sales-based approach. An emissions-based methodology will help mitigate increases in electricity costs attributable to the Cap-and-Trade Program for customers of utilities with higher emissions profiles, as they transition to a lower-carbon portfolio. This proposal also helps utilities like PacifiCorp with a significant share of customers under the CARE program manage the disproportionately-high rate impacts of the Cap-and-Trade Program to its low-income demographic.

The Identification of Electricity Importer should not rely only on North American Electric Reliability Corporation NERC E-Tags

In the proposed rule, electricity importers are defined as:

> *"Marketers and retail providers that hold title to imported power. 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."*

PacifiCorp does not support the conclusion that the use of e-Tags proves ownership or identifies the importer of energy. E-Tags are tools designed to facilitate identification and communication of interchange transaction information between parties; e-Tags are not used to establish title to energy or transmission. Legal title to energy is established by parties through bilateral contracts. E-Tags are typically prepared by the purchaser as part of its performance of a contract, but it is not the mechanism through which parties intend to or establish or keep track of ownership or allocate risk of loss on change in title. California cannot legally impose a new legal standard of

how title is transferred at electricity market delivery points outside of California, or what constitutes intent to create legal relations with respect to title transfer outside of California.

In addition, e-Tag authorship and approval guidelines are driven by the NERC standards process, and there is currently no standard for the PSE field on the e-Tag to be monitored by approval entities for accuracy. Since there is also no process for correcting an errant PSE entry on a finalized tag (now used as proof of ownership), there is the possibility that the e-Tag may indeed not accurately represent the chain of title. While PacifiCorp understands the appeal of using a device like an e-Tag to track the ownership of an electric energy commodity when it passes the state boundary, it is an imprecise and inappropriate tool. A Balancing Authority could become subject to legal responsibilities simply because an e-Tag for a California purchaser identifies the Balancing Authority as the source on an e-Tag, even though the Balancing Authority had nothing to do with the creation of the e-Tag.

The NERC e-Tag establishes the Balancing Authority, but does not identify the actual resource. PacifiCorp therefore **recommends** that ARB change the importer definition that states that NERC e-Tags identifies the title holder when power crosses the state border, and instead use the parties' contract to establish where title lies.

Definition of Resource Shuffling should be changed to avoid unintended consequences

The definition of "Resource Shuffling" found in § 95802(a)(245) and the provisions of § 95852(b)(1) must be changed to avoid significant unintended consequences to the regional wholesale markets. PacifiCorp, as a MJRP, is regulated by six different state regulatory commissions and is equally subject to each state commission's laws and rulings. PacifiCorp operates in all six states under a Multi-State Process (MSP) utilized to allocate costs across the six state jurisdictions as well as to share the PacifiCorp system benefits across the six states. If resource attribution is changed within the MSP protocol, it could result in resources being delivered to California that have "not historically served California load", thus triggering the Resource Shuffling provisions. PacifiCorp is concerned that by continuing to follow the orders of its six state utility commissions, the proposed ARB regulation has the ability to include this required change as an allegation of criminal behavior.

Further, maintaining normal system reliability functions, such as providing operating reserves and balancing services, which are typically from baseload resources, could result in an allegation of criminal behavior under the current Resource Shuffling prohibition.

PacifiCorp does not believe it is ARB's intent to criminalize what are legitimate market and system operations behaviors. Therefore, PacifiCorp strongly **recommends** striking the language that refers to Resource Shuffling as fraud. Resource Shuffling should be subject to the same penalty and enforcement provisions as all the other prohibitions and requirements of the Regulation, and not singled out, especially in a vague manner with a significant possibility of unintended consequences. Further, PacifiCorp recommends explicit exclusions from the definition of Resource Shuffling for resource decisions made as part of a utility commission decision, for system maintenance and reliability decisions, and in reaction to force majeure events.

PacifiCorp recommends that CARB revise the Resource Shuffling provisions as follows:

Amend Section 95852(b)(1), p. A-80:

(1) Resource shuffling is prohibited and is a violation of this article. ~~and is a form of fraud.~~ ARB will not accept a claim that emissions attributed to electricity delivered to the California grid are at or below the default emissions factor for unspecified electricity specified pursuant to MRR section 95111 if that delivery involves resource shuffling, unless the resource has been registered as a specified import. The following attestations must be submitted to ARB annually in writing, by certified mail only:

(A) "I certify under penalty of perjury of the laws of the State of California that [facility or company name] has not intentionally engaged in the activity of resource shuffling to reduce compliance obligation for emissions, based on emission reductions that have not occurred

(B) "I understand I am participating in the Cap-and-Trade Program under title 17, California Code of Regulations, Article 5, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this program and subject myself to the jurisdiction of California as provided in title 17, California Code of Regulations, article 5, as the exclusive venue to resolve dispute brought pursuant to this Article.

Amend Section 95802(a)(245):

"Resource Shuffling" means any plan, scheme, or artifice to intentionally misstate or mislead regarding the ~~receive credit based on~~ emissions rate ~~reductions that have not occurred,~~ involving the delivery of electricity to the California grid~~,~~ by an entity that has not already registered under the Mandatory Reporting Regulation as a specified importer for which:

> An emission factor below the default emission factor is reported pursuant to MRR for a generation source that has not ~~historically~~ served California load (excluding new or expanded capacity)~~. A~~ and, during the same interval(s), electricity with higher emissions was delivered to serve load located within ~~outside~~ California ~~and in a jurisdiction that is not linked with California's Cap-and-Trade Program; or~~
>
> ~~The default emission factor or a lower emissions factor is reported pursuant to MRR, for electricity that replaces electricity with an emissions factor higher than the default emission factor that previously served load in California; except when the replaced electricity no longer serves California load as a result of compliance with the Emission Performance Standards adopted by the California Energy Commission and the California Public Utilities Commission pursuant to Senate Bill 1368 (Perata, Chapter 598, Statutes of 2006~~).

Resource Shuffling does not exist when a utility allocates resources to a particular service territory pursuant to a decision of the California Public Utilities Commission or a regulatory commission of another state, for system maintenance and reliability decisions, or in reaction to force majeure events.

The Proposed Regulation Should Provide Multi-Jurisdictional Retail Providers with the Same Compliance Flexibility That Is Granted to Publicly Owned Utilities (POUs)

The Proposed Regulation currently requires all IOUs (including any MJRPs) to place all of their allowances directly into the auction. In contrast, POUs would be able to directly use their allowances to meet their own compliance obligation and place the remainder into the auction. For the purposes of these regulations, MJRPs are more akin to POUs insofar as a MJRP is a vertically-integrated entity operating its own Balancing Authority Area. Furthermore, the MJRP is subject to regulatory jurisdiction by entities other than the California Public Utility Commission ("CPUC"), and are therefore subject to a different set of resource planning requirements than are the other California IOUs. Accordingly, to accommodate these structural

distinctions and avoid direct conflict with its regulatory mandates under other jurisdictions, the MJRP should be given the same compliance flexibility as are the POUs. Doing so will significantly reduce transaction costs associated with an auction which will directly benefit PacifiCorp's customers in California.

While PacifiCorp recognizes that it may be the desire of the ARB to send a price signal associated with greenhouse gas emissions, in the case of PacifiCorp, imposing the same requirements on a MJRP as a IOU by requiring PacifiCorp to sell all its allocated allowances and purchase them at auction where its customer base is less than 50,000 customers, more than one-third of whom are eligible for low-income assistance, poses a high and disproportionate burden on PacifiCorp's customers which is unlikely to appropriately reflect the cost of greenhouse gases. These compliance costs, which will be borne exclusively by PacifiCorp's 46,500 California customers, will be higher than those incurred by the IOUs on a per customer basis and any price signal will be out shadowed by the high transaction costs inherent in being a small participant in a large market.

Detailed Comments

1. The definition of **Renewable Energy Certificate "REC"** should be changed. PacifiCorp recommends changing §95801(239) from "'REC' means a certificate" to "'REC <u>includes</u> a certificate"; a REC represents more than a certificate. A REC is a property right and should be consistent with other definitions used in the Renewable Portfolio Standard provisions.

2. The provisions in **§95985 Invalidation of Offset Credits (b)** should be modified. PacifiCorp recommends the inclusion of a materiality requirement for all provisions except for §95985 (b)(2) *The Offset Project Data Report contains errors that overstate the amount of GHG reductions or GHG removal enhancements by more than 5 percent.* Further, PacifiCorp recommends that §95985(b)(4) include a provision that excludes the issuance of RECs from invalidating the offset credit. For example, if a dairy methane capture project, which qualifies as a carbon offset, burns the captured methane for electricity generation and the electricity generation qualifies for a REC, it should not invalidate the original offset (removal of methane from the atmosphere).

3. The use of the word **"rent"** in the **definition of Tolling Agreements in §95801(267)** could create accounting impacts. Under Generally Accepted Accounting Principles (GAAP)

accounting rules, a tolling agreement may or may not be a "lease." Use of the word "rent" implies that a tolling agreement is a lease, which might contradict the accounting rules. PacifiCorp recommends using a different word consistent with the concept of an energy conversion service.

Conclusion

PacifiCorp appreciates the opportunity to provide comments on the 15-day modifications of the Regulation. Overall, we would like to remind the Board that a multi-jurisdictional utility has unique reporting and compliance challenges, and the Amended Regulation should strive to both acknowledge these particular circumstances and provide staff with the flexibility to adjust the rule requirements as warranted.

Thank you for your consideration of these comments.

Dated: August 11, 2011

Respectfully submitted,

By

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