Comments on the Proposed Amendments to the Mandatory Reporting Regulation
October 2013

The following comments address issues related to electricity imports as described in proposed changes to section 95111 of the regulation.[1]

Specified Source Electricity – According to the proposed changes in Section 95111(a)(4) of the regulation, a sale or resale of specified source power would require each seller to warrant the sale of specified source electricity from a source through the market path. The rationale for the new language is described as a requirement to ensure that specified power claims are supported by contract documentation.[2]

Under the current regulations for qualifying for specified source emissions rates, the guiding principle is that there be a contract with the specified source that identifies it as the source of supply, as opposed to a purchaser randomly being matched up with the specified source on an exchange. One challenge in implementing this principle arises when an entity purchases from a specified source and resells to another entity. The concern would be that a purchase from a specified source on an exchange (i.e. one that was not made under a specified source contract) not be resold as specified power. The language on seller warrants appears to address this concern by requiring each seller to warrant that it is, in fact, selling specified power. However, it is not clear if the language intends to go further and introduce new requirements on what can qualify as specified power.

By way of an example, consider the above illustration, where a Specified Source sells to Marketer 1, who then resells to Marketer 2, who in turn resells to the eventual Importer. In order for the Importer to claim the power as specified power, it is understandable that there be a verification that each sale in the market path or chain was made pursuant to a specified source contract. One would expect that the Importer would be required to document its purchase from Marketer 2 as one that was made under a specified power contract. Similarly, Marketer 2 would need to document that its purchase from Marketer 1 was made under a specified power contract and Marketer

[1] The changes proposed on September 4, 2013 for consideration at the October 24, 2013 ARB Board meeting are available at http://www.arb.ca.gov/regact/2013/ghg2013/ghg2013isorappa.pdf.

[2] The rationale for the proposed changes is described in the Initial Statement of Reasons for Rulemaking (ISOR), September 4, 2013.

1 (the initial purchaser) would document that that it purchased power from the specified source pursuant to a specified source contract. The language requiring a "seller warrant" would appear to address this issue. However, it is not obvious why the original seller from the specified source needs to make such a warrant unless there is some other significance to the language on seller warrants. Would Marketer 1's purchase from the Specified Source under a specified source contract that clearly lists the Specified Source as the source of supply not qualify unless the term "seller warrants" appears in the contract?

If the language on seller warrants is intended to introduce some new requirement for what product can qualify as specified power, it would help to more clearly state the reasons for the change, recognize it as a change, fully understand its implications and only apply it prospectively.

ACS Power - Discussion about the rationale for changes in section 95111(a)(5)(B) provides further insight into the changes on what qualifies as a specified power purchase. This section clarifies that an ACS can sell specified or unspecified power. At first glance, there is nothing noteworthy about the statement that an ACS can sell unspecified power (e.g. on an exchange). In fact, the language below extracted from the ISOR explains how this can occur.

> Asset-controlling supplier power would be claimed as unspecified power in the event that "*the source of electricity … is not a specified source at the time of entry into the transaction to procure the electricity*," per section 95102(a).

However, this is followed by the language below which, depending on interpretation, is either contradictory or constitutes a significant change[3] to the regulation that must be recognized as such and only applied prospectively.

> *It is ARB's expectation that the ACS seller controls whether the specified ACS attributes are conveyed with the transaction. For example, a renewable energy seller determines whether the renewable energy credits (RECs) convey in a transaction for specified power. Similarly, the ACS would determine whether the specified ACS attributes convey in a transaction for specified ACS power. Thus, in order to claim specified ACS power, EPEs must provide some evidence that the ACS attributes were in fact conveyed at each point along the market path shown on the eTag.*

[3] Prior guidance on claiming power deliveries from an ACS as specified power make no reference to the conveyance of any ACS attribute, but requires a *specified source power contract*. The guidance further states that *"a power contract for a specified source is a contract that is contingent upon delivery of power from a particular facility, unit, or asset-controlling supplier's system that is designated at the time the transaction is executed"* by reference to section 95102(a) of the regulation http://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/acs-power.htm

Assuming the inclusion of the language above is intentional and not an error, it would help to clarify the applicability of the new concept of conveyance of ACS attributes. For example, does the language on "seller warrants" meet the standard of providing "some evidence" of conveyance of attributes to claim the power as specified? Further, does the concept of conveying an attribute apply more generally to all specified power sales?

Emissions Rates for System Power– Under this proposal, *specified source* imports from power systems[4] with blended emissions rates higher than the default emissions rate would be subject to system-specific emissions factors and will no longer be eligible for the default emissions rate. If this concept only applies to specified power sales and if the qualification for specified power is being modified to require the conveyance of an attribute, does this concept still make sense? For example, in the absence of language on seller warrants, would specified power sales from such systems become unspecified? If so, it is unclear how the system-specific emission rates would ever be used. Another issue would be to not apply this concept to existing contracts that may have been negotiated under the assumption of a default emissions factor. This can be addressed by applying any changes prospectively.

Thank you for considering these comments. For any follow-up discussion, please contact Harry Singh at 212 357 6449, or via e-mail at Harry.Singh@gs.com.

[4] The term "system" appears to refer to Balancing Authority Areas. Additionally, the text of the proposed changes in section 95111(a)(12)B) makes clear that system power imports not acquired as *specified power* would continue to be reported as *unspecified*. This is not explained as clearly in the ISOR which explains the rationale for introducing the system power concept on Section 95111(b)(5) by stating "This approach will more accurately reflect the carbon content of the system power, than the use of the default emission factor for unspecified electricity imports".

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