LAW OFFICES OF SUSIE BERLIN

1346 The Alameda, Suite 7, #141
San Jose, CA 95126
408-778-8478
berlin@susieberlinlaw.com

Submitted Via Electronic Transmission

September 15, 2014

Mary Nichols
Chair, California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: *Northern California Power Agency Comments on MRR Proposed Amendments*

Dear Mary:

The Northern California Power Agency (NCPA)[1] appreciates the opportunity to provide these comments to the California Air Resources Board (CARB) regarding the proposed amendments to the Mandatory Reporting Regulation (MRR) published on July 29, 2014. The Rulemaking documents notes that the amendments "are needed to continue to support allocation of allowances and the calculation of compliance obligations under the Cap-and-Trade Regulation, to ensure that reported GHG emissions data are accurate and complete in order to support California's climate programs, including the statewide GHG emission inventory, and to integrate and provide data needed for the Cost of Implementation Fee Regulation." NCPA fully supports CARB's need to ensure the reporting of accurate and relevant information, as well as the desire to consolidate the data needed to support the various AB32 related programs. In attempting to address these concerns, however, the proposed amendments would potentially interfere or contradict various operational aspects of the electric utility industry, and as such should be modified to address these shortcomings. To that end, NCPA has been meeting with CARB staff, and is very appreciative of staff's responsiveness to these concerns and willingness to work with stakeholders to craft the appropriate regulatory amendments. NCPA is hopeful that the Board will direct that the necessary revisions be reflected in 15-day changes, and looks forward to continuing to work with staff on drafting the final amendments.

1 NCPA is a not-for-profit Joint Powers Agency, whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and whose Associate Member is the Plumas-Sierra Rural Electric Cooperative.

NCPA urges the Board to direct Staff to continue these efforts with stakeholders and submit the revisions addressed herein as 15-day amendments to be approved by the Board. Specifically, the MRR amendments should be revised to:

- Adopt a definition for "sales in the CAISO";
- Revise the reporting requirements for sales into the CAISO to limit the scope to only those transactions that must necessarily be verified to ensure CARB's ability to confirm the appropriate use of freely allocated allowances;
- Clarify that hourly data is not required for purposes of utilizing the RPS adjustment in the cap-and-trade program, and;
- Retain use of Environmental Protection Agency (EPA) data for calculating emissions factors for specified out-of-state resources.

Reporting ISO Sales Data

Staff has proposed adding Section 95111(a)(12), that would impose a new reporting requirement on non-IOU electrical distribution utilities (EDUs), that according to the Initial Statement of Reasons (ISOR), are intended to "quantify the electricity sales that would be subject to the prohibition on uses of allowance value specified in the Cap-and-Trade Regulation." (ISOR, p. 4) The ISOR notes that this is necessary because "to date systematic reporting data had not been collected to monitor and enforce the prohibited use of allowance value in the Cap-and-Trade Regulation." (ISOR, p. 8)

NCPA is concerned that requiring reporting of "sales into the CAISO" without clarifying what such transactions are could cause needless reporting and the collection of unnecessary data. As a starting point for effectively utilizing this proposed amendment, the regulations should include a definition of "Sales into the CAISO." NCPA recommends that the definition for sales into the CAISO recognize the fact that the ISO tariff allows for scheduling of electricity that is not actually a sale, and therefore, not subject to the restrictions in section 95892(d)(5). Accordingly, NCPA recommends that the following definition be added:

> "Electricity Sold in the CAISO Market means any transaction that is financially settled by the CAISO under the CAISO tariff, where the California Independent System Operator (CAISO) is the contracting counterparty, except for the exclusions specified in Section 11.29 of the CAISO tariff."[2]

NCPA also recommends that the proposed amendment be applicable only to EDUs that do not consign all of their freely allocated allowances into the CARB auction, a fact that can be verified in

2 This proposed definition for "sales into the CAISO" is consistent with the definition proposed by the Southern California Public Power Authority and the M-S-R Public Power Agency.

the next year's verification report. The proposed language already acknowledges that the need for this additional reporting stems from the fact that some non-IOU allowances may be placed directly into compliance accounts, since the provision would not apply to IOUs that are required to consign all allowances to auction under the Cap-and-Trade Regulation. Accordingly, NCPA recommends that the provision be amended to reconcile this treatment relevant to the non-IOU EDUs, and that the following language be added to the proposed amendment:

> "Electrical Distribution Utility Sales into CAISO. Electric power entities that are ~~All electricity~~ electrical distribution utilities, except for (a) IOUs and (b) POUs that consign all their allocated allowances for auction, . . ."

Additionally, NCPA notes that determining the emissions factor for any such sales may be difficult if the electricity comes from an EDU's system power. Since many publicly-owned utilities sell electricity from their "system" and not from a specific generator or generation facility, it is necessary to have a methodology for calculating and verifying this emission factor. NCPA has discussed potential scenarios and examples with CARB staff, but an ultimate solution has not yet been reached. NCPA urges the Board to direct that staff and stakeholders continue these discussions, and that a resolution and clarification of this issue be addressed in 15-day changes.

Finally, in order to ensure that there is no confusion between the various terms and the corresponding reporting requirements, NCPA recommends that the definition for "electrical distribution utilities" found in the Cap-and-Trade Regulation be added to the MRR. That term is used in the proposed amendment, but is not defined in the MRR. The proposed revision set forth above addresses this issue.

Transmission Loss Factors

The proposed amendments would change section 95111(b)(2) to require electric power entities (EPEs) to use a transmission loss factor of 1.02 for all specified imports. This would require the same transmission loss factor regardless of whether the specified source is measured at the busbar or at the first point of delivery. The ISOR states that because the e-tags do not account for transmission losses, a consistent transmission loss factor is necessary to ensure that transmission losses associated with imported electricity from specified facilities or units will be accurately reported. (ISOR, p. 19) NCPA understands that staff is concerned that the 1.00 factor is being applied to all transactions with no way to verify or otherwise ensure that the appropriate line losses have been accounted for. While NCPA understands CARB's concerns regarding the need to ensure

that the line losses are accounted for, arbitrary application of a 2% factor to all transactions will result in the same inaccuracies the proposed amendment attempts to address, and will also cause increased costs for compliance entities and inaccurate accounting of actual GHG in the state's inventory. Accordingly, NCPA urges CARB to address the manner in which utilization of the 1.00 factor can be confirmed and verified, rather than arbitrarily imposing the higher loss factor to all transactions.

Staff's concerns regarding confirmation of the line losses applied can be addressed by reviewing the agreements that underlie transactions associated with the imports. In some instances, it will be appropriate to use 1.02. In other instances, the line loss should be calculated at 1.00. NCPA notes that there will also be instance where line losses are settled financially, and where the transactions will require use of the 1.02 loss factor, but applied to the generation resources coming from the transmission providers system and not the Specified Source Generator on the NERC e-tag.

NCPA offers the following three examples of the manner in which losses associated with specified transactions are conducted, and the manner in which the line losses can be accurately accounted-for- each of which can be confirmed by a third party verifier in viewing the transaction agreements:

> In-Kind Returns: In these transactions, the return of losses is based on a calculated amount usually defined by a loss factor in the Transmission Providers' OATT multiplied by the MWh quantity on a NERC e-tag during a particular time period, and the calculated amount of energy associated with the Real Power Losses is returned to the transmission providers system by either a generation resource within that system or a scheduled import to that system. The reporting entity should be able to show to the Third Party Verifier the transmission contract reflecting this option to validate the In Kind Return schedules of energy if they wish to claim a source lower than the emission factor of the Specified Source.
>
> Simultaneous Loss Paybacks: In these transactions, where Real Power Losses are calculated either by the Transmission Providers' OATT or a specific contract related to the specified resource and its delivery point, and the generation scheduled at the point of delivery (on the NERC e-tag) is less than the amount generated by the resource with the excess allowed to flow into the Transmission Providers system to compensate for the Real Power Losses, the reporting entity should be able to show the Third Party Verifier a busbar amount that is greater than the NERC e-tagged amount, or a contractual arrangement where the accounting for losses is tracked. In this case, the Real Power Losses associated with imports to California should be calculated by multiplying the import quantity by 1.02.

> Financial Settlement: In a financial settlement transaction, a calculated amount for Real Power Losses is determined in accordance with the Transmission Provider's OATT and the applicable loss factor, and the MWh quantity is then typically settled against a published price of energy at a major trading hub (such as Palo Verde or Mid-C), and a dollar amount is determined and paid to the Transmission Provider, the reporting entity will need to determine whether the Transmission Provider is an ACS or not; in these transactions, in the event that the Transmission Supplier is an ACS, the ACS's EF should be used to account for the additional 2% of Real Power Losses, and if the Transmission Provider is not an ACS, then the default EF should be used to account for the additional 2% of Real Power Losses.

Use of EIA Data

In sections 95111(b)(2)(B) through (b)(2)(D), CARB is proposing amendments that would require the use of net generation data published by the Energy Information Administration (EIA) for determining specified source emission factors. According to the ISOR, this change is necessary to ensure the use of "unified and consistent data to determine emission factors across the sector." (ISOR, p. 19) NCPA urges CARB to retain the use of the EPA data, and not adopt an additional agency's calculations into the existing program. As a practical matter, NCPA's members have some concerns with the timeliness and accuracy of the data produced by EIA. However, even without questions regarding the data's veracity, it seems problematic to involve another reporting entity in the MRR calculations when CARB has already taken such pains to ensure that there is harmony between the California MRR and the EPA reporting requirements. Combined with the fact that California's program will likely be even more inexorably linked with the federal EPA's proposed rule after implementation of the Clean Power Plan Proposed Rule under sections 111(d) and (b), changes to the reporting metrics seems ill advised at this time.

Meter Data Retention

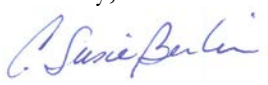
The proposed amendments would change section 95111(g)(1)(N), and add a new data retention and verification requirement. This requirement comes under the section titled "Requirements for Claims of Specified Sources of Electricity, and for Eligible Renewable Energy Resources in the RPS Adjustment." The proposed amendments to this section would require reporters, for verification purposes, to: (1) retain meter generation data from all specified sources, and (2) include a new equation that reporters must use to determine the amount of generated and scheduled power that can be reported as specified source power. The intent is to accurately report the amount of power that can be reported as specified power, if there is a difference between the

amount of electricity generated within an hour, and the amount of electricity scheduled or metered into a California balancing authority within that same hour. The ISOR states that this is necessary because there "could be situations where a renewable source, which may not have a compliance obligation, is scheduled, but not actually delivered to California. For the integrity of the Cap-and-Trade Program, it is important to accurately assign compliance obligations on actual delivered electricity." (ISOR, p. 20) While NCPA does not disagree that it is important to have accurate data, the placement of this new provision causes confusion regarding the scope of the required data. While Staff has confirmed that the information at issue is not applicable to use of the RPS adjustment, due to the fact that the proposed amendments are placed in section 95111(g)(1), the requirement would appear to also cover the RPS adjustment. NCPA understands that Staff is reviewing the regulation and working with stakeholders to better describe application of the required information or move the requirement to a different part of the regulation. The Board should direct that these clarifications be reflected in 15-day changes prior to approving the proposed amendments.

Conclusion

NCPA understands that CARB would like to finalize the proposed amendments for purposes of ensuring that the revised regulation is effective January 1, 2015, and has been working with CARB Staff to explain the areas of concern highlighted herein, and craft acceptable and workable regulatory language that meets CARB's stated intent without hindering electric utility operations. NCPA trusts that the Board will provide Staff with the necessary direction to continue these discussions with stakeholders and complete the needed revisions as 15-day changes to the proposed amendments. Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com if you have any questions regarding these comments.

Sincerely,



C. Susie Berlin
LAW OFFICES OF SUSIE BERLIN
Attorneys for the:
NORTHERN CALIFORNIA POWER AGENCY

cc: Mary Jane Coombs
Brieanne Aguila
Wade McCartney
Bill Knox