Comments of the Western Power Trading Forum on Proposed Amendments to the Regulation for Mandatory Reporting of Greenhouse Gas Emissions

October 8, 2013

Clare Breidenich

WPTF GHG Committee Director

Email: cbreidenich@aciem.us

The Western Power Trading Forum[1] (WPTF) appreciates the opportunity to provide input to the California Air Resources Board (CARB) on the Proposed Amendments to the Regulation Mandatory Reporting Regulation. Our comments below are directed at requirements for reporting by electric power entities.

1. **The regulation inconsistently applies the principle that the generation owner controls whether power is sold as specified.**

The Mandatory Reporting Regulation has evolved over the past year towards enshrining the principle that the generation owner controls whether the electricity from that source is sold as 'specified' or not. This is most clearly articulated in the explanation provided in the Initial Statement of Reasons (ISOR) that an Asset Controlling Supplier (ACS) seller "controls whether the specified ACS attributes are conveyed with the transaction[2]." It is also implicit in the proposed new requirement in Section 95111(a)(4) for "each seller to warrant the sale of specified source electricity from the source through the market path." WPTF supports the principle that the generation owner controls whether electricity sold is specified, but is concerned that it is inconsistently applied in several areas of the regulation.

First, both definitions of "Generating Providing Entity" (GPE) and "Specified Source" distinguish between entities that control electricity from a generator and entities that have a power contract to procure electricity from that generator, but differ in how they characterize entities with control of generation. The specified source definition recognizes only those entities having "full or partial ownership in the facility or unit", whereas the GPE definition also recognizes entities that are either "party to a contract for a fixed percentage of generation, party to a tolling agreement with the owner, or exclusive marketer."

This distinction is important because entities with control of a generator have the inherent right to control whether electricity is sold as specified, whereas contract holders must demonstrate that they have procured that electricity as specified. WPTF considers that determination of whether an entity is considered to have direct control over electricity from a facility or unit, versus a power contract for procurement of that electricity, should be dependent on whether that entity has authority *to dispatch or market electricity off that source.* The categories of entities that meet this test would be a) entities with full or partial ownership of a facility, b) exclusive marketers of a facility, unit or system, and c) entities with tolling contracts. Facility operators should not be deemed to meet this test, because although they are responsible with the day to day operations of the facility, they do not typically have authority to market power from the facility.

Similarly, fixed percentage contracts[3] also do not meet this test. Fixed percentage contracts or 'slices', are commonly used for sale of generation from hydro-electric systems to accommodate variation in

[1] WPTF is a diverse organization comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West. WPTF has over 60 members participating in power markets within California, western states, as well as other markets across the United States.

[2] Rationale for Proposed Updates Section 95111(a)(5(B) - ISOR at page 57

[3] WPTF understands that reference to contracts for a fixed percentage of net generation was added to the GPE definition in 2012 to ensure that California utilities report imports from their legacy high-emission contracts as specified. This objective could be met by modifying section 951119(c)(3)(C) to apply to both high-emission facilities that are owned by California retail providers and facilities and units in which a retail provider has a contract for a fixed percentage of generation.

facility generation due to weather and legal requirements under federal and state operating laws. These contracts were not intended to automatically make the transacted electricity specified – rather the environmental attributes associated with the electricity generation are typically sold as optional add-on. To define buyers of slice contracts as GPEs is thus incompatible with the principle that the generation owner controls whether electricity is sold as specified. It would also force a buyer of a slice product who has not purchased the associated environmental attributes into the untenable situation of either violating the reporting regulation (by reporting that power as specified) or violating contract terms (by reporting power as specified).

Second, the definition of a "power contract" does not capture the seller's intent to sell power as specified, but rather inappropriately suggests that designation alone of a facility, unit, system or ACS system is sufficient to render a transaction specified. As CARB has correctly recognized in the ISOR, electricity sold by an ACS from its system may be sold as either specified or unspecified power, *depending on the intent of the ACS seller*. Thus it is not the designation of the source alone (in this case, the ACS system) that makes a transaction specified, but rather the designation of the source plus the seller's intention to sell that power as specified.

WPTF agrees with this principle and urges CARB to apply it consistently for all electric power entities and all resources. We note that there are commonly used contract models, such as the WSPP Service Schedule B, that would meet the test that of being contingent upon delivery from a particular source, but that are used for reasons completely independent of carbon. (Service Schedule B for example is used to transact non-firm power without limited financial damages.) For CARB to automatically consider these types of contract to be specified, without also requiring evidence of the seller's intent to sell that electricity as specified, would deprive the owner of that generation of control of the specified source attribute and would interfere with the normal operation of power markets.

To rectify these inconsistencies, WPTF recommends that CARB:

- Modify the definition of GPE so that it correctly refers to those categories of entities with rights to *market* the electricity from a facility or unit (i.e. owners, toll holders and exclusive marketers). We also suggest deleting the phrases "that is either the electricity importer or exporter" and "specified source" because they are unnecessary and addressed elsewhere - section 95111(a) requires GPEs that are importers and exporters to report associated power as specified and the definition of specified source establishes when electricity from a facility or unit is specified.
- Revise the Specified Source definition to use the term "generation providing entity" in order to make the two definitions consistent.
- Modify the definition of "power contract for a contract" to require both designation of a facility and clear intention of the seller to transact that power as specified. This could be demonstrated via a seller warranty of the sale of specified power, as required under 95111(a)(4), or through other means, such as the conveyance of environmental attributes.

Our proposed textual edits follow.

(216) "Generation providing entity" or "GPE" means an entity with ~~facility or generating unit operator,~~ full or partial ownership of a generating facility or unit, ~~party to a contract for a fixed percentage of net generation from the facility or generating unit,~~ party to a tolling agreement with the owner, or exclusive marketer recognized by ARB ~~that is either the electricity importer or exporter~~ with prevailing rights to ~~claim~~ sell electricity from the facility or unit or system. ~~specified source~~.

(356) "Power contract" or "written power contract," as used for the purposes of documenting specified versus unspecified sources of imported and exported electricity, means a written document, including associated verbal or electronic records if included as part of the written power contract, arranging for the procurement of electricity. Power contracts may be, but are not limited to, power purchase agreements, enabling agreements, electricity transactions, applicable international treaties, and tariff provisions, without regard to duration, or written agreements to import or export on behalf of another entity, as long as that other entity also reports to ARB the same imported or exported electricity. A power contract for a specified source is a contract that is contingent upon delivery of power from a particular facility, unit, system, or asset-controlling supplier's system that is designated at the time the transaction is executed and in which the seller warrants, or otherwise clearly indicates, that the transaction is for specified source electricity.

(432) "Specified source of electricity" or "specified source" means a facility or unit which is permitted to be claimed as the source of electricity delivered. The reporting entity must be a Generation Providing Entity for ~~have either full or partial ownership in~~ the facility/unit, or have a written power contract to procure electricity generated by that facility, ~~/~~unit or system. Specified facilities/units include cogeneration systems. Specified source also means electricity procured from an asset-controlling supplier recognized by the ARB.

2. Clarification is needed on documentation requirements for sale of specified electricity

WPTF requests CARB staff to provide additional clarity on documentation needed for substantiating the sale of specified source electricity from the generation source through the market path. Our concerns relate to two issues.

First, as WPTF has previously noted, it is not standard market practice to provide written confirmations for electricity transactions with duration of less than one week. Stakeholder concerns about potential ambiguity as to whether verbally confirmed short-term transactions are specified or not, should be reduced going forward as market participants build conditions into contracts to explicitly address requirements for sale of specified power. For this reason, WPTF recommends that CARB accept electronic writing confirmations of short-term transactions. If electronic writing will not be considered acceptable, we request that CARB clearly indicate what is required for documenting specified short-term transactions.

Second, WPTF seeks CARB guidance on whether, in the case of the resale and import of specified electricity, documentation of the entity with marketing control of a facility (i.e. the GPE) may be

required for verification. For instance, consider Entity A who is an exclusive marketer for a facility, and sells specified power off that facility to Entity B. If Entity B imports this power to California and reports it as specified, will documentation that Entity A is the exclusive marketer for Facility A be required (in addition to documentation of the specified contract between Entity A and Entity B) in order for Entity B to report the power as specified?

If the answer is yes, then WPTF would be concerned about requiring GPEs to disclose commercially sensitive information to buyers further down the market path. While this may not be an issue for simple power contracts, it would certainly be a concern for more complex structured or tolling agreements. We would therefore recommend that CARB provide GPEs with the option to provide any necessary documentation required to substantiate a buyer's claim of specified source electricity directly to a verifier. This would avoid the need for a GPE to disclose commercially sensitive information down the market path.

3. **CARB should retain requirement that power be generated at the time of delivery for specified imports**

Staff has proposed deleting the bolded phrase in section 95111(g)(1)(N) of the regulation: "For verification purposes, retain meter generation data to document that the power claimed by the reporting entity was generated by the facility or unit **at the time the power was directly delivered**". WPTF has long understood that that specification of electricity imports requires a clear nexus between a) actual generation of power from the resource in question, b) direct delivery of power from the resource into California, and c) the contractual or ownership right of the reporting entity to claim that power. Elimination of this provision would result in over-accounting of low-emission generation.

The ISOR explains that staff deleted this language based on the understanding that "it is common practice in the industry to perform monthly true-ups between generated and scheduled power." CARB is correct that it is common practice to perform monthly true-ups of generated and scheduled power, particularly for renewable electricity. These monthly true-up typically provide a comparison of *hourly* meter and schedule data, which is then aggregated to total any discrepancies over the month. Thus, the practice of monthly true-up is not incompatible with the regulatory requirement that specified electricity be generated at the time of delivery, but rather supports industry implementation of this requirement.

WPTF therefore recommends that CARB retain the language "at the time the power was directly delivered."

4. **The regulation should require matching of RECs to NERC tags for the RPS adjustment in lieu of REC retirement.**

As WPTF has previously commented, the RPS program requires that, for both portfolio content category one (procurement that corresponds to direct delivery of renewable electricity) and category two (for which the RPS adjustment may be applied) RECs generated by the eligible renewable resource must be matched to specific NERC e-tags to demonstrate either direct delivery in the former case, or delivery of

substitute power in the latter.[4] The Western Renewable Energy Generation Information System (WREGIS) provides a function that allows users to match specific RECs to specific NERC e-tags for scheduling of power. This matching can only be done by the entity with title to the REC as it is imported into California, and cannot be changed. LSEs must then provide this information in the form a "WREGIS NERC e-tag Summary Report" to the California Public Utilities Commission or the California Energy Commission to demonstrate that delivery requirements for procurement categories one and two have been met.

WPTF recommends that CARB expand provisions in the MRR to strengthen the verification of claims to the RPS adjustment and eliminate the requirement for REC retirement. Specifically, WPTF recommends that for, the importer be required to demonstrate that the RECs associated with the renewable electricity generation have been matched to the appropriate NERC tags. This can be done by requiring importers to retain documentation of WREGIS matching of the associated RECs to e-tags for all renewable imports or claims to the RPS adjustment and to provide it upon request to verifiers. Importers can fulfill this requirement by providing the WREGIS NERC e-tag Summary Report for the LSEs on whose behalf they imported the power. This information can then be readily checked by a verifier.

5. A high system-emission factor should be assigned only for direct imports by the system GPE or pursuant to specified contracts

The proposed amendments retain provisions proposed in the informal discussion draft that would WPTF result in assignment of a 'system-specific' emission rate calculated by CARBs for imports of system resources when the blended emission rate of those resources is higher than the default emission factor. It is not clear, however, whether the high emission factor will be assigned only to direct imports by the system owner and imports procured pursuant to a specified power contract with the system owner (or whether CARB would assign the emission factor to any tags originating such systems. WPTF understands from conversations with staff that CARB is likely to rescind these proposed additions. If CARB retains these provisions, then it must ensure that they conform to the rest of the regulation. Specifically, the high system emission factor should be applied only when the system owner imports directly, or an intermediary imports pursuant to a specified contract. Identification of the system on a tag alone should not result in assignment of the system emission rate.

6. Changes to requirements for specified source electric contracts should not apply to contracts executed prior to December 31, 2013.

Staff has proposed new language in Section 95111(a)(4) of the regulation to address the sale and resale of specified source electricity through a contractual market path. WPTF agrees that the owner of electricity generated by a particular source should control whether that electricity sold from that source is specified. However, CARB's new language does more than interpret and implement existing requirements. The change to in 95111(a)(4) is a wholly new requirement and should not be applied to

[4] See the draft 2013 "Renewable Portfolio Standard Eligibility Guidebook" at http://www.energy.ca.gov/2013publications/CEC-300-2013-005/CEC-300-2013-005-ED7-SD.pdf, page 109 and its "Appendix A" at http://www.energy.ca.gov/portfolio/documents/2013-03 - 14_workshop/draft_forms/Appendix_A_Reporting_Instructions_7th_edition_DraftFinal.pdf

transactions that are executed any time before when these revised regulations are approved by the Office of Administrative Law. Similarly, if CARB adopts WPTF's proposed revisions to the definitions of power contract and GPE, these changes should apply prospectively. Otherwise, CARB would be retroactively applying new legal requirements. In short, because the requirements for claiming of specified power have evolved over the past year, it would be unfair to apply a new requirement that sellers warrant the sale of specified source electricity to contracts that were executed prior to the date of the regulatory change.

We appreciate that staff have attempted to address this concern in the new section 95103(h)(8), but do not consider this adequate. The language, which reads "Electric power entities must report 2013 electricity transaction s(MWH) and emissions under the specifications of this article, including the requirements listed in sections 95111(a)(4)(A)(3), 95111(a)(5), 95111(b)(3), 95111(f)(5)(F) and 95111(g)(1)(N)" is insufficient for several reasons.

First, 95103(h)(8) refers to entire paragraphs of the regulation, but does not distinguish between individual provisions that have been amended within those paragraphs. Thus, for example, it appears to exclude the the entirety of paragraph 95111(a)(4) from application for 2014 reporting, as opposed to the new seller warranty requirement only. Second, use of the word 'including' suggests that other sections, in addition to those delineated 95103(h)(8), apply for 2014. Third, the language only differentiates between the dates of electricity transactions; it does not differentiate between the execution dates of the underlying contracts.

Given the ambiguity in the language of 95103(h)(8), WPTF recommends that the most thorough and efficient way to bring certainty to the applicability of new requirements for specified contracts if for them to be clearly set out in the relevant definitions and operational sections of the text. We provide an example for section 95111(a)(4) as follows:

> For power contracts executed after December 31, 2013 the sale or resale of specified source electricity is permitted among entities on the e-tag market path insofar as each sale or resale is for specified source electricity in which sellers have purchased and sold specified source electricity, such that each seller warrants the sale of specified source electricity from the source through the market path.

If is not possible to address the applicability of new requirements throughout the MRR text, then WPTF requests that CARB issue implementation guidance on the applicability of the changes for electricity importers. This guidance should be issued before the end of the calendar year, should address all substantive changes to the regulation, and should clearly indicate what changes apply for different reporting years, and what changes apply for new contracts.