

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

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Clare Breidenich
WPTF GHG Committee Director
Email: cbreidenich@aciem.us

The Western Power Trading Forum¹ (WPTF) appreciates the opportunity to provide input to the California Air Resources Board (CARB) on its Modified Proposed Amendments to the Regulation for Mandatory Reporting of Greenhouse Gas Emissions. Our comments below are directed at requirements for reporting by electric power entities.

Withdrawal of seller control of Asset Controlling Suppliers is discriminatory

WPTF is concerned by the explanation provided on page 3 of the “Notice of Public Availability of Modified Text and Availability of Additional Documents” that “staff intends to issue revised statements in the Final Statement of Reasons *to effectively withdraw the seller control interpretation for asset-controlling suppliers* associated with section 95111(a)(5)(B).” As we noted in our comments to the 45 day proposed changes, WPTF supports the principle that the generation owner should control whether electricity sold is specified and strongly believes that it should be applied consistently to all generation owners.

Under the proposed regulatory amendments, a generation owner would have the implicit ability to control whether a bilateral sale is for specified or unspecified power through its contract practices. A generation owner could sell power as unspecified by, for example, not providing a written power contract (as required by the definition) or by not providing a warranty that the power is specified (as required in revised section 95111(g)). In other words, the terms of a bilateral contract determine whether power is specified – not the mere existence of a bilateral contract. In contrast, CARB’s proposed change to the FSOR would render any bilateral sales from asset controlling suppliers as specified, regardless of the intent of that asset controlling supplier. For CARB to exclude one specific class of entity, or worse - one specific entity, from the general principle of seller control is both arbitrary and discriminatory.

WPTF notes that if CARB withdraws the seller control interpretation for one or more asset-controlling suppliers, an ACS could simply sell power anonymously through brokers or on the Intercontinental Exchange. CARB’s withdrawal of the seller control for asset-controlling suppliers will thus not prevent sale of unspecified power by asset controlling suppliers, but rather force them to make changes in their marketing practices that may result in less efficient outcomes. It would be an inappropriate intervention in the wholesale power market for CARB to restrict asset-controlling suppliers, or for that matter any generation owner, from bilateral power sales that are not ‘contingent upon delivery’ from that unit/facility or asset-controlling supplier system. Yet, this is what withdrawing seller control would do.

For these reasons, WPTF urges CARB to retain and apply the seller control principle consistently to all resources and entities. CARB should clarify in the FSOR that all generation owners, including asset controlling suppliers, have the implicit ability to control whether power sold bilaterally from their assets is specified or not (e.g. through inclusion in the contract of language requiring and warranting the power to be supplied from a specific unit or ACS system). Given that the seller

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.

control principle has only been clearly articulated as of the 2013 regulatory amendments, and the fact that CARB's conflicting guidance on specification of electricity purchases from asset controlling suppliers² has created significant uncertainty in the electricity market, the seller control principle should be applied prospectively for contracts executed after December 31, 2013.

If CARB does not maintain and apply the seller control principle consistently to all entities, then it is incumbent upon staff to clearly articulate the basis for its discriminatory treatment and the conditions under which a generation owner, including an asset-controlling supplier, may sell power as unspecified. Understanding these distinctions will be important to both electricity buyers, as well as other entities that may consider applying for ACS status in the future. CARB should also publish the names of current and any future Asset Controlling Suppliers that may sell unspecified power bilaterally, and those that may not.

CARB needs to explain how inconsistencies in regulation will be rectified.

WPTF remains concerned about inconsistencies between various regulatory provisions. For instance, if staff withdraws the seller control explanation for asset controlling suppliers and instead determines that all power purchased bilaterally from BPA will be considered specified, then staff will have created a potential inconsistency with requirements for tagging of ACS power. If an entity has purchase power bilaterally from BPA that power would be considered specified under CARB's approach, but if the entity received delivery that is sourced from a BPA path out purchase, the import would fail the tagging requirement in 95111(a)(5)(E) because BPA would not be listed as the first PSE on the tag. Under this scenario, which regulatory provision takes precedent? WPTF requests that CARB explain how it would resolve cases where regulatory provisions conflict.

Further guidance is needed on demonstration that power was generated at the time it was directly delivered.

WPTF supports CARB's reinsertion of the phrase "at the time the power was directly delivered" in section 95111(g). However, we understand the concerns raised by other stakeholders that the

² By our count, CARB's guidance on specification of electricity purchased from an asset controlling supplier has changed at least 4 times in the past year: 1) When the 2012 MRR amendments were finalized, there was still ambiguity regarding whether identification of an ACS system on a NERC tag alone was sufficient to render power purchased from an ACS an imported into California as specified. In response, the Guidance document published in late December on "Use of Asset-Controlling Supplier System Emission Factors" clarified that Electric Power entities "must utilize a specified power contract in order to claim ACS power", and that acceptable forms of specified contract may include modified versions (CARB's emphasis) of either WSPP Service Schedule B or C that specify the power is from the ACS system. This was further elaborated at the March 26 workshop, when staff indicated that because the 2012 MRR amendment went into effect on January 1, 2013, BPA unspecified imports occurring in 2012 could be reported as specified, but that as of January 1, 2013 a specified contract with written confirmation would be required. 2) During discussions the July 23 webinar, CARB staff indicated that while Powerex may sell electricity bilaterally as unspecified, Bonneville Power Administration (BPA) cannot due to the fact that 'path-outs' are included in the calculation of the BPA emission factor. 3) CARB then reversed itself with the release of the 45 day proposed language, and the corresponding explanation provided in the FSOR that "it is ARB's expectation that the ACS seller controls whether the specified ACS attributes are conveyed with the transaction." 4) Finally, in the "Notice of Public Availability of Modified Text and the Availability of Additional Documents", staff noted its intention to withdraw the seller control interpretation for asset controlling suppliers.

requirement to report the lessor of generation or scheduled imports in an hour, in accordance with this regulatory provision, could be unnecessary in certain scenarios or could be implemented in a way that is overly burdensome. We therefore recommend that CARB initiate a stakeholder process with the objective of developing practical guidance on interpretation and implementation of this requirement, including reporting and verification. This additional guidance should clarify when meter data is required to demonstrate that generation occurred at the time of delivery, and any cases where other documentation will be acceptable in lieu of meter data. We note that CARB has already indicated that it will accept Mid-Columbia Hourly Allocation Data for participating hydroelectric resources, in lieu of meter data.

CARB must update and publish technical guidance for verifiers

WPTF understands that CARB staff provides ongoing training sessions and guidance materials for accredited verifiers, including technical guidance applicable to individual categories of reporting entities. Yet the only information that is publicly available on the website is dated 2011 and corresponds to the 2007 version of the MRR.³

Given that CARB has significantly revised the regulation and issued several rounds of substantive guidance since that time, CARB should update both the general guidance and training materials, as well as that specific to individual categories of reporting entities (e.g. electric power entities). Because this guidance effectively determines how the verification process is conducted, we believe that it should also be made available to reporting entities. We therefore request that CARB make all verification guidance and training materials, including technical guidance for specific categories of reporting entities, publicly available on its website well in advance of the 2014 reporting deadline.

³ http://www.arb.ca.gov/cc/reporting/ghg-ver/revised_verification_guidance.pdf