BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON PROPOSED CHANGES TO MANDATORY REPORTING REGULATION RELEASED ON OCTOBER 28, 2013

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I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority ("SCPPA")[1] respectfully submits this comment on the proposed changes to the California Regulation for the Mandatory Reporting of Greenhouse Gas Emissions ("Regulation") released on October 28, 2013, by the California Air Resources Board ("ARB").

SCPPA commends the ARB for the majority of the proposed changes to the Regulation. In particular, SCPPA supports: the deletion of the "system power" provisions; the changes to the provision that previously required reasons for increases in criteria pollutants to be reported; the limitations on retroactivity of new reporting requirements; and the withdrawal of the seller control interpretation for asset controlling suppliers.

However, revisions to some of the proposed changes are required. In summary:

- The requirements in section 95111(a)(4) (seller warranties for specified sources) and in section 95111(a)(5)(B) (asset-controlling supplier transactions must be undertaken as specified source transactions) should apply only to transactions entered into after January 1, 2014. Agreements entered into before this date are unlikely to address these requirements, as the requirements did not exist when the agreements were negotiated, and so the new requirements should only apply to new agreements.

[1] SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, the Imperial Irrigation District, Pasadena, Riverside, and Vernon.

- Although the proposed amendments to section 95104(f) (previously section 95104(e)) on reporting reasons for changes in emissions greatly improve this section, these new reporting requirements will still be burdensome, and their purpose is unclear. This provision should be removed.
- The phrase "at the time the power was directly delivered" in section 95111(g)(1)(N) should be deleted. If it cannot be deleted, electricity importers should continue to be allowed to report specified source imports and the RPS Adjustment in accordance with section 95111(b), and hourly meter data should merely be retained for verification purposes.
- The ARB should publish guidance and training materials for use by verifiers who verify electric sector entity emission reports.

These issues are discussed in more detail below.

II. SCPPA SUPPORTS THE REMOVAL OF SYSTEM POWER PROVISIONS.

The proposed changes to the Regulation include the deletion of all provisions and definitions relating to "system power." SCPPA supports the removal of the system power provisions. These provisions were unclear and problematic. For example, it was unclear how the systems would be determined and how the system-specific emissions rate would be calculated, and it was also unclear in what circumstances power from such a system would be subject to the system-specific emissions rate and in what circumstances (if any) the default emissions rate would apply.

Furthermore, there would be a high likelihood of unintended consequences to the power market throughout the Western Electricity Coordinating Council ("WECC") area if the system power provisions were implemented, as entities would seek to revise, swap, or terminate existing

contracts to avoid the application of the high system-specific emissions rates. As noted by PacifiCorp in its comments on the amendments to the Regulation released for 45-day public comment on September 4, 2013 ("September Amendments"), "the application of system emission factors has the potential to cause a significant shift in the entire market."[2]

Finally, it would have been inappropriate to implement the system power provisions without also revising the default emissions factor for unspecified electricity to account for the reduced emissions intensity of the rest of the WECC-wide electricity pool once the higher-emitting systems were separated out.

III. NEW REQUIREMENTS FOR SPECIFIED SOURCE AND ACS TRANSACTIONS SHOULD APPLY ONLY TO TRANSACTIONS ENTERED INTO AFTER JANUARY 1, 2014.

A proposed new sentence in section 95103(h)(8) provides that:

> The requirement that a seller warrant the sale or resale of specified source power in section 95111(a)(4) and the requirement for reporting of asset controlling supplier power in section 95111(a)(5)(B) are effective starting with the reporting of 2014 data in 2015 and later years.

SCPPA appreciates the clarification that these provisions will not be retroactive back to January 1, 2013. As a general rule, SCPPA does not support the retroactive application of changes to regulations. However, this sentence does not address the issue of current agreements, which may provide for specified source and asset controlling supplier ("ACS") power deliveries for some period of time after the new provisions take effect on January 1, 2014.

The changes to sections 95111(a)(4) and 95111(a)(5)(B) in the September Amendments were significant. Section 95111(a)(4) requires a new warranty for specified source transactions. The change to section 95111(a)(5)(B) results in a requirement for a written power contract that is

[2] PacifiCorp comment dated October 15, 2013, page 2. Available at: http://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=ghg2013.

contingent upon delivery of power from the ACS system that is designated *at the time the transaction is executed*, according to the definition of "power contract" in section 95102(a)(356). These requirements are not necessarily addressed in current agreements, and in the case of section 95111(a)(5)(B), current agreements cannot even be amended to address this requirement because source specification must be done at the time the agreement is executed. To address this requirement, a whole new contract would need to be entered into, raising a host of potential commercial issues.

Some SCPPA members have long-term power contracts with asset-controlling suppliers that do not specifically designate the source of the power as the ACS's system. However, the power delivered by the ACS does come from its system, as shown by the e-tags. These contracts have been in place for some years. In the 2012 emissions report, this power could be (and was) claimed as ACS power with the relevant ACS emissions factor, due in part to the requirement in current section 95111(a)(5)(B) to report electricity delivered from asset-controlling suppliers as specified and not as unspecified. If the change to section 95111(a)(5)(B) takes effect for all contracts at the start of 2014, as proposed, the power delivered under these existing contracts could not be claimed as ACS power and must be reported as unspecified (using the default emissions factor) in the 2014 data year report and future reports.

For these reasons, the changes to sections 95111(a)(4) and 95111(a)(5)(B) should apply only to transactions entered into after January 1, 2014, when the changes to the Regulation become effective. Going forward, electricity importers would be aware that any new specified source contracts must contain certain warranties and that any new agreements with asset-controlling suppliers must specify the source of the power, and the importers could take steps to include these provisions when negotiating new contracts. This approach would avoid unfairly

penalizing those importers with existing contracts that do not happen to meet the new requirements and that were entered into when no such requirements were in place.

SCPPA proposes the following changes to section 95103(h)(8) to address this issue:

> The requirement that a seller warrant the sale or resale of specified source power in section 95111(a)(4) and the requirement for reporting of asset controlling supplier power in section 95111(a)(5)(B) are effective for transactions entered into on or after January 1, 2014~~starting with the reporting of 2014 data in 2015 and later years~~.

IV. SECTION 95104(f) IS IMPROVED, BUT REMAINS BURDENSOME AND SHOULD BE DELETED.

Proposed section 95104(f) (previously section 95104(e) in the September Amendments) requires operators of certain facilities, including power plants, to:

- report whether a change in the facility's operations or status potentially resulted in an increase or decrease of more than five percent in emissions of greenhouse gases (previously criteria pollutants or toxic air contaminants) in the previous data year;
- specify the cause of the increase, choosing from a list of reasons (including changes to production, operations, efficiency, or other); and
- describe how each listed change caused the increase.

Section 95104(f)(4) provides that this provision is not subject to third-party verification.

SCPPA appreciates the changes to this provision from the September Amendments, particularly the change from criteria pollutants and toxic air contaminants to greenhouse gases and the deletion of the verification requirements. Greenhouse gases are the proper subject of the Regulation under Assembly Bill ("AB") 32, specifically, section 38530 of the Health and Safety Code. This section provides that the ARB shall establish "regulations to require the reporting and

verification of statewide greenhouse gas emissions."[3] The reporting regulation shall, among other things, "Require the monitoring and annual reporting of greenhouse gas emissions from greenhouse gas emission sources."[4] There is no reference in this section to reporting criteria pollutants and determining the reasons for any increase, and such reports would have been outside the scope of the greenhouse gas reporting regulation as envisaged in AB 32.

Despite these improvements, complying with section 95104(f) will still be burdensome for covered entities. It will be difficult for reporting entities to determine the causes of any increase or decrease in greenhouse gas emissions – for example, to distinguish how much of the increase was caused by changes in operation to comply with regulations and how much was caused by efficiency changes. It will be time-consuming to write a narrative description of how each identified reason caused the increase or decrease in emissions. Electric sector entities are subject to considerable swings in emissions from year to year due to a host of factors including the availability of hydropower and nuclear energy and successes or delays in establishing new renewable energy plants. Thus, electric sector entities are likely to have to report reasons for changes greater than five percent every year.

It is also unclear how these relatively subjective, unverified (and unverifiable) reports will provide useful information to the ARB.

Rather than including this burdensome and unhelpful provision, the ARB should refer to previous years' greenhouse gas reports under the Regulation to determine whether covered entities have increased or decreased their emissions. In addition, the ARB can access various publicly available reports on air pollutants that facility operators are already required to prepare under other regulations. Section 95104(f) should be deleted.

[3] Health and Safety Code section 38530(a).

[4] Health and Safety Code section 38530(b)(1).

V. HOURLY METER DATA FOR SPECIFIED SOURCE IMPORTS AND THE RPS ADJUSTMENT SHOULD NOT BE REQUIRED.

Section 95111(g)(1)(N) of the Regulation sets out information requirements, for verification purposes, for specified sources and eligible renewable energy resources that are counted towards the RPS Adjustment. In the September Amendments, the phrase "at the time the power was directly delivered" at the end of section 95111(g)(1)(N) was deleted. In the proposed amendments released on October 28, 2013, this phrase was reinstated.

However, requiring hourly meter generation data is problematic for several reasons.

A. Reporting entities may not have access to this data.

First, this data may not be available to the reporting entity. Some existing contracts for specified source electricity do not contain provisions allowing the purchaser access to the hourly meter data. These entities would be required to renegotiate their contracts to include a provision for the supplier to provide meter data. Suppliers may be unwilling to do this without recompense.

B. "Lesser of" hourly comparison process is time-consuming and does not produce a significant difference.

Second, and more troublingly, ARB staff indicated in teleconferences with stakeholders that the purpose of including this phrase is not merely to change the information that must be retained for verification purposes, but to change the reporting requirements. SCPPA understands that electricity importers would be required to compare, on an hourly basis, the meter data against the e-tags for the relevant imports and to claim the lesser of the two values as specified, with the remainder being reported as unspecified power with default emissions.

SCPPA understands that some stakeholders, e.g., Shell, have already adopted this hourly meter and e-tag data comparison process and have not found it particularly troublesome. However, the ARB should not assume that this will be the case for all electricity importers.

Certain entities have relatively simple electricity imports so the calculations involved would be straightforward. This is not true for all of the SCPPA members. For example, the share of facility output that some SCPPA members receive may vary from hour to hour; there may be time zone differences to take into account when aligning the hourly meter data with the e-tag data for comparison; and power belonging to multiple reporting entities may be combined and imported on a single e-tag, making it difficult to compare hourly data for an individual entity. For these reasons, obtaining, preparing, and aligning the hourly meter and e-tag data would be a very time-consuming process for some SCPPA members, as the Los Angeles Department of Water and Power ("LADWP") has shown in correspondence with ARB staff. Additionally, during the verification process the independent verifier would require time to determine with reasonable assurance whether the result of the "lesser of" hourly comparison process is accurate.

The usefulness of this labor-intensive process is questionable. The reports under the Regulation are annual, so accuracy on an hourly basis should not matter, provided that the annual figures provided in the report are accurate. Reported annual imports can be verified using the reporting entity's share of the generating facility's annual generation meter data.

Furthermore, LADWP's sample showed that the result of the "lesser of" hourly comparison process is very close to the sum of the megawatt hours on the e-tags, and the difference is substantially less than the five percent accuracy requirement in the Regulation. The conclusions to be drawn from the LADWP sample are that performing an hour-by-hour comparison would not make a significant difference in the reported emissions and is neither necessary nor effective in addressing any perceived over-accounting of low-emission generation.

C. "Lesser of" hourly comparison process is inconsistent with existing requirements in the regulations.

Finally, the "lesser of" hourly matching and comparison process is not required by the plain words of the Regulation (even with the proposed amendments) and, worse yet, would be inconsistent with existing, unchanged provisions of the Regulation as well as with the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation ("Cap and Trade Regulation").

Section 95111(g)(1)(N) of the Regulation provides as follows, with the proposed amendment underlined:

> (1) *Registration Information for Specified Sources and Eligible Renewable Energy Resources in the RPS Adjustment*. The following information is required: ...
>
> (N) For verification purposes, retain meter generation data to document that the power claimed by the reporting entity was generated by the facility or unit <u>at the time the power was directly delivered</u>.

This provision does not contain any reference to comparing meter data against delivered power (e-tags) and claiming only the lesser of the two amounts. On the contrary, this provision is "for verification purposes" only and does not on its face contain any instructions as to how the data is to be used in generating annual emission reports.

The provisions that set out how specified source imports and the RPS Adjustment are to be calculated and reported are sections 95111(b)(2) for power from specified sources, (b)(3) for power from asset-controlling suppliers,[5] and (b)(5) for the RPS Adjustment. For power from both specified sources and asset-controlling suppliers, the formula for calculating the relevant emissions refers to "Megawatt-hours of specified electricity *deliveries*" (emphasis added). The

[5] The definition of "specified source" in section 95102(a) includes asset-controlling suppliers. However, it is unclear whether, or how, section 95111(g) applies to power from asset-controlling suppliers. Section 95111(g) may need to be amended to clarify that it does not apply to power from asset-controlling suppliers.

formula for the RPS Adjustment refers to the "Sum of MWh *generated* by each eligible renewable energy resource" (emphasis added). The Cap and Trade Regulation contains similar provisions in sections 95852(b)(3) and (4).

In neither the Regulation nor the Cap and Trade Regulation is there any requirement to claim the lesser of the hourly meter data or the delivered electricity for specified sources and the RPS Adjustment. Therefore, any guidance the ARB issues that sets out the "lesser of" hourly comparison process mentioned by ARB staff in teleconferences would be inconsistent with both the Regulation and the Cap and Trade Regulation.

D. The phrase should be removed, or if it must remain, entities should be able to satisfy this requirement by merely retaining the meter data.

For the reasons discussed above, the phrase "at the time the power was directly delivered" should be deleted from section 95111(g)(1)(N) of the Regulation.

If it is not possible to revise the Regulation at this stage, the ARB should:

- clarify that electricity importers can satisfy the requirements of section 95111(g)(1)(N) by keeping records, for verification purposes, of hourly meter data;
- allow electricity importers to continue to rely on the existing provisions of section 95111(b) when reporting the RPS Adjustment and power from specified sources and asset-controlling suppliers; and
- not require electricity importers to undertake the burdensome and unnecessary "lesser of" hourly comparison process.

VI. SCPPA SUPPORTS THE WITHDRAWAL OF THE ACS SELLER CONTROL INTERPRETATION.

The notice issued by the ARB with the proposed changes to the Regulation on October 28, 2013, states on page 3 that:

> Additionally, and in response to stakeholder comments, 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). This change is needed to ensure electric power entities know how to effectively report their purchases of asset controlling supplier power.

In the Initial Statement of Reasons ("ISOR") issued with the September Amendments on September 4, 2013, the "seller control interpretation" is explained as follows:

> This change [to section 95111(a)(5)(B)][6] is necessary to establish that asset-controlling supplier power may be reported as either specified or unspecified power depending upon the transaction, for the reason that asset-controlling supplier power can be sold in the market as either specified or unspecified power. … *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.[7] [emphasis added]

For the reasons set out convincingly in Morgan Stanley's comment to ARB on the September Amendments, the seller control interpretation is problematic. Morgan Stanley states:

> Yet part of the proposed amendments includes the proposed "clarification" that an ACS controls whether or not a sale is specified. This additional criterion provides absolutely no improvement to the environmental integrity of the cap- and trade program, and contradicts other parts of the regulations. Conversely, it can be construed as unwarranted interference in negotiating and contracting activities outside the state of California. Furthermore, it swings the determination of whether or not power can be reported as "specified" based solely on whether or not the seller deigns to use the word "specified", rather than on any intrinsic aspect of the underlying electricity being contracted

[6] In the September Amendments section 95111(a)(5)(B) was revised to provide: "Report Asset-Controlling Supplier power that was not properly acquired as specified power, as unspecified power."

[7] ISOR page 57.

> for or the type of transaction used. Last, but not least, granting this type of arbitrary overlordship over how a transaction is reported to ARB to the seller, rather than to the buyer/importer, has the potential to raise the cost of power to California consumers.[8]

These objections are well-founded. SCPPA looks forward to statements in the Final Statement of Reasons that clearly withdraw the seller control interpretation for power from asset-controlling suppliers. Rather than giving an ACS the ability to charge California purchasers more money for the same product, the determination as to whether a particular transaction is for ACS power should rest on the objective criteria already in place in the Regulation. Guidance materials can provide any necessary clarification on the treatment of power purchased from asset-controlling suppliers on exchanges or from points geographically remote from an ACS system.

VII. GUIDANCE FOR VERIFIERS SHOULD BE PUBLISHED.

As a final point, SCPPA requests the ARB to publish guidance and training materials for use by verifiers when verifying reports by electric power entities. Given the complexity of the reporting requirements for this sector and the significant recent changes, it would be useful for such guidance to be publicly available.

[8] Morgan Stanley comment submitted on October 3, 2013, page 2. Available at: http://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=ghg2013.

VIII. CONCLUSION

SCPPA appreciates the opportunity to submit these comments to the ARB and urges the ARB to consider these comments when finalizing the changes to the Regulation. If further information is required, we would be happy to discuss any of the proposals in these comments with ARB staff.

Respectfully submitted,

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