



Department of Energy

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November 15, 2013

In reply refer to: LP-7

Clerk of the Board, Air Resources Board
1001 I Street
Sacramento, California 95814
(Submitted electronically via CARB's online comment form)

RE: 15-Day Comments on Proposed Amendments to the Regulation for the Mandatory reporting of Greenhouse Gas Emissions.

The Bonneville Power Administration (BPA) is a Federal agency within the U.S. Department of Energy. Bonneville is voluntarily reporting under the California Air Resources Board's (CARB) Greenhouse Gas Emissions Reporting Rule (commonly known as the MRR).

On October 18, 2013 BPA commented on proposed changes to the MRR that would require sellers of specified source power to warrant or guarantee that the product is in fact specified source power, and proposed changes that would apply this requirement to ACS sellers and make clear that an ACS seller controls whether the transaction is for specified ACS power. Following its October 24-25 Board meeting, CARB released a document that dramatically altered these proposed changes with regard to ACS entities. The document was labeled "Notice of Public Availability of Modified Text and Availability of Additional Documents."¹

In that document CARB stated that "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)."²

This is the fourth time within the past year that CARB has reversed itself on this issue.³ Therefore, to understand CARB's latest position, BPA spoke with CARB staff on November 5,

¹ <http://www.arb.ca.gov/regact/2013/ghg2013/ghg201315notice.pdf>

² *Id.* at 3.

³ 1) CARB published a guidance document in late December 2012 on "Use of Asset-Controlling Supplier System Emission Factors" which clarified that Electric Power entities must "utilize a specified power contract to convey the right to receive ACS power." Available at: http://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/acs-power.htm#acs_use CARB staff elaborated on this position at a March 26, 2013 workshop, by indicating 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) CARB then reversed itself during discussions in a July 23, 2013 webinar, where CARB staff indicated that while Powerex may sell electricity bilaterally as unspecified, BPA cannot. 3) CARB then reversed itself again with the September

2013. This issue has been far from clear, as illustrated by the range of opinions and differing interpretations expressed in the 45-day comments and in the 15-day comments CARB has received thusfar. Yet the need for clarity and a uniform market-wide understanding of CARB's regulations is extremely important to BPA and parties that purchase from it. CARB must take the present lack of clarity and general regulatory confusion into account when it comes time to verify purchases that were made from BPA during this timeframe.

1. BPA wishes to confirm and memorialize CARB staff's direction in the November 5, 2013 phonecall regarding how BPA power can be sold as specified and unspecified.

Based on the November 5, 2013 phonecall with CARB staff, BPA's present understanding of CARB's guidance is as follows.⁴ CARB will construe BPA power as specified when a buyer calls BPA directly and arranges to buy power bilaterally from BPA.⁵ CARB will construe BPA power as unspecified when BPA sells power anonymously through a broker or through an electronic exchange such as ICE.

2. The distinction CARB has drawn is overly simplistic because there may be situations in which a buyer acquires BPA power through a broker or an exchange and knows up front that it is contracting with BPA. Ultimately CARB will need a means for determining whether the transaction was anonymous or whether the buyer knew it was buying from BPA.

It seems CARB's rationale is premised entirely on whether a buyer knows, at the time of entering into the transaction, that it is transacting with BPA. CARB is basing this on the fact that federal law permits BPA to sell power from only one system, which to date has been the same system mix that BPA has registered as its ACS system with CARB. Thus, CARB's logic is that when a buyer transacts directly with BPA that buyer knows it is receiving power from BPA's ACS system, so CARB will construe this as a transaction for BPA ACS specified power.

4, 2013 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 October 2013 "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. *See* <http://www.arb.ca.gov/regact/2013/ghg2013/ghg201315notice.pdf> at 3.

⁴ Without being able to see the anticipated FSOR changes, BPA's understanding of them is based on (1) the CARB notice that "staff intends to issue revised statements in the Final Statement of Reasons to effectively withdraw the seller control interpretation for asset controlling suppliers," and (2) the November 5th phonecall BPA had with CARB staff.

⁵ With the exception of "pathouts" because CARB does not consider them to be part of BPA's system even though, under federal law, they are. BPA will discuss this in more detail in point #3 below.

The practical result of this rationale is that CARB will now have to police whether a buyer knew, at the time of the transaction, that it was dealing with BPA. CARB cannot accomplish this merely by looking at whether a transaction was done bilaterally versus through a broker or an exchange.

That is, CARB's logic regarding whether or not BPA transacted with pure anonymity will be difficult to validate. For example, an e-tag from a buyer who is matched up with BPA through a broker transaction will not look any different than an e-tag for a buyer that contacted BPA directly to buy power bilaterally. CARB will need to be prepared to police transactions (through some other means beyond simply reviewing e-tags and power contracts) to determine whether a buyer knowingly purchased power from BPA directly and therefore is entitled to claim the power as specified, or whether the buyer did not know who the seller was and therefore would have to claim it as unspecified.

Power contracts do not identify anonymity. For example, BPA can choose whether or not it wants a broker to identify BPA as the seller when communicating our sales price to the market. The power contract would show that a transaction occurred with the help of a broker, but the power contract does not identify whether BPA used the broker to sell the power anonymously. If BPA did not request anonymity in the brokered transaction, BPA's understanding (from the November 5th phonecall with CARB) is that the transaction would qualify as specified because the buyer would know, at the time of entry into the contract, that it was purchasing from BPA.

Here again though, CARB will need some means for determining whether or not transactions occurred with complete anonymity in order to ascertain whether an import of BPA power into California is eligible to be claimed as specified or unspecified. Today's contracts and confirms do not address anonymity, the MRR language does not address it, and proof of anonymity will be difficult to enforce within the current MRR rules.

With regard to electronic exchanges, currently the predominant electronic exchange (ICE) used to transact Day Ahead power in the Pacific Northwest provides anonymity prior to executing a transaction. However, markets evolve and anonymity could be removed from ICE (or other exchanges that might be launched in the future). It is simplistic to assume absolute anonymity will always govern how electronic exchange and brokered transactions will occur in the future.

The bottom line is that, if CARB intends to base the distinction of whether BPA power is specified or unspecified on whether a buyer knows (at the time of entering into the transaction) that it is transacting with BPA, then CARB will need some means for verifying anonymity or the lack thereof at the time a transaction occurs. CARB regulations are currently devoid of guidance on how this will be verified.

3. Comment on CARB's decision to remove pathouts from BPA's definition of its system.

Over the past year BPA has had countless conference calls and emails with CARB staff to explain what resources are part of BPA's system under federal law. One area of particular focus in these discussions was the utility standard practice of "pathing out" surplus power procured in the market from time to time. BPA explained that all power BPA purchases is, under federal law, a part of BPA's federal system. If at some later time BPA no longer needs a market purchase because of changes in demand or system conditions, then BPA sometimes resells the surplus purchased power and combines the purchase and sale transaction into a single schedule and NERC e-tag resulting in a "pathout." "Pathouts" are a common industry scheduling practice not unique to BPA.

CARB originally accepted BPA's explanation and legal analysis that "pathed out" power is part of BPA's system. As a result, CARB included language regarding pathouts in section 95111(a)(5)(E) entitled "Tagging ACS Power." However, in the final round of changes leading up to the October 24-25 Board meeting CARB removed this language so that it now reads:

(E) Tagging ACS Power. To claim power from an asset-controlling supplier, the asset-controlling supplier must be identified on the physical path of the NERC e-Tag as the PSE at the first point of receipt, or in the case of asset controlling suppliers that are exclusive marketers, as the PSE immediately following the associated generation owner, with the exception of path outs. Path outs are excess power, originally procured as part of a U.S. federal mandate to serve the operational or reliability needs of a U.S. federal system but which are no longer required due to changes in demand or system conditions.

This is a significant deletion because it means that CARB has, for purposes of its regulations, declined to recognize pathouts as a part of BPA's system. BPA wishes to point out that this may result in situations where a buyer purchases from BPA in a bilateral transaction (which, as explained in points #1-2 above, CARB would ordinarily construe as specified and the buyer may think is specified) but will end up being unspecified because, when the power is scheduled each day, some of it may be supplied via a pathout. Thus, the buyer and CARB will need to construe the transaction to be unspecified because BPA does not show up on the e-tag as the original source of the power.

In short, CARB needs to be aware that not all bilateral purchases with BPA will result in a NERC e-Tag that identifies "BPA" as the PSE at the first point of receipt on the physical path. Section 95111(a)(5)(E) will not take this into account if CARB makes the change proposed above in double strikeout lines.

4. CARB regulations give non-ACS entities a level of control over their sales that BPA does not have.

Under the current regulations, non-ACS entities can knowingly sell resources as unspecified simply by withholding some of the transaction data, like "meter data," that CARB requires for

verifying that a source was specified. For example, an entity with a carbon-free wind resource could elect to sell their wind resource as unspecified if a buyer is not willing to pay a premium for specified status and the accompanying benefit of a lower exposure to California carbon allowance expenses. BPA has no such ability to recoup the intrinsic low-carbon value of its power when transacting bilaterally, due to CARB's interpretation that everything BPA sells bilaterally (except pathouts) must be considered specified. This is an obvious inequity and another problem with CARB's treatment of BPA power sales.

Sincerely,

/s/ J. Courtney Olive

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