MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

June 24, 2009 **Via Electronic & U.S. Mail**

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814
http://www.arb.ca.gov/lispub/comm/bclist.php

Re: Comments On The California Air Resources Board's Staff Report: Initial Statement Of Reasons For Rulemaking Proposed AB 32 Cost Of Implementation Fee Regulation And Proposed Amendment To The Regulation For The Mandatory Reporting Of Greenhouse Gas Emissions

Dear Ms. Blakeslee:

The Metropolitan Water District of Southern California (Metropolitan) appreciates the opportunity to provide comments in response to the California Air Resources Board (ARB) Staff Report: Initial Statement Of Reasons (ISOR) For Rulemaking Proposed AB 32 Cost Of Implementation Fee Regulation And Proposed Amendment To The Regulation For The Mandatory Reporting Of Greenhouse Gas Emissions, dated May 8, 2009 (Report). Metropolitan attaches and incorporates by reference its prior comments on the April 17, 2009 Proposed Regulation, dated April 24, 2009 (April 24th Comments).

Applicability of the Proposed Fee Regulation to Imported Electricity from Hydroelectric Facilities

In its April 24th Comments, Metropolitan expressed its concern over treatment of imported electricity from large hydroelectric facilities. Specifically, Metropolitan commented that Section 95201(a)(5) and 95203(g) (the latter of which is now renumbered and hereafter referenced as 95203(i)) did not acknowledge that fees would be calculated only on imported electricity that emitted greenhouse gases (GHG). While the Report acknowledges this concern in the ISOR portion of the Report (*see* at 51) and provides some additional detail in an expanded section 95203 (*see* specifically Report at 80-84), it appears to have omitted this clarification in section 95201(a) (*see* Report at 66) and thus, Metropolitan requests the following amendment to this section:

(5) *Retail Providers and Marketers of Imported Electricity.*
Any retail provider or marketer that is the purchasing/selling entity at the first point of delivery in California of imported electricity. Fees shall be paid for each megawatt-hour of imported greenhouse gas-emitting electricity, as detailed in section 95203(i) herein.

(Report at 66 (proposed amendments double underlined)). As noted in the April 24th Comments, in my conversation with Mr. Jon Costantino on April 24, he confirmed that imported electricity from hydroelectric facilities has a zero Emission Factor and therefore would not be assigned a portion of the administration fees.

For these reasons, Metropolitan requests the ARB review the areas of its proposed regulation regarding imported electricity and insert clarifications where necessary, but at least in section 95201(a)(5), that imported electricity from non-emitting facilities are excluded from the costs assigned by California governmental agencies to implement AB 32.

Potential Duplicative and/or Conflicting Regulations

Furthermore, as set forth in the April 24th Comments, while Metropolitan is aware of prior legal analysis on the issue of the deliverer point of regulation, Metropolitan remains concerned that imposition of an administrative fee on out-of-state imports may adversely interfere with interstate commerce, conflict with federal law, and result in unfair and unreasonable duplicative charges. Although ARB admits it lacks authority to regulate out-of-state, upstream generation (see, e.g., Report at 20 ("California cannot apply the Fee to upstream suppliers of fuel to out of state generation facilities (as ARB proposes to do with in-state facilities)"), it appear to proceed with imposing a fee on out-of-state imports that appears to constrain interstate trade. For example, an out-of-state generator would be constrained by ARB's fees to import to California versus another neighboring state without similar fees. The Report does not appear to address the issue of potential impacts on interstate commerce, as set forth in Metropolitan April 24th Comments as well as those of other commenters, including the comments from the Southern California Public Power Authority, dated April 24, 2009, incorporated herein by reference. For these reasons, Metropolitan requests that ARB address this issue in its final rulemaking.

Metropolitan appreciates the opportunity to provide comments. If you have any questions, please contact me at 213-217-7381 or jlambeck@mwdh2o.com.

Very truly yours,

Jon C. Lambeck
Manager, Power Resources
Metropolitan Water District Of Southern California

Attachments

cc: Jeannie Blakeslee, ARB (with attachments)
Via electronic mail to jblakesl@arb.ca.gov

MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

April 24, 2009 **Via Electronic & U.S. Mail**

Jeannie Blakeslee
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812
jblakesl@arb.ca.gov

Re: Comments on the California Air Resources Board's Proposed Assembly Bill 32 Fees for Sources of Greenhouse Emissions

Dear Ms. Blakeslee:

The Metropolitan Water District of Southern California (Metropolitan) appreciates the opportunity to provide comments in response to the California Air Resources Board (ARB) proposed Assembly Bill 32 Administrative Fee Regulation.

Applicability of the Proposed Fee Regulation to Imported Electricity from Hydroelectric Facilities

During the April 20, 2009, Public Workshop on AB 32 Cost of Implementation Fee Regulation, the ARB discussed a proposal to require importers of electricity to pay a portion of the cost to implement AB 32 within California's government agencies. Comments on this proposal were requested within five days of the workshop. This proposal represented a fundamental shift in ARB's prior position regarding the assignment of administrative costs to imported electricity.

In reviewing the proposal and other ARB documents concerning the reporting and emission accounting of imported electricity, Metropolitan is concerned over inconsistencies and ambiguities within and between various documents. Our primary concern is the treatment of imported electricity from large hydroelectric facilities.

700 N. Alameda Street, Los Angeles, California 90012 • Mailing Address: P.O. Box 54153, Los Angeles, California, 90054-0153 • Telephone: (213) 217-6000

The ARBs proposed regulation, in section 95201(a)(5) broadly states, for any retail provider or marketer of imported electricity:

"Fees shall be paid for each megawatt-hour of imported electricity."

However, in section 95203(a) of the same document, the calculation of the Common Carbon Cost shows only imported electricity with an Emission Factor contributes to the result. In my conversation with Mr. Jon Costantino on April 24, he confirmed that imported electricity from hydroelectric facilities has a zero Emission Factor and therefore would not be assigned a portion of the administration fees.

This verbal assurance was appreciated and was consistent with Metropolitan's understanding of how ARB's proposal would be implemented, however the actual written proposed regulation does not provide this level of certainty. Another example of ambiguity is section 95203(g) that states the fee liability of imported electricity for each reporting entity will be based on the quantity of imported electricity. Again, no explicit exemption for imported electricity from hydroelectric facilities is provided within this section.

Metropolitan requests the ARB review the areas of its proposed regulation regarding imported electricity and insert clarifications where necessary, but at least in sections 95201(a)(5) and 95203(g), that imported electricity from hydroelectric facilities are excluded from any assignment of the costs to implement AB 32 by California governmental agencies.

Potential Duplicative and/or Conflicting Regulations

Furthermore, while Metropolitan is aware of prior legal analysis on the issue of the deliverer point of regulation, Metropolitan remains concerned that imposition of an administrative fee on out-of-state imports may adversely interfere with interstate commerce, conflict with federal law, and result in unfair and unreasonable duplicative charges. For example, query how deliverers will reconcile duplicative or conflicting regulations amongst multiple states, in this case, a situation where a neighboring state, like Arizona or Nevada, imposes a charge on the generation and then California imposes its duplicative charge on the same electricity, discouraging the importation of out-of-state electricity. For these reasons, Metropolitan requests that ARB provide additional legal authority demonstrating that these fees are fair and valid.

Metropolitan appreciates the opportunity to provide comments and may provide additional comments during the upcoming 45-day public comment period for this regulation. If you have any questions, please contact me at 213-217-7381 or jlambeck@mwdh2o.com.

Very truly yours,

Jon C. Lambeck
Manager, Power Resources
Metropolitan Water District Of Southern California