Department of Water and Power the City of Los Angeles

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June 24, 2009

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814

Subject: Los Angeles Department of Water and Power Comments on the Proposed AB32 Implementation Fee Regulation (released May 8, 2009)

Ladies and Gentlemen:

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the proposed *AB32 Cost of Implementation Fee Regulation.* We understand the need for the California Air Resources Board (ARB) to collect fees to pay for staff that are developing the statewide program to implement AB32 (California Global Warming Solutions Act of 2006). LADWP supports the State's efforts to reduce Greenhouse Gas (GHG) emissions and are willing to pay our fair share of the cost to implement this program.

Our main concern with the proposed AB32 Fee Regulation is the double counting of emissions with regard to energy exchanges and electricity imports/exports. We understand that ARB staff is planning to propose changes to the Regulation for a supplemental 15-day comment period and we will continue working with staff to address our concerns. Enclosed are our detailed comments on the proposed AB32 Fee Regulation.

In addition, we recommend that ARB revisit the Mandatory Reporting of Greenhouse Gases Regulation and make appropriate amendments to resolve the issues regarding energy exchanges that have come to light as part of the AB32 Fee rulemaking.

Thank you for your consideration of our comments. If you have any questions, please contact Cindy Parsons at (213) 367-0636.

Sincerely,

James H. Caldwell Jr.
Assistant General Manager - Environmental Affairs

CP:seg
Enclosure
c/enc: Cindy S. Parsons

LADWP Comments on Proposed AB32 Cost of Implementation Fee Regulation

LADWP has reviewed and worked through the calculations in the *Proposed AB32 Cost of Implementation Fee Regulation* (AB32 Fee Regulation), and identified several concerns regarding the proposed regulation. We have discussed our concerns with ARB staff, and respectfully submit the following comments for your consideration.

AB32 Fees Should Not Be Assessed On Electricity Not Consumed In California

At the April 20, 2009, AB32 Fee Regulation workshop, staff stated the objective of this regulation is to assess AB32 fees only on electricity that is consumed in California. However, the draft regulation would assess AB32 fees on 100% of fossil-fueled electricity generated in California (source-based approach), as well as 100% of fossil-fueled or unspecified electricity imported into California (load-based approach), without subtracting out emissions for electricity that leaves California. In effect, ARB will be charging AB32 fees on electricity that is consumed both inside and outside California.

AB32 clearly applies to electricity consumed in California, whether generated in-state or imported.

> AB32 section 38505 (m) defines Statewide Greenhouse Gas Emissions as "*the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.*"
>
> AB32 section 38530 (b)(2) says the ARB shall "*Account for greenhouse gas emissions from all electricity consumed in the state, including transmission and distribution line losses from electricity generated within the state or imported from outside the state. This requirement applies to all retail sellers of electricity, including load-serving entities as defined in subdivision (j) of Section 380 of the Public Utilities Code and local publicly owned electric utilities as defined in Section 9604 of the Public Utilities Code.*"

It would appear the intent of AB32 was to regulate only the electricity that is consumed in California. However, the regulatory approach taken by staff in designing the AB32 Fee Regulation (as well as discussions at the June 5 workshop on Imported Electricity) is analogous to a one-way valve for electricity to flow into California, but fails to acknowledge or account for the flow of electricity out of California. Taking this approach with the AB32 Fee Regulation will result in the assessment of AB32 fees on electricity that is not consumed in California. We are concerned about the precedent this approach will set for the future cap and trade regulation, for which the cost implications are significantly higher.

Energy exchange transactions between a California retail provider and an out-of-state party are a prime example of where this regulatory approach will result in double counting.

> Energy Exchanges: In general, energy exchanges are agreements to trade energy due to limitations in generating resources, transmission capacity, or other operational constraints. The exchange may occur simultaneously (receive energy at one point and deliver energy at a different point), or involve a time delay between receipt and return of

the energy. The generating resources and electrical grid serving the western portion of North America was designed for electricity to flow between states. Power exchange agreements are both efficient and economical, and help keep the cost of electricity down for California ratepayers and avoid the need to build additional generating capacity in California.

ARB's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Mandatory GHG Reporting Regulation) requires the California Retail Provider to report the exchange transaction as a separate purchase and a sale, and does not distinguish between an import that is part of an energy exchange and a straight import. We recommend that the Mandatory GHG Reporting Regulation be amended to report energy exchange transactions in a separate category rather than mixing them in with regular energy purchases and sales.

In the case of an energy exchange between a California Retail Provider and an out-of-state provider, the energy received would be reported as an import, and the return energy would be reported as an export. As written, the proposed AB32 Fee Regulation would assess fees on both the import half of the energy exchange as well as the return half, effectually charging fees on two kilowatt hours of electricity when only one of the two kilowatt hours was actually consumed in California.

The AB32 regulations need to be designed to account for the flow of electricity between states, both imports and exports. There is an administratively simple solution to account for exports in the AB32 Fee calculation using data that is already being collected under ARB's Mandatory GHG Reporting program. The AB32 Fee Regulation contains a methodology to calculate emissions for specified and unspecified electricity imports. This same methodology could be used to calculate emissions for exported electricity as well, which could then be subtracted from the imported electricity emissions, and the AB32 fees could be assessed on the difference (see Attachment A for suggested calculation methodology).

Need For A Cap On The Annual AB32 Revenue Requirement

The proposed regulation does not establish an annual limit on the AB32 fees that can be imposed on regulated entities each year. Rather, the annual revenue requirement is left open-ended, to be determined each year as part of the annual state budget process.

> *Section 95203 (a)(1) The Required Revenue (RR) shall be the total amount of funds necessary to recover the costs of implementation of AB32 program expenditures for each Fiscal Year, based on the number of personnel positions, including salaries and benefits and all other costs, as approved in the California Budget Act for that fiscal year.*

Many cities and businesses prepare and adopt their annual budgets by June of each year, and need to know what their AB32 fee liability will be for budgeting purposes. Not knowing what the AB32 program budget will be for the upcoming year will make it difficult for regulated entities to calculate a reasonable estimate of their AB32 fee liability and budget the appropriate amount. To provide regulatory certainty, we request that the Board set a not-to-exceed cap on the annual AB32 Revenue Requirement. Based on historical and current AB32 program budgets, $40 million seems like a reasonable cap.

AB32 Program Costs (from the 5-8-09 AB32 Fee Regulation staff report)

FY 07-08	$25.19 million	Updated Table 3a
FY 08-09	$38.89 million	Updated Table 4a
FY 09-10	$36.2 million	Table 8

Given the current state of the economy, cost containment is very important. Setting a cap on the annual Revenue Requirement will enable regulated entities to calculate a reasonable estimate of their AB32 fee liability for their annual budgets, and avoid unexpected increases in the fee that might occur if the AB32 Revenue Requirement is left open ended. In addition, setting a cap on the fees is consistent with the approach taken by ARB with their *Nonvehicular Source, Consumer Products and Architectural Coatings Fee Regulations*, which has a $20 million cap on the fees ARB can collect to fund the Stationary Source Program (see California Code of Regulations, Title 17, Sections 90800.8 to 90806).

Need To Harmonize The Mandatory GHG Reporting, AB32 Fee, and Cap and Trade Regulations

We recommend that ARB reopen the Mandatory GHG Reporting Regulation no later than December 2009, and harmonize the data collection structure with the intended use of the data. For example, amending how energy exchange transactions are reported would resolve the issue with double assessment of AB32 fees on the import and return halves of an energy exchange. In addition, the reporting requirements need to be reviewed and streamlined now that the overall design of the AB32 program has been laid out in the AB32 Scoping Plan.

In addition, a reopener provision should be added to the AB32 Fee Regulation to revisit the fees in the event an alternate source of funding for the AB32 program is created, such as through the cap-and-trade regulation. For example, if ARB receives revenue from auctioning of emission allowances or offset allowances in a cap-and-trade program, that funding should be used to operate the AB32 program and the AB32 fees should be reduced or eliminated. Without a sunset clause or requirement to revisit the AB32 Fee Regulation in the future, the AB32 fees will become permanent regardless of other sources of funding the AB32 program may generate.

Attachment A

Proposed Revised Calculation of AB32 Fees for Imported Electricity

Section 95203. Calculation of Fees

(e) ~~*Imported Electricity Fee Rate*~~. Emissions from Imported and Exported Electricity.

The Executive Officer shall calculate ~~an Imported Electricity Fee Rate~~ emissions from imported and exported electricity for each affected entity reporting pursuant to section 95204 ~~(f)~~ (g) using the following formulas:

$E_{imported} = \Sigma(MWh_{sp} \times EF_{sp}) + \Sigma(MWh_{asp} \times EF_{asp}) + \Sigma(MWh_{usp} \times EF_{usp})$

$E_{exported} = \Sigma(MWh_{sp} \times EF_{sp}) + \Sigma(MWh_{asp} \times EF_{asp}) + \Sigma(MWh_{usp} \times EF_{usp})$

~~EFRsp = CCC x EFsp~~
~~EFRasp = CCC x EFasp~~
~~EFRusp = CCC x EFusp~~

Where:

$E_{imported}$ = emissions from generation of electricity imported to California (MTCO2)

$E_{exported}$ = emissions from generation of electricity exported from California (MTCO2)

"sp" denotes a specified source that is a generating facility or unit

"asp" denotes an asset-owning or asset-controlling supplier

"usp" denotes an unspecified source

~~CCC = Common Carbon Cost~~

~~EFRsp =The Electricity Fee Rate for the specified source~~

~~EFRasp = The Electricity Fee Rate for the asset-owning and asset-controlling suppliers~~

~~EFRusp = The Electricity Fee Rate for unspecified sources~~

EF_{sp} = Emission Factor for specified source in MTCO2 per MWh

EF_{asp} = Emission Factor for asset-owning and asset-controlling suppliers in MTCO2 per MWh

EF_{usp} = 0.499 MTCO2 per MWh, the default Emission Factor for unspecified sources.

(f) *Emissions Factors for ~~Generating Units or Facilities~~ Specified Sources of Imported and Exported Electricity.*

The Executive Officer shall calculate emissions factors for specified sources of imported and exported electricity that are generating units or facilities using the following methodology:

$$EF_{sp} = \frac{E_{sp}}{EG}$$

Where:

EF_{sp} = Emission Factor for specified source "sp", in MTCO2 per MWh

E_{sp} = CO2 emissions from electricity generation for a specified electric generating facility/unit for the report year (MTCO2)

EG = Net generation from a specified electric generating facility for the report year (MWh)

(1) For specified electric generating facilities/units whose operators are subject to reporting or who voluntarily report under the Mandatory Reporting Regulation, E_{sp} shall be equal to the sum of CO2 emissions directly associated with electricity generation as reported to ARB. Similarly, EG shall be the net generation reported to ARB.

(2) For specified electric generating facilities/units whose operators are not subject to Mandatory Reporting Regulation but who are subject to the Acid Rain Program (40 CFR Part 75), E_{sp} shall be equal to the amount of CO2 emissions reported to U.S. EPA pursuant to 40 CFR Part 75 for the facility in metric tons for the report year. EG shall be data reported to EIA and published in the EIA 923 Excel file for the reporting year available at http://www.eia.doe.gov/cneaf/electricity/page/eia906_920.html (the EIA data).

(3) For specified electric generating facilities whose operators do not report to ARB under the Mandatory Reporting Regulation and do not report to U.S. EPA under the Acid Rain Program, EG shall be taken from the EIA data for the reporting year. E_{sp} shall be calculated using EIA data as shown below.

$$E_{sp} = 1000 \times \Sigma(Q_{fuel} \times EF_{fuel})$$

Where:

Q_{fuel} = Heat of combustion for each specified fuel type from the specified electric generating facility for the report year (MMBtu)

EF_{fuel} = CO2 emission factor for the specified fuel type as taken from the title 17, California Code of Regulations, Chapter1 Subchapter 9, Article 2, Appendix A (kgCO2/MMBtu)

(i) *Fee Liability for Imported Electricity.*

The Executive Officer shall calculate the fee liability for each entity reporting pursuant to section 95204(g) based on the quantity of emissions from imported electricity ~~imported~~ minus the quantity of emissions from exported electricity, as follows:

FSi = ~~(EFRi x QMi)~~ CCC x ($QE_{imported}$ – $QE_{exported}$)

Where:

FSi = The Fee Liability for each entity

CCC = Common Carbon Cost

$QE_{imported}$ = Quantity of CO2 emissions from imported electricity calculated pursuant to 95203(e), in MTCO2.

$QE_{exported}$ = Quantity of CO2 emissions from exported electricity calculated pursuant to 95203(e), in MTCO2.

~~QMi = Quantity of MWh of imported electricity from each specified source, asset-owning or asset-controlling supplier, or unspecified source, as appropriate~~

~~EFRi = Electricity fee rate for each specified source, asset-owning or asset-controlling supplier, or unspecified source, as appropriate~~