

September 2, 2009

To: THE CALIFORNIA AIR RESOURCES BOARD

From: Modesto Irrigation District
Joy A. Warren, Regulatory Administrator

**Subject: MODESTO IRRIGATION DISTRICT COMMENTS ON REVISIONS TO
PROPOSED AB 32 COST OF IMPLEMENTATION FEE REGULATION**

Introduction

On August 25, 2009, the California Air Resources Board (CARB) conducted a workshop and outlined its proposed modifications to the previously proposed AB 32 Costs of Implementation Fee Regulation (the "Proposed Regulation"). The modifications would change the way electricity is covered under the proposed fee. The modified electricity proposal would cover all electricity when it is delivered to the California grid (at the bus-bar for in-state generation, and at the "first California point of delivery" for consumption in California" for imported electricity). The fee would be charged per Mega-Watt hour (MWh) to each "first deliverer." Specific regulatory language has not been issued, however, pursuant to Staff's request at the August 25 workshop, Modesto Irrigation District provides the following comments.

Background

Modesto ID is an irrigation district, organized and operated under the laws of the State of California, which undertakes both electric and water operations. It is a vertically integrated publicly owned utility providing electric services to over 110,000 customers in California's Central Valley. With regard to its electric operations, Modesto ID owns and operates facilities for the generation, transmission, distribution, purchase and sale of electric power and energy at wholesale and retail. In 2008 Modesto ID served a peak summer load of almost 650 Megawatts (MW) and had retail sales of over 2,692,757 MW-hours.

Modesto ID serves this load through a mixture of owned and purchased resources, including wind, large and small hydro, natural gas, and coal generation. In addition to ownership interests in significant hydroelectric generation at Don Pedro Reservoir, Modesto ID owns and operates several natural gas generation facilities. Modesto ID purchases power from a variety of resources and suppliers, including renewable resources firmed by the supplier. These purchases are delivered within Modesto ID's service territory, and outside of its service territory at various points both within and out of state. Modesto ID is also a member of M-S-R Public Power

Agency, a joint powers authority which purchases power from wind energy projects in the Pacific Northwest and owns a share of the thermal San Juan Project in New Mexico. Modesto ID's published Power Content Label, incorporating the state's average resource mix for all unspecified purchased power, identifies the following resource mix: 15% eligible renewables and 18% large hydroelectric, 33% coal, 33% natural gas and 1% nuclear.

Natural gas for Modesto ID's in-area generation plants is procured from a variety of suppliers and is delivered to Modesto by Pacific Gas & Electric Company (PG&E). The gas generally originates out of state and is delivered through pipelines owned by various entities, ultimately reaching PG&E pipelines connected to Modesto ID generating facilities. J.P. Morgan Ventures Energy Corp. provides scheduling and balancing services and acts as Modesto ID's default supplier, to ensure that gas will be available at a variable, indexed-based price.

Comments

Modesto ID Supports Direct Calculation Of The Fee For The Electricity Sector.

Staff's proposal to treat all electricity similarly for purposes of the Fee, and to invoice the Fee directly to the electricity sector entities, will eliminate the fuel-delivery pass-through of costs. Modesto ID believes that if the revised regulations contain clear language and a process to ensure that no fuel based fee charges would be passed through to electric generators, this is a far more transparent approach.

A Mechanism Should Be Included In The Regulation To Ensure that Emissions Are Not Double-Counted for Fee Calculations.

A proper balance needs to be established between ensuring that the Fee is broadly distributed amongst California GHG sources and protecting against application of the Fee associated with electricity generation unrelated to meeting California energy needs. Modesto ID concurs with the comments submitted by NCPA that imposing the Fee on all imported electricity as well as all electricity generated in California rather than simply on net imports (which focus on the actual electricity consumed in California), unduly burdens the electricity sector and California electric ratepayers by resulting in a payment of the Fee on electricity not consumed in California. This outcome is not mandated by the provisions of AB 32 and is clearly inconsistent with the stated purpose of the Fee in the Initial Statement of Reasons (ISOR). Modesto ID urges Staff to consider a resolution to this problem that would involve the netting of electricity imports and exports to ensure that no generation is double-counted in the Fee calculations and that the Fee is only applied to electricity consumed in California. This will in turn assure that California's ratepayers are not overly burdened and charged for emissions unrelated to their load.

Provisions Should Be Included In The Regulation For A Dispute Resolution Procedure To Be Applied Before Late Fees Or Penalties Are Assessed.

Modesto ID continues to urge Staff to consider including within the Fee Regulations some clear process by which parties obligated to pay the Fee can seek corrections to or resolve disputes regarding the calculation of the Fees invoiced or to be invoiced. Modesto ID believes that whether this process occurs before a final invoice is issued or after is less important than ensuring that a process is clearly set forth.

Section 95205 provides that CARB will issue a Fee determination notice and if the Fee is not paid within 60 days a late fee set by the Executive Officer shall be imposed. There is no provision for the Fee paying entity to challenge the calculated Fee or any of the input data underlying such Fee, or work through potential resolution with CARB. Further, Section 95206 provides for the imposition of enforcement penalties for each day the Fee is not paid. Since resolution of such disputes can often take a lengthy period of time due to information gathering, schedule coordination and other issues, provisions should likewise be included to defer such penalties during the periods disputes regarding the underlying “violation” are going through resolution.

Dispute resolution procedures should be applied to all violations potentially acting as a basis for enforcement penalty. For example, in addition to Fee calculations, Section 95206 (c) imposes a penalty for each day a report contains incomplete or inaccurate information. Provision should be made for CARB to notify the submitting party that its report is deemed incomplete and allot time to correct the deficiency or confer with staff to resolve the dispute over whether there is a deficiency, before a penalty is imposed. In addition, penalties for such reporting deficiencies under the Fee Regulation must not duplicate or interfere with enforcement activities under the already existing Reporting Regulations.

Some Certainty Must Be Provided As To The Level Of Costs To Be Incurred By California’s Electric Ratepayers Under The Fee Regulation.

As Modesto ID has noted in previous comments, the estimated costs to be covered by the Fee are just that – estimated. There are no assurances that the Fee will remain at the estimated level. Though the amount is relatively small now when viewed in isolation, it will still have a cumulative impact on ratepayers that are also facing increased costs to deal with the additional requirements of AB 32, as well as other State and Federal programs. California citizens are already facing higher costs of living, a reduction of government services, and higher unemployment. Many businesses in California struggle to operate and compete with very small margins. Even a small additional impact to the bottom line from the Fee will be felt.

Modesto ID urges Staff to consider including mechanisms within the Fee Regulations that would ensure that the Fees invoiced remain fairly predictable, avoiding large price jumps or fluctuations. Various mechanisms that could be considered include an overall Fee limit, a maximum Fee increase trajectory, or any other way of evening out the impacts to State ratepayers.

Conclusion

Modesto ID appreciates the opportunity to provide these comments and encourages CARB to consider the issues raised herein and provide further 15-day language addressing them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Joy Warren", with a long horizontal flourish extending to the right.

Joy Warren
Regulatory Administrator

Copy: Jon Costantino
Jeannie Blakeslee