

**BEFORE THE AIR RESOURCES BOARD  
OF THE STATE OF CALIFORNIA**

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS  
ON THE CALIFORNIA AIR RESOURCES BOARD PROPOSED REGULATION  
FOR MANDATORY REPORTING OF GREENHOUSE GAS EMISSIONS**

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The Alliance for Retail Energy Markets (“AReM”)<sup>1</sup> respectfully submits the following comments with regard to the California Air Resources Board (“ARB”) Staff Report entitled “Proposed Regulation for Mandatory Reporting of Greenhouse Gas Emissions Pursuant to the California Global Warming Solutions Act of 2006 (Assembly Bill 32)” (the “Staff Report”).

**I. Background**

The Staff Report presents the ARB staff’s proposed Mandatory Greenhouse Gas (“GHG”) Reporting Regulation pursuant to the California Global Warming Solutions Act of 2006 (the “Act”). The Act requires the ARB to develop a regulation for the reporting of GHGs by January 1, 2008. This regulation was developed through an extensive public processes involving multiple stakeholders, State agencies, and the public. AReM is generally supportive of the Staff Report and the attached Proposed Regulation Order. We offer certain limited comments herein with regard to the topics of confidentiality and the attribution of GHG emissions to purchases from existing resources based on default emission factors.

As noted in the Executive Summary, “The proposed GHG reporting regulation requires emissions reporting from facilities that account for approximately 94 percent of the total carbon dioxide (CO<sub>2</sub>) produced in California from industrial and commercial stationary sources. Additional sources of GHG emissions will be accounted for through other inventory mechanisms such as the ARB’s inventory model for motor vehicles, and are not included in

this regulation. The ARB’s staff has proposed that emissions reporting occur at the facility level, consistent with other mandatory programs. To support future program development, the regulation also would require reporting of entity identification information for the broader entities that own and operate the facilities that report. The ARB will provide electronic reporting tools to assist with mandatory reporting, and the tools will provide a mechanism for reporting additional voluntary entity-wide data for those who want to report this additional information.”<sup>2</sup>

Although the focus of the Staff Report is on emissions from industrial and commercial stationary sources, particular requirements apply to the electric power sector to meet the requirements of the Act. Specifically, utilities and other load-serving entities (“LSEs”) such as electric service providers (“ESPs”) and community choice aggregators would be required to report certain electricity transactions, including purchases, sales, imports, exports, and exchanges.<sup>3</sup> As the leading representative of ESPs that are active in California’s direct access market, AReM was an active participant in the California Public Utilities Commission (“CPUC”) and California Energy Commission (“Energy Commission”) joint process that examined electric industry GHG reporting rules and welcomes this opportunity to comment on the proposed rules contained in the Staff Report.

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<sup>1</sup> AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of particular members or any affiliates of its members with respect to the issues addressed herein.

<sup>2</sup> Staff Report, at p. iii.

<sup>3</sup> Staff Report, at p. iv.

AReM fully supports the State's goals of limiting and reducing GHG emissions, and the ESPs that constitute AReM's membership stand ready to do their part to help the State achieve those goals. AReM's primary objective is to assist the ARB in its development of rules for GHG emissions reporting and tracking that meet the requirements of regulators without unfairly disadvantaging ESPs or imposing unnecessarily complex or burdensome reporting-related requirements on such entities. To that end, AReM provided extensive comments on the CPUC and Energy Commission Staff Proposal,<sup>4</sup> including recommendations for modifying and clarifying certain of the staff-proposed rules.<sup>5</sup> Staffs of the CPUC and the Energy Commission prepared the joint Staff Proposal to assist in development of a joint recommendation to be presented to the ARB. It contained a reporting and verification protocol with in-depth requirements for the electric sector. AReM commented on the Proposed Decision issued by the CPUC in that proceeding,<sup>6</sup> noting that it generally either adopted AReM's recommendation or otherwise resolved the issue in a manner that addresses AReM's objections and concerns. AReM also offered certain additional comments with suggested revisions to the Proposed Decision.

This led to the CPUC's issuance of its Decision ("D.") 07-09-017.<sup>7</sup> In that decision, the CPUC and the Energy Commission recommended that the ARB adopt the proposed regulations contained in Attachment A to the order, as reporting and verification requirements

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<sup>4</sup> *Joint California Public Utilities Commission and California Energy Commission Staff Proposal for an Electricity Retail Provider GHG Reporting Protocol*, issued June 12, 2007.

<sup>5</sup> *Comments of the Alliance for Retail Energy Markets on Staff Reporting Proposal*, filed July 2, 2007 in CPUC Docket R. 06-04-009.

<sup>6</sup> *Comments of the Alliance for Retail Energy Markets on the Proposed Decision on Reporting and Tracking of Greenhouse Gas Emissions in the Electricity Sector*, filed August 24, 2007 in CPUC Docket R. 06-04-009.

<sup>7</sup> *Interim Opinion on Reporting and Verification of Greenhouse Gas Emissions in the Electricity Sector*, issued September 7, 2007.

applicable to retail providers and marketers in the electricity sector. Key elements of the CPUC/CEC recommendations have been incorporated into the ARB's proposed regulation.<sup>8</sup> The Staff Report notes that, "ARB staff has incorporated these recommendations into the regulation and accompanying nonregulatory guidance"<sup>9</sup> and provides the following summary of the rules applicable to electricity retail providers:

Electricity Retail Providers. Retail providers would report the emissions above for the generating facilities they operate, and fugitive SF6 emissions related to the transmission and distribution systems they maintain. Under the proposal retail providers would also report imported and exported power in megawatt hours, by source when known. There are additional requirements for retail providers related to implementing a possible load-based approach. These include reporting ownership share, renewable energy contract dates, determination of native load power, in-state power purchases and sales, out-of-state owned power sold to out-of-state entities, and other information. Attachment C of this document explains the staff proposal for performing calculations related to this sector.

## II. Confidentiality

As entities that are in direct competition with each other and with the IOUs over a currently limited universe of customers, AReM's members are particularly sensitive to the potential disclosure of market sensitive information regarding their wholesale procurement activities. AReM therefore raised this issue in its comments on the CPUC's Proposed Decision in R.06-04-009.<sup>10</sup> The CPUC dealt with this concern as follows:

AReM requests that the reporting protocol include provisions to maintain the confidentiality of market-sensitive information and to avoid disclosure of detailed transaction data. AReM recommends that the reporting protocol include the "window of confidentiality concept" adopted by the Public Utilities Commission in D.06-06-066.

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<sup>8</sup> Staff Report, at p. 34.

<sup>9</sup> Staff Report, at p. vi.

<sup>10</sup> *Comments of the Alliance for Retail Energy Markets on Staff Reporting Proposal*, filed July 2, 2007 in CPUC Docket R. 06-04-009, at pp. 3-4.

While we agree with AREM that the early release of market-sensitive information could adversely affect retail providers, we do not make recommendations to ARB regarding the extent to which the data reported to ARB should be treated confidentially. AREM should address its concerns about the release of market-sensitive information in the ARB process that is currently developing confidentiality requirements. In adopting final reporting regulations, ARB will determine what, if any, information will be treated confidentially.<sup>11</sup>

The Staff Report directs that retail providers are required to submit a complete GHG emissions data report to the ARB no later than June 1 of each calendar year beginning in 2009, for emissions occurring in the previous calendar year.<sup>12</sup> In its discussion on confidentiality concerns, the Staff Report notes that stakeholders subject to reporting have expressed concern for the protection of commercially sensitive data, while community organizations have urged a high level of transparency for the data used to calculate emissions. The ARB indicates that it must balance these competing needs. Further, as indicated in the proposed regulation, the ARB will handle sensitive information and claims of confidentiality by following the procedures specified in the ARB's confidentiality regulations, which are contained in title 17, California Code of Regulations, sections 91000 to 91022. These regulations allow companies who submit information to the ARB to claim such information as confidential. The regulations also specify a process for the ARB's handling of such information. All information that is designated as confidential will be handled in strict accordance with the ARB confidentiality regulations.<sup>13</sup> The Proposed Regulation Order would adopt a new Subchapter 10, Article 1, sections 95100 to 95133, title 17, California Code of Regulations that would include the following section on confidentiality:

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<sup>11</sup> D.07-09-017, at pp. 56-57.

<sup>12</sup> Staff Report, at p. A-24.

**95106. Confidentiality.**

(a) The following information is public information and shall not be designated as confidential: estimates of direct facility emissions of any greenhouse gases by major source category (combustion, process, fugitive).

(b) Except as provided in section 95106(a), any person submitting information to the ARB pursuant to this article may designate such information as confidential because it is a trade secret or otherwise exempt from public disclosure under the California Public Records Act (Government Code section 6250 et seq.). All requests for confidentiality shall be handled in accordance with the procedures specified in title 17, California Code of Regulations, sections 91000 to 91022.

NOTE: Authority cited: Sections 38580, 39600, 39601, 41511, 38510, and 38530, Health and Safety Code. Reference: Sections 38580, 39600, 41511, and 38530, Health and Safety Code.<sup>14</sup>

The ARB should consider the use of greater specificity in its general reference to Government Code section 6250 et seq. AReM assumes that this actually refers to Government Code section 6254.7(d), which provides as follows: “Except as otherwise provided in subdivision (e) and Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code, trade secrets are not public records under this section. ‘Trade secrets,’ as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.” Specific citation to this provision would be desirable and help to clarify precisely what section of the Government Code is relevant to the confidentiality issue.

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<sup>13</sup> Staff Report, at p. 22.

<sup>14</sup> Staff Report, at p. A-29.

AReM believes that any reporting program established must maintain the confidentiality of market sensitive information and avoid disclosure of detailed transaction data. AReM notes that the criteria of transparency need not be compromised by maintaining confidentiality of elements of the individual reports of retail providers that include market-sensitive data. Aggregated data can be made public that masks individual ESPs' individual market activities and procurement needs while providing the necessary assumptions for derived emission factors.

### **III. Emissions from Unspecified Sources**

Emissions associated with specified sources can be attributed to the retail provider based on the generation details of the facility from which the power originated. Emissions associated with unspecified sources will be assigned default emission factors. In its discussion of this topic, the Staff Report notes as follows:

Stakeholders have raised concerns about the contract shuffling provisions of the CPUC/CEC recommendations, including the default value of 1,100 lbs CO<sub>2</sub>/MWh. Some commenters believe more time should be given to sort out the appropriate value for default emission factors by region. Others have advised ARB that specifying the numeric value of this default factor may immediately impact power markets and power prices. Specifically, setting this value encourages source specification by those generators that emit less than this value, which could potentially reduce participation in the CAISO markets. This potential effect on the CAISO markets could occur immediately after ARB sets this value, though ARB will not begin using the default emission factor until late 2009 or early 2010 when the database calculates emissions from the information reported for the 2008 period. More accurate factors could become available in the interim, and the CPUC/CEC protocol recommends that a comprehensive review of these reporting requirements be undertaken by ARB in 2010, prior to the commencement of a regulatory scheme in 2012.

Specification of the interim default emission factor of 1,100 lbs CO<sub>2</sub>e/MWh for unspecified purchases has broad consequences -- influencing emission calculations related to unspecified sources, new contracts with large hydro and



nuclear facilities, and potentially how null power is treated. It would also reduce ambiguity, act as a preventive measure for contract shuffling, and encourage source specification. ARB staff has opted to include the interim factor in this staff report (Attachment C), and invites further comment. If California adopts a trading scheme based on the first-seller approach recommended by the Market Advisory Committee, some of the issues related to this factor in the context of load-based reporting (e.g., impact on the CAISO markets) would become moot points.”<sup>15</sup>

This issue was also addressed by the CPUC when its proposed decision recommended that the ARB attribute emissions associated with any purchases through new contracts with existing specified sources based on the default emission factor of the region in which the specified source is located. However, “based in large part on comments on the proposed decision, the CPUC concluded that the largest concern about contract shuffling associated with new contracts with existing sources arises with new contractual arrangements with existing nuclear or large hydro plants.”<sup>16</sup>

AReM believes that attributing GHG emissions to purchases from existing resources based on default emission factors would interfere with, and therefore should be excluded from, the CPUC’s resource adequacy requirements. Pursuant to those requirements, LSEs are required to contract for capacity from specified resources that meet certain technological, operational, and location requirements. To the extent an LSE will be attributed GHG emissions for “purchases” of energy from the same resource based on a default emission factor (e.g., because the purchase is from an existing resource under a new contract) and the default factor is higher than the resource’s actual emissions, the LSE could be penalized to the extent the resource actually produces and delivers power to the grid.

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<sup>15</sup> Staff Report, at pp. 36-37.

<sup>16</sup> D.07-09-017, at p. 22.

Given the limited pool of resources that can be used to meet resource adequacy requirements, some LSEs could be forced to choose between being penalized by the CPUC for noncompliance with resource adequacy requirements or being penalized by the ARB for not attaining required reductions in GHG emissions. While reducing GHG emissions associated with the electricity sector is a very important goal, AReM believes that maintaining the reliability of the State's electricity system should take precedence, at least in the near term. Therefore, AReM recommends that the ARB should exclude resources procured to meet resource adequacy requirements from the default emission factor assignment for new contracts with exiting resources.

#### **IV. Conclusion**

For the foregoing reasons, AReM urges the ARB to modify the Staff Report and the proposed rules to provide greater specification as to the Government Code section that provides confidentiality protection to LSEs that file reports to the ARB. AReM further notes that attributing GHG emissions to purchases under new contracts from existing resources, based on default emission factors, would impair the CPUC's resource adequacy program. Therefore, AReM recommends that resource adequacy contracts should be excluded from this proposed treatment by the ARB. AReM's thanks the ARB for its attention to these comments.

Respectfully submitted,

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