

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

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
COMMENT ON THE SECOND 15-DAY PROPOSED CHANGES TO
THE REGULATION FOR THE MANDATORY REPORTING OF
GREENHOUSE GAS EMISSIONS**

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY..... 1

**II. “UNSPECIFIED SOURCE” DEFINITION IN SECTION 95102(a)
SHOULD BE SIMPLIFIED. 2**

**III. SECTION 95107(c) SHOULD CLARIFY THE TREATMENT OF PRE-
VERIFICATION ERRORS..... 3**

**IV. SECTION 95111 ON ELECTRIC POWER ENTITIES SHOULD BE
AMENDED..... 4**

**A. Redundant definitions in section 95111(b)(5) should be deleted to
avoid confusion..... 4**

**B. The calculation of the RPS adjustment in section 95111(b)(5) should
be retained but modified. 6**

**C. Specified source reporting requirements in section 95111(g)(4) should
be included in review of resource shuffling in 2012..... 7**

V. CONCLUSION 9

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I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority (“SCPPA”)¹ respectfully submits this comment on the proposed changes to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (“Regulation”) released by the California Air Resources Board (“ARB”) for 15-day public comment on September 12, 2011 (“Proposed Changes”).

The Proposed Changes make significant improvements to the Regulation. SCPPA greatly appreciates the way in which ARB staff addressed many of the issues raised by SCPPA in previous comments to the ARB.

However, SCPPA recommends limited further revisions to improve the clarity and efficacy of certain portions of the Regulation. In summary, SCPPA recommends that:

- The definition of “unspecified source” in section 95102(a)(399) should be simplified by defining it as a source of imported electricity that does not qualify as a “specified source.”
- When determining whether to bring enforcement proceedings for an inaccurate report under section 95107(c), the ARB should take into account whether the error was a minor one that was identified and corrected during the verification process.

¹ SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, the Imperial Irrigation District, Pasadena, Riverside, and Vernon.

- The terms defined in section 95111(b)(5) that are also defined in section 95852(b)(1)(B) of the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation (“Cap and Trade Regulation”) should be deleted from section 95111(b)(5) of the Regulation to avoid confusion and redundancy.
- The calculation of the RPS adjustment in section 95111(b)(5) should be revised to use the correct term, “eligible renewable energy resource,” rather than the superseded term “California eligible renewable resource,” to reflect the change to section 95852(b)(4)(A)(2) of the Cap and Trade Regulation, and to define “EF_{unsp}”.
- Section 95111(g)(4) should be reviewed in the context of the resource shuffling provisions in the Cap and Trade Regulation, in a separate rulemaking in 2012.

Most of these proposed revisions, discussed in detail below, can be made without further 15-day public comment, as they are “nonsubstantial or solely grammatical in nature” under section 11346.8(c) of the Government Code. If the ARB considers that any of the changes do not fall into this category and cannot be made at this stage because they would require further 15-day public comment, those changes should be addressed in a supplemental rulemaking in 2012 and the resolution on the Regulation that is prepared for the ARB to adopt at the October 20-21 board meeting (“Resolution”) should include a direction regarding the future changes.

II. “UNSPECIFIED SOURCE” DEFINITION IN SECTION 95102(a) SHOULD BE SIMPLIFIED.

The definition of “unspecified source” in section 95102(a)(399) (p. 68) has been amended several times and remains somewhat uncertain. As all imported electricity must be from either specified or unspecified sources, only one of those two terms requires a detailed definition. The other term can then be defined derivatively as all other imported electricity. The

detailed definition of “specified source” should be retained, and electricity from “unspecified sources” should be defined as electricity imports that are not from specified sources. This would reduce the potential for confusion and competing interpretations.

§ 95102. Definitions.

(a)(399) “Unspecified source of electricity” or “unspecified source” means a source of electricity procured and delivered into the state of California that does not qualify as a specified source, without limitation at the time of transaction to a specific facility’s or unit’s generation. Unspecified sources contribute to the bulk system power pool and typically are dispatchable, marginal resources that do not serve baseload.

III. SECTION 95107(c) SHOULD CLARIFY THE TREATMENT OF PRE-VERIFICATION ERRORS.

The Proposed Changes insert a new sentence in section 95107(c) (p. 94) providing that enforcement action will not be initiated under section 95107(c) until after verification. But the ARB notice and summary of the Proposed Changes notes, at page 6, that “this addition is not intended to relieve reporting entities of the obligation to submit accurate reports by the reporting deadline.” Presumably the ARB is still able to take enforcement action (after verification) against an entity for an error in a report that is corrected during verification.

SCPPA members will make every effort to ensure their reports are accurate. However, it is inevitable that some minor errors will occur, particularly in the first years of reporting under the revised Regulation when reporting entities are unfamiliar with the new requirements.

The Regulation also envisages that errors will be found and reports will be corrected during the verification process. Section 95131(b)(9) (p. 234) provides for a revised report to be submitted after the verifier has checked data and prior to completion of verification.

Errors that are corrected during verification are inconsequential. The primary purpose of the Regulation is to support the cap and trade program. Errors that are corrected during verification do not affect the calculation of an entity's compliance obligation under the Cap and Trade Regulation, given that calculations of compliance obligations under the Cap and Trade Regulation are based on verified reports (§ 95853 (p. 107) and § 95855 (p. 109) of the Cap and Trade Regulation).

By including the requirement to wait until after verification to initiate enforcement action for errors in a report, the implication is that the ARB will take into account, in deciding whether or not to pursue enforcement, whether the error has been corrected during verification. This should be made explicit in section 95107(c).

§ 95107. Enforcement.

(c) Each metric ton of CO₂e emitted but not reported as required by this article is a separate violation. ARB will not initiate enforcement action under this subparagraph until after any applicable verification deadline for the pertinent report. In deciding whether to initiate enforcement action under this subparagraph ARB will take into account the cause of the under-reporting and whether the under-reporting was corrected during verification of the pertinent report pursuant to section 95131(b)(9).

IV. SECTION 95111 ON ELECTRIC POWER ENTITIES SHOULD BE AMENDED.

A. Redundant definitions in section 95111(b)(5) should be deleted to avoid confusion.

Section 95111(b)(5) (p 115) on the calculation of covered emissions defines the following terms that are also defined, somewhat differently, in section 95852(b)(1)(B) (p. 89) of the Cap and Trade Regulation:

- CO₂e_{covered}
- CO₂e_{unsp}, referred to as CO₂e_{unspecified} in the Cap and Trade Regulation

- CO₂e _{sp}, referred to as CO₂e _{specified} in the Cap and Trade Regulation
- CO₂e _{sp-not covered}, referred to as CO₂e _{specified-not covered} in the Cap and Trade Regulation
- CO₂e _{RPS adjust}, referred to as CO₂e _{RPS_adjustment} in the Cap and Trade Regulation
- CO₂e _{QE adjust}, referred to as CO₂e _{QE_adjustment} in the Cap and Trade Regulation
- CO₂e _{linked}

There is potential for confusion if the same terms are defined differently in the two regulations. The problem should be solved by deleting the definitions from section 95111(b)(5). They do not provide any information that is not set out in the Cap and Trade Regulation or in other parts of section 95111. Confusion may be caused by the fact that the subscripts as well as the definitions are slightly different from those used in the Cap and Trade Regulation (e.g., “CO₂e _{unsp}” instead of “CO₂e _{unspecified}”).

In addition, the definition of “CO₂e _{RPS adjust}” in section 95111(b)(5) uses the incorrect term “California eligible renewable energy resource” instead of the defined term “eligible renewable energy resource.”

The requirement to report the information needed to calculate the compliance obligation can be expressed in the Regulation by referring to section 95852(b)(1)(B) of the Cap and Trade Regulation as follows:

§ 95111. Data Requirements and Calculation Methods for Electric Power Entities.

(b)(5) *Calculation of covered emissions.* For imported electricity with covered emissions as defined pursuant to section 95102(a), the electric power entity must calculate and report covered emissions pursuant to the equation in section 95852(b)(1)(B) of the Cap-and-Trade Regulation and include ~~the following information:~~ on the number of annual metric tons of CO₂e in each of the following categories, as defined in section 95852(b)(1)(B) of the Cap-and-Trade Regulation: CO₂e _{unspecified}, CO₂e _{specified}, CO₂e _{specified-not covered}, CO₂e _{RPS adjustment}, CO₂e _{QE adjustment}, and CO₂e _{linked}. The calculation of the CO₂e _{RPS adjustment} is further defined below. ...

B. The calculation of the RPS adjustment in section 95111(b)(5) should be retained but modified.

Section 95111(b)(5) includes more information on the calculation of the RPS adjustment than is included in section 95852(b)(1)(B) of the Cap and Trade Regulation. The formula for the RPS adjustment and the definitions of the terms used in the formula should be retained, but corrected to remove certain errors.

First, the definition of MWh_{RPS} in section 95111(b)(5) (p. 116) uses the term “California eligible renewable resource.” This term is not correct. Previous versions of the Regulation used and defined the term “California eligible renewable resource” but this definition has been deleted. The newly defined term in the Proposed Changes to the Regulation is “eligible renewable energy resource” (§ 95102(a)(124), p. 28). This term should be used throughout the Regulation. Referring to “California” resources is particularly confusing in the context of section 95111(b)(5), which addresses imported electricity.

Second, the definition of MWh_{RPS} should be revised to correctly reflect the changes to section 95852(b)(4)(A)(2) of the Cap and Trade Regulation (p. 92). The definition of MWh_{RPS} in the Regulation currently refers only to energy that is “procured” by the reporting entity. However, the RPS adjustment will be utilized by the entity that is importing firm energy in place of the renewable energy that could not be imported as a direct delivery. The entity that is importing firm energy may be the same as the entity that procured the renewable energy, or it may be a separate entity that is importing the firm energy on behalf of the entity that procured the renewable energy. Section 95852(b)(4)(A)(2) (p. 92) of the Cap and Trade Regulation was amended to recognize this type of arrangement by adding the words “or have a contract to import electricity on behalf of a California entity that has ownership or contract rights to the electricity generated by the eligible renewable energy resource, as verified under MRR.” This type of

arrangement should be reflected in the definition of MWh_{RPS} in section 95111(b)(5) of the Regulation.

Lastly, section 95111(b)(5) defines “AF” as “ EF_{unsp} ”, but does not define “ EF_{unsp} ”. The term “ EF_{unsp} ” should be used directly in the formula and should be defined consistently with the other definitions of this term in section 95111.

To address these issues, the RPS adjustment in section 95111(b)(5) should be revised as follows:

§ 95111. Data Requirements and Calculation Methods for Electric Power Entities.

(b)(5) *Calculation of covered emissions.* ...

$$CO_2e_{RPS_adjustment} = MWh_{RPS} \times EF_{unsp} \cdot AF$$

Where:

MWh_{RPS} = Sum of MWh generated by each California-eligible renewable energy resource located outside of the state of California, procured by the reporting entity or imported on behalf of a California entity that has ownership or contract rights to the electricity generated by the eligible renewable energy resource, registered with ARB pursuant to section 95111(g)(1), and meeting requirements pursuant to section 95852(b)(4) of the Cap-and-Trade Regulation.

$AF = EF_{unsp} =$ Default emissions factor for unspecified sources calculated consistent with section 95111(b)(1) (MT CO₂e/MWh)

C. Specified source reporting requirements in section 95111(g)(4) should be included in review of resource shuffling in 2012.

Section 95111(g)(4) (p. 126) sets out additional reporting requirements for specified sources that appear to relate to resource shuffling. SCPPA has significant concerns with the resource shuffling provisions in the Cap and Trade Regulation and recommends that these provisions be deferred to another proceeding in 2012 in which they can be evaluated more fully.

The resource shuffling provisions in the Regulation should be included in the review of the resource shuffling provisions in the Cap and Trade Regulation, to ensure that the resource shuffling-related reporting requirements are clear and appropriate.

One key issue the review should address is whether certain information reported under the Regulation could lead to the importer being charged with resource shuffling under the Cap and Trade Regulation.

Another issue arises in section 95111(g)(4)(A) as currently drafted. This section requires reporting of situations in which more than 80 percent of net generation from a specified facility was imported into California in 2009 or 2010. The 80 percent requirement seems arbitrary and is very high, considering that any one California importer may take only a small fraction of the electricity generated by a large out-of-state facility.

The Resolution should include the following wording to ensure that section 95111(g)(4) of the Regulation is evaluated in full together with the Cap and Trade Regulation resource shuffling provisions:

BE IT FURTHER RESOLVED THAT the Board directs the Executive Officer to include section 95111(g)(4) in the public review of the resource shuffling provisions in the Cap-and-Trade Regulation for the purpose of ensuring that appropriate reporting requirements support the resource shuffling provisions as they may be revised pursuant to the public review.

V. CONCLUSION

SCPPA urges the ARB to consider these comments in finalizing the amendments to the Regulation. SCPPA appreciates the opportunity to submit these comments to the ARB.

Respectfully submitted,

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