In the Mandatory Report in Rule Section 95111 (g)(4)(A) regarding specified import sources, CARB’s identifies parameters that would define a historical commitment of an out-of-state resource to serve California loads and resolve resource shuffling concerns based on existing and renegotiated contracts. The section states:

“A) Electricity historically consumed in California. Specified source of electricity has been reported in a 2009 verified data report and is claimed for the current data year by the same electricity importer, based on a written power contract or status as a GPE in effect prior to January 1, 2010 that remains in effect, or that has been renegotiated for the same facility or generating unit for up to the same share or quantity of net generation within 12 months following prior expiration. When imported electricity from a specified facility reported in a 2009 data report is greater than 80 percent of net generation that year, any subsequent GPE for the facility or purchasing-selling entity with a written power contract may claim it as a specified source for up to the full amount of net generation measured at the busbar in the current data year.”

Resource-shuffling’ of electricity imports (defined as an effort to claim a facility-specific emission factor for a resource that has not historically served California load, or an effort to claim the default emission factor for a high-emission resource that has previously served load) is explicitly prohibited and characterized as a form of fraud.

CARB attempts to differentiate resources that have historically served load in California versus other states based on “contracts” in order to prevent shuffling of cleaner resources to California. However, marginal resources have historically served load both in and outside California based on prevailing market prices, and have contracted freely based on the need for capacity and energy throughout the region. Defining a point in time (such as January 1, 2010) at which a contract represents a historical commitment to California or other state is largely arbitrary and discriminatory. Further, requiring the re-contracting of all or a portion of the resource in order to receive the resource-specific emission rate would unnecessarily restrict the commercial hedging options for resource output, and may ultimately lead to higher costs and reduced market efficiency for California consumers.

CARB should consider an alternative to the existing and re-contracting requirement, which would exempt gas-fired resources generally from resource shuffling concerns based on their role as the marginal resource for the region’s power markets. Gas-fired generators which have historically switched between serving in-state and out-of-state loads depending on where peak conditions were occurring at the time, and would

continue to do so while retaining the use of the their plant-specific emission rate as verified through CARB registration as a specified source and NERC e-Tags. CARB would instead focus on addressing the shuffling of non-gas fired resources, where the potential for emissions leakage is greatest.

If CARB determines that a historical contract linkage for specified source sales to California is appropriate, it should consider a longer time period over which to establish the baseline, allow for portfolio sales, and reduce restrictions on re-contracting to maintain the specified source emission rate. Establishing historical sales to California based on a single year (2009) could discriminate against resources that may have made significantly higher California sales in previous years, but due market conditions, maintenance or other situational factors had lower sales in 2009. It is recommended that CARB consider an alternative metric such as the highest sales in the last 10 years, or similar timeframe.

Second, entities with multiple units within a generation portfolio may not identify specific units in a power sales contract. Nonetheless, specification based on historical sales from a portfolio of resources should be permitted. This is particularly feasible where all units within the portfolio have the same emission rate, such as a fleet of efficient gas-fired resources, and where those sales may be tracked to California via e-Tags.

Finally, requiring re-contracting with the same California counterparty within 12 months is overly restrictive, and could increase costs for California consumers. CARB should allow sales into the CAISO spot markets to qualify as a “contract”, and/or a significantly longer time frame such as 5 years for re-contracting. Ultimately, California is best served by a flexible specification protocol which does not overly restrict commercial transactions, while focusing on those sources with the highest leakage potential.