

April 24, 2009

**To: THE CALIFORNIA AIR RESOURCES BOARD
Office of Climate Change**

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

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

Introduction

The California Air Resources Board (CARB) is developing a new “Administrative Fee” to “recover the costs of implementation of AB 32 program expenditures.” On April 17, 2009, CARB published a revision to its proposed Regulation, “Fees for Sources of Greenhouse Gas Emissions.” A final workshop was held for public input on the Proposed Regulation on April 20th. CARB set April 24 as the deadline for written comments on the revised Proposed Regulation, noting that its draft will be provided to Office of Administrative Law the following Tuesday to prepare for publication and the beginning of a formal public comment period.

The revised Proposed Regulation contains a significant and dramatic departure from policy previously professed by CARB, namely the inclusion of imported electricity which will now be subject to the Administrative Fee. CARB staff explained this addition by declaring that their previous concerns about the feasibility and legality of imposing the fee on electricity imports have now been resolved.¹

The addition of electricity imports represents over 12% of the Administrative fee. This important change should not be rushed into print; rather this newly added language should be fully vetted through a sincere, meaningful stakeholder process. CARB must ensure that if imported electricity is made subject to the Administrative Fee it is done fairly and equitably without undue harm to the electricity sector.

The inclusion of imported electricity completely changes the impact of the Regulation on the Modesto Irrigation District (Modesto ID). Because of the very short comment period provided to stakeholders, Modesto ID can at this time only identify issues and raise questions regarding the Proposed Regulation and this new proposed language that has the potential to negatively affect Modesto ID. Modesto ID provides its summary comments below.

¹ It would be helpful to have a more thorough explanation of support for this “resolution” for stakeholders to consider and comment on before the Proposed Regulation is published.

Modesto ID also joins in the comments on the Proposed Regulation submitted by M-S-R Public Power Agency.

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 and Questions

- The Proposed Regulations should make clear that each emission is only measured one time for purposes of the Administrative Fee calculations, and more specifically that each therm of natural gas is only assessed a single Fee charge.

Section 95201 requires that the Administrative Fee provisions apply to "all public utility gas corporations operating in California" and that Fees shall be paid for each therm of natural gas delivered to any end user. It also requires that the provisions apply to "all owners or operators of interstate and intrastate pipelines that distribute natural gas directly to end users" applying Fees for each therm of natural gas directly distributed to end users by such pipelines. End users include both the point to which natural gas is delivered for consumption and a publicly owned natural gas utility that further distributes natural gas for consumption. These provisions must be clarified to ensure that a therm of natural gas delivered to an electric utility for use at a

generation facility through more than one pipeline owner or natural gas corporation does not incur multiple levels of Fees, all of which would certainly be passed through to the ratepayer.

Thus, for example, if Supplier X located outside of California provides natural gas to one of Modesto ID's generating facilities, the gas would be delivered from the Supplier through interstate pipelines owned by one or more different entities and ultimately to PG&E pipelines and through those pipelines to Modesto. Under the terms of the Proposed Regulation a Fee could be assessed on the gas delivered from the interstate pipeline to PG&E, a natural gas corporation that then distributes the gas to the end-user, Modesto ID (Section 95201(a)(1)(B) and Section 95202(a)(33)(B).) Another Fee could be assessed for PG&E's distribution to Modesto ID (Section 95201(a)(1)(A) and Section 95202(a)(33)(A).)

There is no basis under AB 32 for charging separate Administrative Fees at each point of delivery, or for charging more than one time for the same therm of gas. That therm of natural gas can only be combusted one time. The way the Proposed Regulations are currently drafted there is a potential mis-interpretation that could lead to such double counting.

- If the Proposed Regulation imposes an Administrative Fee on imported electricity, netting or offset provisions must be included to ensure that electricity exported out of, or simply wheeled through, California is not subject to such Fee.

The Proposed Regulation applies to retail providers and marketers of imported electricity, charging a Fee for each megawatt-hour of imported electricity. However, there is no provision to offset or net the electricity imports into California against electricity exports that serve load outside of California. Nor is it clear that electricity that is simply wheeled through California shall not be subject to the Fee.

Without such a clarification and netting provision or offset provisions, retail providers or marketers could be charged a Fee on financial transactions in which no generation or emissions occurred. In addition it is possible that Fees could be assessed on electricity neither generated nor used in California, or on load located outside of California. Charging AB 32 costs on electricity imports without any netting or offsets for electricity exports will result in an unfair over-collection of fees.

- Provisions should be included in the Proposed Regulation for a dispute resolution procedure to be applied before late fees or penalties are assessed.

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 Administrative Fee Regulation must not duplicate or interfere with enforcement activities under the already existing Reporting Regulations.

- It is not clear why the definition of generating facility includes future planned locations at which electricity could be produced.

Section 95202, subsection (43) contains the following definition of Generating facility: “an existing or planned location or site at which electricity is or will be produced.” The Administrative Fee is related to the emissions from fuel combustion. Only facilities at which fuel is actually burned (and electricity actually produced) could by definition be subject to the Fee.

- California’s electric ratepayers should not be responsible for funding Regulations that are struck down through court action or any actions by CARB to defend such Regulations.

Section 95203 provides that the required revenue for the Administrative Fee includes “any amount required to be expended by ARB in defense of this article in court.” If a Regulation is challenged and survives the legal challenge, costs related to such defense could understandably be included within the revenue requirement for the Administrative Fee. However, if the Regulation cannot survive a legal challenge and is struck down Californians should not be made to bear CARB’s cost of defending the improper regulation. No justification or support for imposing such costs that are unrelated to the reduction of emissions has been provided.

- It is critical to avoid imposing multiple levels of charges on the same person (be it individual, business or government) for the same emission.

The electricity sector which emits less than 25% of greenhouse gas emissions has been asked to provide 40% or more of the emission reductions required by AB 32. In addition, the electricity sector will be required to partake in a cap and trade program. For publicly owned utilities such as Modesto ID ratepayers are the only resource available to bear the cost of all these obligations. This burden has been placed on electric ratepayers in recognition that the utilities that serve them are easily identifiable and able to be regulated, and thus such methodology is the best way to spread the cost of these important programs over the broadest array of Californians, without actually going through the formal process of enacting and imposing a “tax”.

The potential result is that the single electric ratepayer will pay a cost to cover the Administrative Fee for all the emissions from the generation used to serve their load and then will additionally have to bear whatever costs are associated with obtaining (eg., purchasing) allowances for those same emissions. CARB staff working on the Administrative Fee

Regulations has acknowledged this concern and suggested that if CARB designs a cap and trade program that incorporates the revenue requirements addressed by the Administrative Fee, that the Fee may be phased out when the cap and trade goes into place. Modesto ID urges CARB to incorporate such phase-out as part of the Fee regulations.

Conclusion

Modesto ID appreciates the efforts of CARB staff in putting the Proposed Regulation together and making the effort to keep stakeholders advised of its activities. Modesto ID also appreciates that CARB has provided an opportunity for stakeholders to submit comments on the Proposed Regulations. We hope CARB is able to consider the issues raised so summarily herein and encourage CARB to contact the undersigned should there be any questions.

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