

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

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
COMMENT ON MANDATORY REPORTING WORKSHOP
HELD ON JUNE 26, 2013**

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Dated: July 10, 2013

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I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority (“SCPPA”)¹ respectfully submits this comment on the issues discussed at the California Air Resources Board (“ARB”) workshop on potential updates to the California Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (“Regulation”), held on June 26, 2013 (“Workshop”).

In summary, SCPPA considers that:

- Neither the reporting nor verification deadlines should be changed. Doing so would impose considerable difficulties on all covered entities. Rather, the Allowance Price Containment Reserve (“Reserve”) sale should be moved to a later date.
- The expanded meaning of “full or partial ownership” of generating facilities and units should be clarified, and the sections of the Regulation to which this expanded definition applies should be specified.
- Entities should not be required to retire renewable energy certificates (“RECs”) for specified source imports and the RPS Adjustment. Rather, double counting should be addressed by means of a database of REC serial numbers. However, if the ARB requires RECs to be retired, entities should at least have flexibility as to when they retire their RECs. Guidance as to the rules that apply to REC retirement should be provided.

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.

- If RECs for specified source imports are now permitted to be retired after the reporting deadline, doing so is no longer a non-conformance with the Regulation. Therefore, an entity that retires specified source RECs after the reporting deadline should be able to obtain a positive verification statement rather than a qualified positive statement.
- When developing documentation requirements for specified source transactions, the ARB should take a flexible approach that can be used with all master agreements commonly used for energy transactions.

These issues are discussed in more detail below.

II. REPORTING AND VERIFICATION DEADLINES SHOULD NOT BE CHANGED.

The ARB proposed moving the emissions report verification deadline from September 1 to August 15 each year, to allow time for natural gas suppliers to be informed of their emissions liability before the September Reserve sale, and asked whether the reporting deadline should also be moved two weeks earlier. (Slides 24-26 of the Workshop presentation.)

Neither the reporting nor verification deadlines should be changed. Doing so would impose difficulties on all covered entities.

Verification is a detailed and time-consuming process that would be difficult to compress into a smaller timeframe. In addition to completing initial investigations, document review and site visits, there is a period of dialog between the verifier and the covered entity to address any questions the verifier may have. An entity may have reports for several facilities, each of which must be verified. Each verifier also has several clients, all requiring verification during the same period. Shortening the time for verification would make it more difficult for the verifier to complete a thorough verification and for the covered entity to respond to any questions.

Moving the reporting deadlines two weeks earlier (so as to allow the same length of time for verification) would impose a host of additional difficulties. Facilities and entities have to submit reports to multiple agencies. An earlier reporting deadline under the Regulation would overlap with reports due to local air quality management districts and the US Environmental Protection Agency (“US EPA”), making it very difficult for reporting staff to spend the necessary time to ensure each report is accurate and complete. Furthermore, since data from greenhouse gas reports to the US EPA, due April 1, are used in reports to the ARB under the Regulation, it would be preferable to finalize the US EPA report before preparing the ARB report (which would be due March 27 if the current deadline were moved two weeks earlier).

Rather than moving the verification or reporting deadlines earlier, the Reserve sale could be moved later to accommodate the participation of natural gas suppliers. SCPPA understands that this may pose administrative difficulties, but it may be easier for the ARB to overcome these difficulties than for all covered entities to compress their verification or reporting schedules. There may be overlap with the preparations for the next allowance auction, but this does not seem to be an insurmountable problem. Participants are able to distinguish between events and deadlines relating to the Reserve sale and those relating to the auction.

III. CLARIFY EXPANDED MEANING OF “FULL OR PARTIAL OWNERSHIP.”

Slide 10 of the Workshop presentation states that “Full or partial ownership is evidenced by a contract for a share or percentage of output or capacity from a facility or unit.”

However, full or partial ownership is different from a contract for a share or percentage of output or capacity from a facility or unit. An entity may have:

- (i) an ownership share that includes a share in output/capacity;
- (ii) a contract for output/capacity without an ownership share; or
- (iii) ownership of a facility or unit without a share in output/capacity.

It appears that the ARB wishes to expand the meaning of “full or partial ownership” to cover scenario (ii) in addition to scenario (i). Scenario (iii) does not appear to be relevant to electric power entities, in relation to facilities located outside California.

To avoid confusion, the ARB should clarify exactly what it intends “full or partial ownership” to include, and the provisions to which this expanded definition applies. The term “full or partial ownership” is used in the following sections of the Regulation:

- Definition of “Generation Providing Entity” (section 95102(a)(216));
- Definition of “Specified Source of Electricity” (section 95102(a)(432));
- Section 95105(d)(6) (“GHG Inventory Program for Electric Power Entities that Import or Export Electricity”); and
- Section 95111(c)(3) (relating primarily to reporting high GHG-emitting facilities or units).

It may be that the expanded definition is intended to apply only to the last of these sections, section 95111(c)(3), as the other listed sections already include a reference to scenario (ii) in some form. They refer to written power contracts or contracts for a share of generation, so an expanded definition of “full or partial ownership” would not change the operation of those sections.

Rather than expanding the meaning of “full or partial ownership” beyond the dictionary meaning of those words, it may be preferable to insert a reference to a written power contract into section 95111(c)(3), as has been done in the other sections listed above. This would ensure section 95111(c)(3) applies to scenario (ii) as well as scenario (i). The phrase “or with which a retail provider has a written power contract” could be included in the first paragraph of section 95111(c)(3) and in subparagraph (C).

IV. ENTITIES SHOULD HAVE FLEXIBILITY AS TO WHEN THEY RETIRE RECS.

Although not discussed at the Workshop, it is important to clarify issues relating to REC retirement for specified source imports and the RPS Adjustment, given previous inconsistent statements on these issues. Therefore, these issues are addressed below.

A. The cap and trade program should not require RECs to be retired.

SCPPA continues to recommend that the ARB should not require RECs to be retired under its cap and trade program. REC retirement is a crucial part of the Renewable Portfolio Standard (“RPS”) program administered by the California Energy Commission. To avoid interfering with that program and making it more difficult for utilities to meet its challenging goals, no other agencies should require RECs to be retired.

The ARB’s concern regarding the potential for double-counting of RECs under the cap and trade program could be addressed by establishing a database of the REC serial numbers that utilities report under section 95111(g)(1)(M) of the Regulation. Any REC with a serial number that has already been reported would be rejected and could not be counted towards the RPS Adjustment or specified source imports. This solution would require no changes to the Regulation, and only minimal changes to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation (“Cap and Trade Regulation”), which are detailed in SCPPA’s comments on the cap and trade workshop.

If this solution cannot be adopted, at a minimum the ARB should ensure that its timing requirements for REC surrender are no stricter than the three-year period allowed by the RPS law, Senate Bill X1 2 (2011). The rules regarding REC surrender under both the Regulation and the Cap and Trade Regulation should be clarified in written guidance materials as soon as possible.

B. Specified source imports: Clarify that RECs can be retired in a year after they were claimed, without affecting verification.

If RECs must be retired for specified source imports, it has long been unclear as to exactly when they must be retired in order to claim specified source electricity in a particular year.

Statements made by ARB staff in discussions with the Joint Utilities, most recently on June 27, 2013, indicate that RECs for specified source imports do not need to be retired in the year for which the specified source import is claimed, but can be retired later. For example, RECs generated from specified sources in 2013 could be claimed in an entity's emissions report for 2013 submitted in 2014, even if the RECs had not been retired by the time the report was submitted. The reporting entity would need to retire those RECs at some point in the future.

This approach provides the entity with the desired flexibility as to when it retires its RECs, and SCPPA looks forward to receiving confirmation, in written guidance, that this approach has been adopted.

One outstanding issue is the consequence of reporting non-retired RECs for the verification statement for an entity's emissions report. If RECs are claimed for specified source imports but not retired as of the reporting date, it is treated as a non-conformance with the Regulation and the emissions report can only receive a qualified positive verification statement, rather than a positive verification statement.² As the ARB now permits RECs for specified source imports to be retired after the reporting year, this is no longer a non-conformance with the Regulation, and it is incorrect to treat it as such. An entity that retires specified source RECs after the reporting deadline should be able to obtain a positive verification statement.

² ARB presentation at the reporting webinar for electric power entities, March 26, 2013, slide 18.

C. RPS Adjustment: Clarify that RECs can be banked, and claimed when retired.

If RECs for the RPS Adjustment must be retired, the ARB should clarify when they must be retired and when the adjustment can be claimed.

The Cap and Trade Regulation currently requires electric sector entities to use the RECs “to comply with the California RPS requirements [i.e., to retire them] during the same year in which the RPS Adjustment is claimed.”³ Some ARB staff had interpreted this to mean that RECs must be generated in the same year in which they are claimed, and must be retired by the reporting deadline – a very restrictive interpretation.⁴

However, statements made by ARB staff in discussions with the Joint Utilities, most recently on June 27, 2013, and an email from ARB staff dated July 5, 2013, indicate that from 2013 onwards the RPS Adjustment can in fact be banked, i.e. carried forward and claimed when the utility wants to retire the RECs. The RECs do not have to be claimed and retired in the year in which they were generated. For example, eligible RECs generated in 2013 that an entity retires in 2015 would be counted towards the entity’s 2015 RPS Adjustment, reported in 2016.

This approach provides the entity with the desired flexibility as to when it retires its RECs, and SCPA looks forward to receiving confirmation, in written guidance, that this approach has been adopted. However, a small change to the Cap and Trade Regulation is required to properly implement this approach; this is detailed in SCPA’s comments on the June 25 cap and trade workshop.⁵

³ Cap and Trade Regulation section 95852(b)(4)(B).

⁴ ARB presentation at the reporting webinar for electric power entities, March 26, 2013, slides 18 and 20.

⁵ Section 95852(b)(4)(B) of the Cap and Trade Regulation should be amended to refer to RECs claimed for the RPS Adjustment being retired during the same year *for* which the RPS Adjustment is claimed, not the year *in* which it is claimed, as claims for an emissions year are made in reports submitted in the year following the emissions year.

V. CONSIDER ALL STANDARD POWER CONTRACTS WHEN SETTING RULES FOR SPECIFIED SOURCE ELECTRICITY TRANSACTIONS.

ARB staff indicated at the Workshop that a separate written confirmation will not be required for verbal electricity transactions that are made pursuant to a master agreement. SCPPA appreciates this change of position from the March 26, 2013 webinar.⁶

However, ARB staff would like some record of the fact that the transaction is a specified source transaction, ideally in the form of a standard “specified source schedule” to a master agreement. (Slide 10 of the Workshop presentation.)

WSPP, Inc. is currently modifying an existing schedule to its standardized power sales contract to accommodate ARB’s concerns. This process, which involves several rounds of input from many stakeholders, may be complete by the end of 2013. SCPPA appreciates that the ARB is involved in this process, and urges the ARB to remain engaged to ensure that the final product meets its needs as well as the needs of the electric sector entities that use the WSPP agreement.

However, the ARB should bear in mind that other forms of master agreements are also in use for electricity transactions, e.g. International Swaps and Derivatives Association (“ISDA”) agreements and Edison Electric Institute agreements. The issue of specified sources may be treated slightly differently under these agreements. For example, with ISDA agreements, the specified source may be mentioned in the special provisions. Any new provision in the Regulation on this issue should be flexible enough to accommodate any of the commonly-used master agreements.

VI. CONCLUSION

SCPPA appreciates the opportunity to submit these comments to the ARB and urges the ARB to consider these comments when preparing the draft revisions to the Regulation. If further

⁶ ARB presentation at the reporting webinar for electric power entities, March 26, 2013, slides 14-15.

information is required, we would be happy to discuss any of the proposals in these comments with ARB staff. We look forward to continuing to provide input to the ARB as the 2013 revisions to the Regulation are developed and finalized.

Respectfully submitted,

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