

**Comments of the Western Power Trading Forum on Discussion
Draft Proposed Changes to the Mandatory Reporting
Regulation**

August 2, 2013

Clare Breidenich

WPTF GHG Committee Director

Email: cbreidenich@aciem.us

The Western Power Trading Forum¹ (WPTF) appreciates the opportunity to provide input to the California Air Resources Board (CARB) on the draft discussion draft for possible changes to the Mandatory Reporting Regulation. Our comments are directed to two areas: the effective date of any adopted changes to the regulation and on changes to the regulation related to requirements for Electric Power Entities.

Effective Date of changes to the MRR

WPTF is extremely concerned about statements made by staff at the July 23rd webinar that the proposed regulatory changes would be applied retroactively. That is, the changes would go into effect as of January 1, 2014 and would apply to electricity imports made during 2013. The rationale provided for the proposed retroactivity of regulatory changes was staff's consideration of the proposed changes as merely clarifications of existing rules.

WPTF strongly objects to the retroactive application of regulatory changes. The requirements for reporting by electric power entities are complex and have evolved over past several years, as staff and stakeholders have gained a better understanding of the relationship between the reporting of electricity imports and practices in the electricity markets. While CARB staff may have intended that previous versions of the regulation be applied in a manner consistent with the proposed amendments, the fact that these regulatory changes are necessary is strong evidence of ambiguity in the previous versions of the regulation and different interpretations by market participants.

Further, over the past year electricity power entities have strived in good faith to adjust market practices and contract terms to comply with the cap and trade and mandatory regulation requirements pertaining to electricity imports. As electricity transactions and contracts terms cannot be changed retroactively, it would be unfair to apply regulatory changes retroactively.

WPTF therefore urges CARB to ensure that any changes to the regulation adopted this year that do not reflect previously issued guidance documents be applied prospectively. That is, they should apply only to electricity imports that occur pursuant to contracts executed after December 31, 2013.

WPTF provides detailed comments on specific regulatory provisions below.

Imported Electricity from Specified Facilities or Units

WPTF appreciates CARB's continued efforts to clarify the requirements for reporting of specified power and supports the additional language regarding warranty of the sale of specified source through the market path. However, we believe that the regulation is still not sufficiently clear on the

¹ WPTF is a diverse organization comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West. WPTF has over 60 members participating in power markets within California, western states, as well as other markets across the United States.

nature of documentation required to legitimate claim an import pursuant to a short term transaction has specified.

From discussions at the July 23 webinar, Staff appear to want a Western States Power Pool Master Agreement for sale of electricity (or similar) to explicitly state when the parties to that agreement intend to allow for the short-term transactions of specified electricity via oral confirmation alone. This is not standard industry practice; nor is it being contemplated in the approach currently being developed by the WSPP.

We respectfully request that CARB add language to the regulation that clearly indicates what type of documentation (e.g. summary statements, transcripts of oral confirmations, instant messages) would be considered sufficient for reporting short-term transactions as specified.

Imported Electricity Supplied by Asset-Controlling Suppliers

The proposed changes to the provisions in the MRR and the cap and trade regulation suggests that when an intermediary imports electricity sourced from an asset controlling suppliers system, that it must have a contract that “specifies” that ACS system in order to claim the ACS emission rate for that import. We have understood this to mean that an ACS can sell power as ‘unspecified’, provided that the contract does not provide explicitly for electricity to be supplied by the ACS system.

However, in discussions during and after the July 23 webinar, CARB staff have indicated that while Powerex may sell electricity bilaterally² as unspecified, Bonneville Power Administration (BPA) cannot due to the fact that ‘path-outs’³ have been included in the calculation of the BPA emission factor. WPTF believes that parties to a transaction must be able to agree on the key elements of the product being transacted including the usefulness of that energy in CARB’s program. We are also concerned that preventing Asset-Controlling Suppliers from bilaterally selling power as unspecified will create a strong disincentive for entities to apply for ACS status, since they will be unable to control the of the low-carbon value of their system. WPTF believes that entities with generation that has an emission factor less than the default rate, including Asset Controlling Suppliers, should be able to choose to sell power as unspecified.

If CARB intends instead to apply this distinction, then WPTF recommends that CARB clearly state the conditions that determine whether an ACS may sell power bilaterally as unspecified in the regulation and exact documentation required to distinguish between specified and unspecified sales. CARB also should publish the names of current and any future Asset Controlling Suppliers that may sell unspecified power bilaterally, and those that may not.

² WPTF understands that power sold by an marketer or via ICE that is only identified as schedule c power without identification of the source, be it an ACS or other specified source, would be considered unspecified and reported using the default emission factor. This interpretation should not prejudice the possibility of future development of exchange-traded ‘specified-contracts’.

³ WPTF understands that the term ‘Path outs’ is intended to refer to excess power, originally procured as part of a U.S. federal mandate to serve the operational or reliability needs of a U.S. federal system but which are no longer required due to changes in demand or system conditions (95111(a)(5).

Imports of Power from Systems with an Emission Factor rate higher than default

WPTF read with interest the proposed provision for imports of power with an emission rate higher than the default rate. The approach proposed would result in assignment of a 'system-specific' emission rate calculated by CARBs for imports of system resources when the blended emission rate of those resources is higher than the default emission factor. From explanations provided at the electric power entity webinar on July 23rd we understand that this provision is essentially intended to treat the operators of these resources as the generation providing entity of the those resources.

WPTF supports this additional provision with several provisos. First, we believe the assignment of the system emissions rate should apply only when the operator of the system is the electricity importer. If an intermediary imports electricity from the system, identification of system on tag should not result in assignment of system emission rate unless the intermediary also has a specified contract for that system. This rules would be consistent to the treatment of generation providing entity and other specified imports.

Second, CARB needs to include a definition of the entities to which this requirement would apply.

Third, since the designation of a system emission rate would be mandatory, and the 'system operator' would not voluntarily apply for designation, it is not clear how the system emission factor will be calculated. WPTF recommends that CARB provide information in the regulation as to how it will identify the resources to be included in the calculation of the system emission factor, and the appropriate transmission loss factor to be applied. CARB should also publish its list of designated systems and associated emission factors in advance of each compliance year.

Requirements for Claims of Specified Sources of Electricity and for Eligible Renewable Energy Resources in the RPS Adjustment.

As WPTF has previously commented, the RPS program requires that, for both portfolio content category one (procurement that corresponds to direct delivery of renewable electricity) and category two (for which the RPS adjustment may be applied) RECs generated by the eligible renewable resource must be matched to specific NERC e-tags to demonstrate either direct delivery in the former case, or delivery of substitute power in the latter.⁴ The Western Renewable Energy Generation Information System (WREGIS) provides a function that allows users to match specific RECs to specific NERC e-tags for scheduling of power. This matching can only be done by the entity with title to the REC as it is imported into California, and cannot be changed. LSEs must then provide this information in the form a "WREGIS NERC e-tag Summary Report" to the California Public Utilities Commission or the California Energy Commission to demonstrate that delivery requirements for procurement categories one and two have been met.

⁴ See the draft 2013 "Renewable Portfolio Standard Eligibility Guidebook" at <http://www.energy.ca.gov/2013publications/CEC-300-2013-005/CEC-300-2013-005-ED7-SD.pdf>, page 109 and its "Appendix A" at http://www.energy.ca.gov/portfolio/documents/2013-03-14_workshop/draft_forms/Appendix_A_Reporting_Instructions_7th_edition_DraftFinal.pdf

WPTF recommends that CARB expand provisions in the MRR to strengthen the verification of claims to direct delivery of renewable energy and the RPS adjustment. Specifically, WPTF recommends that, for both direct delivery of California eligible renewable electricity and for claims of the RPS adjustment, the importer be required to demonstrate that the RECs associated with the renewable electricity generation have been matched to the appropriate NERC tags. This can be done by requiring importers to retain documentation of WREGIS matching of the associated RECs to e-tags for all renewable imports or claims to the RPS adjustment and to provide it upon request to verifiers. Importers can fulfill this requirement by providing the WREGIS NERC e-tag Summary Report for the LSEs on whose behalf they imported the power. This information can then be readily checked by a verifier.