

June 12, 2012

Comments of the Independent Energy Producers Association on CARB's Potential Revisions to the California Mandatory Reporting Regulation

The Independent Energy Producers Association (IEP) offers its comment on CARB's Mandatory Reporting workshop, convened May 30, 2012. IEP represents over 26,000 MWs of installed, non-utility, independently owned generation resources in California. IEP's involvement in the mandatory reporting regulation and the cap and trade rulemaking has been focused on designing a program that (1) maintains a competitive level playing field within the electric sector and (2) treats similarly situated entities equal. IEP's specific comments on the issues that were raised during the CARB reporting workshop are identified below.

Specific Concerns Regarding the Proposed Modifications:

Limiting the RPS Adjustment to Retail Sellers Creates Disparate Treatment Among Obligated Entities. The proposed language in the Mandatory Reporting Regulation (MRR) Discussion Draft states that "the RPS Adjustment may only be claimed by Retail Providers where adjustments are used to comply with the California RPS requirements."¹ This language proposes disparate treatment for "First Deliverers" based on whether they serve load directly and, in doing so, raises concerns regarding discriminatory treatment.

The language implies that only first deliverers that are also retail providers can use the RPS adjustment for GHG accounting purposes. However, retail sellers are not per se "obligated entities" under CARB's rules. Rather, First Deliverers are the obligated entities, and only a limited set of First Deliverers also are retail providers. In fact, retail sellers only face a compliance obligation when they own generation (e.g. utility-owned-generation or "UOG") and have to obtain allowances for the emissions associated with their generation assets. Yet, in contrast, independent power producers are not likely to serve as retail providers. As a result, the CARB proposed rule will discriminate against IPPs as compared to UOG.

As noted in the Discussion Draft, "the reporting of RPS Adjustments shall include information for Cap and Trade accounting purposes as well as information for GHG inventory reporting."² The RPS adjustment is one of the factors used for calculating the amount of covered emissions that ultimately bear a compliance obligation under the cap and trade program. Excluding first deliverers that are not also retail providers from using the RPS adjustment will ultimately result in higher emissions for these entities and the obligation to purchase more allowances. Allowing retail sellers to use this adjustment against their compliance obligation, while excluding all other obligated entities from the same treatment is discriminatory.

¹ Discussion Draft, page 18.

² Discussion Draft, page 18.

Retail sellers are not the only responsible entities under the cap and trade program and therefore they should not be the only entity for which the RPS adjustment, an adjustment used to calculate the compliance obligation, should be applied. It seems that CARB, through the reporting regulation, is attempting to meld the RPS and cap and trade programs. In doing so, however, CARB is missing the very large disconnect that occurs between the two programs. Under the California RPS program, the load (i.e. Publicly Owned Utilities and Investor Owned Utilities) is responsible for meeting the 33% renewables target by 2020. Under the cap and trade program, on the other hand, the obligation is born by first deliverers which include generators and importers into California. The RPS adjustment must be available to all entities that bear a compliance obligation under the cap and trade program, not just those who also happen to be retail sellers.

IEP Recommendation: To the extent that CARB wants to use the RPS adjustment to calculate covered emissions for first deliverers, it must make the RPS Adjustment available to all First Deliverers/obligated entities on a non-discriminatory basis. In limiting the RPS adjustment to First Deliverers/obligated entities that also are retail sellers, CARB is creating preferential treatment for certain obligated entities above others.

Allowing Multiple Methods to Calculate the Emission Factor for Asset Controlling Suppliers Increases the Potential for Resource Shuffling and Gaming of the Cap and Trade Program. CARB is proposing to broaden applicability of the term “Asset Controlling Supplier” (ACS) so that entities, besides Bonneville Power Administration (BPA), can apply to CARB for this designation. In the previously approved Mandatory Reporting Regulation, CARB assigned BPA a default system emission factor equal to 20% of the default emission factor for unspecified sources. The regulation also gave BPA an alternative option to request that ARB calculate its supplier-specific emission factor based on previously verified GHG reports.

In broadening the applicability of the ACS designation, CARB has indicated that it will calculate and publish on the ARB Mandatory Reporting Website the *system* emission factor for all asset-controlling suppliers recognized by the ARB³ (presumably in the same way that the 20% default emission factor was applied to BPA). Alternatively, CARB proposes that approved asset-controlling suppliers *may* request that ARB calculate a *supplier*-specific emission factor that is representative of the complete portfolio of all resources under its ownership or control.⁴

While it is not entirely clear what the difference is between the *supplier* specific and *system* emission factors that CARB is using, in the case of BPA and other potential Asset Controlling Suppliers, CARB is essentially giving the ACS a choice for reporting its emissions. Either CARB assigns a default system emission factor or there is a supplier specific emission factor that is representative of the complete portfolio of all resources based on a previously verified GHG report. Allowing the ACS to have a choice in the method that they use to report increases the potential for resource shuffling and encourages gaming of the cap and trade system. Specifically, if an ACS can choose, on an annual basis, which method they prefer for calculating their emissions, they will always choose the option that leads to fewer emissions. Furthermore, it is unclear why CARB is allowing them to have an option in calculating their emissions in the first place. The Discussion Draft currently states that approved asset controlling suppliers *may* request that ARB calculate a supplier specific emissions factor. The fact of the matter is that

³ Discussion Draft, page 17.

⁴ Discussion Draft, page 19.

CARB *should* calculate a supplier specific emission factor that is representative of the complete portfolio of all resources under its ownership or control, rather than applying some arbitrary number, as was originally done with BPA (i.e. 20% of the default emission factor for unspecified resources).

IEP Recommendation: Asset Controlling Suppliers should not have the option of reporting their emissions in the form that is most favorable to their emissions profiles. If CARB *can* calculate an accurate emissions factor that is representative of the emissions that are in the resource mix, then it should do so. These entities should not be able to switch back and forth between methods for calculating their emissions factor based on the option that is more attractive from year to year. Actual emissions, that are representative of the resource mix should be calculated and applied.

Emissions that are Excluded from a Compliance Obligation Under the Cap and Trade Program Should Remain Exempt. CARB’s proposal is to include the accounting of combustion and process emissions from certain source categories (including flaring emissions from municipal solid waste landfills or geothermal electricity generation) when evaluating the 10,000 MTCO₂e reporting threshold [Section 95101 (a)(1)(B)]. Currently the cap and trade program exempts certain emissions as “emissions without a compliance obligation” under Section 95852.2 of the Cap and Trade Regulation. Many of the emissions that CARB is now attempting to capture under the potential revisions to the Mandatory Reporting Regulation are essentially exempt from a compliance obligation under the cap and trade program. Incorporating these compliance exempt emissions into the mandatory reporting program at this time seems to unnecessarily increase the administrative and financial burden for these entities. While reporting of the emissions from these resources is seemingly unnecessary for purposes of compliance/reporting at this time, IEP wants to ensure that even if some of these emissions are captured for purposes of reporting, these emissions continue to be classified as “emissions without a compliance obligation” under the cap and trade program.

IEP Recommendation: Subjecting certain source categories (including flaring emissions from municipal solid waste landfills or geothermal electricity generation) to the mandatory reporting regulation when stationary combustion and process emissions from these sources equal or exceed 10,000 MTCO₂e is not necessary at this time. However, if CARB does include these emissions for purposes of reporting, these emissions should continue to remain exempt from a compliance obligation under the cap and trade program.

In Conclusion, the potential revisions to the mandatory reporting regulation raise significant concerns, not only with regards to how they will affect the reporting regs, but also regarding the overall obligation that entities will have under the cap and trade program. The concerns raised above related to the RPS Adjustment calculation and emissions factors for Asset Controlling Suppliers must be addressed before CARB moves forward in modifying the Mandatory Reporting Regulations. IEP appreciates CARB’s attention to these unresolved issues.

Respectfully Submitted,



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