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May 11, 2012

Steve Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: M-S-R Comments on May 4 Cap-and-Trade Regulation Workshop

Dear Steve:

The M-S-R Public Power Agency provides these comments to the California Air Resources Board (CARB) regarding the May 4, 2012 *Public Meeting to Discuss Compliance Requirements for First Deliverers of Electricity* (May 4 Workshop). M-S-R limits its comments to addressing only the issue of resource shuffling, and the need for CARB to provide stakeholders with greater certainty regarding the interpretation of the restrictions included in the definition contained in the current version of the Cap-and-Trade Program Regulation.

Introduction

Created in 1980, the M-S-R Public Power Agency is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R is authorized to acquire, construct, maintain, and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its members. M-S-R does not serve retail load within California but supplies wholesale power under long-term contracts to its retail load-serving members. M-S-R pursues the development of renewable and non-renewable electric generation facilities, including interests in the Big Horn and Big Horn Wind 2 Generation facilities, as well as the San Juan Generating Station coal-fired electric generation facility. M-S-R contracts both within and outside of California on behalf of

its member agencies who are obligated to provide retail electricity to their customers, and to comply with both the State's 33% renewable portfolio standard (RPS) and greenhouse gas (GHG) emissions reduction measures. M-S-R's member agencies are all covered entities subject to the Cap-and-Trade Program during the first compliance period. Although M-S-R does not have a direct compliance obligation in the Cap-and-Trade Program, as a joint powers agency that contracts for energy resources on behalf of its members, M-S-R has a direct interest in the outcome of this proceeding and in the treatment of delivered resources under the Cap-and-Trade Program.

Comments on the Definition of Resource Shuffling

M-S-R is concerned that the current definition of "resource shuffling" is not sufficient to address many instances wherein an entity may change its electricity imports from a higher GHG emitting resource to one that is zero- or low-emitting, with *no plan, scheme, or artifice* involved. The Board directed Staff to consider potential changes to the regulation that would "provide appropriate incentives for accelerated divestiture of high-emitting resources," (Staff Presentation, p. 18). While CARB is required under AB32 to consider minimizing leakage when adopting emission reduction measures (Health and Safety Code § 38562(b)(8)), it is necessary to acknowledge that not all changes in electricity imports are the result of Cap-and-Trade Program leakage. There are a myriad of legitimate transactions that could result in out-of-state resources with higher GHG emissions not being delivered to California. As discussed more fully below, M-S-R believes that these legitimate transactions should be acknowledged in advance of finalizing the regulation in order to give both market participants and the market itself greater certainty.

One catalyst for these kinds of changing transactions comes from the confluence of California's increasing RPS mandate with existing long-term contractual arrangements, which have left some utilities over-resourced. This means that not all of a utility's owned generation will need to be delivered to its load at all times. Some of M-S-R's members are in such a position. M-S-R and its members are committed to meeting the emissions reductions mandated by AB32 and the obligations associated with the Cap-and-Trade Program Regulation, but M-S-R and its members must do so while continuing to lawfully and responsibly manage their energy

portfolios within the confines of existing contractual obligations and prudent utility practices. This transition is an ongoing process, and one that is not accomplished overnight.

M-S-R has an ownership interest dating to 1983 in the thermal San Juan Generating Station located on New Mexico. This investment is backed by municipal bonds, and M-S-R has a fiduciary duty its member-ratepayers and bond holders, which must be carefully managed. M-S-R is committed to the state's GHG reduction and RPS goals, and while its current portfolio is comprised of more than 40% renewable resources, M-S-R continues to invest in greater quantities of renewable generation resources. That said, there are times – due to fluctuations in demand – when generation and demand are not equal. For M-S-R's members, this could result in a transaction that includes the sale of San Juan coal-fired generation to an out-of-state entity, rather than delivery of the generation into California. At another time, the coal-fired generation could be delivered into the state, while wind resources are wheeled to another location. The decision about how to deliver such resources is determined not by a desire “shuffle resources,” but rather by timing, contractual obligations, transmission availability, and related electricity deliverability issues. However, without greater certainty regarding the definition of resource shuffling, energy transactions could be categorized as a violation of the regulation, even in the complete absence of malfeasance.

During the May 4 Workshop, Staff stressed the fact that it will be necessary to continue to refer to the definition of resource shuffling found in § 95852(b)(2) for guidance; “is there a plan or scheme?” However, it is simply not sound public policy to subject covered entities to reliance on an after-the-fact determination that will require a subjective review of a situation. Instead, M-S-R believes that the current definition should be refined to specifically address known instances where imports may be exchanged, such as the case with M-S-R's San Juan resource. In addition, CARB should include provisions – within a binding guidance document – that outlines approved transactions that are not deemed resource shuffling.

M-S-R heard the concerns articulated by CARB staff during the May 4 Workshop regarding the need to be careful that the agency does not position itself so that its direction and guidance could be taken out of context. M-S-R acknowledges that this is a valid concern;

however, concerns raised by stakeholders regarding the need for certainty cannot be dismissed, either. M-S-R joins with the other stakeholders that advocated for a formal certification process that provides up-front assurances regarding the validity of certain transactions that will not fall into the category of resource shuffling, with deference to existing contractual obligations.

Indeed, the very discussion that took place during the workshop highlights the need for greater certainty. While stakeholders expressed concerns regarding the uncertainty of case-by-case reviews, and the “advisory” nature of any such review, a lack of clarity about what would constitute a legitimate transaction arose. For example: Must scheduling changes be related to investments in new resources in order to avoid be labeled resource shuffling? Does compliance with existing laws and regulations requiring purchase of greater amounts of existing in-state renewable power to meet the RPS constitute resource shuffling? Do changes due to transmission congestion that results in higher costs for one delivery path over another constitute resource shuffling? Does economic dispatch to utilize the least cost generator in any given hour constitute resource shuffling? Would divestiture of a no longer economic out-of-state thermal resource constitute resource shuffling? While it is impossible to project every potential scenario that may arise in the future, M-S-R believes that a multitude of scenarios can be identified and defined at this time, and that CARB, working with stakeholders, can produce a guidance document that provides stakeholders with greater certainty regarding allowable transactions.

Conclusion

M-S-R appreciates the opportunity to provide these comments and looks forward to the opportunity to continuing to work with CARB staff and other stakeholders to develop guidelines and further certainty for market participants regarding this critical definition.

Respectfully submitted,



Martin Hopper
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