

DIRECT ENERGY BUSINESS

January 20, 2017

Richard Corey
Executive Officer
California Air Resources Board
1001 "T" Street
Sacramento, CA 95814

RE: Direct Energy Business Comments on the December 20, 2016 Amendments to the Cap-and-Trade Regulation

Dear Mr. Corey,

Direct Energy Business¹ provides the following comments on the December 20, 2016 *Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation* ("Proposed Amendments"). The Initial Statement of Reasons and Notice for this rulemaking noticed possible amendments to Section 95852(b)(4) (i.e., the "RPS Adjustment"). DEB supports the ARB's December 20, 2016 proposal to retain the RPS adjustment.

Since Section 95852(b)(4) is within the scope of this rulemaking, the ARB should take this opportunity to clarify Section 95852(b)(4)(A) to ensure that a power marketer's presence in the chain of contract for Procurement Content Category 2 ("PCC-2") energy does not nullify an importer's ability to claim the RPS adjustment. Currently, Section 95852(b)(4)(A) requires the electricity importer (i.e., the entity claiming the RPS adjustment) to either have: (1) ownership or contract rights to the RECs and energy from the RPS facility; or (2) a contract with an entity that is subject to the RPS and that has ownership or contract rights to the Renewable Energy Credits ("RECs"). Section 95852(b)(4)(A) does not explicitly contemplate an arrangement where a power marketer contracts with an electricity importer to receive and reconvey PCC-2 firmed and shaped energy to an entity subject to the California RPS. If the second qualification (i.e., having a contract with an entity subject to the RPS) is read strictly, it would require the electricity importer to have privity of contract with the RPS obligated entity.

Such a requirement would be arbitrary because there is no reason that the presence of a power marketer in the chain of contract in any way reduces or minimizes the greenhouse gas attributes of the firmed and shaped power. In fact, if the regulations were read in this way, that interpretation would be counterproductive to the broader goals of AB 32 because RPS obligated entities that typically contract through power marketers (e.g., Community Choice Aggregators) would have fewer options to procure RPS eligible energy. The PCC-2 contract structure is critical to the developing CCA market because the CCAs often wish to procure RPS eligible energy on a short-term basis. PCC-2 energy is currently one of the most inexpensive options for RPS eligible energy.

¹ Direct Energy Business is energy services provider and energy marketer providing a full range of energy products and services. DEB serves approximately 240,000 business of all sizes from all industries across North America.

The ARB should remove this potential barrier to the efficient operation of the wholesale power markets by amending Sections 95852(b)(4)(A) and (B) as follows:

(A) The electricity importer must have:

1. Ownership or contract rights to procure the electricity and the associated RECs generated by the eligible renewable energy resource; ~~or~~
2. A contract with an entity subject to the California RPS that has ownership or contract rights to the electricity and associated RECs generated by the eligible renewable energy resource, as verified pursuant to the MRR, or
3. A contract with an intermediary electric power entity, and the intermediary electric power entity has a contract to provide an entity subject to the California RPS with the electricity and associated RECs generated by the eligible renewable energy resource that is owned or contracted by the electricity importer.

(B) The RECs associated with the electricity claimed for the RPS adjustment must be placed in the retirement subaccount of the entity subject to the California RPS, ~~and party to the contract in 95852(b)(4)(A),~~ in the accounting system established by the CEC pursuant to PUC 399.25, and designated as retired for the purpose of compliance with the California RPS program within 45 days of the reporting deadline specified in section 95111(g) of MRR for the year for which the RPS adjustment is claimed

As discussed above, since the ARB noticed possible amendments to Section 95852(b)(4), these proposed amendments would be within the scope of this rulemaking based on a plain reading of the California Administrative Procedures Act. DEB's proposed amendment is necessary to avoid an arbitrary denial of the RPS adjustment based on the presence of a power marketer in the chain of contract for PCC-2 energy. Our proposed amendment will also further the broader GHG emission reduction goals of AB 32 by achieving greater coordination with the RPS program and ensuring that RPS obligated entities such as CCAs have all options at their disposal for procuring RPS eligible energy at least cost to their ratepayers. DEB appreciates the opportunity to submit these comments.

Sincerely,

/s/

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