BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON PROPOSED CHANGES TO MANDATORY REPORTING REGULATION RELEASED ON SEPTEMBER 4, 2013

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Dated: October 17, 2013

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I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority ("SCPPA")[1] respectfully submits this comment on the proposed changes to the California Regulation for the Mandatory Reporting of Greenhouse Gas Emissions ("Regulation"), released on September 4, 2013, by the California Air Resources Board ("ARB").

SCPPA commends the ARB for the majority of the proposed changes to the Regulation. In particular, SCPPA supports the proposals to keep the reporting and verification deadlines unchanged, to delete the requirement for hourly meter generation data to be retained for specified source imports in section 95111(g)(1)(N), to have the majority of the significant changes take effect for 2014 data reported in 2015 (rather than retroactively for 2013 data), and to remove the new "system power" provisions.

However, revisions to some of the proposed changes are required. In summary:

- Proposed new sections 95101(a)(3) and 95103(n)(2) seem to indicate that either owners or operators of facilities may assume reporting responsibilities. This is inconsistent with section 95101(a)(1) and various existing definitions. Please clarify whether an entity that owns a facility, but does not operate it, can be the reporting entity for that facility under the new sections.

[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.

- The first proposed new sentence in the definition of "Imported electricity" should refer to balancing authorities, not the more limited (and undefined) "independent system operators."
- The new requirement in section 95111(a)(5)(B) for Asset-Controlling Supplier transactions to be undertaken as specified source transactions should apply only to transactions entered into after January 1, 2014.
- The new biomethane reporting requirements in section 95103(j)(3) should be revised for clarity and accuracy.
- In proposed new section 95103(m)(5), reporting entities should be allowed a period of time to update monitoring and calculation methods after a change to the Regulation.
- Proposed new section 95104(e) on reporting reasons for increases in criteria pollutants and toxic air contaminants is problematic. It should be removed, or at a minimum, revised to provide that verification is not required.
- The reference to SCPPA in the Initial Statement of Reasons, in relation to the generating facility in Burbank, is incorrect. Burbank Water and Power, not SCPPA, is the operator of the facility and the reporting entity for the facility.

These issues are discussed in more detail below.

II. CLARIFY WHETHER OWNERS THAT ARE NOT OPERATORS CAN ASSUME REPORTING RESPONSIBILITIES.

Proposed section 95101(a)(3) provides that:

> If a facility operator determines their reporting applicability and responsibility on the basis of common ownership, the basis of reporting applicability and responsibility can only be changed to common control at the beginning of a compliance period. If a facility operator determines their reporting applicability and responsibility on the basis of common control, the basis of

> reporting applicability and responsibility can only be changed to common ownership at the beginning of a compliance period. These provisions do not apply if there is a legal change in facility ownership. If there is a change in facility ownership, the provisions of section 95103(n) apply.

This new provision appears to contemplate that an entity can determine its reporting responsibility based on either common ownership or common operational control of a facility. However, this is inconsistent with section 95101(a)(1), which provides that the reporting responsibility for facilities in California falls on the operator of the facility; for fuel and carbon dioxide, on the supplier; and for imported electricity, on the importer. This section, which is crucial for interpretation of the Regulation, does not mention ownership as a possible basis for reporting responsibility:

> (a) General Applicability.
>
> (1) This article applies to the following entities:
>
> (A) *Operators* of facilities located in California with source categories listed below are subject to this article regardless of emissions level: …
>
> (B) *Operators* of facilities located in California with source categories listed below, are subject to this article when stationary combustion and process emissions equal or exceed 10,000 metric tons CO2e for a calendar year: …
>
> (C) Suppliers of fuels provided for consumption within California that are specified below in paragraph (c);
>
> (D) Carbon dioxide suppliers as specified below in paragraph (c) …;
>
> (E) Electric power entities as specified below in paragraph (d); and,
>
> (F) *Operators* of petroleum and natural gas systems as specified below in paragraph (e). [emphasis added]

Nor does the related definition of "reporting entity" in section 95102(a)(408) mention ownership: "a facility operator, supplier, or electric power entity subject to the requirements of this article."

An operator is defined in section 95102(a)(326) as "the entity, including an owner, having operational control of a facility." The key part of the definition is the reference to operational control. It appears from the definition of "operational control" in section 95102(a)(325) that the intention is that at any one time, only one entity can have operational control of a particular facility. This is a desirable outcome, avoiding debate as to which entity is liable.

The owner of a facility may have operational control of the facility, or it may not; another entity may be appointed as the operator and have operational control. This is a question of fact in each case. (For example, SCPPA owns the Magnolia generating facility in Burbank, but the operator of the facility, and the entity that currently reports emissions from that facility, is Burbank Water and Power.) If a non-owner has operational control of a facility, the definition of "operator", combined with the clear language of section 95101(a)(1) above, requires the operator to report the facility's emissions and prevents the owner from reporting the emissions instead.

It is unclear whether, by including proposed new section 95101(a)(3), the ARB intends to allow an entity that owns (but does not operate) a facility to assume the reporting responsibility in place of the operator. If that is the ARB's intention, it should be made very clear as reporting responsibility determines emissions liability. There should be no room for doubt as to which entity must report emissions and surrender allowances for a facility. If the ARB intends to give the owner of a facility the option to assume reporting responsibility, sections 95101(a)(1)(A), (B)

and (F) should be amended to refer to "Operators *or owners*" and a similar change may need to be made to the definition of "reporting entity" in section 95102(a)(408).

III. REVISE THE DEFINITION OF "IMPORTED ELECTRICITY" TO REFER TO BALANCING AUTHORITIES.

The definition of "Imported electricity" in section 95102(a)(245) of the Regulation is proposed to be amended by excluding:

> electricity imported into California by an *Independent System Operator* to obtain or provide emergency assistance under applicable emergency preparedness and operations reliability standards of the North American Electric Reliability Corporation or Western Electricity Coordinating Council. [emphasis added]

The Regulation does not define "Independent System Operator"; the term appears to refer to the California Independent System Operator ("CAISO"). However, the relevant North American Electric Reliability Corporation ("NERC") standard, Standard EOP-002 – Capacity and Energy Emergencies, applies not just to the CAISO but more generally to balancing authorities and reliability coordinators.[2] CAISO is an important, but not the only, balancing authority in California. Other balancing authorities (including some of the SCPPA members) that are not known as "Independent System Operators" may also be required to import electricity for reliability purposes under NERC Standard EOP-002 from time to time. Therefore, the definition of "Imported Electricity" should refer to balancing authorities rather than just "Independent System Operators" in the sentence on emergency assistance.

Furthermore, the term "balancing authority" is defined in section 95102(a)(25).

[2] See Standard EOP-002-3, available at: http://www.nerc.com/files/EOP-002-3.pdf.

To avoid inadvertently restricting the application of the first new sentence in the definition of "Imported Electricity" and to maintain consistency with existing defined terms, section 95102(a)(245) should be revised as set out below:

> (245) "Imported Electricity" means electricity generated outside the state of California and delivered to serve load located inside the state of California. ... Imported Electricity does not include electricity imported into California by a~~n~~ balancing authority~~Independent System Operator~~ to obtain or provide emergency assistance under applicable emergency preparedness and operations reliability standards of the North American Electric Reliability Corporation or Western Electricity Coordinating Council.

The same change should be made to the definition of "Imported Electricity" in the Cap and Trade Regulation.

IV. SCPPA COMMENDS THE ARB ON RETAINING THE CURRENT REPORTING AND VERIFICATION DEADLINES.

The proposed changes to the Regulation do not include changes to the emissions report deadline in section 95103(e) or the verification deadline in section 95103(f), despite earlier proposals to move the verification deadline (and possibly also the reporting deadline) two weeks earlier.

SCPPA commends the ARB on retaining the existing deadlines. Moving these deadlines earlier would have imposed difficulties on all covered entities.

Verification is a detailed and time-consuming process that would be difficult to compress into a shorter timeframe. In addition to completing initial investigations, document review and site visits, there needs to be 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. Also, a verifier may have several clients, all requiring verification during the same period. Shortening the time for verification would have made 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 have imposed 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, making it very difficult for reporting staff to spend the necessary time to ensure each report is accurate and complete.

V. NEW REQUIREMENTS FOR ACS TRANSACTIONS SHOULD APPLY ONLY TO TRANSACTIONS ENTERED INTO AFTER 1/1/2014.

Proposed new section 95103(h)(8) provides that electric power entities must report 2013 electricity transactions and emissions in accordance with the requirements of sections 95111(a)(4)(A)(3), (a)(5), (b)(3), (f)(5)(F) and (g)(1)(N). Effectively, therefore, the proposed changes to these parts of section 95111 will be retroactive to the start of 2013, although the changes will not be finalized and approved until towards the end of 2013.

As a general rule, SCPPA does not support the retroactive application of changes to regulations – particularly changes that will be made retroactive back nearly a full year before they are finalized. However, the retroactivity of the proposed change to section 95111(a)(5)(B) is a particular concern.

Section 95111(a)(5)(B) currently provides that electricity delivered from asset-controlling suppliers must be reported as specified and not as unspecified. The proposed change deletes this sentence altogether and substitutes it with a requirement to report as unspecified power asset-controlling supplier ("ACS") power that was not properly acquired as specified power. This change virtually reverses the meaning of this section. Rather than being required to report all

electricity delivered from ACSs as specified, the section would allow only certain purchases of ACS electricity to be claimed as specified. The requirements for claiming specified source power include having a written power contract that is contingent upon delivery of power from a particular facility or ACS system that is designated *at the time the transaction is executed,* according to the definition of "power contract" in section 95102(a)(356).

Some SCPPA members have long-term power contracts with ACSs that do not specifically designate the source of the power as the ACS's system. However, the power delivered by the ACS does come from its system, as shown by the e-tags. These contracts have been in place for some years. In the 2012 emissions report, this power could be (and was) claimed as ACS power with the relevant ACS emissions factor, due in part to the requirement in current section 95111(a)(5)(B) to report electricity delivered from asset-controlling suppliers as specified and not as unspecified.

If the proposed change to section 95111(a)(5)(B) is made retroactive to the start of 2013, the power from these contracts could not be claimed as ACS power and must be reported as unspecified (using the default emissions factor) in the 2013 data year report and future reports. Given the difference between ACS emission factors and the default emissions factor, an electricity importer's reported emissions, and its emissions liability, would increase (as between 2012 and 2013) without any change in the source of its power or its actual emissions. This is not appropriate.

Furthermore, this impact could not be avoided by simply amending the power contract with the ACS to specify the source of the power, because the source must be specified at the time the transaction is executed. A whole new contract would need to be entered into, raising a host of potential commercial issues.

For these reasons, the change to section 95111(a)(5)(B) should apply only to transactions entered into after these proposed changes to the Regulation become effective, which SCPPA understands will be on January 1, 2014. Going forward, electricity importers would be aware that any new contracts with ACSs must specify the source of the power and could take steps to include this provision when negotiating new contracts. This approach would avoid unfairly penalizing those importers with existing ACS contracts that do not happen to specify the source and that were entered into when there was no requirement to specify the source.

VI. NEW BIOMETHANE REPORTING REQUIREMENTS SHOULD BE REVISED.

In the proposed revisions to section 95103(j)(3) of the Regulation, the operator of a generating facility that is reporting emissions from biomethane fuel must report, for each contracted delivery, details on each biomethane vendor from which biomethane is purchased and the annual MMBtus delivered by each biomethane vendor.

This provision requires minor changes. First, references to "delivery" of biomethane should be avoided, given that, absent a dedicated pipeline, biomethane itself is not physically delivered to the generator. References to "supply" would be more appropriate.

Second, although reporting is done on a facility basis, an entity may operate several generating facilities and may contract with a biomethane vendor for a volume of biomethane that the entity then allocates among its facilities. Thus, when reporting the annual volume of biomethane supplied by each biomethane vendor under section 95103(j)(3)(B), in each facility report, it would be logical for the entity to report the volume supplied by that vendor that was allocated to that facility rather than reporting the total volume supplied by that vendor. Section 95103(j)(3)(B) should be clarified to reflect this.

SCPPA's proposed changes to section 95103(j)(3) to address the issues outlined above and to reduce redundancy in the drafting are set out below:

> ~~When reporting biomethane, t~~The operator or supplier who is reporting biomass-derived fuel emissions from biomethane ~~fuel~~ must also report, for each contracted supply~~delivery~~:
>
> (A) Name and address of the ~~biomethane~~ vendor from which biomethane is purchased;
>
> (B) Annual MMBtu ~~delivered~~supplied by each biomethane vendor for the facility.

VII. ALLOW TIME TO UPDATE MONITORING AND CALCULATION METHODS AFTER A CHANGE TO THE REGULATION.

Proposed new section 95103(m)(5) provides that:

> When regulatory changes impose new or revised reporting requirements or calculation methods on an operator or supplier, the monitoring and calculation method must be in place on January 1 of the year in which data is first required to be collected pursuant to the reporting requirements.

It may take a period of time for a reporting entity to adopt new or revised monitoring and calculation methods following a change to the Regulation. If the changes to the Regulation occur towards the end of a year, it may not be possible to adopt the new methods by January 1 of the following year. To allow a reasonable period of time for an entity to adopt new methods, section 95103(m)(5) should be revised as follows:

> When regulatory changes impose new or revised reporting requirements or calculation methods on an operator or supplier, the monitoring and calculation method must be in place by the later of 60 days after the regulatory changes take effect, or~~on~~ January 1 of the year in which data is first required to be collected pursuant to the reporting requirements.

VIII. NEW REQUIREMENT TO REPORT REASONS FOR INCREASES IN POLLUTANTS IS PROBLEMATIC.

Proposed new section 95104(e) requires operators of certain facilities, including power plants, to:

- report whether a change in the facility's operations or status potentially resulted in an increase in emissions of criteria pollutants or toxic air contaminants in the previous data year;
- specify the cause of the increase, choosing from a list of reasons (including changes to production, operations, efficiency, or other); and
- describe how each listed change caused the increase.

This new reporting obligation should not be included in the Regulation.

The Regulation was promulgated pursuant to Assembly Bill ("AB") 32, specifically section 38530 of the Health and Safety Code. This section provides that the ARB shall establish "regulations to require the reporting and verification of statewide greenhouse gas emissions."[3] The reporting regulation shall, among other things, "Require the monitoring and annual reporting of greenhouse gas emissions from greenhouse gas emission sources."[4] There is no reference in this section to reporting criteria pollutants and determining the reasons for any increase. Such reports are outside the scope of the greenhouse gas reporting regulation as envisaged in AB 32. Separate, existing regulations address reporting of criteria pollutants and toxic air contaminants.

In addition to being inconsistent with the enabling legislation, proposed new section 95104(e) would impose considerable practical difficulties. It will be difficult for reporting entities to determine the causes of any increase (for example, to distinguish how much of the

[3] Health and Safety Code section 38530(a).

[4] Health and Safety Code section 38530(b)(1).

increase was caused by changes in operation to comply with regulations, and how much was caused by efficiency changes). It will be even more difficult for verifiers to verify that the reporting entity has correctly determined the causes of an increase.

Rather than including this new provision, the ARB should refer to publicly available reports on air pollutants that facility operators are already required to prepare under other regulations.

If this provision must be retained, at a minimum it should be revised to specify that verifiers are not required to verify the causes of any increase. Verifiers should only be required to check that the reporting entity has provided a response to this provision. Furthermore, when compliance with the Regulation is being determined, the ARB should not assess the accuracy of the causes specified pursuant to section 95104(e)(2) or the statements pursuant to section 95104(e)(3). The ARB should only determine whether the reporting entity has supplied a response.

IX. SCPPA SUPPORTS THE REMOVAL OF SYSTEM POWER PROVISIONS.

The proposed changes to the Regulation include several changes providing that if an entity imports "system power" which has an emissions factor higher than the default emissions factor, the importer must use the emissions factor the ARB publishes for that system, rather than the default emissions factor.[5]

An ARB staff member informed SCPPA on September 24, 2013, that the staff plans to recommend the removal of these new sections. SCPPA supports the removal of the system power provisions.

[5] Proposed new sections 95111(a)(12), (b)(5), and (g)(6).

X. HOURLY METER DATA FOR SPECIFIED SOURCE IMPORTS SHOULD NOT BE REQUIRED.

SCPPA commends the ARB for deleting the phrase "at the time the power was directly delivered" in section 95111(g)(1)(N) and providing that this change will take effect for 2013 data reported in 2014 (section 95103(h)(8)).

Requiring hourly meter generation data was problematic for several reasons. Some existing contracts for specified source electricity do not contain provisions allowing the purchaser access to the hourly meter data. Even if the information was available, tracking and verifying so much detailed data would have required a significant amount of additional time. Furthermore, any imbalance that occurs between the electricity generated and the electricity delivered is typically trued-up as part of the contract administration and energy reconciliation process. Finally, the reports under the Regulation are annual, so accuracy on an hourly basis should not matter provided that the annual figures provided in the report are accurate. Reported annual imports can be verified by comparing the figures with the reporting entity's share of the generating facility's annual generation meter data.

For these reasons, SCPPA supports the proposed change to section 95111(g)(1)(N) and considers that no further changes need to be made to this subsection.

XI. THE REFERENCE TO SCPPA IN THE INITIAL STATEMENT OF REASONS IS INCORRECT.

The Initial Statement of Reasons ("ISOR") prepared for the changes to the Regulation, dated September 4, 2013, contains a section on cost impacts on state and local government. The ISOR states that "Staff reviewed the list of currently reporting entities and identified 28 facilities operated by local government entities... The 28 facilities operated by local agencies are

listed in Table VI-4."[6] This table lists SCPPA as the local government entity in relation to "BWP/MPP Electricity Generating Facilities at 164 W. Magnolia."[7]

However, as mentioned above, Burbank Water and Power, not SCPPA, is the operator of and the reporting entity for the facilities at 164 W. Magnolia. The reference to SCPPA in this context is incorrect. If the Final Statement of Reasons includes this table, it should refer to Burbank Water and Power instead of SCPPA.

XII. CONCLUSION

SCPPA appreciates the opportunity to submit these comments to the ARB and urges the ARB to consider these comments when preparing changes to the Regulation for 15-day public comment. If further 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 finalized.

Respectfully submitted,

/s/ Lily M. Mitchell

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[6] ISOR page 31.

[7] ISOR page 32.