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October 18, 2013

In reply refer to: LP-7

Clerk of the Board, Air Resources Board
1001 I Street
Sacramento, California 95814
(Submitted electronically via CARB's online comment form)

RE: Comments on Proposed Amendments to the Regulation for the Mandatory reporting of Greenhouse Gas Emissions, Released on September 4, 2013.

The Bonneville Power Administration (BPA) is a Federal agency within the U.S. Department of Energy. Bonneville is voluntarily reporting under the California Air Resources Board's (CARB) Greenhouse Gas Emissions Reporting Rule (commonly known as the MRR).

BPA appreciates this opportunity to comment on proposed changes to the MRR and focuses on four areas applicable to the electricity sector: (1) proposed changes that would require sellers of specified source power to warrant or guarantee that the product is in fact specified source power, and proposed changes that would apply this requirement to ACS sellers and make clear that an ACS seller controls whether the transaction is for specified ACS power; (2) proposed changes related to the newly-defined term "Treaty power;" (3) proposed changes related to e-Tag protocol for Asset Controlling Supplier power; (4) proposed changes related to the Asset Controlling Supplier transmission loss factor.

1. Comment regarding proposed changes to MRR Section 95111(a)(4) and to MRR 95111(a)(5)(B)

Regarding 95111(a)(4), CARB has proposed to update this section to "effectively require sellers of specified power to warrant or guarantee that the transacted product is, in fact, specified source electricity from the generation source along each segment in the market path."[1] Regarding 95111(a)(5)(B), CARB states that this proposed change would "establish that asset-controlling supplier power may be reported as either specified or unspecified power depending upon the transaction, for the reason that asset-controlling supplier power can be sold in the market as either specified or unspecified power."[2]

BPA supports the proposed changes to both these sections. As an ACS, BPA regards these changes as related to each other. That is, the change to (a)(4) requires sellers of specified power to warrant or guarantee that what they are selling is in fact specified source power. This principle is then applied to ACS sellers (when selling specified power) through the change to

[1] CARB Initial Statement of Reasons, at 56.
[2] *Id*. at 57.

(a)(5)(B), and the new language in (a)(5)(B) makes clear that an "ACS seller controls whether the specified ACS attributes are conveyed with the transaction."[3] Thus, an ACS seller would control whether the product it is selling is specified by choosing whether to provide a warranty or guarantee to that effect to the purchaser.

The principle of allowing a seller to control its own product is appropriate because, at its core, the California Cap & Trade and MRR program (in the context of the electricity sector) is intended to provide a market mechanism that encourages investment in, and dispatch of, low-carbon resources. To achieve this, sellers must be able to realize the carbon-related economic benefits of their power by having the ability to choose when to convey such benefits. In this vein, BPA agrees with the August 15, 2013, comment of Powerex that "Allowing buyers to acquire the carbon-related economic benefits of low emission factor power without consent from the seller effectively nullifies the very price signals upon which the Program is founded."[4]

To convey the market-driven signals that CARB is attempting to send, the MRR has recognized a fundamental principle: The right to claim power as "specified" is a negotiated term of a transaction between buyer and seller. Specifically, the MRR makes clear that a "written power contract" is to be used "for the purposes of documenting specified versus unspecified sources" and it defines a contract for a specified source as a "contract that is contingent upon delivery of power from a particular facility, unit, or asset-controlling supplier's system that is *designated at the time the transaction is executed*."[5] By placing importance on the "designat[ion] at the time the transaction is executed," the MRR makes specified source status a material term of a transaction that must be agreed upon by the parties.[6] CARB's online guidance reiterates this concept: "EPEs need not contract directly with an ACS in order to claim ACS power so long as the original buyer and any subsequent buyers and sellers showing in the NERC e-tag market path *utilize a specified power contract to convey the right to receive ACS power*."[7] Thus it is clear that the parties must utilize a contract that specifically shows that their intent was "to convey the right to receive ACS power."[8]

To accomplish this, a seller (whether from a low-emission or high-emission resource) must have the ability to choose whether or not to convey that right. Without that choice, the right to claim power as "specified" will automatically pass to buyers without any negotiation process.[9] The

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[3] *Id*.
[4] Comments of Powerex Corp., at 7 (August 15, 2013).
[5] MRR Section 95102 (351) (emphasis added).
[6] BPA, Iberdrola, Transalta, and others have consistently agreed with this concept. *See* Comments of Iberdrola Renewables, LLC, *et al* at 2 (submitted July 10, 2013) ("We believe that energy trading parties need to know from CARB the obligations they must provide in their agreements to trade specified source energy. We believe these are obligations to identify a source, provide specific generation records, and *agree that a source may be claimed by a downstream purchaser as having been purchased as 'specified source' energy*." (emphasis added)).
[7] *See* CARB guidance entitled "Use of Asset-Controlling Supplier System Emission Factors," available at: http://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/acs-power.htm#acs_use (emphasis added).
[8] *Id*.
[9] This is the approach suggested by Morgan Stanley. *See generally* Comments of Morgan Stanley, at 1-3 (October 3, 2013).

point is not to grant sellers "arbitrary lordship"[10] over the value but, rather, to allow parties to enter a discussion about value and to mutually agree on what is appropriate. If sellers are not permitted to choose whether to convey their power as "specified," then that right unilaterally shifts to buyers and thereby prevents the market from determining the appropriate value of "specified" power.[11] This would destroy CARB's already-established principle that "the right to receive ACS power" is a material term of a contract that the parties must agree upon and "designat[e] at the time the transaction is executed."[12]

Accordingly, to ensure a level playing field in the market, the concept of seller choice (as embodied in the written power contract) should apply equally among sellers. One way to accomplish this is proposed by the comments of Western Power Trading Forum (WPTF), which describe certain changes to the regulations.[13] BPA supports the general premise of WPTF's comment, namely, that CARB should consistently apply the principle of seller choice for all electric power entities and resources.[14]

BPA also notes CARB's statement in the ISOR that "in order to claim specified ACS power, EPEs [Electric Power Entities] must provide some evidence that the ACS attributes were in fact conveyed at each point along the market path shown on the eTag."[15] The phrase "some evidence" is vague. BPA presumes that such vagueness may be intentional because CARB may need to evaluate on a case-by-case basis whether an EPE that brings power into California has proof that the power is in fact specified. For example, in the past BPA's trading floor has provided its purchasers with a "BPA ACS specified confirm" to serve as a showing that what was conveyed was in fact specified power. It is BPA's understanding that such a confirm would meet the "some evidence" requirement that CARB would look for from an EPE bringing specified power into California. Apart from its trading floor power sales, BPA also makes various other types of contract sales for both power and load service. If an EPE wishes to claim these as "specified" for purposes of CARB's regulations, CARB will need to work with EPEs to clarify the type of documentation needed.

Lastly, BPA recommends deleting the following sentences from the ISOR's rationale for the proposed updates to section 95111(a)(5)(B):

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[10] Comments of Morgan Stanley, at 2.

[11] Morgan Stanley argues that seller choice and a market-determination of value will harm California consumers. Comments of Morgan Stanley, at 2. This is a red-herring. Morgan Stanley's preferred approach, of having CARB unilaterally convey value to buyers like Morgan Stanley itself, will do nothing to put California consumers in a better position.

[12] CARB guidance entitled "Use of Asset-Controlling Supplier System Emission Factors," available at: http://www.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/acs-power.htm#acs_use ; MRR Section 95102 (351) (emphasis added).

[13] Comments of Western Power Trading Forum, at 2-4 (October 8, 2013).

[14] Comments of WPTF, at 3. However, BPA takes no position on the various specific regulatory changes proposed by WPTF, such as the changes regarding "Slice" contracts. *See* Comments of WPTF, at 2-3.

[15] *Id*. (emphasis added).

> For example, a renewable energy seller determines whether the renewable energy credits (RECs) convey in a transaction for specified power. Similarly, the ACS would determine whether the specified ACS attributes convey in a transaction for specified ACS power.[16]

The comparison to RECs is not needed to explain CARB's rationale. Moreover, it is confusing because RECs are a tradable commodity that can be bought and sold separately from the power that they are generated with. Assuming the sentence discussing RECs is deleted, CARB should also delete the sentence that follows it, beginning with "Similarly." Without the REC sentence, there is no need for this sentence. Moreover, this sentence is repetitive of the earlier sentence that states: "It is ARB's expectation that the ACS seller controls whether the specified ACS attributes are conveyed with the transaction."[17] BPA agrees with this proposition, but it is not necessary to state it twice.

2. Comment regarding proposed changes to MRR Section 95102(a)(476) and Section 95111(b)(3).

CARB has proposed to add the following definition to 95102(a):

> (476) "Treaty power" means electricity returned to Canada from the United States under the Columbia River Treaty, an international treaty. The source of treaty power is neither specified nor unspecified. Treaty power shall be accorded an emission factor of zero.

In addition, CARB has proposed to insert the underlined language in 95111(b)(3) to account for "Treaty power" in the calculation of an Emissions Factor of an Asset-Controlling Supplier:

> PEsp = *Electricity Purchased from Specified Sources*. Amount of electricity purchased wholesale and taken from specified sources by the asset-controlling supplier for the data year as reported to ARB under this article (MWh). <u>For proposes of this calculation, treaty power is included in this variable</u>.

BPA does not take issue with the proposed change to 95111(b)(3), other than to point out that the Canadian Entitlement is not "purchased" from BPA in a market transaction. Rather, BPA provides the power as a return of benefit pursuant to the requirements of the Columbia River Treaty.

BPA's primary reason for commenting on this issue is to point out that BPA does not agree with the proposed definition of Treaty power, specifically, the statement that it should be accorded an emission factor of zero. Instead, BPA suggests modifying proposed definition #476 as explained below.

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[16] ISOR at 57.
[17] *Id*.

Under the Columbia River Treaty, BPA supplies Canadian Entitlement (CE) energy to Powerex from BPA's entire system of resources, including market purchases. Powerex acknowledges this in its August 15th comment: "The treaty obligation to deliver CE energy is an obligation of the United States to deliver a certain fixed amount of power each year, *not an obligation to provide a certain percentage of power from any specific sources*."[18]

The Canadian Entitlement is scheduled to meet Canada's needs and is shaped on a daily and hourly basis to ensure equal average monthly delivery amounts.[19] In order to meet these variable Canadian schedules, BPA relies not only on hydro generation but also on other resources in its entire system. In contrast, if the Canadian Entitlement were truly delivered as zero emission factor hydro generation (as definition #476 is currently written by providing an emission factor of zero to Treaty power), then the power would be delivered to Powerex in the shape of BPA's hydro generation with larger amounts in some months than in others. Thus, a more accurate way to account for the power would be to accord it an emission factor equivalent to BPA's ACS emission factor for the year in question.

Powerex is correct that "the CE reflects Canada's 50% share of the downstream power benefits derived from hydroelectric generation in the United States,"[20] but this is simply the basis for the calculation of total *amount* of benefit, not its *source*. The statement does not support Powerex's conclusion that "it is abundantly clear that CE power should be treated as zero EF power."[21] Powerex is merely citing to the basis for how the *amount* of Canadian Entitlement power is determined; this does not reflect the operational reality of how that power is *supplied*.

Accordingly, BPA suggests that CARB change the proposed definition #476. The final sentence of the definition should be modified to read "Treaty power shall be accorded an emission factor equal to the ACS or other source from which it was supplied."

Lastly, BPA notes that the responsibility for providing approximately 125 of the 500 aMWs of the monthly Canadian Entitlement amount has been allocated to the owners of the five non-Federal hydroelectric projects along the Columbia River. These owners, who are not affiliated with BPA, are referred to as the "Mid-C" participants. Accordingly, the Canadian Entitlement obligation is met by ~375aMWs from the BPA ACS System and ~125 aMWs from generation from the Mid-C participants. BPA has no involvement with how or where the Mid-C participants procure the MWs to meet their monthly 125 aMW Treaty obligation.

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[18] Powerex Comment at 3 (Aug. 15, 2013) (emphasis added).

[19] The Treaty provides that "the downstream power benefits to which Canada is entitled shall be delivered as follows:

a) dependable hydroelectric capacity *as scheduled by the Canadian entity*, and

b) average annual usable hydroelectric energy *in equal amounts each month . . . .*"

Treaty Article VII(3) (emphasis added).

[20] Powerex Comment at 4 (Aug. 15, 2013).

[21] Id.

3. Comment regarding proposed changes to 95111(a)(5)(E)

In the ISOR CARB states that "the purpose of this new section is to specify the tagging requirements necessary to claim asset controlling supplier power."[22] This proposed addition also deals with "path outs" in the context of BPA.[23] BPA supports the general purpose of this new section, but certain edits are needed.

First, the references to path outs. BPA understands and appreciates CARB's effort to acknowledge that, under BPA's governing federal laws, any purchase that BPA makes is a part of BPA's "federal system." That is, federal law only allows BPA to make purchases for the purpose of serving load, however, there are times when demand or system conditions change and BPA no longer needs energy originally purchased to serve load. In such cases BPA may schedule power originally intended to meet federal system load with subsequent sales, resulting in a "path-out" of balancing purchases and sales. This practice is not unique to BPA and has the added benefit of making efficient use of transmission. BPA appreciates CARB acknowledging that BPA's "federal system" consists of federal generation and purchases that might be "pathed-out" with "federal system" sales.

BPA's concern is that the proposed language regarding path outs implies that path outs are a BPA-only practice. They are not; many in the industry "path-out" energy purchases and sales. Therefore, in order to more accurately describe the acceptable tagging practices of BPA ACS power, BPA recommends eliminating the references to the term "path out" (which is a general industry term) and rewriting the language as follows:

> (E) *Tagging ACS Power*. To claim power from an asset-controlling supplier, the asset-controlling supplier must be identified on the physical path of the NERC e-Tag as the PSE at the first point of receipt, or in the case of asset controlling suppliers that are exclusive marketers, as the PSE immediately following the associated generation owner, with the exception of a U.S. federal ACS whose ACS system definition includes energy purchases~~path outs. Path outs are 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. Federal energy purchases that ~~but which~~ are no longer required to meet a U.S. federal mandate due to changes in demand or system conditions can become surplus and can be resold as ACS power in the market with the ACS listed on either the physical or market path of the NERC e-Tag.

These changes better describe CARB's purpose, which is to allow BPA to adhere to its federal system definition that includes generation and system balancing purchases, which sometimes may result in path-outs when the federal system needs change.

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[22] ISOR at 58.
[23] ISOR at 58.

Second, the last line of BPA's suggested edits includes the words "or market path." This addition is necessary because, as BPA has explained and demonstrated to CARB staff through examples, when BPA paths-out surplus purchases and sales at the same point of delivery (POD), BPA does not use transmission and is thereby only listed on the market path of the NERC e-tag. It is only when an entity uses transmission to schedule a path-out between two different PODs that the entity is listed on the physical path and the market path of the NERC e-Tag. CARB staff has indicated that it is permissible to include both of these types of path-outs for purposes of BPA's ACS system. Accordingly, the words "or market path" are necessary to encompass path-outs that do not require transmission and do not result in BPA being listed in the physical path.

4. Comment regarding proposed changes to Section 95111(a)(5)(D)

In the ISOR CARB states that the purpose of this proposed update is "to establish the requirement that all power claimed as asset-controlling supplier power must utilize the transmission loss factor of 1.02."[24] BPA offers no comment regarding the actual proposed change in the regulation language. However, BPA suggests that CARB remove two sentences from the ISOR that describe the rationale for this change. They are:

> While the Bonneville Power Authority [sic] (BPA) service territory does extend into California, it does so only at the distribution level and power is only provided at that level to one entity, Surprise Valley Electric, an electric cooperative. No other electric power entities take delivery of BPA power from that portion of its service territory that extends into California.[25]

These sentences are not necessary to explain CARB's proposed change. The sentences also contain incorrectly-used terms (BPA does not supply power at the "distribution level") and cause confusion by seemingly suggesting that BPA's supply of power to Surprise Valley may be an exception to the new 1.02 loss factor requirement. BPA does not believe that such an exception is needed. BPA intends to use a transmission loss factor of 1.02 when reporting its sales to Surprise Valley Electric Cooperative.

To avoid the confusion and unnecessary questions raised by these two sentences, BPA requests that CARB delete them from the Final Statement of Reasons. This deletion would not alter the meaning of the rest of the paragraph.

Sincerely,

/s/ J. Courtney Olive

[24] ISOR at 57.
[25] ISOR at 57-58.

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