

**BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
COMMENTS ON BEHALF OF
MAGNOLIA POWER PROJECT PARTICIPANTS
ON PROPOSED CHANGES TO CAP AND TRADE REGULATION
RELEASED ON JANUARY 31, 2014**

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Dated: February 14, 2014

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I. INTRODUCTION AND SUMMARY.

The Magnolia Power Project (“Magnolia”) is owned by the Southern California Public Power Authority (“SCPPA”). Magnolia is located in Burbank, California and is operated by Burbank Water and Power (“BWP”) as operating agent. SCPPA sells power from Magnolia to the following publicly-owned utilities (“POUs”): Anaheim, BWP, Cerritos, Colton, Glendale, and Pasadena (jointly, the “Magnolia POUs”). The Magnolia POUs are members of SCPPA, and each Magnolia POU has entered into a power sales agreement with SCPPA for the purchase of power from Magnolia.

SCPPA submits this comment on behalf of the Magnolia POUs. The comment addresses the discussion draft of potential amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation (“Regulation”) released for informal public comment on January 31, 2014, by the California Air Resources Board (“ARB”).

Under the Regulation, BWP is liable for the greenhouse gas emissions from Magnolia because BWP operates the plant.¹ Each Magnolia POU will periodically transfer allowances to BWP and/or direct the ARB to place a portion of the POU’s allocated allowances directly into BWP’s compliance account² to cover the emissions from the electricity that the POU receives

¹ Pursuant to Regulation § 95811(b)(1).

² Pursuant to Regulation § 95892(b)(2)(a).

from Magnolia. The Magnolia POUs are currently finalizing an agreement (“Magnolia Transaction Agreement”) that provides for such transfers.

The Magnolia POUs greatly appreciate the proposed changes to the Regulation that address issues raised by the Magnolia POUs in comments submitted on October 21, 2013.

However, certain of the proposed changes require revisions for clarity. In summary:

- The “termination dates” and even the “expected termination dates” of transaction agreements may be difficult to determine for the purposes of section 95921(b)(4)(B). If a transaction agreement does not specify a termination date, entities should be allowed to report (confidentially) the actual termination provision of the transaction agreement.
- “Agreement transfer date” is adequately defined in section 95802(a)(8), and the additional conflicting provisions relating to the agreement transfer date in section 95921(b)(4)(C) should be deleted. In addition, it should be clarified that only the agreement transfer date relating to the current transfer request must be reported (given that transaction agreements may have many agreement transfer dates).
- In proposed new section 95921(b)(6)(G), the word “processes” should be changed to “procures.”

These issues are discussed in more detail below.

The Magnolia POUs also support the comments on the proposed changes to the Regulation that are being separately submitted by SCPPA.

II. EXPECTED TERMINATION DATES MAY BE DIFFICULT TO DETERMINE FOR THE PURPOSES OF SECTION 95921(b)(4)(B).

Section 95921(b)(4) sets out the reporting requirements for transaction agreements involving multiple transfers of compliance instruments over time. This is the section that applies

to the Magnolia Transaction Agreement. Proposed new subsection 95921(b)(4)(B) requires entities to report the termination date of the transaction agreement, or if one is not specified, the expected termination date.

Definitions of the new terms “termination date” and “expected termination date” are proposed in section 95802(a). As the Magnolia Transaction Agreement does not specify a particular termination date (in terms of a predefined calendar date), it may be more relevant to consider the “expected termination date”, which is defined in section 95802(a)(133) as:

a date specified in a transaction agreement on which all requirements related to present or future transfers of compliance instruments are expected to be completed, excluding contingencies specified in the agreement.

SCPPA appreciates that the term “expected termination date” was included in the Regulation to provide some flexibility. However, it remains difficult to say exactly what the expected termination date of the Magnolia Transaction Agreement may be. The current drafting of the termination provision in this agreement is as follows:

This Agreement and all of the obligations of the Participants, the Authority, and the Operating Agent hereunder shall terminate on the later to occur of (a) the repeal or termination of AB 32 and the GHG Regulations (unless any such repeal or termination is coincident with the enactment of a comparable state or federal greenhouse gas reduction program) and (b) the delivery of all Compliance Instruments required to be delivered under the GHG Compliance Instrument OP for the final year in which the Project is required to provide for Compliance Instruments under AB 32 and the GHG Regulations.

Under the Regulation as it currently stands, the final year in which compliance instruments would need to be transferred would be 2021, to meet compliance obligations for 2020. However, there is a general expectation (pursuant to the recently released draft update to the AB 32 Scoping Plan, among other things) that the cap and trade program will be extended for some period of time beyond 2020, in which case the Magnolia Transaction Agreement would

continue to require compliance instrument transfers throughout this extended period. Thus, it is not currently possible to determine the termination date or even the expected termination date of the Magnolia Transaction Agreement. These issues would not be unique to the Magnolia Transaction Agreement, as similar termination provisions are likely to be found in other transaction agreements.

The inclusion of the term “expected termination date” does not, in this situation, provide much more flexibility than “termination date.” Therefore, it may be preferable to delete the reference to “expected termination date” in section 95921(b)(4)(B). Instead, if a transaction agreement does not provide a specific termination date, the entities could be required simply to report the actual termination provision of the agreement. (The ARB would need to keep this information confidential.)

The Magnolia POU’s proposed changes to section 95921(b)(4)(B) are set out below:

(B) Termination date of the transaction agreement, or if one is not specified, the ~~expected~~ termination [provision in the transaction agreement](#) date.

III. IN SECTION 95921(b)(4)(C), DELETE CONFLICTING PROVISIONS AND CLARIFY THAT ONLY THE CURRENT AGREEMENT TRANSFER DATE IS TO BE REPORTED.

Proposed new section 95921(b)(4)(C) requires entities to report the “agreement transfer date”, which is defined in section 95802(a)(8) as:

a provision of a transaction agreement that requires the transfer of compliance instruments on or before a date determined by the transaction agreement.

The Magnolia POU’s have no objection to this definition, and appreciate the change from the previous term “execution date”, which was confusing. However, concerns arise when this definition is considered in the context of section 95921(b)(4)(C).

First, section 95921(b)(4)(C) unnecessarily, and confusingly, expands on the meaning of “agreement transfer date” by adding the following:

If completion of the transfer request process is the last term of the transaction agreement governing the transfer, the date the transfer request is submitted must be entered as the agreement transfer date. If there are financial or other terms related to the transfer to be settled after the transfer request is approved, the date those terms are expected to be settled must be entered as the Agreement Transfer Date.

These provisions conflict with the definition of “agreement transfer date” in section 95802(a)(8). The date the transfer request is submitted may not be the same as the deadline by which compliance instruments must be transferred under the transaction agreement. “Financial or other terms related to the transfer” may include almost anything, such as guarantees, deposits, or true-up provisions, and these types of provisions may not be concluded until years after any one transfer of compliance instruments. Given the vagueness and the conflicting nature of these provisions in section 95921(b)(4)(C), and the fact that a clear definition of “agreement transfer date” is already provided, these parts of section 95921(b)(4)(C) should be deleted. The ARB should also consider deleting the same sentences in section 95921(b)(3)(B).

Second, section 95921(b)(4)(C) refers to an “agreement transfer date” in the singular, yet this section 95921(b)(4) is intended to apply to transaction agreements that involve multiple transfers of compliance instruments over time. The Magnolia Transaction Agreement, for example, sets out several “agreement transfer dates” for each year the agreement is in effect. For simplicity, section 95921(b)(4)(C) should be amended to clarify that it only requires reporting of the “agreement transfer date” relating to the current transfer request. Future transfers will require further transfer requests, at which time the applicable agreement transfer dates can be reported.

The Magnolia POU’s proposed changes to section 95921(b)(4)(C) are set out below:

(C) Agreement Transfer Date relating to the current transfer request. ~~If completion of the transfer request process is the last term of the transaction agreement governing the transfer, the date the transfer request is submitted must be entered as the agreement transfer date. If there are financial or other terms related to the transfer to be settled after the transfer request is approved, the date those terms are expected to be settled must be entered as the Agreement Transfer Date.~~

IV. IN SECTION 95921(b)(6)(G), CHANGE “PROCESSES” TO “PROCURES.”

Section 95921(b)(6) allows for a price of zero to be reported for compliance instrument transfers in certain circumstances, including the circumstances set out in proposed new section 95921(b)(6)(G). The Magnolia POU's very much appreciate the inclusion of this new section pursuant to our comments submitted on October 21, 2013. It allows transfers under the Magnolia Transaction Agreement to be reported at a price of zero, which is important because BWP will not be paying the other Magnolia POU's for the compliance instruments they transfer to BWP under the Magnolia Transaction Agreement.

However, one minor error has been made in this new section 95921(b)(6)(G): it refers to a generation facility from which the utility *processes* electricity. Rather than “processes”, the correct word is “procures”, as the Magnolia POU's procure electricity from Magnolia.

The Magnolia POU's' proposed correction to section 95921(b)(6)(G) is set out below:

(G) The proposed transfer is from a publicly-owned utility to an entity (including a Joint Powers Authority of which that utility is a member, or an operating agent acting on behalf of such a Joint Powers Authority) operating a generation facility from which the utility ~~processes~~procures electricity.

V. CONCLUSION

The Magnolia POU's appreciate the opportunity to submit these comments to the ARB and urge the ARB to consider these comments when preparing revisions to the Regulation for formal 15-day public comment. If further information is required, the Magnolia POU's would be

happy to discuss any of the proposals in these comments with ARB staff. The Magnolia POU's look forward to continuing to provide input to the ARB as the revisions to the Regulation are finalized.

Respectfully submitted,

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