



WILDFLOWER ENERGY

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April 4, 2014

Ms. Rajinder Sahota,
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 I Street
Sacramento, California 95814

Filed Online And Sent Via Email

Subject: **Wildflower Comments on March 21, 2014 15 Day Cap-and-trade
Regulatory Amendments**

Dear Ms. Sahota:

Wildflower Energy LP ("Wildflower") provides the following comments in response to the March 21, 2014 *Cap-and-Trade Regulatory Amendments*. Wildflower has a Pre-AB 32 long-term contract with a non-utility power marketer that lasts through the duration of the Cap-and-Trade program. The contract does not expressly contemplate any greenhouse gas ("GHG") control program or treatment of such program compliance costs, and this new cost burden poses a serious threat to the continued financial viability of Wildflower's fast starting power plants located in Southern California.

Wildflower supports the Amendments to Sections 95891 and 95894. Wildflower believes that the amendments are a fair approach that will achieve the ARB's policy objectives of encouraging parties to renegotiate their legacy contracts, while at the same time, minimizing the risk of facilities shutting down due to their inability to pass through greenhouse gas compliance costs. Wildflower's good faith efforts to renegotiate its legacy contract to explicitly address greenhouse gas costs have been unsuccessful. However, Wildflower is hopeful that the adoption of the amendments to Sections 95891 and 95894 will ultimately lead to a reasonable amendment to Wildflower's Legacy Contract. Wildflower offers the following specific comments on the proposed amendments to Section 95891 and 95894.

1. The Amendments to Sections 95891 and 95894 Would Neither Penalize Counterparties to Legacy Contracts Nor Provide a Competitive Advantage to Legacy Contract Generators.

One of the fundamental policy objectives of the Cap-and-Trade is to create a carbon price signal. In most cases, the counterparties to Legacy Contracts have been able to avoid



internalizing GHG price signals because the generators are directly responsible for procuring emissions allowances. As amended, Section 95891 would remove allowances from an industrial counterparty's free allocation if the industrial counterparty (or direct associate) refuses to pay for the GHG costs. The effect of this amendment (i.e., the redistribution of allowances) will be to treat the industrial counterparties consistently with all other counterparties that are paying for GHG costs.

This redistribution is particularly important for Wildflower's facilities because they operate under a tolling contract where the counterparty controls the dispatch of the facilities. The facilities are presumably dispatched based on economics of the contract relative to market conditions. In other words, the counterparty controls the GHG emissions of Wildflower's facilities. The ability to avoid AB 32 costs artificially makes the Wildflower facilities appear less expensive compared to other resources in the market where the sellers (e.g., other marketers) have paid for GHG costs. If the ARB redistributes allowances through the Amendments to Section 95891 and 95894, the marketer will be required to internalize the GHG costs and the carbon price will be passed through like other power plants controlled by marketers. Thus, the counterparty is not being penalized by the amendments to Section 95891 and 95894 when compared to the treatment of other marketers.

Moreover, an industrial counterparty can avoid redistribution of allowances if it or the direct corporate associate renegotiates the Legacy Contract to address GHG costs. Alternatively, for Wildflower's facilities, the counterparty could choose to not dispatch the facilities. If the facilities are not dispatched at all, there would be no emissions obligation and there would be no redistribution of allowances after 2014. Either way, the redistribution is within the counterparty's control.

2. The Amendments to Sections 95891 and 95894 Would Not Disrupt the ARB's Policies of Minimizing Risks of Trade Exposure To EITE Industries.

As amended, Section 95891 and 95894 would remove allowances from an industrial counterparty to a legacy contract if the parties do not renegotiate the Legacy Contract. If the counterparty to a legacy contract is a direct corporate associate of an entity receiving free allocation as an "Emissions Intensive Trade Exposed" ("EITE") entity, then the EITE entity lose a portion of their free allocation based on the emissions associated with the Legacy Contract. Since the allowances will initially be allocated from a future compliance period (i.e., 2015 allowances), the EITE entity will have more than enough time to procure allowances and adjust its compliance strategy before the next surrender obligation becomes due. Moreover, there will be ample time for the EITE entity (or the direct corporate associate of the EITE entity) to engage in bilateral negotiations to amend the Legacy Contract and avoid the redistribution all together. Thus, the amendments to Sections 95891 and 95894 will not put EITE entities at any greater risk of trade exposure.



3. The ARB's Nuanced Approach in Section 95894 is Appropriate Given the Diversity of Legacy Contracts.

Wildflower supports the ARB's efforts to develop a multifaceted approach in Section 95894. Section 95894 represents an appreciation for the fact that there are a multitude of different types of generators operating under various contractual structures that expire at different points in time. A "one-size fits all" approach would not have been an effective solution to the Legacy Contract issue. In those cases where the ARB can encourage the counterparty to renegotiate by redistributing allowances (i.e., by withholding free allocation from industrial counterparties), the ARB will fulfill the policy of encouraging renegotiation as the preferred solution to the Legacy Contract issue.

4. The ARB Should Clarify that Sections 95802(a)(206) and 95891 are Meant to Be Consistent with Section 95894.

Wildflower requests that the ARB clarify in its Final Statement of Reasons that when the Regulation refers to: (1) "Legacy Contract Generator with an Industrial Counterparty" in Section 95802(a)(206) and (2) "Legacy Contracts" in Section 95891, the ARB is referring to Legacy Contracts where the counterparty (*or entity in a direct corporate association with the counterparty*) is a covered entity or opt in covered entity that is in a sector listed in Table 8-1. This clarification would ensure that these sections are intended to be consistent with Section 95894(c).

Wildflower appreciates the ARB staff's efforts in working with the diverse group of parties affected by the Legacy Contract issue and looks forward to the successful resolution of this issue in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Shepard', written over a light blue horizontal line.

Paul Shepard
Asset Manager, Wildflower Energy, LP