

Comments of Brookfield Energy Marketing LP (“Brookfield”) to the California Air Resource Board 15-Day Modifications on Proposed Changes the California Greenhouse Gas Cap-and-Trade Regulation**April 5, 2014****I. Introduction**

Brookfield appreciates the opportunity to submit the following comments on the California Air Resources Board’s (“CARB”) proposed 15-day modifications to the California Greenhouse Gas Cap-and-Trade Regulation issued on April 21, 2014. Brookfield offers the following comments on three specific topics raised by the proposed 15-day modifications to the regulation: 1) the definition of resource shuffling, 2) new registration requirements, and; 3) revisions to provisions for Corporate Associations.

II. Modifications to the regulation proposed for Resource Shuffling language, while an improvement from prior versions, do not go far enough to provide sufficient clarity to the market

No further revisions have been proposed by CARB from the 45-day modification but the regulations still remain silent in several key areas that need be addressed in order to allow the energy markets to operate efficiently and to avoid negatively impacting liquidity for imported power. If CARB is unwilling to modify the regulation to address these concerns Brookfield requests that CARB provide the clarification in the Final Statement of Reasons (“FSOR”). Brookfield’s concerns are summarized below. The detail behind these concerns and recommendations can be referenced in Brookfield’s comments to the 45-day modifications¹ submitted on October 16, 2013.

- 1) The definition and enforcement of resource shuffling must be explicitly limited to the activities of the First Deliverer and not extend to other entities’ historic procurement practices.

¹ See Brookfield’s October 16, 2013 comments to the proposed 45-day modifications at: <http://www.arb.ca.gov/lists/com-attach/28-capandtrade13-UzEGcgFvAj4AbVQy.pdf>

- 2) To ensure a buyer will not be held liable for other entities' resource shuffling activities, Brookfield requests that CARB proposes specific contract language that, if included in a bilateral contract or a pre-certification option, will ensure that a buyer will not be held liable for other entities' resource shuffling activities
- 3) The proposed safe harbors focus only on conditions under which California utility legacy contracts of high emissions power might be diverted. It is still unclear whether or not market activities outside of this definition are considered resource shuffling.
- 4) Proposed additions to the safe harbor language in 95852 (b)(2)(A)(9) for electricity imported under short-term contracts is problematic and should be deleted or further clarified in the FSOR. It is unclear how sales of other similar resources would be compared to or even be relevant towards evaluating a specific market transaction as part of a resource shuffling scheme.
- 5) CARB must define in the regulation or clarify in the FSOR what comprises a linked activity as it is used in Section 95852 (B)(2)(a)(10)
- 6) A transparent process is needed for the investigation and enforcement of alleged resource shuffling activity. CARB must include in the regulation or through a supplemental document what methods will be used to identify resource shuffling activities and what process would be followed to investigate a First Deliverer once the activity is identified.

III. The requirements proposed in section 95830 in regards to registration are improved from the prior version but are still overly broad

Brookfield appreciates the most recent modifications to this section that limit the requirement for CITTS entities to disclose names and contact information of employees with access to information on compliance instruments to those employees "with knowledge of the entity's market position (current and/or expected holdings of compliance instruments and current and/or expected covered emissions)." However, this requirement is still overly broad and would create an onerous administrative burden that would require the disclosure of a large number of employee information that may have some knowledge but are not the decision makers. As roles and responsibilities change this information would have to be continuously updated. This creates a large administrative challenge for covered entities. Brookfield recommends CARB retain the existing practices in regards to CITTS registration as it is unclear what benefit collecting large quantities of employee information will provide to CARB. If CARB insists on collecting additional information, Brookfield requests this requirement be limited to employees with

knowledge of the entity's market position as well as decision making authority over current and expected holdings and/or expected covered emissions. Rather than proposing our own modifications to the language we support WPTF's proposed 15-day modifications to this section. Brookfield also is concerned that such disclosure of the personal information of individual employees who are peripherally involved in an entity's market functions potentially raises privacy concerns. By limiting disclosure to employees with knowledge of an entity's market position, these concerns would be mitigated.

IV. Revisions to Section 95833 and 95912 related to provisions for Corporate Associations and Auction Participation are overly burdensome on market participants

Brookfield opposes the language proposed by CARB in section 95833(a)(1) that extends corporate association provisions to include affiliated entities "regardless of whether the second entity is subject to the requirements of this article". This addition will be unnecessarily burdensome on market participants and it is unclear what benefits acquiring information about corporate entities that don't participate in Cap-and Trade provide to CARB.

Additionally Brookfield opposes the proposed modifications in Section 95912 that require auction applicants to submit an attestation regarding previous or pending investigations within the past ten years including other entities with whom the applicant has a corporate associate that participates in carbon, fuel or electricity markets. While we support the revised language that limits the extent of corporate associations from any entity the applicant has a corporate association with to corporate associations that participate in related commodity markets, this requirement is still overly broad, onerous and burdensome. Brookfield's concerns with this proposed language are as follows:

- 1) Covered entities may not have access to information on investigations that apply to their corporate associations and therefore shouldn't be expected to provide an attestation related to other corporate entities investigations
- 2) An open investigation doesn't mean market manipulation has occurred and CARB should only be provided the information if the auction participant is actually convicted. Knowledge of open investigations without information on the outcomes would provide little value to CARB

Brookfield recommends Section 95912(d)(4)(E) be modified as follows:

An attestation disclosing convictions ~~existence and status of any ongoing investigation or an investigation that~~ have occurred within the last ten years with respect to any ~~alleged~~ violation of any rule, regulation, or law associated with any commodity, securities, environmental, or financial market for the entity participating in the auction. ~~and all other entities with whom the entity has a corporate association, direct corporate association, or indirect corporate association pursuant to section 95833 that participate in a carbon, fuel, or electricity market.~~

V. Conclusion

Brookfield appreciates the opportunity to comment on this most recent set of amendments and encourages CARB to incorporate the changes identified herein.

Respectfully,

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