ORA

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THE OFFICE OF RATEPAYER ADVOCATES' COMMENTS ON THE CAP-AND-TRADE REGULATION AMENDMENTS WORKSHOP DATED OCTOBER 21, 2016

November 04, 2016

I. INTRODUCTION

The Office of Ratepayer Advocates (ORA) is the independent consumer advocate within the California Public Utilities Commission (CPUC), with a mandate to obtain the lowest possible rates for utility services consistent with reliable and safe service levels, and the state's environmental goals.

ORA supports the efforts of the Air Resources Board (ARB) staff to develop regulations for the extension of the Cap-and-Trade Program (Program) beyond 2020, while recognizing complementary policies in California to reduce Greenhouse Gas (GHG) emissions by 2030 and beyond. As stated in the Initial Statement of Reason: "AB 32 also requires ARB to work with other jurisdictions to identify and facilitate the development of integrated and cost-effective regional, national, and international GHG reduction programs."[1]

In response to stakeholders' comments, ARB staff is reconsidering its previous proposal to remove the Renewable Portfolio Standard (RPS)[2] adjustment post-2020 from the Cap-and-Trade regulations. ORA supports the ARB staff's reconsideration of [its] decision to eliminate the RPS adjustment post-2020. The RPS adjustment reduces the GHG compliance obligation for certain out of state resources procured to meet California's RPS goals. The RPS adjustment reduces the cost of compliance with Cap-and-Trade regulations, which is ultimately born by ratepayers, while meeting California RPS program goals.

ORA appreciates this opportunity to comment on ARB's proposals presented during the Cap-and-Trade Regulation Amendments Workshop that was held on October 21, 2016. ORA provides the following comments intended to support the alignment of ARB's proposed amendments to the regulations with the state's current and future policies for reducing GHG emissions. ORA focuses on developing strategies that minimize the cost impact on California's ratepayers, while maximizing the benefits from their investments in current and future programs to achieve the state's GHG reduction goals. As discussed below, ORA recommends that ARB consider changes to its implementation of the RPS adjustment to ensure accurate accounting of ratepayers' obligations for GHG compliance costs.

[1] Staff Report: Initial Statement of Reasons, August 2, 2016 (ARB Staff Report), p. ES-1.

[2] Public Utilities Code Section 399 et seq.

II. The ARB should align its Current Cap-and-Trade Accounting Rules with California's RPS Program.

The CPUC and the California Energy Commission (CEC) are required to implement the RPS program to attain 20 percent of total sales of electricity in California from eligible renewable energy resources by 2013, 33 percent by 2020, and 50 percent by 2030.[3] The RPS statute identifies the electricity products that are eligible to comply with the RPS procurement requirements.[4] The CPUC and the CEC track RPS procurement through Renewable Energy Credits (RECs) that are assigned to eligible renewable generation.[5] The RPS program allows procurement of renewable resources through three portfolio content categories (PCC or buckets):

(1) PCC1, applicable to directly delivered electricity-facilities with a first point of interconnection within the California Balancing Authority (CBA) or with generation scheduled in the CBA;

(2) PCC2, applicable to incremental electricity and substitute energy; and,

(3) PCC3, electricity products not qualifying for the first two categories, including unbundled RECs.[6]

Under ARB's Cap-and-Trade program, entities that import electricity to California are responsible for the GHG emissions associated with those imports.[7] If the imported electricity is procured from a "specified"[8] source of electricity outside of California, then the associated

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[3] Public Utilities Code Section 399.11 (a).

[4] Public Utilities Code Section 399.16.

[5] Public Utilities Code Section 399.21.

[6] Public Utilities Code Section 399.16.

[7] Electricity that is "directly delivered" into California should qualify for PCC 1 of the RPS. ARB requires that imported electricity must meet any of the following criteria to be considered directly delivered into California:

(A) The facility has a first point of interconnection with a California balancing authority;

(B) The facility has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area;

(C) The electricity is scheduled for delivery from the specified source into a California balancing authority via a continuous physical transmission path from interconnection of the facility in the balancing authority in which the facility is located to a sink located in the state of California; or

(D) There is an agreement to dynamically transfer electricity from the facility to a California balancing authority." https://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-2013-clean.pdf.

[8] "Specified source of electricity" or "specified source" means a facility or unit which is permitted to be claimed as the source of electricity delivered. The reporting entity must have either full or partial ownership in the facility/unit or a written power contract to procure electricity generated by that facility/unit. Specified facilities/units include cogeneration systems. Specified source also means electricity procured from an asset-controlling supplier recognized by the ARB." Title 17. Public Health--Division 3. Air Resources--Chapter 1. Air Resources Board--Subchapter 10. Climate Change-- Article 2.

emissions compliance obligation is equal to known emissions. If the electricity is imported from an "unspecified" [9] source, then the emissions compliance obligation is determined by multiplying a default emission factor (0.428 MTCO2e/MWh) by the amount of electricity (MWh) delivered.

Under the state's RPS program requirements, a utility may satisfy its compliance obligations in part by purchasing low-emission or carbon-free power generation outside of California that is never delivered to serve load into the state. Under such instances, as is the case under PCC 2 of the RPS program, a utility can apply an RPS Adjustment factor,[10] which would reduce the utility's GHG compliance obligation under Cap-and-Trade regulations.

The ARB's Final Statement of Reasons notes that:

> "ARB included the RPS adjustment for the specific purpose of reducing the cost of RPS compliance that would be born directly or indirectly by entities that must comply with California's RPS program. The adjustment is impartially applied to any electricity importer that meets the requirements in section 95852(b)(4) of the cap-and-trade regulation to deliver RPS electricity used for RPS compliance."[11] [12]

Mandatory Greenhouse Gas Emissions Reporting—Sub article 1. General Requirements for Greenhouse Gas Reporting).

[9] "Unspecified source of electricity" or "unspecified source" means a source of electricity that is not a specified source at the time of entry into the transaction to procure the electricity." *Ibid*

[10] The RPS adjustment is calculated as the product of the default emission factor for unspecified sources factor (0.428 $MTCO_{2e}$/MWh) multiplied by the amount of imported electricity subject to specific requirements under ARB's regulations. *Ibid.*

[11] ARB Final Statement of Reasons for Rulemaking: Public Hearing to Consider Adoption of Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions. October 28. 2011, pp. 365-375.

[12] Reference Section 95852(b)(4): RPS adjustment: Electricity procured from an eligible renewable energy resource reported pursuant to MRR must meet the following conditions to be included in the calculation of the RPS adjustment:

(A) The electricity importer must have: 1. Ownership or contract rights to procure the electricity and the associated RECs generated by the eligible renewable energy resource; or 2. A contract with an entity subject to the California RPS that has ownership or contract rights to the electricity and associated RECs generated by the eligible renewable energy resource, as verified pursuant to MRR.

(B) The RECs associated with the electricity claimed for the RPS adjustment must be placed in the retirement subaccount of the entity subject to the California RPS, and party to the contract in 5852(b)(4)(A), in the accounting system established by the CEC pursuant to PUC 399.25, and designated as retired for the purpose of compliance with the California RPS program within 45 days of the reporting deadline specified in section 95111(g) of MRR for the year for which the RPS adjustment is claimed.

(C) The quantity of emissions included in the RPS adjustment is calculated as the product of the default emission factor for unspecified sources, pursuant to MRR, and the reported electricity generated (MWh) that meets the requirements of this section, 95852(b)(4).

(D) No RPS adjustment may be claimed for an eligible renewable energy resource when its electricity is directly delivered.

(E) No RPS adjustment may be claimed for electricity generated by an eligible renewable energy resource in a jurisdiction where a GHG emissions trading system has been approved for linkage by the Board

Utilities are allowed to meet RPS program goals using RPS PCC 2 as defined in Section 399.16 (b) (2) of the Public Utilities Code.[13] The power that serves load in California procured as PCC 2 can be firmed and shaped (using incremental electricity and substitute energy). However, under ARB's current accounting rules, while PCC 2 renewable power is eligible to meet the RPS program goals for renewable power, a utility may be assigned a GHG compliance obligation for the PCC 2 renewable power.

Due to differences in treatment of such imported power under RPS program rules and the ARB regulations, ratepayers are at risk for paying twice for GHG compliance resulting from RPS procurement. Under ARB regulations, importers of renewable power are required to report and surrender the RECs associated with the imported power in order to claim the RPS adjustments. However, if the imported renewable power is firmed and shaped, ARB does not allow the importer who owns the RECs to claim the RPS adjustment. Instead, where the renewable power is not delivered to California, and an equal amount of substitute power is imported, ARB requires the importer to report the substitute power as unspecified, which is subject to a GHG compliance obligation pursuant to ARB accounting rules. However, if the source of the substitute power is known, importers are required to report that power as specified imports, which is also subject to compliance obligations. While the RPS rules consider the entire output of a renewable energy facility covered by firmed and shaped contracts as renewable energy delivered to California, ARB does not.[14] In this situation, after paying a renewable premium for RECs in compliance with the RPS program, an importing utility (and therefore its ratepayers) is still obligated to pay GHG compliance costs pursuant to ARB rules.

In addition, in the event that a third-party purchases and imports null power (renewable power without the RECs), the imported power is assigned a zero emission factor with no Cap-and Trade compliance obligation. In this situation, despite the fact that the null power is considered and priced as "brown" or non-renewable power under RPS program rules because the RECs have been stripped, the third-party importer has no GHG compliance obligation per the ARB rules, yet the utility that purchased the power for its RECs is not allowed to use the RPS adjustment.[15]

Accurate accounting of GHG emissions from imported power serving load in California is important for the integrity of the Cap-and-Trade program, and accurate accounting should not preclude the application of rules that complement the existing RPS regulations. Accurate

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pursuant to sub article 12.

(F) Only RECs representing electricity generated after 12/31/2012 are eligible to be used towards the RPS adjustment.

[13] Under RPS rules, one of the portfolio content categories of eligible renewable energy resources, as defined in PU Code 399.16 (b) (2) is: "Firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California Balancing Authority."

[14] CEC Guidebook, Renewable Portfolio Standard Eligibility, 3rd ed., January 2008. http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-

ED3-CMF.PDF.

[15] Thus, the GHG compliance costs are passed on to ratepayers when (1) a utility imports renewable electricity under RPS PCC 2 to comply with RPS goals, and the underlying power is delivered into California by a third-party; and (2) a utility imports renewable electricity to comply with RPS goals, but the renewable power is not delivered to California, and firmed and shaped power is delivered instead.

accounting should not impose additional emissions compliance costs on ratepayers without providing commensurate environmental benefits. The CPUC and CEC track RPS procurement through RECS. ARB should require entities importing null power (i.e. renewable power without RECS) to procure GHG compliance instruments. Similarly, utilities importing renewable power under PCC 2 should be allowed to claim the RPS adjustment, as long they surrender associated RECs. ORA recommends that ARB staff consider the recommendations proposed by the investor-owned utilities regarding RPS Adjustments provided in response to ARB's questions at the ARB/Joint Utilities Group meeting held in March of 2016.[16] These recommendations would ensure the appropriate treatment of eligible renewable power under RPS program rules, which the California utilities import to meet the RPS program goals.

ARB included the RPS adjustment for the specific purpose of reducing the cost of RPS compliance. If ARB rules are not accurately aligned with existing RPS program rules, GHG compliance costs passed on to ratepayers may increase due to this misalignment. Appropriately applying the RPS adjustment under the Cap-and-Trade regulation is crucial not only to ensure that ratepayers do not pay twice for complying with the state's GHG Cap-and-Trade regulations and the RPS goals, but also to maintain the benefits of Californians' investments in clean energy.

III. CONCLUSION

Both the RPS and Cap-and-Trade programs are designed to combat climate change. Through these programs, the electric sector currently makes significant contributions toward meeting California's GHG reduction goals. The ARB's regulations should recognize and enhance the value that customers provide through their electric rates that include the cost of these programs. To ensure that ratepayers do not pay twice for the same environmental benefits under the RPS and the Cap-and-Trade programs, ARB should revise its accounting procedures to credit RPS investments in renewable power intended to reduce GHG emissions.

Please contact Ayat Osman (ayat.osman @cpuc.ca.gov or (415) 703-1567) with any questions regarding these comments.

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[16] https://www.arb.ca.gov/cc/capandtrade/meetings/informal/pg_e_comment_7.pdf