October 23, 2013

Clerk of the Board

California Air Resources Board

1001 I Street

Sacramento, CA 95814

**Re: ghg2013, Amendments to Mandatory Reporting Regulation**

Clerk of the Board:

These comments are offered on behalf of the Energy Producers and Users Coalition[[1]](#footnote-1) and the Cogeneration Association of California[[2]](#footnote-2) (EPUC/CAC). The Comments recommend modifications to the proposed Mandatory Reporting Regulation (MRR) amendments or the reporting tool to clarify which cogeneration facilities must report certain new information identified in amendments. Several of the proposed amendments are aimed to provide transition assistance for “legacy” contracts and evaluate “but for” CHP. EPUC/CAC requests modification of the amendments to make clear that cogeneration facilities that are not seeking these forms of assistance do not need to provide the associated data. Subjecting cogenerators that are neither “legacy” nor “but for” generators to these new requirements provides no new valuable information to CARB while subjecting the generators to additional reporting requirements and costs.

1. **Changes to §95112 (a) Are Designed to Capture the Information Needed to Implement Legacy and “But for” Amendments**

Staff have proposed amendments to the Cap-and-Trade (C-T) Regulation that would provide assistance to those generators subject to legacy contracts that do not provide for GHG compliance costs.[[3]](#footnote-3) Staff also proposes that facilities that would not have a compliance obligation “but for” their investment in CHP will be exempt from compliance obligation through 2014.[[4]](#footnote-4) To implement these changes, amendments to the MRR are required in order to gather information on energy disposition and assess carbon cost pass-through, information that is necessary only for providing Legacy Contract Generator assistance or assessing “but for” status.

1. **Amendments to §95112(a) Will Help Staff Gather Necessary Information to Implement the New Cap and Trade Provisions.**

Staff proposes multiple changes to §95112 (a) in order to gather the additional information required to implement Legacy Contract and “but for” limited exemption provisions:

* In Section (a), Staff indicates that in order to receive legacy contract assistance facility operators must always provide the information required in §95112(4)-(6) which is otherwise optional for facilities that do not sell energy outside of the facility boundary.[[5]](#footnote-5)
* In Section (a)(4) and (a)(5), Staff proposes to add headings to clarify the proper reporting of energy flows by disposition category.[[6]](#footnote-6)
* Staff proposes that it will amend (a)(4)(C) and (a)(5)(C) to gather additional information on the “*system energy balance,*” specifically the generated electricity and generated thermal energy used to produce cooling energy.[[7]](#footnote-7) Additionally, if a facility includes more than one cogeneration system and generates qualified thermal or electricity for more than one disposition, the facility must report the dispositions aggregated by unit with the same disposition.[[8]](#footnote-8)

It appears that Staff proposed the changes required to address Legacy Contract Generators and “but for” CHP overlooking the fact that other facilities must comply with §95112(a)(4) and (5). It is not clear from the language of the Initial Statement of Reasons (ISOR) or changes to the MRR and Cap-and-Trade regulation otherwise that staff intended all generators selling outside of their boundary to provide this information. As written, however, all generators subject to §95112(a) (4)-(6) are subject to these new requirements.

1. **The ISOR and Statutory Language Demonstrates the Staff Intent to Limit Additional Regulatory Requirements.**

The language of the ISOR does not suggest that it was the intent of Staff to apply new requirements outside of Legacy Contract Generators. This information is not required to assess the compliance requirements of other facilities, and represents a new cost of compliance with no corresponding benefit for the generator or CARB.

The ISOR rationale suggests that the changes to (a) as well as (a)(4) and (a)(5) are all required to gather the data needed in order to assess “*carbon cost pass-through*,” and to make allocations to Legacy Contract

Generators.[[9]](#footnote-9) Specifically, the ISOR indicates that when generated thermal energy or electricity is provided to multiple end-users, the disposition information requested “*provides key information for assessing* ***carbon cost pass-through*** *from the electricity generator to the purchasers of the generated electricity*.”[[10]](#footnote-10) The Proposed Solution to the Problem explanation in the ISOR further supports the EPUC and CAC reading of Staff’s intent. The proposed revision “*enables the assessment of* ***carbon cost pass-through*** *from the cogen facility operator to their thermal hosts, separately from other units that are not part of the same cogen system.*”[[11]](#footnote-11) Carbon cost pass-through information is relevant information for providing assistance to Legacy Contract Generators and “but for” CHP, and the new data requirements should be so limited.

While the stated intention for changes to §95112(a)(5)(C) is to clarify reporting and complete system energy balances, the definition of “Qualified Thermal Output” suggests that Staff also intends to use the new data collected to determine “but for” CHP. The definition specifies that Qualified Thermal Output, energy generated using cogeneration and used by on-site industrial processes, is to be reported in MRR §95112(a)(5)(C).[[12]](#footnote-12) The only use of the term Qualified Thermal Output in the Cap-and-Trade Regulation is in connection with providing a limited exception to “but for” CHP (§ 95852(j)).[[13]](#footnote-13) The C-T ISOR confirms this reading, stating the “*definition is needed to clarify the kind of thermal output that will be used to determine the eligibility of a facility for a facility with a cogeneration unit or a district heating facility for a limited exemption for emissions associated with thermal energy production pursuant to section 95852(j).*”[[14]](#footnote-14)

1. **The Impact of the Proposed Changes Should Be Limited to Legacy Contract Generators and But For CHP.**

Non-Legacy or but for CHP facilities should not be required to provide the information requested in §95112(a)(4)(C) and (a)(5)(C): the energy used to produce cooling energy and the disposition of energy by unit for multiple unit facilities. If the intent of the changes and the additional regulatory requirements in §95112 is to provide assistance to Legacy Contract Generators and identify “but for” CHP, the new requirements should be limited to those facilities. Providing this information will be an additional burden for facilities, without providing any additional useful information to CARB. If the information does not help CARB provide assistance or determine compliance requirements, the cost of providing the information will always outweigh the benefit of providing it.

1. **The Clarification Can Be Addressed Using the Reporting Tool**

The simplest means of addressing the drafting error is in the regulatory reporting tool. The tool could ask if a facility is seeking Legacy Contract Assistance or a “but for” CHP exemption. If yes, the additional information required by §95112(a) will be required, if not, the facility does not need to provide information regarding the energy used to produce cooling energy or its energy disposition by source.

If the Commission would rather address the drafting error in the MRR the proposed amendment should be modified to include the additional information required as subsections of §95112(a)(4)(C) and (a)(5)(C). Since there are two buckets of information being requested each should be included as a subsection. After the information is set apart, §95112(a) should be amended to clarify that only “but for” CHP and Legacy Contract Generators are required to provide the additional information in these subsections. Attachment A reflects these proposed changes.

1. **Further Explanation of Certain Thermal Reporting Amendments for Cogenerators Would Be Beneficial.**

Staff proposes changes to MRR §95112(b)(3) that clarify the meaning of total thermal output and seemingly as a check on the information required under §95112(a)(5). The amendments to require facilities to provide information on energy that “*can be potentially utilized in other industrial operations that are not electricity generation*.”[[15]](#footnote-15) Additionally, the changes clarify that “*the total thermal output quantity represents the amount of generated thermal energy that can be provided to the thermal energy disposition categories in section 95112(a)(5).*”[[16]](#footnote-16)

The statement that the number provided in §95112(b)(3) should reflect the generated thermal energy provided in §95112(a)(5) suggests that the amendment is designed as a check on other information provided. The ISOR states, however, that these changes are “*made in response to reporter and verifier questions received during program implementation*.”[[17]](#footnote-17) It is important that the reporting tool reflect the ISOR explanation of the change. To the extent that this is simply a clarification, there should be no further information required from facilities. If different or further information is required, Staff should provide additional explanation of the purposes of these changes.

We are available to discuss these and other issues at your request.

Very truly yours,



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1. EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, Phillips 66 Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, Tesoro Refining & Marketing Company LLC, THUMS Long Beach Company, and Occidental Elk Hills, Inc. [↑](#footnote-ref-1)
2. CAC represents the combined heat and power and cogeneration operation interests of

   the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company. [↑](#footnote-ref-2)
3. As defined in the proposed amendments, legacy contracts include contracts entered into before September 2006, and the passage of AB 32, that fail to provide for GHG compliance costs, originally or in a subsequent amendment. Discussion Draft of C-T Regulation §95802(a)(195). [↑](#footnote-ref-3)
4. Discussion Draft of C-T Regulation §95852 (j). [↑](#footnote-ref-4)
5. Discussion Draft of MRR §95112(a). [↑](#footnote-ref-5)
6. Discussion Draft of MRR §95112(a)(4), §95112(a)(5). [↑](#footnote-ref-6)
7. Discussion Draft of MRR §95112(a)(4)(C), §95112(a)(5)(C); Staff Report: Initial Statement of Reasons for Rulemaking, Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR ISOR) at 62-63. [↑](#footnote-ref-7)
8. Discussion Draft of MRR §95112(a)(4)(C), §95112(a)(5)(C). [↑](#footnote-ref-8)
9. *See* MRR ISOR at 62-63. [↑](#footnote-ref-9)
10. MRR ISOR at 63 (emphasis added). [↑](#footnote-ref-10)
11. MRR ISOR at 5 (emphasis added). [↑](#footnote-ref-11)
12. Discussion Draft MRR §95101 (a)(390), Discussion Draft C-T Regulation §95802(a)(294) [↑](#footnote-ref-12)
13. The C-T regulation also uses the term Legacy Contract Qualified Thermal Output in connection with §95870(g). [↑](#footnote-ref-13)
14. C-T ISOR at 93. [↑](#footnote-ref-14)
15. Discussion Draft MRR §95112(b)(3). [↑](#footnote-ref-15)
16. Discussion Draft MRR §95112(b)(3). [↑](#footnote-ref-16)
17. MRR ISOR at 64. [↑](#footnote-ref-17)