



P.O. Box 4060 • Modesto, California 95352 • (209) 526-7373

Submitted Electronically

November 15, 2012

Mary D. Nichols
Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: M-S-R Comments on 15-Day Changes to the Mandatory Reporting Regulation Proposed Amendments

Dear Ms. Nichols:

M-S-R Public Power Agency¹ (“M-S-R”) provides these comments to the California Air Resources Board (“CARB”) on the October 28, 2013 *Modified Text* (“Modified Text” or “15-Day Changes”) set forth in *Attachment B to Resolution 13-43*, regarding proposed amendments to the *Regulation for the Mandatory Reporting of Greenhouse Gas Emissions* (“MRR” or “Regulation”). As more fully set forth in the comments filed by M-S-R on the proposed amendments to the Regulation first released on September 4, 2013,² M-S-R supports the proposed revisions that would exclude references to system power emission factors and would require covered entities to report changes in criteria pollutants. The Regulation should be revised to exclude requirements for verification of generation at the time power is directly delivered, as set forth in section 95111(g)(1)(N). Once the final amendments have been approved, M-S-R urges CARB to develop guidance for both verifiers and reporting entities that reflects the myriad changes to the Regulation, and how those change are intended to be implemented.

¹ Created in 1980, the M-S-R Public Power Agency is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R is authorized to acquire, construct, maintain, and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its members. Each of M-S-R’s member agencies are required to submit annual emissions reports under the Regulation, and are directly impacted by the requirements set forth therein.

² <http://www.arb.ca.gov/lists/com-attach/38-ghg2013-UTwAK1QmA31QJFQL.pdf>.

Verification of Generation Should Not Have to Include Verification that Power was Generated at the Time the Power was Directly Delivered

The Regulation should **not** include a provision requiring verification of data for transactions “at the time the power was directly delivered.” When CARB first released the proposed amendments to the Regulation, language in section 95111(g)(1)(N) requiring reporting entities to maintain meter generation data that documents that the power claimed by the reporting entity was generated by the facility or unit “*at the time the power was directly delivered*” was stricken. In the 15-Day Changes, “*at the time the power was directly delivered*” has been reinserted into the Regulation. As more fully addressed in M-S-R’s October 23 comments, and in the detailed comments provided by the Los Angeles Department of Water and Power (LADWP),³ an hour-by-hour comparison of meter and e-tag data for all specified imports (including non-renewable resources, since subsection (g) does not apply solely to renewable resources) would be a significant labor burden for reporting entities, such as the members of M-S-R. This requirement would encompass considerable amounts of information that would need to be collected and reported to CARB, and which would be subject to verification under the Regulation, both of which result in increased compliance costs for reporting entities. Not only is this requirement costly, it is unnecessary for purposes of meeting the requirements of the MRR for **annual** emissions reporting. As the section itself states, CARB desires to collect the information “for verification purposes.” Verification of hourly deliveries is irrelevant to an annual emissions report.

Despite assertions to the contrary, this exercise is labor intensive. In addition to written comments on this topic, during the October 25 Board meeting, M-S-R and several other stakeholders expressed their concerns to the Board orally, especially with regard to the implications of the staffing and administrative burdens associated with the additional tracking and reporting. In response, other stakeholders opined that they did not “believe” that the requirement would be unduly burdensome for M-S-R and similarly situated POUs. With all due respect to other stakeholders, their understanding of the magnitude of the burden on M-S-R and other POUs is limited and incomplete. Additionally, as more fully described in the comments

³ <http://www.arb.ca.gov/lists/com-attach/44-ghg2013-AGMHaFU6ADcGeQNC.pdf>, pp. 9-10.

submitted by LADWP,⁴ the additional cost associated with providing this information is not commensurate with any added accuracy in the information already provided to CARB.

CARB staff acknowledged the concerns raised by M-S-R and similarly situated stakeholders, and advised the Board that staff would work with stakeholders on Regulatory Guidance documents that will assist in the implementation of the requirements. M-S-R appreciates staff's recognition of the concerns. However, while regulatory guidance documents that provide clarification and proposed approaches for addressing the mandate are certainly helpful in an advisory capacity, such documents *are not* legally binding, and therefore, do not have the same force and effect as revisions to the Regulation itself. Accordingly, while M-S-R appreciates staff's efforts to work with affected stakeholders on this issue, the best way to do so is through regulatory amendments and not guidance. With that said, should the Board determine not to retain the amendments first proposed in the 45-Day changes and proceed with retaining the hourly-data requirement, M-S-R looks forward to working with staff on development of the Regulatory Guidance language.

References to System Power are Properly Removed

The Modified Text strikes what would have been new language in sections 95111(a)(12) and 95111(b)(5), and the associated references to system power in sections 95111(g) and 95111(g)(6). M-S-R supports this change. As originally proposed, sections 95111(a)(12) and 95111(b)(5) would have imposed "*system power emission factor rates*," that would be determined by CARB. Purchasers of system power with a carbon content above the default emission factor (DEF) would use a new "system power emission factor calculated by ARB," instead of the lower DEF for unspecified power.⁵ This approach was intended to "more accurately reflect the carbon content of the system power, than the use of the [DEF] for unspecified electricity imports."⁶ However, as noted in M-S-R's October 23 comments, and in the written and oral comments provided by several stakeholders at the October 25 Board meeting, the concept is too incomplete for inclusion in the Regulation, and fraught with a number of uncertainties, including a clear proposal for how "systems" would be determined and

⁴ *Id.*, at, pp. 9-10.

⁵ ISOR, pp. 10, 60.

⁶ ISOR, p. 60.

to whom the requirement would apply. The proposed language was also problematic in that it would have resulted in the provision of inaccurate information regarding the state's true emissions level, as only systems with emissions determined to be higher than the DEF would be assigned a new emissions factor. Ostensibly, systems with lower emissions would still be subject to the current DEF, which would artificially inflate the overall GHG emissions figures for imported electricity.

M-S-R supports the proposed revisions set forth in the Modified Text which would strike the new provisions regarding system power and urges the Board to support the revisions set forth in the 15-Day Changes relevant to sections 95111(a)(12) and 95111(b)(5).

Criteria Pollutant Reporting Should be Removed

The 15-Day Changes properly remove requirements for reporting of criteria pollutants. The previously proposed section 95104(e) (*Increase in Facility Criteria Pollutant and Toxic Air Contaminant Emissions*), would require reporting entities to include information in their emissions data report that also addresses (1) whether a change in the facility's operations or status potentially resulted in an increase in emissions of criteria pollutants or toxic air contaminants in relation to the previous data year, (2) the reasons for the change, and (3) a narrative description of the reasons for the changes. The Modified Text properly strikes the requirement to submit information regarding criteria pollutants because despite the ISOR's position that this information is needed to support CARB's "*adaptive management monitoring, review, and analysis*"⁷ and will be used by CARB to "*assess the potential localized air quality impacts that may result from the Cap-and-Trade program,*"⁸ tracking criteria pollutants is outside the scope of the MRR's enabling legislation. As originally proposed, the requirement to report data associated with criteria pollutants exceeds the scope of the mandate set forth in Health and Safety Code section 38530 to implement regulations to require "*reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this program.*"⁹ The information regarding criteria pollutants does not fall within the ambit of

7 ISOR, p. 54.

8 *Id.*

9 California Health & Safety Code section 38530(a).

“greenhouse gas emissions” to be reported and verified under the enabling legislation, and should, therefore, not be included within the provisions of the MRR.

In addition to being outside the scope of the AB32 reporting mandate, as contemplated, the requirement also would have imposed additional burdens on reporting entities and provides no new information to CARB, as much of the desired information regarding criteria pollutants to the local air districts,¹⁰ sometimes as frequently as quarterly. CARB, therefore, already has access to the information being sought to assess localized impacts and monitor its adaptive management program.

M-S-R supports the revisions set forth in the 15-Day Changes that strike the references to criteria pollutants and supports the exclusion of section 95104(e) from the verification requirements under the Regulation. However, M-S-R cautions that the Board should only adopt additional reporting requirements once their necessity has been demonstrated. As proposed in the Modified Text, section 95104(e) now requires reporting entities to provide the following *new* information to CARB, each year: (1) whether a change in the facility’s operations or status potentially resulted in an increase or decrease of more than 5% in emissions of greenhouse gas emissions in relation to the previous data year, (2) the reasons for the change, and (3) a narrative description of the reasons for the changes. Before adopting additional reporting requirements under the Regulation, M-S-R urges CARB to demonstrate the need for the additional data, and to ensure that the added value of the newly required information outweighs the administrative burden on reporting entities. If it is still determined that CARB must require this extra reporting requirement, all of the information provided pursuant to section 95104(e) is properly expressly excluded from the Regulation’s verification requirement.

Guidance Regarding Implementation of the Amendments Should be Provided

There are a number of changes – some minor, others more significant – that go into effect once the regulatory amendments are approved. Not only will reporting entities need to be conversant with the revisions, but verifiers will also need to know how to apply new rules in order to timely complete the mandated verification. Because some of these issues are necessarily complex, M-S-R urges CARB to provide updated guidance to reporting entities. Further, CARB should develop detailed guidance for verifiers to ensure that all parties have a full and

¹⁰ This information is also provided to the Environmental Protection Agency under Title IV of the Clean Air Act.

comprehensive understanding of the myriad technical aspects of the Regulation and the recent amendments to it.

Conclusion

M-S-R appreciates the extensive staff time that has been devoted to developing the Proposed Amendments and the subsequent 15-Day Changes. M-S-R urges CARB to continue to consider the issues raised herein carefully and to strike hourly meter data requirements. The Board should adopt the Modified Text that strikes new requirements regarding system power and reporting for criteria pollutants. M-S-R looks forward to working with CARB staff in developing any further revisions to the MRR, as well as Regulatory Guidance, should that be necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Hopper', with a stylized, sweeping flourish at the end.

Martin Hopper
General Manager
M-S-R Public Power Agency