Proposed Amendments to the Regulation for the Mandatory Reporting

Of Greenhouse Gas Emissions

Proposed 15-Day Modifications

Published October 28, 2013

On October 28, 2103, the California Air Resources Board issued a set of proposed 15-day modifications to the Proposed Amendment to the GHG Mandatory Reporting Regulation. Morgan Stanley Capital Group Inc. (MSCG) appreciates the opportunity to comment on the Proposed Modifications, and offers the comments submitted below. For any follow-up discussion, please contact Steve Huhman at (914) 225-1592, or via e-mail at [Steven.Huhman@morganstanley.com](mailto:Steven.Huhman@morganstanley.com).

* MSCG strongly supports the proposed removal of the language in Section 95111(a)(5)(E) regarding the exemption of “path outs”. As argued in more detail in our comments to the initial Proposed Amendments, we believe the “path out” exemption is not consistent with the underlying concept of an Asset Controlling Supplier (ACS), and indeed, could facilitate resource shuffling. For those reasons, elimination of the “path out” exemption is necessary for the protection of the environmental integrity of the program.
* MSCG strongly supports the clarification ARB staff indicated is forthcoming in its October 28th “Notice of Public Availability of Modified Text and Availability of Additional Documents”. Specifically, MSCG is pleased to read that ARB, in response to stakeholder comments. “…*intends to issue revised statements in the Final Statement of Reasons to effectively withdraw the seller control interpretation for asset controlling suppliers with section 95111(a)(5)(B). This change is needed to ensure electric power entities know how to effectively report their purchases of asset controlling supplier power”.* As MSCG argued in more detail in our initial comments submitted on October [5, 2013], the mere use of the word “specified” or “unspecified” by the ACS entity should not determine the claim that can be made under the Cap & Trade Program. Indeed, this “seller’s choice” is fundamentally at odds with the environmental integrity of the Cap & Trade Program.  The label has nothing to do with the intrinsic nature of the underlying power. Moreover, since both of the current ACS entities import power directly into California, allowing these sellers to withhold the specified designation unless a purchaser pays a premium **for the exact same power imported to California,** drastically alters the competitive landscape for wholesale markets. Thus, if one extends the “seller’s choice” principle to its logical conclusion, the result will be a dramatically increased potential for unnecessary power cost increases for California consumers. Such an arbitrary allocation of economic value/cost in no way benefits either the Cap & Trade Program or California consumers.
* MSCG strongly believes that any changes or clarifications to the regulations should have prospective application only. To do otherwise would burden existing and past transactions with unexpected costs, despite informed, good faith intentions to transact on a basis in full recognition of and compliance with the regulations applicable at the time of the transaction. For that reason, MSCG strongly supports the proposed Modification to Section 95103(h)(8) that adds clarification that new rules and/or clarifications relating to reporting of specified source power will not be effective until January 1, 2014, and thus, transactions entered into prior to January 1, 2014 (even for delivery in 2014) shall be governed by the regulations currently in effect.
* Regarding the portion of Section 95111(a)(5)(E) that refers to the tagging of ACS Power, we believe that ARB is fundamentally on the right track with the concept of having the ACS be the PSE on the NERC E-tag. However, there is one transaction type that we believe would be universally agreed could be (not necessarily always is) eligible to be a transaction from an ACS and treatable as from a specified source, that nonetheless would be excluded under the proposed wording. When a party purchases a “slice of system” from an ACS, the PSE on the related e-Tag at the point of first receipt is the transmission owner that is moving energy away from the source busbar, not the ACS entity. The ACS entity is the PSE only on the first line of the physical path of the e-Tag, which is the “Source” field, not a Point of Receipt. A literal interpretation of 95111(a)(5)(E) would not permit this type of transaction to be eligible for “specified” treatment. We wish to make clear that we believe this issue is totally separate from discussion of whether or not a seller, ACS or otherwise, should be able to control whether or not a given sale is “specified; the problem will exist even if the seller agrees that the transaction is specified. For that reason, we believe that support for addressing and resolving the problem (if not necessarily for any given proposed solution) will be universal.

One possible solution that occurred to us is:

(E) Tagging ACS Power. To claim power from an asset-controlling supplier, either the asset-controlling supplier must be identified on the physical path of the NERC e-Tag as the PSE at the first point of receipt, or as the PSE on the “source” line. In the case of asset controlling suppliers that are exclusive marketers, then the ACS must be shown as the PSE immediately following the associated generation owner.