

**BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
COMMENTS ON BEHALF OF
MAGNOLIA POWER PROJECT PARTICIPANTS
ON PROPOSED CHANGES TO CAP AND TRADE REGULATION
RELEASED ON SEPTEMBER 4, 2013**

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I. INTRODUCTION AND SUMMARY.

The Magnolia Power Project (“Magnolia”) is owned by the Southern California Public Power Authority (“SCPPA”). Magnolia is located in Burbank, California and is operated by Burbank Water and Power (“BWP”) as operating agent. SCPPA sells power from Magnolia to the following publicly-owned utilities (“POUs”): Anaheim Public Utilities, BWP, Cerritos, Colton, Glendale, and Pasadena (jointly, the “Magnolia POUs”). The Magnolia POUs are members of SCPPA, and each Magnolia POU has entered into a power sales agreement with SCPPA for the purchase of power from Magnolia.

SCPPA submits this comment on behalf of the Magnolia POUs. The comment addresses the proposed changes to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation (“Regulation”) released on September 4, 2013, by the California Air Resources Board (“ARB”).

Under the Regulation, BWP is liable for the greenhouse gas emissions from Magnolia because BWP operates the plant.¹ Each Magnolia POU will periodically transfer allowances to BWP and/or direct the ARB to place a portion of the POU’s allocated allowances directly into BWP’s compliance account² to cover the emissions from the electricity that the POU receives

¹ Pursuant to Regulation § 95811(b)(1).

² Pursuant to Regulation § 95892(b)(2)(a).

from Magnolia. The Magnolia POUs are currently finalizing an agreement (“Magnolia Transaction Agreement”) that provides for such transfers.

In summary, the Magnolia POUs have the following comments on the proposed changes to the Regulation:

- Section 95833(f)(7) on control of another entity’s account should be clarified to be consistent with the statement on this section in the Initial Statement of Reasons (“ISOR”) prepared for the September 4, 2013, proposed changes to the Regulation.
- To maintain consistency with other subsections of section 95921 and to avoid unnecessarily restricting the scope of transaction agreements, section 95921(b)(2)(B) should be revised to replace the word “for” in the last line with the word “or.”
- Sections 95921(b)(4)(B) and (C) should include the option to report termination dates and transfer frequencies as “other” to accommodate the sometimes complex provisions of transaction agreements.
- As BWP will not be paying the other Magnolia POUs for the compliance instruments that they transfer to BWP, section 95921(b)(6)(C) should be amended to allow for transfers at a price of zero in the Magnolia situation. As currently drafted, section 95921(b)(6)(C) would not apply to Magnolia because Magnolia is not operated as a joint venture, strictly speaking.

These issues are discussed in more detail below.

The Magnolia POUs also support the comments on the proposed changes to the Regulation that are being separately submitted by SCPPA.

II. CLARIFY SECTION 95833(f)(7) ON CONTROL OF ACCOUNTS.

Proposed new section 95833(f)(7) provides that:

If a covered entity will have control of the account in the tracking system of another covered entity with which it does not have a direct corporate association, the entities will be considered to have a direct corporate association...

The meaning of the word “control” in this provision should be clarified. Various measures of control are set out in section 95833(a) on criteria for determining corporate associations. However, rather than referring to any of these measures of control, the ISOR states that section 95833(f)(7) relates to “covered entities who share staff for management of their tracking system accounts” because “two covered entities with the same account representatives have the potential to coordinate on market related decisions.”³ This type of “control” is not defined in section 95833 or elsewhere in the Regulation, and it is not the most obvious meaning of the word “control.”

The Magnolia POU's consider that the statements in the ISOR on this section are reasonable. The drafting of section 95833(f)(7) should be revised to reflect the intended meaning of this section as explained in the ISOR, as the currently-proposed drafting is unclear and does not convey this meaning.

The Magnolia POU's' proposed changes to section 95833(f)(7) are set out below:

(7) If ~~two~~ covered entities share staff for management of their ~~will have control of the account in the~~ tracking system accounts ~~of another covered entity with which it does not have a direct corporate association~~, the entities will be considered to have a direct corporate association...

III. SECTION 95921(b)(2) REQUIRES A MINOR AMENDMENT FOR CONSISTENCY.

Section 95921(b)(2)(B) refers to transaction agreements involving “multiple transfers of allowances over time *for* the bundled sale of allowances with other products” (emphasis added).

The word “for” is restrictive, as only agreements that were for bundled products with multiple

³ ISOR pages 113 and 114.

transfers over time would qualify. The Magnolia Transaction Agreement would not qualify under this provision, nor would it qualify under sections 95921(b)(2)(A) or (C), because it is an agreement with multiple transfers over time, but only for compliance instruments, not bundled products.

The word “for” in section 95921(b)(2)(B) is inconsistent with the ISOR and with a later section of the Regulation relating to the same type of transaction agreement.

The summary of section 95921(b)(2)(B) in the ISOR refers to “over the counter agreements for which delivery will take place more than three days from the date the parties enter into the transaction agreement or that involves multiple transfers of instruments over time *or* the bundled sale of instruments with other products” (emphasis added).⁴ This approach is preferable because it does not unduly restrict the scope of the second type of transaction agreement.

Section 95921(b)(4), following the approach of the ISOR, refers to agreements that involve “multiple transfers of allowances over time *or* the bundled sale of allowances with other products” (emphasis added).

For consistency and to avoid unduly restricting the scope of the second type of transaction agreement, section 95921(b)(2)(B) should be revised to match the ISOR and section 95921(b)(4) by replacing the word “for” with the word “or.”

The Magnolia POUs’ proposed change to section 95921(b)(2)(B) is set out below:

(B) Over-the-counter agreement for the sale of compliance instruments for which delivery is to take place more than three days from the date the parties enter into the transaction agreement or that involve multiple transfers of compliance instruments over time ~~or for~~ the bundled sale of compliance instruments with other products.

⁴ ISOR page 196.

IV. SECTION 95921(b)(4) REQUIRES SOME AMENDMENTS TO ALLOW FOR COMPLEX AGREEMENTS.

Some revisions to sections 95921(b)(4)(B) and (C) to allow for simplified reporting of the potentially complex details of transaction agreements would be helpful.

Section 95921(b)(4)(B) requires a transfer request to include the date the transaction agreement terminates. However, a transaction agreement may not provide for a single, simple termination date. The date of termination may depend on a range of circumstances and conditions, or obligations may terminate at different times for different parties. Complex termination provisions cannot be reported simply. Conversely, reporting complex termination provisions in full would be time-consuming for the reporting entity, and it would also be time-consuming for the ARB staff to analyze the report. Accordingly, if transaction agreements have complex termination provisions, the parties should be allowed to report the termination date under section 95921(b)(4)(B) as “other.”

Section 95921(b)(4)(C) requires transfer frequency to be reported as “monthly, quarterly, annual, or unspecified.” However, a transaction agreement may require compliance instruments to be transferred by specified dates that are neither monthly, quarterly, nor annually. To more accurately reflect transaction agreements that contain specified but irregular transfer dates, the option to report the transfer frequency as “other” should be added to section 95921(b)(4)(C).

The Magnolia POU’s proposed changes to section 95921(b)(4) are set out below:

(4) A transfer request submitted for an over-the-counter agreement for the sale of compliance instruments for which delivery is to take place more than three days from the date the parties enter into the transaction agreement or that involves multiple transfers of compliance instruments over time or the bundled sale of compliance instruments with other products must provide the following information: ...

(B) Date the transaction agreement terminates. If the transaction agreement does not specify a particular calendar date as the termination date, report the termination date as “other.”

(C) If the transaction agreement provides for further compliance instrument transfers after the current transfer request is approved, specify the scheduled frequency as monthly, quarterly, annual, ~~or~~ unspecified, or other. ...

V. SECTION 95921(b)(6)(C) SHOULD BE AMENDED TO ALLOW FOR THE MAGNOLIA CIRCUMSTANCES.

Section 95921(b)(6) allows for a price of zero to be reported for compliance instrument transfers in certain circumstances. The Magnolia POUs would like to rely on this section to report transfers under the Magnolia Transaction Agreement at a price of zero, because BWP will not be paying the other Magnolia POUs for the compliance instruments that they will be required to transfer to BWP under the Magnolia Transaction Agreement.

Section 95921(b)(6)(C) comes close to covering the Magnolia situation. It allows a price of zero to be reported if:

The proposed transfer is from a publicly-owned utility to an entity or a Joint Powers Authority operating a generation facility as a joint venture with the utility.

However, BWP does not operate Magnolia as a joint venture with the other Magnolia POUs. BWP operates Magnolia as an operating agent under a Construction, Management, and Operating Agreement with SCPPA as the owner of Magnolia. The Magnolia POUs are the members of SCPPA that participate in Magnolia.

It does not appear that the Magnolia Transaction Agreement would fall under any of the other zero price transfers set out in sections 95921(b)(6)(A), (B), (D), (E), or (F). Therefore, the Magnolia POUs propose that section 95921(b)(6)(C) be revised, or an additional subsection (G) be added, to allow for transfers at a price of zero in the Magnolia situation.

The Magnolia POUs' proposed changes to section 95921(b)(6)(C) are set out below:

(C) The proposed transfer is from a publicly-owned utility to an entity (including a Joint Powers Authority of which that utility is a member, or an operating agent acting on behalf of such a Joint Powers Authority)

operating a generation facility ~~as a joint venture with~~ from which the utility procures electricity.

VI. CONCLUSION

The Magnolia POUs appreciate the opportunity to submit these comments to the ARB and urge the ARB to consider these comments when preparing revisions to the Regulation for 15-day public comment. If further information is required, the Magnolia POUs would be happy to discuss any of the proposals in these comments with ARB staff. The Magnolia POUs look forward to continuing to provide input to the ARB as the revisions to the Regulation are finalized.

Respectfully submitted,

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