

**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 JULY 15, 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 the Burbank Water and Power (“BWP”) as operating agent. SCPPA sells power from Magnolia to the following publicly-owned utilities (“POUs”): Anaheim Public Utilities (“Anaheim”), 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 discussion draft of the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation (“Regulation”) released on July 15, 2013, and discussed at a California Air Resources Board (“ARB”) workshop on July 18, 2013.

Under the Regulation, BWP is liable for the greenhouse gas emissions from Magnolia because BWP operates the plant. 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 account¹ to cover the emissions from the electricity that the POU receives from Magnolia. The Magnolia POUs are currently drafting an agreement (“Magnolia Transaction

¹ Pursuant to Regulation § 95892(b)(2)(a).

Agreement”) that provides for such transfers. In this context, the Magnolia POUs have the following comments on section 95921 of the Regulation:

- To maintain consistency with other subsections of section 95921 and to avoid unnecessarily restricting the scope of transaction agreements, subsection (b)(2)(B) should be revised to refer to compliance instruments rather than allowances and to replace the word “for” in the last line with the word “or.”
- For the same reasons, subsection (b)(4) should be revised to refer to compliance instruments rather than allowances.
- Subsections (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, subsection (b)(6)(C) should be amended to allow for transfers at a price of zero in the Magnolia situation. As currently drafted, subsection (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 Regulation that are being separately submitted by SCPPA.

II. SUBSECTION 95921(b)(2) REQUIRES SOME AMENDMENTS FOR CONSISTENCY.

Section 95921 deals with transfers of compliance instruments which include both allowances and offsets. In most of the subsections of section 95921, the term “compliance

instrument” is used. However, in defining the second of the three types of transaction agreements, subsection 95921(b)(2)(B) refers to “multiple transfers of **allowances** over time for the bundled sale of **allowances** with other products” (emphasis added):

Over-the counter [sic] 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 **allowances** over time for the bundled sale of **allowances** with other products.²

There is no apparent reason to restrict the second type of transaction agreement to allowances. The summary of the second type of transaction agreement in the Notice of Public Availability of Cap-and-Trade Discussion Draft and Workshop (“Notice”) refers to compliance instruments.³ Market participants including the Magnolia POU’s may wish to enter into the second type of transaction agreement for offsets as well as allowances. Therefore, the generic term “compliance instruments” should be used in place of “allowances” in subsection 95921(b)(2)(B).

An additional concern with subsection 95921(b)(2)(B) is that it refers to “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 transfers over time would qualify. The Magnolia Transaction Agreement would not qualify under this provision, nor would it qualify under subsections 95921(b)(2)(A) or (C).

The word “for” is also inconsistent with other sections relating to the same type of transaction agreement. The summary of subsection 95921(b)(2)(B) in the Notice refers to “Contracts that involve multiple transfers of compliance instruments **or** involve the sale of other

² Section 95921(b)(2)(B) (emphasis added). An additional hyphen should be inserted in the term “Over-the counter” in the draft section 95921(b)(2)(B) so that the term reads “Over-the-counter.”

³ Notice section PP, page 22.

products along with compliance instruments” (emphasis added). Subsection 95921(b)(4), following the approach of the Notice, refers to agreements that involve “multiple transfers of allowances over time **or** the bundled sale of allowances 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. Therefore, the last line of subsection 95921(b)(2)(B) should be revised to replace the word “for” with the word “or.”

The Magnolia POUs’ proposed changes to subsection 95921(b)(2)(B) are 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~~ allowances over time ~~or for~~ the bundled sale of ~~compliance instruments~~ allowances with other products.

III. SUBSECTION 95921(b)(4) REQUIRES SOME AMENDMENTS FOR CONSISTENCY AND TO ALLOW FOR THE MAGNOLIA CIRCUMSTANCES.

Subsection 95921(b)(4) initially refers to compliance instruments and later refers to allowances. As discussed above in relation to section 95921(b)(2), the term “compliance instruments” should be used throughout so that agreements involving offsets are not excluded. Additionally, some revisions to subsections 95921(b)(4)(B) and (C) may be required to allow for simplified reporting of the potentially complex details of transaction agreements.

Subsection 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 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

⁴ As discussed below, section 95921(b)(4) should also refer to compliance instruments rather than allowances.

provisions in full it would be time-consuming for the reporting entity, and it would 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.”

Subsection 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 POUs’ proposed changes to subsection 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~~allowances~~ over time or the bundled sale of compliance instruments~~allowances~~ 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. ...

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

Subsection 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.

Subsection 95921(b)(6)(C) comes close to covering the Magnolia situation. It allows a price of zero to be reported for transfers 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 subsection 95921(b)(6)(C) be revised, or an additional section (G) be added, to allow for transfers at a price of zero in the Magnolia situation.

The Magnolia POUs' proposed changes to subsection 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.

V. CONCLUSION

The Magnolia POUs appreciate the opportunity to submit these comments to the ARB and urge the ARB to consider these comments when preparing the revisions to the Regulation for formal 45-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 2013 revisions to the Regulation are developed and finalized.

Respectfully submitted,

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