Modesto Irrigation District
Water and Power

1231 Eleventh Street
P.O. Box 4060
Modesto, CA 95352
(209) 526-7373

June 24, 2009

To: **THE CALIFORNIA AIR RESOURCES BOARD**

From: **Modesto Irrigation District**
Joy A. Warren, Regulatory Administrator

Subject: **MODESTO IRRIGATION DISTRICT COMMENTS ON PROPOSED AB 32 COST OF IMPLEMENTATION FEE REGULATION**

Introduction

On May 8, 2009, the California Air Resources Board (CARB) released its Proposed AB 32 Costs of Implementation Fee Regulation and Proposed Amendment to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (the "Proposed Regulation"). The Proposed Regulation would create a new "Administrative Fee" to recover past and future expenditures by State Agencies for the implementation of AB 32 programs.

Prior to the release of the Proposed Regulation the Modesto Irrigation District (Modesto ID) submitted comments to CARB raising concerns with the drafted Regulation. Although some of Modesto ID's issues have been addressed, the Proposed Regulation as released continues to raise specific concerns.

Background

Modesto ID is an irrigation district, organized and operated under the laws of the State of California, which undertakes both electric and water operations. It is a vertically integrated publicly owned utility providing electric services to over 110,000 customers in California's Central Valley. With regard to its electric operations, Modesto ID owns and operates facilities for the generation, transmission, distribution, purchase and sale of electric power and energy at wholesale and retail. In 2008 Modesto ID served a peak summer load of almost 650 Megawatts (MW) and had retail sales of over 2,692,757 MW-hours.

Modesto ID serves this load through a mixture of owned and purchased resources, including wind, large and small hydro, natural gas and coal generation. In addition to ownership interests in significant hydroelectric generation at Don Pedro Reservoir, Modesto ID owns and operates several natural gas generation facilities. Modesto ID purchases power from a variety of resources and suppliers, including renewable resources firmed by the supplier. These purchases are delivered within Modesto ID's service territory, and outside of its service territory at various points both within and out of state. Modesto ID is also a member of M-S-R Public Power Agency, a joint powers authority which purchases power from wind energy projects in the Pacific Northwest and owns a share of the thermal San Juan Project in New Mexico.

Modesto ID's published Power Content Label, incorporating the state's average resource mix for all unspecified purchased power, identifies the following resource mix: 15% eligible renewables and 18% large hydroelectric, 33% coal, 33% natural gas and 1% nuclear.

Natural gas for Modesto ID's in-area generation plants is procured from a variety of suppliers and is delivered to Modesto by Pacific Gas & Electric Company (PG&E). The gas generally originates out of state and is delivered through pipelines owned by various entities, ultimately reaching PG&E pipelines connected to Modesto ID generating facilities. J.P. Morgan Ventures Energy Corp. provides scheduling and balancing services and acts as Modesto ID's default supplier, to ensure that gas will be available at a variable, indexed-based price.

Comments and Questions

- The Regulation should include provisions to ensure that electricity that is not generated or consumed in California is not subject to the Fee.

The Proposed Regulation applies to retail providers and marketers of imported electricity, charging a Fee for each megawatt-hour of imported electricity. However, there is no provision to offset or net the electricity imports into California against electricity exports that serve load outside of California.

Without such a clarification and netting or offset provisions, retail providers or marketers could be charged a Fee on financial transactions in which no generation or emissions occurred. In addition it is possible that Fees could be assessed on electricity neither generated nor consumed in California, or on load located outside of California. Charging AB 32 costs on electricity imports without any netting or offsets for electricity exports will result in an unfair over-collection of fees. It could also be outside the authority of AB 32.

- Provisions should be included in the Regulation for a dispute resolution procedure to be applied before late fees or penalties are assessed.

Section 95205 provides that CARB will issue a Fee determination notice and if the Fee is not paid within 60 days a late fee set by the Executive Officer shall be imposed. There is no provision for the Fee paying entity to challenge the calculated Fee or any of the input data underlying such Fee, or work through potential resolution with CARB. Further, Section 95206 provides for the imposition of enforcement penalties for each day the Fee is not paid. Since resolution of such disputes can often take a lengthy period of time due to information gathering, schedule coordination and other issues, provisions should likewise be included to defer such penalties during the periods disputes regarding the underlying "violation" are going through resolution.

Dispute resolution procedures should be applied to all violations potentially acting as a basis for enforcement penalty. For example, in addition to Fee calculations, Section 95206 (c) imposes a penalty for each day a report contains incomplete or inaccurate information. Provision should be made for CARB to notify the submitting party that its report is deemed incomplete and allot time to correct the deficiency or confer with staff to resolve the dispute over whether there is a deficiency, before a penalty is imposed. In addition, penalties for such reporting deficiencies under the Fee Regulation must not duplicate or interfere with enforcement activities under the already existing Reporting Regulations.

- It is not clear why the definition of generating facility includes future planned locations at which electricity could be produced.

Section 95202, subsection (40) contains the following definition of Generating facility: "an existing or planned location or site at which electricity is or will be produced." The Fee is related to the emissions from fuel combustion. Only facilities at which fuel is actually burned (and electricity actually produced) could by definition be subject to the Fee.

- California's electric ratepayers should not be responsible for funding Regulations that are struck down through court action or any actions by CARB to defend such Regulations.

Section 95203 provides that the required revenue for the Administrative Fee includes "any amount required to be expended by ARB in defense of this article in court." If a Regulation is challenged and survives the legal challenge, costs related to such defense could understandably be included within the revenue requirement for the Fee. However, if the Regulation cannot survive a legal challenge and is struck down Californians should not be made to bear CARB's cost of defending the improper regulation. No justification or support for imposing such costs that are unrelated to the reduction of emissions has been provided.

- Some certainty must be provided as to the level of costs to be incurred by California's electric ratepayers under the Fee Regulation.

The Initial Statement of Reasons for Rulemaking estimates that the cumulative cost per household per year resulting from the Fee would be $4.00. While this cost appears small, the estimated amount may not be reflective of the economic impact from the Fee.

The estimated costs are just that – estimated. Though the amount is relatively small now when viewed in isolation, it will still have a cumulative impact on ratepayers that are also facing increased costs to deal with the additional requirements of AB 32, as well as other State and Federal programs. California citizens are already facing higher costs of living, a reduction of government services, and higher unemployment. Many businesses in California struggle to operate and compete with very small margins. Even a small additional impact to the bottom line from the Fee will be felt.

There are no assurances that the Fee will remain at the estimated level. The Proposed Regulation contains no cap or other protections, but provides broad authority for CARB to include in the Total Required Revenue any amounts "necessary to recover the costs of implementation of AB 32 program expenditures." It is more likely than not that such costs will only increase over time.

Costs passed to ratepayers should also be contained by setting limits on the administrative costs that natural gas corporations and other entities required to pay the fee directly pass through to their end-users. The Proposed Regulations should prohibit natural gas corporations and other entities from profiting on the pass-through of the Fee to their customers.

- It is critical to avoid imposing multiple levels of charges on the same person (be it individual, business or government) for the same emission.

The electricity sector which emits less than 25% of greenhouse gas emissions has been asked to provide 40% or more of the emission reductions required by AB 32. In addition, the electricity sector will be required to partake in a cap and trade program. For publicly owned utilities such as Modesto ID ratepayers are the only resource available to bear the cost of all these obligations. This burden has been placed on electric ratepayers in recognition that the utilities that serve them are easily identifiable and able to be regulated, and thus such methodology is the best way to spread the cost of these important programs over the broadest array of Californians, without actually going through the formal process of enacting and imposing a “tax”.

The potential result is that the single electric ratepayer will pay a cost to cover the Fee for all the emissions from the generation used to serve their load and then will additionally have to bear whatever costs are associated with obtaining (eg., purchasing) allowances for those same emissions. The Initial Statement of Reasons for Rulemaking recognizes that if a cap and trade program is adopted that would generate revenue and “it would be appropriate to evaluate funding the State’s implementation of AB 32 from that revenue instead of this fee.” Modesto ID urges CARB to incorporate such phase-out as part of the Fee Regulation.

Conclusion

Modesto ID appreciates the opportunity to provide these comments and encourages CARB to consider the issues raised herein and provide further 15-day language addressing them.

Respectfully submitted,

Joy Warren
Regulatory Administrator

DOCSn179499v3