Modesto Irrigation District
Water and Power

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

March 15, 2010

To: **THE CALIFORNIA AIR RESOURCES BOARD**

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

Subject: **MODESTO IRRIGATION DISTRICT COMMENTS ON 15-DAY MODIFICATIONS TO THE ORIGINALLY PROPOSED AB 32 COST OF IMPLEMENTATION FEE REGULATION**

Introduction

On February 26, 2010, California Air Resources Board (CARB) staff issued proposed modifications to the AB 32 Cost of Implementation Fee Regulation ("Proposed Regulation") considered by CARB at its September 25, 2009 public hearing. The modifications implement a "first deliverer" approach to calculation of the Fee for in-state and imported electricity. The modifications also shift the point of regulation for natural gas to the end users. Certain reporting requirements were also modified, as were provisions relating to the payment, collection and enforcement of the fees.

Modesto Irrigation District (Modesto ID) understands the "first deliverer" approach for electricity and appreciates the revisions to ensure that duplicative Fee costs are not passed through to generators through their fuel providers. However, Modesto ID does have concerns that the Proposed Regulation as modified creates a lack of planning certainty for entities that are subject to the Fee and the potential for double-counting and over-charging for some emissions. More specifically:

- The proposed Fee calculation and adjustment provisions added to the Proposed Regulation create uncertainty and preclude any forward planning by compliance entities.
- To the extent the modified Proposed Regulation allows for Fees to be charged on electricity values in excess of the amount used to serve California load, the Regulation would exceed the bounds of AB 32.
- It is not clear that the emission factor now identified in the Proposed Regulation accurately reflects the unspecified power consumed in California.
- Clarification is required in the Proposed Regulation regarding the new collection threshold and enforcement criteria.

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 2009 Modesto ID served a peak summer load of almost 620 megawatts (MW) and had retail sales of over 2,528,013,695 kilowatt-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: 11% eligible renewables and 16% large hydroelectric, 33% coal, 37% natural gas and 2% 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. JP 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

Some Certainty Must Be Provided As To The Level Of Costs To Be Incurred By California's Electric Ratepayers Under The Fee Regulation.

The revisions made to the Proposed Regulation, while clarifying the amount of existing Debt to be included in each of the first three years of Fee calculation, continue to leave compliance entities with little real notion of how much their current or future Fees will be. Though the Fee amount is thought to be relatively small at the outset 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.

The Fees are based on costs annually approved through the California Budget process, and are thus inherently uncertain from year to year. Entities that will be obligated to pay the

Fees cannot do more than guess at what their obligation will be, making them unable to accurately integrate such Fees into their own budget and rate planning processes. This leaves publicly owned utilities particularly at a disadvantage since they have only their rate revenue to rely on to raise the funds needed to pay the Fee invoices. As modified, the Proposed Regulation now also provides that amounts not expended or encumbered in one year will be trued-up in the next year's Fee calculation and that if any Fee payer(s) become ineligible to pay the Fee the remaining entities subject to the Fee will be responsible to pay the deficit. These provisions exacerbate the cost uncertainties inherent in the Regulation by effectively requiring a recalculation of Fees already charged to compliance entities.

Provisions should be included within the Proposed Regulations to balance the impact of these uncertainties and ensure that the Fees invoiced remain fairly predictable, avoiding large price jumps or fluctuations. Various mechanisms that could be considered include an overall Fee limit, a maximum Fee increase trajectory, or any other way of evening out the impacts to State ratepayers.

A Mechanism Should Be Included In The Regulation To Ensure that the Fee is Charged Only on Emissions Associated with Electricity Consumed in California.

Modesto ID appreciates that the revised regulations recognize that Fees should only be charged on electricity "consumed" in California. However, while including only imported electricity that is "delivered for consumption in California" in the Fee calculation, the Proposed Regulation requires that Fees be paid for "each megawatt-hour of imported electricity reported" excluding imported power that is "simultaneously exchanged" for exported power. These revisions leave open the question of what it means to be "delivered for consumption" or "simultaneously exchanged", leaving open the possibility that fees may be charged on more electricity than is actually consumed in California. Such an outcome would unduly burden the electricity sector and California electric ratepayers by resulting in a payment of the Fee on electricity not consumed in California. This outcome is not mandated by the provisions of AB 32 and is inconsistent with the stated purpose of the Fee in the Initial Statement of Reasons (ISOR).

The simplest resolution to this problem would provide for the netting of electricity imports and exports. This will ensure that no generation is double-counted in the Fee calculations and that the Fee is only applied to electricity consumed in California. This will in turn assure that California's ratepayers are not overly burdened and charged for emissions unrelated to their load.

Separate Emission Factors Should be Identified for Each Region Importing Into California.

The modified Proposed Regulation includes an emission factor for all unspecified power of .499 metric tons per megawatt hour. The regulation contains no explanation of how this number was determined and contains no provision for reviewing its accuracy and allowing periodic updates. Furthermore, because the power sources for each region are likely to be very different, it may be more appropriate to use a different emission factor for unspecified power from each region: California, the northwest and the southwest. In order to ensure that the Fees fairly capture the emission value of unspecified power resources Modesto ID believes that it is important that this value be consistent with approaches taken in other venues, including the Western Climate Initiative.

Provisions Should Be Included In The Regulation For A Dispute Resolution Procedure To Be Applied Before Late Fees Or Penalties Are Assessed.

New provisions added to the Proposed Regulation state that where the fee is equal to or less than $50, CARB will not collect the Fee. There is no indication whether such Fees are just deferred and accumulated until they exceed $50, or whether they are waived on an annual basis. The Proposed Regulation fails to recognize that such waiver would have an additional impact on those compliance entities that remain obligated to pay the Fee. Such inequitable impact would occur because the under-collected Fees will subsequently be passed on to remaining compliance entities. Any waiver of Fees must be structured to avoid this disparate impact.

Furthermore, the revised Proposed Regulation lacks any clear process by which parties obligated to pay the Fee can seek corrections to or resolve disputes regarding the calculation of the Fees invoiced or to be invoiced. Modesto ID believes that whether this process occurs before a final invoice is issued or after is less important than ensuring that a process is clearly set forth. There must be some provision for the Fee paying entity to challenge the calculated Fee or input data underlying such Fee, and work through potential resolution with CARB before penalties would apply. 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 should not duplicate or interfere with enforcement activities under the already existing Reporting Regulations.

Conclusion

Modesto ID appreciates the opportunity to provide these comments and encourages CARB to consider the issues raised herein before finalizing the Proposed Regulations.

Respectfully submitted,

Joy Warren
Regulatory Administrator

Copy: Jon Costantino
Jeannie Blakeslee

DOCS_n212950_v1_Comments_on_GHG_Administrative_Fee_15_Day_Language