

**COMMENTS OF THE M-S-R PUBLIC POWER AGENCY ON
REVISED 15-DAY LANGUAGE FOR PROPOSED AB 32 COST OF
IMPLEMENTATION FEE REGULATION**

Submitted electronically to
<http://www.arb.ca.gov/lispub/comm/bclist.php>

March 15, 2010

The M-S-R Public Power Agency (M-S-R)¹ appreciates the opportunity to provide these comments on the *15-Day Modifications to the Originally Proposed AB 32 Cost of Implementation Fee Regulation* (15-Day Language), issued by the California Air Resources Board (CARB) on February 26, 2009. The 15-Day Language revises the May 8, 2009 Proposed Regulation (May 2009 Proposed Reg), adopting new Article 3, sections 95200 to 95207, to Title 17 of the California Code of Regulations, termed the “AB 32 Cost of Implementation Fee” (Fee).

Introduction

M-S-R submits these comments on the limited issue of the treatment of imported electricity due to the very significant implications that the current 15-Day Language places on the efficient, economic, and viable use of generation resources throughout the western region. M-S-R supports the March 15, 2010 *Comments of the Northern California Power Agency on Revised 15-day Language for Proposed AB 32 Cost of Implementation Fee Regulation* and the *Modesto Irrigation District Comments on 15-Day Modifications to the Originally Proposed AB 32 Cost Of Implementation Fee Regulation*, also dated March 15, 2010, and does not reiterate all of the points raised in those comments herein.

Section 95202(56) Should Be Revised to Acknowledge the Net of Electricity Imports

The 15-Day Language correctly clarifies the fact that not all electricity imported into California is consumed in the State. Accordingly, the revisions to § 95202(56) regarding the exclusion of power wheeled through California (§ 95202(56)(A)) and simultaneous power exchanges (§ 95202(56)(B)) from the definition of “Imported Electricity” properly capture these important exclusions. However, the proposed definition falls short of addressing the total power imported

¹ M-S-R Public Power Agency, is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding in 1982, and is authorized by its organic documents to acquire, construct, maintain and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its Members. M-S-R Public Power Agency does not serve retail load within California but supplies wholesale power under long-term contracts to its retail load-serving members.

into California, yet not consumed in the State, and should be revised to exclude application of the Fee on all annual imports that are offset by corresponding exports of electricity.

The need for such a revision is vital to the efficient and cost effective operation of the west-wide electricity generation and transmission system, and to ensure that the Regulation fully complies with the stated intent of the Initial Statement of Reasons (ISOR)² that the Fee only be imposed on the *imported electricity consumed in California*. The purpose of the fee is to cover electricity consumed in California. AB 32 includes in its definition of “statewide greenhouse gas emissions” all emissions of greenhouse gases from the generation of electricity “delivered to and consumed in California, accounting for transmission and distribution losses, whether the electricity is generated in the state or imported” (Health & Safety Code (H&S) § 39505). Thus, AB 32 specifically requires CARB to consider imported electricity in the implementation of the statute.” (ISOR, p. 18) The Proposed Regulation assumes that the Fee must likewise be imposed on electricity imports and exports. However, doing so ignores the broad statutory authority granted to CARB in H&S § 38597. Accordingly, while AB 32 specifically requires CARB to consider imported electricity in the implementation of the statute, it also gives the agency the authority to design the Fee in a fair and nondiscriminatory manner. Just as importantly, it allows the agency to impose a fee that will not adversely impact the efficient and reliable operation of the west-wide generation and electricity infrastructure.

Many electricity providers engage in “exchange” transactions that allow entities to maximize the use of generation facilities and transmission planning throughout the west. For example, imports may come from generation in the Pacific Northwest at certain times of year when those facilities can operate the most economically and when the excess power is not needed for domestic purposes. This reduces the amount of electricity that must be generated in California at the same time, usually from resources that would not otherwise need to operate at that time. Similarly, during other times of the year, facilities operating in California export (or exchange) power with their out-of-state counterparts. These transactions are common, cost effective, and environmentally efficient, in addition to being easily tracked and administratively simple. The Fee should properly only be imposed on the net of these transactions – that is when California entities import more power than they export. This would reflect the true amount of power imported *and consumed in California*.

The total Fee obligation is going to change from year to year (and very likely increase) and be in addition to the financial obligations entities are already undertaking to comply with the mandates of AB32. By failing to recognize the net of electricity imports, the Fee effectively inhibits a key cost containment tool available to electricity providers, and forces even greater AB32 cost on California’s electricity ratepayers. Such a result should be avoided. Accordingly, M-S-R urges the further revision of the Proposed Regulation to acknowledge that imported electricity be defined to only include the net of annual electricity imports.

² The Staff Report: *Initial Statement of Reasons for Rulemaking (ISOR) for the Proposed AB 32 Cost of Implementation Fee Regulation*, dated May 8, 2009.

Conclusion

M-S-R urges Staff and the Board to consider the definition of imported electricity set forth in the 15-Day Language, and make the revisions necessary to ensure a just and reasonable application of the Fee. If you have any questions regarding these comments, please do not hesitate to contact the undersigned at 408-307-0512 or msr.general.manager@gmail.com.

Respectfully submitted,

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