BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON THE 45-DAY NOTICE OF PROPOSED CHANGES TO THE AB 32 COST OF IMPLEMENTATION FEE REGULATION

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I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority ("SCPPA") [1] respectfully submits this comment on the proposed changes to the AB 32 Cost of Implementation Fee Regulation ("Regulation") released by the California Air Resources Board ("ARB") for 45-day public comment on August 31, 2011 ("Proposed Changes").

SCPPA supports the Proposed Changes insofar as they increase the consistency of the Regulation with the revised Regulation for the Mandatory Reporting of Greenhouse Gas Emissions ("MRR") and the revised California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation ("C&T Regulation"). However, the MRR and the C&T Regulation have both changed significantly since the publication of the Proposed Changes to the Regulation. The Initial Statement of Reasons ("ISOR") issued with the Proposed Changes states that the Regulation will be further revised to be consistent with the revised MRR (ISOR at page ES-1). SCPPA urges the ARB to prepare these further revisions promptly, as the Proposed Changes are now inconsistent with the MRR in several important ways.

SCPPA also recommends that the Regulation be revised in the following ways, for increased clarity and consistency:

[1] SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, the Imperial Irrigation District, Pasadena, Riverside, and Vernon.

- It should be clarified that fees will not be imposed on electricity imported from jurisdictions which have entered into linkage agreements with California pursuant to the C&T Regulation ("linked jurisdictions").
- Qualified exports of electricity from unspecified sources (as well as specified sources) should be deducted from the calculation of the Common Carbon Cost and the fee liability.
- Fees for entities in all covered sectors should be calculated in the same way, by reference either to carbon dioxide emissions only or by reference to "carbon dioxide equivalent" emissions including other greenhouse gases.

II. THE REGULATION SHOULD BE FURTHER REVISED FOR CONSISTENCY WITH THE REVISED MRR.

A. It is important to reflect recent changes to the MRR and the Cap and Trade Regulation.

The ARB issued notices of significant proposed changes to the MRR and the C&T Regulation on July 25 and September 12, 2011. While the Proposed Changes to the Regulation reflect the changes issued on July 25, they do not address the additional changes issued on September 12. Promptly after the changes to the MRR and the C&T Regulation are sent to the Office of Administrative Law for final review, the Regulation should be revised to reflect the final changes to those regulations. As noted in the ISOR, consistency with the MRR is important to avoid confusion, to allow data to be reported once to satisfy both regulations, and to reduce the administrative burden on entities covered by both the Regulation and the MRR (ISOR at pages II-1 and III-4). Consistency with the C&T Regulation is also important given the close relationship between the MRR and the C&T Regulation.

B. The definitions section of the Regulation requires several amendments.

The definitions section of the Regulation, section 95202(a), should be revised for consistency with the relevant definitions in the MRR and the C&T Regulation. Many changes to the definitions are required. As just one example, the definition of "qualified export" should be revised to reflect the revised definition of that term in the C&T Regulation (the MRR definition merely refers to the definition in the C&T Regulation). The definitions of "replacement electricity" and "variable renewable resource" should be deleted, as those terms have been deleted from the MRR and the C&T Regulation.

C. Section 95201(a)(4)(B) should be amended to remove "replacement electricity."

Changes to various provisions of the Regulation will be required as a consequence of the changes to the definitions. For example, section 95201(a)(4)(B)2 of the Regulation refers to "replacement electricity" and "variable renewable resources", and specifically to replacement electricity with a zero emission factor under the MRR. However, pursuant to the changes issued on September 12, 2011, the MRR and the C&T Regulation no longer use the concept of replacement electricity and a zero emission factor will not be issued for such electricity. Instead, the C&T Regulation provides for a "$CO_2e_{\text{RPS adjustment}}$" as a deduction from the sum of covered emissions (C&T Regulation § 95852(b)(1)(B)). The RPS adjustment is calculated as "MWh_{RPS}" – a defined term – multiplied by the default emissions factor for unspecified sources (MRR § 95111(b)(5)). Section 95201(a)(4)(B)2 of the Regulation should be revised as follows to avoid inadvertently imposing fees on electricity that meets the criteria for "MWh_{RPS}" under the MRR.

§ 95201. Applicability.

(a)(4) *First Deliverers of Electricity*.

(B)2 No fee shall be paid for any megawatt-hour of renewable energy, nor for ~~replacement~~ electricity ~~for variable renewable~~

~~resources~~ that meets the requirements for "MWh $_{RPS}$" ~~a zero emission factor~~ pursuant to Mandatory Reporting Regulation section 95111(b)(5) ~~except that, for replacement electricity that has an emission factor greater than the default emission factor, the fee shall be paid based on the difference between the greater emission factor and the default emission factor~~.

D. Consequential amendments to section 95203(m) are required due to the deletion of "replacement electricity."

Section 95203(m) of the Regulation, *Fee Liability for Electricity Delivered in California*, needs to be amended to include an RPS adjustment, similar to the current deduction for qualified exports, because replacement electricity will no longer be issued a zero emission factor under the MRR. The RPS adjustment proposed below is calculated in the same way as the RPS adjustment in the MRR and the C&T Regulation, using the emission factor for unspecified sources.

§ 95203. Calculation of Fees.

(m) *Fee Liability for Electricity Delivered in California.*

$FS_i = \Sigma(EFR_d \times QM_d) - \Sigma(EFR_{qe} \times QM_{qe}) - (EFR_{unsp} \times QM_{RPS})$

Where:

EFR_{unsp} = Electricity fee rate for unspecified sources calculated pursuant to section 95203(f)

QM_{RPS} = Quantity of MWh of electricity that meets the requirements for "MWh $_{RPS}$" pursuant to Mandatory Reporting Regulation section 95111(b)(5)

III. NO FEES SHOULD BE IMPOSED ON ELECTRICITY IMPORTED FROM LINKED JURISDICTIONS.

Section 95203(f) of the Regulation, *Electricity Fee Rate for electricity delivered in California on or after January 1, 2011*, provides that the emissions factor for unspecified electricity imported from points of receipt located in linked jurisdictions is zero so that no fees are payable on such electricity. It is appropriate that no fee be imposed on electricity from linked jurisdictions. The MRR and C&T Regulation achieve a similar result – no liability for emissions

from electricity from linked jurisdictions – by different means. Rather than providing an emissions factor of zero, the C&T Regulation provides for a "CO_2e_{linked}" deduction from the sum of covered emissions (C&T Regulation § 95852(b)(1)(B)).

To avoid confusion, consistency with the approach taken in the C&T Regulation would be desirable. This could be achieved by including a deduction for electricity from linked jurisdictions in the fee liability calculation in section 95203(m) of the Regulation, similar to the deduction for qualified exports. However, the zero-emission-factor approach taken in section 95203(f) of the Regulation would be acceptable, if this approach were consistently applied throughout the Regulation. But this is not the case in the Proposed Changes. Changes to two sections of the Regulation are required to consistently implement the position that no fees are to be imposed on electricity imported from linked jurisdictions.

A. Section 95201(a)(4)(B) should be amended to provide that no fee is payable on electricity from linked jurisdictions.

Section 95201(a)(4)(B) of the Regulation summarizes the calculation of the fee for electricity delivered in California, with exclusions specified in subsections (B)1 and (B)2. It does not exclude electricity from linked jurisdictions. Electricity from linked jurisdictions should be excluded in a new subsection 95201(a)(4)(B)3 as follows:

§ 95201. Applicability.

(a)(4) *First Deliverers of Electricity*.

(B)3 No fee shall be paid for any megawatt-hour of electricity imports from specified or unspecified sources with a first point of receipt located in a linked jurisdiction.

B. Section 95203(h) should be amended to provide a zero emission factor for specified sources in linked jurisdictions.

Section 95203(f) of the Regulation provides an emission factor of zero for electricity imports from *unspecified* sources in linked jurisdictions. An emission factor of zero should also

be provided for electricity imports from *specified* sources in linked jurisdictions. Section 95203(h), *Emission Factors for Specified Sources that are Electricity Generating Facilities or Units, Calculation Methods for Report Years 2011 and Subsequent Years*, would be the appropriate place to make this change. This section refers to the emission factors calculated pursuant to the MRR. But as discussed above, the MRR will no longer provide for a zero emission factor for energy from linked jurisdictions because those emissions are now addressed by means of a "CO_2e_{linked}" deduction in the C&T Regulation.

Unless the electricity from linked jurisdictions is deducted in section 95203(m), section 95203(h) should be amended as follows:

> **§ 95203. Calculation of Fees.**
>
> (h) *Emission Factors for Specified Sources that are Electricity Generating Facilities or Units, Calculation Methods for Report Years 2011 and Subsequent Years*.
>
> Emission factors for Specified Sources that are Electricity Generating Facilities or units shall be facility specific or unit specific emission factors for the specified source published on the ARB Mandatory Reporting website calculated by ARB according to the methods in section 95111(b) of the Mandatory Reporting Regulation. However, the emission factor for electricity imports from Specified Sources located in linked jurisdictions will be zero.

Section 95202(g), *Emission Factors for Specified Sources that are Electricity Generating Facilities or Units, Calculation Methods for Report Years 2008 through 2010*, does not need to be amended as there were no linked jurisdictions in report years 2008-2010.

Provided that the emission factor for electricity from linked jurisdictions is zero, the calculation of the Common Carbon Cost in section 95203(b) will automatically exclude emissions from electricity from linked jurisdictions.

IV. QUALIFIED EXPORTS FROM BOTH SPECIFIED AND UNSPECIFIED SOURCES SHOULD BE DEDUCTED FROM THE COMMON CARBON COST AND THE FEE LIABILITY.

The calculation of the Common Carbon Cost in section 95203(b) provides for a deduction for qualified exports from specified sources. This is too narrow. The definition of "qualified export" is not limited to specified sources, either in the Regulation or the MRR, and there is no reason to so limit it. In many cases exported electricity will come from unspecified sources. The deduction of qualified exports from the Common Carbon Cost should extend to qualified exports from both specified and unspecified sources, as follows:

> **§ 95203. Calculation of Fees.**
>
> (b) *Common Carbon Cost.*
>
> Σ $(Q_{qe} \times EF_{qe})$ = Quantity of MWh of qualified exports ~~from each specified source~~ multiplied by the applicable specified source emission factor or by the default emission factor for unspecified sources, as appropriate~~for that specified source~~.

The deduction of qualified exports from the fee liability in section 95203(m) should also be amended to clarify this issue:

> **§ 95203. Calculation of Fees.**
>
> (m) *Fee Liability for Electricity Delivered in California.*
>
> EFR_{qe} = Electricity fee rate for electricity from qualified exports from each specified or unspecified source
>
> QM_{qe} = Quantity of MWh from qualified exports from each specified or unspecified source

V. EMISSION FACTORS FOR ALL SECTORS SHOULD BE CALCULATED IN THE SAME WAY, USING EITHER CO_2 OR CO_2E.

In section 95203(d) of the Regulation, the emission factors for coal, petroleum coke, natural gas, diesel and gasoline are expressed in relation to carbon dioxide only, and do not include other greenhouse gases that may be emitted upon combustion of fossil fuel, such as

methane and nitrous oxide. By contrast, the Proposed Changes to section 95203(f), *Electricity Fee Rate for electricity delivered in California on or after January 1, 2011*, refer to emission factors in "$MTCO_2e$", metric tons of carbon dioxide equivalent. This includes all greenhouse gases, not just carbon dioxide. Consequently, the fee for entities in the electricity sector for 2011 onwards will be calculated with reference to a larger pool of emissions than the fee for entities in other sectors.

The Regulation should be revised to provide that the emission factors for all sectors are calculated in the same way, by reference either to carbon dioxide or to carbon dioxide equivalent.

VI. CONCLUSION

SCPPA urges the ARB to consider these comments in finalizing the amendments to the Regulation. SCPPA appreciates the opportunity to submit these comments to the ARB.

Respectfully submitted,

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