Cindy Parsons
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Department of Water and Power the City of Los Angeles

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October 19, 2011

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, CA 95814

Ladies and Gentlemen:

Subject: Comments on the Proposed Amendments to the AB 32 Cost of Implementation Fee Regulation

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the proposed amendments to the "AB 32 Cost of Implementation Fee Regulation" (Fee Regulation) released on August 31, 2011.

The Fee Regulation was adopted for the purpose of collecting fees from sources of greenhouse gas (GHG) emissions to fund California's AB 32 program to reduce GHG emissions. The Fee Regulation depends on data reported to the California Air Resources Board (ARB) under the "Regulation for the Mandatory Reporting of Greenhouse Gas Emissions" (MRR) as the basis for assessing the fees. The MRR was recently amended to harmonize California's GHG reporting requirements with federal GHG reporting requirements and to support ARB's Cap-and-Trade Regulation. The purpose of amending the Fee Regulation is to bring it into alignment with the amended MRR.

LADWP's comments regarding the proposed amendments to the Fee Regulation are enclosed. The main issues and concerns are summarized below:

1. Point of Regulation for Imported Electricity:

   Under the original MRR and Fee Regulation, the owner of imported electricity was responsible for reporting and paying AB 32 fees for GHG emissions associated with the imported electricity. On September 12, 2011, ARB released a second round of revisions to the MRR, which included amendments to the definition of Electricity Importer which shift the responsibility for reporting imported electricity from the owner of the electricity to the entity that schedules and/or physically delivers the electricity into California. In cases where the owner of the electricity does not also

deliver the electricity into California, this revision would transfer responsibility for reporting and paying AB 32 fees for the imported electricity from the owner to the transmission provider. Placing compliance responsibility on the transmission provider or the scheduling entity is neither appropriate nor consistent with the joint CPUC/CEC recommendations to ARB on the point of regulation for the electric sector (Decision Number 08-03-018 dated March 13, 2008).

LADWP is very concerned by the recent revisions to the definition of Electricity Importer, because it will change the point of regulation for reporting electricity imports from the entity that owns the power to the entity that schedules and/or delivers the power into California. The entity that reports the electricity import will also be responsible for paying the AB32 fees and satisfying the cap-and-trade compliance obligation for that import, even though the electricity may not belong to that entity.

Since the recent revisions to the definition of Electricity Importer shift the compliance responsibility from one entity to another, this amendment should have been vetted with stakeholders through the public workshop process before adoption into the MRR. Unfortunately, the revised definition was a last minute change inserted into the MRR without going through the public workshop process. Therefore, the revised definition of Electricity Importer should <u>not</u> be automatically transferred to the Fee Regulation without further evaluation of the impact this change to the point of regulation will have on reporting and payment of AB 32 fees for imported electricity.

2. <u>The emissions on which fees are based should be consistent across all sectors</u>:

   The proposed amendments to the Fee Regulation are inconsistent in that fees for fuels would be assessed based on CO2 emissions, but fees for electricity would be assessed based on CO2-equivalent emissions. Since CO2-equivalent emissions are higher than CO2 emissions, the electricity sector would end up paying higher fees than the fuel suppliers. This inconsistency should be eliminated.

3. <u>Qualified Exports should not be subject to fees</u>:

   The description of Qualified Exports in the Common Carbon Cost and fee calculation equations is inconsistent with the definition of Qualified Exports, and incorrectly limits Qualified Exports to only exports from specified sources. This error needs to be corrected so that all Qualified Exports can be deducted and will not be subject to fees.

   LADWP understands that ARB staff is planning to propose additional changes to the Fee Regulation for a supplemental 15-day comment period, and will continue working with staff to address these issues and concerns.

Thank you for your consideration of these comments. If you have any questions, please contact Ms. Cindy Parsons of my staff at (213) 367-0636.

Sincerely,

Mark J. Sedlacek
Director of Environmental Affairs

CSP:lr
Enclosure
c: Cindy S. Parsons

§ 95201(a)(4) *First Deliverers of Electricity.*

References to replacement electricity for variable renewable resources should be deleted from the Fee Regulation and replaced with electricity that qualifies for the RPS Adjustment.

The terms "replacement electricity" and "variable renewable resource" were deleted from the MRR as part of the recent amendments released on September 12, 2011. Therefore, any references to "replacement electricity" and "variable renewable resource" should also be deleted from the Fee Regulation. Electricity that meets the requirements for the RPS Adjustment should be substituted in place of the former reference to replacement electricity.

2. No fee shall be paid for any megawatt-hour of renewable energy, nor for ~~replacement~~ electricity that meets the requirements for the RPS Adjustment ~~for variable renewable resources that meets the requirements for a zero emission factor pursuant to MRR section 95111 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.~~

§ 95202 Definition (115) "Replacement electricity" and Definition (132) "Variable renewable resource"

The terms "replacement electricity" and "variable renewable resource" were deleted from the MRR as part of the recent amendments released on September 12, 2011. Therefore, these terms should also be deleted from the Fee Regulation.

§ 95202 Definition (46) "Electricity importers"

Recent changes to the definition of "Electricity Importer" in the MRR are problematic. Responsibility for reporting and paying AB 32 fees for imported electricity should remain with the electricity owner.

While the intent of the proposed amendments to the Fee Regulation is to align it with the recent amendments to the MRR, it is important to evaluate and consider the impacts those changes will have in practice before adopting them into the Fee Regulation. For example, the September 12, 2011 revisions to the definition of Electricity Importer in the MRR would shift responsibility for reporting imported electricity and by extension, the associated AB 32 fees and cap-and-trade compliance obligation, from the entity that owns the imported electricity to the entity that delivers the electricity into California.

Placing the compliance burden on the transmission provider instead of the entity that holds title to the power is analogous to the compliance responsibility being placed on the trucking company rather than the owner of the cargo being transported, even though the emissions subject to the compliance obligation are from generating the cargo (the electricity). This shift in responsibility will negatively impact LADWP and other entities that schedule and/or deliver power on behalf of other utilities.

Transferring the compliance obligation from the owner of the electricity to the transmission provider is neither appropriate nor consistent with the joint CPUC/CEC recommendations to ARB regarding the

point of regulation for the electricity sector under a cap-and-trade program. Copied below for reference is the summary of the CPUC/CEC recommendation regarding the point of regulation (Decision Number 08-03-018 dated March 13, 2008, page 72):

3.3.2.6. Formulation of the Deliverer Point of Regulation

Having determined that the deliverer point of regulation best meets the four criteria examined above, we turn to certain details regarding the manner in which compliance requirements should be determined in a cap-and-trade system with a deliverer point of regulation for the electricity sector.[17]

We conclude that the most useful formulation of the deliverer point of regulation approach is that the point of regulation would be the entity that owns electricity as it is delivered to the grid in California. In most situations, this would be the entity that owns the electricity on the portion of the physical path just before the point where it is delivered to the California transmission grid, which would be the busbar for in-state generation or the first Point of Delivery in California for imported power.[18] Where electricity is first delivered to the California grid at the distribution level, the deliverer definition results in the following: (i) for generation facilities that are connected to a retail provider's distribution network, the deliverer would be the entity that owns the electricity as it is delivered to the distribution network, and (ii) for electricity delivered directly to California retail customers of a multi-jurisdictional utility from out-of-state sources, the deliverer would be the multi-jurisdictional utility.[19] Recognizing that electricity is an instantaneous commodity, we call the entity that owns the electricity as it is delivered to the California grid the "deliverer" of the electricity for purposes of establishing GHG responsibility. We recommend that deliverers be required to surrender allowances associated with the electricity's GHG emissions.

Deliverers would include generators, operators, retail providers, marketers, and any other types of entities that own electricity as it is delivered to the California grid. While the deliverer often may be the owner or operator of the generating unit, it could also be any entity that purchases or otherwise has a contractual arrangement such that it owns the electricity as it is delivered to the California grid.

The proposed decision and parties' comments on the proposed decision addressed several possible exceptions to our determination of the manner in which deliverers should be identified for the purpose of GHG compliance obligations. We address these proposed exceptions in turn.

[16] See Governor Schwarzenegger, Executive Order S-3-05, June 2005.

[17] As explained in Section 3, electricity that is wheeled through California is not included in the electricity sector for purposes of establishing GHG regulations pursuant to AB 32. As explained in Section 4.2.2, we defer the issue of whether electricity generated by CHP facilities should be included in the electricity sector.

[18] In this situation, the deliverer would be the owner that delivers the electricity to the first Point of Delivery in California, not an entity that accepts ownership of the electricity for the first time at that Point of Delivery.

[19] We understand that the multi-jurisdictional utilities generate or purchase electricity out-of-state and that the electricity is delivered at the distribution level directly from out-of-state to their California retail customers.

LADWP believes it is more appropriate and straightforward for the AB 32 fee liability to remain with the owner of the electricity, since the owner of the electricity is ultimately responsible for its generation and disposition. Therefore, the definition of Electricity Importer as currently proposed in the Fee Regulation should remain as is, and should not be updated to match the September 12, 2011 revision to this definition from the MRR.

§ 95203 (b) *Common Carbon Cost.*

The description of Qualified Exports in the Common Carbon Cost equation is inconsistent with the definition of Qualified Exports.

The description of Qualified Exports is incorrect in the (Q_{ie} x EF_{ie}) term of the equation for calculating the Common Carbon Cost. The proposed wording limits qualified exports to specified sources only, which is inconsistent with the definition of qualified exports. Qualified exports are defined as imports and exports within the same hour by the same PSE. Qualified exports may come from either specified or unspecified sources. This term should be corrected to make it consistent with the definition of Qualified Exports.

(Qie x EFie) = Quantity of emissions from electricity delivered in California as the sum of:

(Qsp x EFsp) = Statewide ~~Q~~quantity of MWh of electricity delivered from each specified source multiplied by the emission factor for that specified source;

(Qusp x EFusp) = Statewide quantity of MWh of electricity delivered from unspecified sources multiplied by the default emission factor for unspecified sources.

Minus
(Qqe x EFqe) = Quantity of MWh of qualified exports as defined in 95202 and reported under the MRR ~~from each specified source~~ multiplied by the emission factor for ~~that~~ each specified source or the default emission factor for unspecified sources, as appropriate.

§ 95203(f) *Electricity Fee Rate for electricity delivered in California on or after January 1, 2011.*

The proposed amendments include emission factors for electricity delivered in California on or after January 1, 2011 that are in units of CO2-equivalent. This is inconsistent with the emission factors in section 95203(e) for electricity delivered in California prior to January 1, 2011, as well as emission factors in section 95203(d) for fuels, both of which are in units of CO2, not CO2-equivalent. It is inconsistent to assess fees on fuels based on CO2 emissions only, while assessing fees on electricity based on CO2-equivalent emissions. For consistency, fees for entities in all sectors should be calculated based on either CO2 only or CO2-equivalent emissions.

§ 95203 (m) *Fee Liability for Electricity Delivered in California.*

The description of Qualified Exports in the calculation of fee liability for electricity delivered in California is inconsistent with the definition of Qualified Exports.

The description of Qualified Exports in the equation to calculate fee liability for electricity delivered in California should be modified. The proposed wording "from each source" implies that the source of the export is specified. However, this is inconsistent with the definition of Qualified Exports, which specifies that "electricity exported within the same hour and by the same PSE as the imported electricity is a qualified export." The definition does not specify the source of the export; therefore Qualified Exports should not be limited to specified sources in the fee calculation equations.

In addition, the fee calculation equation in 95203(m) includes the term EFRqe but does not specify how this term is calculated. An equation to calculate EFRqe should be added to section 95203(f) of the regulation.

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

The Executive Officer shall calculate the fee liability for each entity reporting pursuant to section 95204(g) based on the quantity of electricity delivered, as follows:

FSi = Σ(EFRd x QMd) - Σ(EFRqe x QMqe)

Where:

FSi = Fee for each entity

QMd = Quantity of MWh of electricity delivered in California from each specified source, asset-controlling supplier, or unspecified source, as appropriate

EFRd = Electricity fee rate for electricity from each specified source, asset-controlling supplier, or unspecified source, as appropriate

EFRqe = Electricity fee rate for electricity from qualified exports ~~from each source~~ calculated pursuant to section 95203(f)

QMqe = Quantity of MWh from qualified exports ~~from each source~~ as defined in 95202 and reported under the MRR