Department of Water and Power the City of Los Angeles

ANTONIO R. VILLARAIGOSA
Mayor

Commission
THOMAS S. SAYLES, *President*
ERIC HOLOMAN, *Vice President*
RICHARD F. MOSS
CHRISTINA E. NOONAN
JONATHAN PARFREY
BARBARA E. MOSCHOS, *Secretary*

RONALD O. NICHOLS
General Manager

April 17, 2012

Mr. David Mallory
Air Resources Board
1001 I Street
Sacramento, CA 95814

Subject: Comments on the April 2, 2012 modifications to the AB 32 Cost of Implementation Fee Regulation

Ladies and Gentlemen:

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the modifications to the AB 32 Cost of Implementation Fee Regulation (Fee Regulation) that were made available for public review and comment on April 2, 2012.

LADWP would like to compliment California Air Resources Board (ARB) staff for their approach of working with stakeholders while drafting these additional modifications, and for addressing stakeholder concerns and comments.

LADWP supports the following changes, which address issues that LADWP had raised in previous comments:

- Making the basis for assessing fees consistent across all sectors. Historically, AB 32 fees for all sectors were assessed based on CO2 emissions. In the October 2011 amendments to the Fee Regulation, ARB proposed changing the basis for assessing fees on electricity from CO2 emissions to CO2-equivalent emissions, while fees for fuel usage would remain based on CO2 emissions. Since CO2-equivalent emissions are higher than CO2 emissions, the electric sector would have ended up paying higher fees than the fuel suppliers. LADWP supports the April 2, 2012 modifications to the Fee Regulation to revert back to using CO2 emissions as the basis for assessing fees on electricity (as it historically has been) rather than CO2 equivalents. This change eliminates the inconsistency and levels the playing field between the electric sector and the other sectors that are subject to AB 32 fees.

- Deducting all Qualified Exports. Previously, the description of Qualified Exports in the "Common Carbon Cost" and "Fee Liability for Electricity Delivered in California" equations incorrectly limited the Qualified Exports that could be deducted to only exports from specified sources. The proposed modifications correct this error and enable all qualified exports to be deducted.

111 North Hope Street, Los Angeles, California 90012-2607 *Mailing address;* Box 51111, Los Angeles 90051-5700
Telephone: (213) 367-4211 *Cable address:* DEWAPOLA

LADWP wishes to bring to ARB's attention several issues relating to the "First Deliverer" point of regulation for imported electricity.

1. Applicability for First Deliverers of Electricity.

   The criteria in section 95201(a)(4) for imported electricity to be subject to the Fee Regulation is too narrow, and creates a potential loophole whereby electricity that is delivered into the California Independent System Operator (CISO) system at a point outside of California may not be subject to AB 32 fees. This would be unfair to the other fee payers, as the total cost of the AB 32 program is divided amongst the total emissions that are subject to the Fee Regulation.

   Electricity can be delivered into the CISO system at a point outside of California. CISO has transmission paths that extend beyond the borders of California to tie points in Nevada (Mead, Eldorado, McCullough and Marketplace), Arizona (Palo Verde), and Utah (Gonder, Mona and IPP).

   LADWP recommends that ARB avoid this potential loophole by revising the wording in section 95201(a)(4) to read as follows:

(4) First Deliverers of Electricity.

***

(B) For electricity delivered in California on or after January 1, 2011, any owner or operator of a grid-dedicated, stand-alone electricity generating facility in California that delivers electricity to the California transmission and distribution system, and any electricity importer that ~~is the purchasing-selling entity that~~ delivers electricity ~~at its~~ to a first point of delivery located in California or sells the electricity into the California Independent System Operator markets. Fees shall be paid for each megawatt-hour of net power generated by combustion of natural gas, coal or other fossil fuels (except California diesel) at a grid-dedicated, stand-alone electricity generating facility in California, and reported pursuant to section 95112 of the Mandatory Reporting Regulation. Fees shall also be paid for each megawatt-hour of imported electricity reported pursuant to section 95111 of the Mandatory Reporting Regulation if the electricity is from either unspecified sources or specified sources that combust natural gas, coal, or other fossil fuels (except California diesel). For multi-jurisdictional retail providers, fees shall be paid only for each megawatt-hour of wholesale sales delivered to a first point of delivery in California.

Since ARB is planning to rely on e-tags to determine who is responsible for paying the AB 32 fees and the cap-and-trade compliance obligation for imported electricity, a standard protocol or set of rules for generating e-tags should be implemented to ensure that everyone is following the same format. As it currently stands, there is a great deal of leeway in how e-tags are written. In the case of imports into the CISO system, the entity generating the e-tag can provide a detailed pathway or merely specify they are using the "CISO system" to move

the electricity from point A to point B without showing any points in between. Furthermore, the e-tag may show the PSE as CISO or the name of the entity that sold the electricity to CISO.

In summary, LADWP recommends the applicability section be clarified to ensure that all electricity imported into California is subject to AB 32 fees. In addition, a standard protocol for generating e-tags should be implemented.

2. The definitions of Electricity Importer and Specified Source of Electricity are problematic and should be revised.

The definitions of "Electricity Importer" and "Specified Source" are problematic. The revised definition of "Electricity Importer" is likely to result in LADWP having to pay AB 32 fees for electricity imports that belong to other utilities. In addition, it is unclear whether the definition of "Specified Source" allows electricity that is imported by LADWP on behalf of other utilities from out-of-state generating facilities such as Hoover Dam and Milford Wind Farm to be reported as a specified import, or whether default emissions will be assigned. If default emissions are assigned, LADWP will end up paying AB 32 fees on those default emissions, even though the electricity is directly delivered from a known zero GHG emission source. Below is a detailed discussion of the issues associated with these two definitions.

Definition of "Electricity Importer"

Under the original mandatory reporting and Fee Regulation, the owner of imported electricity was responsible for reporting and paying the AB 32 fees for GHG emissions associated with the electricity they import into California. On September 12, 2011 as part of the second round of revisions to the cap-and-trade and mandatory reporting regulations, a revised definition of Electricity Importer was introduced which shifted the responsibility for reporting electricity imports from the entity that holds title to the electricity to the entity that schedules and/or physically delivers the electricity into California. In addition, ARB added a new sentence making the facility operator or scheduling coordinator responsible for reporting electricity imports from generating facilities located outside of California that have a first point of interconnection with a California Balancing Authority.

These revisions to the definition of Electricity Importer are significant in that they changed 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 is also responsible for paying the AB 32 fees and satisfying the cap-and-trade compliance obligation for that imported electricity, even though the electricity may not belong to that entity.

For example, since LADWP is the scheduling agent for Burbank's and Glendale's imports from Intermountain Generating Station, the responsibility for reporting and paying AB 32 fees for these electricity imports is likely to shift from Burbank and Glendale onto LADWP (as the scheduling agent) even though Burbank and

Glendale physically deliver the electricity into California themselves (are the PSE on the NERC e-tag when the electricity crosses the California border).

LADWP has conveyed concerns about the consequences of this revised definition in our written comments on the mandatory reporting and cap-and-trade regulations, during the public hearing on October 20, 2011, and in our subsequent discussions with ARB staff and managers. To correct the issues created by the earlier amendments, LADWP has proposed the following revisions to the definition of Electricity Importer:

> *"Electricity importers" are marketers and retail providers that deliver~~hold title to~~ imported electricity. ~~For electricity delivered between balancing authority areas, t~~The electricity importer~~entity that holds title to delivered electricity~~ is identified on the NERC E-tag as the purchasing-selling entity (PSE) on the last segment of the tag's physical path~~,~~ with the point of receipt located outside the state of California and the point of delivery located inside the state of California. ~~For facilities physically located outside the state of California with the first point of interconnection to a California balancing authority's transmission and distribution system, the importer is the facility operator or scheduling coordinator.~~ Federal and state agencies are subject to the regulatory authority of ARB under this article and include Western Area Power Administration (WAPA), Bonneville Power Administration (BPA), and California Department of Water ~~and Power~~Resources (DWR). ~~When PSEs are not subject to the regulatory authority of ARB, including tribal nations, the electricity importer is the immediate downstream purchaser or recipient that is subject to the regulatory authority of ARB.~~*

Definition of "Specified Source"

The revised definition of "Specified Source" requires that "the reporting entity must have either full or partial ownership in the facility/unit or a written contract to procure electricity generated by that facility/unit", in order to report the electricity as a specified import and use the emission factor for that particular generating facility to calculate emissions for the imported electricity.

LADWP has agreements with other utilities to import electricity on their behalf from Hoover Generating Station and Milford Wind Farm. The definition of "Specified Source" needs to be clarified to allow imports from a specified generating facility by one entity on behalf of another entity that has "full or partial ownership in the facility/unit or a written power contract to procure electricity generated by that facility/unit" to be reported as a specified import. If not, LADWP will have to report the electricity imported on behalf of the other utilities as an "unspecified import" with associated default emissions and pay AB 32 fees for the default emissions, even though the electricity was imported directly from zero GHG emission generating facilities.

LADWP recommends the following changes to the definition of "Specified Source" to enable an Electricity Importer who imports electricity from a specified source on behalf of another entity that has ownership in or a contract to procure electricity from the specified source to be reported as a specified import:

> "Specified source of electricity" or "specified source ~~of power~~" means a facility or unit which is permitted to be claimed as the source of ~~imported~~ electricity delivered ~~by an electricity importer.~~ The reporting entity ~~electricity importer~~ must have either full or partial ownership in the facility/unit, or a written contract to procure electricity generated by that facility/unit, or import the electricity on behalf of an entity that has full or partial ownership in the facility/unit or a written power contract to procure electricity generated by that facility/unit. Specified facilities/units include: cogeneration systems. Specified source also means electricity procured from an asset-controlling supplier recognized by the ARB.

LADWP will continue working with ARB to address and resolve the issues created by these revised definitions. We understand the objective of the amendments to the Fee Regulation is to make it consistent with the mandatory reporting and cap-and-trade regulations, and the definitions are merely being copied from the other regulations into the Fee Regulation. However, in order to address and resolve the unintended consequences described above, LADWP requests that these definitions be revised in this rulemaking and as part of future amendments to the mandatory reporting and cap-and-trade regulations.

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