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September 27, 2011

Mr. Doug Thompson, Manager
Climate Change Reporting Section
Air Resources Board
1001 I Street,
Sacramento, CA 95814

Dear Mr. Thompson:

Subject: Los Angeles Department of Water and Power Comments on the Proposed Modifications to the "Regulation for the Mandatory Reporting of Greenhouse Gas Emissions" (released September 12, 2011 for 15-day comment)

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the additional proposed modifications to the California Air Resources Board (ARB) "Regulation for the Mandatory Reporting of Greenhouse Gas Emissions" (Mandatory Reporting Regulation) that were released on September 12, 2011 for 15-day public review and comment.

LADWP appreciates and supports the following modifications ARB staff has made to the Mandatory Reporting Regulation:

Streamlined Verification Requirements for Biomass-Derived Fuels

In its original December 2010 comments, LADWP pointed out that the upstream verification requirements for biomass-derived fuels would have resulted in substantial and duplicative verification efforts and needed to be streamlined. LADWP appreciates ARB staff's willingness to work with stakeholders to resolve the issues and streamline the verification requirements for biomass-derived fuels. The revised verification requirements are a significant improvement.

Additional time to Reconcile and Correct RPS Adjustment Numbers in Report

LADWP appreciates the recognition that additional time may be needed to fully reconcile electricity imported from renewable energy resources, and supports the added flexibility to make corrections to the amount of electricity claimed for the RPS Adjustment, if necessary, within 45 days following the report due date.

Boundary for Reporting Facility Energy Inputs and Outputs

LADWP appreciates the clarification added to section 95104(d) to limit the boundary for reporting of facility energy inputs and outputs. Since the definition of facility may include a variety of adjacent facilities under common ownership that serve different functions, it would be helpful if ARB could document the intent of this reporting requirement in the staff report and provide examples to clarify what energy inputs and outputs should / should not be reported, to help reporters understand how to apply this new reporting requirement to their facilities. For example, in the case of an electricity generating station that is adjacent to a water pumping station, the electricity input to run the pumps at the water pumping station should not be included in the energy input reported by the generating station.

As a facility operator, Balancing Authority, Retail Provider and Marketer, LADWP has a unique perspective with which to evaluate and identify issues with the reporting requirements. Attached for ARB's consideration are a number of technical comments on various aspects of the modified regulation ranging from applicability to definitions to reporting requirements.

Highlighted below are our main issues and concerns with the amendments to the Mandatory Reporting Regulation. Additional comments are included in the attached technical comments.

1. Point of Regulation: The latest proposed amendments to the definition of Electricity Importer are a significant change in that these changes would shift the responsibility for reporting imported electricity and by extension, the associated cap-and-trade compliance obligation from the entity that owns the electricity to the entity that delivers the electricity into California. In addition, a new sentence was inserted that would make the facility operator or scheduling coordinator responsible for reporting electricity imported from out-of-state generating facilities that have a first point of interconnection with a California balancing authority. Placing compliance responsibility on the transportation 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 under a cap-and-trade program. The proposed changes would create significant impacts and consequences and should be tabled. Significant changes such as these should be thoroughly vetted with stakeholders through the public workshop process, rather than being inserted as a last minute change into the Mandatory Reporting Regulation.

2. Specified Sources: The definition of "Specified Source" is still too restrictive, and may result in changing imports that previously were specified to unspecified, and imposing a cap-and-trade compliance obligation on imported renewable energy. This definition should be neutral when it comes to who delivers the electricity into California and focus solely on whether the electricity can be traced to a specific generating facility.

3. New Reporting Requirements: Several new reporting requirements have been introduced during the 15-day changes process that will apply to the 2011 reporting period. All reporting entities should be able to use best available data to comply with new reporting requirements for the 2011 reporting period, not just those entities that are not subject to EPA's mandatory reporting rule.

4. Enforcement: LADWP still has concerns with several aspects of the enforcement language which have not been adequately addressed. Please see our enclosed technical comments.

LADWP appreciates ARB's 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: Ms. Cindy S. Parsons

Los Angeles Department of Water and Power
Comments on the September 12, 2011
Proposed Modifications to the
"Regulation for the Mandatory Reporting of Greenhouse Gas Emissions"

§ 95101(d): The overlap in applicability between Electricity Importers and Retail Providers may result in duplicative reporting and needs to be resolved.

Under the original Mandatory Reporting Regulation (effective January 1, 2009), Retail Providers and Marketers were the entities responsible for reporting electricity imports, exports, electricity wheeled through California, and electricity transactions within California. Under the proposed amended Mandatory Reporting Regulation, the entity responsible for reporting is being changed to "Electric Power Entities", which consists of:

1) Electricity importers and exporters
2) Retail Providers and Multi-Jurisdictional Retail Providers
3) California Department of Water Resources
4) Western Area Power Administration
5) Bonneville Power Administration

The definitions of "Electricity Importer" and "Electricity Exporter" include both Retail Providers and Marketers, and since Marketers have been deleted from the Applicability section, Retail Providers should also be deleted from the Applicability section to avoid overlapping responsibility and confusion over who is responsible for reporting. For example, if electricity is imported by another entity on behalf of a Retail Provider, it is unclear who would be responsible for reporting the import since both Retail Providers and Electricity Importers are listed under "Electric Power Entities" and are subject to the reporting requirements. This clarification will help to avoid duplicative reporting and compliance obligations and enhance the integrity of the program.

§ 95102(a)(108): The definition of "Direct Delivery of Electricity" should include electricity delivered via a redelivery agreement.

The definition of "Direct Delivery of Electricity" should include electricity scheduled for delivery from the specified source into a California balancing authority via a redelivery agreement. This would enable renewable electricity imported from wind generating facilities to be reported as a specified import with zero GHG emissions. Based on the revised reporting requirements for specified imports in Section 95111 of the Mandatory Reporting Regulation, imported electricity must meet both the definition of "specified source" and "direct delivery of electricity" to be reported as a specified import. Imported electricity that does not meet both of these definitions has to be reported as an unspecified import with default emissions.

Assume, for example, that renewable electricity produced by wind generating facilities in the PNW is purchased directly from a specified out-of-state eligible renewable energy resource by a California retail provider (such as LADWP). The renewable electricity is purchased by the California Retail Provider at the generating facility's busbar. However, because the electricity is firmed and shaped before it is delivered into California, it does not meet the current definition of "Direct Delivery of Electricity". As a result, this renewable electricity cannot be reported as a specified import and instead must be reported as an unspecified import with default emissions.

To enable Retail Providers to report imported wind energy as a specified import, LADWP recommends the following revision to the definition of "Direct Delivery of Electricity":

(108)(105) "Direct delivery of electricity" or "directly delivered" means electricity that meets any of the following criteria:
(A) The facility has a first point of interconnection with a California balancing authority;
(B) The facility has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area;
(C) The electricity is scheduled for delivery from the specified source into a California balancing authority via a continuous transmission path from interconnection of the facility in the balancing authority in which the facility is located to a final point of delivery located in the state of California~~without replacement electricity from another source;~~ or
(D) The electricity is scheduled for delivery from the specified source into a California balancing authority via a redelivery agreement or arrangement which delivers the electricity to either:
(a) a first point of interconnection with a California balancing authority; or
(b) a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area;
(E)~~(D)~~ There is an agreement to dynamically transfer electricity from the facility to a California balancing authority.

The CARB may want to harmonize its proposed regulations with those the California Energy Commission is considering in its proceeding under Docket 11-RPS-01, and those the California Public Utilities Commission is considering in its proceeding under Order Instituting Rulemaking, R.11-05-005. Both entities are currently receiving comments on the recently enacted California Renewable Energy Resources Act (sometimes referred to as "SB2 (1X)"). The CARB has the potential to impose penalties under the Public Utilities Code Section 399.30 (o). Rather than come up with different definitions, it may be more efficient for the regulated entities and the regulating authorities to provide similar definitions for the same concepts.

§ 95102(a)(121): The proposed amendments to the definition of "Electricity Importer" are problematic, and need to be thoroughly vetted before adoption.

The proposed amendments to the definition of "Electricity Importer" are significant in that they will shift responsibility for reporting imported electricity and by extension, the associated cap-and-trade compliance obligation, from the entity that holds title to the imported electricity to the entity that delivers the electricity into California.

Placing the compliance burden on the transportation 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 is neither appropriate nor consistent with the joint CPUC/CEC recommendations to ARB regarding including the electricity sector in a cap-and-trade program and the point of regulation. 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.

In addition to shifting the point of regulation from the entity that holds title to the power to the entity that delivers the power, the following sentence was added to the definition of Electricity Importer as part of the 2nd 15-day changes package.

> *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.*

This new sentence would apply to a number of out-of-state generating facilities with a first point of interconnection with a California balancing authority, including Intermountain Generating Station, Milford Wind Farm, the Boulder Canyon Project (Hoover), Navajo Generating Station, and Palo Verde Generating Station. Adding this sentence creates issues and uncertainty with regards to who is responsible for reporting imports from specified out-of-state generating facilities.

- In cases where the out-of-state facility connects with a California balancing authority, it is unclear whether the entity responsible for reporting the import is the entity that schedules the electricity into California, or the entity identified as the PSE on the physical path of the NERC E-tag when the electricity crosses the California border.
- The term "Scheduling Coordinator" applies only within CAISO, not outside of CAISO.
- Is the Scheduling Entity identified on the E-tag responsible for reporting the import?
- Does the ARB Mandatory Reporting Regulation apply to Scheduling Entities?

If the scheduling entity is responsible for reporting imported electricity that it schedules on behalf of the electricity owner(s), the emissions for the imported electricity will be included in the scheduling entity's report, and the associated compliance obligation will be assigned to the scheduling entity rather than to the entities that own the electricity. For example, if Retail Provider A acts as the scheduling entity for Retail Providers B and C, emissions for electricity belonging to Retail Providers B and C would be included in Retail Provider A's report, and Retail Provider A would be responsible for the emissions compliance obligation. However, Retail Providers B and C were allocated the allowances to cover those emissions.

This scenario is not a desirable outcome. Responsibility for reporting electricity imports and the associated compliance obligation should be placed on the entity that owns the electricity, rather than on the scheduling entity that does not own the electricity nor has allowances to cover the emissions. If the scheduling entity has to purchase allowances to cover the emissions, there is no guarantee that the scheduling entity would be able to pass the cost of allowances through to the owner of the electricity.

Furthermore, assigning responsibility for imported electricity to scheduling entities and transportation providers will not provide emissions data that is useful to the public. Under the California Climate Action Registry reporting protocols on which the ARB Mandatory Reporting Regulation is supposed to be based, Retail Providers calculated their entity CO2 intensity metric (lbs CO2/MWh) based on their total portfolio of electricity generating resources (both owned and purchased power). This metric could be used by the utility's customers to calculate their own

carbon footprint. The public will likely want to use emissions data collected under the Mandatory Reporting Regulation for the same purpose. However, assigning responsibility for emissions to entities that do not own the electricity will skew the reports and not reflect each entity's carbon footprint.

In summary, the latest proposed amendments to the definition of Electricity Importer create significant issues and consequences. LADWP recommends retaining the previous language and not incorporating the proposed amendments. LADWP requests this matter be tabled and deferred to a future rulemaking proceeding where it can be thoroughly vetted with stakeholders, rather than incorporating this as a last minute change into the mandatory reporting regulation without going through the public workshop and vetting process.

(121)~~(118)(102)~~ "Electricity importers" are marketers and retail providers that ~~deliver~~hold title to imported electricity. For electricity delivered between balancing authority areas, 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).

§ 95102(a)(182): The definition of "Generation Providing Entity" is unclear as to who has the compliance obligation.

The definition of "Generation Providing Entity" points to multiple responsible entities, which can lead to unintended interpretations and confusion over who has the compliance obligation. To eliminate any possible confusion, operator and scheduling coordinator should be deleted from this definition, and the "Generation Providing Entity" should be simply the PSE with prevailing rights to claim electricity from a specified source.

(182)~~(179)(151)~~ "Generation providing entity" or "GPE" means a merchant selling energy from owned, affiliated, or contractually bound generation. For purposes of reporting delivered electricity pursuant to section 95111, a GPE is the PSE, ~~operator, or scheduling coordinator~~ with prevailing rights to claim electricity from a specified source. A facility or generating unit operator, full or partial owner, sole party to a tolling agreement with the owner, or exclusive marketer is recognized by ARB as a generation providing entity.

§ 95102(a)(233): A Marketer and Retail Provider are not mutually exclusive.

The definition of Marketer states "...and is not a retail provider". This is not a true statement, as some marketers are also retail providers. Therefore, this statement should be deleted.

(233)~~(229)(192)(112)~~ "Marketer" means a purchasing/selling entity that delivers electricity and~~takes title to wholesale electricity and is not a retail provider~~.

§ 95102(a)(364): The definition of "Specified Source" is still too restrictive, and may result in changing imports that previously were specified to unspecified, and imposing a cap-and-trade compliance obligation on imported renewable energy.

The definition of "Specified Source" in the original Mandatory Reporting Regulation (effective January 1, 2009) read as follows:

> *(180) "Specified source of power" or "specified source" means a particular generating unit or facility for which electrical generation can be confidently tracked due to full or partial ownership or due to its identification in a power contract including any California eligible renewable resource.*

Under the original definition, renewable electricity from California eligible renewable resources and electricity from other specific generating facilities could be reported as a specified import regardless of which entity delivered it into California.

However, the amendments to this definition now require 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 import or export as from a specified generating facility.

Requiring that the electricity importer or reporting entity have a direct relationship with the generating facility will change imports that previously were reported as specified to unspecified. For example, an entity that has an ownership share or power purchase contract with a particular generating facility may not have transmission rights to import the electricity, so they enter into a contract with another entity to import the electricity on their behalf. Under the original definition, this was considered a specified import. Under the revised definition, if the reporting entity (who delivers the electricity into California) does not a direct relationship (ownership or written contract to procure the electricity) with the generating facility, the import cannot be reported as specified and must instead be reported as an "unspecified import" with associated default emissions. This will result in inaccurate reporting, because default emissions will be assigned to zero emission renewable energy, or to electricity generated by high GHG emitting facilities, based solely on who "delivers" the electricity into California. This inaccuracy will carry over to the cap-and-trade compliance obligation, which is based on the emissions report.

As a result, a cap-and-trade compliance obligation could be imposed on imported renewable electricity. For example, if the entity that imports renewable electricity into California does not have a direct relationship with the generating facility, the renewable energy import will have to be reported as unspecified with default emissions. If the Electricity Importer does not qualify to claim the RPS adjustment, the default emissions cannot be subtracted out resulting in a cap-and-trade compliance obligation on what was originally renewable energy. Having to surrender emission allowances for renewable energy would tighten the supply of available CARB emission allowances, thereby increasing the cost of California's cap-and-trade program.

To avoid these unintended consequences, the definition of "Specified Source" should be neutral when it comes to who delivers the electricity, and focus solely on whether or not the origin of the delivered electricity is known. California utilities have contractual arrangements with other

entities to move electricity on their behalf. Those arrangements should have no bearing on reporting of emissions for imported or exported electricity.

LADWP recommends that the definition of "Specified Source" be revised as follows:

> (364)~~(354)(299)(180)~~ "Specified source of ~~power~~electricity" or "specified source" means a ~~particular generating unit or~~ facility ~~for which electrical generation can be confidently tracked due to~~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~~ to which the source of electricity can be confidently tracked due to full or partial ownership ~~or due to its identification in a power contract including any California eligible renewable resource~~in the facility/unit or a written contract to procure electricity generated by that facility/unit. Specified facilities/units include: cogeneration systems, and eligible renewable energy resources. Specified source also means electricity procured from an asset-controlling supplier recognized by the ARB.

§ 95102(a)(399): The definition of Unspecified Source should be simplified.

As currently worded, this definition could be interpreted in different ways. LADWP recommends that this definition be simplified to "any source other than a Specified Source".

> (399)~~(389)(328)(196)~~ "Unspecified source of ~~power~~electricity" or "unspecified source" means any source other than a specified source.~~electricity procured and delivered without limitation at the time of transaction to a specific facility's or unit's generation.generation that cannot be matched to a particular generating facility. Unspecified sources of power may include power purchased from entities that own fleets of generating facilities such as independent power producers, retail providers, and federal power agencies and power purchased from electricity marketers, brokers, and markets specific facility or unit that generates electricity or matched to an asset-controlling supplier recognized by the ARB.~~ Unspecified sources contribute to the bulk system power pool and typically are dispatchable, marginal resources that do not serve baseload.

§ 95103(h): All reporting entities should be able to use best available data to satisfy new reporting requirements introduced as part of the 15-day changes packages that will apply to the 2011 reporting period.

Several new reporting requirements have been introduced during 2011 as part of the 15-day modifications to the Mandatory Reporting Regulation. Since the modifications to the Mandatory Reporting Regulation will apply retroactively to the 2011 reporting period, the regulation should allow entities to use best available data to satisfy any new reporting requirements for the 2011 reporting period. This would be consistent with the original Mandatory Reporting Regulation which allowed the use of best available data and methods for the initial 2008 emissions report. For example, one of the new requirements added to the Mandatory Reporting Regulation during 2011 requires facilities to report facility energy inputs and outputs. Since facilities did not become aware of this new reporting requirement until July 2011, it seems only fair that facilities should be able to use best available data for the first year of reporting.

A provision was added to 95103(h) to allow use of best available data for the 2011 reporting period; however, this provision is limited only to entities that are not subject to reporting to EPA under 40 CFR Part 98. To simplify the reporting requirements and apply it uniformly to all reporting entities, ., this provision should apply to all new reporting requirements, regardless of whether or not the reporting entity is subject to EPA's mandatory reporting rule (40 CFR Part 98). To achieve this efficiency and uniformity all facilities should use best available data to fulfill new reporting requirements for the 2011 emissions report. Therefore, LADWP recommends that section 95103(h) be modified as follows:

(h) *Reporting in 2012.* For emissions data reports due in 2012, ~~in cases where monitoring equipment and procedures were not in place in 2011 to enable reporting under the full specifications of this article~~, facility operators ~~and suppliers must~~may report 2011 emissions using applicable monitoring and calculation methods ~~that are applicable to them~~ from 40 CFR Part 98~~. For entities not required to report 2011 emissions under 40 CFR Part 98~~, or best available data and methods ~~may be used for the 2011 data year~~. ~~Suppliers and E~~Eelectric power entities must report 2011 electricity transactions (MWh) and emissions (MT of CO2e) under the full specifications of this article as applicable in 2012. For 2012 reports of 2011 emissions by facilities and suppliers, the missing data substitution requirements specified in this article that are different from the requirements of 40 CFR Part 98 do not apply; missing data for the 2012 report of 2011 emissions must be substituted according to the requirements of 40 CFR Part 98.

§ 95103(k): Accuracy of Measurement Devices – need to retain exclusion for units subject to Part 75.

Previously, section 95103(k) did not apply to stationary fuel combustion units that use methodologies in Part 75 to calculate CO2 emissions. As part of the changes made in the 2nd 15-day changes package, ARB deleted the "methodologies in 40 CFR Part 75" language and replaced it with "the methods in 40 CFR 98.33(a)(4)". However, 40 CFR 98.33(a)(4) excludes electricity generating units subject to 40 CFR Subpart D, and Subpart D applies to electricity generating units that report emissions to EPA according to 40 CFR Part 75. As a result of this change, electricity generating units that previously were not subject to this section will now need to comply with both the QA/QC requirements in Part 75 as well as demonstrating compliance with the accuracy requirements in MRR 95103(k).

It appears this was an inadvertent deletion, based on the following statement from page 5 of the Summary of Proposed Modifications included in the September 12, 2011 Second Notice of Public Availability of Modified Text:

> *The measurement accuracy and calibration requirements specified in section 95103(k) were modified to clarify that the requirements also apply to product measurement devices. Staff clarified that the requirements do not apply to fuel measurements for stationary fuel combustion units when a CEMS is used under Part 75 or Part 60.*

LADWP recommends the previous language "use CEMS methodologies in Part 75" be retained in addition to the new language.

(k) Measurement Accuracy Requirement. The operator or supplier subject to the requirements of 40 CFR §98.3(i) must meet those requirements, except as otherwise specified in this paragraph. In addition, the operator or supplier ~~submitting an emissions data report with fossil fuel emissions greater than or equal to 25,000 metric tons of CO2e, and each operator or supplier~~ with covered emission equal to or exceeding 25,000 metric tons of CO2e or a compliance obligation under the Cap-and-Trade Regulation in any year of the current ~~three-year~~ compliance period, must meet the requirements of ~~40 CFR §98.3(i)~~paragraphs (k)(1)-(10) below for calibration and measurement device accuracy. Inventory measurement, stock measurement, or tank drop measurement methods are subject to paragraph (11) below. The requirements of paragraphs (k)(1)-(10) apply to~~The operator or supplier with infrequent outages as specified at 40 CFR §98.3(i)(6) who documents in the monitoring plan a calibration postponement after January 1, 2012 must submit at the Executive Officer a request for postponement, within 30 days of the postponement or the effective date of this article, whichever occurs last. The request must include an explanation of the reasons for the postponement, the date when the calibration will be completed, or a demonstration of meter accuracy in the absence of calibration. Such postponement will be subject to the approval of the Executive Officer.~~ fuel consumption monitoring devices, feedstock consumption monitoring devices, process stream flow monitoring devices, ~~and~~ steam flow devices, product data measuring devices, mass and fluid flow meters, weigh scales, conveyer scales, gas chromatographs, mass spectrometers, calorimeters, and devices for determining density, specific gravity, and molecular weight. Unless otherwise required by 40 CFR §98.3(i), the provisions of this section do not apply to: stationary fuel combustion units that use the CEMS methodologies in 40 CFR Part 75 or the methods in 40 CFR §98.33(a)(4) to calculate CO2 mass emissions; emissions reported as de minimis under section 95103(i); and devices that are solely used to measure parameters used to calculate emissions that are not covered emissions. ~~without a compliance obligation.~~

§ 95107: Enforcement issues remain unresolved

In our December 2010 and August 2011 comments on the proposed modifications to the MRR, LADWP identified the following concerns with the proposed enforcement language.

1) A report that "contains information that is incomplete or inaccurate" would be subject to separate daily violations, but the MRR does not establish a standard for determining whether a report is incomplete or inaccurate. Since there is no standard or threshold for "incomplete or inaccurate", even minor errors in a report that are identified and corrected during the verification process would be subject to daily violations and penalties.

2) "Each failure to measure, collect, record or preserve information needed for the calculation of emissions…constitutes a separate violation of this article", even though the use of missing data substitution procedures is allowed under section 95129 of the MRR when equipment fails to measure or record data.

While ARB has proposed some changes to the enforcement language, the changes do not resolve LADWP's concerns. Copied below for reference are its previous comments regarding these issues:

95107(a) the phrase "contains information that is incomplete or inaccurate" should be removed for the following reasons:

- There is no defined standard to determine whether a report is "incomplete or inaccurate".
- The purpose of verification is to identify and correct any errors to ensure the reports are as accurate as possible, therefore corrections made to an emissions data report during the verification process should not be subject to penalties.
- MRR section 95131(b)(9) requires the reporting entity to "make any possible improvements or corrections to the submitted emissions data report, and submit a revised emissions data report to ARB".
- MRR 95107(b) provides for penalties for under-reporting of emissions (inaccuracy).

(a) Each day or portion thereof that any report ~~or to include in a report all information required by this article, or late submittal of any report, shall constitute a single, separate violation of this article for each day that the report has not been submitted beyond the specified reporting date. For the~~required by this article remains unsubmitted or is submitted late~~, or contains information that is incomplete or inaccurate within the level of reproducibility of a test or measurement method~~is a separate violation. For purposes of this section, ~~"~~"report~~"~~" means any emissions data report, verification ~~opinion~~statement, or other ~~document~~record required to be submitted to the Executive Officer by this article.

95107(c) the phrase "except to the extent the missing data substitution procedures in section 95129 are applied" should be added. Without this clarification, daily violations and penalties could be imposed for the use of missing data procedures when fuel flow metering equipment fails to measure or record data, even though use of missing data procedures is allowed under EPA Part 75 (Acid Rain), EPA Part 98 (GHG Reporting Rule), and ARB's MRR 95129.

(c) ~~Each f~~Failure to measure, collect, record or preserve information required by this article~~needed~~ for the calculation of emissions ~~as required by this article~~ or that this article otherwise requires be measured, collected, recorded or preserved constitutes a separate violation of this article, except to the extent that missing data substitution procedures specified in 95129 are applied.

§ 95111(a)(4): Information reported for specified electricity imports should include whether or not the first point of receipt is located in a linked jurisdiction.

Information reported for unspecified and specified electricity imports should be consistent. For unspecified imports, the reporting requirements include "Whether the first point of receipt is located in a linked jurisdiction published on the ARB Mandatory Reporting website". This provision is missing from the information reported for specified imports and should be added. Electricity imported from a linked jurisdiction, regardless of whether it is from an unspecified or specified source, should not carry a compliance obligation under California's cap-and-trade regulation because the compliance obligation would already be satisfied in the home jurisdiction.

In addition, terms used in the reporting requirements should be consistent with terms defined in section 95102. Since "Specified Facilities or Units" is not a defined term, it should be replaced by "Specified Sources" which is a defined term.

Lastly, section 95111(a)(1) states that:

> *The electric power entity must report GHG emissions separately for each category of delivered electricity required, in metric tons of CO2 equivalent (MT of CO2e), according to the calculation methods in section 95111(b).*

Restating "are calculated pursuant to section 95111(b)" again in 95111(a)(4) is redundant and makes no sense within the context of the sentence.

Therefore, LADWP recommends the following changes to 95111(a)(4):

(4) Imported Electricity from Specified Sources~~Facilities or Units~~. The electric power entity must report all direct delivery of electricity as from a specified source for facilities or units in which they are a generation providing entity (GPE) or have a written power contract to procure electricity. When reporting imported electricity from specified facilities or units, the electric power entity must disaggregate electricity deliveries and associated GHG emissions by facility or unit and by first point of receipt, as applicable. The reporting entity must also report total GHG emissions and MWh from specified sources and the sum of emissions from specified sources explicitly listed as not covered pursuant to section 95852.2 of the Cap-and-Trade Regulation.

(A) Whether the first point of receipt is located in a linked jurisdiction published on the ARB Mandatory Reporting website;
(B~~A~~) Claims of specified sources of imported electricity, defined pursuant to section 95102(a), ~~are calculated pursuant to section 95111(b), and~~ must meet the requirements in section 95111(g), and must include the following information:
1. The amount of imported electricity from specified sources~~facilities or units~~ as measured at the busbar; and
2. ~~For~~If t~~T~~he amount of imported electricity deliveries from specified sources~~facilities or units where~~as measured~~ments~~ at the busbar ~~are~~is not known, report the amount of imported electricity ~~the amount of imported electricity~~ as measured at the first point of delivery in California, ~~and~~ including estimated transmission losses as required in section 95111(b), and the reason why measurement at the busbar is not known.

§ 95111(a)(5): A mechanism is needed for other entities to become recognized by ARB as Asset Controlling Suppliers.

The Mandatory Reporting Regulation should include a process whereby other entities that operate or serve as an exclusive marketer for a system or fleet of generating facilities can become recognized by ARB as an Asset Controlling Supplier.
For example, LADWP has a contract with Powerex to purchase renewable electricity from the BC Hydro system. However, Powerex is not recognized by ARB as an Asset Controlling Supplier, and does not have an ARB ID. Without an ARB ID, LADWP cannot report this renewable electricity as a specified import, so will have to report this renewable electricity as an unspecified import with default emissions. If renewable electricity qualifies for compliance with the state's RPS program, it should also be recognized and reported as zero emission under the mandatory reporting regulation.

To address this issue, the MRR should include a mechanism for other entities to become recognized as an Asset Controlling Supplier and obtain an ARB ID, so that power imported from their system can be reported as a specified import.

§ 95111(b)(5): The RPS Adjustment terms in the Mandatory Reporting Regulation should be consistent with the Cap-and-Trade Regulation to ensure that all eligible renewable electricity can be included in the RPS Adjustment calculation.

As currently written, the definition of the MWh_{RPS} term in section 95111(b)(5) of the Mandatory Reporting Regulation limits the MWh of renewable electricity that can be included in the RPS adjustment calculation to only electricity procured by the reporting entity from a California eligible renewable resource.

This is inconsistent with the RPS Adjustment language in the Cap-and-Trade Regulation in two ways:

1) Section 95852(b)(4) of the Cap-and-Trade Regulation states that electricity imported or procured by an electricity importer from an eligible renewable energy resource…must meet the following conditions to be included in the calculation of the RPS Adjustment.

    (A) The electricity importer must have either:
    1. Ownership or contract rights to procure the electricity generated by the eligible renewable energy resource, or
    2. A contract to import electricity on behalf of a California entity that has ownership or contract rights to the electricity generated by the renewable energy resource.

2) The definition of the RPS Adjustment and MWh_{RPS} terms in section 95111(b)(5) of the Mandatory Reporting Regulation refers to "California eligible renewable energy resource" rather than "eligible renewable energy resource" which is defined in section 95102(a) and used in section 95852(b)(4) of the Cap-and-Trade Regulation.

To ensure that the RPS Adjustment language in the Mandatory Reporting Regulation is consistent with the Cap-and-Trade Regulation, and all eligible renewable electricity can be included in the RPS Adjustment calculation, LADWP recommends the following modifications to the terms defined in section 95111(b)(5) of the Mandatory Reporting Regulation:

CO2e RPS adjustment = Sum of CO2 equivalent mass emissions adjustment for electricity generated by each ~~California~~ eligible renewable energy resource located outside the state of California and registered with ARB by the reporting entity pursuant to section 95111(g)(1), but not directly delivered as defined pursuant to section 95102(a). Electricity included in the RPS adjustment must meet the requirements pursuant to section 95852(b)(4) of the Cap-and-Trade Regulation (MT of CO2e).

MWhRPS = Sum of MWh generated by each ~~California~~ eligible renewable energy resource located outside of the state of California, procured by the reporting entity or imported on behalf of a California entity that has ownership or contract rights to the electricity, registered with ARB

pursuant to section 95111(g)(1), and meeting requirements pursuant to section 95852(b)(4) of the Cap-and-Trade Regulation. (MWh)

September 27, 2011