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VIA ELECTRONIC MAIL

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

Re: Comments of PacifiCorp Regarding the California Air Resources Board October 28, 2010 Proposed Amendments to the Regulation for Mandatory Reporting of Greenhouse Gas Emissions

Dear Board Members:

PacifiCorp is pleased to submit the following comments as requested in the October 28, 2010 "Notice of Public Hearing to Consider Amendments to the Regulation For Mandatory Reporting of Greenhouse Emissions" (hereinafter "Amended Regulation" or "MRR").[1]

Our comments on the Amended Regulation are intended to help refine the use of MRR for the "Notice of Public Hearing to Consider The Adoption of a Proposed California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms Regulation, Including Compliance Offset Protocols" (hereinafter "Cap-and-Trade Program"). PacifiCorp is concurrently providing separate comments on the proposed Cap-and-Trade Program for consideration.

I. INTRODUCTION

PacifiCorp operates an integrated service territory, delivering reliable electricity to retail customers in six jurisdictions. While PacifiCorp owns roughly 80% of the resources needed to serve these customers, the company does not track its system power by jurisdiction. Before California's mandatory greenhouse gas ("GHG") reporting requirements took effect, PacifiCorp sought to provide the California Air Resources Board ("ARB") with the most accurate and up-to-date information by voluntarily reporting GHG emissions under the Climate Action Registry. Subsequently, PacifiCorp has met with ARB staff on numerous occasions to ensure PacifiCorp is in compliance with the MRR, and that the MRR accounts for PacifiCorp's unique circumstances.

The Amended Regulation presents new challenges in that the MRR will be directly integrated with the Cap-and-Trade Program as well as other regulatory requirements. PacifiCorp has worked with ARB staff to develop a reporting calculation appropriate for a multi-jurisdictional retail provider ("MJRP"), including the determination of a system emissions factor ("SEF") that accurately characterizes the emissions profile of the system-wide electric power attributable to

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[1] See October 28, 2010 Notice of Public Hearing and associated rulemaking materials, available at: http://www.arb.ca.gov/regact/2007/ghg2007/ghg2007.htm.

serving the MJRP's retail customers in California. Our comments below include detailed suggestions that recommend (1) greater flexibility in reporting when certain information is not available to a reporting entity, (2) clarity regarding certain reporting requirements that apply to MJRPs, and (3) sufficient opportunity for an MJRP to comment on the calculation of its SEF.

II. DISCUSSION

A. The Mandatory Reporting Regulation Should Account for the Unique Reporting Challenges PacifiCorp Faces as a Multi-Jurisdictional Retail Provider.

PacifiCorp is a multi-jurisdictional retail provider ("MJRP") that provides retail electric service to approximately 1.7 million retail customers located within the states of California, Idaho, Oregon, Utah, Washington and Wyoming. In California, PacifiCorp serves approximately 46,500 customers in Del Norte, Modoc, Shasta and Siskiyou counties. Approximately 35 percent of its California customers are eligible for PacifiCorp's California Alternate Rates for Energy ("CARE") low-income assistance program.

As an MJRP regulated under each of the retail jurisdictions it serves, PacifiCorp faces unique challenges that differ from those faced by most of California's other electric utilities. For example, PacifiCorp operates two balancing authority areas that span its six-state retail service territory: PacifiCorp East ("PACE") and PacifiCorp West ("PACW"). While a portion of PACW is located in northern California, neither control area is part of the California Independent System Operator ("CAISO") controlled grid. Unlike other California investor-owned utilities ("IOUs"), PacifiCorp remains a vertically integrated, multi-jurisdictional utility that owns approximately 80% of its generation portfolio and utilizes the majority of the electricity generated from those assets to serve customer retail load. As a load-serving entity and balancing authority, it operates its multi-state territory as a single, integrated system.

PacifiCorp's owned-generation portfolio is a mix of assets located within nine western states (Arizona, California, Colorado, Idaho, Montana, Oregon, Utah, Washington, and Wyoming). Consistent with a long-standing regulatory practice agreed to among the various state regulatory entities overseeing its operations, nearly all energy produced by PacifiCorp-owned resources, as well as most purchased energy delivered pursuant to power purchase agreements, is referred to as "system" power. System power is electricity that is not specifically assigned by PacifiCorp for use within a particular state or balancing authority area and is operated to meet system wide needs. Unlike IOUs located entirely within California, PacifiCorp aggregates all of the costs for generating and maintaining the appropriate level of the power within its system, and then allocates to each jurisdiction a proportionate share of system resources and related costs based upon the retail load served in that jurisdiction. PacifiCorp's California retail customers consume slightly less than a two percent (2%) share of PacifiCorp's system resources.

A useful analogy would be to conceptualize PacifiCorp's multi-jurisdictional system as a water reservoir with many points where water flows in, and many different points where water flows out. Once water enters the reservoir, it becomes part of a common water pool. The reservoir may have a pipe bringing water into the system from one end (representing power

generated in Wyoming) and a pipe of water flowing out of the system on another end (represented by power delivered to California). Regardless, the result is that PacifiCorp does not track the location, flow and physical delivery (i.e., transmission) of power used to serve retail load from a point of generation to a point of consumption. Rather, PacifiCorp combines all of the costs for generating and maintaining the appropriate level of the power within the integrated system, and uses system power cost allocation factors to assign costs and benefits to each of the states based on the respective retail load served. As a result of this shared resources approach, PacifiCorp's states each receive the various benefits created by resource diversification. The cost allocation factor is part of a more comprehensive cost allocation methodology referred to as the PacifiCorp Multi-State Process ("MSP") Revised Protocol. The Revised Protocol is a cost allocation methodology agreed to by the various utility commissions that regulate PacifiCorp.

Because PacifiCorp is a vertically-integrated MJRP, assessing PacifiCorp's reporting obligations and correspondent compliance obligations under both the MRR and the Cap-and-Trade Program is a more complicated endeavor than for utilities with operations solely within California. Therefore, PacifiCorp requests that ARB continue to review and refine the MRR to accommodate the unique circumstances of MJRPs as much as possible (starting with the recommendations outlined in this document).

B. ARB's Calculation of the System Emissions Factor ("SEF") under the Amended Regulation Should Provide a Timeframe for ARB's SEF Determination to Avoid the Risk of Compliance Penalties.

The Amended Regulation would require the ARB to calculate and publish on the ARB Mandatory Reporting website a SEF for each MJRP.[2] However, the Amended Regulation does not specify *when* the ARB will make and publish this calculation. PacifiCorp is concerned that the timeframe for the ARB's publication of the SEF could conflict with the Company's compliance deadlines under the Cap-and-Trade Program, exposing the Company to compliance risk outside of its control.

To illustrate this concern, consider that the MRR requires regulated entities in the electricity sector to report emissions by June 1 of the year following an emissions year. For these sources, the 30% surrender obligation would be due by July 15 following the reporting deadline.[3] By November 1 of the calendar year following the third year in the triennial compliance period, a covered entity must transfer enough compliance instruments into its compliance account to fulfill its triennial surrender obligation (e.g., by November 1, 2015 for the first triennial compliance period).[4] While PacifiCorp expects to have sufficient allowances to cover the 30% obligation each year, PacifiCorp nevertheless needs certainty as to exactly how many allowances PacifiCorp

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[2] See Proposed 17 Cal. Code Reg. § 95111(b)(3), p. 56.

[3] See Proposed 17 Cal. Code. Reg. **§** 95856(d)(2), p. A-70.

[4] See Proposed 17 Cal. Code. Reg. § 95856(f)(1), p. A-71.

needs to retire on an annual basis to ensure its compliance obligation with the cap-and-trade regulation—and this obligation is directly calculated using the published SEF. This certainty is especially important with respect to the triennial compliance obligation.

To address this issue, PacifiCorp recommends that ARB provide MJRPs with the SEF calculation no later than 30 days after the June 1 reporting deadline. This requirement should be explicitly specified in the Amended Regulation itself.

C. ARB Should Include Provisions in the Amended Regulation to Provide MJRPs with an Opportunity to Comment on ARB's Calculation of the SEF.

The Amended Regulation should require ARB to provide sufficient opportunity for MJRPs to comment on the calculation of the SEF in advance of the compliance deadline. If there is an outstanding dispute between the ARB and the MJRP regarding the calculation of the SEF, any compliance obligation that becomes due during the dispute should be tolled until the resolution of the dispute.

D. ARB Should Clarify the Non-Applicability of Several Reporting Provisions to MJRPs.

Section 95111(a)(5) provides reporting requirements for imported electricity from asset controlling suppliers. If this section were to be applied to MJRPs, it would impose duplicative reporting requirements with Section 95111(a)(6). ARB should specifically state in Section 95111(a)(5), that Section 95111(a)(5) does not apply to MJRPs.

Similarly, Section 95111(b)(3) would impose duplicative reporting requirements for MJRPs that are already required to report under Section 95111(b)(4). Therefore, Section 95111(b)(3) should state that Section 95111(b)(3) does not apply to MJRPs, except as provided in Section 95111(b)(4).

E. The Reporting Provisions for MJRPs Should Include a Definition For CO_2e_{linked}.

Section 95111(b)(4) does not provide a definition for CO_2e_{linked}. The following definition should be included in Section 95111(b)(4): *"CO_2e_{linked} = Annual CO_2 equivalent mass emissions of imported electricity with compliance accountability in a reciprocal or linked jurisdiction, and therefore excluded from California compliance obligation (metric tonnes)."* This definition is consistent with the language PacifiCorp previously proposed to ARB staff.

F. The Mandatory Reporting Requirements for Imported Power Create New Informational Requirements That May Not Be Available to a Reporting Entity.

The previous version of the MRR allowed importers to report unspecified imports by counterparty. Section 95111(a)(3) now requires importers of electricity from unspecified sources to separate power purchase transactions from unspecified sources by the first point of receipt and jurisdiction. In many cases, the new level of information is not available by power purchase transaction. In addition the new reporting requirements will be very burdensome and labor intensive to produce. PacifiCorp recommends deleting this requirement and allowing importers to aggregate unspecified imports by counterparty, as the previous version of the MRR allowed. The default emissions factor documented by ARB could then be assigned to the unspecified sources for the purpose of calculating the overall SEF. If ARB does not wish to delete the requirement, Section 95111(a)(3) should be amended to provide that the new informational requirements will be reported "when available."

In addition, Section 95111(a)(3)(C) would impose new requirements to report transmission losses. However, transmission loss information is often not available to importers. Therefore, Section 95111(a)(3)(C) should provide that reporters will report transmission loss information "when available."

G. The Amended Regulation Needs to Modify the Definitions of Partially-Owned and Fully-Owned Sources.

Section 95111(a)(4) refers to partially-owned and fully-owned generation facilities. These terms are open to multiple interpretations, in particular whether "ownership" includes contractual arrangements with Qualified Facilities ("QFs"). PacifiCorp recommends that these terms be defined to specifically exclude contractual arrangements with QFs where the entity has no equity interest in the QF and are required under federal law to take the QF's output.

H. The Additional Reporting Requirements for MJRPs Require Information That Is Not Always Available to an MJRP.

Section 95111(d) would create additional reporting requirements for MJRPs. Specifically, Section 95111(d)(1) would require an MJRP to report associated GHG emissions with electricity transactions. However, this information is not always available, and Section 95111(d)(1) should provide that an MJRP will report the associated GHG emissions information "when available."

Furthermore, Section 95111(d)(6) requires MJRPs to claim as specified power all power purchased or taken from facilities or units in which they have operational control or an ownership share *or written contract*. Some of the power purchase contracts that an MJRP enters into are not from a specified facility, but instead originate from block energy purchases without attribution to any generation source. An MJRP should be able to claim these transactions as "unspecified" when the contract does not specify a unit or facility. Under North American Electric Reliability Corporation (NERC) rules, contracts are required for any transaction that is at least seven days in

advance. Further, the use of contracts from unspecified sources is an industry standard practice and is used in control areas like PacifiCorp's, to ensure system reliability and load balance. To address this issue, PacifiCorp recommends adding the following language to Section 95111(d)(6):

> …operational control or an ownership share or written contract *that designates output from a specific unit or facility.*

Finally, Section 95111(d)(7) provides that an MJRP will provide supplier-specific ARB identification numbers to electric power entities that purchase electricity from the MJRP. Section 95111(d)(7) should be amended to only require an MJRP to provide the identification number "when the identification number is provided by the ARB."

I. The Requirement to Register Specified Sources and Suppliers Should Include an Option to Update Information When the Information Is Not Made Available by the Reporting Deadline.

Section 95111(g) would require any electricity importer claiming specified sources and suppliers to register the source by January 1 of each reporting year. This deadline is impractical because many contracts are signed late in the year prior to a reporting year, and in some cases, an importer may not have the information until after the January 1 deadline. Section 95111(g) should be amended to either impose a later date such as June 1 and/or include some flexibility to allow importers to update the registration information.

J. ARB Should Ensure that the Amended Regulation Is Consistent with the Assembly Bill 32 Administrative Fee Regulation.

PacifiCorp respectfully requests that the ARB ensure that the Amended Regulation is consistent with the Assembly Bill 32 Administrative Fee Regulation ("Fee Regulation"). As ARB is aware, the Fee Regulation relies on the current MRR to inform the applicability and amount of any fees to be incurred by regulated entities. PacifiCorp representatives and ARB staff have worked cooperatively to understand the unique circumstances applicable to PacifiCorp as an MJRP and the potential impact of the Fee Regulation on PacifiCorp's retail customers. In particular, PacifiCorp and ARB staff discussed the potential disconnect between the manner in which PacifiCorp reports the California share of system power-related emissions and the proposed operation of the Fee Regulation as applicable to retail and wholesale imports of electricity.

Under the current MRR, the Fee Regulation provides a reasonable solution for ensuring that PacifiCorp's retail customers continue to be served in a cost-effective manner and are not unduly burdened by the proposed Fee Regulation. As described in PacifiCorp's comments in the Fee Regulation proceeding, based on the current GHG MRR developed by ARB, PacifiCorp reports GHG emissions consistent with California's two percent (2%) share of system emissions, although the actual power flows physically serving the California electric demand primarily come

from a different subset of system resources located in the PacifiCorp West control area.[5] This proportionate share approach to emissions reporting is an administratively-efficient mechanism based upon PacifiCorp's long-standing cost allocation mechanism that has been agreed to by the various states' regulatory bodies and which is routinely reflected in California regulatory filings and cost structures. The Fee Regulation relies on the types and quantities of GHG emissions reported pursuant to the ARB's current GHG MRR as the basis for imposing a fee on individual entities, including electricity importers. See §§ 95204(g) and 95205(a).

Pursuant to § 95201(a)(4), the Fee Regulation is applicable to an MJRP on a limited basis, specifically stating that "[f]ees shall also be paid for each megawatt-hour of imported electricity reported pursuant to Sections 95111(b)(2)(B), 95111(b)(2)(C), and 95111(b)(3)(N) of the MRR if the electricity is from either unspecified sources or specified sources that combust natural gas, coal, petroleum coke, catalyst coke, refinery gas or other fossil fuels (except California diesel)." See § 95201(a)(4). In other words, the Fee Regulation applies only to each megawatt-hour of imported electricity from the MJRP's wholesale power sales.[6]

PacifiCorp asks that ARB take necessary steps in this rulemaking to ensure that the Amended Regulations are applied in a manner that ensures consistency with the Fee Regulation and other applicable regulations.

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[5] Comments of PacifiCorp Concerning the AB 32 Administrative Fee, dated September 29, 2009, available at http://www.arb.ca.gov/lists/feereg09/171-pacificorp_carb_ghgadminfee_cmts__2010march04_.pdf for specific recommendations.

[6] More specifically, when section 95111(b)(2)(B and C) is applied, which addresses wholesale power imports into California, MJRPs are explicitly exempted within section 95111(b)(2) from this specific reporting requirement. Since wholesale power imports are not reported by MJRPs as part of the GHG Mandatory Reporting Regulations, no AB 32 fees can be assessed on an MJRP's wholesale power imports into California under this provision. Similarly, when section 95111(b)(3)(N) is applied, AB 32 fees may be assessed on MJRP's wholesale power imports into California. Specifically, section 95111(b)(3)(N) states that "[m]ulti-jurisdictional retail providers shall indicate those wholesale sales included in section 95111(b)(3)(K)-(M) for which they are the deliverer to the first point of delivery in California (not located within their own service territory)". These wholesale power sales are transactions where power delivery is scheduled and each transaction explicitly identifies a final point of delivery. Moreover, these wholesale power sales are reported by PacifiCorp pursuant to the GHG Mandatory Reporting Regulations as part of the CARB's "Power Transaction Reporting" excel workbook (specifically within the spreadsheet titled "WSP Sold to CA (MJRP&DWR)".

III. CONCLUSION

Once again, PacifiCorp appreciates the opportunity to provide comments on the Amended Regulation. Overall, we would like to remind the Board that multi-jurisdictional utilities have unique reporting and compliance challenges, and the Amended Regulation should strive to both acknowledge these particular circumstances and provide staff with the flexibility to adjust the rule requirements as warranted.

Thank you for your consideration of these comments.

Dated: December 15, 2010

Respectfully submitted,

By

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