SMUD
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LEG 2010-0557

December 15, 2010

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Sacramento Municipal Utility District's Comments on Mandatory Reporting

Dear Clerk of the Board,

We appreciate the opportunity to offer comment on the ARB's proposed amendments to the regulation of the mandatory reporting of greenhouse gas emissions. SMUD has been a supporter of the ARB's approach to reporting of greenhouse gas (GhG) emissions, and we support the approach taken here to streamline reporting to both ARB and the U.S. EPA in a way that supports ARB's Cap and Trade rule. Our primary concerns with the proposed revisions relate to anomalies in reporting certain renewable power transactions and renewable biomass derived-fuels, both sources of energy that are encouraged under California law. We have included additional comments in places where clarifications and corrections are necessary.

In related comments, SMUD notes the importance of ensuring harmonization between the ARB's proposed Cap and Trade program and existing complementary programs that make up the vast majority of the reductions expected under AB 32. In particular, the Mandatory Reporting regulations should support harmonization between the Renewable Electricity Standard and the Cap and Trade program.

Section 95111.g.4.B of the proposed Mandatory Reporting regulation deals with Delivery Tracking Conditions, a section of key importance with regard to imports of renewable electricity. Unfortunately, the treatment of renewable energy imports that meet the CEC eligibility guidelines using flexible delivery mechanisms is not clearly addressed in the regulation and raises concerns over how such energy will be tracked. Paragraph (B) of that section states that the electricity importer may claim a source as specified (including a non-emitting, renewable resource) if it has a written contract to receive electricity generated by the source. However, RPS-eligible sources with flexible delivery contracts, such as intermittent resources or baseload facilities on the other side of transmission constraints, may not be scheduled directly from the source, but may

instead be resold, with other, unspecified energy being imported under the same contract to firm or replace it. The proposed requirement in Paragraph (B) does not spell out how the reporter should treat unspecified imports in these transactions. The vagueness in the regulation in this respect concerns us because a "written contract" with a counterparty may not be sufficient proof for reporters and verifiers to claim the energy import from the renewable facility. On the other hand, use of WREGIS documentation would ensure that the counterparty selling the renewable energy has not resold the same energy to another party.

Staff's Initial Statement of Reasons ("ISOR") identifies the basis for the ARB's policy. The ISOR states that ARB will follow the WCI decision not to allow RECs to be used in GhG reporting in order to provide a "smooth transition" to a future federal source-based program. The policy is meant to provide a level playing field between in-state and out-of-state generation so that RECs from California facilities do not have a lesser value than RECs from out-of-state facilities.

SMUD's first concern is the lack of public process by the ARB in adopting the WCI recommendations. Not only did the WCI Partners adopt a policy that imperils a stable system of trading renewable energy with scant public process, but ARB is adopting the WCI approach without adequate public comment in this regulatory process.

Another issue we take with this approach is its concern with a transition to a future federal Cap and Trade program. However, the prospect of a federal Cap and Trade program is receding rapidly. As President Obama stated after the mid-term elections, a federal Cap and Trade program will not happen this year or next, or indeed before the next election. A federal Cap and Trade program has become highly speculative. Subordinating California needs in the hope that someday the federal government will follow our lead is no longer a prudent policy choice. Circumstances have changed. Transitioning to a federal program is no longer a realistic justification to eschew RECs as a tracking mechanism.

SMUD agrees with ARB staff that the issue is indeed one of providing a level playing field between in-state and out-of-state generation. When a retail provider purchases renewable energy from a facility in California, it has no compliance obligation, even if the electricity is firmed and shaped. The retail provider pays a premium for the renewable energy and in return is assured of no GhG compliance obligation even if it cannot show that it received the power from a specified source. SMUD is concerned that the proposed reporting rules may not provide the same assurance for electricity imports. ARB staff has assured stakeholders that firmed and shaped renewable imports will not have a compliance obligation, however that policy is not manifest in the reporting rule. The reporting rule should ensure that the purchaser of renewable energy for delivery to California using flexible delivery contracts should receive the same value as purchasers of in-state resources with similar contracts. A level playing field must be level in both directions.

Similarly, the renewable energy generator should get the same value for its product whether it is located in-state or out-of-state.

SMUD is not advocating for a the use of RECs in the Cap and Trade structure like a tradeable offset or allowance, but rather the use of RECs through WREGIS to verify in the GHG mandatory reporting system that the quantity of unspecified power imported as part of the firming and shaping transaction is the same as the amount of the renewable energy purchased from the specified source. We advocate using WREGIS to provide better proof of these transactions, with lower cost.

WREGIS was created to track renewable energy generation to ensure there would be no double-counting or double selling of the renewable energy or its associated attributes. The tracking system is widely used today, and is a requirement of the ARB's own RES system. The tracking system took nearly 5 years to reach the stage it is at today. The mistake of avoiding use of this existing system because of perceived administrative simplicity with separating the REC and GhG markets becomes very apparent when digging into the complexities that will inevitably arise with taking an approach that proposes no tracking system. Surely using WREGIS certificates to track renewable energy purchases makes more sense than coming up with a separate renewable energy tracking system, paralleling WREGIS, but tracking the energy purchase rather than the REC. This approach makes little sense, and given the complexity in establishing the approach, will create chaos in the implementation of the Cap and Trade program.

Because we are using WREGIS as a tracking system today for renewable purchases, the use of WREGIS certificates would be ideal for a verifier to confirm the purchase of energy from the renewable facility. This approach would rely on the system that was specifically developed for the purpose of tracking renewable energy ownership.

In addition to excessive reporting requirements that avoiding the use of the WREGIS system for renewable energy would require, section 95111.a.4, which also deals with imported electricity from specified facilities or units, requires importers to report information that they are not likely to have available, and which may be difficult to come by without some kind of generation tracking system. Subsection (4) requires importers to report the total amount of generation from facilities from which they make specified purchases. If the data is not already available from public databases, it will require manual data collection from these individual generators, which will add time, cost, and uncertainty to the reporting process. If the data is available from public databases, it would seem that it would be easier for the ARB to directly link to those public databases to provide them the information they require. Given the dozens of renewable energy contracts that reporters may enter into, collecting this data one by one from generators seems overly burdensome and likely to create errors as well as risks for the verification process. It is also not clear what additional value this adds for the ARB's reporting efforts.

The last area of unnecessarily excessive burden related to reporting power transactions is found in the requirements of section 95111.a.3, which requires imports to be specified from first point of receipt. Given that most points of receipt from a particular state will have no difference in emissions factor, and given the interconnected nature of the electricity grid, this level of specificity seems unnecessary. Because it creates additional reporting burden for classifying and sorting power transactions, SMUD would prefer a requirement that collected only the state of origin of the purchase, or a requirement that collected information for every unique state/balancing authority combination. This change would reduce the reporting and verification burden while still providing necessary information for the Cap and Trade program to function. SMUD has spent hundreds of person-hours over the past two years trying to meet ARB requirements for breaking out purchases by counterparty, and this requirement would not improve on that situation.

Beyond SMUD's objections to the undue administrative burden that the above provisions will place on reporting and verification, we are concerned about section 95161.i.B, which apparently prohibits entities from producing both pipeline biogas and carbon offsets from facilities like biodigesters or landfills. Whether landfill gas or digester gas is converted to pipeline biogas or burned on-site to produce renewable energy both options should be viewed as capable of producing two benefit streams: one for zero emissions biogenic renewable energy generation, and the other for a carbon offset for the destruction of methane. Eliminating the zero emissions benefit for renewable energy generation creates a disincentive to installing equipment to either generate on-site renewable electricity or clean up the gas to send to highly efficient gas-fired power plants. This policy will cause facility owners, if they can afford it, to opt for producing a carbon offset by flaring the gas, resulting in a lost opportunity to produce useful electricity from that same resource. The existence of both benefits is recognized by state law and the CPUC in their definition of a renewable energy credit as well as by the Climate Action Reserve and Green-e. The existence of both benefits is good policy that furthers the goals of AB 32 through both the RES and Cap and Trade programs.

The policy of limiting methane capture to one benefit stream also seems at odds with other provisions of the program. The ARB recognizes the biogenic nature of digester gas, and explicitly states that its combustion for displacement of fossil generated electricity is a complementary and separate GHG project activity and is not included within the offset protocol accounting framework (*See* ARB Livestock Protocol, at p. 6.) Consequently, the proposed Cap and Trade program exempts emissions from combustion of biogas (*See* section 95852.2(e), at p. A-66). However, the proposed Mandatory Reporting regulation apparently prohibits two benefit streams from landfills and biodigesters on the theory that the combustion of biogas produces carbon emissions and thus should have a compliance obligation. (Telephonic discussion between SMUD and ARB staff, Tuesday, Dec. 7, 2010) Thus, the prohibition in the Mandatory Reporting regulation is contrary to ARB's Cap and Trade policy and

internally inconsistent with ARB's own livestock protocol. Thus, the prohibition should be dropped for both livestock and landfill gas.

In addition to the above comments, SMUD has the following questions and clarifications related to specific sections:

Section 98104(b) Designated Representative – Under this provision, each reporting entity must designate a reporting representative and adhere to the requirements for this representative pursuant to 40 CFR §98.4. Establishing a Designated Representative for an Electric Power Entity (§95111) will be unique to ARB's reporting program because the U.S. EPA reporting program does not include reporting of electricity transactions. SMUD recommends that the ARB include a process to register Designated Representatives for reporting entities that are outside of the U.S. EPA reporting program, such as an Electricity Power Entity.

Section 95105(c) GhG Monitoring Plan – Under this provision, each reporting entity must have a GhG Monitoring Plan that meets the requirements of 40 CFR §98.3(g)(5). The elements to be included in the Plan, which are listed in the regulation, are associated with reporting GhG emissions and fuels from Facilities, but not electricity imports and power transactions. SMUD recommends that the ARB modify its reporting regulation and/or provide guidance on the elements to include in a GhG Monitoring Plan for an Electric Power Entity that reports electricity imports and power transactions.

Section 95112(a)(5) Basic Information for EGUs – Under Section 95112, Electricity Generating Units (EGUs) are required to provide specified information in emission data reports. In Paragraph (a)(5), ARB is requiring that emission data reports include weighted average carbon content and high heat value by fuel type if that information is used to calculate CO_2 emissions and refers to 40 CFR §98.32(a)(2)(ii) for high heat value procedures. SMUD's review of 40 CFR §98.32 finds no such subparagraphs or procedures for determining high heat value of fuels, so this appears to be an incorrect citation.

Section 95112(c) CO_2 from Fossil Fuel Combustion – Under this provision, operators subject to Subpart C or D of 40 CFR Part 98 must use a CO_2 calculation method in 40 CFR §98.33(a)(1) to (a)(4). These represent the Tier 1-4 calculation methods in Subpart C of 40 CFR Part 98. SMUD maintains that this provision should be modified to recognize that EGUs subject to Subpart D of 40 CFR Part 98, the Acid Rain Program, and 40 CFR Part 75 would follow the requirements of 40 CFR §98.43, and would not use the Tier 1-4 calculation methods.

Harmonizing with 40 CFR Part 98 – SMUD supports harmonizing the ARB and U.S. EPA GHG reporting programs and appreciates the progress made in ARB's current proposal. We note that the proposed revisions to ARB's Mandatory Reporting regulations being considered on December 16, 2010 incorporate by reference U.S. EPA

GhG reporting regulations promulgated through October 7, 2010. However, additional revisions to the U.S. EPA GhG reporting program are imminent with a final rule to become effective December 31, 2010. As of this writing, this final rule is not yet published in the Federal Register but is signed by the U.S. EPA Administrator. The final rule amends specific provisions in the U.S. EPA GhG reporting rule to clarify certain provisions, to correct technical and editorial errors, and to address certain questions and issues that have arisen since promulgation. One of the technical errors corrected in U.S. EPA's rulemaking was an incorrect citation for the data reporting requirements applicable to electricity generating units subject to Subpart D. Section 98.46 of Subpart D specified that the owner or operator of a Subpart D unit must comply with the data reporting requirements of 40 CFR §98.36(b) and, if applicable, 40 CFR §98.36(c)(2) or (c)(3). However, Subpart D units all use the CO_2 mass emissions calculation methodologies in 40 CFR Part 75. Therefore, the applicable data reporting section for Subpart D units is 40 CFR §98.36(d), not 40 CFR §98.36(b), 98.36(c)(2), or 98.36(c)(3). This is one example of where ARB proposed revisions, if adopted as is, will conflict with the latest revisions to the U.S. EPA GhG reporting rules. SMUD recommends that ARB review and include, where appropriate, the latest revisions to the U.S. EPA GhG reporting regulations, to become effective December 31, 2010. At a minimum, ARB should apply compliance discretion in cases where the U.S. EPA rules up through October 7, 2010 are clearly in error.

Summary

To summarize, SMUD's main concerns have to do with excessive burdens that some of the reporting requirements will place on reporters subject to the Mandatory Reporting rule and the Cap and Trade program. Paramount among these is the shift away from the WREGIS tracking system for tracking renewable energy, potentially significantly increasing reporting and verification costs, along with a number of unintended consequences that have not been fully vetted with stakeholders. Further complications introduced for reporting include the requirement to report total generation from specified facilities for which we have no ownership control over and therefore do not have this information readily at hand, and requirements to report unspecified power transactions by point of receipt, a requirement that adds no apparent value, yet significantly complicates the reporting and verification process. Finally, SMUD is concerned that the ARB's requirement that offsets cannot be generated at a biomethane facility that generates renewable energy unnecessarily discourages these facilities, and goes against past precedent set by other state agencies, carbon registries, and voluntary renewable energy market oversight entities. In the interest of ensuring a streamlined reporting process which ensures harmonization between AB 32 programs, SMUD

respectfully asks for your consideration of these issues as you consider your 15 day language revisions.

Thank you.

Respectfully submitted,

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cc: Corporate Files