BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY COMMENT ON PROPOSED CHANGES TO THE MANDATORY REPORTING REGULATION

Norman A. Pedersen, Esq.
HANNA AND MORTON LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071-2916
Telephone: (213) 430-2510
Facsimile: (213) 623-3379
Email: *npedersen@hanmor.com*
lmitchell@hanmor.com

Attorney for the **SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

Dated: September 14, 2012

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY..... 1

II. CLARIFY THE REC REPORTING PROVISIONS IN SECTION 95111(g). 2

III. REVISE SECTION 95111(f)(5) TO ASSURE THAT REVOCATION OF ASSET CONTROLLING SUPPLIER STATUS WILL NOT HAVE A RETROACTIVE EFFECT ON EMISSION CALCULATIONS..... 3

IV. REVISE CERTAIN ELECTRICITY SECTOR DEFINITIONS. 5

A. The definition of "Electricity importer" should be revised. 5

B. The definition of "Generation providing entity" should be revised...... 6

C. The definition of "Power contract" should be revised. 7

V. CONCLUSION 9

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
COMMENT ON PROPOSED CHANGES TO
THE MANDATORY REPORTING REGULATION

I. INTRODUCTION AND SUMMARY.

The Southern California Public Power Authority ("SCPPA") [1] respectfully submits this comment on the proposed amendments to the *Regulation for the Mandatory Reporting of Greenhouse Gas Emissio*ns ("MRR")[2] that were presented in the Proposed Regulation Order appended to the California Air Resources Board ("ARB") staff's Initial Statement of Reasons ("ISOR") dated August 1, 2012.

SCPPA appreciates the continuing efforts of the ARB staff to clarify the requirements of the MRR. SCPPA particularly appreciates the adoption of a number of revisions that were proposed by SCPPA in its June 25, 2012 comment on the draft amendments that were released by the ARB staff on May 29, 2012, and on June 14, 2012, for informal comment.

Overall, the proposed amendments clarify the MRR reporting requirements. In some instances, the amendments reduce the cost of compliance with the MRR. For example, the ARB staff proposes to remove verification requirements for facilities that emit below 25,000 $MTCO_2e$. This revision will provide a cost savings to a variety of reporting entities, including nine electricity generating facilities operated by publicly owned utilities. The majority of the nine affected generation facilities are operated by SCPPA members.[3]

---

[1] SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, the Imperial Irrigation District, Pasadena, Riverside, and Vernon.

[2] Title 17 California Code of Regulations, Subchapter 10, Article 2.

[3] Anaheim, Colton, Imperial Irrigation District, Pasadena, and Riverside.

However, the proposed amendments could be further improved by making several changes. SCPPA urges the ARB staff make the following revisions and to circulate the revisions for "15-day" comments:

- Clarify that the renewable energy credit ("REC") reporting provisions in section 95111(g)(1)(M) are not intended to prevent an importer of electricity from claiming an RPS adjustment before retiring the associated RECs.

- Revise section 95111(f)(5) to assure that revocation of an Asset Controlling Supplier's status will not have a retroactive effect on emission calculations.

- Revise the definition of "Electricity importer," "Generation providing entity," and "Power contract" and add a new definition of "Specified power contract" to add clarity to the MRR definitions.

These revisions are discussed in more detail below.

II. CLARIFY THE REC REPORTING PROVISIONS IN SECTION 95111(g).

The proposed amendments to section 95111(g)(1) require information related to specified sources and eligible renewable energy resources for which a reporting entity claims an RPS adjustment. Section 95111(g)(1)(M) requires that a reporting entity provide the serial numbers for renewable energy credits ("RECs") which are specified as follows:

> 1. RECs associated with electricity procured from an eligible renewable energy resource and reported as an RPS adjustment as well as whether the RECs have been placed in a retirement subaccount and designated as retired for the purpose of compliance with the California RPS program.
>
> 2. RECs associated with electricity procured from an eligible renewable energy resource and reported as an RPS adjustment in a previous emissions data report year that later were withdrawn from the retirement subaccount, the associated emissions data report year the RPS adjustment was claimed, and date of REC withdrawal.

> 3. RECs associated with electricity generated, directly delivered, and reported as specified imported electricity and whether or not the RECs have been placed in a retirement subaccount.[4]

The new section 95111(g)(1)(M) is worded so as to require a reporting entity to report whether the RECs associated with an RPS adjustment are retired or not.

SCPPA understands that the staff does not intend that the new requirement for reporting the retirement status of RECs should prevent an importer from claiming an RPS adjustment before retiring the associated RECs. Accordingly, SCPPA urges that section 95111(g)(1)(M) be expanded to clarify that reporting whether RECs are retired or not does not prevent an importer from using unretired RECs to claim electricity for the RPS adjustment.

III. REVISE SECTION 95111(f)(5) TO ASSURE THAT REVOCATION OF ASSET CONTROLLING SUPPLIER STATUS WILL NOT HAVE A RETROACTIVE EFFECT ON EMISSION CALCULATIONS.

SCPPA supports the proposed amendments to sections 95111(a)(5) and (b)(3). These amendments will permit entities in addition to the Bonneville Power Administration ("BPA") to be recognized as Asset Controlling Suppliers. Other entities as well as BPA will be permitted to serve as the marketer for a system or a fleet of generating facilities. Electricity importers such as SCPPA members will be permitted to report electricity supplied by an Asset Controlling Supplier as a specified import with emissions being calculated on the basis of the Asset Controlling Supplier's emission factor rather than as an unspecified import with default emissions. This will be beneficial for entities that purchase electricity from Asset Controlling Suppliers insofar as the Asset Controlling Suppliers' emission factors are likely to be lower than the default emission factor.

[4] ISOR, Attachment A, Proposed Regulation Order, pp 39-40.

The usefulness of permitting entities other than BPA to be Asset Controlling Suppliers is limited, however, by the provision in section 95111(f)(5) that provides for Asset Controlling Suppliers to lose their designation as being Asset Controlling Suppliers if they receive an adverse verification statement. Proposed language in section 95111(f)(5) provides as follows:

> Asset-controlling suppliers must annually adhere to all reporting and verification requirements of this article, or be removed from asset-controlling supplier designation. Asset-controlling suppliers will also lose their designation if they receive an adverse verification statement, but may reapply in the following year for re-designation.[5]

This provision does not make it clear that the revocation of an Asset Controlling Supplier's status as being an Asset Controlling Supplier would have only a prospective effect on the calculation of emissions associated with imports from the Asset Controlling Supplier. As a result of the lack of clarity regarding prospective-only effect, the downstream purchaser of electricity from an Asset Controlling Supplier would be concerned that revocation of an Asset Controlling Supplier's status as being an Asset Controlling Supplier could have a retroactive effect on the emission factor associated with imports from the Asset Controlling Supplier.

The possibility that revocation would have a retroactive effect would make it difficult for an importer that purchases from an Asset Controlling Supplier to estimate the number of allowances that it will need to satisfy its cap-and-trade compliance obligation. The importer would have to take into account the possibility that revocation of the Asset Controlling Supplier's status as being an Asset Controlling Supplier would retroactively cause the emission factor associated with imports to be the default emission factor rather than the lower emission factor that was specific to the Asset Controlling Supplier. Uncertainty about the security of the Asset Controlling Supplier's emission factor could cause the downstream importer to purchase

[5] ISOR, Attachment A, Proposed Regulation Order, p 39.

more allowances than necessary, putting unnecessary pressure on allowance prices in the market for cap-and-trade allowances.

In order to assure that revocation of an Asset Controlling Supplier's status would not have a retroactive effect on emission factors associated with purchases from the Asset Controlling Supplier, SCPPA recommends that the following sentence be added to section 95111(f)(5): "The loss of designation as being an Asset Controlling Supplier will not have a retroactive effect on the emission factor associated with purchases of electricity from the affected Asset-Controlling Supplier."

IV. REVISE CERTAIN ELECTRICITY SECTOR DEFINITIONS.

The definitions for "Electricity importers," "Generation providing entity," and "Power contract" should be revised for clarity as discussed below.

A. The definition of "Electricity importer" should be revised.

SCPPA supports the proposed changes to the definition of "Electricity importer."[6] However, the definition should be further revised to clarify which entity is considered to be the electricity importer if there is no NERC e-Tag. Currently, the definition refers to "the facility operator or scheduling coordinator" without specifying the order of priority of those two types of entities. This could lead to confusion in cases where there is no NERC e-Tag, but there is both a scheduling coordinator and a separate facility operator.

This issue was discussed at the ARB cap-and-trade workshop on May 4, 2012. ARB staff stated that if there were a scheduling coordinator, that entity would be the importer. If there were no scheduling coordinator, the facility operator would be considered to be the importer. This order of priority is logical and should be included in the definition.

[6] Regulation § 95102(a)(140).

The term "scheduling coordinator" is specific to the California Independent System Operator ("CAISO"). This term is not necessarily used in non-CAISO balancing authority areas. Other terms may be used to describe the same function. To avoid unnecessarily limiting this term, the words "or the functional equivalent" should be added after "scheduling coordinator."

In addition, the reference to a California balancing authority's "transmission and distribution system" should be changed to "transmission *or* distribution system." These are two distinct systems and a connection would be to one system or the other, not both.

The definition of "Electricity importer" in section 95102(a)(140) of the Regulation should be revised as follows:

> (140) "Electricity importers" deliver imported electricity. For electricity that is scheduled with a NERC e-tag to a final point of delivery inside the state of California, the electricity importer 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 or~~and~~ distribution system when the electricity is not scheduled on a NERC e-Tag, the importer is the ~~facility operator or~~ scheduling coordinator or the functional equivalent, or if there is no entity performing this function, the facility operator. 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 Resources (DWR).

B. The definition of "Generation providing entity" should be revised.

SCPPA supports the proposed changes to the definition of "Generation providing entity" or "GPE."[7] However, the definition still refers to the GPE as being "recognized by the ARB." At the staff's June 19, 2012 webinar, ARB staff stated in response to a SCPPA query that they do not propose to have any formal recognition process. The ARB will not establish a list of

[7] Regulation § 95102(a)(216).

"recognized" GPEs. Rather, the ARB expects GPEs to identify themselves as such in their reports under the Regulation. Therefore, the reference to recognition by the ARB should be deleted. It has no practical application, and it gives rise to an expectation of ARB action that will not be taken. The definition of "Generation providing entity" in section 95102(a)(216) of the Regulation should be revised as follows:

> (216) "Generation providing entity" or "GPE" means a facility or generating unit operator, full or partial owner, party to a contract for a fixed percentage of net generation, sole party to a tolling agreement with the owner, or exclusive marketer ~~recognized by ARB~~ that is either the electricity importer or exporter with prevailing rights to claim electricity from the specified source.

C. The definition of "Power contract" should be revised.

SCPPA supports the proposed changes to the definition of "Power contract."[8] However, certain changes to this definition would increase its clarity. First, two terms are used for the same concept: "power contract" and "written power contract." Only one term should be used for each defined concept. The term "power contract" is preferable. The term "written" is confusing, given that verbal and electronic records also qualify. References to "written power contract" in the MRR should be changed to "power contract."

Second, the reference to "procurement of electricity" in the opening sentence of the definition is somewhat limiting. The examples of power contracts given in the second sentence go beyond procurement. The broader term "electricity transaction" should be used instead.

At the June 19, 2012 staff webinar, there was some discussion of moving the additional language at the end of the definition into section 95111 of the MRR. It would be preferable to retain this language as part of the definition, and to refer to the relevant subsections of section 95111 that require reporting of imports and exports.

[8] Regulation § 95102(a)(351).

Accordingly, the definition of "Power contract" in section 95102(a)(351) of the MRR should therefore be revised as follows:

> (351) "Power contract," ~~or "written power contract,"~~ as used for the purposes of documenting specified versus unspecified sources of imported and exported electricity, means an agreement ~~written document~~, including written, ~~associated~~ verbal or electronic records ~~if included as part of the written power contract~~, arranging for ~~the procurement of~~ an electricity transaction. Power contracts may be, but are not limited to, power purchase agreements, enabling agreements, and tariff provisions, without regard to duration, or ~~written~~ agreements to import or export electricity on behalf of another entity, as long as that other entity also reports to ARB the same imported or exported electricity under section 95111(c)(4) or section 95111(a)(6).

Additionally, it would be helpful to have a definition of "Specified power contract." As the Western Power Trading Forum ("WPTF") explains in its comments in the proposed amendments,[9] the term "Power contract" can be used to refer to contracts for both specified and unspecified sources of electricity. It would be helpful to have a definition of "Specified power contract" in the MRR and to use the term in provisions that apply to specified imports:

> "Specified power contract" means a power contract that is contingent upon delivery of power from a particular facility, unit, or asset-controlling supplier's system that is designated at the time the transaction is executed.

[9] Comments of the Western Power Trading Forum on the Proposed Amendment to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, p. 10 (August 30, 2012).

V. CONCLUSION

SCPPA urges the ARB to consider these comments in revising the proposed amendments to the Regulation for "15-day" public comment. SCPPA appreciates the opportunity to submit these comments to the ARB.

Respectfully submitted,

/s/ Norman A. Pedersen

Norman A. Pedersen, Esq.
HANNA AND MORTON LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071-2916
Telephone: (213) 430-2510
Facsimile: (213) 623-3379
Email: *npedersen@hanmor.com*

Attorney for the **SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

Dated: September 14, 2012