

California Environmental Protection Agency

 **Air Resources Board**

**Final Statement of Reasons for Rulemaking,
Including Summary of Public Comments and Agency Responses**

THE ADOPTION OF PROPOSED AMENDMENTS TO THE
AB 32 COST OF IMPLEMENTATION FEE REGULATION

Public Hearing Date: October 20, 2011
Agenda Item No.: 11-8-2

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State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Public Comments and Agency Responses**

**PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO
THE AB 32 COST OF IMPLEMENTATION FEE REGULATION**

Public Hearing Date: October 20, 2011
Agenda Item No.: 11-8-2

I. GENERAL

In this rulemaking, the Air Resources Board (ARB or the Board) has adopted amendments to the AB 32 Cost of Implementation Fee Regulation (Fee Regulation). The Fee Regulation is primarily designed to assess a fee to be paid by sources of greenhouse gas (GHG) emissions in order to fund the State's AB 32 implementation costs. The regulation is codified in sections 95200-95207, title 17, California Code of Regulations (CCR).

On August 31, 2011, ARB issued a notice of public hearing to consider the proposed amendments at the Board's October 20, 2011 hearing. An "Initial Statement of Reasons" (Staff Report or ISOR) was also made available for public review and comment starting August 31, 2011. The Staff Report, which is incorporated by reference herein, described the rationale for the proposal. The originally proposed text of the amended regulation was included as Appendix A to the Staff Report. These documents were posted on ARB's internet site for this rulemaking at <http://www.arb.ca.gov/regact/2011/feereg11/feereg11.htm>.

On October 20, 2011, the Board conducted a public hearing to consider staff's proposal for adoption. Written and oral comments were received at the hearing. At the conclusion of the hearing, the Board adopted Resolution 11-33, which initiated steps toward final adoption of the proposed amendments. The approved amendments included modifications to the originally proposed language. These modifications had been suggested by staff in response to public comments made after issuance of the original proposal. The text or narrative description of each modification was contained in a six page document entitled, "Public Hearing to Consider Adoption of Proposed Amendments to the AB 32 Cost of Implementation Fee Regulation – Staff's Suggested Modifications to the Original Proposal," which was distributed at the beginning of the hearing and included as Attachment B to the Resolution.

Resolution 11-33 directed the Executive Officer to adopt the modified regulations after making the modified regulatory language available for public comment for a

period of at least 15 days, in accordance with Government Code section 11346.8(c), and to make such additional modifications as may be appropriate in light of the comments received.

A "Notice of Public Availability of Modified Text" together with a copy of the full text of the regulation modifications, with the modifications clearly indicated, were distributed on April 2, 2012, to each of the individuals described in subsections (a)(1) through (a)(4) of section 44, title 1, CCR. By this action, the modified AB 32 Cost of Implementation Fee Regulation was made available to the public for a 15-day comment period from April 2, 2012, to April 17, 2012, pursuant to Government Code section 11346.8.

A "Second Notice of Public Availability of Modified Text" together with a copy of the full text of the regulation modifications, with the modifications clearly indicated, were distributed on June 21, 2012, to each of the individuals described in subsections (a)(1) through (a)(4) of section 44, title 1, CCR. By this action, the modified AB 32 Cost of Implementation Fee Regulation was made available to the public for a 15-day comment period from June 21, 2012, to July 6, 2012, pursuant to Government Code section 11346.8. The Executive Officer then determined that no additional changes should be made to the regulations, and subsequently issued an Executive Order, by which the modifications to the AB 32 Cost of Implementation Fee Regulation were adopted.

This Final Statement of Reasons (FSOR) updates the Staff Report by identifying and providing the rationale for the modifications made to the originally proposed amendments. The FSOR also contains a summary of the comments received on the proposed amendments during the formal regulatory process and ARB's responses to those comments. Modifications to the original proposal are described in Section II of this FSOR entitled "Modifications Made to the Original Proposal."

In this rulemaking action, references to ASTM standards that are already listed in the existing regulation were clarified by adding the publication date of each ASTM standard. All of these documents are referenced and incorporated into the CCR because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the CCR. ARB administrative practice has long been to have specifications, test procedures, and similar documents incorporated by reference rather than printed in the CCR because these specifications and procedures are highly technical and complex. Because ARB has never printed complete test procedures and similar documents in the CCR, the directly affected public is accustomed to the incorporation format used in the regulation. These test procedures and similar documents as a whole are extensive, and it would be both cumbersome and expensive to print these lengthy, technically complex procedures in the CCR for a limited audience. For similar reasons, it has been a longstanding and accepted practice of ARB to incorporate ASTM International standards and test methods into the CCR by reference. Among other things, this

enables interested parties to verify the standards or practices have been adopted by a consensus-driven, authoritative source.

As defined in Government Code section 11345.5(a)(6), the Board has determined that this regulatory action will create costs for one State agency, the California Department of Water Resources. This regulatory action will not affect federal funding to the State. The Board has also determined that this regulatory action will not create costs or impose a mandate upon any local agency or school district, whether or not it is reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code; or affect other non-discretionary savings to state or local agencies. In preparing the regulatory proposal, the ARB staff considered the potential economic impacts on California business enterprises and individuals. A detailed discussion of these impacts is included in the ISOR. The adopted regulations are not considered "major regulations" within the meaning of Health and Safety Code section 57005 (enacted by Senate Bill 1082: Stats.1993, ch. 418). During the 45-day and 15-day comment periods, no alternatives or combination of alternatives were submitted to the ARB which would be equally effective as the proposed regulations (i.e., no alternatives, or combination of alternatives, were submitted which would achieve at least the equivalent level of environmental protection within the same time frame as the proposed regulations.)

The Board has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

II. MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

Various modifications to the original proposal were made in order to address comments received during the 45-day public comment period, and to clarify the regulatory language. These modifications are described below.

A. Section 95201. Applicability.

1. In Section 95201(a)(1), the term “distribute” was removed and replaced with the term “deliver” for clarity.
2. In Section 95201(a)(4)(B), modifications were made to clarify the applicability for First Deliverers of Electricity and to conform with final amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR). Modifications were also made to clarify that electricity delivered on or after January 1, 2011, is reported pursuant to Section 95103 of the MRR.

B. Section 95202. Definitions.

In Section 95202(a), five definitions were added: 95202(a)(18) “California balancing authority;” 95202(a)(39) “Covered emissions;” 95202(a)(43) “Direct delivery of electricity;” 95202(a)(50) “Eligible renewable energy resource;” and 95202(a)(58) “Exported electricity;” two definitions were deleted 95202(a)(115) “Replacement electricity” and 95202(a)(132) “Variable renewable resource;” and the following ten definitions were modified to conform with final amendments to Section 95102 of the MRR.

1. Section 95202(a)(23) “Carbon dioxide equivalent;”
2. Section 95202(a)(31) “Cogeneration;”
3. Section 95202(a)(49) “Electricity importers;”
4. Section 95202(a)(69) “Generated electricity;”
5. Section 95202(a)(77) “Imported electricity;”
6. Section 95202(a)(86) “Marketer;”
7. Section 95202(a)(114) “Purchasing-selling entity;”
8. Section 95202(a)(115) “Qualified exports;”
9. Section 95202(a)(127) “Specified source of electricity;”
10. Section 95202(a)(134) “Unspecified source of electricity.”

C. Section 95203. Calculation of Fees.

1. In Section 95203(b), several modifications were made to clarify that the quantity of emissions for electricity includes all electricity and is not exclusive to imported electricity. To conform with the final amendments to the MRR, an additional modification was made to the Common Carbon Cost equation which subtracts the metric tons of carbon dioxide from the quantity of emissions that are attributed to California’s eligible renewable resources.

2. In Section 95203(f), modifications were made to provide clarity and remove duplication. As originally proposed, this section contained electricity fee rate equations for specified sources of electricity, asset-controlling suppliers, and unspecified sources of electricity. However, asset-controlling suppliers are specified sources of electricity, therefore, multiple uses of the term Asset-controlling supplier were deleted. Modifications were also made to clarify that the Electricity Fee Rate for electricity delivered in California on or after January 1, 2011, is based on data reported pursuant to Section 95103 of the MRR.
3. In Section 95203(h), modifications were made to clarify that specified source emission factors and calculation methods for report years 2011 and subsequent years, for electricity generating facilities or units, are based on data reported pursuant to Section 95103 of the MRR.
4. Section 95203(j) was removed because multi-jurisdictional retail providers' wholesale sales delivered to a first point of delivery in California are calculated according to methods in Section 95203(f).
5. Section 95203(l) was modified to subtract the megawatt-hours from California eligible renewable resources located outside the State of California and that meet the requirements of the Cap-and-Trade Regulation, from the fee liability for electricity delivered in California. These modifications were made to conform with final amendments to the MRR.

D. Section 95204. Reporting and Recordkeeping Requirements.

1. In section 95204(c), the annual reporting deadline was changed from April 1 to April 10 to conform with the final amendments to the MRR. Additionally, affected entities were allowed to report 2011 report year data to ARB by June 30, 2012. Finally, modifications were made to clarify that 2012 and subsequent report year data, must be submitted to ARB no later than April 10 of the following year and each year thereafter, excluding electricity importers which must submit 2012 and subsequent report year data to ARB pursuant to Section 95103(e) of the MRR.
2. In section 95204(d), several modifications were made to improve clarity. Two new provisions were added to specify that fee liabilities for Natural Gas Utilities, Users and Pipeline Owners and Operators will not include deliveries to Electricity Generating Facilities that have a fee liability and are customers of the supplier. In addition, ARB will provide each Natural Gas supplier a list of customers whose gas deliveries will be subtracted from the supplier's fee liability, no later than September 1 of the corresponding fee determination notice fiscal year. Finally, modifications were made to clarify that the data reported for report years 2011 and subsequent years referred to in Section 95204(d)(8) is reported pursuant to the provisions in Section 95204(c).

III. REVISIONS TO ECONOMIC IMPACT ANALYSIS

As a result of modifications proposed in the first 15-day public comment period, staff identified an additional economic impact on affected entities. An amendment to the default emission factor for unspecified sources of electricity in section 95203(f), was proposed in the first 15-day public comment period to improve clarity and to conform with amendments to the MRR. The proposed amendment lowers the default carbon dioxide (CO₂) emission factor for unspecified sources of electricity from 0.499 metric tons of CO₂ per megawatt-hour to 0.427 metric tons of CO₂ per megawatt-hour.

The overall fiscal impact of the amendment described above, and the amendment increasing the minimum greenhouse gas reporting threshold for electricity generating facilities from 2,500 to 10,000 tons of CO₂ (described in the Initial Statement of Reasons) will not change the total fees collected by the Fee Regulation. However, these amendments will redistribute the fee obligations resulting in some entities paying higher fees and other entities paying lower fees.

Entities that were previously assessed fees based on the 0.499 metric tons of CO₂ per megawatt-hour default emission factor, are expected to pay lower fees as a result of lower the emission factor, while all other entities will experience a fee increase of approximately one percent.

Based on FY 2010-2011 invoicing, the increased costs affecting fee payers would range from approximately \$104 to \$52,000 per invoice. A large business, originally invoiced \$5 million, would see an increase of \$52,000, whereas, a typical business originally invoiced \$10,000 would see an increase of \$104. The approximate one percent increase is not expected to have a noticeable impact on jobs.

Staff maintains the assessment in the Initial Statement of Reasons that the proposed amendments to the Fee Regulation will not result in significant additional cost to local, State, or federal agencies and will not result in any additional costs to the ARB to implement the Fee Regulation.

Fifteen local agencies, presently subject to the Fee Regulation, would save a collective \$76,900, as a result of the proposed amendments. In addition, one federal agency, the Western Area Power Administration, will save an estimated \$10,000, starting in fiscal year 2013-2014. The remaining thirteen local government agencies, presently subject to the Fee Regulation, would collectively pay an estimated \$10,000 in additional fees, as a result of the proposed amendments. One State agency, the California Department of Water Resources, would be required to pay an additional estimated \$2,000.

IV. SUMMARY OF COMMENTS MADE DURING THE 45-DAY COMMENT PERIOD AND AGENCY RESPONSES

The Board received written and oral comments during the 45-day comment period for this regulatory action. A list of commenters is shown below, along with an abbreviation for each commenter. Following the list, staff has summarized each comment provided regarding the proposal with an explanation of how the proposed action has been changed to accommodate the comment, or the reasons for making no change.

A. List of Commenters

The table below identifies the comments received during the 45-day comment period that presented an objection or recommendation specifically directed toward the regulation or the procedures followed. The table provides a correlation between (1) the abbreviation used in this section to refer to a comment letter or testimony; and (2) the name of the person(s) signing the comment letter or presenting the testimony. Written submittals were received between August 31, 2011, and October 19, 2011. Oral testimony was presented at the October 20, 2011 hearing.

Comment Abbreviation	Commenter
LADWP1	Cindy Parsons, Department of Water and Power for the City of Los Angeles Written testimony: October 19, 2011
LADWP2	Cindy Parsons, Department of Water and Power for the City of Los Angeles Oral testimony: October 20, 2011
PGE1	John Busterud, Pacific Gas and Electric Company Written testimony: October 14, 2011
PGE2	Kate Beardsley, Pacific Gas and Electric Company Oral testimony: October 20, 2011
SCE1	Frank Harris, Southern California Edison Oral testimony: October 20, 2011
SCPPA1	Lily Mitchell, Southern California Public Power Authority Written testimony: October 19, 2011
SCPPA2	Lily Mitchell, Southern California Public Power Authority Oral testimony: October 20, 2011

B. General Comments

- B-1. Comment:** SCPPA supports the Proposed Changes insofar as they increase the consistency of the Regulation with the revised Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (“MRR”) and the revised California Cap

on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation (“C&T Regulation”). [SCPPA1]

- B-2. Comment:** The Utilities support ARB’s assessment of fees to recover the reasonable and necessary administrative costs associated with the implementation of AB 32 in a fair and equitable manner. [PGE1]
- B-3. Comment:** We support the changes to increase the consistency of the fee regulations and commend the comments in the Initial Statement of Reasons and the Resolution that further changes will be needed to reflect the even more recent changes to the mandatory reporting regulation that's quite significant in terms of calculation of the fee for electricity sector entities. [SCPPA2]
- B-4. Comment:** We participated in the fee, the development of the initial fee regulation back in '08. We were supportive of it. You absolutely have the right to collect this fee. [PGE2]

Response to Comments B-1 through B-4: Comments noted. The Board approved staff’s proposal with the suggested modifications.

- B-5. Comment:** One of the key design features of the regulation was to collect it from upstream sources with the assumption they can pass the cost on downstream to the actual sources of greenhouse gas emissions. That totally makes sense. It's a much easier approach. [PGE2]
- B-6. Comment:** The elements of the Pacific Gas and Electric and San Diego Gas and Electric letter that are addressed to the electricity sector, like the Board to recognize that Southern California Edison is in complete agreement with that. [SCE1]

Response to Comments B-5 through B-6: Comments noted.

- B-7. Comment:** The regulation should be further revised for consistency with recent changes to the MRR and the Cap and Trade Regulation. [SCPPA1]

Response: Staff agrees with the comment and proposed modifications in the 15-day public comment period to conform with final amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR).

- B-8. Comment:** At the time of the original rulemaking, ARB chose to assess the fee upon gas utilities upstream of the actual emission sources because this approach could be implemented in a simple, low cost manner assuming that the upstream gas utilities could pass along the costs to the end users. The Utilities, however, have not yet been authorized to pass the cost of the fee through to the sources of gas-related emissions as was intended in the design of the original regulation, and as contemplated by the AB 32 statute. If the CPUC does not authorize the

Utilities to recover the cost of the fee from the sources of emissions in this proceeding, the Utilities respectfully request that ARB re-assess the approach it has taken to collect the fee. [PGE1]

- B-9. Comment:** We've been trying to move that ball forward on passing the costs along to our customers. We haven't been able to. So we're just in kind of an awkward situation. We appreciate any further coordination between ARB and the PUC on this issue. [PGE2; SCE1]

Response to Comments B-8 through B-9: Comments noted. Staff acknowledges that the California Public Utilities Commission (CPUC) is still evaluating the Utilities' request to pass through the costs of this fee to their ratepayers. ARB staff has contacted CPUC staff regarding the pending decision and will continue to work with them to address this issue.

- B-10. Comment:** We also request that ARB reconsider the proposed fee regulation amendment that would impose the fee on the Utilities for an even larger number of customers than the original regulation. The ARB's proposal to collect the fee directly from electricity generators who emit more than 10,000 MT CO₂e/year in contrast to the original proposal to collect directly from those who emit more than 2,500 MT CO₂e/year means that the Utilities will be expected to report emissions for a larger number of customers which are the direct emissions sources (since fewer are paying directly) and be responsible to pay a larger portion of the fee. As noted, until the Utilities are authorized to collect the fees from these direct emissions sources, ARB's approach for the current fee regulation and the proposed amendments runs contrary to the language of AB 32. [PGE1]

Response: Recent amendments to the MRR no longer require reporting by electricity facilities that emit less than 10,000 MT CO₂e, whereas the existing Fee Regulation requires that fees be paid by facilities that emit 2,500 or more MT CO₂ per year. The data collected by the revised MRR will no longer support application of the fee to these lower emitting facilities. Staff assessed the economic impact of raising the reporting threshold from 2,500 MT CO₂/year to 10,000 MT CO₂/per year and determined that, as a result of this specific amendment, the estimated average increase cost to a typical business would be 0.04 percent.

- B-11. Comment:** LADWP is very concerned by the recent revisions to the definition of Electricity Importer, because it will change the point of regulation for reporting electricity imports from the entity that owns the power to the entity that schedules and/or delivers the power into California. The entity that reports the electricity import will also be responsible for paying the AB32 fees and satisfying the cap-and-trade compliance obligation for that import, even though the electricity may not belong to that entity. [LADWP1; LADWP2]

Response: The definition of Electricity importer was revised for reporting consistency with the MRR. Staff acknowledges that the amendments to the Electricity importer definition may make LADWP liable for electricity imported into California that they were not liable for in the past. LADWP may need to work with the parties that they schedule electricity imports for, for reimbursement of a portion of the fee. In the event that there are any future modifications proposed to MRR's Electricity importer definition, staff may also propose additional consistent modifications to the Fee Regulation.

C. Renewable Electricity Comments

- C-1. Comment:** ARB should amend the definition of replacement electricity to be consistent with and reflect the most recent approach for accounting for out-of-state renewable energy (as described in the Second 15-day Changes to Cap-and-Trade and MRR). [PGE1; SCPPA1]

Response: Staff agrees with the comment and proposed at the Board hearing to remove the definition of replacement electricity to conform with final amendments to the MRR.

- C-2. Comment:** We also note that ARB will need to modify the equation in Section 95203(b) associated with the quantity of emissions from electricity delivered in California to subtract out the electricity associated with these renewable transactions. [PGE1]

Response: Staff agrees with the comment and proposed modifications in the 15-day public comment period that included the subtraction of the metric tons of carbon dioxide, from California eligible renewable resources located outside the State of California and that meet the requirements of the Cap-and-Trade Regulation, from the Common Carbon Cost equation in section 95203(b).

- C-3. Comment:** Section 95201(a)(4)(B)2 of the Regulation should be revised to avoid inadvertently imposing fees on electricity that meets the criteria for "MWh_{RPS}" under the MRR. [SCPPA1; SCPPA2]

Response: Staff agrees with the comment and proposed modifications in the 15-day public comment period which included deleting the provision originally proposed in section 95201(a)(4)(B)(2) to conform with final amendments to the MRR.

- C-4. Comment:** Section 95203(m) of the Regulation, Fee Liability for Electricity Delivered in California, needs to be amended to include an RPS adjustment, similar to the current deduction for qualified exports, because replacement electricity will no longer be issued a zero emission factor under the MRR. [SCPPA1; SCPPA2]

Response: Staff agrees with the comment and proposed at the Board hearing to modify section 95203(m) to conform with final amendments to the MRR.

- C-5. Comment:** The terms “replacement electricity” and “variable renewable resource” were deleted from the MRR as part of the recent amendments released on September 12, 2011. Therefore, any references to “replacement electricity” and “variable renewable resource” should also be deleted from the Fee Regulation. [LADWP1]

Response: Staff agrees with the comment and proposed modifications in the 15-day public comment period which included deleting the terms “replacement electricity” and “variable renewable resource” from section 95202(a).

D. Qualified Export Comments

- D-1. Comment:** The deduction of qualified exports from the Common Carbon Cost in section 95203(b) should extend to qualified exports from both specified and unspecified sources. [SCPPA1; LADWP1; SCPPA2; LADWP2]

Response: Staff agrees with the comment and proposed modifications in the 15-day public comment period which included deleting the term “specified” from section 95203(b).

- D-2. Comment:** The deduction of qualified exports from the fee liability in section 95203(m) should also be amended. [SCPPA1]

Response: Staff agrees and proposed clarifying modifications to section 95203(m) in the 15-day public comment period.

E. Fee Liability Consistency Comments

- E-1. Comment:** The Regulation should be revised to provide that the emission factors for all sectors are calculated in the same way, by reference either to carbon dioxide or to carbon dioxide equivalent. [SCPPA1; SCPPA2]

- E-2. Comment:** The proposed amendments to the Fee Regulation are inconsistent in that fees for fuels would be assessed based on CO₂ emissions, but fees for electricity would be assessed based on CO₂-equivalent emissions. Since CO₂-equivalent emissions are higher than CO₂ emissions, the electricity sector would end up paying higher fees than the fuel suppliers. This inconsistency should be eliminated. [LADWP1; LADWP2]

Response to Comments F-1 through F-2: Staff agrees with the comments and proposed modifications in the 15-day public comment period which included removing staff’s original proposal to assess fees for carbon dioxide equivalents for the electricity sector. The prospective emission factors, with the exception of

the default emission factor for unspecified sources which appears in section 95203(f), that will be published on the ARB Mandatory Reporting website, will support the continuation of fees assessed for CO₂ rather than CO₂ equivalents.

F. Electricity Generating Facility Comments

F-1. Comment: To ensure timely and accurate reporting, ARB should amend the regulation to provide natural gas utilities with a list of customers who should pay the fee directly. The current amendments are unclear regarding whether ARB will continue to provide lists of electric generating facilities to exclude from the natural gas utilities' reporting and fee payment obligation going forward. Additionally, the amendments to the reporting section now require that natural gas utilities report both the quantity of therms of natural gas delivered at the meter to all end users and the "aggregate quantity of therms of natural gas delivered to electric generating facilities." It is not clear in the regulation whether this second reporting requirement is referring to the list of electric generating facilities that are paying the fee directly to ARB which ARB had previously been providing to the natural gas utilities. The Utilities request that ARB continue to provide the natural gas utilities with a list of the electric generating facilities paying the fee directly to ARB six weeks prior to reporting to ensure that we are able to report in a timely an accurate manner. [PGE1]

Response: Staff agrees with the comment and proposed modifications in the 15-day public comment period which included a provision stating that staff will provide Natural Gas Utilities, End Users, and Pipeline Owners and Operators, a list of customers subtracted from the supplier's fee liability, no later than September 1 of the corresponding fee determination notice fiscal year. Staff believes September 1 of the corresponding fee determination notice fiscal year is appropriate for providing natural gas utilities with a list of the electric generating facilities paying the fee directly, because it allows staff to utilize the most recent, verified, data reported to the MRR. In a subsequent discussion, the commenter clarified that the list of the electric generating facilities paying the fee directly will be used to identify customers of the natural gas supplier that would receive a fee determination notice from ARB and agreed that September 1 of the corresponding fee determination notice fiscal year is appropriate.

F-2. Comment: The Utilities recognize that the emissions data necessary to determine which electric generating facilities are above the 10,000 MT CO₂e/year threshold will not be available to ARB until April 1 of each year. Accordingly, we recommend that ARB revise the reporting date for natural gas utilities to June 1 of each year to provide ARB sufficient time to review the data submitted, generate a list and then have the natural gas utilities adjust their report as needed. [PGE1]

Response: Staff disagrees with the comment. The Fee Regulation relies on information reported pursuant to the MRR. The April 10 reporting deadline in the

amended Fee Regulation conforms with the reporting deadline in the MRR. ARB's Greenhouse Gas Reporting Tool is locked after the April 10th reporting deadline, therefore the reporting deadline in the Fee Regulation cannot be later.

G. Linked Jurisdiction Comments

G-1. Comment: Section 95203(f) of the Regulation, Electricity Fee Rate for electricity delivered in California on or after January 1, 2011, provides that the emissions factor for unspecified electricity imported from points of receipt located in linked jurisdictions is zero so that no fees are payable on such electricity. It is appropriate that no fee be imposed on electricity from linked jurisdictions. The zero-emission-factor approach taken in section 95203(f) of the Regulation would be acceptable, if this approach were consistently applied throughout the Regulation. Changes to sections 95201(a)(4)(B) and 95203(h) of the Regulation are required to consistently implement the position that no fees are to be imposed on electricity imported from linked jurisdictions. [SCPPA1]

Response: Comment noted. In 2012, ARB staff proposed amendments, specific to linkage, to California's Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms (Cap-and-Trade Regulation). In the event that ARB links with another jurisdiction that imports electricity into California, ARB will consider conforming amendments to the MRR and the Fee Regulation.

V. SUMMARY OF COMMENTS MADE DURING THE FIRST 15-DAY COMMENT PERIOD AND RESPONSES

The table below identifies the comments received during the 15-day comment period. The table provides a correlation between (1) the abbreviation used in this section to refer to a comment letter; and (2) the name of the person(s) signing the comment letter. Written submittals were received between April 2, 2012, and April 17, 2012.

Comment Abbreviation	Commenter
AK	Seema Srinivasan, Alcantar & Kahl, LLP Written testimony: April 16, 2012
LADWP3	Cindy Parsons, Department of Water and Power for the City of Los Angeles Written testimony: April 17, 2012
SCPPA3	Lily Mitchell, Southern California Public Power Authority Written testimony: April 17, 2012
WSPA	Catherine Reheis-Boyd, Western States Petroleum Association Written testimony: April 17, 2012

1. **Comment:** ARB should modify the “Cogeneration” definition in Section 95202(a)(31) of the Regulation to better ensure that the definition of cogeneration excludes facilities that should not qualify as cogeneration and at the same time include existing cogeneration facilities. [AK]

Response: The definition of Cogeneration was revised for reporting consistency with the MRR. Staff acknowledges the commenter’s concern, however, staff believes amendments to the Cogeneration definition are more appropriate for a future rulemaking, either in conjunction with or after amendments are proposed to the MRR. In the event that there are any future modifications proposed to MRR’s Cogeneration definition, staff may also propose additional consistent modifications to the Fee Regulation.

2. **Comment:** We urge ARB to amend the proposed regulation to make the deadline for AB 32 fee reports on April 30, not April 10. The information required to be reported for the AB32 administrative fee is similar yet different from the MRR report. Requiring the reports at the same time can tend to overwhelm our members who must ensure these actions are completed on time. Of course these actions are in addition to a federal reporting requirement that is due in the same timeframe. [WSPA]

Response: The Fee Regulation relies on information reported pursuant to the MRR. The April 10 reporting deadline in the amended Fee Regulation conforms with the reporting deadline in the MRR. ARB’s Greenhouse Gas Reporting Tool

is locked after the April 10th reporting deadline, therefore the reporting deadline in the Fee Regulation cannot be later. It would be administratively burdensome to grant Fee Regulation reporters access to the tool after it has locked down. Modifying the tool to accept Fee Regulation data after the April 10th Mandatory Reporting deadline may be appropriate for a future rulemaking, either in conjunction with or after amendments are proposed to the MRR.

3. **Comment:** Since this revised regulation is still not effective, the amendments should make clear that the deadline for the 2011 report (based on 2010 data) is June 30, 2012 not April 10, 2012. [WSPA]

Response: Staff agrees with the comment and proposed modifications in the Second 15-day public comment period which included allowing affected entities to report 2011 report year data to ARB by June 30, 2012. Additionally, modifications were made to clarify that 2012 and subsequent report year data, must be submitted to ARB no later than April 10 of the following year and each year thereafter, excluding electricity importers which must submit 2012 and subsequent report year data to ARB pursuant to the requirements of Section 95103(e) of the MRR.

4. **Comment:** WSPA urges an exemption from the Fee Regulation for ethanol and other low carbon fuels that were exempted from compliance obligations, under the cap and trade regulation, Section 95852.2. [WSPA]

Response: This comment is not directed at the proposed amendments, however, in the May 2010, Final Statement of Reasons for Rulemaking, AB 32 Cost of Implementation Fee, staff determined that the volume of fuel used to calculate the fee should be that of finished California gasoline, some of which contains ethanol. Further, staff determined that the fee would not apply to fuels containing more than ten percent ethanol. The commenter also urges an exemption for fuels that were exempted from compliance obligations in the Cap-and-Trade Regulation. The Fee Regulation is not intended to address compliance obligations that are addressed in the Cap-and-Trade Regulation.

5. **Comment:** The RPS adjustment should be recognized in section 95201 on applicability. This has been recognized in other sections of the revised Fee Regulation, specifically 95203(b) on the Common Carbon Cost and section 95203(m) on the fee liability for electricity delivered in California. [SCPPA3]

Response: Staff disagrees that the RPS adjustment should be recognized in section 95201. As the commenter stated, the RPS adjustment is was included in sections 95203(b), Common Carbon Cost, and 95203(l), Fee Liability for Electricity Delivered in California. The Response to Comment C-4 is incorporated herein.

6. **Comment:** Electricity imported from jurisdictions linked to California should not be subject to the fee. The Fee Regulation appears to accept this position in part, by providing a zero emissions factor for electricity from unspecified sources in linked jurisdictions in section 95203(f). This section sets the electricity fee rate for electricity delivered in California on or after January 1, 2011. However, this position is not reflected in sections 95201 or 95203(h) of the Fee Regulation. [SCPPA3]

Response: The Response to Comment G-1 is incorporated herein.

7. **Comment:** LADWP supports making the basis for assessing fees consistent across all sectors. [LADWP3]
8. **Comment:** LADWP supports deducting all qualified exports. [LADWP3]

Response to Comments 7 through 8: Comments noted.

9. **Comment:** The criteria in section 95201(a)(4) for imported electricity to be subject to the Fee Regulation is too narrow, and creates a potential loophole whereby electricity that is delivered into the California Independent System Operator (CISO) system at a point outside of California may not be subject to AB 32 fees. This would be unfair to the other fee payers, as the total cost of the AB 32 program is divided amongst the total emissions that are subject to the Fee Regulation. [LADWP3]

Response: Staff disagrees with the comment. Staff believes that all electricity used to serve load inside the State of California is subject to the Fee Regulation. The definition of Imported electricity states that the electricity must have a final point of delivery inside the State of California to serve load inside the State of California. Electricity delivered outside the State of California but used to serve load inside the State of California, must be bid into the California Independent System Operator (California ISO) market, as either a priced bid or a zero bid. Electricity that is bid, and subsequently cleared, in the California ISO market must be scheduled to a final point of delivery inside the State of California. The NERC E-tag will show the physical path between the California ISO point outside the State of California, and the final point of delivery inside the State of California.

10. **Comment:** The revised definition of “Electricity Importer” is likely to result in LADWP having to pay AB 32 fees for electricity imports that belong to other utilities. [LADWP3]

Response: The Response to Comment B-11 is incorporated herein.

11. **Comment:** LADWP recommends changes to the definition of “Specified Source” to enable an Electricity Importer who imports electricity from a specified source

on behalf of another entity that has ownership in or a contract to procure electricity from the specified source to be reported as a specified import. [LADWP3]

Response: The definition of Specified source of electricity was revised for reporting consistency with the MRR. Amendments to the Specified source of electricity definition are more appropriate for a future rulemaking, either in conjunction with or after amendments are proposed to the MRR. In the event that there are any future modifications proposed to MRR's Specified source of electricity definition, staff may also propose additional consistent modifications to the Fee Regulation.

VI. SUMMARY OF COMMENT MADE DURING THE SECOND 15-DAY COMMENT PERIOD AND RESPONSE

The table below identifies the comment received during the second 15-day comment period. The table provides a correlation between (1) the abbreviation used in this Section VI to refer to a comment letter; and (2) the name of the person signing the comment letter. Written submittals were received between June 21, 2012, and July 6, 2012.

Comment Abbreviation	Commenter
PacifiCorp	James Campbell, PacifiCorp Written testimony: July 6, 2012

- Comment:** PacifiCorp agrees with ARB that Section 95203 (j) should be removed to maintain consistency with the Mandatory Reporting Regulation. Further, PacifiCorp agrees that the fee rate for MJRP's wholesale deliveries into California (not for retail use) should be calculated using Section 95203 (f), which again is consistent with the Mandatory Reporting Regulation. Since the Mandatory Reporting Regulation identifies MJRP wholesale sales to a first point of delivery into California as an unspecified delivery, the AB 32 Cost of Implementation Fee should reflect that same qualification. [PacifiCorp]

Response: In response to the first point, staff appreciates the commenter's support of modifications proposed in the Second 15-day public comment period. Related to Multi-jurisdictional retail provider wholesale sales to a first point of delivery in California, the fee assessed to a Multi-jurisdictional retail provider's wholesale sales is assessed the default emission factor for unspecified sources of electricity and conforms with the MRR.