



## CALPINE CORPORATION

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By *Electronic Submission*: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Hon. Mary D. Nichols, Chairman  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

Re: Comments on Proposed Amendments to the Mandatory Reporting Rule

Dear Madam Chairman:

On behalf of Calpine Corporation (hereinafter, “Calpine”), thank you for the opportunity to submit these written comments on the California Air Resources Board’s (“CARB”) Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Cal. Code Reg. tit. 17, §§ 95100 *et seq.*, “Mandatory Reporting Rule” or “MRR”) (Collectively, “Proposed Amendments” or “Proposed MRR Amendments”).

### Summary

The Proposed MRR Amendments would require applicants for legacy contract assistance to include detailed information in block-diagram format concerning the flow of thermal energy products, the location of meters, the type and amounts of thermal energy products delivered, the amount of fuel consumed and the resulting greenhouse gas (“GHG”) emissions. Calpine appreciates CARB’s amendment of the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (Cal. Code Reg. tit. 17, §§ 95800 *et seq.*, “Cap-and-Trade Regulation”) to provide legacy contract assistance to legacy contract generators. Calpine believes that CARB already has the authority under those amendments to request just the type of information that would be required from legacy contract generators under the Proposed MRR Amendments, whenever the information submitted on the application for legacy contract assistance is not self-evident and the Executive Officer needs additional clarification to determine whether an allocation should be provided and the amount of such allocation. Calpine believes that CARB should not make the legacy contract generator’s obligation to provide such information an express requirement of the MRR because the information that would need to be included on the block diagram is highly detailed and complex and, consequently, the risk that an immaterial mistake could result, which could lead to potentially large penalties for violations of the MRR, is high. Accordingly, Calpine recommends that CARB withdraw the Proposed Amendments to section 95112(i)(1) of the MRR and instead obtain the pertinent information

whenever it is needed to determine a legacy contract allocation pursuant to its existing authority under the Cap-and-Trade Regulation.

### Background

The Mandatory Reporting Rule currently requires facility operators that are applying for legacy contract transition assistance under the Cap-and-Trade Regulation to submit, among other things, “a simplified block diagram depicting the following, as applicable: individual equipment included in the generation system (e.g. turbine, engine, boiler, heat recovery steam generator); direction of flows of energy specified in paragraphs (a)(4)-(5), (b)(2)-(4) and (b)(7)-(8) of this section, with the forms of energy carrier (e.g. steam, water, fuel) labeled; and relative locations of fuel meters and other fuel quantity measurements” for the first year of reporting only. MRR § 95112(a)(6). However, “[i]f the cogeneration or bigeneration system is modified after the initial submission of the diagram, the operator must resubmit an updated diagram to [CARB].” *Id.*

### Proposed Amendments to MRR

The Proposed MRR Amendments would amend the above requirement such that the block diagram must be submitted every year, not just the first year of reporting. Proposed MRR Amendments § 95112(i). Additionally, “[t]he diagram must depict the following elements:

- (A) For the data year, all of the information described in sections 95112(a)(4)-(5), as applicable, regardless of whether the facility operator is itself otherwise subject to sections 95112(a)(4)-(5). This information reflects electricity and thermal energy flows, including information identifying the recipient(s) of the electricity and/or thermal energy. Also report the quantities of any other products provided or sold under the legacy contract, using the units in which they are reported elsewhere in this regulation, if applicable. The diagram must indicate where each of these energy flows or products is measured. In addition, the following information must be included:
  - 1. Each of the amounts reported under section 95112(i)(1)(A) must be labeled indicating whether or not it was provided under the legacy contract; and
  - 2. All thermal energy products must be labeled with the type of thermal energy product (e.g., steam, hot water, chilled water, distilled water).
- (B) The individual equipment included in the system for which the facility operator is applying for legacy contract transition assistance, and other equipment that is not an integral part of that system but produces or consumes energy that is sent to or received from that system and is owned or operated by either the facility

operator<sup>1</sup>. Boilers, individual generators such as heat recovery steam generators, turbines if separate from generators, ice plants, chillers, purifiers and other equipment that meet these criteria must each be shown separately in the diagram. In addition, label each piece of equipment with the amount of fuel consumed (in MMBtu) by that piece of equipment during the data year, if any, and the resulting greenhouse gas emissions as reported elsewhere under this regulation. The diagram must also indicate the fuel meter where this fuel use was measured, and the amount measured.

- (C) An outline showing the boundary of the activities covered by the legacy contract.

*Id.* § 95112(i)(1).

*Calpine's Concern with the Proposed Amendments*

The proposed notation requirements described above would significantly increase the complexity of the block diagram submission. For instance, each piece of equipment must be labeled with the amount of fuel consumed (in MMBtu) by that piece of equipment during the data year, if any, and the resulting GHG emissions as reported elsewhere under the MRR, *even if* the equipment is not an integral part of the system for which the facility operator is applying for legacy contract transition assistance (but produces or consumes energy that is sent to or received from that system). *Id.* § 95112(i)(1)(B). Moreover, the information required regarding all deliveries of thermal energy products would essentially transform the simple block diagram currently required into a highly detailed heat balance. Calpine does not believe the emissions data report and corresponding block diagram requirement are conducive to such a highly detailed exercise regarding documentation of all thermal energy flows (e.g., enthalpy in returned condensate). Reducing all this complex information into block-diagram format presents a cognizable risk of error, due to no lack of diligence on the part of the covered entity, but solely to the fact that the required notations and associated calculations can be incredibly complex.

If a covered entity applying for legacy contract transition assistance were to accidentally make even a minor error in the notation on the block diagram, which is submitted as part of the annual emissions data report, this could serve as grounds for CARB to take enforcement action against the covered entity, including the imposition of significant penalties. Under the MRR, “[e]ach day or portion thereof that any report required by this article remains unsubmitted, is submitted late, or contains information that is incomplete or inaccurate is a single, separate violation.”<sup>2</sup> The risk that the information submitted in block-diagram format could be deemed “incomplete” or “inaccurate” is high. This represents an unwarranted risk to impose upon legacy contract generators, especially because CARB can request pertinent additional information from any

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<sup>1</sup> We note that the phrase “by either the facility” appears to be mistakenly truncated; presumably CARB intended to include the phrase “or any other party” afterwards.

<sup>2</sup> MRR § 95107(b). The information required in block-diagram format would constitute a “report” (“report” includes “any emissions data report, verification statement, or other document required to be submitted to the Executive Officer by this article”). *See id.*

legacy contract applicant via the Cap-and-Trade Regulation. *See* Cap-and-Trade Regulation § 95894(e).<sup>3</sup> This authority under the Cap-and-Trade Regulation permits CARB to request the *exact type* of information reflected in Section 95112(i)(1) of the Proposed MRR Amendments, but does not carry the same degree of risk as would inclusion in the facility’s emissions data report.<sup>4</sup>

Furthermore, CARB may not even need all the detailed information required by the Proposed MRR Amendments to establish the appropriate legacy contract allocation in all circumstances. While Calpine appreciates the opportunity to obtain legacy contract assistance for several of its cogeneration facilities, CARB does not need to understand the entire heat balance for such facilities in order to calculate the appropriate legacy contract allocation pursuant to Section 95894. Given the highly complex and sensitive nature of information that would be required pursuant to the Proposed Amendments and the risk of potential enforcement if any such information should inadvertently prove inaccurate or incomplete in some immaterial respect, Calpine urges CARB to use its existing authority to request any additional information necessary to establish a legacy contract allocation and not finalize proposed Section 95112(i).

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Thank you for the opportunity to submit these comments. Please contact me at 925.557.2238 if you have any questions about these comments.

Sincerely,

/S/

Barbara McBride  
Director, Environmental Services

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<sup>3</sup> “In determining the appropriate values for section 95894(c) and 95894(d), the Executive Officer may employ all available data reported to ARB under MRR and all other relevant data, including invoices, that demonstrate the amount of electricity and legacy contract qualified thermal output sold or provided for off-site use does not include a carbon cost in the budget year for which it is seeking an allocation. *If necessary*, the Executive Officer will solicit *additional data* to establish a representative allocation. The operator of the legacy contract generator with an industrial counterparty and the operator of a legacy contract generator without an industrial counterparty, *must provide the additional data* upon request by the Executive Officer.” Cap-and-Trade Regulation § 95894(e) (emphasis added).

<sup>4</sup> *See* Cap-and-Trade Regulation § 96014(c)(4)-(5) (making it a violation, *inter alia*, if someone “[o]mits material facts from a submittal or record” and defining “material” as a fact that “could probably influence a decision by the Executive Officer, the Board, or the Board’s staff.”). *Compare* MRR § 95107(b) (making each day that any report remains unsubmitted, incomplete or inaccurate a separate violation).