M S R Public Power Agency

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August 2, 2013

Dr. Steven Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: M-S-R Comments on Discussion Draft of Proposed Revisions to the Cap-and-Trade Program Regulations

Dear Steve:

M-S-R Public Power Agency[1] (M-S-R) provides these comments to the California Air Resources Board (CARB) regarding the July 15 Discussion Draft of Proposed Amendments to the Cap-and-Trade Program Regulation. M-S-R limits the scope of these comments to two specific issues – the treatment of the RPS Adjustment as it pertains to compliance with the Renewable Portfolio Standard (RPS) mandates and the proposed definitions of resource shuffling transactions.[2] M-S-R's members are members of the California Municipal Utilities Association (CMUA), and the cities of Redding and Santa Clara are also members of the Northern California Power Agency (NCPA). The individual M-S-R members support comments submitted to CARB by the organizations of which they are members.

RESOURCE SHUFFLING

M-S-R supports the proposed revisions in section 95852(b)(2) that provide examples of "safe harbor" transaction that are clearly not instances of resource shuffling. These kinds of

[1] Created in 1980, the M-S-R Public Power Agency is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R is authorized to acquire, construct, maintain, and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its members.

[2] While M-S-R is not commenting on all proposed changes set forth in the Discussion Draft, that should not be seen as a position for or against any of the proposed changes.

legitimate transactions are properly acknowledged in the Regulation itself in order to give both market participants and the market itself greater certainty. It is important, however, that the prohibition on resource shuffling be carried out in a manner that does not impede other legitimate transactions not specifically set forth in section 95852(b)(2)(A).

As stakeholders have noted on several occasions, there are a number of reasons why a California entity may not import electricity it contracts for out of state, or why electricity from one source may be substituted with electricity from another source before it reaches California's borders, including timing, contractual obligations, transmission availability, and related electricity deliverability issues. The transactions set forth in the Discussion Draft appear to capture many of the types of transactions that would reflect such situations, but not all of them. M-S-R wants to be sure that CARB continues to recognize as yet undefined transactions that do not fall within any of the existing safe harbor provisions, but which should not be deemed resource shuffling, and ensure that the definition of resource shuffling found in section 95802(a)(252) of the Regulation reflects this. Section 95802(a)(252) should be amended as set forth below:

> "Resource Shuffling" means any plan, scheme, or artifice ~~to receive credit based on emissions reductions that have not occurred, involving the delivery of electricity to the California grid~~ undertaken by a First Deliverer of Electricity to substitute electricity deliveries from sources with relatively lower emissions for electricity deliveries from sources with relatively higher emissions resources to reduce its emissions compliance obligation. *Not all substitutions of electricity between sources with different emission levels are resource shuffling, and* ~~R~~resource shuffling does not include substitution of electricity deliveries from sources with relatively lower emissions for electricity deliveries from sources with relatively higher emissions resources when the substitution occurs pursuant to the conditions listed in section 95852(b)(2)(A).

M-S-R, like many California utilities, has taken active and aggressive steps to implement early divestiture from its significant economic interests in non-EPS compliant facilities, such as its ownership interest in the San Juan Generating Station located on New Mexico.[3] However, divestiture of an investment that goes back 30 years and is backed by municipal bonds must be done in manner that recognizes M-S-R's fiduciary duty to its member-ratepayers and bond holders. The divestiture cannot be done in a vacuum, as the ownership interest is part of multi-

3 The San Juan Generating Station emissions exceeds the state's emissions performance standard (EPS), and is, therefore, deemed non-compliant.

state, multi-contract, and multi-party arrangements. The complexities associated with such a divestiture were recognized by CARB in Appendix A to the Regulatory Guidance Document, and M-S-R wants to ensure that all steps taken by entities (such as M-S-R) that hold long-term contracts or ownership shares in facilities that do not meet the EPS and that are attempting to transition out of those contracts are not deemed resource shuffling. In order to fully capture this understanding, section 95852(b)(2)(B)(1) should be revised to clarify that the substitution must be done for the sole purpose of reducing a first deliverer's compliance obligation.

> 95852(b)(2)(B)(1): Substituting relatively lower emission electricity to replace electricity generated at a high emission power plant procured by a First Deliverer under a long-term contract or ownership arrangement, when the power plant does not meet California's EPS, and the substitution is made *for the sole purpose of reducing* ~~*to reduce*~~ a First Deliverer's compliance obligation.

M-S-R also supports formally removing the attestation requirement as proposed in section 95852(b) of the Discussion Draft, which was previously suspended, and recommends that the revision be reflected in the upcoming proposed amendments.

RPS ADJUSTMENT

Section 95852(b)(4)(B) of the Regulation should be amended to clarify the manner in which the RPS Adjustment is claimed for a renewable energy credit (REC) that is not retired during the same calendar year in which the electricity is generated. As evidenced by past comments, M-S-R supports the inclusion of the RPS Adjustment in the Regulations and believes that is necessary for CARB to recognize the important impact that the State's RPS program has on covered entities that are also electric utilities required to comply with the RPS. Since the Regulation was last revised, the California Public Utilities Commission (CPUC) and California Energy Commission (CEC) have moved forward with implementation of the mandated 33% RPS consistent with the provisions of Public Utilities Code sections 399.11, et seq.

The July 15 Notice Availability that accompanied the Discussion Draft states that the modifications to this section are necessary to facilitate the original intent of the provision and clarify requirements to meet the intent.[4] In the October 2011 Final Statement of Reasons (FSOR), Staff noted that the "RPS adjustment provision accomplishes the purpose of reducing a

4 Notice of Public Availability of Cap-and-Trade Discussion Draft and Workshop, p. 9.

deliverer's compliance obligation by accounting for renewable imports that staff previously addressed through the 'replacement electricity' requirements."[5] However, M-S-R believes that the proposed revision, while intending to clarify the original intent, fails to do so.

The Discussion Draft proposes changing the language in section 95852(b)(4) to allow the RPS Adjustment to be utilized by a covered entity as long as the REC is retired (as that term is used within the context of the California RPS program) "during the same calendar year for which the RPS adjustment is claimed." The requirement to retire the REC in the same year the adjustment is claimed does not recognize that the electricity may be imported during a different year than when the associated REC is retired for compliance with the RPS program. The difficulties of matching electricity imports to REC retirement within a single calendar year are complicated by the fact that the RPS program has multi-year compliance periods through 2020, and RECs can be retired at anytime within 36 months of being generated. Requiring a REC to be retired in the same year the electricity is generated is also problematic given the fact that REC itself is not issued by WREGIS at the same time the underlying electricity is generated.

Therefore, any attempt to "annualize" the REC retirement requirement could dissociate the RPS Adjustment from the electricity import. If the proposed changes to section 95852(b)(4) would allow the RPS Adjustment to be claimed at the time the REC is retired without regard to the year in which the underlying electricity was imported/generated, it is not clear how this would be reconciled with the current Mandatory Reporting Regulation (MRR). The MRR requires compliance entities to report emissions for all imports that occurred within the previous calendar year for purposes of calculating the entity's compliance obligation. This is also reflected in section 95852(b)(1)(B) of the Regulation that addresses how emissions with a compliance obligation are calculated, and which reflects data reported under applicable provisions of the MRR.

M-S-R urges CARB to engage in further discussions with stakeholders and Staff from the CEC to fully address this issue. The Cap-and-Trade Regulation needs to be consistent with the RPS program and workable within the construct of the processes employed by WREGIS for the issuance of RECs. Stakeholders need to know that the Cap-and-Trade Regulation properly

5 FSOR, p. 57.

reflects the RPS regulations and accurately acknowledges the associated complexities of the requirements set forth therein. If not clarified, it is possible that inadvertent restrictions on reporting the RPS Adjustment could hinder the ability of utilities that are covered entities under the Cap-and-Trade regulation and subject the State's RPS mandate to maximize their resource commitments in meeting the stringent requirements of both programs.

CONCLUSION

M-S-R appreciates CARB's dissemination of the Discussion Draft, and the opportunity to provide comments on the proposed revisions to the Cap-and-Trade Regulation. M-S-R and its members remain committed to helping California reach its emissions reduction goals and meeting the objectives of AB 32. Because the Cap-and-Trade Program is such a key component of the State's overall emissions reduction strategy, it is important that the elements of the program are designed and implemented in a way that recognizes the requirements and restrictions placed on covered entities by California's other green energy programs – such as the emissions performance standard and renewable portfolio standard – in order to ensure its continued success. M-S-R urges CARB to amend sections 95852(b)(2)(A) and 95802(a)(252) of the Cap-and-Trade Regulation consistent with the Discussion Draft and modifications discussed herein. M-S-R also asks that CARB clarify that the RPS Adjustment need not be claimed at the time the electricity is generated, and reconcile how reporting under the MRR and the provisions of 95852(b)(1) will address this clarification.

Respectfully submitted,

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