



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

December 4, 2007

Mr. Tom Cackette  
Acting Executive Officer  
Air Resources Board  
1001 I Street  
Sacramento, California 95814

Dear Mr. Cackette:

The Metropolitan Water District of Southern California (Metropolitan) is the largest wholesale water supplier in California, providing supplemental water supplies for domestic and municipal uses at wholesale rates to 26 cities and water districts. This supplemental water supplies serves over 18 million consumers within the six county region of southern California (Los Angeles, Orange, Riverside, Ventura, San Diego, and San Bernardino), an area covering nearly 5,200 square miles. Metropolitan's mission is to provide its member agencies with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way. To that end, Metropolitan is a proud member of the California Climate Action Registry (CCAR) and already reports greenhouse gas (GHG) emissions arising from its operations in accordance with CCAR protocols.

Metropolitan is pleased to submit these comments in response to the California Air Resources Control Board's (ARB) Staff Report and Proposed Regulation for the Mandatory Reporting of Greenhouse Gas Emissions. Metropolitan has vital concerns regarding the marked rise in GHG emissions and its adverse impact on the state's snowpack, water demands and water supplies, and looks forward to participating in the important work undertaken by ARB in furtherance of California's landmark GHG emission legislation, AB 32. Metropolitan's selected comments focus on reporting requirements for the electricity sector.

**Retail Provider - Article 1, Section 95102(a)**

As proposed, ARB Staff's<sup>1</sup> regulatory definition of "Retail Provider" in Article 1, Section 95102(a) broadly defines "retail providers" of electric service as:

"an operator that is any electric corporation as defined in Public Utilities Code Section 218, electric service provider as defined in

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<sup>1</sup> All further references to "Staff" are intended to refer to Staff of the ARB.

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Public Utilities Code Section 218.3, public owned electric utility as defined in Public Resources Code Section 9604, community choice aggregator as defined in Public Utilities Code Section 331.1, the Western Area Power Administration, or the California Department of Water Resources.”

ARB staff’s proposed definition deviates from the statutory language in AB 32 (“retail sellers of electricity”) and from the definition suggested by the California Public Utilities Commission (CPUC) and the California Energy Commission (CEC) in their September 6, 2007 Joint Recommendations on Reporting and Verification of Greenhouse Gas Emissions - Order Instituting Rulemaking (Joint Recommendations) (“an entity that provides electricity to end users in California.”) Notably absent from staff’s proposed regulatory definition is the requirement that a “retail provider” actually function as an entity providing electric service to retail customers.

Metropolitan, as a local publicly owned electric utility, falls under the proposed definition of “retail provider” despite its lack of retail customers. Because the proposed definition includes entities that don’t provide retail service, it is misleading and could be a source of future confusion and unforeseen adverse impacts. Therefore we recommend use of the statutory language or definition from the Joint Recommendations to define “retail provider.” If this suggested change was incorporated, Metropolitan would report GHG emissions arising from its operations as a “marketer,” since Metropolitan does fit the definition of a “purchasing/selling entity.”

In the alternative, we understand that some commenters may suggest adding a new reporting category of “wholesale end-users,” to describe entities that purchase energy at wholesale to serve their own load. Metropolitan would support adoption of this reporting category, which accurately describes Metropolitan’s energy functions, and would report under this category if it were adopted.

### **Large Hydroelectric Default Emission Factors**

In apparent response to the Joint Recommendations, Staff has proposed that the ARB adopt regulations that would require retail providers to separately identify their energy purchases made under new contracts with large hydroelectric generating facilities over 30 megawatts (MW) and nuclear generation, so that the ARB can assign a default emission factor of 1,100 lbs CO<sub>2</sub> per electricity megawatt-hour (MWh) to them. (See Section 95111(b)(3)(F)(2) of the proposed regulations and Staff Report at p. C-5.) Although Staff otherwise recommends the ARB calculate emissions associated with retail provider electricity purchases from a known, specified source based on information contained within its database, they nevertheless recommend



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attributing the same emissions factor as they recommend for purchases from unspecified sources to purchases from these zero-emission resources.

The proposed adoption and assignment of such an arbitrary emission factor, when actual emissions are known to be virtually zero, may conflict with California's Administrative Procedure Act (Gov. Code §11340 *et seq.*). The assignment of a default emissions factor when actual emissions are known and calculable is contrary to the express terms of the enabling statute, for AB 32 directs the ARB to adopt regulations to require the reporting and verification of statewide greenhouse gas emissions in order to "ensure rigorous and consistent accounting of emissions" (Health and Safety Code § 38530).

To be "rigorous and consistent," an accounting should be scrupulously accurate, and free from variation or contradiction. Otherwise, it will be difficult to meet AB 32's clear directive that emission reductions be "real, permanent, quantifiable, verifiable, and enforceable by the state board."<sup>2</sup> Assignment of a default emissions factor when actual emissions are known fails to meet the requirement that emissions reporting be accurate.

Staff's proposed regulations would result in inconsistent reporting of emissions from hydroelectric generation facilities. The default emissions factor would apply if energy was purchased from a large hydroelectric facility, but would not apply if the energy were used to serve native load. If a hydroelectric generation facility had a nameplate capacity of 30 MW or greater but was not certified as a California eligible renewable resource, energy sold from that unit would be assigned the default emissions factor, while energy sold from the same size facility that was a certified renewable resource would not. Energy sold under contracts in existence prior to January 2008 would not be subject to the default emissions assignment, but energy sold under new contracts would be assigned the default emissions. Furthermore, despite AB 32's clear direction to adopt regulations that incorporate the standards and protocols developed by the California Climate Action Registry (CCAR) "where appropriate and to the maximum extent feasible," the proposed regulations would assign a default emissions factor to large hydroelectric generation, even though CCAR protocols recognize it as a zero emission resource.<sup>3</sup> Overall, Staff recommendations provide no evidence that the proposed default emission factor accurately reports actual greenhouse gas emissions.

Commissioner Rachelle B. Chong of the CPUC noted the foregoing problems in her Concurrence to the Joint Recommendations. Therein, she suggested an alternative approach that

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<sup>2</sup> Health and Safety Code § 38562(d)(1) as enacted by AB 32.

<sup>3</sup> See CCAR Reporting Form titled "2006 Annual Entity Emissions: Electric Power Generation/Electricity Utility Sector"

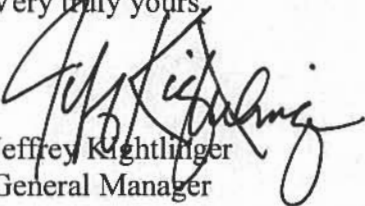
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attributes "actual emissions to all purchases from specified sources." The Commissioner's comments and recommendations cited the "rigorous and consistent accounting" required in AB 32 and section 38562(d)(1) calling for "real, quantifiable and verifiable" greenhouse emission reductions.

For the reasons stated above, Metropolitan recommends that the ARB reject inclusion of section 9511(b)(3)(F)(1)-(2) of Staff's proposed regulations, which would remove the requirement for specialized reporting of large hydropower purchases to which a default emissions factor would be assigned.

Metropolitan appreciates the opportunity to comment on the proposed reporting requirements. Please contact Jon Lambeck at 213-217-7381 if you have any questions.

Very truly yours,



Jeffrey Kightlinger  
General Manager