CRS center for resource solutions

April 28, 2017

Mary Nichols
California Cap-and-Trade Program
California Air Resources Board (ARB)
1001 I Street
Sacramento, CA 95814

Re: Comments of Center for Resource Solutions (CRS) on July 19, 2016 Proposed Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions

Dear Chairman Nichols:

CRS appreciates the opportunity to submit comments on the 45-day proposed changes to the mandatory reporting regulation (MRR). We understand that since these comments will be received after the September 19, 2016 deadline for comments on the 45-day proposed changes, they are considered "late" and ARB Staff is not obligated to respond to them in the Final Statement of Reasons (FSOR). However, we are submitting them to present and respond to new information that has come to our attention since the deadline. We also present new solutions developed in response to this new information. We therefore encourage both the Board and ARB Staff to consider these comments in decisions on the 45-day proposed changes to MRR.

Background

In March and September of 2016, CRS submitted comments on proposed changes to the cap-and-trade regulation explaining importance of the REC reporting requirement for specified imports (see Sec. 95111(g)(1)(M)(3) of the MRR) to reduce the risk of double counting and leakage.[1] There will be double counting of zero-emission power if energy is imported without the REC, counted as zero-emissions specified power, and then the associated REC is counted as zero-emissions by another program. RECs are therefore critical in this context to prevent double counting with other programs and policies, and in fact, to prevent leakage[2] for California as it would allow null power (electricity without RECs or for which the RECs are sold out of state) to be imported without emissions.

[1] March 4, 2016. Comments of Center for Resource Solutions (CRS) in response to February 24, 2016 Workshop on Potential Amendments to the Greenhouse Gas Mandatory Reporting and Cap-and-Trade Regulations. Available online: http://resource-solutions.org/site/wp-content/uploads/2016/03/CRScommentstoARB_3-4-2016.pdf.
September, 19, 2016. Comments of Center for Resource Solutions (CRS) on Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms. Available online: https://resource-solutions.org/wp-content/uploads/2016/10/CRScomment_CTAmendments_9-19-2016.pdf.

[2] California does not appear to provide a clear definition of leakage outside of the context of an offset project (see Sec. 95802(a)(3) and 95802(a)(221) of the cap-and-trade regulation). But if RECs are not required for specified renewable imports, there can be decreased GHG removals outside the cap-and-trade program's boundary due to the effects of the program on RE markets. This appears to meet a general definition of market-shifting leakage. Alternatively, it can be viewed as the state simply failing to account for emissions—allowing emissions to be imported without a compliance obligation or allowing what would otherwise be California's emissions reductions

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We also explained that matching e-tags and RECs in the Western Renewable Energy Generation Information System (WREGIS) cannot currently prevent this double counting:

- Certain parties can see e-tags with RECs in WREGIS but only if the account holder has matched their e-tags and RECs and only if the account holder has chosen to release that information; and
- Even if states or Green-e could require that regulated entities/sellers with WREGIS accounts match e-tags to RECs and make this information available in WREGIS, there would be no way to see if the underlying power associated with RECs was imported into California by a previous or different seller or importer.

To strengthen the REC reporting requirement and further prevent double counting and leakage, we recommended that the list of REC serial numbers associated with specified imports be given to WREGIS and that WREGIS be used to confirm that those RECs were retired in California or by a California user at the time of compliance.

Our previous comments on proposed changes to the cap-and-trade regulation also addressed and provided solutions to administrative challenges associated with REC serial reporting that have been noted by ARB Staff.

Comments

Conversations with ARB Staff since the deadline for comments on 45-day changes have provided us with new information and more detailed explanation of both the intent and interpretation of Sec. 95111(a)(4), the proposed change to Sec. 95111(g)(1)(M)(3), and the relationship between these proposed changes to the MRR and a proposed change to Sec. 95852(b)(3)(D) of the cap-and-trade rule.

ARB Staff's proposed changes to Sec. 95111(g)(1)(M)(3) of the MRR—to clarify that failure to report RECs with specified renewable imports results in a nonconformance that does not affect reported emissions and that, absent other errors, leads to a qualified positive verification statement, rather than an adverse—are based on its interpretation of Sec. 95111(a)(4), which requires that electricity imports be reported as specified source (and that the applicable specified emissions factor be used) if that electricity is from the GPE or the importer holds a contract to obtain power from that resource, and which does not provide further clarification that RECs are also required in the case that the resource is renewable.

Staff is interpreting the fact that Section 95111(a)(4) of the MRR does not explicitly require RECs for specified renewable imports (or, more accurately, does not explicitly exclude renewable energy where the RECs are sold off or not reported from being reported as specified) to mean that it conflicts with current language at Sec 95852(b)(3)(D) of the cap-and-trade regulation, which says that if RECs were created for the electricity imported and reported pursuant to MRR, then the REC serial numbers must be reported and verified pursuant to MRR in order for importers to claim a compliance obligation for delivered electricity based on a specified source emission factor or asset controlling supplier emission factor. To resolve this conflict, Staff has chosen to propose removal of Sec. 95852(b)(3)(D) of the cap-and-trade rule, rather than add clarification at Sec. 95111(a)(4) of the MRR that RECs are required where the electricity is from a renewable resource. This choice means that RECs are not required for specified

to be exported and counted in other states/programs. For each MWh of RE that is double counted, there is one less MWh of RE and fewer emissions reductions by the marginal emissions rate.

renewable imports and that nonconformance with the REC reporting requirement in the MRR results in a qualified positive verification statement, hence the need for proposed clarification to Sec. 95111(g)(1)(M)(3). It also allows double counting and leakage.

Another development since the comment deadline is a memo from WREGIS to its account holders dated April 19, 2017 with the subject "WREGIS Certificates and EIM Crossover."[3] This memo was the result of lengthy discussion at WREGIS and among its members and advisors regarding the treatment of imported renewable electricity bidding into the EIM claimed as specified renewable imports under the MRR and cap and trade regulation and the resultant requirement for REC ownership and retirement.

This memo is further confirmation that the direct emissions attributes of RE generation are contained in WREGIS certificates, and that a claim on this attribute (the emissions or emissions factor associated with RE) represents a claim on the REC and requires REC retirement in WREGIS: "In the case of carbon attributes being claimed by a buyer of the energy, the REC would need to be retired in WREGIS as one or more defined attributes would be used by the buyer."

This memo also addresses how California's cap-and-trade program and GHG accounting and reporting under the MRR affects RECs and RE delivery claims. It confirms that REC retirement in WREGIS is required for energy that is assigned a specified renewable emissions factor to calculate emissions associated with delivered electricity for the purposes of cap-and-trade compliance: "WREGIS account holders bidding energy into the EIM should be prepared to retire the RECs associated with that energy."

We provide responses and new recommendations in response to this information below.

Recommendations

1. We recommend additional changes to Sec. 95111(a)(4) to align with Sec. 95111(g)(1)(M) as well as Sec. 95852(b)(3)(D) of the cap-and-trade regulation.

We recommend the following changes (in red) to Sec. 95111(a)(4) to align the MRR with the current requirement at Sec. 95852(b)(3)(D) of the cap-and-trade regulation, which we have recommended keeping in that regulation.[4]

> (4) Imported Electricity from Specified Facilities or Units. The electric power entity must report all direct delivery of electricity as from a specified source for facilities or units in which they are a generation providing entity (GPE) or have a written power contract to procure electricity, and a GPE must report imported electricity as from a specified source when the importer is a GPE of that facility, except where the facility or unit is a renewable energy facility or unit, or where the power contract is with a renewable energy facility or unit, and the RECs associated with electricity generated, directly delivered, and reported as specified imported electricity have not been reported in accordance with Sec. 95111(g)(1)(M). When reporting imported electricity from specified facilities or units, the electric power entity must disaggregate electricity deliveries and associated GHG emissions ~~by facility or unit and by generation source first point of receipt~~, as applicable. The reporting entity must also report total GHG emissions and MWh from specified sources and the sum

[3] https://www.wecc.biz/Administrative/WREGIS%20EIM%20Memo%2020170419.pdf.
[4] See CRS comments on 45-day proposed changes to the cap-and-trade regulation, September 19, 2016. Also see CRS Supplemental Comments on 45-day proposed changes to the cap-and-trade regulation, April 28, 2017.

of emissions from specified sources explicitly listed as not covered pursuant to section 95852.2 of the cap-and-trade regulation. Seller Warranty: The sale or resale of specified source electricity is permitted among entities on the e-tag market path insofar as each sale or resale is for specified source electricity in which sellers have purchased and sold specified source electricity, such that each seller warrants the sale of specified source electricity from the source through the market path.

2. If our recommended changes to Sec. 95111(a)(4) above ARE accepted (see recommendation no. 1), then we recommend removing proposed changes to Sec. 95111(g)(1)(M)(3) that are no longer applicable. We also recommend other changes to Sec. 95111(g)(1)(M)(3) that require reported REC serial numbers associated with specified imports be given to WREGIS and that WREGIS be used to confirm that those RECs were retired in California or by a California user at the time of compliance.

The change to Sec. 95111(a)(4) that we proposed above would mean that failure to report REC serial numbers associated with specified source imported electricity from an eligible renewable energy resource would represent a nonconformance that would affect reported emissions and would therefore result in an adverse verification statement. In this case, the specified source emissions factor could not be assigned by ARB to calculate emissions associated with imported electricity unless the RECs are reported. This would nullify Staff's proposed change to Sec. 95111(g)(1)(M)(3).

Furthermore, we suggest other revisions to this section to strengthen the requirement using WREGIS.

If our recommended changes to Sec. 95111(a)(4) above (see recommendation no. 1) ARE accepted, then we recommend the following changes (in red) to Sec. 95111(g)(1)(M)(3).

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~~. ARB will provide these REC serial numbers to administrators of the Western Renewable Energy Generation Information System (WREGIS) to confirm that those RECs have been placed in a retirement subaccount for use in California. ~~Failure to report REC serial numbers associated with specified source imported electricity from an eligible renewable energy resource represents a nonconformance with this article and in itself will not result in an adverse verification statement. In such cases, the specified source emission factors assigned by ARB must still be used to calculate emissions associated with the imported electricity.~~

3. If our recommended changes to Sec. 95111(a)(4) above (see recommendation no. 1) are NOT accepted, we recommend additional revisions to Sec. 95111(g)(1)(M)(3).

We recommend changes to Sec. 95111(a)(4) above that would nullify Staff's proposed clarification to Sec. 95111(g)(1)(M)(3). But, if our recommended changes to 95111(a)(4) are not accepted, additional clarification beyond Staff's proposed changes to Sec. 95111(g)(1)(M)(3) is needed. According to ARB Staff, verification requirements provide that if the verifier identifies a nonconformance that does not affect emissions which is not corrected when the verification statement is submitted, the verifier must submit a "qualified positive verification statement." In this case, the reporting entity must undergo a "full verification" the following year. A full verification is one which requires a site visit and review primary source data, create a sampling plan from scratch, etc. If the reporting entity had been in full conformance with the rule, they would be eligible for a "less intensive verification" (defined at Sec. 95102(a)(271)).

Therefore, if our proposed changes to Sec. 95111(a)(4) above (see recommendation no. 1) are NOT accepted, we recommend the following changes (in red) to Sec. 95111(g)(1)(M)(3).

> 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. Failure to report REC serial numbers associated with specified source imported electricity from an eligible renewable energy resource represents a nonconformance with this article ~~and in itself will not result in an adverse verification statement~~. In such cases, the specified source emission factors assigned by ARB must still be used to calculate emissions associated with the imported electricity. Absent other nonconformances that affect emissions, this will result in a qualified positive verification statement and the reporting entity must undergo a full verification the following year.

Please feel to contact us with any questions about these comments, or if we can otherwise be of assistance.

Sincerely,

Todd Jones
Senior Manager, Policy and Climate Change Programs