

Communications with Mary Nichols
Around December 10, 2013 Email
"consumer fraud" – **See P. 11 of 12**

From: "Nichols, Mary D. @ARB" <mnichols@arb.ca.gov>
Subject: **RE: Underming ARB's mission?**
Date: February 15, 2014 at 3:03:40 PM PST
To: Jim Phelps <jmphelps@webperception.com>

Yes, I would appreciate it if you could stick to the emails. ARB is pretty busy trying to implement AB32 and our clean air laws; we tried to respond to your inquiry and agreed with your basic point but don't have the legislative authority or bandwidth to engage much beyond that.

From: Jim Phelps [jmphelps@webperception.com]
Sent: Saturday, February 15, 2014 1:44 PM
To: Nichols, Mary D. @ARB
Subject: Re: Underming ARB's mission?

If you are referring to email exchanges from you and staff, OK. But I haven't submitted any other letters to ARB. It sounds as though I should refer to your emails when discussing MCE issues in public.

Thanks,
Jim Phelps

From: "Nichols, Mary D. @ARB" <mnichols@arb.ca.gov>
Subject: **Re: Underming ARB's mission?**
Date: February 15, 2014 at 11:21:19 AM PST
To: Jim Phelps <jmphelps@webperception.com>
Cc: Jim Phelps <jmphelps@webperception.com>

Jim,
I did not respond to your last letter because I believe I already answered the exact same questions in a previous letter from you. As did my staff.
Sincerely,
Mary Nichols

Sent from my iPhone

Communications with Mary Nichols
Around December 10, 2013 Email
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From: "Jim Phelps" <jmphelps@webperception.com>
Subject: **Undermining ARB's mission?**
Date: February 14, 2014 at 5:59:29 PM PST
To: "Nichols, Mary D. @ARB" <mnichols@arb.ca.gov>
Cc: "Jim Phelps" jmphelps@webperception.com

Hi Mary --

It has been two months since I sent a formal letter to your Shannon Stewart requesting your response to the practice of using Renewable Energy Certificates in order to report cleaner-than-actual greenhouse gas emission rates. Community choice aggregator Marin Clean Energy (MCE), a multi-jurisdictional retail provider in northern California bases the majority of its clean energy upon REC-washed brown power. MCE appears to be aggressively undermining AB 32.

MCE employs the following claims and practices:

1. For 2012 MCE will REC-wash 41% of its total portfolio with Unbundled and Firm & Shape RECs;
2. MCE claims to follow standardized GHG emissions accounting (I do not find any MRR emissions reporting for them);
3. MCE cites Varshney & Associates AB 32 compliance cost estimates when selling its energy to prospective municipalities that are considering purchasing energy from MCE, or becoming a governing member of MCE;
4. MCE claims ARB sponsors and endorses Varshney.

With respect to the last item above, I notice that ARB refers to Varshney as “schlock science.” http://www.arb.ca.gov/cc/cleanenergy/clean_fs.htm (pdf attached).

By virtue of its Opt Out mechanism, MCE will eventually be one of the largest retail electric providers in California, automatically switching consumers from IOU service to MCE service.

Please let me know when I might expect your response to my December letter (attached). I'd be pleased to meet with you at your convenience in Sacramento if you would like to learn more about how Community Choice Aggregators are undermining AB 32.

Very truly yours,
Jim Phelps

JIM PHELPS
NOVATO, CALIFORNIA
jmphelps@webperception.com

December 11, 2013

Mary D. Nichols, Chairman
Attention: Shannon Stewart
California Air Resources Board
1001 "T" Street
Sacramento, CA 95814

Subject: AB 32 / Clean Energy Emissions – Retroactive Retirement of RECs

Dear Ms. Nichols:

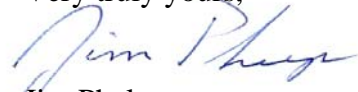
I would appreciate your clarification regarding AB 32 and air regulations as relates to a developing practice where annual electricity emission rates are manipulated by retroactively purchasing and retiring Renewable Energy Certificates. This use of RECs is practiced by clean energy companies in order to give the appearance of delivering clean energy and clean air.

Here are the mechanics – The local clean energy company waits for its competitor, PG&E, to declare its annual emission rate. The clean company then purchases the necessary number of vintage RECs to undercut PG&E's rate and retroactively retires the RECs for the year in question. It then advertises a lower-than-PG&E emission rate.

The clean energy company refers to this process as a "true-up" because it claims it made a long-ago commitment to deliver a lower emission factor than PG&E. The company does not disclose to consumers that it is actually delivering (brown) system power.

Does this "true-up" practice have anything to do with AB 32 or air regulations?

Very truly yours,


Jim Phelps

Communications with Mary Nichols
Around December 10, 2013 Email
"consumer fraud" – **See P. 11 of 12**

From: Jim Phelps <jmphelps@webperception.com>
Subject: Re: AB21, AB33, AB32
Date: January 30, 2015 at 2:50:59 PM PST
To: "Nichols, Mary D. @ARB" <mary.nichols@arb.ca.gov>

Thanks Mary!

From: "Nichols, Mary D. @ARB" <mary.nichols@arb.ca.gov>
Subject: Re: AB21, AB33, AB32
Date: January 30, 2015 at 12:49:36 PM PST
To: Jim Phelps <jmphelps@webperception.com>
Cc: "Sahota, Rajinder@ARB" <rsahota@arb.ca.gov>

I am forwarding your messages to the person in charge of designing the relevant next stage of the scoping plan. She may have some information for you.

Sent from my iPhone

From: Jim Phelps <jmphelps@webperception.com>
Subject: AB21, AB33, AB32
Date: January 30, 2015 at 10:55:54 AM PST
To: "Nichols Mary D. @ARB" <mnichols@arb.ca.gov>
Cc: Jim Phelps <jmphelps@webperception.com>

Hi Mary --

Thanks very much for your previous correspondences regarding the (improper) inclusion of unbundled RECs by clean energy companies who claim to adhere to AB32. These entities continue to undermine AB32, and are monitoring AB21, AB33, and the new section of AB32. In light of the abuse of unbundled RECs, I wonder if CARB might include a footnote in its updated scoping plan, and in emission targets, to immediately exclude the use of "voluntary" unbundled renewable energy certificates when determining greenhouse gas emissions and emission rates? "Voluntary" unbundled RECs are the clean energy companies workarounds on REC limits imposed by RPS.

Presently there is no directive on voluntary RECs that applies specifically to emission rates, or in this case, Pounds of CO₂-e per Megawatt-hour. A majority of the "clean" energy in these clean energy suppliers' portfolios is system power that is simply green-washed with "voluntary" RECs. Consumers don't know what is happening. The result is they purchase "clean" energy that is loaded with GHGs and does not reduce global warming. Can you help?

Thanks,
Jim Phelps

Communications with Mary Nichols
Around December 10, 2013 Email
"consumer fraud" – **See P. 11 of 12**

From: "Stewart, Shannon@ARB" <snstewar@arb.ca.gov>
Subject: Re: AB 32 -- retroactive retirement of RECs
Date: January 20, 2014 at 3:48:32 PM PST
To: "jmphelps@webperception.com" <jmphelps@webperception.com>

You're welcome! I'll be in touch

Shannon Stewart
Administrative Assistant to Chairman Nichols
Air Resources Board
916.322.3312 (p)
916.327.5748 (f) snstewar@arb.ca.gov

From: Jim Phelps [<mailto:jmphelps@webperception.com>]
Sent: Monday, January 20, 2014 03:46 PM Pacific Standard Time
To: Stewart, Shannon@ARB
Subject: Re: AB 32 -- retroactive retirement of RECs

OK, thanks!

From: "Stewart, Shannon@ARB" <snstewar@arb.ca.gov>
Subject: Re: AB 32 -- retroactive retirement of RECs
Date: January 20, 2014 at 3:23:18 PM PST
To: "jmphelps@webperception.com" <jmphelps@webperception.com>

Hello -

I'll check our correspondence que when I get back to the office tomorrow. We are closed today in observance of Martin Luther King, Jr Day.

My apologies for the delay; we have hundreds of letters to respond to and try to provide the most knowledgeable/helpful reply possible.

Shannon Stewart
Administrative Assistant to Chairman Nichols
Air Resources Board
916.322.3312 (p)
916.327.5748 (f) snstewar@arb.ca.gov

Communications with Mary Nichols
Around December 10, 2013 Email
“consumer fraud” – **See P. 11 of 12**

From: Jim Phelps [<mailto:jmphelps@webperception.com>]
Sent: Monday, January 20, 2014 11:48 AM Pacific Standard Time
To: Stewart, Shannon@ARB
Subject: Fw: AB 32 -- retroactive retirement of RECs

Hi Shannon --

I'm hoping my letter (attached) wasn't lost....

Thanks,
Jim Phelps

JIM PHELPS
NOVATO, CALIFORNIA

jimphelps@webperception.com

December 11, 2013

Mary D. Nichols, Chairman
Attention: Shannon Stewart
California Air Resources Board
1001 "T" Street
Sacramento, CA 95814

Subject: AB 32 / Clean Energy Emissions – Retroactive Retirement of RECs

Dear Ms. Nichols:

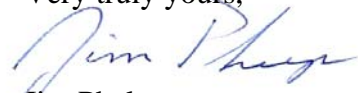
I would appreciate your clarification regarding AB 32 and air regulations as relates to a developing practice where annual electricity emission rates are manipulated by retroactively purchasing and retiring Renewable Energy Certificates. This use of RECs is practiced by clean energy companies in order to give the appearance of delivering clean energy and clean air.

Here are the mechanics – The local clean energy company waits for its competitor, PG&E, to declare its annual emission rate. The clean company then purchases the necessary number of vintage RECs to undercut PG&E's rate and retroactively retires the RECs for the year in question. It then advertises a lower-than-PG&E emission rate.

The clean energy company refers to this process as a "true-up" because it claims it made a long-ago commitment to deliver a lower emission factor than PG&E. The company does not disclose to consumers that it is actually delivering (brown) system power.

Does this "true-up" practice have anything to do with AB 32 or air regulations?

Very truly yours,


Jim Phelps

Communications with Mary Nichols
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----- Original Message -----

From: [Stewart, Shannon@ARB](mailto:Stewart,Shannon@ARB)

To: jmphelps@webperception.com

Cc: [Smith, Courtney@ARB](mailto:Smith,Courtney@ARB) ; [Welch, Virgil@ARB](mailto:Welch,Virgil@ARB) ; [McCarthy, Ryan@ARB](mailto:McCarthy,Ryan@ARB)

Sent: Wednesday, December 11, 2013 2:14 PM

Subject: FW: AB 32 -- retroactive retirement of RECs

Hi Mr. Phelps –

I would be happy to forward the attached to the Chairman for a response!

We'll be in touch!

Shannon Stewart
Administrative Assistant to Chairman Nichols
Air Resources Board
916.322.3312 (p)
916.327.5748 (f)
916.206.7885 (bb)
snstewar@arb.ca.gov

JIM PHELPS
NOVATO, CALIFORNIA
jimphelps@webperception.com

December 11, 2013

Mary D. Nichols, Chairman
Attention: Shannon Stewart
California Air Resources Board
1001 "T" Street
Sacramento, CA 95814

Subject: AB 32 / Clean Energy Emissions – Retroactive Retirement of RECs

Dear Ms. Nichols:

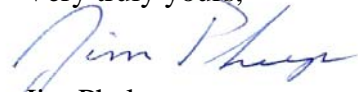
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Very truly yours,


Jim Phelps

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From: "Nichols, Mary D. @ARB" <mnichols@arb.ca.gov>
Subject: RE: No-burn day solution
Date: December 11, 2013 at 11:59:13 AM PST
To: Jim Phelps <jmphelps@webperception.com>

Thanks for asking. I would prefer to send you something a little more formal in writing, in response to a question.

From: Jim Phelps [<mailto:jmphelps@webperception.com>]
Sent: Wednesday, December 11, 2013 9:50 AM
To: Nichols, Mary D. @ARB
Subject: Re: No-burn day solution

Hi Mary --

I'd like to approach our local clean energy company and reference your email -- is that okay, or would you prefer that I send a letter to you at ARB in Sacramento for a response?

Thanks,
Jim

----- Original Message -----

From: [Jim Phelps](#)
To: [Nichols, Mary D. @ARB](#)
Sent: Tuesday, December 10, 2013 10:02 AM
Subject: Re: No-burn day solution

Okay. I'll stay on this on my end. Thanks for your thoughts and be sure to honor those No-Burn days!

Jim

Communications with Mary Nichols
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From: "Nichols, Mary D. @ARB" <mnichols@arb.ca.gov>
Subject: Re: No-burn day solution
Date: December 10, 2013 at 9:49:58 AM PST
To: Jim Phelps <jmphelps@webperception.com>

Whatever they are doing, it has nothing to do with AB32 or air regulations it may be consumer fraud, but that's not my jurisdiction.

Sent from my ARB iPhone

On Dec 10, 2013, at 9:44 AM, "Jim Phelps" <jmphelps@webperception.com> wrote:

Hi Mary --

I am confused and would appreciate your clarification. You write that RECs in California are not used for GHGs. However, the use of RECs is exactly how our local clean energy company "out-greens" everyone. For instance, the clean energy company waits for PG&E to declare its annual emission rate, then the company purchases applicable vintage RECs and retroactively retires them in order to report a lower-than-PG&E emission rate. The clean energy company reports those retroactive RECs rather than the actual system power that it purchases for consumers. The clean energy folks refer to this process as a "true-up."

Am I missing something?

Thanks,
Jim Phelps

----- Original Message -----

From: Nichols, Mary D. @ARB

To: Jim Phelps

Sent: Tuesday, December 10, 2013 7:43 AM

Subject: Re: No-burn day solution

Cute, but we don't use RECs in California for either ground-level air pollution or GHGs. It is true that if a power plant needs a permit to construct or modify a large pollution source they will have to buy offsets to cover any new pollution they will emit-- either from within their own operation or through a bank created by the air district using credits from other entities that have shut down.

While it might be possible to use a permit system for individual fireplaces (and sell the permits?) all that does is raise money. The problem is that smoke is not healthy to breathe. So for the sake of children, elderly and people with heart and lung disease, fires are restricted in some areas to times when the wind will dilute and disperse rather than trapping the pollution where everyone is exposed to it.

PS- I have a fireplace in my house. I love to have a fire around the holidays.

Sent from my iPhone

Communications with Mary Nichols
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On Dec 9, 2013, at 2:03 PM, "Jim Phelps" <jmphelps@webperception.com> wrote:

Hi Mary --

I have a win-win solution for no-burn days. RECs. Consumers could buy two Renewable Energy Certificates each year and show them to any compliance agency that asserts a residence is violating no-burn days. After all, most "clean energy" biomass power plants burn wood and emit CO₂ and particulate matter (P.M.) while they also produce RECs that are often traded and used by energy companies to zero-out emissions. If RECs are good enough for power companies to scrub emissions, aren't they good enough for households to do the same thing while enjoying a winter fire?

Please let me know your thoughts.

Thanks,

Jim Phelps

PS. Here's the math for how many RECs are required when burning wood:

Biomass Power Plant net heat rate = ~ 14,000 Btu/KWh = 14,000,000 Btu/MWh.

One Std. chord of wood (annual average consumption per household) = 20,000,000 Btu.

$20,000,000 / 14,000,000 = 1.48$ RECs equivalency (say 2 RECs = 52% conservative, in favor of atmosphere).