

November 23, 2009

**The Honorable Mary Nichols, Chairman  
Mr. James Goldstene, Executive Officer  
Mr. Gary Collord  
Mr. Dave Mehl  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814**

**Re: ARB Staff's Renewable Energy Standard Concept Outline**

Dear Ms. Nichols, Mr. Goldstene, Mr. Mehl, and Mr. Collord,

Thank you for the opportunity to submit these initial comments on the Proposed Concept Outline for the California Renewable Electricity Standard (RES Outline). The Sacramento Municipal Utility District (SMUD), the second largest publicly owned utility in the state, appreciates the work of the Air Resources Board (ARB) staff, and their colleagues at the California Energy Commission (CEC) and California Public Utilities Commission (CPUC) to develop this initial concept for the Renewable Energy Standard (RES) pursuant to Executive Order S-21-09. SMUD submits comments on the areas of the RES Outline where ARB staff requested feedback.

**A. Applicability Of the Renewable Energy Standard**

SMUD agrees with the RES Outline proposal that the RES should apply to California electrical corporations, electric service providers, community choice aggregators, electrical cooperatives, and local publicly-owned electric utilities.

SMUD also believes it reasonable, as proposed by the RES Outline, to consider a threshold for application of the RES to reduce the administrative burden on the smallest regulated parties. While the 500 GWh/year threshold example seems to be a reasonable initial number, the ARB should determine the appropriate threshold by weighing the principle of applying the RES to as much of the State's retail sales as possible against the higher proportionate costs to smaller regulated entities. The ARB also needs to determine how the threshold should apply to new entities, and to growth and decline of sales in existing entities.

SMUD does not believe that it is appropriate or reasonable to include the Western Area Power Authority (Western) in the RES. Western is a federal entity that typically does not sell electricity at retail and largely sells power at wholesale to state parties that will be

regulated under the RES. So, in practice, Western is a wholesale energy generator not a retail electricity provider. Thus, including Western in the RES is both unnecessary, as most electricity sales are already covered through the downstream customers, and complicated, since rules and requirements would need to be worked out to cover Western's RES obligation.

## **B. Relation to the RPS**

SMUD supports the concept in the RES Outline that compliance with the RES timeframe and other implementation requirements would apply independently of California's 20 percent Renewables Portfolio Standard (RPS). SMUD notes that at the workshop ARB staff appeared sensitive to the need to base as much of the RES as appropriate on the structures and processes already in place for the RPS, to avoid unnecessary complication in the State's renewable marketplace and policies.

California's current RPS includes policies for the publicly-owned utilities (POUs) that are similar to, but independent from, the RPS policies in place for the investor-owned utilities under CPUC oversight. Both SMUD, and the POUs in aggregate, are making great strides implementing the RPS under these policies. SMUD is on track to achieve a 20% RPS by 2010, and the POUs in aggregate also expect to achieve this target.<sup>1</sup> As the ARB considers developing a statewide RES based upon structures and processes already in place, SMUD recommends that the successful POU policies for renewable procurement be continued with the RES. Any movement toward statewide conformity under the RES should consider the POU policies as a potential basis, rather than the more complicated and -- to date -- less successful IOU model.

## **C. Resource Type Eligibility**

SMUD supports the concept in the RES outline that eligible resources under the RPS would continue to remain eligible under the RES. At the same time, SMUD appreciates ARB staff's openness to evaluating other technologies and the current limits placed upon certain RPS technologies. For purposes of regulatory certainty and for avoiding marketplace confusion, SMUD believes that there should be only marginal, not dramatic changes in potential resource eligibility. Therefore, SMUD agrees with the RES Outline statement that large hydroelectric and nuclear generating technologies should not be eligible under the RES.

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<sup>1</sup> "In 2010, the largest 15 publicly owned utilities plan to increase renewable energy supplies to ... equal 21 percent of all retail sales." *An Assessment of Resource Adequacy and Resource Plans Of Publicly Owned Utilities in California*, California Energy Commission Staff Report, CEC 200-2009-019.

That said, SMUD notes that there are differing protocols about what resources are considered eligible for the RPS in the State, with POUs generally having more liberal and flexible definitions of eligibility than established in state law for the IOUs. SMUD asserts that the ARB should consider carefully how these existing RPS eligibility requirements may be changed under the RES. While SMUD has procured most of its renewable resources consistent with the IOU-specific definition of resource eligibility, other POUs have established their own definitions of resource eligibility, and have been procuring renewables under those definitions for years. The ARB should be cognizant that any dramatic shifts in eligibility for these entities as they move from the existing RPS in 2010 to the RES in 2012 may be difficult to comply with, at least initially, and thus provides good reason for at least a transition period in the early years of the RES. Alternatively, the ARB could consider defining eligibility for the RES in such a manner that there is statewide conformity, but is based upon a mixture of current RPS definitions that causes the least regulatory and market disruption.

SMUD also notes that there are specific elements of RPS eligibility that are reasonable for ARB to consider modifying under the RES. For example, SMUD strongly supports the proposal in the RES outline that unbundled RECs, or 'REC-only transactions', would be fully eligible for the RES. Under the current IOU RPS policy overseen by the CPUC unbundled RECs are not clearly eligible, but some POUs accept unbundled RECs as part of their RPS efforts. Allowing unbundled RECs is an example, already supported in the RES Outline, of how the ARB could define eligibility to achieve statewide conformity under the RES with minimal regulatory and market disruption.

In addition, the current RPS law prevents eligibility of out-of-state small hydro facilities that were on-line before January 1, 2005 unless the electricity is incremental, from an expansion or repowering, or the facility was part of the existing baseline of renewable energy resources of a retail seller. SMUD and the other POUs are not retail sellers, and so have no legally established baseline other than as may have been established by their governing boards. Again, differences in the RPS among the IOUs and the POUs should be carefully considered by the ARB and structured for the RES to minimize market disruption and maximize flexibility. SMUD suggests that the ARB consider establishing a common baseline for the RES at a recent historical date such as January 1, 2009 – to capture resources that may be already procured as part of the RPS but avoid opening the door to further procurement under diverse eligibility rules.

Another small hydro issue that ARB may take under consideration for the RES is the eligibility of new small hydro facilities that are associated with enhanced or improved stream flow. Current RPS law for the IOUs limits new small hydro to those facilities that '... do not cause a *change* in the volume or timing of stream flow.' This language appears to prevent eligibility of a facility that causes or is associated with a *positive* change in the volume or timing of stream flow. SMUD supports policies that avoid environmental damages from new small hydro facilities. Thus, a facility that improves the environment by enhancing flow or improving timing should be eligible for the RES, even

if prevented by a literal reading of current RPS law. This literal reading need not constrain RES policies established by the ARB. For example, one result of a relicensing proceeding for a hydro facility or system is an agreement to increase stream flows in a particular area, and this increased flow could be used for additional small hydro power in addition to improving the stream environment.

#### **D. Resource Location Eligibility**

SMUD supports the concept in the RES Outline that any facility that meets the resource eligibility criteria should be eligible for the RES regardless of its location in-state or out-of-state, so long as it is within and connected to the Western Electricity Coordinating Council (WECC) transmission system.

Should a deliverability requirement be adopted under the RES as has been required under the RPS, SMUD strongly supports continuation of the current firming and shaping policy allowed under RPS law as reflected in the CEC's *RPS Eligibility Guidebook*. These firming and shaping policies allow intermittent out-of-state resources to compete with similar in-state resources without discrimination, and thereby lead to the ability to achieve the RES goals at lower overall cost to California electricity customers.

SMUD also recommends that the ARB consider how the current RPS law treats imported power from the perspective of the environmental conditions applied to that power. These conditions in RPS law are difficult to reasonably interpret, and ARB expertise in understanding how environmental criteria from a different jurisdiction should and can be applied may bring greater clarity to this area than current guidelines establish.

#### **E. Compliance Metric: MWh or GHG**

SMUD strongly recommends that the ARB continue to employ a MWh metric for measuring RES compliance, as used in the RPS. A GHG emissions metric alternative, as discussed in the RES Outline, would either add significant additional complication to the RES as differing GHG signatures are developed for each resource, location, and generation period, or would be a simple factor that adds no meaning beyond the MWh metric. In either case, changing to a GHG emissions metric for the RES as opposed to the MWh metric for the RPS would increase regulatory burden and market confusion, since MWh would still need to be tracked and tabulated for RPS compliance.

SMUD understands the necessity of considering alternatives during a regulatory proceeding, but does not support the GHG emissions metric for the RES, and believes that the ARB has authority to establish metrics under AB 32 that are not measured directly on a mass basis. AB 32 does not require that emissions reductions measures

be expressed in tons of carbon dioxide equivalent, but rather that such measures be designed to reduce emissions. This has been recognized by ARB in the complementary measures adopted in the Scoping Plan.

#### **F. Compliance Period: Annual or Otherwise**

SMUD does not support annual compliance periods for the RES. Compliance periods should be no more frequent than every 3 years, as in the proposed cap-and-trade regulation. SMUD would support ARB consideration of longer compliance periods, given the lumpiness of resource procurement and the long lead times necessary for resource and transmission permitting and construction. Regardless of the compliance period structure chosen, SMUD supports annual reporting requirements so that all stakeholders can adequately gauge how RES procurement and generation is proceeding.

#### **G. Flexible Compliance Mechanisms**

SMUD supports consideration of flexible compliance mechanisms that can reflect circumstances beyond the control of utilities and other regulated parties that could result in a shortfall of resources or a delay in compliance under the RES. Regulated entities should not be penalized when, despite their best faith efforts, lack of necessary transmission, delays in project permitting or siting, or the plain unavailability of sufficiently cost-effective resources, prevents them from achieving RES compliance in a particular period. SMUD encourages the ARB to consider a structure where, by 'looking forward', achievement of compliance can be reasonably projected because of steel in the ground – projects or related necessary transmission that is in progress. Such physical evidence of resource progress is one type of evidence of good faith procurement toward compliance.

#### **H. Excluded Load**

In Attachment 3, the RES Outline raises the concept of 'excluded load' – where some amount of electrical load is excluded from the RES obligation calculations. It is not clear to SMUD whether this concept is raised generally, or only within the construct of the 'GHG Metric Calculations' that is the subject of Attachment 3, but SMUD urges that the ARB exhibit caution in considering load that may be excluded from RES obligation. With regard to the the three examples of possible excluded load – electricity from combined heat and power resources, electricity from net-metered distributed generation, and electricity used to charge electric vehicles, SMUD has the following comments.



First, SMUD believes that electricity from net-metered distributed generation is already effectively excluded from the RES as such generation generally reduces retail sales and commensurately an entity's RES obligation to achieve renewable resources equaling a percentage of those sales. Hence, no separate exclusion calculation is necessary for net-metered load used on site. To the extent that distributed generation exports power to the grid, new state law requires that that power be purchased along with any renewable attributes, so this generation, and the subsequent off-site load that it serves, should not be excluded from the RES.

Similarly, CHP resources will generally be providing a significant portion of their electricity, if not all of it, to the on-site host to reduce their electricity purchases. Hence, much of the generation from these facilities also reduces retail sales and the commensurate RES obligation. To the extent that these facilities are exporting power to the grid they are serving load that should be covered by the RES – excluding this load will be complicated and could lead to retail disclosure inconsistencies that will be confusing to consumers.

Finally, while SMUD understands the appeal of excluding load from electric transportation from the RES obligation, since a growing load for electric transportation makes the challenging RES target even harder to meet, SMUD does not think of this as a clear cut issue. Modeling GHG reductions from electric transportation over time, and the resulting GHG emission signature for electricity as a fuel that underlies calculation of LCFS credits, assumes that the electricity generation that supplies electric vehicles will become cleaner over time in response to State policies. Excluding electric transportation load from the RES will likely establish a perverse incentive to preserve an entity's renewable resources to serve obligated load, leaving conventional resources to serve the excluded load. Such a result could undermine claims about the GHG reductions from transportation electrification and may put a damper on this nascent market.

In closing, SMUD again expresses its appreciation of the hard work by ARB staff in the initial crafting of the RES, and for the opportunity to submit these comments. We look forward to participating throughout the development of the RES regulations.

Respectfully submitted,

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Senior Attorney