M E M O R A N D U M

TO:	California Air Resources Board
FROM:	Modesto Irrigation District Redding Electric Utility Turlock Irrigation District
SUBJECT:	Proposed Regulation Order for a California Renewable Electricity Standard
DATE:	July 26, 2010

The Utilities

Modesto Irrigation District ("MID"), Redding Electric Utility ("REU"), and Turlock Irrigation District ("TID"), collectively the "Utilities," appreciate the opportunity to comment on the "Proposed Regulation Order for a California Renewable Electricity Standard" (PRO) developed by the California Air Resources Board (CARB).

MID, REU, and TID are local publicly owned electric utilities. MID and TID are irrigation districts located in the Central Valley, while REU is a municipal utility within the City of Redding. MID serves over 110,000 electric customers with a peak load around 620 Megawatts (MW). REU serves 42,000 customers with a peak load of 247 MW. TID serves about 100,000 electric customers with a peak load of approximately 600 MW. The Utilities maintain similar resource mixes, including hydroelectric, eligible renewable resources and fossil fuel sources. MID anticipates it will meet about 18% of its retail sales with eligible renewable energy in 2010 and will begin to meet over 27% of its retail energy sales with renewable energy in 2011. REU has long-term contracts to provide 31% of its energy from qualified renewable resources. TID is currently meeting 27% of its retail load with eligible renewable energy. In addition to the foregoing "eligible" renewable resources, the Utilities have ownership and/or contractual interests in large hydroelectric resources that meet up to 21 percent of their retail load. The Utilities also share similar challenges in implementing their respective Renewable Portfolio Standards (RPS), including weather patterns, demographics and local economics. The Utilities have consistently supported the goals of AB 32 and participated in CARB's effort to create a successful program to implement these goals.

Introduction

The AB 32 Scoping Plan, adopted on December 12, 2008, called for the State to have 33% of its electric load served through renewable resources by 2020. Governor Schwarzenegger's Executive Orders S-14-08 and S-21-09 augment the Scoping Plan goal by setting forth clear expectations such as that the renewable energy target must apply to all retail sellers of electricity, and that CARB must consult with the CAISO and other balancing authorities[1] to ensure that the bulk transmission system operates reliably, efficiently, and in a cost effective manner while providing access to resources throughout the Western Interconnection.

The Utilities appreciate every effort CARB has made to meet these objectives and to coordinate the new Renewable Electricity Standard (RES) obligations as closely as possible with the existing RPS requirements.

The Utilities provide the following comments on the PRO. Where appropriate we have also included suggested language to address the concerns raised.[2]

97002. Definitions and Acronyms

The Utilities propose the following changes:

(4) "Compliance Deadline" means ~~March 31~~ ***July 1*** *of the year following the end of the compliance interval.*

> The Utilities assert that a compliance deadline of March 31 is infeasible and promote July 1 as the earliest date for the Compliance Deadline. In order to gather the information required to achieve compliance, the following activities must occur in this sequence:
>
> > Step 1: The Owner-Generator of the eligible renewable resource project must submit the generation data to WREGIS within 90 days after the generation occurs; RECs are then created and verified by the WREGIS software based on that generation data. For renewable energy generation and/or RECs procured through power purchase agreements, the timing of the generation data submittals is dependent on the Owner-Generator. For generation occurring on December 31 of the last day of the compliance interval, that 90 day time period ends on March 31 of the year following the end of the compliance interval, therefore there would be no time left to complete the remaining steps necessary to achieve and report compliance.

[1] TID is a balancing authority.

[2] Existing language from the PDR is reflected in italics, with inserts underlined and deletions shown in strike out.

Step 2: The RECs produced from the generation data in Step 1 must then be transferred from the generator's account into the subaccount of the compliance entity. This may involve more than one transfer depending on how many times the RECs have been sold. For example, wind energy from the Big Horn Wind Project is transferred from the project developer to the M-S-R Joint Powers Agency. These RECs are then transferred to Redding Electric Utility and the Modesto Irrigation District, who are Regulated Parties under the RES. For larger utilities, Step 2 can take up to one month, extending the process timeline out to April 30, at the earliest.

Step 3: The compliance entity must then inventory the RECs that it has received from the various generators to determine if they are correct. The Regulated Party must then retire the RECs into their WREGIS retirement account. This step can take up to two weeks, extending the process timeline out to May 15, at the earliest.

Step 4: If all goes accordingly, the Regulated Party could then file the compliance report by July 1 of the year following the end of the compliance interval.

Given the necessary steps required to download the generation data and transfer the associated RECs from the generator to the Regulated Party, and finally to that Party's retirement account, along with the need for a cushion of time to deal with unforeseen errors (such as software problem, etc.), it is clearly not practical or feasible to mandate a March 31 compliance date, and a July 1 date is much more practical. Since various steps in this timeline can be out of the control of the Regulated Party, a sufficient buffer must be included in the compliance and reporting requirements to account for operational considerations and delays. Further, the Utilities recommend that both the compliance deadline and the deadline for filing the Compliance Interval Reports (97006 (d)) coincide to reduce duplicate reporting efforts. This need is highlighted by the draconian penalty provisions applied by the PRO to late compliance and report submittals.

(8) *"Eligible renewable energy resource" means a generating facility participating in the WREGIS tracking system that is…*

(B) ~~*Meets*~~ ***Consistent with*** *the criteria of the California RPS program, excluding electricity delivery requirements, as determined by ARB; or*[3]

Clarification must be provided regarding the process and criteria CARB will use to make the determination called for regarding the electricity delivery requirements in this section. Time must be included in the compliance and reporting timelines to incorporate such a

[3] This language is also found at Section 97005 (a) (2), where it should likewise be revised.

process. Certainty is necessary for compliance entities to ensure they have a sufficient ability to plan, purchase, or contract for the necessary resources and/or RECs.

(16) *"Renewable Energy Credit or REC" means one MWh of electricity generated by an eligible renewable energy resource. A REC does not include an emission reduction credit issued pursuant to Health and Safety Code section 40709. A REC does not include any allowance issued pursuant to a cap and trade or similar program.* ~~*A REC does not constitute property or property right.*~~ *ARB reserves the right to alter or amend the definition of a REC as it is used for demonstrating compliance with this Article.*

The REC protocols developed by WREGIS establish the ownership of a REC to the Generator-Owners. Further, the Environmental Protection Agency defines a REC as:

"A REC (pronounced: rĕk) represents the property rights to the environmental, social, and other nonpower qualities of renewable electricity generation. A REC, and its associated attributes and benefits, can be sold separately from the underlying physical electricity associated with a renewable-based generation source."[4]

Part of the ownership or property right to a REC includes the right to freely hold or dispose of the REC. Thus, the Owner-Generator has the ability to transfer the REC to another account, or retire it for compliance. The Utilities recognize the desire of CARB to balance such ownership attributes with CARB's need to retain the ability to define the attributes of a compliance instruments used to satisfy the obligations imposed by the PRO, however we believe prior precedent clearly shows that a REC does in fact constitute a property right, and request the above change.

97004. Renewable Electricity Standard Obligations

The Utilities propose the following changes:

(a) ...RES Obligation = Sum of sales to retail end-use customers for the compliance interval x the REC percentage for the compliance interval.

Table 1. Compliance Intervals and REC Percentages

Compliance Intervals	*REC Percentage*
2012 through 2014	*20*
2015 through 2017	*24*

[4] http://www.epa.gov/grnpower/gpmarket/rec.htm

*2018 through ~~2019~~**2020***	*28*
*202~~0~~**1** and **tri-**annually thereafter*	*33*

The Utilities urge CARB to apply a standard 3-year compliance period throughout the program. Initially, a 33-percent compliance measure applied starting January 1, 2021 meets the objective of reaching the State objective of 33-percent by 2020. In the long-term, the basis for three-year intervals does not evaporate upon reaching an initial goal of 33 percent. Annual compliance obligations create unnecessary administrative burdens for the compliance entity as well as for CARB for no proportionate gain in emission reduction. No purpose is served by devolving to annual compliance periods starting in 2020; RPS goals don't change and compliance is required throughout the compliance period. Thus, the retention of tri-ennial compliance periods reduces reporting, verification and enforcement costs while retaining the benefits to air quality.

The Utilities are pleased that CARB has recognized the requirements in this section should not apply to the either WAPA or DWR.

97005. Renewable Electricity Standard Requirements

The Utilities propose the following changes:

(d) (1) *A REC may be retained or traded ~~for a period of up to three calendar years~~ from the date WREGIS issued the certificate, including the certificate issuance year, or until a REC has been retired into WREGIS retirement subaccount, whichever occurs first.*

(2) A REC must be moved to a WREGIS retirement subaccount ~~within three calendar years from the date WREGIS issued the certificate, including the certificate issuance year,~~ to be used towards a RES Obligation.

CARB states in the ISOR that its rationale for suggesting a 3-year trading limit is that such limit is consistent with the TREC decision adopted by the CPUC. Since the CPUC decision has been "stayed", the Utilities request that this 3-year limit be removed as there is no longer legitimate rationale for its inclusion. Regulated entities must have the flexibility to react to changing circumstances in the long- as well as short-term. It is essential that RECs remain valid until they are used to meet the RES compliance target, regardless of their creation date, to be consistent with current WREGIS practices. Incorporating flexible REC options are essential to ensure the RES program is both efficient and cost effective.

97006. Monitoring, Verification, and Compliance

The Utilities agree with CARB's proposal to use WREGIS for monitoring, verification, and compliance with the RES. However, the Utilities believe that the multiple reports outlined in the PRO are counterproductive. The Achievement Plan requires information about a Regulated Party's procurement strategy that may be in the very early stages of development, and is highly subject to changes that the Regulated Entity cannot control. Moreover, much of the requested data is already reported through the CEC IEPR and other proceedings. Therefore the Achievement Plan is unnecessary and duplicative of the Integrated Energy Resource Plan filing required by the CEC, and the Integrated Resource Plan filing required by WAPA. Further, it is essential that a Regulated Party's ability to meet the goals outlined in their Achievement Plan be exempted from Enforcement Section 97009 (b) (1). Therefore, the Utilities propose the following changes:

(2)(B) *A* ***summary of the Regulated Party's*** *plan and procurement strategy, including any known procurement or project development activities by contract and resource type,* ~~*sufficient to demonstrate how the Regulated Party plans*~~ *to achieve and maintain the 33 percent RES requirement by 2020.*

> The requirement in 97006 (2) (B) to provide a plan and procurement strategy "sufficient to demonstrate" how a party will comply with the RES places Regulated Party's in an untenable position. This concern is exacerbated by the severe penalties that can be imposed should the Regulated Party submit a tardy or incomplete plan. Since there are no criteria or standards defining what would be "sufficient" a party has no way of determining whether they would be subject to penalty. In addition, the penalty provisions impose daily penalties for incomplete submittals; with such a vague requirement, how would a party know whether their submittal is complete or not. Because a Party is held to comply with the RES as set forth in the PDR, not as set forth in the Achievement Plan, it is sufficient to require a statement of the Party's activities and planning rather than to mandate a "demonstration" of any sort, to ensure that a Regulated Party is working toward the goal. For this same reason there is no added benefit from the Achievement Plan towards greenhouse gas reductions or to reaching the 33-percent by 2020 goal identified in Executive Order S-21-09, and therefore the contents of the Achievement Plan should not be subject to any penalties.

(c) *Filing of Annual Progress Reports. Beginning July 1, 2013 and July 1st of each year thereafter through 2020,* ***excepting any year in which a Compliance Interval Report is submitted pursuant to subsection (d),*** *each Regulated Party, except those exempted by Section 97003 and DWR and WAPA, shall submit the following information…*

> Progress Reports are to be filed July 1 of each year starting in 2013. Compliance Interval Reports are to be filed following each compliance year – thus in July 2015, 2018 and 2021 and annually thereafter. If the compliance periods are adjusted to be tri-ennial after 2020, Compliance Interval Reports should only be filed after the end of each compliance period. Because the Compliance Interval Report encompasses all contents of the

Progress Report, they should replace the Progress Reports in each year they are filed. Thus Progress Reports should not be required in 2015 or 2018 or 2020, and should cease thereafter.

97008. Interagency Cooperation

In entering MOUs with the CPUC, CARB must ensure that no new oversight or enforcement authority is directly or indirectly granted to CPUC over local publicly owned utilities. CARB is not authorized by either AB 32 or by Executive Order S-21-09 to endow the CPUC with ratemaking or other authority over local publicly owned utilities. Thus, no regulation issued by the CPUC pursuant to any such MOU can or should be applicable to any local publicly owned utilities.

97009. Enforcement

The Utilities understand that third party enforcement oversight will be incorporated in the RES and seeks to ensure that such oversight will be effective, efficient and able to be clearly anticipated. In other words, all Regulated Parties must be able to understand what steps they can take to reasonably and cost effectively avoid an enforcement action; and such steps must be realistically feasible and achievable. Toward that end, the Utilities offer the following suggestions:

- **Any enforcement penalty must be measurable, gradual, and relative to the gravity and intent of the violation.** For example, the delayed submittal of a filing should not be exposed to the same level of penalties as the failure to take action toward procuring necessary resources. Likewise the failure to achieve the established target due to the unavailability of cost effective RECs should not be exposed to the same level of penalties as a violation resulting from a Party's failure to seek to purchase the RECs in the first place. Ameliorating circumstances must be factored into the enforcement process.

- **CARB should consider including a pre-penalty process in the PRO by which a Regulated Party can meet and confer with appropriate CARB staff prior to the issuance of any violation.** CARB staff has indicated that its objective is to assist Regulated Parties to achieve compliance and not to fill its coffers with penalty fines. Toward that end, a meet and confer process could be used to obtain report filing extensions, to clarify where mandated filings may not meet CARB's data sufficiency expectations, or to otherwise ensure that CARB has appropriately understood and considered any barriers a Regulated Party has encountered towards achieving the RES goals. Thus, Regulated Parties would be able to make corrections before any penalties are imposed and avoid expenditures being shifted from greenhouse gas reduction activities.

- **Flexible compliance mechanisms should be included in the RES program**. Appropriate circumstances where flexible compliance mechanisms may be needed include changes in market conditions that impact compliance costs, insufficient cost effective generation or transmission, or contingency related generation requirements due to reliability issues. Other mechanisms include cost expenditure limitations and the recognition of zero carbon resources that currently exist within a Regulated Party's resource portfolio.

- **Regulated Parties should have the option to use any zero carbon resource or fossil generation offset to avoid a RES penalty or violation.** This concept links directly with the goals of AB 32. Hydroelectric generation is one such zero carbon renewable resource that is currently not listed as an eligible renewable resource under California's standards. While the Utilities understand the desire to encourage investments in new technologies and the construction of new resources, we continue to believe that imposing penalties for failing to meet RES criteria on Regulated Parties who serve their load through large hydroelectric resources is counter to the intent of AB 32. Proposed federal legislation includes a "netting" approach to recognize the value of hydroelectric generation and the Utilities support this approach; however such an approach has not garnered support in California. As an alternative, the Utilities believe that it is appropriate to adjust the RES requirements leading to the imposition of enforcement penalties in certain circumstances involving large hydro resources.

To address the need for flexible compliance mechanisms, the Utilities offer the following language as a new section 97011:

§ 97011. Flexible Compliance

(b) Upon application from a Regulated Party, the Executive Director shall review requests to modify the application of the RES to the Regulated Party, and shall consider the following factors on a case by case basis:

(1) the existence of considerable variation in load of the Regulated Party from year to year and whether compliance intervals should therefore be modified;

(2) the variability of energy supply from the resource portfolio of the Regulated Party from year to year and whether compliance intervals should therefore be modified;

(3) the adequacy of transmission capacity and the ability to site transmission upgrades necessary to deliver electricity from eligible renewable resources;

(4) the adequacy of supply of delivered electricity from eligible renewable energy resources, including without limitation unanticipated delays for procured eligible renewable energy resource projects;

(5) the amount of zero or low-carbon non-eligible renewable energy resources already in the resource portfolio of the Registered Party prior to the effective date of this regulation;

(6) the ability of existing zero or low-carbon non-eligible renewable energy resources to provide ancillary services or ramping services to the applicable Balancing Authority in order to facilitate electrical integration of eligible renewable energy resources that have intermittent generating characteristics and thereby ensure reliable system operation;

(7) the electrical requirements of the grid, including whether existing zero or low-carbon non-eligible renewable energy resources owned or controlled by the Regulated Party that are not eligible renewable energy resources provide locational or other reliability benefits to the applicable Balancing Authority;

(8) changes in market conditions that have increased compliance costs;

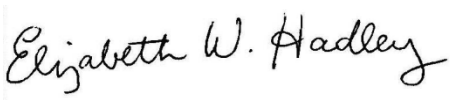
(9) the level of expenditure necessary to meet an RES mandate over any compliance interval relative to the Party's net revenue from retail electric sales;

If any one or more of these factors are present in any case, the application of the RES shall be modified for that Regulated Party to take into account these enumerated factors as they apply to that Registered Party.

Conclusion

The Utilities appreciate the opportunity to comment on the PRO, and would welcome the chance to discuss these concepts further.

Respectfully submitted,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