M S R Public Power Agency

P.O. Box 4060 • Modesto, California 95352 • (209) 526-7373

Electronically Submitted via CARB's Website

September 8, 2010

Mr. Gary Collord
California Air Resources Board
Energy Section – Stationary Source Section
1001 I Street
Sacramento, CA 95812

Subject: Comments on *Proposed Regulation for a California Renewable Electricity Standard, June 2010*

Dear Mr. Collord:

The M-S-R Public Power Agency[1] thanks the California Air Resources Board (CARB) Staff for their hard work in the development and drafting of the *Proposed Regulation for a California Renewable Electricity Standard* (Proposed Regulation), released on June 2, 2010. M-S-R Public Power Agency offers these comments on the Renewable Electricity Standard (RES) Proposed Regulation in the interest of further facilitating development of the best possible regulation that will both meet the purpose of the Regulation itself – to reduce greenhouse gas (GHG) emissions associated with the generation of electricity[2] – and allow retail electricity providers to continue to provide safe, reliable, and cost-effective electricity to customers throughout the State.

The M-S-R Public Power Agency offers these comments on various provisions of the Proposed Regulation in the order in which they are set forth in Appendix A of the Staff Report: Initial Statement of Reasons (ISOR).

[1] Formed in 1980, the M-S-R Public Power Agency is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R Public Power Agency is authorized to acquire, construct, maintain, and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its members. As such M-S-R Public Power Agency does not serve retail load within California but supplies wholesale power under long-term contracts to its retail load-serving members.

[2] Proposed Regulation § 97000.

Definition of a REC Should be Revised to Recognize the Property Right in the Instrument.

The proposed definition of a renewable energy credit or REC in § 97002(a)(16) would strip a valuable instrument of its underlying property right. A REC is not an instrument created independent of the RES Regulation. M-S-R Public Power Agency opposes this unlawful definition of a REC that not only interferes with the Regulated Party's contractual relationships with the renewable generator, but could undermine the stability of the existing REC market. M-S-R Public Power Agency supports a definition of RECs that would address CARB's concern regarding the value of the "compliance instrument" under the Regulation, while at the same time preserving the property interest that Regulated Parties have in the underlying instrument. Accordingly, M-S-R Public Power Agency proposes the following revision to § 97002(a)(16):

> (16) **"Renewable Energy Credit or REC" . . .** As used for purposes of this Article, ~~A~~ a REC is intended to serve only as a compliance instrument, and compliance instrument surrendered under this Article does not constitute property or a property right~~.~~, provided further that nothing in this section otherwise alters or impairs an entities' property rights associated with a REC. ARB reserves the right to alter or amend the attributes or use of a REC as it is used for demonstrating compliance with this Article.

Restrictions Associated with the Definition of RES Qualifying POU Resources Should be Clarified.

Section 97002(19), the definition for Qualifying POU Resource, is intended to create a special distinction for resource investments made by POUs in compliance with the current renewables portfolio standard program (RPS) (under Public Utilities Code § 387), but which are not otherwise considered "eligible renewable resources." However, as currently drafted, the definition could be interpreted to include all POU renewable energy resources that are used for compliance with the RPS, even those that are qualified resources. Because the Proposed Regulation places restrictions on the use of RECs associated with these specific resources, it is imperative that the definition be clarified as not to needlessly restrict the ability of a Regulated Party to trade, sell, or otherwise transfer RECs associated with its renewable generation resources. To address this concern, the following revisions should be made to § 97002(a)(19):

> (19) **"RES Qualifying POU Resource"** means a renewable energy resource as defined in section 97002(a)(8)(C), which resource does not otherwise meet the definition of an eligible renewable energy resource as defined in section 97002(a)(8)(A) or (B) whose electrical generation was . . . "

The Compliance Deadline Should be July 1.

Simply put, three months from the end of a Compliance Interval to the due date for the surrender of compliance instruments is an insufficient amount of time to conduct all of the necessary calculations to determine the amount of the final compliance obligation, arrange for the purchase of RECs, and surrender the required compliance instruments. Extending the Compliance Deadline does not in any way impact an entity's overall Compliance Obligation. The longer Compliance Deadline would, however, allow Regulated Parties the time needed to

compile the required retail load data and other information necessary to confirm the total surrender amount with greater accuracy. The July 1 deadline is also consistent with other reporting deadlines, as mandated by the CEC, for example, and consistent with the deadline specified in § 97006 of the Regulation for the submission of Annual Reports and Compliance Interval Reports. A single, uniform deadline that allows Regulated Parties sufficient time to collect and compile all necessary data, and purchase and surrender the necessary compliance instruments best serves the needs of the State and the intent of the underlying Regulation. Accordingly, M-S-R Public Power Agency recommends that § 97002(a)(4) be revised as follows:[3]

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

RECs Should Not Expire Until Retired for Compliance.

M-S-R Public Power Agency supports the unlimited use of RECs, but believes that the Proposed Regulation should be revised to strike any limitations on the period of time during which RECs can be traded. Other than referencing the deliberations before the California Public Utilities Commission, the ISOR makes no arguments to support a 3-year limitation on the trading of a REC. Similarly, there are no grounds set forth in the ISOR to justify the requirement that these RECs be retired into a WREGIS subaccount within that same period of time. Indeed, there are no compelling reasons why a renewable energy credit should expire, nor be forced into a retirement account, since the value that was obtained when the electricity was generated does not expire or otherwise go away. Accordingly, M-S-R Public Power Agency recommends that § 97005(d) be revised to strike all limitations on the duration of time during which a REC that has not been retired can be lawfully traded and surrendered for compliance with the Regulation.

Reporting Requirements Must be Tempered.

M-S-R Public Power Agency understand the need for Regulated Parties to report to CARB regarding their compliance with the RES Regulation, including an initial report that sets forth anticipated strategies for meeting the Compliance Obligation in 2020. However, the information sought in the Achievement Plan calls for too much detail given the 8-year time frame that it covers. Additionally, the Achievement Plan seeks a "demonstration" of sufficiency which cannot be accurately verified at the beginning of the RES Program. The submission of informative data to the regulatory agency is not necessarily problematic, except that this information is subject to a "demonstration of sufficiency," which if found to be lacking, could result in the imposition of significant penalties on the Regulated Party.

Accordingly, while M-S-R Public Power understands that CARB would like Regulated Parties to file an Achievement Plan by July 1, 2012, any plan submitted at the beginning of the program should be for illustrative purposes only, and should not be subjectively reviewed by

[3] Similarly, the reference to March 31 in § 97004(b) should be revised to read "Compliance Deadline."

CARB for the sufficiency of the data contained therein. Accordingly, § 97006(b) should be revised as set forth below:

> (b) *Filing of Achievement Plans.* By July 1, 2012, each Regulated Party, except those exempted by section 97003 and DWR and WAPA, shall submit an achievement plan to ARB for the overall 2020 RES target containing the following information:
> . . .
> (2) Achievement Plan Informational Filing
> (A) The applicable compliance subsection under section 97004;
> (B) A summary of the plan and procurement strategy, including any known procurement or project development activities by contract and resource type~~, sufficient to demonstrate~~ showing how the Regulated Party plans to achieve and maintain the 33 percent RES requirement by 2020.

Compliance Interval Reports Should Not Require Project Development Status Report.

At the end of each Compliance Period, Regulated Parties are required to submit Compliance Interval Report that provides information to CARB that allows the agency to monitor and verify the Regulated Party's compliance with the RES program, including retail sales, the total RES Obligation, and information regarding the RECs retired during the Compliance Interval. The Compliance Interval Report also requires, in subsection (3), the submission of a "project development status report on any project development activities." Subsection (3) requires a wide array of information that does not necessarily facilitate CARB's stated rationale for the requested information – namely to "verify compliance with the RES obligation for the applicable compliance interval and ensure that regulated parties that fall short of their RES obligation have a concrete schedule in place to come into compliance within the current reporting year." (ISOR, VIII-19) The additional information and level of detail sought in the "project development status report" is unnecessary for purposes of determining compliance and unduly burdensome to provide. As with the "demonstration" proposed in the Achievement Plan required under § 97006(b), the fact that submission and completeness of this report is also subject to penalties, and no standards are included for review or analysis of the submitted information is problematic for Regulated Parities. Rather, in the interest of ensuring that CARB is able to continue to collect information from Regulated Parties for informational purposes, but also recognizing the need of Regulated Parties to protect against amorphous penalty provisions, M-S-R Public Power recommends that subsection (3) of § 97006(d) be revised to require the submission of an "Informational Update" to CARB regarding the status of various pending projects.

Furthermore, as currently drafted, "Progress Reports" are due each year, including in years when Regulated Parties are required to submit Compliance Reports. M-S-R Public Power Agency proposes that § 97006(c) be revised so that the requirement to submit the Annual Progress Report be suspended during the years when a Compliance Interval Report is required.

Enforcement Provisions Should be Revised to Reflect Extenuating Circumstances.

The purpose of enforcement provisions is to ensure that the regulatory agency has the tools necessary to pursue those that do not comply with the Regulation. The focus of penalties should be on changing behavior and encouraging compliance. Accordingly, penalty provisions should center on noncompliance that is the result of intentional malfeasance or negligence (either in the failure to submit the necessary reports or in meeting the Compliance Obligation).

The provisions of § 97009 regarding enforcement of the RES Regulation and the imposition of penalties for noncompliance should be revised to remove onerous daily penalty provisions and to accommodate nonperformance in the event of extenuating factors that are outside the control of a Regulated Party. Revisions to § 97009 should include specific provisions that acknowledge that no penalties will be assessed against a Regulated Party that fails to meet its Compliance Obligation due to any of the following reasons: unforeseen delays in construction generation facilities or transmission facilities, or an insufficient supply of RECs or energy from eligible renewable energy resources. Whenever these instances occur, and are not caused the by contributing actions of the Regulated Party, the Regulated Party should not be subject to penalties in the event that these instances cause a shortfall in reaching the Compliance Obligation. Indeed, in these cases, the Regulated Party (and the entire State) would be better served by committing scarce resources towards moving these impediments and pursing the stated renewable objective, than paying needless penalties. To this end, M-S-R Public Power Agency supports the inclusion of a new § 97009(c), that would address a case-by-case review of the application of the RES to a Regulated Party in the event of specific circumstances that are beyond the control of the Regulated Party. If such a review results in a finding of that these factors exist and impacted the Regulated Party's ability to meet the RES, the application of the RES shall be modified for that Regulated Party to take into account these enumerated factors. Examples of factors that should be considered in such a review process include:

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

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

(3) Changes in market conditions that have increased compliance costs;

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

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

(6) the amount of zero or low carbon resources that are not eligible renewable energy resources and are already in the resource portfolio of the Regulated Party prior to the effective date of this regulation;

(7) the ability of the existing zero or low-carbon non-Eligible 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; and

(8) the electrical requirements of the grid, including whether existing zero or low-carbon 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.[4]

Conclusion.

The M-S-R Public Power Agency appreciates the opportunity to provide these comments to CARB. If you have any questions, please do not hesitate to call me at 408-307-0512.

Sincerely,

Martin R. Hopper, General Manager
msr.general.manager@gmail.com

cc: Mary Nichols, Chairman, CARB
James Goldstene, Executive Officer, CARB
Robert Fletcher, Chief, Stationary Source Division, CARB
Kevin Kennedy, Chief, Office of Climate Change, CARB
Mike Tollstrup, Chief, Project Assessment Branch, CARB
David Mehl, Manager, Energy Section, CARB

[4] Several parties have filed written comments on the Proposed Regulation addressing the need for the Regulation to include flexible compliance mechanisms. Although the specific language may vary, the underlying rationale remains consistent – there are extenuating circumstances beyond the control of a Regulated Party that can impact the attainment of the RES, and the Regulation itself should acknowledge this. Specifically, please see the Comments of the **Northern California Power Agency**, dated July 28, 2010, p. 8 and the Comments of **Modesto Irrigation District, Redding Electric Utility, and Turlock Irrigation District**, dated July 26, 2010, pp. 8-9.