

July 2, 2010

Michael Tollstrup, Chief
Project Assessment Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95814

**Re: *Southern California Edison Company's Comments on
Renewable Electricity Standard Proposed Regulation***

Dear Mr. Tollstrup:

Southern California Edison Company ("SCE") thanks the California Air Resources Board ("CARB") staff for their hard work in developing a proposed regulation for a 33% renewable electricity standard ("RES") on the aggressive schedule set forth in Executive Order S-21-09. Achieving a statewide 33% renewable electricity goal is a monumental undertaking. A massive and unprecedented infrastructure build-out is required, and major challenges such as the slow pace of transmission permitting and approval, project permitting and siting delays, and the need to maintain grid reliability while integrating a large amount of intermittent renewable resources must be addressed. The RES regulation must recognize the significant challenges ahead and the need to protect California's electricity customers from excessive costs.

Four principles are integral to any fair and successful RES – equal rules, broadening of the market, compliance flexibility to address real-world barriers to meeting the State's goals, and customer protection against excessive costs. Overall, SCE believes the RES proposed regulation released on June 3, 2010 is consistent with these principles, and will provide a workable framework to support investment in renewable generation and achievement of the State's greenhouse gas ("GHG") reduction goals, while maintaining electric system reliability and containing customer costs. SCE provides the following recommendations regarding specific regulatory language to help ensure that the RES regulation serves these goals.

A. Section 97009(b) – Violations

The RES proposed regulation provides that:

- (1) *Each day or portion thereof that a Regulated Party violates or remains in violation of a requirement of this Article is a separate violation. Each day or portion thereof that any report required by this Article remains unsubmitted, is submitted late, or contains incomplete or inaccurate information, shall constitute a separate violation of this Article.*

- (2) If a Regulated Party fails to retire a sufficient number of WREGIS certificates to meet its RES Obligation by the date specified in section 97004, there is a separate violation of this Article for each required WREGIS certificate that has not been retired by the Compliance Deadline. *There is also a separate violation for each day or portion thereof after the Compliance Deadline that each required WREGIS certificate has not been retired.*¹

Based on presentations at the RES workshops and discussions with CARB staff, SCE understands that CARB staff does not intend the RES program to include cumulative deficits for failure to meet a RES Obligation. While the RES proposed regulation does not add any RES Obligation shortfall to the RES Obligation for the next compliance interval, the italicized language in Section 97009(b) could be read to allow cumulative penalties for the same shortfall, regardless of whether the Regulated Party is capable of satisfying the shortfall. SCE strongly opposes cumulative penalties because they result in unfair and unduly punitive results.

If a Regulated Party fails to meet a RES Obligation and pays a penalty, the Regulated Party should not be penalized again for the same shortfall. Instead, CARB should look at whether the Regulated Party satisfies its RES Obligations for subsequent compliance intervals. Cumulative penalties lead to a lose-lose situation where customers are saddled with whatever renewable energy is available at any price while penalties are generated that are completely disproportionate to the Regulated Party's actual shortfall. Moreover, cumulative penalties are not justified on policy grounds. The purpose of penalties is to motivate a change in behavior. However, in this case, a Regulated Party may be subject to cumulative penalties for reasons completely beyond its control such as the need for new transmission infrastructure. Cumulative penalties also misalign the interests of Regulated Parties and their customers in a way that prevents the creation of a cost-effective renewable energy program by providing an incentive to sign any contract for renewables (even excessively-priced contracts) in order to avoid cumulative penalties.

For all these reasons, Section 97009(b) should be modified as follows:

- (1) ~~Each day or portion thereof that a Regulated Party violates or remains in violation of a requirement of this Article is a separate violation.~~ Each day or portion thereof that any report required by this Article remains unsubmitted, is submitted late, or contains incomplete or inaccurate information, shall constitute a separate violation of this Article.
- (2) If a Regulated Party fails to retire a sufficient number of WREGIS certificates to meet its RES Obligation by the date specified in section 97004, there is a separate violation of this Article for each required WREGIS certificate that has not been retired by the Compliance Deadline. ~~There is also a separate violation for each day or portion~~

¹ Proposed Regulation Order § 97009(b)(1)-(2) (italics added).

~~thereof after the Compliance Deadline that each required WREGIS certificate has not been retired.~~

B. Sections 97002(a)(8), 97005(a)(2), and 97007(a)(2) – Definition of Eligible Renewable Energy Resources

As SCE explained in prior comments, given the significant impediments to reaching 33% renewables, it is critical that California expand its supply of renewable resources by allowing access to a broader renewable resource market. SCE supports allowing RES-eligible resources to come from anywhere within the Western Electricity Coordinating Council (“WECC”) and the unlimited use of WECC-wide unbundled renewable energy credits (“RECs”).

The proposed regulation appropriately recognizes the need for a broad, WECC-wide renewable energy market and the unlimited use of unbundled RECs to meet the 33% RES. An “eligible renewable energy resource” is defined as follows:

“Eligible renewable energy resource” means a generating facility participating in the WREGIS tracking system that is:

- (A) Certified as eligible for California’s RPS program pursuant to Public Utilities Code section 399.13;
- (B) Meets the criteria of the California RPS program, excluding electricity delivery requirements, as determined by ARB; or
- (C) Is a RES Qualifying POU Resource as defined in, and limited by, this Article.²

Under the current eligibility requirements of California’s Renewables Portfolio Standard (“RPS”), this definition allows for a sufficiently broad renewable energy market and does not unduly restrict access to out-of-state renewable resources. However, because the RES definition of an eligible renewable energy resource is linked to the eligibility requirements of the RPS program, any changes in the RPS definition of an eligible renewable energy resource that restrict the use of out-of-state renewable resources would be automatically incorporated into the RES regulation. Such incorporation would be inconsistent with CARB’s determination that unrestricted access to WECC-wide renewable resources supports CARB’s RES and GHG reduction goals. If the RPS eligibility requirements are modified to become more restrictive, CARB should independently consider whether such restrictions should be included in CARB’s RES regulation. Accordingly, SCE recommends that the proposed regulatory language be modified to allow resources that meet the eligibility requirements of the California RPS on the date the RES regulation is adopted to meet the eligibility requirements of the RES.

Furthermore, the language in Section 97002(a)(8) providing that a generating facility is an eligible renewable energy resource if it “[m]eets the criteria of the California RPS program, excluding electricity delivery requirements, as determined by ARB” should be clarified. It is not

² *Id.* § 97002(a)(8).

clear what “as determined by ARB” refers to. SCE believes this language may be intended to refer to a certification under Section 97007 by CARB, or the California Energy Commission (“CEC”) under an interagency agreement with CARB, that a generating facility “meet[s] eligibility requirements for the RPS program, except as to any delivery requirement.”³ However, as currently drafted, the language could also be read to suggest that CARB will determine what electricity delivery requirements do and do not apply. SCE suggests this language be clarified to clearly reflect CARB’s intent.

In order to clarify Section 97002(a)(8) in accordance with SCE’s comments above, SCE recommends the following changes:

“Eligible renewable energy resource” means a generating facility participating in the WREGIS tracking system that is:

- (A) Certified as eligible for California’s RPS program pursuant to Public Utilities Code section 399.13;
- (B) Meets the criteria of the California RPS program as they existed on [the date of the adoption of the RES regulation], excluding electricity delivery requirements, as ~~determined by ARB~~ certified under section 97007; or
- (C) Is a RES Qualifying POU Resource as defined in, and limited by, this Article.

The following conforming changes should also be made to Section 97005(a)(2):

- (a) RECs must be tracked by the WREGIS system to be eligible to satisfy the requirements of section 97004. Consistent with the definition of “eligible renewable energy resource” in section 97002(a)(8), RECs used for compliance with this Article may only be acquired from: ...
 - (2) An eligible renewable energy resource that meets all requirements of the RPS program as they existed on [the date of the adoption of the RES regulation], excluding electricity delivery requirements, as ~~determined by ARB~~ certified under section 97007; ...

Finally, conforming changes should be made to Section 97007(a)(2):

- (a) An Eligible renewable energy resource may be certified by any of the following: ...
 - (2) The CEC under an interagency agreement with ARB, as meeting eligibility requirements for the RPS program as they existed on [the date of the adoption of the RES regulation], except as to any delivery requirement; ...

³ *Id.* § 97007(a)(2).

C. Section 97002(a)(16) – Definition of a REC

The proposed regulation’s definition of a “Renewable Energy Credit or REC” is “one MWh of electricity generated by an eligible renewable energy resource....”⁴ A REC is a certificate of proof that one MWh of electricity was generated by an eligible renewable energy resource, not the actual MWh of electricity generated by the resource. This separation of the certificate of the proof that the electricity was generated from the underlying electricity allows the unbundling of the REC from the electricity and their sale to separate parties.

Accordingly, consistent with the definition of a REC under the RPS program in Public Utilities Code Section 399.12(f)(1), Section 97002(a)(16) should be revised as follows:

“Renewable Energy Credit or REC” means a certificate of proof that one MWh of electricity was generated by an eligible renewable energy resource....

D. Sections 97002(a)(18) and 97004(a) – Definition of RES Obligation

Section 97002(a)(18) defines the “RES Obligation” as “the number of WREGIS certificates required to be retired to demonstrate compliance with the requirements of section 97004.” Neither the definition of a “WREGIS Certificate” nor the WREGIS Operating Rules specifically incorporate the RES regulation’s definition of an “eligible renewable energy resource.” Therefore, SCE recommends the definition of the RES Obligation be modified to expressly refer to WREGIS Certificates from eligible renewable energy resources.

SCE suggests the following changes to Section 97002(a)(18):

“RES Obligation” means the number of WREGIS eCertificates from eligible renewable energy resources required to be required to demonstrate compliance with the requirements of section 97004.

Similar changes should also be made in Section 97004(a):

Except as provided in Section 97003, each Regulated Party (other than DWR and WAPA) shall retire an amount of WREGIS certificates from eligible renewable energy resources sufficient to demonstrate compliance with the Regulated Party’s RES Obligation for each compliance interval. Compliance intervals and the associated REC percentages are specified in Table 1. WREGIS certificates from eligible renewable energy resources retired for the purpose of demonstrating compliance with the RES Obligation for each compliance interval shall be retired no later than the Compliance Deadline for each compliance interval....

⁴ *Id.* § 97002(a)(16).

E. Section 97002(a)(19) – Definition of RES Qualifying POU Resources

At the May 20, 2010 workshop, CARB staff indicated that, in order to protect prior RPS program investments by publicly-owned utilities (“POUs”), POUs would be able to continue limited use of “RES Qualifying POU Resources” that do not meet the criteria to be eligible renewable energy resources. As SCE explained in previous comments, contracts entered into before January 1, 2003 could not have been executed to voluntarily comply with the RPS since the RPS did not exist at that time. Therefore, such contracts should not count as RES Qualifying POU Resources. CARB staff appear to agree, noting that “[c]ontractual investments to procure these resources must have occurred on or after the January 1, 2003, effective date of the RPS program, and prior to the September 15, 2009, date of Executive Order S-21-09.”⁵

However, the language in Section 97002(a)(19) does not limit the definition of “RES Qualifying POU Resources” to contracts executed on or after January 1, 2003. Accordingly, SCE recommends the following revisions to that section:

“RES Qualifying POU Resource” means a renewable energy resource as defined in section 97002(a)(8)(C), whose electrical generation was both approved by the POU’s Governing Board and reported to the California Energy Commission, as contributing towards the POU’s RPS eligible generation on or after January 1, 2003, and prior to September 15, 2009, and:

- (A) The POU owned the facility ~~prior to~~ on or after January 1, 2003, and prior to September 15, 2009, or
- (B) Procured the electricity from the facility by contract executed on or after January 1, 2003, and prior to September 15, 2009; and:
 - (1) The POU procured electricity and RECs, or RECs without electricity; and
 - (2) The electricity was procured under the terms of the contract in effect on or before September 15, 2009, and not during any contract term extended or modified after that date.
 - (3) Upon expiration of a procurement contract under subsection (B) above, RECs procured from a RES Qualifying POU Resource shall no longer be eligible for compliance with the RES and shall be replaced with RECs from an eligible renewable energy resource under subsection 97002(a)(8)(A) or (B).

⁵ Staff Report: Initial Statement of Reasons at VII-7.

F. Sections 97002(a)(4), 97004(b)(1), and 97006(d) – Compliance and Reporting Deadlines

Section 97004(a) of the proposed regulation requires WREGIS certificates to be retired no later than the “Compliance Deadline” for each compliance interval. Section 97002(a)(4) defines the Compliance Deadline as “March 31 of the year following the end of each compliance interval.”

At the May 20th workshop, several stakeholders raised concerns that this March 31 cut off date is too early for Regulated Parties to definitely know their prior year’s retail sales, which is necessary to calculate the RES Obligation. Moreover, even if a Regulated Party does know its RES Obligation shortly before March 31, the March 31 deadline may not leave enough time to purchase any additional RECs in the marketplace in the event of a shortfall. SCE agrees with these concerns, and suggests that the definition of the Compliance Deadline in Section 97002(a)(4) be revised to give Regulated Parties until September 30 of the year following the compliance interval to demonstrate compliance with the RES Obligation. A conforming change should also be made to the date in Section 97004(b)(1).

Furthermore, changing the Compliance Deadline requires a change in the filing of the compliance interval reports pursuant to Section 97006(d). SCE suggests these reports be due on December 1 of the relevant years.

G. Section 97006(d)(4) – RES Obligation Deficiency

Section 97006(d)(4) of the proposed regulation states that in the event a Regulated Party’s compliance interval report indicates the RES Obligation was not met, the Regulated Party shall submit (1) documentation of RES Obligation deficiency, expressed in MWh, and (2) a schedule to meet the shortfall within the current year. Based on discussions with CARB staff, SCE understands this requirement to mean that a schedule to meet the shortfall is due to CARB within the current year (i.e., the year the compliance interval report is due). However, this language could be read to mean that the shortfall must be met within the current year. SCE thus recommends that CARB clarify the regulatory language. Moreover, if the deadline for the compliance interval report is changed from July 1 to December 1 as suggested above, the deadline for the schedule should also be changed.

SCE suggests the following revisions to Section 97006(d)(4):

- (4) RES Obligation Deficiency. In the event that a Regulated Party’s compliance interval report, filed under subsection (2) above, indicates that the RES Obligation was not met, the Regulated Party shall also submit the following, within three months following the submission of the compliance interval report:
 - (A) Submit Ddocumentation of the RES Obligation deficiency, expressed in MWh; and
 - (B) Submit Aa schedule to meet the shortfall ~~within the current year.~~

H. Section 97005(b)(2) – Interaction with Future Federal RPS Program

Pursuant to Section 97005(b)(3) of the proposed regulation, a WREGIS certificate retired to demonstrate compliance with the RES may not be used to meet the regulatory or voluntary requirements of any other federal, state, or local program. Section 97005(b)(2) creates an exception for WREGIS certificates retired “to meet California’s RPS program compliance.” This exception would not include WREGIS certificates retired to meet any future federal RPS program.

As CARB staff noted, there are two Congressional bills in development that would create a federal RPS program.⁶ CARB’s RES program should be able to integrate with a federal RPS or other federal renewable energy standard. There is no reason that WREGIS certificates retired to meet a federal RPS or other federal renewable energy standard should be ineligible for compliance with the RES if they otherwise meet RES program requirements. SCE recommends that Section 97005(b)(2) be modified as follows:

WREGIS certificates retired to meet California’s RPS program compliance or compliance with any federal renewables portfolio standard or other federal renewable energy standard may also be used to demonstrate compliance with this Article.

SCE looks forward to working with CARB to finalize the RES regulation. If you have any questions regarding this letter or SCE’s comments please contact me at (626) 302-3348.

Very truly yours,



Marc Ulrich
Vice President, Renewable and Alternative Power

cc: David Mehl
Gary Collord
Tom Pomaes

⁶ *Id.* at ES-5.