

Comments submitted by: Alliance for Retail Energy Markets

Date: November 24, 2009

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The Alliance for Retail Energy Markets (“AReM”)¹ is pleased to submit these initial comments in response to the California’s Air Resources Board’s (“CARB”) *Proposed Concept Outline for the Renewable Electricity Standard (“RES Concept Outline”)*, dated October 2009. AReM supports the Governor’s Executive Order authorizing CARB to implement a 33% renewable energy requirement as part of its mandate to implement regulations that comply with AB 32.

You will note that AReM has provided feedback responses where those have been requested. In addition, AReM has provided additional comments in certain sections of the RES Concept Outline, even though specific feedback is not requested.

Part II -- Section by Section Discussion of the Renewable Electricity Standard

1. Applicability of the Renewable Electricity Standard

Applicability of the Renewable Electricity Standard

1.a The Renewable Electricity Standard (RES) shall apply to California electrical corporations, electric service providers, community choice aggregators, electrical cooperatives, and local publicly owned electric utilities; hereafter referred to as “regulated parties”.

Feedback Requested

To reduce the administrative burden upon the smallest regulated parties, who may contribute little towards achieving program objectives, staff is exploring a threshold for application of the RES. Staff seeks comments on this concept and the appropriate exemption threshold for regulated parties. For example, a 500 GWh threshold would potentially exclude a few smaller electrical corporations and electricity service providers. This threshold would also exclude 22 local publicly-owned utilities (POUs), but still

¹ AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

subject 96% of POU retail sales to the regulation. Staff also seeks comments on the appropriateness of including the California Department of Water Resources and the federal Western Area Power Authority as regulated parties in the RES.

Response: Generally, AReM does not support the idea that some market participants should be exempt from compliance with environmental mandates. Such exemptions create inequities that can have unintended consequences. Rather than design specific exemptions, CARB should focus on implementing flexible compliance mechanisms, including an Alternative Compliance Payment (“ACP”) discussed in Section 5.e below, that will facilitate compliance by all parties, regardless of their size.

1.b The RES would be effective by January 1, 2012. Compliance with the RES timeframe and other implementation requirements would apply independently of California’s 20 Percent Renewable Portfolio Standard (RPS) program.

Note: Staff’s objective is to develop a RES regulation which builds upon and complements the existing RPS program.

Comment: AReM is concerned that this element of the RES Concept Outline implies that RES compliance for 2012 and beyond may be different than compliance under the CPUC’s RPS program and/or that the compliance requirements for the portion above the current RPS 20% mandate could be different than the compliance requirements up to 20%. Either of these scenarios would be very problematic. For instance, developers of resources and purchasers may enter into multi-year agreements for renewable energy that are fully compliant with the current RPS requirements. Any potential that those agreements may not be compliant in the post- 2012 time frame inserts a great amount of risk in forward contracting and will have a chilling effect on contract negotiations and development of new resources. Therefore, it is important that it be made clear that investment now will not be “de-valued” by new rules implemented by CARB. Specifically, CARB should make it clear that any commitments made now that comply with the CPUC’s RPS rules will be fully grandfathered for their terms when the RES requirements are put in place. Moreover, we respectfully request that CARB and the CPUC make it clear to all market participants that in no event will there be duplicative sets of renewable energy compliance or reporting requirements.

2. RES Eligible Resources

2.a Eligible Resources

Eligible renewable resources or fuels currently eligible under the Renewable Portfolio Standard (RPS) program would continue to be eligible under the RES²³. These generally include power generating facilities using a combination of one or more of the following: biodiesel, biomass, conduit hydroelectric, small hydroelectric, incremental hydroelectric generation from efficiency improvements, digester gas, geothermal, landfill

gas, municipal solid waste, ocean wave, ocean thermal, tidal current, photovoltaic, solar thermal, wind and fuel cells using renewable fuel.

Feedback Requested

Staff may evaluate other technologies and the limitations currently placed on certain RPS eligible technologies. Staff seeks comments on the appropriateness of including other technologies and modifying existing RPS program limitations.

Response: AReM supports the concept that new technologies and existing limitations on certain RPS technologies should be evaluated. Moreover, AReM appreciates CARB's clarification that resources currently eligible under the California Energy Commission's ("CEC") eligibility rules will continue to be eligible under the RES. As noted in the response to Section 1.b of the RES Concept Outline above, it is important that there be a "seamless" transition from RPS compliance to RES compliance, and that there be no duplicative compliance or reporting requirements.

2.b Excluded Technologies

The regulation will not extend eligibility to large hydroelectric or nonrenewable generating facilities, such as nuclear facilities.

2.c Geographic Eligibility

Facilities located in- or out-of-state, and connected to the Western Electricity Coordinating Council (WECC) transmission system, would be eligible for the RES.

Feedback Requested

Staff seeks comments on the potential impact of modifying the deliverability requirements for out-of-state generating resources. In particular, further evaluation of the eligibility, delivery, and environmental conditions currently applied to imported power is needed for the RES.

Response: AReM strongly supports RPS and RES compliance that permits the broadest possible use of tradable WECC-wide renewable energy Credit ("RECs"), including RECs created from "behind the meter" generation. By allowing the use of WECC-wide RECs for RES compliance, there is no need to address delivery requirements within WECC. Moreover, issues associated with power imported into the state are resolved because out-of-state facilities that wish to sell RECs for RES compliance must comply with the California eligibility standards. If, however, WECC-wide RECs are not authorized for RES compliance, then the delivery requirements currently in place via the rules established by the California Energy Commission ("CEC") should be retained.

2.d Purchase and Use of Renewable Energy Credits (RECs)

Power purchase agreements for energy and RECs, REC-only transactions, and generation owned by regulated parties would be eligible to satisfy the RES. RECs traded separately from energy generation would be eligible for the RES, provided the

RECs were tracked by the Western Renewable Energy Generation Information System (WREGIS) and the regulated party could demonstrate that the REC attribute, and its GHG emission reduction attributes, were not used towards other renewable generation or GHG reduction program requirements. Note: According to a recent joint study adopted by the PUC and CEC, WREGIS is capable of verifying the amount of electricity generated from renewable energy resources and can ensure that renewable energy credits are not double counted by other electricity sellers within the WECC.

Comment: AReM strongly supports the use of bundled energy/REC transactions and/or REC-only transactions for RES compliance, without limitations on how much of each are permissible.

3. RES Compliance

Similar to the existing RPS program, RES compliance would generally be assessed on the basis of a regulated party's proportion of electricity sales obtained, or load served, from eligible renewable resources. A renewable energy credit, or REC, would be created for each MWh of renewable generation reported to and verified by the WREGIS tracking system.

Staff is evaluating various metric options to implement and monitor compliance with the RES. One option would be to measure compliance based on MWh of eligible renewable generation obtained by regulated parties, similar to the current RPS program. As most parties are familiar with the current RPS program, the details of the current RPS program are not explained in detail in this document. Readers not familiar with the RPS program can find detailed information on the program on the CEC and PUC's websites. In addition CEC and PUC staff may be consulted for additional information.

Another option for implementing the RES would be to develop a system whereby verified MWh of eligible generation would be converted to tons of GHG reductions to determine a regulated party's compliance. Through this conversion process, a "RES compliance credit" would be generated and serve as the metric for measuring a regulated party's compliance. The conversion of MWh to tons of GHG reductions could be based on GHG factors created for each resource technology. The information and formulas outlined in Attachments 2 and 3 illustrate how MWh could be converted to tons, how other load adjustment factors might be applied, and how GHG factors could be applied to various technologies.

The energy agencies recommend that the metric used to determine compliance with the RES be based solely on MWh of eligible generation, consistent with the existing RPS program. Additionally, they recommend that if ARB adopts a metric based on GHG emission reductions, a uniform metric (implying the same RES credit amount) should be adopted for all eligible renewable technology types. ***(See Attachment 1 for a more detailed discussion of recommended approaches proposed by the CEC.)***

Feedback Requested

Staff is exploring options for the best RES metric, which may include other approaches than those described above, and seeks comments on potential approaches. With respect to converting MWh to GHG tons, as outlined below, please comment on the feasibility of using prescribed GHG factors for various resource types. For example, what are the potential system impacts of this approach?

Response: AReM supports using a RES compliance metric based on MWh of eligible generation, primarily because it is familiar to most market participants. Moreover, AReM would note (as does CEC in Attachment 1) that if a uniform conversion from MWh to GHG tons is used, there is little (mathematical) reason to implement the “GHG tons” approach.

3.a Compliance Period Targets

Each regulated party would ensure that sufficient power is procured from eligible resources to meet its RES obligation for an applicable compliance period. A regulated party’s compliance with its RES obligation could be determined by the methods specified below. **(See Attachment 2 for an example of how a large regulated party might comply with the RES between 2013 and 2020.)**

Table 3.1 below illustrates a possible pathway for steadily increasing the amount of required RES obligation for two possible metrics. One metric is based on the percentage of generation, and the other is based on a GHG metric. In this example, both assume annual compliance targets.

Table 3.1 Example of Annual RES Obligations

Year	% Generation	RES Obligation
		GHG metric
2013	20.00	90 MTCO ₂ eq/GWh
2014	20.00	90 MTCO ₂ eq/GWh
2015	22.22	100 MTCO ₂ eq/GWh
2016	24.44	110 MTCO ₂ eq/GWh
2017	26.67	120 MTCO ₂ eq/GWh
2018	28.89	130 MTCO ₂ eq/GWh
2019	31.11	140 MTCO ₂ eq/GWh
2020	33.30	150 MTCO ₂ eq/GWh

Note: Table 3.1 is for illustrative purposes only and is based on an assumed marginal power average GHG emission rate of 450 MTCO₂eq/GWh. The emissions of the displaced power and the amount of reductions necessary would be evaluated and refined as part of the regulatory development process.

3.b Compliance Schedule

Compliance periods would be on an annual or multi-year basis, beginning with 2013. Alternatively, the compliance schedule may include annual reporting obligations with enforceable compliance targets at two- or three-year intervals.

Feedback Requested

Staff recognizes annual compliance may be too frequent and is evaluating the appropriateness of different compliance schedules. Staff seeks comments on establishing interim compliance targets and the frequency of meeting these targets to ensure steady progress towards meeting the 33% mandate.

Response: As noted in Section 3.a above, AReM does not necessarily object to interim targets and prefers annual targets as long as there are flexible compliance tools available, as discussed below in Section 5.e.

3.c Generation of RES Compliance Credits

RES compliance credits (whether based on a percent generation or GHG metric) that exceed a regulated party's obligation for a compliance period, could be used for future compliance periods or traded with other regulated parties. Such RES compliance credits would remain valid until used *[footnote omitted]*.

Comment: AReM strongly supports permitting RECs to be banked until used for compliance purposes.

4. Monitoring and Verification

4.a Regulated Parties

Regulated parties would be responsible for maintaining appropriate records and documentation, and providing requested information to the ARB and/or the specified energy agency necessary to determine program compliance

4.b Administration

The RES regulation would be designed to utilize as much of the current monitoring, reporting, and verification systems developed and implemented by the CEC and PUC for the RPS program, including WREGIS verification of eligible renewable generators.

4.c RES Implementation Guidelines

As a supplement to the RES regulation, ARB, CEC, and PUC may jointly prepare a non-regulatory guideline document that provides assistance to regulated parties in complying with the RES regulation.

4.d Potential Agency Monitoring and Verification Roles

ARB is continuing to collaborate with the CEC and PUC on the nature and extent of interagency roles for implementation of the RES. ARB may ultimately enter into interagency agreements to formalize the role of the energy agencies in providing monitoring, verification, and other support for the RES regulation.

Comment: AReM appreciates that the CARB intends to streamline multi-agency reporting requirements. Duplicative reporting requirements should be avoided, as they only serve to increase customers' costs.

5. Compliance and Enforcement

5.a Compliance Requirements

Regulated parties would submit sufficient information to the CEC and PUC on their power procurement and delivery activities, including net-metered distributed generation, necessary for the energy agencies and ARB to determine compliance with the RES. To the extent possible these submittals would be combined with reporting requirements established under the RPS program.

5.b Agency Roles

The CEC or PUC would collect information and provide annual reports to the ARB on the status of regulated party compliance. The annual report would provide sufficient information to determine: 1) the location of eligible RES resources and amount of power delivered from procured or owned generation; 2) the amount of RES compliance credits generated; and 3) each regulated party's compliance with annual or periodic RES obligations.

5.c Compliance Determinations

The amount of qualifying RES credits procured by each regulated party from eligible renewable generation would be determined annually or on a periodic basis. The regulation is satisfied when RES credits from qualifying renewable power equal or exceed a regulated party's RES obligations. ARB would review verification documentation provided by the CEC and PUC, and take appropriate enforcement action when a regulated party fails to meet compliance obligations.

5.d Enforcement Approach

A regulated party's reporting obligations would begin with calendar year 2012, and full compliance with RES obligations would start with calendar year 2013.

5.e Penalties for Non-Compliance

ARB would develop a sliding-scale schedule that would establish the number of violations based on the extent and quantity of RES credit shortfalls incurred by a regulated party. Any shortfall in meeting annual RES obligations would be carried forward and added to subsequent compliance period obligations. If ARB finds that a shortfall was due to circumstances beyond the reasonable control of the regulated party, the ARB may allow up to three years for the shortfall to be remedied.

Note: AB 32 incorporates the existing ARB equitable, as well as criminal and civil, penalty provisions as enforcement tools for violation of regulations adopted under AB 32. AB 32 also provides that violations of regulations adopted pursuant to AB 32 are to be considered as emission violations, which is an aggravating factor in penalty determinations. On this basis, financial penalties of up to \$75,000.00 per day per violation for intentional violations may be assessed. AB 32 also grants ARB the ability to develop a method to determine what the number of daily violations would be, where appropriate, for a given violation.

Comment: AReM notes that the RES Concept Outline does not discuss flexible compliance tools, other than noting that an entity would be allowed to bank renewable energy credits for future periods if they have procured more in one

year than is needed for that year's compliance. There are other flexible compliance tools that are currently permitted in the CPUC's RPS, including deferral of a portion of the current year requirement to future years, and the ability to earmark future deliveries. AReM strongly urges CARB to retain these flexible compliance mechanisms. If they are not retained then a transition from the current environment to a new environment is essential.

Furthermore, AReM urges CARB to evaluate the Alternative Compliance Payment ("ACP") as an additional flexible compliance mechanism. The following is a brief description of the ACP approach.

- ACPs represent an alternative method of compliance and is compatible with purchasing renewable energy or renewable energy credits.
- ACPs are used in almost jurisdiction that has an RPS, including Pennsylvania, Maryland, the District of Columbia, New Jersey, Delaware, Massachusetts, Connecticut, Rhode Island, New Hampshire, Maine, Ohio, Illinois, and Oregon. ACPs simplify RPS compliance and helps to create market certainty and stability by providing a flexible compliance mechanism for LSEs and their customers.
- ACPs create a source of funds that can be deployed to increase the renewable resource base, particularly for in-state resources.
- Implementing an ACP will effectively set a ceiling for the price of RECs and thereby serves as a cap for the cost of RPS compliance, eliminating the need for complex RPS off ramps.
- ACPs allow a regulatory body to set a different price cap for the value of renewable energy independent of previous energy policy objectives that may not be applicable to renewable energy development goals.
- ACPs eliminate the punitive sanctions associated with penalties that occur when there is unforeseen scarcity or unavailability of renewable energy, or REC shortages. To work efficiently, the ACP should be set at a level that is commensurate with market conditions so as to not undermine merchant investment. When the ACP is at a level that approximates market conditions, there is no need to implement any restrictions on the use of ACP for compliance.
- To ensure that the ACP approach promotes market certainty and stability, the timing and frequency of changes to the ACP, which will be needed from time to time so that the ACP stays in line with market conditions, should be known in advance.

Best practices from other parts of the country that have implemented the ACP approach should be investigated.

5.f RES Procurement Planning

Staff anticipates that procurement planning procedures for the RES regulation would be similar to the current procedures, schedules, and CEC and PUC oversight activities employed for the current RPS program.

6. Reporting and Recordkeeping

Information to be added.

7. Periodic Review

ARB would conduct periodic reviews, in consultation with the energy agencies, of RES implementation progress and evaluate the need for program adjustments.

8. Definitions

Information to be added