

# California Municipal Utilities Association

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## **Initial Comments of the California Municipal Utilities Association Proposed Concept Outline for the California Renewable Electricity Standard (RES)**

Pursuant to the procedures established by the California Air Resources Board (ARB) and oral discussions at the Workshop held October 30, 2009, the California Municipal Utilities Association (CMUA) submits these initial comments on the Proposed Concept Outline for the California Renewable Electricity Standard (Outline).

CMUA members have significantly increased their purchases of renewable energy over the last 7 years, and plan to continue that increase towards 33% or more of our supply coming from renewable sources. At this early juncture, CMUA and its members are encouraged by the constructive proposals included in the Outline to delineate an entity-specific RES. CMUA supports many aspects of the Outline as further discussed below, and also provides its initial view on certain other issues raised in the Outline, all in furtherance of the intent of the California Legislature that regulations developed in furtherance of AB 32 requirements be accomplished “in a manner that minimizes costs ... and maintains electric reliability.” Health and Safety Code § 38501(h).

These comments reflect CMUA’s initial view of the Outline, and we look forward to additional Staff workproducts and the Comments of other parties to inform our view. Further, CMUA has approached the Outline as an overall package, in which modifications to the treatment of one key issue may affect CMUA’s initial view of the overall equity of the package. CMUA has ordered its comments on issues consistent with the order in the Outline.

### **Applicability of the RES**

In the Outline, Staff requested feedback on its concept of a proposed threshold for application of the RES to regulated parties below 500 GWh of energy load per year as part of the implementation of an entity-specific RES. The goal of this proposal is to reduce administrative burdens on smaller regulated parties and agency staff, while retaining the overall integrity of the RES program. As stated in the Outline and relevant to CMUA, under the 500 GWh threshold 22 small local publicly owned electric utilities (POU) would not be subject to the RES, while 96% of POU retail sales would still be covered.

It is a priority for CMUA that RES regulations balance policy goals with cost-effective implementation that reflects the individual needs of regulated parties. This observation cuts across all regulated parties, not just POUs. We therefore support the proposal in the Outline for a 500 GWh threshold that would exclude very small regulated parties.

CMUA recognizes there will be questions about how this applies to entities that grow larger than the threshold, thus potentially having significant resource obligations when or if they become regulated under the RES, or how it would apply to entities that are regulated, but where sales decline to below the threshold. CMUA is aware that there are also concerns about potential new regulated parties structuring themselves to remain under the threshold to avoid RES obligations thereby. It is CMUA's view that the 500 GWh application threshold does not contravene state policy direction because, as specifically applicable to POUs, California statute requires that all POUs implement and enforce an RPS that reflects the intent of the Legislature to encourage renewable resources. *Public Utilities Code § 387(a)*. Further, it is CMUA's understanding that the application threshold is not intended to modify existing obligations to report renewable procurement information to relevant regulators under any existing RPS program. Thus, the 500 GWh threshold is reasonable. CMUA stands willing to work through implementation issues while supporting the general framework proposed in the Outline.

The Outline also requests feedback on including the California Department of Water Resources (CDWR) and/or the Western Area Power Administration (WAPA) as regulated entities. CMUA does not support inclusion of CDWR or WAPA. Neither are retail sellers of electricity. Most of their load is served by carbon free generation. CDWR has already taken steps to reduce its carbon footprint by not renewing existing contracts with coal-fired generation, and as a state agency will almost certainly be attuned to the RES requirements. Other than pump load, almost all WAPA power is sold to entities that are already regulated parties. There are considerable practical and legal complications that may arise by adding either as a regulated party, with little or no apparent benefit toward achievement of GHG goals. Therefore, CMUA urges the ARB to not include either CWDR or WAPA as regulated parties.

Another issue raised at the ARB Workshop involved the unique circumstances of certain parties whose resources portfolios are structured such that imposition of a 33% RES would force those specific entities to replace their zero-carbon resources in the form of electric generation from existing large hydro-electric facilities that they currently own or have rights to the output under law or contract. As was pointed out at the Workshop, it would make little sense, and not contribute to the ARB's GHG reduction goals, if the RES were to be applied to these entities in a manner which would force them to replace existing carbon-free hydroelectric resources to be RES compliant. ARB staff at the Workshop appeared to understand and agree with this position, and seemed willing to address these unique circumstances to reflect the contribution that existing, non-GHG emitting resources already play in an entity's portfolio. CMUA wants to work with ARB staff to craft constructive compliance approaches that reflect that any new procurement of

renewable resources to meet RES requirements must make sense and fit into the portfolios of these entities.

### **RES Eligible Resources**

The Outline proposes to maintain the current definition of eligible renewable resources or fuels currently eligible under the RPS program. The Outline proposes that to be eligible, resources must be located within the Western Electricity Coordinating Council (WECC). Finally, the Outline proposes to count Renewable Energy Credits (REC), provided that the RECs are tracked by the Western Renewable Energy Generation Information System (WREGIS), and its GHG emission reduction attributes are not counted toward other RES or GHG reduction program requirements.

#### Geographic Eligibility

CMUA fully supports the position articulated in the ARB's Proposed Concept Outline for continued inclusion of both in-state and out-of-state resources connected to the WECC transmission system as eligible resources. CMUA agrees that the RES should not discriminate between in-state and out-of-state renewable energy supplies. GHG emissions will be reduced by the RES, regardless of the relative location of these renewable resources in comparison to the state's border. Studies have indicated that location of renewable resources across the WECC can add diversity of supply to aid in the integration of intermittent resources. This is because the WECC is so large that peak output from out-of-state resources will differ in many instances from peak output of in-state resources, thus providing resource diversity that will help manage system reliability issues. Also, renewable resources located out-of-state can and do provide in-state GHG reductions and co-pollutant benefits from in-state fossil resource displacement. Perhaps more importantly, to the extent that lower cost renewable resources are available out-of-state, the reduced cost of the RES would imply increased in-state jobs as consumer dollars are reallocated to other expenditures, or as utilities have additional funds to allocate to green jobs and to associated energy efficiency and distributed generation programs.

CMUA would also point out that current firming and shaping policy in place in the State's RPS program makes the deliverability requirement for the RPS workable for intermittent out-of-state resources, and should continue to accompany any deliverability requirement in the RES. Flexibility and access to cost-effective resources will be key factors in keeping the cost of the RES under control in a transmission-constrained renewable energy supply environment both in and outside of California.

#### Renewable Energy Credits

CMUA also supports the position articulated in the ARB's Outline proposal that Renewable Energy Credits (REC) would count to satisfy RES, including unbundled RECs. This is especially important for the small and medium-sized CMUA members that need flexibility to ensure cost-effective RES implementation.

Renewable energy credits should be bankable and have an unlimited lifespan such that once in existence a REC can be used in the current or any future compliance period and will retain its bundled RPS and RES compliance value until it is retired for compliance. The availability of RECs for meeting a compliance obligation should not be limited numerically or geographically.

We note that there is an existing process to certify, track, and verify eligible renewable resources and RECs, both in-state and out-of-state, which was developed by the CEC pursuant to legislation, and is in use for the RPS. *Renewables Portfolio Standard Eligibility, Commission Guidebook, Third Edition, California Energy Commission, CEC-300-2007-006-ED3-CMF* (January 2008). This process is working well and we recommend that the ARB use it for tracking RES compliance as well.

## **RES Compliance**

### GHG versus MWh Metrics

ARB Staff asked for specific feedback on whether a new metric, measuring GHG emission reductions, should be substituted for the current RPS metric, measuring MWh of renewable generation. CMUA does not support using the proposed GHG metric.

CMUA recognizes the natural link between the GHG emission reduction metric, and any legal authority the ARB may have to implement RES as part of its authority under AB 32. CMUA also recognizes the need to consider alternatives as part of the regulatory process. However, given the existing programs in place which measure MWh, and the considerable complexity that would be added to change metrics at this time, CMUA urges the ARB to retain the current MWh approach. We believe this approach will further achievement of AB 32 goals.

As an initial matter, a GHG-based alternative metric would either be unfeasibly complicated – possibly involving electricity system modeling to determine year-to-year and resource-to-resource differential GHG impacts – or would act as an unnecessary translation of MWh generation into an overly simplified GHG calculation. Given the mature RPS program and years of measuring compliance using a MWh metric, together with the considerable complexity that would be added to change metrics at this time, CMUA urges the ARB to retain the current MWh approach. The RES will then be most consistent with the existing RPS, and will continue to use the same metric in the electricity sector as the energy efficiency goals that are also contained in the Scoping Plan. We believe this approach will further achievement of AB 32 goals.

### Compliance Period Targets

ARB Staff recognizes that annual compliance targets may be too frequent, and requests feedback on alternative interim compliance targets.

CMUA agrees that annual compliance targets are too frequent. Particularly for smaller entities, progress toward 33% is likely to be lumpy. Even so, we believe that there can be annual progress reporting, with review and verification by the CEC for the POUs. However, we recommend that if interim compliance period targets are adopted they be at no less than three year intervals.

### **Compliance and Enforcement**

CMUA supports reporting, monitoring, and compliance verification for POUs at the California Energy Commission (CEC). We are concerned with any overlapping jurisdiction that would subject CMUA members, directly or indirectly, to CPUC rules under its RPS programs. Just as investor-owned utilities and others are regulated by the CPUC, POUs are regulated by their locally elected or appointed governing boards which are responsible for ratemaking, resource planning, and procurement. The CEC has concluded that the ramp-up of renewable resources for POUs, overseen by our local governing boards, has been steep and actually increased in recent years when RPS numbers for other entities decreased. *The Progress of California's Publicly Owned Utilities in Implementing Renewable Portfolio Standards, CEC-300-2008-005* (December 2008). The CEC has also concluded that the 15 largest POUs are already on a pace to reach 30% renewables by 2018 using CEC-defined eligible resources, even before the issuance of Executive Order S-21-09. *An Assessment of Resource Adequacy and Resource Plans of Publicly Owned Utilities in California, CEC-200-2009-019* (November 2009). This history of success supports continuation of the current framework whereby ratemaking, resource planning, and procurement authority rest with our local boards as the rate setting body, with reporting and verification by the CEC.

Further, CMUA would be concerned with any role for the CEC other than reporting, monitoring, and verification. Any sanctioning authority should rest with the ARB. This CMUA position appears to be consistent with the position and language in the Proposed Concept Outline, but we would like to work with ARB staff to clarify this further.

The Proposed Concept Outline correctly recognizes that there are circumstances beyond the control of utilities and other regulated parties which could lead to a shortfall in a compliance obligation under the RES. These circumstances include, but are not limited to: lack of available necessary transmission, delays in project permitting, delays in project siting, and the inability to develop or secure contract resources that are cost-effective. CMUA wants to work with ARB staff in the coming weeks to further clarify and refine a workable flexible compliance mechanism.

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Respectfully submitted,

  
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