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December 17, 2009

Dave Mehl, Manager
Energy Section
California Air Resources Board

Gary Collord
Energy Section
California Air Resources Board

RE: Comments on Proposed Concept Outline for Renewable Energy Standard

Dear Messrs Mehl and Collord:

LS Power appreciates the opportunity to comment on the Air Resource Board's (ARB) Concept Outline for a California Renewable Energy Standard (RES).

LS Power (www.lspower.com) is leader in the development, acquisition and management of power generation and transmission infrastructure. Since its formation in 1990, LS Power has compiled a proven track record of successful asset development, operations management and commercial execution, completing some of the sector's most successful transactions. Located in offices in New York, New Jersey, Florida, Missouri, and California, LS Power's 120+ employees have world class expertise in all areas of the power sector including project management, power marketing, construction, operation, regulatory, environmental, finance, legal, and tax. LS Power is predominantly focused on following business segments:

Power Generation. LS Power has been involved in the development, acquisition, construction or operation of over 20,000 MW of power generation assets throughout the United States. LS Power recognizes the need for diversity in power generation resources. By working with its customers, such as investor-owned utilities, electric cooperatives and municipal utilities, it is able to identify the best solutions for new generation. LS Power currently owns or is developing a diverse mix of power generation projects fueled by natural gas, coal, and renewable resources, including wind and solar.

Electrical Transmission. LS Power is also applying its experience and expertise to the development of electrical transmission facilities. As part of a competitive process, LS Power was recently selected by the Texas Public Utilities Commission to construct, operate and maintain over 200 miles of transmission lines and associated equipment that will help deliver wind energy from the Texas panhandle to markets in the state. We are also in the advanced development stage of the Southwest Intertie Project (SWIP) and associated transmission projects that will help California access the low-cost and reliable wind resources of the Wyoming, Colorado and other Rocky Mountain states.

Private Equity. Highly regarded in the financial community, LS Power has raised over \$11 billion in debt and equity since 2005. Through its private equity affiliates, the LS Power Group fully controls and manages approximately \$4.3 billion dedicated to investments in the power sector including select corporate and securities investments.

The successful implementation of the state's renewable energy goals—requiring the timely development and interconnection of thousands of megawatts worth of renewable energy—will require unprecedented coordination and development. The participation of experienced and resourceful development companies like LS Power will be vital to achieving these goals. LS Power generally supports the straightforward approach outlined by the ARB in its RES. We have the following comments on key aspects of the RES, as solicited by the ARB.

Broad Market for Eligible Resources

Maintaining eligibility for renewable energy resources within the entire Western Electric Control Council (WECC) area is the single most important aspect for guaranteeing success of the RES and we strongly support the position established by the ARB. The RES goal of 33% renewable energy is ambitious, and successful implementation will require a smartly-designed rule as well as access to renewable resources throughout the West.

California has tremendous potential for renewable energy development. However, one need only review the challenges experienced by renewable energy and transmission projects currently under development to understand the important difference between the mere *potential* for a project and what is necessary to actually bring that project to commercial operation. The commercially viable development of even a significant fraction of the potential renewable energy resources in California is far from certain and it would be unwise to base a RES policy on the unsupported assumption that California can meet all of its renewable energy goals with in-state resources.

To be clear, LS Power is a proponent of in-state renewable energy development. We are currently developing renewable energy projects in California and will continue to pursue additional opportunities to the extent there is a competitive environment for independent projects. Restrictions on out-of-state imports concern us specifically because they threaten a competitive environment by artificially tampering with the traditional market forces that have guided successful energy development in the West for decades.

In addition to frustrating project development, a mandate for the in-state development of renewable energy resources to the exclusion of out-of-state resources would put California ratepayers at great operational and financial risk. The evolution of the electrical infrastructure and electrical markets in the WECC has occurred over decades and across all Western States. California-only restrictions on renewable energy development would complicate grid operations and isolate California from the rest of the WECC in ways that would increase costs, decrease electrical service reliability, and foreclose on opportunities for California ratepayers to benefit from high-quality renewable energy projects. Maintaining WECC-wide eligibility of renewable resources is the best way to ensure the methodical integration of renewable energy in a manner consistent with the well understood rules and long-established market practices of the WECC.

Delivery Requirements are Important

LS Power believes that the current RPS rules requiring delivery into California are important to maintain and that compliance based solely on Renewable Energy Credit (REC) transactions will fail to ensure the necessary long term infrastructure build-out. California is by far the single largest electrical load in the WECC and the RES will result in unprecedented demand for renewable energy. In maintaining the requirement for delivery into California, the RES will ensure that transmission and other necessary electrical infrastructure are concurrently developed.

Energy development has traditionally focused on satisfying electrical demand reliably and at reasonable cost. Under the RES, the fundamental change to this tradition should be that these goals are met through an increasingly larger use of renewable energy resources. Our concern is that California's RPS mandate is too large to allow paper-based, REC-only transactions for compliance. The renewable attributes associated with a REC are derivative, and unlimited REC use without any requirement for delivering the underlying electricity creates market incentives that don't consistently drive long-term investment and development. Reliance on REC-only compliance will contribute to over-capacity, reduced grid reliability, under utilization of existing generation resources and poses risk of other unintended consequences that may delay or derail achievement of the RES goals.

Although Executive Order S-21-09 mandates a 33% renewable energy target, the RES should be designed to lay the groundwork and ensure implementation success at levels of 40%, 50% and beyond. Maintaining WECC-wide eligibility of renewable resources AND requiring deliverability is the best way to ensure the methodical integration of renewable energy in a manner consistent with the well understood rules and long-established market practices of the WECC. Combined, these requirements maximize access to renewable resources, minimize infrastructure costs borne by CA ratepayers, and ensure that the most competitive projects succeed.

Challenges Require Flexibility

We believe it is necessary to maintain the current RPS rules that allow load-serving entities (LSEs) and grid operators flexibility in scheduling power imports and matching renewable energy generation to actual energy imports. The intermittent nature of renewable resources makes them a challenge to integrate into the electrical grid. Even now, there are frequent periods during which California simply cannot consume all the electricity that is generated in-state or scheduled for import, so system operators must pay out-of-state systems to take our excess power. Because these challenges and costs are certain to increase with an increasing requirement for renewable energy, maintaining the current RPS rules that permit matching imports with actual generation is critical to achieving the RES goals.

Clear Targets, Simple Rules, Firm Compliance

Uncertainty is a significant threat to making real progress in renewable energy development. We support the ARB's plan to largely rely on the existing RPS framework. Introducing complexity unrelated to the fundamental goals of climate change - such as preferences for in-state resources or restrictions on imports - will not only fail to produce purported benefits but their inclusion in the RES will almost certainly result in litigation, delay and ultimate failure to achieve the RES goals.

Firm compliance goals will also be necessary. LS Power supports a standard that establishes the targets outlined in the Executive Order while letting the long-established market practices of energy development in the West determine the best means to achieve that goal in a manner that ensures long-term grid stability and reliability—in other words, *how* the RES targets are satisfied. Inclusion of intermittent compliance goals in the RES will help ensure *when* the RES targets are satisfied by making certain that the proper market incentives are created. Time and money will be lost if the RES allows too many exceptions or fails to establish strict penalties for non compliance.

Thank you again for the opportunity to provide comments on the RES Conceptual Outline. LS Power is ready to use our resources and experience to help CA achieve these historic goals. We look forward to being active participants with the ARB as the RES is developed further in the coming months. Feel free to contact me or my colleague James White (805/550-4595) or our government relations advisors Jackson R. Gualco or Lisa Rodriguez at 916/441-1392 to discuss these matters in more depth as the process unfolds.

Sincerely,

Lynne Flowers
Vice President, Legislative and Regulatory Policy
LS Power Development, LLC

cc: Mr. James Goldstene, Executive Officer, CA Air Resources Board
Mr. Jackson R. Gualco, The Gualco Group, Inc.
Mr. George T. Poppic, Jr., Senior Counsel, CA Air Resources Board
Mr. Michael J. Tollstrup, Chief, Project Assessment Branch, CA Air Resources Board