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Submitted Electronically

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Gary Collard
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments of the Northern California Power Agency on the
CARB Renewable Energy Standard Concept Outline

Dear Mr. Collard:

In accordance with the direction presented in *Proposed Concept Outline for the California Renewable Electricity Standard* (Concept Outline), dated October 2009, the Northern California Power Agency¹ (NCPA) submits these comments to the California Air Resources Board (CARB). These comments address the Concept Outline, as well as issues raised by CARB Staff and Stakeholders during the October 30, 2009 workshop during which the Concept Outline was presented to the public.

INTRODUCTION

Clearly, CARB Staff has spent considerable time developing the Concept Outline, and NCPA appreciates the opportunity to provide these comments on the nascent development of this critical component of a Scoping Plan complimentary measure. In the Scoping Plan, CARB anticipates that reductions of 21.3 million metric tons of CO₂e can be achieved through the increase of renewable electricity from 20% to 33% across the state.² This is not an insignificant number. NCPA members have been very active in attaining clean generating resources for decades, have made significant investments in renewable electricity resources, and look forward to continuing to do so – be it under their existing renewable portfolio standards (RPS) or the newly defined renewable electricity standard (RES). It is crucial, however, that the RES be designed in such a way that acknowledges the intent of Assembly Bill (AB) 32 to reduce overall statewide greenhouse gas emissions, facilitate the development of renewable electricity resources, allow entities to procure resources at reasonable costs, and ensure the reliable provision of safe

¹ NCPA members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, the Truckee Donner Public Utility District, and the Turlock Irrigation District, and Associate Members Plumas-Sierra Rural Electric Cooperative and Placer County Water Agency.

² California Air Resources Board, *Climate Change Proposed Scoping Plan*, October 2008, page 46.

and reasonably priced electricity to California's consumers. It is within this context that NCPA provides the following comments on the Concept Outline. These comments address the issues in the order they are raised in the document.³

COMMENTS ON THE CONCEPT OUTLINE

PART I – Regulation Schedule, Legal Authority and Requirements, and Procedures

1. Schedule

The schedule proposed in the Concept Outline is necessarily aggressive in order to meet the deadline set forth in the Governor's Executive Order (EO) S-21-09. While NCPA understands the need to work quickly, it is also important that the work being undertaken by Staff and stakeholders alike not be marginalized for expediency. Specifically, the economic analysis that will accompany the final document must be thorough and must provide a realistic assessment of the current economic climate. There must also be careful consideration given to the overlap that is anticipated both by CARB Staff and EO S-21-09 with the California Public Utilities Commission (CPUC) and the California Energy Commission (CEC). Meeting and workshop schedules, as well as comment and filing deadlines must be coordinated in order to maximize stakeholders' limited resources. NCPA urges a robust stakeholder process that allows for meaningful review and analysis of all documentation prior to public workshops in order to optimize discussions.

2. Legal Authority

The Concept Outline notes that AB 32 confers broad authority upon CARB to adopt greenhouse gas emission reduction measures that achieve technologically feasible and cost-effective reductions. (p. 6) While these are the primary constraints within which the agency must work, there are several other factors that CARB must consider, to the extent feasible, when promulgating regulations for emissions reduction measures. NCPA recognizes that CARB strives to keep all of these factors in mind when setting forth the agency's initial proposal for the RES in the Concept Outline. With that said however, the Concept Outline is entirely devoid of information regarding the potential economic impacts of the RES and the ability of regulated parties to meet the RES in the face of cost constraints. Given the clear legal mandate in AB 32 regarding the need to ensure that the measures adopted by the agency are cost effective, this omission must be rectified in the Preliminary Regulation.

³ NCPA takes no specific position at this time on matters set forth in the Concept Outline that are not specifically addressed in these comments.

PART II – The Renewable Electricity Standard

1. Applicability of the RES

§ 1.a. Regulated Parties. The REC Concept Outline proposes that for purposes of the RES, regulated parties⁴ include all electrical corporations, electric service providers, community choice aggregators, electrical cooperatives, and local publicly owned utilities (POUs). Each of these – entities that serve retail load in California – are properly within the realm of entities to which the standard should be applied. Regulated parties that meet all threshold requirements would be subject to the entity-specific RES.

During the October 30 Workshop and in the Concept Outline, Staff specifically sought feedback on the use of a threshold for applicability of the RES. Consideration of a threshold is appropriate, and NCPA supports a 500 gigawatt hours (GWh) threshold for existing regulated parties for applicability of the RES. Staff correctly notes that for some smaller regulated parties, there may be significant administrative burdens associated with RES compliance. This burden would also be felt by the regulatory bodies involved in monitoring and enforcing compliance. The circumstances, however, are unique to existing regulated parties. Application of such a threshold for newly emerging regulated parties would also need to be addressed in the RES regulation. Such a threshold and the attendant regulations can be carefully crafted to ensure the integrity of the RES, while at the same time avoiding perverse consequences that are unique to smaller entities.

Using the 500 GWh example set forth in the Concept Outline, several small electrical corporations and electric service providers would fall within the threshold, as well as 22 POUs. The POU electric load not subject to the RES under the threshold would be **less than 4%** of retail sales. However, it is important to note that this number is a maximum. According to CEC data, ten NCPA members would fall below the threshold.⁵ All NCPA members have existing RPS, and even of those that would not meet the threshold, several currently have more than 20% of their portfolios comprised of California-eligible renewable resources, and three of these entities already have a California-eligible RPS that exceeds 40%. What these numbers demonstrate is the fact that application of a threshold does not mean that the state’s GHG emission reduction goals are being thwarted.

Furthermore, it is important to note that all POUs will continue to comply with the provisions of Public Utilities Code § 387(a),⁶ which does not change with the promulgation of the

4 For purposes of these comments, the term “regulated parties” is used consistent with the definition proposed in § 1.a of the Concept Outline.

5 CEC Energy Consumption Data Management System; <http://www.ecdms.energy.ca.gov/elecbyutil.aspx>.

6 P.U. Code § 387(a) provides that “each governing body of a local publicly owned electric utility, as defined in section 9604, shall be responsible for implementing and enforcing a renewable portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environment.”

RES regulations. Nor does the application of a threshold change the fact that all California entities are still subject to the emissions performance standard adopted by the CPUC and the CEC, pursuant to the provisions of Senate Bill 1368 (2006).

While it makes sense to have a minimum threshold to avoid subjecting smaller entities – in this case NCPA speaks to POUs specifically – to burdensome administrative mandates, that threshold does not by definition erode the integrity of the RES program. NCPA believes that the total statewide impact would be *de minimus* for any similarly situated regulated parties, and not just POUs. Once an entity reaches the threshold, that regulated party would then be subject to the RES. The gradual accumulation of renewable resources over time will allow the entity to meet the RES compliance obligation once the threshold is met. This factor should also help to allay concerns that entities not subject to the RES will do nothing towards acquiring renewable resources. For its part, several smaller NCPA members have adopted a higher RPS goal for all new resources added to the entities' portfolios moving forward.

§ 1.b. Program Start Date. The RES Concept Outline proposes an effective date of January 1, 2012 for the RES regulation. NCPA does not oppose the imposition of the January 1, 2012 effective date. However, the RES regulation should address several issues regarding the transition period with respect to this effective date. For instance, during the October 30 Workshop, Staff stated its intent for the RES to run concurrently with the RPS during the nascent part of the program and that all of the same program rules would apply. For POUs, those rules are defined by the RPS that is implemented and enforced by its own governing body pursuant to P.U. Code § 387(a). The RES regulation needs to acknowledge this construct, especially in terms of seeking a mandate with intermittent compliance milestones (i.e., §3.a).

2. RES Eligible Resources

2.a. Eligible Resources. NCPA believes that eligible renewable resources or fuels under the current RPS program should continue to be eligible under the proposed RES regulation. It is prudent for CARB Staff to look at other technologies and the limitations that are placed on existing RPS eligible technologies, in coordination with the CEC and that agency's existing authority in this area. One of the objectives of AB 32 is to encourage investments in GHG reducing technologies. Some of these technologies will be closely tied to renewable resources. Accordingly, it is important for the regulations to address a means by which new and emerging technologies can be included within the RES eligible resources in an expedient and cost-efficient manner. Including new and emerging technologies as eligible for the state's RES program will go far to advance the development of those resources, facilitate construction of the infrastructure needed to access those resources, and provide regulated entities with a wider range of viable options with which to meet their regulatory obligation.

2.b. Excluded Technologies. The Concept Outline notes that large hydroelectric and nuclear facilities will not be added to the list of eligible resources. Staff stated during the October 30 Workshop that while CARB has the authority to add resources to the list of eligible resources;

it does not intend to do so at this time.

While CARB does not intend to add these existing technologies to the list of eligible resources, the regulations must include provisions to “avoid the absurd.” In instances where regulated parties have a large amount of zero-to-low emitting GHG resources that are not eligible for the RES, those entities should not be forced to acquire either more costly or higher GHG emitting resources simply in order to comply with the RES. As the Concept Outline notes in Part 1, CARB’s authority to adopt the RES comes primarily from AB 32 “which provides the ARB with broad authority to adopt **greenhouse gas emission reduction measures** that achieve technologically feasible and cost-effective **reductions.**” (Emphasis added.) To adopt a GHG reduction measure that results in an increase in GHG emissions due to a regulated party’s need to shift its resource portfolio would clearly contradict the intent of AB 32 and EO S-21-09. Accordingly, the draft regulation must address this issue appropriately. NCPA offers its assistance to CARB staff in helping to devise draft language that would focus on a resolution to this problem.

2.c. Geographic Eligibility. All in-state and out-of-state resources connected to Western Electricity Coordinating Council (WECC) transmission system should be eligible for the RES. No limitations should be placed on the “deliverability” of resources beyond what is already set forth in the CEC Guidelines, and NCPA supports the comments of the California Municipal Utilities Association (CMUA) in this regard.

2.c Purchase and Use of Renewable Energy Credits (REC). The Concept Outline proposes that energy and RECs, REC-only, and owned-generation be eligible for RES compliance. NCPA fully supports this position. REC transactions monitored through Western Renewable Energy Generation Information System (WREGIS) provide the system with transparency and accountability. NCPA concurs with the requirement that REC-only transactions be tracked in WREGIS, and that the GHG and REC attribute not be used toward another renewable or GHG reduction program in order to ensure the integrity of the program. NCPA also supports the CMUA comments on this issue.

3. RES Compliance

Compliance Metric. The RES compliance metric should be based on megawatt hours (MWh) of renewable electricity.⁷ CARB Staff has obviously spent considerable time looking at the possibility of converting the MWh metric into something that can be read in terms of total GHG reductions. While this is a laudable goal, it is not something that should be undertaken at this time for several reasons.

First and foremost, it is too complex. The schedule for developing and finalizing the RES

⁷ The Concept Outline contains three Attachments that all address various aspects of the GHG conversion metric. Because NCPA has taken the position that now is not the time to further explore or develop such a metric, these comments do not address any part of the three Attachments.

regulation is already extremely aggressive by any standard. Concurrent efforts of the affected agencies and stakeholders on the upcoming cap-and-trade regulation, coupled with the development of the RES regulation do not provide sufficient time to develop and test new compliance mechanisms. Devising a complex mechanism for determining a conversion factor for every conceivable renewable resource from MWh to tons of GHG reductions is not a simple task. Updates would be needed as technologies change or to account for the same technologies with different efficiency levels or varying proximity to load. The number of variables that could conceivably come into play are large, as are the potential glitches that could occur in implementing the conversion factor.

Additionally, the transition to a GHG metric lacks transparency. Not only is this proceeding something that the energy agencies and stakeholders are interested in, but it is also something that has drawn the interest of the public. The GHG conversion metric adds a layer of complexity to this process that is simply not necessary.

Furthermore, and most importantly from a practical standpoint, a GHG metric is not consistent with any other measure in the electricity industry, including combined heat and power and energy efficiency. Both the CEC and CPUC have expressed concern with the notion of converting the compliance obligation to a GHG metric. The Independent System Operator (ISO) would also be working with the calculation and so would be compelled to adopt the conversion as well. The total obligation set forth in EO S-21-09 speaks to MWh. The WREGIS REC tracking system would also need to be adjusted to make the conversions when dealing with compliance.

While NCPA does not believe that conversion or application of a GHG metric is without merit, now is not the time to attempt to implement such a mechanism. For purposes of the RES regulation, the compliance metric should be MWh.

3.a. Compliance Period Targets. The RES regulation should not include annual compliance periods. While it may be appropriate to have intermittent targets, those targets, at least during the first part of the RES program, must be designed to reconcile existing RPS regulations (as currently applied to each of the regulated parties). Any interim compliance targets should also be treated as progress updates – regulated parties that fail to meet the initial targets should not be subject to costly fines and penalties, rather they should be able to direct valuable resources towards achieving the mandated renewable electricity levels. As with penalties in general (discussed more fully in § 5 below), the RES regulation should be drafted with an eye toward facilitating the attainment of the state’s GHG reduction goals.

3.c. Generation of RES Compliance Credits. The Concept Outline proposed that “Compliance Credits” not needed to meet the regulated parties’ compliance obligation during a compliance period can be used in future years or traded with other regulated parties. NCPA fully supports the flexible use of compliance obligations. There is no policy or practical reason to limit the use of a compliance credit once it has been obtained – the corresponding utilization of a MWh of renewable electricity (and ideally reduction in GHG emissions) has been achieved.

However, there are instances where an entity may not be able to meet the compliance obligation that must also be addressed. NCPA proposes that an additional subsection be added to Section 3 that addresses flexible compliance mechanisms.

New Section. Flexible compliance mechanisms. Flexible compliance mechanisms must be devised. These provisions would apply in the event that there are factors beyond the control of a regulated party that precludes that party from securing the necessary compliance credits during a compliance period or in instances where obtaining the necessary renewable electricity to meet the RES obligation was simply not cost-effective. This section would require a showing that the regulated party was not “negligent” in trying to achieve its regulatory obligation. While section 5.e does address the ability of entities to defer their compliance obligation if CARB “finds that a shortfall was due to circumstances beyond the reasonable control of the regulated party,” there are insufficient procedures to address how this will occur.

Flexible Compliance Options for Cost Containment: The RES is but one of several complimentary measures the electric utilities will be utilizing to reduce GHG emissions and move the entire state towards achieving the emissions reduction goals set forth in AB 32. However, such reductions cannot be achieved at any cost. Indeed, AB 32 specifically directs CARB to promulgate regulations and adopt measures that achieve technologically feasible **and cost-effective reductions**. Accordingly, including provisions in the RES regulation that addresses instances where it is simply not cost-effective for a regulated party to obtain a portion of its RES obligation provides a comprehensive framework within which California’s regulated parties can comply with the intent of the RES while continuing to provide reliable and reasonably priced electric service to electricity customers throughout the state.

Flexible Compliance Options for External Factors: Instances that would warrant flexible compliance alternatives would include the failure to procure necessary permits when such permits were diligently sought and reasonably expected, or operational failures totally unforeseen and outside the control of the regulated party. Regardless of the zealotry with which renewable resources are pursued, instances such as these are not totally unlikely. It is also important for regulated parties to be able to ensure operational control and that procurement of specific resources does not adversely impact the provision of reliable electricity.⁸ These issues are not trivial and are among many factors that impact attainment of the RES. As acknowledged in CARB’s own Scoping Plan, “reaching a target of 33 percent will require that California quickly address challenges such as program complexity, lack of transparency, permitting difficulties, and transmission, distribution and, for intermittent renewable, integration issues.”⁹

8 See Health & Safety Code § 38501(h), which provides that it is the intent of the legislature that the GHG reduction measures be design “in a manner that minimizes costs ... and maintains electric reliability.”

9 California Air Resources Board, *Climate Change Proposed Scoping Plan*, October 2008, C-127.

It would be beneficial to both regulators and regulated parties for the RES regulation to include language that addresses the means by which regulated parties can meet their compliance obligations without being subject to onerous or burdensome fines and penalties under certain instances.

3.d. GHG Metric Calculation. The GHG Metric calculation should not be adopted at this time. Accordingly, these comments do not address any part of Attachment 3.

4. Monitoring and Verification

The Concept Outline proposes that the existing RPS structure for monitoring and verification be retained. As it pertains to the POU, this involves reporting to the CEC. The POU, has a long-standing and productive working relationship with the CEC that results in the provision of detailed energy-related information from the POU to the CEC each year, including detailed energy efficiency, renewable energy, and power content reports. This successful dynamic should not be changed under the RES regulation. Further, it is important that the role of the POU local regulatory boards not be hindered or subsumed into a new regulatory paradigm. The current reporting and monitoring structure between the POU and the CEC should be retained and not expanded. As CARB works through the interagency roles contemplated in section 4.d. for the CEC and CPUC for monitoring and verification, the existing role of the CEC should not be switched to another regulatory agency, such as the CPUC.

NCPA also urges CARB staff to work with the POU governing bodies, as well as the CPUC and CEC, in the development of the non-regulatory RES implementation guideline proposed in section 4.c.

5. Compliance and Enforcement

NCPA supports the role of CARB as the agency solely responsible for compliance and enforcement of the RES, despite the intermediate role of the CEC and CPUC for purposes of reporting, monitoring, and verification. NCPA believes that the compliance and enforcement provisions of the RES regulation should include a greater level of detail regarding procedure and appeals, as more fully discussed herein.

5.a and b. Compliance Requirements and Agency Roles. NCPA believes that the RES regulations should provide specificity with regard to the factors that will be used for determining compliance. This determination should be based on objective criteria, and should include the flexible compliance procedures addressed above. These provisions should also clearly define the agencies' roles and clarify that this does not expand the current scope of CEC jurisdiction over POU governing boards.

5.c. Compliance Determination. The compliance determination should set forth the review standards and process. This section should also delineate the intermediate steps for review of a compliance determination, the appeal process, and re-review prior to enforcement action.

5.e. Penalties for Non-Compliance. NCPA understands that CARB has the authority to promulgate penalties for noncompliance. Penalties should be levied by the agency with the intent of attaining the goals of the regulation. The agency should consider financial penalties as a last resort and should link their imposition to malfeasance or gross negligence. Regulated parties who are unable to meet their compliance obligations are better served utilizing scarce resources procuring additional renewable electricity than paying penalties or dealing with burdensome administrative processes. Furthermore, as noted above, noncompliance can and should be noted, but when such noncompliance is beyond the control of the entity, it should not be subject to monetary penalties. Finally, an appeal process and intermediate review should be clearly articulated in the regulation.

CONCLUSION

Achieving the greenhouse gas reductions mandated in AB32 will not be accomplished easily or without considerable cost to California's electricity ratepayers. As discussed more fully above, the RES is a valuable and viable tool that can assist the state in achieving that goal, but it is not without cost or complications. NCPA appreciates that opportunity to provide these comments on the Concept Outline and work with Staff on the development of the RES regulation. If you have any questions regarding these comments, please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com.

Sincerely,
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