

November 20, 2009

***VIA ELECTRONIC MAIL***

Mr. Gary Collard  
Project Manager  
California Air Resources Board  
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1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95814

**Re: Comments of PacifiCorp regarding Proposed Concept Outline for the California Renewable Electricity Standard (“Proposed Outline”)**

Dear Mr. Collord:

PacifiCorp, dba Pacific Power (“PacifiCorp” or “Company”), respectively submits these comments regarding the California Air Resources Board’s (“CARB”) Proposed Concept Outline for the California Renewable Electricity Standard (“RES”) issued in accordance with Governor Schwarzenegger’s Executive Order (EO) S-21-09. PacifiCorp appreciates the opportunity to submit comments in this proceeding and CARB’s efforts to address this important topic.

I. Introduction of PacifiCorp

PacifiCorp is a regulated multi-jurisdictional utility serving 1.7 million retail electricity customers, in California, Idaho, Oregon, Utah, Washington, and Wyoming. Of those customers, approximately 46,500 are located in Del Norte, Modoc, Shasta, and Siskiyou counties in Northern California. PacifiCorp maintains a transmission and distribution system and is the Balancing Authority for the areas known as PacifiCorp West and PacifiCorp East.<sup>1</sup> Neither control area is part of the California Independent System Operator (“CAISO”) controlled grid.

PacifiCorp’s primary function is to serve retail load. Unlike other California investor-owned utilities (“IOUs”), PacifiCorp remains a vertically-integrated multi-jurisdictional utility owning approximately 80 percent of its generation portfolio, and utilizing the majority of the electricity generated from those assets to serve customer retail load. PacifiCorp’s owned-generation portfolio is a mix of assets located within nine western

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<sup>1</sup> A Balancing Authority is defined as the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time. A Balancing Authority Area is defined as the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load resource balance within this area.

states (Arizona, California, Colorado, Idaho, Montana, Oregon, Utah, Washington, and Wyoming).

Consistent with a long-standing regulatory practice agreed to among the various state regulatory entities overseeing PacifiCorp, all energy produced by PacifiCorp-owned resources, as well as purchased energy delivered pursuant to a power purchase agreement is referred to as “system” power.<sup>2</sup> System power is electricity that is not assigned by PacifiCorp for use within a particular state or balancing authority. Unlike IOUs located entirely within California, PacifiCorp combines all of the costs for generating and maintaining the appropriate level of the power within the system and allocates to each jurisdiction its proportionate share of system resources based upon retail load served. PacifiCorp’s California retail customers make up approximately a two percent (2%) share of PacifiCorp’s system resources.

A useful analogy would be to think of PacifiCorp’s multi-jurisdictional system as a water reservoir with many points where water flows in, and many different points where water flows out. Once the water is in the reservoir, it is all the same water. There may be a pipe bringing water into the system from one end (representing power generated in Wyoming) and a pipe of water flowing out of the system on another end (represented by power delivered to California). The result is that PacifiCorp does not track the location, flow and physical delivery (i.e., transmission) of power used to serve retail load from a point of generation to a point of consumption. Rather, PacifiCorp combines all of the costs for generating and maintaining the appropriate level of the power within the integrated system, calculates a cost of service for doing so, and allocates the costs and benefits to each of the states based on the respective retail load served. PacifiCorp uses a system power cost allocation factor. As a result of this shared resources approach, PacifiCorp’s states receive the various benefits created by resource diversification. The cost allocation factor is part of a more comprehensive cost allocation methodology referred to as the PacifiCorp Multi State Process (“MSP”) revised protocol. The revised protocol is a cost allocation methodology agreed to by the various utility commissions that regulate PacifiCorp.

## II. Comments

### A. Small and Multi-Jurisdictional Utilities

The Proposed Outline indicates that the RES would apply to all California electrical corporations but requests feedback on the concept of a threshold exemption based on the characteristics of a given utility. As noted above, PacifiCorp is a multi-jurisdiction utility with approximately 46,500 of its 1.7 million customers located in northern California. Approximately 35% of these customers are considered low-income and participate in PacifiCorp’s California Alternative Rates for Energy (“CARE”) assistance program. As such, the Company is particularly sensitive about keeping costs as low as possible while

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<sup>2</sup> An exception is the assigning of the power produced by Qualifying Facilities (“QFs”) subject to contracts that mandate utility purchases under federal law (e.g., Public Utility Regulatory Policies Act of 1978). The output from QFs is usually assigned to the state where the QF is physically located.

continuing to provide safe and reliable electric service. To achieve these goals, PacifiCorp recommends that the design, implementation and enforcement of the RES should allow for flexibility with respect to small and multi-jurisdictional utilities, with the objective of balancing benefits with the potentially high costs of compliance.

In 2005, the Legislature recognized the unique challenges faced by small, multi-jurisdictional utilities operating as an integrated system to meet California's renewable portfolio standard ("RPS") with the passage of Assembly Bill 200 (amended Section 399.17 of the Public Utilities Code). Assembly Bill 200 recognizes the characteristics of the small and multi-jurisdictional utilities discussed above, and allows utilities that serve less than 60,000 California customers and also have operations in other states to use system resources located within the Western Electricity Coordinating Council ("WECC") to meet the requirements of the California RPS program, among other things. PacifiCorp recommends that the RES should mirror the flexibility provided for in Section 399.17 by allowing small and multi-jurisdictional utilities such as PacifiCorp to utilize renewable resources located outside the state of California for purposes of RES compliance. Such an approach is critical for PacifiCorp as it operates its system on a multi-state integrated basis.

#### B. Relationship between RPS and RES

The Proposed Outline notes that compliance with the RES would apply independently of the RPS program. PacifiCorp strongly recommends that to the extent possible, the RES be consistent with, and not duplicative of, the RPS program. Although PacifiCorp supports the laudable goals of both the RPS and the RES, the RPS is an extremely complicated program that demands a high level of a time and resources for administration and reporting, completely separate and apart from the acquisition of complying resources. Moreover, the RPS program has been and remains highly organic and still developing as both the California Public Utilities Commission ("Commission") and the California Energy Commission ("CEC") continue to address the complex issues surrounding implementation and compliance. For PacifiCorp's relatively small California customer base, the administrative burden and cost of compliance is a serious concern. For their part, California's regulators have invested substantial effort in developing this program over more than a decade, in close consultation with stakeholders through numerous workshops and hearings. To that end, the Company recommends building on that work by designing the RES in close consultation with the Commission and the CEC to achieve the best results for California.

#### C. Tradeable Renewable Energy Credits

The Proposed Outline indicates that eligible renewable resources or fuels currently under the RPS program would continue to be eligible under the RES. PacifiCorp strongly agrees that this proposal will aid in the reduction of administrative cost and complexity. The Company recommends, however, that in addition to the existing eligible renewable resources under the RPS, the RES include use of tradeable renewable energy credits ("TRECs") as a compliance option. PacifiCorp recognizes that the use of TRECs for purposes of RPS compliance is currently under consideration by the Commission in

Docket No. R.06-02-012. PacifiCorp is an active participant in that proceeding and continues to support the authorization of the use of TRECs for compliance with the RPS program. The authorization of TRECs would provide load serving entities with much-needed flexibility for achieving RPS compliance at the least cost for customers; this is set out in great detail through numerous party comments in that docket. For the same reason, PacifiCorp believes that utilization of TRECs would be critical for meeting RES compliance at the lowest cost. Due to the remote geographic nature of PacifiCorp's California service territory and the inability to access the CAISO, many issues related to procuring and delivering renewable energy would be addressed by allowing the use of TRECs.

#### D. Out-of-State Resources

The Proposed Outline requests feedback on the potential impact of modifying the deliverability requirements for out-of-state resources. As discussed above, PacifiCorp requests that the RES mirror the flexibility provided to small and multi-jurisdictional utilities under Section 399.17, which allows PacifiCorp to utilize system resources located within the WECC to meet the requirements of the RPS program.

PacifiCorp adds an additional concern and recommendation regarding the CEC process for certifying eligible renewable energy resources located outside of California under the RPS program. Specifically, the Company points to the CEC's requirement for utilities to demonstrate that out-of-state facilities will not cause or contribute to a violation of a California environmental standard or regulation. Rather than demonstrate, for example, that a facility is several hundred miles away from California and does not connect with any waterways or identifiable air flows that flow into California, a facility is required by the CEC to provide a comprehensive list and description of all California environmental quality laws, ordinances, regulations, and standards ("LORS") that be directly or indirectly violated by the facilities development or operation. *See* California Energy Commission, Renewables Portfolio Standard Eligibility Commission Guidebook at pp. 37-38. In applying this process, the CEC typically takes eight to ten months to conclude that facilities that are hundreds of miles out of state and emit nothing (since they are wind), do not have a negative environmental impact in California.

PacifiCorp appeals to the CARB to either defer to the CEC in certification, or, if it revisits the process, revisit the process jointly with the CEC to ensure that their requirements are the same, and do not represent a new and further set of requirements. PacifiCorp has previously submitted comments strongly encouraging California to subject its recommendations to an objective, independent analysis by a reputable third party, for Constitutional review. The ultimate purpose of a RES would be frustrated if it were delayed or ultimately overturned by a Federal lawsuit. Legal risk is the most significant initial objective to consider when evaluating different types of regulation. It remains unclear whether partner states possess sufficient statutory and regulatory authority to implement the RES.

## E. Alternate Approaches to Greenhouse Emissions

The Global Warming Solutions Act of 2006 (codified at Cal. Health & Safety Code §§ 38500-38599, hereinafter “AB 32”) directs CARB to, among other things, design emission reduction measures. Executive Order S-21-09 further requires CARB to adopt a regulation consistent with the 33 percent renewable energy target established in Executive Order S-14-08 by July 31, 2010. Notably, Executive Order S-21-09 further states that CARB may consider different approaches that would achieve that objective.

PacifiCorp previously commented on the need for California to harmonize different electricity policies that all individually look to mitigate greenhouse gas emissions. Many of these comments were captured within recommendations included within the February 2008 Final Report of the California Air Resources Board’s Economic and Technology Advancement Advisory Committee (“ETAAC”).<sup>3</sup> The committee offered the following problem statement:

*“Problem:* Energy efficiency programs have individual budgets and targets, the [Renewable Portfolio Standard] program stimulates particular technologies up to a certain percentage of the state’s total electricity supply, and solar [photovoltaic] programs aim to achieve specific capacity installation targets from just one renewable energy fuel. Other opportunities in renewable energy development -- such as waste heat recovery and methane capture and utilization -- are not fully developed under existing State programs. Though these are important programs individually, they do not encompass all of the technologies relevant to the unifying challenge of GHG emissions mitigation. The State’s resource planning process is not optimized when these efforts are uncoordinated. As the implementation of AB 32 proceeds and carbon savings become a higher public policy priority, there may be value in better coordinating these programs so that they are all directed towards a common end. Clear ownership rights and credits for early action, as recommended above, will aid in establishing this coordination, but other steps are needed as well.”  
(page 5-25)

The committee then offered possible solutions:

*“Possible Solutions:* CARB should pursue a uniform strategy for implementation of new carbon reducing technologies after 2012, with carbon-equivalent savings that would link all existing clean energy programs and mandates. All actions within the electricity and natural gas sectors that result in such savings would contribute to GHG emission

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<sup>3</sup> See, Section VI. “Low and Zero Carbon Electricity Generation Plan”, subsection (k) “Unifying Standards for Climate-Related Programs.” (available online: <http://www.arb.ca.gov/cc/etaac/ETAACFinalReport2-11-08.pdf>).

reduction targets under AB 32. Such a policy provides an incentive for all energy market participants to undertake what are now generally unrecognized beneficial climate change response activities. It would also provide certainty to those making investments that credits for GHG emission savings will accrue to them. This unifying standard, however, should not jeopardize programs that play important roles in nurturing certain technologies to a position of market readiness. Such programs should continue in a targeted and efficient manner, connected to the climate change regime by clear performance metrics that apply across all technology categories. In this regard, the State should, as a first priority, begin to develop a unified GHG emission accounting process across clean energy programs, to support rationalization of policy and financial priorities post-2012.” (page 5-26)

The CARB’s proposed RES could be designed to achieve the recommended uniform strategy. PacifiCorp brings to CARB’s attention the state of Utah’s recently passed legislation establishing a state RPS that also addresses other opportunities for achieving carbon emission reductions. *See* Utah Code Ann. § 54-17-601, et. seq.<sup>4</sup> Significantly, the Utah RPS recognizes that renewables represent one of many tools necessary to reach the goal of carbon emission reduction. The Utah RPS provides an incentive to utilities to increase their investment in energy efficiency measures to reduce demand and energy growth by creating a crediting scheme that may be counted toward the Utah RPS targets. Traditional RPS programs contain no such incentive. Moreover, the Utah RPS provides this incentive without additional mandates and without imposing incremental costs upon customers or the state budget. It accomplishes this by a very simple and straightforward method of allowing a utility to adjust retail sales to eliminate the kilowatt-hour equivalent of the energy efficiency savings before applying the percentage of sales to be met with renewables.

The Utah RPS also provides an incentive to utilities to increase their investment in new zero or reduced carbon emitting generation, such as hydroelectric energy, carbon-sequestered coal generation and nuclear power purchases. It accomplishes this goal by allowing a utility to adjust its retail sales baseline by netting out kilowatt-hours produced by these sources before applying the RPS percentage target. In effect, only kilowatt-hours derived from fossil-fuel resources are subject to the Utah RPS target. Traditional RPS programs fail to recognize that these other types of low- or zero-emitting resources are essential tools to reducing carbon emissions. Again, the Utah RPS provides this incentive without mandates and without imposing incremental costs upon customers or the state budget. It also accomplishes this without the controversy of designating coal or nuclear or large out-of-state hydro as renewable energy.

The Utah RPS also provides customers with an incentive to invest in energy efficiency improvements and distributed generation where the energy source is solar, geothermal, hydro and waste heat recovery. Traditional RPS programs fail to recognize that contributions by customers to reduce carbon emissions will be essential to be successful.

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<sup>4</sup> See also, <http://le.utah.gov/~2008/bills/sbille/r/sb0202.pdf>

Once again, the bill provides this incentive without mandates or a single dollar from the state budget. The bill takes advantage of the developing market in tradable renewable energy credits and allows customer to receive such credits for their activities that reduce carbon emissions. Customers can then sell these credits and use the associated revenues to reduce the cost of the investments that gave rise to the credits or invest in further activities to reduce carbon emissions. The Utah RPS has taken the traditional RPS model from what is essentially a kilowatt-hour “new renewable procurement” standard, and converted it into a kilowatt-hour “declining carbon intensity” standard. In essence, the Utah RPS turns the traditional RPS program stick, into a carbon emissions reduction carrot.

Two Congressional proposals, including H.R. 2454 “The American Clean Energy and Security Act of 2009” (June 26, 2009) passed by the U.S. House of Representatives, and a federal RPS measure included within energy legislation passed out of the Senate Energy and Natural Resources Committee titled “Clean Energy Technology Deployment” (June 17, 2009), incorporated provisions similar to the Utah RPS including crediting energy efficiency toward the federal RPS target, as well as netting-out kilowatt-hours produced by hydro, nuclear, and even fossil fueled generation in proportion to the amount of carbon dioxide emissions sequestered as a result of carbon capture and sequestration equipment. These kilowatt-hours would be deducted from a utility’s annual kilowatt-hour baseline to which the federal RPS percentage target would be applied.

Both the Utah RPS and the two federal RPS proposals have taken the traditional RPS model from what was essentially a kilowatt-hour “new renewable procurement” standard, and converted it into a kilowatt-hour “declining carbon intensity” standard. CARB should design the RES to achieve the ETAAC’s recommendation to adopt a uniform strategy for the electricity sector with carbon-equivalent savings linking all existing clean energy programs and mandates. Both the Utah RPS and recent federal RPS proposals offer useful models for the CARB to follow.

#### F. Compliance Schedule

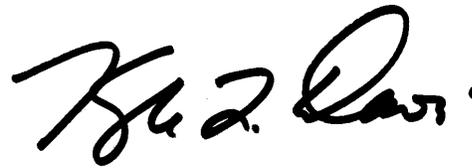
The Proposed Outline recognizes that RES annual compliance may be too frequent and notes that Staff is evaluating the appropriateness of different compliance schedules. As discussed above, PacifiCorp is very concerned about the potential time and expense associated with an overlapping and potentially duplicative RES compliance schedule. To that end, PacifiCorp recommends that at a minimum, any compliance schedule should be consistent with the current reporting schedule for RPS.

If you have any questions concerning these comments, please contact me at (503) 813-6601 or Jordan White at (503) 813-5613. Thank you for your consideration of these comments.

Dated: November 20, 2009

Respectfully submitted,

By

A handwritten signature in black ink that reads "Kyle L. Davis". The signature is written in a cursive, flowing style.

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