

**COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY TO THE
CALIFORNIA AIR RESOURCES BOARD ON PROPOSED CONCEPT OUTLINE FOR
THE CALIFORNIA RENEWABLE ELECTRICITY STANDARD**

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I.

INTRODUCTION

Southern California Edison Company (“SCE”) appreciates the opportunity to provide comments on the Proposed Concept Outline for the California Renewable Electricity Standard (“Outline”) issued by the California Air Resources Board (“CARB”). As noted in the Outline, Assembly Bill (“AB”) 32 grants CARB the authority to adopt emissions reduction measures to achieve technologically feasible and cost-effective reductions in greenhouse gas (“GHG”) emissions consistent with AB 32’s overall goal of achieving 1990 emissions by 2020.¹ Cost-effectiveness must be a critical element of CARB’s efforts to implement AB 32. The Legislature expressly stated that: “It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California’s economy. . . .”²

The proposed 33% renewable electricity standard (“RES”) regulation discussed in the Outline is consistent with the approach California has taken to emissions abatement to date. The State plans to achieve the vast majority of emissions reductions from specific programmatic mandates that prescribe how expected GHG reductions must be achieved such as a 33% renewable electricity goal, the Low Carbon Fuel Standard (“LCFS”), and the Pavley vehicle emissions standards. This may not be the most cost-effective approach to reducing statewide GHG emissions. In order to meet the State’s long-term emissions reduction goals without imposing unacceptably high costs on California customers, CARB should focus its long-term efforts on transitioning to a comprehensive approach that focuses on GHG reduction and provides the flexibility to allow such emissions reductions to be achieved in the most cost-effective manner possible. In particular, the RES regulation should be drafted to give CARB the flexibility to transition to such an approach.

¹ Outline at 6; Cal. Health & Safety Code § 38562.

² Cal. Health & Safety Code § 38501(h).

In light of Executive Order S-21-09's requirement that CARB adopt a regulation by July 31, 2010 and the aggressive schedule proposed by CARB, in the short-term, it is most practical to develop a RES regulation which builds upon and complements the current Renewables Portfolio Standard ("RPS") program. Achieving a statewide 33% renewable electricity goal is a monumental undertaking. A massive and unprecedented infrastructure build-out is required, and major challenges such as the slow pace of transmission permitting and approval, project permitting and siting delays, and the need to maintain grid reliability while integrating a large amount of intermittent renewable resources must be addressed. The RES program must recognize the significant challenges ahead and the need to protect California's electricity customers from excessive costs.

Four principles are integral to any fair and successful renewable electricity standard – equal rules, broadening of the market, compliance flexibility to address real-world barriers to meeting the State's goals, and customer protection against excessive costs. Consistent with these principles, SCE offers the following comments on the Outline.

- **Equal Rules:** SCE strongly supports the Outline's application of the RES to all California load-serving entities ("LSEs"). The Outline's recognition of the need for equality in the RES program is consistent with Executive Order S-21-09's intent that the RES be broadly applied and AB 32's mandate that CARB design regulations equitably. Equal application and enforcement of the RES on all LSEs are also necessary if the State is to achieve its 33% renewables goal.

CARB should not adopt a minimum threshold for participation in the RES program that exempts small LSEs. If CARB sets a minimum threshold there is a very real potential that LSEs will form or reorganize operations to fall below the threshold, thus avoiding responsibility for renewable procurement. Such gaming would undermine the RES program and place an unfair burden on customers of those LSEs who do procure renewables. If, however, CARB determines a minimum threshold is necessary, that threshold should be set at 100 GWh. Moreover, only existing LSEs who are under that threshold should be exempt in order to prevent new or

reorganized LSEs from evading the RES, and any exempt LSEs should be subject to alternative compliance mechanisms.

- **Broadening of the Market:** A 33% RES represents a 65% increase over the State's existing 20% goal, requiring a substantial increase in the State's renewable energy in a relatively short time period. This highly ambitious goal will not be achieved without addressing significant challenges such as insufficient transmission infrastructure and a prolonged process for permitting and approval of new transmission lines, project permitting delays, and grid reliability and integration issues. Given these significant impediments to reaching 33% renewables, it is critical that California expand its supply of renewable resources by allowing access to a broader renewable resource market. SCE is pleased that the Outline acknowledges the need to broaden the market by proposing to allow RES-eligible resources to come from anywhere within the Western Electricity Coordinating Council ("WECC") and the unlimited use of WECC-wide unbundled renewable energy credits ("RECs"). These measures to expand the market will vastly increase LSEs' ability to procure renewables while also helping to contain customer costs, and are consistent with Executive Order S-21-09's recognition that climate change is a global problem.

In addition to broadening the market, all renewable resources that currently count towards California's existing RPS must count for the RES. LSE customers have made substantial investments in long-term renewable contracts in compliance with current law and those investments must be protected. Accordingly, until such time as a comprehensive GHG reduction program focused on cost-effectiveness is established, CARB should measure RES compliance based on the same megawatt-hour ("MWh") metric that is used in the RPS program.

- **Compliance Flexibility:** Renewable resources develop in a lumpy fashion with peaks and valleys unrelated to the targets set by policymakers. SCE therefore supports multi-year RES targets that recognize the way renewable resources actually develop: 20% by December 31, 2013, 25% by December 31, 2016, and 33% by December 31, 2020.

Moreover, LSEs do not control all of the factors necessary to ensure that renewable electricity is delivered to meet the State's goals. Needed transmission lines take significant time to permit, approve, and construct. LSEs have no control over the siting and permitting process for renewable generating facilities and there are often long delays in that process. Renewable developers may not perform in accordance with their contractual obligations. The existing RPS program acknowledges that LSEs cannot always control their compliance with flexible compliance rules allowing excess procurement in one year to be used in subsequent years (i.e., banking) and borrowing against future deliveries from executed contracts to account for inadequate procurement results (i.e., earmarking). To account for the disconnect between policy decisions and real development timelines and issues, CARB should incorporate these flexible compliance options in its RES program. Additionally, CARB should provide reasonable opportunity for LSEs to have targets extended under circumstances beyond their reasonable control such as failure of transmission infrastructure to appear, permitting or siting delays, developer non-performance, or an insufficient market for competitively priced renewable resources.

Furthermore, if an LSE is assessed a penalty in connection with a shortfall in meeting a RES target, CARB should not add that shortfall to the next compliance period's target. Such cumulative deficits are unfair and unduly punitive, leading to even greater procurement obligations being placed on customers when supply is scarce, compounding the sellers' market created by the RES program. Cumulative deficits also misalign the interests of LSEs and their customers by creating an incentive to purchase renewables at any cost to avoid penalties.

- **Cost Containment:** Executive Order S-21-09, AB 32, and existing RPS law all make clear that the State does not support "renewables at any cost." Accordingly, the cost impact of the RES on customers must be carefully considered. Although the Outline includes measures that will help contain costs such as broadening the market and recognition of the need for compliance flexibility, the Outline does not explicitly address cost containment. CARB must determine some manner of ensuring cost containment in the RES. SCE suggests that CARB

work with the California Public Utilities Commission (“CPUC”) to establish a framework for investor-owned utility (“IOU”) renewable procurement which is based on whether the CPUC finds renewable contracts to be priced at “just and reasonable” levels.

In addition to the issues discussed above, CARB should work with the energy agencies to avoid duplicative and inconsistent RES and RPS requirements. The RES and RPS programs should use common monitoring, reporting, and verification systems. Additionally, CARB should ensure that no LSE is subject to multiple penalties from multiple agencies for the same renewable energy shortfall. CARB should also consider proposed federal renewable energy legislation and how the RES program will integrate with a federal renewable energy standard to avoid unduly burdensome and costly conflicting requirements for LSEs.

Finally, SCE supports the Outline’s proposal to exclude electricity obtained from combined heat and power (“CHP”) and electricity used to charge electric vehicles from the load used to calculate an LSE’s RES obligation. This is the appropriate way to encourage CARB’s other policy objectives and the overall reduction of statewide GHG emissions.

II.

CARB SHOULD MOVE TOWARD A LONG-TERM FOCUS ON COST-EFFECTIVE GHG EMISSIONS REDUCTIONS

AB 32’s overall goal is GHG emissions reductions that will reduce the risk of climate change. The long-term success of this goal depends on containing the costs of GHG reduction for California customers. The Legislature recognized this fact, expressing its intent that CARB design emissions reduction measures “in a manner that minimizes costs and maximizes benefits for California’s economy. . . .”³ Cost-effectiveness and cost minimization are mentioned

³ Cal. Health & Safety Code § 38501(h).

throughout AB 32.⁴ AB 32 defines “cost-effective” or “cost-effectiveness” to mean “the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.”⁵

The State’s current approach to fulfilling the goals of AB 32 focuses on specific regulatory programs such as a 33% renewable electricity goal that prescribe how GHG reductions must be achieved. Approximately 80% of the estimated emissions reductions from the measures in the Scoping Plan are expected to come from such programmatic measures.⁶ This may not be the most cost-effective path to long-term GHG reductions. For example, Energy and Environmental Economics, Inc.’s (“E3”) modeling for the CPUC found that renewable energy has a cost of \$148 per tonne of CO₂e saved.⁷ There are many other emissions reduction measures that are much more cost-effective.⁸

CARB should focus its long-term efforts to meet AB 32’s goals on transitioning to a comprehensive approach to GHG reduction that provides the flexibility to allow emissions reductions to be achieved in the most cost-effective manner possible. This is the best approach to meeting the State’s long-term emissions reduction goals while protecting California customers from excessive costs. The RES regulation should be drafted to include the flexibility to transition to such an approach.

⁴ See, e.g., Cal. Health & Safety Code §§ 38562(b)(1) (stating that CARB shall design the regulations in a manner that “seeks to minimize costs”); 38562(b)(5) (requiring that CARB “[c]onsider [the] cost-effectiveness of these regulations”).

⁵ Cal. Health & Safety Code § 38505(d).

⁶ Climate Change Scoping Plan (“Scoping Plan”) at 17 (December 2008).

⁷ E3, *Greenhouse Gas Modeling of California’s Electric Sector to 2020: Updated Results of the GHG Calculator Version 3*, Prepared for the CPUC, at 34 (October 2009). The GHG abatement costs for renewable energy implicit in the CPUC’s 33% Renewables Portfolio Standard Implementation Analysis Preliminary Results are even higher.

⁸ See, e.g., McKinsey & Company, *Reducing U.S. Greenhouse Gas Emissions: How Much at What Cost?* (December 2007).

III.

THE OUTLINE PROPERLY RECOGNIZES EQUAL RULES AS AN IMPORTANT PRINCIPLE OF THE RES

California's existing RPS program does not equally apply to all LSEs. IOUs, electric service providers ("ESPs"), and community choice aggregators ("CCAs") have an established goal of 20% RPS which is overseen by the CPUC, while publicly-owned utilities ("POUs") are encouraged but not required to meet the same RPS.⁹ Unequal rules allow POUs to count different renewable resources in furtherance of renewable electricity goals than IOUs, ESPs, and CCAs.¹⁰ Moreover, IOUs are potentially subject to penalties for renewable energy shortfalls while POUs are not. These disparities place IOU customers at a distinct competitive disadvantage because IOUs are held to higher RPS goals under a heavily regulated process, while other competitors in the renewable energy marketplace are not.

SCE is pleased that the Outline applies the RES equally to all "California electrical corporations, electric service providers, community choice aggregators, electrical cooperatives, and local publicly owned electric utilities."¹¹ Equal application of the RES to all LSEs gives meaning to Executive Order S-21-09's directive that CARB's regulation "shall regulate all California load serving entities, including investor-owned utilities, publicly-owned utilities, direct access providers, and community choice aggregators."¹² Equal treatment of all LSEs is also necessary to fulfill AB 32's mandate that CARB design regulations "in a manner that is equitable."¹³ Furthermore, the RES must be applied equally to all California LSEs if the goal is to be met. As the Scoping Plan acknowledges, "achieving the 33 percent goal will require broad-

⁹ Scoping Plan at 45.

¹⁰ See Kema, Inc., *The Progress of California's Publicly Owned Utilities in Implementing Renewables Portfolio Standards*, Prepared for the California Energy Commission, CEC-300-2008-0005, at 5-6, 9-15, 17, 26-28 (December 2008) (noting that, unlike the IOUs, some POUs count large hydroelectric resources, unbundled RECs, renewables purchased for voluntary green power programs, and the renewable content of generic system power purchases towards their renewable energy targets, and that POU renewable energy purchases may not be subject to the same delivery requirements applicable to the IOUs).

¹¹ Outline at 9.

¹² Executive Order S-21-09, ¶ 2.

¹³ Cal. Health & Safety Code § 38562(b)(1).

based participation from many parties. . . .”¹⁴ Indeed, attaining the State’s highly aggressive 33% renewable electricity goal will require holding all parties equally accountable for meeting the goal, under the same rules for eligibility, reporting, and compliance.¹⁵

A. The RES Program Structure Should Not Include an Exemption for Small LSEs

Given the importance of equality in the application, and ultimate success of the RES, SCE recommends against establishing a minimum threshold for participation in the RES. The ostensible reason for inclusion of a minimum threshold is that there could be an administrative burden upon the smallest regulated parties.¹⁶ However, the unlimited use of RECs, which is recommended in the Outline, allows even the smallest LSEs to fully participate in meeting the State’s renewable electricity goals. All California LSEs can purchase RECs regardless of their access to transmission or other procurement options. Moreover, small LSEs will have correspondingly small RES compliance burdens since RES requirements will be based on the LSE’s electricity sales.¹⁷

CARB should carefully consider whether a minimum threshold for RES participation is prudent considering that some LSEs may choose to restructure their operations so they fall below the threshold. New LSEs may also choose to form in a way that puts them under the threshold. The higher the threshold, the more incentive there is for an LSE to form or subdivide in order to avoid responsibility for RES compliance. If an increasing share of LSEs are not subject to the RES, such an outcome will negatively affect the State’s ability to reach 33% renewables and its AB 32 emissions reduction goals. Exempting small LSEs from the RES is also unfair to customers of LSEs who do comply. Before exempting small LSEs from the RES program altogether because of concerns over undue administrative burdens, CARB should consider streamlined reporting or other administrative requirements for the smallest LSEs.

¹⁴ Scoping Plan at 45.

¹⁵ For this reason, SCE supports inclusion of the California Department of Water Resources and the federal Western Area Power Authority as regulated parties in the RES program.

¹⁶ Outline at 9.

¹⁷ *Id.* at 10.

If CARB finds a minimum threshold necessary, 100 GWh is an appropriate threshold. Under such a threshold, only one current CPUC-jurisdictional entity would be exempt from the RES. Additionally, CARB's regulation must prevent LSEs from gaming the system by organizing or reorganizing operations in order to avoid responsibility for providing their customers with renewable electricity. Any exemption for small LSEs should only apply to existing LSEs, and not to new or reorganized LSEs, in order to prevent this type of gaming. CARB should also include an alternative compliance mechanism for any exempt LSEs to ensure that all California electricity customers make a contribution to meeting the State's RES and reducing statewide GHG emissions.

B. The RES Program Structure Should Apply Equally to All Participants

In addition to ensuring that as broad a group of LSEs as practicable are tasked with achieving the State's renewable electricity goals, CARB must make certain that all LSEs have the same standards with regard to achievement of such goals. The Outline suggests a "sliding-scale schedule" for penalties for non-compliance.¹⁸ Although this statement is not defined, CARB must ensure that the RES enforcement process does not distinguish between large LSEs and small LSEs. Such arbitrary action would impose an unfair burden upon certain LSEs, contrary to AB 32's directive that CARB's regulations be equitable.¹⁹

Additionally, under the existing RPS program, IOUs are potentially subject to shareholder penalties for renewable energy shortfalls. In contrast, ESPs and CCAs can pass any penalties to their customers. POUs do not face any potential penalties for shortfalls in meeting their renewable energy targets. Under a RES program, POUs, ESPs, and CCAs would be able to pass any penalties to their customers. POUs do not have any shareholders and ESPs and CCAs are not subject to any regulation of their rates. However, the CPUC would continue to regulate IOU rates. The RES program's enforcement and penalty process should apply any potential penalties equally to all LSEs. One method for achieving parity between IOUs and other entities

¹⁸ *Id.* at 14.

¹⁹ Cal. Health & Safety Code § 38562(b)(1).

is the introduction of an alternative compliance payment mechanism. Alternative compliance payments are payments made on a cents per kilowatt-hour (“kWh”) basis for any shortfalls in meeting renewable energy goals. They are currently used in several states and are included in H.R. 2454, The American Clean Energy and Security Act of 2009 (also referred to as the “Waxman-Markey bill”), the federal renewable energy standard legislation passed by the House of Representatives last June.²⁰ One significant benefit of alternative compliance payments is that they can be used to support renewable development.

IV.

THE OUTLINE APPROPRIATELY PROPOSES A BROADER MARKET FOR ELIGIBLE RENEWABLE RESOURCES

The 33% RES is a highly ambitious goal that will not be achieved without addressing significant challenges such as lack of sufficient transmission infrastructure and the prolonged process for permitting and approval of new transmission lines, project permitting difficulties, and grid reliability and integration issues associated with intermittent renewable resources. CARB has appropriately recognized these barriers to reaching 33% renewables, stating that “[a] key prerequisite to reaching a target of 33 percent renewables will be to provide sufficient electric transmission lines to renewable resource zones and system changes to allow integration of large quantities of intermittent wind and solar generation,” and that California will need to quickly address transmission and integration issues and permitting difficulties to reach a 33% renewable energy goal.²¹ Similarly, the CPUC concluded that a 33% renewable energy goal is “highly ambitious, given the magnitude of the infrastructure buildout required.”²² The CPUC noted that the “magnitude of the infrastructure that California will have to plan, permit, procure, develop, and integrate in the next ten years is immense and unprecedented,” including approximately \$115 billion in new infrastructure investment in an uncertain financial environment and seven

²⁰ See H.R. 2454, 111th Cong. § 101 (1st Sess. 2009).

²¹ Scoping Plan at 45; Scoping Plan Appendices, Volume I at C-127-C-128.

²² CPUC 33% Renewables Portfolio Standard Implementation Analysis Preliminary Results (“CPUC 33% RPS Implementation Analysis”) at 1 (June 2009).

major new transmission lines (in addition to the four major new transmission lines needed to reach 20% renewables).²³

In view of these major challenges to reaching 33% renewables, it is crucial that California expand the supply of renewable resources by allowing the broadest possible market of eligible renewable resources. The Outline includes three important elements that will broaden the market and significantly affect the State's ability to achieve the 33% RES: the ability to count all currently eligible renewable resources towards the RES, geographic eligibility for all resources connected to the WECC transmission system, and permission to use RECs traded separately from energy generation towards the RES (so long as they are tracked by the Western Renewable Energy Generation Information System ("WREGIS")).²⁴ These elements must be included in the RES program in order to cause minimum disruption to the RPS system already created by law and to expand options for LSEs to meet the State's increased renewable energy goals.

A. The RES Must Not Undermine Previously Signed Renewable Agreements

As CARB is aware, California's LSEs have entered into many contracts for renewable resources in furtherance of the State's renewable energy goals over the past several years. For example, the CPUC has approved 129 IOU contracts for 10,271 megawatts ("MW") from new and existing RPS-eligible facilities, and is current reviewing an additional 30 contracts for 4,605 MW of capacity.²⁵ The IOUs are also in the midst of solicitations for additional renewable contracts. The IOUs and their customers expect to receive energy deliveries from these contracts with independent power producers for many years in the future (in many cases, well past 2020). These contracts will be paid for by IOU customers who are supporting the development of renewable resources. In order to give full value to IOU customers' investment, CARB must ensure that all existing renewable contracts that count towards the current RPS will also count

²³ *Id.* at 1-4.

²⁴ Outline at 9-10.

²⁵ CPUC Renewables Portfolio Standard Quarterly Report at 3, 8 (Q4 2009).

towards the new RES. SCE appreciates the Outline’s statement that “[e]ligible renewable resources or fuels currently eligible under the Renewable Portfolio Standard (RPS) program would continue to be eligible under the RES.”²⁶

CARB should also ensure that its RES compliance metric does not undermine the value of existing RPS-eligible renewable contracts. Under the existing RPS program, the IOUs have entered into renewable contracts that are counted on a MWh basis and not on the basis of GHG reduced. If RES compliance were measured based on GHG reductions rather than MWh, there would be a fundamental inconsistency between the RPS and RES programs. Determining RES compliance by GHG reductions that differ by technology would, in practical terms, pick winners and losers. For example, if the GHG reduction factor for wind was lower than for solar, LSEs would be less inclined to enter into new contracts with wind developers. The value of existing wind contracts that were executed based on the current MWh metric would also be reduced. The effect of this change would be to prejudice LSEs subject to the current RPS law who have already executed numerous long-term renewable contracts, while rewarding LSEs who have not made long-term investments in renewables, and can therefore make future purchases in a way that maximizes their RES compliance under a GHG reduction compliance metric. CARB should protect the investments in long-term RPS-eligible renewable contracts already made by IOU customers.

AB 32 provides that CARB shall consult with the CPUC in its development of emissions reduction measures “in order to ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.”²⁷ Executive Order S-21-09 similarly states that CARB shall work with the CPUC and California Energy Commission (“CEC”) to ensure that the RES regulation “shall build upon the RPS program” and may delegate responsibilities to the CPUC and CEC “that would reduce duplication and improve consistency

²⁶ Outline at 9.

²⁷ Cal. Health & Safety Code § 38501(g). *See also* Cal. Health & Safety Code § 38562(f) (“The state board shall consult with the Public Utilities Commission in the development of the regulations as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.”).

with other energy programs.”²⁸ Consistent with this direction, the Outline indicates it is CARB’s intent to develop a RES approach “that utilizes, to the greatest extent practicable, the structures, policies and implementation mechanisms established by the CEC and PUC for the existing RPS program.”²⁹ As discussed above, SCE believes CARB’s long-term focus should be a comprehensive approach focusing on achieving the lowest cost GHG reductions. However, while the RES is in place, SCE agrees with the energy agencies that CARB should measure RES compliance based on MWh until it is transitioned into a broader program based on cost-effective GHG reductions.

Using energy based compliance is the simplest approach and will also avoid other inconsistencies between the RES and the RPS. Different compliance metrics for the RES and RPS could lead to LSEs being in compliance with one standard but not the other, and would also make it difficult for CARB to use current monitoring, reporting, and verification systems developed and implemented by the CPUC and CEC for the RPS program. For example, WREGIS tracks MWh of renewable generation, not GHG reductions. For all of these reasons, CARB should adopt a RES program based on a MWh metric.

B. The Significant Increase in the State’s Renewable Energy Goal Should be Matched by Greater Access to Renewable Resources

A 33% RES represents a 65% increase over the State’s current 20% RPS. Indeed, the CPUC concluded that attaining 33% renewables will require almost a tripling of renewable electricity, from 27 terawatt hours today to approximately 75 terawatt hours.³⁰ As discussed above, there are many substantial barriers to achieving this “highly ambitious” goal,³¹ making it especially important that the market for renewable resources be expanded. The Outline’s proposals to allow RES-eligible resources to come from anywhere within the WECC and to allow the unlimited use of WECC-wide unbundled RECs will vastly expand LSEs’ ability to

²⁸ Executive Order S-21-09, ¶¶ 2-3.

²⁹ Outline at 1.

³⁰ CPUC 33% RPS Implementation Analysis at 1.

³¹ *Id.*

procure renewables, as well as help encourage the development of the most cost-effective renewable resources. Accordingly, SCE strongly supports these proposals.

1. “Delivery” to the WECC-wide System Should be the Only Delivery Rule

While the State’s RPS law currently allows the use of certain out-of-state renewable resources, these resources must meet “delivery” requirements established by the CEC in order to count for the State’s RPS goals.³² Specifically, energy from intermittent out-of-state resources must be “firmed” and “shaped” and matched within the year to electricity that actually arrived in California in order to count toward RPS goals.³³ While out-of-state renewable resources generally provide benefits to California in terms of price and shorter development times, as well as reductions in overall GHG emissions, current “delivery” arrangements can add to procurement costs for out-of-state renewable resources.³⁴ A RES regulation that allows parties to count renewables that are generated throughout the WECC, so long as the electricity is generated from an eligible renewable resource, delivered to the WECC-wide transmission system, and verified by the WREGIS tracking system, will expand LSEs’ access to renewable resources and increase the probability of the State achieving its renewable electricity goals. Another significant benefit is that renewable generation will be built in the best locations for the renewable resources and access to transmission. The revision of current delivery requirements to only require delivery to the WECC will also protect California’s customers from the possible high cost impacts of an increased RES.³⁵

³² See CEC Renewables Portfolio Standard Eligibility Guidebook at 23-26 (Third Edition, January 2008).

³³ See *id.*

³⁴ For example, the need to reserve transmission capability in order to transmit wind energy to California at the moment it is generated may add unnecessary costs to such transactions. If, however, the regulations allowed for transmission to the WECC and not California-specifically, such costs may be avoided.

³⁵ Additionally, to the extent any RES restricted current delivery requirements, previously signed contracts that relied on delivery rules already in place must be allowed to count in their entirety.

2. Achievement of the RES Goal Will Require Unlimited Use of Unbundled RECs

The Outline's recommendation to allow the unlimited use of unbundled RECs will also help California create an achievable RES. RECs may be used to demonstrate renewable commitments in at least 21 other states.³⁶ Of the WECC states with a RPS, only California and Arizona do not allow for the use of unbundled RECs to demonstrate RPS compliance. Allowing the use of RECs helps protect the State's electricity customers from restrictions in supply that may come from too narrowly limiting the geographical area from which RES-eligible resources can be purchased. Access to RECs will also prevent any group of suppliers from having market power over the price to be paid for renewable resources necessary to meet the State's goals. Additionally, as lack of adequate transmission facilities will continue to be the major barrier for renewable energy development in California for the next several years, the additional flexibility of using RECs will lead to lower transaction costs in obtaining renewable attributes from renewable resources that have limited access to transmission or are located a far distance from their buyers.

Such benefits were specifically contemplated by Executive Order S-21-09, which asked CARB to develop a regulation that provides an incentive for the resources that can be "developed most quickly and that support reliable, efficient, cost-effective electricity system operations throughout the Western Interconnection."³⁷ Given the transmission constraints that currently limit the interconnection and delivery of renewable resources, CARB should not foreclose any opportunities for renewable procurement. The use of unlimited WECC-wide resources and unbundled RECs will significantly open up renewable markets and reduce customer costs.

³⁶ Ryan Wiser and Galen Barbose, *Renewables Portfolio Standards in the United States*, Lawrence Berkeley National Laboratory, at 25-26 (April 2008).

³⁷ Executive Order S-21-09, ¶ 5.

V.

THE RES PROGRAM MUST INCLUDE COMPLIANCE FLEXIBILITY TO ADDRESS BARRIERS TO MEETING THE STATE'S RENEWABLE ELECTRICITY GOALS

The existing RPS program allows for flexibility surrounding compliance with the State's RPS goals. The flexible compliance rules allow excess procurement in one year to be used in subsequent years (i.e., banking) and borrowing against future deliveries from executed contracts to account for inadequate procurement results (i.e., earmarking). The flexibility provided by such rules is important because there are significant barriers to achieving the State's renewable electricity goals that will only increase with the higher contemplated goals.

The CPUC has called the State's 20% renewable energy goal "one of the most ambitious renewable energy standards in the country."³⁸ While the CPUC has recognized that the IOUs existing renewable procurement processes are working effectively, transmission constraints, a congested interconnection queue, and developer performance (i.e., financing, permitting, construction, and operation according to the milestones set in the contract) are substantial impediments to the State's ability to reach 20% renewables.³⁹ The CPUC has acknowledged that it does not expect any of the IOUs to meet 20% of their retail sales with renewables by 2010.⁴⁰ Given the barriers to reaching existing RPS program goals, flexible compliance measures provide LSEs with critical flexibility for meeting renewable targets when situations arise that make the orderly procurement, development, and delivery of renewables impossible in certain years.

Flexibility is even more important in the RES program because of the increased magnitude of the 33% renewable electricity goal. "Serving 33% of California's energy needs with renewable sources will require an infrastructure build-out on a scale and timeline perhaps

³⁸ CPUC Renewables Portfolio Standard Quarterly Report at 2 (July 2009).

³⁹ CPUC Renewables Portfolio Standard Quarterly Report at 4, 7 (July 2008); CPUC Renewables Portfolio Standard Quarterly Report at 2-4 (Q1 2009); CPUC Renewables Portfolio Standard Quarterly Report at 4 (July 2009); CPUC Renewables Portfolio Standard Quarterly Report at 3-8 (Q4 2009).

⁴⁰ CPUC Renewables Portfolio Standard Quarterly Report at 4 (Q4 2009).

unparalleled anywhere in the world.”⁴¹ The substantial lead times required for transmission permitting, approval, and construction, the complex, long, and uncertain process for permitting renewable generation facilities, grid reliability and integration issues, and other project development barriers, such as financing and equipment procurement, are also major challenges to reaching 33% renewables.⁴² Indeed, the CPUC’s 33% RPS Implementation Analysis concluded that achieving 33% renewables by 2020 is “highly ambitious” and that, even assuming a best case scenario with no external risks, 33% renewables may not be achieved by 2020.⁴³ The CPUC also found that reaching a 33% renewable electricity goal will require seven major new transmission lines at a cost of \$12 billion (in addition to the four major new transmission lines required to get to 20% renewables) and approximately \$115 billion in total infrastructure investment in an uncertain financial environment.⁴⁴

The unprecedented nature of the RES goal and the considerable challenges to meeting the goal make compliance flexibility an important part of the RES program. The Outline appears to recognize that real-life barriers may prevent delivery of renewable resources on a predetermined schedule by allowing deferral of compliance for “circumstances beyond the reasonable control of the regulated party.”⁴⁵ The Outline, however, does not go far enough in including compliance flexibility in the RES program. As explained below, the RES program should include multi-year targets, flexibility surrounding those targets, and should not include cumulative deficit provisions.

A. The RES Program Should Include Multi-Year Targets

The Outline notes that RES compliance periods will be on either an annual or multi-year basis.⁴⁶ Although the current RPS program requires obligated LSEs to increase their renewable procurement by one percent per year, renewable resource development and the transmission

⁴¹ CPUC Renewables Portfolio Standard Quarterly Report at 3 (October 2008).

⁴² *Id.* at 3-8; Scoping Plan at 45; Scoping Plan Appendices, Volume I at C-127-C-128.

⁴³ CPUC 33% RPS Implementation Analysis at 1-4.

⁴⁴ *Id.* at 1, 4.

⁴⁵ Outline at 14.

⁴⁶ *Id.* at 12.

necessary to delivery those renewable resources do not develop in such uniform mathematical increments. Renewable resource development occurs in a more lumpy fashion with peaks and valleys unrelated to the targets set by policymakers. Moreover, given the need for new transmission infrastructure and the time needed to permit, approve, and construct such transmission, less renewable resource additions will be possible in early years before transmission is built and more renewable resource additions will be possible in later years when there is available transmission. Accordingly, annual targets are not appropriate for the RES program. CARB should instead adopt multi-year targets to serve as a check-in point on the way to 33% renewables. Multi-year targets are a better reflection of how renewable resources can actually be developed in California. In light of current law⁴⁷ and projections for achievement of 20% renewables by 2013 or 2014, an appropriate timeline for the RES program would be 20% by December 31, 2013, 25% by December 31, 2016, and 33% by December 31, 2020.⁴⁸

B. All RES Targets Must Have Flexibility Around Them Since LSEs Do Not Control All Factors Necessary for the Delivery of Renewable Resources

Because of the aforementioned impediments to achieving a 33% renewable electricity goal, LSEs do not control all of the factors necessary to ensure that renewable electricity is delivered to meet the State's goals. LSEs cannot control how quickly new transmission lines are permitted. Nor can they control the permitting process for new renewable generating facilities or the performance of renewable developers or their financiers. Moreover, LSEs do not control the actions of the federal government, which provides tax credits for certain renewable energy projects. Accordingly, CARB cannot simply set dates by which delivery of renewables must occur with no compliance flexibility. Such an inflexible program could inappropriately put all of the risk of non-performance by other participants needed for the success of California's renewable electricity goals solely upon the LSEs.

⁴⁷ The existing RPS program flexible compliance rules measure LSEs' compliance with the 20% renewable energy target through December 31, 2013.

⁴⁸ CPUC Renewables Portfolio Standard Quarterly Report at 4 (Q4 2009) (noting that the CPUC expects the IOUs to achieve the 20% RPS goal in the 2013 to 2014 timeframe).

This risk is especially apparent in light of the conclusion in the CPUC’s 33% RPS Implementation Analysis that achieving a 33% renewable electricity standard is “highly ambitious” and will require an infrastructure build out perhaps unparalleled in the world.⁴⁹ Even assuming a best case scenario with successful implementation of numerous process reforms and no external risks, the CPUC found that 33% would not be achieved until 2021.⁵⁰ Using past practice as a guide and again assuming no external risks, the State would not achieve 33% renewables until 2024.⁵¹ With the consideration of external risks such as California’s high reliance on relatively new technologies and companies, the unprecedented scale of the new infrastructure investment required in an uncertain financial environment, the environmental impacts of generation and transmission facilities, and legal challenges and public opposition to large-scale renewable energy infrastructure, the CPUC found that in another timeline, the State does not reach 33% renewables.⁵²

Considering these uncertainties, a RES program that fairly allows LSEs to achieve targets must include flexibility around compliance dates in the form of banking, earmarking, and the opportunity to excuse compliance for other circumstances beyond an LSE’s reasonable control. Executive Order S-21-09 authorizes CARB to provide flexibility around target dates, providing that CARB may “expand the time frame based on a thorough assessment of such factors as technical feasibility, system reliability, cost, greenhouse gas emissions, environmental protection or other relevant factors.”⁵³ The existing RPS program’s flexible compliance rules provide a good starting point that will allow CARB to build upon and complement the current program. Notably, while flexible compliance provides latitude regarding the timing of renewable resources, actual delivery of renewables does occur, albeit at a slightly later date.

⁴⁹ CPUC 33% RPS Implementation Analysis at 1, 4.

⁵⁰ *Id.* at 4.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Executive Order S-21-09, ¶ 1.

In addition to banking and earmarking, the RES should provide reasonable opportunity for LSEs to have targets extended under circumstances such as failure of transmission infrastructure to appear, permitting or siting delays, developer non-performance, or an insufficient market for competitively-priced renewables. CARB should also recognize that all IOU renewable contracts are subject to CPUC approval and that the CPUC can limit the IOUs' renewable procurement options. For example, although the current RPS law allows for the use of unbundled RECs, they have not yet been allowed by the CPUC. If an IOU cannot meet a RES target because the CPUC has rejected the IOU's proposed contracts or has not allowed the IOUs to pursue all available renewable procurement options, the IOU should not be penalized by CARB. Each of these bases for compliance flexibility are beyond the reasonable control of the LSE and support the type of expansion of the RES timeframe envisioned by the Executive Order.

C. The RES Program Should Not Include Cumulative Deficits

While SCE is generally supportive of CARB's efforts to maintain many elements of the State's current RPS program, the Outline suggests that the "[a]ny shortfall in meeting annual RES obligations would be carried forward and added to subsequent compliance period obligations."⁵⁴ The Outline appears to be contemplating cumulative deficits, where the payment of a penalty does not eliminate the deficit and a shortfall in meeting a RES target is carried forward to the next compliance period, and the next compliance period, and the next compliance period, regardless of whether the LSE is capable of satisfying the deficit in future years. SCE strongly opposes cumulative deficits because they result in unfair and unduly punitive results.

With cumulative deficits, a shortfall in renewable deliveries continues to roll forward and may result in increased procurement requirements when supply is scarce, compounding the sellers' market created by the RES program. Additionally, if an LSE fails to meet one RES target and pays a penalty, the LSE will face cumulative penalties on that same shortfall even if it meets the RES targets in each subsequent compliance period. This leads to a lose-lose situation

⁵⁴ Outline at 14.

where customers are saddled with whatever renewable energy is available at any price while penalties are generated that are completely disproportionate to the LSE's actual shortfall.

Cumulative deficits are not justified on policy grounds. The purpose of penalties is to motivate a change in behavior. However, in this case, an LSE may be subject to cumulative penalties for reasons completely beyond its control. As discussed above, the need for new transmission infrastructure and the time required to permit, approve, and construct such transmission is a major constraint on new renewable development, especially in the near-term. Even with unlimited use of WECC-wide resources and unbundled RECs, there are not enough existing renewable resources to reach 33% renewables. Therefore, an LSE with a compliance shortfall cannot simply purchase more renewable energy in the near-term to fill that deficit or to fill the cumulative deficits in subsequent compliance periods. The LSE will thus be subject to cumulative penalties for reasons beyond its control.

Cumulative deficits also misalign the interests of LSEs and their customers in a way that prevents the creation of a cost-effective renewable energy program. For example, under any RES with a cumulative deficit structure, an LSE is provided with an incentive to sign any agreement for renewables (including excessively-priced contracts) in order to avoid a deficit and enforcement action. Such a structure, however, fails to protect customers from the potentially high cost of certain renewable resources (especially during times of scarcity). In order to more appropriately align LSE and customer incentives, the cumulative deficit provisions found in current RPS law, and proposed by the Outline, should be eliminated. Once an LSE pays a penalty associated with a shortfall, that shortfall should be retired and the LSE should no longer have any exposure to penalties for that shortfall.

VI.

THE RES PROGRAM SHOULD INCLUDE COST CONTAINMENT MEASURES TO PROTECT CUSTOMERS FROM EXCESSIVE COSTS

Executive Order S-21-09 and the current RPS program make one thing clear: any California renewables standard must consider the cost impact on customers.⁵⁵ Similarly, AB 32 requires CARB to consider the cost-effectiveness of its regulations and minimize costs to California.⁵⁶ Nevertheless, the Outline is surprisingly silent on the issue of how customers will be protected against potential increases in electricity costs as a result of the State's ambitious goals. To protect customers against excessive costs, the RES program must build in mechanisms that prevent the RES from requiring "renewables at any cost." Specifically, the RES program should include expanded renewable market opportunities, maintain and enhance compliance flexibility, and establish an explicit customer cost protection framework based on consultation with the energy agencies.

First, CARB should avoid any RES program elements that would narrow the market for renewable resources to a specific technology or narrow geographic area. Instead, as noted above, LSEs should have broad opportunities for meeting the State's RES goal (i.e., a technology-neutral program, unlimited access to WECC-wide resources, unlimited use of unbundled RECs). Providing access to a wide panoply of resources will help to contain customer costs because market participants will be forced to compete against a broad group of suppliers who must provide competitive pricing to obtain contracts. Conversely, a more limited selection of renewable products will give market power to a limited number of renewable developers, to the detriment of the State's electricity customers.

Second, the RES program should not provide market participants the opportunity to exercise market power by establishing inflexible target dates unrelated to whether the targets are technically feasible and whether the electric system's reliability will be jeopardized.

⁵⁵ Executive Order S-21-09, ¶ 1; Cal. Pub. Util. Code § 399.15(d).

⁵⁶ See, e.g., Cal. Health & Safety Code §§ 38562(b)(1), 38562(b)(5).

Establishing hard dates for compliance around time periods that are not physically achievable will not induce LSEs to act faster. Instead, such rigid dates will ensure that a few fortunately situated renewable developers can demand high prices for their resources from California's customers, while the State as a whole fails in its attempt to meet the overall RES goal. For this reason, CARB should allow for compliance flexibility to address circumstances beyond the LSE's control. Permitting flexibility around the RES target dates will control some of the cost impact of procuring additional renewables during times of scarcity for California's electricity customers.

Finally, under the current RPS law, the cost limitation for the IOUs' renewable procurement pursuant to the RPS program comes from a limitation in the Public Utilities Code.⁵⁷ Under that restriction, an IOU can limit its purchases of above-market renewables once it has expended a certain amount of dollars on the above-market costs of renewable contracts.⁵⁸ To date, California's three major IOUs have hit that threshold and are no longer required to procure renewable resources priced above the administratively-established market price referent.

The RES program must address the task of defining the point at which the price of renewable resources are too high. All IOU renewable contracts are subject to approval by the CPUC and the CPUC evaluates the reasonableness of the contract costs. SCE therefore suggests that CARB work with the CPUC to establish a framework for renewable procurement done by IOUs which is based on whether the contracts are priced at "just and reasonable" levels, in a manner similar to that used for all other procurement done pursuant to Section 454.5 of the California Public Utilities Code.⁵⁹

⁵⁷ See Cal. Pub. Util. Code § 399.15(d).

⁵⁸ *Id.*

⁵⁹ Public Utilities Code Section 451 requires that all charges by a public utility shall be "just and reasonable."

VII.

OTHER ISSUES

A. CARB Should Work With the Energy Agencies to Avoid Duplicative and Inconsistent RES and RPS Requirements

SCE appreciates the Outline's statement that "Staff's objective is to develop a RES regulation which builds upon and complements the existing RPS program."⁶⁰ This is consistent with the provisions in AB 32 and Executive Order S-21-09 directing CARB to work with the CPUC and CEC to minimize duplicative and inconsistent regulatory requirements.⁶¹ SCE strongly supports using common monitoring, reporting, and verification systems for the RES and RPS. SCE and the other IOUs are already subject to extensive reporting requirements in connection with the RPS program. CARB should work with the CPUC and CEC to utilize the same reports for the RES.

CARB should also ensure that no LSE is subject to multiple penalties from multiple agencies for the same renewable energy shortfall. Such duplicative penalties are unduly punitive and do nothing to remedy the barriers to renewable development that may jeopardize the achievement of the State's renewable energy goals. They also unfairly penalize those LSEs who are subject to both the RES and RPS.

B. CARB Should Consider Proposed Federal Renewable Energy Legislation in its Design of the RES Program

In designing its RES regulation, CARB should consider how its RES program will integrate with a future federal renewable energy standard. The Waxman-Markey bill includes a 20% federal combined efficiency and renewable electricity standard requirement for retail electricity suppliers that sell at least 4 million MWh of electric energy to retail electric consumers annually; at least 75% of the requirement in any year must be met with RECs and demonstrated annual electricity savings from energy efficiency can be used to meet the

⁶⁰ Outline at 9.

⁶¹ Cal. Health & Safety Code § 38562(f); Executive Order S-21-09, ¶¶ 2-3.

remainder of the requirement.⁶² RECs may be sold, transferred, or exchanged, and triple credits are awarded for renewable generation from distributed generation facilities of 2 MW or less.⁶³ The bill includes alternative compliance payments of \$25 per MWh (or 2.5 cents per kWh) to be used for deploying renewable technologies and cost-effective energy efficiency measures and programs.⁶⁴

AB 32 recognizes the benefits of broad-based approaches to climate change by requiring CARB to consult with other states, the federal government, and other nations “to identify the most effective strategies and methods to reduce greenhouse gases” and to “facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.”⁶⁵ Conflicting state and national programs may lead to complex and potentially contradictory state and federal regulations that will seriously complicate compliance for LSEs and substantially increase compliance costs. Accordingly, CARB should evaluate proposed federal renewable energy legislation and consider how CARB’s program would integrate with a future federal program. One way to do this would be to provide that the RES regulation will be re-examined if a federal renewable energy standard is adopted so as to minimize duplicative and inconsistent requirements on LSEs subject to both programs. This is consistent with AB 32 requirements that CARB seek to minimize duplicative and inconsistent regulatory requirements and the administrative burden of complying with CARB’s regulations.⁶⁶

C. SCE Supports Excluding Electricity Obtained From CHP and Electricity Used to Charge Electric Vehicles and Other Equipment From the Load Used to Calculate the RES Obligation

The Outline proposes excluding the electricity amount obtained from CHP in the LSE’s service territory and the electricity amount used to charge electric vehicles under CARB’s LCFS

⁶² See H.R. 2454, 111th Cong. § 101 (1st Sess. 2009).

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ Cal. Health & Safety Code § 38564.

⁶⁶ Cal. Health & Safety Code §§ 38562(b)(7), 38562(f).

from the load used to calculate an LSE's RES obligation. SCE supports excluding this electricity from the calculation of load. The Scoping Plan includes increased CHP generation and the LCFS as emission reduction measures that will reduce California's overall GHG emissions.⁶⁷ While these measures may decrease overall GHG emissions they will increase electricity load, and consequently, the GHG emissions and RES obligations of LSEs. Excluding this electricity from the calculation of load appropriately encourages CARB's policy goals for CHP and the LCFS.

In particular, in order to encourage electrification of transportation fuels that will reduce the State's overall GHG emissions, it is crucial that the use of electricity as a transportation fuel is encouraged, and that appropriate price signals are sent to consumers. Adding the cost of renewable energy to the cost of electricity as a transportation fuel may discourage electrification and inhibit the appropriate price signals. Accordingly, excluding the electricity used to charge electric vehicles from the calculation of LSEs' RES obligations is an appropriate way to encourage electrification of transportation fuels. For this reason, SCE supports the exclusion of electricity used to charge all electric vehicles, including plug-in electric hybrid vehicles, battery electric vehicles, non-road electric vehicles, electric forklifts, electric trains, and other electric vehicles.

⁶⁷ Scoping Plan at 17.

VIII.

CONCLUSION

SCE appreciates the considerable work done by CARB staff in a short time period to develop the Outline. SCE looks forward to working with the CARB, CPUC, CEC, and other stakeholders on the implementation of a RES program and the consideration of SCE's concerns as discussed above.

Respectfully submitted,

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