

**Comments of the  
California Municipal Utilities Association  
on the California Renewable Electricity Standard  
Preliminary Draft Regulation**

Pursuant to the procedures established by the California Air Resources Board (ARB), the California Municipal Utilities Association (CMUA) submits these Comments on the Preliminary Draft Regulations (PDR) of March 11, 2010, to implement a California Renewable Electricity Standard (RES).

CMUA supports a 33% RES. CMUA members have significantly increased their purchases of renewable energy over the last 7 years and continue to do so. CMUA supports many aspects of the PDR, in furtherance of the intent of the regulation to “reduce greenhouse gas emissions associated with the generation of electricity,” PDR, § 97000, accomplished “in a manner that minimizes costs ... and maintains electric reliability.” Health and Safety Code § 38501(h).

CMUA has approached the PDR as an overall package, in which modifications to the treatment of one key issue may affect CMUA’s initial view of the overall equity of the package. CMUA has ordered its comments on issues consistent with the order in the Preliminary Draft Regulation.

**§ 97001, Applicability of the RES**

Partial Exemption

In the PDR, Staff proposes a partial exemption for application of the RES for small Regulated Parties who serve 200,000 MWh of electricity or less to retail end-use customers. In the October 2009 Concept Outline, Staff had proposed a 500,000 MWh partial exemption. CMUA appreciates the balancing act attempted by Staff in both the PDR and the Concept Outline, that both provide for a partial exemption from the RES based on size. It is key to CMUA that administrative burdens be weighed against cost effective greenhouse gas emission reductions.

CMUA believes that any exemption should apply only to existing regulated parties. CMUA is aware that there are concerns about potential new Regulated Parties structuring themselves to remain under the threshold to avoid RES obligations thereby. CMUA agrees that the partial exemption should apply only to existing Regulated Parties.

Under the 500,000 MWh application threshold, 96% of all POU retail sales would still be covered. Only the smallest fraction over overall retail sales in California would be below that threshold. Finally, California statute requires that all POUs implement and enforce an RPS that reflects the intent of the Legislature to encourage renewable resources. *Public Utilities Code § 387(a)*. Thus, even under the higher partial exemption, renewable resources will be procured in increasing amounts. In short, either

partial exemption threshold can accomplish the goals to reduce GHG emissions from the electricity sector; the higher threshold may have advantages of lessening administrative burdens.

Additionally, CMUA reaffirms its previous position that the special circumstances of municipal utilities that meet substantially all of their needs from GHG-free hydroelectric generation, and are not otherwise exempted due to their size, must be addressed.

Application to the Western Area Power Administration (WAPA) and the California Department of Water Resources (CDWR)

The PDR proposes to include WAPA and CDWR as Regulated Parties. CMUA urges Staff to reconsider this proposal or, in the alternative for WAPA, provide clarification regarding the applicability of the standard.

CMUA has an interest in the equitable and fair treatment of CDWR. Many CMUA water utility members receive water from the State Water Project which is operated by CDWR. CMUA recognizes that, as a state agency, CDWR is both required and authorized to develop and implement GHG emissions reduction policies specific to its operations. CDWR's operations now include implementing complementary state policies designed to: (1) adapt California to the impacts of climate change on water resources and the environment; and (2) mitigate future changes in the same. Furthermore, because CDWR has no retail sales, CARB's proposed RES metric does not apply. For these reasons, the RES should not be imposed on CDWR.

With respect to WAPA, CMUA seeks clarification that the treatment of WAPA as a Regulated Party. It is CMUA's understanding that, other than sales to POUs that are already Regulated Parties, WAPA's sales are characterized as federal end use load. It is unclear how the RES would be applied to WAPA.

**§ 97003, RES Obligations**

CMUA supports a multi-year compliance interval. Multi-year compliance intervals provide an important source of flexibility for utilities to source renewable energy to meet their obligations. Certain factors that affect all Regulated Parties are exacerbated for POUs because even the largest POUs are quite small as compared to their investor-owned counterparts. This size difference exacerbates the following factors that support flexible application of the RES: (1) there is a largely unavoidable "lumpiness" in the availability of new renewable energy, arising from the long timeframes for the permitting and construction of large renewable energy plants; (2) the number of RECs generated from a renewable energy plant may vary considerably over time, due to variations in the availability of the renewable energy resource; (3) a utility's power demand, and hence its REC liability, can also vary considerably between years; and (4) year to year variations in hydrology can greatly affect overall energy generation and load for certain entities.

CMUA believes that no less than three-year compliance intervals are required. Transitioning to two years and then one year as proposed in the PDR is not consistent with the rationale that supports the inclusion of an initial 3-year interval. Keeping three year compliance intervals need not affect the percentage renewable energy requirements that the PDR currently specifies. For example, § 97003 of the Draft RES Regulation provides a 28% target for the two-year compliance interval 2018-2019, and a 33% target for the one-year interval 2020. Instead, the RES could include a three year compliance interval, 2018-2020, but retaining the same annual targets. The requirement in section 97005(b)(2)(A) to provide annual RES Progress Reports ensures the availability of the data needed to calculate total REC requirements for each compliance interval.

Retaining no-less-than three year compliance intervals is a critical issue for CMUA members to provide needed flexibility that will enable cost-effective compliance, while not undermining GHG reduction from the electricity sector.

### **§ 97004(a), Unbundled RECs**

CMUA supports the use of unbundled, tradeable RECs traced by the WREGIS system to fulfill the RES requirement.<sup>1</sup> In this regard, CMUA supports what it understands as “Option 1” outlined in the PDR. This is especially important for the small and medium-sized CMUA members that need added flexibility to ensure cost-effective RES implementation.

The California Public Utilities Commission (CPUC) has wrestled with tradeable RECs for years, coming out with a series of decisions in the past few months while PDR was being drafted. There remain continuing questions with respect to the implementation of certain provisions of the recent decision, so much so that the CPUC has already scheduled implementation workshops.

CMUA members are not CPUC-jurisdictional for this purpose. Nevertheless, CMUA understand Staff’s desire to harmonize existing RPS program elements with the RES. CMUA submits that a reasonable definition of “harmonization” in this area is to ensure that the RES requirements do not interfere with implementation of what may be a more stringent RPS program, either by the CPUC or by the governing boards of POU. An RES that allows freely tradeable, unbundled RECs would provide a cost-effective mechanism for those Regulated Parties that chose to utilize them, but allow stricter RPS rules established by the CPUC or a POU governing board, without damage to the overall RES program.

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<sup>1</sup> CMUA notes and supports the requests of its members the Northern California Power Agency and the Southern California Public Power Authority to modify and clarify the terminology surrounding RECs, unbundled RECs, and tradeable RECs.

### **§ 97004(c), RES Qualifying POU Resource**

CMUA commends Staff for its attempt at wrestling with the issue of harmonizing the current RPS construct while providing a transition to a more standardized RES. One aspect of the current RPS rules is the flexibility provided to a POU with respect to the definition of eligible renewable resources. In this regard, the PDR defines an RES Qualifying POU Resource to be:

“a renewable energy facility that is not certified by the CEC as eligible for the RPS program, but whose generation was approved by the POU’s Governing Board as counting toward its RPS targets, and: (A) the POU owned the facility prior to September 15, 2009; or (B) a contract for electricity from the facility was executed prior to September 15, 2009; and: (1) The POU procured electricity and RECs, or RECs without electricity, from the facility prior to September 15, 2009; and (2) The electricity was procured during the initial term of the contract and not during any extended or modified term.”

The PDR proposed to allow POUs to use RES Qualifying POU Resources for up to 20 percent of the regulated party’s retail sales. PDR §97004(c).

As Staff recognizes, certain POUs have counted resources, often large hydroelectric resources, toward their RPS obligations consistent with authority under California statute. While this issue gets substantial attention, the CEC has concluded that these different resource definitions are currently small and will be almost non-existent by 2020. Therefore, examined in the totality of the RES program, tailored treatment of POUs that have large hydro will have minimal impact on reducing greenhouse gas emissions.

CMUA generally supports the proposal in §97004(c), but has lingering concerns that it may not be a complete solution. At the Workshop, Staff indicated that it believes that 18 POUs would be affected by its proposal in the PDR. CMUA is examining relevant reports and data. However, at this time there is not enough empirical evidence to take a final position on the issue. To further consideration of how to best recognize the statutory flexibility afforded POUs that do recognize large hydroelectric resources, CMUA offers the following principles.

1. At the beginning of RES implementation, and in order to minimize disruption of existing RPS programs, RES resource eligibility rules should respect the definitional flexibility currently embodied in state statute.
2. RES eligibility rules should transition over time to a common definition of eligible resources for all Regulated Parties.

3. CMUA agrees with the proposal in the PDR that RECs associated with RES Qualifying POU Resources cannot be completely fungible with other RECs, in order to maintain the common product definition in broader markets.

CMUA looks forward to continued discussions with Staff to further flesh out proposals to effectively transition POUs from the current RPS regime to the RES, including addressing the issue of eligible renewable resources.

### **§ 97005. Monitoring, Verification, and Compliance**

Currently, CMUA members report considerable information to the CEC with respect to energy demand, load forecasts, demand-side programs, resource adequacy, renewable procurement, and other matters. The CEC has formal data reporting regulations, and produces several reports both independently and as part of the Integrated Energy Policy Report. §97005(b)(2)(a) provides for the reporting of information by POUs and electrical cooperatives of load and resource information to the CEC and ARB. CMUA does not oppose reporting requirements, but desires to work with the CEC and the ARB to avoid duplication, ensure timelines and reporting deadlines work, and to utilize existing reporting channels to the fullest extent possible.

Reporting obligations and regulatory approval mechanisms should not be confused, however. Specifically, CMUA opposes any effort to transform the RES Procurement Plan proposal in §97005(b)(2)(A), to a regulatory approval process for POU procurement. Procurement is inextricably linked to ratemaking functions exercised by the governing bodies of POUs. CMUA requests that the PDR be modified to make clear that plan submittal requirements do not include subsequent approval powers by ARB or the CEC.

CMUA also urges that additional provisions be added to the regulations to reflect real world obstacles that are outside of the control of the Regulated Party that could result in the inability of a Regulated Party to meet renewable resources targets. Such factors include siting and permitting obstacles, the lack of transmission development, system operational obstacles such as the inability to integrate renewable resources into grid operations, and other factors. CMUA recognizes that the PDR includes these factors in the Staff review of the regulations, contemplated at three intervals prior to 2020. CMUA believes these factors should be expressly enumerated as factors that shall excuse non-performance.

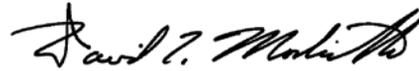
### **§97008. Enforcement**

CMUA submits that the goal of reducing GHG emissions from the generation of electricity is best served by calculating penalties in proportion to the number of RECs by which a regulated party is in shortfall of its target, with commensurate penalty values attached to REC shortfalls. This approach would effectively deter non-compliance, as it would be cheaper to comply than to pay the non-compliance penalty.

§ 97008(a) of the Draft RES Regulation refers to penalties being calculated on a kilowatt hour basis. With further development, this approach (as compared to daily penalties) could be workable. However, the method of calculating the extent of a violation should reflect the method of determining compliance. A penalty based on the shortfall of RECs surrendered more closely reflects the basis on which compliance with the regulation is determined.

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Respectfully submitted,



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