

Attachment A

RES Preliminary Draft Regulation

1 March 11, 2010

Subchapter 10. Climate Change

Article 6. California Renewable Electricity Standard

§ 97000. Purpose

The purpose of this regulation is to reduce greenhouse gas emissions associated with the generation of electricity.

§ 97001. Applicability

(a) Except as provided in subsection 97001(b), the provisions of this article apply to all regulated parties.

(b) *Partial Exemption for Small Regulated Parties*

(1) Section 97003 of this article does not apply to a regulated party providing [200,000] MWh of electricity or less to retail end-use customers in its service territory during a calendar year.

(2) A regulated party exempt from section 97003 pursuant to subsection 97001(b)(1), but that provides more than [200,000] MWh of electricity to retail end-use customers during a subsequent calendar year, shall retire an amount of RECs pursuant to the following formula for that calendar year:

REC Obligation = Total retail sales (in MWh) – [200,000] MWh

(3) Once a previously exempt regulated party procures RECs equivalent to providing 33 percent of its retail sales to end-use customers from eligible renewable energy resources, the regulated party will be subject to the requirements of section 97003.

Discussion of Concept:

Staff is proposing a partial compliance exemption for regulated parties with minimal electricity loads. Staff is evaluating whether the exemption

should be granted to regulated parties on the basis of a specific year (e.g. calendar year 2011), or allow exemption for any regulated party falling below the threshold during the regulation compliance period (2011 and beyond).

As described in paragraph (b)(3), a previously exempt regulated party that exceeds the threshold would not be subject to the compliance intervals of section 97003 but required to procure only renewable RECs until 33% of its pre and post exemption load is derived from renewable resources. Is this a feasible approach to phase in compliance for previously exempt parties?

§ 97002. Definitions and Acronyms

(a) For the purposes of this article, the following definitions apply.

(1) “**Community choice aggregator**” means a community choice aggregator as defined in Public Utilities Code section 331.1.

(2) “**Electric service provider**” means an entity that offers electrical service to customers within the service territory of an electrical corporation and includes the unregulated affiliates and subsidiaries of an electrical corporation as defined in Public Utilities Code Section 394(a).

(3) “**Electrical cooperative**” means any private corporation or association organized for the purposes of transmitting or distributing electricity exclusively to its stockholders or members at cost as defined by Public Utilities Code Section 2776.

(4) “**Electrical corporation**” means every corporation or person owning, controlling, operating, or managing any electric plant for compensation except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others. “Electrical corporation” does not include a corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity solely for any one or more of the purposes listed in

Public Utilities Code Section 218, subparagraphs (b) through (f) or an “exempt wholesale generator” or “qualifying small power producer” as defined in Public Utilities Code Section 218.5(a).

(5) “**Eligible renewable energy resources**” means a generating facility participating in the WREGIS tracking system and is certified as eligible for California’s RPS program pursuant to Public Utilities Code Section 399.13, [or otherwise meets the criteria of the California RPS program excluding the electricity delivery requirements for out-of-state facilities],

Deleted: , or is not recognized as a RES Qualifying POU Resource as provided in this article.

(6) “**Executive Officer**” means the Executive Officer of the California Air Resources Board, or his or her designee.

(7) “**Kilowatt-hour or kWh**” means a unit of energy equivalent to one kilowatt of electricity supplied for one hour.

(8) “**Local publicly owned electric utility**” means a local publicly owned utility as defined in Public Utilities Code Section 224.3.

(9) “**Megawatt-hour or MWh**” means a unit of energy equivalent to one megawatt of electricity supplied for one hour.

(10) “**Procure or procurement**” as related to renewable energy means an ownership or contractual investment to acquire the physical electrical output of an eligible renewable generating resource or facility, or the acquisition of a REC that represents the environmental attributes of an eligible renewable generating resource or facility.

(11) “**Publicly Owned Utility or POU**” means a local publicly owned electric utility as defined in this article.

(12) “**Regulated party**” means any of the following:

- (A) Local publicly owned electric utility;
- (B) Electrical corporation;
- (C) Electric service provider;
- (D) Community choice aggregator;
- (E) Electrical cooperative;
- (F) California Department of Water Resources; or
- (G) Western Area Power Administration

(13) “**Renewable Energy Credit or REC**” means a credit issued by WREGIS associated with one MWh of electricity generated by an eligible renewable energy resource or facility as evidenced by a Renewable Energy Certificate. A REC does not include an emission reduction credit issued pursuant to Health and Safety Code section 40709 or any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels. A REC also does not include any allowance issued pursuant to a cap and trade or similar program. A REC does not constitute property or a property right.

(14) “**Renewables Portfolio Standard or RPS**” means the Renewables Portfolio Standard” as set forth in Public Utilities Code section 399.11 et seq.

(16) “**Responsible official**” means an officer of the regulated party having the authority to sign on behalf of the regulated party and bind the regulated party for all purposes regarding compliance with this article.

(17) “**Retail end-use customer**” means a residential, commercial, agricultural, industrial, or other electric customer who receives electricity to be consumed as a final product (not for the purpose of resale).

(18) “**Retire or retired**” means to transfer a WREGIS certificate to a “retirement subaccount” and thereby remove the certificate from circulation. For purposes of this article, a WREGIS certificate would be retired to demonstrate compliance with the RES or RPS.

(19) “**Western Area Power Administration or WAPA**” refers to the power marketing administration within the U.S. Department of Energy for the 15 state region within the central and western United States.

(20) “**Western Electricity Coordinating Council or WECC**” means the regional entity responsible for coordinating and promoting bulk electric system reliability in the Western Interconnection serving all or part of the 14 Western States and portions of Mexico and Canada.

(21) “**Western Renewable Energy Generation Information System or WREGIS**” refers to the independent, renewable energy tracking system

Deleted: (15) “**RES Qualifying POU Resource**” means 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¶
towards 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.¶

implemented for the region covered by the Western Electricity Coordinating Council.

(22) “**WREGIS Certificate**” means a certificate of proof issued through WREGIS that one MWh of electricity was generated by a RES eligible renewable energy resource.

(b) For the purposes of this article, the following acronyms apply.

(1) “ARB” means the California Air Resources Board

(2) “CAISO” means California Independent System Operator.

(3) “CEC” means California Energy Commission.

(4) “CPUC” means California Public Utilities Commission.

(5) “kWh” means kilowatt-hour.

(6) “MWh” means megawatt-hour.

(7) “POU” means local publicly owned electric utility.

(8) “REC” means renewable energy credit.

(9) “RES” means Renewable Electricity Standard.

(10) “RPS” means Renewables Portfolio Standard.

(11) “WAPA” means Western Area Power Administration.

(12) “WECC” means Western Electricity Coordinating Council.

(13) “WREGIS” means Western Renewable Energy Generation Information System.

§ 97003. Renewable Electricity Standard Obligations

Unless exempted by section 97001(b), each regulated party shall retire an amount of RECs equivalent to its REC obligation at the end of each compliance interval, as specified in Table 1. Notwithstanding these compliance interval obligations, REC retirement shall be measured, tracked and reported on an annual basis pursuant to the formula in section 97005 (c) of this article, as a percentage of total MWh of electricity delivered to retail end-use customers.

Table 1. Compliance Intervals and REC Percentages

Compliance Intervals	REC Percentage
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2012 through 2014	20
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2015 through 2017	24
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2018 through 2019 28

2020 and annually thereafter 33

§ 97004. Renewable Electricity Standard Requirements

(a) RECs must meet the eligibility requirements in this article and must be tracked by the WREGIS system to be eligible to satisfy the requirements of section 97003.

Note: Staff is currently evaluating two options to increase the potential availability of renewable resources to facilitate compliance with the RES and maximize potential greenhouse gas reductions within the WECC. One option includes allowing the use of unbundled and undelivered RECs; the second option is to use “tradable” RECs for compliance with the RPS, consistent with the CPUC’s approach. As harmonization is the ultimate objective between the existing RPS and this RES, staff is continuing to evaluate the impacts and implications of these two options.

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Option (1): Allow the unlimited use of unbundled and undelivered RECs, as described below.

(1) The acquisition of RECs from eligible renewable energy resources meeting the requirements of the RPS program, including delivery requirements for out-of-state facilities; and

(2) The acquisition of RECs from eligible renewable energy resources that meet all other requirements of the RPS program, excluding electricity delivery requirements for out-of-state facilities; and

(3) The acquisition of RECs from an RES Qualifying POU Resource as defined in section 97002.

Option (2): Allow the use of “tradable” RECs consistent with the approach identified by the CPUC.

Discussion of Concept:

Staff is seeking comments on the REC options presented in this section, including the implications of using the CPUC approach for tradable RECs in the context of achieving the 33% target. Specifically, staff is seeking feedback on what impacts the two options will have on investments for in-state renewable resource and transmission development, availability and cost of RECs, and any

other information that helps to inform the approach for handling RECs.

(b) RECs must be retired in WREGIS for RES compliance and may not be used to meet the requirements of any other federal, state or local program.

(c) Banking and Trading of RECs. RECs not used to meet a compliance interval obligation in section 97003 may be banked and used for subsequent obligations or traded to other parties, subject to the limitations of this subsection. RECs traded to other regulated parties subject to this article must not be transferred outside the WREGIS system.

(2) RECs procured by regulated parties operating under a partial exemption as provided in subsection 97001 (b) are not eligible for trading.

Discussion of Concept

Staff is proposing to allow the banking and trading of RECs as described in section 97004 (b). As contemplated, this would allow RECs to be traded among regulated parties for up to three years. Staff is aware of efforts by the CPUC to allow “tradable” RECs as outlined in its December 22, 2009, proposed decision (PD). In light of the PD, staff is evaluating the feasibility of the following additional REC trading provisions and is seeking stakeholder suggestions on other options:

A REC procured for RES compliance pursuant to Section 97003, may be traded for a period of up to three years from its WREGIS creation date or until the REC is retired to a WREGIS retirement subaccount.

§ 97005. Monitoring, Verification, and Compliance

(a) *WREGIS Verification.* Each regulated party shall register with WREGIS and comply with all WREGIS requirements.

(b) *Filing of Plans and Reports.* Regulated parties shall prepare and submit the following plans and reports to the Executive Officer and the CPUC or CEC as follows:

(1) Electrical corporations, electric service providers, and community choice aggregators shall submit the following reports to the ARB and CPUC:

(A) *RES Progress Report*—No later than June 1, 2013, and no later than March 1st of each subsequent year, the responsible official of

Deleted: (c) RECs procured from a RES Qualifying POU Resource may be used for up to 20% percent of the regulated party's retail sales to its end-use customers.¶
Discussion of Concept:¶
Staff is proposing to allow those POUs who previously claimed uncertified¶ renewable resources (mostly large hydropower) for compliance towards¶ RPS program goals, to continue to use those resources for up to 20% percent of their retail sales under the RES until contractual investments¶ expire. Should there be any limits on the kinds of resources that may be¶ claimed? What are the potential ramifications of this action?¶

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Deleted: (1) RECs procured from RES Qualifying POU Resources are not eligible for trading.¶

Deleted: (2) RECs may only be traded by regulated parties who are in compliance with the REC retirement requirements of section 97003.¶

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the electrical corporation, electric service provider, or community choice aggregator shall submit a progress report. The report shall contain sufficient information to verify annual progress towards compliance with the REC retirement obligations of section 97003, and include a WREGIS report of RECs procured by contract and resource type during the prior calendar year. Where a REC obligation was not met, the report shall document the MWh shortfall and demonstrate how the electrical corporation, electric service provider, or community choice aggregator will make up the shortfall within the succeeding compliance period.

(B) *RES Procurement Plan*—No later than August 1, 2013, and no later than August 1st of each subsequent year, the responsible official for the electrical corporation, electric service provider, or community choice aggregator shall submit a procurement plan. The plan shall forecast eligible procurement by contract and resource type sufficient to demonstrate the potential to meet the next compliance period established by section 97003. The plan shall also include a project development status report of any project development activities, including site control, permitting status, financing status, interconnection progress, and transmission access.

(2) Local publicly owned electric utilities and electrical cooperatives shall submit the following reports to the CEC and ARB:

(A) *RES Progress Report*—No later than June 1, 2013, and June 1st of each subsequent year, the responsible official of the local publicly owned electric utility or electrical cooperative shall submit a progress report. The report shall contain sufficient information to verify annual progress towards compliance with the REC retirement obligations of section 97003, and include a WREGIS report of eligible RECs procured by contract and resource type during the prior calendar year. The report shall document retail sales for the preceding calendar year using the forms required under the

Quarterly Fuel and Energy Reports to be filed with the CEC by February 15 of each year. Where a REC obligation was not met, the report shall document the MWh shortfall and demonstrate how the local publicly owned utility or electrical cooperative will make up the shortfall within the succeeding compliance period.

(B) *RES Procurement Plan*—Every two years, the responsible official of the local publicly owned electric utility or electrical cooperative shall file a procurement plan as part of the Integrated Energy Policy Report (IEPR) process and cycle, starting with the 2011 IEPR. The plan shall include a project development status report of any project development activities, including site control, permitting status, financing status, interconnection progress, and transmission access.

(c) In addition to verifying compliance with the requirements of this regulation, information obtained from annual reports submitted to the ARB will be used to estimate greenhouse gas emissions and benefits. ARB staff will report these estimates annually and make the results available to the public on our website.

(d) *RES Formula*. Regulated parties shall calculate annual RES progress as follows:

Total retail sales (in kWh), multiplied by the percentage of procured and retired RECs (in kWh) for the applicable year.

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(e) *Recordkeeping Requirements*. All regulated parties must retain copies of all information and records necessary to verify the accuracy of any information included in the regulated party' applications, invoices, or reports for at least three years following the end of a compliance interval as specified in section 97003; and must provide such records within 30 days of a written request received from the Executive Officer or designee. A regulated party may also be required to open its business records for on-site inspection and audit by the Executive Officer or designee to verify the accuracy of any information included in the party's applications, invoices and reports.

§ 97006. Certification of Eligible Renewable Energy Resources

Renewable energy facilities or resources potentially eligible for the RES include facilities certified by the CEC as eligible for the California RPS program pursuant to Public Utilities Code Section 399.13 ~~and~~ out-of-state facilities that meet the requirements of the RPS program [excluding its delivery requirements].

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(1) Applicants seeking certification of a renewable energy resource for eligibility under the existing RPS program should file the application with the CEC in accordance with their review process.

(2) Applicants seeking certification [of a facility for eligibility under the RES program, including out of state facilities not meeting the delivery requirement of the RPS program], should file the application with the Executive Officer.

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Executive Officer may enter into an interagency agreement with the CEC or a third party contractor to review and make recommendations as to certification and verification of the resource for the RES program.

§ 97007. Interagency Cooperation

The Executive Officer may enter into memorandums of understanding or interagency agreements with the CEC, CPUC or CAISO to assist in the implementation of the processes, procedures and requirements set out in this article.

§ 97008. Enforcement

(a) *Penalties.* Any violation of the requirements of this article shall be enforced in accordance with Part 6, of Division 25.5, of the Health and Safety Code, commencing with section 38580. Violations of the requirements of section 97003 shall be considered as a violation of an emission limitation and shall be calculated on a kWh basis.

(b) Each day or portion thereof that any report required by this article is not submitted, is submitted late, or contains incomplete or inaccurate information is a separate violation of this article.

§ 97009. Treatment of Confidential Information

Information submitted pursuant to this article may be claimed as confidential. Such information shall be handled in accordance with the procedures specified in Title 17,

California Code of Regulations, Sections 91000 through 91022.

§ 97010. Severability

Each part of this article is deemed severable and in the event that any part of this article is held to be invalid, the remainder of this article shall continue in full force and effect.

§ 97011. Regulation Review

(a) As provided in this section, the Executive Officer, in consultation with the CEC, CPUC and CAISO, shall conduct three implementation reviews of the RES program. Each review shall be completed and presented to the Board by December 31, 2013, December 31, 2016, and December 31, 2018.

(b) The scope of each review shall include, at a minimum, consideration of the following areas:

- (1) Progress against targets;
- (2) Adjustments to compliance schedule to minimize costs and maximize benefits for California's economy, improve and modernize California's energy infrastructure, maximize potential greenhouse gas and criteria pollutant emissions, and maintain electric system reliability;
- (3) Advances in renewable energy generation technologies, including storage technologies, and the feasibility and cost effectiveness of such advances;
- (4) Availability and use of eligible renewable resources, both in state and out-of-state;
- (5) Assessment of supply availabilities of renewable energy and renewable energy credits in-state and out-of-state;
- (6) Impacts on the State's energy supplies and reliability of the State's electricity system, including integration of intermittent renewable resources;
- (7) Impacts on electric rates, consumers and economic growth;
- (8) Analysis of public health impacts, including impacts of generating facilities needed to integrate renewable energy safely and reliably;
- (9) Assessment of air quality impacts on California and throughout the WECC associated with implementation, including affects on State or federal air quality standards;

(10) Identification of development hurdles and barriers, such as transmission siting and permitting issues, and recommendations for addressing identified barriers; and

(11) Opportunities to harmonize the program with any federal, regional or other state RPS programs or REC markets.

(c) The Executive Officer shall conduct the reviews specified above in a public process and shall conduct at least one public workshop for each review prior to presenting the reports to the Board. In presenting the results of each program review to the Board, the Executive Officer shall propose any amendments or such other action as the Executive Officer determines is warranted.