

INDEPENDENT ENERGY PRODUCERS

To: Gary Collord
CARB

From: Steven Kelly Amber Riesenhuber
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RE: Initial IEP COMMENTS on RES Preliminary Draft Regulation

The Independent Energy Producers Association (IEP) is pleased to provide these initial comments on the California Air Resources Board (CARB) Renewable Electricity Standard (RES) Preliminary Draft Regulation (PDR). The PDR was presented and discussed at the CARB workshop on March 18, 2010. Accordingly, IEP's comments address matters that arose at the CARB workshop as well as the specific language proposed in the PDR.

I. Comments on CARB RES PDR Workshop (March 18, 2010)
a. Metric

IEP supports staff's proposal to apply a metric based on MWh of procured RECs relative to annual retail sales of the load-serving entity. Historically, commercial transactions in the electric sector are conducted in capacity (MW) and/or energy (MWh). These transactions occur in the form of contracting via power purchase agreements (long-term, short-term, etc.) as well as through centralized markets. Continuing to use the conventional terms for electricity transactions is a far superior approach, and it makes sense for the CARB to apply a formulaic approach to convert MWh to GHG emissions, as opposed to requiring individual energy transactions and established trading hubs to express transactions in terms of GHG reduction.

b. Methodology for Review

IEP supports staff's proposal to apply a "net facility" GHG emissions from each resource. IEP is not advocating for application of a life-cycle calculation of GHG emissions as a general rule, because developing such a methodology will be intractable. However, CARB should not foreclose the opportunity for individual generators to present information related to avoided GHG emissions when determining the "net facility" emissions. In California today, some electric generators consume relatively high-emitting, carbon-based fuels (*e.g.*, petroleum coke) in facilities that are relatively low emitting compared to alternative uses of such fuels. These facilities have been sited and certified under California's stringent environmental and air quality rules. The relatively high carbon-content fuel may be diverted to another source or use not located in California and, thus, not subject to the same stringent standards, if the cost of utilizing this fuel becomes uncompetitive. Failing to account for the secondary and sometimes tertiary effects of burning carbon-based fuels in California-sited facilities, as opposed to burning the

same fuel in a non-California certified facility, could result in CARB regulations that exacerbate the total global GHG emissions. Accordingly, IEP requests that the final RES Regulations enable electric generators to present to CARB additional information critical to determining the overall “net emissions” of the facility based on an avoided emissions principle.

c. Limitations on the Use of Renewable Resources that may be claimed

During the staff workshop, the issue arose as to whether limits should be imposed on the kinds of renewable resources that may be claimed. The Publicly-Owned Utilities (POUs) apparently have sought to include resources that fall outside the definition of “eligible renewable resources” under the Public Utilities Code (“PU Code”) and the Public Resources Code. In addition, the question was posed as to whether it should matter if the resources not included in the PU Code or Public Resources Code definition as eligible renewable resources were otherwise contracted or owned. Finally, it was observed by the investor-owned utilities (IOUs) that the same rules should apply to all load-serving entities (LSEs). The issue primarily centers on whether (or not) the CARB should count “large hydro” (*i.e.*, 30 MWs or greater), whether contracted or owned, within the RES.

Defining eligibility to include additional resources not currently recognized by the legislature as “eligible renewable resources” (e.g. large hydro) under the rules and standards of the California RPS would be inappropriate at this time. Currently, the public has a certain perception of what an “RPS standard” implies, and it does not include large hydro. The public’s confidence in and support for an RPS program by itself or as a tool for GHG emission reductions is a function of their confidence that the program has a significant measure of integrity related to the types of resources that underlay the procurement strategy to achieve an RPS. CARB risks undermining this confidence if it expands the definition of eligible renewable resources under the RES to include large hydro, just as it would if it were to expand the definition of ‘eligible renewable resource’ to include energy efficiency (EE). While both EE and large hydro may have GHG emission reduction benefits, the integration of both within the definition of eligible renewable resources will undermine years of work by the renewable community, in addition to undermining the public confidence in what it means to have a renewable portfolio standard with clear goals, standards, etc.

The concern expressed by the small POUs is that a 33% RES purchase obligation will require them to purchase more energy than they can apply to their immediate load, given their other long-term resource obligations. These POUs tend to be customers of large hydro marketed by federal power agencies (*e.g.*, Western Area Power Administration, Bonneville Power Administration). This power tends to be the cheapest power on the market and is federally subsidized. Under the CARB proposal, these POUs will be able to buy RECs totally separate from energy, thereby avoiding a situation in which they are required to “dump” energy. Given these circumstances, avoiding any requirement to purchase incremental RECs from eligible renewable resources appears unnecessary.

Assuming application of the principle espoused by some that “all LSEs” must be treated the same, IEP is concerned that an exception adopted for a few, relatively small POUs may become the rule for all POUs/LSEs. Due to the potential implications of this matter for all LSEs, IEP requests that the CARB address the potential scope/scale of adopting this request by the POUs, including the scenario under which all LSEs are treated equivalently.

d. REC Use

CARB staff is evaluating two options for REC use. Option 1 is the unlimited use of “unbundled” RECs without an electricity delivery requirement. Under Option 1, so-called “bundled” REC acquisitions would be those transactions that comply with the RPS delivery requirements prescribed in the PU Code and/or Public Resources Code. Further, so-called “RES Qualifying POU Resources” would be deemed eligible. On the other hand, Option 2 would provide for “tradable RECs” as defined and described per the CPUC Decision dated March 18, 2010. Pursuant to the CPUC Decision, a two-phase program would be implemented. The first phase, to be concluded by December 31, 2011, would define a “Bundled Product” as an energy plus REC transaction (combined) such that the electricity underlying the transaction is generated in California or directly interconnected to a California Balancing Authority (CBA). Furthermore, the Decision specifies that the definition of “directly interconnected” includes resources delivering to gen-ties that are directly interconnected to a CBA, dynamically scheduled to a CBA, and, potentially, electricity with a firm transmission path to a CBA (this variation will be explored in workshops during the transitional, 2-year initial phase of the program). All other transactions would be deemed as “REC-only” transactions, which can be used to show compliance by the three large IOUs for not more than 25% of the IOU’s Annual Procurement Target; all other CPUC-jurisdictional entities have no such limits on REC-only usage.

IEP has a number of concerns regarding the CPUC Decision. For example, the Decision mistakenly melds into the definition of REC-only transactions all existing and future transactions that are “firmed and shaped” and otherwise deemed an “eligible renewable resource” by the CEC. From IEP’s perspective, a REC-only transaction is simply a transaction that conveys a WREGIS certificate wholly separate from any energy delivery commitments. In addition, the Decision fails to recognize that transactions using a firm transmission path for delivery to a CBA are functionally equivalent to a Bundled Product (as defined). As a result, the Decision creates a significant measure of market uncertainty as the Energy Division evaluates the nature and substance of electricity delivered via a firm transmission path in the context of whether such transactions are Bundled Products or REC-only (as defined).

IEP supports the following characteristics of a TREC Program for purposes of RES compliance:

- The CEC retains jurisdiction over eligibility and delivery rules.
- TRECs must be associated with generation from an eligible renewable resource.
- TRECs from existing, CPUC-approved transactions as of the effective date of the Decision should be treated as Bundled Products for purposes of RES compliance.
- TRECS may be sold as a bundled product and as a REC-only transaction:
 - A REC-only transaction is defined as a transaction that involves solely a WREGIS certificate, wholly separate from an exchange of any energy or capacity.
 - A Bundled Product conveys a WREGIS Certificate as well as the underlying energy from an eligible renewable resource as determined by the CEC.
- RECs must be tracked in WREGIS.
- A REC-only transaction may be used for compliance if the associated WREGIS certificate was generated after January 1, 2008.
- REC-only transactions should not be subject to a price cap (*e.g.*, \$50/MWh). A REC price cap has the effect of skewing the marketplace for RECs versus Bundled and firmed

and shaped products. This effect, in turn, skews development options for renewable generation and compliance opportunities for LSEs.

- In terms of application of Flexible Compliance rules:
 - Banking for up to 3 years.
 - Earmarking should not be included. A REC, by definition, is linked to eligible renewable electricity delivered to the electrical grid. Allowing earmarking of RECs, which enables an obligated entity to count RECs not yet created against past obligations, violates the principle that a REC is associated with actual energy delivered to the grid.
- REC trading should not be limited to Regulated Parties. Not only would this restriction likely violate the Commerce Clause, but it is unnecessary. The WREGIS certificate, which underlies the REC transaction, contains a unique number to prevent double-counting. By requiring a WREGIS certificate to represent the REC, CARB will be creating protections against fraud and abuse. A WREGIS Certificate is only created based on third party verified, metered data related to energy actually delivered to the WECC electrical grid. The WREGIS certificate contains important information such as (a) when it was created, (b) technology type, and (c) location of generating facility. Any change in ownership of the WREGIS certificate is tracked through WREGIS accounts. Once a WREGIS certificate is used to meet a regulatory compliance obligation at CARB or any other regulatory entity, the WREGIS certificate is “retired” within the WREGIS system and removed from commerce. This approach allows the formation of a liquid market in REC trading (*i.e.*, many buyers and sellers), while creating necessary and fundamental protections against fraud and abuse.

Regarding renewable transactions in general, including TREC transactions, the value of these transactions to consumers is a function of price, project viability, and geographic attributes. Through the application of a proper methodology valuing price, project viability, and geographic attributes relative to each other in an open and transparent manner, consumers will realize the highest valued products (*i.e.* projects) at the least cost. Essentially, each of these broad characteristics can and should be measured and evaluated relative to each other. . Accordingly, artificial “caps” on one or more RES “products” would be unnecessary at this time.

II. Comments on CARB RES PDR

Provided below are specific comments on the CARB RES PDR (dated March 11, 2010).

- 1. Section 97001(b): Partial Exemption for Small Regulated Parties.** IEP agrees that a partial exemption for Small Regulated Parties is warranted, if unbundled REC-only transactions are not available for compliance purposes. If REC-only transactions are eligible, and a REC-only transaction refers to a WREGIS certificate meeting the compliance obligation absent any underlying energy delivery requirement, it is more equitable to simply allow Small Regulated Parties unlimited use of REC-only transactions to achieve compliance as proposed by staff.
- 2. Section 97002(a)(5) Definitions and Acronyms: “Eligible renewable energy resources.”** The definition of eligible renewable energy resources includes generation participating in the WREGIS tracking system and is certified as eligible pursuant to the California Public Utilities Code. IEP agrees with this approach. We oppose expanding the definition to include “RES Qualifying POU Resources as provided in this article.” As noted above,

allowing POU Governing Boards to approve technologies or specific generation projects as eligible, irrespective of whether they meet the definition provided by the legislature and prescribed in the PU Code, raises a host of issues related to fairness, equitable treatment across LSEs, etc. Any such change risks undermining the public's confidence in the integrity of the RPS/RES program, threatening many years of work by multiple stakeholders "marketing" RPS programs and goals. Accordingly, IEP recommends that POU Governing Boards not be afforded the opportunity to define eligible renewable resources for themselves that are inconsistent with the provisions of the PU Code.

3. **Section 97002(12)(B): Definitions and Acronyms: "Regulated party."** Section (12) states that "Regulated party" means any of the following..... Included in this definition is (B) Electrical Corporation. Currently, under the PU Code and the Public Resources Code, the definition of Electrical Corporation means In order to prevent electrical generators from being inadvertently included in the definition of an Electrical Corporation, IEP recommends the following: [TO BE ADDED INCORPORATING LEGAL LANGUAGE].
4. **Section 97002(15): Definitions and Acronyms: "RES Qualifying POU Resource."** Delete this exemption and adopt a common definition of eligible renewable resources across all LSEs, consistent with the PU Code, for purposes of RES compliance.
5. **Section 97004(a): Renewable Electricity Standard Requirements.** As regards the choice between Option 1, which would allow an unlimited use of unbundled and undelivered RECs, and Option 2, which would allow the use of "tradable RECs" as described in the CPUC Decision, IEP reiterates its concerns regarding the CPUC Decision as noted above. The CARB and the CPUC should integrate their individual approaches to attain a measure of consistency, but the CPUC Decision makes this goal difficult to achieve. If the LSEs' evaluation methodology of proposed projects is open, transparent, and includes the weighting of such key factors as price, project viability, and geographic attributes, then no limit on the use of RECs is necessary. Rather, the "limit" on REC-only transactions will be a function of their overall value to consumers when considered in light of all the relevant factors that the state values.
6. **Section 97004(c): RECs procured from Qualifying POU Resource.** As noted above, the ability of POU's to apply "RES Qualifying Resources" (mostly large hydropower) should be excluded from the definition of an eligible renewable resource under the RES. Inclusion of existing "owned" or "contracted" large hydro resources in the RES will have no incremental effect on the electric grid from a GHG perspective.
7. **Section 97004(d)(2) re trading of RECs.** This section states that "RECs may only be traded by regulated parties who are in compliance with the REC retirement required in section 97003." IEP infers from this statement that the intent is to limit the trading by an "obligated entity" under the RES until *after* that party has proven its compliance per the schedule described in section 97003. This restriction creates an unwarranted limit on trading. An obligated entity should be allowed unlimited trading of RECs at any time. This ability to trade will support market liquidity in the trading of RECs. Allowing an obligated entity the opportunity to trade RECs at will does not necessarily undermine that entity's obligations to comply with the RES, which is a separate requirement and has a separate standard for compliance. Accordingly, IEP recommends clarifying this section to state that Obligated

Entities have an unlimited right to trade, bank, etc., RECs, but once a REC is applied to a compliance obligation it is permanently “retired” from the WREGIS system and no longer available for use by a party for purposes of complying with a regulation.

III. IEP Recommendations as to Modifications of Specific Language in the RES PDR

Attachment A includes a markup of the staff proposed RES PDR to reflect and incorporate the changes recommended by IEP.