



M E M O R A N D U M

TO: California Air Resources Board

FROM: Modesto Irrigation District
Redding Electric Utility
Turlock Irrigation District

SUBJECT: California Renewable Electricity Standard Preliminary Draft Regulation

DATE: April 12, 2010

The Utilities

Modesto Irrigation District (“MID”), Redding Electric Utility (“REU”), and Turlock Irrigation District (“TID”), collectively the “Utilities,” appreciate the opportunity to comment on the revised “California Renewable Electricity Standard Preliminary Draft Regulation” (Draft Regulation) developed by the California Air Resources Board (CARB).

MID, REU, and TID are local publicly owned electric utilities. MID and TID are irrigation districts located in the Central Valley, while REU is a municipal utility within the City of Redding. MID serves over 110,000 electric customers with a peak load around 620 Megawatts (MW). REU serves 42,000 customers with a peak load of 247 MW. TID serves about 100,000 electric customers with a peak load of approximately 600 MW. The Utilities maintain similar resource mixes, including hydroelectric, eligible renewable resources and fossil fuel sources. MID plans to meet about 14% of its retail sales with eligible renewable energy in 2010 and will begin to meet over 25% of its retail energy sales with renewable energy starting in 2011. REU has long-term contracts to provide 31% of its energy from qualified renewable resources. TID is currently meeting 27% of its retail load with eligible renewable energy. In addition to the foregoing “eligible” renewable resources, MID and TID have ownership and contractual interests in large hydroelectric resources that meet 9 to 21 percent of their retail load, respectively. The Utilities also share similar challenges in implementing their respective Renewable Portfolio Standards (“RPS”), including weather patterns, demographics and local economics. The Utilities have consistently supported the goals of AB 32 and participated in CARB’s effort to create a successful program to implement these goals.

Introduction

The AB 32 Scoping Plan, adopted on December 12, 2008, called for the State to have 33% of its energy from renewable resources by 2020. Governor Schwarzenegger's Executive Orders S-14-08 and S-21-09 augment the Scoping Plan goal by setting forth clear expectations such as that the target must apply to all retail sellers of electricity, and that CARB must consult with the CAISO and other balancing authorities¹ to ensure that the bulk transmission system operates reliably, efficiently, and in a cost effective manner while providing access to resources throughout the Western Interconnection.

As the Utilities previously commented, we appreciate every effort made to coordinate the new Renewable Electricity Standard (RES) obligations as closely as possible with the existing renewable portfolio standard (RPS) requirements. Avoiding duplication in compliance procedures will reduce reporting, verification and other burdens for utilities and the regulatory agencies. In addition we urge CARB to continue its efforts to ensure that the RES harmonizes with CARB's greenhouse gas (GHG) reduction program.

The Utilities further believe that the new RES program must coordinate with any federal climate change and renewable energy program to ensure compatibility, particularly since the flow of electrons and emissions do not stop at California's border. The new RES program must be implemented in a manner that protects the reliability of the electric grid and maintains the Utilities' efforts to provide dependable and affordable power to their customers. Reliability and cost-effectiveness must be the cornerstones of the RES regulation as this regulation will not only impact the electric industry within the state of California, but also the electric industry across the WECC.

Feedback Requested

Throughout the Draft Regulation, CARB has requested feedback on various issues. The Utilities are members of the California Municipal Utilities Association (CMUA), and strongly support the comments provided by CMUA²³. In addition, the Utilities expand on several sections of the Draft Regulation, below:

97002. Definitions and Acronyms

"Regulated Party" –

The Utilities do not believe it is appropriate to include the California Department of Water Resources (DWR) nor the federal Western Area Power Authority (WAPA) as a Regulated Party

¹ TID is a balancing authority.

² MID and REU are members of the M-S-R Public Power Agency. MID and REU support the comments of M-S-R on the Proposed Outline.

³ TID and REU are members of the Northern California Power Agency (NCPA). TID and REU support the comments of NCPA on the Proposed Outline.

within the RES since these entities are not retail providers and the retail providers receiving power from WAPA and DWR will be subject to the RES. For example, REU receives over 30% of its energy directly from WAPA and is subject to the RES. By nature of the federal preference power program, WAPA passes on all of its costs to its customers. Thus, REU would be obligated to pay for both WAPA's RES obligation as well as REU's own compliance costs, resulting in a duplicate regulation.

“Eligible Renewable Energy Resources” –

The Utilities believe that the definition of technologies that qualify as “eligible renewable resources” needs to be continuously updated and reviewed to include new emerging renewable technologies. As part of implementing the RES, CARB should be able to provide this feedback to the California Energy Commission (“CEC”) for inclusion in the CEC's RPS Eligibility Guidebook. For example, energy storage technologies must be thoroughly assessed for compliance with the RES through a separate category of qualifying resources in that it meets the GHG goals of AB 32 through reduced electricity demand, improves the electrical grid, and avoids the need to build fossil-fueled generating resources. This type of resource may also qualify as an RPS eligible renewable resource depending on the energy used to create the stored energy.

While the Utilities agree with CARB's proposal for the CEC to retain the authority for developing renewable resource eligibility criteria, the CEC should not overlook the RES value of additional resources. In order to avoid duplication of efforts, the CARB should remain with the authority to declare what is RES eligible for compliance with the RES and should be able to provide the CEC feedback on potential modifications to the RPS Eligibility Guidebook if there are eligibility criteria that can be modified within the construct of the law so that utilities can take full advantage of potential non-GHG emitting renewable resources after exploring the benefits of new and existing resources and the existing RPS eligibility criteria.

The Utilities strongly believe that a regulated party should not be required to displace a zero or low carbon resource to meet any RES obligation – this would be counter-productive to achieving the GHG reduction objectives laid out by AB 32, which is the underlying goal for the RES program. The Utilities continue to advocate for the recognition of the zero carbon benefits of electricity generated from large hydroelectric resources and support the “netting” approach developed in the federal climate change and energy legislation⁴. While we appreciate CARB's recognition that some POUs have used non-CEC certified resources to meet their individually tailored RPS requirements as consistent with existing laws, as well as the importance and necessity of providing these entities with a transitional period to meet the new RES requirements, the Utilities do not believe this proposal by CARB fully addresses the important

⁴ Netting of large hydro electric resources from a Utility's baseline is found in H.R. 2454, “The American Clean Energy Security Act”, Title 1, Subtitle A, Sec. 101, passed by the House on June 26, 2009, and in S. 1463, “The American Clean Energy Leadership Act”, Title 1, Subtitle C, Sec. 132.

value of large hydro as a zero carbon resource, nor does it promote consistency with federal renewable energy proposals. Using a netting approach for large hydro will acknowledge utilities that made early contributions to California's carbon emission goals by investing in this clean resource, without losing the incentive for such utilities to continue making investment in new clean technologies. For those utilities that have all or a majority of their resources met by large hydro, such a netting approach will not require them to displace their zero carbon hydro resources to meet any RES obligation.

“RES Qualifying POU Resource” -

The Utilities disagree with the proposed procurement date for electricity and RECs, or RECs without electricity in (B) (1) and request that the procurement date be extended until the effective date of the regulation. The rationale behind this request is that several utilities continue to procure renewable resources under the auspices of the existing CEC RPS Eligibility Guidebook which has not been updated since the last quarter of 2007. The same rationale is used in the Utilities request that CARB strike the second condition in (B) (2) which states that the electricity from a RES Qualifying POU Resource must have been procured during the initial term of the contract and not during any extended or modified term. As stated above, several utilities continue to procure and execute agreements, whether they are from extensions or modifications of the initial agreements that still qualify under the existing RPS Eligibility Guidebook criteria. For this reason, these resources should be allowed to count towards a utility's future RES compliance requirement.

97003. Renewable Electricity Standard Obligations

The Utilities believe that CARB should set an end-point objective for the RES by eliminating the interim targets, and provide regulated parties with the flexibility to achieve that target in their most cost effective and efficient manner. The Utilities have demonstrated solid advancement of RPS goals and interim targets are not necessary for State goals. The oversight provided through the Utilities' respective elected boards ensures every effort is made to comply with regulatory mandates. Moreover, other regulatory requirements being developed to comply with AB 32 provide sufficient “incentives” to obtain renewable energy resources.

However, if interim targets are to be imposed, the Utilities recommend compliance intervals be set at a minimum of three-years, which will help balance the impacts from weather, technological delays, and transmission development. This is also consistent with the proposed three-year compliance targets proposed for the AB 32 cap-and-trade program.

97004. Renewable Electricity Standard Requirements

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.

The Utilities prefer Option 1 presented in the Draft Regulation. Option 1 more closely aligns with the goals set out in AB 32, which require electric utilities to reduce their GHG emissions, regardless of their source or location.

The Utilities do not believe there should be limits on the amount of unbundled and undelivered out-of-state RECs that may be used. As stated previously, the Utilities believe that there must be coordination between the RES and a federal climate change and energy program as the benefits will not only be limited to the State of California, but also be provided to a wider region. We agree with the many others that have suggested allowing utilities to procure out-of-state renewable resources can i) stimulate competition that could help development of local resources in California, and ii) provide flexibility to use another compliance tool to meet RES compliance targets in the most economic way for Californians.

Discussion of Concept:

Staff is proposing to allow those POU's 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?

As noted above, the Utilities appreciate CARB's recognition on the zero carbon value of large hydro and believe allowing 20% of certain utilities' retail sales to come from RES Qualifying POU Resources is a great first step. However, while some POU's have thus far enacted RPS obligations in accordance with existing law that include large hydroelectric resources, and while it is important to provide such POU's with a transition from these individually tailored RPS programs to the new RES requirements, the Utilities believe that it is equally important to recognize the contribution to carbon emission reductions made by POU's who complied with the CEC's definition of eligible renewable resources while making additional investments in large hydroelectric resources. To that end the Utilities reiterate their request that CARB fully explore netting of large hydro. As described above, netting of large hydro is consistent with proposed federal climate change and energy legislation⁵ as well as more appropriately addresses the GHG goals set forth in AB 32 by recognizing the zero carbon value of large hydro electricity.

Banking and Trading of RECS -

⁵ Netting of large hydro electric resources from a Utility's baseline is found in H.R. 2454, "The American Clean Energy Security Act", Title 1, Subtitle A, Sec. 101, passed by the House on June 26, 2009, and in S. 1463, "The American Clean Energy Leadership Act", Title 1, Subtitle C, Sec. 132.

The Utilities agree with (d) (2) in that only regulated parties that are in compliance with the REC retirement requirements in Section 97003, as modified per the Utilities request, should be allowed to trade RECs.

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.

The Utilities disagree with CARB's proposal to limit REC trading for only 3 years for RES compliance. RECs must remain valid until they are used to meet the RES compliance target, regardless of their creation date. Further, a limited lifespan is inconsistent with current WREGIS practices. These types of flexible compliance mechanisms are critical to the cost-effective compliance with the statewide RES objectives. The more flexible REC options are, the more likely that the Utilities can meet both RPS and RES compliance in the most efficient, cost effective manner, which is consistent with goals set forth in AB 32.

A REC, whether it is generated or purchased, should count towards the holder of the REC's RES compliance obligation, regardless of when it is traded or retired. Limiting the lifespan of a REC diminishes the value, which would ultimately be bracketed by the 3 year compliance term. Further, under the auspice of the CPUC decision on tradable REC's, unbundled transactions will have a limiting cap while bundled transactions will be unlimited. The Utilities disagree with this CPUC approach, as it amounts to a changing of the rules in the middle of the race as contracts already on the books would be considered unbundled and subject to a cap, decreasing their value. Those contracts considered unlimited at inception would also be capped, further exposing the Utilities to additional costs.

As such, the Utilities believe the RES should call for unlimited trading and retirement periods for REC's, allowing for both bundled and unbundled transactions for RPS and RES compliance. The RES should not cap contracts already in place, regardless if they are bundled or unbundled. CARB must focus on the ultimate goal of GHG reductions at the lowest cost, and avoid limiting the path to that goal.

97005. Monitoring, Verification, and Compliance

The Utilities agree with CARB's proposal to use WREGIS for monitoring, verification, and compliance with the RES. This has proven to be an extremely effective tool by all entities that utilize it, and will ensure that REC certificates are tracked from cradle to grave.

The Utilities believe that CARB's proposed reporting requirements for local publicly owned utilities are similar to reports the Utilities currently submit to the CEC regarding RPS documentation. The Utilities request that every effort be made to combine and streamline these reports and avoid duplication. Further the Utilities strongly disagree with any requirement, including procurement plan submittal to a reviewing body, that that removes or encroaches on the local ratemaking authorities jurisdiction over procurement decisions.

97006. Certification of Eligible Renewable Energy Resources

The Utilities agree with CARB's proposal for the certification of Eligible Renewable Energy Resources. The CEC has a rigorous process for certifying California-eligible renewable facilities located out-of-state and within the WECC; the Utilities believe that this process has proven its effectiveness.

While the Utilities believe that CARB should remain with the authority to declare what is RES eligible for compliance with the RES and should be able to provide the CEC feedback on potential modifications to the RPS Eligibility Guidebook if there are eligibility criteria that can be modified within the construct of the law, the CEC should have the sole responsibility of certifying all resources to be compliant with the RPS and therefore compliant with the CARB's RES, with the exception of the RES Qualifying POU Resources. The Utilities support the CARB's proposal on the jurisdiction over certification of RES Qualifying POU Resources. While RECs may be created for the RES Qualifying Resources, those RECs should only be retired for compliance with the RES and not the CEC's RPS. The WREGIS construct allows this flexibility, therefore the CARB should remain as the jurisdictional entity that will ultimately certify RES Qualifying POU Resources and certify the retirement of those RECs that will be used to comply only with the CARB's RES,

97008. Enforcement

The Utilities believe provisions regarding enforcement of the RES regulations must be crafted carefully to ensure that the focus remains on achieving air emission benefits, and that any penalties are commiserate with the seriousness of the violation and the impact of that violation on carbon emission levels. All of the circumstances surrounding a utility's renewable procurement decisions should be considered, including the contributions made to the utility's portfolio by zero-emission resources that are not deemed "eligible" for inclusion in the RES calculation. Procedures must also be put in place to allow utilities to review, participate in and to appeal enforcement actions by CARB. Enforcement under CARB's RES should not be duplicative of other regulations.

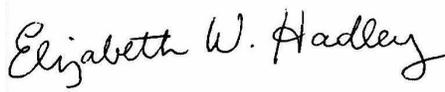
Conclusion

The Utilities appreciate the opportunity comment on the Draft Regulation, and would welcome the chance to discuss these concepts further.

Respectfully submitted,



Joy Warren
MODESTO IRRIGATION
DISTRICT



Elizabeth Hadley
REDDING ELECTRIC UTILITY



Wes Monier
TURLOCK IRRIGATION
DISTRICT