

**BEFORE THE
AIR RESOURCES BOARD
OF THE
STATE OF CALIFORNIA**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
COMMENT ON RENEWABLE ELECTRICITY STANDARD
DRAFT REGULATION**

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I. INTRODUCTION AND SUMMARY

The Southern California Public Power Authority (“SCPPA”)¹ respectfully submits this comment on the May 14, 2010 version of the California Renewable Electricity Standard regulation (“Revised RES Regulation”). SCPPA appreciates the opportunity to provide feedback prior to finalization of the regulation.

The SCPPA members support regulations designed to achieve the 33 percent renewable energy target in an efficient and cost-effective manner.

SCPPA particularly commends the decision to allow unlimited use of tradable renewable energy credits (“RECs”) for the purposes of compliance with the Revised RES Regulation. This is a sensible approach that will help control the costs of the 33 percent target to California energy consumers.

Further, the Revised RES Regulation is significantly clearer and more comprehensibly drafted than the previous version of the regulation dated March 11, 2010 (“March Draft Regulation”).

However, the Revised RES Regulation does not address some issues which remain important to SCPPA members. In summary, SCPPA recommends the following changes to the Revised RES Regulation:

¹ SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Imperial Irrigation District, Pasadena and Riverside.

- The definition of “RES Qualifying POU Resource” should be revised to ensure it covers only renewable energy sources that do not meet the current certification criteria of the California Energy Commission (“CEC”).
- Compliance intervals should remain at three years rather than dropping to two years and then one year. Longer compliance periods provide important flexibility for utilities that invest in their own renewable energy projects rather than buying RECs on the market.
- The Revised RES Regulation should incorporate the flexibility provisions in Senate Bill (“SB”) 722, as amended. These provisions allow extensions of time for compliance if renewable energy is unavailable due to circumstances beyond the control of the regulated party. Again, this is particularly important for utilities that invest in their own projects.
- The deadline for retiring RECs to meet the targets in section 97004 should be nine months instead of three months after the end of each compliance interval to allow regulated parties enough time to calculate their exact REC liability and to procure the necessary RECs.
- Given the increased importance of the REC market in meeting compliance obligations under the RES, market oversight and control mechanisms should be developed to avoid market abuse and increase transparency. At a minimum, market operation should be added to the list of items to review in the periodic regulation review.
- Violations for non-compliance with the RES Obligation should only be assessed after the REC retirement deadline set out in section 97004(a), not directly after the end of each compliance interval.

SCPPA’s comments are set out in detail below in the order in which issues arise in the Revised RES Regulation.

II. DEFINITIONS SHOULD BE REVISED.

A. Definition of RPS should refer to POU RPS regulation.

In section 97002(a)(17), the definition of “Renewables Portfolio Standard or RPS” refers only to Public Utilities Code section 399.11. However, this section of the Code does not cover publicly owned utilities (“POUs”) – see section 399.12(g)(4)(C). It is evident that the definition of RPS in the Revised RES Regulation is intended to apply to POUs, as the definition of RES Qualifying POU Resource refers to POUs’ RPS eligible generation.

A different section of the Code, section 387, requires POUs to set renewable portfolio standards. This section should be referred to in the definition of RPS, as follows:

“**Renewables Portfolio Standard**” or “**RPS**” means the Renewables Portfolio Standard as set forth in Public Utilities Code section 399.11 et seq [and section 387 in respect of POUs](#).

B. Definition of RES Qualifying POU Resource is too broad.

SCPPA appreciates the changes made to section (B)(2) of the definition of RES Qualifying POU Resource. However, the changes made to the first paragraph of the definition have the effect, no doubt unintended, of broadening the definition so that it would cover renewable energy used by a POU from all sources – those certified under current CEC rules, as well as those that would not be certified save for this provision and section 97007(a)(3). This is due to the removal of the phrase “not certified by the CEC as eligible for the RPS program”, which was in the definition in the March Draft Regulation.

This broad application is a concern given that RECs from RES Qualifying POU Resources can only be used for up to 20 percent of the RES Obligation, and that such RECs cannot be traded (sections 97005(c) and (d)(3)).

Secondly, while POU's are required under existing regulations to report their energy sources annually, this reporting does not specifically relate to their RPS eligible generation as the current wording of the definition of RES Qualifying POU Resource would imply.

To address these issues, the following changes should be made to the first paragraph of the definition:

“RES Qualifying POU Resource” means a renewable energy resource not certified in accordance with section 97007(a)(1) or (2) whose electrical generation was both approved by the POU’s Governing Board ~~and reported to the California Energy Commission~~ as contributing towards the POU’s RPS eligible generation and reported to the California Energy Commission on or after January 1, 2003, and prior to September 15, 2009, and: ...

C. Formula for RES Obligation should include reference to MWh.

In section 97004(a), the formula for calculating an entity’s RES Obligation does not specify what units should be used for the sum of retail sales. Megawatt hours are specified in the formulae in sections 97004(b) and (c), and should also be specified in (a) to avoid confusion. Confusion is possible as kilowatt hours are used elsewhere in the Revised RES Regulation, for example sections 97006(d)(1) and 97009(a), both relating to RES Obligation violations.

Ideally the same unit of measurement should be used throughout the regulation – megawatt hours would be most appropriate, given that RECs are measured in megawatt hours. At a minimum, megawatt hours should be specified in the formula in section 97004(a), as using a different unit will affect the size of the RES Obligation:

RES Obligation = Sum of retail sales for the compliance interval in MWh x the REC percentage for the compliance interval.

III. COMPLIANCE INTERVALS SHOULD REMAIN THREE YEARS.

At the RES workshop on May 20, 2010, ARB staff stated that three-year compliance periods are not required after 2020 as the REC market will be sufficiently liquid by that time to enable compliance entities to purchase RECs annually for compliance.

As the REC market is of limited size, it may never become very liquid. However, regardless of the liquidity of the market, many utilities (particularly POU) plan to establish their own renewable energy projects for compliance with their RES obligations, rather than relying on the market. POU tend to self-supply, both for electricity and RECs. They are less experienced in the markets and do not have the sophisticated trading desks of investor-owned utilities (“IOUs”). Purchasing RECs on the spot market or under guaranteed-delivery contracts is also likely to be more expensive than obtaining RECs from a utility’s own resource.

As just one example, a particular SCPA member intends to satisfy a substantial portion of its renewable energy requirement through a contract signed with a geothermal resource that is in early development. Projects of this nature are subject to considerable risk of delay or a change in parameter, both prior to and after commissioning, for various geological reasons. This remains true both now and after 2020.

Multi-year compliance intervals provide an important source of flexibility in this situation. They allow time for utilities to develop, repair, or replace renewable energy projects and to average out periods of variable REC generation.

Dropping to one-year compliance intervals from 2020 would make it extremely risky for a utility to rely on a limited number of its own renewable energy projects to generate the RECs it needs, given that both the number of RECs generated by a plant and the number of RECs a utility requires may vary greatly from year to year. To reduce the risk of non-compliance,

utilities would be forced to buy RECs at a higher price on the market rather than investing in their own projects.

For these reasons, the ARB should reconsider its decision to drop compliance intervals to one year from 2020 and instead retain three-year compliance intervals.

Retaining three-year compliance intervals need not affect the upward trajectory of percentage renewable energy requirements that the Revised RES Regulation currently specifies. It is possible to have different percentage renewable energy requirements for different years within the same compliance interval. Section 97004(a) of the Revised RES Regulation provides a 28 percent target for the two-year compliance interval 2018-2019 and a 33 percent target for the one-year interval 2020. SCPPA proposes a three year compliance interval, 2018-2020, while retaining the renewable energy percentages proposed in section 97003. Thus, after the end of 2020 a regulated entity would calculate its total REC obligation for the compliance interval as 28 percent of its 2018 and 2019 power sales, plus 33 percent of its 2020 power sales.

The requirement in section 97006(b)(2) to provide annual RES Progress Reports would ensure the availability of the data needed to calculate total REC requirements for the three-year compliance interval.

The table in section 97004(a), “Compliance Intervals and REC Percentages”, would need to be amended as follows:

Compliance Intervals	REC Percentage
2012 through 2014	20
2015 through 2017	24
2018 through 20 2019	<u>For 2018-2019: 28</u> <u>For 2020: 33</u>
20 21 through 2023, 0 and <u>each three-year interval</u> annually thereafter	33

IV. EXTENSIONS OF TIME FOR COMPLIANCE SHOULD BE GIVEN IN CERTAIN CIRCUMSTANCES.

For the same reasons as are set out above in relation to three-year compliance periods, it is important to provide some flexible compliance options when a utility is unable to meet its RES Obligation through no fault of its own.

Flexible compliance provisions have a well-established precedent in renewable energy standards. The RPS regulations (sections 399.11-399.20 of the Public Utilities Code), as well as the extension to the RPS proposed in SB 722, allow flexibility in complying with the renewable energy targets in certain situations. Specifically, SB 722 would allow extensions of up to two years in meeting the targets if:

- There is inadequate transmission capacity to allow for sufficient electricity to be delivered from proposed eligible renewable energy resource projects;
- There are unanticipated permitting, interconnection, or other delays for procured eligible renewable energy resource projects; or
- There is an insufficient supply of delivered electricity from eligible renewable energy resources available to the retail seller. (SB 722 proposed section 399.15(b)(4) of the Public Utilities Code.)

As the renewable energy targets increase, these grounds for extensions become increasingly pertinent for those utilities that invest in their own renewable energy projects – self-supply entities, as compared to trading and marketing entities such as IOUs. IOUs are likely to have a greater capacity to purchase RECs at the market.

For example, if, as in the case mentioned above, one of the SCPPA utilities uses its best efforts to ensure that its geothermal project delivers RECs in time to allow it to meet its compliance deadline, but the geothermal project fails to operate as planned through no fault of

this POU, the POU should not be penalized or required to enter the TREC market at a potentially higher price. Instead, it should be given an opportunity to procure the missing RECs over an extended period.

The flexibility provisions proposed in SB 722, as summarized above, should be incorporated into section 97004 of the Revised RES Regulation.

V. ALLOW NINE MONTHS AFTER THE END OF A COMPLIANCE PERIOD BEFORE RECS ARE DUE.

SCPPA appreciates that in the Revised RES Regulation the deadline to retire RECs for compliance has been extended from the end of each compliance interval to March 31 of the year following the end of each compliance interval (section 97004(a)).

However, SCPPA considers that three months is not enough time to finalize retail sales figures and obtain any additional RECs on the market. Unless an entity has banked RECs in excess of its liability, it may take some time to obtain the total volume of RECs required. As noted above, the volume of RECs required and the volume received from any particular renewable energy project may vary considerably each year, making it difficult to accurately forecast required and delivered RECs.

Therefore, regulated entities should be given a period of nine months from the end of each compliance interval before the full number of RECs must be retired. This would be consistent with the period proposed for the retirement of allowances in the Preliminary Revised Regulation for the California Cap and Trade Program. Regulated entities need this period to determine their exact liability and to obtain RECs if they do not have enough.

This change should be reflected in section 97004(a) as follows:

Compliance with the RES Obligation for each compliance interval shall be made no later than ~~September 30~~March 31 of the year following the compliance interval...

VI. REC MARKET OVERSIGHT MECHANISMS SHOULD BE INTRODUCED.

The REC market will play an increasingly important role in allowing compliance entities to meet their RES targets. Therefore, market oversight and control mechanisms should be developed to avoid market abuse. Attention is being paid to developing such measures for the trading in allowances under the California emissions cap and trade program and also under the Western Climate Initiative emissions cap and trade program.² These measures may provide a guide to the types of market oversight measures that should be considered for the REC market.

A. Increase transparency of the REC market.

Increasing the transparency of the REC market is an important first step. It will lower transaction costs and thereby assist smaller compliance entities to participate in the market. Also, it will provide the information necessary to identify and address market manipulation.

As an example, the South Coast Air Quality Management District publishes detailed information on the trading of RECLAIM Trading Credits, including seller and buyer names, quantity sold, type of credit, price, and transaction date.³ Public reporting such as this, by a regulatory body, would be a very useful transparency tool for the REC market.

B. Include market reviews as part of the regulation reviews.

At the May 20 workshop on the Revised RES Regulation, ARB staff noted that they would look at how well the REC market is functioning as part of the regulation reviews to be conducted under section 97011. This would be helpful, although it would not be sufficient on its own. However, section 97011(b), which lists the issues that the regulation reviews should

² See for example the April 2010 WCI paper entitled “Market Oversight Draft Recommendations”, available at http://westernclimateinitiative.org/components/com_publiccomments/documents/Market_Oversight_Draft_Recommendations.pdf.

³ This information can be found at http://www.aqmd.gov/reclaim/rtc_main.html at the link “Listing of Trade Registrations”.

include, does not specifically mention REC market functioning. Given the importance of reviewing REC market functioning, section 97011(b) should be amended as follows:

(4) Availability and supplies of eligible renewable resources and ~~renewable energy credits~~ RECs within the WECC, including consideration of how well the REC market is operating and whether any market manipulation has occurred;

VII. VIOLATIONS SHOULD BE ASSESSED ONLY AFTER THE REC RETIREMENT DEADLINE.

At the RES workshop on May 20, 2010, the ARB staff stated that they intend to provide examples of likely penalties in various types of non-compliance scenarios. This will be very helpful, and SCPPA looks forward to receiving the examples.

SCPPA remains concerned that section 97009(b) provides for a separate violation for failing to meet a RES Obligation each day after the end of a compliance period. But RECs are not due to be retired to meet RES Obligations until March 31 of the year following the end of a compliance interval (section 97004(a) – see also the comment above that this date is too early). Under the current drafting, if a regulated entity meets its RES Obligation by retiring the required number of RECs on the retirement deadline it will be liable for 90 violations, being the number of days between the end of the compliance interval and the current retirement deadline. This is clearly inappropriate, as the regulated entity has satisfied its RES Obligation on time.

The ARB staff at the workshop stated that the intention was to assess penalties only after the retirement deadline. This is an important distinction, and it should be reflected in section 97009(b) as follows:

Each day or portion thereof that a Regulated Party has failed to meet a RES Obligation after the date set out in section 97004(a) for compliance with the RES Obligation for each compliance interval ~~end of a compliance period~~ is a separate violation.

VIII. CONCLUSION

SCPPA urges the ARB staff to consider these comments in developing the final version of the RES regulation. SCPPA appreciates the opportunity to submit these comments.

Respectfully submitted,

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