

August 11, 2011

Clerk of the Board  
Air Resources Board  
1001 I Street  
Sacramento, CA 95814

**RE: Renewable Energy Markets Association Comments on the Proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation, Article 5**

Dear Chairman Nichols and Members of the Board:

The Renewable Energy Markets Association (REMA) appreciates the opportunity to provide comments on the California Air Resources Board's (ARB) Proposed Regulatory Order, released July 25, 2011. REMA represents the collective interests of both for-profit and nonprofit organizations that sell or promote renewable energy products through voluntary markets, including renewable technology, renewable electricity, and renewable energy certificates (RECs), to individuals, companies and institutions throughout North America.

REMA fully supports ARB's continuing pursuit of a climate program that encourages meaningful GHG reductions through market-based compliance and voluntary actions. As stated in REMA's previous statements to ARB, the voluntary renewable energy markets can play a role in increasing renewable energy generation capacity that promotes GHG reductions, as long as the correct policy mechanism is in place.

In its *Staff Report: Initial Statement of Reasons*, ARB acknowledged the importance of the Voluntary Renewable Energy (VRE) markets and proposed an allowance set-aside process to recognize VRE market activity.<sup>1</sup> REMA welcomes the new VRE set-aside language outlined in the Proposed 15-Day Modifications document and the additional detail it offers on the VRE set-aside's structure, guidance, allowance allocation, and definitions.<sup>2</sup> Again, REMA offers its support of the set-aside's development and offers the following recommendations to improve the program's impact, access, and usability.

**REMA's VRE Set-Aside Recommendations**

- I. Emission categories should address imported electricity to prevent double counting**
- II. Any VRE set-aside cap should have flexibility to account for VRE market growth**
- III. Any time limit on the VRE set-aside should have the flexibility to reflect market growth**
- IV. Ex-post true-up of budget adjustments should true-up in both directions**
- V. Program definitions should avoid participant confusion**
- VI. Clarified VRE program provisions can improve set-aside functionality**

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<sup>1</sup> California Air Resources Board, *Staff Report: Initial Statement of Reasons (ISOR)*, Part I, Vol. I, pg. II-28  
<http://www.arb.ca.gov/regact/2010/capandtrade10/capisor.pdf>

<sup>2</sup> California Air Resources Board, *Proposed 15-Day Modifications*,  
<http://www.arb.ca.gov/regact/2010/capandtrade10/candtmodreg.pdf>

## **I. Emission categories should address imported electricity to prevent double counting**

REMA proposes that ARB insert some simple additional language to prevent the double counting of emissions associated with electricity imports from out-of-state renewable facilities into California. In addition to the voluntary market for renewable energy, many western states have mandated renewable portfolio standards (RPS) in order to capture and claim the greenhouse gas and other environmental benefits associated with renewable energy. The renewable energy attributes (including the GHG emission benefits) are contained and conveyed with the REC. To maintain the integrity of both the voluntary and compliance markets, only the party owning the REC can claim the environmental benefits.

When electricity generated by a renewable facility is sold separately from the associated environmental attributes, or RECs, it is no longer allowed to be claimed as renewable or as containing any of the environmental benefits. To do otherwise is double counting. As written, § 95852(b)(2)(B) would allow electricity imports from renewable energy facilities to be treated as emissions free without accounting for the necessary environmental attributes. Again, this constitutes double counting and would severely weaken GHG reduction efforts within the state, region, and voluntary markets.

There are several scenarios in which the electricity imports from specified renewable sources could produce double counting:

- A renewable energy generator outside of California exports power to California where it is claimed as zero emissions under ARB's cap and trade program, while the generator simultaneously sells the associated RECs into the voluntary market or RPS markets outside California;
- An out-of-state entity purchases bundled electricity (environment attributes and underlying power), and then proceeds to sell the RECs into the voluntary market or RPS markets outside California, while selling the underlying electricity to California as zero emissions for cap and trade purposes;
- A California entity purchases imported bundled electricity (environment attributes and underlying power), and then proceeds to sell the RECs into the voluntary market or RPS markets outside California, while retaining and reporting the underlying electricity as zero emissions for cap and trade program compliance.

To prevent double counting of emissions claims, REMA recommends that ARB insert the following language as new paragraph § 95852(b)(5). This language prevents double counting and does not conflict with the draft regulation's definitions, does not create new processes, and does not conflict with California statutes:

- § 95852(b)(5): To report imported electricity from a specified source of renewable energy, the electricity importer must own all property rights to the emissions, or lack of emissions, associated with the imported electricity.
  - NB: The current (5) would be renumbered (6) and so on.

## **II. Any VRE set-aside cap should have flexibility to account for VRE market growth**

The proposed VRE set-aside modifications in § 95870 place a cap on the total allowances allocated to the VRE set-aside for each compliance period. REMA urges ARB not to adopt a pre-determined cap and to allow budget adjustment to be determined by demonstrated demand. An inflexible cap would place an artificial ceiling on the growth of the voluntary market for renewable energy, while an annual adjustment would provide flexibility and encourage additional demand for VRE purchases. ARB has recognized that voluntary demand for renewable energy helps reduce greenhouse gas emissions, and an annual adjustment would ensure that renewable energy supported by the voluntary market in fact reduce emissions by retiring allowances.

However, should ARB decide to maintain its proposed VRE allowance cap, REMA strongly recommends that § 95870(C) ("Disposition of Allowances") be revised to allow allowances to roll-over into future years whenever VRE set-aside allowance supply exceeds demand.<sup>3</sup> This, at the very least, will create a slim buffer to allow for VRE market growth in the succeeding years. Also, REMA recommends the cap be subject to periodic review and adjustment prior to the start of each compliance period, or that an automatic review be triggered whenever demand exceeds the cap for two consecutive years. Several RGGI states have adopted a similar provision.

## **III. Any time limit on the VRE set-aside should have the flexibility to reflect market growth**

As stated in REMA's previous comments to ARB, the Board should keep in mind that it is through the addition of more renewables that the state will actually reduce carbon emissions in the electricity sector. Limiting the term of the VRE set-aside through § 95870 sends a poor market signal for the investment in renewable generation.

Should ARB maintain its set-aside time limit (proposed currently as 2020), it should undertake a general stakeholder review process in the future to examine the market evidence and determine whether a sunset on the set-aside is indeed merited or if an adjustment is more appropriate.

Finally, if ARB decides to end the VRE set-aside, it should be careful to base the sunset on the date of project *installation*, not on the date of the RECs or output. Renewable developers who make investment decisions based on a set of assumptions about market support should not have the rug pulled out from under them. That kind of risk will deter new investment.

## **IV. Ex-post true-up of budget adjustments should true-up in both directions**

REMA recommends that any shortage of allowances in the VRE set-aside for a given year be remedied by increasing the next year's ex-ante adjustment by the amount of the shortage, and immediately (in the new year) retiring allowances commensurate with the shortage. Consumer-led growth of the renewable energy sector should be reflected in a true-up that recognizes the voluntary market's progression.

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<sup>3</sup> This proposed mechanism is explained further in recommendation III below.

If this cannot be done, then REMA recommends that ARB embrace a policy prohibiting the release of any excess allowances in the set-aside account, and instead carrying them forward to be used in any year when voluntary demand exceeds the ex-ante adjustment for that year. This issue is critical because it will be impossible to ensure that a purchase is meaningful if it is uncertain that it will result in the retirement of equivalent allowances. Purchasers must know that they are going to get what they intended to buy. In the event that demand for the voluntary set-aside exceeds the year's allowances and neither the program cap nor the two-way true up is revised, REMA recommends that allowances are distributed and retired equally amongst program participants.

#### **V. Program definitions should be revised to reduce participant confusion**

The definition of "Voluntary Renewable Electricity" in § 95802 (a) (280) contains a reference to renewable energy certificates (RECs) being applied towards mandatory and voluntary programs in California. REMA recommends that ARB clarify the definition by removing the reference to "voluntary programs," as it may create confusion and appear to prevent voluntary renewable energy purchasers from participating in recognition programs and other voluntary programs, such as the U.S. Environmental Protection Agency's (EPA) Green Power Partnership program.<sup>4</sup>

#### **VI. VRE set-aside program provisions should be clarified to improve functionality**

Again, REMA applauds ARB's continued work in revising the program requirements for the voluntary renewable energy set-aside outlined in § 95841.1. Specifically, ARB's revision of the direct delivery provision is an improved policy and is consistent with REMA's previous comments. Other components of § 95841.1 could benefit from similar clarifications and revisions, such as integration of tracking system information, modified application and characterization of RECs, and threshold adjustments for nameplate capacity. Recommended revisions and clarifications are listed below.

##### ***VI.i Inclusion of tracking information data in reporting requirements***

Incorporating tracking system data in ARB's reporting requirements, both for direct retirement of RECs and retirements on behalf of an end user, would encourage the set-aside's efficient operation and oversight. The use of a tracking system, like the Western Renewable Energy Generation Information System (WREGIS),<sup>5</sup> enables easy and accurate REC retirement reporting, reducing the verification workload for ARB staff and the need for private companies and individuals to adopt new systems to participate in the state's GHG reduction efforts.

REMA recommends that ARB revise the VRE set-aside reporting requirements to allow for the use of existing reporting pathways in the following sections (proposed revisions in **bold**):

- § 95841.1 (b)(1)(C): Contract, settlement, **or tracking system data** for the purchase of the electricity or RECs associated with the generation of the electricity;

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<sup>4</sup> For more information on the EPA's Green Power Partnership, visit <http://www.epa.gov/greenpower/index.htm>

<sup>5</sup> For more information on the Western Renewable Energy Generation Information System, visit <http://www.wregis.org/>

- § 95841.1 (b)(1)(D): Contract, settlement, **or tracking system data** for sale of the electricity or RECs associated with the generation of the electricity to the end-user or entity purchasing on behalf of the end-user;
- § 95841.1 (b)(2)(D): REC retirement report **or tracking system data**
- § 95841.1 (b)(3)(E): REC retirement report **or tracking system data**

#### ***VI.ii Application of RECs***

REMA recommends several clarifications to the set-aside's REC retirement, allocation, and program provisions that would improve upon the proposed draft language and match the environmental commodity industry's best practices.

First, REMA's suggestions would modify ARB's descriptions of RECs to align more clearly with industry standards. Second, the recommendations would clarify the role of voluntarily retired RECs in the set-aside program. Finally, REMA recommends that VRE set-aside participant regulatory responsibilities be limited to the set-aside program only. Extending overall cap and trade responsibilities to parties only participating in the set-aside could impose overly burdensome compliance obligations, limiting private participation.

REMA's recommendations on the application of RECs include (proposed revisions in **bold**):

- § 95841.1 (a): Program Requirements: The end-user, or VRE participant acting on behalf of the end-user, must meet the requirements of this section. Generation must be new and not have served load prior to July 1, 2005. Allowance retirement for purposes of voluntary renewable electricity will begin in 2014 for 2013 generation. **RECs associated with renewable electricity, or eligible renewable electricity**, must provide direct delivery of electricity to California.
- § 95841.1 (b)(2)(B): MWhs of renewable electricity generated **designated for VRE retirement**;
- § 95841.1 (b)(2)(C): Number of RECs **designated for VRE retirement**, as applicable;
- § 95841.1 (b)(1)(E)(2): Attest, in writing, to ARB as follows: "I understand I am voluntarily participating in the California Greenhouse Gas Cap-and-Trade Program under title 17, Cal. Code of Regs. article 5, and by doing so, I am now subject to all regulatory requirements and enforcement mechanisms of this **voluntary renewable energy set-aside** program and subject myself to the jurisdiction of California as the exclusive venue to resolve any and all disputes."
- § 95841.1(c) "Number of MT CO<sub>2</sub>e" **rounded up** to the nearest whole ton, is the number of allowances to be retired from the Voluntary Renewable Electricity Reserve Account;

#### ***VI.iii Modification of 150 MtCO<sub>2</sub>e threshold for <200 kW generators***

Small renewable energy generation, whether hosted by a single residential/commercial entity or a collection of entities, will aid the state's GHG reduction goals. However, the requirements for ≤ 200 kW nameplate capacity described in § 95841.1(b)(3) risk deterring small-scale participation. The minimum allowance application level of 150 MT CO<sub>2</sub>e is too high for most residential and small commercial entities

to meet alone, and REMA believes the likelihood of aggregation among disparate entities is low. Decreasing the threshold below 150 MTCO<sub>2</sub>e (to a to-be-determined limit) should increase residential and small commercial access to allowances. REMA recommends that ARB, in conference with small-scale renewable generation partners, propose a more realistic and attainable MTCO<sub>2</sub>e limit.

### Concluding Remarks

Again, REMA thanks ARB for taking these comments under consideration and continuing to improve the functionality and scope of the VRE set-aside program. These improvements will allow ARB to responsibly address climate change concerns while simultaneously encouraging meaningful purchases of renewable energy that allow individuals and businesses to go above and beyond statutory obligations.

For additional questions or clarification on REMA's recommendations, please contact Joseph Seymour, REMA Policy and Governmental Affairs Coordinator, at [jseymour@ttcorp.com](mailto:jseymour@ttcorp.com).

Sincerely,



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