

**Comments of Constellation NewEnergy, Inc.**  
**On the California Air Resources Board's**  
**Modified Regulation Order**  
**For a California Cap and Trade Program**  
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## **I. Introduction and Overview**

Constellation NewEnergy, Inc.<sup>1</sup> (Constellation) appreciates the opportunity to submit these brief comments to the California Air Resources Board (ARB) on its Modified Regulation Order for a California Greenhouse Gas Cap and Trade Program (MRO). At the outset, Constellation acknowledges the comments that are being submitted today by the Western Power Trading Forum (“WPTF”), with which Constellation generally concurs. However, there is an issue not addressed in the WPTF comments that is of importance to Constellation with respect to the MRO’s regulations on replacement electricity. Constellation believes the regulations, as written on this topic, are unnecessarily restrictive and should be modified in two ways: first, the reference to “variable” resources should be deleted; second, the requirement that replacement electricity must be sourced from the same balancing authority area as the underlying renewable energy should be eliminated.

Constellation explains these recommended changes in more detail in the section that follows:

## **II. Comments On Replacement Electricity**

The MRO includes regulations that allow an entity to secure a zero emission rate for imports scheduled into California to replace electricity from renewable resources, under what are typically referred to as “firmed and shaped” transactions. These new regulations are an important addition to the MRO, and help to ensure that the cap and trade regulations do not unnecessarily increase the costs of compliance with the state’s Renewable Portfolio Standard (“RPS”).

The definition of Replacement Electricity contained in the MRO reads as follows:

(237) “Replacement Electricity” means electricity delivered to a first point of delivery in California to replace electricity from variable renewable resources in order to meet hourly load requirements. The electricity generated by the variable renewable energy facility and purchased by the first deliverer is not required to meet direct delivery requirements. The physical location of the variable renewable energy

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<sup>1</sup> Constellation NewEnergy, Inc. provides electricity and energy-related services to retail customers in California as well as in 15 other states, the District of Columbia, and two Canadian provinces and serves more than 15,000 megawatts of load and more than 10,000 customers. Constellation holds a certificate as an Electric Service Provider from the California Public Utilities Commission to engage in the competitive sale of electric service to retail electric service customers in California. Constellation currently provides service to direct access customers in California.

facility busbar and the first point of receipt on the NERC E-tag for the replacement electricity must be located in the same Balancing Authority Area.<sup>2</sup>

There are two elements of this definition that should be modified. First, the definition restricts the ability to use replacement electricity in connection with out-of-state resources that are “variable renewable resources,” which in turn are defined as:

(272) “Variable Renewable Resource” means run-of-river hydroelectric, solar, or wind energy that requires firming and shaping to meet load requirements.<sup>3</sup>

As written, this definition appears to exclude all non-variable renewable resources, such as biomass facilities, that may be procured from out-of-state resources in order to meet the RPS. Excluding these resources from the ability to utilize the replacement electricity provisions of the MRO will mean that these out-of-state resources will have to meet a more stringent and costly delivery requirement under the RPS in order to avoid incurring GHG emission reduction costs on electricity purchases that would otherwise qualify for a zero emission rate, creating an unnecessary and unwarranted “value” arbitrage for out-of-state resources. To remedy this problem, the reference to “variable” should be deleted from the definition of Replacement Electricity. In short, the ability to claim the zero emissions rate for replacement electricity should be applicable to all out-of-state renewable resources that are used to meet the RPS.

A second problem with the definition of Replacement is Electricity is the requirement that “the physical location of the variable renewable energy facility busbar and the first point of receipt on the NERC E-tag for the replacement electricity must be located in the same Balancing Authority Area.” Given that the regulations are allowing a zero emission claim for replacement electricity only if the replacement electricity is at or below the default emission rate, and there is a single default emission rate, there is no practical reason for requiring the replacement electricity to be sourced from the same balancing authority area as the renewable energy, and will unnecessarily complicate and likely raise the costs of transactions for firmed and shaped power. Moreover, such a requirement is inconsistent with current RPS regulations that do not impose such a requirement.

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<sup>2</sup> See MRO, page A-39.

<sup>3</sup> See MRO, page A-44.

Nor does the recently enacted (but as yet not effective) new RPS legislation impose such restrictions on the source of the “firmed and shaped” replacement electricity. Constellation urges CARB to eliminate this restriction.