



P.O. Box 4060 • Modesto, California 95352 • (209) 526-7373

September 27, 2011

Clerk of the Board  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95812

Re: M-S-R Comments on Cap-and-Trade Regulation,  
Second 15-Day Revisions

Dear Sir:

Pursuant to the direction set out in the *Second Notice of Public Availability of Modified Text and Availability of Additional Documents* (Proposed Revisions), issued on September 12, 2011, the M-S-R Public Power Agency<sup>1</sup> provides these comments to the California Air Resources Board (CARB) on the *Proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation, Including Compliance Offset Protocols* (Proposed Regulation).

#### **COMMENTS ON THE RPS ADJUSTMENT**

On August 11, 2011, M-S-R submitted comments that were limited to addressing the treatment of “replacement electricity.” In those comments, M-S-R highlighted the need for CARB to review the proposed provisions for treatment of renewable energy contracts, many of which utilize firming and shaping to ensure delivery of the electricity from RPS eligible,

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<sup>1</sup> Created in 1980, the M-S-R Public Power Agency is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R is authorized to acquire, construct, maintain, and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its members. M-S-R pursues the development of renewable energy projects and contracts both within and outside of California on behalf of its member agencies each of which is a covered entity under the Regulation and each of which is obligated to meet the State’s 33% renewable portfolio standard (RPS).

resources into California. As previously drafted, those provisions would have had significant implications and adverse impacts on the efficient, economic, and viable use of generation resources and the treatment of renewable generation resources throughout the western region.

In the September 12 Proposed Revisions, CARB has removed in its entirety the reference to “replacement electricity,” and included an “RPS adjustment” in the calculation of the first deliverer’s compliance obligation set forth in § 95852(b)(1)(B). M-S-R supports this change. The September 12 Proposed Revisions recognizes and reconciles the important ramifications of RPS contracts on entities with compliance obligations under both the Cap-and-Trade Program and the State’s 33% renewable energy mandate. As previously proposed, CARB’s calculation of a compliance obligation under the Cap-and-Trade Program for RSP eligible contracts would have adversely impacted entities such as M-S-R and its members who have made significant financial investments in renewable resources. The result would have been to undermine the considerable (and costly) progress that these entities, and indeed all electrical distribution utilities, have made in attempting to meet the State’s explicit and aggressive RPS.

M-S-R further supports the proposed revisions, because as previously drafted, CARB’s treatment of renewable electricity contracts would have unduly constrained the resources available to compliance entities for meeting their RPS obligations, and placed arbitrary geographical limitations on those resources that had no relevance to meeting the objectives of the Cap-and-Trade Program, but are based merely on where balancing authority jurisdictional lines have been drawn.

Furthermore, the Proposed Revisions are necessary to address the added compliance obligation under the Cap-and-Trade Program that would have resulted by virtue of the fact that such compliance costs were not contemplated nor included in the calculation of the electrical distribution utilities’ cost burden under the Program, and accordingly not reflected in the final determination of allowances to be allocated to the utilities. This is a significant point, since the allowance allocation proposal that was put forth by Staff in Appendix A of the July 25 Proposed Revisions assumes that the electrical distribution utilities will meet their RPS compliance obligations under the 33% mandate. Therefore, when determining the appropriate number of allowances to provide to each electrical distribution utility, a constraint was included in that

calculation that begins with 20% RPS compliance in 2012 and increases linearly to 33% in 2020. To ensure that this constraint was reflected in the allowances allocated to the electrical distribution utilities, each utility's resource plan was adjusted to incrementally invest in a sufficient amount of renewables to meet the RPS obligations and lay off or divest an equivalent amount of natural gas and coal resources to keep supply and load equal. (See Appendix A, p. 4 for the First Notice of Modified Text) Accordingly, to have imposed an obligation to surrender a GHG compliance instrument associated with RPS contracts would have resulted in a significant increase in the "cost burden" of each electrical distribution utility.

As M-S-R advocated in its August 11 comments, if an underlying contractual arrangement was deemed RPS eligible, the associated resources should not have a competing compliance obligation under the Cap-and-Trade Program.<sup>2</sup> By including the RPS adjustment, rather than the previously proposed treatment of replacement electricity in the Proposed Regulation, CARB properly deducts the emissions from the RPS associated contracts from the overall compliance obligation. Such an approach is consistent with meeting the objectives of both the Cap-and-Trade Program and the 33% RPS Mandate. M-S-R urges the Board to incorporate this recognition into the final Regulation.

## **CONCLUSION**

M-S-R appreciates CARB's proposed revisions to the Cap-and-Trade Proposed Regulation that addresses the need to recognize the importance of the State's RPS mandate and to align those interests (and cost obligations) with the Cap-and-Trade Program. Accordingly, M-S-R supports the proposed inclusion of an RPS adjustment, and the removal of the provisions regarding "replacement electricity."

Respectfully submitted,



Martin Hopper  
General Manager  
M-S-R Public Power Agency

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<sup>2</sup> This was a position that was also advocated by the Joint Utility Group, as well as many other stakeholders.