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Ms. Lucille Van Ommering
California Air Resources Board
Office of Climate Change
1001 I Street
Sacramento, CA 95814

RE: ARB Renewable Electricity Standard Staff Workshop on October 30, 2009

Dear Ms. Van Ommering:

Sempra Energy submits these comments concerning the Renewable Electricity Standard (RES) complementary measure and the "Proposed Concept Outline for the Renewable Electricity Standard" (Concept Outline) discussed at the Staff Workshop on October 30, 2009.

Comments on Concept Outline

The Concept Outline is not the first time the State has attempted to confront the issues and solutions for developing a 33% renewables standards. Discussions among stakeholders and policy makers have been taking place for well over a year, and this has helped to identify the major issues. Much of the Concept Outline appears to have been advised by this in depth dialogue, and we commend the Air Resources Board for building off of this foundation.

However, while the Concept Outline is a fine starting point for the development of an RES, there are many very important details that need to be embodied in an RES that have not been fully addressed by the Concept Outline. The treatment of these details will fundamentally affect the success or failure of the concepts contained in the Outline.

Furthermore, we observe that the Concept Paper does not discuss several of the key issues the State needs to confront in order for the Air Resources Board to adopt a renewables standard. For example, one of the most significant and difficult issues in a renewables standard is the issue of cost management, a subject on which the report is Outline is completely silent. The treatment of this issue could affect all stakeholders, and the Concept Outline's silence on cost management is not an adequate way to confront the issue. Similarly, an important issue is the transition from the current statutory Renewable Portfolio Standard to the proposed RES. There are many details that need to be addressed that the Outline does not yet address.

Our specific comments on the Concept Outline, and on the key issues in developing a renewables standard follow.

Universal Application of the Rules (Concept Outline, Part II, #1, page 9)
The rules for the RES must apply equally to all parties providing end use electric service, not only Investor-owned Utilities (IOUs), but also Publicly Owned Utilities (POUs), Community Choice Aggregators, Electric Service

Providers (ESPs), and the California Department of Water Resources (CDWR) and there should be no blanket exemptions from the RES based on size.

Current law, including new direct access rules adopted by SB 695 this year (Chapter 337, Statutes of 2009), makes no exceptions to the 20% RPS for ESPs based on size. With respect to smaller investor-owned utilities, while the law provides streamlining of some of the RPS requirements, it does not relieve those smaller IOUs from the 20% RPS obligation (see, e.g. Public Utilities Code Section 399.17.). That same policy should apply to any 33% renewables requirements, and should apply equally to retail suppliers, including IOUs, POUs, CCAs, ESPs, and CDWR.

The Concept Paper asks for comments on a proposal to set a threshold of 500 GWh for application of the proposed RES. The Air Resources Board should unequivocally reject this arbitrary threshold. First, it is hardly a de minimus level. Total annual sales of 500 GWh is the equivalent of a retail seller serving 80-100,000 residential customers – hardly a small city.

Second, if the Air Resource Board were to establish this dichotomy, knowing that there is a cost in retail rates to meet a higher renewables requirement, it would corrupt the competitive relationship between IOUs, POUs, ESPs, and CCAs, giving incentives to form smaller ESPs, CCAs, and perhaps even POUs, as a means of evading this additional cost.

Third, creating a de minimus exception should, in most cases, be unnecessary, to the extent that the State permits the use of unbundled Renewable Energy Certificates (RECs). In the event that a small retail seller has a portfolio that is so full that it cannot accept renewable energy, it could still acquire renewable energy credits that would have no impact on the seller's physical portfolio, but would result in lower overall greenhouse gas emissions.

If despite the options and flexibility built into the program, a small retail seller nevertheless is unable to meet its renewable obligations, there is a better solution than simply providing a blanket exemption. Instead, the Air Resources Board should allow that seller to seek temporary relief, provided that the Board determines that the seller has made a reasonable showing of the reasons it cannot comply, and the steps it proposes to take to bring itself into compliance at the earliest moment. Any relief the Board grants should be temporary; permanent exemptions from these requirements should not be granted.

Likewise, the RES should apply to the CDWR since it consumes roughly 8 million MWh each year, a substantial amount – approximately 40% of SDG&E's entire load. CDWR occupies a role involving the public trust. It is not reasonable to exempt the CDWR's load from the State policies governing renewables that apply to the remainder of the State's load.

The Concept Outline also asks for comment on whether the RES should apply to the Western Area Power Authority (Western), a federal power marketing agency. We are not aware that Western engages in retail sales in California. To the extent that it does, then the RES should apply to those retail sales. To the extent that Western solely makes sales at wholesale, and not to end users, then the RES would not apply to Western.

RES Eligible Resources (Concept Outline, Part II, #2, pages 9-10)

Sempra Energy urges the ARB to honor all commitments made under the current RPS, as suggested in Part II, section 2.a of the Concept Outline. Even if the ARB prospectively modifies the RPS eligibility requirements, it should allow all such commitments contracted under the RPS program to count 100 percent toward the RES program. IOU, POU, and ESP customers should not have to bear any stranded costs resulting from reliance on the current RPS program guidelines.

Sempra Energy believes the RES program would be best served to continue with the same eligibility requirements as exist in the current RPS program, including the list of eligible technologies, as well as current geographic eligibility and delivery requirements. Using the same eligibility standards, or a more expansive list, will minimize confusion between the two programs and promote near-term certainty for project developers and renewable-acquiring IOUs, POUs, and ESPs. Sempra Energy has no objection to considering expanding eligibility to encompass other carbon-reducing technologies – for example, carbon capture and sequestration -- that will undoubtedly be needed to meet the required worldwide GHG reductions by 2050.

Sempra Energy also agrees with much of ARB's Concept Outline with respect to the purchase and use of RECs. IOUs, ESPs, and POUs should be able to use tradable RECs for a reasonable portion of the RES requirements to smooth the lumpiness of renewable acquisition and to promote a robust renewables market. As a general principle, increasing the renewables requirements from 20 percent to 33 percent is an extraordinary increase in renewable energy procurement in less than 10 years. There are risks for renewable energy developers and investors, LSEs, and consumers alike, as the State embarks on such a dramatic reconfiguration of the energy supply. Accordingly, we support the use of a range of tools, subject to reasonable rules and limitations, to help meet renewables targets, including: firming and shaping, use of both in-state and out-of-state storage, and use of RECs.

As noted in the Concept Outline, WREGIS is able to track renewables throughout the WECC to ensure RECs that are traded provide real, verifiable GHG savings and are not double counted.

RES Compliance Metric (Concept Outline, Part II, #3, pages 10-13)

Sempra Energy supports the energy agencies' view that the metric used to determine compliance with the RES be based solely on MWh of eligible generation, consistent with the existing RPS program. The simplest and best approach would be for the RES program to continue with the same MWh accounting. As an alternative, the Air Resources Board could adopt a methodology that converts MWh of renewables into GHG benefits, using a methodology that is the functional equivalent of an RPS approach. Under such an alternative, the ARB should assign the same GHG value to each MWh regardless of technology and locations in order to effectively support a robust REC trading market. Using the same metric as the current RPS program and GHG reductions as developed in the Scoping Plan will minimize confusion. Our reading of the first of the ARB's alternatives is that it is indeed proposing a technology neutral functional equivalent of the current RPS. If true, then we believe it will be an adequate substitute for a direct RPS. We read the second of the two ARB approaches as a similar, although somewhat more convoluted structure. For simplicity purposes, we think the first alternative is preferable to the second.

If the ARB prospectively modifies the RPS metric counting rules (an approach we oppose), it must allow all commitments contracted under the current RPS program to count 100 percent toward the ARB RES program. All MWhs procured under the current RPS should be counted at the maximum GHG value so that IOU, POU, and ESP customers do not have any stranded costs resulting from reliance on the current RPS program guidelines.

Sempra Energy supports maintaining the rules for establishing the value of renewables that exist under the current RPS. We oppose changing the rules in moving to an RES, thereby resulting in multiple sets of renewables values for the same technology, depending on whether a resource were contracted for under the current RPS, or under the new program. This would also have the effect of forcing the development of multiple REC markets for each technology, location, and vintage of resource. These complications would be a necessary byproduct of arbitrarily changing the rules. Keeping the same approach as the current RPS program will greatly reduce complexity, a desirable quality of an RES.

Compliance Schedule and Credits, Flexible Compliance, Banking, and Borrowing

Sempra Energy supports a schedule of renewables targets such as that presented in Table 3.1 that provides some time in the early years for POUs to reach 20 percent. It is not obvious to us that it should matter whether the

schedule for compliance should be annual or less frequent, provided that the State maintains the same flexible compliance rules that currently exist.

The presence of these same flexible compliance rules is an essential element of the RES. Current law allows retail sellers to bank surplus generation beyond the current yearly target on an unlimited basis and allows for flexible compliance for up to three years to recognize that additions can be lumpy, project development can be uncertain, building transmission to access renewable energy can be challenging, and events outside of a retail seller's control could impact the ability to comply. Sempra Energy supports retaining these features in the RES program. As part of the transition from the existing RPS to the ARB's RES, the Air Resources Board should honor any banked energy resulting from over-procurement under the RPS, and allow any such banked energy to count toward meeting the targets under the new RES.

With flexible compliance features, there does not seem to be much distinction between an annual compliance period and a multi-year compliance period.

Reporting should coincide with the compliance schedule and recordkeeping should be entirely electronic.

Monitoring and Verification (Concept Outline, Part II, #4, page 13)

Sempra supports the ARB efforts to use as much of the current RPS monitoring and verification framework as possible and to work with the CPUC and CEC as much as possible to reduce the burden on reporting parties. WREGIS reporting allows for simple monitoring and verification.

Compliance and Enforcement (Concept Outline, Part II, #5, pages 13-15)

As stated previously, Sempra supports the flexible compliance and banking provisions detailed in the ARB Concept Outline. And, as stated in this section of the Concept Outline, penalties should be reserved for intentional violations, and should not apply if they result from events outside of a retail seller's control. Since IOU procurement is based upon approved procurement plans, in accordance with Public Utilities Code Section 454.5, following an approved plan should create a rebuttable presumption that no intentional violation has occurred. To the extent that non-compliance justifiably requires a penalty, only a single agency should impose the penalty. Since the CPUC is closest to the IOUs' resource planning process, as well as its own decisions to approve or disapprove contracts and proposed renewables projects, Sempra Energy believes that for IOUs (as well as CCAs and ESPs), a determination of whether penalties should be imposed on IOUs should come from the CPUC, but be enforced by the ARB. For POUs (and CDWR), we believe that the role of identifying whether penalties are appropriate can be carried out by the CEC, and enforced by the ARB.

GHG Metric Calculation (Concept Outline, Attachment 3, pages 20-21)

Staff has requested comments on whether it is appropriate to reduce the RES obligation based on generation from photovoltaic and combined heat and power systems. The proposed calculation of load subject to the RES is somewhat confused in that the amount of electricity delivered for purposes of computing the RES compliance does not include behind the meter generation. It is not clear whether the ARB is intending to deduct such generation a second time to provide additional incentives to install such technologies, an approach we would oppose. However, Sempra Energy would support excluding experimental zero emitting technologies – for example, carbon capture and storage -- that have the effect of reducing overall GHG emissions, for the purposes of calculating an RES requirement. Sempra Energy also supports excluding electricity load used to charge electric vehicles (LCFS) from load subject to the RES regulation to support the GHG reductions available in the transportation sector from electric vehicles.

Cost Protections for Customers

The Concept Outline does not appear to address the issue of cost caps. As articulated by Sempra Energy and other parties at the workshop, the RES needs some type of cost containment. Cost management really consists of a package of provisions that will help to ensure that the program involves reasonable costs. For example, a

program that limits the scope of renewables options available to retail sellers will place greater upward pressure on costs and create a greater need for more prescribed and detailed cost caps. On the other hand, a program that protects existing commitments and accommodates a broad range of renewables options, subject to reasonable rules and limitations, will allow for more general cost management provisions. We support the latter approach, and we read the Concept Outline as consistent with this approach.

If this is the direction that the Air Resources Board elects to pursue, then Sempra Energy believes that a more generalized cost standard will work best, based on a determination of whether commitments result in costs that are just and reasonable. Under this approach,, since the CPUC already reviews for reasonableness IOU commitments to renewables, it is logical that the means of cost management should be the CPUC's determination that the costs are "just and reasonable" in accordance with long-standing regulatory practice. This avoids the creation of specific "cost caps".

For POUs, whose contracts and commitments are reviewed by their local boards, there does not need to be a separate cost management process, except to the extent that a POU contends that there are no resources available to achieve 33% that would maintain just and reasonable rates. In that event, we suggest that the POU be required to make a showing to the CEC of the need to modify its RES obligations, and the steps that the POU proposes to take to achieve the RES at the earliest possible time. Absent a CEC finding that rates are not just and reasonable, a POU would not be relieved of any obligation. As a general principle, the rules for establishing these "just and reasonable" prices should be universally applied through partnership with the CPUC and CEC. There should not be one standard for which the price at which renewables acquisition might be considered "just and reasonable" for IOUs and a different standard for POUs.

Sempra Energy believes that the Air Resources Board has authority to take this action explicitly through AB32, which is also the basis on which the Board is pursing a 33% RES through Executive Order S-21-09. AB32 imposes an affirmative duty on ARB to, "evaluate the total potential costs and total potential economic and noneconomic benefits of the plan for reducing greenhouse gases to California's economy, environment, and public health, using the best available economic models, emission estimation techniques, and other scientific methods." (Health and Safety Code section 38561 (d)). Health and Safety Code Section 38562(b)(1) requires that CARB to "Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions." ARB is further directed to consider the cost-effectiveness of its regulations in Section 38562(b)(5) and is required to consider benefits to the economy in Section 38562(b)(6). Accordingly, the Air Resources Board has an affirmative statutory obligation under AB32 to implement Executive Order S-21-09 in a manner that ensures that cost impacts are minimized and cost effectiveness is maximized. The approach we have proposed above would allow ARB to carry out this obligation, while also implementing the Air Resources Board's obligation to consult with the Public Utilities Commission required in AB32.

Thank you for the opportunity to comment.

Yours sincerely,

c: Mr. James Goldstene
Mr. David Mehl
Mr. Gary Collord