

**Comments of the Western Power Trading Forum to the  
California Air Resources Board on the Proposed Regulation Order  
For the Renewable Energy Standard**

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The Western Power Trading Forum<sup>1</sup> (WPTF) appreciates the opportunity to provide these comments to the California Air Resources Board (ARB) on the Proposed Regulation Order (PRO) for a California 33% Renewable Electricity Standard (RES). WPTF supports flexible program rules as essential elements of any program that will efficiently and economically achieve the state's renewable electricity goals. ARB's decision to allow the use of unbundled renewable energy credits (RECs) from within the region of the Western Electricity Coordination Council (WECC) without an associated electricity delivery requirement for out-of-state resources will maximize compliance opportunities and lower costs for retail providers, thereby enhancing the likelihood of achieving the 33% RES, and avoiding unnecessary transmission constraints that would arise from less flexible program rules.

WPTF fully endorses the ARB's approach to attaining a 33% renewable target for California and urges the Board to adopt the regulation, with only the minor modifications discussed below.

### **The Definition of a REC should Eliminate the "Property Right" Reference**

WPTF has previously expressed concern about the statement in the definition of a Renewable Energy Credit (REC) that "[a] REC does not constitute property or a property right." The intent of REC trading programs and WREGIS tracking is explicitly to create a clear property right to claims of renewable attributes to enable renewable facilities to capture the full economic value of their generation. The PRO's language will undermine the legitimate rights of renewable investors and create uncertainty for the California REC market.

WPTF acknowledges ARB's legitimate interest in maintaining its ability to modify the rules of the renewable energy standard (RES) over time, including with respect to the use of RECs for compliance, without creating a legal liability issue. WPTF notes that many other parties have raised this concern as well, and we understand that ARB is working toward modifications that would retain ARB's ability to modify the RES program in the future, but would not undermine the value of renewable generation, as the current language does. WPTF urges the Board to make those modifications before adopting the PRO.

### **Energy Service Providers should be exempt from filing of Achievement Plans**

Section 97006, sub-paragraph(b) of the PRO requires each regulated entity to file a one-time "Achievement Plan" laying out "A plan and procurement strategy, including any known procurement or project development activities by contract and resource type, sufficient to demonstrate how the Regulated Party plans to achieve and maintain the 33

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<sup>1</sup> WPTF is a diverse organization comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West. WPTF has over 60 members participating in power markets within the WCI member states and provinces, as well as other markets across the United States.

percent RES requirement by 2020.”<sup>2</sup> WPTF is concerned that this requirement is inappropriate for competitive retail sellers, including energy service providers (ESPs).

Submission of energy procurement plans, including with respect to renewable generation, is a normal part of the California Public Utilities Commission (CPUC) rate-making regulation and oversight of the investor-owned utilities. Submission of these plans is linked to those entities ability to recover the costs of those commitments through their regulated rates. Publicly-owned utilities are subject to similar oversight by their respective municipal boards. Competitive retail providers, such as ESPs, are not rate-regulated, do not seek nor receive guaranteed recovery of their costs, and therefore should not be subject to this same sort of procurement planning requirements. Moreover, ESPs formulate their procurement plans and strategies in direct response to the needs of their customers and therefore require flexibility to modify and adapt their strategies as they acquire new customers, lose customers, or to be responsive to their existing customers’ changing requirements. Therefore, any requirement to submit such plans would become even more inappropriate if submission of such plans limited ESPs ability to make such changes to their plans.

For these reasons, WPTF requests that ARB specifically recognize the special situation of competitive retail sellers, including ESPs, and accordingly amend the regulation to exempt them from the requirement to submit Achievement Plans.

#### **Dual Use of a WREGIS certificate in a federal RPS should be permitted**

In previous comments, WPTF expressed the concern that the draft regulation’s language regarding exclusive use of RECs was too broad in that it would prevent the use of RECs for both compliance with the RES and another renewable portfolio standard (RPS), including California’s own.<sup>3</sup> The revised PRO has satisfactorily addressed this problem with respect to dual usage of a Western Renewable Energy Generation Information System (WREGIS) certificate for both the California RPS (Section 97005(b)(2)) and the RES. However, the PRO still precludes use of a WREGIS certificate for both the RES and a possible future federal RPS program. If a federal RPS is adopted, there must be flexibility within the California RPS and RES programs to allow regulated entities to be able to count retired WREGIS certificates toward both California and Federal obligations, otherwise the procurement requirements of the two programs would be additive. For example, a 20% federal RPS in conjunction with the RES would require a California retail provider to procure 53% of its power from renewable sources.

In adopting the regulation, ARB should avoid the possibility that the RES impose a double compliance burden on entities in the future. We note that sub-paragraph(b)(10) of section 97001 (Regulation Review) provides for the RES program review to consider

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<sup>2</sup> See PRO, page A-11.

<sup>3</sup> “This draft regulation provides that “RECs must be retired in WREGIS for RES compliance and may not be used to meet the requirements of any federal, state or local program (emphasis added).” The highlighted part of this provision is too broad, and in the extreme can be read as preventing the use of RECs for compliance with the RES and another RPS program, including California’s own. Because the RES will essentially encompass the California RPS, it is essential that RECs retired for compliance with the RPS are also counted toward compliance with the RES.”

“Opportunities to harmonize the RES with any federal, regional or other state renewable energy programs or REC markets.” To ensure that ARB’s intent to avoid a situation where such “double procurement” could occur, WPTF requests that the this section be modified as follows: Opportunities to harmonize the RES with any federal, regional, or other state renewable energy programs or REC markets, with a specific view toward avoiding situations that could created additive requirements.

**The Determination of Compliance should be more explicit**

The proposed regulation is much clearer than the earlier preliminary draft regarding the role of the WREGIS in tracking compliance with the RES program. Nonetheless, the regulation still lacks a clear and explicit statement regarding the basis for determination of compliance. Specifically, the Compliance Interval Reports require entities to indicate the number of WREGIS certificates retired for compliance, but do not require entities to demonstrate compliance through submission of a WREGIS report, or provision of the serial number of these units. The PRO should be modified to either require that regulated entities submit a WRGEGIS report documenting the retirement of certificates or to provide for verification of retirement via WREGIS. Such a provision would avoid a possible outcome whereby a regulated entity is deemed in compliance by virtue of reported retirement in its Compliance Interval Report, when actual retirement in WREGIS is insufficient.

**Enforcement should be clarified**

We also seek clarity of the statement in section 97009, sub-paragraph (b) that “(a) violation of the requirements of this Article shall be deemed to result in an emission of an air contaminant.”<sup>4</sup> Early on in this proceeding, ARB staff considered the possibility of using a greenhouse gas metric to measure and determine compliance with the RPS. Based on feedback from stakeholders, ARB staff rejected this approach and instead has recommended that the RES compliance metric should be based on megawatt hours of renewable generation. Given the fact that retirement of WREGIS certificates, denominated in MWH units, will be the basis for the RES compliance assessment, WPTF’s understanding is that a violation of the RES target would not be converted to a greenhouse gas metric. Therefore, in order to avoid any confusion, WPTF suggests that section of the PRO should be modified by eliminating the reference to a violation in terms of air contaminants.

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<sup>4</sup> See PRO, page A-15.