

Date: April 8, 2010
To: Gary Collard
California Air Resources Board
From: Arthur O'Donnell, Executive Director, The Center for Resource Solutions
RE: Comments on RES Draft Regulation

The Center for Resource Solutions (CRS) welcomes this opportunity to provide comments and suggestions for the design of a renewable electricity standard to achieve a 33 percent renewable energy standard for California, as directed under Governor Arnold Schwarzenegger's Executive Order S-21-09.

Our comments will focus on several broad market issues in the development of such an RES as described by the March 11, 2010, Preliminary Draft Regulation, and the presentations made during the March 18 workshop. As CARB refines its draft, we look forward to other opportunities to comment on this important policy initiative.

CRS is highly supportive of several fundamental designs expressed in the Preliminary Draft:

1. Holding publicly-owned utilities (POUs) to the same compliance standards and dates as investor-owned utilities (IOUs) and other currently regulated load-serving entities (LSEs). CRS does not favor use of currently non-eligible POU resources for RES compliance
2. A determination that compliance with the RES should be based on Megawatt hours (MWh) rather than attempting to measure compliance in terms of individualized reductions to greenhouse gas emissions. This will maintain consistency with the way accounting is done for the existing 20 percent Renewable Portfolio Standard, and it will greatly facilitate recordkeeping and reporting. While reducing GHG is a primary goal for CARB's RES, it is preferable to perform a calculation of the emission reduction benefits for aggregated, verified RES deliveries, rather than on an individual utility/LSE basis. As staff correctly points out in the Draft Q&A document, use of a MWH metric will result in comparable GHG emission reductions to a GHG reduction-based metric, and will be simpler to administer.
3. The use of renewable energy certificates (RECs) as the means for tracking compliance, rather than estimates of electricity deliveries by the covered entities. This method of tracking compliance will put California in line with the way other major markets, including Texas, provide for tracking and accounting for compliance. In addition, since the Western Renewable Energy Information System (WREGIS) tracks the transfer and retirement of RECs from throughout the Western Electricity Coordinating Council (WECC) region, the use of RECs as the "currency of compliance" will greatly facilitate verification to prevent duplication or use of ineligible RECs.

CRS also supports the inclusion of the California Department of Water Resources and the Western Area Power Administration as regulated parties. CRS is also generally supportive of the concept of providing a threshold exemption for small entities, for whom compliance with the 33 percent RES represents a costly burden. However, without further analysis of cost/benefits of various threshold levels, CRS cannot at this time fully support the recommended level of no more than 200,000 MWh/year.

Nonetheless, CRS would like to call attention to other aspects of the Preliminary Draft Regulation which we would oppose, and some aspects which we believe require further clarification before adoption. In some cases, these are definitional issues, in others, substantive policy determinations that could possibly undermine the effectiveness of the proposed 33 percent RES.

- A. In Section 97002, definitions and acronyms, the definition of RECs (No. 13) states, “A REC does not constitute a property or a property right.” CRS holds that this is an incorrect statement, as a REC is more than a mere tracking device, but a claim by its owner to the positive environmental attributes associated with renewable energy generation. The fact that RECs may be separated from the underlying commodity electron, sold and marketed separately based on the perceived value of those environmental attributes (including the value of compliance with an RPS/REC) clearly establishes a REC as a property right.
- B. The definition (No. 15) for a “RES Qualifying POU Resource” appears to establish an eligibility for REC compliance of certain generation resources, particularly hydroelectricity facilities the existing over 30 MW limit, although it does not spell out this implication. In Section 97004(c) such resources would be allowed to account for up to 20 percent of the regulated party’s retail sales to end-use customers, although the ability to trade RECs from these resources is prohibited under (d). CRS holds that this provision is in conflict with the first principle established above of holding POUs to the same standards as IOUs, and should not be adopted. There is a likelihood that IOUs will argue for a similar flexible option for large hydro facilities, which would severely limit the development of preferred (as currently defined) eligible renewables.
- C. Should this provision be adopted, however, CRS supports the strict prohibition on the trading of RECs from large hydro.
- D. Section 97003 on the timetable for compliance with the 33 percent RES indicated as much as a four year hiatus before requiring any increase in the amount of renewable energy required above 20 percent (which is currently required by the end of 2010 under CPUC rules). After that date, according to a slide on Compliance Obligations shared during the March 18 workshop, the step-up in requirements follows this trajectory:
 - 24% for 2015 through 2017, or 1.5 percent annual increase
 - 28% for 2018 through 2019, or 2 percent annual increase and
 - 33% by 2020 and annually thereafter.

CRS holds that this schedule for compliance will cause great market uncertainty, as it threatens to create a four-year gap in new development or procurement of eligible RECs. Instead, due to the adoption of the recent CPUC ruling allowing IOUs/LSEs to employ tradeable RECs for RPS compliance (D10-03-021), the CARB should assume that a 20 percent RPS will be met by 2011, and it should increase the compliance obligation in a smoother trajectory, say 1.5 percent increase per year, from 2011 through 2020 in order to achieve the 33 percent goal.

- E. Section 97004 (a), poses evaluation of two options for use of RECs from throughout the WECC. However, the distinction between “unbundled and undelivered RECs” and “tradeable RECs” is unclear and confusing. CRS would prefer a simple definition of the use of RECs for tracking and compliance, whether they are obtained by the regulated entity bundled with electricity or traded separately (TRECs).
- F. Section 97004(b) would prevent eligible RECs from also being used to meet other federal, state or local compliance schemes. CRS holds that in the event of a federal REC that creates a different category of national RECs for compliance, the CARB should require simultaneous retirement of the FedREC.

The March 11 Q&A document lists several issues that are still pending and not fully described in the Preliminary Draft regulation, in particular, whether to “capture other elements” of the CPUC TRECs decision.

CRS points to the recent Lawrence Berkeley National Laboratory report that found that allowing the greater use of TRECs for compliance can lower costs and reduce the amount of transmission lines that would have to be built. We understand the attention to in-state economic development and job creation, especially during the on-going recession. However, given the failure to achieve the 20% RPS without TRECs and the challenges to in-state development, and given the potential benefits of allowing TRECS, we urge a balanced treatment that allows for the use of TRECs going forward.

Thank you for consideration of our positions.



Arthur O'Donnell, Executive Director
Center for Resource Solutions
415-561-2101
arthur@resource-solutions.org