# M E M O R A N D U M

**TO:** California Air Resources Board

**FROM:** Modesto Irrigation District
Redding Electric Utility
Turlock Irrigation District

**SUBJECT:** Proposed Concept Outline for the California Renewable Electricity Standard

**DATE:** November 20, 2009

## The Utilities

Modesto Irrigation District ("MID"), Redding Electric Utility ("REU"), and Turlock Irrigation District ("TID"), collectively the "Utilities," appreciate the opportunity to comment on the "Proposed Concept Outline for the California Renewable Electricity Standard" (Proposed Outline) developed by the California Air Resources Board (CARB).

MID, REU, and TID are local publicly owned electric utilities. MID and TID are irrigation districts located in the Central Valley, while REU is a municipal utility within the City of Redding. MID serves over 110,000 electric customers with a peak load around 650 Megawatts (MW). REU serves 42,000 customers with a peak load of 247 MW. TID serves about 100,000 electric customers with a peak load of approximately 600 MW. The Utilities maintain similar resource mixes, including hydroelectric, eligible renewable resources and fossil fuel sources. MID currently meets about 12% of its retail sales with eligible renewable energy and is negotiating additional power purchase agreements that would increase this value to over 20%. REU has long-term contracts to provide 31% of its energy from qualified renewable resources. TID is currently meeting 27% of its retail load with eligible renewable energy. The Utilities also share similar challenges, including weather patterns, demographics and local economics. The Utilities have consistently supported the goals of AB 32 and participated in CARB's effort to create a successful program to implement these goals.

## Introduction

The AB 32 Scoping Plan, adopted on December 12, 2008, called for the State to have 33% of its energy from renewable resources by 2020. Governor Schwarzenegger's Executive Orders S-14-08 and S-21-09 augment the Scoping Plan goal by setting forth clear expectations such as that the target must apply to all retail sellers of electricity, and that CARB must consult with the CAISO and other balancing authorities[1] to ensure that the transmission system operates reliably, efficiently, and in a cost effective manner to ensure access to resources throughout the Western Interconnection.

The Utilities urge CARB to coordinate California's Renewable Electricity Standard (RES) obligations as closely as possible with the existing renewable portfolio standard (RPS) requirements, including Public Utilities Code section 387. In addition, given the limited timeframe in which this regulation must be developed, utilizing existing processes that have proven effectiveness can minimize duplication, thus reducing reporting and verification burdens for utilities and the regulatory agencies.

AB 32, and thus any corresponding RES program, must coordinate with any federal climate change and renewable energy program to ensure compatibility, particularly since the flow of electrons and emissions do not stop at California's border. The Utilities continue to urge CARB to move forward with the development of AB 32 in a manner that protects the reliability of the electric grid and maintains the Utilities' efforts to provide reliable and affordable power to their customers. Reliability and cost-effectiveness must be the cornerstones of the RES regulation as they will not only impact the electric industry within the state of California, but also the electric industry across the WECC.

In addition to addressing the questions raised in CARB's Proposed Outline, the Utilities welcome the opportunity to explore further the treatment of large hydroelectric facilities under a RES program. Netting of large hydro from a utility's baseline generation should be thoroughly considered as it is included in both H.R. 2454, "The American Clean Energy Security Act", and S. 1463, "The American Clean Leadership Act".

Finally, the Utilities are members of the California Municipal Utilities Association (CMUA), and strongly support the comments provided by CMUA on the Proposed Outline[2][3].

**Feedback Requested**

Throughout the Proposed Outline, CARB has requested feedback on various issues. The following outlines these requests, followed by the Utility's comments:

[1] TID is a balancing authority.
[2] MID and REU are members of the M-S-R Public Power Agency. MID and REU support the comments of M-S-R on the Proposed Outline.
[3] TID and REU are members of the Northern California Power Agency (NCPA). TID and REU support the comments of NCPA on the Proposed Outline.

**To reduce the administrative burden upon the smallest regulated parties, who may contribute little towards achieving program objectives, staff is exploring a threshold for application of the RES. Staff seeks comments on this concept and the appropriate exemption threshold for regulated parties. For example, a 500 GWh threshold would potentially exclude a few smaller electrical corporations and electricity service providers. This threshold would also exclude 22 local publicly-owned utilities (POUs), but still subject 96% of POU retail sales to the regulation. Staff also seeks comments on the appropriateness of including the California Department of Water Resources and the federal Western Area Power Authority as regulated parties in the RES.**

The Utilities believe that as part of a RES Program based on individual per-entity compliance obligations, it makes sense to consider alternative compliance mechanisms for smaller utilities as long as such mechanisms don't reduce the effectiveness of the REC market within California's balancing areas and the WECC.

The Utilities do <u>not</u> believe it is appropriate to include the California Department of Water Resources nor the federal Western Area Power Authority in the RES since these entities are not retail providers and the retail providers receiving power from WAPA and DWR will be subject to the RES.

**Staff may evaluate other technologies and the limitations currently placed on certain RPS eligible technologies. Staff seeks comments on the appropriateness of including other technologies and modifying existing RPS program limitations.**

The Utilities believe that the definition of technologies that qualify as "eligible renewable resources" needs to be continuously updated and reviewed to include new emerging renewable technologies. The CEC should retain the authority for developing these eligibility criteria. The Utilities would support CARB's evaluation of restrictions on current eligible renewable resources, including the treatment of small hydroelectric. However, to ensure some level of certainty in development and procurement planning, eligibility should never backtrack; those resources deemed eligible should always remain eligible.

That said, no utility should be required to displace a zero or low carbon resource to meet any RES obligation – this would be counter-productive to achieving the GHG reduction objectives laid out by AB 32. Although the Utilities recognize CARB has indicated it is not open to revisiting the inclusion of large hydroelectric generation as an "eligible' renewable resource, the Utilities continue to advocate for the recognition in some positive manner of the zero carbon benefits of electricity generated from large hydroelectric resources. Thus, the Utilities support the "netting" approach developed in the federal climate change and energy legislation. Existing large hydroelectric generation should be netted out of any RES calculation. This approach recognizes the zero carbon value of large hydro without encouraging new construction, and is

compatible with the federal RES proposals[4]. In addition, using this approach will acknowledge Utilities that have all or a majority of their resources met by large hydro and will not require them to displace their zero carbon hydro resources to meet any RES obligation.

**Staff seeks comments on the potential impact of modifying the deliverability requirements for the out-of-state generating resources. In particular, further evaluation of the eligibility, delivery, and environmental conditions currently applied to imported power is needed for the RES.**

The Utilities support Governor Schwarzenegger's veto of SB 14 and AB 64, the two RPS bills debated during the 2009 Legislative session, and the Governor's comments regarding the proposed bills' restrictive definitions of deliverability which would have made compliance with a 33% renewable energy goal unnecessarily difficult and costly to achieve. The Governor stated in his veto message that "California needs a regional approach that provides streamlined regulatory processes and compliance flexibility that facilitate the timely construction of in-state resources. This legislative package does the opposite – adds new regulatory hurdles to permitting renewable resources in the state, at the same time limiting the importation of cost-effective renewable energy from other states in the West." The Utilities agree.

CMUA is presenting its comments to CARB's Proposed Outline. These comments address the treatment of "deliverability" in the context of CARB's RES. The Utilities urge CARB to consider those comments[5].

WREGIS was developed to track and verify eligible renewable resources generation as well as the associated renewable energy credits (RECs) within the WECC; the Utilities believe this extremely effective tool should be continued for compliance with the RES process. The Utilities also believe that CARB should allow the use of unlimited RECs, including unbundled RECs, from all resources within the WECC that qualify as eligible renewable resources under California's RPS. Within that context, the current definition and application of "deliverability" under Public Resources Code section 25741 used to determine the eligibility of a renewable resource need not be reinterpreted; changing this existing definition could result in stranded resource investments and additional costs to consumers due to new investments needed in replacement resources. In addition, the current CEC RPS Eligibility Guidebook allows for ability of wind resources to use "shaping" or "firming" services to facilitate delivery of the output of such intermittent resources to the state of California[6]. The Utilities reiterate that there is no need to revisit current eligibility criteria. The CEC has a rigorous process for certifying

[4] Netting of large hydro electric resources from a Utility's baseline is found in H.R. 2454, "The American Clean Energy Security Act", Title 1, Subtitle A, Sec. 101, passed by the House on June 26, 2009, and in S. 1463, "The American Clean Energy Leadership Act", Title 1, Subtitle C, Sec. 132.

[5] MID and REU urge CARB to consider the comments on "deliverability" presented by M-S-R as well.

[6] Renewables Portfolio Standard Eligibility, Commission Guidebook, Third Edition, California Energy Commission, January, 2008, CEC-300-2007-006-ED3-CMF, pp. 23-26.

California-eligible renewable facilities located out-of-state and within the WECC; the Utilities believe that this effective process should continue.

The current definition of deliverability works best where use of unbundled RECs to meet RES compliance obligations is not limited. In other situations, the Utilities believe that the inclusion of physical delivery as part of the deliverability criteria would need to be revisited. In no event should such physical delivery requirements become more restricted. Such restrictions were the key factor leading to the Governor's veto of proposed legislation.

**Staff is exploring options for the best RES metric, which may include other approaches than those described above, and seeks comments on potential approaches. With respect to converting MWh to GHG tons, as outlined below, please comment on the feasibility of using prescribed GHG factors for various resource types. For example, what are the potential system impacts of this approach?**

Again, the Utilities support the comments submitted by CMUA addressing this issue. The Utilities urge CARB to adopt the current MWh generation approach that is applied to measuring renewable energy in the RPS. The GHG metric identified by CARB will generate unnecessary costs and be administratively complex.

**Staff recognizes annual compliance may be too frequent and is evaluating the appropriateness of different compliance schedules. Staff seeks comments on establishing interim compliance targets and the frequency of meeting these targets to ensure steady progress towards meeting the 33% mandate.**

The Utilities believe that CARB should set an end-point objective for the RES goal, and provide utilities with the flexibility to achieve that target in the most cost effective and efficient manner. The Utilities have demonstrated solid advancement of RPS goals and interim targets are not necessary for State goals. The oversight provided through our respective elected boards ensures every effort is made to comply with regulatory mandates. Moreover, other regulatory requirements being developed to comply with AB 32 provide sufficient "incentives" to obtain renewable energy resources.

However, if interim targets are to be imposed, the Utilities recommend they be set at a minimum of three-years which will help account for impacts from weather, technological delays, and transmission development. This is also consistent with the proposed 3-year compliance targets proposed for the AB 32 cap and trade program.

**Staff seeks comments on the concept of excluding generation from technologies promoted in the AB 32 Scoping Plan (such as rooftop PV and CHP systems) subject to the RES obligation. Is it appropriate to include an approach that reduces the RES obligation due to these technologies (which reduce a regulated party's load), but avoids double counting emission reductions? Additionally, staff seeks comments on the concept of excluding future load deliveries to plug-in hybrid vehicles from the RES obligation.**

*As stated above, the Utilities do not believe CARB should recommend using a GHG metric to measure compliance. This feedback requested by staff addresses one component within staff's proposed GHG metric. Our response is based on the proposed concept of "Excluded Load" within the metric calculation, and we articulate our response to use of a MWH compliance metric as well.*

Although the Utilities believe the concept of excluding the electricity used to charge plug-in hybrid electric vehicles is a step in the right direction for acknowledging fuel switching that will occur because of other AB 32 reduction regulations, we are concerned that the costs to monitor such electricity will outweigh the benefits, and this cost could be used on other GHG reduction activities. Thus, at this time, the Utilities do not believe excluding the electricity from plug-in hybrid electric vehicles should be considered in reducing the RES obligation.

Further, the Utilities disagree with the concept of excluding electricity from net-metered and distributed generation from the RES. This would contradict two recently passed legislative bills, AB 920 and SB 32, which allows excess onsite generation sold back to the Utility to count towards the Utility's RPS requirements.

**Staff will be evaluating the value and potential impact of the factors proposed for establishing RES compliance credits. For example, is it feasible or appropriate to reduce the RES GHG factor for remote generating resources subject to higher line losses? Are there other adjustment factors that should be applied based on the location or operational regime of various resources? Should resources that are less stable and require additional thermal support receive a smaller RES GHG factor?**

No, all eligible renewable resources, once certified by the CEC, should be treated equal.

**Additional Comments**

The Utilities strongly agree with CARB's proposal to permit free trading of RES compliance credits with other regulated parties. We also support CARB's proposal to permit banking of these credits. Finally, the Utilities agree with CARB's proposal to allow RES compliance credits to remain valid until used to meet a compliance target. These types of flexible compliance mechanisms are critical to the cost-effective compliance with the statewide RES objectives.

The Utilities appreciate CARB's recognition that some period of time should be provided to regulated utilities to remedy a shortfall for any RES compliance obligation; three years should be the minimum allowable remedy period. In order to ensure the utilities are not unduly penalized by unavoidable barriers to compliance, provisions should also be developed to address "force majeure" events such as lack of sufficient resources or transmission, or economic hardship.

Where monetary penalties can be imposed, such penalties must be fair, reasonable and proportionate to the measurable violation, and always in alignment with cost causation

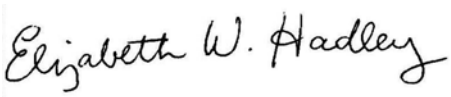
principles. Enforcement actions and penalties should use a phased-in approach and criteria should be established for determining the severity and amount of any penalty imposed. Regulated utilities should not be subject to monetary penalties on top of the requirement to make-up the RES shortfall, in addition to an AB 32 emission reduction enforcement, when the failure to meet a target during the designated timeframe is not within the utility's control. Criteria for assessing the level of monetary penalties should consider the movement made by the utility towards it regulatory goals, the efforts made by such utility to meet its goal, the costs the utility would have incurred to meet its goal, the weather impacts experienced by the utility, the load growth experienced by the utility, and any other impacts contributing to the shortfall.

**Conclusion**

The Utilities appreciate the opportunity comment on the Proposed Outline, and would welcome the chance to discuss these concepts further.

Respectfully submitted,

Joy Warren
MODESTO IRRIGATION DISTRICT



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