

**LATHAM & WATKINS** LLP

March 31, 2010

The Honorable Mary Nichols, Chairman  
Mr. James Goldstene, Executive Officer  
Mr. Gary Collord, Air Pollution Specialist  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95812

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File No. 027774-0053

**Re: Comments on the Draft Renewable Electricity Standard**

Dear Ms. Nichols, Mr. Goldstene, and Mr. Collord:

On behalf of TransAlta Corporation (“TransAlta”), we appreciate the opportunity to comment on the California Air Resources Board’s (“CARB”) Preliminary Draft Renewable Electricity Standard (“RES”). TransAlta owns and operates numerous electric-generating facilities in Canada and throughout the Western Electricity Coordinating Council (“WECC”), including ownership interests in renewable facilities in California. TransAlta also is a major developer of wind energy facilities within the WECC that could help California meet its renewable energy mandates.

TransAlta strongly supports allowing the unlimited use of unbundled and undelivered renewable energy credits (RECs) for RES compliance (referred to as “Option 1” in the draft regulation)<sup>1</sup> because:

- The flexible use of RECs from WECC-based facilities advances key objectives of Executive Order S-21-09 and AB 32 to utilize resources throughout the integrated western transmission grid to meet renewable energy mandates in a reliable, cost-effective manner that protects California’s ratepayers.
- An unlimited use of unbundled and undelivered RECs is needed to feasibly achieve the RES target of 33% procured renewable energy by 2020.

In contrast, TransAlta does not support mirroring the California Public Utilities Commission’s (“CPUC”) recent decision on tradable RECs (TRECs) (referred to as “Option 2” in the draft regulation) because of important differences between the RES and the Renewables

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<sup>1</sup> See Draft Renewable Electricity Standard, § 97004, at pp. 5-6.

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Portfolio Standard (RPS). As we describe below, the CPUC's TREC policy would stymie CARB's efforts to achieve a workable 33% renewable mandate that utilizes resources throughout the WECC while minimizing costs to California's ratepayers.

A. The Unlimited Use of Unbundled and Undelivered RECs for RES Compliance Advances Key Objectives of Executive Order S-21-09 and AB 32 to Procure 33% Renewable Energy by 2020 While Protecting California's Ratepayers

On October 12, 2009, Governor Schwarzenegger vetoed Senate Bill 14 and Assembly Bill 64, which would have raised the RPS to 33% by 2020, because the bills added new regulatory hurdles and "limit[ed] the importation of cost-effective renewable energy from other states in the West."<sup>2</sup> The Governor recognized that "as a world leader in climate change and renewable energy development, California needs a regional approach...and compliance flexibility."<sup>3</sup>

To achieve a "workable" 33% renewable mandate,<sup>4</sup> the Governor issued Executive Order S-21-09 directing CARB to implement the RES utilizing resources "that can be developed most quickly and that support reliable, efficient, cost-effective electricity system operations including resources and facilities located throughout the Western Interconnection."<sup>5</sup> AB 32, which provides the regulatory authority for the RES, also directs CARB to reduce greenhouse gas emissions "in a manner that minimizes costs and maximizes benefits for California's economy...and maintains electric system reliability."<sup>6</sup>

CARB can achieve a workable 33% renewable mandate that utilizes resources throughout the WECC while minimizing costs to California's ratepayers by allowing the unlimited use of unbundled and undelivered RECs. WECC-based RECs support the "regional approach" identified by Governor Schwarzenegger and help reduce compliance costs, enhance system reliability, and achieve the 33% by 2020 objective.

Moreover, the RES timelines are probably infeasible without a flexible use of unbundled and undelivered RECs. The CPUC recently issued a report that analyzed the likelihood of achieving the 33% target by 2020 *without using unbundled RECs*.<sup>7</sup> The CPUC looked at various implementation scenarios but none achieved the target on time or in a cost-effective manner, even assuming "best case" outcomes that are highly unlikely to occur, such as the timely construction of seven new transmission lines by 2020 at a cost of approximately \$12 billion.<sup>8</sup> The CPUC determined that because the 33% goal is "highly ambitious" and "the magnitude of the infrastructure that California will have to plan, permit, procure, develop, and integrate in the

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<sup>2</sup> See Governor Schwarzenegger vetoes of SB 14 and AB 64, dated October 12, 2009.

<sup>3</sup> See *id.*

<sup>4</sup> See *id.*

<sup>5</sup> Executive Order S-21-09, § 5.

<sup>6</sup> California Health & Safety Code § 38501(h). See also Health & Safety Code § 38501(b) ("Global warming will ... also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.")

<sup>7</sup> CPUC, *33% Renewables Portfolio Standard Implementation Analysis Preliminary Results*, Executive Summary, p. 2, (Jun 2009).

<sup>8</sup> *Id.*, Executive Summary, p. 1.

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next ten years is immense and unprecedented,” the delivery requirements for non-California resources may need to be waived to “meet the 2020 target or pursue a lower cost strategy.”<sup>9</sup>

**B. The CPUC’s TREC Policy Would Undermine RES Objectives**

The CPUC’s recently finalized TREC policy under the RPS would significantly limit the availability of WECC-based but non-California resources, at least temporarily.<sup>10</sup> Although the CPUC explicitly authorizes unbundled TRECs, the CPUC narrowly defines bundled transactions as only those where (1) the renewable generator’s first point of interconnection is with a California balancing authority, such as the California Independent System Operator (CAISO), or (2) the RPS eligible energy from the transaction is dynamically transferred to a California balancing authority area.<sup>11</sup> All other transactions are REC-only and subject to the temporary 25% cap.

Thus, the CPUC’s decision effectively requires the large investor-owned utilities (IOUs) to meet 75% of their RPS obligations with in-state renewable resources, significantly hampering the ability of WECC-based but non-California resources to compete. Because the state’s IOUs have already been procuring RECs from out-of-state facilities that will now be reclassified as “REC-only,” certain IOUs may already be at or near the 25% procurement limit.

While the CPUC’s TREC policy may or may not meet the RPS objectives as designed by the California Legislature,<sup>12</sup> the same policy approach will not meet the express objectives of Executive Order S-21-09 and AB 32. Accordingly, TransAlta supports allowing the unlimited use of unbundled and undelivered RECs to achieve a workable 33% renewable mandate that utilizes resources throughout the WECC while minimizing costs to California’s ratepayers.

We look forward to working with CARB to assist in the development of the RES.

Sincerely,



Marc T. Campopiano  
of LATHAM & WATKINS LLP

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<sup>9</sup> *Id.*, Executive Summary, p. 11.

<sup>10</sup> Decision Authorizing the Use of Renewable Energy Credits for Compliance With the California Renewables Portfolio Standard, Cal. P.U.C., Ruling 06-02-012 (March 11, 2010).

<sup>11</sup> *Id.* at 46. Moreover, as the CPUC’s TREC decision recognized, the CAISO currently does not have the capability for dynamic transfers for intermittent resources.

<sup>12</sup> See Public Utilities Code § 399.11 *et seq.*; Public Resources Code § 25740 *et seq.*