

April 8, 2010

Mr. Gary Collard  
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**VIA ELECTRONIC MAIL**

**RE: COMMENTS OF PACIFICORP ON THE MARCH 11, 2010  
PRELIMINARY DRAFT CALIFORNIA RENEWABLE ELECTRICITY  
STANDARD REGULATIONS**

Dear Mr. Collard:

As requested in the March 11, 2010 Regulatory Questions and Answers Document<sup>1</sup>, PacifiCorp, dba Pacific Power (“PacifiCorp” or “Company”) respectfully submits these comments pursuant to the California Air Resources Board’s (“CARB”) March 11, 2010 Preliminary Draft Regulations (“Draft Regulations”) implementing the California Renewable Electricity Standard (“RES”). For the reasons provided below, PacifiCorp requests a number of modifications to ensure multi-jurisdictional utilities (“MJUs”) have the requisite tools to comply with the RES program and mirror the structure of Public utility Code Section 399.17. The requested modifications mirror the existing rules applicable to the MJUs’ Renewable Portfolio Standard (“RPS”) programs. This document consists of this comment letter plus an appendix, providing recommended changes to the Draft Regulations consistent with these comments in underscored and ~~strike-through~~ text.

**I. Overview of Comments**

PacifiCorp is concerned that the current design of the Draft Regulations fails to adequately reflect the MJUs’ unique operational challenges that are otherwise acknowledged in the existing statutory RPS program through Public Utilities Code Section 399.17. PacifiCorp’s California service territory represents a relatively small fraction of its overall system requirements.<sup>2</sup> California’s regulatory oversight of the MJUs has traditionally recognized that the MJUs’ integrated operations are subject to concurrent regulatory oversight over the provision

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<sup>1</sup> See CARB, *Questions and Answers California Renewable Electricity Standard Preliminary Draft Regulation* (March 11, 2010), available at: <http://www.arb.ca.gov/energy/res/meetings/031810/regqa.pdf>.

<sup>2</sup> In the case of PacifiCorp, the 46,500 California customers represent a little less than 2% of their overall system load. Additional details on the Company’s system is provided in Section II, below.

of retail service to customers in California and other states respectively. Therefore, the California Public Utilities Commission (“CPUC”) typically defers to the resource planning processes undertaken pursuant to the other states’ laws. As detailed in Appendix A, PacifiCorp respectfully requests that CARB mirror the structure of Public Utilities Code Section 399.17.

In addition, PacifiCorp requests recognition within the Draft Regulations that renewable energy credits (“RECs”), including Western Renewable Energy Generation Information System (“WREGIS”) Certificates evidencing and facilitating transfer of title to those renewable attributes definitionally included in RPS-eligible energy production, constitute property rights that have been acquired for adequate consideration. In particular, CARB should not assert that a REC as used in the RES program does not constitute property because RECs and or Tradable RECs (“TRECs”)<sup>3</sup> constitute rights and benefits independent of compliance use, that may have value and be transferred as intangible property which is further explained in Section IV. Finally, PacifiCorp urges CARB to not place restrictions on the use of RECs. CARB should allow for regulated entities to utilize unbundled RECs to meet the RES compliance obligation. These and other specific suggestions for amendments to the draft RES regulation are detailed below.

## **II. Description of PacifiCorp and Pacific Power**

PacifiCorp is a regulated MJU serving 1.7 million retail electricity customers, in California, Idaho, Oregon, Utah, Washington, and Wyoming. The company serves its, approximately 46,500 customers in Del Norte, Modoc, Shasta, and Siskiyou counties in Northern California through its retail business unit, Pacific Power. PacifiCorp maintains a transmission and distribution system and is the Balancing Authority for the areas known as PacifiCorp West and PacifiCorp East. Approximately 35 percent of its California customers are estimated to be eligible for PacifiCorp’s California Alternate Rates for Energy (“CARE”) assistance program. As such, the Company is particularly sensitive about keeping costs as low as possible while continuing to provide safe and reliable electric service.

While a portion of PacifiCorp West is located in northern California, neither the PacifiCorp West nor PacifiCorp East control areas are part of the California Independent System Operator (“CAISO”) controlled grid. PacifiCorp’s primary function is to serve retail load. Unlike other California investor-owned utilities (“IOUs”), PacifiCorp remains a vertically integrated multi-jurisdictional utility owning approximately 80 percent of its generation portfolio, and utilizing the majority of the electricity generated from those assets to serve customer retail load.

PacifiCorp’s owned-generation portfolio is a mix of assets located within nine western states (Arizona, California, Colorado, Idaho, Montana, Oregon, Utah, Washington, and Wyoming). Consistent with a long-standing regulatory practice agreed to among the various state regulatory entities overseeing PacifiCorp, all energy produced by PacifiCorp-owned resources, as well as purchased energy delivered pursuant to a power purchase agreement, is

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<sup>3</sup> Hereinafter, unless otherwise distinguished, we refer to RECs to mean both RECs (representing a product of both bundled energy environmental attributes) and Tradable RECs (“TRECs”) (representing the environmental attributes unbundled from the energy). PacifiCorp recognizes that the existing Draft Regulation explicitly defines RECs, and we presume no different treatment under the RES for RECs and TRECs.

referred to as “system” power. System power is electricity that is not assigned by PacifiCorp for use within a particular state or balancing authority and is operated on a system wide basis. Unlike IOUs located entirely within California, PacifiCorp combines all of the costs for generating and maintaining the appropriate level of the power within the system and allocates to each jurisdiction its proportionate share of system resources based upon retail load served. PacifiCorp’s California retail customers consume slightly less than a two percent (2%) share of PacifiCorp’s system resources.

PacifiCorp combines all of the costs for generating and maintaining the appropriate level of the power within the integrated system and allocates most of the costs to each of the states based on the respective retail load served. For allocating most of its generation costs, PacifiCorp uses a system power cost allocation factor for each of its states. As a result of this shared resources approach, PacifiCorp’s states receive cost savings associated with resource diversification. The cost allocation factor is part of a more comprehensive cost allocation methodology referred to as the PacifiCorp Multi-State Process (“MSP”) Revised Protocol. The Revised Protocol is a cost allocation methodology agreed to by various utility commissions that regulate PacifiCorp.

### **III. The Draft Regulations Require Modifications to Account For The Particular Circumstances Of Multi-Jurisdictional Utilities**

On numerous occasions, CARB has stated that it intends to mimic the existing RPS program. For example, the Questions and Answers Document<sup>4</sup> released with the draft regulation states:

To the greatest extent possible, the proposed regulation is being developed to utilize the structure, provisions, policies, and implementation mechanisms established by the California Energy Commission (CEC) and California Public Utilities Commission (CPUC) for the RPS program. This includes carry-over of as many of the provisions of the RPS program as possible ....<sup>5</sup>

We urge CARB to include provisions in the Draft Regulations to reflect the existing program elements designed and applicable explicitly for the circumstances of the MJUs. The total retail customers served by the three large IOUs totals approximately 29.4 million customers, approximately 318 times the number of MJUs’ retail customers.<sup>6</sup> Unlike most

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<sup>4</sup> See CARB, *Questions and Answers California Renewable Electricity Standard Preliminary Draft Regulation* (March 11, 2010), available at: <http://www.arb.ca.gov/energy/res/meetings/031810/regqa.pdf>.

<sup>5</sup> Id. at page 2.

<sup>6</sup> See, United States Energy Information Administration (“EIA”) California’s Electricity Profile, 2008 Data, Tables 3 and 9, available at: [http://www.eia.doe.gov/cneaf/electricity/st\\_profiles/california.html](http://www.eia.doe.gov/cneaf/electricity/st_profiles/california.html) ; See also, PG&E Company profile indicating 15 million customers, available at: <http://www.pge.com/about/company/profile/> ; See also, SCE Company profile indicating 13 million customers, available at: <http://www.sce.com/AboutSCE/CompanyOverview/> ; See also, SDG&E description of service territory indicating 1.4 million customers, available at: <http://www.sdge.com/aboutus/serviceTerritory.shtml>

California utilities, the Company procures a pool of resources for all its customers, from which California customers receive their proportionate share of the cost and benefits of the generation. Also, unlike most California utilities, PacifiCorp is not in the California Independent System Operator (“CAISO”) balancing authority and, rather, operates its own multi-state balancing authority integrating the interconnected renewable and conventional resources to provide reliable service to its customers.

When the California Legislature revised the RPS statutes in 2005, it recognized the unique operational challenges faced by MJUs and passed a law, codified as Public Utilities Code Section 399.17,<sup>7</sup> that allows utilities that serve less than 60,000 California customers and also have operations in other states to use system resources located within the Western Electricity Coordinating Council (“WECC”) to meet the requirements of the California RPS program, among other things. PacifiCorp asks that the Draft Regulations mirror the flexibility provided for in Section 399.17 and allow MJUs to utilize RECs from California RPS-eligible resources located outside the state of California for purposes of RES compliance.

Consistent with this recommendation, Appendix A contains changes to §§ 97001, 97002(a), and 97005(b) that mimic the existing RPS program rules for MJUs.

#### **IV. A Renewable Energy Credit Is A Property Right**

As currently drafted, Draft Regulation Section 97002(a)(13) states that “[a] REC does not constitute property or a property right.” PacifiCorp disagrees that this is, or could be, the case and requests that this sentence be deleted from the definition. As detailed below, the logic supporting limitations on emissions allowances does not apply to RECs. RECs constitute property rights because they are much more than a CARB-created compliance tool.

At the March 23, 2010, workshop, CARB staff opined that this language was intended to reflect the structure used by CARB in its regulation of other criteria pollutants. However, the RES program, while intended to help in the reduction of greenhouse gas (“GHG”) emissions associated with the consumption of electric power by incenting increased reliance on less carbon-intensive generation, should not be subject to the same type of design as CARB’s other regulatory programs for criteria pollutants precisely because CARB is not creating and allocating the RECs at issue. The United States program for trading sulfur dioxide (“SO<sub>2</sub>”) allowances (a sulfur dioxide allowance is a permit to emit a quantity of pollutant) under the Clean Air Act Amendments specifically provides that those allowances are “authorizations,” not “property rights.”<sup>8</sup> This was so that if total allowances provided under the program were reduced, those to whom the allowances had previously been allocated would not have claims against the United

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<sup>7</sup> Pub. Utilities Code Sec. 399.17, codified by Chapter 50, Statutes of 2005 (Assembly Bill 200), available at: [http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab\\_0151-0200/ab\\_200\\_bill\\_20050718\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0151-0200/ab_200_bill_20050718_chaptered.pdf)

<sup>8</sup> See, 42 U.S.C. §7651b(f): “An allowance allocated under this subchapter is a limited authorization to emit sulfur dioxide in accordance with the provisions of this subchapter. Such allowance does not constitute a property right. Nothing in this subchapter or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.”

States for a government taking.<sup>9</sup> The legislated non-property nature of government authorizations to emit pollutants—namely allowances—must be distinguished from RECs. RECs include at least some rights and benefits, independent of compliance use, that may have value and be transferred as intangible property. Among the bundle of rights and claims represented by RECs, it is only the ability to use the RECs for a specific compliance purpose under an identified compliance program that is an authorization created by the government. The government can resolve the risk of takings claims by establishing rules by which RECs may be used. There is no reason comparable to the SO<sub>2</sub> program—where the government issues a quantity of SO<sub>2</sub> allowances and then wishes to reduce the quantity of SO<sub>2</sub> allowances it issues—why CARB should consider that it needs to take RECs without compensation. RECs or aspects thereof could be used for purposes of compliance pursuant to the rules of the RES or RPS, as applicable, and would not be usable by not meeting an RES REC requirement (e.g., age), but not because they do not exist as property or rights. RECs not meeting California requirements would continue to exist and could be used to comply with the requirements of another federal or state program. Thus, the risk of takings claims is negligible, and there is no reason to state that a REC does not constitute a property right.

RECs subject to tracking in WREGIS and potential trading between eligible parties constitute much more than just a CARB-created “compliance tool.” The WREGIS “Certificate” definition<sup>10</sup> provides:

A WREGIS Certificate represents all Renewable and Environmental Attributes from one MWh of electricity generation from a renewable energy Generating Unit ....

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Renewable and Environmental Attributes [means] [a]ny and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the generation from the Generating Unit, and its avoided emission of pollutants. [Original Fn 2]

Footnote two to the WREGIS certificate definition goes on to provide that:

The avoided emissions referred to here are the emissions avoided by the generation of electricity by the Generating Unit .... Avoided emissions may or may not have any value for complying with any local, state, provincial or federal GHG regulatory program. Although avoided emissions are included in the

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<sup>9</sup> See generally Gerhring & Streck, Emissions Trading: Lessons from SO<sub>x</sub> and NO<sub>x</sub> Emissions Allowance and Credit Systems, 35 *Envtl. L. Rep.* 10220 at 3-4 (Apr. 2005).

<sup>10</sup> WREGIS, *Modified WREGIS Certificate Definition*, available at [http://www.wregis.org/uploads/files/106/WREGIS%20Certificate%20Definition%20modification\\_FINAL%2012%208%2008.pdf](http://www.wregis.org/uploads/files/106/WREGIS%20Certificate%20Definition%20modification_FINAL%2012%208%2008.pdf).

definition of a WREGIS Certificate, this definition does not create any right to use those avoided emissions to comply with any GHG regulatory program.

In other words, the definition for WREGIS Certificates already includes property rights that go beyond compliance, and further provides that WREGIS Certificates may not necessarily be used for compliance. This does not, however, mean that they do not exist as property. The formulation that the REC “does not create any right to use” the REC for GHG compliance, as opposed to the RECs are “not property rights”, is also used by the CPUC with regard to the Green Attributes, which are evidenced by WREGIS Certificates.<sup>11</sup> The CPUC has stated that while a REC may not be eligible for use in certain compliance purposes such as a GHG offset, the REC still may be used for other purposes.<sup>12</sup> In sum, stating that a REC does not constitute a type of property is inconsistent with both the WREGIS rules and CPUC’s conclusions on this issue.

A REC constitutes personal property reflective of rights and title to specified environmental attributes associated with a quantity of electric generation acquired from certain types of generation resources. An individual entity may possess RECs (as may be evidenced by title to WREGIS Certificates) independently of CARB’s RES program. Furthermore, as acknowledged by CARB, the WREGIS Certificates tracks title to environmental attributes that can be used to satisfy other regulatory programs such as California’s RPS program, or other renewable programs in other jurisdictions participating in WREGIS. Corrections to the Draft Regulations are provided in Appendix B’s definition of “REC” at § 97002(a)(13).

**V. CARB Should Allow Unlimited Use of Unbundled RECs (TRECs) and Should Not Place a Sunset Date on RECs**

As discussed above, current law recognizes the challenges facing California’s MJUs by allowing the use of electricity associated from any facility that is connected to the WECC transmission system. This language recognizes that PacifiCorp procures and allocates generation costs and benefits to California customers from our system as a whole, and allows PacifiCorp to retain that system in meeting its RPS mandates.

Due to the remote geographic location of the PacifiCorp’s California service territory and the inability to access the California Independent System Operator (“CAISO”), many issues related to procuring and delivering renewable energy would be addressed by allowing the use of bundled and or unbundled RECs. Placing few, if any, restrictions on the use of unbundled RECs would recognize the limitations PacifiCorp faces in delivering renewable electricity, with its limited access to the California transmission system, and allow greater flexibility in the procurement and reporting requirements associated with RES compliance.

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<sup>11</sup> See, *Decision on Definition and Attributes of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard*, D.08-08-028 (August, 2008) in CPUC Docket R.06-02-012), Appendix B, page 1.

<sup>12</sup> *Id.* at page 26.

The draft RES regulations also suggest that CARB would allow parties to trade RECs for up to three years. This suggests that CARB may provide that a REC could only be used in the RES program within three years of when it was created. As discussed above, even if CARB places a limitation on REC usage in the RES program, a REC not used in the RES could still be used in another program. Moreover, it is unclear why CARB would place this limitation on REC usage, particularly where PacifiCorp's customers have already paid for those resources and should be permitted to recognize their full value. CARB should provide parties with the flexibility of banking RECs without limitation to their usage and should not place an expiration date on RECs used for the RES program.

## **VI. Other Recommendations**

PacifiCorp offers the following additional changes to the Draft Regulations for the reasons briefly explained below.

- 97002(a): inserts a definition of “Multi-jurisdictional Utility” to support PacifiCorp’s recommendations for a new section 97001(c) to mirror Public Utilities Code Section 399.17;
- 97002(a)(10): changes “investment” to “arrangement” to clarify the definition of “procurement”;
- 97002(a) (13): changes “credit” to “certificate” to reflect that WREGIS does not create or issue “credits”;
- 97003: revisions create greater flexibility in meeting the 33% by 2020 deadline by deleting interim RES obligations; revisions provide additional clarity regarding compliance deadlines. Further, the section includes a the concept that CARB should include a flexible compliance approach which would permit entities with options to achieve resolution of compliance issues over a period of time, similar to the CPUC’s flexible compliance program. ;
- 97004(a): adds language change to permit use of eligible generation located within WECC and tracked in WREGIS;
- 97004 (b): adds language clarifying that a REC used for RES purposes may also be used for RPS purposes applicable to a utility’s common load subject to concurrent procurement obligations;
- 97004 (d): eliminates language that appears to prohibit trading of WREGIS Certificates;
- 97005(b): adds a MJU-specific reporting section that uses the existing RPS requirements for MJUs to report to the CPUC as provided by Public Utilities Code Sec. 399.17(d);
- 97005 (c): insert section detailing a CARB data verification process and providing a specified time period to respond to CARB inquires on the submissions. Also recommends a flexible compliance concept like that for the existing RPS program;

- 97005 (d): changes kWh measurement to a MWh measurement to maintain better consistency with the existing RPS program;
- 97006: simplifies the renewable resource certification process to avoid deliverability and perfection issues;
- 97008: changes kWh measurement to a MWh measurement to maintain better consistency with the existing RPS program and provides that ARB will consult with CPUC to avoid duplicative enforcement actions; and
- 97009: inserts provision to allow for advanced determinations of confidentiality so that a regulated entity does not have to assert confidentiality in every compliance filing or report.

## **VII. Conclusion**

In sum, PacifiCorp is concerned that the Draft Regulations fail to adequately reflect the MJUs' unique operational challenges that are otherwise acknowledged in the existing statutory RPS program through Public Utilities Code Section 399.17. PacifiCorp strongly urges CARB to include language that mirrors the structure of Public Utilities Code Section 399.17, as detailed in Appendix A. In addition, PacifiCorp requests recognition within the Draft Regulations that renewable energy credits ("RECs"), including WREGIS Certificates, constitute property rights that have been acquired for adequate consideration. In particular, CARB should not assert that a REC as used in the RES program does not constitute property. Finally, PacifiCorp urges CARB to not place restrictions on the use of RECs. CARB should allow for regulated entities to utilize unbundled RECs to meet the RES compliance obligation. These and other more specific language modifications to the Draft Regulations are detailed in Appendix A. Should you have any questions about these comments, please do not hesitate to contact the below listed signatories. PacifiCorp appreciates the opportunity to submit these comments.

Respectfully Submitted,

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## APPENDIX A

### REDLINED PROVISIONS OF DRAFT PRELIMINARY REGULATIONS

- Amend § 97001 regarding Applicability by inserting the following:

(c) Provisions for Electrical Corporation With 60,000 Or Fewer Customer Accounts In California That Serves Retail End-of-use Customers Outside California

(1) This subsection applies to an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California.

(2) For an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, an eligible renewable energy resource includes a facility that is located outside California, if the facility is connected to the Western Electricity Coordinating Council (WECC) transmission system, provided all of the following conditions are met:

(A) The electricity generated by the facility is procured by the electrical corporation on behalf of its California customers, and is not used to fulfill renewable energy procurement requirements in other states.

(B) The electrical corporation participates in, and complies with, the WREGIS accounting system.

(C) The Energy Commission verifies that the electricity generated by the facility is eligible to meet the procurement targets of this article.

(3) The California Air Resources Board shall determine the annual procurement targets for an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, as a specified percentage of total kilowatt hours sold by the electrical corporation to its retail end-use customers in California in a calendar year.

- Amend § 97002(a) to add a definition for multi-jurisdictional utilities:

“Multi-jurisdictional Utility” means a retail provider that provides electricity to end users in California and in one or more other states.

- Amend § 97002(a)(10) to clarify the definition of “procurement” by amending the following language:

**“Procure or procurement”** as related to renewable energy means an ownership or contractual ~~investment~~ arrangement to acquire the physical electrical output of an eligible renewable generating resource or facility, or the acquisition of a REC or TREC that represents the environmental attributes of an eligible renewable generating resource or facility.

- Amend § 97002(a)(13) by changing “credit” to “certificate and deleting the last sentence:

(13) **“Renewable Energy Credit or REC”** means a ~~credit~~ certificate issued by WREGIS associated with one MWh of electricity generated by an eligible renewable energy resource or facility as evidenced by a Renewable Energy Certificate. A REC does not include an emission reduction credit issued pursuant to Health and Safety Code section 40709 or any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels. A REC also does not include any allowance issued pursuant to a cap and trade or similar program. ~~A REC does not constitute property or a property right.~~

- Amend Section 97003 regarding Renewable Electricity Standard Obligations to clarify compliance deadlines and provide greater flexibility in meeting the RES targets:

Unless exempted by section 97001(b), each regulated party shall retire an amount of RECs equivalent to its REC obligation ~~at the end of~~ by end of second quarter after each compliance interval, as specified in Table 1. Notwithstanding these compliance interval obligations, progress towards a regulated entity’s RES obligation and RES procurement plans shall be REC retirement ~~shall be measured, tracked and reported~~ on an annual basis pursuant to the formula in section 97005 (c) of this article, as a percentage of total MWh of electricity delivered to retail end-use customers.

Table 1. Compliance Intervals and REC Percentages

| <u>Compliance Intervals</u>         | <u>REC Percentage</u> |
|-------------------------------------|-----------------------|
| <u>2012 through 2014</u>            | <u>20</u>             |
| <u>2015 through 2017</u>            | <u>24</u>             |
| <u>2018 through 2019</u>            | <u>28</u>             |
| <u>2020 and annually thereafter</u> | <u>33</u>             |

- Amend Section 97004(a) to clarify that a REC generated anywhere in the WECC and tracked by WREGIS constitutes an eligible REC in the RES:

RECs must meet the eligibility requirements in this article and must be tracked by the WREGIS system and generated within the Western Electricity Coordinating Council service territory to be eligible to satisfy the requirements of section 97003.

- Amend Section 97004(b) to clarify that a REC retired for purposes of the RPS may also be used to satisfy the RES:

RECs must be retired in WREGIS for RES compliance and may not be used to meet the requirements of any federal, state or local non-renewable energy procurement program. A REC may be used to satisfy another renewable energy procurement obligation for the same regulated entity, including the California RPS program. If the regulated entity uses the REC to satisfy

more than one renewable energy procurement program, then the retired REC applied to the renewable energy procurement programs must be applied to a common load obligation.

- *Amend Section 97004(d) to delete limitations on transfers of RECs to other systems and avoid conflict with WREGIS rules:*

(d) *Banking and Trading of RECs or TRECs.* RECs and or TRECs not used to meet a compliance interval obligation in section 97003 may be banked and used for subsequent obligations or traded to other parties, subject to the limitations of this subsection. ~~RECs traded to other regulated parties subject to this article must not be transferred outside the WREGIS system.~~

(1) RECs or TRECs procured from RES Qualifying POU Resources are not eligible for trading.

~~(2) RECs may only be traded by regulated parties who are in compliance with the REC retirement requirements of section 97003.~~

~~(3) RECs procured by regulated parties operating under a partial exemption as provided in subsection 97001 (b) are not eligible for trading.~~

- *Amend Section 97005(b) regarding Monitoring, Verification and Compliance to provide greater consistency with the existing RPS Program and Public Utilities Code Section 399.17. Unlike the IOUs, MJUs do not provide procurement plans to the CPUC under current RPS rules. CARB should add the following reporting requirements exclusive to multi-jurisdictional utilities:*

(b) *Filing of Plans and Reports.* Regulated parties shall prepare and submit the following plans and reports to the Executive Officer and the CPUC or CEC as follows:

- (1) Electrical Corporations that are not multi-jurisdictional utilities, electric service providers, and community choice aggregators, shall submit the following reports to the ARB and CPUC:

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- (2) Local publicly owned electric utilities and electrical cooperatives shall submit the following reports to the CEC and ARB:

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- (3) Multi-jurisdictional utilities shall submit the following report the ARB:

(A) A multi-jurisdictional utility shall submit the report using an integrated resource plan prepared in compliance with the requirements of another state utility regulatory commission, that is submitted to the CPUC pursuant to Public Utilities Code Section 399.17(d), if that report also includes information regarding procurement of renewables to satisfy the RES, or provided that the multi-jurisdictional utility supplement the report submitted to the CPUC to address the procurement of renewables required to meet the RES.

- *Amend Section 97005(c) regarding ARB's review and verification of compliance to provide greater certainty regarding enforcement possible enforcement actions.*

(c) In addition to verifying compliance with the requirements of this regulation, information obtained from annual reports submitted to the ARB will be used to estimate greenhouse gas emissions and benefits. ARB staff will report these estimates annually and make the results available to the public on our website.

- (1) The ARB will verify compliance and provide notice to any regulated entity that is not in compliance with ninety (90) days of the submission of any compliance plan or report. The regulated entity will then have thirty (30) days within which to respond to any assertion of non-compliance by the ARB.

[Additional concept to include with RES regulations: the RES program should provide a mechanism for entities to cure any compliance concerns over a period of time, similar to approaches in the existing RPS program. This would account for issues such as unforeseen delays to project completions or “lumpy” project capacity additions, load forecasting errors or periods of poor project production.]

- *Amend Section 97005(d) to provide greater consistency with existing RPS and WREGIS rules:*

(d) RES Formula. Regulated parties shall calculate annual RES progress as follows: Total retail sales (~~in kWh~~ in MWh), multiplied by the percentage of procured and retired RECs (~~in kWh~~ in MWh) for the applicable year.

- *Amend Section 97006 regarding Certification of Eligible Renewable Energy Resources to simplify the eligibility rules and avoid complication in existing rules regarding perfection of deliveries into the state:*

Renewable energy facilities or resources ~~potentially~~ eligible for the RES include in-state and out-of-state facilities certified by the CEC as eligible for the California RPS program pursuant to Public Utilities Code Section 399.13, ~~out-of-state facilities that meet the requirements of the RPS program [excluding its delivery requirements]~~, and facilities that qualify as a RES Qualifying POU Resource as defined in this article.

~~(1) Applicants seeking certification of a renewable energy resource for eligibility under the existing RPS program should file the application with the CEC in accordance with their review process.~~

~~(2) Applicants seeking certification [of a facility for eligibility under the RES program, including out of state facilities not meeting the delivery requirement of the RPS program] or facilities eligible as a RES Qualifying POU Resource, should file the application with the Executive Officer. The Executive Officer may enter into an interagency agreement with the CEC or a third party contractor to review and make recommendations as to certification and verification of the resource for the RES program.~~

- *Amend Section 97008 regarding enforcement to provide greater consistency with the existing RPS program:*

(a) *Penalties.* Any violation of the requirements of this article shall be enforced in accordance with Part 6, of Division 25.5, of the Health and Safety Code, commencing with section 38580. Violations of the requirements of section 97003 shall be considered as a violation of an emission limitation and shall be calculated on a ~~kWh~~ MWh basis. Prior to commencing any enforcement action against a regulated entity under this Article, ARB will coordinate with the CPUC to avoid unnecessary administrative costs to ARB and the CPUC so there will not be duplicative enforcement proceedings twice penalizing a common set of circumstances

- *Amend Section 97009 regarding Treatment of Confidential Information to create advanced determinations of confidentiality similar to existing RPS rules:*

Information submitted pursuant to this article may be claimed as confidential. Such information shall be handled in accordance with the procedures specified in Title 17, California Code of Regulations, Sections 91000 through 91022. Upon request, the ARB may issue advanced determinations of confidentiality such that a regulated entity is not required to assert confidentiality in every report, plan or compliance filing submitted in accordance with this Article.