

**Comments of the Western Power Trading Forum to the
California Air Resources Board on the Preliminary Draft Regulation
For the Renewable Energy Standard
04/16/2010**

Clare Breidenich
WPTF GHG Consultant
Email: clare@wptf.org

The Western Power Trading Forum¹ (WPTF) appreciates the opportunity to provide input to the California Air Resources Board (ARB) on its Preliminary Draft Regulation for a California Renewable Energy Standard (PDR). WPTF supports many of the elements of the PDR. However, we remained concerned about potential incompatibilities between the existing Renewable Portfolio Standard (RPS) and the RES, and ARB's proposal to restrict participation in the Renewable Energy Credit (REC) market.

Our specific comments on the PDR are provided, presented in same topic order used in the PDR.

A. Definitions (§97002)

WPTF offers the following comments on the definitions contained in this section

- *Eligible renewable resources*

We have a number of concerns with PDR's definition of eligible renewable resources. First, as indicated in our earlier comments on the RES conceptual approach, WPTF believes that more flexibility in program rules than the current RPS will be necessary to achieve the 33% renewable electricity standard. For this reason WPTF supports ongoing evaluation of additional RES eligible technologies by the California Energy Commission. ARB should retain flexibility to include other technologies as part of its RES implementation in the future.

Second, in order to allow full use of unbundled, tradable RECs from eligible facilities within the REC, we strongly support elimination of the electricity delivery requirements for out-of-state facilities. (For further discussion of the need to eliminate delivery requirements for out-of-state resources, see our comments on section §97004 - Renewable Electricity Standard Requirements below.)

Finally, as written, the definition appears to exempt RES Qualifying POU Resources from mandatory participation in WREGIS. If, as suggested in section §97003:Renewable Electricity Standard Obligations, RES compliance can only be achieved through retirement of RECs, then Qualifying POU Resources must also be required to participate in WREGIS, along with other obligated entities.

To address these concerns, WPTF recommends that the definition be modified as follows. **“Eligible renewable resources** means a generating facility participating in the WREGIS tracking system, ~~is certified as eligible for California's RPS program pursuant to Public Utilities Code Section 399.13, or otherwise~~ that meets the criteria of the California RPS

¹ 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.

program excluding the electricity delivery requirements for out of state facilities}, or is recognized or a RES Qualifying POU Resource as provided in this article.”

- *Renewable Energy Credit or REC*

WPTF has two concerns with this definition. First, we note that sub-paragraph (a) 18 defines a “WREGIS Certificate” as “a certificate of proof issued through WREGIS that one MWH of electricity was generated by a RES eligible energy resource.” The use of two terms, REC and WREGIS Certificate, within the PDR creates confusion. We therefore recommend that ARB simply define a REC in terms of the WREGIS certificate: **“Renewable Energy Credit or REC”** means a credit issued by ~~WREGIS~~ associated with one MWH of electricity generated by an eligible renewable energy resource or facility as evidenced by a ~~Renewable Energy~~ WREGIS Certificate.”

More importantly, the statement that “A REC does not constitute property or a property right” is extremely problematic. WPTF would argue that the intent of REC trading programs and WREGIS tracking is explicitly to create a clear property right to claims of renewable generation. Such a property right is essential to enable renewable facilities to gain the economic benefit of this generation.

To the extent that ARB’s reference to property rights is predicated upon property rights issues associated with GHG Emission reduction allowances, WPTF notes that the RES is not the same as an emission trading program, and the REC is not analogous to an emission allowance. Under an emission trading program, an allowance is a construct of the cap and trade program. The quantity of allowances is by definition finite, and created solely by the regulatory authority (i.e. the allowance does not exist in the absence of the regulation). In contrast, the quantity of RECs is determined by actual output, and is not dependent on a regulation for its existence.²

For these reasons, WPTF strongly objects to the ARB statement that “A REC does not constitute property or a property right”, and urges ARB to delete it from the RES regulation.

B. Renewable Electricity Standard Obligations (§97003)

WPTF has two comments with this section of the PDR.

First, the PDR requires REC retirement as the only means to demonstrate compliance with the RES. We are concerned that this regulation contains some ambiguity with respect to whether all procurement that counts for compliance toward the RPS may also count toward RES compliance. Specifically, we believe that there may be some RPS procurement, such as legacy contracts enacted prior to 2005 or contracts with Qualifying Facilities, that provide for physical delivery of renewable power without commensurate tracking and retirement of RECs. ARB should verify this with the CPUC and CEC and

² The existence of voluntary renewable emission credits demonstrates that the REC itself has an inherent value aside from any regulations for RPS or RES compliance.

ensure that all procurement that counts toward RPS compliance also counts toward RES compliance. To this end, we recommend that the regulation contain a clear statement that *all* RPS-valid procurement may also count toward compliance with the RES.

Second, the compliance periods are multi-year, which theoretically provides obligated entities with additional compliance flexibility. However, in Section 97005, the PDR calls for annual compliance reporting. As noted in the WPTF comments below, it is not clear what purpose annual procurement reports serve in years where there is no compliance obligation.

C. Renewable Electricity Standard Requirements (§97004)

- *Subparagraph(a)*

Article 6, Section 97004 of the PDR notes that ARB staff is considering two options for demonstrating compliance with the RES. Option 1 would allow unlimited use of unbundled and undelivered renewable energy credits (RECs) from within the region of the Western Electricity Coordinating Council (WECC) to meet the RES. Option 2 would allow the use of tradable RECs consistent with the approach defined by the CPUC in Decision 10-03-021 (“Decision”). In defining the two options, the staff seeks comment on how the options will impact investments for in-state renewables and associated transmission development, the availability and cost of RECs and other information to assist them in making an informed choice.

During the CPUC proceeding leading up to the issuance of D.10-03-021, WPTF submitted comments that opposed arbitrary limits on the use of TRECs for RPS compliance. TRECs are a necessary and desirable component of a fully functional renewable program. TRECs bring price transparency to the renewable attributes, offer a flexible compliance mechanism for LSE’s to meet the renewable procurement obligation, and provide for efficient transactions to manage the over or under procurement given uncertain load obligations. Fostering a vibrant, liquid TREC market is an important step for establishing competitive market conditions that ultimately create the price signals necessary to support renewable and conventional generation investment. WPTF therefore prefers option 1, imposing no restrictions on the use of TRECs for RES compliance.

However, the CPUC final Decision imposed a temporary limit on the use of TRECs by Investor-owned Utilities (IOUs) to address concerns over limited TREC supply and possible high prices in the near term. While WPTF disagreed with imposing this limit, we nonetheless recognize that the CPUC’s role in IOU procurement is important to ensure a stable and enduring regulatory procurement framework to promote renewable development and resource diversity, as well as provide for the fossil resources needed to integrate renewables and ensure reliable system operation. Similar procurement planning efforts by the publically owned utilities are also underway. As TRECs emerge as a RPS/RES compliance tool in utility procurement, the CPUC’s and Public Utility Boards’ evaluation of renewable options will continue to ensure that the procurement processes remain consistent with least-cost principles for the benefit of California consumers.

In developing the RES regulation, ARB must accommodate the planning processes occurring at the CPUC with respect to investor owned utility procurement and transmission planning, and similar planning processes by the publically owned utilities. A careful coordination will serve to foster the regulatory certainty required for vibrant renewable investment and the development of the TREC market, and promote the development of infrastructure solutions that best meet customer's needs at the least cost. ARB and the CPUC will need to work together to ensure that their separate regulations are compatible and do not create market uncertainty³, and to ensure that the regulations together foster the increasingly competitive wholesale markets that are needed to efficiently meet the state's 33% target.

- *Sub-paragraph (b)*

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.

Similarly, 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 RECs toward both California and Federal obligations - - otherwise the procurement requirements of the two programs would be additive (for example, 53% for a 20% federal RPS). We therefore recommend that this sub-paragraph be modified as follows. RECs must be retired in WREGIS for RES compliance and may not be used to meet the requirements of ~~any federal, state or local~~ renewable procurement program of another state.

- *Subparagraph (d)(2)*

As written, this provision of the PDR would only allow RECs to be traded by 'regulated parties who are in compliance with the REC retirement requirements of section 97003.' Since the RES regulation applies only to California load-serving entities, it appears that this regulation would prohibit participation of both market intermediaries as well as owners of renewable facilities! WPTF doubts that ARB intends for such limited market participation, as broad participation is already permitted under the exiting CPUC RPS rules, and such broad participation is necessary to promote price transparency and the development of a liquid REC market.

To the extent this part of the regulation is intended to provide an additional incentive for regulated entities to comply with RES regulations, a requirement that regulated entities must be in compliance with REC retirement requirements in order to trade RECs through WREGIS is misplaced. Such a rule would mean that a regulated entity that fails to meet

³ For instance, CA currently does not have a mechanism to distinguish RECs in a fashion that recognizes the value of renewable resource diversity. CARB and the CPUC should work together to address this issue.

its RES obligation has no means of coming into compliance, because the entity would be prohibited from acquiring RECs. A more appropriate rule would require that participants in the REC market must comply with WREGIS registration and tracking requirements.

WPTF recommends that subparagraph (d)(2) be revised as follows: “RECs may be traded by regulated parties who meet WREGIS participation requirements. ~~are in compliance with the REC retirement requirements of section 97003.~~”

- *Additional concept issue on REC shelf life*

ARB has asked whether parties believe that the three-year shelf life of a REC adopted in CPUC Decision 10-03-021 should be incorporated into the RES regulations. WPTF does not object to a three-year REC life. However, current RPS rules currently allow for unlimited banking by regulated entities once RECs have been retired in WREGIS for California RPS compliance. In other words, if a California obligated entity retires 20,000 RECs in WREGIS and reports those for RPS compliance, but only has 10,000 obligation, the excess retirement reported can be used by the reporting entity for RPS compliance at any time in the future, although there are no provisions that allow the entity to trade that excess with any other party. If the RPS continues to allow for this ‘California banking’, the RES regulations should also.

Monitoring, Verification and Compliance (§97005)

- *Subparagraph (b)(1)(A)*

The PDR requirements for reporting and tracking need to be modified and/or clarified. First, while the regulation requires regulated entities to calculate *annual* RES progress in terms of procured and retired RECs, the compliance obligation is assessed on a multi-year basis, as described in Section 97003. Since compliance is required only on a multi-year basis, if annual reports are going to be required, the regulations need to clearly state that there are no compliance implications for reports submitted in the interim years. Moreover, the “RES Formula” does not state on what basis the determination of a party’s compliance with the RES will be made. We presume that this determination would be made based on a combination of a WREGIS report documenting the quantity of RECs retired by a party for a particular compliance interval and the appropriate documentation of the Party’s load.

ARB should revise this section to include a clear statement that the WREGIS documents are the definitive source of verified REC retirements, and indicate what source will be the definitive source of retail load for retail providers (i.e. CPUC data for IOUs).

- *Subparagraph (b)(1)(B)*

This PDR requires all regulated entities to submit procurement plans. ARB regulations must recognize that non-IOU retail providers conduct their procurement based on the needs of their customer base, and that the customer base is subject to change due to load migration. Moreover, these providers do not have the same type of customer recovery for their renewable investments that the IOUs have. Therefore, it is entirely appropriate and important for ARB regulations to recognize these differences that exist in the business

models of non-IOU retail providers and the IOUs, especially with respect to differences in reporting requirements and submission of procurement plans. Such distinctions exist with respect to RPS compliance, and those distinctions should be carried forward to RES compliance as well.

- *Subparagraph (e)*

WPTF does not object to the PDR's recordkeeping requirements. However, much of the requested information is confidential. We therefore recommend that ARB include a statement in the PDR that confidential business information will not be published, and will be subject to the same protection as provided by the CPUC under the RPS.

Enforcement (§97008)

The PDR states that violation of the RES requirements will be treated 'as a violation of an emission limit and calculated on a KWh basis. This suggests that penalties established under the GHG cap and trade program would apply for violations, but again this is not clear.

It is essential that the consequences for non-compliance with the RES obligations are clear and understood by all regulated entities. WPTF requests that the regulations provision on enforcement explain how non-compliance with the RES will be converted to an emission limit violation, and what specific penalties would apply.