State of California
AIR RESOURCES BOARD

Resolution 10-23

September 23, 2010

Agenda Item No.: 10-7-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or the Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the California Global Warming Solutions Act of 2006 (AB 32; Stats 2006, ch. 488, Health and Safety Code sections 38500-38599) declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California, and creates a comprehensive multi-year program to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020;

WHEREAS, section 38510 of the Health and Safety Code designates ARB as the State agency charged with monitoring and regulating sources of GHG emissions that cause global warming in order to reduce such emissions;

WHEREAS, section 38560 of the Health and Safety Code directs the Board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emission reductions from sources or categories of sources, subject to the criteria and schedules specified in Part 4 of Division 25.5 of the Health and Safety Code;

WHEREAS, in 2002, Senate Bill 1078 established the California Renewables Portfolio Standard (RPS) program which required retail sellers of electricity regulated by the California Public Utilities Commission (CPUC) to procure 20 percent of retail sales from renewable energy by 2017; local publicly owned electric utilities are encouraged, but not required, to meet the same goal;

WHEREAS, retail sellers of electricity regulated by the CPUC include electrical corporations or investor owned utilities (IOUs), community choice aggregators (CCAs), and electric serve providers (ESPs);

WHEREAS, the California Energy Commission (CEC) and CPUC have specific implementation roles under the RPS program;

WHEREAS, in 2006, Senate Bill 107, modified the RPS program by requiring retail sellers of electricity regulated by the CPUC to procure 20 percent of retail sales from renewable energy by 2010;

WHEREAS, in November 2008, Governor Schwarzenegger issued Executive Order S-14-08, establishing a renewable energy target of 33 percent renewable by 2020;

WHEREAS, after a public meeting on December 11, 2008, the Board approved the Climate Change Scoping Plan, which includes a GHG emission reduction measure to implement the goals of Executive Order S-14-08 and achieve a 33 percent renewable energy target by 2020;

WHEREAS, in September 2009, Governor Schwarzenegger issued Executive Order S-21-09, directing ARB, under its AB 32 authority, to develop a regulation by July 31, 2010, consistent with the 33 percent renewable energy target established in Executive Order S-14-08;

WHEREAS, Executive Order S-21-09 directed the ARB to regulate all California load serving entities, consult with the CPUC and CEC to ensure that the proposed regulation builds upon the RPS program, and consult with the California Independent System Operator (CAISO) and other load balancing authorities on the impacts on reliability, renewable integration requirements, and interactions with wholesale power markets in carrying out the provisions of the Executive Order;

WHEREAS, the staff has proposed a new regulation establishing a Renewable Electricity Standard (RES) for California wherein retail sellers of electricity must demonstrate, by 2020, that 33 percent of the electricity sold to their customers is generated from renewable energy resources;

WHEREAS, ARB staff conducted six public workshops regarding the proposed RES and participated in numerous other meetings with various stakeholders in order to include the public and affected stakeholders in the regulatory development process;

WHEREAS, ARB staff has prepared a document entitled "Staff Report: Initial Statement of Reasons for Proposed Regulation for a California Renewable Electricity Standard" (ISOR), which presents the basis and rationale for the proposed regulation and identifies the data, reports, and information upon which ARB relied;

WHEREAS, the ISOR and proposed regulatory language were made available to the public for at least 45 days prior to the public hearing to consider the proposed regulation;

WHEREAS, the Board has considered the impact of the proposed regulation on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, the Board has considered the community impacts of the proposed regulation, including environmental justice concerns;

WHEREAS, the California Environmental Quality Act (CEQA) and Board regulations at California Code of Regulations, title 17, section 60006 require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, CEQA allows public agencies to prepare a plan or other written documentation in lieu of an environmental impact report (i.e., a functional equivalent environmental document), once the Secretary of the Resources Agency has certified an agency's program pursuant to section 21080.5 of the Public Resources Code;

WHEREAS, pursuant to section 21080.5 of the Public Resources Code, the Secretary of the Resources Agency has certified that portion of ARB's program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans;

WHEREAS, the Board's regulations under ARB's certified program provide that prior to taking final action on any proposal for which significant environmental issues have been raised, the decision maker shall approve a written response to each such issue;

WHEREAS, although the Board recognizes its limited role in the siting, review, and approval of renewable generation projects, the Board can identify possible areas of concern and suggest measures that may lessen the impacts of those projects;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, in consideration of the ISOR, written comments, and public testimony it has received, the Board finds that:

> The proposed regulation meets the criteria set forth in section 38562 of the Health and Safety Code;
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> The proposed regulation is expected to reduce GHG emissions from California's electricity sector by about 12 to 13 $MMTCO_2e$ per year by 2020;
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> The proposed regulation is expected to reduce criteria and toxic air pollutant emissions in California by hundreds of tons per year by 2020, and is expected to have significant other co-benefits such as diversification of the current energy supply, creation of new green jobs, and promotion of California's energy security; The proposed regulation was developed in a public process, in consultation with the CEC, CPUC, CAISO, and affected parties through numerous public workshops, individual meetings, and other outreach efforts;

The proposed RES builds upon California's existing RPS program, to the greatest extent practicable, but does not supersede any obligations that apply to retail sellers of electricity under the existing RPS program;

The ongoing harmonization with the CPUC RPS program is essential to achieving the RES regulation objectives and ensuring market stability;

The CPUC has issued a proposed decision authorizing the use of renewable energy credits for compliance with the RPS program, including provisions for the use of Tradable Renewable Energy Credits (TREC);

It is appropriate to consider amendments to the RES regulation should the CPUC approve new requirements for the RPS program, particularly related to the use of TRECs, to ensure that ongoing harmonization between the two programs is appropriately maintained;

The benefits to human health, public safety, public welfare, or the environment justify the costs of the proposed regulation;

The economic impacts of the proposed regulation have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the ISOR;

The cost-effectiveness of the proposed regulation has been considered, and the regulation will achieve cost-effective GHG emission reductions;

The proposed regulation is consistent with ARB's environmental justice policies and will equally benefit residents of any race, culture or income level;

The reporting requirements of the proposed regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State;

No reasonable alternative considered, or that has otherwise been identified and brought to the attention of the ARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons and businesses than the proposed regulation;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that although the ISOR does identify possible significant impacts from construction and operation of renewable energy projects necessary to achieve compliance with the RES that may not be fully mitigated through permitting or future project-specific CEQA compliance, the Board does not have the authority to impose mitigation measures on these future projects and must rely on those agencies that will ultimately conduct the project level review and approve those projects to impose the necessary mitigation;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board adopts the Findings of Fact and Statement of Overriding Considerations attached to this Resolution as Attachment B;

NOW, THEREFORE, BE IT RESOLVED that, subject to the Executive Officer's approval of written responses to environmental issues that have been raised, the Board hereby approves for adoption new sections 97000, 97001. 97002, 97003, 97004, 97005, 97006, 97007, 97008, 97010, 97011, and 97012 of article 6, subchapter 10, chapter 1 of division 3, title 17, CCR, as set forth in the Initial Statement of Reasons, with the suggested modifications described in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to make the proposed regulation set forth in the Initial Statement of Reasons, with the suggested modifications set forth in Attachment A and such other conforming modifications as may be appropriate, and any additional supporting documents and information, available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as may be submitted during this period and shall make modifications as appropriate in light of the comments received.

BE IT FURTHER RESOLVED that the Executive Officer is the decision maker for the purposes of title 17, California Code of Regulations, section 60007; the Board directs the Executive Officer to prepare and approve written responses to all significant environmental issues that have been raised, and then to either: (1) return the proposed regulation to the Board for further consideration if he determines that such action is warranted, or (2) take final action to certify the final functional equivalent environmental document, including written responses to comments raising significant environmental issues, and take final action to adopt the proposed regulation with any conforming modifications that may be appropriate, and any modifications that are necessary to ensure that all feasible mitigation measures or feasible alternatives that would substantially reduce any significant adverse environmental impacts have been incorporated into the final action.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor the development of new renewable energy contracts and projects both within California and the region covered by the Western Electricity Coordinating Council and report back by December 31, 2011, and periodically thereafter, on the status of activity.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue to closely coordinate with the CPUC, CEC, and CAISO on the implementation of the RES program and the harmonization of the RES program with the RPS program.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor the ongoing CPUC proceeding related to authorization of the use of renewable energy credits for compliance with the RPS program and, no later than 30 days after the CPUC issues its decision, initiate a rulemaking to ensure continued harmonization of the two

programs, specifically incorporating provisions related to Tradable Renewable Energy Credits for all regulated parties under the RES regulation, and complete the rulemaking as expeditiously as possible.

I hereby certify that the above is a true and correct copy of Resolution 10-23, as adopted by the Air Resources Board.

Mary Alice Morency, Clerk of the Board

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## Identification of Attachments to the Board Resolution

**Attachment A:** Staff's Suggested Modifications to the Original Proposal, presented at the September 23, 2010 public hearing.

**Attachment B:** Findings of Fact and Statement of Overriding Considerations.