ATTACHMENT A

PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED REGULATIONS FOR A 33% RENEWABLE ELECTRICITY STANDARD

Staff's Suggested Modifications to the Original Proposal

TO BE PRESENTED AT THE SEPTEMBER 23, 2010 HEARING
OF THE AIR RESOURCES BOARD

Comments and Suggested Modifications to the Original Regulatory Proposal Set Forth in the Initial Statement of Reasons.

This document describes and explains the rationale for the more substantive changes to the originally proposed regulatory language. All proposed modifications will be made available to the public for a fifteen-day comment period prior to final adoption.

Section 97000. Purpose

Staff is proposing to add language to more clearly identify ARB's the authority to adopt and implement the proposed regulation.

Section 97001. Applicability

Staff is proposing to add language to clarify the regulation focuses solely on the RES and does not modify any provisions of the RPS program.

Section 97002. Definitions and Acronyms

Staff is proposing a number of modifications to the definitions section of the regulation to clarify language and adjust or clarify compliance provisions. The more substantive proposed modifications include the following:

(a)(4) Staff is proposing to extend the Compliance deadline from March 31 to June 1, following the end of each compliance interval, to allow regulated parties additional time to verify generation records and acquire any additional RES Certificates needed to comply with RES compliance interval requirements.

(a)(16) Staff is proposing to delete the "REC" definition to avoid confusion and potential conflict with the statutory RPS definition of a REC. Staff is proposing to create a "RES Certificate" definition in its place to serve as the compliance mechanism for the RES. This definition would identify the types of WREGIS Certificates eligible for RES compliance.

(a)(19) Staff is proposing to modify the "RES Qualifying POU Resource" definition to clarify applicability provisions.

Section 97003. Partial Exemption

Staff is proposing to modify subsection (a) to specifically exclude DWR and WAPA from the partial exemption provisions and clarify that partially exempt parties will need to demonstrate their eligibility for the partial exemption.

Section 97004. Renewable Electricity Standard Obligations

Staff is proposing to revise this section to reflect the use of RES Certificates as the compliance mechanism.

Staff is also proposing to modify the compliance requirements so that the initial compliance interval will no longer be an enforceable renewables requirement but will be used to monitor progress towards meeting renewables goals and incentivize over compliance for use in meeting future compliance intervals.

Staff is also proposing other minor clarifying changes.

Section 97005. Renewable Electricity Standard Requirements

Staff is proposing to include a new provision requiring any RES Certificates procured by regulated parties for compliance with the RES to be associated with generation occurring on or after January 1, 2010. This provision ensures that greenhouse gas and criteria pollutant emission reductions accounted for through implementation of the RES regulation result from actual generation from renewable resources and new renewable generation is built to meet the regulations renewable targets.

Subsection (d)(3). Staff is proposing to revise this subsection to clarify that RES Qualifying POU Resources may be used to meet up to 20% of a regulated party's 2010 retail sales for each year within a compliance interval.

Staff is proposing to add a new subsection to allow a regulated party that exceeds RPS requirements during calendar years 2010 and 2011 to carry over and use over-procurement for RES compliance. This provision would reward early action.

Section 97006. Monitoring, Verification and Compliance

Staff is proposing to modify the reporting provisions of this section to relieve the duplicative reporting between annual progress and compliance interval reports for years in which both reports are required and to provide additional clarification on information required to be submitted for each of the reports. Staff is also proposing to modify this section to require WREGIS verification reports to be provided in support of reported RES Certificate retirement.

Subsection (e). Staff is proposing to modify this subsection to require regulated parties potentially eligible for a partial exemption from the RES regulation to provide retail sales information to ARB in order to demonstrate their eligibility for the partial exemption.

Section 97009. Enforcement

Staff is proposing to add language to the enforcement section to clarify that CPUC regulated utilities will not be subject to dual penalties by the CPUC and ARB for potential violations of overlapping RPS and RES program requirements.

In addition, staff is proposing to add language that will provide additional specificity on how violations of the proposed RES regulation will be assessed. Staff will work with stakeholders and regulated entities to evaluate potential options and develop recommendations to address concerns raised over the potential for levying excessive penalties. Potential options that may be considered include, but are not limited to, removing language in the proposed regulation establishing a separate violation for each day, establishing a not to exceed penalty cap for strict liability or negligence, and establishing an alternate metric for determining penalty amounts.

Section 97011. Regulation Review

Subsection (b)(4). Staff is proposing to add language to this subsection to include an evaluation of RES Certificate costs and how well the RES Certificate market is operating. This evaluation will be included as part of the periodic updates to the Board established in Subsection 97011(a).