

State of California

**Public Utilities Commission
San Francisco**

MEMORANDUM

Date : July 2, 2010

**To : The Commission
(Meeting of July 8, 2010)**

**From : Traci Bone, Legal Division
Sara Kamins, Energy Division**

Subject : Request for Authorization to File Comments Regarding California Air Resources Board Proposed Regulations to Implement a 33% California Renewable Electricity Standard

RECOMMENDATION:

The Commission grants Energy Division Staff authority to file comments on the California Air Resources Board's proposed 33% Renewable Electricity Standard Regulations on behalf of the Commission.

OVERVIEW:

On September 15, 2009, Governor Schwarzenegger issued Executive Order ("EO") S-21-09, directing the California Air Resources Board (ARB) to adopt a regulation consistent with a 33% statewide renewable energy target. The EO requested that ARB, the CPUC, the California Energy Commission ("CEC") and the California Independent System Operator ("CAISO") collaborate in designing and implementing the regulation to ensure that the policy is harmonized with the current 20% Renewables Portfolio Standard ("RPS").

ARB issued its proposed regulations for a California Renewable Electricity Standard ("RES Regulations") on June 2, 2010. The RES Regulations would, among other things, implement a 33% renewable procurement requirement. Comments are due on the proposed RES Regulations by July 21, 2010.

Energy Division staff has worked collaboratively with ARB, CEC and CAISO staff to design the proposed regulation to ensure that the policy is harmonized with the current 20% RPS. Energy Division staff have provided ARB will multiple rounds of agency-to-

agency comments throughout the drafting process. Energy Division seeks to provide this next round of comments to ARB on behalf of the Commission through ARB's public comment process to provide all parties to the process the opportunity to understand and respond to the Commission's concerns regarding the proposed RES Regulations.

The comments would: (1) identify provisions in the proposed RES Regulation that are consistent with the existing 20% RPS; (2) identify provisions that conflict with existing law and the Commission's existing RPS Program; and (3) recommend changes to the RES Regulations to harmonize the proposed RES program with the existing 20% RPS program.

DISCUSSION:

The comments will identify a few provisions in the proposed RES Regulation that are harmonized with the 20% RPS Program. These include:

- Compliance metric: The RES compliance obligation is proposed to be measured in terms of renewable energy credits (RECs). A REC is associated with one megawatt-hour of eligible renewable energy. By utilizing the same fundamental compliance metric as the 20% RPS Program, the RES and RPS programs will be able to coordinate their rules and compliance verification and tracking methodologies, resulting in administrative streamlining.
- Applicability: The RES extends the mandatory renewable energy targets to the publicly-owned utilities ("POUs") and exempts very small electricity providers. The comments would support including the POUs in the RES, even though they are not obligated by the 20% RPS, because it creates a level playing field for all California electricity providers. The comments would also support exempting small entities from the RES since it is unrealistic to require the same rules for all regulated parties. For very small electricity providers, the relative cost of implementing the obligations is very high as compared to the amount of additional renewable energy that would be generated.

The comments would also address those portions of the RES Regulations which will create problems – including possible double counting, inaccurate compliance determinations and legal challenges – if the RPS and RES rules are not properly aligned. To remedy the problems that would result from these different program rules, the comments would recommend that the RES Regulations:

- Only regulate CPUC-jurisdictional electric retail sellers' renewable procurement above the 20% RPS requirement, and explicitly state that CPUC-jurisdictional regulated entities must meet the 20% RPS requirements before additional renewable energy procurement can count for the RES;

- Align monitoring, verification and compliance rules with the existing RPS Program processes. As written, ARB would determine compliance with the RES before the CEC has verified that the renewable energy claimed for compliance was generated and not double counted; and
- Use the existing definition of a REC. Although the RES regulation proposes to use the same compliance metric as the existing RPS – the REC - ARB defines a REC to include different attributes and to have different legal properties than the existing statutory definition. The differences in the programs' definitions of a REC are likely to create market uncertainty as well as administrative complexity in tracking compliance between the two programs.

The comments will urge ARB to make changes to the RES Regulations necessary to harmonize the RES and RPS Programs in order to avoid administrative complexity and regulatory uncertainty which are both likely to delay implementation of any renewable energy program.

CONCLUSION:

Energy Division requests Commission authorization to file public comments with ARB consistent with the description above.