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M E M O R A N D U M

to: CALIFORNIA ENERGY COMMISSION

from: MODESTO IRRIGATION DISTRICT
REDDING ELECTRIC UTILITY
TURLOCK IRRIGATION DISTRICT

subject: **DOCKET NO. 03-RPS-1078**
RENEWABLES PORTFOLIO STANDARD

date: JULY 8, 2011

Pursuant to the workshop notice issued by the California Energy Commission (Commission or CEC) on June 7, 2011, and the subsequent comment period extension issued July 1, 2011, Modesto Irrigation District (“MID”), Redding Electric Utility (“REU”), and Turlock Irrigation District (“TID”), collectively the “Utilities,” respectfully submit these initial Comments on issue prioritization, issue identification and options for issue resolution in connection with the Commission’s implementation of California’s newly passed Renewable Portfolio Standard (RPS) Law, SBX1 2. The Utilities appreciate the opportunity to submit these comments and look forward to working with the Commission to develop focused, balanced and cost-effective regulations.

The Utilities are each members of the California Municipal Utilities Association (CMUA), and join in the comments submitted in this Docket by CMUA on this date. MID and REU are also members of the M-S-R Public Power Agency and join in the comments submitted in this Docket by M-S-R on this date.

The Utilities

As California is for the first time requiring the Commission to adopt regulations for enforcement of RPS requirements for publicly owned utilities (POUs), the Utilities encourage the Commission to remember that many POUs are transitioning to the new 33% mandate from different starting

points, with different resource mixes and qualifying resources, and with varying potential cost impacts from these new legislative requirements.

MID, REU, and TID are local publicly owned electric utilities. MID and TID are irrigation districts located in the Central Valley, while REU is a municipal utility within the City of Redding. MID serves over 113,000 electric customers with a peak load of over 640 megawatts (MW). REU serves 43,000 customers with a peak load of 247 MW. TID serves about 100,000 electric customers with a peak load of approximately 600 MW. The Utilities maintain similar resource mixes, including hydroelectric, eligible renewable resources (energy defined as eligible under SBX1 2) and fossil fuel sources. In 2003, MID adopted its 20% by 2017 RPS policy and met about 18% of its retail sales with eligible renewable resources in 2010. MID expects to meet 27% of its retail energy sales with eligible renewable resources in 2011. REU's RPS policy of 20% by 2017 was adopted in 2002 and included large hydroelectric generation towards its compliance. REU recently revised its RPS policy in March 2011 by adopting the California Air Resources Board (CARB) Renewable Electric Standard, which would have allowed REU to continue to count large hydroelectric generation for up to 20% of its renewable goal. REU currently has long-term contracts to provide 29% of its energy from eligible renewable resources. TID adopted its current RPS Policy of 20% by 2017 in 2004 and reached that goal in 2010. TID is currently meeting 27% of its retail load with eligible renewable resources. In addition to the foregoing state-defined eligible renewable resources, the Utilities have ownership and/or contractual interests in large hydroelectric resources that meet up to 21 percent of their retail load. The Utilities also share similar challenges in meeting the 33% RPS, such as weather patterns, demographics and declining community economics.

A. **Role of the Energy Commission.**

As directed under SBX1 2, the role of the CEC is straightforward. Specifically, Section 29 of SBX1 2 enacts Public Utilities Code section 399.30, which requires POUs to adopt and implement renewable energy procurement plans that meet the 33% RPS goals, and directs the CEC to adopt regulations by July 1, 2011¹, "specifying procedures for enforcement" of the POU RPS obligations. (Pub. Util. Code section 399.30(n)).

As the CEC moves forward with the development of the regulations necessary to comply with the above directive, it is important to note that SBX1 2 also recognizes the existing POU governing board authority. For example, SBX1 2 specifies that each POU governing board has the authority to adopt and implement its own renewable energy procurement plan and targets, as well as its own program for enforcement of the RPS. (Pub. Util. Code section 399.30 (a)-(c), and (e)). POUs are also vested with the authority to adopt as part of their RPS implementation, rules permitting the POU to apply excess procurement in one compliance period to subsequent compliance periods, conditions that allow for delaying timely compliance of the RPS, and cost limitations for procurement expenditures. (Pub. Util. Code section 399.30 (d)). The CEC's role is to identify at a compliance point, whether the POU has met its compliance obligations. The

¹¹ Senate Bill 23 (Simitian) would extend compliance of this requirement to July 1, 2012.

CEC does not have the authority to direct the POU how to design or implement its RPS programs. As previously referenced, that role is exclusively defined and firmly established as that of the local governing boards of each POU.

Although SBX1 2 requires certain of these POU program measures to be “consistent with” the requirements set forth for investor owned utilities (IOUs), the legislation does not apply the California Public Utilities Commission (CPUC) directives to POUs. (See, e.g., Pub. Util. Code section 399.30 (p) stating that the CPUC has no authority or jurisdiction to enforce the RPS on POUs). The phrases “consistent with” and “in the same manner as” as laid out in the legislation do not require the CEC to apply the CPUC decisions or criteria to POUs. Nor do they preclude local governing boards from taking different approaches to implementation from CPUC-jurisdictional entities. While some RPS program elements, such as the RPS general compliance targets, are clearly defined in statute to be the same for POUs and IOUs, for other elements a “one size fits all” approach is not appropriate and not reflective of the inherent differences between POUs and IOUs. POUs are generally vertically integrated and have ownership of generation, transmission and distribution assets, while the IOUs generally contract for their RPS resources. POUs solicit the input of the local community they serve in order to assess the types and costs of various technology and ultimately the resource portfolio mix for which their community has an appetite. These local boards can distinguish and determine what are the most cost effective and appropriate resources for their individual needs, especially under the current economic conditions that the State and their individual communities are facing. In each case the reference “consistent with” or “in the same manner as” is accompanied by a cross reference. These cross references ensure that POUs and IOUs are following the same RPS program parameters, not that they are following identical paths to meeting these parameters. For example, in adopting its cost limitations under Pub. Util. Code section 399.30(d)(3), a POU must rely on its “most recent renewable energy procurement plan”, “procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources”, and “the potential that some planned resource additions may be delayed or canceled.” (See, Pub. Util. Code section 399.15(c)). However, in doing so the POU is not required to adopt the limit established by the CPUC.

The Utilities urge the Commission to draft regulations that recognize this fundamental principle; while the Commission’s role is to identify whether the POU has met its RPS obligations, the Commission does not have the authority to direct the POU how to meet its obligations or to require the implementation of the exact same programs as designed by the CPUC.

CEC staff mentioned at the June 17 workshop that they felt obligated to give the renewable market “certainty.” While SBX1 2 does provide that one of the long-term goals of the CEC “shall be a fully competitive and self sustaining supply of electricity generated by renewable sources”² the Utilities do not believe that the CEC should attempt to regulate the creation of market certainty, but rather it should let the natural laws of economic supply and demand foster a

² See Section 4, amending Section 25740.5 of the Public Resources Code in SBX1 2, at page 7.

competitive environment within the State to accomplish that goal. At the core, the POU's are driven to serve their local customer owners with the most efficient resources in a reliable and cost-effective manner, thus creating a market signal that should resonate within California's renewable energy resource market. As such, the CEC must focus on its statutory obligation to develop procedures for overseeing and monitoring POU compliance with their specific RPS implementation obligations pursuant to the regulatory framework and authority of SBX1 2. In essence the CEC's role is to design regulations that take a "snap-shot" of the POU procurement progress at each of the three compliance periods to determine if the POU's have or have not met their required RPS target.

B. Flexible Compliance Mechanisms

The flexible compliance mechanisms outlined in SBX1 2 are critical to the successful implementation of California's 33% RPS goal. These provisions were carefully structured in recognition that it will be necessary to balance environmental and health goals with economic and technological realities. The Utilities urge the Commission to structure its regulations to assess POU compliance with the RPS obligation within this context. The following provisions have been identified in SBX1 2 and should be priorities during this CEC proceeding:

1. Renewable Energy Credit Carryover:

The Utilities have taken steps to comply with their respective RPS policies adopted early on. While the Utilities appreciate that SBX1 2 allows for the grandfathering of contracts that were executed prior to June 1, 2010, ensuring durability in the shifting regulatory framework of the RPS, there have been times and will be times when the Utilities will be in excess of the newly established RPS procurement targets. The CEC must provide flexibility by allowing the POU's to carry over any prior and future excess renewable energy credits to future years for use with all compliance targets established by the law. This flexibility will provide a clear balance between durability, certainty and cost-effectiveness for the early action that POU's took in order to comply with the intent of the shifting RPS targets.

2. Cost Containment Limitation:

As mentioned above, the Utilities don't believe that the CEC's function is to set a cost containment limit for the POU's, but rather to define the parameters that each POU may rely on to set its individual limitation. Applying a cap to the POU cost containment mechanisms would thwart the market signals necessary to establish an efficient marketplace for the products that are supplied to meet demand. Costs at the local level will have to be monitored by the POU's local governing board as the POU strives to meet

the various compliance targets. The CEC regulations must be designed to recognize each POU's specific cost limitation parameters.

3. Extenuating circumstances:

When assessing compliance with the RPS, it is essential that general guidelines be identified for POUs to apply the criteria for delaying and/or waiving compliance obligations. Generation and transmission curtailments, along with unexpected, force majeure type events that have a material effect on the ability of an entity to receive renewable generation should be given primary consideration as extenuating circumstances for non-compliance. The Utilities would request that the CEC consider broad parameters for these guidelines.

4. 3rd party policies :

In addition to the above flexible compliance mechanisms explicitly identified in the legislation, there is also a need to address the various 3rd party policies that could hamper the Utilities' abilities to comply with the 33% RPS. For example, the Bonneville Power Administration (BPA) has enacted two policies that are impairing many California utilities from receiving the wind generation they contracted for in the early years³. The BPA Dispatcher Standing Order 216 (DSO 216) was implemented in 2009 and is causing wind generators to limit generation or curtail schedules when BPA runs out of imbalance reserves. The impact of this policy on intermittent resources, such as wind resources, was not contemplated when POUs were making significant good-faith investments in wind energy in the northwest, and has resulted in significant amounts of lost generation and power deliveries since its implementation.

BPA's recent Environmental Redispatch Policy was implemented by BPA in spring of 2011 and limits generation from wind generators in the BPA balancing area. This policy is different from the BPA DSO 216 in that the schedules stay whole as BPA serves the transaction with Federal hydropower, some of which is not recognized as a qualified renewable resources under SBX1 2. The Utilities believe that the effects of 3rd party policies should hold harmless the ability of a utility to comply with the RPS statute. If the above 3rd party policies stay in place, Utilities should not have to bear the cost of replacing generation lost due to these extenuating circumstances for which utilities have absolutely no control. While the Utilities have undertaken contracts to meet their compliance targets, these potential 3rd party events not only abrogate contractual certainty but can also cause a utility to miss a compliance target. The Utilities look forward to working with the Commission in exploring alternatives to deal with 3rd party

³ Modesto and Redding have had contractual interests in wind from Washington state since 2006. In 2009 TTD purchased the Tuolumne Wind Project, a 136.6 MW capacity wind farm, which it owns and operates in Washington state.

impacts, such as the above, that can enervate the efforts to meet the compliance targets of the publicly owned electric utilities.

5. Balancing Authority Variability:

The CEC should recognize that there is variability among balancing authorities. As stated above, a “one-size-fits-all” approach would not be prudent because there are operational variances that are specific to individual balancing authorities such as scheduling timelines and protocols, varying tagging procedures, etc.

C. Eligibility Requirements

While SBX1 2 identifies specific eligibility requirements for new resources, certain elements must be more clearly defined. For example, the definitions of “incremental energy”, “firmed and shaped”, and “unbundled REC’s”, along with the requirements on how to verify which compliance category a resource belongs to must be addressed during the CEC’s proceeding.

As stated previously, grandfathering of the POU’s existing contracts must be recognized. SBX1 2 states that “Any contract or ownership agreement originally executed prior to June 1, 2010 shall count in full towards the procurement requirements.” (Pub. Util. Code section 399.16(d)). Specific clarification is needed to ensure that grandfathered resources are essentially placed into their own “procurement bucket” and that the three procurement categories laid out in statute apply in a forward looking manner to an entity’s remaining obligation.

Further discussion on the portfolio content categories must also be prioritized. Specifically, in the June 17 workshop presentation, the CEC reiterated identified “conditions” for a POU selling renewable generation to an IOU, such as whether the POU has “adopted and implemented a renewable energy resources procurement plan that complies with the RPS” and if the POU “is procuring sufficient eligible renewable energy resources to satisfy the compliance period target, and will not fail to satisfy the target standard in the event that the REC is sold to the retail seller.” (Pub. Util. Code section 399.31). The Utilities again urge the CEC to recognize that the local governing boards are vested with the responsibility to manage the associated risks of RPS market participation and the potential for the inability to not comply with the RPS targets. Thus, the Utilities have presented several tools in these comments that will provide local boards with the flexibility necessary to achieve compliance with its RPS obligations in a reliable and cost-effective manner. The CEC’s attempt to direct the risk of the POU is out of the scope of its authority and could have the unintended impact of creating a less liquid market.

D. Enforcement

SBX1 2 mandates the CEC to “adopt regulations specifying procedures for enforcement” of the POU RPS obligations. In doing so the CEC is to “include a public process under which the Energy Commission may issue a notice of violation and corrections against a local publicly owned electric utility for failure to comply.” (Pub. Util. Code section 399.30 (n)). Inherent in this grant of authority is the obligation to define what will constitute a “violation.” The Utilities believe the CEC has discretion in drafting its regulations to provide a definition of “violation” that excludes certain defined circumstances. These exclusions may include non-compliance events triggered by inadvertent error. Further, the CEC should define any non-compliance of a de minimis nature (+/-5%) to not be a violation at all. The CEC should also consider the reasons for non-compliance to determine severity. Economic infeasibility could be part of why a POU may not be able to comply completely with the established compliance target. In addition, 3rd party impacts could be a reason for not being able to meet a compliance target. The potential for non-compliance exists and there could be valid reasons outside a POU’s control for a POU not having the ability to meet a specific RPS target. This flexibility is afforded to the CEC in the language of SBX1 2.

E. Procurement Plans and Reporting Requirements

The responsibility for a POU’s resource procurement strategy lies strictly with the local governing boards. POU’s know what resource mix is appropriate for the loads they serve.

At the workshop on the 17th, CEC Staff presented an example of the IOU Procurement Plan requirements. The requirements included the “assessment” of a variety of capacities to determine the “optimal” mix of renewable resources. The Utilities remind the CEC that SBX1 2 does not require the POU’s procurement plans to be identical to those determined by the CPUC for the IOUs.

The Utilities believe that their procurement processes and plans are transparent and that they have provided the CEC with access to a sufficient amount of POU procurement data through the IEPR, Power Source Disclosure, Power Content Label and the CARB’s Mandatory Reporting Regulation. The Utilities have collaborated with the California Municipal Utilities Association, the Northern California Power Authority and the Southern California Public Power Authority over the past several years to streamline these reporting requirements. The Utilities believe the CEC should and can utilize these existing reports for this new RPS program as these documents contain all relevant information the CEC will need for assessing the POU’s compliance under SBX1 2.

While comments made at the June 17 workshop referenced a “lack of clarity” as far as the transparency of the above filings, the Utilities encourage the CEC to take a fresh look at the information provided in the filings, as we believe that the Utilities have been crystal clear with the procurement strategies of renewable energy resources and there is no transparency issue.

If adjustments are required to existing processes this avenue should be prioritized over the creation of new and duplicative reporting.

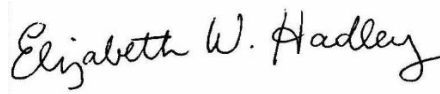
Conclusion

The Utilities are appreciative of the opportunity to comment on this important subject, and look forward to working with the CEC to craft the equitable, feasible and cost-effective regulations for POU implementation of the 33% RPS that preserve the authority of POU governing boards while allowing the CEC to accomplish their statutory obligations under SBX1 2. We look forward to participating in the upcoming workshops and meetings.

Respectfully submitted,



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