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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. 11-RPS-01**
RENEWABLES PORTFOLIO STANDARD

date: MARCH 30, 2012

Modesto Irrigation District (“MID”), Redding Electric Utility (“REU”), and Turlock Irrigation District (“TID”), collectively the “Utilities,” respectfully submit these comments on the California Energy Commission’s (Commission) “33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations” (Draft Regulation). The Utilities appreciate the opportunity to submit these comments and look forward to working with the Commission to develop a focused, balanced and cost-effective regulation.

The Utilities

MID, REU, and TID are local publicly owned electric utilities (POUs). 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 and fossil fuel sources. Each of the Utilities took early action following the passage of California’s initial renewable portfolio standard legislation, AB 1028, to integrate renewable generation into their resource mixes based on the direction of the Utility’s individual governing boards. The cost of these efforts has resulted in significant rate impacts for customers of the Utilities. For example, MID customers pay over 5% on their bills to cover the above-market

costs of eligible renewable resources in MID's resource mix. As a result of this early action, MID will be positioned to meet 28% of its retail energy sales with its eligible renewable resources starting in 2012. Likewise, REU currently has long-term contracts to provide 26% of its energy from eligible renewable resources and 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 26 percent of their retail load. The Utilities also share similar challenges in meeting the 33% RPS, such as weather patterns, demographics and below average community economics.

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. The Utilities offer the following comments as supplemental to those filed by CMUA.

General comments

Senate Bill 2 adopted in the first extraordinary session 2011 (SBx1 2) became effective December 10, 2011, adopting a statewide 33% renewable portfolio standard (RPS) and for the first time requiring the Commission to adopt regulations for enforcement of RPS requirements for POU's. The Utilities encourage the Commission to remember that many POU's 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.

The Utilities appreciate that the Commission is working to create a regulation that takes a balanced approach to implementing SBx1 2 mandates. SBx1 2 appropriately recognizes and preserves the local decision making authority of POU governing boards, while ensuring that certain RPS measures were interpreted consistently throughout the State. We are supportive of the Commission's efforts to tailor a program that recognizes a "one size fits all" approach cannot capture all of the distinctions amongst the POU's and that complete deference to the CPUC is in conflict with the intent of SBx1 2 (which requires that the Commission consider the differences between California's Investor Owned Utilities and POU's). The Utilities also support implementation of regulations that provide sufficient flexibility to address the long term and lumpy nature of electric resource planning and procurement.

Thus, the Utilities highlight the following areas in the Draft Regulation for the Commission's further refinement:

- "Excess" renewable energy credits (RECs) should be eligible for carryover on an annual basis.
- Reliance on renewable resources procured prior to June 1, 2010 shall not preclude the use of tradable (or unbundled) RECs up to the percentages permitted by SBx1 2.

- Pre-enforcement compliance procedures should be developed for technical and non-substantive failures.
- Additional unforeseen circumstances may create the need for a POU to utilize flexible compliance mechanisms.

The Utilities also believe certain clarifications and corrections are required to harmonize the Draft Regulation with current utility operational standards:

- Substitute electricity should be measured on a rolling 12-month basis rather than calendar year.
- A POU in compliance at the end of a compliance period is de facto in compliance with any reasonable progress obligation in the prior intervening years.
- Deference should be given to procurement and enforcement plans adopted by POU governing boards in compliance with SBx1 2.
- Reporting obligations should be streamlined.

In addition, the Utilities urge the Commission not to rush into finalizing the Draft Regulations without taking sufficient time to ensure that the concerns raised by the operational realities faced by POUs are addressed. Given that the statutory timeline for adoption of the regulation is moot, additional time should be used for the Commission to ensure that the regulation is accurate and effective.

Carryover of Excess Procurement

All RECs generated in excess of the prior compliance period obligation may be carried over, or banked, and applied to the next compliance period. (Section 399.30 (d)(1).) In addition, to effectuate this ability to carry over excess RECs between compliance periods while recognizing the limited 36-month life of a REC, carry over will also have to be permitted on an annual basis. The Utilities believe that for each interim year all eligible renewable resources procured above the annual measures outlined in 3204 (d) may be “banked” for application in the next year. For example, a Utility that serves 27% of its load with eligible renewable resources in 2014 shall be eligible to carry over 7% of its renewable target towards its 2015 measure, and so on.

The Utilities offer the following regulatory language change to make this clarification:

Section 3206 (a) (1) (D) POUs may accrue excess procurement only if the POU meets the criteria for reasonable progress as specified in Section 3204 (d)(~~2~~)(~~3~~).

1. *Excess procurement for the first compliance period is:*

$$\begin{aligned} & \text{Excess Procurement} \\ & = (\text{EP}_{2014} + \text{EP}_{2015} + \text{EP}_{2016}) \end{aligned}$$

$$-(0.20 \times (RS2011 + RS2012 + RS2013))$$

EPx = Electricity Products procured and retired for the specified year X.

RSx = Total retail sales made by the POU for the specified year X

2. Excess procurement for the second compliance period is:

Excess Procurement

$$=(EP2014 + EP2015 + EP2016)$$

$$-(0.20 \times RS2014 + 0.20 \times RS2015 + 0.25 \times RS2016)$$

3. Excess procurement for the second compliance period is:

Excess Procurement

$$=(EP2017 + EP2018 + EP2019 + 2020)$$

$$-(0.25 \times RS2017 + 0.25 \times RS2018 + 0.25 \times RS2019 + 0.33 \times RS2020)$$

4. Excess procurement within a compliance period is determined on an annual basis as follows:

Excess Procurement

$$=EPx - \% \times RSx$$

X = the year

% = 0.20 for 2011 through 2015, 0.25 for 2016 through 2019, 0.33 for 2020

Early Action Resources and Portfolio Content Categories

The Utilities believe the Draft Regulation correctly states that eligible renewable resources procured prior to June 1, 2010 are not required to fit into the Portfolio Content Categories. However, the Utilities suggest that additional clarification is needed to ensure that those Utilities with such resources are not precluded from using tradable (or unbundled) RECs to meet the RPS Procurement Requirements outlined in Section 3204. For example, a Utility that can satisfy its entire compliance obligation with pre-June 1, 2010, (or “early action”) resources should have the option to utilize Portfolio Content Category 3 resources allowing it to carryover the commensurate amount of early action generation for the following compliance period pursuant to Public Utilities Code section 300.30(d)(1).

The Utilities offer the following regulatory language change to make this clarification:

3202 (b) Procurement qualifying under Section 3202 (a)(3) of these regulations may be counted for compliance with the RPS without regard to the quantitative requirements for the use of any portfolio content category. Provided, however, that use of such procurement for compliance with the RPS shall not preclude application of any portfolio content categories in compliance with Section 3202. If any RECs from a contract signed prior to June 1, 2010, are unbundled and sold separately after June 1, 2010, the underlying energy may not be counted for compliance with the RPS, and the unbundled RECs must be counted in Portfolio Content Category 3, as defined in Section 3203 (c) of these regulations.

Compliance Process for Technical and Non-Substantive Failures

SBx1 2 directs the Commission to include in its implementing regulations, “a public process under which the Energy Commission may issue a notice of violation and correction against a local publicly owned utility for failure to comply with this article.” (Section 399.30 (n).) The Utilities believe that such a process should include a mechanism for POU’s to resolve technical and other unintentional compliance errors. Such a compliance error that is resolved in a timely manner would not be deemed a violation of the RPS mandates, and no enforcement referral would be issued. This approach meets the requirements of SBx1 2 and furthers State RPS policy in an efficient and effective manner. The goal is compliance not enforcement. Commission and utility resources are better spent achieving RPS objectives than in pursuing enforcement actions.

The Utilities do not at this time suggest specific language but urge the Commission to consider supplementing Section 3208 of the Draft Regulation with a pre-enforcement process geared at identifying and correcting technical and other unintentional compliance errors.

Flexible Compliance Mechanisms

While the Utilities appreciate that the Commission has laid out circumstances under which a POU may adopt the flexible compliance rules, the Utilities are concerned that the role the Commission has assumed conditioning such rules usurps authority clearly granted by SBx1 2 to the local governing boards. The Utilities understand that some POU’s may want the certainty that comes with the Commission’s preliminary review. However, the provisions of the Draft Regulation section 3206 (c) – (d) are burdensome and create the proverbial “traps for the unwary.” The Commission’s enforcement obligation cannot be interpreted to require review and approval of every minute exercise of the local governing board authority, direction or action. These sections should be deleted or, at a minimum, significantly revised to provide an optional safe – harbor against enforcement.

Time to Schedule Substitute Electricity

The Utilities recommend that the timing for scheduling substitute electricity used to firm and shape the electricity from the RPS-certified facility into the California balancing authority should be measured on a rolling 12-month basis rather than a calendar year. Consider that a calendar year “true up” is by default inaccurate and prone to over scheduling of the RPS generation. A Utility will always schedule a bit more than forecasted generation in December in order to ensure full credit for all RPS certified generation. This is problematic in that the Utility will ironically have to pay default emissions on substitute electricity over and above the RPS generation 2013 forward with the advent of the Cap and Trade program. A rolling 12-month true-up allows for a more measured approach without the issue of purposely overscheduling to gain full RPS credit and having to pay emissions.

This correction is easily incorporated into the Draft Regulations as follows:

Section 3203(b)(2)(D) The substitute electricity used to firm and shape the electricity from the RPS-certified facility must be scheduled into the California balancing authority within ~~the same calendar year as~~ 12 months from the date that the electricity from the RPS-certified facility is generated.

Local Governing Boards Measure Reasonable Progress

SBx1 2 sets RPS targets for each multi-year compliance period, however it does not provide for the establishment of specific targets to be met in the intervening years. Rather, the local governing board is to ensure that after the first compliance period sufficient quantities of eligible renewables are procured to “reflect reasonable progress” toward achieving the next end-period goal. (Section 399.30 (b)(2).) While the Utilities appreciate the optional methodologies that were outlined in Section 3204(d) for identifying reasonable progress, it should be clarified that each local governing board is authorized to define its own measure of reasonable progress within its RPS procurement plan, and, for POUs such as the Utilities that currently have resource commitments to meet the second compliance period obligation, such progress has already been made. A POU meeting its compliance obligation at the end of the 2nd and 3rd compliance periods is de facto in compliance with any reasonable progress measure for the preceding intervening years. Thus, an enforcement action related to achieving a specific renewable percentage in any intervening year would not be permissible or consistent with SBx1 2.

Deference to POU Procurement and Enforcement Plans

The Utilities each adopted and posted enforcement programs in compliance with SBx1 2. SBx1 2 provides the POUs’ respective governing boards to each develop the enforcement program that is best suited for its unique community. (Section 399.30(c).) The Commission authority to ensure POUs have met such adoption and the associated posting obligations cannot create new enforcement program requirements. Thus, the Utilities suggest that Section 3205(b)(1) be revised as reflected below and subsection (2) be deleted.

Section 3205(b)(1) The governing board of each POU must adopt ~~an enforcement plan or~~ program for RPS enforcement on or before January 1, 2012. Any POU that has not adopted an enforcement plan in compliance with Section 399.30(c) shall do so within 120 days after the effective date of these Regulations.

Streamline Compliance Reporting for POUs

The Utilities believe that the reporting obligations outlined in the Draft Regulation should be streamlined and consolidated. The Utilities believe that this can be accomplished either by a small addition to the Power Source Disclosure (SB1305) filing, or by simply cross checking the Power Transactions template required by ARB’s Mandatory Reporting Regulation (MRR) or WREGIS reports.

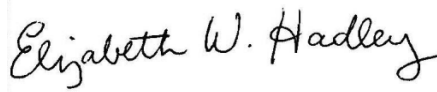
Conclusion

The Utilities appreciate the opportunity to comment on the Draft Regulation and look forward to working with the Commission to finalize an equitable, feasible and cost-effective 33% RPS that preserves the authority of the POU governing boards while allowing the Commission to accomplish its statutory obligations under SBX1 2. The Utilities welcome the opportunity to discuss with the Commission any of these important concepts and the operational realities that dictate our recommendation. Again, the Utilities urge the Commission to take time in adopting this regulation to ensure all stakeholder input has been received and thoroughly vetted.

Respectfully submitted,



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