

Sara Kamins
10-7-1

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION ON THE
CALIFORNIA AIR RESOURCES BOARD'S PROPOSED REGULATIONS TO
IMPLEMENT A CALIFORNIA RENEWABLE ELECTRICITY STANDARD**

TRACI BONE
Attorney
SARA KAMINS
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1288
Fax: (415) 703-2262
Email: tbo@cpuc.ca.gov

September 23, 2010

I. INTRODUCTION

The California Public Utilities Commission (“CPUC” or “Commission”) submits these comments in response to the proposed California Air Resources Board (“ARB”) Regulations to Implement a California Renewable Electricity Standard (“RES Regulations”). The proposed RES Regulations, as well as a Staff Report on Initial Statements of Reasons for a proposed 33% RES (“Staff Report”), a proposed regulatory order and supporting documents on the studies conducted to analyze the proposed RES Regulations, were posted as part of the June 2, 2010 Notice of Public Hearing.¹ The hearing set for July 22, 2010 was postponed to September 23, 2010, with written comments due electronically on September 22, 2010 or delivered in person at the September 23, 2010 hearing.²

In general, the CPUC is extremely supportive of the regulations to require 33% renewable energy from all retail providers of electricity in California by 2020. The CPUC has long been on record in support of that goal, and is pleased to support the ARB moving forward to adopt these regulations. CPUC staff also have participated collaboratively with ARB staff in their efforts to design a clear and straightforward regulation to accomplish this important policy objective shared among agencies with energy-related responsibilities in California. We appreciate the ability to participate in a cooperative and open dialogue with ARB staff and we file these comments in that spirit.

While we are filing these comments today with some recommendations for changes to further improve or clarify the regulations as published in June 2010, it is our understanding based on numerous agency-to-agency discussions that a number of revisions related to these recommendations are already planned to be made prior to the regulations being finalized. Thus, we offer these comments for transparency and clarity as the ARB considers its final regulations. CPUC staff were requested and authorized to file these comments by a vote of the CPUC at its July 8, 2010 public meeting.

¹ The June 2, 2010 Notice of Public Hearing is available at: <http://www.arb.ca.gov/regact/2010/res2010/res2010.htm>. Staff documents are available at: <http://www.arb.ca.gov/regact/2010/res2010/res2010.htm>.

² The Notice of Postponement is available at: <http://www.arb.ca.gov/regact/2010/res2010/respostponmentnotice.pdf>.

II. LEGAL AND PROCEDURAL BACKGROUND

On September 15, 2009, Governor Schwarzenegger issued Executive Order (“EO”) S-21-09, directing ARB “under its AB 32 Authority”³ to adopt a regulation consistent with a 33% statewide renewable energy target.⁴ The EO also directs ARB to work with the CPUC and the California Energy Commission (“CEC”) to ensure that the regulation “shall build upon the [existing 20%] RPS Program and shall regulate all California load serving entities...”⁵

The EO’s directives to CARB are consistent with the requirements of AB 32, which establish the requirements for any RES Regulations adopted by ARB. AB 32 emphasizes the Legislature’s intent that ARB avoid adopting “duplicative or inconsistent regulatory requirements.”⁶ AB 32 reiterates the objective to avoid duplicative or inconsistent regulatory requirements by expressly requiring CARB to consult with the CPUC “in the development of the regulations as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.”⁷

While in general the CPUC is extremely supportive of the overall direction of the ARB regulations, the Commission’s recommendations in these comments focus on areas where the proposed RES Regulations appear inconsistent with the provisions of the existing 20% RPS Program, and are likely to create administrative complexity and RPS market uncertainty. The Commission recommends changes to the proposed RES Regulations to align the RPS and RES programs to comply with the requirements of AB 32 in the most efficient and cost-effective manner possible. In summary, the CPUC recommends that the RES Regulations be revised to:

- For CPUC-jurisdictional Regulated Parties covered by the existing RPS statutory requirements, only impose the RES requirement as an increment above the existing 20% RPS requirement administered by the CPUC. This recommendation is suggested to avoid legal challenges and uncertainty, and to prevent overlaps between the two programs which may create administrative uncertainty, inefficiency, and inconsistency with the requirements of AB 32;

³ Assembly Bill (AB) 32 is codified at California Health and Safety (H&S) Code §§ 38500 – 38599.

⁴ EO at 1st Ordering Paragraph. The EO is available at <http://gov.ca.gov/executive-order/13269>.

⁵ California’s RPS Legislation is codified at California Public Utilities (Pub. Util.) Code §§ 399.11-399.20.

⁶ H&S Code § 38501(g) (emphases added).

⁷ H&S Code § 38562.

- Substitute references to “renewable energy credits (RECs)” with “WREGIS Certificates” since the latter will be used for RES compliance,
- Utilize the CEC RPS verification process to ensure WREGIS Certificates used for the RES are not double counted.

All of these points are discussed in more detail below. Additionally, Appendix A, attached hereto, provides a proposed redline to the draft RES Regulations.

III. DISCUSSION

A. Interaction between Statutory 20% RPS Program and the Proposed 33% RES Regulations

It is critical to the CPUC’s ongoing responsibility to implement the existing 20% RPS Program prescribed by statute that nothing in ARB’s RES Regulations interferes with or modifies our ongoing statutory requirements or obligations. This includes regulation of the renewable procurement of CPUC-jurisdictional electricity providers up to 20% of their retail sales.

CPUC, CEC, CAISO and ARB staff have been engaged in a constructive dialogue for several months to design the best approach to harmonize the existing statutory RPS requirements with proposed RES regulations, while providing the greatest value to California residents.⁸ With these principles in mind, these comments identify provisions in the proposed RES Regulations which appear incompatible with the existing 20% RPS program and could create market uncertainty and administrative complexity if not revised.

As written, the proposed RES program is not limited to the incremental procurement percentage between the existing 20% RPS Program and the proposed RES obligation percentages. The proposed RES Regulations would apply to all Regulated Parties’ renewable energy procurement up to 33% of their retail sales.⁹ Since the CPUC-jurisdictional Regulated Parties have an existing statutory obligation to obtain 20% renewables in compliance with the RPS Program, the CPUC recommends that ARB modify its regulations so that there is no overlap between the obligations of the RPS and the RES. The RES Regulations should only regulate CPUC-jurisdictional Regulated

⁸ See, e.g., § 38562(a).

⁹ See RES Regulations Sec. 97001(b).

Parties' renewable procurement above 20% of their retail sales; otherwise, regulated entities will be subject to different requirements under the two programs for the same procurement. The RES Regulations, as currently drafted, are in conflict with some portions of the existing RPS statute and will create implementation problems, such as double counting and incorrect compliance determinations.¹⁰ To remedy these issues in a relatively simple manner, we attach recommended redlines in Appendix A, primarily in §§ 97002(a)(22) and 97004.

1. Legal Constraints In Regulating the Existing 20% RPS Increment In the RES

ARB can only legally regulate the incremental procurement percentage for CPUC-jurisdictional Regulated Parties above the 20% RPS. This is also the greatest virtue of ARB's authority, since the CPUC is currently prohibited by law from requiring more than 20% RPS from its regulated entities. ARB is implementing the RES Regulation under the authority of AB 32, and the CPUC administers the existing 20% RPS Program under its statutory authority in Pub. Util. Code § 399.11-399.20. Pursuant to ARB's authority under AB 32 and rules of statutory construction, the RES Regulation must be a separate and incremental renewable energy program that is harmonized and does not conflict with the existing statutory RPS program. AB 32 explicitly directs ARB to not interfere with other agencies' existing authority. H&S Code § 38574 states, "Nothing in this part or Part 4 (commencing with Section 38560) confers any authority on the state board [i.e., ARB] to alter any programs administered by other state agencies for the reduction of greenhouse gas emissions." In addition, H&S Code §38593(a) says, "Nothing in this division affects the authority of the Public Utilities Commission." Finally, AB 32, as well as revisions to the RPS statutory framework in SB 107, were adopted by the Legislature in the same session in 2006. Had the Legislature intended to have AB 32 take precedence over the RPS Program, it could have spoken at that time and could have explicitly repealed or modified provisions in the RPS program. However, every indication in the language of AB 32 is that the Legislature intended for the 20%

¹⁰ The CPUC notes that this comment is limited to the regulation of CPUC-jurisdictional retail sellers.

RPS program to operate in parallel with AB 32, and thus the two programs will need to be harmonized so as not to conflict.¹¹

Implementation of the proposed RES Regulations, as currently written, would modify certain aspects of the existing RPS program because the RES obligations would apply to the renewable procurement up to 20% of retail sales for CPUC-jurisdictional entities. For example, the RES would modify the compliance deadline for complying with a 20% obligation,¹² authorize resources that are not RPS-eligible to be used to meet the 20% obligation,¹³ and allow RECs to be double counted in the RPS and RES programs.¹⁴ Accordingly, the CPUC recommends that ARB avoid the overlap in the RES regulations with the existing RPS Program.

2. Differences Between the RES and RPS That Are Likely To Lead to Practical Implementation Issues

As noted above, there are a few differences between the existing 20% RPS Program rules and the proposed RES Regulations. While the Commission is not necessarily opposed to any of these differences on a policy basis, certain problems may arise when trying to simultaneously implement both programs. If the RES Regulations are not modified to eliminate the overlap between the programs, these differences could result in double counting of WREGIS Certificates for compliance with the RES and/or the RPS, and in compliance irregularities. Some of the programmatic differences between the RPS and proposed RES include:

- Differences Among Obligated Electricity Providers: Only CPUC-jurisdictional retail sellers,¹⁵ which include investor-owned utilities (“IOUs”), energy service providers (ESPs”) and community choice aggregators (“CCAs”), are obligated to comply with the existing 20% RPS Program. The

¹¹ Compare AB 32, Stats. 2006, Ch. 488 with SB 107, Stats. 2006, Ch. 464.

¹² See RES Regulations Sec. 97002(a)(4) which changes the compliance deadline from December 31 of the compliance year to March 31 of the following year.

¹³ See RES Regulations Sec. 97002(a)(8).

¹⁴ See RES Regulations Sec. 97002(a)(22) and 97004. If CPUC-jurisdictional regulated parties have to comply both with a 20% RPS and a RES that has compliance obligations that overlap with the RPS, the same RECs will be used to comply with both programs. However, pursuant to Pub. Util. Code 399.13(b), the CEC is required to prevent double counting of electricity generated by an eligible renewable energy resource that is used to meet the RPS.

¹⁵ “Retail sellers” refers to the CPUC-jurisdictional electricity providers, as set forth in Pub. Util. Code § 399.12(g).

RES would include retail sellers, as well as publicly-owned utilities (POUs), community aggregators and electrical cooperatives.¹⁶

- Differences in Resource Eligibility Rules: The RES would expand the types of resources eligible for the RES as compared to the RPS. For example, under certain conditions the RES would allow the use of resources located outside California for which the energy is not delivered to California¹⁷ and technologies that are not considered “renewable” pursuant to statute for the existing 20% RPS, but which the POUs already claim for RPS compliance. Because different facilities will qualify as “renewable” under the RES, those facilities will generate WREGIS Certificates that are not eligible under the existing RPS program.
- Differences In Compliance Targets and Timetables: The RES would have multi-year compliance periods; the RPS has annual procurement targets.
- Differences In Flexible Compliance Rules: The RES, like the RPS, would allow WREGIS Certificates generated in one year to be banked for future compliance years. However, the RPS also allows borrowing so that a retail seller can defer a current year deficit for up to three years if certain excuses are provided to the CPUC. In that case, energy generated in the future years would be counted back to previous year compliance obligations. The RES does not allow borrowing since the multi-year compliance periods framework in and of itself provides similar compliance flexibility. However, this means that a retail seller may use different WREGIS Certificates to comply with each policy.

Because of these differences, WREGIS Certificates could be double counted since the flexible compliance rules do not align; gaming could result in a Certificate being used for multiple compliance years. It is also possible that a retail seller could be in compliance with one program and not the other, or that it could be out of compliance with both, and will thereby be double-penalized. This is true because the program overlap is compounded by the different resource eligibility criteria and different flexible compliance rules. A Regulated Party may procure WREGIS Certificates that are eligible for the RES but not for the RPS, and thus could be penalized for failure to comply with one program but not the other. This is not an optimal outcome since it would reduce the

¹⁶ The RES additionally requires the California Department of Water and Power and the Western Area Power Administration to report on renewable procurement.

¹⁷ Public Resources Code § 25741(b)(2)(B)(iii) requires electricity produced by an RPS-eligible resource that has its first point of interconnection to the Western grid outside California to deliver its energy to an in-state location.

credibility of both programs. It would also make straightforward assessment of statewide renewable progress, which we believe is a goal of all of the relevant agencies, difficult.

Similarly, a Regulated Party could be in compliance with the RPS and not the RES since the flexible compliance rules differ. Consider an entity with a 20% RPS target in 2014 and a 20% RES target for the overlapping 2012-2014 compliance period. If the entity does not retire sufficient WREGIS Certificates to meet the RPS obligations, it could use borrowing to satisfy the RPS deficit, but would be subject to penalties for RES noncompliance. Both situations and other combinations of facts could additionally result in double counting of RECs and other administrative complexity.

B. WREGIS Certificates Are the Appropriate Compliance Metric For the RES Program

To harmonize the RES and RPS programs, Sections 97002(18) and 97004 of ARB's RES Regulations propose to measure compliance in terms of renewable energy generation. In previous drafts of the proposed regulation, ARB had considered implementing an emissions reduction metric as the compliance criteria, but ultimately proposed the same metric as the RPS Program – renewable energy generation. The CPUC strongly supports this decision because only through use of the same fundamental compliance metric can the RES and RPS programs effectively coordinate their rules and compliance verification methodologies.

The CEC uses the Western Renewable Energy Generation Information System ("WREGIS") to track, verify and prevent double counting of renewable energy generation for the RPS Program. A "WREGIS Certificate" represents all of the renewable and environmental attributes from one megawatt-hour (MWh) of electricity generation from a renewable energy generating unit registered with WREGIS. The WREGIS system creates exactly one Certificate per MWh of generation that occurs from a registered generating unit.¹⁸ WREGIS is the regional tracking system for California's RPS Program, for voluntary renewable programs, and for many other state renewable programs in the West. The RES Regulations would similarly use WREGIS to track

¹⁸ See revised WREGIS Certificate definition at http://www.wregis.org/uploads/files/106/WREGIS%20Certificate%20Definition%20modification_FINAL%2012%208%2008.pdf

compliance so regulated parties will be required to submit a certain amount of WREGIS Certificates to comply with both programs.¹⁹

1. The RES Regulations Should Eliminate References To RECs

For purposes of the RPS Program, each MWh of RPS-eligible renewable energy is associated with one renewable energy credit (REC).²⁰ A REC must be bought by an RPS-obligated electricity provider to claim ownership over the renewable attributes of eligible generation and must be surrendered to demonstrate compliance with the policy. A REC is defined by RPS statute to represent “all renewable and environmental attributes associated with the production of electricity from the [RPS-eligible] resource.” Further, RECs are defined by statute as “a certificate of proof, issued through the accounting system established by the Energy Commission ... that one unit of electricity was generated and delivered by an eligible renewable energy resource.”²¹ The tracking system that the CEC uses is WREGIS. RPS-eligible RECs are tracked in the WREGIS system as WREGIS Certificates and are marked as RPS-eligible.

In the June 2010 draft RES Regulation, ARB is proposing a new definition of a REC.²² We understand that, in response to our interagency discussions, ARB is considering a change to the regulatory language on this point, but include these comments here for clarity and transparency. The draft REC definition in the RES Regulation as of June 2010 is neither consistent with the existing statutory definition of a REC nor the definition of a WREGIS Certificate.²³ There are several substantive differences in the definitions, including:

- In statute and in the WREGIS Certificate definition, a REC represents the renewable and environmental attributes associated with one MWh of RPS-eligible energy. A REC is a certificate of proof that the eligible energy was generated and

¹⁹ See proposed RES Regulations § 97002(18): “‘RES Obligation’ means the number of WREGIS certificates required to be retired to demonstrate compliance with the requirements of section 97004.”

²⁰ See Appendix B for the statutory definition of a REC.

²¹ Cal. Pub. Util. Code § 399.12(f)(1).

²² ARB’s proposed definition at § 97002(a)(16) of the RES Regulations states: “Renewable Energy Credit or REC” means one MWh of electricity generated by an eligible renewable energy resource. A REC does not include an emission reduction credit issued pursuant to Health and Safety Code section 40709. A REC also does not include any allowance issued pursuant to a cap and trade or similar program. A REC does not constitute property or a property right. ARB reserves the right to alter or amend the definition of a REC as it is used for demonstrating compliance with this Article.

²³ See the following link for the WREGIS Certificate definition in the WREGIS Operating Rules: http://www.wregis.org/uploads/files/106/WREGIS%20Certificate%20Definition%20modification_FINAL%2012%208%2008.pdf

is not the actual energy. In ARB's proposed regulation, a REC represents the MWhs of generation, and not the green attributes.²⁴

- The generation resources that count as "eligible" under the RPS and RES are different, and thus, different facilities will create RECs under each program.
- By statute, a REC can not be generated for contracts signed before January 1, 2005 unless the contract explicitly contains terms and conditions specifying the ownership of the RECs. Also, RECs can not be created for qualifying facility (QF) contracts executed after January 1, 2005.²⁵
- The RES regulation states that "A REC does not constitute property or a property right" whereas the statutory definition of a REC is silent on this issue.

The CPUC recommends that ARB eliminate all references to RECs in its RES Regulation because the term is not necessary for compliance with the RES. As stated previously, the RES Obligation (§ 97002[18]) is in terms of WREGIS Certificates associated with RES-eligible resources, and not RECs. Also, pursuant to § 97002(8) and § 97005, WREGIS Certificates can come from any of the three types of resources that are eligible for the RES: 1) RPS-eligible resources, 2) RPS-eligible resources minus the delivery requirements, or 3) RES Qualifying local publicly owned electric utility (POU) Resources.²⁶

The CPUC is concerned that multiple definitions of a REC will create significant legal and practical problems for ARB's regulations and for the renewables market. Such inconsistency could lead regulated entities to seek clarification of their compliance obligations in the courts. Also, it would require each RPS contract to contain two different definitions of the same term. Ultimately, if ARB keeps its new definition of a REC, including the provision that it is not a property right, renewable energy developers may not be able to finance their projects because of the unclear value of a tradable REC.

The CPUC has identified no practical or legal reason that it is necessary to create a new definition of a REC, and many reasons for why it would be inappropriate. Therefore, the CPUC recommends that ARB modify the RES Regulations as set forth in the redline to the RES Regulations provided as Appendix A. The redlines specifically associated with this issue are set forth in RES Regulations Sections 97002(a)(13), (16),

²⁴ In Proposed Regulation Order § 97002(a)(16), a REC means "one MWh of electricity generated by an eligible renewable energy resource."

²⁵ Pub. Util. Code §§ 399.16(a)(5) and (6).

²⁶ See description of RES Qualifying POU Resources at § 97002(14)

(19), (22), (26), 97004, and 97005. In some instances, this may include substituting the word "REC" with "WREGIS Certificate" or simply eliminating the reference entirely. Again, it is our understanding based on interagency conversations that these revisions are already being considered for incorporation into the final regulation.

C. The RES Regulation Should Utilize The CEC Verification Process To Ensure That WREGIS Certificates Used For The RES Are Not Double Counted

The proposed RES regulation requires each Regulated Party to submit WREGIS data on the number of Certificates it retired to meet its RES Obligation for each compliance interval, in order for ARB to determine RES compliance.²⁷ The CPUC recommends that ARB instead use CEC-verified data to make compliance determinations. While the CEC does use WREGIS data to verify renewable procurement claims, the CEC-verified data is independently verified and, as required by statute, is the source that the CPUC uses to make RPS compliance determinations. The CEC publicly reports this data in an annual verification report. The CPUC suggests that using self-reported data, as currently contemplated in the draft regulations, rather than independently verified information, could make compliance determinations difficult and potentially inconsistent. CPUC staff pledge to work collaboratively with the CEC and ARB staff to determine the best way to ensure consistency and commonality to compliance and enforcement determinations needed for both the RPS and the RES.

In addition, if our suggested change to eliminate the potential for overlap and confusion between the RES and RPS programs is not implemented, ARB will have no choice except to align its Monitoring, Verification, and Compliance rules²⁸ with the RPS processes for verification and compliance determinations. This includes using the CEC-verified generation data as well as the compliance reports that CPUC-jurisdictional Regulated Parties are required to submit to the CPUC within 30 days after the CPUC receives the CEC's verification report. It will be necessary to utilize the information in the RPS compliance reports to prevent double counting and incorrect compliance determinations if some Regulated Parties must attain 20% both under the RPS and RES rules. For example, a regulated party could report to ARB that WREGIS Certificates

²⁷ See RES Regulations Sec. 97006(d).

²⁸ See RES Regulations Sec. 97006.

generated in 2014 apply to the 2012-2014 RES compliance period, but tell the CPUC that the WREGIS Certificates generated in 2014 were earmarked and apply to the party's 2011 RPS targets. Issues such as these could be resolved by integrating the RES obligation into the existing RPS compliance reports. There are many risks of incorrect or inconsistent RES compliance calculations if ARB attempts to determine compliance with the RES without the CEC also determining whether the WREGIS certificates are verified for the RPS and applied to the appropriate compliance year.

We appreciate and concur with ARB's desire, reflected in its Staff Report, to "enforce the requirements of the RES, in cooperation with CEC and CPUC, to ensure that all regulated parties are in compliance."²⁹ To make this possible, we will need to ensure that the RES and RPS compliance processes are aligned. Also, in order to make this a reality, ARB may need to add more time into its compliance reporting schedule to use CEC-verified data to make compliance determinations. The Commission believes that the benefits of such alignment and the extra time it may take outweigh the drawbacks since it will significantly reduce the risk of incorrect compliance determinations and enhance our collective ability to understand the actual level of renewable electricity delivered to consumers in California.

IV. CONCLUSION

The Commission appreciates the opportunity to comment publicly on ARB's proposed RES Regulations. We also very much appreciate the collaborative and open process of interagency discussions that our staff have had with ARB staff on the development of this regulation. As discussed in more detail above, our priority, consistent with AB 32, the EO, and ARB's stated preference (as set forth in the Staff Report), is for the RES Regulations to be harmonized and coordinated with the existing 20% RPS program so that both programs will provide consistent and appropriate incentives to build more renewable energy and reduce California's impact on climate change in the most efficient and cost-effective manner possible.

²⁹ Staff Report at ES-11.

As set forth above, many provisions in the proposed RES Regulations harmonize well with existing statutes and 20% RPS program rules. We have also identified several areas where some additional improvement and clarification is needed. As the agencies move forward to implement the RES Regulations, we expect that further collaborative work will be needed to continue to harmonize our programs and activities as the RES program matures. We look forward to continuing to work collaboratively and effectively with ARB, the CEC and the CAISO in this important effort.

Respectfully Submitted By:

TRACI BONE
Attorney
SARA KAMINS
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1288
Fax: (415) 703-2262
Email: tbo@cpuc.ca.gov

September 23, 2010

Appendix A

Proposed Redlines To ARB's Proposed Regulation RES Regulation Order

Subchapter 10. Climate Change Article 6. California Renewable Electricity Standard

§ 97000. Purpose

The purpose of this regulation is to reduce greenhouse gas emissions associated with the generation of electricity.

NOTE: Authority cited: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511, Health and Safety Code. Reference: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38590, 38592, 38596, 38597, 39600, 39607, 39607.4, and 41511.

§ 97001. Applicability

- (a) The provisions of this Article shall be known as the Renewable Electricity Standard or RES. Nothing in this Article shall be construed to alter or amend the requirements of the Renewables Portfolio Standard Program or the rights, privileges created, the duties or obligation imposed by that program.
- (b) The provisions of this Article apply to all Regulated parties, except as provided in sections 97003 and 97004.

NOTE: Authority cited: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511, Health and Safety Code. Reference: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38590, 38592, 38596, 38597, 39600, 39607, 39607.4, and 41511.

§ 97002. Definitions and Acronyms

- (a) For the purposes of this Article, the following definitions apply.
 - (1) **“California Department of Water Resources”** means the department within the California Resources Agency, established by section 120 of the Water Code, responsible for California’s regulation and management of water use.
 - (2) **“Community aggregator”** means a community aggregator as defined by Public Utilities Code section 366.1(b).
 - (3) **“Community choice aggregator”** means a community choice aggregator as defined by Public Utilities Code section 331.1.

- (4) **“Compliance Deadline”** means March 31 of the year following the end of each compliance interval.
- (5) **“Electric service provider”** means an electric service provider as defined by Public Utilities Code section 218.3.
- (6) **“Electrical cooperative”** means an electrical cooperative as defined by Public Utilities Code section 2776.
- (7) **“Electrical corporation”** means an electrical corporation as defined by Public Utilities Code section 218.
- (8) **“Eligible renewable energy resource”** means a generating facility participating in the WREGIS tracking system that is:
- (A) ~~certified as eligible for California’s RPS program pursuant to Public Utilities Code section 399.13;~~
 - (B) ~~Meets the criteria of the California RPS program, excluding electricity delivery requirements, as determined by ARB; or~~
 - (C) ~~Is a RES Qualifying POU Resource as defined in, and limited by, this Article.~~
- (9) **“Executive Officer”** means the Executive Officer of the California Air Resources Board, or his or her designee.
- (10) **“Large hydroelectric generation”** means a hydropower generating facility with a 30 MW or larger generating capacity and which otherwise does not meet the definition of a small hydroelectric facility as described under Public Utilities Code section 399.12; and/or is not recognized as an eligible resource for the RPS program as set forth in Public Utilities Code section 399.11 et seq.
- (11) **“Local publicly owned electric utility”** means a local publicly owned utility as defined by Public Utilities Code section 224.3.
- (12) **“Megawatt-hour or MWh”** means a unit of energy equivalent to one megawatt of electricity supplied for one hour.
- (13) **“Procure or procurement”** as related to renewable energy means an ownership or contractual investment to acquire the physical electrical output of an eligible renewable generating resource, and/or the acquisition of a ~~REC~~ WREGIS Certificate.
- (14) **“Publicly Owned Utility or POU”** means a local publicly owned electric utility as defined in this Article.
- (15) **“Regulated Party”** means any of the following:

- (A) Local publicly owned electric utility;
- (B) Electrical corporation;
- (C) Electric service provider;
- (D) Community choice aggregator;
- (E) Electrical cooperative;
- (F) Community aggregator;
- (G) California Department of Water Resources; and
- (H) Western Area Power Administration.

~~(16) “Renewable Energy Credit or REC” means one MWh of electricity generated by an eligible renewable energy resource. A REC does not include an emission reduction credit issued pursuant to Health and Safety Code section 40709. A REC also does not include any allowance issued pursuant to a cap and trade or similar program. A REC does not constitute property or a property right. ARB reserves the right to alter or amend the definition of a REC as it is used for demonstrating compliance with this Article.~~

(17) “Renewables Portfolio Standard or RPS” means the Renewables Portfolio Standard” as set forth in Public Utilities Code section 399.11 et seq.

(18) “RES Obligation” means the number of WREGIS certificates required to be retired to demonstrate compliance with the requirements of section 97004.

(19) “RES Qualifying POU Resource” means a renewable energy resource as defined in section 97002(a)(8)(C), whose electrical generation was both approved by the POU’s Governing Board and reported to the California Energy Commission, as contributing towards the POU’s RPS eligible generation on or after January 1, 2003, and prior to September 15, 2009, and:

(A) The POU owned the facility prior to or after January 1, 2003, and prior to September 15, 2009, or

(B) Procured the electricity from the facility by contract executed prior to September 15, 2009; and:

(1) The POU procured electricity and RECs WREGIS Certificates, or RECs WREGIS Certificates without electricity; and

(2) The electricity was procured under the terms of the contract in effect on or before September 15, 2009, and not during any contract term extended or modified after that date.

- (3) Upon expiration of a procurement contract under subsection (B) above, ~~RECs~~ WREGIS Certificates procured from a RES Qualifying POU Resource shall no longer be eligible for compliance with the RES and shall be replaced with ~~RECs~~ WREGIS Certificates from an eligible renewable energy resource under subsection 97002(a)(8)(A) or (B).
- (20) **“Responsible Official”** means an officer of the Regulated Party having the authority to sign on behalf of the Regulated Party and bind the Regulated Party for all purposes regarding compliance with this Article.
- (21) **“Retail end-use customer”** means a residential, commercial, agricultural, industrial, or other electric customer who receives electricity to be consumed as a final product (not for the purpose of resale).
- (22) **“Retire or retired”** means to transfer a WREGIS certificate associated with a ~~REC as defined herein~~, to a WREGIS “retirement subaccount” and thereby committed the certificate to be used for compliance with the ~~RPS~~ and/or RES.
- (23) **“Western Area Power Administration”** refers to the power marketing administration within the U.S. Department of Energy for the 15 state region within the central and western United States.
- (24) **“Western Electricity Coordinating Council or WECC”** means the regional entity responsible for coordinating and promoting bulk electric system reliability in the Western Interconnection serving all or part of the 14 Western States and portions of Mexico and Canada.
- (25) **“Western Renewable Energy Generation Information System or WREGIS”** refers to the independent, renewable energy tracking system implemented for the region covered by the Western Electricity Coordinating Council.
- (26) **“WREGIS Certificate”** means a WREGIS certificate as defined in the WREGIS operating rules in effect at the time of the adoption of this Article, representing a ~~REC~~ all renewable and environmental attributes from one MWh of electricity from a renewable energy generating facility.
- (b) For the purposes of this Article, the following acronyms apply.
- (1) **“ARB”** means the California Air Resources Board.
- (2) **“CAISO”** means California Independent System Operator.
- (3) **“CEC”** means California Energy Commission.

- (4) "CPUC" means California Public Utilities Commission.
- (5) "DWR" means the California Department of Water Resources.
- (6) "kWh" means kilowatt-hour.
- (7) "MWh" means megawatt-hour.
- (8) "POU" means local publicly owned electric utility.
- ~~(9) "REC" means renewable energy credit.~~
- (10) "RES" means Renewable Electricity Standard.
- (11) "RPS" means Renewables Portfolio Standard.
- (12) "WAPA" means the Western Area Power Administration.
- (13) "WECC" means Western Electricity Coordinating Council.
- (14) "WREGIS" means Western Renewable Energy Generation Information System.

NOTE: Authority cited: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511, Health and Safety Code. Reference: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38590, 38592, 38596, 38597, 39600, 39607, 39607.4, and 41511.

§ 97003. Partial Exemption

- (a) The provisions of this Article, with the exception of subsection 97006(e), shall not apply to a Regulated Party that had annual sales of electricity to retail end-use customers of 200,000 MWh or less, averaged during calendar years 2007 through 2009.
- (b) A Regulated Party that is partially exempted from the requirements of this Article under subsection (a) shall demonstrate continued eligibility for the exemption pursuant to section 97006(e).
- (c) A Regulated Party that had been partially exempted from the requirements of this Article under subsection (a), and whose sales to retail end-use customers exceed 200,000 MWh in any calendar year after 2009, shall no longer be partially exempted from the requirements of this Article as of January 1st of the next calendar year, notwithstanding sales to retail end-use customers less than 200,000 MWh in any subsequent year. A Regulated Party no longer partially exempt under this section shall fully comply with the requirements of this Article.
- (d) A Regulated Party formed after September 15, 2009, shall not be eligible for a partial exemption under this section.

NOTE: Authority cited: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511, Health and Safety Code. Reference: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38590, 38592, 38596, 38597, 39600, 39607, 39607.4, and 41511.

§ 97004. Renewable Electricity Standard Obligations

- (a) RES Obligation for Regulated Parties

Except as provided in Section 97003, each Regulated Party (other than DWR and WAPA) shall retire an amount of WREGIS certificates sufficient to demonstrate compliance with the Regulated Party's RES Obligation for each compliance interval. Compliance intervals and the associated ~~REC~~ RES percentages are specified in Table 1. WREGIS certificates retired for the purpose of demonstrating compliance with the RES Obligation for each compliance interval shall be retired no later than the Compliance Deadline for each compliance interval.

The RES obligation for POUs and electrical cooperatives shall be calculated as follows:

$$RES\ Obligation = \text{Sum of sales to retail end-use customers for the compliance interval} \times \text{the RES}\% \text{ percentage for the compliance interval.}$$

The RES obligation for CPUC-jurisdictional Regulated Parties (electrical corporations, energy service providers and community choice aggregators) shall be calculated as follows:

$$RES\ Obligation = \text{Sum of sales to retail end-use customers for the compliance interval} \times \text{the RES}\% \text{ percentage} - 20\%.$$

Table 1. Compliance Intervals and RESC Percentages

Compliance Intervals	RESC Percentage
2012 through 2014	20
2015 through 2017	24
2018 through 2019	28
2020 and annually thereafter	33

(b) RES Obligation for Loss of Partial Exemption

- (1) A Regulated Party no longer exempt under section 97003, shall annually retire WREGIS certificates from eligible renewable energy resources, by March 31 after the end of each calendar year pursuant to the following formula:

$$RES\ Obligation = \text{Total sales to retail end-use customers in MWh} - 200,000\ MWh$$

If the calculated RES Obligation is less than zero, then there is no RES Obligation for that calendar year. No part of the exemption threshold shall be banked or traded as a ~~REC~~ WREGIS Certificate.

- (2) When a previously exempt Regulated Party's RES Obligation calculated under subsection 97004(b)(1) equals or exceeds a RES Obligation calculated under subsection 97004(a) for the applicable compliance interval, the Regulated Party shall comply with subsection 97004(a).

(c) RES Option for Regulated Parties with Large Hydroelectric Generation

- (1) A Regulated Party receiving greater than 67 percent of its electricity used for sales to retail end-use customers from hydroelectric generation that does not meet the eligible renewable energy resources definition of this Article, and which was procured by ownership or contract executed prior to September 15, 2009, shall have a RES Obligation equivalent to the amount of sales to retail end-use customers not met by the hydroelectric generation, by the Compliance Deadline for compliance interval, as specified in Table 1.

*RES Obligation = Total sales to retail end-use customers in MWh
– sales to retail end-use customers from hydroelectric generation
in MWh.*

- (2) A Regulated Party that chooses the RES compliance option under subsection 97004(c)(1), shall notify ARB in writing of its intent to comply with the requirements of this Article pursuant to this subsection by December 31, 2011. The decision to comply with the RES Obligation under subsection 97004(c)(1) cannot be withdrawn or amended once made.

- (d) No part of this section 97004 shall apply to or create any obligation on the part of DWR or WAPA.

NOTE: Authority cited: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511, Health and Safety Code. Reference: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38590, 38592, 38596, 38597, 39600, 39607, 39607.4, and 41511.

§ 97005. Renewable Electricity Standard Requirements

- (a) RECs WREGIS Certificates must be tracked by the WREGIS system to be eligible to satisfy the requirements of section 97004. Consistent with the definition of "eligible renewable energy resource" in section 97002(a)(8), RECs WREGIS Certificates used for compliance with this Article may only be acquired from:

- (1) A generating facility certified as eligible for California's RPS program pursuant to Public Utilities Code section 399.13; or

- ~~(2) An eligible renewable energy resource that meets all requirements of California's RPS program, excluding electricity delivery requirements, as determined by ARB; or~~
 - (23) A RES Qualifying POU Resource, for those POU's that meet the provisions of section 97002(a)(19).
- (b) Use of WREGIS certificates
- (1) WREGIS certificates must be retired in WREGIS to be eligible for demonstrating RES compliance.
 - ~~(2) WREGIS certificates retired to meet California's RPS program compliance may also be used to demonstrate compliance with this Article.~~
 - (3) Exclusive use
 - (i) Except as allowed by federal law ~~provided in section 97005(b)(2) above~~, a WREGIS certificate retired to demonstrate compliance with this Article may not also be used to meet the regulatory or voluntary requirements of any other federal, state, or local program ("secondary program").
 - (ii) In the event that a Regulated Party has retired or attempts to retire a WREGIS certificate to demonstrate compliance with this Article and also to meet a regulatory or voluntary requirement of a secondary program, the WREGIS certificate will be deemed ineligible for any use under this Article at the time such certificate is dedicated to meet such requirement of a secondary program.
- (c) RECs WREGIS Certificates procured from a RES Qualifying POU Resource may be used by the initial POU owner or procurer for up to the amount of its RES Obligation equal to 20 percent of its retail sales to end-use customers during calendar year 2010.
- (d) *Banking and Trading of* RECs WREGIS Certificates used to comply with the RES. For purposes of meeting a RES Obligation, RECs WREGIS Certificates may be banked and traded subject to the following limitations:
- (1) A REC WREGIS Certificate may be retained or traded for a period of up to three calendar years from the date WREGIS issued the certificate, including the certificate issuance year, or until a REC WREGIS Certificate has been retired into a WREGIS retirement subaccount, whichever occurs first.

- (2) A REC WREGIS Certificate must be moved to a WREGIS retirement subaccount within three calendar years from the date WREGIS issued the certificate, including the certificate issuance year, to be used towards a RES Obligation. A REC WREGIS Certificate placed in a retirement subaccount that is not used to meet a compliance requirement under section 97004, may be banked without limit to meet a future RES Obligation.
- (3) RECs WREGIS Certificates generated or procured from a RES Qualifying POU Resource may be banked by the original REC WREGIS Certificate owner. RECs WREGIS Certificates generated or procured from a RES Qualifying POU Resource may not be sold or traded to any other entity.
- (4) RECs WREGIS Certificates generated or procured by a Regulated Party operating under the partial exemption in subsection 97003, are not eligible for sale, banking or trading.

Nothing in this subsection (d) shall be construed to limit the use, banking, or trading of RECs WREGIS Certificates not used to meet RES Obligations under this Article.

NOTE: Authority cited: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511, Health and Safety Code. Reference: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38590, 38592, 38596, 38597, 39600, 39607, 39607.4, and 41511.

§ 97006. Monitoring, Verification, and Compliance

- (a) *WREGIS Verification.* Each Regulated Party, except those exempted by section 97003 and DWR and WAPA, shall register with WREGIS and maintain compliance with all WREGIS requirements.
- (b) *Filing of Achievement Plans.* By July 1, 2012, each Regulated Party, except those exempted by section 97003 and DWR and WAPA, shall submit an achievement plan to ARB for the overall 2020 RES target containing the following information:
 - (1) Regulated Party Information
 - (A) Entity name, contact name, mailing address, phone number, and email address;
 - (B) Name of Responsible Official for entity; and
 - (C) Entity WREGIS account identification number.
 - (2) Achievement Plan Information
 - (A) The applicable compliance subsection under section 97004;
 - (B) A plan and procurement strategy, including any known procurement or project development activities by contract and

resource type, sufficient to demonstrate how the Regulated Party plans to achieve and maintain the 33 percent RES requirement by 2020.

- (c) *Filing of Annual Progress Reports.* Beginning July 1, 2013, and July 1st of each year thereafter, each Regulated Party, except those exempted by section 97003 and DWR and WAPA, shall submit the following information for the prior calendar year to ARB:
- (1) Regulated Party Information
 - (A) Entity name, contact name, mailing address, phone number, and email address;
 - (B) Name of and contact information for Responsible Official for entity; and
 - (C) Entity WREGIS account identification number.
 - (2) RES Annual Progress Information
 - (A) Number of WREGIS certificates retired for reporting year by facility identification number; and
 - (B) Amount of sales to retail end-use customers for reporting year.
- (d) *Filing of Compliance Interval Reports.* By July 1, 2015, July 1, 2018, July 1, 2020, and on July 1st annually thereafter, each Regulated Party, except those exempted under section 97003 and DWR and WAPA, shall submit the following information for the preceding compliance interval to ARB:
- (1) Regulated Party Information
 - (A) Entity name, contact name, mailing address, phone number, and email address;
 - (B) Name of Responsible Official for entity; and
 - (C) Entity WREGIS account identification number.
 - (2) RES Compliance Information
 - (A) The applicable compliance subsection under 97004;
 - (B) Total sales to retail end-use customers during the compliance interval;
 - (C) RES Obligation for the compliance interval;
 - (D) Number of WREGIS certificates retired during the compliance interval for the purpose of demonstrating compliance with the RES Obligation for that compliance interval; and
 - (E) Number of WREGIS certificates retired between the end of the compliance interval to the Compliance Deadline for the purpose of demonstrating compliance with the RES Obligation for the preceding compliance interval.
 - (3) Project Status Report

A project development status report on any project development activities, including site control, permitting status, financing status, interconnection progress, and transmission access during the next compliance interval, consistent with the achievement plan submitted under 97006(b) above.

- (4) **RES Obligation Deficiency**

In the event that a Regulated Party's compliance interval report, filed under subsection (2) above, indicates that the RES Obligation was not met, the Regulated Party shall also submit the following:

 - (A) Documentation of the RES Obligation deficiency, expressed in MWh; and
 - (B) A schedule to meet the shortfall within the current year.

- (e) A Regulated Party partially exempted pursuant to section 97003 shall report to ARB by July 1, 2013, and July 1st of each year thereafter, its total sales to retail end-use customers for the prior calendar year, in MWh.

- (f) *DWR and WAPA Reporting.* Beginning July 1, 2013, and July 1st of each year thereafter, DWR and WAPA shall submit the following information for the prior calendar year to ARB:
 - (1) **Information Requirements**
 - (A) Contact name, mailing address, phone number, and email address; and
 - (B) Name of and contact information for Responsible Official for entity;

 - (2) **Electricity Procured or Generated**
 - (A) For each contract or transaction engaged in for the purchase of electricity, specify the amount of electricity procured or generated, the generator fuel type, and the name and location of the entity or power pool from which the electricity was purchased; and
 - (B) For each owned source used to generate electricity, specify the total amount of electricity generated, the name and location of the generator, and the generator fuel type.

 - (3) **Electricity Used or Sold**
 - (A) Identify the total amount of electricity used to convey, pump, and store water, or to serve individual water delivery contracts;
 - (B) For each contract or transaction engaged in for the sale of electricity to retail end-use customers, specify the total amount of electricity sold, the name and location of the generator or source of sold power, the generator or contract source fuel type, and the name and location of the entity to whom the electricity was sold; and

- (C) For each contract or transaction engaged in for the sale of electricity not reported pursuant to subsection (B) above, specify the total amount of electricity sold, the name and location of the generator or source of sold power, the generator or contract source fuel type, and the name and location of the entity to whom the electricity was sold.
- (g) *Recordkeeping Requirements.* All Regulated parties must retain copies of all information and records required by this Article or necessary for verifying the accuracy of any information required by this Article or included in the Regulated Party's applications, or reports required by this Article for no less than seven years. A Regulated Party shall allow the inspection and duplication of such information and records or provide such information and records within 30 days of a written request received from the Executive Officer or designee.

NOTE: Authority cited: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511, Health and Safety Code. Reference: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38590, 38592, 38596, 38597, 39600, 39607, 39607.4, and 41511.

§ 97007. Certification of Eligible Renewable Energy Resources

- (a) An Eligible renewable energy resource may be certified by any of the following:
- (1) The CEC as meeting the eligibility requirements for the RPS program;
 - (2) The CEC under an interagency agreement with ARB, as meeting eligibility requirements for the RPS program, except as to any delivery requirement;
 - (3) The CEC under an interagency agreement with ARB for a RES Qualifying POU Resource using the criteria of section 97002(a)(19); or
 - (4) The Executive Officer, his/her designee, or a third party contractor under contract with ARB, using the same criteria that would be used by the CEC under (2) or (3) above.
- (b) Applicants seeking certification of a renewable energy resource for eligibility under the existing RPS program shall file the application in accordance with that program's requirements.
- (c) Applicants seeking certification of a generating facility for eligibility under this Article shall file the application with the Executive Officer using a form or forms approved by the Executive Officer. The Executive Officer may enter into an interagency agreement with the CEC or a third party contractor to review and make recommendations as to certification and verification of the generating facility for eligibility.

NOTE: Authority cited: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511, Health and Safety Code. Reference: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38590, 38592, 38596, 38597, 39600, 39607, 39607.4, and 41511.

§ 97008. Interagency Cooperation

The Executive Officer may enter into memoranda of understanding or interagency agreements with appropriate parties, including the CEC and CPUC, to assist in the implementation of the processes, procedures, and requirements set out in this Article.

NOTE: Authority cited: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511, Health and Safety Code. Reference: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38590, 38592, 38596, 38597, 39600, 39607, 39607.4, and 41511.

§ 97009. Enforcement

- (a) *Penalties.* Penalties may be assessed for any violation of this Article pursuant to Health and Safety Code section 38580.
- (b) *Violations.* A violation of the requirements of this Article shall be deemed to result in an emission of an air contaminant.
 - (1) Each day or portion thereof that a Regulated Party violates or remains in violation of a requirement of this Article is a separate violation. Each day or portion thereof that any report required by this Article remains unsubmitted, is submitted late, or contains incomplete or inaccurate information, shall constitute a separate violation of this Article.
 - (2) If a Regulated Party fails to retire a sufficient number of WREGIS certificates to meet its RES Obligation by the date specified in section 97004, there is a separate violation of this Article for each required WREGIS certificate that has not been retired by the Compliance Deadline. There is also a separate violation for each day or portion thereof after the Compliance Deadline that each required WREGIS certificate has not been retired.

NOTE: Authority cited: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511, Health and Safety Code. Reference: Sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38590, 38592, 38596, 38597, 39600, 39607, 39607.4, and 41511.

§ 97010. Treatment of Confidential Information

Information submitted pursuant to this Article may be claimed as confidential. A Regulated Party shall designate such information as confidential at the time it is