

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF A PROPOSED REGULATION FOR A CALIFORNIA RENEWABLE ELECTRICITY STANDARD

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of a new regulation to reduce greenhouse gas (GHG) emissions from the electricity sector by implementing a renewable electricity standard.

DATE: July 22, 2010

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., July 22, 2010 and may continue at 8:30 a.m., July 23, 2010. This item may not be considered until July 23, 2010. Please consult the agenda for the meeting date and time, which will be available at least 10 days before July 22, 2010, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of California Code of Regulations, title 17, division 3, chapter 1, subchapter 10, article 6, California Renewable Electricity Standard, sections 97000, 97001, 97002, 97003, 97004, 97005, 97006, 97007, 97008, 97009, 97010, 97011, and 97012.

Background:

Over the last decade, California has implemented several laws and policies to expand the use of renewable energy and reduce GHG emissions from the electricity sector. These policies are outlined below.

Senate Bill 1078 (Sher, Chapter 516, Statutes of 2002): This law established the California Renewables Portfolio Standard (RPS), which required retail sellers of electricity (electrical corporations {investor owned utilities}, community choice aggregators, and electric service providers) to procure 20 percent of their retail electric sales from renewable resources by 2017. The local publicly owned electric utilities (POUs) were encouraged, but not required, to meet the same goal. The bill delegated

specific implementation roles to the California Energy Commission (CEC) and the California Public Utility Commission (CPUC).

Energy Action Plans I (2003) and II (2005): In 2003, CEC, CPUC, and the Conservation Financing Authority (now defunct) adopted an Energy Action Plan to present a single, unified approach to meet California's electricity and natural gas needs. The Plan recommended accelerating the RPS deadline for 20 percent to 2010. The second Energy Action Plan, adopted in 2005 to reflect the policy changes and actions of the ensuing two years, recommended an accelerated goal of 33 percent renewables by 2020.

Executive Order S-3-05 (2005): In June 2005, Governor Schwarzenegger signed Executive Order S-3-05 calling for the State to reduce GHG emissions to 1990 levels by 2020 and to 80 percent below 1990 levels by 2050. The 2020 goal was established to be an aggressive, but achievable, mid-term target and the 2050 goal represents the level scientists believe is necessary to reach levels that will stabilize our climate.

Senate Bill 107 (Simitian, Chapter 464, Statutes of 2006): This bill modified the RPS Program by requiring retail sellers of electricity (investor owned utilities, community choice aggregators, and electric service providers) to procure 20 percent of retail sales from renewable energy by 2010 as recommended in the *Energy Action Plan I*.

Assembly Bill 32 (Núñez, Ch. 488, Statutes of 2006): This law, referred to as the California Global Warming Solutions Act of 2006, required the Board to develop a plan to reduce GHG emissions in California to 1990 levels by 2020. Among other provisions, the plan must achieve the maximum technologically feasible and cost-effective reductions in GHG emissions from sources or categories of sources of GHGs by 2020.

Executive Order S-14-08 (2008): In November 2008, Governor Schwarzenegger signed Executive Order S-14-08 to accelerate the RPS target to 33 percent renewables by 2020, as recommended in the *Energy Action Plan II*.

Climate Change Scoping Plan (2008): In December 2008, the Board approved the Climate Change Scoping Plan (Scoping Plan or Plan) as required by Assembly Bill 32 (AB 32). This law sets forth a comprehensive reduction strategy that combines market-based regulatory approaches, other regulations, voluntary measures, fees, policies, and other programs to reduce California's GHG emissions to 1990 levels by 2020. The Plan identified electricity generation (which includes both in-state and out-of-state generation) as the second largest contributor to California's GHG emissions. The Plan also identified a number of measures to reduce GHG emissions from California's electricity sector, with large estimated reductions coming from implementation of the goals of Executive Order S-14-08 to achieve 33 percent renewable energy by 2020.

Executive Order S-21-09 (2009): This Executive Order, signed by Governor Schwarzenegger on September 15, 2009, directed the ARB, under its AB 32 authority, to adopt a regulation consistent with the 33 percent renewable energy target

established in Executive Order S-14-08. ARB was directed to adopt the regulation by July 31, 2010. As specified in Executive Order S-21-09, ARB:

1. May consider different approaches that would achieve the objectives of the Executive Order based on a thorough assessment of such factors as technical feasibility, system reliability, cost, GHG emissions, environmental protection or other relevant factors;
2. Shall work with the CPUC and the CEC to ensure that a regulation adopted under authority of AB 32 builds upon the RPS Program and regulates all California load serving entities, including investor-owned utilities, publicly-owned utilities, direct access providers, and community choice aggregators;
3. May delegate to CPUC and CEC any policy development or program implementation responsibilities that would reduce duplication and improve consistency with other energy programs;
4. Shall consult with California Independent System Operator (CAISO) and other load balancing authorities on, among other aspects, impacts on reliability, renewable integration requirements and interactions with wholesale power markets in carrying out the provisions of the Executive Order; and
5. Shall establish the highest priority for those resources that provide the greatest environmental benefits with the least environmental costs and impacts on public health.

The proposed regulation satisfies the directives of Executive Order S-21-09, as well as the implementation of the 33 percent renewables measure in the Scoping Plan.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

The proposed regulatory action was developed in consultation with CEC, CPUC, and CAISO. The proposed California Renewable Electricity Standard (RES) requires the State's sellers of electricity to demonstrate, by 2020, that 33 percent of the electricity sold to their retail end-use customers was generated from renewable energy resources. Increasing the portion of electricity supplied from qualifying renewable resources will reduce GHG emissions by displacing electricity produced by fossil fuel-fired electrical generating facilities.

The RES builds upon the existing California RPS Program and would establish an RES obligation that is determined by multiplying a utility's total retail electricity sales by the percentage of those sales that must come from renewable generation. Compliance with the RES obligation is demonstrated by retirement of Western Renewable Energy Generation Information System (WREGIS) certificates. WREGIS certificates document the generation of renewable energy. The credit given for such generation is called a renewable energy credit, or REC. A REC represents one megawatt-hour (MWh) of

energy generated by an eligible renewable resource. RECs will be tracked using WREGIS certificates. As stated above, these certificates represent proof that one MWh of renewable energy was generated by a renewable energy facility. Entities that are subject to the regulation would comply with the percentage of electricity sales requirement if the number of WREGIS certificates retired at the end of the compliance period is equal to, or greater than, the percentage required during that period.

To the greatest extent possible, the proposed regulation utilizes the structure, provisions, policies, and implementation mechanisms established by CEC and CPUC for the existing California RPS Program. The primary areas where the proposed regulation expands upon or diverges from the RPS Program are as follows:

- Holding the POUs to the same compliance obligations and dates as the investor-owned utilities (IOUs);
- Providing a compliance exemption threshold for the smallest utilities;
- Establishing multi-year compliance intervals; and
- Providing more flexible REC trading options to achieve GHG reductions and increase the potential availability of renewable resources. Staff's analysis supports flexible trading options. These options allow compliance at a lower cost and do not have a significant impact on utilities securing in-state vs. out-of-state resources.

The proposed regulation does not supersede the obligations that apply under the existing RPS program. A renewable generating facility that is certified by the CEC as an eligible renewable resource under the RPS will also be considered as meeting the renewable generation requirements under the proposed regulation.

Applicability

The proposed regulation would affect over 60 private and public entities including seven IOUs, eight electric service providers, and approximately 50 POUs and rural electric cooperatives. The regulation refers to these entities as the regulated parties.

Standards

The regulation would establish minimum standards that obligate a regulated party to provide a specific percentage of its total electricity sales to retail end-use customers from renewable resources by certain dates. In order to achieve the 33 percent renewables requirement by 2020, the proposed regulation would phase-in the requirement to increase the amount of electricity from eligible renewable resources over an eight-year period, starting in 2012. The tiered schedule consists of compliance intervals, each with a specified percentage of retail sales that must be generated by eligible renewable energy resources. A regulated party's compliance is demonstrated by retirement of WREGIS certificates in an amount equivalent to the RES obligation for the applicable compliance interval. Compliance with the interim standards is not

assessed until after the end of each compliance interval; however, a regulated party must measure, track, and report its status annually.

Partial Exemption

The RES obligations and compliance intervals of the proposed regulation do not apply to regulated parties that had annual sales of electricity to its retail end-use customers of 200,000 MWh or less averaged over calendar years 2007 through 2009. However, regulated parties that qualify for this partial exemption are still required to comply with certain recordkeeping and reporting provisions in order to demonstrate continued eligibility for the exemption.

Provisions Governing Use of Renewable Energy Credits

RECs reflecting generation from eligible renewable resources must be registered in and tracked by WREGIS. WREGIS issues a uniquely numbered certificate for each MWh of electricity generated by a facility registered in the system, tracks the ownership of certificates as they are traded, and retires the certificates once they are used to avoid double counting and double claims. WREGIS certificates used for compliance with the RES must be retired in WREGIS and may not be used to meet the regulatory or voluntary requirements of any other federal, state, or local program. However, a REC used for compliance with the California RPS would count toward compliance with the RES.

Banking and Trading of Renewable Energy Credits

The regulation would provide a mechanism for banking and trading of RECs. RECs that are not used by a regulated party to meet a current compliance obligation may be banked and applied toward that party's RES obligation in subsequent years or may be traded to other parties. RECs may be traded for a limited time from the date the WREGIS certificate was created and the WREGIS certificate documenting the REC must be moved to a retirement subaccount at the end of this limited time period. WREGIS certificates placed into a WREGIS retirement subaccount that are not used to meet a current RES obligation have an unlimited banking life towards meeting future RES obligations. RECs from non-RPS eligible resources held by POU's may be banked in a retirement subaccount by the original owner but cannot be sold or traded to another entity. A regulated party operating under the partial exemption may not sell, bank, or trade RECs. It should be noted that these restrictions apply to how WREGIS certificates are used to meet a RES obligation under the RES Program. They do not limit the use, banking, or trading of RECs that are not otherwise used to meet the regulation.

Recordkeeping and Reporting

The regulation would require a regulated party to submit an annual progress report, starting in 2013, and a compliance interval report during the subsequent year that immediately follows the end of the compliance period.

The annual report must include information about the regulated party and provide information about the regulated party's progress toward the RES obligation achieved over the prior calendar year.

The regulation would also require a regulated party to submit a compliance interval report following the end of a compliance interval. The compliance interval report must include information about the regulated party and provide sufficient information to determine whether the regulated party has demonstrated compliance with its RES obligation over the preceding compliance period. This information includes, but is not limited to, total retail sales to end-use customers over the compliance interval, the number of WREGIS certificates retired for the purpose of demonstrating compliance with the RES obligation, and the applicable subsection under which the regulated party calculated its RES obligation.

Additional information is required if the compliance interval report indicates that the RES obligation was not met.

Regulation Review

The regulation would require that at least three reviews be conducted to evaluate the effectiveness of the RES program. These reviews would occur in 2013, 2016, and 2018, and would be done in consultation with CEC, CPUC, and CAISO. The reviews will determine the need for program modifications and will evaluate whether any adjustments to the compliance schedules are necessary to minimize costs and maximize benefits for California's economy, improve and modernize California's energy infrastructure, maximize potential GHG and criteria pollutant emissions reductions, and maintain electric system reliability. Opportunities to harmonize the program with any federal, regional, or other state renewable portfolio standard programs or REC markets will also be considered. The reviews will be conducted using a public process and results will be presented to the Board.

Environmental Impacts:

Staff estimates that the proposed regulation would reduce GHG emissions by displacing fossil-fueled electricity generation in the Western Electricity Coordinating Council (WECC) region consistent with implementing a 33 percent renewables requirement. Overall, renewable generation produces less criteria pollutant and toxic emissions per unit of electricity output than the fossil-fuel generation it will displace. Therefore, the regulation is expected to provide an air quality benefit by reducing statewide emissions of criteria and toxic air pollutants. Certain renewable technologies, however, may

decrease these benefits and may contribute to localized impacts due to their variable nature and the need to back-up these technologies with fossil fuel-fired generation to meet demand. However, the proposed regulation is expected to result in an overall net benefit to California.

A more detailed discussion of these air quality impacts, as well as other environmental impacts, can be found in the environmental chapter of the Staff Report.

Economic Impacts:

The proposed regulatory action is considered a major regulation since the estimated costs to California business enterprises will exceed \$10 million. Overall, the RES is expected to result in a slight reduction in job growth in the State. The cost of the program is expected to be passed on to electricity consumers through increased rates. However, the analysis indicates that most new renewable projects will be built in-State leading to an increase in jobs in the renewable energy sector.

A detailed discussion of these impacts can be found in the economic impacts chapter of the Staff Report.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations that mandate the reduction of GHG emissions through a renewables portfolio standard. However, there are two bills before Congress that would establish a federal-level combined efficiency and renewable electricity standard that would require each retail electricity supplier to supply an increasing percentage of its demand each year from a combination of electricity savings and renewable resources.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The ISOR is entitled, "Initial Statement of Reasons for the Proposed Regulation for a California Renewable Electricity Standard."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on July 22, 2010.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified below, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. David Mehl, Stationary Source Division, Energy Section Manager, at (916) 323-1491, or Mr. Gary Collord, Air Pollution Specialist, at (916) 324-5548.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, and Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533.

The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are also available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2010/res2010/res2010.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

For the purposes of this analysis, all regulated parties are treated as businesses. POU's, however, have characteristics common to both businesses and public agencies. In the context of this regulation, it is the business aspects of the POU's activities and the acquisition and sale of electricity that are affected. The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Costs to State Government and Local Agencies

The ARB Executive Officer has determined that the proposed regulatory action would not create costs or savings, as defined in Government Code sections 11346.5(a)(5) and 11346.5(a)(6), to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary costs or savings to any State or local agencies.

Costs to Businesses and Private Individuals

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB has determined that representative private persons and businesses may be affected by the cost impacts from the proposed regulatory action. Pursuant to Government Code section 11346.5(a)(7)(C), the Executive Officer has made an initial determination that the proposed regulatory action may have a significant statewide adverse economic impact

directly affecting businesses, but is expected to have little or no effect on the ability of California businesses to compete with businesses in other states. To put the impacts of the proposed regulation into context, the higher costs associated with additional renewable electricity are estimated to translate into a six percent increase, on average, in monthly electricity bills in 2020 for households and businesses.

ARB staff has considered proposed alternatives that would lessen any adverse economic impact on businesses. The alternatives that staff considered are described in more detail in the Staff Report. ARB staff invites you to submit proposals as part of the public comment period. Submission may include the following approaches for consideration:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. However, the proposed regulatory action would affect the creation or elimination of jobs within the State of California. Specifically, the proposed regulatory action is expected to create jobs by increasing employment in certain business sectors, but will also eliminate jobs in other sectors resulting in a slight decrease in job growth overall.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, ARB must determine that no reasonable alternative considered by ARB, or that has otherwise been identified and brought to the attention of ARB, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Additional information on economic impacts is addressed in the economic impacts chapter of the Staff Report.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on June 7, 2010. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after June 7, 2010, and received **no later than 12:00 noon, July 21, 2010**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and other search engines.

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB in Health and Safety Code sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511. The proposed regulations will implement, interpret and/or make specific Health and Safety Code sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38592, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also

adopt the proposed regulatory language with other modifications if the text, as modified, is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language, as modified, could result from the proposed regulatory action. For this rulemaking, such modifications may include, but are not limited to, alternative provisions related to the use and definition of RECs, the timing of compliance with regulatory requirements and the requirements for the determination of eligible facilities. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e. Braille, large print) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Para solicitar alguna comodidad especial o si por su idioma necesita cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (es decir, sistema Braille, letra grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Por favor llame a la oficina del Consejo a (916) 322-5594 o envíe un fax a (916) 322-3928 lo mas pronto possible, pero no menos de 10 dias de trabajo antes del dia programado para la audencia del Consejo. TTY/TDD/ Personas que nesessitan este servicion pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: May 25, 2010

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs see our website at www.arb.ca.gov.