

**COMMENTS OF NOBLE AMERICAS  
ENERGY SOLUTIONS LLC**

**On Proposed Amendments To The  
REGULATION FOR THE MANDATORY  
REPORTING OF GREENHOUSE GAS EMISSIONS  
17 CCR §§ 95100-95157**

**And**

**On Proposed Amendments To The  
CALIFORNIA CAP ON  
GREENHOUSE GAS EMISSIONS AND  
MARKET-BASED COMPLIANCE MECHANISMS  
17 CCR §§ 95800-95943**

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# COMMENTS OF NOBLE AMERICAS ENERGY SOLUTIONS LLC

## INTRODUCTION

Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby offers its Comments on the proposed Amendments to the “Regulation For The Mandatory Reporting Of Greenhouse Gas Emissions” (“MRR”) [17 CCR §§ 95100-95157] and the proposed Amendments to the “California Cap On Greenhouse Gas Emissions And Market-Based Compliance Mechanisms” (“Cap-and-Trade Regulation”) [17 CCR §§ 95800-95943].

Noble Solutions is a California Electric Service Provider (“ESP”) as defined in California Public Utilities Code §218.3. Noble Solutions (and its predecessor name Sempra Energy Solutions) has been serving retail electric customers in California since 1998. As a California ESP, Noble Solutions is an “Electric Power Entity” under 17 CCR §95101(d)(2), and an occasional “Electricity Importer” under 17 CCR §95811(b)(2).

## **CARB Should Amend the Definition of “Replacement Electricity”**

CARB has defined the term “Replacement Electricity” at 17 CCR §95102(a)(336) and 17 CCR §95802(a)(237). Included in the definition is a restriction that Replacement Electricity must originate<sup>1</sup> in the same Balancing Authority Area as the Variable Renewable Resource it is associated with.

It is unclear why this restriction has been proposed. “Replacement Electricity” is a term evidently created to address the commercial practice of using “Firming and Shaping” (“F&S”) contracts for the procurement of variable renewable resource energy. Renewable

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<sup>1</sup> The precise language requires “the first point of receipt on the NERC E-tag for the replacement electricity” to be located in the same BAA as the “physical location of the variable renewable energy busbar.”

resource energy procurement is largely driven by the requirements of California’s Renewable Portfolio Standard (RPS).<sup>2</sup>

Because the demand for renewable resource energy in California exceeds the supply of renewable resources in the state, Noble Solutions and most other load serving entities are obliged to import renewable energy and renewable energy products into California to meet the State’s RPS mandates. This necessitates the use of F&S agreements so that a firm product can be delivered to serve the ultimate customer load. F&S contracts may specify the source of the “Replacement Electricity,” but usually they do not.

The western electricity market is liquid and deep, and providers of “Replacement Electricity” and the host Balancing Authorities Areas (“BAA”) use a variety of resources throughout the region. There is no reason why the portfolio of resources eligible to provide “Replacement Electricity” in an F&S deal must be limited to a single BAA. This unduly restricts the options for F&S contracting, and will certainly result in increased wholesale prices and a consequent increase in costs to California retail electric customers without any economic or regulatory justification for this restrictive policy.

Noble Solutions is cognizant of CARB’s concern about transactions in which a GHG-producing resource “supports” the import of an intermittent zero-emissions renewable resource. It might seem as if the RPS-eligible import supported by an F&S agreement “causes” an increase in GHGs if the “Replacement Electricity” is produced by a GHG-producing resource. But this assumption is not accurate. Every MWh of zero-emissions renewable energy, regardless of where it physically sinks, displaces a MWh of energy produced by the least-efficient resource (assumed to be fossil thermal)<sup>3</sup> in the dispatch

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<sup>2</sup> The California Renewable Portfolio Standard (RPS), codified at Public Utilities Code Sec. 399.11 et seq., was originally created in 2002, and has been modified and amended several times, most recently by SB 2 (1X), which established an RPS procurement target of 33% by the year 2020. The RPS is implemented by rules, regulations and directives promulgated by the California Energy Commission (“CEC”) and the California Public Utilities Commission (“CPUC”). The procurement of renewable resources is one of the principle tools needed to achieve CARB’s GHG reduction goals.

<sup>3</sup> Fossil thermal may not be at the margin under certain extreme and rare hydro conditions.

stack of the host BAA. Therefore, there is virtually always a GHG reduction whenever zero-emissions renewable resources are operating. Moreover, for California to impose a GHG charge on “Replacement Electricity” imported in connection with an F&S arrangement is equivalent to charging a California importer a penalty for reducing GHG emissions in another jurisdiction.<sup>4</sup>

### **CARB Should Abandon the Proposed Use of E-Tags as a Proxy for Assigning Title to Import Transactions**

A NERC E-Tag is a reliability device designed to track transfers of electric energy between Balancing Authority Areas. The E-Tag does not establish a chain of title—chain of title is established by the contractual relationship between the Buyer and the Seller. E-Tags were designed to establish the chain of responsibility for scheduling power from one BAA to another.

In several locations in the MRR and in the Cap-and-Trade regulations, the E-Tag is identified as the element that will determine title to the power imported,<sup>5</sup> and thus assigns the responsibility for any GHG liability that may accrue from that importation. This is an incorrect application of the E-Tag. Title is a matter of contract law, not a function of a reliability tool designed to track power transactions between BAAs. Moreover, CARB’s definition of “PSE” is “the functional entity that purchases or sells, and takes title to, energy, capacity and reliability-related services.”<sup>6</sup> These are distinct product markets, and an entity can contract for, and take title to, one or more of these products without taking title to all three.

It is important to recognize that both the CPUC and the CEC rely upon E-Tags to audit RPS transactions after the fact, and to verify that WREGIS certificates are associated with imports by entities subject to RPS requirements over the appropriate time interval. This

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<sup>4</sup> “Replacement Electricity” in excess of the RPS-eligible production would be subject to normal GHG counting rules.

<sup>5</sup> See, e.g., 17 CCR §§ 95102(a)(115), 95102(a)(118), 95102(a)(314), 95802(a)(84), 95802(a)(217).

<sup>6</sup> 17 CCR § 95802(a)(217)

is a far different use of an E-Tag than its proposed use to determine title to power, and the presumption of responsibility for GHG liability.

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