

COMMENTS OF NOBLE AMERICAS ENERGY SOLUTIONS LLC

Noble Americas Energy Solutions LLC (“Noble Solutions”) has previously commented on Section 95852(b)(4) of the Cap-and-Trade regulation dealing with the RPS Adjustment.¹ The “same year rule” expressed in Section 95852(b)(4)(B) deprives Noble Solutions and others similarly situated of the benefit of a key feature of the RPS law. Under the terms of Public Utilities Code Section 399.21(a)(6), Renewable Energy Certificates (“RECs”) have a three-year “shelf life” before they must be retired to demonstrate compliance with the RPS program.² This provides retail sellers with a measure of flexibility in building an RPS portfolio that satisfies the complex “Content Category” requirements³ of the RPS law.

The RPS Adjustment is a mechanism that recognizes that an electricity import associated with a “substitute energy” (Category 2) RPS

¹ See *Comments of Noble America Energy Solutions LLC*, submitted to the CARB website on August 2, 2013, and incorporated herein by reference.

² PU Code §699.21(a)(6) reads as follows: “A renewable energy credit shall not be eligible for compliance with a renewables portfolio standard procurement requirement unless it is retired in the tracking system established pursuant to subdivision (c) of Section 399.25 by the retail seller or local publicly owned electric utility within 36 months from the initial date of generation of the associated electricity.”

³ See PU Code §699.16(c)

contract⁴ should not bear a carbon liability. The documentation supporting a Category 2 transaction links each MWh of the import schedule with a MWh of generation from an eligible renewable resource. This documentation is aggregated and submitted to the California Public Utilities Commission and the California Energy Commission as the “WREGIS-NERC e-Tag Summary Report” in connection with an entity’s RPS compliance showing. This Report permanently links each REC with its corresponding hourly import schedule.

The “WREGIS-NERC e-Tag Summary Report” represents an ironclad audit trail that insures that each Category 2 REC procured is matched with an E-Tag for California RPS reporting purposes. The Category 2 RECs can be used in any compliance period, so long as the three-year term is observed. Although the RECs are not required to be retired in the same year as a Category 2 transaction occurs, the substitute energy must be scheduled in the same calendar year as the generation from the RPS-eligible facility.⁵ But the “same year rule” expressed in Section 95852(b)(4) of the Cap-and-Trade

⁴ See PU Code §699.16(b)(2).

⁵ See D. 11-12-052, Ordering Paragraph 2: “A retail seller claiming that procurement for compliance with the California renewables portfolio standard from a contract or ownership agreement signed, or utility-owned generation in commercial operation, on or after June 1, 2010 counts in the portfolio content category described in new Pub. Util. Code § 399.16(b)(2), must provide information to the Director of Energy Division sufficient to demonstrate that the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority *within the same calendar year* as the generation from the facility eligible for the California renewables portfolio standard...” [*emphasis added*]

regulation unfairly imposes a carbon liability on Category 2 RECs that are not retired in the same year the transaction occurs. The “same calendar year” scheduling requirement specified in D. 11-12-052 should satisfy the policy objectives expressed in the “same year rule” of Section 95852(b)(4), but without the unnecessary requirement to retire the RECs in that same year.

There is a straightforward fix Section 95852(b)(4). The “WREGIS-NERC e-Tag Summary Report” should provide CARB staff with adequate evidence that the RPS Adjustment RECs have been matched to a schedule in the same calendar year that the RECs were created. Noble Solutions proposes that Section 95852(b)(4)(B) be amended to remove the “same year” rule, to acknowledge the three-year shelf life of RECs guaranteed by the RPS statute, and to explicitly prohibit the used of RECs claimed for the RPS adjustment for any use other than compliance with the RPS program by the party that claims the RPS adjustment.⁶ In its August 2, 2013 comments, Noble Solutions proposed amendments to Section 95852(b)(4)(B) that incorporated each of these elements. The Western Power Trading Forum (“WPTF”) has produced proposed amendments to the RPS Adjustment

⁶ CARB could also require an attestation to the effect that RECs claimed for the RPS Adjustment will not be sold or used for compliance in any other jurisdiction.

language that Noble Solutions supports. CARB should adopt amendments to the RPS Adjustment language that harmonizes the Cap-and-Trade regulation with state law governing RPS compliance.

Noble Solutions appreciates the opportunity to comment on the proposed Cap-and-Trade amendments, and urges CARB to change Section 95852(b)(4)(B) as proposed herein.

DATED: October 18, 2013

Contacts:

Legal	Regulatory	Operational/Technical
Thomas Corr Law Office of Thomas Corr 618 W. Lewis Street San Diego, CA 92103 619-540-5694 thomaspcorr@gmail.com	Greg Bass Director Noble Americas Energy Solutions LLC 401 West "A" Street, Suite 500 San Diego, CA 92101 619-684-8199 gbass@noblesolutions.com	Justin Pannu Power Operations Noble Americas Energy Solutions LLC 401 West "A" Street, Suite 500 San Diego, CA 92101 619-684-8182 jpannu@noblesolutions.com