

COMMENTS OF NOBLE AMERICAS ENERGY SOLUTIONS LLC

Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby submits its comments in response to the Mandatory Reporting Workshop held in Sacramento on June 26, 2013.

Noble Solutions takes this opportunity to remind the ARB staff of the importance of drawing up its rules in a manner that makes compliance with the ARB’s GHG rules compatible with compliance with the CPUC’s RPS rules. In particular, the ARB requirement that RECs associated with the RPS Adjustment must be retired in the same year that the RPS Adjustment is claimed is incompatible with the RPS regime in which there is a multi-year RPS compliance period, and RECs have a three-year “shelf life” for purposes of meeting RPS compliance requirements. Noble Solutions has made detailed arguments on this issue previously, and will not repeat them here. Rather, Noble Solutions’ prior Comments on this issue on elements of the Mandatory Reporting Regulation (September 13, 2012) and the Cap-and-Trade Regulation (May 11, 2012) are attached for reference.

This issue remains of paramount importance to Noble Solutions and other Electric Power Entities. Noble Solutions urges the ARB Staff to make the appropriate adjustments to the MRR and Cap-and-Trade regulations so that RPS and GHG compliance policies can be harmonized.

Dated: July 10, 2013

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ATTACHMENT 1

NOBLE AMERICAS ENERGY SOLUTIONS LLC

COMMENTS ON §95111(g)(1)(M)

September 13, 2012

COMMENTS OF NOBLE AMERICAS ENERGY SOLUTIONS LLC

Introduction

Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby submits its comments on the Proposed Amendments to the Mandatory Reporting Regulation (“MRR”) [Division 3, Chapter 1, Subchapter 10, Article 2 of Title 17, California Code of Regulations (“CCR”).]¹ The Proposed Amendments were issued on August 1, 2012.

Noble Solutions is a California Electric Service Provider (“ESP”) as defined in California Public Utilities Code §218.3. Noble 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). It is important to emphasize that Noble Solutions finds itself an occasional “Electricity Importer” almost entirely as a consequence of having to meet its compliance obligations under California’s Renewable Portfolio Standard (“RPS”).² Noble Solutions has previously participated in the development of the various AB 32 implementation rules through written comments and participation at public meetings convened by the California Air Resource Board (“ARB”).

¹ Unless otherwise specified, references to individual sections refer to Title 17 of the CCR.

² The California Renewables Portfolio Standard, 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”).

§95111(g)(1)(M)

Noble Solutions has previously submitted comments to the ARB, emphasizing the importance of harmonizing the ARB’s GHG compliance regime with the CPUC’s Renewable Portfolio Standard (“RPS”) program. Procurement from qualified Renewable Resources, and the accounting of the Renewable Energy Credits (“RECs”) that are evidence of this procurement, must be able to serve both an entity’s GHG compliance obligations and its RPS compliance obligations.

It is with this fundamental principle in mind that Noble Solutions calls attention to the proposed amendment to §95111(g)(1)(M), which reads in pertinent part:

(M) Provide the serial numbers of Renewable Energy Credits (RECs) as specified below:

1. RECs associated with electricity procured from an eligible renewable energy resource and reported as an RPS adjustment as well as whether the RECs have been placed in a retirement subaccount and designated as retired for the purpose of compliance with the California RPS program.

It is vital that the phrase “whether the RECs have been placed in a retirement subaccount” be interpreted quite literally. That is, it must refer to the report of the status of the RECs (whether or not they have been placed in a retirement subaccount) used for claiming the RPS adjustment, rather than establishing a requirement that the RECs be placed in such a subaccount as a condition of claiming the RPS adjustment. This is important because for RPS compliance purposes, a REC need not be retired in the year in which it was created.³

The RPS adjustment for GHG purposes must allow for the identification of RECs in the year in which the RPS adjustment is claimed, even though those RECs might not be retired for RPS compliance purposes until some later year. Since each REC bears a unique identifying number assigned and tracked by the Western

³ See PU Code § 399.21(a)(6) and CPUC Decision No. 21-06-038, pp. 48-51.

Renewable Energy Generation Information System (“WREGIS”), there is no risk to using the same RECs for both GHG and RPS compliance purposes, even if they are claimed under their respective programs in different years. In most instances for retail providers who are also Electric Service Providers, like Noble Solutions, a REC is retired in the year it is claimed for RPS purposes irrespective of the year in which the REC was created.⁴ For GHG reporting purposes, a REC needs to be reported in the year of its creation, but does not need to be retired in the year it is reported. It is essential that the rules promulgated by ARB and the CPUC be in harmony, to insure that the complementary policies of GHG management and RPS development can be met.

Reporting Tool

Noble Solutions has observed that the GHG Reporting Tool, as currently designed, does not accommodate the interpretation of §95111(g)(1)(M) articulated above. Certain cells do not permit the reporting of RECs for purposes of claiming the RPS adjustment without identifying the RECs as being retired in a WREGIS retirement subaccount. The Reporting Tool must be modified to accommodate the reporting of RECs for purposes of claiming the RPS adjustment, without requiring identification of the RECs as being retired in WREGIS.

Dated: September 13, 2012

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⁴ This general rule may not apply to certain RECs associated with long-term and grandfathered contracts.

ATTACHMENT 2

NOBLE AMERICAS ENERGY SOLUTIONS LLC

COMMENTS ON §95852(b)(4)(B)

May 11, 2012

COMMENTS OF NOBLE AMERICAS ENERGY SOLUTIONS LLC

Introduction

Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby submits its comments on the May 4, 2012 “Public Meeting to Discuss Compliance Requirements for First Deliverers of Electricity,” convened by the staff of the Air Resources Board of the State of California (“ARB”) to discuss select provisions of Subchapter 10, Article 5 of Title 17, California Code of Regulations (“CCR”).¹

Noble Solutions is a California Electric Service Provider (“ESP”) as defined in California Public Utilities Code §218.3. Noble 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). It is important to emphasize that Noble Solutions finds itself an occasional “Electricity Importer” almost entirely as a consequence of having to meet its compliance obligations under California’s Renewable Portfolio Standard (“RPS”).²

¹ Unless otherwise specified, references to individual sections refer to Title 17 of the CCR.

² The California Renewables Portfolio Standard, 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”).

§95852(b)(4)(B)

Noble Solutions notes that certain implementation orders issued by the California Public Utilities Commission in connection with California's RPS statute have a bearing on provisions of the Cap and Trade regulation administered by ARB. Noble Solutions previously submitted comments to the ARB on September 27, 2011³ calling attention to §95852(b)(4)(B), which reads as follows:

The RECs associated with the electricity claimed for the RPS adjustment must be used to comply with California RPS requirements during the same year in which the RPS adjustment is claimed.

As noted previously, this section links the requirements for claiming the RPS adjustment to the CPUC's RPS compliance program, which does not require RECs to be used for compliance in the same year in which the electricity is generated. At the end of 2011, the CPUC issued D. 11-12-052, which implements the multi-year compliance periods specified by SB 2 (1X), further de-linking the CPUC's RPS compliance program from the provisions of §95852(b)(4)(B). This mismatch between GHG compliance requirements and RPS compliance requirements must be addressed, and the compliance obligations under both programs harmonized to the greatest extent possible.

In addition to creating a multi-year compliance period SB 2 (1X) and D. 11-12-052 recognize three categories of RPS compliance transactions, and specify conditions for the use of each category. Category 1 transactions involve direct delivery of bundled energy. Category 2 transactions are the familiar "Firming and Shaping" ("F&S") contracts, under which the energy and the RECs are linked, but not necessarily delivered simultaneously. Category 3 transactions involve unbundled RECs. Category 2 transactions require a forward purchase of both the

³ These comments can be found at http://www.arb.ca.gov/lists/capandtrade10/1599-noble_solutions_comments_to_arb_27sep11.pdf.

RPS-eligible energy and the substitute energy, coupled with the CEC requirement that the import and REC be generated within the same calendar year. Thus, for GHG accounting purposes, the energy and the RPS attribute for Category 1 and Category 2 transactions will always be linked, (and will always be verifiable in WREGIS) irrespective of when the RECs may be retired for RPS compliance purposes.

The risk of an entity subsequently selling a REC associated with a Category 1 or Category 2 transaction is small, because of the heavy financial penalty such a selling entity would incur. Category 1 and Category 2 transactions command a premium in the market, so a sale would involve “converting” a Category 1 or Category 2 REC to a lower-value Category 3 REC. This would not only forfeit the premium paid for the REC in the bundled transaction, but would also make RPS compliance more difficult and more costly to consumers.

Noble Solutions believes that the RPS adjustment should be linked to a qualified import transaction in the same GHG reporting year, not to an RPS compliance activity. The GHG regulation should complement the new RPS program and its protocols. Noble Solutions supports CARB’s objective of ensuring that the RPS Adjustment is applied to electricity imported and used for California RPS compliance; thus, if the ARB staff deems the financial incentives described above to be insufficient, there can be a further condition that any REC claimed for the RPS adjustment must remain with a California “Retail Provider.”⁴ In that way, there is zero risk that the benefits of the RPS transaction will not remain in California.

⁴ See §95802(252)

§95852(b)(3)(D)

Section 95852(b)(3)(D), which sets criteria for electricity importers to claim a GHG compliance obligation based on a specified source, requires RECs to be retired “pursuant to MRR,” as follows:

If RECs were created for the electricity generated and reported pursuant to MRR, then the RECs must be retired and verified pursuant to MRR.

Noble Solutions understands the retirement of RECs to be a compliance activity under the RPS program—indeed the only way to demonstrate compliance with RPS requirements. To the extent that an import from a specified resource might serve to meet GHG compliance and reporting goals, Noble Solution agrees that such transactions can do “double duty” as GHG and RPS compliance activities. But the retirement of RECs must be regarded solely as an RPS compliance activity. Under the RPS statute, RECs have a “shelf life” of 36 months,⁵ and can be used in any compliance period, so long as it is within the 36-month period.⁶ To the extent that §95852(b)(3)(D) requires the retirement of RECs under less flexible terms or for purposes other than those specified in the RPS statute, it must yield. Noble recommends that §95852(b)(3)(D) be eliminated.

Dated: May 11, 2012

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⁵ See PU Code §399.21(a)(6).

⁶ See Proposed Decision of ALJ Simon in R. 11-05-005, issued April 24, 2012.