

COMMENTS OF NOBLE AMERICAS ENERGY SOLUTIONS LLC

Introduction

Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby responds to the “Second Notice of Public Availability of Modified Text and Availability of Additional Documents and Information,” issued by the Air Resources Board of the State of California (“ARB”) on September 12, 2011 and the associated changes to select provisions of Subchapter 10, Article 5 of Title 17, California Code of Regulations (“CCR”).

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”).¹

Noble Solutions commends the ARB staff in its diligence and willingness to solicit comments from and listen to representatives of industries affected by

¹ The California Renewable 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”).

the complex requirements of GHG reporting and reduction programs. ARB staff has proved nimble in addressing the concerns of stakeholders and accommodating those concerns whenever feasible in a manner consistent with the policy directives the ARB staff has received from its Board and the Legislature.

ARB staff is faced with a vast and complex task, and the intricate web of regulations necessary to support this important program will never be deemed perfect. Still, Noble Solutions is confident that with each new iteration of these regulations, we can continue to make progress toward accomplishing the policy objectives of the GHG program within the framework of existing commercial practices.

Section 95852(b)(4)(B)

Noble Solutions believes that ARB staff has been attentive to entities that are engaged in the importing of electricity into California, and has drafted modifications to the proposed regulations that address many of the concerns raised by these stakeholders. However, there remains an ambiguity in the proposed regulation at §95852(b)(4)(B), which is proposed 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.

This sentence appears to contemplate a direct linkage between compliance with the RPS statute and compliance with the GHG the program. While there is no question that these two laws are complementary—perhaps it is

better to say that RPS compliance is one of the tools that can be used to achieve GHG objectives—they are still different programs administered by different agencies. Conflating the two does not serve the purposes of either.

To illustrate the point plainly, consider the following transaction. A reporting entity executes a firming and shaping contract calling for the import of 1000 MWh of energy and 1000 qualified RECs during Year 1. For GHG reporting and compliance purposes, the “RPS adjustment” would be claimed in Year 1. However, RPS rules permit banking of RECs under certain conditions. It might be desirable for the reporting entity to hold these RECs for RPS compliance purposes until Year 2. But as §95852(b)(4)(B) is currently written, this apparently would not be permitted, since the RECs “used to comply with California RPS requirements” would not be used in the same year as the RPS adjustment was claimed.

Noble Solutions does not understand what GHG compliance purpose such a restriction can have. As long as the RPS adjustment is linked to a qualified import transaction in the same reporting year, it is completely irrelevant when—or even if—the RECs associated with that RPS adjustment are claimed for California RPS compliance purposes. It is simply not within the purview of ARB to specify how an entity complies with California RPS requirements. Clearly, there is a serious jurisdictional question presented, since §95852(b)(4)(B), as drafted, usurps the prerogative of the California Public Utilities Commission to design the implementation rules—including the banking of RECs—under the RPS statute.

Fortunately, the modification to §95852(b)(4)(B) to remove this defect is simple. Noble Solutions proposes that §95852(b)(4)(B) should be modified to read:

~~The RECs associated with t~~ The electricity claimed for the RPS adjustment must be imported ~~used to comply with California RPS requirements~~ during the same calendar year in which the RECs procured from the eligible renewable resource are generated. ~~RPS adjustment is claimed.~~

Noble Solutions urges that this modification be made in the package that is presented to the Board for adoption.

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