COMMENTS OF
NOBLE AMERICAS ENERGY SOLUTIONS LLC

Noble Americas Energy Solutions LLC ("Noble Solutions") has previously commented on the RPS Adjustment in the context of both the Cap-and-Trade rules and the MRR rules.[1] The revisions to Section 95852(b)(4)(B) proposed in the Informal Discussion Draft dated January 31, 2014 still do not address the fundamental issue that Noble Solutions has urged the CARB staff to accomplish: to fashion an RPS Adjustment rule that permits retail sellers to fully utilize the flexibility built into the state RPS compliance program.

For an RPS Adjustment rule to be in harmony with the RPS compliance regime, a REC claimed for the RPS Adjustment must be able to be retired at any time during the three-year life of the REC specified in PU Code §399.21(a)(6). Otherwise, a retail seller is deprived of a key flexibility measure that the Legislature explicitly incorporated into the RPS compliance program. An agency rule should not be applied to frustrate such clearly-articulated legislative intent.

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[1] See *Comments of Noble America Energy Solutions LLC*, October 18, 2013; *Comments of Noble America Energy Solutions LLC*, August 2, 2013; *Comments of Noble America Energy Solutions LLC*, July 10, 2013; *Comments of Noble America Energy Solutions LLC*, September 13, 2012; *Comments of Noble America Energy Solutions LLC*, May 11, 2012, each of which is appended hereto and incorporated herein by reference.

Noble Solutions has pointed out that existing reporting formats permit the CARB staff a more than adequate audit trail to assure that RECs claimed for the RPS Adjustment are used only for the compliance obligation of the retail seller claiming the RPS Adjustment;[2] that the RPS Adjustment as proposed is incompatible with a multi-year RPS compliance program;[3] that constraining the use of RECs for RPS Adjustment reporting might be reasonable, but restricting their use for RPS compliance purpose is not;[4] and that the variable economic value of different categories of RECs makes it financially infeasible for an entity to use a REC claimed for the RPS Adjustment for any purpose other than compliance with the statewide RPS program.[5] Noble Solutions has even proposed language to amend Section 95852(b)(4)(B) in a manner consistent with the provisions of the RPS statute.[6]

CARB staff has not responded to these arguments in writing, nor expressed any theory about why RECs claimed for the RPS Adjustment cannot be retired under the parameters specified in the RPS statute. Perhaps CARB can set forth an "Informal Statement of Reasons" that addresses these points. If CARB staff can share their thinking about these matters, perhaps

[2] See Noble's Comments dated October 18, 2013.
[3] See Noble's Comments dated July 10, 2013.
[4] See Noble's Comments dated September 13, 2012.
[5] See Noble's Comments dated May 11, 2012.
[6] See Noble's Comments dated August 2, 2013.

the stakeholders can propose a remedy that addresses CARB staff's concerns while also preserving the flexibility of the RPS program as designed.

Dated: February 14, 2014

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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" requirements[3] 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)

contract[4] 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 to 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

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COMMENTS OF
NOBLE AMERICAS ENERGY SOLUTIONS LLC

Noble Americas Energy Solutions LLC ("Noble Solutions") has been working with CARB staff to fashion language for the RPS adjustment that will accomplish two goals:

- From the public policy perspective, to prevent RECs claimed for the RPS adjustment from being sold on or used for any other purpose;
- From the REC owner's perspective, to use the RPS adjustment for imports associated with "firming and shaping" RPS procurement contracts, while at the same time permitting the RECs claimed for the RPS adjustment to be retired for RPS compliance at any time within the 36-month life of the REC.

Heretofore, the approach in the draft regulation has been to require that the RECs associated with the RPS adjustment must be retired in the same year that the RPS adjustment is claimed. The "same-year retirement" rule[1] seems to be a straightforward way to ensure that RECs claimed for the RPS adjustment will not be sold on to other parties, but it is a deeply flawed approach. Strictly applied, this rule artificially limits the number of legitimate RPS procurement transactions that can participate in the RPS adjustment protocol.

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[1] Sec. 95853(b)(4)(B)

Under strict application of the "same-year retirement" rule, the RPS adjustment could not be claimed for a transaction occurring in the fourth quarter of any given year. This is because a REC is not created until ninety days or more after the renewable generator has produced its eligible renewable electricity.[2] Thus, a Category 2 "Firming and Shaping" deal, meeting all of the RPS compliance requirements,[3] would be ineligible for the RPS adjustment under the "same year retirement" rule, to the extent that it involved generation from an eligible renewable energy facility that produced electricity after September 1,[4] because the RECs would not be available to retire in the "same year for which the RPS adjustment is claimed."

This is clearly an unintended, and patently unfair result. Fully one-fourth of a year's renewable electricity production could be ineligible for RPS adjustment treatment. This cannot be the intent of the design of the "same-year retirement" rule, but it is most certainly its effect.

And there are other unsatisfactory consequences of the "same-year retirement" rule. A key design feature of the RPS compliance regime established by SB 2(1X) is the ability of RPS-obligated entities to retire RECs for RPS compliance at any time "within 36 months from the initial

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[2] See *WREGIS Operating Rules*, July 15, 2013, Section 12.2, p. 38: "WREGIS will create certificates 90 days following the end of a generation month."
[3] CA Public Utilities Code Sec. 399.16(b)(2).
[4] RECs are created "90 days following the end of a generation month."

date of generation of the associated electricity."[5] This 36-month "shelf life" for RECs, combined with the multi-year compliance periods specified in the 33% RPS law,[6] gives RPS-obligated entities important flexibility in meeting RPS compliance goals. That flexibility can be thwarted if an RPS-obligated entity uses Category 2 imports to meet its RPS obligations, and the "same-year retirement" rule is applied to that procurement.

To illustrate this point: under the "same-year retirement" rule, when Noble Solutions imports energy into California by means of a Category 2 firming and shaping transaction solely to meet its RPS obligations, it may have to adjust its REC retirement strategy for RPS compliance, or face carbon cost liability solely because it procured RPS products from out-of-state resources. This is manifestly unfair, and it encroaches on the RPS compliance scheme painstakingly developed by the Legislature and at the CPUC. Nevertheless, the "same-year retirement" rule as set forth in the July 18 discussion draft has exactly that effect. The "same-year retirement" rule is simply incompatible with the way RECs are administered by WREGIS and with the way RPS-obligated entities are permitted to manage their RPS compliance.

Noble Solutions wants to emphasize that it agrees with the goal of

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[5] CA Public Utilities Code Sec. 399.21(a)(6).

[6] See CA Public Utilities Code Sec. 399.15(b)(1).

preventing the misuse of RECs associated with the RPS adjustment. But a rule that addresses potential misuse of the RPS adjustment by limiting legitimate procurement activities, or by diminishing the flexibility of RPS compliance rules administered by another agency cannot be regarded as sound rulemaking or good public policy.

For the reasons stated above, Noble Solutions suggests that the "same-year retirement" rule as set forth in the July 18 discussion draft is unworkable and unjust and should be abandoned. Section 95852(b)(4)(B) should be amended to read as follows:

> (B) Within 36 months of the generation date, the RECs associated with the electricity generated by the eligible renewable resource and claimed for the RPS adjustment must be placed in the retirement sub-account of the RPS-obligated entity, in the accounting system established by the CEC pursuant to PU Code Sec. 399.13 and designated as retired for the purpose of compliance with the California RPS program. RECs claimed for the RPS adjustment must not be resold by the RPS-obligated entity, or used for any other purpose other than that entity's compliance with the California RPS program.

This approach will achieve the public policy goal of preventing abuse of the RPS adjustment mechanism, while at the same time preserving the ability of RPS-obligated entities to avail themselves of the compliance flexibility built into the RPS compliance program. Noble Solutions urges the CARB staff to modify Sec. 95853(b)(4)(B) as proposed herein.

DATED: August 2, 2013

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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, 2011[3] 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.