COMMENTS OF
NOBLE AMERICAS ENERGY SOLUTIONS LLC

Noble Americas Energy Solutions LLC ("Noble Solutions") has offered comments on the RPS Adjustment no fewer than six times, most recently on February 14, 2014. Until the recent modifications to Section 95852(b)(4)(B) of the Cap-and-Trade Regulation, Nobel's concerns have largely gone unaddressed. With the issuance of the March 21, 2014 amendments, at least some modest progress has been made. But Noble Solutions remains concerned that even the amended RPS Adjustment rule fails to give appropriate deference and comity to the California RPS statute.

The argument is simple. RECs acquired in firming and shaping transaction under PU Code Sec. 399.16(b)(2) have all the attributes specified in the RPS statute, including the three-year life of the REC specified in PU Code §399.21(a)(6). The RPS Adjustment, as applied, deprives the owner of such a REC the full value of the REC by imposing a cost for keeping the REC for its full 36-month term before retiring that REC for compliance in accordance with the RPS statute. Not only is this an impermissible taking, it is a violation of the fundamental principle that an agency rule cannot contravene a statute.

Noble Solutions has requested that a Statement of Reasons, a common feature of the CARB rulemaking process, address the CARB staff's concerns about the RPS adjustment, but none accompanied the most recent amendments to the RPS Adjustment rule. If CARB staff is concerned about the potential for secondary trading of RECs used for the RPS adjustment, that concern can be addressed in a way that does not perpetuate the mismatch between compliance with carbon rules and RPS requirements. Under the proposed 15-day regulation, should a retail seller choose not to use RECs for RPS Adjustment for the year in which the import occurred, the retail seller could potentially be subject to a carbon obligation due to the declining Category 2 requirements under the RPS statute. Noble Solutions has previously shown that a REC claimed for the RPS Adjustment can be tracked by its own unique identification number through to the point of retirement—whenever that may occur—using existing documentation. It is simple to require that a REC used for the RPS Adjustment must be retired for compliance by the same entity that claimed the RPS Adjustment. But it is manifestly unreasonable to create a carbon compliance regime that requires an import associated with a REC contract to carry a carbon liability because the regulations are not in conformance with the RPS statute.

Noble Solutions stands ready to propose additional ways to address any other of CARB staff's concerns about the RPS Adjustment, if those concerns are made plain in writing. Burdening RECs with a carbon obligation is surely not the only way to ensure a robust carbon accounting system. Noble Solutions is convinced that permitting the flexibility afforded by state law will not damage the integrity of the carbon reporting protocols. A modest amendment to Section 95852(b)(4)(B) will preserve the compliance flexibility granted by the RPS statute, while maintaining CARB's goals of rigorously monitoring the RECs used for the RPS Adjustment.

> (B) The RECs associated with the electricity claimed for the RPS adjustment must be placed in the retirement subaccount of the entity subject to the California RPS, and party to the contract in 95852(b)(4)(A), in the accounting system established by the CEC pursuant to PUC 399.25, and designated as retired for the purpose of compliance with the California RPS program ~~within 45 days of the reporting deadline specified in section 95111(g) of MRR for the year for which the RPS adjustment is claimed~~. in accordance with state law.

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