COMMENTS OF
NOBLE AMERICAS ENERGY SOLUTIONS LLC

Noble Americas Energy Solutions LLC ("Noble Solutions") was disappointed to see that the proposed 2014 amendments to the Mandatory Reporting Regulation ("MRR")[1] do not include any proposals to improve the RPS Adjustment mechanism. To be sure, Noble Solutions does not believe that there is a problem with the *reporting* requirements for the RPS Adjustment specified in the MRR.[2] Rather, the interaction between the MRR requirements and the Cap-and-Trade ("C&T") regulation,[3] specifically Section 95852(b)(4), which is cross-referenced in Section 95111(g), is what causes the problem. Noble Solutions has commented extensively about the flaw in the RPS Adjustment mechanism.[4] This flaw deprives retail sellers the ability to fully utilize the flexibility built into the state RPS compliance program.

Noble Solutions, like most if not all retail sellers, is obliged to meet its some of its RPS obligations by procuring some RPS-eligible Renewable

[1] 17 CCR §§ 95100 et seq. Subsequent references in the text to sections are to Title 17 unless otherwise specified.
[2] 17 CCR § 95111(g)
[3] 17 CCR §§ 95801et seq.
[4] See *Comments of Noble America Energy Solutions LLC*, April 4, 2014; *Comments of Noble America Energy Solutions LLC*, February 14, 2014; *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.

Energy Credits ("RECs") from facilities located outside of California. The supply of available RPS-eligible RECs in California is simply unable to meet the demand. Since few out-of-state eligible facilities are able to deliver physical RPS energy into California, retail sellers are required to execute "Firming and Shaping" contracts,[5] by which the RPS energy (represented by authenticated RECs) is matched with unspecified power that is physically delivered into California to meet the retail seller's customer load. The RPS Adjustment is designed to remove the carbon liability from the unspecified power that is imported to effectuate this transaction. *Note that the import of unspecified power is undertaken solely to support the RPS procurement,* and this is necessary due to the inadequate supply of RPS-eligible resources in the state.

By itself, the MRR requires that the retail seller claiming the RPS Adjustment report on the details of the RECs used to claim the RPS Adjustment. The C&T Regulation, by contrast, requires that the RECs be retired within the annual reporting cycle specified by the Regulation.[6]

[5] These agreements are referred to as "Category 2" contracts, and are described in the RPS Statute at Public Utilities Code § 399.16(b)(2).

[6] "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." C&T Regulation, § 95852(b)(4).

This distinction is crucial, for in effect the C&T Regulation undermines the RPS statute, which permits a REC to be retired for RPS compliance anytime within three years of its creation.[7] For retail sellers to get the benefit of the RPS statute, CARB regulations must be changed to permit a retail seller to identify RECs claimed for the RPS Adjustment in the reporting year, but to retire those RECs for RPS compliance purposes anytime within the three-year statutory window. The Climate Change regulations administered by CARB must work in harmony with the RPS statute. State law—the provisions of P.U. Code §399.21(a)(6), not regulations promulgated by a state agency—governs the question of when RECs need to be retired for RPS compliance purposes.

Dated: June 17, 2014

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[7] See Public Utilities Code §399.21(a)(6).