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.

[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.

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