BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005

REPLY OF THE ALLIANCE FOR RETAIL ENERGY MARKETS TO OPENING COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD

August 19, 2011

Andrew B. Brown
Ellison Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: abb@eslawfirm.com

Attorneys for the
Alliance for Retail Energy Markets

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I. INTRODUCTION AND SUMMARY

On August 8, 2011, numerous parties, including the Alliance for Retail Energy Markets ("AReM") [1] submitted opening comments to the California Public Utilities Commmission ("Commission" or "CPUC") in accordance with the instruction in Administrative Law Judge ("ALJ") Anne E, Simon's July 12, 2011 *Ruling Seeking Comments on Implementation of New Portfolio Content Categories for the Renewable Portfolio Standard*, ("ALJ Ruling"). Pursuant to the ALJ Ruling, AReM submits these reply comments. As a representative of Electricity Service Providers ("ESPs"), AReM has been keenly focused on ensuring that this proceeding's implementation of SB 2 (1x) facilitates its members' ability to continue to comply with their Renewable Portfolio Standard ("RPS") obligations in the face of the complex compliance regime embedded in SB 2 (1x). AReM's review of the comments submitted by other parties reveals that many of its responses to the implementation questions posed in the ALJ Ruling are similar to those of other parties, most notably by Southern California Edison ("SCE"), Pacific Gas & Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E") (collectively, the

[1] AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

Investor-Owned Utilities or "IOUs"), and the Los Angeles Department of Water and Power ("LADWP").

AReM also notes that fourteen parties who submitted opening comments collaborated in the preparation of a table entitled the *"RPS Product Matrix: Reference Proposal Outlining Areas of Broad Consensus and Open Issues"* ("Matrix").[2] While AReM was not invited to participate in the development of the Matrix, AReM generally concurs with its consensus elements. Of particular interest to AReM is the fact that the Matrix also presents specific open/non-consensus issues. AReM believes that the listing in the Matrix of the open/non-consensus issues encompasses nearly all the areas where reply comments are warranted. AReM's reply comments focus on its recommendations for addressing those non-consensus items, especially in comparison to certain positions taken by The Utility Reform Network ("TURN") and the Division of Ratepayer Advocates ("DRA"). AReM is particularly concerned that TURN and DRA are supporting implementation measures that (i) are not required under the law, (ii) will greatly increase the cost of RPS compliance for customers, and (iii) perform no useful function with respect to attaining the renewable energy goals set forth in SB 2 (1x).

Finally, in these reply comments, AReM will respond to specific comments offered by other parties with respect to how the Commission should approach the timing issues associated with the effectiveness of these regulations, given that SB 2 (1x) has not yet become effective and its date of effectiveness remains speculative.

AReM also notes that many of the opening comments agree that the WREGIS tracking system will play a key role with respect to tracking the product content category of renewable

[2] Coalition of California Utiliy Employees, Division of Ratepaer Advocates, enXco, FirstSolar, Iberdrola, Independent Energy Producers Associaton, Large-Scale Solar Association, NextEra, Pacifica Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison, Sunpower, The Utility Reform Network, and the Union of Concerned Scientists.

energy production. Since tracking and verification of the various product content categories is so central to the implementation of SB 2 (1x), AReM first presents a summary of the process it believes should be adopted for qualifying, tracking, and verifying the product content category of renewable generation that is used for RPS compliance.

II. FRAMEWORK FOR PRODUCT CONTENT CATEGORIZATION

In its opening comments, AReM presented an overview and framework that it believes should guide the implementation of SB 2 (1x). After reviewing the opening comments, AReM remains convinced that the framework it laid out continues to be appropriate, and presents it here with additional details.

1. Resources that are certified by the California Energy Commission ("CEC") as RPS-eligible are referred throughout these comments as Eligible Renewable Energy Resources or "ERERs."

2. As an ERER produces energy, the WREGIS Qualified Reporting Entity ("QRE") applicable to the ERER records the monthly energy production into the ERER's WREGIS holding account, and each MWh of monthly energy production is recorded in the WREGIS holding account creates WREGIS certificates. At this point in the existing processes, a new step will be added so that the owner or designated representative of the ERER will make specific product content category designations such that the sum of the monthly energy production reflects the sum of product designations of the certificates.

3. An ERER located inside California meets all the requirements for a Product 1 designation for all energy production because in-state ERERs are, by definition, delivered into a California Balancing Area ("CBA"), as required by the statute. Therefore, the owner or designated representative of an ERER that is located within the state should be allowed to categorize all the ERER's energy production with a Product 1 designation, and RPS obligated entities should be allowed to purchase those Product 1 certificates without having to demonstrate a purchase of the underlying energy.

4. Behind the meter generation that is entirely consumed on-site within California meets the intent of the legislation with respect to Product 1 categorization, and the owner or designated representative of such generation should be allowed to designate the WREGIS certificates as Product 1 for all the MWhs produced.

5. The Product designation assigned to each MWh of production from an ERER should remain associated with that WREGIS certificate for that production as the certificate is transferred and traded among parties.

6. Consistent with current requirements, a WREGIS certificate cannot be used for RPS compliance unless it has been transferred to the WREGIS retirement account of the entity claiming it for RPS compliance.

7. An owner or designated representative of an ERER will be allowed to modify the product content category designations of certificates held in an active account until the end the third year following WREGIS Certificate was generated. However, once retired for RPS compliance purposes, the product designation for any WREGIS certificate that resides in a WREGIS retirement account cannot be modified. Timing of any compliance filings at the Commission or CEC should recognize the processing time requirements for creation of WREGIS Certificates, particularly if additional work is needed at WREGIS to support a product category claim.

8. An RPS obligated entity will submit its RPS compliance reports to the Commission as required by CPUC rules. The compliance reports will be structured to allow the entity to report the product content categories for the RPS procurement listed in its compliance report.

9. The Commission staff will ensure that the RPS compliance reports meet the required product content quantities.

10. The CEC will remain responsible for verifying that the product content claims in the RPS compliance reports are accurate. This will be accomplished by comparing the total production from the WREGIS categories against the total production from the ERER, with associated delivery showings for each month to support Product 1 or Product 2 claims. This verification process must be structured to answer the following questions for the product claims originating from each ERER:

    a. Is the total annual production from the ERER greater than or equal to the total claims against the facility?

    b. How much of the monthly production from the ERER qualified for Product 1 – i.e., does not involve any electric power substitution and/or was delivered pursuant to a dynamic transfer agreement?

    c. Are the claims against the facility for Product 1 equal to or less than the amount that qualified for Product 1 based on monthly data?

    d. How much of the monthly production from the ERER qualified for Product 2 – i.e., were firmed and shaped with substitute energy that was delivered into California at a time different than time of production?

e. Are the claims against the facility for Product 2 equal to or less than the amount that qualified for Product 2 based on monthly data?

f. How much of the annual production from the ERER qualified for Product 3 – i.e., out of state production with the underlying energy not scheduled into California such that they do not qualify as Product 1 or Product 2?

g. Are the claims against the facility for Product 3 equal to or less than the amount that qualified for Product 3?

III. REPLY COMMENTS

A. Response to Open/Non-Consensus Issues Raised in the Matrix

As noted in the Introduction and Summary above, fourteen parties' opening comments referred to a table entitled the *"RPS Product Matrix: Reference Proposal Outlining Areas of Broad Consensus and Open Issues"* ("Matrix"). The Matrix lists each of the product content categories provided for in SB 2 (1x), and a RPS product description for each category upon which the parties agreed, as well as consensus illustrative contract/interconnection structures for each of the product categories. AReM generally concurs with the consensus RPS product description and the consensus illustrative contract/interconnection structures as presented in the Matrix.

The Matrix also presents ten different open issues upon which the parties did not reach consensus, and many of the fourteen parties addressed these non-consensus issues in their opening comments. AReM's reply comments herein focus on providing its views on the open/non-consensus items.

1. Should the CPUC establish a standard in advance for identifying future or additional CBAs now, or should that process wait until there is some change in the current CBA lineup?

Answer: In its opening comments, AReM deferred responding to Question 3 in the ALJ Ruling that asked parties to provide a comprehensive list of CBAs. After reviewing the opening

comments of other parties, it appears that there is little or no dispute that the existing CBAs are: (1) Balancing Authority of Northern California (formerly Sacramento Municipal Utility District); (2) California Independent System Operator (CAISO); (3) Imperial Irrigation District; (4) Los Angeles Department of Water and Power; and (5) Turlock Irrigation District. AReM also notes that some parties (PG&E, TURN, and Sempra Generation, and the California Municipal Utility Association or "CMUA") offer specific recommendations that (i) would establish criteria necessary for new CBAs, or (ii) preclude certain entities from being categorized as CBAs. AReM does not have a position at this time on those recommendations, but does agree that there must be clarity about which existing entities qualify as CBAs, and asks that the Commission provide a determination specifying the CBAs. AReM has no further comment at this time with respect to specific criteria for new CBAs, and believes that the process of identifying future or additional CBAs can be deferred until potential new CBAs are identified.

2. **Do RECs associated with generation within a CBA area that serves load "behind the meter" (i.e., CSI/NEM or industrial RPS generation serving on-site load) qualify as Bucket 1 if they are sold (unbundled) to a (1) the retail seller that is also buying the energy, or (2) another RPS-obligated retail seller?**

Answer: AReM believes that this question should be broken down into two components. First, should the RECs associated with behind the meter in-state generation that is entirely consumed on-site qualify as Product 1? The answer to this question is an unqualified "yes." One of primary objectives of the SB 2 (1x) is to ensure that the RPS obligation is met with very high proportion of renewable energy that is produced within the state of California. While AReM has disputed the wisdom of that approach on grounds that it is expected to increase program costs

and impede the development of a vibrant west-wide RPS markets,[3] there can be no dispute that behind the meter renewable generation consumed on-site by the owner of the facility meets this requirement of providing in-state renewable production, displacing what might otherwise have been non-renewable energy production and consumption with associated greenhouse gas ("GHG") impacts. Moreover, the state's key policymakers, including the Governor, have made it clear that deployment of distributed generation is a high priority for meeting the state's GHG reduction goals, increasing the likelihood of new installations.[4] To relegate the renewable energy production from these in-state resources to a product content category that is anything other than Product 1 will reduce the financial incentives for deployment of this type of renewable distributed generation, diminish the potential for a market-based support for such installations, and violate the clear intent of the SB 2 (1x).

The second question is whether there should be any restrictions with respect to the contractual arrangements by which the owners of the distributed generation facilities transfer the REC to an RPS obligated entity. The answer to this question should be an unqualified "no." The owner of a renewable distributed generation facility that has been RPS certified by the California Energy Commission ("CEC") should be allowed to transfer the RECs associated with the energy production into its WREGIS account with a Product 1 designation, and when sufficient generation accumulates to produce a WREGIS Certificate, the REC should be fully fungible as Product 1 until its expiration 36 months after the initial date of Certificate. No useful policy objective is served by requiring the REC to be transferred with the sale of energy, when the

[3] AReM has long argued that RPS costs and market development would be much better served by a fully fungible west-wide market for RPS that is unconstrained by artificial locational requirements.

[4] See Governor Brown's July 19, 2011 press release concerning the 12,000 MW distributed generation by 2020 goal (posted at http://gov.ca.gov/news.php?id=17128), and the Governor's Clean Energy Jobs Plan, posted at http://gov.ca.gov/docs/Clean_Energy_Plan.pdf.

energy is consumed in-state and on-site. Nor should there be any restrictions that allows the behind the meter producer to sell the REC only to an RPS obligated entity.

3. In general, should the "bucket" attribute of a REC remain with the REC until it is retired for compliance, no matter how many times it is traded as an unbundled product in the secondary market? If so, how can the bucket attribute of a REC best be tracked?

Answer: There is a very broad, although not unanimous, consensus that the product attribute should remain with the REC for its entire thirty-six month shelf life in a WREGIS active account. Supporters of this approach include all of the IOUs, the Western Power Trading Forum ("WPTF"), the Independent Energy Producers Association ("IEP"), the City and County of San Francisco ("CCSF"), the Union of Concerned Scientists ("UCS"), NextEra Energy Resources, LLC ("NextEra").[5] AReM strongly concurs that the product attribute should remain with the REC.

TURN and DRA, the most prominent opponents to this approach along with some renewable developers, insist that a transfer of Product 1 WREGIS Certificate from the original purchaser to another entity that is qualified to hold WREGIS certificate will cause the Certificate to lose its value and be re-categorized as a less-desirable Product 3 REC. Should the TURN and DRA position – that the product content attribute changes if there is a secondary transaction – prevail, that will effectively mean that there can be no secondary market for Product 1 production and that the REC must be retired by the original purchasing entity. This has two seriously negative impacts on RPS compliance. First, it will mean that only RPS obligated entities can purchase the Product 1 output of ERERs – because only the first purchase would

[5] Some parties agree with AReM that Product 1 production should retain its classification regardless of any later, downstream transactions. These parties include: NV Energy, Inc., County Sanitation Districts of Los Angeles County, California Wastewater Climate Change Group.

ensure the transfer of the Product 1 attribute. This means that market intermediaries, who are instrumental in helping to manage risk, will be unable to execute contracts for this Product 1 output because they will have no ability to transfer that attribute to an RPS obligated entity. Second, even if the original purchaser is an RPS obligated entity, should that purchaser realize that it has more Product 1 RECs than is necessary for its compliance during the course of the compliance period (e.g., due to lower than expected loads or greater than expected renewable production or other events), then the purchaser would only be able to trade that surplus volume as a Product 3 REC, presumably at a loss. This transformation of a Product 1 REC into a Product 3 REC will reduce market liquidity for Product 1 RECs, artificially increase the demand for resources that meet the Product 1 requirements, and thereby increase costs for California consumers. For ESPs, a regime that prohibits transfer of Product 1purchases to other entities would be particularly harmful because ESPs will be required under SB 2 (1x) to enter into ten year RPS contracts,[6] even though their customer base can and does change frequently. The inability to transfer the premium Product 1 to other entities as an ESP's load changes has the potential to cause them to incur significant losses or significantly increase their costs to serve their customers due to load migration. As a result, costs for compliance will increase and RPS-obligated entities will have fewer tools to manage their portfolios.

AReM questions why consumer advocates that are concerned about ratepayer costs would support an approach that would re-categorize the most valuable form of RPS product due solely to a secondary transaction, especially when there is no plain reading of SB 2 (1x) that supports imposing restrictions that would diminish the value of the Product 1 RECs based on

[6] See Section 399.13(a)(4)(B) which limits the ability to bank resources to contracts with 10 year or longer terms; see also Section 399.13(b) that will require review of the minimum term procurement rule for each retail seller.

remarketing in the secondary market. Consistent with the statutory structure, where the output of an ERER meets the initial delivery requirements of Sections 399.16(b)(1) or (b)(2), then that output should be keep its designation in the secondary markets. Only where the product produced by the ERER cannot meet the Product 1 or Product 2 definitions when originally created should it be deemed Product 3. Any remarketing of Product 1 or 2 volumes in a secondary transaction should not automatically result in a loss of value for market participants and customers through the re-categorization as Product 3.

Moreover, adopting an automatic re-designation rule will greatly increase the CEC and WREGIS' administrative burdens with respect to tracking and verification, as they would need to not only ensure that the Product 1 production claims match E-tags, but they will also need to ensure that the Product 1 or 2 claims for RPS compliance are made only by the entity that first purchased the product and there were no resales.

The Commission should instead seek to maintain the value of RPS-compliant procurement so as to avoid detrimental impacts to California consumers. Instead of limiting the secondary market where entities can manage their RPS obligation throughout the compliance period and optimize the value of their portfolios, the Commission should adopt rules that explicitly allow the product content category attribute of a REC to remain with the REC until it is retired in WREGIS. This is accomplished by allowing the renewable energy resource owner (or an entity who is managing the output for the owner) to designate in WREGIS with the certificate or through sub-accounts whether the output of the ERER is Product 1, Product 2, or Product 3, subject to verification by the CEC.

Issue 3 (a): There is a corollary to this question that was not explicitly identified as an area of non-consensus among the parties who collaborated on the Matrix, but for which there

appears to be disagreement nevertheless. That is, whether generation facilities that are located in-state should be automatically deemed delivered to California and therefore the RECs will be eligible for Product 1 designation whether or not the underlying transaction includes bundled energy and REC or the REC-only transaction. In its opening comments, AReM took the position that because the statute clearly specifies that Product 1 status is achieved for resources that are directly connected to a CBA, any renewable generation resources located inside California should categorize all their output as Product 1. Numerous parties seem to have made this same recommendation, including IEP, Calpine, CMUA, LADWP, the Sanitation Districts of Los Angeles County, Shell Energy North America (US), L.P., Noble Americas Energy Solutions LLC, WPTF, Green Power Institute, UCS, and AReM. Accordingly, the Commission should include this determination about classification of in-state resources when it rules in this proceeding.

4. Over what period of time may the facility's meter data be netted against the final adjusted E-tags from the contract? Hourly? Monthly?

Answer: The answer to this question is different for Product 1 versus Product 2 content categories. For Product 2 content – firmed and shaped transactions, there appears to be little dispute within the comments that the CEC's current practice of verifying the firmed and shaped deliveries based on a calendar year is a suitable and preferred approach. In fact, AReM notes only one instance—enXco's comments—where a 180 days netting period was suggested. However, AReM sees no reason to depart from current practice and supports the calendar year as the appropriate time frame for firmed and shaped transactions to take place for Product 2.

In the case of the netting period for Product 1, there is less uniformity across the comments. Because the fundamental definition of Product 1 carries with it a requirement that there be no substitution of energy from another source during the delivery into California (other

than the use of ancillary services needed to maintain an hourly or sub-hourly import schedule), AReM had not anticipated that there would be any need to net the meter data against the final adjusted WECC pre-schedule E-tags. However, several parties have raised important issues that suggest that monthly netting is more appropriate for the Product 1 output of ERERs.[7] AReM does not object to monthly netting of Product 1 output and recognizes that this may ease some of the burden of tracking and verifying production claims. This issue may be well suited for a workshop including both the Commission and the CEC and WREGIS to review technical requirements for tracking and verifying Product 1 production.

5. What additional technology, data, or systems, if any, are needed to track, compute, and produce for verification these comparisons of meter data with final adjusted E-tags? How does the answer to this question impact the feasibility or reasonableness of any particular netting period, as discussed in the bullet above?

Answer: AReM believes that resolution of these technical issues may be appropriate for a workshop for parties to hear what the CEC and WREGIS identify as potential system changes and the expected complexities and costs associated with using more granular data.

6. What is the definition of "incremental electricity?"

Answer: A review of the opening comments confirms the statements made by AReM (and others) that defining "incremental electricity" is not simple. AReM believes, however, that the Commission should avoid an overly prescriptive or complicated definition of incremental electricity because, as noted by DRA, being overly restrictive in how LSEs contract for the Product 2 matching power will increase the costs of those transactions. AReM suggests that further discussion of this topic at a Commission workshop may be beneficial. At such a

[7] See, e.g., PG&E Comments, page 11; SDG&E Comments, page 3, 4 and 6.

workshop, stakeholders could describe the type of transactions that are used today for firming and shaping of renewable electricity purchases, which may facilitate a clearer picture of how this term should be defined for RPS compliance purposes under the Product 2 category.

7. Are there any additional attributes or contract structures that must be included to qualify procurement as a "firmed and shaped" product (i.e., concurrent procurement, fixed price agreement, etc)?

Answer: AReM agrees with DRA's statement that

> The new §399.25 established by SB 2 1X appears to set the same role for the CEC as it had before; namely, to certify new renewable facilities and track and verify renewable deliveries. Unless a compelling reason is presented to do otherwise, DRA suggests that administrative costs be kept low by retaining as much of the previous structure as possible.[8]

Although DRA's comment was expressed in the context of its response to tracking and verifying Product 1 deliveries, it is equally applicable with respect to Product 2 and all verification of RPS production. The CEC has previously established a set of carefully developed regulations for verifying firmed and shaped transactions, that provide for a calendar year as the reasonable time frame for the matching of E-tags with RECs and that impose no specific contract duration or pricing parameters for firming and shaping transactions supporting those deliveries. There is no need for the Commission to consider imposing new restrictions such as the IEP recommendations that would have firmed and shaped transactions match the duration of the underlying RPS deal if that transaction is for less than 5 years, and for at least 5 years, if the underlying RPS transaction duration is 5 years or more. TURN, Sierra Club California, and UCS all also recommend 5 year contract durations for firming and shaping transactions.

[8] See DRA Opening Comments, pages 3-4.

Such recommendations will effectively negate the years of work spent establishing the CEC's existing tracking and validation regulations and procedures, needlessly increase the costs of RPS transactions and compliance, increase the difficulty associated with RPS compliance because of the commercial transaction complications it introduces, and exponentially increase the administrative burden imposed on the CEC's and WREGIS' verification processes, as they will need to make sure that their verification processes includes a review of specific contracts, rather than just a matching of E-tags. The CEC has already established a calendar year timeframe for matching up energy with RECs for out-of-state firmed and shaped transactions and there is no compelling operational or policy reason to revisit this CEC decision. Moreover, it will unnecessarily complicate the ability of asset operators to optimize the value of their output to the extent Product 1 deliveries may be curtailed or interrupted, thus necessitating short-term or spot transactions to support a timely delivery of the output as a Product 2 delivery.

AReM also strongly urges the rejection of TURN's recommendation that the Commission adopt a regulation that firmed and shaped power must be sourced from the "same WECC subregion as the underlying RPS purchase". TURN offers no explanation whatsoever as to why or how such a recommendation is consistent with the language in SB 2 (1x). Nor does TURN provide any analysis or explanation as to why or how their location restriction will help RPS-obligated entities meet the RPS goals of SB 2 (1x) or improve market efficiency. Indeed, the only outcome to be achieved by TURN's recommendation is an unnecessary increase in costs to the consumers in California.

AReM also strongly urges the Commission to reject TURN's proposal that firming and shaping transactions must include fixed price provisions, as discussed more fully in the response to Question 9 below.

In summary, with respect to the provisions of SB 2 (1x) that affect firmed and shaped transactions under 399.16(b)(2), the only issue that needs Commission direction is how RPS obligated entities are to demonstrate that the firmed and shaped energy purchases are incremental to purchases that the RPS obligated entity would have otherwise made. It is within that scope that the Commission should consider interpretations of firmed and shaped transactions. Other than that, the Commission should adopt the approach recommended by AReM, all of the IOUs, NextEra, and CMUA and preserve the maximum amount of flexibility with respect to firming and shaping so as to allow RPS obligated entities to better manage their firming and shaping costs.

8. Should there be a grace period beyond the calendar year during which the tagging process may be "trued up?"

Answer: Because the implementation of the product content portfolio approach will be new for all market participants, AReM believes that it would be worthwhile for there to be a grace period to allow for truing up the tagging process. However, this grace period should be associated with the end of the compliance period, rather than a calendar year because it is only at the end of the 3-year compliance period that the process of verifying the product content claims of the RPS compliance reports will occur. Moreover, during the grace period, WREGIS account holders should be able to modify the product content designations for Certificates in their WREGIS sub-accounts along with any ability to provide corrected E-tags as part of the true up process, so long as it is clear that the product designations cannot be changed for any WREGIS certificate that has been retired.

9. Must the term of the firming and shaping agreement described in the first illustrative contract structure match the term of the RPS PPA producing the RECs?

Answer: AReM has addressed several facets of this issue in its response to Question 7. To reiterate, AReM concurs with others that there is no reason to require the term of firming and shaping agreements to match the term of the underlying RPS purchase that provides the REC. First, the statute is silent with respect to whether the terms of the firming and shaping transactions must match, and therefore a Commission-imposed mandate of this sort would unnecessarily limit the program design set forth in the statute. Equally important is the practical perspective; imposing such restrictions on firming and shaping transactions is unnecessary for ensuring that the Product 2 category provides incremental energy deliveries into California.

Moreover, two parties, IEP and TURN, suggest that firming and shaping transactions must include a fixed price component or must be for some set duration. But here too there is no statutory direction for such restrictive provisions, which will only serve to increase costs to California consumers with no commensurate benefit in terms of achieving the goals of SB 2 (1x).

10. What other contract structures or variations on the consensus contract structures qualify as bucket #2?

Answer: There were two other noteworthy comments offered by SolarReserve and Duke Energy that should be accommodated in the Commission's regulations with respect to firmed and shaped transactions. The first is that if the firming and shaping is provided by a resource that is an ERER, then the underlying RPS energy that has been firmed and shaped should qualify as Product 1. While it is somewhat difficult to envision a circumstance where firming and shaping would be provided by an ERER (because one would think that the ERER would just directly deliver into the California Balancing Area if it is already available), should such transactions occur, AReM would agree that they should qualify as Product 1. The second is that

if the firmed and shaped power is delivered from an energy storage facility that is committed to storage of renewable energy only, including the underlying RPS resources, then it should also qualify as Product 1. AReM would concur with both of these recommendations.

IV. EFFECTIVE DATE

There are significant differences of opinion among parties as to when the RPS program should be made effective in light of the statute's continuing pending status – whether that should be as of January 1, 2011, or no sooner that the conclusion of this proceeding. The Commission must avoid applying the product portfolio content categories to RPS contracts executed prior to the effective date of the legislation, as that would be a retro-active application. While there continue to be indications that "clean-up" legislation may address grandfathering concerns entities have with RPS contracts executed after June 1, 2010 but prior to the effective date of the legislation, it remains unclear whether any clean-up legislation will occur. Moreover, the effective date for SB 2 (1x) continues to "float" because the bill is not effective law until 90 days after the end of the Extraordinary Session. Because of the "floating" nature of the effective date of the legislation, the complexities required to establish clear rules for compliance, and the impracticality of assuming that RPS-obligated entities can redefine their procurement and commercial practices or their procurement contracts with counterparties, the Commission should avoid any retrospective application of RPS program changes. Instead, any changes to procurement obligations and position limits should become applicable when the Commission has resolved the implementation issues, including interpretation regarding the product definitions under § 399.16. Serious effort must be taken to avoid devaluing procurement transactions already executed for purposes of achieving RPS compliance. The most pragmatic and straight-forward way to transition to the new RPS program structure would be to keep the existing

program rules in place with respect to eligible products and compliance until SB 2 (1x) is effective, and by tying and coordinating the CPUC's work with that needed at other agencies and entities. Therefore, the start of the SB 2 (1x) program should not occur until the changes necessary for the CEC and WREGIS tracking and validation processes are established.[9]

V. CONCLUSION

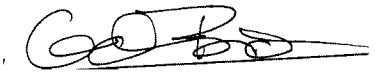
AReM appreciates the focused questions presented by the Commission and the work presented by a number of parties to advance the implementation of SB 2 (1x). A comment common among a number of parties is the need for clarity with respect to both the new RPS program rules and product categories, as well as how the state transitions from the existing RPS program structure to the new and more complex SB 2 (1x) program. AReM urges the Commission to provide guidance as soon as possible concerning an expected "launch" date for the new RPS procurement requirements as well as assuring the market that procurement made to achieve compliance with the current, ongoing RPS program will receive full credit.

At present it remains unclear when SB 2 (1x) will become legally effective. It is also unclear when the required implementation work at the CPUC, CEC and WREGIS will be completed. What is clear is that coordination between the agencies responsible for procurement policy implementation development and product claims verification should be completed before the start of the new program to avoid unnecessary confusion over product eligibility and compliance requirements. Also as noted by AReM and others in opening comments, implementation of the new program should avoid imposing needless complexities that will make

[9] AReM notes that its February 14, 2011 Application for Rehearing for D.11-05-025 in R.06-02-012 concerning grandfathering remains outstanding.

it difficult to manage and optimize portfolios or resell eligible products since such rules will ultimately increase costs throughout California's economy.

Respectfully submitted,



August 19, 2011

Andrew B. Brown
Ellison Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: abb@eslawfirm.com

Attorneys for the
Alliance for Retail Energy Markets

VERIFICATION

I am the attorney for the Alliance for Retail Energy Markets ("AReM"), and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on August 19, 2011 at Sacramento, California.

Andrew B. Brown