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

COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS ON ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON NEW PROCUREMENT TARGETS AND CERTAIN COMPLIANCE REQUIREMENTS FOR THE RENEWABLES PORTFOLIO STANDARD

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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

Pursuant to the instruction in Administrative Law Judge Anne E. Simon's *Ruling Requesting Comments on New Procurement Targets and Certain Compliance Requirements for the Renewables Portfolio Standard Program*, dated July 15, 2011 ("ALJ Ruling"), the Alliance for Retail Energy Markets ("AReM")[1] submits these comments. The ALJ Ruling sets the stage for the Commission to address some of the most pressing issues associated with implementation of SB 2 (1x) that require urgent resolution in order to bring market certainty to entities responsible for compliance with the Renewable Portfolio Standard ("RPS"), and to their customer who will have to pay for that compliance. In Section II of these comments, AReM provides an overview of the framework that it believes should apply to the implementation of the new procurement period targets and the related compliance issues raised in the ALJ Ruling. In Section III of these comments, AReM provides detailed responses to the questions posed in the ALJ Ruling.

[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 individual members or the affiliates of its members with respect to the issues addressed herein.

II. OVERVIEW AND FRAMEWORK

AReM recognizes the complexity associated with establishing regulations to implement SB 2 (1x). It is a complicated statute that in some instances provides little specificity, and therefore little guidance, on how the implementing regulations should be structured. Where the details are absent in the legislation, Commission interpretation of the statute must rely on the plain language of the statute, and where the plain language is not so unambiguous and leads to differences of opinion on implementation details, Commission interpretation should be focused on furthering the overall goal of the statute to increase use of renewable energy in California in a manner that is fair, will promote market certainty, and will help to manage costs of achieving the goals.

Two specific themes recur frequently in AReM's recommendations for the structure of regulations to implement the procurement targets and other compliance requirements of the statute. The first is that the statute should not be interpreted in ways that will impermissibly confiscate from retail sellers and their customers the ability to realize the expected value of RPS purchases they made prior to the passage of SB 2 (1x). This theme is particularly prominent in determining how the statute's provisions in Section 399.15(a) with respect to elimination of past deficiencies and status of RPS purchases banked as of December 31, 2010 will be implemented. In this regard, AReM urges the Commission to establish a process that: (i) allows retail sellers to bank 2010 RPS procurement that is in excess to the 14% threshold established in SB 2 (1x); and (ii) nets remaining deficiencies (including earmarks) against banks existing as of December 31, 2010. This approach is consistent with the statute's language that is intended to provide relief for past deficiencies reflected in the earmarking by the Investor-Owned Utilities ("IOUs"), while ensuring that retail sellers that did not carry deficiencies throughout the 20% RPS program will retain the value of those purchases made for RPS compliance purposes.

The second recurring theme is that there should be a smooth transition from the existing 20% RPS regime to the new 33% RPS regime contemplated by SB 2 (1x). This is particularly important given that the first multi-year compliance period under the statute includes 2011, a year that is rapidly approaching its conclusion. This theme is reflected in AReM's recommendations for a flexible approach to the compliance period targets (a minimum quantity that achieves compliance, and a slightly higher target that establishes a threshold for banking), and that drives AReM's recommendations that the Commission maintain existing regulations with respect to potential monetary penalties ($50/MWh when waivers are not granted) and that the minimum level of required 10 year contracting (0.25%) be maintained in the new 33% program.

III. RESPONSES TO THE QUESTIONS POSED IN THE ALJ RULING

The following are AReM's responses to the specific questions posed in the ALJ Ruling.

1. *Should the transition from the current RPS program (20% of retail sales) from RPS-eligible generation by the end of 2010)(20% program) to the RPS program as revised by SB 2 (1x) (33% of retail sales from RPS-eligible generation by the end of 2020) (33% program) start from the position that the procurement and flexible compliance rules for the 20% program apply through the 2010 compliance year and the procurement and compliance rules for the 33% program apply beginning with the 2011 compliance year (making allowance for the special provision in new § 399.15(a)?) Please provide detailed support for your position.*

Answer: AReM notes that SB 2(1x) has, in fact, deleted or amended all sections of the code that provided for an RPS compliance requirement for 2010, such that there is now no 20% statutory procurement requirement for 2010 RPS compliance. Indeed, the only reference in the new statute that the intent of the framers was to preserve a 2010 requirement at all is in section 399.15(a). That section makes special provisions for RPS-obligated entities that achieved procurement of at least 14% in 2010 whereby they are relieved of any prior period deficits. That provision is discussed in more detail in the response to Question 3 below. AReM believes that the SB 2(1x) changes should be interpreted to mean that the 20% 2010 compliance procurement obligation is effectively reduced to 14%, and that any RPS actual procurement made for 2010 compliance in excess of the 14% threshold, along with any other

volumes banked under the 20% regime, can be carried forward to meet future RPS obligations under the 33% program. This is the appropriate interpretation because other interpretations will result in situations specific purchases made by retail sellers in full compliance with the 20% regime will be otherwise rendered valueless in a transition to the new regime. There is nothing in the statute that indicates that the Legislature intended to create a bifurcation between the two programs that results in the taking or confiscates of value from retail sellers' customers in that manner.

Whether rules for the new 33% program begin with the 2011 compliance year is a more complex issue, because RPS obligated entities, such as the Electricity Service Providers ("ESPs") that AReM represents, have had to continue to procure renewable energy products to meet their obligations in the face of significant market uncertainty created by the nearly mid-year passage of SB 2 (1x), the fact that it has yet to become effective, and the fact that the details of the implementing regulations required from the CPUC and California Energy Commission ("CEC") are just being developed. Because of these uncertainties, AReM noted in its previous comments that the 2011 compliance year should be evaluated from the position that there needs to be a smooth transition from today's 20% program structure to the new 33% program with its product categories and portfolio development requirements that will occur on a prospective basis. Some parties may assert that the outline of the new program has been public for some time and therefore obligated entities could have been procuring during 2011 under that program. The problem with this thinking, however, is that it rests on a fallacy that the law has already changed when in fact we do not know when that will occur, as well as the fallacy that existing law is functionally suspended by a pending, but not yet effective, new law.

A reasonable transition should be designed on a premise that the statute does not intend for there to be confiscation of value paid for by customers; i.e., entities that undertook procurement consistent with the existing (and currently effective) 20% program should receive credit for that procurement executed before the 33% program becomes effective. This would include maintaining the value of procurement eligible in 2010 above the 14% threshold. While the new program effectively relieves the prior years' procurement obligation for entities that achieve at least 14% procurement in 2010, that provision should not take away the real RPS

compliance value paid for above that 14%. Rather, the Commission should permit that value to be carried forward into the 33% program.[2]

2. *New § 399.15(b) establishes new RPS compliance targets and provides instructions to the Commission about implementing them. (A copy of new § 399.15(b) is attached as Attachment A.)*

   A. *New § 399.15(b)(2)(B) states that "for the compliance period from January 1, 2011, to December 31, 2013, inclusive, the commission shall require procurement for each retail seller equal to an average of 20 percent of retail sales. For the following compliance periods, the quantities shall reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products form eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020…"*

   - *Should compliance targets for intervening years in the 2011-2013compliance period be set as:*
     -- 20% of retail sales for the year ending December 31, 2011;
     -- 20% of retail sales for the year ending December 31, 2012; ending with
     -- 20% of retail sales for the year ending December 31, 2013, such that the RPS obligation (compliance period quantity) of a retail seller for the 2011-2013 compliance period would equal in megawatt-hours (MWh): (.20 x 2011 retail sales) + (.20 x 2012 retail sales) + (.20 x 2013 retail sales)?
   - *Should different compliance targets for intervening years be set for this period? Why or why not?*
   - *Should no compliance targets for intervening years be set for this period? Why or why not?*

Answer: AReM recommends that no specific compliance targets be set for the intervening years of the 2011 to 2013 compliance period. AReM's recommendation is based on the following rationale.

- The statute does not require such specificity with respect to the intervening years, suggesting that the framers of the legislation intended to provide RPS obligated entities with a significant degree of procurement flexibility in the intervening years of the compliance period. Setting specific targets for the intervening years would undermine this flexibility, and is contrary to the express language in 399.15(b)(2)(C).
- The statute is also clear that the Commission may <u>not</u> impose any penalties for an ESP's failure to meet any set level of RPS procurement in the intervening years of a compliance period. Therefore, efforts to establish targets will serve no enforcement purpose.

[2] AReM notes that the statute unfortunately establishes June 1, 2010 as the trigger date for executed contracts to meet the product portfolio standards, creating significant complexities and potential legal issues associated with the transition from the 20% program to the 33% program.

Therefore, AReM's recommendation is that the Commission regulations simply state that the compliance obligation for 2011 through 2013 will be 20% average of all retail sales over the entire first compliance period.

B. For the compliance period 2014-2016 and 2017-2020, the Commission is required to set compliance period quantities that "reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products form eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2015, and 33 percent of retail sales by December 31, 2020."

- *Should targets for intervening years in the 2014-2016 compliance period be set using a linear trend:*
  -- 21.5% of retail sales by December 31, 2014;
  -- 23.5% of retail sales by December 31, 2015; ending with
  -- 25% of retail sales by December 31, 2016, such that the compliance period quantity for the 2014-2016 compliance period would equal in MWh: (.215 x 2014 retail sales) + (.235 x 2015 retail sales) + (.25 x 2016 retail sales)?
- *Should targets for intervening years in the 2017-2020 be set using a linear trend:*
  -- 27% of retail sales by December 31, 2017;
  -- 29% of retail sales by December 31, 2018;
  -- 31% of retail sales by December 31, 2019; ending with
  -- 33% of retail sales by December 31, 2020, and thereafter, such that the compliance period quantity for the 2017-2020 compliance period would equal in MWh: (.27 x 2017 retail sales) + (.29 x 2018 retail sales) + (.31 x 2019 retail sales) + (.33 x 2020 retail sales)?
- *Should different targets for intervening years be set for either of these compliance periods? Why or why not?*

Answer: As noted in the response immediately above, AReM believes that the Commission should avoid setting specific targets for the intervening years of the compliance period because the statute does not require the Commission to limit procurement flexibility in that way, nor does it permit the Commission to impose penalties for failure to achieve any specific procurement target in the intervening years. Therefore, in establishing compliance requirements for the second and third compliance periods, AReM believes that the Commission's goals should be to (i) provide procurement flexibility during the compliance period; and, (ii) provide certainty as to just what the procurement requirement is for the compliance period. To this end, a total volume of MWhs procured over the course of the compliance period will need to be established. AReM recommends procurement made between the bounds described below would satisfy a "reasonable progress" showing.

AReM suggests that the following recommendations would accomplish these two goals and are wholly consistent with the statute.

- First, establish a baseline minimum volume required by the statute (§399.15(b)(2)(B)) for the first compliance period that sets a floor MWh volume of RPS product to be procured. For the 2014-2016 period, this would be calculated as the sum of (0.2 * 2014 retail sales) + (0.2*2015 retail sales) + (0.25*2016 retail sales). Failure to achieve procurement above this floor by the end of the compliance period would be non-compliant and subject to enforcement absent a waiver.

- Second, establish a procurement quantity that establishes the threshold above which procurement volumes can be banked as excess procurement. AReM suggests that this threshold could be set at the sum of the levels included in the straw proposal included in the ALJ Ruling: (0.215 x 2014 retail sales) + (0.235 x 2015 retail sales) + (0.25 x 2016 retail sales). Procurement above this quantity would be eligible for banking as excess procurement.

- For the second compliance period, the minimum or floor procurement volume would be the sum of (0.25 * 2017 retail sales) + (0.25 * 2018 retail sales) + (0.25*2019 retail sales) + (0.33*2020 retail sales). Failure to achieve procurement above this floor would trigger a compliance review absent a waiver.

- The excess procurement threshold applicable for the 2017 through 2020 compliance period should equal the sum of (0.27 x 2017 retail sales) + (.029 x 2018 retail sales) + (0.31 x 2019 retail sales) + (0.33 x 2020 retail sales). Procurement above this quantity would be eligible for banking as excess procurement consistent with the banking rules.

Setting the procurement target regulations in this manner best achieves the goals of the statute:

1. They serve to clearly inform RPS obligated entities that their compliance period obligation reflects an increasing proportion of renewable energy over time, and as such will provide the incentives for RPS obligated entities to make the purchases necessary to achieve the compliance period requirements.

2. They establish a bright line for the triggering of non-compliance actions while providing flexibility to address potential lumpiness of resource additions, project delays, swings in demand, or variability in resource output due to weather or economic changes.

3. They meet the letter of the statute that requires the Commission to set targets that ensure reasonable progress toward the statutory compliance period procurement requirements.

4. They do not, however, limit the RPS obligated entities' flexibility with respect to when during the compliance period they actually make the purchases necessary to achieve the compliance period target, which is precisely the purpose of having multi-year compliance periods, rather than annual targets. For instance, assume that an RPS obligated entity can make a multi-year commitment to a renewable resource that is expected to come online in the second year of the compliance period, and that contract would satisfy the entity's entire compliance period procurement obligation. That entity may have to forego that preferable option if there is an individual procurement target for the first year of a compliance period since meeting the annual target, plus the multi-year commitment, requirement would cause the entity to have to over-procure, with the result that costs would be higher than they need to be. Moreover, since the Commission has no ability to enforce procurement targets during the intervening years (Section 399.15(b)(2)(C), there is not much sense in setting them.

C. *New section 399.15(b)(2)(C) provides that "[r]etail sellers shall be obligated to procure no less than the quantities associated with all intervening years by the end of each compliance period. Retail sellers shall not be required to demonstrate a specific quantity of procurement for any individual intervening year."*
   - *What are the consequences, if any, of a retail seller attaining the target in the final year of the compliance period (e.g., 25% of retail sales in 2016), but failing to procure "the quantities associated with all intervening years" by the end of that compliance period?*

Answer: AReM does not believe that this section of the statute should be interpreted to impose on retail sellers a separate and distinct compliance obligation for the final year of the compliance period, in addition to an overall compliance target for the entire compliance period. Put another way, there should be no requirement that a retail seller separately shows that it has purchased 25% renewables in 2017 or 33% in 2020, along with the overall volumetric showing for the multi-year compliance period thresholds. Layering of the compliance obligations in that manner would unnecessarily complicate an entity's management of its compliance obligations, and significantly reduce the flexibility intended by the implementation of multi-year compliance periods, as described in response to the immediately preceding question. With respect to the question of what should happen if an entity achieves the 25% in 2017 (or the 33% in 2020), but does not achieve interim targets, AReM notes that its recommended approach described above, if adopted by the Commission, avoids a situation where a showing is made for any set procurement targets for the intervening years of the compliance period. Rather, the showing is for a cumulative volume representing the sum of volumes across the compliance period, and establishes a compliance

threshold and a separate threshold for banking of excess purchases. Moreover, if the Commission should decide to adopt specific procurement targets for the intervening years, any such targets would not be binding obligations as the Commission is not allowed under the statute to impose any demonstration requirement, and therefore penalties, for such failure to reach a particular volume in the intervening years.

3. *New section 399.15(a) provides that "[f]or any retail seller procuring at least 14 percent of retail sales from eligible renewable energy resources in 2010, the deficits associated with any previous renewables portfolio standard shall not be added to any procurement requirement pursuant to this article."*
   A. *How should "at least 14 percent of retail sales from eligible renewable energy resources in 2010" be interpreted?*
      1. *At least 14 percent of retail sales must come from renewable energy credits (RECs), from bundled or REC only contracts, associated with RPS-eligible energy that was generated and delivered in 2010. Or*
      2. *The 14% figure may include the allowable deferral of up to 0.25% of a retail seller's annual procurement target (APT) for 2010 under the flexible compliance rules for the 20% RPS program set out in Decision (D.) 06-10-050. Or*
      3. *The 14% figure may include both the allowable deferral of up to 0.25% APT and deferral of further deficits for 2010 through any allowable reason for current noncompliance, e.g. "earmarking," as set out in D. 06-10-050. Or*
      4. *The 14% figure may include either the deferral of up to 0.25% of APT for 2010 or deferral of further deficits through any allowable reason for current noncompliance, e.g., earmarking, but not both. Or*
      5. *The 14% figure should be calculated in some other way. Please provide detailed support for the proposed calculation.*

Answer: The 14% figure should be based on actual procurement made for 2010 requirements consistent with the 20% program rules applicable to the 2010 compliance year. That means that the 14% should include procurement of eligible renewable resources procured and received for 2010 delivery, plus actual delivered procurement from prior years that the retail seller banked in accordance with established CPUC rules. It should also include the 0.25% APT deferral as well. However, how volumes deferred through earmarking should be carefully considered, because the data on earmarking, a tool that has been used to AReM's knowledge only by the IOUs, shows that earmarking was occurring at the same time that the IOUs had significant banked quantities from earlier purchases. As further explained in the responses that follow in Section B and C of this question 3, AReM believes that the most equitable approach for implementing the 14% threshold with respect to deficits is as follows:

1. The 14% threshold should be calculated based on actual 2010 purchases plus application of banked volumes of delivered energy from prior years, as permitted by the 20% program rules.

2. For all entities who meet this 14% threshold, the 2010 compliance threshold should be 14% and volumes procured above 14% should be bankable by the retail seller for the 33% program.

3. Elimination of deficits should include elimination of past earmarking, but any such elimination of the remaining earmarks as of December 31, 2010 should be netted against the retail sellers cumulative banks as of December 31, 2010. If the net number is a net deficiency, that the deficiency is forgiven (set at zero). If the net number shows a remaining bank, the entity keeps the bank and may use it for future compliance periods in the 33% program without restriction as to product content categories.

4. For clarity, any retail seller that had a bank as of December 31, 2010 and never had any past deficiencies or earmarks will be allowed to retain their bank for use in future compliance periods without restrictions as to product content categories.

B. *How should "the deficits associated with any previous renewable portfolio standard" be interpreted? Please provide detailed support for the proposal.*
   1. *As applying only to deficits in meeting the 2010 target of 20% of retail sales, without the use of flexible compliance; or*
   2. *As applying only to the 2010 target of 20% of retail sales, using allowable flexible compliance rules in the calculation of any deficit. Or*
   3. *As applying to any year in which a retail seller has an APT obligation, using allowable flexible compliance rules in the calculation of any deficit. Or*
   4. *Another interpretation should be used.*

Answer: AReM believes that the wording of the statute requires the Commission to consider all the years in which the retail seller has an APT. With respect to the extent to which flexible compliance tools are included in the calculation of any deficit, there are three very important issues that the Commission must address in determining the level of deficiency that exists in 2010.

First, the Commission must determine whether earmarked volumes from prior years are considered to be deficits that must be forgiven as a result of these provisions of the statute. From AReM's perspective, earmarking was a tool afforded by the Commission that allowed entities to avoid RPS procurement deficiencies by committing future deliveries from executed contracts to satisfy a current year RPS procurement obligation. Moreover, the contracts used for the earmarking were approved by the Commission for the purpose of satisfying the earmarking

obligation, and presumably have already achieved commercial operation or are continuing to move toward commercial operation. Therefore, to now treat those earmarked volumes as part of the deficit that is forgiven if the entity achieved 14% procurement in 2010 since doing so would, in essence, confer on those entities a very large "gift" of future excess procurement. It would be particularly egregious to allow such a result if entities who managed to achieve compliance without earmarking are precluded from carrying forward their existing banks as of December 31, 2010. Having said that, AReM recognizes that the statute does indeed provide for forgiveness of the past deficit, and if earmarking is not included in that forgiveness, then in essence, there will be no deficits to forgive. Therefore, AReM believes that deficits should include remaining earmarked quantities as of December 31, 2010.

Second, the Commission must rule on whether or not the grandfathering provisions of the statute allow an entity to carry forward into the 33% programs quantities banked as of December 31, 2010. While the statute says in Section 399.13(a)(4)(B) that the Commission must establish rules that permit banking as of January 1, 2011, that language does not mean that entities who have accumulated banks under the 20% program and prior to January 1, 2011 are now required to forfeit the value of that procurement reflected in their banks. Moreover, the grandfathering provisions of the statute do not in any way limit the applicability of grandfathering as it relates to banks created prior to the effectiveness of this statute. Nor do any of the provisions of the statute indicate that the intent of the Legislature is to confiscate value achieved in the 20% program. Moreover, taking away such value which was secured for the explicit purpose of complying with the RPS program raises concerns about impermissible confiscation of property. Finally, as will become apparent in the next several paragraphs of these comments, it will be critical for the Commission to adopt this interpretation to ensure that the implementation of the statute does not create unintended windfalls for some and debilitating losses for others.

Third, if earmarked volumes are determined to be included as deficiencies that are forgiven for any entity that achieved 14% in 2010 (as the 14% threshold is defined by AReM in response to Question 3.A), then those deficiencies must first be offset by any excess procurement that the entity has banked through December 31, 2010. Failing to do so will effectively permit the carry-forward of volumes that ought to have been retired in 2010 or earlier years. To illustrate the issues raised here, AReM has prepared the table below from publicly available sources. The table shows that each of the Investor Owned Utilities ("IOUs") has utilized

earmarking to a significant degree over the course of the RPS program. Interestingly, while the IOUs have used earmarking to meet the annual RPS requirements, they have also simultaneously amassed significant banks of RPS procurement. The table below is a summary of the cumulative earmarking versus cumulative banking for each of the IOUs as of December 31, 2010, data taken from their publicly available compliance reports posted by the Commission.

Cumulative Earmarking versus Cumulative Banking through 2010 (MWhs)

IOU	Cumulative Earmarking	Cumulative Banking	Net Earmarking
SCE	5,843,865	305,482	5,538,383
PG&E	3,018,678	2,143,175	875,503
SDG&E	1,273,922	1,196,299	77,623
Totals	10,136,465	3,644,956	6,491,509

AReM notes that this table changes significantly based on AReM's interpretation of the statute whereby 14% is the renewables procurement threshold required for 2010, and quantities procured beyond that level are then included in a retail seller's bank as of December 31, 2010. The table below shows AReM's calculations of the status of the IOUs' procurement if the Commission adopts the interpretation that 14% is the 2010 compliance threshold.

Cumulative Earmarking versus Cumulative Banking through 2010 (MWhs)
With 2010 Obligation set at 14%

IOU	Cumulative Earmarking	Cumulative Banking	Net Bank/(Earmarking)
SCE	5,843,865	4,813,547	(1,030,318)
PG&E	3,018,678	6,809,509	3,790,831
SDG&E	1,273,922	2,173,260	899,338
Total	10,136,465	13,796,316	3,659,851

AReM believes that it would be contrary to the spirit and intent of the statute for the Commission to allow the IOUs to retain their 2010 banks while at the same time their obligation to deliver earmarked volumes in the future is eliminated. Similarly, it would also be contrary to the spirit and intent of the statute for the Commission to presume that the statute intends for retail sellers, such as the ESPs that AReM represents, that have had no deficiencies as of December 31, 2010, but have accumulated banks as of December 31, 2010, to be required to forfeit the entire value of their banked quantities while they receive *no benefit* for deficit forgiveness because they did not carry forward any deficits through earmarking. To ensure that this blatant inequity does not occur, AReM urges the Commission to establish rules that avoid this outcome by:
(i) resetting the 2010 obligation to 14% and allowing entities who exceeded that threshold to

carry forward the excess as of December 31, 2010 into the 33% program; and, (ii) netting each retail seller's remaining deficits as of December 31, 2010, if any (including earmarks), against their banks as of December 31, 2010. The difference between these two numbers will result in each entity having a net bank or a net deficit. If the net number is a deficit, that deficit should be forgiven and set to zero. If the net number is a bank, the entity gets to carry forward that bank into the 33% program.

This is the approach most consistent with the statute and provides the most equitable result across all retail sellers. It ensures that past deficits are forgiven, while at the same time ensuring that retail sellers who have complied with their obligations all along are not stripped of the banks that they managed to accumulate.

C. *How should "shall not be added to any procurement requirement pursuant to this article" be interpreted with respect to RPS procurement obligations under the 20% program?*
   - *Does a retail seller need to satisfy its APT requirements for all compliance years through 2010, using the current flexible compliance rules, whether or not the retail seller attained 14% of retail sales from RPS-eligible resources (defined as you proposed in 3.A, above) in 2010?*
   - *Is a retail seller subject to penalties for failing to satisfy its APT requirements for any compliance year(s) through 2010, in accordance with D.03-06-071, D.03-12-065, and D.06-10-050, whether or not the retail seller attained 14% of retail sales from RPS-eligible resources (defined as you proposed in 3.A, above) in 2010?*

Answer: As noted in its response to 3.B of this question, AReM recommends that for any entity who achieved 14% in 2010 (as defined by AReM in its response to Question 3.A), past deficiencies, including earmarked volumes, should be netted against banked quantities, and any remaining net deficiency be forgiven or, if there is a net bank, that net bank should be usable in future compliance periods (for further discussion of the treatment of banked quantities held by an entity at year end 2010, please see AReM's response to Question 8). For any entity with a net deficit under this approach that is eliminated, the entity should be relieved of the obligation to procure those quantities and should not be subject to a compliance review or any penalty for that net deficit.

4. *Should new § 399.15(b)(9) be interpreted to mean: "[d]eficits associated with the compliance period in which the deficits occur shall not be added to a future compliance period?" Should this section apply only to compliance year 2011 and future years? Why or why not?*

Answer: This statutory provision is intended to be applicable to the compliance periods established in SB 2 (1x). Therefore, unlike the current 20% program with its mandatory

"make-up" rule applicable to deficits, under the 33% program no deficits that may exist at the end of each compliance period to be carried forward into the next multi-year compliance period. What this means in practical terms is that when and if an entity is demonstrably deficient at the end of a multi-year compliance period, one of two things can happen: (i) the Commission can issue a waiver to that entity, if a convincing case has been made to the Commission that such a waiver is warranted, consistent with the provisions of Section 399.15(b)(5) and (7); or, (ii) if the Commission denies an entity's waiver request, the Commission has the authority to require a remedy for the deficiency in accordance with the provisions of Section 399.15(b)(8), and potentially require additional reporting under Section 399.15(b)(6).[3] If a compliance proceeding is triggered under 399.15(b)(8), once any penalty (if imposed) has been paid by the deficient entity the compliance obligation for that compliance period will be considered satisfied.

Market certainty could be significantly enhanced if the Commission confirms in its ruling in this proceeding that (a) it will determine whether a waiver is warranted at the time a waiver request is made, and (b) if a waiver is not granted, the potential penalty that the Commission will impose, if it determines that a monetary penalty is warranted, will be consistent with the penalty provisions already in place, which has a penalty rate of $50/MWh. Current provisions also cap current penalties at a total of $25 million. AReM believes that the $25 million cap should be reviewed so that the overall cap is based on a scale that is tied to the size of the retail seller's overall RPS obligations. However, until such a proceeding can take place, AReM recommends that the current $50/MWh cap and $25 million total should remain in place with respect to potential monetary penalties.

5. *If a retail seller has deficits from any compliance year through 2010 that must be satisfied with procurement in 2011 and/or later years, how should the requirement to satisfy the prior deficits be implemented, in light of new § 399.15(b)(9)?*

Answer: As explained in AReM's response to question 4 above, AReM believes that the intent of the statute is to eliminate deficits from the years prior to 2010, where an entity shows that it realized a 14% procurement level for 2010. Therefore, there should not be any deficit that must be satisfied with procurement in 2011 or beyond. Note, however, that as explained by AReM in

[3] AReM notes that the Commission has penalty provisions in place now that impose a penalty of $50/MWh for any deficiency that has not been specifically waived by the Commission.

its response to Question 3.B above, deficits, including earmarked volumes as of December 31, 2010 should be netted against any banked volumes held at the end of 2010.

6. *New § 399.13(b) amends current § 399.14(b) as indicated below (underlines show additions; strikeouts show deletions):*

   (b) A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration ~~or from new facilities commencing commercial operations on or after January 1, 2005~~.

   In D. 07-05-028, the Commission implemented current § 399.14(b) by requiring that retail sellers enter into contracts for a minimum quantity of 0.25% of the prior year's retail sales that have a minimum duration of 10 years (long-term contracts), or are with RPS-eligible generation facilities commencing commercial operation on or after January 1, 2005. This obligation ends when a retail seller reaches the goal of 20% of retail sales obtained from eligible renewable resources. (D.07-05-028, OP 5.)

   - *How should the Commission determine the minimum quantity under new § 399.13(b)? Please provide a sample calculation using the proposed method.*
   - *Should the minimum quantity include specific minimum quantities of procurement from long-term contracts in any or all of the portfolio content categories identified in new § 399.16(b)?*
   - *Should the minimum quantity requirement under new § 399.13(b) carry forward the requirement in D.07-05-028 that the long-term contracts for the minimum quantity must be signed in the same year as the short-term contracts sought to be counted for RPS compliance? If not, what basis for accounting for the minimum quantity of long-term contracts should be used?*
   - *Should the minimum quantity requirement under new § 399.13(b) have a termination? If so, what should the termination be?*
   - *How should deliveries in 2011 and later years from short-term contracts entered into in 2010 and earlier years, and in compliance with D.07-05-028, be treated?*
   - *Should such deliveries be deducted from actual procurement quantities as part of the calculation of excess procurement that may be applied to a subsequent compliance period pursuant to new § 399.13(a)(4)(B)?*
   - *Should short-term contracts entered into in 2011 but prior to the effective date of SB 2 (1x) be treated differently? Why or why not?*

Answer: The rules implementing SB 107 under the 20% program with respect to a minimum procurement requirement from new or long-term contracts suspended that requirement once the utility achieved a 20% procurement level. The new 33% program departs from that structure. From AReM's perspective, it is unfortunate that the statute eliminated explicit

language with the previous flexibility that allowed a retail seller to avoid a long term contract requirement as long as a portion of its requirement was met with short term contracts with facilities that had achieved commercial operation after January 1, 2005. Fortunately, however, the statute does provide the Commission with significant discretion in how it applies the long term contracting requirement in that it specifically provides that the Commission can enforce different long term contracting requirements for different retail sellers, as is clear from the inclusion of the phrase "***for each retail seller***" in the excerpt cited above. AReM believes when the Commission exercises this discretion it should recognize differences between ESPs and IOUs and other providers. To implement this approach, AReM answers the question in this section as follows:

- As noted in the wording of this question, under current regulations, the standard for long term contracts is 0.25% of APT, which can be met with long term contracts or with contracts from resources that came on line after January 1, 2005. For ease of implementation, AReM suggests that 0.25% should be retained as the threshold for long term contracts. Any changes to this standard should be made on a prospective basis only after a fully vetted stakeholder process to analyze the pros and cons of any changes. Moreover, the Commission regulations in this regard should be written to ensure that a contract that meets this threshold retains its ability to meet the 10 year contract duration even as the contract term winds down below ten years.

- The statute does not require that the 10 year contract requirement be apportioned among the product content categories, and therefore the Commission should not unnecessarily complicate RPS procurement by creating any such restrictions.

- The statute does not require any linkage between the date the 10 year contract is signed and the signing date of any short term contracts, and the Commission should not unnecessarily complicate RPS procurement by creating any such restrictions, particularly because of the additional commercial and creditworthiness issues associated with long-term procurement.

- There should not be an annual incremental long-term procurement requirement. This is not reflected in the statute. Instead, if a retail seller executes a long-term contract volume as set by the Commission, it should be covered for this requirement over the term of that long-term contract, and the volumes should be eligible for banking over the term of that contract.

- With respect to whether the minimum quantity requirement should have a termination date similar to the mechanism under the 20% program (which AReM presumes means that the minimum long-term contracting obligation would end), AReM recommends that the Commission establish a rule clarifying that the long term contract requirement terminates when a retail seller achieves 33% RPS procurement. AReM suggests that the Commission set this question for review at the end of the first compliance period, at which time market participants could present arguments as to why the Commission should (or should not) terminate the minimum contract requirement.

- AReM believes that all procurement done prior to the effective date of the legislation should be grandfathered, such that the imposition of product content categories, contract duration requirements, or ability to bank the excess procurement for use in a future compliance period are not applicable to grandfathered volumes. In short, all procurement pursuant to contracts executed before that date should be usable for RPS compliance based on prior Commission decisions – most notably the TREC Order, D.11-01-025. Moreover, deliveries under all contracts executed before the effective date of the legislation should not reduce the amount of excess procurement that can be banked as a result of Section 399.13(a)(4)(B). Such treatment is required to avoid impermissible takings of value from contracts executed for purposes of achieving RPS compliance and to avoid unnecessary costs to California customers.

- Short term contracts entered into during 2011, consistent with the SB 107 provisions of the 20% program, prior to the effective date of SB 2 (1x) should be fully grandfathered, as described above.

7. *New § 399.13(a)(4)(B) requires the Commission to adopt new rules for the calculation and management of RPS procurement that is in excess of the requirements for a given compliance period ("banking"). This new section provides that the Commission must adopt:*

   [r]ules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period. The rules shall apply equally to all retail sellers. In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration. In no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement.

   New § 399.15(b) sets out three metrics for procurement requirements in a compliance period:

   1. *For the 2011-2013 compliance period, attaining an average of 20% of retail sales in that period.*

2. *For the 2014-2016 and 2017-2020 compliance periods, attaining a target of a percentage of retail sales by the end of the compliance period (25% by December 31, 2016 and 33% by December 31, 2020).*
3. *For all compliance periods, procuring no less than the quantities associated with all intervening years by the end of the compliance period.*
   - *Please propose a method of calculating any excess procurement that may be carried over from the 2011-2013 compliance period to the 2014-2016 compliance period. Please provide a sample calculation.*
   - *Should the method you propose also be used for calculating any excess procurement that may be carried over from the 2014-2016 compliance period to the 2017-2020 compliance period? If not, please propose another method. Please provide a sample calculation for your method.*
   - *Please discuss the relationship of the method(s) you propose to your response to #2, above, relating to the calculation of RPS procurement obligations for compliance year 2011 and future years pursuant to new § 399.15(b).*

Answer: As an initial matter, AReM believes that determination of excess procurement can only be established at the end of the compliance period. The following methodology should be used in determining excess procurement:

- For each multi-year compliance period, the retail seller will be required to submit its compliance report. The compliance report will be structured to show the retail sellers' procurement in accordance with the product content categories.

- To the extent the retail seller has excess procurement in any of the Product 1 or Product 2 content categories, and the retail seller wants the excess recorded as a volume banked in its CPUC compliance accounting, the retail seller must attest that the excess procurement has been delivered from a contract that is ten years or longer. The Commission can ask for proof of that attestation, should it choose to do so.

- The determination of excess procurement will compare volumes retired from WREGIS for each of the product categories used to meet the total compliance period requirement, up to their respective procurement limitations. Any Product 1 or Product 2 volumes that are held and that exceed the quantity required to meet the compliance obligation can be banked forward to the next compliance period, so long as they were deliveries from a contract that is or had been of 10 years in duration. Any excess Product 3 volumes that have been retired for California compliance purposes which exceed the compliance period procurement limits would be stranded assets under the limitation created by Section 399.13(a)(4)(B). It should be noted that the banking restrictions included in this section of the statute will effectively create different tranches that retail sellers will follow in structuring their compliance reports. That loading order would be as follows:

  - Product 3 volumes, up to the Product 3 limit;

- Product 2 volumes under contracts of less than 10 years' duration, up to the Product 2 limit;
- Product 1 volumes under contracts of less than 10 years' duration;
- Product 1 and 2 volumes under contracts of 10 years' or longer duration, up to the limits of those products, if any;
- Surpluses will come from this last tranche;
- Each tranche will be further subdivided taking into account whether any of the compliance instruments face shelf life expirations before the next compliance period.

- AReM believes that this methodology can be used for each of the multi-year compliance periods.

8. *Current RPS rules set out a system of procurement banking different from that in new § 399.13(a)(4)(B). Current § 399.14((a)(2)(C)(i) directs the Commission to adopt:*

> *Flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable energy resources.*

The Commission has adopted rules that, among other things, allow unlimited forward banking of excess RPS procurement and allow inadequate procurement to be deferred, in certain circumstances, for no more than the following three years. (See, e.g., D.03-06-071, D.06-10-050, D.08-02-008.)

With respect to forward banking under the provisions of SB 2 (1x), please comment on the following possibilities. Please provide detailed support and examples. Please specifically address the application of new §§ 399.15(a) and 399.16(d) to your proposal.

- *Should the Commission allow unlimited forward banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts for all compliance periods?*
- *Should the Commission allow no banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts for any compliance period later than 2010?*
- *Should the Commission allow forward banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts through the 2011-2013 compliance period but not beyond 2013?*
- *Should the Commission make some other provision for banking of excess procurement prior to January 1, 2011 from bundled and/or REC only contracts?*
- *Should any banked procurement be counted in years after 2010 only in accordance with the limits on the use of specific portfolio content categories set out in new § 399.16(c)?*

Answer: AReM's position with respect to banks created up through December 31, 2010 is set forth in its response to Question 3.B. Specifically, an entity's bank as of December 31, 2010, net of any deficit that is forgiven as a result of the application of the 14% threshold, should be fully usable by that entity in future compliance periods, as provided for in the grandfathering provisions of the statute. This means that such banks can be carried forward for use in any future compliance period since the regulations in effect prior to this new statute allowed unlimited banking. As such, any limitations on the use of the banks, either with respect to the time period over which they can be used or by imposing product content categories on those banks, would represent an impermissible retroactive devaluation of purchases made in good faith compliance with existing regulations. With this overall review in place, AReM answers each of the questions above as follows:

- *Should the Commission allow unlimited forward banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts for all compliance periods?*

  Answer: Yes. Any other mechanism presents a confiscation of value paid by California consumers to comply with RPS.

- *Should the Commission allow no banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts for any compliance period later than 2010?*

  Answer: No. The statute does not contemplate the confiscation of value secured to meet compliance requirements under the 20% program. Not allowing a carry-forward of volumes secured under the 20% program will penalize customers of retail sellers who attempted in good-faith to maintain compliance. This should be avoided, as the statute does not compel such a taking.

- *Should the Commission allow forward banking of excess procurement prior to January 1, 2011 from bundled and/or REC-only contracts through the 2011-2013 compliance period but not beyond 2013?*

  Answer: Procurement from eligible ERERs made under the 20% program should be eligible in the 33% program, and should not be limited to any particular multi-year compliance period.

- *Should the Commission make some other provision for banking of excess procurement prior to January 1, 2011 from bundled and/or REC only contracts?*

  Answer: AReM urges the Commission to adopt the recommendations included in its response to Question 3 with respect to banking of excess procurement prior to January 1,

2011, and how those banked volumes are treated in instances where there are also pre-January 1, 2011 deficiencies that are being forgiven pursuant to Section 399.15(a).

- *Should any banked procurement be counted in years after 2010 only in accordance with the limits on the use of specific portfolio content categories set out in new § 399.16(c)?*

  Answer: No. As rules associated with such limitations were not established, entities procuring to meet RPS program requirements could not have adjusted their portfolio. Instead, volumes secured for compliance under the 20% program should be carried forward irrespective of any product content categorization.

9. *If a retail seller did not procure at least 14% of retail sales from RPS-eligible resources in 2010, should its deficit for 2010 be calculated as a shortfall from 20% of retail sales in 2010 or from 14% of retail sales in 2010?*

Answer: The answer to this question must be considered in tandem with the issues addressed in Questions 3 above with respect to the forgiveness of deficiencies for entities who achieve the 14% procurement threshold. Specifically, if entities who achieved 14% in 2010 are allowed to bank the excess between 14% and 20% for future years' compliance, then entities who did not achieve 14% should have their deficiency calculated from the 14% level. If, on the other hand, entities who achieved 14% in 2010 are nevertheless required to comply with a 20% procurement target for 2010, then the entities who did not achieve the 14% level in 2010 should have their 2010 deficiency based on a 20% requirement. In short, the rules in this regard must impose the same 2010 obligation on all entities, whether that obligation is 14% or 20%.

Having made those observations, AReM believes, as it has explained more fully in its response to Question 3, that an appropriate interpretation of the statute would be to allow parties who met the 14% threshold (defined as recommended by AReM in response to Question 3.A), be able to bank the excess above 14% and that entities who did not achieve the 14% threshold should have their deficiencies calculated against a 14% threshold. Moreover, the additional banked volumes that this creates for entities that also have deficiencies that are being forgiven as a result of statute should have those additional banked volumes included in the netting process described in AReM's response to Question 3.B.

10. *Should the Commission continue to apply the current flexible compliance rules to RPS procurement for 2010 and prior compliance years?*

Answer: Yes, nothing in the new statute changes the prior year's compliance regime.

11. Since SB 2 (1x) will not become effective until, at the earliest, the last quarter of 2011, should the current flexible compliance rules apply to RPS procurement for 2011?

Answer: As noted throughout these comments, AReM believes that there must be a smooth transition from the 20% program to the 33% program, especially given that we are already well into the first year of the first compliance period under the 33% program. AReM believes that its recommendations included herein with respect the treatment of banked quantities, past deficiencies and grandfathered contracts will ensure an appropriate transition.

12. In the current RPS flexible compliance regime, a retail seller is allowed to defer a shortfall of up to 0.25% of APT without explanation, so long as the deficit is made up within three years. Under new § 399.15(b)(9), deficits will not be carried forward from one compliance period to the next.

- *For years after 2010, should the Commission eliminate its current rule allowing deferral of 0.25% of APT without explanation, so long as the deficit is made up within three years?*

Answer: Yes.

13. In the current RPS flexible compliance regime, a retail seller is allowed to defer a deficit in excess of 0.25% of APT by the use of any allowable reason for noncompliance (e.g., "earmarking.")7 Under new § 399.15(b)(9), deficits will not be carried forward from one compliance period to the next.

- *For years after 2010, should the Commission eliminate its current rule allowing deferral of deficits in excess of 0.25% of APT through earmarking?*
- *How should the Commission treat RECs from contracts earmarked prior to January 1, 2011 that are received by the retail seller during the compliance period 2011-2013?*
  -- Should the RECs be allocated to the portfolio content categories (and their respective limits) of new § 399.16?
  -- Should the RECs be allocated to the procurement categories that applied in the year in which the contract was signed? How would these categories connect to the portfolio content categories of new § 399.16? Please address the application of new § 399.16(d) to your proposals.

Answer: AReM believes that for the years after 2010, the Commission should eliminate the use of earmarking. With respect to earmarked volumes through December 31, 2010, AReM has addressed this issue in its responses to Question 3.

14. Should retail sellers be required to apply the RECs from contracts earmarked prior to January 1, 2011 that are received by the retail seller during the compliance period 2011 2013 to any deficits in meeting APT in years prior to 2011, regardless of whether the retail seller attained at least 14 percent of retail sales from eligible renewable energy resources in 2010 (new § 399.15(a))? Why or why not?

Answer: Again, AReM notes that it has addressed the issues of earmarked volumes through December 31, 2010 in its response to Question 3.

15. New section 399.31 provides for the procurement of RECs for RPS compliance from local publicly owned utilities (POUs) by retail sellers, under certain conditions.8 It provides:

A retail seller may procure renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, for purposes of compliance with the renewables portfolio standard requirements, if both of the following conditions are met:

(a) The local publicly owned electric utility has adopted and implemented a renewable energy resources procurement plan that complies with the renewables portfolio standard adopted pursuant to Section 399.30.

(b) The local publicly owned electric utility is procuring sufficient eligible renewable energy resources to satisfy the target standard, and will not fail to satisfy the target standard in the event that the renewable energy credit is sold to the retail seller.

- *What documentation should the Commission require from IOUs to demonstrate that the selling POU is in compliance with new § 399.31(a)?*
- *What documentation should the Commission require from ESPs? From CCAs?*
- *What documentation should the Commission require from IOUs to demonstrate that the selling POU is in compliance with new § 399.31(b)?*
- *What documentation should the Commission require from ESPs? From CCAs?*
- *In view of the CEC's oversight of POUs' compliance with RPS requirements under SB 2 (1x), how should this Commission coordinate with the CEC to administer and verify your proposed system of documentation?*

Answer: AReM suggest that since the CEC is responsible for oversight of POU compliance with RPS requirements, the most efficient way to manage these statutory requirements would be to require that commercial arrangements with any POU include a warranty of compliance, and for the CEC to undertake the validation of POUs' compliance with 399.31(a) and (b) under its program. Retail sellers should be able to rely on the commercial warranty provided by the POU, and any POU that subsequently fails compliance with the CEC will be subject to potential sanctions under that program.

16. In D.03-06-071 and D.03-12-065, the Commission set the basic parameters for enforcement of RPS obligations. Among other things, the Commission set a penalty amount for retail sellers failing to meet their annual RPS obligations at $0.05/kilowatt-hour (kWh) for each kWh below the annual procurement target, with an annual cap of $25,000,000. New § 399.15(b)(2) institutes two three-year compliance periods and one four-year compliance period. New § 399.15(b)(1)(C) specifies that retail sellers "shall not be required to demonstrate a specific quantity of procurement for any individual intervening year."

- *To what obligation should a penalty apply?*
  -- the goal at the end of each compliance period (i.e., average of 20% for 2011-2013; 25% by the end of 2016; 33% by the end of 2020);

-- the compliance period quantity for a particular compliance period;
-- both of the above;
-- another metric or quantity. Please set out the proposal in detail and explain its basis.

- *Should the penalty amount of $0.05/kWh be changed? If so, what method should be used to set a new penalty amount?*
- *For compliance periods beginning in 2011, should a penalty cap be in place?*
- *If a penalty cap is imposed, should it cover an entire compliance period?*
- *What method should be used to set a new penalty cap under SB 2 (1x)?*

Answer: AReM believes that the statute requires the Commission to contemplate a penalty only at the end of a multi-year compliance period if a request for a waiver has been denied. The potential penalty for non-compliance would be determined after a waiver denial in an enforcement action, and may include a financial penalty or some other structured remedy consistent with the RPS program goals. Enforcement actions should be modeled after the structure balancing tests first outlined in D.98-12-075.[4] Potential sanctions should be assessed on actual RPS procurement versus the overall obligation for the compliance period in question. So, if the Commission adopts the targets suggested in its response to Question 2, then the procurement obligation for the 2011 through 2013 would be 20% times the entity's retail sales during that time period. The minimum procurement obligation for the 2014 through 2016 compliance period and the 2017 through 2020 compliance periods would be 21.7% and 27%, respectively of the retail sales in each of those multi-year compliance periods. With respect to the level of a potential monetary penalty, AReM refers to its response to Question 4, urging the Commission to retain the current $50/MWh penalty rate.

17. Please identify how the Commission would verify compliance with any proposal you have made, above. Please provide specific mechanisms and examples.

Answer: AReM believes that the compliance reporting to the Commission will need to be modified for retail sellers to report procurement in the newly established product content categories. Compliance with those reporting requirements should remain as is, i.e., compliance reports should be accompanied by appropriate corporate attestations, and verification should continue to reside with the CEC.

[4] D.98-12-075, the *Affiliate Rules Decision*, adopted a "five factors" test that has been applied by the Commission in other enforcement settings. This process reviews the severity of the offense, the entity's conduct, the financial resources of the entity, the role of precedent, and the totality of the circumstances in furtherance of the public interest to determine the appropriate remedy, whether it is a financial sanction or some other result.

18. Please discuss any issues related to the verification by the CEC of any elements of any proposal you have made, above. Please include discussion of the use of the Western Renewable Energy Generation Information System (WREGIS). Please provide specific mechanisms and examples.

Answer: AReM notes that the statute's imposition of the product content categories will require additional functionality at WREGIS, either through the use of sub-accounts or other mechanisms that allow parties to track the product content associated with each RPS compliant MWh. AReM does not know precisely how responsive WREGIS will be in light of pending changes in its governance, but most importantly, the market will require there to be single point of tracking through WREGIS, not two layers of auditing/verification that increase program costs. Then the role of the CEC with respect to verifications can remain as is.

19. The First Extraordinary Session of the Legislature is still in session. Because SB 2 (1x) becomes effective 90 days after the end of this special session, the provisions of SB 2 (1x) will not be in effect until mid-October 2011, at the earliest. In light of this, please review your proposals and identify any issues of timing that should be addressed. Should the Commission simply carry forward the existing RPS rules through calendar year 2011? Why or why not?

Answer: See response to Question 11.

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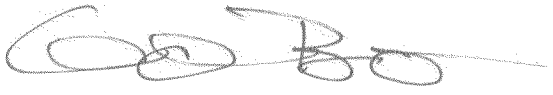
IV. CONCLUSION

As AReM noted in the conclusion to its August 8, 2011 comments to the July 12 Ruling, energy suppliers in California serving the state's residents, commercial and industrial businesses, schools, colleges, and universities are facing an unprecedented level of market uncertainty at the same time. There are significant concerns that the costs associated with compliance with the state's environmental goals and mandates will undermine a much needed economic recovery for California. The Commission's careful attention to the issues raised in this second ALJ Ruling will go far in resolving many of those uncertainties. AReM looks forward to continue working through these issues with the Commission, its staff, and market participants; and urges the Commission to continue working as quickly as possible to resolve these issues.

Respectfully submitted,



August 30, 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

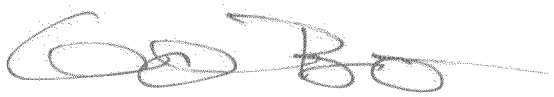
Attorneys for the
Alliance for Retail Energy Markets

VERIFICATION

I am the attorney for the respondent corporation herein, 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 30, 2011 at Sacramento, California.



Andrew B. Brown
Attorney for Alliance for Retail Energy Markets