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 SEEKING COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD

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I. INTRODUCTION AND SUMMARY

Pursuant to 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"), the Alliance for Retail Energy Markets ("AReM")[1] submits these comments. In Section II of these comments, AReM provides an overview of the framework that it believes should apply with respect to the implementation of the portfolio content categories for the Renewables Portfolio Standard ("RPS"). In Section III of these comments, AReM provides detailed responses to the questions posed in the ALJ Ruling. In Section IV, AReM provides a detailed compendium of the definitions that it believes should applied to each of the product porfolio content categories established in Senate Bill ("SB") 2 (1x).

In these comments, AReM also strongly urges the Commission to announce that its RPS compliance policies for 2011 will be based on the compliance rules that it has established prior to the enactment of SB 2 (1x), given that it remains unclear whether SB 2 (1x) would be effective

[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.

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for any portion of 2011, and in any event will not be effective for any more than the final month of 2011. Moreover, AReM urges that the start of the new regulatory paradigm under SB 2 (1x) be tied and coordinated with the completion of the other critical implementation work of agencies and entities such as the CEC and WREGIS so that there is a single renewables market opening with the most amount of clarity and consistency.

II. OVERVIEW AND FRAMEWORK

AReM's comments herein are predicated upon four over-arching principles:

1. Transactions between the sellers of the generation from eligible renewable energy resources ("ERERs") and buyers of that output for RPS compliance should specify the product(s) being bought and sold. To facilitate these transactions, the Commission must provide clear definitions of each product category, but RPS compliance enforcement by the Commission should not otherwise interfere or be overly prescriptive with respect to the formulation of specific transactions for entities whose contracts are not subject to Commission approval.
2. The process of verifying RPS compliance should remain the purview of the California Energy Commission ("CEC"). With respect to the product content categories, the CEC verification process should be structured to check and confirm the output of ERERs is greater than or equal to the sum of the compliance claims submitted by load serving entities ("LSEs"). This verification process must be structured to answer the following questions for the product claims originating from each ERER:
    a. Is the total production from the ERER greater than or equal to the total claims against the facility?
    b. How much of the 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 compliance claims against the facility for Product 1 equal to or less than the amount that qualified for Product 1?
    d. How much of the 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?

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

f. How much of the 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?

3. The output from ERERs should be recorded in WREGIS. So that the production output can be identified with respect to the production portfolio content categories, the output must be tracked in WREGIS with a designator for identifying whether the production meets the definitions of Product 1, Product 2, or Product 3?

4. Commission policy should establish that 2011 RPS compliance will be measured in conformance with Commission regulation in effect immediately prior to the enactment of SB 2 (1x) *and* that the start of the SB 2 (1x) program structure will occur when all required implementation processes are established and functional.

While the task before the Commission in this phase of the proceeding is indeed complex, AReM believes that adherence to these overarching principles will serve to somewhat simplify the task before the Commission with respect to the sweeping changes made to the RPS program by SB 2 (1x). In short, if the product content categories are clearly defined, then the owners and marketers of ERERs and the buyers of the output who have the RPS compliance obligation will be able to structure transactions and appropriately manage the risks that the portfolio content approach imposes upon them. Moreover, avoiding prescriptive regulations with respect to the underlying transactions that parties will enter into enables buyers and sellers to properly allocate the risks and benefits associated with their respective rights and responsibilities. Finally, making it clear that existing regulations will govern 2011 RPS procurement will alleviate the unprecedented level of market uncertainty that currently exists with respect to RPS compliance.

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III. RESPONSE TO THE QUESTIONS POSED IN THE ALJ RULING

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

1. Section 399.16(b)(1) describes "eligible renewable energy resource electricity products" that meet certain criteria. "Electricity products" is not defined in the statute. Should this term be interpreted as meaning "RPS procurement transactions"?

ANSWER: No. The term "Transactions" should not be used to define eligible renewable energy resource electricty products, because "transactions" refer to an incident of a commercial arrangement. What 399.16(b) outlines are forms for three products that are subject to procurement limitations under the revised law. It would be possible to have a single transaction that would provide more than one product, and transactional details should be left to the parties entering into the transaction. AReM believes that in the course of this initial phase of the docket the Commission must provide explicit definitions for each of the three electricity products that can be used to meet the RPS obligations.

General requirement: all RPS eligible products must come from ERERs certified by the CEC with its output tracked by WREGIS. Once an eligible product is created, it may transact between entities without losing its initial product designation so as to maintain value of products and allow entities to manage risks associated with the dynamic procurement obligation and limitations on product procurement and banking.

Product 1: Product 1 requires contemporaneous scheduling or direct delivery into a California Balancing Authority Area ("CBAA"), without use of substitute resources, whether achieved by the ERER's (i) physical presence inside the State, (ii) an out-of-state ERER directly connected with a CBAA, (iii) contemporaneous deliveries scheduled into a CBAA, or (iv) dynamic transfers into a CBAA. All resources physically interconnected with a CBAA per se provide Product 1 output without any additional verification needs. Resources scheduled into a CBAA, or delivered by dynamic transfers, will require additional data to verify contemporaneous deliveries.

Product 2: Product 2 is characterized by the delivery of a volume of energy into a CBAA at a time that differs from the production of the REC by the ERER through the use of substitute resources. Only the volume of energy corresponding with production tracked by WREGIS is eligible to count for a LSE's RPS procurement obligation.

Product 3: Product 3 is characterized by the transfer of the REC that was not associated with a Product 1 or Product 2 qualified product.

With specific and clear definitions in place, parties will be able to negotiate and execute specific transactions.

2. Should the first sentence of § 399.16(b)(1)(A) be interpreted as meaning: "The RPS-eligible generation facility producing the electricity has a first point of

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interconnection with a California balancing authority, or has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or the electricity produced by the RPS-eligible generation facility is scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source."

ANSWER: Yes, with two caveats. First, the second sentence of § 399.16(b)(1)(A) says:

> The use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category.

The interpretation of this second sentence of §399.16(b)(1)(A) should be clearly stated as follows: "The use of any other source, including non-eligible renewable energy resources or fossil resources to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category."

Second, the Commssion should clearly state that its interpretation of this portion of the statute also applies such that all output from eligible renewable distributed generation resources located in California will meet the requirements of §399.16(b)(1)(A) even if all or a portion of the output of the resource is consumed on-site. AReM believes that this interpretation is consistent with the intent of the legislation, but is a clarification that is necessary to provide clarity and certainty with respect to the product portfolio content of distributed generation that is located in California.

3. **Please provide a comprehensive list of all "California balancing authorit[ies]" as defined in new § 399.12(d).**

ANSWER: AReM reserves the right to address this question in reply comments.

4. **How should the phrase in new § 399.16(b)(1)(A) ". . . scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source" be interpreted? Please provide relevant examples.**

ANSWER: The phrase should be interpreted as requiring scheduling of energy from one Balancing Authority Area that is not located in California into the CBAA contemporaneously with the ERER's production. This means the scheduling of the ERER located outside the state should result in the quantity "sinking" into a CBAA, as verified by NERC e-tags.

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The noted language draws a distinction from current RPS eligibility practices where the CEC's energy delivery rules allow a temporal break between the time of production from the ERER and the time of delivery of power into California. The current CEC rules permit conveyance of RPS-eligible quantities into California from locations not subject to transmission constraints, which would result in deliveries of the environmental attributes with energy produced at a later time by another facility. The new statutory language aims to require *contemporaneous* delivery of the energy from the out-of-state Balancing Authority Area into the CBAA and, for this first product category, precludes any temporal shifting between time of production of the RPS-eligible quantities and delivery of the energy. For example, if the renewable energy is scheduled for delivery into a CBAA (which can be verified through e-tags) contemporaneously with its production, then those deliveries should count for RPS compliance as Product 1. Any production for which the scheduling shows deliveries into California that are not contemporaneous with the production, namely through the use of substitute resources, would be permissible as Product 2 category. This interpretation of the statutory language leads to two important conclusions: First, all production that occurs within the state should *always* be considered Product 1 because all such production is, by definition, contemporaneously delivered into California. Second, a transaction from an out-of-state renewable resource and a buyer could cover both types of products. For instance, counterparties to a contract may specify that when deliveries from the resource are scheduled contemporaneously, those deliveries will be treated as Product 1, but when contemporaneous deliveries are not possible then the deliveries would be categorized as Product 2.

AReM notes, however, that for this definition to be implemented, the CEC regulations must be modified. AReM urges the Commission to ensure close coordination with the CEC on this definition, so that there is no gap between the time that this Commission finalizes its regulation and the CEC regulations are finalized as well. Close coordination between the agencies, as well as coordinating the start of implementation for all entities now subject to an RPS procurement obligation under SB 2 (1x) will minimize issues with later verification processes and better provide a level playing field between LSEs subject to the CPUC's oversight and those subject to the CEC's new jurisdiction.

5. Does the inclusion of transactions characterized in #4, above, subsume or resolve the work done by Energy Division staff and the parties in response to Ordering Paragraph 26 of Decision (D.) 10-03-021, regarding transactions using firm transmission?[2]

ANSWER: Yes, the new statutory language resolves the issue of whether an out-of-state resource can use existing scheduling practices to deliver into California as the energy is scheduled and produced. If power can be scheduled into a CBAA, or if it has a direct connection with a CBAA, it will qualify for the Product 1 category. Therefore, there is no further need for the Commission to determine what level of transportation service is needed in regulations; that can be left to commercial transactions.

[2] For example, the staff workshop held on April 23, 2010, and the post-workshop comments and reply comments.

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Indeed, under SB 2 (1x) there is no need to make any distinctions with respect to firm and non-firm transmission. All that is required is for there to be verification that a Product 1 claim is supported by specific e-tags that show contemporaneous delivery of the energy. Where those e-tags are tied to firm or non-firm transmission schedule is not relevant. Should delivery of the energy from an ERER be curtailed such that the delivery is not contemporaneous, then the curtailed output could not be claimed as Product 1, although it could be claimed as Product 2, so long as the e-tags verify that the production was firmed and shaped and sunk to the CBAA.

6. How would transactions characterized in #4, above, be tracked and verified? Please address the roles and responsibilities of both the CEC and the Commission.

ANSWER: The CEC should continue its existing statutory role of certifying the eligibility of resources and verifying the eligibility of claimed production. We anticipate that some changes at WREGIS will be needed to align the metered production data with scheduling information for those imported resources claiming category 1 status. For instance, as noted in the response to Question 4 above, when the production from a renewable resource is recorded in WREGIS, an additional designation should be made noting which product category was claimed. For renewable resources that are directly connected to a CBAA, or for ERERs that are scheduled into a CBAA according to dynamic scheduling provisions, the default designation will be Product 1. If no designation is entered for a resource that is located out of state, and it has not been dynamically scheduled, then its default category should most likely be Product 3, absent data to support a different designation.

The CPUC's role does not extend to tracking which is done through WREGIS by the CEC, or ultimate verification of the eligible volumes, which is done by the CEC per statute.

7. Please provide relevant examples of the situation described in the second sentence of § 399.16(b)(1)(A):

> **"the use of another source to provide real-time ancillary services required to maintain an hourly or sub-hourly import schedule into a California balancing authority. . ."**

ANSWER: The role of Balancing Authorities is to ensure that power delivered from one balancing authority to another meets the scheduling quantities of the export schedule. To achieve this operational requirement, the Balancing Authority will rely on a plethora of resources to fulfill its delivery and balancing obligations. As an ERER experiences variability of output within the schedule period, the Balancing Authority will rely on another generation source to maintain the export schedule. For example, assume that a solar resource was scheduled into California at 100 MWs for the hour, but due to a thunderstorm developing its actual production dropped to 50 MWs for the last 30 minutes. The cited provision allows the schedule to be firmed by another resource in

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real-time to maintain the schedule flow between the receiving CBAA and the exporting BA. Similarly, assume that there is a renewable resource of 20 MW capability, but the standard energy block size used for transacting and scheduling is 25 MWs. The 5 MW balance of the block of scheduled energy could come from another resource, while only the 20 MWs from the ERER would count toward the RPS obligation. Another example could be that 50 MWh of production from an ERER is scheduled for contemporaneous delivery consistent with the Product 1 category, but realtime transmission constraints result in a scheduling cut so that only 40 MW of energy is delivered contemporaneously as originally scheduled. Only that 40 MWhs would count as Product 1, absent finding an alternative schedule path into the CBAA for contemporaneous delivery. It should be noted however that the 10 MWh in the cut schedule could be counted toward Product 2, if the ERER maintained its 50 MWh production schedule and appropriate firming and shaping arrangements are secured to support the 10 MWh delivery.

How should the subsequent qualifying phrase, "but only the fraction of the schedule actually generated by the eligible renewable energy resources shall count toward this portfolio content category" be interpreted in light of your response? Please provide relevant examples.

ANSWER: This phrase reiterates that to qualify for this category, the renewable generation must be produced contemporaneously with the energy scheduled into the CBAA, and only the actual renewable production, as opposed to the originally scheduled quantity, can be claimed for RPS purposes. So, referring to the examples described above, only the actual metered renewable production delivered to the CBAA during the hour of the schedule would count. In the first example from above, 100 MWs of renewables were produced for 30 minutes, and 50 MWs delivered by the Balancing Authority for the second 30 minutes of the scheduled hour (resulting in a 75 MWh of renewable energy deliveries). In the second example, only 20 MWs of the scheduled 25 MWs would count as Product 1 renewable. In the third example, 40 MWhrs would count as Product 1 deliveries.

8. Should § 399.16(b)(1)(B) be interpreted as meaning: "The RPS-eligible generation facility producing the electricity has an agreement to dynamically transfer electricity to a California balancing authority."

ANSWER: The section should mean that there is a dynamic transfer arrangement in place to provide for the delivery of the out-of-state resource into a CBAA. However, the "facility" may not have the arrangement in every case, so the syntax of the proposed interpretation may be too narrow, particularly if the ERER contracts with another entity for the marketing or scheduling of the resource, and that marketing/scheduling entity puts the dynamic transfer arrangement into place. Consistent with these comments, AReM suggests the following interpretation: The RPS-eligible generation facility producing the electricity has the necessary arrangements in place, as required by the CBAA and the exporting BA, to dynamically transfer electricity to the California balancing authority."

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9. The phrase "unbundled renewable energy credit" (REC) is not defined in the statute. Should it be interpreted as meaning: "a renewable energy credit [as defined in new § 399.12(h)] that is procured separately from the RPS-eligible energy with which the REC is associated"?

ANSWER: AReM believes that the definition of an unbundled renewable energy credit (REC) need not reference procurement at all. Instead, the interpretation of an unbundled renewable energy credit (REC) should be that the REC has been separated from the RPS-eligible energy with which the REC originated.

10. "Unbundled renewable energy credits" are a type of transaction meeting the criteria of § 399.16(b)(3). Does § 399.16(b)(1) include any transactions that transfer only RECs but not the RPS-eligible energy with which the RECs are associated (for example, a transaction in which an RPS-eligible generator having a first point of interconnection with a California balancing authority sells unbundled RECs to a California retail seller)? Why or why not?

ANSWER: When the statutory revisions encompassed in SB 2 (1x) are reviewed in its entirety and in a manner that gives all provisions meaning and seeks to harmonize potential conflicts across their possible interpretations, then it is apparent that § 399.16(b)(1) is intended to capture bundled energy and REC transactions with contemporaneous deliveries into a CBAA. As noted in the response to Question 4, all renewable production that occurs within California is, by definition delivered to a CBAA, and therefore, all such production should be recorded in WREGIS with a Product 1 designation. In this way, RPS compliance with Product 1 resources will be greatly simplified.

Moreover, including product designations in the WREGIS records will allow entities who have purchased Product 1 resources and are holding them in a WREGIS account prior to retiring them for RPS compliance to easily trade and transfer those purchases to other entities as may be necessary to manage the portfolio and product value in light of procurement and banking limitations.

If your response is that unbundled REC transactions are or may be included in § 399.16(b)(1), please also address how a particular transaction can be characterized and verified as belonging in a particular portfolio content category.

ANSWER: As noted in the overview, the verification of compliance claims with respect to each of the product portfolio content categories resides with the CEC's verification and tracking processes. As long as the total energy produced by a Product 1 eligible ERER is greater than or equal to the quantity of RECs plus Product 1 claimed from that facility for RPS compliance, then the purchase of RECs that are associated with the ERER should be counted toward the compliance requirements of § 399.16(b)(1).

11. Section 399.16(b)(3) includes "[e]ligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled

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renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2)."

- **Should the phrase, "or any fraction of the electricity generated" be interpreted as meaning "any fraction of the electricity generated by the eligible renewable energy resource"?**

  ANSWER: Yes, although "the eligible" should be "an eligible"

- **What metrics should be used to account for "any fraction of the electricity generated?" Please address the time period that may be encompassed in your response.**

  ANSWER: As noted in the overview and framework section, it should be the responsibility of the entity managing the RPS facility's WREGIS account to include in its production report to WREGIS whether the output from the facility meets the requirements of Product 1, Product 2 or Product 3. The CEC will then verify those claims by comparing total production from the ERER to the sum of all the product categorizations submitted in WREGIS and by verifying the product categorizations based on e-tags and meter data.

- **How would the procurement of "any fraction of the electricity generated" be documented? Please address the roles of the Western Renewable Energy Generation Information System (WREGIS), the CEC, and this Commission.**

  ANSWER: As noted above, verification of RPS compliance claims will be the role of the CEC, and will be predicated upon the information contained in the WREGIS accounting system and the NERC e-tags. That verification will start by determining that total production from an ERER does not exceed the compliance claims against that facility. Next, the CEC will verify that all output from a facility that has been designated in WREGIS as Product 1 has met the delivery obligations associated with that Product definition, and that Product 1 compliance claims against that facility are less than or equal to the verified Product 1 designations. The CEC needs to repeat this process for Product 2 and Product 3.

12. **"Firmed" is not defined in SB 2 (1x). Please provide a definition or description of this term. Please include relevant examples.**

13. **"Shaped" is not defined in SB 2 (1x). Please provide a definition or description of this term. Please include relevant examples.**

ANSWER to 12 and 13: The terms "firmed and shaped" in the RPS context are terms defined by the CEC to describe contractual arrangements in which the energy produced from RPS resources may occur in a time frame that is different that the time frame in which the Balancing Authority or scheduling entity delivered energy to a CBAA. In this context, "firmed" relates to the provision of resources to maintain a scheduled volume of

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delivery over a period of time. Firming is important for maintaining reliability between BAs, and can cover instances where the generator is inherently variable (such as an ERER), or where a forced outage or upstream transmission curtailment impedes delivery from the intended source of generation.

The term "shaped" relates to the contractual provision of resources to achieve a standardized block of scheduled power delivery, such as the case where an additional 5 MWs of energy are added to a 20 MW delivery from another resource to provide a 25 MW standard block of energy for scheduling. Shaping works with firming to address delivery contingencies. These terms have been fully described in the CEC eligibility Guidebook.[3]

14. "Incremental electricity" is not defined in SB 2 (1x). Please provide a definition or description of this term.:

ANSWER: AReM is not aware of "incremental electricity" to be a standard term of art in the industry (as compared to "firming" or "shaping"). However, we believe that the specific concern that gave rise to the use of this term was in the context of firmed and shaped deals where the energy import that was matched to the renewable production was an import that had been previously contracted under a separate PPA. Such firming and shaping was thought not to produce any new or 'incremental" energy delivery into California, and therefore was classified as a TREC only purchase. On the other hand, many firmed and shaped transactions were structured such that the RPS production was matched with deliveries of energy that were new or "incremental" deliveries of energy at, for instance, specific interties between California and neighboring states or balancing authorities. With this background in mind, AReM believes that a concise and workable definition of this term is difficult, but such a definition must preserve the ability for parties to execute transactions at the interties to perfect the delivery of Product 2 category volumes.

- **Please also address:**
- **how a particular transaction can be characterized as providing incremental electricity;**

  ANSWER: A transaction is characterized as providing an incremental electricity product so long as the energy output is not already contracted for delivery under a separate PPA, and is being delivered into the CBAA for the purpose of meeting the requirements for the Product 2 deliveries.

- **whether there are or should be any more particular relationships between the generation of the RPS-eligible electricity and the scheduling of the "firmed and shaped" incremental electricity into a California balancing authority (for example, the electricity must be scheduled into a California balancing authority within one**

[3] See, RPS Eligibility Guidebook 4th Ed (CEC-300-2010-007-CMF), January 2011, pages 36-40, particularly footnote 61.

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month of its generation; or, the energy that is delivered must come from generators in the same balancing authority area as the RPS-eligible generation).

ANSWER: There is no statutory requirement requiring such conditions, and AReM sees no reason for the Commission to consider adopting one. The goal of the provision is to allow the scheduling of energy into California with the environmental attributes of the RPS generation. Providing for a temporal shift between the time of production of the renewable energy and the time of the scheduled delivery of energy, allows the purchaser to manage a myriad of operational and reliability issues that may occur, such as elevated congestion costs or limited transmission availability. Under current CEC guidelines, the timeframe for matching the RPS generation with the firmed and shaped energy delivery has been within the calendar year. AReM sees no need to change that timeframe.

- **whether the definition proposed is based on contract terms or on the characteristics of the electricity that is ultimately delivered into a California balancing authority.**

ANSWER: The guidelines provided here by AReM are based on contract terms only insofar as meeting the incremental energy requirements would dictate that the firmed and shaped energy must not already be scheduled for delivery to California under a separate contractual arrangement. Ownership and other characteristics of the delivered energy are not a factor.

Please provide relevant examples.

ANSWER: AReM anticipates that the verification process for Product 2 will be essentially unchanged from current CEC validation of out-of-state deliveries. For instance, if an LSE reports that it has secured 100 MWhs of Product 2 from ERER unit X to meet its RPS, the CEC verification process should show that ERER Unit X produced at least that amount of Product 2 with deliveries matched with e-tag designations, as is provided under current CEC and WREGIS rules. Furthermore, the LSE should be required to include in its attestations that the commitments made to energy deliveries used for the Product 2 matching were only for the purpose of providing matching energy for the RPS compliance obligations.

15. **Should § 399.16(b)(2) be interpreted to refer only to energy generated outside the boundaries of a California balancing authority, or may it refer also to energy generated within the boundaries of a California balancing authority? Please provide relevant examples.**

- **Should this section be interpreted as applying only to transactions where the RPS-eligible generation is intermittent? Is the location of the generator within or outside of a California balancing authority area relevant to your response?**

ANSWER: Section 399.16(b)(2) should be applicable only to resources located outside of a CBAA, because, as explained in the response to Question 4, all in-state or

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directly connected/dynamically transferred resources should be Product 1 eligible and should not be required to make any additional delivery demonstration. However, its applicability should not be limited to variable resources. The value of this provision lies in the ability to have the energy delivery occur at a time different than the time of the renewable generation production. This allows for a product that can avoid transmission congestion or limitations in transmission access. Because such limitations are not limited to intermittent resources, the provision should be interpreted to be available for any RPS-eligible resource certified by the CEC.

16. **Should the requirement in § 399.16(b)(1)(A) that the generation must be "scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source" be interpreted to mean that no firmed and shaped electricity, as set forth in § 399.16(b)(2), may be considered as meeting the requirements of § 399.16(b)(1)(A)? Please provide relevant examples.**

ANSWER: The § 399.16(b)(1)(A) product is one that involves the delivery of energy into a CBAA contemporaneously with the generation production from the eligible renewable resource. Such deliveries will include certain firming and shaping services to maintain reliability between the BAs, as described in the response to Question 7. The distinction between those real-time services and the firming and shaping contemplated for category 2 products under § 399.16(b)(2) is the absence of the requirement to contemporaneously deliver the energy at the time of renewable generation production.

17. **Section 399.16(d) provides that:**

> **"Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if [certain] conditions are met. . ."**

ANSWER: AReM strenuously objects to any consideration of applying the product portfolio content categories to RPS contracts executed prior to the effective date of the legislation, on the grounds that such retroactivity is legally impermissble. AReM continues to work with legislators to secure "clean-up" legislation to address the legal infirmity of the June 1, 2010 date, but it remains unclear whether such clean-up legislation will ultimately be enacted. Moreover, SB 2 (1x) legislation has no set effective date yet, because the bill is not effective law until 90 days after the end of the Extraordinary Session, a date that has yet to occur. Therefore, AReM urges the Commission to exercise the greatest discretion possible in light of the problem that the "floating" nature of the effective date of the legislation creates by issuing decisions that would categorize transactions executed prior to the still unknown effective date of SB 2 (1x) as meeting any of the product porfolio content categories.

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- **How should the phrase "ownership agreement" be interpreted in this context? Please provide relevant examples.**

  ANSWER: Ownership agreement should be interpreted to mean the legal title to power produced.

- **How should the phrase "count in full" be interpreted? Include consideration of:**

  a) The requirements in D.07-05-028 (implementing current § 399.14(b))[4] that, in order for procurement from a short-term contract with an existing facility to count for RPS compliance, a minimum quantity of contracts longer than 10 years and/or contracts with new facilities must be signed in the same year as the short-term contract sought to be counted;

  ANSWER: The SB 107 provision (existing § 399.14) is applicable until the retail seller achieves a 20% procurement threshold, at which point the procurement limitation ceases to be applicable. Procurement executed by the retail seller prior to reaching the 20% procurement target would still need to meet the minimum new / long-term volumes to have all short-term procurement count, absent a showing that the retail seller was unable to secure those resources consistent with the basis for seeking waiver under the then-applicable law.

  b) The requirement in new § 399.13(b)[5] for minimum procurement from contracts of at least 10 years' duration;

  ANSWER: The statute provides the Commission with discretion in applying the new § 399.13(b). In exercising this discretion with respect to how to interpret the "count in full" provisions of the statute, the Commission should rule that any specification for procurement from contracts of at least 10 years duration will not be applicable to procurement from contracts that were executed prior to the effective date of SB 2 (1x). Application of this limitation on the value of previously executed contracts would result in a confiscation of value from the retail seller and its customers. To retroactively apply the new provision will deny the contracting party of the essential purpose to those contracts—namely the procurement of RPS-eligible quantities to

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[4] Current § 399.14(b) provides:

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.

[5] New § 399.13(b) provides:

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 through contracts of at least 10 years' duration.

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achieve compliance with the state's mandatory RPS procurement obligations. In other words, procurement from contracts executed prior to the effective date of the legislation should continue to count toward compliance in any of the three Product Portfolio content categories at the discretion of the retail seller for the duration of those contracts.

b) The restrictions set out in new § 399.13(a)(4)(B) on the use of procurement from contracts of less than 10 years' duration and on procurement meeting the portfolio content of § 399.16(b)(3) in accumulating excess procurement that can be applied to subsequent compliance periods.

ANSWER: AReM's position with respect to banking of excess procurement under contracts executed prior to the effective date of the legislation is the same as its position with respect to which product portfolio content category such output can count toward – any excess procurement from contracts executed up to the effective date of the legislation should be usable in future years to meet any of the three product portfolio content categories.

18. Please discuss the relationship between the instruction in § 399.16(d), set forth above, and the rules for the use of tradable RECs (TRECs) set out in D.10-03-021 (as modified by D.11-01-025), and in D.11-01-026 (for example, temporary limits on TRECs usage; application of the temporary TREC limits to previously signed contracts).

ANSWER: SB 2 (1x) effectively rewrites the statutes concerning California's RPS program. By its operation, on its effective date, the new legislation will delete and replace large portions of the existing statutory scheme. In certain cases sections are renumbered. Because of the extensive nature of the reworking of the RPS program by SB 2 (1x), Commission decisions addressing the existing code should not be carried forward as dispositive interpretations of the new statutory scheme. To do so would ignore the interrelationship between many of the existing code sections that are either removed or restructured under the new statutory scheme. Accordingly, the prior efforts in discerning the conditions for use of TRECs, including the prior position limits, are now made obsolete by the new structure. For transactions not subject to grandfathering, the SB 2 (1x) rules regarding maximum positions for Category 2 and 3 products will apply. Accordingly, after SB 2 (1x) becomes effective, the procurement limits previously articulated by the Commission will become moot.

19. When should the portfolio content limitations set forth in § 399.16(d) go into effect (for example, January 1, 2011; or the effective date of SB 2 (1x); or the date of the Commission decision implementing § 399.16)?

ANSWER: The changes in 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. It is also *critical* that the Commission avoid retroactive application of SB 2 (1x) in a way that will cause any retail

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seller to be denied the full value of transactions executed to achieve compliance with the RPS rules applicable at the time of contract execution. In short, the Commission regulations issued in Decisions 10-03-021 and 11-05-025 and 11-05-026 should govern compliance until SB 2 (1x) is effective. Moreover, to avoid needless market uncertainty and to provide a level playing field, implementation of the SB 2 (1x) paradigm should be tied to and coordinated with the work required at other agencies and entities, particularly as non-CPUC jurisdictional entities will be subject to a parallel program under the new statewide structure. 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.[6]

20. SB 2 (1x) amends Pub. Res. Code § 25741 to, among other things, eliminate the current requirement that RPS-eligible energy must be "delivered" to end-use retail customers in California.[7] The requirement for delivery is implemented by the CEC in its *Renewables Portfolio Standard Eligibility Guidebook (RPS Eligibility Guidebook)* (3d ed. December 19, 2007).[8] It is also incorporated into the characterization of a REC in D.08-08-028.

- **At what point in time should the Commission consider the "delivery" requirement ended (e.g., on the effective date of SB 2 (1x); or as of January 1, 2011; or on the effective date of the CEC's revisions to the *RPS Eligibility Guidebook* reflecting the repeal)?**

  ANSWER: The CPUC should consider the delivery rule under existing provisions to no longer be applicable at the time it determines the new product definitions will become effective. Coordination with the CEC, and its efforts to develop the parallel program for POUs, along with the updating of the Guidebook, should occur together. Much of the regulatory uncertainty that has impacted the renewables market and driven high transaction costs for retail sellers comes from the lack of coordinated timing to rule revisions. RPS suppliers will naturally focus on requirements applicable to the certification of resources and the validation of deliveries undertaken under the CEC's jurisdiction. Retail sellers, subject to the CPUC's regulatory oversight and enforcement authority, are focused on rules controlling their procurement obligations. Transaction costs increase for parties when there is a lack of coordination between the two regulatory bodies. AReM urges the Commission and CEC to coordinate the rollout and effectiveness of new rule changes to avoid problems in the marketplace and concerns about risks of ineligibility of transactions. The best way to achieve this coordination is to tie implementation of the provisions of

[6] AReM notes its February 14, 2011 Application for Rehearing for D.11-05-025 in R.06-02-12 concerning grandfathering remain outstanding.

[7] This is accomplished by eliminating both current Pub. Res. Code § 25741(a) (defining "delivered" and "delivery") and current Pub. Res. Code §25741(a)(2)(B)(iii) (requiring that RPS-eligible energy be delivered to an in-state location).

[8] The *RPS Eligibility Guidebook* is available at http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF.

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SB 2 (1x) until both commissions, the CPUC and the CEC have finalized their new rules and the CPUC issues a decision adopting a prospective start date for the SB 2 (1x) compliance rules.

- **Does the "delivery" requirement end at that time for generation under RPS contracts of utilities that were already approved by the Commission? Only for generation under contracts signed by utilities after the end of the delivery requirement?**

  ANSWER: The answer to this question rests in the appropriate balance of maintaining the full value of grandfathered transactions, which were structured to meet the existing delivery requirements, and the updates to WREGIS tracking systems to address different product types or recognition of output associated with a grandfathered contract. Any contract entered into up to the time the SB 2 (1x) RPS program is implemented should be "fully grandfathered" and countable for RPS in accordance with the Commission regulations in place at the time of execution. This applies to utility contracts approved by the Commission and to contracts executed by ESPs that are not approved by the Commission. Contracts entered into after the date the new program is implemented will need to conform to the implementing regulations. Under the new product definitions, for the Product 1 and 2 categories, the energy will be delivered to a CBAA, and hence to California ratepayers, thus meaning that the existing delivery rule will be satisfied. Accordingly, grandfathered transactions that contain those product types should not necessarily require changes, but should be recognized in WREGIS as deliveries under grandfathered contracts. If the Commission agrees with this interpration of the overlap between the existing delivery requirement and the characterization of Category 1 and 2 product types, then there is no need to have two validation processes. Moreover, having two types of validation processes will create an unreasonable burden on both CEC and CPUC staff.

- **How should the plan you propose be applied to ESPs? to CCAs?**

  ANSWER: See response immediately above. Contracts executed by ESPs prior to the date the SB 2 (1x) program becomes effective should be provided grandfathered treatment consistent with the requirements applicable under the rules at the time of execution. Such contracts should be provided full value. Validation would be undertaken by the CEC.

21. **What documentation or descriptions should be required in an advice letter to enable Energy Division staff to confirm the portfolio content category of transactions submitted by utilities for Commission approval?**

ANSWER: AReM does not have a response to this question at this time, but reserves the right to comment later.

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22. **Is any post-contracting verification of the portfolio content category needed to track and determine compliance with RPS procurement obligations for utilities? for ESPs? for CCAs? If yes, is the CEC responsible for undertaking it? is this Commission?**

- **What information would be required for such verification?**

- **Would any changes be needed to WREGIS to accommodate your proposal?**

ANSWER: As noted in the overview section of these comments, and in the response to Questions 4 through 7, under the statute the CEC retains its responsibilities to determine resource eligibility and to verify procurement claims. This should include the assertions provided for delivery of specific product types and the framework for which should be designations attached to production that is recorded in WREGIS. For Category 2 and 3 products this should not require any modifications to WREGIS tracking as the existing firmed and shaped product (Product 2) is verified through WREGIS and e-tags, and because any REC-only transaction (Product 3) must simply convey a WREGIS Certificate. For the Category 1 product types, those deliveries to the CBAA made through direct connections or dynamic transfer mechanisms should be readily verifiable by attestation and verifying the interconnection and/or dynamic scheduling arrangements with the CBAA. For the out-of-state resources scheduled into a CBAA on a contemporaneous basis, some further changes to WREGIS and the validation process will be necessary to track the timing and volume of production against scheduling arrangements.

We would encourage the Commission to avoid dictating mandatory contract language, as this increases transaction costs and can impede commercial structures that evolve over time. Instead, as noted in the overview section, the Commission should provide a complete definition of each *product portfolio content category*, which should include any structural specifics that are needed to meet that product definition. It is also important that the product definitions do not contain language that describes what a product *is not* as that makes contract drafting more difficult and increases transaction costs as the parties must review and agree on the meaning of long definitions.

23. **Reviewing your proposals above, please describe the value to the buyer, the seller, and ratepayers of transactions in each portfolio content category. Identify the direct and indirect costs that would be associated with transactions in each category.**

ANSWER: It is not clear to AReM how this question is related to establishing the rules and protocols necessary to implementation of product portfolio content categories of the RPS program. Therefore, AReM does not have a response to this question at this time, but reserves the right to comment on the response of other parties to this question.

24. **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**

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SB 2 (1x) will not be in effect until mid-October 2011, at the earliest, and the end of 2011, at the latest. 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: Yes, the Commission should carry forward the existing RPS through calendar year 2011 at a minimum and should announce that policy as soon as possible. Furthermore, based on how the policies and rules rolled out over the years in the current RPS program, AReM encourages the CPUC and CEC to work concurrently, and be clear that the provisions of SB 2 (1x) will be applicable on a prospective basis after both commissions have adopted the necessary implementation policies and rules. There are two reasons why the Commission should adopt this approach: First, as of the submission of these comments, the extraordinary session still has not concluded. Assuming that the session will not conclude until at least the end of August (two weeks after the legislators return from their summer break), the earliest the bill could become effective is the end of November, 2011. There is no reason to implement new rules that would apply for only one month of the compliance year. Making clear that its policy is to carry forward the existing regulatory framework until such time as the implementation materials at the CPUC, CEC and WREGIS are available would go a long way to reducing the current extremely high regulatory uncertainty.

Second, AReM is still hopeful that there will be clean up legislation enacted before the end of 2011, especially with respect to modifying the sections that establishes the June 1, 2010 date for grandfathering of contracts to meet the product portfolio content requirements.

Lastly, AReM wishes to point out that if the Legislature fails to adjourn the special session at the end of September, it is technically possible under the California Constitution for SB 2 (1x) to continue its floating effective date. California's legislative session runs for two-years, and the Constitution's default mechanism would force the adjournment of a special session with the close of the regular session. Accordingly, absent explicit action to close the First Extraordinary Session, it is possible for it to remain open into 2012. While AReM does not expect this result, it must be pointed out in light of the assumption provided in question 24.

IV. CONCLUSION

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 that there is significant concern that the costs associated with compliance with the state's environmental goals and mandates will undermine a much needed economic recovery for California.. The legislature has done little to help alleviate this

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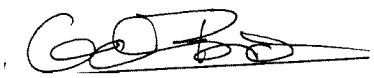
uncertainty, given the fact that the effective date of the newly enacted legislation remains unknown, as that it remains unclear whether there will be additional clean-up legislation in this session. The Commision's leadership in setting the phases for this exercise of implementing regulations for the vastly revised RPS program is a good sign that the Commission is up to the task of doing the hard work necessary to set the right path for increasing the use of renewable energy in California.

AReM urges the Commission to continue working quickly on these tasks and appreciates the opportunity to submit these comments.

Respectfully submitted,



August 8, 2011

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VERIFICATION

I am the attorney representing Alliance for Retail Energy Markets (AReM) in this proceeding. AReM is absent from Sacramento County, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of FCE for that reason. I have read the attached **COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS ON ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD.** I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed on this 8th day of August, 2011, at Sacramento, California.

/s/

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