**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program. | Rulemaking 11-05-005<br>(Filed May 5, 2011) |

# COMMENTS OF NV ENERGY, INC. ON ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Dated: August 8, 2011

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## I. Introduction

NV Energy, Inc. (NVE)[1] appreciates the opportunity to comment on the Commission's implementation of the new Portfolio Content Categories and RPS compliance rules contained in Section 399.16 of Senate Bill (SB) 2 (1x), as requested in the ALJ's July 12, 2011 Ruling.[2] As the balancing authority (BA) for Nevada and a portion of northern California, NVE interfaces directly with portions of the California Independent System Operator (CAISO) controlled transmission system at substations located in Nevada and California. NVE also recently announced its Renewable Transmission Initiative, designed to assess the interest of the regional renewable marketplace in transmission projects from renewable energy zones in Nevada to loads in other markets, particularly California.

NVE agrees that establishing clear and definitive descriptions of the types of RPS-eligible electric products is of paramount important for the success of California's ambitious renewables policies. Moreover, understanding product definitions as well as the rules that LSEs

[1] NVE provides a wide range of utility services and products to approximately 2.4 million residents of Nevada, including renewable power that meets the Nevada Renewable Portfolio Standard. NVE owns, operates and continues to develop a portfolio of renewable power projects in Nevada and also procures renewable energy for its customers. NVE is also the balancing authority for its Nevada service territories and the area of California around Lake Tahoe for which NVE was the retail service provider until January 1, 2011.

[2] R.11-05-005, Administrative Law Judge's Ruling requesting comments on the implementation of new portfolio content categories for the renewables portfolio standard program, date July 12, 2011.

must follow for compliance with SB 2 (1x) requirements will assist entities like NVE both to sell eligible products and to facilitate the interconnection and transmission development needed to support sales from eligible renewable energy resources (ERERs) to buyers in California. Of particular importance to NVE is the description of products that will satisfy Section 399.16(b)(1)'s Portfolio Content Category 1 (Category 1) for both direct connections into a California Balancing Authority (CBA) as well as scheduling approaches between the NVE balancing authority area (BAA) and a CBA area (CBAA).

The following section contains NVE's responses to some of the questions presented in the ALJ Ruling. While NVE has not responded to all of the questions at this time, its silence should not be taken as a lack of interest on NVE's part, but rather that those questions do not implicate the requirements for deliveries from out-of-state resources to qualify as Category 1 products. NVE reserves its right to respond to other parties' views on these questions through its reply comments.

## II. Response to Questions Posed in the ALJ's Ruling

**Question 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 1:** No. "Products" are different from "transactions." Section 399.16(b)(1) is referring to different types of *products* that are subject to differing procurement limitations under SB2 (1x). "Transactions" refer to one or more business arrangements between commercial entities. For example, a single procurement transaction may incorporate a variety of products, but the details of that transaction should be left to the commercial entities to decide. Stated another way, the market will require clear definitions of the characteristics necessary to qualify as a specific type of product, but market participants should be free to structure transactions in a way that best suits their circumstances for securing and providing the specific product types. Because of the complexity of the commercial, regulatory, financial and physical constraints that different participants must work under, NVE believes the Commission should avoid dictating terms or structures for transactions.

**Question 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 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 2:** Yes. However, this sentence should be interpreted to allow market participants to provide one or more eligible electricity products produced from more than one ERER. For example, if a set of facilities satisfies the requirements of Section 399.16(b)(1)(A), then an entity should be able to offer a Category 1 product sourced from this portfolio, as well as Category 2 (Section 399.16(b)(2)) and other lesser eligible products. This clarity is needed to provide market participants with options for structuring transactions and to help address risks associated with project operations (such as forced or planned outages) and transmission system contingencies (such as emergency or planned transmission line capacity derates or failures). This approach is consistent with the product definitions presented in 399.16(b) and necessary to achieve market efficiencies. Moreover, the Category 1 definition should allow the marketing of "hybrid" products which contain both a Category 1 product along with conventional generation (such as from a low-GHG emitting combined cycle resource) to achieve an overall energy delivery desired by the purchaser. This flexibility is important to optimize use of available transmission, irrespective of whether the underlying ERER is a variable energy resource or a renewable resource with a high capacity factor.

**Question 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 4:** This phrase should be interpreted as requiring the scheduling of energy deliveries into the CBAA contemporaneously with the ERER's physical generation along a defined and specified physical transmission path from source to sink. The core concept here is that there is no temporal break between the time of generation and the scheduling of that energy into a CBAA. However, because of the dynamic nature of generation, loads and transmission

operations, there will be degrees of firming and shaping of the ERER production for any product scheduled into the CBAA. Therefore, any ERER product scheduled into a CBAA without a temporal break between the time of production and the time of energy flow should be considered a Category 1 product.

This new language reflects a distinction from the historic product delivery validation practice reflected in the CEC rules, which allowed a temporal break between the production from a renewable resource and the time of delivery into California. The prior rules also permitted conveyance 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 from another facility. While this type of product is now captured by the Category 2 definition (Section 399.16(b)(2)), the new structure of Category 1 requires contemporaneous production and delivery from an ERER and precludes the temporal shifting previously allowed by the CEC.

In addition, because of the dynamic nature of the regional transmission system, it is likely that, on occasion, delivery schedules may be altered, such that what may have initially been intended as a 100% Category 1 delivery becomes a mix of Category 1 and other eligible products. Moreover, to the extent that other rules impacting a load serving entity's (LSE) management of its portfolio (such as limitations on banking or procurement of certain product types) create a market need to exchange products between LSEs or other participants, the Commission should make clear that once a product is delivered in a manner that perfects a volume's Category 1 status, it may be subsequently remarketed as a Category 1 volume. This is critical to maintain the value of the defined products, particularly as certain premiums can be expected for Category 1 deliveries. Significantly, only that portion of a delivery that meets the requirements of Category 1 could be counted as a Category 1 volume.

**Question 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?*

**Answer 5:** Yes. The new statutory language explicitly permits deliveries of RPS-eligible energy into California from outside the state where that delivery is done via transmission

arrangements that allow the contemporaneous production to be scheduled into California. This may be accomplished via a traditional firm transmission to a delivery point to a CBAA, or with other transmission arrangements that provide a direct connection with a CBAA.

For example: (a) firm transmission from the RPS-eligible generation facility via Point-to-Point (PTP) transmission purchased and scheduled for an indicated volume to a CBAA interface such as Palo Verde, Mead or Eldorado for a product made exclusively of RPS-eligible energy (100% bundled); or (b) non-firm transmission from the same facility to the CBAA interface; or (c) a bundled product that includes RPS-eligible energy from a RPS-eligible generation facility and non RPS-eligible, but GHG compliant, energy generated by natural gas facilities delivered to the CBAA interface. In the first case, all of the delivery qualifies as Category 1. In the second case, provided that the non-firm transmission is not recalled, all of the renewable energy delivery qualifies as Category 1. If the schedule is cut, then the volume allowed into the CBAA counts as Category 1 and the balance of production could be sold as another product if no alternative contemporaneous schedule path is secured. In the last case, with the hybrid product, only the RPS-eligible portion of the energy will count toward the RPS procurement obligation.

**Question 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 6:** NVE anticipates the following oversight structure, consistent with SB 2 (1x): (1) The CEC would continue to be responsible for certifying the eligible facility and verifying procurement claims; (2) Tracking would be done through WREGIS; (3) The tracking approach will look to the output's scheduling, as reflected in the e-tags that are associated to the WREGIS Certificate per existing functionality, and then meter data from the ERER would need to be used to correlate the e-tag information placed in the Certificate with the timing of the production scheduled into California to verify satisfaction of Category 1 criteria versus the other potential product types; and (4) The CPUC's role would be to approve utility contracts' structures to verify intent to have contemporaneous deliveries into a CBAA as Category 1, or whatever transaction is developed by the parties.

**Question 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. . ."*

*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 7:** The question presented here concerns different ways in which products from an ERER will be scheduled into California and how another resource may be required to fulfill the balance of the ERER's delivery obligation if the ERER experiences reduced output during the schedule period. There may be times where, for various reasons such as natural production variability or forced outages, the anticipated deliveries from an ERER will not occur, but the scheduled flow across the transmission interface between the BAs must be maintained. In instances where the source BA provides the backup to the ERER schedule, the source BA will provide, as needed, ancillary services to maintain the scheduled flow between the source and sink BAs. The cited language simply means that only the RPS-eligible portion of the scheduled flow will count for RPS purposes. If one ERER's decreased output is covered by another eligible resource, then the entire scheduled flow should still count as RPS-eligible, albeit the WREGIS tracking will relate to two (or more) facilities. However, if the decreased output is covered by a non-ERER, then only that portion of the delivered energy provided by the ERER would count as RPS-eligible as tracked in WREGIS.

**Question 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 8:** This phrase should be interpreted to mean that the RPS-eligible generation facility has the necessary arrangements in place, as required by the CBAA and the exporting BA, to dynamically transfer electricity to the CBAA. This provision should not be interpreted to require that the RPS-eligible generation facility must make its own arrangements. Rather, one or more ERER facilities should be allowed to contract with a third entity, for example, NVE, to act

as an aggregator for purposes of implementing the dynamic transfer of the products within the source BA to the sink CBAA.

**Question 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 9:** No, to the extent that this phrase implies that an unbundled REC must be "procured." Rather, this phrase should be interpreted to mean that an unbundled REC simply is a REC that has been separated from the RPS-eligible energy with which the REC originated.

**Question 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?*

*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 10**: All product deliveries meeting the Category 1 definitions should be deemed delivered into California consistent with the 399.16(b)(1) definitions irrespective of whether the initial or a downstream transaction reflects only a transfer of the REC, and should always retain their Category 1 status. This is a critical issue because the Category 1 product can be expected to trade at a premium and there are limitations on the ability to retain or bank that value if it is surplus to the current-year procurement obligation. Market participants should be able to remarket surplus Category 1 RECs to avoid stranded value and excess cost to ratepayers. The remarketing of RECs that originally had Category 1 status should not result in a loss of value and Category 3 status. Verification of the Category 1 status would be made by the CEC in conjunction with WREGIS tracking. For in-state ERERs, the RECs associated with their output always would be categorized as Category 1. For resources scheduled into a CBAA or covered through dynamic transfers, some additional verification work will be required to show a timely energy flow consistent with those provisions. In light of procurement limitations for Categories

2 and 3, limitations on banking for Category 1 deliveries and expected scarcity of Category 1 qualified deliveries, a critical issue should be the ability to maintain the premium value of the product, as represented by the REC, in both the primary and secondary markets.

**Question 11**: *Section 399.16(b)(3) includes "[e]ligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled 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 11:** Yes, although the interpretation should refer to "*an* eligible renewable energy resource" instead of "*the* eligible renewable energy resource."

- *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 11:** Since documentation and verification of RPS compliance depends on information contained in the WREGIS accounting system, the measurement of "any fraction" of RPS-eligible energy should be based on the manner in which WREGIS tracks this information—currently cumulative meter output data aggregated to 1 MW volumes. Since there is no contemporaneous production and delivery requirement for Category 3, there is no need to introduce a new metric to track "fractions" of electricity generated over specific periods of time, beyond that already measured and tracked in WREGIS. Should the units of measure tracked by WREGIS change (for instance to accommodate very small generation production that individually would not create a Certificate often, but that on aggregate could have more timely volumes), then the basis for tracking would be updated at that time. This should be a CEC / WREGIS verification issue, not a matter for product definition or any transaction-related requirements.

- *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 11:** As noted above, the CEC will use the information reported, verified and contained in the WREGIS accounting system for its verification processes based upon the measured output from an ERER. Additional work may be necessary to verify the delivery data for certain product types. The output data should comport with the RPS-compliance information submitted by the owner of that ERER, and the delivery data could be supported from other sources involved with the delivery processes. The method of tying output to deliveries may present some challenges and new complexities that will require technical input.

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

**Answer 12:** See answer 13.

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

**Answer 13**: "Firmed and shaped" has the common industry meaning of providing generation resources to achieve a specified or standardized block of power delivery for a specified period of time. In the context of the RPS program, firming and shaping is used to augment intermittent generation, such as some ERERs, with other generation in order to maintain an anticipated delivery schedule over a specified period. For example, if the industry standard block of energy delivery is 25 MWs, but an ERER is only expected to produce 15 MWs in a specific hour, then an additional 10 MWs of generation is provided during that hour from other sources, which could include other ERERs, to ensure that a full 25 MW block of energy is delivered in that hour.

Firming and shaping also are important tools to maintain system reliability both within and between BAs, and particularly to avoid inadvertent flows between BAs. These services are either explicitly or implicitly associated with all energy deliveries. These supporting services may be structured into transactions, or a BA may provide the service. Because of the general applicability of those services, NVE interprets the new provisions of Section 399.16(b)(2) as referring to the firming and shaping terms as they have applied in the context of California's RPS

program—namely as previously used in the CEC Guidebook to reflect deliveries verified to have been made into California.

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

- *how a particular transaction can be characterized as providing incremental electricity;*
- *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 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).*
- *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.*

*Please provide relevant examples.*

**Answer 14:** "Incremental energy" is referred to in Section 399.16 only with reference to Category 2. Since Category 2 encompasses non-contemporaneous production and delivery of product from an ERER, "incremental energy," in this context, should be interpreted to mean a delivery into California by a party without a corresponding export of an equivalent volume of energy. Because of the dynamic nature of the interstate transmission system, it is critical that any analysis of "incremental" be limited to the parties to a specific transaction. What the term seeks to exclude are transactions where an import carries in energy and RECs and also includes a corresponding counter flow of identical volume so the net effect is simply the sinking of RECs at the receiving BA. This term exists to differentiate a transaction with an intended import into CA from a transaction that could otherwise be characterized as a Category 3 delivery. It is critical to understand, however, that expanding an analysis to look at whether a delivery is "incremental" from a larger system perspective, for example, a netting across all system transactions, will result in incredible complexity, needless (and harmful) commercial uncertainty and attendant risks that will increase transaction costs and prices.

**Question 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 15:** Section 399.16(b)(2) should be interpreted to apply only to resources located outside of California being delivered to a CBAA and not to resources located in California. All in-state resources provide Category 1 products. There also is no requirement or need to interpret this section as applying only to "intermittent" ERERs, since the purpose of this section is to account for deliveries of any RPS-eligible energy that is not produced contemporaneously with its delivery into a CBAA. This includes circumstances where, for example, a transmission contingency or congestion alters the ability to make a contemporaneous delivery possible. Therefore, the existing CEC Guidebook delivery analysis should apply, that is, there can be a temporal shift between the time of production and the time of delivery, as long as there is a transmission path for the volume into California.

**Question 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 16:** No. The focus of Category 1 is the contemporaneous generation and delivery of RPS-eligible energy. There is nothing in Section 399.16(b)(1)(A) that precludes the use of firming and shaping to effectuate the delivery, as long as the firmed and shaped RPS-eligible generation is contemporaneously delivered to the CBAA. In fact, as previously noted, firming and shaping may be needed to maintain the schedule across the transmission interface and can be imputed to any delivery if not explicitly addressed by the parties to the transaction. In the case of Section 399.16(b)(1)(A) products, the source BA will provide firming and shaping reserves to ensure the anticipated schedule. In the case of Section 399.16(b)(1)(B) products, the sinking CBAA likely will carry the requisite reserves as if the resource was physically located

inside its BA, assuming the dynamic transfer approach is structured that way. But in both cases, the production from the ERER is contemporaneously scheduled to meet loads within the CBAA.

**Question 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 21:** NVE expects that the verification of product type eligibility would occur at the CEC. NVE suggests that the advice letter for a transaction describe the applicable Portfolio Content Category or Categories and the expected source ERER (if applicable). It should not be necessary to require a binding description of how deliveries would be made, particularly if new options for achieving the product(s) categories become available over time. Moreover, there may not be a need, at this time, for the contracts (or advice letters) to articulate how product categories would be satisfied, particularly as the still-evolving mechanisms to meet §399.16(b)(1)(A) and (B) cannot be anticipated at this time.

**Question 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 22:** Product verification will be a CEC responsibility undertaken in conjunction with the WREGIS tracking system. WREGIS may require some modifications in order to track Category 1 deliveries within the WREGIS Certificates. There are a number of technical issues that will need to be addressed, particularly where the output of an ERER may switch between Category 1 and Category 2 eligibility due to scheduling issues outside the control of the transacting parties (such as transmission curtailments, etc.). Section 399.16(b)(1)(A) transactions may require tying time-stamped meter data with evidence of a schedule to a CBAA—but this is another technical area that will require input from impacted BAs. Section 399.16(b)(1)(B) transactions should be verifiable by the nature of the dynamic transfer arrangement(s), which for the most part will involve CAISO or another CBAA and the source

BA where the ERER is located (and perhaps other BAs). Section 399.16(b)(2) and (b)(3) transactions may not require any changes to WREGIS. For example, verification of the "incremental" nature of Category 2 resources simply may involve determining whether the transaction is structured for a circular schedule that first originates from RPS-eligible resources.

**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 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 24:** Yes, the Commission should carry forward the existing RPS rules through at least the remainder of 2011, and perhaps longer. The Legislature has not officially closed the First Extraordinary Session, hence the 90 day period has not yet begun to run for the implementation of SB 2 (1x). As of the date of these comments, the earliest the First Extraordinary Session could be closed is the end of August, when legislative activity resumes, meaning the soonest the new provisions of SB 2 (1x) could become effective is the end of November, 2011. Therefore, it would be confusing and inefficient to implement new rules only for the one month or less remaining in the current compliance year. Moreover, because of some of the technical issues noted above, the fact that a parallel RPS program is being developed at the CEC for publicly owned utilities and because the CEC will need to update its materials that parties rely upon for ensuring facility and product eligibility, it may in the best interest of the market to coordinate a uniform implementation date.

## III. Conclusion

As a neighboring balancing authority with a growing portfolio of ERERs interconnecting to its transmission system, direct interconnections to the CBAs and an interest in promoting the development of renewable resources in the region, NVE appreciates the Commission's determination to carefully consider all the issues associated with SB2 (1x) and the opportunity to

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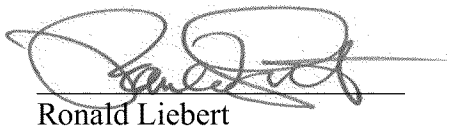
provide these comments on the Commission's Section 399.16 development and implementation concerns.

Dated: August 8, 2011

Respectfully submitted,



Ronald Liebert
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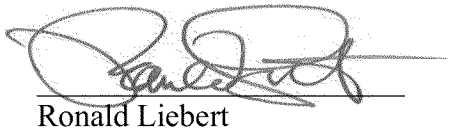
Attorneys for NV Energy, Inc.

## VERIFICATION

I am the attorney for NV Energy, Inc. (NVE); NVE is absent from the County of Sacramento, California, where I have my office, and I make this verification for NVE for that reason. 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 8, 2011 at Sacramento, California.



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