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

JOINT COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS AND RETAIL ENERGY SUPPLY ASSOCIATION ON PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD

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I. INTRODUCTION AND SUMMARY

On October 7, 2011, Administrative Law Judge Anne E. Simon ("ALJ") issued the proposed *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard* ("PD" or "Proposed Decision"). This PD is the first of several decisions that the California Public Utilities Commission ("Commission" or "CPUC") will make to implement Senate Bill ("SB") 2 (1X), which was signed into law on April 10, 2011. As noted in the PD, this first step, "focuses on new § 399.16, which establishes three new portfolio content categories for Renewable Portfolio Standard ("RPS") procurement and sets limitations on the use of procurement in each category."[1] The Alliance for Retail Energy Markets ("AReM")[2] and the Retail Energy Supply Association ("RESA")[3] (together, "AReM/RESA") submit these joint opening comments on the PD pursuant to Rule 14.3 of the CPUC

[1] See PD, page 6.

[2] 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.

[3] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Rules of Practice and Procedure to provide their unique perspective as non-investor owned utility ("IOU") retail sellers with RPS compliance obligations.[4]

AReM/RESA are grateful that the ALJ and Assigned Commissioner have followed through on their commitment to quickly implement SB 2 (1X), so that procurement under the statute's new and vastly more complex RPS compliance regime can proceed with some semblance of market certainty. However, AReM/RESA have several serious concerns with respect to some of the requirements that the PD imposes on the portfolio content categories–requirements that AReM/RESA believe are inconsistent with the intent of the statute, will inhibit the formation of vibrant renewable energy markets, will disadvantage non-IOUs and will ultimately increase RPS compliance costs for California consumers.

For convenience, AReM/RESA refer to the product content categories as Product 1, Product 2, and Product 3, corresponding to section Sections 399.16(b)(1), 399.16(b)(2), and 399.16(b)(3) respectively. AReM/RESA's concerns and recommended modifications to the PD are explained in the comments set forth in Section II below, and are summarized as follows:

- **Section II.A**: The PD specifies that any sale, transfer or trade of Product 1 or Product 2 by the original purchaser to another entity causes those products to be re-categorized to portfolio content category Product 3 for RPS compliance purposes. This re-categorization is inconsistent with the statute's definition of the three portfolio content products which imposes no such restriction on the tradeability of Product 1 or Product 2. Moreover, the PD's rationale that this trading restriction will lower RPS compliance costs by ensuring that the premium price attached to the delivered energy associated with Product 1 and Product 2 is paid for only one time is, economically speaking, inaccurate. To the contrary, the PD's imposition of this restriction will increase RPS compliance costs by imposing a structural inefficiency that will inhibit the development of a renewable energy market with fungible products and multiple buyers and sellers.

[4] Pursuant to Rule 1.8(d), the undersigned has been authorized by RESA to submit this pleading on their behalf.

- **Section II.B:** The PD's conclusion that the renewable attribute of behind-the-meter renewable generation consumed on-site can only be categorized as Product 3 is inconsistent with the statute's clear statements that resources located inside the state of California are to be treated as Product 1 based upon their location. Moreover, the PD errs in its analysis that allowing behind the meter generation to count for anything other than a Product 3 resource is tantamount to double counting the renewable generation.
- **Section II.C:** The PD requires that Product 2 must be firmed and shaped pursuant to a deal that is executed *at the same time* as the underlying deal for the bundled energy/renewable credit transaction. There is no mandate in SB 2 (1X) for this sort of requirement. If this new restriction is adopted by the Commission, it will signficantly reduce the flexibility that purchasers of Product 2 need to manage their procurement of imported RPS products, such as in instances where transmission limitations may impede renewable output provided as Product 1 delivery but could otherwise be provided on a short-term basis as a Product 2 delivery. By adding a new restriction on structuring commercial arrangements, the provision inhibits contracting flexibility, the development of innovative structures to manage the risks associated with Product 2, and will result in unnecessarily increased costs.
- **Section II.D:** The PD should be clarified to make explicit that Product 2 firmed and shaped deals do not prohibit the resale of the renewable energy where an import into California relies on incremental energy from the substitute resource.
- **Section II.E:** In this Section, AReM/RESA urge that potentially duplicative reporting requirements associated with product content category validation be eliminated.

Recommended changes to the Findings of Fact and Conclusion of Law consistent with these comments are provided in Appendix A.

II. COMMENTS

A. Product 1 and Product 2 deliveries should not be automatically re-categorized as Product 3 deliveries simply because the original purchaser decides to sell, transfer, or trade them.

The portfolio content categories' definitions are guided by two specific tenets that are presented for the first time in the PD: (i) ***"what you buy is what you have"*** and ***"what you have is what you retire***

for RPS compliance."[5] Against this framework, the PD concludes that the procurement of Product 1 or Product 2 will retain those categorizations for RPS compliance purposes only to the extent those products are retired by the original purchaser and that any subsequent transaction such as a sale, transfer or trade of the product(s) after its initial delivery will trigger an automatic alteration of the product's category qualification for RPS compliance into a Product 3 type only. However, there is a corollary tenet missing from the PD that follows from the property status of the compliance product types: ***"what you have is what you can sell."*** If a purchasing entity arranges for production and delivery of a renewable energy meeting the Product 1 or 2 requirements, it will hold that RPS compliance product in its inventory until retired for compliance purposes. As long as there is no means to double claim the product for compliance purposes, the owner of the commodity should be able to sell its rights to its already-delivered product inventory, or to its rights to receive future product not yet produced and delivered. Yet the PD undermines that right to manage an inventory of compliance instruments, and proposes to transmute the property right if the ownership of inventory subsequently changes hands. This constitutes legal error that must be corrected.

Moreover, the PD's determination in this regard rests on two arguments, both of which are erroneous, as explained further below.

1. The statute does not contemplate that a subsequent transfer of Product 1 or Product 2 ownership automatically transmutes the products into Product 3.

The PD describes in great detail the elements that must be present for an entity to assert that its purchases meet the Product 1 or Product 2 definitions for RPS compliance. AReM/RESA concur with many elements of the PD's definitions of the portfolio content categories including its primary focus on *products* and the commodity or property nature of the procurement obligation. However, the PD shifts from this *product based* structure of the new law when it states:

[5] See PD, page 14.

> If the buyer of the firmed and shaped electricity retires in the Western Renewable Energy Generation Information System (WREGIS) the renewable energy credits (RECs) for that transaction, the buyer may then claim those megawatt-hours (MWh) in the § 399.16(b)(2) portfolio content category. If, however, the original buyer sells the RECs from that transaction prior to retiring them for RPS compliance, then the buyer of the RECs may retire the RECs for RPS compliance pursuant to § 399.16(b)(3). The seller of the RECs then has nothing to retire for RPS compliance, since the RECs, not the electricity without the RECs, are what count for RPS compliance. (D.08-08-028.)[6]

This PD language indicates that the original Product 1 or Product 2 categorization will be automatically changed if there are any subsequent transactions that seek to transfer ownership of the RPS compliance product inventory from the original purchaser to some other party. The PD's transmutation of a Product 1 or Product 2 property into Product 3 type simply due to subsequent *transactions* is not contemplated by the statute, is at odds with the general interpretation of the three Product categories, and imposes a structural inefficiency to the market that will raise costs. Specifically, Section 399.16(b)(3) of SB 2 (1X) provides the statutory framework for Product 3, and simply says that any *product* that is purchased from a RPS eligible resource that does not meet the definition of Product 1 or Product 2 will be categorized as Product 3. The Product 3 category is essentially a catch-all product type and subject to the more restrictive procurement limitations. The PD unnecessarily alters the statutory definition of Product 3 by stating the Product 1 and Product 2 resources are automatically reclassified to Product 3 simply because they are used for RPS compliance by an entity other than the original purchaser.

Moreover, as noted above, the PD's own central tenet of ***"what you buy is what you have"*** should carry with it an important corollary that ***"what you have is what you can sell,"*** meaning that the compliance instruments should maintain their category qualification once the product type is perfected. But the PD's automatic recategorization of Product 1 or Product 2 into Product 3 on any subsequent

[6] See PD, page 14-15.

resale does just the opposite. AReM/RESA strongly urge that the PD be modified to recognize that as long as the output of an eligible renewable resource is provided in a way that meets a Product 1 or Product 2 portfolio content category, and is used only once for RPS compliance purposes when retired as that Product 1 or Product 2, it should not matter to the Commission whether the entity making the RPS compliance showing is the first and original purchaser of the delivered product, or the second – or the 50th. Put another way, the statute's drafters did not specify that the definition of Product 3 should include an automatic transmutation of Products 1 and 2 to Product 3 based on whether a subsequent transaction occurs, and the Commission should not now impose that sort of new restriction on product categorization.

2. Transfers of Product 1 or Product 2 inventory will not increase customer costs with each subsequent transaction, but restrictions on such transfers will.

The PD expresses concern that if entities are able to trade or transfer Product 1 and Product 2 then RPS compliance costs will increase because each subsequent purchaser will pay an incrementally higher price for the Product 1 or Product 2 commodity, even though the energy has already been delivered and consumed, and for that reason forecloses such transactions. This ignores market realities and the value of product fungibility and secondary markets. If the original purchaser of Product 1 or Product 2 content no longer needs that form of product for RPS compliance purposes, it should be encouraged to sell its excess inventory to a buyer willing to acknowledge the best and highest value for the product. Those secondary market transaction revenues will offset the original purchaser's costs with a profit, loss, or by breaking even. In any event, the secondary transaction will be done at then-prevailing market price, which will depend on whether the supply of Product 1 or Product 2 meets the aggregate demand for compliance instruments within that compliance period. The idea that any entity owning Product 1 or Product 2 inventory can always extract premium prices simply because of the

Product 1 or Product 2 designation does not accurately reflect the new, complex market realities—particularly for those entities with higher variability in their customer base.

On the other hand, if Product 1 or Product 2 eligible inventory can only be used for RPS compliance purposes by the original purchaser, as the PD's new limitation requires, that limitation will mean that any surplus inventory held by the original purchaser must remain with that purchaser for future compliance periods (subject to compliance period carry-forward limitations and potential resulting loss in inventory value).[7] Another compliance-obligated entity that needs Product 1 or Product 2 eligible product to meet a current compliance period requirement will have to find an as yet un-purchased Product 1 or Product 2, even though surplus already exists amongst the compliance obligated entities in aggregate. Such market inefficiency will lead to unnecessary overbuilding of long-lived RPS resources and potentially transmission additions, increasing costs for all Californians and increasing the potential for massive stranded costs. Such an outcome should be avoided by permitting transactions that change ownership of eligible product to allow market participants to optimize their RPS portfolios and manage their RPS risks.

The PD's proposed limitations on transfers of Product 1 and Product 2 will also curtail, if not eliminate, participation in the RPS markets of third party intermediaries, marketers and brokers, who play an important role in providing risk management, scheduling, and other services necessary to manage RPS inventories and RPS deliveries. Because these third party entities have no RPS compliance obligation, they, by definition, will always be transfering ownership of the Products to entities who will ultimately retire them for RPS compliance. Therefore, such entities will not be able to help manage

[7] The inability to transfer ownership of the higher valued products that are subject to higher procurement requirements will effectively result in potential stranding of compliance value to the extent an entity cannot resell a Product 1 or 2 inventory, but can only resell a lesser valued product. If the potential seller already has its maximum level of Product 2 or 3 inventories, the banking rules will result in loss of value to the extent it cannot capture Product 1 or Product 2 prices on resale, and potential purchasers will not be able to utilize Product 3 inventory due to applicable procurement limitation rules.

inventories of Product 1 or Product 2 because they will not be able to transfer those Products to RPS obligated entities with an intact Product 1 or Product 2 designation. Curtailing the particpation of these important market participants will reduce the competitiveness and liquidity of the RPS markets, and create unnecessary obstacles for non-IOU retail providers that often rely upon those services.

3. The PD must clarify that sale of Product 1 or Product 2 eligible production that has not yet been produced and delivered will maintain its Product 1 or Product 2 categorization eligibility.

If the Commission determines that a subsequent sale, transfer or trade by the original purchaser of its Product 1 or Product 2 inventory transmutes the product into the Product 3 portfolio content category (an outcome that AReM/RESA strongly oppose for the reasons described above), then the Commission must make it clear that this portfolio content category transmutation only applies to completed deliveries of the products, and will not apply where a secondary transaction (or chain of transactions) exists that transfers title to the product prior to energy production and delivery. Failure to make this clarification will result in significant unintended consequences for the market, and may impede the ability of some retail sellers to rely on transactions structures that are necessary for various reasons. For example, an intermediary may be needed to meet certain counterparty credit requirements for longer term transactions, to help manage changing Product 1 and Product 2 procurement requirements as a retail seller's load changes, or to help meet mandatory requirements with respect to minimum contract durations. In other words, if an entity has a multi-year contract from an RPS eligible resource that it will use to meet Product 1 or Product 2 procurement requirements, then the PD's proposed restriction that any subsequent transaction of delivered quantities converts the products into Product 3 must not also extend to any *future* production and deliveries that have yet to occur under that contract. This clarification will ensure that a purchaser of Product 1 or Product 2 that anticipates future contract deliveries in excess of its compliance requirements can make secondary transactions to sell some or all of its contracted quantities and confer full Product 1 or Product 2 value to the purchaser.

This clarification will also preserve the ability for third party intermediaries and marketers to provide their important market based risk management services.

B. The PD errs in its conclusion that renewable Distributed Generation consumed on-site can only qualify for RPS compliance as Product 3.

The major modification to the California RPS program ushered in with SB 2 (1X) is the Legislature's clear intent to create a preferential status for in-state resources or contemporaneously imported renewable generation. Thus, it is surprising that the PD takes a position that California-based renewable distributed generation ("DG") consumed on-site can only satisfy portfolio content category Product 3. For the reasons explained below, AReM/RESA strongly urge the Commission to modify the PD so that all the production from in-state renewable DG, whether consumed on-site or sold as excess production, be deemed eligible as Product 1.

1. Distributed Generation located in-state should be treated the same as other in-state renewable resources with respect to RPS compliance product category eligibility.

The PD cites a net metering statute (AB 920) that "specifically recognized that the sale of RECs associated with the on-site use of electricity from an RPS-certified DG facility is different from the sale by the generation system owner of both energy and RECs to a retail seller."[8] On the strength of this reference, the PD states that excess energy from a RPS eligible DG facility will be categorized as Product 1. AReM/RESA agree with this conclusion. However, the PD also interprets this statute to also mean the converse: that RPS eligible energy from the renewable DG resource that is consumed on-site is not eligible as Product 1 production, but will only qualify as Product 3. This conclusion is wholly misplaced. First of all, AB 920 was written and passed before the product content categories were envisioned, and therefore it is the subsequent legislation, SB 2 (1X), that should control with respect to a determination of portfolio content categories. Second, SB 2 (1X) does not, in specifying that Product 1

[8] See PD, page 35.

resources must be interconnected with a California Balancing Authority, state that the on-site consumption of the energy disqualifies its Product 1 categorization. Given the high level of legislative attention to renewable DG in recent years, as well as the Governor's interest in seeing greater levels of renewable DG deployment in the coming years, it stands to reason that if the drafters of the statute intended for it to matter whether or not the production from the facility is net metered, they would have explicitly said so.

Imposing a mandatory Product 3 classification to DG serving on-site loads will have the unintended consequence of impeding commercial innovation in support of greater renewable DG deployment. As previously noted, the portfolio content categories were designed to encourage in-state renewable resource development and energy delivery. Renewable DG located inside California is consistent with that policy preference. To relegate those resources to the Product 3 category, with its lower compliance value and ineligibility for banking will undermine the development of cost-effective installations. Entities interested in renewable DG deployment will be forced to forego net metering arrangements in favor of more complex and expensive wholesale DG configurations which are likely to result in much lower levels of deployment. The Commission should avoid this result by recognizing that renewable DG resources located within California provide Product 1 and permit secondary transactions of that compliance value.

2. Allowing renewable DG to count for Product 1 RPS compliance does not result in double counting of the RPS benefits of the distributed generation.

The PD supports its recommendation that RPS eligible DG consumed on site must be treated as Product 3 as follows:

> In considering the role of such unbundled RECs, it is also important to recognize that the on-site consumption of the electricity from the DG system has already produced an RPS benefit: it reduces the total retail sales of the interconnected utility, and thus reduces the amount of RPS-eligible procurement the utility requires. (See, D.05-05-011 at 9.) Conferring an additional value on the unbundled RECs by considering

> them to meet the "first point of interconnection to distribution system" criterion is not warranted by any statutory language or Commission decision.[9]

This passage from the PD suggests that allowing renewable DG consumed on-site to count as Product 1 will essentially result in a double counting of the RPS benefit. Focusing the benefits of renewable DG on whether the total retail sales of the RPS obligated load serving entity are reduced and thus the RPS obligation for the RPS obligated load serving entity is reduced, unfairly penalizes the very Californians that risked capital and resources to create the new renewable DG that the State professes to support and prefer. First, SB 2 (1X) does not specifically delegate renewable DG to the Product 3 category or require grid delivery, so such an outcome was NOT the intent of the Legislature. Second, SB 2 (1X) explicitly removed the deliverability requirements that were codified in the prior RPS law. Therefore, where the energy associated with the in-state renewable resource is physically consumed is not a relevant point of reference when determining the portfolio content category for in-state renewable DG.

Moreover, the effect that DG has in reducing the overall RPS requirement is not limited to renewable DG—all DG, whether renewable or otherwise, serving on-site loads has that effect. The impact of DG—renewable or conventional—on the overall level of RPS obligation is simply not relevant with respect to the RPS value attributable to the DG production. If the goal of the RPS program is to increase the volume of *renewable* energy production (as opposed to policies that may encourage any type of DG installation such as small combined heat and power), then the fact that the DG is *renewable* and located within California should be dispositive of the product category eligibility and result in a Product 1 designation.

[9] See PD, page 35.

C. The PD should be modified to eliminate the requirement that firmed and shaped energy must be purchased at the same time as the underlying purchase of the out-of-state renewable energy.

The PD states:

> From the perspective of an RPS procurement transaction, this general characterization of a firmed and shaped transaction necessitates three commercial elements:
>
> 1. the buyer's simultaneous purchase of energy and associated RECs from the RPS-eligible generation facility without selling the energy back to the generation;
>
> 2. the availability of the purchased energy to the buyer (i.e., the purchased energy must not in practice be already committed to consumption by another party);
>
> 3. the acquisition of the substitute energy ***at the same time as acquisition of the RPS-eligible energy***, or at least prior to submission of the contract for the firmed and shaped transaction for Commission approval. (Emphasis added)[10]

The PD does not explain why the substitute energy must be acquired at the same time as the RPS eligible energy, nor does AReM/RESA believe that there is any statutory basis for imposing this requirement. The new requirement proposed in the PD will have serious unintended consequences that can impair the ability of entities to have flexibility in procurement structures, particularly in light of longer-term market dynamics.[11] The proposed requirement will increase costs as a result.

Take for example a longer-term transaction with an out-of-state renewable resource where the purchaser intends and expects to have Product 1 eligible delivery in most circumstances, but the parties anticipate events on the transmission system (such as periodic overgeneration conditions, transmission capacity derates, or a period where new transmission is not yet available) during which the resource is

[10] See PD, page 40.

[11] These long-term market dynamics include changes in regional loads and generation, transmission availability, as well as technological changes that can support short term ancillary service transactions or prompt inter-balancing authority area scheduling modification in support of renewables integration.

producing renewable energy, but the deliveries into California can only be effectuated as Product 2. While these circumstances are foreseeable, they are not of a nature that the occurrences can be forecast with precision. The parties could agree to curtail production in any instance where the delivery cannot meet the requirements of Product 1, but that would be contrary to the overarching RPS goals of maximizing the use of renewable energy. Under the PD's proposed limitation, there is a necessity to reach a commercial arrangement for the Product 2 delivery far in advance of the conditions that may trigger the need to default to the lower-valued product. Rather than requiring advanced or simultaneous contracting for the substitute energy, the Commission should acknowledge that the tracking of the substitution will be required as a condition of Product 2 eligibility to be overseen by the CEC, and failure to satisfy the requirement when having the production and deliveries reviewed for specific product eligibility will result in the production being categorized as Product 3. Accordingly, the Commission should not impose this additional contracting requirement.

D. The PD should clarify that firmed and shaped deals do not prohibit the resale of the renewable energy.

One of the three elements central to the characterization of Product 2 is stated in the PD as follows: "the buyer's simultaneous purchase of energy and associated RECs from the RPS-eligible generation facility without selling the energy back to the generation."[12] This language could be interpreted to prohibit the resale of renewable energy associated with Product 2, a component that AReM/RESA believe is critical to the concept allowing use of substitute energy found within the Product 2 definition. Delivery of Product 2 will involve the redirection (and therefore resale) of energy produced at the renewable resource with the volume replaced by the substitute energy that can be imported into California. AReM/RESA suggest that the substitution concept within the Product 2

[12] See PD, page 40.

definition must be clarified to allow for the purchaser's ability to resell the renewable energy produced at the resource.

E. Duplicative reporting requirements associated with product content category validation should be eliminated.

AReM/RESA urge the Commission to avoid imposing unnecessary and duplicative reporting requirements on retail sellers. To the extent that retail sellers will need to make reports to the CEC to support their procurement claims for specific volumes of particular product categories, the CPUC should structure its review to rely upon the CEC validation work, rather than requiring retail sellers to make additional, duplicative reports to the CPUC to support the category claims. Section 3.4.2.1 of the PD calls for such a duplicative report when it states:

> At the stage of compliance determination, all retail sellers claiming generation under this criterion must be able to demonstrate that the dynamic transfer mechanism was in place and effective at the time of the generation claimed, and that the generation was actually dynamically transferred. *Such a demonstration is required in addition to the report that retail sellers provide to the CEC for verification of generation.* (Emphasis added.) [13]

A similar "demonstration" requirement is noted at page 27 with respect to the compliance filings to be developed by the Director of the Energy Division.[14] The CEC's obligation to verify eligibility of resources and their production should result in the verification that any delivery conditions associated with a particular product type (e.g., Product 1 or 2) have been met. The PD suggests that the Commission will make its own additional and separate determination. In light of the separate agency responsibilities and the interaction between agencies established by statute, AReM/RESA recommend that duplicative reporting requirements to verify eligibility be avoided. This could be accomplished by

[13] PD, page 29.

[14] See, PD, pages 26-27: "Compliance determinations are similar for all retail sellers, requiring documentation that the criteria for this category were met. Any retail seller claiming generation in this category must be prepared to show, in a Commission compliance filing …. Such a demonstration is required in addition to the report retail sellers provide to the CEC for verification of generation."

inter-agency coordination on product category categorization requirements and the structure for validation reports coupled with reliance on a single validation determination. Absent such action, the CPUC should be clear that a CEC determination on the product eligibility is determinative. Clarity in this area will help both the RPS obligated retail sellers subject to CPUC oversight, as well as those entities selling RPS products that focus on the CEC's requirements for eligibility and validation, and will preclude the potential for conflicting decisions on eligibility.

While the PD at page 27, and footnote number 12 at page 8 notes the interaction with the CEC validation process and a desire to have Energy Division develop a "more comprehensive and long-term approach to this compliance determination" in consultation with the CEC and WREGIS, all parties in the marketplace will benefit from having a closely coordinated set of eligibility rules, including reporting requirement rules, as soon as possible.

III. CONCLUSION

AReM/RESA urge the adoption of the revisions and modifications presented herein. It is critical that the Commission develop policies that allow for secondary transactions of delivered products without conversion or transmutation of the inventory's product categorization. Failure to allow products to retain their category once perfected will result in unnecessary increases in costs to consumers due to excessive renewable generation and transmission capacity developments and therefore should be avoided. Moreover, suggesting that subsequent transactions and transfer of ownership will result in alteration of product categorization will have unintended consequences that will disadvantage non-IOU retail sellers and impede the ability of intermediaries to provide vital services.

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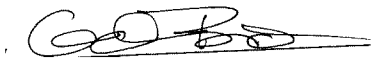
Respectfully submitted,



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VERIFICATION

I am an agent of 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 October 27, 2011 at Sacramento, California.

/s/

Andrew B. Brown

Ellison, Schneider & Harris L.L.P.

Attorneys for the Alliance for Retail Energy Markets

Appendix A
Recommended Modifications to Findings of Fact and Conclusions of Law

Findings of Fact

3. While WREGIS does not currently have a functionality that would allow tracking of the new portfolio content categories created by new § 399.16, the CEC will address the verification and tracking requirements consistent with SB 2 (1x).

11. Once renewable generation satisfies the conditions for a specific product content category and is delivered to an entity and held it its compliance inventory, that entity may subsequently transfer ownership and rights to claim that product for compliance purposes until such time the product is retired for RPS compliance, and the product categorization will not be changed due to the subsequent transfer of ownership.

Conclusions of Law

7. In order to ensure that RPS procurement complies with the new portfolio content requirements and promote the fair and efficient administration of the RPS program, all retail sellers should be required to provide documentation to Energy Division staff such submissions made to the CEC demonstrating that RPS procurement properly belongs in the portfolio content category in which it is claimed for RPS compliance.

9. Because new types of information will be necessary to evaluate retail sellers' compliance with the procurement requirements of the new portfolio content categories, the Director of Energy Division should be authorized to develop methods for ~~evaluating~~ confirming compliance with the new portfolio content categories as verified by the CEC and to require retail sellers to provide necessary information, as determined by the Director of Energy Division, for such ~~evaluation~~ confirmation.

11. Because dynamic transfer transmission arrangements are evolving, the Director of Energy Division should be authorized to review the development of dynamic transfer methods and incorporate any such developments into the information retail sellers must provide for confirmation of compliance with the new portfolio content categories as determined by the CEC.

12. Procurement from contracts signed on or after June 1, 2010 may be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(1), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and has its first point of interconnection to the WECC transmission grid within the metered boundaries of a California balancing authority area~~, so long as the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner,~~ and all other procurement requirements for compliance with the California RPS are met.

13. Procurement from contracts signed on or after June 1, 2010 may be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(1), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and has its first point of interconnection with the electricity distribution system used to serve

end user customers within the metered boundaries of a California balancing authority area~~, so long as the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner,~~ and all other procurement requirements for compliance with the California RPS are met.

14. Procurement from contracts signed on or after June 1, 2010 may be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(1), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and the generation from that facility is scheduled into a California balancing authority without substituting electricity from any other source~~, so long as all the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner,~~ and all other procurement requirements for compliance with the California RPS are met; and provided that, if another source provides real-time ancillary services required to maintain an hourly or subhourly import schedule into the California balancing authority only the fraction of the schedule actually generated by the generation facility from which the electricity is procured may count toward this portfolio content category.

15. Procurement from contracts signed on or after June 1, 2010 may be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(1), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and the generation from that facility is scheduled into a California balancing authority pursuant to a dynamic transfer agreement between the balancing authority where the generation facility is interconnected and the California balancing authority into which the generation is scheduled~~, so long as the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner,~~ and all other procurement requirements for compliance with the California RPS are met.

16. Procurement from contracts signed on or after June 1, 2010 may be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority within the same calendar year as the generation from the facility eligible for the California RPS, and if the substitute electricity provides incremental electricity, if the following conditions are met~~, so long as the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner,~~ and all other procurement requirements for compliance with the California RPS are also met:
    - the buyer simultaneously purchases energy and associated RECs from the RPS-eligible generation facility;
    - the energy purchased from the RPS-eligible generation facility is available to the buyer (i.e., the purchased energy must not in practice be already committed to consumption by another party);
    - the buyer acquires and delivers into California ~~the~~ substitute energy ~~at the same time as it acquires~~ in a quantity equal to or greater than the RPS-eligible energy it claims.

17. Procurement from contracts signed on or after June 1, 2010 may be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(3), as effective December 10, 2011, if the

procurement consists of any generation eligible under the California renewables portfolio standard that does not quality to be counted in either the portfolio content category described in Pub. Util. Code § 399.16(b)(1), as effective December 10, 2011, or the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011, ~~either of the following conditions is met,~~ so long as all other procurement requirements for compliance with the California RPS are met:

- ~~The procurement consists of unbundled renewable energy credits originally associated with generation eligible under the California renewables portfolio standard; or~~
- ~~The procurement consists of any generation eligible under the California renewables portfolio standard that does not quality to be counted in either the portfolio content category described in Pub. Util. Code § 399.16(b)(1), as effective December 10, 2011, or the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011.~~