Comments of Noble Americas Energy Solutions LLC

Noble Americas Energy Solutions LLC ("Noble Solutions") appreciates the opportunity to comment on matters raised during the informal working group meeting convened by the California Energy Commission ("CEC") and the California Public Utilities Commission ("CPUC" or "Commission") to discuss RPS reporting and verification issues on November 30, 2012 in Sacramento.

Proposal for an Informal Content Category Determination Process

Because the RPS program has so many complex design features, there are significant risks attendant to RPS procurement. Most of these risks are addressed in the RPS contracting process. But it is not easy for the counterparties to manage the regulatory risk associated with Content Category determinations in an RPS procurement contract. At least part of the regulatory risk can be mitigated, however, by creating an informal, voluntary, staff-level "pre-review" process, by which an entity can submit a procurement contract for staff review to get an assessment of whether a given contract structure does or does not meet the requirements of the RPS Content Category criteria.

It is important to remember that investor-owned utilities ("IOUs") are already afforded a pre-review process of a sort. Because ratepayer costs are implicated in all IOU procurement decisions, a formal pre-approval process is in place for IOUs. All of the elements of the IOU procurement contract are reviewed, including conformity with the Content Category classifications of Public Utilities (PU) Code §399.16(b), where applicable. If, at a later time the Commission determines a contract did not conform to a particular Content Category, the IOU is stilleligible for cost recovery from its ratepayers. Electric Service Providers ("ESPs") have no "guaranteed" cost

This rule applies to IOUs. It is cited her to illustrate the problem of managing Content Category determination risk in an RPS procurement contract.	nt as	□ð	
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recovery, so the absence of a voluntary Product Content Category predetermination creates even more regulatory risk.

Non-IOU LSEs, including ESPs, do not have their customer rates set by a regulatory body, and therefore are not subject to the Commission's contract pre-approval process. However, this does not mean that RPS procurement contracts for ESPs escape regulatory scrutiny. These contracts come under regulatory review in the RPS compliance process, after the RPS procurement contracts have been executed, and after the ESP has undertaken substantial financial commitments under those contracts, at the conclusion of the RPS Compliance Period. Clearly, there is an overhanging regulatory risk between the time and RPS procurement contract is executed and when the ESP submits its compliance filing. The RPS contracts themselves are discoverable by the CPUC staff during the compliance review process.² It is not until this *post-hoc* review takes place that a regulatory body opines on whether the Content Category criteria have beenmet.

This is clearly an untenable situation, as an ESP can have its entire compliance showing "blown up" by an adverse staff opinion on Content Category grounds. No matter how carefully the ESPs and RPS suppliers craft their agreements,³ it is only *after* the compliance filing has been accepted as conforming to the RPS requirements that the ESP knows definitively that it has properly met the Content Category criteria.

This overhang of regulatory risk is not necessary. Already ESPs are required to submit RPS Procurement Plans on an annual basis. ⁴ There should be a voluntary process, perhaps most conveniently during the RPS Procurement Plan review period, for the ESP to reach out to staff for a review of the proposed RPS procurement contracts for conformity with the Content Category rules. This voluntary process should be an informal review at the staff level, ideally by the same staff cadre that will review the RPS compliance filings. Of course, this review would not offer the same level of scrutiny or assurance as the IOU pre-approval process, which is done through a formal Advice Letter procedure. Nevertheless, ESPs can have the option of pursuing an additional measure of due diligence in their

⁴ PU Code §365.1, D. 11-01-026, Ruling of Commissioner Ferron, dated April 5, 2012.

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contracts themselves pass muster in the compliance and verification process.

4 PLI Code 8365 1, D. 11-01-026, Ruling of Commissioner Ferron, dated April 5, 2012

RPS procurement activities if they are permitted to engage the staff in an informal review of conformity with Content Category criteria for proposed RPS procurement contracts. If the Commission staff have any concerns at that time, the ESP is on notice that their procurement may not conform to an expected Content Category classification.

This voluntary, informal staff review process will not be a burden on the staff. It can be expected that once a body of experience is acquired with respect to contract provisions that pass muster under the Contract Category criteria, these "tried and true" contract models will become the norm. Of course, parties to energy contracts are always exploring ways to give greater clarity to the allocation of rights and liabilities in commercial arrangements, so the proposed informal review process will allow parties to RPS contracts to innovate with the assurance that these contracts will serve their intended purpose of supporting California's RPS policies.

Inter-SC Trades

It was suggested during the November 30 meeting that documentation of energy trades between California Independent System Operator (CAISO) Scheduling Coordinators (known as Inter-SC Trades, or ISTs) might be a source of documentation to verify certain Category 1 RPS transactions. Inter-SC Trades are governed by Section 28 of the CAISO Tariff. It is unclear how IST documentation could be used as a verification tool in the RPS program. It is better to think of the IST protocols as a settlement service provided by CAISO to facilitate bilateral energy and ancillary services transactions between market participants. These are strictly financial settlements between parties, and do not represent "incremental" energy flows into the CAISO footprint. Rather, these trades allocate obligations to pay and rights to be paid for transactions that are already scheduled in the CAISO market.

In many ways, the apparent confusion over the role ISTs play in RPS procurement is an artifact of CAISO's prior market design. In the pre-nodal CAISO market, ISTs were, in fact, physical trades. Now, however, all energy transactions within (and into) the CAISO Balancing Authority ("BA") are cleared through the CAISO market mechanisms. CAISO intermediates by paying the seller and collecting from the buyer. Thus, an

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RPS seller does not actually directly "deliver" energy to the RPS buyer, nor does the RPS buyer directly pay the RPS supplier for physical energy. The model of a "bundled" RPS procurement transaction no longer has validix in a marketplace wherein CAISO intermediates between buyers and sellers of energy products in the CAISO BA. In the nodal era, ISTs have been adopted by the market to represent conformity with the bundling requirement.

Verification Issues Involving e-Tags

During the workshop discussions, there appeared to bean embedded assumption that the retail seller claiming RPS credit for certain import transactions was invariably the importer. This is not always the case and the Guidelines should be modified to reflect this fact.

Spreadsheet Issues

Cells S5, T19, S33

These cells request information with respect to percentage of total facility generation for a REC claim. In Noble's experience, this information is seldom known to the buyer, unless a percentage is specifically contracted for.

Cells L5/M5, M19/N19, L33/M33

These cells request information with respect to Facility eligibility date and Facility on-line date. It should be clarified that test energy from a facility should be eligible for REC creation. In addition, there is a section (beginning at Cell A46) that requests information about the substitute energy facility for a PCC2 transaction. The origin of the substitute energy is seldom known and often unknowable. As Noble understands the requirement, the substitute energy is firm LD energy delivered from a region that is not in a California Balancing Authority Area.

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Cell J5

This cell should be modified or clarified, to account for the enactment of AB2187, which specifies the relevant date as January 13, 2011 for PCC0 RECs for ESPs.

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