

# 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 counter-parties to manage the regulatory risk associated with Content Category determinations in an RPS procurement contract.<sup>1</sup> 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 still eligible for cost recovery from its ratepayers. Electric Service Providers (“ESPs”) have no “guaranteed” cost

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<sup>1</sup> See D. 12-11-016, Ordering Paragraph 18: “[SDG&E] shall not include a requirement that the Commission determine or approve the portfolio content category classification as a precondition to the contract’s effectiveness.” This rule applies to IOUs. It is cited here to illustrate the problem of managing Content Category determination risk in an RPS procurement contract.

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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.<sup>5</sup> 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

<sup>5</sup> See Item 4 on the November 30 Meeting Agenda.



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 PCCO RECs for ESPs.

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