

**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
(Filed May 5, 2011)

PUBLIC VERSION

**RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLAN OF
CONSTELLATION NEWENERGY, INC.**

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Pursuant to the May 10, 2013 *Assigned Commissioner's Ruling Identifying Issues and Schedule of Review for 2013 Renewables Portfolio Standard Procurement Plans Pursuant to Public Utilities Code Sections 399.11 et seq. and Requesting Comments on a New Proposal* ("Assigned Commissioner's Ruling") and the May 23, 2013 email from Administrative Law Judge DeAngelis granting the request for extension of time to file 2013 RPS Procurement Plans, Constellation NewEnergy, Inc. ("CNE") submits the following Renewables Portfolio Standard ("RPS") Procurement Plan.

CNE is an electric service provider ("ESP") registered with the California Public Utilities Commission ("Commission" or "CPUC") to serve commercial customers in California participating in the direct access program. CNE is in full compliance with its procurement obligations under the RPS and resource adequacy ("RA") programs, and all other terms and conditions required of a registered ESP. Unlike the investor owned utilities ("IOUs"), CNE's load is fully contestable at the customer's choice such that at the end of their contract term they could renew with CNE, or they could decide to move to other ESPs or return to utility service. Therefore, all forecast load data is subject to change in light of customer migration and forecast procurement data is subject to change based on decisions by CNE to revise the wholesale contracts used to serve such loads, with increased uncertainty associated with forecasts beyond

the next 3-5 year period over which there are much fewer customer commitments. Against this backdrop, CNE undertakes its procurement activities to meet regulatory and commercial obligations while managing market and regulatory risks.

I. Assessment of RPS Portfolio Supplies and Demand - § 399.13(a)(5)(A) (Section 6.1 of the Assigned Commissioner’s Ruling)

Section 6.1 of the Assigned Commissioner’s Ruling requests:

Provide a written description assessing annual and multi-year portfolio supplies and demand in relation to RPS requirements, the RPS program, and the RPS program’s overall goals to determine the retail seller’s optimal mix of eligible renewable energy resources.

The assessment should consider, at a minimum, a 20-year time frame with a detailed 10-year planning horizon that takes into account both portfolio supplies and demand. This written description must include the retail seller’s need for RPS resources with specific deliverability characteristics, such as, peaking, dispatchable, baseload, firm, and as-available capacity as well as any additional factors, such as ability and/or willingness to be curtailed, operational flexibility, etc.

This written description must also explain how the proposed renewable energy portfolio will align with expected load curves and durations. Where applicable, assessment should also identify and incorporate impacts of overall energy portfolio requirements (not just RPS portfolio requirements), recent legislation, other Commission proceedings (e.g. Long-Term Procurement Plans Proceeding), other agencies requirements, and other policies or issues that would impact RPS demand and procurement.

Additionally, the assessment should address the retail seller’s need for and plan for procuring resources that satisfy the three portfolio content categories of RPS procurement. [footnote omitted.] Lastly, it must also explain how the quantitative analysis provided in response to section 6.5 supports the assessment.

A. Assessment of annual and multi-year portfolio supplies and demand in relation to RPS requirements, the RPS program, and the RPS program’s overall goals.

Because retail suppliers typically do not have retail customer contract commitments that exceed 36-months, 10-year and 20-year forecasts are difficult to make and subject to change.

Due to this forecasting uncertainty, CNE sources supplies from the competitive regional markets, and structures its purchases to hedge its retail commercial commitments with corresponding supply commitments. Based on its best estimate of customer demand, CNE undertakes RPS procurement consistent with the regulatory obligation compliance horizon, and its ability to manage the market risks associated with longer term purchases. Consistent with its risk management practices, CNE builds its portfolio consistent with regulatory obligations, and corresponding customer commitments.

- B. *CNE's need for RPS resources with specific deliverability characteristics, including peaking, dispatchable, baseload, firm, as-available, as well as willingness to be curtailed, operational flexibility, or other factors.*

The RPS procurement obligation is an *energy-based* obligation for the applicable percentage of megawatt hours (“MWhs”) over the particular compliance period. Accordingly, CNE does not generally procure RPS eligible generation for capacity or ancillary service characteristics. Instead, except as noted below, capacity requirements are procured separately consistent with RA obligations, and ancillary services needed for load following, voltage support, and regulation are purchased through the California Independent System Operator (“CAISO”) ancillary service markets.

In instances where it may procure energy and capacity from an RPS-eligible resource, the RA value is going to vary pursuant to CAISO and CPUC RA counting rules for the particular technology, and therefore will likely be a secondary consideration when compared to the delivery of RPS-eligible megawatt-hours. CNE will typically procure RPS resources for its portfolio based on the facility’s expected energy deliveries into a California Balancing Authority, consistent with the RPS law. Moreover, because the RA program’s policies and associated procurement obligations continue to evolve in the near term, and because CNE’s ability to

optimize RA portfolio build out is compromised by utility procurement that is given cost allocation methodology (“CAM”) treatment, it is difficult for CNE to develop long-term RA capacity procurement forecasts.

C. Description of how procurement will meet CNE’s load forecasts.

As previously mentioned, CNE’s loads are fully contestable, and the RPS obligation is based upon served loads, so CNE must seek to balance its regulatory obligations for duration and RPS product type over the compliance period. Under the previous RPS program structure, CNE avoided developing procurement deficits, which was facilitated by flexible procurement rules that allowed CNE to accumulate and maintain a bank of eligible procurement to help address variations in loads or RPS eligible supplies. However, under current RPS regulations, procurement of excess RPS eligible generation is more restrictive with respect to the type of contracts from which purchases can be carried from one compliance period to the next, such that purchases from any contracts that are less than ten years in duration cannot be banked for future compliance periods and become stranded if not used in the compliance period in which they are procured. Moreover, current regulations prohibit delivered Product 1 or Product 2 compliance instruments from being bought or resold with their original compliance categorization intact. Because RPS product pricing can vary significantly by product type, this restriction on the ability to re-market products that may be surplus due to load changes requires CNE and all other load serving entities to analyze the most efficient manner to balance the higher cost Product 1 resource procurement requirement against a potential stranding of short term or Product 3 surpluses.

D. Need for and plan for procuring portfolio content category requirement.

CNE anticipates undertaking RPS procurement from the regional market in a manner that optimizes available supplies consistent with established RPS procurement requirements. Currently, CNE will seek to optimize its procurement against variable customer demand and two dimensions of the RPS procurement obligation: namely, the “total volume requirement” and the “content category mix requirement” applicable for each compliance period. CNE will seek to secure during a compliance period the mix of resources that would minimize stranding of procurement due to restrictions on banking surplus procurement of certain product content categories and/or shorter duration commitments, potentially including procurement of renewable Distributed Generation (“DG”) as part of its RPS portfolio as market rules develop for the use of DG to meet the RPS requirements.

II. Project Development Status Update - § 399.13(a)(5)(D) (Section 6.2 of the Assigned Commissioner’s Ruling)

Section 6.2 of the Assigned Commissioner’s Ruling requests:

Provide a written status update on the development schedule of all eligible renewable energy resources currently under contract but not yet delivering generation. This written status update may rely upon the most recent filed Project Development Status Reports [footnote omitted] but must elaborate upon these reports and should differentiate status updates based on whether projects are pre-construction, in construction, or post-construction. Providing a copy of the Project Development Status Report will not be a sufficient response. The status updates provided in the written description must be reflected in the quantitative analysis provided in response to section 6.5, below. Given this analysis, discuss how the status updates will impact the retail seller’s net short and its procurement decisions for a 10-year planning horizon.

- A. *Update on development schedule for resources not yet online.*
- B. *Impact of schedule on CNE's net short and procurement decisions*

The electrical corporations file the Project Development Status Reports, and so an update of this report is not applicable to CNE. All resources identified in CNE's last RPS Compliance Report, submitted to the CPUC in December, 2012, have achieved commercial operations.

III. Potential Compliance Delays - § 399.13(a)(5)(B) (Section 6.3 of the Assigned Commissioner's Ruling)

Section 6.3 of the Assigned Commissioner's Ruling requests:

Describe in writing any potential issues that could delay RPS compliance, including, but not limited to inadequate transmission capacity, delayed substation construction, financing, permitting, and the relationship, if any, to deliveries and project development delays. Describe the steps taken to account for and minimize these potential compliance delays. The potential compliance delays included in the written description must be reflected in the quantitative analysis provided in response to section 6.5. Given this analysis, discuss how the potential compliance delays will impact the retail seller's RPS net short and its procurement decisions.

- A. *Description of potential issues that could delay RPS compliance.*

CNE, a competitive retail provider, typically contracts for resources from the regional markets to supply its loads and meet regulatory requirements. CNE directly seeks out arrangements with counterparties involved in project development and can negotiate contracts initiated in the brokered markets. CNE looks for resources that have achieved, or are close to achieving, commercial operations. In those cases the developer has addressed its permitting, engineering, procurement and construction requirements, and interconnection requirements with the CAISO and Participating Transmission Owners.

RPS compliance could be delayed to the extent that there is scarcity of eligible generation resources in the regional market, or limitations on the resources' ability to contemporaneously import or directly connect to a California Balancing Authority Area. To the extent that import

limitations increase over time, portions of some Product 1 procurement may end up being converted to Product 2 or Product 3, depending on the ability to reschedule under the revised delivery rules, balancing authority area tariffs and system conditions. Such impacts may impede compliance with the content category mix requirement, but CNE expects to fully comply with both the total RPS volume requirement as well as the content category mix requirement.

B. Description of steps taken to minimize compliance delays.

CNE does not undertake any transmission development, so it is not in a position to address alleviation of interconnection timing or transmission availability issues. Moreover, as noted above, in contracting for RPS resources, CNE typically does so with projects that are on-line or where the on-line date is known with a high degree of certainty. In addition, CNE is actively engaged on an ongoing basis in the renewable energy markets, and enters into renewable transactions to meet its requirements when opportunities arise. CNE's ongoing and active monitoring of market conditions is a key element of its ability to avoid and/or minimize compliance delays.

C. Description of the impact of delays on CNE's net short and procurement decisions.

If project developers in the regional market experience delays in reaching commercial operations, CNE would anticipate scarcity issues around meeting the content mix requirement and possibly in the total volume requirement as well.

IV. Risk Assessment - § 399.13(a)(5)(F) (Section 6.4 of the Assigned Commissioner's Ruling)

Section 6.4 of the Assigned Commissioner's Ruling requests:

Provide a written assessment of the risk in the RPS portfolio in relation to RPS compliance requirements. Risk assessment should describe risk

factors such as those described above regarding compliance delays, as well as the following: lower than expected generation, variable generation, resource availability (e.g., biofuel supply, water, etc.) and impacts to eligible renewable energy resource projects currently under contract. The risk assessment provided in the written description must be reflected in the quantitative analysis provided in response to section 6.5 and section 6.6. Given this analysis, discuss how the risk assessment will impact the retail seller's net short and its procurement decisions. The written assessment must explain how quantitative analysis provided in response to section 6.5 supports this response.

At present, apart from the delay issues described above, the risks described in Section 6.4 are not applicable to CNE's portfolio as the supplying resources have achieved commercial operations. In the event of lower than expected or variable generation, CNE's ongoing monitoring of counterparty performance, market conditions and active participation in the renewable energy markets will allow CNE to address procurement risks relative to changes in its retail load over time. Typically CNE will address some of these operational issues within CNE's negotiated RPS contracts by requiring minimum and maximum contract quantities within the expected deliveries from use-limited or intermittent resources.

V. Quantitative Information - §§ 399.13(a)(5)(A),(B), (D) and (F) (Section 6.5 of the Assigned Commissioner's Ruling)

Section 6.5 of the Assigned Commissioner's Ruling provides:

In addition to the written descriptive responses to section 6.1 through 6.4, provide quantitative data, methodologies, and calculations relied upon to assess the retail seller's RPS portfolio needs and RPS procurement net short. This quantitative analysis must take into account, where appropriate, the quantitative discussion requirement by sections 6.1-6.4, above. As stated above, the portfolio assessment should be for a minimum of 20 years in the future. The responses must be clear regarding the quantitative progress made towards RPS requirements and the specific risks to the electrical corporation's RPS procurement portfolio. Risks may include, but are not limited to, project development, regulatory, and market risks. The quantitative response must be provided in an Excel spreadsheet or based on the most recently directed renewable net short methodology.

Pursuant to the “most recently directed renewable net short methodology,” which was established in the August 2, 2012 *Administrative Law Judge’s Ruling (1) Adopting Renewable Net Short Calculation Methodology (2) Incorporating the Attached Methodology into the Record, and (3) Extending the Date for Filing Updates to the 2012 Procurement Plans* (“RNS Ruling”), CNE provides the following description of its renewable net short (“RNS”) and the process by which CNE determines its RPS procurement requirements:

- (1) CNE matches its procurement to the load it has under contract, which typically is no longer than three years. Accordingly, while CNE has found its load to be fairly stable on a year to year basis, its procurement and risk management strategy reflects the fact of short term retail customer contract duration and the fully contestable nature of its loads. To forecast its RNS over the 20 year horizon as required by the RNS Ruling, CNE holds as constant its last load assumption. CNE addresses regulatory risks through its involvement in regulatory proceedings at the CPUC and the California Energy Commission (“CEC”) and its monitoring of legislative activities impacting the renewable energy requirements and markets, and incorporates developments in ongoing analysis of potential wholesale supply transactions including RPS.
- (2) CNE’s net short position is a function of customer load commitments over the compliance period. Put simply, CNE will seek to procure RPS compliant energy based on an estimate of customer loads during the compliance period with adjustments as final load figures become available. For purposes of this multi-year forecast reporting obligation, CNE holds as constant its last load assumption for the balance of the mandatory forecast period.
- (3) The RNS is the difference between the anticipated loads and procured quantities under contract as set forth by the formulas adopted in the RNS Ruling. Annual and Compliance Period RNS are set out in Table 1, below. CNE does not undertake speculative forward contracting beyond what is required under the RPS program in light of known load obligations, and hence does not have a specific “voluntary margin of over-procurement.” Contracting includes forecast volumes from unit-contingent intermittent resources, but RPS compliance will ultimately be based on actual eligible deliveries. CNE does not forecast a failure rate for operational projects, but instead addresses operational risks within the negotiated contracts. As previously noted, CNE’s current contracts are with operational facilities, so there is no development failure rate or delay assumption in the forecast. CNE has historically maintained a net positive balance of RPS eligible procurement to help manage procurement and load risks associated with the RPS compliance obligation calculations. Now, under the new RPS program rules and because of the very narrow ability to carry forward excess procurement and the non-fungible nature of the procurement, CNE will seek to balance its procurement during the compliance period with potential load migration changes,

energy demand forecast change or actual intermittent production levels to minimize potentially stranded procurement.

- (4) A number of significant and material elements of the compliance and verification program are currently pending before the Commission and the CEC that will necessarily drive ongoing compliance strategies in light of the shorter-term nature of customer commitments. Additionally, the California Air Resources Board's greenhouse gas ("GHG") program rules are also under development with respect to what the GHG obligation will be for Product 2 imported power, and the final rules will impact RPS portfolio compliance strategies. Until those program elements are finalized a quantitative analysis as requested here would be speculative.

VI. Portfolio Optimization Strategy

Section 6.6 of the Assigned Commissioner's Ruling provides:

Based on the above assessment provided in response to sections 6.1 – 6.5, include an RPS Portfolio optimization strategy for the next ten years. The scope of the optimization strategy should cover how ratepayer costs are minimized, portfolio value is maximized, RPS compliance is met and maintained, and risk [footnote omitted] is managed. Specifically, a response should include:

- a. Specification of objectives of portfolio optimization strategy;
- b. Description of methodology or model used to define portfolio optimization strategy;
- c. Identification of metrics (e.g. PPA costs, energy value, capacity value, interest costs, carrying costs, transaction costs, etc.) within methodology or model;
 - i. Description of how metrics are measured or valued (e.g. PPA costs in \$ per megawatt-hour (MWh) based on executed contracts or forward REC prices in \$/MWh based on internal forecasts);
 - ii. Description of how metrics are maximized/minimized in optimization strategy and quantification of metric based on optimization strategy (e.g. x million in ratepayer costs avoided by selling y gigawatt-hours (GWh) or x reduction in rates by contracting for y number of curtailment hours);
- d. Identification of risks (e.g. non-compliance with RPS requirements, regulatory risk, overprocurement of non-bankable RPS-eligible products, etc.) and constraints included in optimization strategy;
 - i. Description of metrics used to measure risk (e.g. value-at-risk, likelihood of non-compliance);
 - ii. Identification of appropriate ranges of risks identified;
- e. Description of activities and overall range of transactions planned to optimize portfolio; and

- f. Identification and quantification of likely impacts of optimization strategy on ratepayers, shareholders, and market.

- A. *Specification of objectives of portfolio optimization strategy.*

As described above, CNE does not typically have retail customer contract commitments that exceed 36-months, making it difficult to make long-term forecasts of requirements. In addition, existing regulatory policies that favor rate regulated utility investments imposed risks on investments by non-rate-regulated entities to make long term investments in supply side resources. However, for each compliance period CNE will seek to procure the most cost-effective resources to meet its procurement obligations while securing a mix of resources that will minimize stranding of procurement due to restrictions on banking certain product content categories and/or procurement with shorter duration commitments. CNE will also seek to incorporate renewable DG as part of its RPS portfolio as market rules develop for the use of DG to meet the RPS requirements.

- B. *Description of methodology or model used to define portfolio optimization strategy.*

CNE optimizes its portfolio for California loads on a horizon commensurate with its customer commitments and regulatory obligations. CNE undertakes RPS procurement consistent with the regulatory obligation's compliance horizon from resources available within the regional market in a manner that optimizes supplies against its RPS procurement obligation as it changes over time, namely, the "total volume requirement" and the "content category mix requirement". Against those customer load-driven obligations CNE seeks to optimize for each compliance period, while minimizing potential stranded RPS procurement.

C. *Identification of metrics (e.g. PPA costs, energy value, capacity value, interest costs, carrying costs, transaction costs, etc.) within methodology or model.*

1. *Description of how metrics are measured or valued (e.g. PPA costs in \$/MWh based on executed contracts or forward REC prices in \$/MWh based on internal forecasts).*

2. *Description of how metrics are maximized/minimized in optimization strategy and quantification of metric based on optimization strategy (e.g. x million in ratepayer costs avoided by selling y GWh or x reduction in rates by contracting for y number of curtailment hours).*

As described above, CNE procures resources based upon customer commitments and regulatory obligations, but generally does not secure RPS-eligible resources for their capacity or ancillary service characteristics, or based on their impact on ancillary service requirements. Accordingly, procurement is structured to satisfy RPS obligations for each compliance period together with the remainder of customer energy requirements. Resource adequacy capacity procurement may be undertaken as a separate product. CNE will seek to maximize value within and across compliance periods from RPS-eligible contracts while also minimizing the potential stranding of RPS energy due to statutory restrictions to the banking of surplus renewable deliveries procurement and related restrictions on resales of delivered volumes. In this way, CNE seeks to avoid over-procuring volumes, avoids the need to resell any surplus generation and thereby optimize value of energy delivered to customers.

Discussions are underway at the CAISO and the CPUC on the manner in which an entity's RPS portfolio impacts the need for flexible resources. Should those proceedings result in an allocation of flexible capacity requirements based the level of intermittent generation in an entity's portfolio, such requirements would also have to be taken into account in managing RPS procurement.

D. Identification of risks (e.g. non-compliance with RPS requirements, regulatory risk, overprocurement of non-bankable RPS-eligible products, etc.) and constraints included in optimization strategy.

1. Description of metrics used to measure risk (e.g. value-at-risk, likelihood of non-compliance).

2. Identification of appropriate ranges of risks identified.

A major factor in CNE's procurement optimization strategy is to avoid the overprocurement of non-bankable RPS products in light of the fact that 100% of its customer base is contestable. Limiting the potential stranding of procurement that cannot be carried forward is a crucial step to optimizing procurement and managing costs for CNE and its customers. CNE manages the potential risk of non-compliance by undertaking procurement from resources that are operating or near commercial operations. Additionally, although risks associated with intermittent production or operational failures carry certain risks for potential to meet regulatory obligations, those risk are inherent with many resources. Accordingly, CNE will strive to accurately forecast future near-term loads and procure a sufficient mix and volume of RPS products to satisfy its RPS procurement obligations in a manner that provides value to its customers.

E. Description of activities and overall range of transactions planned to optimize portfolio.

CNE sources supplies from the competitive regional markets, and structures its purchases to hedge its retail commercial commitments with corresponding supply commitments. Based on its best estimate of customer demand, CNE undertakes RPS procurement consistent with the regulatory obligation's compliance horizon, and its ability to manage the market risks associated with mandatory longer-term purchases. Consistent with its risk management practices, CNE builds its portfolio to satisfy its regulatory obligations and the corresponding customer demand.

F. Identification and quantification of likely impacts of optimization strategy on ratepayers, shareholders, and market.

CNE expects that this question is germane for reviewing the balance of interests in tension under the regulated electrical corporation business structure where a significant portion of load is not contestable and ratepayers are not permitted to exercise choice among service providers. In CNE's case, as an ESP with a 100% contestable customer base, its optimization strategy must strive to reach a balance that ensures CNE is providing electric supply that its customers are willing to pay for that covers the costs of the supply and a reasonable compensation for CNE as the supplier. By seeking to satisfy its RPS and other regulatory procurement obligations within a competitive retail market structure by structuring its portfolio and managing market risks for its customers, the company seeks to balance the delivery of strong commercial value to customers with a market-based opportunity for return. However, certain market design elements, including the inability to re-market ownership of claims to previously delivered volumes of higher valued Product 1 and 2 volumes along with the inability to banking surplus shorter term deliveries across compliance periods, add material risk management challenges that are not found in other competitive retail markets. These prescriptive regulations, in turn, result in increased costs to customers that do not necessarily advance social goals of lower GHG emissions or insulation from volatile fossil fuel costs. For example, the increasing procurement targets for Product 1 deliveries, coupled with the inability to re-sell surplus delivered Product 1 volumes, will artificially increase demand and costs for Product 1 resources. This suboptimal result for load serving entities and the broader market could be lessened if the restrictions on Product 1 resales were relaxed, thus allowing retail sellers to more efficiently manage and rebalance portfolios—particularly near the end of the multi-year compliance period—without the risk of stranding value. Similarly, ongoing issues associated with California

hybrid market structure and the impact that it has on investment, as well as potential changes to RA obligations with respect to flexible capacity requirements procurement may create the need to modify and evolve current procurement strategies.

VII. Conclusion

CNE provides this submission in compliance with the May 10, 2013 Assigned Commissioner's Ruling. As described herein, CNE takes its RPS energy procurement compliance obligations seriously and is actively engaged with the Commission's processes in developing the RPS implementation requirements.

Dated: June 28, 2013

Respectfully submitted,

/s/

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**TABLE 1
CNE RPS Plan Forecast RNS
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Forecast										
RPS Procurement and Targets (MWh)	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021-2033
Forecast Bundled Retail Sales	5,234,127	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Annual Percentage Targets	20.0%	20.0%	21.7%	23.3%	25%	27%	29%	31%	33%	33%
Forecast Total RPS Procurement	1,029,149	1,438,797	830,528	830,528	0	0	0	0	0	0
Forecast Annual RNS	17,676	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	1,350,000	1,450,000	1,550,000	1,650,000	21,450,000
Eligible Excess Procurement	640,560		TBD			TBD				TBD
Forecast Compliance Period RNS	[REDACTED]		[REDACTED]			6,000,000				N/A

VERIFICATION

I am the attorney for Constellation NewEnergy, Inc. (“Constellation”) and am authorized to make this verification on its behalf. Constellation is absent from the County of Sacramento, California, where I have my office, and I make this verification 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 foregoing is true and correct.

Executed on June 28, 2013 at Sacramento, California.

/s/

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