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California Energy Commssion
DOCKETED
13-RPS-01
TN # 70618
MAY 06 2013

VIA Electronic Mail

May 6, 2013

Chairman Robert B. Weisenmiller
Commissioner Karen Douglas
Commissioner David Hochschild
Commissioner Andrew McAllister
Commissioner Janea A. Scott

Re: Proposed RPS Banking Rules for Publicly Owned Utilities

Dear Commissioners:

On April 19, 2013, a document entitled *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, Proposed Regulations,* CEC-300-2013-002-15Day, ("*15-Day Comment Draft*") was posted to the website of the California Energy Commission ("CEC" or "Commission"). This document incorporated certain revisions to the document of the same name, identified as CEC-300-2013-002-SD ("*45-Day Comment Draft*"), that had been posted to the Commission's website on March 1, 2013.

Noble Americas Energy Solutions LLC ("Noble Solutions") objects to the provisions of the *15-Day Comment Draft* that eliminate all long-term contracting requirements for the banking of excess RPS procurement for Publicly-Owned Utilities ("POUs") across compliance periods.[1] The provisions of the original *45-Day Comment Draft* with respect to the aforementioned banking issues correctly interprets and applies the RPS statute to banking by POUs.

[1] See *15-Day Comment Draft*, p. 5, striking proposed Section 3202(a)(2)(A)(3), and p. 17, striking proposed Section 3206(a)(1)(A)(2). The cited sections are parts of the proposed regulations designated under Title 20, Division 2, Chapter 13 of the California Code of Regulations.

Noble Americas Energy Solutions LLC
A member of the Noble Group
401 West A Street, Suite 500, San Diego CA 92101 U.S.A.
Tel +877 273 6772 Fax +619 684 8355 www.noblesolutions.com

The RPS banking rules that POUs are governed by are specified in the RPS statute.[2] Public Utilities Code §399.30[3] is explicitly applicable to POUs, and states in relevant part:

> (d) The governing board of a local publicly owned electric utility may adopt the following measures:
>
> (1) Rules permitting the utility to apply excess procurement in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers pursuant to Section 399.13.

The relevant RPS banking rules for retail sellers are set forth in §399.13(a)(4)(B):

> (B) Rules permitting retail sellers to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period. The rules shall apply equally to all retail sellers. In determining the quantity of excess procurement for the applicable compliance period, the commission shall deduct from actual procurement quantities, the total amount of procurement associated with contracts of less than 10 years in duration. In no event shall electricity products meeting the portfolio content of paragraph (3) of subdivision (b) of Section 399.16 be counted as excess procurement.

On its face, then, striking the 10-year contract provisions from proposed Section 3202(a)(2)(A)(3) and proposed Section 3206(a)(1)(A)(2) in the *15-Day Comment Draft* is clearly contrary to the statute. And the proposed deletions are also contrary to the CEC's detailed explanations of why it is appropriate to treat POUs and retail sellers the same with respect to the RPS banking rules. Those explanations are contained in the CEC's *Initial Statement Of Reasons For Enforcement Procedures For The Renewables Portfolio Standard For Local Publicly Owned Electric Utilities*, CEC-300-2013-004 ("*ISOR*"), issued concurrently with the *45-Day Comment Draft* on March 1, 2013.

In contrast to the meticulous reasoning supporting the *45-Day Comment Draft*, the striking of the 10-year contract provisions in the *15-Day Comment Draft* is done without the slightest explanation. There is no justification offered for making the change, nor any explanation as to why the detailed arguments of the *ISOR* should be abandoned in this instance. Striking long-term contract requirements for RPS banking by POUs simply confers on POUs and their

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[2] Senate Bill X1-2 (Stats. 2011, 1st Ex. Sess., ch. 1), as amended.

[3] All statutory references are to the Public Utilities Code unless otherwise specified.

consequence of the *15-Day Comment Draft,* as written, is to exempt POUs and their ratepayers from the obligation of supporting RPS development through long-term contract commitments, to the detriment of the ratepayers of the Investor Owned Utilities and the customers of Electric Service Providers and Community Choice Aggregators among other retail sellers, who are obligated to enter into long-term RPS contracts if they want the flexibility to engage in banking excess RPS procurement across compliance periods.

For legal reasons and for equity among all California ratepayers and electricity customers in supporting California's RPS policies, the Commission should restore the long-term RPS contracting requirement for POUs to bank excess procurement across compliance periods as set forth in the *45-Day Comment Draft*.

Respectfully submitted,

Greg Bass
Director

cc: Lorraine Gonzalez, CEC
Angela Gould, CEC
Kate Zochetti, CEC
Thomas Corr, Attorney for Noble Solutions