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**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

In the Matter of: )  
)  
Pre-Rulemaking Draft Regulations Regarding )  
33 Percent Renewables Portfolio Standard )  
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Docket No. 11-RPS-01

**PATHFINDER RENEWABLE WIND ENERGY AND  
ZEPHYR POWR TRANSMISSION, LLC  
COMMENTS ON  
PRE-RULEMAKING DRAFT REGULATIONS**

Christopher T. Ellison  
Ellison, Schneider & Harris, L.L.P.  
2600 Capitol Avenue, Suite 400  
Sacramento, CA 95816  
Telephone: (916) 447-2166  
Facsimile: (916) 447-3512

August 13, 2012

Attorneys for Pathfinder Renewable Wind  
Energy and Zephyr Power Transmission,  
LLC

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COMMENTS ON  
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Pathfinder Renewable Wind Energy (“Pathfinder”) and Zephyr Power Transmission, LLC (“Zephyr”) respectfully submit these brief comments on the California Energy Commission’s (“CEC”) Pre-Rulemaking Draft Regulations regarding the 33 Percent Renewable Portfolio Standard. Pathfinder and Zephyr recommend that the Draft Regulations preserve their definitions of the three “portfolio content categories” which are consistent with the definitions provided by the California Public Utilities Commission’s (“CPUC”) regulations. Furthermore, Pathfinder and Zephyr advise that the Draft Regulations be revised to include a “change in law” provision that provides that any changes in the CEC Regulations will apply only prospectively. Such a provision will allow publicly owned utilities (“POUs”) to successfully acquire renewable energy from sellers without confronting the obstacle of negotiating which party bears the risk of future changes to the CEC Regulations.

**I. THE DEFINITONS OF “PORTFOLIO CONTENT CATEGORIES” PROVIDED BY THE CALIFORNIA ENERGY COMMISSION MUST BE CONSISTENT WITH THOSE PROVIDED BY THE CALIFORNIA PUBLIC UTILITY COMMISSION**

Under California’s Renewables Portfolio Standard (RPS), the CEC is responsible for ensuring the RPS compliance of POUs and the CPUC is responsible for ensuring the RPS compliance of investor owned utilities (“IOUs”). Both the CEC and the CPUC must adopt

regulations that specify mechanisms for the enforcement of the RPS. Within these regulations, both the CEC and the CPUC define “portfolio content categories” which are “categories of electricity products procured from an RPS-certified facility.”<sup>1</sup> In order for there to be a consistent electricity market in California, there must be uniformity in how electricity products are categorized under the RPS enforcement regulations from the CEC and CPUC. It is critical that both the CEC regulations and the CPUC regulations define each of the three “portfolio content categories” in the same manner in order to maintain a uniform electricity market in California for both POU and IOU. The Draft Regulations properly define the three “portfolio content categories” in parallel to the definitions provided by the CPUC regulations. Pathfinder and Zephyr commend the Commission staff for defining the “portfolio content categories” in the proposed regulations in the same manner as the CPUC Regulations. Pathfinder and Zephyr endorse this portion of the CEC’s Draft Regulations because consistent definitions of “portfolio content categories” across the CEC and CPUC regulations will provide consistency in the California electricity market.

## **II. THE CALIFORNIA ENERGY COMMISSION MUST INTEGRATE A “CHANGE IN LAW” PROVISION INTO THE REGULATIONS**

Pathfinder and Zephyr support the Los Angeles Department of Water and Power’s (“LADWP”) suggestion that the 33 Percent Renewable Portfolio Standard Regulations should include a “change in law” provision. This provision should provide that, if the CEC Regulations are later modified, any change in law applies only prospectively. In the negotiation of contracts between sellers and POU for renewable power a significant issue remains regarding which party will bear the burden of risk if the CEC Regulations change in the future. This condition has created an obstacle for POU to secure renewable energy and will continue to hinder the completion of contracts for renewable energy. A “change in law” provision in the CEC

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<sup>1</sup> 33 Percent Renewables Portfolio Draft Regulations, pg. 6.


Regulations will enable POUs to successfully acquire renewable energy because neither the utility nor the seller will be disadvantaged by changes in the CEC Regulations.

### **III. CONCLUSION**

In order to support the underlying purpose of the RPS to increase the use of renewable energy in California, the Draft Regulations must both (1) provide definitions of “portfolio content categories” that are consistent with the definitions provided by the CPUC Regulations, and (2) include a “change in law” provision that will enable POUs and sellers of renewable energy to effectuate contracts that will allow these POUs to meet the RPS. Pathfinder and Zephyr support the regulations as drafted with regard to the content category definitions and join LADWP in urging the Commission to include a “change in law” provision.

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Respectfully submitted,

By: 

Christopher T. Ellison  
ELLISON, SCHNEIDER & HARRIS L.L.P.  
2600 Capitol Avenue, Suite 400  
Sacramento, California 95816  
Telephone: (916) 447-2166  
Facsimile: (916) 447-3512

Attorneys for Pathfinder Renewable Wind Energy  
and Zephyr Power Transmission, LLC