

COMMENTS OF  
NOBLE AMERICAS ENERGY SOLUTIONS LLC  
IN RESPONSE TO THE  
MARCH 14, 2013 RPS ELIGIBILITY GUIDEBOOK  
WORKSHOP

Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby offers its Comments on the proposals made by the Staff of the California Energy Commission (“CEC”) during the Renewables Portfolio Standard (“RPS”) Eligibility Guidebook Workshop held on March 14, 2013. Noble Solutions believes that the CEC strengthens the RPS program by actively soliciting stakeholders and other responsible agencies into a collaborative effort to modify program rules “in response to changes in law, policy clarifications and lessons learned from program implementation.”

**1. The Guidebook Text Should Be Modified to Clarify the Distinction Between Reporting Obligations and Compliance Obligations**

Because the Guidebook serves as a Reporting Manual for Retail Sellers, as defined, and simultaneously as a Reporting Manual *and* a Compliance Manual for Publicly-Owned Utilities (“POUs”), care must be taken keep the two functions of Reporting and Compliance separate. For the

most part this has been done. Nevertheless, there are a few instances where imprecise language about this distinction creates ambiguity and confusion.

One instance is found at pp. 113-114 of the Proposed 7<sup>th</sup> Edition of the Guidebook:<sup>1</sup>

SB x1 2 established multiyear compliance periods, and allows RECs to remain active for up to 36 months before they must be retired. Retail sellers and POUs must still report procurement *claims* annually to the Energy Commission. The Energy Commission requires retail sellers and POUs to report on the monthly *procurement that was retired* for the RPS to be counted in the previous calendar year, (reporting year), as described below. [*italics added*]

This passage refers to both the three-year Compliance periods and the annual Reporting periods in the same paragraph, which is one source of the confusion. In addition, it is not clear what the word “claims” in the second sentence adds to the statement. The use of the word “retired” in the third sentence creates further confusion. The notion that “procurement” can be “retired” does not even make sense.<sup>2</sup> Noble Solutions proposes that this passage be simplified as follows:

SB x1 2 established multiyear compliance periods, and allows RECs to remain active for up to 36 months before they must be retired. Retail sellers and POUs must still report procurement ~~claims~~ annually to the Energy Commission. ~~The Energy Commission requires retail sellers and POUs to report on the monthly procurement that was retired for the RPS to be counted in the previous calendar year, (reporting year), as described below.~~

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<sup>1</sup> References to the Guidebook are to the redline version marked “Staff Draft Guidebook,” denominated with the document identifier CEC-300-2013-005-ED7-SD, dated March 2013.

<sup>2</sup> Compliance instruments—RECs—are retired to demonstrate RPS compliance and to prevent double counting of RPS procurement for compliance.

Another instance where the variants on the words “claim” and “retire” sow confusion<sup>3</sup> is on page 119, “RPS Reporting for Retail Sellers.” In this paragraph there are numerous references to retirement of RECs. RECs are retired to demonstrate compliance with RPS requirements during the three-year compliance period, not to demonstrate annual RPS procurement. RPS procurement can be demonstrated by contracts, schedules, meter data, invoices and other documentation that shows eligible energy products were purchased by and delivered to a Retail Seller. The RECs associated with that procurement are not required to be retired annually, so they are not an indicator of annual RPS procurement activity. Conversely, annual procurement activity is not demonstrated by reporting the number of RECs retired during the year. The distinction between Reporting and Compliance must be kept clear.

Still another instance where the Guidebook inappropriately references the retirement of RECs as the measure of annual RPS procurement reporting is found at pages 121-122 of the Guidebook, under the heading “Supplements for Previously Reported Years through the Following Reporting Year.” The passage reads in full:

LSEs should not expect to supplement procurement claims for a report submitted for a previous year. The multi-year compliance periods and the

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<sup>3</sup> There is a reference to “claims retired” in the cited paragraph.

36-month retirement requirement allowance, combined with allowances for excess procurement, provide LSEs flexibility in determining the necessary amount of RECs to retire per reporting year to meet their RPS procurement requirements. LSEs are encouraged to take a prudent approach to retirement and achievement of the RPS requirements by retiring enough RECs to meet their RPS requirements and, perhaps, retiring more to cover unexpected situations or to qualify as excess procurement.

Again, the idea that RECs need to be retired “per reporting year” conflates the Reporting and the Compliance functions in an impermissible and misleading way.

There is also embedded in this paragraph the suggestion that LSEs should intentionally “over-procure,” apparently with the thought that “excess procurement” can always be rolled over to a future compliance period. In fact, the rules for Excess Procurement are very specific, and apply only to contracts with a term of at least ten years.<sup>4</sup> The Guidebook should not suggest, and may not require, that a Retail Seller procure RPS products in excess of statutory requirements.

## **2. The Guidebook’s Protocols for Demonstrating Compliance Are Flawed for Certain Import Transactions**

Section V of the Guidebook sets forth the detailed program of demonstrating compliance with California RPS requirements.<sup>5</sup> As the

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<sup>4</sup> See CPUC D. 12-06-038, pp. 61-74.

<sup>5</sup> See Draft Guidebook, pp. 127 et seq.

Guidebook notes, the CEC has oversight authority for POU compliance, while the CPUC has oversight authority for RPS compliance for other Retail Sellers. Because the Guidebook modifications have been published before the CPUC has promulgated its rules for Retail Sellers, Noble Solutions believes that is appropriate to comment on a perceived flaw in the POU compliance regime in the hopes that this flaw can be corrected in the Guidebook and avoided in the CPUC rules when issued.

It is common for both Retail Sellers and POU's to procure RPS products from third-party marketers. Third-party marketers are skilled at arranging imports of RPS-eligible electricity into California, and sometimes provide RPS-eligible electricity from one or more RPS facility to one or more California buyers. These transactions are familiar to many participants in the broader western energy markets.

Although the Guidebook appears to recognize that such transactions occur,<sup>6</sup> the compliance regime set forth in the Guidebook does not accommodate such third-party transactions. This is because the Guidebook puts the onus of producing documentation to validate the import

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<sup>6</sup> See e.g., the Guidebook's introductory language in its discussion of Scheduling Documentation: "The facility, *or party responsible for the scheduling arrangements*, engage [sic] in an interchange transaction with the appropriate control area operator to deliver the facility's generation to a CBA." Draft Guidebook, p. 131, *italics* added. The italicized phrase implicitly acknowledges that a party other than the buyer and seller might be responsible for scheduling the RPS-eligible electricity.

transaction on the LSE.<sup>7</sup> The required documentation specifically includes the *WREGIS NERC e-Tag Summary Report*.<sup>8</sup> But in a transaction arranged by a third-party marketer, the LSE has no ability to generate that Report, because the marketer, not the LSE, is the “importer” into California, and the importer is the only entity entitled to the information needed to generate the *WREGIS NERC e-Tag Summary Report*.<sup>9</sup> Thus, the directive that “Retail sellers must complete WREGIS forms authorizing WREGIS to send the WREGIS NERC e-Tag summary reports to CPUC staff” [Draft Guidebook at 119] cannot be accomplished, because the LSE is not the scheduler of the import, and thus is not entitled to receive the Report, let alone direct sharing of the Report with others. The issue, then, is how does the CEC get the e-Tag information it needs to verify compliance, when the entity under its jurisdiction has no rights to the very information that is needed for verification?

One way is for WREGIS to modify its practice, and automatically send the e-Tag information to the LSE when the third-party marketer transfers the matched tags with the associated RECs. Since the REC is

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<sup>7</sup> The broader term LSE (“load-serving entity”) is used here to embrace both POUs and Retail Sellers.

<sup>8</sup> See, e.g., Draft Guidebook at 134. WREGIS is the Western Renewable Energy Generation Information System.

<sup>9</sup> See [http://www.wecc.biz/WREGIS/Documents/WREGIS%20NERC%20e-Tag%20Change%20Control%20Form%20\(PCR%20165\).pdf](http://www.wecc.biz/WREGIS/Documents/WREGIS%20NERC%20e-Tag%20Change%20Control%20Form%20(PCR%20165).pdf), and <http://www.wecc.biz/WREGIS/Documents/WREGIS%20NERC%20e-Tag%20Functionality%20Change%20Memo.pdf>.

clearly the property of the LSE buyer (and is identified in the e-Tag), this approach allows the LSE to get access to the WREGIS e-Tag information directly, and affords the LSE the means to provide this documentation to the CEC or to the CPUC, as the case may be. With this information, the LSE can create a *WREGIS NERC e-Tag Summary Report* for regulatory validation of the RPS procurement claims. This “WREGIS fix” is the simplest and most straightforward way to address the third-party importer problem, but it is hard to predict when WREGIS will be able to make this change, even assuming it is willing to do so.

An interim solution is to have the third-party marketer authorize WREGIS to release the *WREGIS NERC e-Tag Summary Report* directly to the CEC or CPUC, as appropriate.<sup>10</sup> This approach can be implemented during the course of the Guidebook revisions and the forthcoming CPUC rulemaking.

A third option, probably the easiest interim solution, involves the use of the “*CA RPS e-Tag Summary Report*.”<sup>11</sup> Currently, the Guidebook allows a POU to create this report when the *WREGIS NERC e-Tag Summary Report* is unavailable because the POU was not registered in WREGIS. Noble Solutions suggests that any LSE should be able to use the “*CA RPS e-Tag*

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<sup>10</sup> Marketers engage in a variety of transactions with a variety of buyers, so this approach might require some effort to connect the tags with the correct LSE and the correct RECs.

<sup>11</sup> See Draft Guidebook, p. 134, especially footnote 169 and accompanying text.

*Summary Report*” whenever a third-party import is involved, until the “WREGIS fix” can be implemented. This solution can be implemented by amending the Guidebook language<sup>12</sup> as follows:

The WREGIS NERC E-Tag Summary Report is used to report e-Tag data. [fn omitted] The CA RPS e-Tag Summary Report is a spreadsheet with headers matching those in the WREGIS NERC e-Tag Summary Report and may be used by retail sellers or POU’s in the first compliance period,<sup>7</sup> ~~if the WREGIS NERC e-Tag Summary report is not available.~~

### **3. The Data Requirements for Validating Portfolio Content Category 1 Procurement Require Modification**

As in the previous section, Noble Solutions offers comments on Guidebook matters intended explicitly for POU’s in the expectation that the CPUC will use the CEC’s Guidebook as a model for designing its compliance program for Retail Sellers, since both agencies are charged with implementing the same RPS statute. And as in the prior section, Noble Solutions will use the term “LSE” to include POU’s and Retail Sellers.

The Guidebook requires certain documentary evidence to be submitted by an LSE to demonstrate compliance with the requirements of Portfolio Content Category 1 (“PCC 1”) procurement. One of the items required to be a part of the “auditable package” in the annual RPS Report is an “*Annual Hourly Comparison Spreadsheet.*” The required fields in the

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<sup>12</sup> See Draft Guidebook at 134.



*Spreadsheet* are specified in some detail.<sup>13</sup> One of these fields is identified as “Amount (Percent Share) of Facility Output procured.” This formulation is appropriate for an output contract (whole or partial) between an LSE and an RPS-eligible facility. However, it does not properly account for a procurement arrangement that allocates a fixed volume of a facility’s metered output to the actual hourly import schedule or schedules made for the benefit of the LSE buyer. As a consequence, there could be an inadvertent reduction of Eligible PCC 1 procurement for LSEs using the fixed-volume procurement model.<sup>14</sup>

To correct this, the data required for the *Annual Hourly Comparison Spreadsheet* [Draft Guidebook, p. 134] should be modified as follows:

- Date (for example, 01/01/2011; 01/02/2011, and so forth);
- Hour Ending (1; 2; 3 and so forth);
- RPS facility’s Final Hourly Schedule as represented on e-Tag (reported in MWh – include four decimal points if converting from kWh);
- RPS facility’s Hourly Meter Data (reported in MWh – include four decimal points if converting from kWh)
- **Amount of Hourly Meter Data associated with Final Hourly Schedule (MWh);**
- Eligible PCC 1 Volume: Lesser of Schedule, **Amount of Hourly Meter Data associated with Final Hourly Schedule** (reported in MWh - include four decimal points if converting from kWh);
- Amount (Percent Share) of **Final Hourly Schedule Procured-Facility Output Procured;**
- Eligible PCC 1 Volume Procured (MWh)- this is the amount of the Eligible PCC 1 Volume the POU procured, which would be calculated using the Percent Share of **Final Hourly Schedule Procured-Facility**

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<sup>13</sup> See Draft Guidebook, p. 134.

<sup>14</sup> Eligible PCC1 volume is the lesser of the schedule and the RPS-eligible facility’s hourly meter data. See Draft Guidebook at 134.

- Output multiplied by the Eligible PCC 1 Volume;
- Total MWh Retired From Eligible PCC 1 Procurement (MWh) for Reporting Year;
  - Expected Reporting Year for which Eligible PCC1 Procurement may be retired- indicate expected reporting year, if known, or indicate that it will be reported later (2012 or Later Year for example);
  - Total MWh Sold From Eligible PCC 1 Procurement (MWh);
  - E-Tag ID Number; and
  - Contract Reference Number

#### **4. The Guidebook Should Be Modified to Recognize Aggregation of Fractional MWhs from Import Schedules to be Matched with WREGIS Certificates**

WREGIS certificates (RECs) are issued and tracked in whole MWh. Import Schedules and generation meters, however, are resolved in kWh.<sup>15</sup> This can result in lost or stranded Eligible PCC 1 procurement when PCC 1 procurement is from RPS-Eligible facilities outside the California Balancing Authority. Clearly, it is not the intent of the Guidebook to create mechanisms that increase the cost or diminish the value of PCC 1 procurement, which is already the most costly of all RPS products. The Guidebook must explicitly recognize that aggregation or carry-forward of fractional MWhs from the scheduling data can be matched with WREGIS certificates created the same day. While this is likely to inject a new complexity to the work of verification, it is clearly inappropriate to simply strand “fractional RECs” outside the verification system. This may require

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<sup>15</sup> The Guidebook recognizes this, when it requires reporting of Schedules and generation to “include four decimal points if converting from kWh.” See Draft Guidebook, p. 134.

recognition that the phrase “lesser of Schedule or Meter” is not as much an absolute principle as a basic guideline.

## Conclusion

Noble Solutions recognizes that implementing a statute as complex as SB2 (1X) is a daunting undertaking, and the task of developing implementing regulations is a difficult one. Noble Solutions salutes the diligence of the CEC Staff in taking on this matter, and appreciates the collaborative spirit in which the details of this important work have been worked out. Noble Solutions urges the adoption of the changes recommended herein.

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