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February 23, 2024

California Energy Commission (CEC)
Docket Unit, MS-4
715 P Street, Sacramento, California 95814

RE: Comments of the Alliance for Retail Energy Markets on Pre-Rulemaking Amendments to Power Source Disclosure Rules (Docket No. 21-OIR-01)

Dear CEC Staff:

On October 24, 2023, The Alliance for Retail Energy Markets (“AREM”)¹ provided comments to the CEC on the pre-rulemaking workshop and draft regulations.² Unfortunately, CEC Staff failed to reflect those comments in its January 31, 2024 Summary of Changes and FAQs³ that was distributed with the Pre-Rulemaking Amendments to the Power Source Disclosure Program (“PSD”) (“PSD Amendments”)⁴. AREM appreciates the revisions made to the September 20, 2023 draft amendments that address areas AREM found problematic.

One of AREM’s core issues in those comments highlighted the problems with trying to impute emissions associated with volumes of renewable energy procured for RPS compliance. ESPs, like other retail sellers, buy RPS qualified energy plus RECs under contracts for firm quantities over a delivery period from a resource or set of resources specified by the seller. This form of contractual arrangement—often referred to as “seller’s choice”—gives the seller flexibility in meeting the quantity committed in light of the variability of resource output. These forms of contractual arrangements do not involve a slice or pro-rata share of resource output at time of production (i.e., “output contracts”), but rather a firm volume due by the end of the delivery period. Buyers under these types of contracts will not see energy deliveries on a pre-set hourly schedule. Instead, the seller delivers into a California Balancing Authority like CAISO, which helps to indirectly offset the retail seller’s load during that time, consistent with RPS compliance rules.

¹ AREM is a California mutual benefit corporation formed by electric service providers that are active in California’s direct access market. The positions taken in this filing represent the views of AREM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

² Posted at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=252717&DocumentContentId=87797>.

³ Posted at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=254272&DocumentContentId=89637>.

⁴ Posted at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=254257&DocumentContentId=89605>.

It appears that under PSD Amendments § 1393 (c) on Data Availability, retail sellers with these firm quantity seller's choice contracts will have those volumes treated via proxy hourly distribution curves developed through CPUC's resource production models used in the Integrated Resource Planning processes. This approach, however, can only work where the retail seller is the sole offtaker from the resource(s) used to meet the contract quantities over the particular year. In the case of seller's choice contracts, § 1393 (b) portends to address this issue, but again fails because it is unlikely that any one retail seller with a seller's choice contract (as opposed to a fractional offtake agreement) can know its proportional share of seller's total delivered volume during the particular year in time for annual submissions.

Another issue raised in its October comments asked that the CEC provide auditors clear and detailed verification guidelines for verifiers reviewing retail sellers' reporting. AReM reiterates this request, as the changes to § 1394 on Auditing and Verification do not provide the type of clear direction necessary to confirm reporting of seller's choice or firm quantity contracts that do not have hourly scheduling requirements.

AReM suggests that the CEC use retail sales data for retail sellers' load values, rather than imputing additional transmission and distribution losses from the output of resource contracted by the retail seller as loss-adjusted load. Retail sales data reflects the energy consumed at an end-user's site. Loss adjustments may come into consideration when trying to calculate a resource to end-user delivery, but these are proxies for actual load losses. For ESPs that primarily serve commercial and industrial customers, some that may be served at primary or transmission levels, the assumption that distribution level losses should be imputed to those loads is a mistake and inappropriate. It appears that imputing losses to hourly loads would potentially over-count losses for deliveries from different resources, including storage, for ESPs. The draft rules should be modified to properly reflect loss levels appropriate to the retail seller.

Respectfully submitted,

/s/

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