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11-RPS-01

**DOCKET**

02-REN-1038

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Re: Comments of the Alliance for Retail Energy Markets ("AReM") Re:  
Docket No. 11-RPS-01 and Docket No. 02-REN-1038 (SB 2-1x RPS  
Proceeding)

Dear Ms. Zochetti:

The Alliance for Retail Energy Markets ("AReM")<sup>1</sup> provides these brief comments on the redlined RPS eligibility guidebook ("Guidebook") as requested in the October 4, 2011 Notice. These comments are brief, and recognize that additional revisions will be forthcoming as the CEC and the CPUC undertake additional implementation details.

The Guidebook should be explicit that the CEC will determine both resource eligibility as well as the eligibility for specific product claims from the eligible resources. The dual energy agency structure under the statute places those responsibilities with the CEC, and both sellers and purchasers will benefit from the clarity associated with a single agency role for certification and validation of products. AReM members have historically seen confusion in the marketplace where sellers focus on the CEC's rules for certification and product eligibility, but CPUC-jurisdictional retail sellers are then subject to additional procurement restrictions imposed by the CPUC. With the new product definitions codified in SB 2(1x) and the CEC's continuing role to oversee the product verification and tracking (through the use of WREGIS), both sellers and buyers should now be able to look just to the CEC's rules to ensure product eligibility and validation. Notwithstanding that certain implementation details are still under development, the specific agency roles under the revised California RPS program can and should be clearly stated in Section II of this version of the Guidebook.

Related to RPS product verification and tracking, page 63 of the redlined Guidebook should be clear that eligible resources may provide varying product types over time, and that the CEC's role will be to verify product type claims. The current language suggests that

<sup>1</sup> 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.

procurement would be a single product type.<sup>2</sup> Moreover, the CEC will need to verify output from an eligible facility as meeting the claimed product type, which in the case of facilities located out-of-state may include a delivery verification. So while there is no longer a generic delivery verification requirement, the CEC will need to oversee verification associated with the specific product type claims associated with the output from an eligible facility on an annual basis. Yet Footnote 103 on page 63 of the redlined Guidebook suggests that the CPUC will verify product type procurement claims for output procured by IOUs, ESPs and CCAs, while the CEC will verify product type procurement for the POUs. AReM believes such a result is not required under the statute, conflicts with the overall verification role assigned by law to the CEC, and can lead to greater market confusion to the extent there are inconsistent or even conflicting determinations.

Instead, the CEC should be clear that within its processes of verifying annual aggregate eligible production from a certified facility, it will also verify product claims by retail sellers from those resources to ensure there are no over-claims or incorrect categorizations. This is critical, particularly in the case where product determinations may turn on intermittent changes in transmission availability and may cause anticipated Product 1 deliveries to be re-categorized as Product 3 deliveries supported by an incremental import from a separate, substitute resource, or a REC-only transaction without an energy delivery. It would be administratively inefficient to have the responsibility for such determinations split between two agencies, and nothing in §§ 399.15 or 399.16 indicate that this is the Legislature's intent. The Guidebook should be revised accordingly, and a procedural process initiated to develop the CEC reporting requirements for the specific product claims.

Pages 66-71 of the redlined Guidebook address "unbundled RECs" and distributed generation ("DG"). The Governor and the state have expressed a strong interest in seeing greater DG deployment generally, and use for RPS compliance. In light of the product types described in SB 2(1x), whether or not there is a "bundled" or "unbundled" delivery is not dispositive on eligibility for a specific product content category. Discussion in the Guidebook should not presume that deliveries from DG, including DG serving on-site loads within California, do not provide Product 1 deliveries. Moreover, insofar as SB 2(1x) deletes and replaces sections of the code concerning the RPS program, interpretations of the code that relied upon the earlier codification will no longer be precedential since they relied on a different regulatory regime. Accordingly, care must be taken when citing back to older RPS determinations as those older decisions did not address the new and more complex RPS program being implemented now.

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<sup>2</sup> See, "To comply with the RPS procurement requirements under SB X1-2, "electricity products" from eligible renewable energy resources must be procured from one of three "portfolio content categories" as described in Section I, B.2: 33 Percent RPS by 2020 Implementation in this guidebook." A clearer statement would be that procurement must come from an eligible resource and claims on output must be verified as meeting the product content categories.

November 2, 2011

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AReM appreciates the consideration of these comments, and looks forward to continuing to work with the CEC and other stakeholders in the implementation of SB 2(1x) and the establishment of clear market rules.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. B. Brown', with a long horizontal line extending to the right.

Andrew B. Brown

*Attorneys for the  
Alliance for Retail Energy Markets*