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California Energy Commission  
Dockets Office, MS-4  
Re: Docket No. 11-RPS-01 and Docket No. 02-REN-1038  
1516 Ninth Street  
Sacramento, CA 95814-5512

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Re: Comments of the Alliance for Retail Energy Markets ("AReM") on the Draft Seventh Edition of the Renewables Portfolio Standard Eligibility Guidebook

The Alliance for Retail Energy Markets ("AReM")<sup>1</sup> provides these comments on the California Energy Commission's ("Commission") redlined version of the draft seventh edition of the Renewables Portfolio Standard ("RPS") Eligibility Guidebook ("Guidebook") as requested in the March 4, 2013 workshop notice and the March 15, 2013 email extending the comment period. These comments focus on the need to modify the Guidebook to eliminate annual REC retirement requirements and other additional clarifications.

## **I. Reporting and Retirement Requirements Must Conform to Pub. Util. Code Section 399.21(a)(1) and Avoid an Annual Retirement Requirement**

According to the Guidebook, "SB X1-2 established multiyear compliance periods and allows [renewable energy credits] RECs to remain active for up to 36 months before they must be retired."<sup>2</sup> This is consistent with Public Utilities Code Section 399.21(a)(6), as well as California Public Utilities Commission ("CPUC") Decision ("D.") 12-06-038.<sup>3</sup> The Guidebook also includes multiple references to a 36 month period for retail sellers to retire RECs.<sup>4</sup> Despite the statutory clarity of the 36 month time period provided to retail sellers to retire RECs, the Guidebook appears to require retail sellers to retire RECs on an annual basis. This result violates

<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.

<sup>2</sup> Guidebook, p. 113. All references to the Guidebook are to the redlined version of the Guidebook issued on March 11, 2013.

<sup>3</sup> See D.12-06-038, pp. 48-51 and Ordering Paragraph 23.

<sup>4</sup> See Guidebook, pp. 113, 120-121, and 136.

the explicit statutory provisions of SB X1-2 and the goals of the RPS program and must be corrected.

The Guidebook provides:

For retail sellers, RECs retired for the 2011 reporting year must be reported by July 1, 2013 or within 90 days after the adoption of the RPS Eligibility Guidebook, Seventh Edition, whichever is later and RECs retired for the 2012 reporting year must be reported [within] or [sic] 120 days after the adoption of the RPS Eligibility Guidebook, Seventh Edition. For 2013 forward, the due date for reporting RPS procurement retired for the previous reporting year is July 1 of the following year.<sup>5</sup>

Additionally, the Guidebook states that the “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)...”<sup>6</sup> This language implies that in order for procurement to count, it must be retired and reported on an annual basis. This erroneous annual limitation is further exacerbated because the Guidebook states that “LSEs should not expect to supplement procurement claims for a report submitted for a previous year.”<sup>7</sup>

At the March 14 Workshop, Commission staff noted that it was not the intent of the draft Guidebook to limit the statutory flexibility of the 36 month shelf life, and expressed a willingness to modify the Guidebook to eliminate annual REC retirement requirements so that the requirements are consistent with the compliance period flexibility granted to retail sellers by SB X1-2. AReM notes that it is not annual reporting that is problematic, provided that any annual report within a compliance period can be supplemented in a subsequent annual report within that same compliance period to reflect any additional RECs that are retired within 36 months and applied to the compliance period for which a report has already been submitted, as authorized by SB X1-2. This is necessary to ensure that retail sellers and their customers are provided the full value of any procurement undertaken and the flexibility afforded by the multi-year compliance periods and 36-month “shelf life” rule.

Due to fluctuations in electric demand and because Electric Service Providers (“ESPs”) have fully contestable loads, ESPs are unlikely to know their specific RPS procurement obligations and portfolio balance requirements until late in a multiyear compliance period. Therefore, ESPs (and other Load Serving Entities) may defer retiring any RECs until late in the reporting cycle for a compliance period to ensure that the RECs are actually needed and will not exceed any applicable portfolio balance requirements. For this reason, a requirement to report RECs retired for the prior year by July 1 of the following year, will only reflect those RECs that have actually been retired and will not reflect other RECs procured during that year that remain in active Western Renewable Energy Generation Information System (“WREGIS”) subaccounts that have not approached their 36 month shelf life. Similarly, the proposed requirements for

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<sup>5</sup> Guidebook, p. 119.

<sup>6</sup> Guidebook, p. 114.

<sup>7</sup> Guidebook, p. 121.

reporting retirement data for 2011 and 2012 are unlikely to reflect all RECs procured during those years that will later be retired and ultimately be applied to the compliance period including those years.

Therefore, the Commission must allow retail sellers to submit additional retirement data through the compliance period to reflect all procurement received and intended to be retired in a given year despite the timing of receipt of the Certificate. This is not currently contemplated by the Guidebook, so the Guidebook must be clarified prior to adoption.

Implementing the modifications requested herein will ensure that RECs need not be applied to individual years, but instead would be applied to the compliance period. This would allow RECs to be retired and reported annually while also ensuring that retail sellers have the flexibility to retire RECs later in the compliance period and apply those RECs to the compliance period, and not individual years. This way, retail sellers could simply wait until later in a compliance period before retiring RECs, and still use such RECs to meet RPS compliance targets for that compliance period. For example, if a retail seller had procurement in 2011, 2012, and 2013, it could elect to defer retiring *all* such procurement until late in 2013. Therefore, the annual reports for 2011 and 2012 would not show any retired procurement, and all procurement would be retired in and applied to 2013. This way, the retail seller would still retain the flexibility provided by the 36 month retirement shelf life, and an annual report would still capture all retired procurement for the prior year.

## **II. The Commission and the CPUC Should Coordinate Procurement Verification Efforts**

As both the Commission and the CPUC will be responsible for reviewing and verifying procurement claims by retail sellers, AReM asks that the Commission and the CPUC work together and coordinate any procurement verification efforts going forward, to minimize duplicative or conflicting reporting obligations and expedite the release and finalization of verified data. To the extent reporting dates can be synchronized and verification reports can be issued at the earliest date possible, both agencies should strive to do so in order to minimize the potential for non-compliance and to provide retail sellers with addition certainty as they plan and execute their RPS procurement.

## **III. Conclusion**

AReM appreciates the consideration of these comments, and looks forward to continuing to work with the Commission and other stakeholders in the implementation of SB X1-2 and the establishment of clear market rules.

Respectfully submitted,



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