



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**FILED**  
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Order Instituting Rulemaking to Continue	)	
Implementation and Administration, and Consider	)	Rulemaking 15-02-020
Further Development, of California Renewables	)	(Filed February 26, 2015)
Portfolio Standard Program.	)	
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**REPLY COMMENTS OF NOBLE AMERICAS ENERGY SOLUTIONS LLC**

Respondent Noble Americas Energy Solutions LLC (“Noble Solutions”) files these Reply Comments pursuant to the *Administrative Law Judge’s Ruling Requesting Comment on Implementation of Elements of Senate Bill 350 Relating to Procurement under the California Renewables Portfolio Standard (“April ALJ Ruling”)*, issued on or about April 15, 2016. These reply comments respond to points raised by other parties in their opening comments filed on or about May 5, 2016, and are organized according to the questions posed by the *April ALJ Ruling*.

**I. Question 8**

Noble Solutions believes the Legislature’s clear intent in enacting 2015 Senate Bill 350<sup>1</sup> was to contribute to mandated reductions in California’s greenhouse-gas emissions and one vehicle for these reductions is the increased percentages of renewable energy in the power mix. The majority of the other parties argue that nothing in Public Utilities Code Section 399.13(b)<sup>2</sup> specifically indicates procurement contracts, ownership agreements and utility-owned generation predating January 1, 2021, should not be counted toward the long-term procurement obligations in that section.<sup>3</sup> Their agreement, however,

<sup>1</sup> Stats.2015, Ch.547.

<sup>2</sup> Unless otherwise noted, all references to code sections are to the California Public Utilities Code.

<sup>3</sup> See, e.g., *Opening Comments of Pacific Gas & Electric Company*, Rulemaking 15-02-020, May 5, 2016, at pp.6-7; *Comments of San Diego Gas & Electric Company*, Rulemaking 15-02-020, May 5, 2016, at pp.7-10; *Comments of Marin Clean Energy*, Rulemaking 15-02-020, May 5, 2016, at pp.4-5; *Comments of the Utility Reform Network and the Coalition of California Utility Employees*, Rulemaking 15-02-020, May 5, 2016, at pp.2-3; *Joint Comments of Bear Valley Electric Service etc., Liberty Utilities etc., and PacifiCorp*, Rulemaking 15-02-020, May 5, 2016, at pp.7-9; *Comments of the Center for Energy Efficiency and Renewable Technologies*, Rulemaking 15-02-020, May 5, 2016, at p.8; *California Municipal Utilities Association Comments*, Rulemaking 15-02-020, May 5, 2016, at pp.5-6; *Comments of the Green Power Institute*, Rulemaking 15-02-020, May 5, 2016, at p.3; *Comments of the Independent Energy Producers Association*, Rulemaking 15-02-020, May 5, 2016, at pp.2-4; *Opening Comments of Southern California Edison Company*, Rulemaking 15-02-020, May 5, 2016, at pp.6-8; and, *Comments of Shell Energy North America etc. and Commerce Energy, Inc.*, Rulemaking 15-02-020, May 5, 2016, at pp.3-4.

completely ignores the Legislature's intent. If the Commission were to adopt the other parties' position and allow previously executed long-term obligations to count toward the minimum<sup>4</sup>, it is self-evident that this interpretation would be counter to achieving the energy-sector greenhouse-gas goals the Legislature envisions.

Contrary to the arguments of the other parties, there are in fact many indications the Legislature intended to exclude certain pre-2021 procurement obligations from counting toward the Section 399.13(b) long-term procurement requirement as articulated by Noble Solutions. In the first instance, the plain language of the statute provides, "Beginning January 1, 2021, at least 65 percent of *the procurement* a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from" long-term obligations and resources. (Section 399.13(b), emphasis added.) Thus, the Legislature distinguished the act of "procurement" from a simple inventory of "contracts of 10 years or more in duration or in its ownership or ownership agreements", and defined the requirement as a *procurement* obligation, as argued by Noble Solutions in its Opening Comments, rather than *an inventory of obligations* as argued by the other parties. For the purposes of defining the nature of "the procurement" which must occur to satisfy Section 399.13(b), the Legislature provides that a "retail seller *may enter* into a combination" of qualifying obligations, and Noble Solutions submits the Commission has the authority to determine whether the act of "procurement" was one that was to be performed in future, or as specified in the second sentence of the section and as implied in Question 8 of the *April ALJ Ruling*, "[b]eginning January 1, 2021." In interpreting "the plain language" of Section 399.13(b), the other parties impute phantom words into Section 399.13(b) so that it essentially reads, "A retail seller may enter [*insert here: 'or have previously entered'*] into" qualifying obligations, and it is only by virtue of adding words not otherwise appearing in the law that they can construe past obligations to constitute "procurement" "beginning January 1, 2021." By adding these words, the other parties by default have gone beyond the plain language of the statute and their interpretation should be rejected.

In construing whether the phrase "beginning January 1, 2021" should be applied to the act of procurement, as recommended by Noble Solutions, or an inventory of preexisting obligations as proposed by other parties, the Commission should consider that, as the Legislature has modified the state renewable

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<sup>4</sup> Noble Solutions in its opening comments did not address Questions #13 or #14. However, as other parties have aptly surmised, Section 399.6(d) specifically "grandfathered" pre-June 2010 contracts as eligible to "count in full" and was unaffected by the enactment of Senate Bill 350. The Commission should conclude that the Legislature intended that all the benefits of the pre-June 2010 contracts are to remain intact.

portfolio standard, the Legislature has adopted any number of savings clauses so as to protect preexisting rights and obligations from being eviscerated by ensuing legislation, e.g.:

- Energy from an existing small hydroelectric generation facility of 30 megawatts or less is deemed to be an eligible renewable energy resource if the energy from that facility had been procured by a retail seller as of December 31, 2004 (Section 399.12(e)(1)(A));
- A conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is deemed to be an eligible renewable energy resource (Section 399.12(e)(1)(B)); and,
- A facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy the renewable portfolio standard is deemed to be an eligible renewable energy resource (Section 399.12((e)(1)(C)).<sup>5</sup>

These various statutory instructions make it clear that, had the Legislature been so inclined, it could well have “saved” long-term contracts and ownership agreements predating January 1, 2021, and defined them as eligible to count toward the future, *circa* 2021-2024, long-term procurement requirement which otherwise begins on January 1, 2021. Clearly, when it has suited its purposes, the Legislature has exercised its plenary authority to preserve preexisting qualifications and rights created under previous law into periods governed by new legislation, something of which Noble Solutions is very much aware. (See *California Constitution*, Article XII, Sections 3, 5.) But in enacting Section 399.13(b), the Legislature did not exercise that authority and it should not be presumed to have meant to qualify long-term contracts and ownership agreements predating January 1, 2021, for the long-term procurement obligation “beginning January 1, 2021.” The Legislature could have, but simply and plainly did not, exercise its prerogative here.

Section 399.13(b) is nuanced and open to differing interpretations which the Commission should resolve, not by a vote of the parties, but by the exercise of the Commission’s clear authority and jurisdiction to give effect to the Legislature’s intent. (Accord, *Greyhound Lines, Inc. v Public Utilities Commission*, 68 Cal.2<sup>nd</sup> 406, 410-411 (Cal.Sup.Ct., 1968), holding that the Commission interpretation of the Public Utilities Code is presumptively valid if within statutory purposes; also, *Southern California Edison Company v. Public Utilities Commission*, 31 Cal.4<sup>th</sup> 781, 796 (Cal.Sup.Ct., 2003).) The Commission should do so here by adopting Noble Solutions’ interpretation of Section 399.13(b): That renewable energy contracts, ownership agreements and utility-owned generation predating a January 1, 2021 initial delivery date should not count toward meeting the 65-percent long-term procurement requirement.

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<sup>5</sup> Similarly, see Sections 399.12(e)(1)(D)(i), 399.12(h)(3)(D), 399.12.6(a)(1), and 399.16(d).

## II. Question 12

There was complete unanimity amongst the parties filing comments that the rules under which a retail seller may elect early compliance with Section 399.13(b) should be addressed sooner rather than later. However, except for the rules governing early compliance, there is no immediate need for the Commission to set the rules for compliance with Section 399.13(b) now. For retail sellers not electing early compliance, meeting the 65-percent long-term contracting requirement in order to comply during the fourth compliance period, 2021-2024, is far enough in the future that the Commission can tend to more pressing issues related to the implementation of the sweeping provisions of Senate Bill 350. Given that the details of the renewable portfolio standard have evolved every few years and will likely continue to evolve, it would be judicious of the Commission to move conservatively on components of Senate Bill 350 that have effective dates years in the future. Thus, with the exception of rules governing electing early compliance, the Commission can defer consideration and adoption of rules addressing the long-term procurement requirement for the time being.

## II. Question 22

Noble Solutions is in agreement with Southern California Edison with respect to the timing of the early-compliance notice requirement;<sup>6</sup> that notice should be provided prior to the start date for the third compliance period, January 1, 2017, but no later, as suggested by Southern California Edison, than sixty days after the Commission's adoption of rules governing the election of early compliance. If the Commission accepts Noble Solutions' interpretation of the January 1, 2021, "start date" for the resources and obligations counting toward the 65-percent long-term procurement requirement, based on a majority of retail sellers' 2014 Preliminary Annual 33% RPS Compliance Reports, it is unlikely that there will be a "gold rush" of retail sellers that will automatically qualify for, and therefore elect, early compliance in order to

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<sup>6</sup> *Opening Comments of Southern California Edison Company, supra*, at p.16.

secure the more flexible excess procurement treatment for their existing renewable energy credits. Even so, assuming one or more retail sellers elect for early compliance prior to January 1, 2017, the Commission has four years, 2017-2020, in which to prioritize the Rulemaking to address the rules associated with long-term contracting.

Respectfully submitted,

-----/s/ Greg Bass-----

Director, Western Regulatory Affairs  
Noble Americas Energy Solutions LLC  
401 West A Street, Suite 500  
San Diego, California 92101  
Phone: 619.8199  
Email: [GBass@NobleSolutions.com](mailto:GBass@NobleSolutions.com)

-----/s/ Alvin S. Pak-----

Attorney for Respondent  
Law Offices of Alvin S. Pak  
827 Jensen Court  
Encinitas, California 92024  
Phone: 619.209.1865  
Email: [APak@AIPakLaw.com](mailto:APak@AIPakLaw.com)

San Diego, California  
May 16, 2016

**VERIFICATION BY AFFIDAVIT**

I, Peter Yuen, Esq., hereby state that I am an officer of Noble Americas Energy Solutions LLC and authorized to make this verification on its behalf. I have read the foregoing **REPLY COMMENTS OF NOBLE AMERICAS ENERGY SOLUTIONS LLC** and attest that the matters stated therein are true and correct to the best of my knowledge, except as to matters stated on information and belief, and as to those matters I attest that I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed this 25<sup>th</sup> day of May, 2016, at San Diego, California.

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/s/ Peter Yuen

Peter Yuen  
Vice President and General Counsel