March 15, 2011

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol Building
Sacramento, CA 95814

Subject: **SBX1 2 (Simitian, Kehoe and Steinberg) Renewable Energy Resources**

Dear Governor Brown:

The undersigned parties to this letter wish to express our concerns with SBX1 2, a bill that will soon reach your desk for signature. Despite widespread recognition among legislators and stakeholders that certain inequitable aspects in the bill should be remedied, the bill is nevertheless going to be presented to you for your signature into law, amidst the promises that "clean-up" legislation will follow addressing our concerns.

Given the economic harm that the bill's passage into law will create for California businesses, the inequitable treatment that it creates for the energy service providers who serve a wide array of commercial, institutional and industrial customers, and the fact that legislators clearly seem fatigued or otherwise reluctant to address these issues in a rush to send this bill to your desk, we are concerned that the promise of "clean-up" legislation will not materialize or will fail to reach your desk in a timely manner that avoids costly and disruptive impacts. Therefore, we urge you to veto this extraordinary session bill and direct your colleagues in the legislature that legitimate business and fairness concerns must be addressed in the regular session version of this bill (SB 23) in order to obtain your signature.

There are four main aspects of SBX1 2 that are of particular concern. First, SBX1 2 will eviscerate large percentages of the renewable energy value of power contracts entered since June 1, 2010. SBX1 2 provides that the contract execution date, for which existing renewable energy contracts are grandfathered under the rules and laws in-place at the time, is on or before June 1, 2010, instead of these contracts being grandfathered *prospectively* as of the effective date associated with passage of the bill. The grandfathering date concern is not so much a policy issue, but a basic issue of fair treatment for the customers of energy service providers who bear the costs of these renewable energy purchases made in good faith and under existing law at the time. Those customers include hospitals, public and private universities, cities and counties, as well as California commercial and industrial businesses.

In today's recessionary environment, imposing additional costs on California businesses by not recognizing the full value of the renewable energy contracts is bad policy and is unnecessary and counterproductive to business competitiveness. Moreover, legal ramifications will ensue as a

result of the retroactive impairment of the value of renewable energy contracts that have been executed.

Second, this bill severely limits the flexibility of energy service providers in meeting their renewable energy obligations across compliance periods. The bill stipulates that only renewable energy purchases in excess of the compliance period mandated percentages that are associated with contracts that have a term of 10-years or more may be banked for use in future compliance periods. Limiting contracting flexibility in this way achieves no purpose but to complicate commercial transactions and shift economic risk onto energy service providers and their customers.

Third, the bill will compromise the development of in-state distributed renewable generation resources that are located behind the customer's meter as it limits the definition of "in-state" resources to those resources directly connected to the California power grid, a requirement that most, if not all, distributed renewable generating resources do not meet. The upshot is that the ability of energy service providers to work with their customers and develop cost effective, distributed renewable generating resources will be limited, thwarting what is otherwise the clear goal of this legislature to increase distributed renewable generation, and it will further impede the ability of energy service providers to meet the ambitious in-state renewable energy requirements that are included in this bill.

Finally, the bill provides cost containment provisions that ensure that the state's largest investor owned utilities are excused from meeting the renewable energy mandated percentages if those purchases exceed a specific cost threshold. However,the reciprocal treatment for energy service providers to secure similar cost-containment compliance waivers are vague and ambiguous, creating yet another unfair and unequal policy outcome.

The California Public Utilities Commission (CPUC), to which you have recently appointed two new commissioners, has provided you with their comprehensive review of SBX1 2.In that review they cite the need to address many of the issues referenced in this letter, as well as a host of other issues that passage of this bill into law will create. The CPUC's analysis serves as a yet another signal that SBX1 2 needs more work, and the legislative rush involved in getting this bill signed into law is riding roughshod on a deliberative and thoughtful policy making process. A copy of the CPUCs analysis may be found at the following link:
http://docs.cpuc.ca.gov/PUBLISHED/REPORT/131922.htm

For the reasons cited above, the undersigned respectfully request that you veto SBX1 2 and direct the legislature to address the issues noted above through amendments to SB 23 currently residing in the regular session.

Thank you for your consideration of our concerns.

Regards,

Alliance for Retail Energy Markets (AReM)
California Alliance for Competitive Energy Solutions (CACES)
California Grocers Association (CGA)
California Manufacturers and Technology Association (CMTA)

California Retailers Association (CRA)
Direct Access Customer Coalition (DACC)
School Project for Utility Rate Reduction (SPURR)

cc: Nancy McFadden, Governor's Office
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