

DOCKETED

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Comments on Proposed Modifications

Additional submitted attachment is included below.

March 30, 2016

Via E-Mail

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Docket No. 16-RPS-01: RPS Eligibility Guidebook: Comments on Proposed Modifications

To: Energy Commission:

In accordance with the schedule established at the March 17, 2016 “scoping workshop” in the above-referenced proceeding, Shell Energy North America (US), L.P. (“Shell Energy”) provides its initial comments on the Commission Staff’s proposed modifications to the RPS Eligibility Guidebook (8th Edition). Shell Energy’s initial comments address two issues, as follows:

First, the Commission should not modify the current reporting requirement for RPS-certified facilities using common carrier pipeline biomethane. The Commission should not require the production of daily biomethane delivery information (e.g., meter data; nomination reports). Monthly data is sufficient to verify the delivery of biomethane from the source through the common carrier pipeline(s) to the RPS-certified facility.

Second, as it considers modifications to the RPS Eligibility Guidebook, the Commission should align the substantive RPS eligibility requirements and compliance obligations for publicly-owned utilities (“POU”) with the RPS eligibility and compliance obligations for other load-serving entities (“LSE”). Unless otherwise required by statute, the RPS eligibility and compliance obligations for POU’s and other LSE’s should be the same.

I.

**DAILY BIOMETHANE DELIVERY INFORMATION
IS NOT REQUIRED
TO ASCERTAIN RPS ELIGIBILITY OR
COMPLIANCE**

The Commission's current annual reporting requirement for RPS-certified facilities using common carrier pipeline biomethane¹ requires the production of monthly data to determine compliance with the RPS eligibility requirements. The annual report requires monthly meter data for the injection point of the biomethane source on the delivery pipeline, monthly pipeline nomination reports for each pipeline and storage site along the delivery path, monthly invoices for the procurement of the biomethane, and monthly meter data showing the total use of all biomethane and nonrenewable energy resources at the generating facility.

At the March 17, 2016 scoping workshop, the Commission Staff proposed a “non-substantive change” to the RPS Eligibility Guidebook that would require the production of daily data (in addition to, or in place of monthly data) to ascertain compliance with RPS eligibility requirements. The production of daily data would impose an undue burden on the operators of RPS-certified generation facilities and would not provide more accurate or relevant information respecting compliance with RPS eligibility requirements. In fact, the production of daily gas delivery data in a gas contract environment that is based on monthly or annual delivery obligations could distort the picture of whether a generating facility's procurement and delivery of biomethane complies with the substantive biomethane delivery requirements set forth in Section II.C of the RPS Eligibility Guidebook.

If a contract provides that the supplier may deliver no more than a Maximum Daily Volume (“MDV”) set forth in the contract, daily delivery quantities (above or below the maximum) are not determinative of whether deliveries exceed the maximum contract quantity. The issue is whether the deliveries exceed the overall contract quantity for the term of the contract, over the course of a year, or in a specific month.

For example, a contract may provide that the “contract quantity” is the product of the MDV times the number of days in a month (or a six-month period, or an annual period). The

¹ See RPS Eligibility Guidebook (8th Edition), Chapter V (Annual Facility Reports), Section B (Common Carrier Pipeline for Biomethane), pp. 57-58.

enforceable obligation is based on monthly, semi-annual, or annual deliveries, not daily deliveries.

Contracts do not generally provide that the Seller may not exceed the MDV on a particular day. Rather, compliance with the contract is based on the level of deliveries over a month, six-months, or a year. In other words, contractual remedies for failure to perform are based on deliveries over a month, or a six-month period, or an annual period, not based on the amount delivered on a specific day. There is no contract breach or remedy if the delivery volume exceeds the MDV on a given day. Daily excursions of delivered biomethane above the MDV are not inconsistent with an MDV requirement under a contract. Therefore, monthly data is sufficient to support and complete the RPS verification process.

Moreover, although a biomethane procurement contract may specify a daily maximum, pipeline transportation contracts contain terms that provide the transport flexibility needed to deliver the contract quantities, as is standard industry practice. Annual true-up of any daily imbalances is standard practice in the natural gas industry. A shortfall in delivery on one day can be made up on a subsequent day.

Moreover, the transport of biomethane on a pipeline may not match biomethane production on a daily basis. Transport of gas also may be affected by “line-pack” (which constitutes storage within the pipeline). Pipeline transportation contracts refer to “imbalances,” which reflect the difference between the quantity of gas received and the quantity of gas delivered at the Delivery Point. “Make-up volumes” are allowed to be nominated by a Shipper to resolve an imbalance.

Pipeline transportation contracts interact with a biomethane procurement contract, recognizing that deliveries at the injection point may be either higher than or lower than expected levels, and transportation of gas may be altered on a daily basis to make up the difference between the projected amounts and actually delivered amounts. Pipeline transportation contracts also make clear that, once injected, the daily amounts transported across the pipeline may vary from the injected amounts in response to conditions on the transportation pipeline.

Because a biomethane procurement contract is intended to ensure that over a period of time (month or year), the delivered quantity is equal to the total contract quantity (daily quantity times the number of days in the month/year), daily deviations above (or below) the daily contract quantity are not relevant to a determination of RPS eligibility. The reporting requirement in the RPS Eligibility Guidebook properly addresses “monthly” data. The vagaries of daily pipeline deliveries, as well as the use of storage and “balancing” to levelize deliveries over time, all

demonstrate that it is the total contract deliveries (over a month or a year), rather than daily deliveries, that should count for RPS compliance.²

Finally, there is a practical reason not to require the production of daily data. Most pipelines do not provide daily pipeline statements. Moreover, pipelines that do provide daily information do not typically maintain the daily information for more than two years. Requiring the production of daily data to show RPS eligibility could present gaps in information availability, rendering useless the produced daily data.

II.

UNLESS OTHERWISE DICTATED BY STATUTE, RPS ELIGIBILITY RULES SHOULD BE THE SAME FOR POUs AND FOR OTHER LSEs

RPS products are regularly purchased and sold between and among POU's and other LSEs. Developing and maintaining a liquid market for RPS products requires that the eligibility standards for RPS products, and RPS compliance obligations, are the same for POU's and for other LSEs, to the extent permitted by statute. Ensuring that the RPS eligibility requirements (and compliance requirements) are consistent between POU's and other LSEs requires coordination between this Commission and the CPUC. A goal of both agencies should be to maintain consistency in the RPS programs for all LSEs, including POU's.

As it reviews RPS eligibility and compliance issues for POU's in this Docket, the Commission should make every effort to achieve consistent treatment of POU's and other LSEs. When considering rules for a long term contracting requirement, the calculation of excess procurement, the treatment of REC's, and RPS compliance obligations beyond 2020, the Commission should endeavor to make the rules for POU's the same as the rules for other LSEs.

In Resolution No. 16-0309-4a (March 9, 2016), the Commission approved a process that permits a POU to seek Commission approval to withdraw surplus retired REC's from a specified

² Although there is a catch-all, in Section V.B.7, for "any additional documentation" needed by the Commission to determine "nonrenewable energy resource use," a request for daily data should only be made if necessary to determine if there are "[a]ny limitations on the maximum quantity of gas that can be delivered in a specific period, for example, daily, monthly, yearly." See Section V.B.8(c).

RPS compliance period and use the RECs for the POU's following compliance period. The Commission determined that this process applies exclusively to POUs, however, thus providing POUs with an advantage over other LSEs with respect to the treatment of surplus retired RECs. In this proceeding and future proceedings addressing the RPS compliance rules applicable to POUs, the Commission should make every effort to avoid the adoption of provisions that favor the POUs over other LSEs.

In some instances, different requirements for POUs are dictated by statute. Even when a statute mandates different treatment of POUs and other LSEs, however, the Commission should strive to develop requirements for POUs that complement the RPS requirements for other LSEs. The RPS rules for POUs should not be developed in a vacuum. For any different treatment of POUs that may be required by statute, the Commission should endeavor to establish a workable framework that accounts for the treatment of other LSEs.

III.

CONCLUSION

Thank you for your consideration of these comments. If you have questions regarding the issues raised in these comments, please do not hesitate to contact the undersigned.

Best regards,



John W. Leslie
of
Dentons US LLP
on behalf of
Shell Energy North America (US), L.P.