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16-OIR-05 Comments of Shell Energy North America (US), LP on Proposed Revised Regulations to Implement AB 1110

Attached in Docket No. 16-OIR-05 are the comments of Shell Energy North America (US), L.P. on the proposed revised regulations to implement AB 1110.

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

Additional submitted attachment is included below.

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October 28, 2019

Via E-Mail

California Energy Commission
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Re: Docket No. 16-OIR-05: Comments of Shell Energy North America (US), L.P. on Proposed Revised Regulations to Implement AB 1110

To: Energy Commission:

In accordance with the "Notice" issued in the above-referenced proceeding on September 6, 2019, Shell Energy North America (US), L.P. ("Shell Energy") provides comments on the Commission Staff's proposed revised regulations to implement AB 1110. The Staff's proposed regulations are intended to update the Power Source Disclosure ("PSD") program. Shell Energy is a "retail supplier" as defined in P.U. Code Section 398.2(b). In its comments, Shell Energy addresses three issues, as follows:

First, the proposed PSD regulations, if adopted, will not provide an accurate picture of the mix of resources used by a retail supplier to serve its customers in a particular year, as intended. A retail supplier should provide, to the Energy Commission and to its retail customers, the mix of resources included in its "electricity portfolio" in the previous calendar year. The proposed regulations, however, require a retail supplier reporting "specified purchases" and purchases from "unspecified sources" to report only those quantities generated in the previous year. A retail supplier's electricity portfolio may or may not be limited to generation in the previous calendar year. Information provided by a retail supplier must recognize a retail supplier's procurement in any year (including years before the previous calendar year) that may be included in its electricity portfolio for the previous year.

Second, the proposed regulations fail to assign proper emission factors for CAISO system power and "unspecified resources." The proposed regulations do not assign an emissions factor for CAISO system power. Furthermore, the Staff improperly assigns the ARB default emissions rate to "unspecified resources." Not all unspecified electricity is imported into California, yet the ARB's unspecified emissions rate is based on aggregated generation information from resources physically located outside California. There should be two unspecified emissions rates: the ARB default emissions rate for imported power sold to retail customers; and the CAISO system rate, which the CAISO can establish based on existing information.

Third, the proposed regulations improperly fail to recognize that ARB does not assign a carbon obligation for power imports associated with PCC2 claims. ARB provides an RPS adjustment for entities importing PCC2 energy for California RPS compliance. To provide consistency with ARB standards, the Energy Commission should recognize that PCC2 imports are considered carbon neutral, particularly in light of the level of investment in out-of-state renewable energy.

I.

THE PSD REGULATIONS MUST HAVE CONSISTENT REQUIREMENTS THAT REQUIRE A RETAIL SUPPLIER TO REPORT ITS ELECTRICITY PORTFOLIO IN THE PREVIOUS YEAR

In its "Initial Statement of Reasons," the Commission Staff states that under the PSD program, retail suppliers must "disclose accurate, reliable and simple to understand information on the sources of energy, and the associated GHG emissions, that are used to provide electric services." Statement at p. 4. Unfortunately, the proposed regulations fail to achieve this objective. Section 1394(a) of the PSD regulations provides that a retail supplier must provide to the Energy Commission, each year, an annual report on its "electricity portfolio" offered to retail customers in the previous calendar year. Similarly, Section 1394.1(a) requires a retail supplier to provide to consumers a power content label that discloses the fuel mix and GHG intensity of each electricity portfolio that was sold during the previous calendar year.

Section 1394(b), however, provides that a retail supplier must provide information for each "specified purchase" of electricity procured in the previous year, as well as information for electricity from "unspecified sources" procured in the previous year. The proposed regulations adopt additional unnecessary methodologies (e.g., Section 1393(a)(6)) to account for mismatches in annual procurement versus annual sales rather than eliminating the language that results in the mismatch. The proposed language will result in a retail supplier's "electricity portfolio" for the previous year (reflecting sales of energy to retail customers) not matching its combined "specified purchases" and purchases from "unspecified sources" in that year.

In accordance with the Renewables Portfolio Standard ("RPS") requirements, a retail supplier may use energy generated in one year to serve load in a different year. The proposed PSD regulations must be modified to ensure that the resource information that retail suppliers provide to the Energy Commission matches the resources included in the portfolio used to serve retail customers in the previous year. Modification of the proposed regulations is necessary to provide "accurate, reliable and simple to understand information on the sources of energy, and the associated GHG emissions, that are used to provide electric services" to a retail supplier's customers. If the Energy Commission cannot achieve this objective within the framework of AB 1110, the Energy Commission must work with the legislature to change the statute to provide consistency in the reporting requirements.

The Commission Staff acknowledges that the PSD requirements are not the same as the RPS requirements. The September 6, 2019 "Notice of Proposed Action" states: "Compliance under the RPS is based on multi-year compliance periods allowing procurement to vary year to year as long as compliance period targets are met, banking of early procurement and excess procurement from prior compliance period is allowed to some degree, and RECs may be retired for up to 36 months after the actual generation of the renewable energy. Therefore, the procurement in any single calendar year will not translate to the procurement applied within a multi-year compliance requirement." Notice at p. 6. The Commission Staff also acknowledges that the information to be provided by retail suppliers will not correspond with the information retail suppliers are including in their portfolios, but the proposed regulations fail to provide customers enough detail about why the Power Content Label will not represent what retail suppliers are truly offering for sale in their electricity portfolios.

The proposed PSD regulations only provide for reporting the procurement of net electricity "generated" in the previous year. Section 1392(d)(2), for example, requires, for any generation included in an electric service product for which a claim of "specific purchases" is made, a report on the net electricity generated by the generating facility in the previous year. This requirement fails to recognize a retail supplier's procurement in prior years that may be sold to customers under the three-year RPS retirement provisions. The three-year RPS retirement window is essential in reducing costs to consumers, and should be reflected in the procurement information provided to consumers.

For example, a retail supplier may have procured RPS energy that is generated in 2017 in an amount greater than the State's 2017 RPS target, anticipating that it will spread the cost of that generation to its retail customers over time. Under the proposed PSD regulations (and template), however, that retail supplier's 2018 PSD report would only reflect sales to the retail supplier's customers that include 2017 generation. In other words, in November 2018, the retail supplier's electricity portfolio may include RPS energy that was generated in 2017, but because the PSD template only covers the prior year's generation (2017), it will appear that the retail supplier sold more RPS energy to its retail customers than the amount customers were invoiced. In November 2019, that same customer will be paying for renewable energy generated in 2017, but will receive a Power Content Label that reflects no renewable energy. This approach results in a significant discrepancy and deviates from the intent of the PSD requirement.

The PSD regulations should require retail suppliers to account for their actual retail sales to customers, regardless of the year in which the power was generated. Absent changes to the proposed regulations, the Energy Commission must update its footnote in the Power Content Label explaining that the amounts in the label only reflect the prior year generation, and do not accurately reflect the retail supplier's electricity portfolio, which may include RPS procurement from prior years.

II.

THE COMMISSION MUST ASSIGN AN EMISSIONS FACTOR FOR CAISO POWER AND MUST ASSIGN AN ACCURATE EMISSIONS FACTOR FOR UNSPECIFIED RESOURCES

The proposed PSD regulations improperly assign the ARB default emissions rate for all unspecified resources. The proposed regulations also fail to assign an unspecified emissions factor for CAISO system power. The proposed regulations must be modified to properly reflect the emissions intensity of CAISO system power and all unspecified resources.

Section 1393(c)(2)(A) provides that the Energy Commission "shall annually assign a GHG emissions intensity to each generator that delivers electricity to a California balancing authority, and provide the most recent GHG emissions intensities of generators for retail suppliers to use in annual reporting to the Energy Commission pursuant to section 1394." Sections 1393(c)(2)(B) and (C) provide that the Energy Commission will use generators' reported or assigned emissions intensity under the ARB's mandatory reporting requirements ("MRR"), or the default emission factors by fuel type under the MRR.

Section 1393(c)(3) provides that the GHG emissions intensity of unspecified power shall be assigned the default emissions factor under the MRR. The "Initial Statement of Reasons" provides that the ARB "calculated the default emissions factor for unspecified power based on marginal fossil fuel emissions of generators located outside California." Statement at p. 21.

The Commission Staff attempts to justify this proposal by stating that "the average GHG emissions factor of current in-state marginal generation does not substantially deviate from CARB's GHG default emissions for imported sources of unspecified power." The Statement continues: "Furthermore, the Energy Commission is not aware of a simple and reliable method for distinguishing between in-state and imported sources of unspecified power purchased through open market transactions." Id. Based on these observations, the Commission Staff concludes that "it is appropriate to apply CARB's default emissions factor to all sources of unspecified power." Id.

The ARB's unspecified emissions rate is based on aggregated generation information from resources located outside California. Assigning the ARB default emissions rate to unspecified resources wrongly assumes that all unspecified electricity is imported into California. To be accurate, there should be two unspecified resource emissions rates: the ARB default emissions rate, if the power sold to retail customers was imported; and the CAISO system rate, which the CAISO can establish based on existing data.

The CAISO's DMM annually reports its generation mix to the Energy Commission. The Energy Commission should require the DMM to further drill down on imports by assessing the source on the OATI import tags and establish an annual CAISO System Power rate representing in-state unspecified purchases. This approach would more accurately reflect, in retail suppliers' electricity portfolios, procurement from unspecified resources.

III.

THE COMMISSION MUST NOT ASSIGN EMISSIONS TO DELIVERED ENERGY ASSOCIATED WITH PCC2 RESOURCES

The Staff's proposed GHG accounting methodology will misinform customers if adopted as written. Section 1393(c)(1) assigns GHG emissions to delivered electricity associated with RPS-eligible firmed and shaped products. The Commission Staff states that "[t]his provision is necessary for the Energy Commission to establish a GHG emissions accounting methodology that is accurate, reliable and simple to understand, and is consistent with GHG emissions accounting policy established under MRR." Initial Statement of Reasons at p. 15. The Commission Staff's proposed approach fails to recognize that for a firmed and shaped (PCC2) product, RECs represent GHG emission reductions even if the generation is not delivered to California. Even ARB, which accounts for the emissions associated with those imports, does not assign a carbon obligation to retail suppliers that have procured firmed and shaped products for RPS compliance.

ARB provides an RPS adjustment, acknowledging that retail suppliers and their customers have paid a premium for PCC2 products in order to comply with the State's RPS procurement obligation. Similarly, the Energy Commission must eliminate the emissions associated with firmed and shaped energy. Unless the Energy Commission eliminates this requirement, the Commission must include a footnote stating that the emissions associated with these imports are actually carbon free or carbon neutral according to the ARB.

IV.

CONCLUSION

The PSD regulations must be consistent with the RPS requirements. The PSD regulations should require a retail supplier to provide customers and the Energy Commission an accurate picture of the mix of resources used by the retail supplier to serve its customers in the previous year. The retail supplier should include, in its Power Content Label and its report to the Commission, the portfolio of resources used in the previous year, regardless of the calendar year in which the energy was "generated."

The Energy Commission also should rely on the GHG emissions factors reported by the CAISO to establish an accurate emissions factor for CAISO system power -- including in-state unspecified sources. Furthermore, the Commission should apply the ARB default emissions rate (a rate based on aggregated generation information from resources located outside California) to unspecified imports. There should be two unspecified emissions rates: the ARB default emissions rate for power sold to retail customers that was imported into California; and the CAISO system rate, which the CAISO can establish based on information provided by the CAISO DMM.

Finally, the Energy Commission should not assign emissions to eligible firmed and shaped resources. California ratepayers have paid a premium to import these resources under the RPS program. The ARB recognizes eligible PCC2 products as carbon-neutral by providing an RPS adjustment to retail suppliers utilizing these products for RPS compliance. The Energy Commission should apply a consistent emissions approach for firmed and shaped energy.

Best regards,

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

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