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16-RPS-03 Shell Energy North America (US), LP Comments

Additional submitted attachment is included below.

June 1, 2020

Via CEC E-Comment System

Docket Unit
California Energy Commission
1516 9th Street, MS-4
Sacramento, CA 95814

Re: Docket No. 16-RPS-03

To: California Energy Commission:

In accordance with the process established in the “Notice of Proposed Action” that was issued on May 7, 2020, Shell Energy North America (US), L.P. (“Shell Energy”) submits its comments on the Commission Staff’s proposed “Modification of Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.” Shell Energy is a marketer of natural gas and electricity to wholesale and retail customers throughout California and the western United States. Shell Energy is a registered energy service provider (“ESP”) in California. Shell Energy also sells energy and related products on a wholesale basis to other retail sellers, including publicly owned utilities (“POU”).

Shell Energy’s comments focus on the Staff’s proposed modifications to the rules addressing the long-term contract requirement under P.U. Code Section 399.13(b). Specifically, Shell Energy comments on Staff proposed Sections 3204(d)(2)(A)(3) and 3207(c)(2)(G). Shell Energy asks the Commission to remove language from Section 3204(d)(2)(A)(3), and limit the scope of information to be provided pursuant to Section 3207(c)(2)(G).

I. INTRODUCTION

P.U. Code Section 399.13(b) provides in pertinent part: “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 its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.”

P.U. Code Section 399.30 (d)(1) provides in pertinent part: “The governing board of a local publicly owned electric utility shall adopt procurement requirements consistent with . . . subdivision (b) of Section 399.13.” In other words, the long term contracting requirement of P.U. Code Section 399.13(b), which is applicable to “retail sellers,” also applies to POUs.

To implement P.U. Code Section 399.13(b), the Commission Staff proposes the following language in Section 3204(d):

“(2) Electricity products will be classified as long-term or short-term based on the contracts, ownership, or ownership agreements through which they are procured. For the purpose of this subdivision, long-term procurement refers to procurement from long-term contracts, ownership, or ownership agreements, subject to the following:

(A) A long-term contract is defined as a contract demonstrating a POU’s commitment to procure electricity products from an RPS-certified facility for a duration of at least 10 continuous years, except as specified in subparagraphs (i)-(iii).

1. A long-term contract includes a contract executed by a joint powers agency on behalf of the POU with an RPS-certified facility, if the contract by the joint powers agency otherwise meets the requirements of a long-term contract.
2. A long-term contract includes a resale agreement, whereby a retail seller or POU sells a portion of the electricity products procured under a long-term contract with one or more RPS-certified facilities to a second POU, regardless of the duration of the resale agreement, if the contract executed by the retail seller or first POU otherwise meets the requirements of a long-term contract.
3. Except as provided in in paragraphs (i) and (ii), a long-term contract includes a contract between a POU and a third party only if the contract between the POU and third party has a duration of at least 10 continuous years and the POU can provide documentation showing that the third party’s underlying procurement agreement(s) with the RPS-certified facilities supplying the procured electricity are contracts with duration(s) of at least 10 continuous years, ownership, or ownership agreements.”

A portion of the language of Subsection 3 above is contrary to P.U. Code Section 399.13(b), and contrary to the CPUC's interpretation and implementation of the long term contracting requirement adopted in D.17-06-026 (June 29, 2017). When a retail seller (including a POU) shows one or more contracts with a third party of at least 10 years in duration for eligible RPS resources, the length of the third party's contract(s) with upstream suppliers is not material. There is no need for the Commission to require information about the duration of so-called "underlying contracts" held by the retail seller's supplier, if the retail seller's contract(s) is/are at least 10 years in duration. The only inquiry into the "underlying contract(s)" is to confirm that the project(s) are eligible RPS resources.

The Commission should therefore omit, from Subsection 3 of Section 3204(d)(2)(A), the following language: ". . . and the POU can provide documentation showing that the third party's underlying procurement agreement(s) with the RPS-certified facilities supplying the procured electricity are contracts with duration(s) of at least 10 continuous years, ownership, or ownership agreements." The "underlying procurement agreements" upstream of the retail seller's agreements of at least 10 years in duration do not themselves have to be at least 10 years in duration.

By the same measure, the Commission should omit a portion of the Staff's explanation accompanying proposed Section 3207(c)(2)(G). Staff proposes that a POU should be required to provide, in its RPS annual procurement information for the prior calendar year, "a POU's procurement contracts with a third party, and the third party's contracts with RPS-certified facilities, as applicable." Statement at p. 67. The Staff states that "[t]his information will be used to verify contract duration and other information specific to the requirements of long-term procurement in accordance with section 3204(d)." *Id.* The Staff's explanation represents an unwarranted overreach of Commission authority. If a POU provides a contract with a third party for eligible RPS resources with a duration of at least 10 years, the POU's contract meets the "long-term" requirement. The only legitimate inquiry into the third party's "underlying contracts" is to determine whether the project(s) are "eligible" RPS resources.

II.

COMPLIANCE WITH P.U. CODE SECTION 399.13(b) IS BASED ON WHETHER THE RETAIL SELLER'S CONTRACT(S) FOR ELIGIBLE RPS RESOURCES IS/ARE AT LEAST 10 YEARS IN DURATION

In D.17-06-026, the CPUC stated: "[T]he primary model for the LT requirement is a retail seller's contract of at least 10 years in duration for eligible renewable resources" Decision at p. 21 (emphasis added). When a retail seller (or a POU's) contract has a term of at least 10 continuous years for eligible RPS resources, there is no further examination necessary as

to whether the retail seller (or POU) meets the “long term” contracting requirement. The statute is very clear: 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 its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.” Emphasis added. The phrase “its contracts of 10 years or more in duration” refers to the “retail seller’s” contracts.

As noted in the Staff’s May 7, 2020 “Initial Statement of Reasons,” “the Legislature did not declare its specific intent or purpose” in establishing the long-term procurement requirement. Statement at p. 40. The Staff continues: “However, the statute, as applicable to retail sellers, appears to identify a preference for the retail seller’s own long-term contracts.” *Id.* As acknowledged by Staff, the key inquiry under P.U. Code Section 399.13(b) is the duration of the retail seller (or POU’s) contract for the procurement of eligible RPS resources. If the retail seller (or the POU) provides a contract for eligible RPS resources with a third party that is at least 10 years in duration, that contract satisfies P.U. Code Section 399.13(b).

Reliance on the duration of the retail seller’s contract(s) is consistent with the CPUC’s interpretation, as set forth in D.17-06-026. The CEC Staff noted in its Notice of Proposed Action that “[i]n implementing the RPS requirements for POUs, the CEC generally seeks to maintain consistency between the requirements for retail sellers and POUs. The RPS is a statewide program, and the CEC supports a uniform implementation for POUs and retail sellers to the extent appropriate and practicable.” Notice at p. 9. To achieve consistency between the CPUC’s long term contracting rules and the CEC’s long-term contracting rules, the CEC must omit the language above from proposed Section 3204(d)(2)(A)(3).

The Staff seeks to justify the proposed language of Section 3204(d)(2)(A)(3) by stating that a “POU’s long-term contract [with an entity other than an RPS-certified facility, another POU, JPA, or retail seller] can count as long-term only if the entity has underlying long-term contract(s) or ownership agreements with the RPS-certified facilities supplying the electricity products.” Statement at p. 46. The Staff reasons: “If the electricity products were instead sourced from a portfolio of short-term contracts with RPS-certified facilities, this arrangement would not provide the long-term procurement commitment underpinning the long-term procurement requirement.” *Id.*

The Staff’s proposed language in Section 3204(d)(2)(A)(3) appears to be directed at the CPUC’s discussion, in D.17-06-026, concerning “repackaged” long term contracts for eligible RPS resources. With respect to “repackaged” long term contracts, however, the CPUC stated: “The use of repackaged long-term contracts is reasonable in the context of the new SB 350

requirements. Such contracts may be used to meet the LT requirement, so long as they are truly long term, i.e., the retail seller's contract for its repackaged share of the generation has a duration of at least 10 years." Decision at p. 21 (emphasis added).

In other words, if the retail seller's contract with a third party for eligible RPS resources is for a term of at least 10 years, the contract is not a "repackaged" contract at all. The retail seller's contract with the third party is a qualifying long term contract on its own.

III. THE EXPLANATION ACCOMPANYING PROPOSED SECTION 3207(c)(2)(G) MUST BE MODIFIED TO ALIGN WITH THE REQUIREMENTS OF P.U. CODE SECTION 399.13(b)

The Staff proposes to modify Section 3207(c)(2)(G) to require a POU to demonstrate that it meets the long-term contract requirement by producing not only its contract(s) for eligible RPS resources with third parties for at least 10 years in duration, but also the third party's "underlying" or upstream contracts for eligible RPS resources. The Staff explains that Section 3207(c)(2)(G) was modified to require a POU to provide documentation that "may include a POU's own contracts with RPS-certified facilities, a POU's procurement contracts with a third party, and the third party's contracts with RPS-certified facilities, as applicable." Statement at p. 67. The Staff notes that "[t]his information will be used to verify contract duration and other information specific to the requirements of long-term procurement in accordance with section 3204(d)." Id.

The Staff's proposal for documentation exceeds the information necessary for the Commission to determine whether a POU's contract meets the long-term contract requirement of P.U. Code Section 399.13(b). If a POU's contract with a third party for eligible RPS resources is for a term of at least 10 years, there is no justification for the Commission to require the POU to produce a "third party's contracts with RPS-certified facilities" for purposes of demonstrating that the POU has met the long-term contract requirement.

In addition, a POU's contract with a third party will not likely provide the POU with access to the third party's upstream contracts. These contracts likely have confidentiality provisions that severely restrict disclosure of the terms of the contracts. Moreover, there could be multiple counterparties between the third party and the RPS project developer. The only relevant information from a third party's upstream contracts is whether the project(s) are eligible RPS resources. For this reason, the explanation accompanying Section 3207(c)(2)(G) must be modified.

IV. CONCLUSION

P.U. Code Section 399.13(b) is very clear: 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 its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.” Emphasis added. The phrase “its contracts of 10 years or more in duration” refers to the “retail seller’s” contracts.

The Commission’s rules addressing a POU’s compliance with the long-term contracting requirement (and addressing the documentation required to verify compliance) must comport with the statute. The Commission must modify proposed Section 3204(d)(2)(A)(3) and the explanation accompanying Section 3207(c)(2)(G) to comply with P.U. Code Section 399.13(b).

Respectfully submitted,



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