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*Comment Received From: Shell Energy North America (US), L.P.
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Comments of Shell Energy North America (US), LP

Additional submitted attachment is included below.

Via CEC E-Comment System

August 5, 2020

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

Re: Docket No. 16-RPS-03: Comments of Shell Energy North America (US), L.P. on “15-Day Language - Modification of Regulations Specifying Enforcement Procedures” (POU Long Term RPS Contract Requirement)

To: California Energy Commission:

On July 21, 2020, the California Energy Commission (“CEC”) issued its “Notice of Availability of 15-Day Language - Modification of Regulations Specifying Enforcement Procedures” for the Renewables Portfolio Standard (“RPS”) program. The 15-Day Language addresses the CEC’s proposed “Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities.”

Shell Energy North America (US), L.P. (“Shell Energy”) provides its comments on the 15-Day Language, focusing on three provisions that address the long-term RPS contracting requirement for publicly owned electric utilities (“POU”). All three of the provisions are in proposed Section 3204(d)(2)(A)(3). All three of these proposed provisions should be deleted or modified because they are contrary to the statute the CEC seeks to implement. Specifically, these proposed provisions are contrary to P.U. Code Section 399.13(b).

The legal deficiencies identified below highlight a misreading of the “long term procurement” requirement in P.U. Code Section 399.13(b). The statute provides that the retail seller (POU) must have a long term contract for eligible RPS resources to meet the long term procurement requirement. This misreading of P.U. Code Section 399.13(b) is reflected in each of the three provisions discussed below.

A. Section 3204(d)(2)(A)(3)(ii): The 15-Day Language proposes that “long-term procurement” requires both a 10-year commitment between the POU (retail seller) and a third party supplier, and an upstream 10-year procurement commitment between the third party

supplier and the RPS-certified facilities. The proposed language of Section 3204(d)(2)(A)(3) is as follows:

3. A long-term contract includes a POU's contract or resale agreement with a third-party supplier, including a retail seller, if both of the following are satisfied:
 - i. The POU's contract or resale agreement with the third-party supplier has a duration of at least 10 continuous years.
 - ii. The RPS-certified facility or facilities supplying the electricity products in the long-term contract are owned by the third-party supplier or are subject to a long-term contract with a duration of at least 10 continuous years, and the POU, or the third-party supplier or other party on the POU's behalf, can submit documentation demonstrating this.

The proposed language improperly imposes an additional long-term RPS procurement obligation beyond the retail seller's long-term RPS procurement contract obligation. The proposed language requiring a long-term procurement contract(s) between a third party and eligible RPS facilities would impose a new RPS compliance requirement that is not reflected in P.U. Code Section 399.13(b) or in the CPUC's June 2017 implementing decision (D.17-06-026). This proposed language is contrary to statute and represents an unlawful overreach.

P.U. Code Section 399.13(b) addresses the retail seller's (POU's) long term contract requirement for eligible RPS resources. The statute provides as follows: "[A]t 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, not a third party's upstream contract(s) with an RPS project developer.

The statute requires the POU (the retail seller) to have a long term contract for eligible RPS resources. The third party supplier that has a long term contract with the POU does not also have to have a long term contract for RPS supplies. The 15-day language is inconsistent with the statute and presents the risk of a legal challenge. The CEC may not lawfully impose an additional requirement that is not reflected in the applicable statute. The language of Section 3204(d)(2)(A)(3) should be deleted.

There is no legitimate policy reason to require the POU's upstream third party supplier to have a long term RPS procurement contract. The increased RPS procurement target under SB 350 and SB 100 provide a compelling incentive for developers to pursue new and/or repowered RPS resources. The increased RPS procurement target, in and of itself, provides a strong incentive for the development of RPS resources. The increased RPS procurement target under SB 350 and SB 100 will continue to encourage RPS resource development through 2030 and beyond.

Moreover, allowing the retail seller's (POU's) counterparty to provide a portfolio of eligible RPS supplies through a combination of new, repowered and existing projects will increase the third party's procurement flexibility and reduce the cost of a retail seller's RPS procurement, while maintaining the commitment necessary to support development of RPS projects. Whether the POU's third party supplier enters into long-term agreements or short-term agreements with RPS developers, it is the procurement obligation (target) of the downstream POU (and other retail sellers) that will drive expanded RPS resource development.

For these reasons, Section 3204(d)(2)(A)(3)(ii) should be stricken from the proposed regulations.

B. Section 3204(d)(2)(A)(1): The proposed language of Section 3204(d)(2)(A)(1) provides that a "long-term contract includes a contract between a joint powers agency and a POU, if the joint powers agency has executed a contract on behalf of the POU that otherwise meets the requirements of a long-term contract and the POU or joint powers agency on the POU's behalf can provide documentation demonstrating this."

The proposed language of Section 3204(d)(2)(A)(1) is unclear and must be modified. The 15-day language does not indicate what is meant by a joint powers agency executing a contract "on behalf of" a POU. The language does not provide, for example, that the joint powers agency is acting as an "agent" for and on behalf of the POU.

Only if the joint powers agency is acting as the POU's agent (meaning that the POU has legal title and is otherwise legally responsible for the long term contract) is the provision consistent with P.U. Code Section 399.13(b). If the joint powers agency is not acting as the POU's agent (meaning that the POU does not have legal title and/or legal responsibility for the long term contract), this provision does not comply with P.U. Code Section 399.13(b).

P.U. Code Section 399.13(b) provides that the retail seller (POU) must have a long term RPS procurement contract for RPS resources. The 15-day language, if adopted, would only require the joint powers agency, and not the POU, to have the long term contract. This language is contrary to the statute. If the POU is only a "third party beneficiary" of the JPA's long term

RPS contract, the POU does not have the long term RPS contract obligation that is required of a retail seller under P.U. Code Section 399.13(b).

Furthermore, an interpretation of P.U. Code Section 399.13(b) that allows a joint powers authority, but not another entity, to hold a long term RPS contract “on behalf of” a POU (and enable the POU to meet the long term contract requirement) would place other load serving entities (“LSE”) and suppliers at a competitive disadvantage in the RPS procurement market. This provision, if adopted, would be unlawfully unduly discriminatory. An agency may not interpret a statute in a manner that would unduly discriminate against one class of stakeholders. The language of this proposed provision must be modified or deleted.

C. Section 3204(d)(2)(A)(2): Section 3204(d)(2)(A)(2) states that “[a] long-term contract includes a resale agreement between POUs, whereby a 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 first POU otherwise meets the requirements of a long-term contract and the second POU, or another party on the second POU’s behalf, can provide documentation demonstrating this.” This proposed provision is contrary to P.U. Code Section 399.13(b) and must be modified or eliminated.

This provision, if adopted, would allow a short-term RPS contract between two POUs to count as a long-term RPS contract, provided that the upstream contract involving one of the POUs is a long-term contract. This proposed provision does not require the POU (the retail seller with the RPS procurement obligation) to have a long term contract for RPS resources. This provision is inconsistent with the statute.

Furthermore, Section 3204(d)(2)(A)(2) is unduly discriminatory because it would allow an RPS-obligated POU to rely on a short term arrangement with another POU (but not with any other supplier) to satisfy the POU’s long term contract obligation. This proposal, if adopted, would unjustly favor POUs and disfavor other suppliers of RPS resources.

In addition, this proposal, if adopted, would unduly discriminate against LSEs that must meet the CPUC’s requirements in the administration of P.U. Code Section 399.13(b). In accordance with D.17-06-026, all LSEs subject to CPUC oversight must have long term RPS procurement contracts to meet the 65 percent long term RPS contract requirement. If a POU were able to rely on short term contracts to meet its long term RPS procurement obligation, the POU would enjoy an undue advantage over other LSEs.

For all the foregoing reasons, Section 3204(d)(2)(A)(2) must be stricken.

D. Conclusion

Three provisions of proposed Section 3204(d)(2)(A)(3) must be modified or deleted. First, Section 3204(d)(2)(A)(3)(ii) must be deleted. P.U. Code Section 399.13(b) does not authorize the CEC to impose a requirement that a retail seller's (POU's) third party supplier must have a long term RPS procurement contract.

Second, Section 3204(d)(2)(A)(1) must be modified or deleted. Language providing that a "long-term contract includes a contract between a joint powers agency and a POU, if the joint powers agency has executed a contract on behalf of the POU that otherwise meets the requirements of a long-term contract" (emphasis added) does not ensure that the POU (the retail seller) has a long term RPS contract.

Third, Section 3204(d)(2)(A)(2) must be deleted. This provision, if adopted, would allow a POU to rely on short-term RPS contracts (with another POU) to meet its long-term RPS procurement obligation, provided that the POU's upstream contract is a long-term contract. This proposed provision does not require the POU (the retail seller with the RPS procurement obligation) to have a long term contract for RPS resources, which is inconsistent with P.U. Code Section 399.13(b). Moreover, this provision, if adopted, would improperly place POU's at a competitive advantage compared to LSEs that must meet the CPUC-imposed RPS compliance requirements.

Thank you for your consideration of these comments.

Very truly yours,



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