

DOCKETED

Docket Number:	16-RPS-03
Project Title:	Amendments to Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities
TN #:	235950
Document Title:	Shell Energy North America (US), LP Comments - on Staff's Third 15-Day Language
Description:	N/A
Filer:	System
Organization:	Shell Energy North America (US), L.P.
Submitter Role:	Public
Submission Date:	12/15/2020 3:49:26 PM
Docketed Date:	12/15/2020

Comment Received From: Shell Energy North America (US), L.P.
Submitted On: 12/15/2020
Docket Number: 16-RPS-03

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

Additional submitted attachment is included below.

Via CEC E-Comment System

December 15, 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 Staff's Third 15-Day Language

To: California Energy Commission:

On December 1, 2020, Lead Commissioner Karen Douglas issued a "Notice of New Public Hearing Date and Notice of Availability of Third 15-Day Language" in the above-referenced proceeding. The December 1 Notice provides additional proposed language for the California Energy Commission's ("Commission") proposed "enforcement procedures" for publicly owned electric utilities ("POU") under the Renewables Portfolio Standard ("RPS") program.

The third 15-Day Language posted on December 1, 2020 reflects an unduly complex, unsupported, and legally indefensible interpretation of the "long term procurement requirement" set forth in P.U. Code Section 399.13(b). The Staff's proposed language should be rejected. The Commission should take a step back and align the language of its proposed regulation with the language of the statute.

A. Introduction

Shell Energy North America (US), L.P. ("Shell Energy") has provided comments on earlier versions of the Staff's proposed 15-Day Language.¹ Shell Energy will not repeat those comments here. However, its concerns are not mitigated by the Staff's proposed third 15-Day Language. To the contrary, this most recent iteration of the proposed language exacerbates the problems of the statutory violations identified by Shell Energy in its earlier comments.

¹ Shell Energy previously provided comments in this Docket on August 5, 2020 and November 13, 2020.

The Staff's proposed revised Section 3204(d)(2)(B)(2)(ii) would require a third party supplier selling RPS energy to a POU under a long term contract to supply this energy from an upstream contract with a **remaining** term of at least 10 years. The Staff's proposed language, if adopted, would diminish the value of (and potentially strand) existing long term RPS contracts, create confusion and uncertainty among retail sellers as a result of conflicting Commission and CPUC rules, present the possibility of a legal challenge, and increase costs for California ratepayers. The Staff's proposed 15-Day language is not supported by P.U. Code Section 399.13(b) and should be stricken.

B. The Staff's New Proposed 15-Day Language Would Devalue Existing Long-Term RPS Contracts and Increase Costs to Customers

In these comments, Shell Energy focuses on the Staff's proposed revised Section 3204(d)(2)(B)(2)(ii). The proposed language addresses the required elements of a POU's long term procurement contract or resale agreement with a joint powers agency or third-party supplier. Staff proposes (Section 3204(d)(2)(B)(2)(i)) that a POU's agreement with a joint powers agency or third-party supplier must have a duration of at least 10 continuous years. In addition, proposed Section 3204(d)(2)(B)(2)(ii) provides that "[t]he RPS-certified facility or facilities supplying the electricity products in the long-term contract [must be] owned by the joint powers agency or third-party supplier or [must be] subject to a long-term contract with a **remaining** duration of at least 10 continuous years" Emphasis added.

As Shell Energy noted in its earlier comments, P.U. Code Section 399.13(b) establishes requirements for a retail seller's (POU's) RPS procurement contracts. The language of P.U. Code Section 399.13(b) does not provide the Commission with authority to dictate the terms and conditions of **upstream** third party suppliers' RPS procurement contracts. For this reason alone, proposed Section 3204(d)(2)(B)(2)(ii) should be stricken.

An additional concern raised by proposed Section 3204(d)(2)(B)(2)(ii) is that the proposed language, if adopted in its current form, would not only require an upstream supplier's RPS contract to have a duration of at least 10 continuous years, but would also require the upstream supplier's RPS contract to have a **remaining** duration of at least 10 years. This additional requirement, if adopted, would improperly diminish the value of existing long term RPS procurement contracts held by RPS developers, suppliers, and load-serving entities ("LSE"). A similar proposal was expressly and emphatically rejected by the CPUC in its June 2017 decision (D.17-06-026) implementing P.U. Code Section 399.13(b).

In the proceeding leading up to D.17-06-026, one party proposed that to comply with P.U. Code Section 399.13(b), an LSE should be required to rely on contracts signed (or generation facilities entering into commercial operation) on or after January 1, 2021. Rejecting this proposal, the CPUC was very clear: “It is not reasonable to interpret Section 399.13(b) as a “restart” button in 2021 for long-term procurement when SB 350 continues to increase the percentage of retail sales that must come from RPS-eligible resources.” The CPUC continued: **“Excluding existing long-term contracts would reduce the value of the procurement from those contracts and . . . create a disadvantage for retail sellers and their customers by undermining the value of customers’ pre-existing investments in long-term RPS contracts made in accordance with the program rules in effect at the time.”** Decision at p. 17 (emphasis added). The CPUC continued further: **“We decline to create such a situation; long-term contracts that otherwise comply with RPS requirements may be used for compliance regardless of the date they were originally signed.”** *Id.* (emphasis added).

As shown in the above language from D.17-06-026, the Staff’s proposed requirement for upstream supplier contracts would create a further inconsistency between the Commission’s requirements for POU’s long-term RPS procurement agreements, and the CPUC’s requirements for LSEs’ long-term RPS procurement agreements. This additional inconsistency, if allowed to stand, would create unnecessary confusion and uncertainty in the RPS procurement market among POU’s, LSEs, and RPS project developers. Different long term RPS contract requirements imposed by the CPUC and by this Commission could lead to legal challenges of the Commission’s rules; the resulting uncertainty could also discourage investment in RPS resources.

The increased RPS procurement target under SB 350 and SB 100, and the 65 percent long term procurement requirement, in combination, provide a compelling incentive for developers to pursue new and/or repowered RPS resources, and to enter into long term contracts. Allowing a POU’s supplier to provide a **portfolio** of eligible RPS supplies through a combination of new, repowered and existing projects, and through a combination of long- and short-term contracts, increases the third party’s procurement flexibility and reduces the cost of a POU’s RPS procurement. The Commission should not try to micro-manage the upstream contract terms through which POU’s obtain RPS supplies to meet the long term procurement requirement. POU’s will not be able to minimize the costs passed on to their customers if they are bound by the Staff’s proposed language.

It would be unwise and unduly costly (and contrary to P.U. Code Section 399.13(b)) to require every POU’s upstream supplier to have a contract with a remaining term of at least 10 years. The Staff’s proposed language, if adopted, would likely strand some existing RPS resources and dramatically increase the cost of RPS procurement for POU’s and their customers. This proposed language should be eliminated from the proposed regulation.

C. Conclusion

P.U. Code Section 399.13(b) does not authorize the Commission to require a POU's third party supplier to have a long term RPS procurement contract. In addition, neither the statute nor the key CPUC implementing decision authorizes the Commission to require an upstream supplier to have a long term RPS contract with a **remaining** term of at least 10 years.

The Staff's proposed language interpreting and implementing P.U. Code Section 399.13(b) should be rejected. The proposed 15-Day Language is discriminatory, attempts to change the statute without legislative support, is inconsistent with the CPUC's interpretation, risks devaluing existing long term RPS procurement contracts, is harmful to ratepayers, and presents the likelihood of a legal challenge with consequent uncertainty. The Staff's proposed language should be eliminated from the proposed regulation.

Thank you for your consideration of these comments.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John W. Leslie".

John W. Leslie
of
Dentons US LLP

Attorneys for Shell Energy North America (US), L.P.