

02-REN-1038

DOCKET

11-RPS-01

DATE MAR 23 2012

RECD. MAR 23 2012

STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

In the matter of:

Developing Regulations and Guidelines for the
33 Percent Renewables Portfolio Standard

and

Implementation of Renewables Investment Plan
Legislation

Docket No. 11-RPS-01

Docket No. 02-REN-1038

**COMMENTS OF SHELL ENERGY
NORTH AMERICA (US), L.P. ON
NOTICE TO CONSIDER SUSPENSION
OF THE RPS ELIGIBILITY GUIDELINES
RELATED TO BIOMETHANE**

John W. Leslie
McKenna Long & Aldridge LLP
600 West Broadway, Suite 2600
San Diego, California 92101
Tel: (619) 699-2536
Fax: (619) 232-8311
E-Mail: jleslie@mckennalong.com

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

Date: March 23, 2012

STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

In the matter of:

Developing Regulations and Guidelines for the
33 Percent Renewables Portfolio Standard

and

Implementation of Renewables Investment Plan
Legislation

Docket No. 11-RPS-01

Docket No. 02-REN-1038

**COMMENTS OF SHELL ENERGY
NORTH AMERICA (US), L.P. ON
NOTICE TO CONSIDER SUSPENSION
OF THE RPS ELIGIBILITY GUIDELINES
RELATED TO BIOMETHANE**

Subject: RPS Proceeding

In accordance with the instructions issued by the California Energy Commission (“Commission”) on March 16, 2012, Shell Energy North America (US), L.P. (“Shell Energy”) submits its comments in opposition to the “Notice to Consider Suspension of the RPS Eligibility Guidelines Related to Biomethane.”

The Commission should not suspend the biomethane provisions of the RPS Guidebook. Suspension would disrupt existing contracts, shut down ongoing negotiations for long-term contracts, create an immediate conflict between this Commission’s rules and the greenhouse gas (“GHG”) emissions reduction regulations adopted by the Air Resources Board (“ARB”), discourage investment in in-State and out-of-State biomethane production facilities, reduce the

reliability and availability of the State's renewable supply portfolio, and increase costs to ratepayers. If the Commission seeks to maintain the status quo while the Legislature considers possible changes to the RPS statute, the Commission should leave the existing regulations alone.

If the Commission decides to suspend the biomethane provisions of the RPS eligibility guidelines, the suspension should not become effective until July 1, 2012, at the earliest. Prospective implementation of the suspension will allow parties to complete ongoing negotiations for the purchase of biomethane to support applications for RPS certification. In addition, the terms and conditions of the suspension should be modified in order to "grandfather" all quantities of biomethane under contracts that are or have been relied upon in applications for RPS certification (or pre-certification) that are filed before July 1, 2012.

I.

INTRODUCTION

Shell Energy is a wholesale energy marketing and trading company that serves markets throughout the United States. Shell Energy is also an Energy Service Provider ("ESP") in California. Shell Energy sells natural gas, power and environmental products, including wind, solar energy and biomethane, to wholesale and retail customers in the State.

On September 20, 2011, in this proceeding, Shell Energy Vice President Thomas Ingwers addressed the Commission at a workshop focused on the use of biomethane delivered via pipeline under the RPS program. Shell Energy submitted written comments on September 30, 2011. Like most other participants in the workshop process, Shell Energy noted that because SBX1 2 made no changes to the terms and conditions under which biomethane may be used for RPS eligibility, there is no statutory basis to change the biomethane provisions of the RPS eligibility guidelines. Circumstances have not changed since that time. Legislative

consideration of possible changes to the biomethane provisions of the RPS statute does not justify suspension of the biomethane provisions of the RPS Eligibility Guidebook.

The March 16 Notice states that suspension of the biomethane provisions would be implemented to “provide additional time to evaluate the RPS eligibility of biomethane as a result of [SBX1 2].” Notice at p. 3. The Commission acknowledges, however, that SBX1 2 does not change the law respecting the RPS eligibility of biomethane. *Id.* Moreover, SBX1 2 does not alter the legislature’s determination that electricity products are “differentiated by their impacts on the operation of the grid in supplying electricity” P.U. Code Section 399.16(a).

The Commission thoughtfully developed rules for determining the RPS eligibility of electric generation facilities that use biomethane based on the RPS statute as it exists today. Individual legislators’ perusal of the biomethane provisions of the RPS law, which may or may not lead to enacted changes, provides no justification for the Commission to suspend the existing regulations. Suspension of the biomethane provisions would improperly and unlawfully interfere with existing contracts and would effectively prejudge the outcome of the legislative process.

II.

SUSPENSION OF THE BIOMETHANE PROVISIONS OF THE RPS ELIGIBILITY GUIDELINES WOULD INTERFERE WITH EXISTING CONTRACTS

The Notice states that by suspending the biomethane provisions, the Commission “hopes to protect program participants from prematurely entering into biomethane-related transactions that could be subject to different RPS eligibility rules established by the Energy Commission or enacted by the Legislature.” Notice at p. 4. Rather than “protect” RPS program participants, however, the Commission’s proposed suspension of the biomethane provisions would interfere with existing contracts and discourage investment in biomethane production, thereby reducing the availability of this limited source of RPS supply. Suspension of the biomethane provisions of

the RPS Eligibility Guidebook would devalue existing contracts for the purchase of biomethane. Diminishing the value of existing biomethane transactions constitutes an impermissible impairment of contracts and an unlawful “taking” of private property.

LSEs and their suppliers relied upon the Commission’s existing RPS eligibility guidelines when they entered into contracts for the purchase of biomethane for RPS compliance. These market participants have continued to rely upon the Commission’s RPS guidelines as they negotiate contracts for the purchase of biomethane for RPS-eligible facilities. By diminishing the value of existing biomethane contracts, the Commission would engage in the unlawful confiscation of a valuable property right without due process, without just compensation, and without justification. By curtailing ongoing contract negotiations, the Commission would interfere with parties’ opportunities to utilize existing, RPS-eligible resources for RPS compliance as permitted by the current statute.

III.

IF A SUSPENSION IS IMPOSED, THE TERMS OF THE SUSPENSION MUST BE MODIFIED

The “grandfathering” provisions set forth in the March 16 Notice (see p. 5) do not adequately protect existing contractual rights because these provisions do not honor all existing biomethane contracts. For example, if a biomethane production facility that is relied upon to provide biomethane quantities under a contract was not identified in the generator’s application for RPS certification, or if a change in the biomethane supply were to arise during the term of the contract, the new (or replacement) biomethane supply would not be “grandfathered” because under the proposed language in the Notice, no amendments would be considered by the Commission during the term of the suspension. In addition, a suspension would quash current

negotiations between biomethane producers and LSEs for the purchase of biomethane to be used in RPS-eligible generation facilities.

If the Commission decides to suspend the biomethane provisions of the RPS guidelines, the suspension should not be placed into effect immediately. In addition, the terms of the suspension should be carefully limited to ensure that the quantities under existing biomethane contracts that are relied upon in an application for RPS certification are honored for the duration of the contract.

If a suspension is imposed, Shell Energy recommends the following:

1. The suspension should become effective no earlier than July 1, 2012. Delaying the effective date of the suspension will allow market participants currently engaged in negotiations for the purchase of biomethane to complete their negotiations, execute a contract, and present the contract as support for RPS eligibility in an application for RPS certification. The Commission should not curtail existing good faith negotiations. Negotiations for long-term biomethane procurement contracts take many months to complete. Market participants should be allowed to conclude their negotiations. A ten-day notice of a suspension is unreasonable.
2. The suspension should not apply to the total quantities under any biomethane procurement contract relied upon in an application for RPS certification submitted prior to the effective date of the suspension. Whether or not the biomethane production facility identified in the contract has commenced commercial operation, and whether or not the biomethane production facility has achieved production of the maximum quantities under the contract, all quantities agreed to between the buyer and the seller under an existing contract should be “grandfathered” if the application for RPS certification was submitted prior to the effective date of the suspension. There should be no limit on the grandfathered eligible volume, up to the

maximum quantity in the contract. Grandfathering should also apply to any replacement quantity from another facility that is otherwise compliant under the existing RPS guidelines but that may not be identified in the original RPS certification application. In other words, amendments to the original application for RPS certification should continue to be considered and accepted during the term of the suspension in order to honor the terms and conditions in the grandfathered contract.

3. Under existing contracts, parties to the contract should also have the ability to capture any increased efficiencies realized by the contracted supply. For example, if an LSE has contracted for the output of a biomethane supply source and the supply source has employed new technologies or taken other action that results in increased supply, the contract holders should have the opportunity to capture the additional quantities under an amendment, and the revised terms and conditions should be honored regardless of any active suspension.

These proposed revisions to the terms of the Commission's proposed suspension are intended to ensure that the Commission honors existing contracts and respects the legitimate expectations of the owners and operators of RPS-eligible generation facilities that relied upon the biomethane provisions of the Commission's existing regulations when they entered into negotiations (and contracts) for the purchase of RPS-eligible biomethane fuel. Market participants are entitled to rely upon the Commission regulations that existed at the time they commenced their contract negotiations. If a suspension is imposed, the proposed terms of the suspension must be modified to honor all biomethane quantities delivered under grandfathered contracts.

IV.

SUSPENSION OF THE BIOMETHANE PROVISIONS WOULD IMPROPERLY INCREASE COSTS TO RATEPAYERS

Suspension of the RPS eligibility guidelines related to biomethane would increase costs to ratepayers. One of the legislative objectives of SBX1 2 is to “promote[] stable retail rates for electric service.” P.U. Code Section 399.11(b)(5). Increased customer rates is a job-killer for California. Businesses will leave the State rather than subsidize an RPS program that drives up the costs to participants.

First, biomethane-fueled generation is among the least costly renewable supplies. Suspension of the RPS provisions applicable to biomethane would require LSEs to replace low-cost biomethane-fueled generation with more expensive renewable supplies in their RPS portfolios. Suspension of the biomethane provisions would benefit higher cost wind and solar generators (including generators located out-of-State), but at the expense of California ratepayers.

Second, one of the many benefits of biomethane-fueled generation is that it can provide both a baseload supply and a peak period supply through the use of gas storage. Replacing biomethane-fueled generation with intermittent renewable resources such as solar and wind generation would increase the need for “flexible capacity” procurement, as proposed by the CAISO in proceedings before the CPUC (see R.11-10-023). This, in turn, would increase the overall cost of renewable energy integration. The significant cost of flexible capacity, whether provided by the CAISO or by LSEs, would add to the costs borne by ratepayers.

Third, as noted in the comments Shell Energy submitted in September, biomethane is in relatively short supply compared with other renewable products. There is no potential for out-of-State biomethane to “dominate” California’s renewable market. Shell Energy estimates that the

maximum quantity of out-of-State biomethane that economically can be purchased for use in California RPS-eligible generation facilities over the next three-to-five years is approximately 50,000 MMBtu per day. Based on an average heat rate of 7.2 MMBtu per MWh, this available out-of-State biomethane translates to approximately 300 MW of capacity on a 24-hour, 7-day/week basis.

The 33 percent RPS procurement obligation for all LSEs and publicly-owned utilities (“POU”) subject to the RPS obligation will require approximately 10,000 MW of renewable capacity by 2020. The maximum penetration of out-of-State biomethane in the California RPS market, therefore, is approximately three percent.

At a time of economic stress in this State, ratepayers are already bearing significant added costs based on the RPS procurement obligation imposed on LSEs. The Legislature recognized the advantage of providing access to low cost renewable products as part of the State’s overall RPS portfolio in order to minimize RPS costs to ratepayers. Biomethane presents one low cost alternative, as well as a complementary renewable resource that augments the existing portfolio of wind and solar resources. In the absence of a statutory change, the Commission should refrain from limiting biomethane producers’ participation in the RPS market.

V.

SUSPENSION OF THE BIOMETHANE PROVISIONS WOULD CREATE A CONFLICT BETWEEN ARB REGULATIONS AND COMMISSION REGULATIONS

Suspension of the RPS eligibility guidelines related to biomethane would conflict with the ARB’s adopted regulations for the cap and trade program and the Low Carbon Fuel Standard (“LCFS”) program. The ARB’s GHG emission reduction programs incorporate provisions that allow biomethane to be used to reduce GHG emissions. Under the cap and trade regulations,

electric generation fueled with eligible biomethane is exempt from the GHG “compliance” obligation; reporting protocols have also been adopted in order to account for biomethane as a renewable fuel. Similarly, under the LCFS, the relatively low carbon intensity (“CI”) of biomethane in transportation fuels (compressed natural gas and liquefied natural gas) produces “credits” for regulated parties that use biomethane in their fuel mix. Both the cap and trade program and the LCFS program recognize the value of biomethane in reducing GHG emissions.

The ARB’s GHG emissions reduction programs encourage the use of biomethane in electric generation and in transportation. Suspension of this Commission’s RPS eligibility guidelines related to biomethane would create conflicting State policies with respect to RPS compliance and GHG emission reduction compliance.

VI.

BIOMETHANE-FUELED GENERATION MEETS THE GOALS OF SBX1 2, INCLUDING THE REDUCTION OF GHG EMISSIONS

The March 16 Notice states that “[i]t is not clear whether, or to what extent,” the current RPS guidelines related to biomethane advance the Legislature’s environmental goals in SBX1 2. Notice at p. 3. In particular, the Notice questions whether the RPS Guidebook’s biomethane provisions promote the displacement of in-State fossil fuel consumption, reduce air pollution within the State, and/or help reduce GHG emissions associated with electric generation. Id.

The Notice fails to acknowledge that SBX1 2 identifies additional objectives of the RPS program, including renewable supply diversity, adding new electric generation in the WECC service area, promoting stable retail rates for electric service, assistance with meeting the State’s resource adequacy requirements, and contributing to the safe and reliable operation of the electrical grid. See P.U. Code Section 399.11(b). The statute provides that “each of [these objectives] independently justifies the program.” Each of these objectives is met through the use

of biomethane-fueled generation. Moreover, because contracts for the purchase of biomethane are almost exclusively long-term (10 – 20 year) contracts, these transactions are consistent with the Legislature’s goal to maximize RPS procurement under contracts of at least ten years’ duration. See P.U. Code Section 399.13(b).

With respect to the “environmental” goals of SBX1 2, the displacement of natural gas with biomethane in electrical generation facilities contributes significantly to the reduction of GHG emissions and associated air pollution. Whether the biomethane is produced in-State or out-of-State, reduced GHG emissions benefit all Californians - - indeed all North American citizens. Whether biomethane is injected into a pipeline in California or in another state, California citizens benefit from the displacement of fossil fuels in electric generation. Global warming is not limited to California. Encouragement of the biomethane industry throughout North America will reduce GHG emissions for everyone.

VII.

BIOMETHANE DELIVERED BY PIPELINE IS TRACKED AND VERIFIED UNDER THE EXISTING REGULATIONS.

The Notice states that for biomethane delivered by pipeline, “it may be difficult to verify that biomethane is in fact injected into the natural gas pipeline system and sold to the designated power plants in the quantities represented by the producers and power plant operators.” Notice at p. 4. This statement is not correct. The physical delivery requirements of the RPS Guidebook ensure that the reported quantity of biomethane produced at an identified source is transported from the source to the specified electric generator facility. See Guidebook at p. 18. The Commission conducts periodic audits to ensure that the quantities of biomethane claimed for RPS compliance match the supply delivered into a pipeline and the supply redelivered to the

RPS-eligible generator facility. Shell Energy has provided production and delivery information to verify its deliveries of biomethane to California generation facilities.

The Commission's regulations acknowledge that biomethane that is injected into the pipeline system is commingled with other gas supplies in the transportation stream. Because the quantity delivered into the pipeline system is matched with the quantity consumed by the electric generator facility, the Commission's verification process ensures that any biomethane used for RPS compliance displaces natural gas in the pipeline system, thereby reducing GHG emissions associated with gas-fired generation. Stated concerns about "verification" do not justify suspension of the biomethane provisions of the RPS guidelines.

VIII.

CONCLUSION

Suspension of the biomethane provisions of the RPS Guidebook would improperly interfere with existing contracts, disrupt the current renewable market, and increase costs to ratepayers. The Commission should refrain from suspending or modifying the existing RPS eligibility guidelines with respect to biomethane pending any legislative action with respect to the RPS eligibility of biomethane.

If, however, the Commission suspends the RPS eligibility guidelines related to biomethane, the suspension must be delayed until July 1, 2012, and the suspension must be limited so that it does not affect the quantities delivered under existing biomethane procurement contracts. Biomethane contracts entered into based on the current RPS eligibility rules should continue to be honored in full for RPS compliance.

Shell Energy appreciates the opportunity to submit these written comments.

Respectfully submitted,



John W. Leslie
McKenna Long & Aldridge LLP
600 West Broadway, Suite 2600
San Diego, California 92101
Tel: (619) 699-2536
Fax: (619) 232-8311
E-Mail: jleslie@mckennalong.com

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

Date: March 23, 2012

101835618.3