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CALIFORNIA ENERGY COMMISSION

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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

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**COMMENTS OF SHELL ENERGY  
NORTH AMERICA (US), L.P. ON  
PROPOSED CHANGES TO THE  
RPS ELIGIBILITY GUIDEBOOK**

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Date: March 25, 2013

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Subject: RPS Proceeding

In accordance with the instructions provided in the “Notice” issued by the California Energy Commission (“Commission”) Staff on March 4, 2013, Shell Energy North America (US), L.P. (“Shell Energy”) submits its comments on the Staff’s proposed Seventh Edition of the RPS Eligibility Guidebook, which was posted on March 11, 2013. Shell Energy’s written comments complement the remarks provided by Marcie Milner, Shell Energy’s Vice President, Regulatory Affairs, at the March 14 workshop.

**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. Shell Energy sells biomethane to utilities and other entities that use biomethane to produce RPS-eligible energy.

Shell Energy applauds the Commission Staff's efforts to incorporate, in the draft Seventh Edition, changes that are required as a result of AB 2196. The proposed changes that are reflected in the draft Seventh Edition highlight key issues that must be addressed by the Commission. In view of the accelerated schedule that has been adopted in this matter, Shell Energy requests that the Commission Staff issue a revised draft for comment prior to consideration by the Commission.

A number of issues in the draft Seventh Edition require further consideration. For example, the Staff must address proposed language in the draft Seventh Edition that is inconsistent with the language of AB 2196. In particular, the Staff must modify proposed language that would improperly impose restrictions on the RPS eligibility of generation fueled by biomethane that is delivered by interstate pipeline, and/or biomethane delivered to out-of-State generation facilities. The Staff also must address implementation of the proposed "verification and reporting" protocols to ensure that load serving entities ("LSEs") are required to provide only that information that is useful and necessary to determine RPS eligibility. In addition, the Staff must make the definition of "Station Service" in the Guidebook consistent with the FERC definition.

## **II.**

### **DISCUSSION**

Shell Energy's comments on the draft Seventh Edition address the following areas of concern:

**A. The Proposed Definition of a “Common Carrier Pipeline” Is Not Consistent with AB 2196 or its Companion Statute AB 1900**

The definition of a “common carrier pipeline” is a threshold issue that addresses the scope of the restrictions limiting the use of biomethane under AB 2196. In the proposed “Glossary of Terms” (p. 120), a “common carrier pipeline” is defined as “a gas conveyance pipeline that is owned or operated by a utility or gas corporation, excluding a dedicated pipeline.” To be consistent with AB 2196 and its companion statute AB 1900, the definition of a common carrier pipeline must include the phrase “located in California.”

As used throughout the proposed revisions to the “Biomethane” provisions of the draft Seventh Edition (Section II.C) (pp. 14-28), the Staff interprets “common carrier pipeline” to include both “intrastate” pipelines and “interstate” pipelines, whether or not the pipelines are located in California. The Staff’s proposed expansive definition of a common carrier pipeline unlawfully subjects biomethane delivered by interstate pipeline, and biomethane delivered to out-of-State generation facilities, to the restrictions of P.U. Code Section 399.12.6(a) and (b).

AB 2196 amends Pub. Res. Code Section 25741(a), which addresses the eligibility requirements for a “renewable electrical generating facility.” Section 25741(a) is amended to include a new subsection (4). This new subsection provides as follows:

(4) If eligibility of the facility is based on the use of landfill gas, digester gas, or another renewable fuel delivered to the facility through a common carrier pipeline, the transaction for the procurement of that fuel, including the source of the fuel and delivery method, satisfies the requirements of Section 399.12.6 of the Public Utilities Code and is verified pursuant to the accounting system established by the commission pursuant to 399.25 of the Public Utilities Code, or a comparable system, as determined by the commission.

Emphasis added.

In accordance with Pub. Res. Code Section 2574(a)(4), only if the biomethane is delivered through a “common carrier pipeline” must the transaction for the procurement of the biomethane (and delivery method) satisfy the requirements of P.U. Code Section 399.12.6 (a) or

(b) to be RPS-eligible. If the biomethane is not delivered through a common carrier pipeline, subsection (4) of Pub. Res. Code Section 25741(a), and P.U. Code Section 399.12.6(a) and (b), do not apply to a determination of RPS eligibility.

Whether or not certain legislators may have intended for AB 2196 to impose broad limits on the RPS eligibility of generation fueled by out-of-State biomethane, the statutory language does not address biomethane delivered over interstate pipelines, or biomethane delivered to out-of-State generation facilities. In AB 1900, the companion bill to AB 2196, a “common carrier pipeline” is defined as “a gas conveyance pipeline, located in California, that is owned or operated by a utility or gas corporation, excluding a dedicated pipeline.” See Health and Safety Code Section 25420(f) (emphasis added). The definition of a common carrier pipeline in AB 1900 does not include a gas pipeline that is located outside California, and does not include an interstate pipeline. This definition of a common carrier pipeline applies equally under AB 2196.

In addition, even as defined by the Staff, a pipeline that operates outside the State is neither a “utility” nor a “gas corporation,” within the meaning of the Public Utilities Code. Under P.U. Code Section 222, a “gas corporation” is defined (in pertinent part) as follows:

“Gas corporation” includes every corporation or person owning, controlling, operating, or managing any gas plant for compensation within this state, . . . .

Emphasis added. Interstate pipelines, and intrastate pipelines that operate outside the State, are not “gas corporations” within the meaning of P.U. Code Section 222. Consequently, these pipelines also are not “public utilities” within the meaning of P.U. Code Section 216(a) and (c). In fact, interstate pipelines regulated by FERC are not “common carrier pipelines” under any definition of the term.

As provided in AB 1900, the limitation in Pub. Res. Code Section 25741(a)(4) only applies to biomethane that is delivered to a generation facility through a California in-State pipeline. This means that an electric generation facility that is fueled by biomethane that is

delivered to the generation facility directly from an interstate pipeline is not subject to the requirements of P.U. Code Section 399.12.6 (a) and (b). Moreover, any biomethane-fueled electric generation facility that is located outside California is not (nor should it be) subject to the eligibility requirements in P.U. Code Section 399.12.6 (a) and (b), because the biomethane is not delivered to the facility through a “common carrier pipeline.”

The Staff must modify the definition of a “common carrier pipeline” to be consistent with applicable law. The Staff must clarify that when P.U. Code Section 399.12.6 (a) and (b) do not apply, the RPS eligibility of biomethane-fueled generation is to be determined based on the requirements of the Commission’s RPS Eligibility Guidebook in effect when the biomethane contract is/was executed.

**B. RPS Certified (or Pre-Certified) Facilities with a Biomethane Contract Should Not Have to Submit a New Application**

The Staff proposes, in Section II.C.4, that all RPS-certified (or pre-certified) facilities with a biomethane contract must file a new application for certification (or pre-certification), regardless of whether the facility is already certified, precertified, or pending certification, in order to maintain or establish its RPS status. The Staff proposes that this new application must be filed within 90 days after the adoption of the Seventh Edition.

This proposed requirement is unnecessary, unduly burdensome, and may result in further delay of the Commission’s review of pending certifications. If a facility previously has been certified (or pre-certified) based on procurement under a biomethane contract, the facility owner should not be required to file a new certification application as a result of the adoption of a new edition of the RPS Eligibility Guidebook. Instead, Shell Energy recommends that for any RPS-certified (or pre-certified) facility with an eligible biomethane procurement contract, the owner of the facility should be required to submit an attestation that the biomethane contract meets the requirements under Section II.C.1. Alternatively, if the owner of an RPS-certified (or pre-

certified) generation facility must submit a new application, the RPS Eligibility Guidebook must include a designated section that details which edition of the Guidebook the facility is subject to, based on the contract signing date, the date of the original certification (or pre-certification) application, and which provisions of the Seventh Edition now apply. This new section of the Guidebook must ensure that any new requirements imposed on facility owners do not conflict with the requirements under the Guidebook that was in place at the time of the original application.

**C. Deliveries from an RPS-Certified Facility Must Be Presumptively RPS Eligible; the Commission Should not Wait until the Annual Filing to Determine RPS Eligibility**

The Staff proposes, in Section II.C.1.a, that the Commission not provide a final determination of RPS eligibility for biomethane-fueled generation (and the biomethane delivery path) at the time the RPS certification application is addressed by the Commission. Moreover, in Section II.C.6, the Staff proposes that even for RPS-certified facilities, a final determination of RPS eligibility for a delivery path for biomethane should not be made until after the facility owner complies with the “annual reporting requirement” that is due on March 31 of the following year.

The Staff’s proposal, if adopted, would mean that an LSE or POU could rely on a biomethane delivery transaction (and pathway) as RPS-eligible for an entire year, and only after its March 31 filing (in the following year) learn that the Commission has decided that the biomethane-fueled energy is not RPS-eligible. This approach could severely prejudice an LSE or a POU in meeting its RPS compliance obligation in a specific compliance period.

Shell Energy submits that if biomethane under contract is consumed in an RPS-certified facility, this biomethane-fueled energy must presumptively qualify as RPS-eligible (and either as “count-in-full” or Product Content Category 1 (“PCC 1”) procurement). If the biomethane contract meets the terms and conditions of the Seventh Edition of the RPS Eligibility Guidebook

(for existing or new biomethane contracts), the biomethane-fueled energy should be deemed RPS-eligible. If it is later determined, after the annual report has been filed, or in the REC verification process, that the transportation arrangement and other transaction elements do not comply with the Guidebook requirements, the Commission will have the ability to determine the RPS eligibility of the biomethane-fueled generation at the same time it verifies the eligibility of all other RECs.

**D. Grandfathered Biomethane Contracts Should be Allowed to Transfer the Biomethane from one RPS-eligible Facility to Another, and Revise the Delivery Path, as Long as These Changes are Consistent with the Statute and Therefore the Guidebook Provisions that Existed at the Time of Contract Execution.**

The Commission Staff proposes (Section II.C.1.c.) that biomethane under an existing biomethane contract may only be used for RPS purposes at the designated electrical generation facility for which the biomethane procurement contract was originally reported to the Commission prior to March 29, 2012. The Staff proposes that an LSE or a publicly-owned utility (“POU”) should not be allowed to change a “grandfathered” (pre-March 29, 2012) biomethane contract from one RPS-certified generation facility to another and still maintain grandfathered status. Similarly, the Staff proposes (page 30) that “any revisions to the delivery path for the gas comply with the requirements in the Guidebook that was in place at the time the revision occurs.” Emphasis added.

These proposed limitations are not found in AB 2196. Moreover, these proposed requirements impose undue restrictions on the holders of grandfathered biomethane procurement contracts. If a biomethane producer must revise the transportation path used to deliver biomethane to a generation facility due to pipeline flow changes, or due to pipeline rate increases, the facility owner should not be required to meet biomethane delivery requirements that are intended to apply to new biomethane contracts.

Similarly, an owner of RPS-eligible facilities should be allowed to shift biomethane from one RPS-eligible facility to another RPS-eligible facility in order to accommodate operational issues at either facility. The facility owner should be allowed to maximize its utilization of biomethane under contract, even among multiple generation facilities.

AB 2196 was specific about the changes under an existing (pre-March 29, 2012) biomethane contract that would trigger the eligibility requirements under P.U. Code Section 399.12.6 (b). Neither of the Staff's proposed restrictions are in the statute. These restrictions must be stricken.

**E. The Commission Staff Must Revise the Standard for Determining Whether the Biomethane is Flowing Toward the Generation Facility for Which the Biomethane is Procured**

The Staff proposes (Section II.C.2.a.3) that in order to meet the requirement that the biomethane must flow “toward the generation facility for which the biomethane is procured,” the applicant must show that gas flows on each segment of the pipeline path in the direction of the generation facility at least 50 percent of the time. This proposal should be eliminated. It is difficult, if not impossible, to determine the direction of the gas flow on all pipelines, all the time. The quantity and duration of the physical flow of gas should not be the measure of compliance with P.U. Code Section 399.12.6(b)(3)(A).

Shell Energy proposes that if it is determined, contrary to statute, that a “common carrier pipeline” includes an interstate pipeline, the standard should be satisfied if the applicant can demonstrate that the pipeline offers transportation service in the direction of the generation facility on the pipeline path relied upon by the applicant, and that the applicant (or the biomethane supplier) has a contract to transport gas on the pipeline in that direction. However, if “common carrier pipeline” is defined in accordance with California law, the issue of gas flowing

“toward the generation facility” is resolved because all gas injected into a “common carrier pipeline” will “physically flow within California.”

**F. “Count-in-Full” Treatment Should Be Afforded to Otherwise Eligible Pre-June 1, 2010 Contracts, Regardless of Whether the Contract Required Deliveries of Biomethane to the Facility for Generation before June 1, 2010**

Section II.C.3 of the Seventh Edition addresses the matter of whether the procurement of biomethane-based electricity generation from a facility qualifies as “PCC” procurement or “count-in-full” procurement. Shell Energy agrees with the Staff’s proposal in Section II.C.3.b, which provides that if the PPA was executed before June 1, 2010, and specifies that the procurement of generation is attributable to biomethane (regardless of the biomethane contract date), the procurement should qualify as “count-in-full.” In addition, if the biomethane contract was executed before June 1, 2010, and if the contract for the purchase of RPS-eligible energy was executed before June 1, 2010, the procurement of the biomethane-fueled electric generation should qualify as “count-in-full” procurement, subject to the following conditions:

- (1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.
- (2) For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.
- (3) Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.

P.U. Code Section 399.16(d).

Shell Energy questions the Staff’s proposed added condition, however, which states that the pre-June 1, 2010 biomethane contract must have provided for deliveries of biomethane to the facility for generation before June 1, 2010. See Section II.C.3.c. Shell Energy requests that the Commission eliminate this condition. An otherwise eligible pre-June 1, 2010 contract does not

have to require deliveries of biomethane to the facility for generation before June 1, 2010 in order to be classified as “count-in-full” procurement.

**G. Changes Should be Made to the Verification and Reporting Provisions**

Shell Energy proposes the following modifications to Section V, “RPS Tracking Systems, Reporting and Verification”:

1. Section V. B. 5. should be renamed “RPS REC Retirement Reporting Due Dates.” RPS procurement requirements established by the Commission only apply to POUs. Language referring to both POUs and LSEs needs to be clarified throughout.

2. Section V.B.5.1. “Reporting Year” should be defined as the year in which the RECs were retired. For example, the CARB mandatory emissions report that is filed on June 1, 2013 represents 2012 volumes. For Section 5.1, the report that is due on July 1, 2013 should reflect RECs that were retired in 2012, regardless of when the RECs are used for RPS compliance.

3. Section VI relates to RPS procurement requirements. Although this provision only pertains to POUs, it is possible that the Public Utilities Commission (“PUC”) could adopt the same requirements for all LSEs. Shell Energy requests the following clarifications:

a) Section VI.C.3.ii. (page 133-134). The Staff proposes an “Annual Hourly Comparison Spreadsheet.” Because the “lesser of” calculation is undertaken on a monthly basis, and because RECs are created on a monthly basis, the Commission should allow some flexibility in how the data is provided as long as annual information is submitted. For example, a supplier could send its POU counterparty a monthly reconciliation, which the POU could provide to the Commission. In view of the magnitude of the data contained in one monthly report, producing an annual report would be duplicative and the data would be much less manageable in one spreadsheet.

b) In the “verification” presentation (which is expected to be outlined in a new Appendix A), the Staff proposes to require LSEs and POUs to retire RECs differently. The Staff proposes that POUs should be allowed to retire RECs in accounts labeled:

2012 CA RPS PCC0

2012 CA RPS PCC1

2012 CA RPS PCC2

2012 CA RPS PCC3

By contrast, the Staff proposes that all other LSEs must retire RECs in one subaccount per year under accounts labeled YYYY CA RPS RS10. For example:

2012 CA RPS RS10

2013 CA ROS RS10

If this different approach were to be adopted for POUs and LSEs, there would be no way for an LSE to then track/differentiate into which PCC its supplies are categorized. Although the RS10 designation may work well for the Commission to distinguish between POU and LSEs, it would be ideal if LSEs could also use the PCC0, PCC1, etc. subaccounts through which to retire RECs. It would be difficult to track the PCC designation if all RECs must be included under RS10 by year.

If the LSE designation must be differentiated from the POU designation, it might be appropriate to substitute “RS” for “CA” in the designated field. For example,

2012 RS RPS PCC0

2012 RS RPS PCC1

**H. The Guidebook Definition of “Station Service” Must be Consistent with the FERC Definition**

The Commission Staff proposes to modify the definition of “Station Service” in the Guidebook. On page 43 of the draft Seventh Edition, in a section titled “Station Service,” the

Staff proposes to add language that would link the definition in the Guidebook to the WREGIS definition. On page 129 of the draft Seventh Edition, in the “Glossary of Terms,” the proposed definition of Station Service is “the electric supply for the ancillary equipment used to operate a generating station or substation.”

The Staff’s proposed definition of Station Service is not consistent with the FERC definition for Station Service. The FERC definition provides as follows:

Station Service is the electric energy used for the heating, lighting, air-conditioning, and office equipment needs of the buildings on a generating facility’s site, and for operating the electric equipment that is on the generating facility’s site such as lights, fans, pumps, electric motors, instrumentation, and pollution control equipment.<sup>1</sup>

Shell Energy submits that the FERC definition should be embraced by the Commission in the RPS Eligibility Guidebook. The FERC definition reflects an industry standard that should not be unnecessarily modified. In addition, the FERC definition creates a level playing field for all technologies. The definition of Station Service in the Glossary of Terms should be modified to reflect the FERC definition.

### III.

#### CONCLUSION

The issues raised above are indicative of the need for the Commission Staff to solicit another round of comments on an updated, revised draft Seventh Edition. Shell Energy requests that the Commission Staff provide at least one more opportunity to comment on an updated draft

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<sup>1</sup> PJM Interconnection, LLC, 94 F.E.R.C. ¶ 61,251 (2001).

that addresses the issues set forth above in greater detail. Shell Energy appreciates the opportunity to submit these written comments.

Respectfully submitted,



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