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August 8, 2011

25388-00007

VIA E-MAIL AND U.S. MAIL

Honesto Gatchalian
Maria Salinas
Energy Division
California Public Utilities Commission
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

Re: Comments of Shell Energy North America (US), L.P. on Draft Resolution E-4335

Dear Mr. Gatchalian and Ms. Salinas:

Shell Energy North America (US), L.P. ("Shell Energy") submits its comments on the above-referenced Draft Resolution ("DR") that was circulated by the Energy Division on July 19, 2011. The DR addresses proposed purchase and sale agreements ("PSA") that were submitted for approval by SDG&E in Advice No. 2118-E (as supplemented). Shell Energy requests that the Commission modify the DR to provide that under current (pre-SBX1 2) rules, SDG&E's proposed PSAs, in combination with the corresponding DWR contracts for the purchase of energy at the same RPS-eligible facilities, are classified as "bundled" transactions as defined in D.10-03-021 (March 11, 2010) (as modified by D.11-01-025 (January 13, 2011)).[1]

In support of its comments, Shell Energy states the following:

I.

INTRODUCTION

In D.10-03-021, the Commission stated that "[t]he distinction between bundled and REC-only RPS-eligible procurement should turn on the availability of the energy in the transaction to serve California load." Decision at p. 27 (emphasis added). The Commission also stated, in D.10-03-021, that the "fundamental characteristic of a bundled transaction is that the energy associated with the REC serves California load." Decision at p. 35. As long as the final point of physical receipt of the renewable energy on the path from the renewable resource is a California Balancing Authority ("CBA"), the renewable energy is "serving California load" and should be classified as a bundled transaction.

[1] Proposed findings and Ordering Paragraphs are set forth in the Appendix.

As described in SDG&E Advice No. 2118-E-A, the PSAs are designed to "re-unite" the unbundled renewable energy credits ("REC") purchased by SDG&E from the Cabazon and Whitewater wind energy facilities with the energy that is delivered from these facilities under DWR agreements that are administered by SDG&E. The PSAs, in combination with the DWR agreements, provide renewable energy that serves California load. Because the RECs from the Cabazon and Whitewater facilities are combined with the energy from these same RPS-eligible facilities, the combined transactions constitute "bundled" transactions for purposes of RPS compliance.

II.

BECAUSE SDG&E'S PSAs CONVEY RECs THAT ARE COMBINED WITH ENERGY FROM THE SAME CALIFORNIA RPS FACILITIES, THE PSAs CONSTITUTE "BUNDLED" TRANSACTIONS

The DR states that "under current rules, the PSAs are REC-only contracts because they are for the procurement of only RECs." DR at p. 13. The DR continues by stating that "D.10-03-021, as modified by D.11-01-025, does not contain rules about "rebundled" transactions." Id.

Although D.10-03-021 does not use the term "rebundled" transactions, the rules adopted in D.10-03-021 (as modified in D.11-01-025) make it clear that when a transaction for the purchase of RECs is combined with a transaction for the purchase of energy from the same facility, the combined transaction constitutes a "bundled" arrangement for purposes of RPS compliance. In D.10-03-021, the Commission concluded that "for RPS procurement purposes," REC-only transactions will be those deals that:

- Expressly convey only RECs and not energy; or
- Transfer both energy and RECs, but the energy associated with the RECs cannot serve California load.

Decision at p. 26. The Commission emphasized that where the two types of contracts (REC-only transactions and bundled transactions) "differ most significantly is in whether the energy associated with the procurement will serve California customer load." Id.

The DR properly recognizes that for purposes of assessing the reasonableness of the prices under the PSAs (and recovery of the cost of the PSAs in SDG&E's rates), the PSAs, standing alone, are REC-only transactions. For RPS compliance purposes, however, the PSAs, combined with the energy delivered under DWR contracts administered by SDG&E, constitute

"bundled" transactions. These transactions, in combination, convey both the RECs and the energy from the same RPS-eligible facilities located in California. The combined transactions meet the definition of a "bundled" transaction in D.10-03-021, as modified by D.11-01-025.

III.

THE COMMISSION SHOULD ADDRESS THE ISSUE OF "REBUNDLING" AS A COMPLEMENT TO ITS TREC DECISIONS

Whether the RECs and the energy from RPS-eligible California facilities are conveyed through a "rebundled" transaction or through a single original transaction, the Commission's current rules provide for the purchase to be classified as a "bundled" transaction for purposes of RPS procurement. In D.11-04-004 (April 14, 2011), the Commission missed an opportunity to clarify that "re-bundling" the energy and the RECs from the same eligible in-State RPS facility constitutes a bundled transaction within the meaning of D.10-03-021. Instead, the Commission declared SDG&E's petition on this issue "moot" because D.10-03-021 authorized the use of TRECs for RPS compliance. See Decision at p. 4.

As the Commission is aware, however, the distinction between a "REC-only" transaction and a "bundled" transaction is significant when considering an LSE's annual RPS compliance obligation. Current rules impose limits on the use of TRECs for RPS compliance. There is no limit on the use of bundled transactions for RPS compliance, however. The Commission must address the issue of "rebundled" contracts now in order to provide certainty to SDG&E -- and to other LSEs -- with regard to the ability to use transactions combining RECs and energy from the same in-State RPS-eligible facility for RPS compliance.

IV.

THE COMMISSION MUST ADDRESS THE ISSUE OF "REBUNDLING" NOW IN ORDER TO INFORM THE PROCESS IN R.11-05-005

The DR recommends that if SDG&E would like to pursue a different classification (other than REC) for the PSAs presented in the advice letter, SDG&E may "request clarification from the Commission through the implementation of [SBX1 2] . . . ." DR at pp. 13-14. Seeking a determination under SBX1 2 is not sufficient, however. Even if SDG&E seeks clarification in the OIR proceeding (R.11-05-005) that is devoted to implementation of SBX1 2, the Commission will have to determine whether "the renewable energy resource was eligible under

the rules in place as of the date when the contract was signed." See P.U. Code Section 399.16(d)(1) (emphasis added).

In order for the Commission to address the "eligibility" issue in R.11-05-005, the Commission must initially clarify the rules under D.10-03-021 (as modified by D.11-01-025). By clarifying the rules in this Resolution, in response to SDG&E's advice letter, the Commission will provide certainty to SDG&E (and to all similarly situated market participants) with respect to the use of these transactions for RPS compliance in 2011. Moreover, the Commission will inform the ongoing process in R.11-05-005 with respect to implementation of the provisions of SBX1 2 that address the treatment of pre-June 1, 2010 contracts. See P.U. Code Section 399.16(d)(1).

V.

CONCLUSION

For the foregoing reasons, Shell Energy requests that the Commission modify the DR to provide that the RECs purchased under the PSAs, when combined with the energy delivered under the DWR contracts, constitute "bundled" transactions within the meaning of D.10-03-021, as modified by D.11-01-025. The Commission's final Resolution should provide that these "re-bundled" transactions may be counted in full for RPS compliance in the years in which the renewable energy was generated.

Shell Energy's proposed findings and Ordering Paragraphs are set forth in an Appendix to these comments.

Respectfully submitted,

John W. Leslie
of
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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

JWL/jh
cc: The Honorable Michael R. Peevey, President
The Honorable Mark J. Ferron, Commissioner
The Honorable Michel P. Florio, Commissioner
The Honorable Catherine J.K. Sandoval, Commissioner
The Honorable Timothy Alan Simon, Commissioner

Julie A. Fitch, Director, Energy Division
The Honorable Karen V. Clopton, Chief Administrative Law Judge
Frank Lindh, General Counsel
All persons on the service list in R.11-05-005

SUBJECT INDEX

Shell Energy's recommended changes to Draft Resolution E-4335:

- Transactions that, alone or in combination, convey both the RECs and the energy from the same RPS-eligible in-State facility constitute "bundled" transactions within the meaning of D.10-03-021 (March 11, 2010), as modified by D.11-01-025 (January 13, 2011).

- SDG&E's PSAs with Cabazon Wind Partners and Whitewater Hill Wind Partners, when combined with the energy purchased from the same RPS-eligible facilities under the CDWR PPAs with Cabazon and Whitewater, constitute bundled transactions for RECs and energy for purposes of RPS compliance.

APPENDIX

PROPOSED REVISED FINDINGS AND ORDERING PARAGRAPHS

A. Proposed Revised Findings:

1. Delete Finding No. 11 and replace with the following:

   Because the RECs purchased by SDG&E under the PSAs are combined with the energy delivered from the same in-State RPS-eligible facility pursuant to the CDWR PPAs administered by SDG&E, the integrated transactions are "bundled" transactions for RPS compliance purposes.

2. In Finding No. 13, add the following at the beginning of the text:

   Except when combined with energy delivered from the same RPS-eligible facility, . . .

B. Proposed Revised Ordering Paragraph:

1. In O.P. No. 1, delete the words "with modifications."

2. Add a new O.P. No. 2, as follows:

   Consistent with D.10-03-021, as modified by D.11-01-025, transactions that combine the RECs and the energy from the same RPS-eligible in-State facility constitute "bundled" transactions for purposes of RPS compliance.

VERIFICATION

I am an officer of Shell Energy North America (US), L.P. and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 3, 2011 at San Diego, California.

Thomas Ingwers
Vice President – Environmental Products
Shell Energy North America (US), L.P.

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