

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program.

R.11-05-005

**OPENING COMMENTS OF SHELL ENERGY
NORTH AMERICA (US), L.P. ON NEW PROCUREMENT TARGETS
AND CERTAIN COMPLIANCE REQUIREMENTS
FOR THE RPS PROGRAM**

John W. Leslie
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, California 92101
Tel: (619) 699-2536
Fax: (619) 232-8311
E-Mail: jleslie@luce.com

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

Date: August 30, 2011

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In accordance with the procedural schedule established in the Presiding Judge's July 15, 2011 Ruling, Shell Energy North America (US), L.P. ("Shell Energy") submits its opening comments on new procurement targets and certain compliance requirements for the Renewable Portfolio Standard ("RPS") program. Shell Energy is a registered energy service provider ("ESP") and a "Respondent" in this proceeding. Shell Energy appreciates the opportunity to submit comments on the Commission's implementation of SBX1 2.

I.

INTRODUCTION

Shell Energy's opening comments respond (in order) to the questions presented in the Presiding Judge's July 15 Ruling. As provided in the Judge's Ruling, Shell Energy does not reproduce the questions in this document. Shell Energy's responses are identified by the number corresponding to the questions in the Judge's Ruling.

II.

RESPONSES TO QUESTIONS

Shell Energy's responses to the individual questions are as follows:

1. Implementation of SBX1 2 should begin on the later of January 1, 2012, or the date when both SBX1 2 becomes effective and the Commission's implementation rules are placed into effect. On this basis, the current RPS procurement rules and current flexible compliance rules (20 percent program) should remain in place through 2011, and possibly through 2012. For compliance year 2011 and until SBX1 2 is implemented, the 20 percent RPS procurement obligation should apply, including current rules for "flexible compliance."

2. A. Over the term of the first compliance period (ending December 31, 2013), an LSE's RPS procurement obligation should be 20 percent of the LSE's total retail sales during the compliance period. By December 31, 2013, an LSE should have met an RPS procurement obligation equal to 20 percent of its total retail sales for the years 2011-2013.

Within the first compliance period, there should not be different compliance targets for the individual intervening years. The statutory language (P.U. Code Section 399.15(b)(2)(B)) provides that for the first compliance period, an LSE's RPS procurement obligation is an "average" of 20 percent of its retail sales. There is no basis in the statute for distinct RPS procurement targets for the individual years within the first compliance period.

2. B. The annual increase in the RPS procurement "target" percentage for each of the second and third compliance periods, as set forth in the Ruling, is reasonable, and this approach is consistent with the statutory language. For each "intervening year" within each of these latter compliance periods, the RPS procurement target percentage should be applied to the LSE's retail sales in the same year. The annual RPS target percentage does not reflect an RPS compliance obligation for that year, however.

Once the annual RPS procurement targets are established by the Commission for these intervening years, the Commission should not modify the targets. LSEs should have regulatory certainty regarding the annual RPS procurement targets within each RPS compliance period in order to plan for their RPS purchases.

2. C. The Commission must reconcile the language of P.U. Code Section 399.15(b)(2)(C) with the language of P.U. Code Section 399.15(b)(2)(B). Shell Energy believes that the most reasonable interpretation (and integration) of these sections is that the Commission will establish annual RPS procurement targets for the “intervening years” within each of the two latter compliance periods. The “targets” should reflect a best efforts obligation to demonstrate “reasonable progress” toward the RPS obligation for the compliance period.

An LSE’s procurement obligation, however, will only be measured at the end of each compliance period. An LSE’s RPS procurement obligation will be to purchase, for the entire compliance period, RPS quantities equal to each year’s annual target percentage times the year’s retail sales, summed for all years of the compliance period.

For example, an LSE’s overall RPS procurement obligation for the second compliance period (ending December 31, 2016) will be the sum of the following:

21.5 percent times 2014 retail sales
plus 23.5 percent times 2015 retail sales
plus 25.0 percent times 2016 retail sales

As set forth in Section 399.15(b)(2)(C), the LSE will not be required to meet an individual intervening year’s RPS procurement target in that particular year. Compliance with the RPS procurement obligation for a compliance period will be determined at the end of the compliance period, subject to the provisions for flexible compliance, including “banking” and “earmarking.”

The consequence for an LSE's failure to meet its total RPS compliance obligation for the compliance period, after taking into account earmarking and banking (and if the RPS obligation is not otherwise "waived" under Section 399.15(b)(5)), should be payment of the applicable penalty.

3. Shell Energy does not take a position on the matters raised in this question at this time, except as follows:

This question addresses the treatment of LSEs that have achieved at least 14 percent, but less than 20 percent RPS procurement by 2010, under SBX1 2. Regardless of how the Commission handles "earmarked" volumes and "banked" volumes for these LSEs, the Commission must not undermine or otherwise diminish the value of banked volumes for those LSEs that met the 20 percent RPS obligation by 2010. For LSEs that do not have RPS procurement deficiencies but have accumulated banked volumes as of the implementation date of SBX1 2, these banked volumes must be treated as fully available for use in future compliance periods on an unlimited basis. The Commission must honor the legitimate expectations of LSEs at the time they purchased these excess RPS volumes. These expectations include the ability to forward bank their excess procurement for an unlimited time.

4. Yes. Section 399.15(b)(9) refers to RPS procurement deficits that occur within a compliance period. These deficits shall not be added to the LSE's RPS procurement obligation in a future compliance period. This section applies only to deficits that arise in the three compliance periods under Section 399.15(b)(1).

5. An LSE that has an RPS procurement deficit from any year up to the date of implementation of SBX1 2 should be required to satisfy its RPS procurement obligation in accordance with the requirements that existed in the year(s) when the procurement deficit

occurred up until SBX1 2 is implemented, including applicable rules for “banking” and “earmarking.”

6. Shell Energy responds to each bullet point as follows:

- The minimum quantity of renewable energy under 10-year contracts (including 10-year contracts entered into prior to the implementation of SBX1 2) should be equal to 0.25 percent of the LSE’s retail sales in the compliance period.

- No. The minimum quantity should not be limited by portfolio content category. The language of Section 399.13(b) refers to long-term (10-year) contracts for “electricity and associated [RECs].” A qualifying long-term contract under Section 399.13(b) includes a long-term contract for any eligible RPS product under Section 399.16(b)(1), (2) or (3), and any contract for an eligible RPS product entered into prior to the implementation of SBX1 2, based on the rules that existed at the time of the contract.

- No. Section 399.13(b) does not require that long-term contracts for the minimum quantity must be signed in the same year as the short-term contracts used for RPS compliance. Moreover, RPS procurement compliance is to be measured over a multiple-year compliance period. The statutory provision should be interpreted to apply to any long-term or short-term RPS procurement contract upon which the LSE relies during the compliance period.

- Yes. The “minimum quantity” requirement under Section 399.13(b) should terminate when an LSE reaches 33 percent RPS procurement at (or prior to) the end of the third compliance period (December 31, 2020).

- As noted above, all deliveries under an RPS contract that is relied upon by an LSE to meet its RPS procurement obligation during the applicable compliance period (including long-term contracts and contracts with new facilities commencing operation on or after January 1, 2005, entered into prior to the implementation of SBX1 2) should count toward

the minimum percentage requirement for long-term contracts under Section 399.13(b). Any contract that was entered into prior to the implementation of SBX1 2 that was eligible under D.07-05-028 for inclusion in the 0.25 percent requirement should be “grandfathered” for purposes of compliance with Section 399.13(b).

- No. Contracts entered into prior to the implementation of SBX1 2 may not be deducted from the procurement quantities that are part of the calculation of “excess procurement” under Section 399.13(a)(4)(B). These pre-SBX1 2 contracts should be “grandfathered.”

- No.

7. Shell Energy responds to each bullet point as follows:

- Section 399.13(a)(4)(B) limits the “excess procurement” that may be carried over from one compliance period to the next to deliveries from eligible RPS products in Buckets One and Two, and deliveries under long-term (10-year) contracts. This limitation should apply only to contracts entered into after the implementation of SBX1 2. Excess procurement eligible for “banking” shall also include, however, any contracts entered into prior to implementation of SBX1 2 that were otherwise eligible for banking under then-existing RPS procurement rules. Eligible excess procurement includes, but is not limited to, REC-only contracts and short-term contracts that are eligible for banking under current rules.

- Yes.

- “Excess procurement” must be measured based on RPS procurement for the entire compliance period. As noted above, “excess procurement” must include any contracts entered into prior to implementation of SBX1 2 that were eligible for “banking” under the then-existing RPS rules.

8. Shell Energy responds to each bullet point as follows:

- Yes. In addition, because SBX1 2 should not be implemented until SBX1 2 becomes effective and the Commission’s rules are in effect, any excess RPS procurement prior to implementation of SBX1 2 (from “bundled” contracts and/or REC-only contracts) should be eligible for unlimited forward banking for all three compliance periods. Any excess RPS procurement that is eligible for forward banking under the current rules should be eligible for unlimited forward banking under Section 399.13(a)(4)(B). LSEs that have excess RPS procurement under the current rules should not be prevented from realizing the full value of that procurement once SBX1 2 becomes effective. This approach is necessary to honor existing contracts.

- No, for the reasons set forth above.

- No. Section 399.13(a)(4)(B) provides that an LSE’s excess RPS procurement may be “applied to any subsequent compliance period.” (Emphasis added.) The banking of excess procurement (including pre-SBX1 2 excess procurement) should not be limited to a single compliance period. Current rules provide for unlimited forward banking of excess procurement. For any excess procurement that occurs under current rules (and that occurs prior to implementation of SBX1 2), the forward banking should be for any compliance period under Section 399.15(b)(1).

- No.

- No. If the excess RPS procurement is under one or more contracts executed prior to the implementation of SBX1 2, the excess procurement should be eligible for unlimited forward banking in accordance with the RPS rules in existence at the time of the contract. If the excess procurement is under one or more contracts executed prior to June 1, 2010, the excess procurement should “count in full” toward an LSE’s RPS procurement obligation in any compliance period, in accordance with Section 399.16(d). If the excess RPS

procurement in any year prior to implementation of SBX1 2 is not under a pre-June 1, 2010 contract, the excess procurement should be eligible for RPS compliance in the same way it would have been eligible for RPS compliance under the pre-SBX1 2 rules (including the definition of “bundled” contracts and “REC-only” contracts under D.10-03-021, as modified by D.11-01-025).

9. Shell Energy does not take a position on this question at this time, but reserves the right to comment at a later time.

10. Yes. Until SBX1 2 is implemented, the current RPS procurement rules and compliance rules should continue to apply. For 2011 and all previous years, the current flexible compliance rules should apply.

11. Yes.

12. Under SBX1 2, there is no annual procurement target that is enforceable as an RPS compliance obligation. Accordingly, the concept of an “APT” and deferral of a portion of the APT, is moot under SBX1 2. P.U. Code Section 399.15(b)(9) provides that an LSE’s RPS procurement deficit in one compliance period shall not be added to the LSE’s RPS procurement obligation for a future compliance period. On this basis, for all years (and compliance periods) after SBX1 2 is implemented, the Commission may not allow a deficit of any amount to be deferred to a future year (or compliance period), except with respect to “earmarking.”

13. Shell Energy responds to each bullet point as follows:

- Under current rules, earmarking is permitted such that an LSE may meet an RPS procurement deficit based on RPS contracts for future year deliveries, where the contracts were entered into during the year of the deficit. For years after 2011 (assuming SBX1 2 is implemented on or about January 1, 2012), the Commission should allow “earmarking” of contracts entered into during the same “compliance period.”

- For REC-only contracts “earmarked” prior to the implementation of SBX1 2, the RECs should be treated as they otherwise would have been treated at the time the contracts were executed. On this basis, RECs under earmarked contracts entered into on or before the implementation of SBX1 2 should be eligible for RPS compliance under the TREC rules adopted in D.10-03-021 (as modified by D.11-01-025) for the three years after the contract was executed. If the contract is a pre-June 1, 2010 contract that qualifies under P.U. Code Section 399.16(d), the RPS procurement under this contract will “count in full” toward the LSE’s RPS procurement obligation.

14. Yes. To the extent that an LSE relies on the current “earmarking” rules for RPS compliance in a year prior to implementation of SBX1 2, the RECs from these earmarked contracts, which are received by the LSE in the three years following the contract year, must be applied to any deficit in the year of the contract. Reliance on the pre-SBX1 2 rules for RPS procurement in the years prior to implementation of SBX1 2 requires that the pre-SBX1 2 rules for RPS compliance apply to this RPS procurement as well.

15. Shell Energy responds to each bullet point as follows:

- P.U. Code Section 399.30(n) provides that the CEC shall adopt regulations to enforce the RPS obligations that apply to POU’s under all of Section 399.30. If an LSE (including an IOU, ESP and/or CCA) presents an attestation provided by the POU that the POU has complied with Section 399.31(a) and/or (b), the Commission can coordinate with the CEC to ensure that the POU is in compliance.

- See response above.
- See response above.
- See response above

- Coordination between the Commission and the CEC as to compliance by a POU can be worked out by the two agencies. An LSE's obligation under Section 399.31(a) and/or (b) is satisfied, however, when the LSE provides an attestation provided by the POU.

16. Shell Energy responds to each bullet point as follows:

- "Compliance" with an LSE's RPS procurement obligation is based on whether, at the end of the applicable compliance period, the LSE has met its RPS procurement obligation for the entire period. "Compliance" is not measured on a year-by-year basis. See Responses to Question Nos. 2.A, 2.B, and 2.C, above.

- The penalty amount – applied to RPS procurement deficiencies based on the entire compliance period – should be equal to \$0.05 per kWh.
- A penalty cap should apply.
- The adopted penalty cap should apply for an entire compliance period.
- The penalty cap should be based on \$25 million for the compliance period.

17. Commission verification of RPS compliance by an LSE can be the same under SBX1 2 as it has been under the current RPS compliance rules. Both this Commission and the CEC have processes in place to verify RPS compliance. No proposal herein by Shell Energy would require a different method of verification by the Commission or the CEC.

18. The CEC's responsibilities for tracking and verifying RPS energy under Section 399.21(a)(5) and Section 399.25(a), (c) and (d) remain the same under SBX1 2, with the exception that the CEC is also responsible for verifying RPS compliance by POUs. The CEC continues to be responsible for verifying eligible renewable energy resources under Section 399.25(a). None of Shell Energy's proposals herein would alter the verification protocols that have been established (or that will be updated) by the CEC.

19. Yes. The Commission should carry forward, through calendar year 2011 and until SBX1 2 is implemented, the current RPS rules. As noted, SBX1 2 likely will not become effective until very late in calendar year 2011, or possibly sometime in 2012. The comments submitted on August 8, 2011 in this proceeding in connection with “portfolio content categories” (Buckets), and the questions raised in the Presiding Judge’s July 15 Ruling herein, reveal that there are many outstanding issues that the Commission must address before SBX1 2 can be implemented. Even if the Commission issues one or more decisions on these matters by November 2011, LSEs will have very little time to make RPS procurement decisions and meet their RPS compliance obligations in 2011. On this basis, and in order to provide certainty to participants in the RPS market, the Commission should announce that SBX1 2 will not be implemented before January 1, 2012, and possibly not until later in 2012 or 2013.

III.

CONCLUSION

Shell Energy appreciates the opportunity to respond to the above questions.

Respectfully submitted,



John W. Leslie
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, California 92101
Tel: (619) 699-2536
Fax: (619) 232-8311
E-Mail: jleslie@luce.com

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


Date: August 30, 2011

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 22, 2011 at San Diego, California.



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

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