

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

**REPLY COMMENTS OF SHELL ENERGY NORTH
AMERICA (US), L.P. ON PRESIDING JUDGE SIMON'S
PROPOSED DECISION IMPLEMENTING PORTFOLIO
CONTENT CATEGORIES 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: November 1, 2011

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

**REPLY COMMENTS OF SHELL ENERGY NORTH
AMERICA (US), L.P. ON PRESIDING JUDGE SIMON'S
PROPOSED DECISION IMPLEMENTING PORTFOLIO
CONTENT CATEGORIES FOR THE RPS PROGRAM**

In accordance with Rule 14.3(d) of the Commission's Rules, Shell Energy North America (US), L.P. ("Shell Energy") submits its reply comments on Presiding Judge Simon's October 7, 2011 proposed decision ("PD") addressing "portfolio content categories." Shell Energy's reply comments address the following issues:

1. Pipeline Biomethane: The use of pipeline biomethane in an RPS-eligible generation facility does not convert the renewable generation to an unbundled REC. Renewable generation resulting from the use of pipeline biomethane must be classified under P.U. Code Section 399.16(b)(1) if the generation meets the qualifications under Section 399.16(b)(1).
2. Unbundled RECs: In accordance with P.U. Code Section 399.16(b)(3), only those unbundled RECs that do not qualify under Section 399.16(b)(1) or (b)(2) may be classified under Section 399.16(b)(3). RECs do not have to be "bundled" with energy from the RPS-eligible facility in order for the RECs to be classified under Section 399.16(b)(1) or (b)(2).
3. Firmed and Shaped Products: There is no statutory basis for imposing additional terms and conditions (length of contract term; origin of substitute energy; restrictions on sale of the energy from the RPS-eligible facility) on "firmed and shaped" products under P.U. Code Section 399.16(b)(2).

4. Flexible Compliance Rules: The Commission must address expeditiously how the flexible compliance rules – including “unlimited forward banking” – will apply to pre-June 1, 2010 contracts under the “count in full” language of P.U. Code Section 399.16(d).

I.

THE PRODUCT CLASSIFICATION FOR RPS-ELIGIBLE GENERATION DOES NOT CHANGE IF PIPELINE BIOMETHANE IS USED IN THE GENERATION FACILITY

TURN and the Joint Solar Parties assert that RPS-eligible generation that uses pipeline biomethane should be characterized as an “unbundled REC” and classified under P.U. Code Section 399.16(b)(3) (Product Category Three). See TURN Comments at pp. 1-4; Joint Solar Parties’ Comments at p. 5-7. Contrary to TURN and the Joint Solar Parties’ argument, classification of the RPS-eligible product is not based on whether the generation facility uses pipeline biomethane to produce RPS-eligible electricity. As the PD properly notes, “[i]f a generating facility that the CEC certifies as RPS-eligible is using a fuel that the CEC finds is RPS-eligible, and the facility is directly interconnected with ... a [CBA], or has its electricity output scheduled into a [CBA] without substitution of electricity from another source, ... the facility’s output could be classified ... [under] section 399.16(b)(1).” PD at p. 36.

A generation facility that uses pipeline biomethane and has its first point of interconnection with a CBA is “renewable electrical generation facility” within the meaning of Pub. Res. Code Section 25741(a), and is an “eligible renewable energy resource” within the meaning of P.U. Code Section 399.12(e). As stated in P.U. Code Section 399.16(a), electricity products are “differentiated by their impacts on the operation of the grid in supplying electricity....” The use of pipeline biomethane in an eligible renewable resource does not affect the product classification.

II.

UNBUNDLED RECS ARE NOT LIMITED TO PRODUCT CATEGORY THREE

In accordance with P.U. Code Section 399.16(b)(3), if an unbundled REC otherwise qualifies under P.U. Code Section 399.16(b)(2) (Product Category One) or Section 399.16(b)(2) (Product Category Two), the unbundled REC must be classified in that product category. Neither P.U. Code Section 399.16(b)(1) nor Section 399.16(b)(2) states that the REC must be “bundled” with the energy. In fact, a “firmed and shaped” product (Product Category Two) is an unbundled REC that is matched with substitute energy that is scheduled and delivered into a CBA.

NextEra and Iberdola assert that unbundled RECs from an “in-State” RPS-eligible generation facility “could only qualify” under P.U. Code Section 399.16(b)(3). See Iberdola Comments at p. 8; NextEra Comments at p. 15. This is wrong. If an RPS-eligible generation facility has its first point of interconnection with a CBA, or if the energy is scheduled from an RPS-eligible facility into a CBA without substituting electricity from another source, the REC (whether bundled or unbundled) is classified under P.U. Code Section 399.16(b)(1)(A). An unbundled REC does not lose its classification under Product Category One.

Including unbundled RECs from “in-State” RPS-eligible generation facilities in Product Category One will promote the development of in-State RPS-eligible generation facilities. Eligibility of unbundled RECs under Product Category One will increase the flexibility and variety of the transactions that may be entered into for the output (energy and RECs) of an in-State facility.

III.

THE COMMISSION SHOULD NOT IMPOSE CONDITIONS ON FIRMED AND SHAPED PRODUCTS BEYOND THOSE SET FORTH IN P.U. CODE SECTION 399.16(b)(2)

In its opening comments, Shell Energy requested that the Commission modify or eliminate two of the “commercial elements” (conditions) that the PD recommends for “firmed and shaped” transactions under P.U. Code Section 399.16(b)(2). See Shell Energy Comments at pp. 9-10. Limiting the restrictions on firmed and shaped transactions is consistent with P.U. Code Section 399.16(b)(2) and will increase market liquidity, thereby reducing RPS costs for customers.

In their opening comments, however, TURN, CEERT and Iberdola propose that the Commission impose additional restrictions on the eligibility of firmed and shaped products under P.U. Code Section 399.16(b)(2). These additional conditions, if adopted, would severely limit the ability of market participants to enter into firmed and shaped transactions.

Iberdola and TURN propose that the Commission impose a minimum five-year term requirement on firming and shaping contracts. See Iberdola Comments at pp. 13-14; TURN Comments at pp. 4-5. CEERT proposes that the Commission require any firmed and shaped transaction to be between the retail seller (LSE) and the owner/operator of the RPS-eligible generator. CEERT Comments at p. 7. Finally, TURN proposes that the energy used to “firm and shape” the generation from the RPS-eligible facility should be provided from “the same WECC subregion as the renewable generator.” TURN Comments at p. 5.

There is no statutory basis for these proposed conditions. A five-year contract term requirement would make it difficult, if not impossible for smaller LSEs (ESPs, for example) to enter into firmed and shaped transactions. Restricting firmed and shaped transactions to LSEs would limit the ability of other market participants (e.g., wholesale marketers) to enter into firmed and shaped transactions. Finally, limiting firmed and shaped transactions to the same

WECC subregion would restrict the firming resources available to a purchaser. As acknowledged by Iberdola, “limiting options to purchase firming generation would raise the cost of firming service and, ultimately, costs to retail customers.” Iberdola Comments at p. 15.

IV.

THE COMMISSION SHOULD ADDRESS HOW THE FLEXIBLE COMPLIANCE RULES APPLY TO GRANDFATHERED CONTRACTS

In its opening comments, SCE “seeks clarification that flexible compliance rules from the 20% RPS program will not continue beyond the end of the 20% RPS program.” SCE Comments at p. 14. SCE’s statement is made in the context of the “earmarking” rules. Other flexible compliance provisions of the existing RPS program should continue to apply beyond the end of the 20% RPS program. In particular, unlimited forward banking should apply, without limitation, to those “grandfathered” pre-June 1, 2010 contracts that “count in full” toward an LSE’s RPS procurement obligations.

V.

CONCLUSION

There is no statutory basis for classifying all unbundled RECs under Section 399.16(b)(3). There is no statutory basis for classifying RPS-eligible generation that uses pipeline biomethane as an “unbundled REC.” Furthermore, there is no statutory basis for imposing terms and conditions on “firmed and shaped” contracts beyond those set forth in P.U. Code Section 399.16(b)(2).

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: November 1, 2011

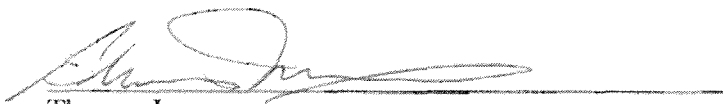
101704483.2

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 October 31, 2011 at San Diego, California.



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