

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.**

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Date: July 18, 2012

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In accordance with the procedural schedule adopted in the April 5, 2012 Assigned Commissioner's Ruling ("ACR"), Shell Energy North America (US), L.P. ("Shell Energy") submits its reply comments on load-serving entities' ("LSE") annual RPS procurement plans. In particular, Shell Energy responds in opposition to the June 27, 2012 opening comments of PG&E on the subject of energy service providers' ("ESP") RPS procurement plans.

I.

INTRODUCTION

PG&E states that ESPs' RPS procurement plans are, "in general, perfunctory and lacking in the type of detail that the Commission has said is necessary in order for it to assess a complete picture of the State's RPS compliance position and strategy." Comments at p. 3. PG&E further states that ESPs' 2012 RPS procurement plans "show a lack of effort and robustness that borders on disregard of D.11-01-026, the ACR, and ALJ DeAngelis' [May 18 e-mail] Ruling." *Id.* at p. 2. Based on these assertions, PG&E proposes that the Commission require ESPs to "provide additional detail to demonstrate that each [ESP] has a viable strategy that is reasonably calculated to ensure compliance with the RPS requirements over the coming decade." *Id.*

Shell Energy disagrees with PG&E's comments and objects to PG&E's request for "additional detail." As applied to Shell Energy, PG&E's opening comments are irrational and should be disregarded. In its RPS procurement plan, Shell Energy provided all of the "detail," "effort" and "robustness" that is possible in view of its role as an ESP competing for load in the California direct access market. No further elaboration is necessary or practical in Shell Energy's RPS procurement plan.

II.

IOUs AND ESPs OCCUPY DIFFERENT POSITIONS IN THE CALIFORNIA MARKET

In D.11-01-026 (January 13, 2011), the Commission determined that pursuant to SB 695, ESPs (as well as the IOUs) must submit annual RPS procurement plans. In his April 5, 2012 ACR, Commissioner Ferron addressed the categories of information that are to be included in the annual RPS procurement plans.

On May 23, 2012, Shell Energy submitted its 2012 RPS procurement plan as directed in the ACR. Shell Energy's RPS procurement plan provides an explanation of how Shell Energy purchases RPS supplies for its retail customers. Shell Energy's RPS plan contains as much information regarding Shell Energy's RPS procurement over the next decade as Shell Energy is capable of providing.

Shell Energy explained, in its RPS procurement plan, that it does not – and cannot – predict its purchases of RPS products for a time period greater than one year ahead, because the level of Shell Energy's customer load depends entirely upon Shell Energy's ability to compete with other LSEs (including the IOUs) for sales of power to direct access-eligible customers. Projections of Shell Energy's customer load, its RPS procurement, and its RPS "net short" calculation over the next ten years are simply not possible.

Notwithstanding the obvious limitations on ESPs' ability to predict future load, PG&E's June 27 comments disparage the RPS procurement plans submitted by Shell Energy and other ESPs. PG&E fails to acknowledge, however, that under the current regulatory structure, IOUs and ESPs occupy very different roles in the market.

As the "default" supplier of electricity to all customers in its service territory, and as the only supplier to customers that are not eligible for direct access or CCA service, PG&E can project the size of its customer load within reasonable limits and can plan its procurement, including RPS procurement, accordingly. Moreover, PG&E has guaranteed cost recovery for its RPS contracts that are approved by the Commission. PG&E can invest in RPS projects and RPS facilities because it recovers all the costs of these investments from its ratepayers (including direct access and CCA customers, in some cases).

By contrast, as noted in Shell Energy's RPS procurement plan, most end-use customers that are eligible for direct access are only willing to commit to a one-year contract with an ESP. Because the level of participation in the direct access market is capped, and because Shell Energy must compete against other ESPs – and the IOUs – for customer load, Shell Energy cannot assume that its current customer load will grow – or even remain the same – from one year to the next.

Shell Energy cannot purchase RPS supplies on a long-term basis for its current retail load, and it cannot make long-term investments in RPS facilities, because it does not know how much load it will be serving on a long term basis. Moreover, Shell Energy does not have guaranteed cost recovery for its RPS contracts. Shell Energy cannot make speculative investments in RPS projects when it has no assurance of a market for the RPS energy.

In accordance with SBX12, the Commission has established RPS procurement requirements that must be met by all LSEs in each compliance period. See D.11-12-020

(December 1, 2011). Shell Energy intends to meet these requirements, just as it met its 20 percent RPS procurement requirement in 2010. Shell Energy's RPS procurement in the first compliance period under SBX1 2 is reflected in the RPS progress report that Shell Energy submitted on March 1, 2012. In response to the specific concern raised by PG&E in its June 27 comments (p. 2), the Commission can obtain "important information . . . about the progress a retail seller is making in attaining the important public policy goals set by the RPS program" from the ESP's annual RPS compliance report that is required in accordance with D.12-06-038 (June 21, 2012).

III.

ESPs ARE AT RISK FOR THEIR RPS PROCUREMENT COSTS

IOUs must provide RPS procurement plans because IOUs seek Commission approval for their RPS procurement strategies and for the costs incurred as the IOUs execute their approved RPS procurement strategies. The Commission does not approve ESPs' RPS procurement costs, however, and the Commission does not approve ESPs' RPS procurement contracts. See D.11-01-026 (January 13, 2011) at pp. 19 – 20, 22. ESPs are fully at risk for the costs associated with their RPS procurement.

If, based on an ESP's RPS procurement plan, an ESP enters into a long-term RPS contract to serve its projected load, the ESP is responsible for the costs under the contract. The Commission does not ensure an ESP's recovery of its contract costs if the ESP's anticipated load does not materialize. Upon its review of an ESP's RPS procurement plan, therefore, the Commission does not have to approve an ESP's RPS procurement strategy or an ESP's RPS contracts, because the Commission does not guarantee RPS cost recovery for ESPs. See D.11-01-026 at p. 22.

PG&E asks the Commission to require ESPs to “provide additional detail” in their RPS procurement plans to demonstrate that each ESP has a “viable strategy” with respect to RPS procurement. PG&E Comments at p. 3. The Commission does not have to approve an ESP’s RPS procurement strategy, however. What PG&E seeks is outside the scope of the Commission’s review. As the Commission stated in D.11-01-026:

Section 365.1(c) does not require that the Commission take elements of the procurement practices of the utilities it regulates with respect to procurement and rates and impose them on the ESPs that it does not regulate with respect to procurement and rates, simply because the Commission has authority over ESPs’ participation in the RPS programs.

Decision at pp. 22-23. ESPs are fully at risk for their RPS procurement strategies and their RPS procurement costs. No further “detail” is required in Shell Energy’s RPS procurement plan.

IV.

CONCLUSION

Shell Energy’s annual RPS procurement plan complies with the requirements in the April 5, 2012 ACR. No further information is required. PG&E’s comments regarding Shell Energy’s RPS procurement plan should be disregarded.

Respectfully submitted,



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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 July 18, 2012, at Spokane, Washington.



Michael E. D'Arienzo
Vice President – Commercial, Industrial & Aggregators
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