

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration, and Consider
Further Development, of California Renewables
Portfolio Standard Program.

Rulemaking 15-02-020
(Filed February 26, 2015)

**RESPONSE OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION TO THE PETITION OF SHELL ENERGY NORTH
AMERICA FOR MODIFICATION OF DECISION 17-06-026**

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Pursuant to Rule 16.4(f) of the Commission’s Rules of Practice and Procedure, the Independent Energy Producers Association (IEP) responds to the Petition for Modification (Petition) of Decision (D.) 17-06-026 submitted by Shell Energy North America (Shell Energy). In its Petition, Shell Energy makes two requests. First, Shell Energy asks the Commission to permit a load-serving entity (LSE) to count for Renewables Portfolio Standard (RPS) compliance, including the 65% long-term procurement requirement of Public Utilities Code section 399.13(b),¹ any long-term contract, ownership, or ownership agreement held by an LSE’s retail customer, if the retail customer conveys or assigns eligibility of the renewable energy and the renewable energy credits (RECs) to the LSE for the duration of the LSE’s relationship with the retail customer. Second, Shell Energy asks the Commission to permit an LSE to count the renewable energy and associated RECs from a “re-packaged” long-term contract of another LSE, if the re-packaged agreement is at least one year in duration.² IEP opposes the Petition.

¹ All statutory references are to the Public Utilities Code.

² Petition, p. 2.

At its core, the Petition asks the Commission to reconsider the meaning of section 399.13(b), which states:

A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. Beginning January 1, 2021, *at least 65 percent* of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period *shall* be from *its* contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources. (Emphasis added.)

In this case, the statute is clear: beginning January 1, 2021, all retail sellers are to meet their RPS procurement obligations associated with serving their own retail load from energy derived from long-term contracts into which the retail seller itself has entered. Section 399.13(b) imposes a long-term contracting obligation on retail sellers without exception. Neither Section 399.13(b) nor any other section of the RPS statute empowers the Commission to shield retail sellers from the long-term procurement obligation even if an LSE's retail customer chooses on its own initiative to invest in renewables.

In support of its Petition, Shell Energy argues that a retail customer's long-term investment in RPS generation is not recognized by the Commission.³ However, even if the Commission were inclined to recognize long-term investments by retail customers, this desire does not alter the statutory requirement that the LSE (and not retail customer) has the long-term procurement obligation specified in section 399.13(b). To the extent that the Commission wants to recognize retail customers' long-term investment in renewables, that recognition should occur in the context of long-term statewide planning (*e.g.*, the Integrated Resource Planning (IRP) proceeding), rather than in the context of RPS procurement.

Also, as a practical matter, customers' investments in renewable resources can be recognized today in the voluntary renewables market. Green-e Energy, for example, certifies

³ Petition, p. 4.

voluntary renewable investments that meet specified standards, thereby enabling retail customers to invest in renewable energy and make claims of “greenness.” Green-e Energy verifies the entire chain of custody of certified renewable energy from generation to retirement to ensure individuals and businesses are getting what they paid for. Green-e Energy certifies Community Choice Aggregation (CCA) programs, competitive electricity products, Renewable Energy Certificates (RECs), utility green pricing programs, and REC purchases and power purchase agreements such as those that might occur between customers and LSEs.⁴ Programs implemented through Green-e Energy provide proper and valid recognition of retail customer investment in renewable resources. Accordingly, the voluntary market in general and the Green-e Energy program in particular allow the valid claims of retail customers to be recognized in the renewable markets and by the public.

In further support of its Petition, Shell Energy alleges that a retail customer who makes a long-term renewable investment will be paying twice for RPS resources, unless the Commission allows an LSE to count its customers’ investment in renewable resources against its long-term procurement obligation.⁵

However, retail sellers will not be paying twice for RPS resources. When a retail customer voluntarily chooses to invest in renewable generation, that retail customer also decides what to do with the energy output from the investment. On the one hand, the retail customer can serve its own load and lower the load to be served by its LSE. This strategy decreases the amount the retail customer would otherwise pay its LSE. Alternatively, the retail customer might decide sell the output of its renewable investment in energy markets or to third parties. This strategy results in revenues, which it can use to pay its LSE for electric service. In either

⁴ <https://www.green-e.org>.

⁵ Petition, p. 5.

case, the retail customer is not paying twice. The retail seller is rationally choosing a course of action to lower the costs it would otherwise incur. No double-payment is taking place.

Shell Energy also argues that requiring an electric service provider (ESP) to meet the 65% long-term procurement requirement exclusively with its own contracts limits direct access.⁶ However, Senate Bill 350 in general and section 399.13(b) specifically were enacted in light of the state's interest in and policy toward direct access. Section 399.13(b) directs **all** retail sellers to enter into a combination of long-term contracts such that, as of January 1, 2021, at least 65% of the procurement a retail seller counts toward its RPS requirement will be from long-term contracts of 10 years or more in duration. The statute applies to **all** retail sellers, including retail sellers serving direct access customers. To the extent that the long-term procurement obligation specified in statute affects direct access, the problem likely resides in the absence of any long-term business relationship between the direct access retail customer and its ESP, but consideration of that issue properly falls outside the discussion of how to implement section 399.13(b).

Finally, Shell Energy seeks modification of D.17-06-026 to allow an LSE to use a repackaged portion of an underlying long-term RPS contract (or ownership or ownership agreement) to satisfy its 65% long-term requirement as long as the term of the re-packaged agreement is for at least one year. Shell Energy argues that enabling an LSE to “slice” another LSE's contract contributes to supporting long-term investment in eligible renewable resources. Moreover, Shell Energy alleges this modification of Commission policy will not result in double-counting.⁷

⁶ Petition, p. 6.

⁷ Petition, p. 9.

The re-packaging proposal raises a number of concerns. On first impression, if the original LSE sells a “slice” of its long-term contract to another LSE on a long-term basis, then the second LSE ought to be able to claim this procurement against its LT RPS procurement obligation. However, if the original LSE is selling a “slice” of its LT 10-year contract for a year, for example, then it appears that the LSE purchasing the “slice” is not meeting the requirements of section 399.13(b).

Moreover, IEP is concerned that Shell Energy’s proposal regarding re-packaging of long-term RPS contracts could undermine public and policy support for the RPS program, which is needed to achieve the state’s greenhouse gas (GHG) emission-reduction goals. If policymakers, the public, and other states and nations view the California RPS model as inherently flawed due to double-counting, for example, then the goal of achieving expanded investment in renewable resources will have been unnecessarily made more difficult. At a minimum, the issue of “re-packaging” RPS long-term contracts requires further consideration, perhaps in a workshop. This proposal need not and should not be authorized through the modifications sought by Shell Energy.

For the reasons outlined above, IEP respectfully urges the Commission to deny the Petition.

Respectfully submitted this 1st day of September, 2017 at San Francisco, California.

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By /s/ Brian T. Cragg

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VERIFICATION

I am the attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Response of the Independent Energy Producers Association to the Petition of Shell Energy North America for Modification of Decision 17-06-026," dated September 1, 2017. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed on this 1st day of September, 2017, at San Francisco, California.

/s/ Brian T. Cragg
Brian T. Cragg