



**Shell Energy North America**  
4445 Eastgate Mall, Suite 100  
San Diego, CA 92121  
Tel 1+ 858 526 2019  
[www.shell.com/us/energy](http://www.shell.com/us/energy)

November 30, 2018

California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

Re: Shell Energy North America (US), L.P. Comments to the California Air Resources Board: 15-Day Proposed Cap and Trade Regulation Amendments

To: Air Resources Board:

In accordance with the “Notice of Public Availability of Modified Text and Availability of Additional Documents” issued on November 15, 2018, Shell Energy North America (US), L.P. (“Shell Energy”) provides its comments on the proposed changes to the Air Resources Board’s (“ARB”) cap and trade regulations in the post-2020 period. Shell Energy previously submitted comments on May 10, 2018 and October 22, 2018.

Shell Energy is concerned that in the “amendments” issued on November 15, 2018, the Staff has failed to address critical issues raised in stakeholders’ previous comments. For this reason, Shell Energy highlights two topics: first, rules to implement the “direct environmental benefits in the State” (“DEBS”) criteria for listed offset projects after 2020; and second, changes to the rules governing offset invalidation. Shell Energy’s comments on these issues are as follows:

## **I.**

### **DIRECT ENVIRONMENTAL BENEFITS IN THE STATE**

Shell Energy generally supports the proposed language of Section 95989(a) and (b). The language should be expanded, however, to provide that out-of-State offset projects will be judged under the DEBS standard based on factual information demonstrating that the project is beneficial to the California environment. To that end, the regulation should state that environmental impacts of offset projects on watersheds, wildlife and air quality are “regional” in nature. Projects providing benefits within a defined geographical region should be recognized as

eligible for DEBS treatment. As noted in its earlier comments, Shell Energy supports a broad application of the DEBS standard to out-of-State offset projects.

For example, as Shell Energy noted in previous comments, tribal authorities have established offset projects that provide economic benefits to tribal communities located within and outside California. These tribal initiatives should be supported, in light of the State's commitment to foster improved conditions in disadvantaged communities. Support for tribal initiatives that harness and quantify GHG emission reductions should extend beyond 2020 by allowing out-of-State offset projects, including offset projects sponsored by tribal authorities, to demonstrate compliance with the DEBS standard. The ARB should make this clear in the regulation.

Transparency is critical to determining eligibility under the DEBS standard. More specificity around DEBS eligibility for out-of-State projects should be provided. As offset project applications are approved or rejected, the characteristics and types of projects eligible for DEBS treatment should be made public to create uniformity and expedite future applications.

In addition, the language of Section 95989(d) should be amended to recognize as "DEBS-eligible" the offsets from all projects listed with an Offset Project Registry ("OPR") by December 31, 2020. All such offset projects should be "grandfathered;" i.e. deemed to have met the DEBS requirement. The current proposed language of Section 95989(d) would require offset projects that have already incurred significant costs to meet the new DEBS standard on and after January 1, 2021. This approach would be unfair to offset project developers and offset purchasers.

Entities that have made a significant investment in an offset program based on existing rules should not be subject to additional requirements or restrictions after January 1, 2021. Any offset project that is listed in accordance with Section 95975 before 2021 should be exempted from (or automatically grandfathered under) the DEBS standard. The offset credits associated with pre-2021 projects should be fully eligible for use to meet a covered entity's compliance obligation.

## **II.**

### **OFFSET INVALIDATION**

As currently structured, the offset program is only available (as a practical matter) to obligated entities that can carry the risk of "buyer liability" for offset invalidation. The offset invalidation provisions of Section 95985 should be updated to assign liability to the seller in the event of fraud, while providing a "buffer pool" or "environmental integrity account" to cover invalidation associated with material overstatement and regulatory non-conformance. Establishing a mechanism that provides transparency and assigns liability according to specific types of invalidation will encourage development of more offset projects, both in-state and out-of-state.

Shell Energy supports Appendix E insofar as it provides that offset projects are not subject to invalidation for non-GHG related occupational health and safety violations that have no impact on the validity of the offsets themselves. However, the following “conditional” language of Appendix E should be stricken: “. . . if the noncompliance has been resolved prior to the submittal of a request for issuance of ARB offset credits pursuant to Section 95981.” This language is unduly restrictive and contrary to the goal of limiting the bases for offset invalidation to relevant concerns. If an offset project’s regulatory noncompliance is not related to the GHG emission reduction purpose of the offset, the validity of the offset should not be contingent upon resolution of the regulatory noncompliance issue.

Finally, the regulation and Appendix E should be more specific and include both violations of the Occupational Health and Safety Administration and the Federal Mine Safety and Health Act. ARB protocols specifically recognize projects that capture and destroy methane in abandoned mines; clarifying the language to include both OSHA and MSHA violations in Appendix E is reasonable and should be adopted.

### III.

#### CONCLUSION

Shell Energy appreciates this opportunity to comment on the proposed changes reflected in the November 15, 2018 amendments. Shell Energy urges the ARB to modify the proposed regulation as indicated above. If you have any questions regarding these comments, please do not hesitate to contact me.

Respectfully submitted,



Marcie Milner  
Vice President, Regulatory Affairs  
Shell Energy North America (US), L.P.  
4445 Eastgate Mall, Suite 100  
San Diego, CA 92121  
Phone: 858.526.2106  
Cell: 858.405.2241  
Fax: 858.320.2606