



Shell Energy North America
4445 Eastgate Mall, Suite 100
San Diego, CA 92121
Tel 858 526 2109
www.shell.com/us

April 4, 2014

Via E-Mail and FedEx

Dr. Steven Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments of Shell Energy North America (US), L.P. on the ARB Staff's
March 21, 2014 Proposed Revisions to the Proposed Amendments to the
Cap and Trade Regulations

Dear Dr. Cliff:

Shell Energy North America (US), L.P. ("Shell Energy") provides its comments in response to the Staff's March 21, 2014 proposed modifications to the Staff's proposed amendments to the Air Resources Board's ("ARB") Cap and Trade Regulations. Shell Energy's comments focus on two issues: first, the Staff's proposed treatment of Legacy Contract counterparties under proposed Section 95891(f); and second, the Staff's proposed standards for determining a "direct corporate association" with a limited liability corporation ("LLC") under proposed Section 95833(a)(2)(F).

A. Treatment of Legacy Contracts

The Staff's proposed amendments (specifically, Section 95891(f)) would have the effect of penalizing an entity that is a counterparty to a Legacy Contract if the Legacy Contract Counterparty has a "direct corporate association" (within the meaning of Section 95833(a)(2)) with an industrial entity receiving a direct allocation of free allowances under Section 95891(d). Pursuant to Section 95891(f), free allowances that otherwise would be allocated to an industrial entity under Section 95891(d) would be taken from the industrial entity based on its direct corporate association with a Legacy Contract Counterparty.

The Staff's proposed amendments would place Shell Energy -- a Legacy Contract Counterparty -- at a disadvantage compared to other equally situated entities. All other Legacy Contract counterparties that do not have an association with an Industrial Entity receive free allowances as "transition assistance." As a separate matter, the Staff's proposed amendments have the unintended consequence of eliminating any incentive for a Legacy Contract generator to renegotiate the terms of the Legacy Contract.

Shell Energy has a "direct corporate association" with Shell Oil Company, the owner of the Martinez Refinery and an "Industrial Entity" under the regulations. The Martinez Refinery is eligible for a direct allocation of allowances as "transition assistance" pursuant to Section 95891(b) or (d). However, under proposed Section 95891(f), the Martinez Refinery would have

its allocation adjusted (reduced), owing to its direct corporate association with Shell Energy, a Legacy Contract Counterparty. This proposed approach would unfairly disadvantage Shell Energy under its Legacy Contract.

The Staff's proposed amendments also would have the unintended consequence of discouraging a Legacy Contract generator from attempting to renegotiate a Legacy Contract with a counterparty that is associated with an industrial entity. When these proposed amendments were published, the generator that is a party to Shell Energy's Legacy Contract ceased efforts to renegotiate the Legacy Contract. The proposed amendments eliminated the incentive for the generator to engage in efforts to mutually agree on the allocation of GHG compliance costs arising under the Legacy Contract (under which the generator is the obligated entity). In effect, the Staff's proposed amendments, if adopted, would pre-determine the "winner" as between the generator and its counterparty regarding the allocation of GHG compliance costs under the Legacy Contract.

All Legacy Contract counterparties should be treated equally with respect to the allocation of free allowances associated with emissions from the generation facilities under contract. Section 95894 of the proposed regulations properly provides for a direct allocation of free allowances to eligible Legacy Contract counterparties for "transition assistance." Section 95891(f) of the proposed regulations, however, has the effect of subtracting these allowances from the allocation of allowances to an Industrial Entity that is not a Legacy Contract Counterparty, but that has a direct corporate association with a Legacy Contract Counterparty. Section 95891(f) should be eliminated. A Legacy Contract Counterparty's eligibility for allocation of free allowances for transition assistance should stand on its own merits, without adjustment based on a "direct corporate association."

B. Determining a Direct Corporate Association with a Limited Liability Corporation ("LLC")

The Staff proposes to include an LLC within the meaning of a "direct corporate association," if an entity owns more than 50 percent of the LLC. As provided in previous comments, ownership of more than 50 percent of the LLC is not enough to establish a "direct corporate association" with an LLC. In order to determine the level of "control" that is required to establish a direct corporate association with an LLC in which an entity has an ownership interest, specific indicia of control must be considered, based on the terms of the LLC's operating agreement and/or through an attestation by an authorized officer.

Shell Energy proposes that the ARB include the following language at the end of Section 95833(a)(2)(F):

" . . . except that with respect to a limited liability corporation, a direct corporate association does not exist if the entity holding more than 50 percent of the limited liability corporation may not and does not exercise control over the activities of the limited liability corporation, as evidenced by all of the following:

- (i) Does not hold (and may not appoint or remove) more than 50 percent of the directors of the limited liability corporation;
- (ii) May not appoint or remove officers of the limited liability corporation; and
- (iii) May not act on behalf of the limited liability corporation or commit it to any obligation.

Evidence that an entity holding more than 50 percent of the limited liability corporation does not have the authority to exercise control over the activities of the limited liability corporation may be established through disclosure of the Operating Agreement of the limited liability corporation, and/or by a written attestation provided by an authorized officer of the entity that owns more than 50 percent of the limited liability corporation, affirming that the above criteria are met.”

This proposed language, if adopted, will ensure that a “direct corporate association” relationship with an LLC is limited to those entities that have control (or that have the ability to control) the LLC based on objective, verifiable criteria. It is unreasonable for the ARB to conclude that a “direct corporate association” with an LLC exists if an entity cannot and does not exercise control over the activities or the governance of the LLC.

C. Conclusion

The ARB should modify the above-referenced proposed amendments to the Cap and Trade Regulations. If you have any questions regarding these comments, Shell Energy would appreciate the opportunity to discuss its concerns in greater detail.

Respectfully submitted,



Marcie A. 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
Fax: 858.320.2606
E-Mail address: marcie.milner@shell.com