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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: 45-Day Proposed Cap and Trade Regulation Amendments

To: Air Resources Board:

Shell Energy North America (US), L.P. (“Shell Energy”) welcomes this opportunity to provide comments on potential changes to the ARB’s cap and trade regulations in the post-2020 period. Shell Energy’s comments focus on four topics: first, rules to implement the “direct environmental benefits in the State” (“DEBS”) criteria for offset projects after 2020; second, changes to the rules governing offset invalidation; third, treatment of unaccounted for emissions in the Energy Imbalance Market (“EIM”); and, fourth, provisions to address withdrawal from the Cap and Trade Program. Shell Energy’s comments on these topics are as follows:

DIRECT ENVIRONMENTAL BENEFITS IN THE STATE

Shell Energy agrees that all offset projects located in California should be deemed to meet the DEBS standard. Out-of-State offset projects should be judged under the DEBS standard based on factual information demonstrating that the project is beneficial to the California environment. To that end, ARB can acknowledge that environmental impacts of projects on watersheds, wildlife and air quality are generally regional in nature. Therefore, the ARB can recognize projects providing benefits within a defined geographical region as eligible for DEB treatment. As noted in its earlier comments,

Shell Energy supports a broad application of the DEBS standard to out-of-State offset projects.

At the April 26 workshop, Staff indicated that most stakeholders oppose retroactive application of the DEBS standard to existing (pre-2021) offset projects. Shell Energy agrees. Offset credits from projects listed with an Offset Project Registry (“OPR”) by December 31, 2020 should be deemed to have met the DEBS requirement. Any offset project that is listed 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. Requiring offset credits that have already been generated—or offset projects that have already incurred significant costs—to meet the new DEBS standard 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.

The DEBS "exemption" should apply to offsets from projects that are “listed,” in accordance with Section 95975, prior to 2021. An offset project developer has no control of the timing of “issuance” under Section 95980.1 or 95981, once its offset project has been listed. An offset developer should not face the uncertainty (and economic disadvantage) associated with the timing of “issuance,” a matter over which a project developer has no control. The new DEBS standard should be applied prospectively, and only to offset credits generated by new projects that are listed on or after January 1, 2021.

Transparency, however, is critical to the process. More specificity around eligibility of out-of-State projects that qualify for DEBs should be provided. Minimum criteria could be developed, and as applications are that are to be listed in 2021 are approved or rejected, the characteristics and types of projects should be made public to create uniformity and expediency for future applications.

DEBs application and approval criteria also must be completed well in advance of 2021 to facilitate purchase planning and inventory management. In addition, the application and approval should occur at or before “listing” rather than upon submission of the Offset Project Data Report in order to facilitate investment decisions. Ideally, ARB should set an enforceable timeframe in which to review and approve DEB applications (i.e. 45 days) to avoid increasing the backlog of offset issuance. According to ClearBlue Markets, ARB is currently averaging 214 days for review of forestry projects even though the regulation specifies a 45-day review period.

OFFSET INVALIDATION

The emphasis on in-state projects requires a new review of the regulations regarding offset invalidation. California offsets have proven to be reliable, eligible, real sources of enforceable GHG emissions reductions. Unfortunately, they are only available to obligated entities that can carry the risk of buyer liability. Shell Energy believes ARB must update the offset invalidation provisions to clearly assign seller liability 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 increase demand resulting in the development of more offset projects, both in-state and out-of-state. It is time to update the offset invalidation to ensure all obligated entities have access to this important cost containment product.

Finally, Shell Energy appreciates ARB’s acknowledgement that offset projects should not be subject to invalidation for non-GHG related occupational health and safety violations that have no impact on the validity of the offsets themselves. ARB must be more specific, however, and include both violations of the Occupational Health and Safety Administration and the Federal Mine Safety and Health Act as well. 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 clarified.

ENERGY IMBALANCE MARKET

ARB is proposing to eliminate the “bridge solution” (where unsold allowances would be retired), and replace it with the “EIM Purchaser” approach. This approach is discriminatory as it subjects California entities that participate in the real time market to carbon obligations not directly associated with their transactions (and over which they have no control.) The EIM Purchaser approach is contrary to ARB’s policies that are intended to allow entities to reduce their obligations by responding to a price signal. Shell Energy urges ARB to reject this proposal.

Shell Energy supports Staff's efforts to clarify and narrow the types of activities that could render an offset project invalid. Offset project developers need certainty as they initiate projects and programs that meet the DEBS offset eligibility criteria. Offset project developers also require certainty as to the actions that would cause an offset project to be determined invalid.

CAP AND TRADE PROGRAM WITHDRAWALS

In response to the recent actions taken by the Ontario government, under the proposed changes to the regulation, ARB grants the Executive Director the authority to suspend, revoke or repeal an approved linkage if a linked partner revokes its program. Shell Energy supports ARB's efforts to ensure there is a process when a member of the program withdraws its participation. It is unclear, however, how ARB would define maintaining "environmental integrity," a provision that allows the Executive Director to cancel allowances. More clarity is needed on what constitutes "environmental integrity." Language must be adopted stating that any cancellation of allowances will not be made from entity holding or compliance accounts as this would constitute a legal "taking."

CONCLUSION

Shell Energy appreciates this opportunity to comment on the proposed changes to the Regulation. If you have any questions regarding these comments, please don't hesitate to contact me.

Regards,



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