BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As-Available Capacity Prices adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities beginning July 2003 and Associated Relief.	A.08-11-001
And Related Matters.	R.06-02-013 R.04-04-003 R.04-04-025 R.99-11-022

REPLY COMMENTS OF SHELL ENERGY NORTH AMERICA (US), L.P. ON THE PRESIDING JUDGE'S PROPOSED DECISION

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Date: December 13, 2010

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Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As-Available Capacity Prices adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities beginning July 2003 and Associated Relief	A.08-11-001
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In accordance with Commission Rule 14.3(d), Shell Energy North America (US), L.P. ("Shell Energy") files its reply comments regarding the proposed decision ("PD") that was circulated by Presiding Judge Mark Wetzell on November 16, 2010. In its reply comments, Shell Energy responds to the joint opening comments submitted by the settlement parties on December 6, 2010. Shell Energy addresses the following issues:

- The CHP procurement obligation entered into to by the IOUs reflects an agreed upon approach to resolve longstanding disputes among the IOUs, QFs and ratepayer advocates. ESPs and CCAs were not participants in the underlying disputes, were not participants in the settlement process, and may not lawfully be straddled with the CHP procurement obligation voluntarily undertaken by the IOUs.

- Because the IOUs agreed to purchase CHP to meet future GHG emissions reduction requirements as part of a settlement of ongoing litigation, the costs of CHP should be borne by the IOUs' bundled procurement customers. There is no statutory obligation for customers of ESPs and CCAs to bear the costs of new IOU procurement resources that arise from a litigation settlement.

In support of its position on these issues, Shell Energy states the following:

I.

INTRODUCTION

The settlement parties acknowledge that the settlement agreement "resolves numerous outstanding disputes" among the QFs, IOUs and ratepayer advocates. Comments at p. 1. ESPs and CCAs were not parties to these "outstanding disputes." In approving a settlement agreement that benefits certain parties by resolving ongoing litigation between them, the Commission may not impose future costs and burdens on market participants that had no stake in and no involvement in these matters. ESPs and CCAs receive no benefit from the settlement. They should bear no burden from the settlement, either.

Shell Energy does not oppose the provisions of the settlement agreement that are intended to realign the relationship between QFs and IOUs. Shell Energy also does not oppose those provisions of the settlement under which the IOUs assume certain CHP procurement obligations on a going forward basis. There is no statutory basis for the Commission to extend these voluntarily agreed upon CHP procurement obligations to ESPs and CCAs, however. There is no legal justification, under SB 695 or otherwise, for the Commission to impose on ESPs and CCAs the procurement obligations that were agreed upon by the IOUs to settle QF pricing and contracting issues.

II.

NO STATUTORY BASIS EXISTS FOR EITHER CHP PROCUREMENT "OPTION" ADVANCED BY THE SETTLEMENT PARTIES

In their opening comments, the settlement parties urge the Commission either to "clarify" or "modify" the PD with respect to the CHP procurement obligation under Section 13 of the settlement agreement. Under one option, the settlement parties would have the Commission "clarify" the PD to require ESPs and CCAs to purchase "their proportionate share of CHP" to meet the agreed upon GHG emission reduction targets specified in Section 6 of the settlement agreement. See Comments

at p. 3. Under the second option, the settlement parties would have the Commission "modify" the PD to require the IOUs to purchase CHP on behalf of ESPs and CCAs, and thereupon allocate the "RA benefits" and "net capacity costs" to ESPs, CCAs and their customers. Id.

Neither option advanced by the settlement parties has a basis in existing statutes or Commission decisions. SB 695 does not require the CPUC to impose the same requirement on ESPs when the IOUs have voluntarily entered into a CHP procurement requirement in order to resolve ongoing litigation.

Moreover, there has been no finding by the Commission, under P.U. Code Section 365.1(c)(2), that CHP resources are "needed to meet system or local area reliability needs for the benefit of all customers" in the IOUs' service territories. See also D.06-07-029 (July 20, 2006) at pp. 25-33. In the absence of a proceeding in which all stakeholders have notice and an opportunity to comment on such a proposal, the Commission may not impose either a CHP procurement obligation or a CHP cost burden on ESPs and CCAs.

III.

THE CHP PROCUREMENT OBLIGATION MAY BE AGREED UPON EXCLUSIVELY FOR THE IOUs

The Commission may approve the IOUs' voluntary agreement to purchase from CHP resources if the Commission finds that it is reasonable in order to resolve outstanding litigation. Such a determination should not affect ESPs and CCAs or their customers, however. Unlike the IOUs (which receive consideration through the resolution of contentious litigation), ESPs and CCAs gain no benefit from the requirement to purchase CHP. Moreover, as noted in the settlement parties' opening comments, the Commission cannot assume that ESPs and CCAs are in the same position as the IOUs with respect to the purchase of CHP. See Comments at p. 4. It is difficult, if not impossible for ESPs and CCAs to purchase CHP under long-term contracts. As described by the

settlement parties, long-term contracts for the purchase of CHP energy "can impact their [ESP/CCA] balance sheet, liquidity and debt equivalence." Id.

Moreover, unlike the IOUs, ESPs and CCAs cannot be sure of the level of their customer load on a long-term basis. As a consequence, any long term CHP procurement contract could result in an ESP or CCA holding excess resources in a particular procurement period. Id. Approval of a voluntary CHP procurement program for the IOUs does not establish a sufficient basis for adopting a mandatory CHP procurement program for ESPs and CCAs.

IV.

AN IOU-ONLY CHP PROCUREMENT PROGRAM WILL NOT DISADVANTAGE THE IOUs

Imposing a CHP procurement obligation on the IOUs, but not on ESPs and CCAs, will not negatively affect the IOUs' competitive position. The IOUs voluntarily agreed to purchase CHP to meet a portion of their GHG emissions reduction obligation. The costs of these CHP purchases should be reflected in the IOUs' bundled procurement charges.

In whatever manner ESPs and CCAs choose to meet their GHG emission reduction requirements (whether through CHP purchases or otherwise), the costs of these resources will be reflected in their procurement charges to the extent they are able to do so in a competitive market. ESPs and CCAs should not be required to purchase -- or pay for -- CHP purchases just because the IOUs agreed to make such purchases.

The IOUs should not be heard to complain of a "competitive disadvantage" in a market in which the IOUs are guaranteed recovery of their approved procurement costs, and in a market in which customer migration to direct access is severely limited. Given the size of the IOUs' procurement portfolios and their bargaining strength in the CHP market, the IOUs will not be disadvantaged if a CHP procurement obligation applies exclusively to the IOUs.

V.

CONCLUSION

Without any participation by ESPs and CCAs, the IOUs agreed to purchase CHP to meet the IOUs' agreed upon GHG emission reduction targets. The burden voluntarily assumed by IOUs cannot be shifted to ESPs and CCAs. The Commission should not require ESPs and CCAs to purchase CHP, and the Commission should not spread the costs of the IOUs' CHP procurement to the customers of ESPs and CCAs. These elements of the settlement agreement must be severed and addressed separately, if at all.

Respectfully submitted,

/s/

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Date: December 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have served, this day, a copy of the foregoing REPLY COMMENTS OF SHELL ENERGY NORTH AMERICA (US), L.P. ON THE PRESIDING JUDGE'S PROPOSED DECISION on the Honorable Michael R. Peevey, Assigned Commissioner and the Honorable Mark Wetzell, Presiding Administrative Law Judge, by electronic mail and Federal Express; and on all parties on the service lists for Docket Nos. A.08-11-001, R.06-02-013, R.04-04-003, R.04-04-025, and R.99-11-022, by electronic mail only.

Executed on December 13, 2010, at San Diego, California.

/s/
Sue Pote

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