BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	R.11-05-005

OPENING COMMENTS OF SHELL ENERGY NORTH AMERICA (US), L.P. ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES

John W. Leslie
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, California 92101
Tel: (619) 699-2536
Fax: (619) 232-8311
E-Mail: jleslie@luce.com

Attorneys for Shell Energy North America (US), L.P.

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In accordance with the procedural schedule established in the Presiding Judge's July 12, 2011 Ruling, Shell Energy North America (US), L.P. ("Shell Energy") submits its opening comments on implementation of the portfolio content categories for the Renewable Portfolio Standard ("RPS") program. Shell Energy is a registered energy service provider ("ESP") and a "Respondent" in this proceeding. Shell Energy appreciates the opportunity to submit comments on the Commission's implementation of SBX1 2.

I.

INTRODUCTION

Shell Energy's opening comments respond (in order) to the questions presented in the Presiding Judge's July 12 Ruling. The questions relate primarily to the implementation of P.U. Code Section 399.16. As provided in the Judge's Ruling, Shell Energy does not reproduce the questions in this document. Shell Energy's responses are identified by the number corresponding to the questions in the Judge's Ruling.

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II.

RESPONSES TO QUESTIONS

Shell Energy's responses to the Presiding Judge's questions are as follows:

1. "Eligible renewable energy resource electricity products" should be interpreted to mean the "output" from any "eligible renewable energy resource." An "eligible renewable energy resource" is defined in P.U. Code Section 399.12(e). An "electricity product" from an eligible renewable energy resource is the output of that facility, whether or not the output is identified with a specific "transaction" or associated with "procurement."

2. Yes. The first clause of P.U. Code Section 399.16(b)(1)(A) refers to the RPS-eligible generation facility itself. The second clause of the provision refers to the electricity produced at (i.e., the "output" of) the facility.

3. The California balancing authorities ("CBA") covered by P.U. Code Section 399.12(d) are balancing authorities with control over a "balancing authority area" primarily located within the State of California and include the following:

- California ISO
- Imperial Irrigation District
- Sacramento Municipal Utility District
- Los Angeles Department of Water and Power
- Turlock Irrigation District[1]

4. Energy that is "scheduled" from an eligible renewable energy resource into a CBA as that energy is produced meets the definition of P.U. Code Section 399.16(b)(1)(A) because the energy delivery can be verified through a NERC e-tag. The

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[1] Subject to the issue of "primarily located within" California, Nevada Energy and PacifiCorp may also be considered CBAs within the meaning of P.U. Code Section 399.12(d).

NERC e-tag is conclusive evidence of a transaction that is scheduled from an eligible renewable energy resource into a CBA "without substituting electricity from another source." Delivery of the renewable energy can be tracked from the "source" to the "sink" through the NERC e-tag. As long as the energy from the eligible renewable energy resource is transmitted to a CBA, the energy can be tracked and it meets the product content definition of P.U. Code Section 399.16(b)(1)(A).

A transaction does not require "firm" transmission to demonstrate that the renewable energy from an out-of-State eligible renewable energy resource has been scheduled to a CBA without substituting electricity from another source. The NERC e-tag traces the renewable energy from the source to the CBA regardless of whether transmittal of the renewable energy is through firm transmission or interruptible transmission. The LSE can provide an attestation, and the CEC as part of its verification process can audit the hourly NERC e-tags and WREGIS tracking system data to confirm that firm or interruptible transmission was used to deliver the renewable energy from the source to the CBA. Firm transmission should not be required in order for renewable energy from an out-of-State eligible renewable energy resource to qualify under P.U. Code Section 399.16(b)(1)(A).

In addition, P.U. Code Section 399.16(b)(1)(A) includes the output from any eligible renewable energy resource that is located <u>within</u> the boundaries of a CBA. All renewable generation that is located within a CBA's boundaries is scheduled from the eligible renewable energy resource into a CBA without substituting electricity from another source. All energy output from an eligible resource within a CBA control area is scheduled, and in the case of the CAISO BA, sold and cleared through the CBA under the CAISO's MRTU market requirements. This means that any REC, whether bundled with, or unbundled from the energy from an eligible

renewable energy resource located within the boundaries of a CBA, qualifies under P.U. Code Section 399.16(b)(1)(A). Regardless of what entity is the purchaser of the renewable energy from an in-State eligible renewable energy resource, the energy is always scheduled -- and delivered -- into a CBA.

5. Yes. As noted above, the NERC e-tag traces the renewable energy from the source to the CBA regardless of whether firm or interruptible transmission is used. This provides the "definitive determination" that is required in Ordering Paragraph No. 26 of D.10-03-021 (March 11, 2010) (as modified by D.11-01-025) (January 13, 2011).

6. In accordance with P.U. Code Section 399.21(a)(5) and Section 399.25(a), (c) and (d), the CEC is responsible for tracking and verifying renewable energy scheduled from an eligible renewable energy resource into a CBA. Under P.U. Code Section 399.25(a), the CEC is responsible for certifying eligible renewable energy resources. The CEC also is responsible for designing and implementing an accounting system to verify compliance with the RPS requirement by retail sellers (and by local publicly owned electric utilities). See P.U. Code Section 399.21(a)(5). Moreover, the CEC is responsible for establishing a system for tracking RECs and certifying the eligibility of RECs for RPS compliance. See P.U. Code Section 399.25(c) and (d).

The CEC is responsible, therefore, for defining and counting, under P.U. Code Section 399.16(b)(1)(A), those products that are "scheduled from the eligible renewable energy resource into a [CBA] without substituting electricity from another source." The Commission should rely on the CEC's verification process to determine compliance with the product content categories.

The Commission requires IOUs to submit RPS contracts for approval through an advice letter process. The Commission requires all LSEs to submit annual compliance reports detailing their RPS procurement. This process is in place and is working.

7. Reference to the "fraction of the schedule actually generated by the eligible renewable energy resource" should be interpreted to mean that only the renewable energy that is reflected in actual meter data should count toward the portfolio content category under P.U. Code Section 399.16(b)(1)(A). WREGIS currently accounts for fractional amounts on a monthly basis and then carries that balance forward. For example, if a renewable facility generates 100.7 MWh in January, WREGIS subsequently issues 100 RECs and then carries the balance of 0.7 MWh into February. If the facility generates 98.6 MWh in February, WREGIS subsequently issues 99 RECs, carrying over a balance of 0.3 MWh into March.

8. Reference to an "agreement to dynamically transfer electricity" to a CBA should be interpreted to mean that the output ("electricity product") of an eligible renewable energy resource is subject to an agreement between two balancing authorities by which the renewable energy will be transferred from a generator located outside California to a CBA, with the CBA agreeing to assume the provision of regulation and associated ancillary services for the generator just as if the generator was physically located in the CBA.

9. Yes. As noted, a "renewable energy credit" ("REC") is defined in P.U. Code Section 399.12(h). A REC may be procured together – "bundled" – with the energy generated at an eligible renewable energy resource, or the REC may be procured separately – "unbundled" – from the energy generated at an eligible renewable energy resource.

10. An unbundled REC qualifies under P.U. Code Section 399.16(b)(1)(A) if the eligible renewable energy resource is located within the boundaries of a CBA. In-state

renewable energy is scheduled into a CBA without substituting electricity from another source. The CEC can verify that the REC was created when the energy was generated at an eligible renewable energy resource via WREGIS.

11. The WREGIS protocol provides that certificates are issued only in increments of full (whole) megawatts (MW). Any partial MWs may be carried over from one month to another in order to aggregate to a full MW. To the extent that the otherwise eligible renewable energy (or a REC) does not qualify under P.U. Code Section 399.16(b)(1)(A) or Section 399.16(b)(2), the fractional MW of the electricity generated will be included under Section 399.16(b)(3) (see Response to Question No. 7 above).

12. "Firmed and shaped" products are discussed in the CEC's RPS Eligibility Guidebook in order to explain the definition of "delivery" under the existing RPS statute (SB 1078). See Guidebook (Fourth Edition, January 2011) at pp. 36-40. With the elimination of the definition of "delivery" under SBX1 2, and with specific reference to "firmed and shaped" products under P.U. Code Section 399.16(b)(2), the CEC's explanation of "firmed and shaped" products in the RPS Eligibility Guidebook gains added, independent significance. The Commission should defer to the CEC's articulated definition of "firmed and shaped" products, including but not limited to the specific examples set forth in the footnote to this section. See Guidebook at p. 37, n. 61. As noted in the footnote, the cited examples reflect the types of contracting structures that meet the definition of "firmed and shaped." These examples are not exhaustive, however.

13. See Response to Question No. 12, above.

14. The reference to "incremental electricity" in P.U. Code Section 399.16(b)(3) -- in connection with the reference to "firmed and shaped" RPS-eligible electricity products -- should

be interpreted to mean that the REC generated at any out-of-State eligible renewable energy resource must be matched with energy delivered to a CBA within the same year in which the REC is generated. "Incremental" should be interpreted to mean that "but for" the RPS-eligible firmed and shaped transaction, no additional energy would be scheduled to the CBA to serve California load.

15. First Question: Yes. "Firmed and shaped" products under P.U. Code Section 399.16(b)(2) refer only to energy generated outside the boundaries of a CBA. As described above, renewable energy (or RECs) generated within the boundaries of a CBA qualify under P.U. Code Section 399.16(b)(1)(A) because the energy is scheduled into a CBA without substituting electricity from another source. There is no reason to "firm and shape" a transaction for the sale of "in-State" renewable energy (or RECs).

Second Question: No. Firmed and shaped products under P.U. Code Section 399.16(b)(2) may include renewable generation from any eligible renewable energy resource that meets the definition of a "renewable electrical generation facility" under Pub. Res. Code Section 25741. Such a facility may produce intermittent energy (wind, solar) or non-intermittent energy (geothermal, digester gas, landfill gas) consistent with the limitations of Pub. Res. Code Section 25741(a)(1).

The location of the eligible renewable energy resource is not relevant to the issue of whether or not firmed and shaped products under P.U. Code Section 399.16(b)(2) should be restricted to "intermittent" generation. However, the location of the eligible renewable energy resource is relevant to whether the renewable generation (or the RECs) qualify as firmed and shaped products under P.U. Code Section 399.16(b)(2). As noted above, if the eligible

renewable energy resource is located within the boundaries of a CBA, the renewable generation -- or the REC -- qualifies under Section 399.16(b)(1)(A).

16. Shell Energy agrees with this statement to the extent that the eligible renewable energy resource is located outside the boundaries of a CBA. As a practical matter, renewable energy (or RECs) from an eligible renewable energy resource located within the boundaries of a CBA cannot be firmed and shaped because the renewable energy must be scheduled into the CBA.

17. First Question: "Ownership agreement" should be interpreted to mean any agreement or transaction reflecting ownership of the output (energy; RECs) of the eligible renewable energy resource.

Second Question: "Count in full" should be interpreted to mean that the renewable energy (or REC) that is the subject of the pre-June 1, 2010 agreement shall be fully eligible to meet the load-serving entity's ("LSE") RPS procurement obligations. There should be no limitation on the LSE's use of these renewable resources for RPS compliance. Consequently, if the output of the pre-June 1, 2010 RPS agreement was eligible for RPS compliance under the rules in place as of the date the contract was executed (P.U. Code Section 399.16(d)(1)), the limitations set forth in various provisions of SBX1 2 shall not apply.

For example, the renewable energy (and RECs) purchased under a qualifying pre-June 1, 2010 contract are not subject to the "bucket" limits set forth in P.U. Code Section 399.16(c); are not subject to the limitations on "banking" excess procurement applied to contracts less than 10 years in duration under P.U. Code Section 399.13(a)(4)(B); and are not subject to any greater limitation on the use of RPS contracts less than 10 years in duration (under P.U. Code Section 399.13(b)) than existed at the time the contract was executed.

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"Count in full" should be interpreted in a manner that gives full effect to the legitimate expectations of the parties that entered into an "ownership agreement" prior to June 1, 2010. SBX1 2 must be interpreted and implemented to provide RPS market participants with regulatory certainty and an assurance of continuity in the value of a contract throughout the term of the contract. "Count in full" must be interpreted to mean that pre-June 1, 2010 contracts will be fully honored and fully eligible for RPS compliance.

18. The language of P.U. Code Section 399.16(d) must be read in conjunction with the language of D.10-03-021 (March 11, 2010) (as modified by D.11-01-025 (January 13, 2011)), and also in conjunction with the language of D.11-01-026 (January 13, 2011). In the same manner that the Commission "preserved the intent of treating approved contracts as bundled" (for IOUs) (D.11-01-025 at p. 17), and "recognize[d] the legitimate expectations" of the parties to contracts that were entered into (signed) prior to the date of the Commission's decision (for ESPs) (D.11-01-026 at p. 17), P.U. Code Section 399.16(d) also honors the expectations of the parties to contracts signed before June 1, 2010.

Based upon the consistent treatment of RPS contracts entered into in reliance on the regulatory requirements existing at the time of contract execution, the Commission should give effect to the overlapping, complementary provisions of D.10-03-021 (as modified by D.11-01-025), D.11-01-026, and P.U. Code Section 399.16(d). Specifically, any Commission-approved IOU RPS contract entered into prior to June 1, 2010 should "count in full" toward the IOU's RPS compliance obligation, regardless of the date of Commission approval. Moreover, any ESP RPS contract that was signed prior to January 13, 2011 (the date of D.11-01-026) should "count in full" toward the ESP's RPS compliance obligation. This approach reconciles the provisions of P.U. Code Section 399.16(d) with the terms of the Commission's January 2011 decisions,

thereby providing certainty to RPS market participants that entered into contracts based upon the existing regulatory structure. Any other interpretation would impair the obligations and expectations of the parties under the RPS contracts and would constitute a "taking."

19. As is pointed out in the Presiding Judge's July 12 Ruling (p. 10), SBX1 2 will not become effective until 90 days after the end of the Legislature's First Extraordinary Session. Moreover, it is uncertain when the First Extraordinary Session will end. At the earliest, SBX1 2 will become effective in November 2011. The implementation rules for SBX1 2 will not be adopted until shortly before the end of this calendar year. Yet P.U. Code Section 399.15(b) provides for an initial compliance period that commences on January 1, 2011.

In view of when SBX1 2 may become effective, and in view of the anticipated timing of a Commission decision adopting implementation rules, the Commission should maintain the existing RPS regulatory structure at least through the end of 2011. The portfolio content classifications, compliance processes, procurement limitations, flexible compliance rules and reporting requirements under SBX1 2 should be effective only after SBX1 2 is placed in effect, but not before January 1, 2012.

LSEs should be required to continue to meet the RPS procurement obligations and reporting obligations under existing regulations until SBX1 2 is implemented. In this connection, existing rules (e.g., TREC definition; TREC usage limitations; banking and flexible compliance; and reliance on contracts with a term less than 10 years in duration) should remain in place at least through the end of 2011.

Because, under P.U. Code Section 399.15(b)(2)(B), the RPS procurement obligation for the first compliance period (2011-2013) is an average of 20 percent of an LSE's retail sales, the current RPS procurement obligation of 20 percent per year can be relied upon for 2011 while

providing a smooth transition to the requirements under SBX1 2. Maintaining the current RPS procurement requirements and compliance program through the end of 2011 will provide regulatory certainty and allow the market to move relatively seamlessly to the new market structure in 2012.

20. Eliminating the "delivery" language from the statute does not necessarily eliminate the delivery obligation from the eligibility requirement. Although the definition of "delivery" is not technically a part of the definition of an "eligible renewable energy resource" under SBX1 2, "delivery" is a necessary result of "firmed and shaped" products defined in the CEC's RPS Eligibility Guidebook. See Guidebook at pp. 36-40. The new statutory provisions addressing portfolio content categories explicitly provide for the use of "firmed and shaped" products for RPS compliance. The CEC's RPS Eligibility Guidebook should continue to define the products that qualify as "firmed and shaped," whether or not a "delivery" requirement is explicitly provided in the statute.

21. The IOUs already are required to provide, with their advice letters, copies of the RPS procurement contracts for which they seek approval.

22. The CEC is responsible for certifying eligible renewable energy resources and verifying LSEs' compliance with the RPS requirements. See P.U. Code Section 399.25(a); Section 399.21(a)(5). Any "post-contracting verification" of the portfolio content category will be performed by the CEC.

23. The legislature has established the portfolio content categories under P.U. Code Section 399.16(b). The market will determine the relative value of "electricity products" in each portfolio content category ("bucket"). Any direct or indirect costs associated with transactions in each category will be reflected in the agreed upon price.

24. As noted above, the existing rules should be maintained through the end of this calendar year and (if the effective date of SBX1 2 is after January 1, 2012) until the effective date of SBX1 2. RPS market participants must have regulatory certainty in order to enter into RPS contracts to meet their 2011 RPS procurement obligations. Maintaining the existing rules through the end of 2011 will allow LSEs to enter into contracts based upon a structure that is known, and protocols that are understood. Maintaining the current rules through the end of 2011 will affirm existing contracts and facilitate a smooth transition to the modified RPS framework under SBX1 2.

If the Commission maintains the existing RPS rules through the end of this year, the TREC classification, TREC usage limitations, and TREC price limit (for IOU contracts) will continue to apply through the 2011 compliance period. In addition, the minimum quantity of long-term contracts, the 20 percent RPS procurement obligation (accompanied by flexible compliance rules (including banking)) will apply through 2011. The current rules can be maintained for 2011 while the Commission develops the structure for the three-year compliance period (2011-2013) under P.U. Code Section 399.15(b)(1)(A).

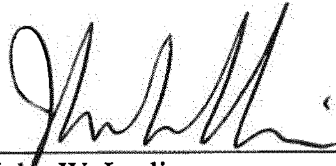
III.

CONCLUSION

Shell Energy appreciates the opportunity to respond to the above questions. The Commission should hold a workshop soon after opening comments are filed so that parties'

August 19 reply comments can address both the opening comments and issues raised at the workshop.

Respectfully submitted,



John W. Leslie
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, California 92101
Tel: (619) 699-2536
Fax: (619) 232-8311
E-Mail: jleslie@luce.com

Attorneys for Shell Energy North America (US) L.P.

Date: August 8, 2011

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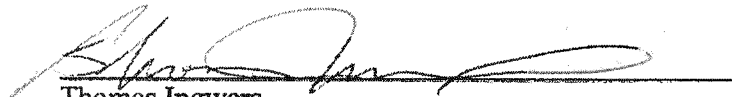
VERIFICATION

I am an officer of Shell Energy North America (US), L.P. and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

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

Executed on August 3, 2011 at San Diego, California.



Thomas Ingwers
Vice President – Environmental Products
Shell Energy North America (US), L.P.

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