BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	R.10-05-006

RESPONSE OF SHELL ENERGY NORTH AMERICA (US), L.P. TO THE MOTION OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION FOR EXPEDITED DETERMINATION OF ISSUE

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In accordance Rule 11.1(e) of the Commission's Rules, Shell EnergyNorth America (US), L.P. ("Shell Energy") files this response insupportof the motionthat was filed bythe Independent Energy Producers Association ("IEP") on September 23, 2011. IEP's motion requests that the Commission "set a schedule for an expedited determination of the treatment of GHG compliance costs associated with contracts executed between independent generators and utilities prior to the passageofAB32thatdo notincludeamechanism forrecoveryof such costs." IEP Motionat p.3. ShellEnergyconcurswithIEP. TheCommissionshouldaddressthe"regulatorygap"thatcurrently existsintheproposedregulatorystructurerespectingtherecoveryofGHGcompliancecostsinpre-AB 32 contracts.

TheCommissionshouldestablishascheduleforwrittencommentsandaproposeddecision thatcanbecirculatedbyJanuary 2012. Independentgeneratorsandimportersofelectricitythathave

a compliance obligation under AB 32 must have certainty as to whether and how they will recover the cost of GHG compliance from their customers. Because long-term, pre-AB 32 power sale contracts do not allocate the cost of GHG compliance between the buyer and seller, the contracting parties must have guidance as to how these costs will be recovered. Up to this point in time, the Air Resources Board ("ARB") has not addressed the issue in its proposed cap and trade regulations. In order to ensure that there is a level playing field for all "covered entities" that sell electric power into the California market, this Commission should expeditiously address the treatment of GHG compliance costs under pre-AB 32 contracts.

I.

INTRODUCTION

In accordance with the ARB's current proposed cap and trade regulations, a "covered entity," including a "first deliverer" of electricity (as defined in CCR Title 17, Section 95811(b)), will have an annual compliance obligation under which the covered entity must surrender one compliance instrument (an "allowance" or an "offset") for each metric ton of CO_2 equivalent of GHG emissions for its annual and triennial compliance obligations, beginning in 2013. See Section 95856(a). This compliance obligation will require each covered entity to purchase allowances or offsets.

Covered entities must have a means by which to recover their GHG compliance costs. If the covered entity is an IOU, it will recover its GHG compliance costs from its bundled sales customers. If the covered entity is an operator of an electric generating facility located in California, or an electricity importer, the covered entity must recover its GHG compliance costs through the price(s) charged in its contract(s) with its customer(s).

Contracts that were entered into after the enactment of AB 32 reflect an agreed upon allocation of GHG compliance costs in the contract price. Contracts that were entered into prior to the enactment of AB 32, however, do not provide for the allocation of GHG compliance costs betweenthesellerandbuyer. Somecoveredentitieshavelong-term,pre-AB32fixedpricecontracts that do not address the recovery of GHG compliance.

II.

THE COMMISSION SHOULD ESTABLISH A PROCEDURAL SCHEDULE TO ADDRESS THE PRE-AB 32 CONTRACT ISSUE

IEP noted in its September 23 motion that the ARB's current proposed regulations do not address the recovery of GHG compliance costs in pre-AB 32 long-term contracts. Some parties, includingShellEnergy,haverequestedthattheARBamendtheproposedcapandtraderegulations to provide a direct allocation of allowances to the limited number of entities that have pre-AB 32 contracts that do not address the allocation of GHG compliance costs. ARB has not adopted this approach as of this time.

InviewoftheARB'sfailuretoaddressthisissue,coveredentitieswithpre-AB32long-term contractsthatextendbeyond2012havenoguidanceastohowtorecovertheGHGcompliancecosts that theywill incur in 2013 and thereafter. Although this could be a matter of negotiation between buyer and seller, purchasers of electricity from covered entities have little, if any incentive to negotiateacontractmodificationthatwouldincreasethepriceunderthecontract. Acoveredentity should not be placed in a position in which it must negotiate against itself in order to obtain any recovery of its GHG compliance costs.

Initsmotion,IEPnotesthatintheJointRulingissuedonAugust 4,2011(inthisproceeding andinR.11-03-012),thePresidingJudgesdeterminedthat"GHGcompliancecostsassociatedwith contractsexecutedbetweenindependentgeneratorsandutilitiespriortothepassageofAB32,which do not provide for pass-through of such costs, [are] more appropriately addressed in an LTPP proceeding." Ruling at p. 2. The August 4 Ruling stated that issues related to GHG risk management,procurementandcompliancecostsremainwithinthescopeof thisproceeding. Id.at p. 6.

NotwithstandingtheAugust 4Ruling,theCommissionhasnotinitiatedaprocesstoconsider thetreatmentofGHGcompliancecostsunderpre-AB32contractsthatdonotaddresstheallocation of such costs. On this basis, IEP proposes that the Commission set a schedule for an expedited determinationofthetreatmentofGHGcompliancecostsassociatedwithpre-AB32contracts. IEP seeksan"expedited"determinationbecausetheauctionofGHGemissionallowanceswillbeginin the second half of 2012, and covered entities must decide "whether and to what extent they must obtain GHG emissions allowances in the auctions." IEP Motion at p. 3.

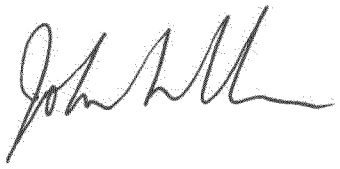
ShellEnergysupportsIEP'smotion. Coveredentitiesshouldbeaffordedguidanceastohow GHG compliance costs should be recovered in pre-AB 32 contracts, in the absence of contract language assigning this cost responsibility. If the ARB is unable or unwilling to provide this guidance,theCommissionshoulddoso. InitsroleasregulatoroftheState'sIOUs,theCommission must ensure that all covered entities selling power to the IOUs are afforded equal treatment. Covered entitles with pre-AB 32 long-term contracts should not be disadvantaged simply because they could not anticipate the requirements adopted in – and the costs imposed through – AB 32.

III.

CONCLUSION

For the forgoing reasons, Shell Energy requests that the Commission grant IEP's September 23 motion. The Commission should adopt an expedited schedule to address the allocationofGHGcompliancecostsinthosepre-AB32long-termcontractsthatdonotaddressthe recovery of GHG compliance costs.

Respectfully submitted,



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