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April 17, 2013

The Honorable Michael R. Peevey  
President  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Re: QF/CHP Settlement Agreement Implementation

Dear President Peevey:

This letter is written on behalf of Shell Energy North America (US), L.P. (“Shell Energy”) in response to the April 12, 2013 letter addressed to you from Jan Smutney-Jones, Executive Director of the Independent Energy Producers Association (“IEP”). In his letter, Mr. Smutney-Jones referred to individual Commissioners’ public comments about two Energy Division Draft Resolutions (E-4529 and E-4569). These Draft Resolutions were discussed at the Commission’s April 4 meeting, but were “held” until the April 18 meeting. The two Draft Resolutions address PG&E and SCE resource adequacy (“RA”) capacity only contracts with a CHP facility owner. These capacity only contracts were negotiated under the framework established through the QF/CHP settlement agreement.

In his letter, Mr. Smutney-Jones observed that at the April 4 meeting, the Commissioners expressed concern whether these RA capacity only contracts meet the “spirit” of the settlement agreement. Noting that IEP was a signatory to the QF/CHP settlement agreement and was involved in negotiation of the settlement agreement, Mr. Smutney-Jones stated that “individual terms and conditions” of the settlement agreement were “examined in excruciating detail.” He stated further that CHP eligibility was defined in the settlement term sheet in “unambiguous terms.” Mr. Smutney-Jones expressed concern that the Commissioners’ April 4 comments suggested that the Commission may be adding a new standard for approval of contracts with eligible CHP facilities: whether the contract meets the “spirit” of the settlement agreement.

Shell Energy agrees with Mr. Smutney-Jones that developers – and other market participants – need certainty with respect to the selection criteria for projects and contracts that are submitted for Commission approval. Shell Energy does not agree with Mr. Smutney-Jones, however, that the standard for “eligibility” of capacity only contracts is clear under the settlement agreement. For all the “excruciating detail” in the QF/CHP settlement agreement, the settlement term sheet does not indicate that capacity only products are eligible for consideration under the protocols established in the QF/CHP settlement agreement.

Shell Energy, whose customers are required to bear a portion of the cost of CHP capacity procured under the settlement agreement, cannot speak to the negotiations leading up to the QF/CHP settlement agreement. Shell Energy and other representatives of ESPs and CCAs were not invited to participate in the settlement process. Shell Energy can only point to the language of the settlement agreement itself. Nowhere in the settlement term sheet is there a reference to capacity only contracts.

Moreover, the Independent Evaluator Reports for both the SCE and PG&E contracts acknowledged that a capacity only product “was not explicitly identified in the . . . Settlement. . . .” In fact, both SCE and PG&E had to revise their initial CHP RFO protocols to accept offers for capacity only products. In view of the exactitude with which the settling parties addressed the terms and conditions of the settlement agreement, it is astonishing that some (but not all) of the settling parties insist that capacity only products are eligible for treatment under the settlement agreement, when no such language appears in the settlement term sheet.

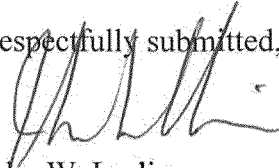
Shell Energy agrees with Mr. Smutney-Jones that the Commission should “consider how best to proceed in the implementation” of the QF/CHP settlement agreement. Because the settlement agreement has been approved by the Commission, the Commission must proceed in a manner that is open and transparent. Shell Energy supports the institution of a formal rulemaking proceeding to examine implementation issues with respect to the settlement agreement.

Among other “implementation” issues to be considered, the Commission must address a “cap” on the amount of capacity (and net capacity costs) that can be shifted to DA and CCA customers under the settlement. The settlement establishes MW procurement “targets” for each IOU, but the settlement does not establish “caps.” The MW targets for each IOU under the settlement should establish limits on the amount of capacity (and net capacity costs) that can be allocated to DA and CCA customers under the settlement.

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Shell Energy welcomes the opportunity to participate in an OIR proceeding addressing implementation of the QF/CHP settlement agreement. More immediately, Shell Energy would appreciate the chance to speak with you further regarding this matter. If you have questions about Shell Energy's position, please do not hesitate to contact the undersigned.

Respectfully submitted,



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of  
McKenna Long & Aldridge LLP

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

JWL/jl

cc: Commissioner Mark J. Ferron  
Commissioner Michel P. Florio  
Commissioner Carla J. Peterman  
Commissioner Catherine J.K. Sandoval  
All parties on the service list in R.10-05-006

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