

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

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**OPENING COMMENTS OF SHELL ENERGY NORTH AMERICA (US), L.P.  
ON THE PRELIMINARY STAFF PROPOSAL CONCERNING  
CONFIDENTIALITY RULES FOR RPS PROCUREMENT**

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In accordance with the schedule established by the Presiding Administrative Law Judge, Shell Energy North America (US), L.P. (“Shell Energy”) submits its opening comments on the Energy Division’s “Preliminary Staff Proposal” addressing revised confidentiality rules for RPS procurement. The Preliminary Staff Proposal is incorporated in Presiding Judge Anne Simon’s July 1, 2013 Ruling in the above-reference proceeding.<sup>1</sup>

**I.**

**INTRODUCTION**

The Presiding Judge’s Ruling solicits comments on a preliminary Energy Division staff proposal addressing “the appropriate treatment of [RPS procurement and compliance] information that maybe or is claimed to be confidential [by LSEs] . . .” Ruling at p. 1. The Preliminary Staff Proposal includes a series of proposed revisions to the Commission’s existing confidentiality rules for RPS procurement. Most of these confidentiality rules were developed in D.06-06-066 (June 29, 2006), as modified in D.08-04-023 (April 10, 2008).

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<sup>1</sup> R.11-05-005, “Administrative Law Judge’s Ruling Requesting Comments on Preliminary Staff Proposal to Clarify and Improve Confidentiality Rules for the Renewables Portfolio Standard Program” (issued July 1, 2013).

Many of the staff's proposals address potential changes to existing "public disclosure" requirements that are set forth in D.06-06-066 and D.08-04-023. The Commission's existing public disclosure requirements apply to confidential information in all LSEs' RPS compliance reports, as well as confidential information in IOUs' RPS procurement contracts. The Judge's Ruling states that many of the staff's proposals seek changes to the confidentiality rules in light of recent legislative changes, including the State's new RPS statute (SB 1x 2). See Ruling at pp. 8 – 9..

Some of the staff's "public disclosure" proposals, however, extend beyond the scope of the matters addressed in D.06-06-066 and D.08-04-023, beyond the scope of recent legislative changes, and beyond the scope of the Commission's jurisdiction. The Commission's legal authority does not extend to the RPS procurement prices paid, or the RPS procurement costs incurred, by ESPs. ESPs' RPS procurement prices, costs and contracts are not subject to public disclosure under D.06-06-066 or D.08-04-023, because the Commission does not regulate the prices paid, or the prices charged by the ESPs for RPS procurement. The Commission's authority to regulate an ESP's compliance with its RPS procurement obligation does not give the Commission authority to order ESPs to publicly disclose their RPS procurement contract information.

The Energy Division staff seeks to require ESPs to publicly disclose confidential RPS procurement contract information (e.g., RPS procurement prices; RPS procurement costs; RPS procurement contract terms). The staff attempts to justify this requirement based on SB 695. The staff proposes that the same treatment should apply to ESPs and IOUs with respect to the confidentiality of RPS procurement contract information, because the legislature determined that ESPs and IOUs are subject to the same RPS compliance obligations. Contrary to the staff's reasoning, the "equal treatment" provision of SB 695 does not extend to public disclosure rules for ESPs' confidential RPS procurement contract information. The Commission does not have

jurisdiction over the prices, costs, or other contract terms between ESPs and their RPS suppliers. The Commission may not lawfully require ESPs to publicly disclose this information.

As the Commission is aware, the ESP business model is very different from the IOU business model. As a regulated entity and as the “default” supplier of energy to captive customers, the IOU must obtain Commission approval for its RPS procurement contracts, including the price paid by the IOU for RPS energy. See P.U. Code Section 399.13(d). In return, the IOU is granted guaranteed recovery, from its bundled sales customers, of the costs under all approved RPS contracts. See P.U. Code Section 399.13(g). This is a fundamental element of the “regulatory compact” between the IOUs and the Commission.

By contrast, the Commission does not regulate the prices charged by ESPs to their direct access customers. See P.U. Code Section 394(f). An ESP’s retail sales price is negotiated between the ESP and its customer. Moreover, the Commission does not approve or regulate terms of an ESP’s RPS procurement contracts. See D.11-01-026 (January 13, 2011) at pp. 18, 22-23. The Commission does not determine whether the prices in an ESP’s RPS procurement contracts are “reasonable,” and the Commission does not guarantee that an ESP will recover the costs of its RPS procurement contracts in the prices charged to its direct access customers. Unlike an IOU, the ESP is “at risk” for the recovery of its RPS procurement costs.

Because the Commission does not have legal authority to regulate the prices charged by ESPs to their customers, the Commission does not have legal authority to require ESPs to disclose their RPS procurement prices--either to the Commission or to the public. Unlike the IOUs’ captive bundled sales customers, direct access-eligible customers elect to purchase their energy from a particular ESP based upon price, contract terms, and many other considerations. Prices are transparent to an ESP’s customer (or prospective customer) and the ESP bears this risk related to customer choice. The Commission has no business reviewing (or ordering disclosure of) the prices

or other terms of an ESP's RPS procurement contracts, because the Commission has no role in regulating the price or other terms of an ESP's retail sales to its direct access customers.

In accordance with SB 695, ESPs are required to satisfy most of the same RPS compliance obligations that are imposed on the IOUs. The Commission has determined, in a series of decisions (most recently, D.11-01-026), that an ESP must submit an annual RPS procurement plan, in addition to an annual RPS compliance report and an end-of-compliance-period report. These ESP RPS compliance filing requirements parallel the IOUs' RPS filing requirements because ESPs must meet the same RPS procurement targets that must be met by the IOUs. See P.U. Code Section 399.15. As a consequence, public disclosure of ESPs' annual RPS procurement plans and annual RPS compliance reports is appropriate (subject to withholding confidential retail sales information and confidential RPS procurement information, the disclosure of which could reveal an ESP's RPS net short position). The Commission and the public have a legitimate interest in ascertaining whether an ESP has met its RPS procurement obligation.

There is no similar justification for ordering public disclosure of an ESP's RPS price or RPS cost information, however. The Commission does not need an ESP's RPS procurement price information, or its RPS procurement cost information, to determine whether an ESP has met its RPS compliance obligation.

For the foregoing reasons, and for the reasons set forth more particularly below, the Commission may not lawfully require ESPs to publicly disclose their RPS procurement price, cost or contract information. Public disclosure requirements do not apply equally to ESPs and IOUs. Because an ESP's RPS procurement price and cost information is not necessary to determine compliance with its RPS procurement obligation, the Commission has no lawful basis to require an ESP to publicly disclose this information. Any proposal seeking public disclosure of an ESP's RPS

procurement price and contract information, where the information is not directly related to RPS compliance, must be rejected.

Shell Energy does not address, in its opening comments, all of the individual proposals set forth in the Preliminary Staff Proposal. Shell Energy reserves the right, however, to submit reply comments on all of the proposals, as deemed appropriate upon the review of the opening comments filed by other parties.

## II.

### OPENING COMMENTS ON SPECIFIC PROPOSALS

Shell Energy's comments on specific Energy Division proposals<sup>2</sup> are as follows:

#### A. **Section C: RPS Compliance Reporting**

**5.C.1: The confidentiality treatment of information from compliance reports should be the same for all retail sellers.**

No comment at this time.

**5.C.2: Information for the “front two years” of a retail seller’s energy forecast of bundled load may be kept confidential.**

The confidentiality of an LSE's retail sales forecast must be maintained in order to protect against disclosure of an LSE's RPS net short position. With the implementation of multi-year RPS compliance periods (instead of annual compliance periods), confidentiality of an LSE's RPS net short must be maintained for at least the entire compliance period. In light of the fact that the end point for a compliance period may be greater than (or less than) two years away at any point in time, maintaining confidential treatment of competitively sensitive information for only the “front two years” is not acceptable.

The Energy Division states that “retail sellers are less vulnerable to potentially negative market behavior in the short term because they have a longer time to manage their RPS compliance

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<sup>2</sup> The Energy Division proposals are set forth in bold, with the accompanying Section reference.

obligations.” Ruling at p. 14. This statement is false for several reasons. First, ESPs are particularly vulnerable to negative market behavior owing to the market power enjoyed by the IOUs in the RPS procurement market. Second, customer contracts with ESPs are typically short-term (usually one year). As a result, ESPs are subject to fluctuating load over the course of an RPS compliance period. The current confidentiality rules (“front three years”) ensure that competitors are not able to reconstruct an LSE’s RPS net short position for the current compliance period.

Revealing an ESP’s retail sales forecast information would provide competitors with an insight into the ESP’s RPS net short position and its procurement objectives for the next compliance period, leading to increased costs for ESPs and their customers. The current standard ensures that the confidentiality of an LSE’s RPS net short position will be maintained for the entire recurrent RPS compliance period. In addition, in the year prior to the beginning of a new RPS compliance period, an LSE’s retail sales forecast for the succeeding RPS compliance period should be maintained on a confidential basis.

**5.C.3: The “front two years” of a retail seller’s RPS net short position may be kept confidential.**

Shell Energy’s response above to Section 5.C.2 applies equally with respect to this item. In addition, the Energy Division’s rationale that applies with respect to the IOUs does not necessarily apply with respect to ESPs. Contrary to the Energy Division’s comment about “transparency,” ESPs do not submit “resource planning” information in the LTPP proceeding. See Ruling at p. 16. The LTPP proceeding is intended to address the procurement needs of the IOUs’ bundled sales customer loads, not direct access customer loads.

The Energy Division also states that “the Commission should make it as easy as feasible for customers to understand what they are paying for.” Id. The IOUs’ bundled sales customers must find out “what they are paying for” through public disclosures of IOU information by the IOU or by the Commission. By contrast, an ESP’s current and prospective customers inquire about pricing

directly from the ESP, without the need for public disclosure of this competitively sensitive commercial information. The customer ultimately decides what ESP products and services (and prices) are acceptable, recognizing that the customer can “vote with its feet” and switch to another ESP.

**5.C.4: The compliance reporting tool should be redesigned to provide a self-contained report of past compliance performance, independent of any present performance or future procurement projections. This report should be publicly available.**

Shell Energy has two comments on this proposal: First, Shell Energy supports redesign of the RPS compliance reporting tool. For ESPs, in particular, the reporting requirements imposed by this Commission, the Energy Commission and other state agencies have become extremely - - and unreasonably - - burdensome. The current annual RPS compliance report, for example, requires LSEs to provide information that LSEs have already provided to the Energy Commission, or information that is available through the Commissions’ access to WREGIS. Duplicative reporting requirements do not improve “transparency.” Rather, these requirements create more administrative burdens for ESPs, which already undertake substantial efforts to comply with the ever-increasing regulatory burdens imposed by this Commission and others. In redesigning the RPS compliance reporting tool, the Commission should ensure that it requires only information that is not already available, and only information that is necessary to determine compliance.

Second, the Commission must ensure that publicly disclosed reports continue to protect LSEs’ confidential information. LSEs should not be required to publicly disclose the immediately previous year’s retail sales quantities or RPS procurement quantities. Revealing an LSE’s previous year’s retail sales quantities or RPS procurement quantities would, over a two- or three-year period, allow competitors to compile the data from the preceding two or three years’ compliance reports to determine an LSE’s RPS net short for the remainder of an RPS compliance period. The confidentiality of an LSE’s immediately previous year’s retail sales information and RPS



procurement quantities should be preserved to protect the confidentiality of an LSE's RPS net short position.

**B. Section D: RPS Price Disclosure**

**5.D.1: For RPS procurement contracts requiring Commission approval via resolution, the contract price is publicly disclosed in the draft resolution and in the final resolution adopted by the Commission.**

No comment at this time.

**5.D.2: For RPS procurement contracts submitted for Commission approval via advice letter but not submitted through a Tier 3 advice letter that requires approval by Commission resolution (e.g., contracts under the renewable auction mechanism (RAM)), the contract price is publicly disclosed at the time the advice letter is filed.**

No comment at this time.

**5.D.3: For IOUs' RPS procurement contracts that are submitted for Commission approval via application, the following information in testimony and other documents is publicly disclosed at the time it is submitted in the proceeding.**

No comment at this time.

**5.D.4: For RPS procurement contracts that do not require specific Commission approval (e.g., any IOU's contracts with costs authorized to be booked directly to the IOUs' Energy Resource Recovery Account (ERRA); ESPs' contracts; CCAs' contracts) the contract price is publicly available six months after the contract is signed or 30 days after deliveries of energy and/or RECs under the contract commence, whichever occurs first.**

Shell Energy does not have comments, at this time, on this Energy Division proposal as it may apply to the IOUs. Shell Energy responds to this proposal only as it would apply to ESPs.

This proposal should be rejected and removed from consideration. The proposal is unlawful as applied to ESPs. The Commission does not have jurisdiction over ESPs' RPS procurement prices. Neither the Commission's current RPS compliance rules nor its current confidentiality rules require disclosure of ESP RPS procurement price information under any circumstances. The Energy

Division seeks to impose entirely new RPS disclosure requirements on ESPs, without any basis in the law, and without any legitimate justification.

The Commission has authority to ensure that ESPs comply with their RPS procurement obligations. See P.U. Code Sections 399.13(a)(3); 399.15(b)(8). The Commission does not have authority, however, over the terms of contracts between ESPs and their RPS suppliers. The Commission does not have jurisdiction over the prices paid by ESPs for RPS procurement. Moreover, the Commission does not approve the “reasonableness” of ESPs’ RPS procurement contracts. The Commission also does not guarantee the pass-through of ESPs’ RPS procurement costs in the prices charged to direct access customers.

P.U. Code Section 394(f) clearly states that the Commission does not have authority over the “rates or terms and conditions of service offered by [ESPs].”<sup>3</sup> Because the Commission does not have legal authority over the prices charged by ESPs to direct access customers, and because the Commission does not guarantee RPS procurement cost recovery for ESPs, the Commission does not have any basis to assert authority over the prices paid by ESPs for RPS procurement. The Commission cannot lawfully require ESPs to disclose their RPS procurement prices.

The Preliminary Staff Proposal cites Senate Bill (SB) 695 (P.U. Code Section 365.1(c)(1) and Section 399.12(j)(3)) as support for its proposal. See Ruling at p. 26. The Commission has made it clear, however, that although SB 695 provides that ESPs and IOUs should be subject to the same RPS compliance obligations (RPS procurement targets; RPS compliance reports; RPS procurement plans), SB 695 does not authorize the Commission to regulate ESPs’ RPS procurement prices, or contracts.

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<sup>3</sup> Specifically, Section 394(f) provides: “Nothing in this part authorizes the [C]ommission to regulate the rates or terms and conditions of service offered by [ESPs].”

In D.11-01-026, the Commission addressed the RPS compliance responsibilities of ESPs under SB 695. In this Decision, the Commission stated that it (the Commission) “has no responsibility for the price reasonableness of ESP procurement (whether conventional or RPS-eligible), and has no regulatory authority over ESP rates.” Decision at p. 22. The Commission stated further:

[SB 695] does not require that the Commission take elements of the procurement practices of the utilities it regulates with respect to procurement and rates and impose them on ESPs that it does not regulate with respect to procurement and rates, simply because the Commission has authority over ESPs’ participation in the RPS programs and we decline to do so here.

Id. at pp. 22-23. Because the Commission does not regulate the prices paid by ESPs for RPS products, and does not regulate the prices charged by ESPs, the Commission does not have legal authority to order ESPs to disclose their RPS procurement prices.

The Energy Division also seeks to justify its proposal for public disclosure of ESP RPS procurement prices by asserting a “general public interest in RPS cost overall...” Ruling at p. 25. The Energy Division’s general curiosity regarding ESPs’ RPS procurement prices does not authorize the Commission to order ESPs to disclose their RPS procurement prices. General interest in an ESP’s RPS procurement prices and costs does not overcome the absence of Commission authority over ESP price and cost information.

The Energy Division also states that the Commission’s statutory obligation to report to the Legislature about the costs of the RPS program “support[s] disclosure of the price of RPS procurement contracts by all retail sellers.” Id. This Energy Division argument is disingenuous. The Commission’s reporting obligations to the Legislature under P.U. Code Sections 910 and 911 apply to “electrical corporations” (Section 910), utility-owned generation (Section 911), and RPS procurement contracts “approved by the Commission” (Section 911). The reporting obligations

cited by the Energy Division do not extend to the prices or costs under ESPs' RPS procurement contracts.

Public disclosure of an IOU's RPS procurement cost information may be justified, among other reasons, because the Commission must establish a "limitation" on the IOUs' RPS procurement expenditures. See P.U. Code Section 399.13(c). The RPS procurement expenditure limitation does not apply to ESPs, however. In fact, Presiding Judge Simon's July 23, 2013 Ruling in this proceeding (in which the Judge solicits comments on an Energy Division staff proposal for a methodology to calculate an RPS "procurement expenditure limitation") applies exclusively to the IOUs' RPS procurement costs.<sup>4</sup> ESP procurement cost information has no relevance to the procurement expenditure limitation to be established for IOUs under P.U. Code Section 399.13(c).

Moreover, public disclosure of ESPs' RPS procurement prices would place ESPs at a competitive disadvantage in the RPS procurement market. Because the IOUs have market power in the market for RPS procurement, the IOUs could position themselves to outbid ESPs for future RPS supplies. In fact, by requiring ESPs to reveal their RPS procurement prices, the Commission would create conditions under which publicly disclosed RPS procurement prices establish the floor for future RPS procurement negotiations, thereby increasing RPS costs for all customers. Revealing individual ESPs' RPS procurement prices within 30 days after first deliveries could seriously damage the competitive market for RPS supplies in the entire WECC region.

Finally, the Commission should not confuse "price transparency" with mandatory price disclosure. Price transparency can be achieved through published indices, where RPS buyers and RPS sellers voluntarily--and anonymously--report prices for specific RPS products. Mandatory price disclosure, by contrast, would reveal an ESP's most competitively sensitive commercial

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<sup>4</sup> R.11-05-005, "Administrative Law Judge's Ruling Requesting Comment on Staff Proposal for a Methodology to Implement Procurement Expenditure Limitations for the Renewables Portfolio Standard Program" (issued July 23, 2013).

information, while creating an “apples-to-oranges” price comparison that would have the effect of distorting the market.

**C. Section E: Costs of RPS Procurement Contracts**

**5.E.1: Actual total MWh of RPS-eligible electricity procured in any prior year by each retail seller are public.**

Contrary to the Energy Division’s “rationale” (Ruling at p. 28), the new multi-year RPS compliance periods make RPS procurement information from prior years more sensitive than under the former “annual compliance” regime. Public disclosure of an LSE’s RPS procurement quantities and retail sales quantities for the immediate prior year would enable competitors to aggregate this information over the first two years of a compliance period to determine an LSE’s RPS net short for the remainder of the compliance period. The Commission should reject this Energy Division proposal. The Commission should continue to allow LSEs to maintain the confidentiality of their RPS net short (retail sales quantities; RPS procurement quantities) for the immediate prior year. With the enactment of multi-year compliance periods, the current protocol continues to be necessary to protect the confidentiality of an LSE’s RPS net short position.

**5.E.2: Annual information on total RPS procurement costs incurred by each retail seller in any prior year is public.**

For the reasons set forth with respect to Section 5.D.4 (public disclosure of ESP RPS procurement prices), Shell Energy objects to the staff’s proposal to require ESPs to publicly disclose their prior years’ total RPS procurement costs. The proposal is not supported by the law. The Commission does not regulate (and does not have jurisdiction over) the prices paid, or the prices charged by ESPs. The Commission may not order ESPs to disclose their RPS procurement cost information.

**5.E.3: RPS procurement contract generation cost forecasts of each retail seller are public when aggregated by resource category (e.g., wind, solar, geothermal, etc.), so long as there are more than two contracts or facilities in the resource category.**

For the reasons set forth above with respect to Sections 5.D.4 and 5.E.2, Shell Energy objects to the staff's proposal to require ESPs to publicly disclose RPS procurement contract generation cost forecasts, whether or not these costs are aggregated by resource category. The Commission does not have legal authority to require ESPs to disclose this information.

**5.E.4: Certain general information about bids received in response to IOUs' RPS solicitations is public.**

No comment at this time.

**D. Review of RPS Procurement Contracts**

**5.F.1: Certain information about each bid received in response to each IOU's RPS solicitation, but not shortlisted, is public the day after the Commission approves the IOU's shortlist for that solicitation.**

No comment at this time.

**5.F.2: Certain information about each shortlisted bid received in response to each IOU's RPS solicitation, but not resulting in an executed contract, is public the day after the shortlist for that solicitation expires.**

No comment at this time.

**5.F.3: Bid prices of all bids received in response to each IOU's RPS solicitation are public when aggregated by resource category, so long as there are more than two bids in a category, the day after the Commission approves the IOU's shortlist for that solicitation.**

No comment at this time.

**5.F.4: Information about the generation forecast in each approved RPS procurement contract of an IOU or UOG authorization to an IOU is public.**

No comment at this time.

**5.F.5: The RPS generation forecast is public for RPS procurement offers that have been short-listed in the solicitation process of an IOU, or that are the subject of bilateral negotiations between an IOU and a generation developer, if aggregated by resource category, and there are more than two contracts in a category.**

No comment at this time.

**5.F.6: The RPS generation forecast assumptions used by each IOU for purposes of calculating that IOU's renewable net short (RNS) are public, including project viability and failure assessment assumptions.**

No comment at this time.

**5.F.7: The following terms of RPS procurement contracts of IOUs are publicly disclosed in the advice letter submitting the contract for Commission approval.**

No comment at this time.

**5.F.8: The following terms of RPS procurement contracts of ESPs and CCAs are publicly available 30 days after deliveries (energy and/or RECs) begin under the contract.**

For the reasons stated above with respect to Sections 5.D.4, 5.E.2 and 5.E.3, Shell Energy objects to the staff proposal to require ESPs to make the terms of their RPS procurement contracts publicly available. As provided in D.12-06-038 (June 21, 2012), the Commission is authorized to require an ESP to submit appropriate documentation to the Energy Division, including copies of RPS procurement contracts, to demonstrate an ESP's compliance with its RPS procurement obligations. See Decision at p. 77 and p. 104 (Ordering Paragraph No. 41). This authority does not extend to ordering public disclosure of an ESP's RPS procurement contract terms. The terms of an ESP's RPS procurement contract with a wholesale supplier are not relevant to an ESP's compliance with its RPS obligations. Public disclosure of an ESP's RPS procurement contract terms would not assist in determining whether the ESP met its RPS procurement obligations. Consequently, the Commission may not order ESPs to publicly disclose their RPS procurement contracts.

**5.F.9: The following information in an RPS procurement contract using a standard contract is public. [ ].**

Based on the assumption that this Energy Division proposal regarding “standard contracts” does not apply to ESPs’ RPS procurement contracts, Shell Energy has no comment on this proposal at this time.

**5.F.10: Amending an RPS procurement contract does not affect the confidentiality requirements that apply to prior versions of the contract, including the time frame for making information public.**

For the reasons stated above in Section 5.F.8, Shell Energy objects to this proposal as it may apply to ESPs’ RPS procurement contracts.

**5.F.11: For UOG projects that the utility intends to be RPS-eligible, the following information is publicly disclosed in the application for Commission approval of the UOG project.**

No comment at this time.

**E. Section G: General Planning and Disclosure**

**5.G.1: RPS project specific evaluations and scores for IOUs’ procurement contracts approved by the Commission are publicly available 30 days after energy and/or REC delivery begins pursuant to the contract, or three years after the Commission approves the contract, whichever comes first.**

No comment at this time.

**F. Section 6: Effective Date and Transition Provisions.**

Any changes to the confidentiality rules that are adopted by the Commission should apply prospectively only. New “disclosure requirements” should not apply retroactively to an LSE’s RPS compliance reports, RPS procurement contracts, or other RPS procurement data, all of which were compiled, executed or implemented subject to the confidentiality rules that applied prior to the effective date of the Commission’s decision. Retroactive application of any new public disclosure requirements would undermine the privacy expectations of the LSE in submitting an RPS compliance report, as well as the privacy expectations of the LSE and its counterparty, both of which



relied upon the confidentiality rules as they existed at the time of entering into RPS procurement contract.

On this basis, Shell Energy objects to the proposal that would apply the “new rules” on the effective date of the Commission’s decision to “[a]ny RPS procurement contract that expired prior to the effective date of the decision....” Ruling at p. 42. For the same reason, Shell Energy objects to the proposal to apply the “new rules” on the effective date of the Commission’s decision to “[a]ny RPS compliance report, or other document related to compliance with or enforcement of any RPS obligation, that was submitted to the Commission more than six months before the effective date of the decision . . . .” *Id.* Both of these proposals would improperly apply the new public disclosure rules retroactively to contracts executed and reports submitted prior to the effective date of the Commission’s decision.

Similarly, Shell Energy objects to the proposal that would apply the new rules, six months after the effective date of the Commission’s decision, to “[a]ny RPS compliance report, or other document related to compliance with or enforcement of any RPS obligation, that was submitted to the Commission less than six months before the effective date of the decision....” Ruling at p. 43. Again, this proposal should be rejected because, if adopted, the proposal would apply retroactively to reports that were submitted prior to the effective date of the Commission’s decision.

### III.

#### CONCLUSION

Before the Commission addresses the merits of those Energy Division public disclosure proposals that are properly - - lawfully - - within the Commission’s jurisdiction, the Commission must emphatically and swiftly reject the Energy Division proposals that are beyond the Commission’s legal authority. Because the Commission does not have authority over the prices or other terms of ESPs’ RPS procurement contracts, the Commission must summarily reject those

proposals that seek to require ESPs to disclose the price and other terms of their RPS procurement contracts. The Commission should remove the uncertainty that has been created by the Energy Division's attempts to extend the Commission's authority beyond the statutory limits.

Respectfully submitted,



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Date: August 5, 2013

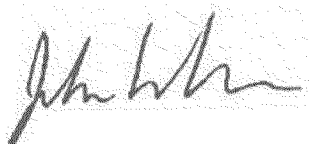
## VERIFICATION

I, John W. Leslie, declare:

I am the attorney of record for Shell Energy North America (US), L.P. in the referenced proceeding. I am authorized to make this verification on behalf of Shell Energy. The contents of the foregoing document are true of my own knowledge, except as to matters that are 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 5, 2013 at San Diego, California.



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John W. Leslie  
Attorney for  
Shell Energy North America (US), L.P.

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