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 THE PRELIMINARY STAFF PROPOSAL CONCERNING CONFIDENTIALITY RULES FOR RPS PROCUREMENT

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Date: August 5, 2013

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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.[1]

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 existingconfidentialityrules forRPSprocurement. Mostoftheseconfidentialityrulesweredevelopedin D.06-06-066(June 29, 2006), as modified in D.08-04-023 (April 10, 2008).

[1] 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 (SB1x 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 satisfymost of the same RPS compliance obligationsthatareimposedontheIOUs. TheCommissionhasdetermined,inaseriesofdecisions (mostrecently,D.11-01-026),thatanESPmustsubmitanannualRPSprocurementplan,inaddition to an annual RPS compliance report and an end-of-compliance-period report. These ESP RPS compliancefilingrequirementsparalleltheIOUs'RPSfilingrequirementsbecauseESPsmustmeet thesameRPSprocurementtargetsthatmustbemetbytheIOUs. SeeP.U.CodeSection399.15. 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 shortposition). TheCommissionandthepublichavealegitimateinterestinascertainingwhetheran ESP has met its RPS procurement obligation.

ThereisnosimilarjustificationfororderingpublicdisclosureofanESP'sRPSpriceorRPS cost information, however. The Commission does not need an ESP's RPS procurement price information,oritsRPSprocurementcostinformation,todeterminewhetheranESPhasmetitsRPS compliance obligation.

For the foregoing reasons, and for the reasons set forth more particularly below, the CommissionmaynotlawfullyrequireESPstopubliclydisclosetheirRPSprocurementprice,costor 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 compliancewithitsRPSprocurementobligation,theCommissionhasnolawfulbasistorequirean ESPtopubliclydisclosethisinformation. AnyproposalseekingpublicdisclosureofanESP'sRPS

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 commentsonalloftheproposals,asdeemedappropriateuponthereviewoftheopeningcomments filed by other parties.

II.

OPENING COMMENTS ON SPECIFIC PROPOSALS

Shell Energy's comments on specific Energy Division proposals[2] 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 disclosureofan LSE'sRPS netshortposition. Withtheimplementationofmulti-yearRPS 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 pointforacomplianceperiodmaybegreaterthan(orlessthan)twoyearsawayatanypointintime, 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 marketbehaviorintheshorttermbecausetheyhavealongertimetomanagetheirRPScompliance

[2] The Energy Division proposals are set forth in bold, with the accompanying Section reference.

obligations." Rulingatp. 14. Thisstatementisfalseforseveralreasons. First,ESPsareparticularly vulnerabletonegativemarketbehaviorowingtothemarketpowerenjoyedbythe IOUsintheRPS procurement market. Second, customer contracts with ESPs are typically short-term (usually one year). Asaresult,ESPsaresubjecttofluctuatingloadoverthecourseofan RPScompliance 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 insightintotheESP'sRPSnetshortpositionanditsprocurementobjectivesforthenextcompliance period, leading to increased costs for ESPs and their customers. The current standard ensures that theconfidentialityofanLSE'sRPSnetshortpositionwillbemaintainedfortheentirecurrentRPS complianceperiod. Inaddition,intheyearpriortothebeginningofanewRPScomplianceperiod, an LSE'sretailsalesforecast forthesucceedingRPS complianceperiodshouldbemaintainedona confidential basis.

5.C.3: The "front two years" of a retail seller's RPS net short position may be kept confidential.

ShellEnergy'sresponseabovetoSection 5.C.2appliesequallywithrespecttothisitem. In addition, the EnergyDivision's rationale that applies with respect to the IOUs does not necessarily applywithrespecttoESPs. ContrarytotheEnergyDivision'scommentabout"transparency,"ESPs do not submit "resource planning" information in the LTPP proceeding. See Ruling at p. 16. The LTPPproceedingisintendedtoaddresstheprocurementneedsoftheIOUs'bundledsalescustomer loads, not direct access customer loads.

TheEnergyDivisionalsostatesthat"theCommissionshouldmakeitaseasyasfeasiblefor customers to understand what they are paying for." Id. The IOUs' bundled sales customers must findout"whattheyarepayingfor"throughpublicdisclosuresofIOUinformationbytheIOUorby 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 provideaself-containedreportofpastcomplianceperformance, independentof anypresentperformanceor futureprocurement projections. This report should be publicly available.

Shell Energy has two comments on this proposal: First, Shell Energy supports redesign of theRPScompliancereportingtool. ForESPs,inparticular,thereportingrequirementsimposedby this Commission, the EnergyCommission 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 requirementsdonotimprove"transparency." Rather,theserequirementscreatemoreadministrative 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 publiclydisclose the immediately previousyear'sretailsalesquantitiesorRPSprocurementquantities. RevealinganLSE'sprevious year'sretailsalesquantitiesorRPSprocurementquantitieswould,overatwo-orthree-yearperiod, allowcompetitorstocompilethedatafromtheprecedingtwoorthree years'compliancereportsto 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

procurementquantitiesshouldbepreservedtoprotecttheconfidentialityofanLSE'sRPSnetshort position.

B. Section D: RPS Price Disclosure

> **5.D.1: For RPS procurement contracts requiring Commission approvalviaresolution,thecontractpriceispubliclydisclosedin 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 Commissionapprovalviaadviceletterbutnotsubmittedthrough a Tier 3 advice letter that requires approval by Commission resolution (e.g., contracts under the renewable auction mechanism(RAM)),thecontractpriceispubliclydisclosedatthe time the advice letter is filed.**

No comment at this time.

> **5.D.3: ForIOUs'RPSprocurementcontractsthataresubmitted 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)thecontractpriceispubliclyavailablesixmonthsafter thecontractissignedor30daysafterdeliveriesofenergyand/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.

Thisproposalshouldberejectedandremovedfromconsideration. Theproposalisunlawful asappliedtoESPs.TheCommissiondoesnothavejurisdictionoverESPs'RPSprocurementprices. NeithertheCommission'scurrentRPScompliancerulesnoritscurrentconfidentialityrulesrequire disclosure of ESP RPS procurement price information under <u>any</u> circumstances. The Energy

Division seeks to impose entirely new RPS disclosure requirements on ESPs, without anybasis 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.CodeSection 394(f)clearlystatesthattheCommissiondoesnothaveauthorityoverthe "rates or terms and conditions of service offered by [ESPs]."[3] Because the Commission does not have legal authority over the prices charged by ESPs to direct access customers, and because the CommissiondoesnotguaranteeRPSprocurementcostrecoveryforESPs,theCommissiondoesnot 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 madeitclear,however,thatalthoughSB 695providesthatESPsandIOUsshouldbesubjecttothe same RPS compliance obligations (RPS procurement targets; RPS compliance reports; RPS procurementplans),SB 695doesnotauthorizetheCommissiontoregulateESPs'RPSprocurement prices, or contracts.

[3] 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 costs 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 otherreasons,becausetheCommissionmustestablisha"limitation"ontheIOUs'RPSprocurement expenditures. SeeP.U.CodeSection 399.13(c). TheRPSprocurementexpenditurelimitationdoes 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 methodologyto calculate an RPS "procurement expenditure limitation") applies exclusivelyto the IOUs' RPS procurement costs.[4] ESP procurement cost information has no relevance to the procurementexpenditure limitationtobeestablishedfor IOUsunderP.U.CodeSection 399.13(c).

Moreover, public disclosure of ESPs' RPS procurement prices would place ESPs at a competitivedisadvantageintheRPSprocurementmarket. BecausetheIOUshavemarketpowerin themarketforRPSprocurement,theIOUscouldpositionthemselvestooutbidESPsforfutureRPS supplies. Infact,byrequiringESPstorevealtheirRPSprocurementprices,theCommissionwould 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 RPSsellersvoluntarily--andanonymously--reportpricesforspecificRPSproducts. Mandatory price disclosure, by contrast, would reveal an ESP's most competitively sensitive commercial

[4] R.11-05-005,"AdministrativeLawJudge'sRulingRequestingCommentsonStaffProposalfora 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 procurementoffersthathavebeenshort-listedinthesolicitation processofanIOU,orthatarethesubjectofbilateralnegotiations 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. SeeDecisionatp. 77andp.104(OrderingParagraph No. 41). Thisauthoritydoesnot extendtoorderingpublicdisclosureofanESP'sRPS procurementcontract terms. Thetermsofan ESP'sRPSprocurementcontractwithawholesalesupplierarenotrelevanttoanESP'scompliance withitsRPSobligations. PublicdisclosureofanESP'sRPSprocurementcontracttermswouldnot 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 onthe assumptionthatthisEnergyDivision proposalregarding"standardcontracts" doesnotapplytoESPs'RPSprocurementcontracts,ShellEnergyhasnocommentonthisproposal 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.

ForthereasonsstatedaboveinSection 5.F.8,ShellEnergyobjectstothisproposalasitmay 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' procurementcontractsapprovedbytheCommissionarepublicly 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 prospectivelyonly. New"disclosurerequirements"shouldnotapplyretroactivelytoanLSE'sRPS 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 anynew public disclosure requirements would undermine the privacy expectations of the LSE in submitting an RPS compliancereport,aswellastheprivacyexpectationsoftheLSEanditscounterparty,bothofwhich

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

On this basis, Shell Energyobjects to the proposal that would applythe "new rules" on the effectivedateoftheCommission'sdecisionto"[a]nyRPSprocurementcontractthatexpiredpriorto theeffectivedateofthedecision...." Rulingatp.42. Forthesamereason,ShellEnergyobjectsto the proposal to applythe "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,thatwassubmittedtotheCommissionmorethansixmonthsbeforetheeffectivedateof 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 anyRPS obligation, that was submitted to theCommissionlessthansixmonthsbeforetheeffectivedateofthedecision...." Rulingatp. 43. Again,thisproposalshouldberejectedbecause,ifadopted,theproposalwouldapplyretroactivelyto reports that were submitted prior to the effective date of the Commission's decision.

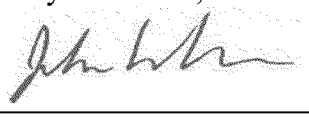
III.

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'slegalauthority. BecausetheCommissiondoesnothave authorityoverthe 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

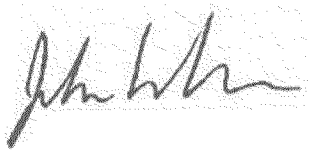
VERIFICATION

I, John W. Leslie, declare:

I am the attorney of record for Shell Energy North America (US), L.P. in the referenced proceeding. Iamauthorizedtomakethisverificationonbehalfof Shell Energy. Thecontentsofthe forgoing 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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