BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort.	R.21-03-011

COMMENTS OF SHELL ENERGY NORTH AMERICA (US), L.P. ON MAY 28, 2025 ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENT ON PROCEDURAL PATHWAY TO ADDRESS APPLICATIONS FOR PROVIDER OF LAST RESORT STATUS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Statutes

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I. INTRODUCTION

Shell Energy North America (US), L.P. ("Shell Energy") submits the following comments on the May 2025 Administrative Law Judge's Ruling Seeking Comment on Procedural Pathway to Address Applications for Provider of Last Resort Status ("Ruling").

As noted in the Ruling, Shell Energy is potentially interested in becoming a non-investor-owned utility ("non-IOU") provider of last resort ("POLR") within the service territories of Pacific Gas and Electric Company ("PG&E"), Southern California Edison ("SCE"), and San Diego Gas and Electric Company ("SDG&E"), for commercial and industrial ("C&I") customers.[1]

The Ruling requests comment on two issues: (1) proffered definitions of "POLR-specific services," "fully severable services," and "non-severable services"; and (2) a proposed procedural path forward. Broadly, as Shell Energy has previously explained, the Commission's jurisdiction for non-IOU POLRs extends only to POLR-related services, or "POLR-specific services" set forth in Section 387 of the California Public Utilities Code. Shell Energy is concerned that the proposed

[1] The Ruling states that "Shell expressed an interest in serving as POLR for certain Commercial & Industrial customers it currently serves via Direct Access." To be clear, Shell Energy would be interested in serving all C&I customers in PG&E's, SCE's, and/or SDG&E's service territory not just the customers it currently serves.

definitions contemplate that the Commission would seek jurisdiction over services that do not fit the narrow definition of POLR-specific services, which it does not have the statutory authority to do.

Regarding the proposed procedural path forward, Shell Energy believes there are two critical issues which the Commission should clarify at this time, so that potential non-IOU POLRs, including Shell Energy, will have a better understanding of whether investing the time and resources to file a Petition for Rulemaking ("PFR") is worth the investment. Both of these issues have been fully briefed in comments on threshold questions submitted in response to the October 24, 2024 Phase 2 Amended Scoping Memo and Ruling ("Scoping Memo"). Those two questions are: (1) whether the statute governing non-IOU POLRs expressly bars the segmentation of serving customers by class; and (2) whether the circumstances under which an IOU POLR surrenders load to a non-IOU POLR must always be voluntary.

The answer to both these questions is resoundingly no. The statutory structure applicable to the assignment of POLR responsibilities clearly contemplates that multiple POLRs can operate in a single IOU service territory—and there is no statutory or policy basis not to consider assigning POLR responsibilities based upon customer class, rather than geographic area.

Nor should the Commission abdicate its authority to select an appropriate POLR for the ratepayers subject to its jurisdiction, by deferring to the incumbent IOU POLRS as to whether POLR responsibilities should be transferred. POLR duties involve an involuntary return to service from a load-serving entity ("LSE") that cannot continue to serve its customers. The Commission must ensure that the selected POLR has the capability to ensure continued service, and it should not assume that the IOUs will continue to be suited to assume that role, given the ongoing impacts of wildfires and other financial challenges.

Resolution of these key questions will remove uncertainty and encourage other LSEs to consider the role of POLR. This in turn will give the Commission better options in selecting the best possible LSE or LSEs to fill the role of POLR, whether the current incumbent IOU POLRs or other non-IOU LSEs.

II. COMMISSION JURISDICTION OVER POLR SERVICES

The scope of the Commission's authority to regulate electric service providers ("ESPs") and community choice aggregators ("CCAs") is expressly delineated by statute.[2] Nothing in either those statutes, or the provisions concerning POLRs set forth in California Public Utilities Code § 387, would permit the Commission to expand its jurisdiction over non-POLR activities if an ESP or CCA becomes a POLR. The roles of non-IOU POLR and non-IOU LSE are distinct and should be treated as such from a regulatory perspective, with the Commission's jurisdiction over and regulation of non-IOU POLRs extending only to those activities which relate to that service. California Public Utilities Code § 387(j) provides that the Commission "shall supervise and regulate each provider of last resort, as necessary, as a public utility for the services provided by the provider of last resort pursuant to this article…." Thus, the statutory provisions concerning POLR service clearly contemplate Commission regulation as a public utility is limited to POLR-related services, not to any other unrelated services that the non-IOU POLR may provide as an ESP or CCA.

Given this statutory scheme, the Commission's jurisdiction must be narrowly applied, so as not to extend beyond the confines of its limited authority over ESPs and CCAs. Shell Energy is concerned that the concept of "non-severable services," though no examples were given in the Ruling, risks an inappropriate extension of the Commission's jurisdiction over non-IOU LSEs.

[2] *See, e.g.,* Cal. Publ. Util. Code §§ 394, et seq.

Shell Energy reserves the right to further address the concept of "non-severable services" in reply comments to the extent other parties identify services they believe fall into this category.

That said, Shell Energy concedes that the Commission's oversight over a non-IOU POLR is likely more expanded than the Commissions traditional jurisdiction over non-IOU LSEs, and welcomes the opportunity to examine these issues further.

III. PROCEDURAL PATH FORWARD

Shell Energy believes there are at least two additional critical issues that the Commission should resolve before closing this proceeding: confirming that (1) POLR duties may be assigned based on customer class (C&I customers, for example); and (2) assignment of POLR duties does not depend on the current IOU POLR consenting to relinquish all or a portion of its responsibilities.

The Ruling suggests the following for a procedural path forward:

> One procedural path forward is for the Commission to issue a decision that provides a framework for its regulatory authority over a non-IOU POLR and the services it provides. The decision would close the instant proceeding and direct any non-IOU entity that seeks POLR status to first file and serve a Petition for Rulemaking (PFR) at least 12 months before filing an application to assume POLR responsibilities. Upon receipt of a PFR, the Commission would resume its consideration of the threshold questions and topic areas identified in the Scoping Memo. This approach could have the benefit of preserving Commission and party resources until those issues are immediately relevant.[3]

While Shell Energy appreciates the Commission's efforts to preserve both Commission and party resources until issues are immediately relevant, it is clear from comments on the threshold questions that the two additional issues Shell Energy has identified above are also "immediately relevant." Those two questions involve critical issues regarding the scope of POLR authority and when (or if) a non-IOU POLR can pursue POLR responsibilities—i.e., whether it must obtain the

[3] Ruling at 2-3.

consent of the current IOU POLR. These questions have been fully briefed in response to the threshold questions and are ripe for Commission resolution. Absent clarification of the scope of POLR duties a non-IOU POLR might request, and when a non-IOU POLR would have the opportunity to seek such duties, it will remain unclear when and if a non-IOU LSE such as Shell Energy could seek POLR responsibilities through a PFR, as suggested by the Ruling. The preparation and analysis required to pursue POLR duties through a PFR and subsequent application will be costly and time-consuming, and providing the additional clarification requested above will further the Commission's goal of preserving Commission and party resources, including Shell Energy's.

A. POLR Responsibilities Can Be Assigned on the Basis of Customer Class

To date, Shell Energy is the only non-IOU that has expressly stated an interest in serving in the POLR role. As Shell explained in its comments in response to the Scoping Memo, its interest is in serving as a POLR for C&I customers exclusively, given its experience in serving that customer class and operational limitations in serving others. Section 387(c) contemplates that POLR responsibilities within a single IOU service territory might be allocated to more than one entity—it explicitly states that a non-IOU POLR may request to serve only "a portion of that service territory."[4] The authorizing statute thus explicitly recognizes the potential for segregation of POLR responsibilities within a single IOU service territory. That segregation could be based on customer class, rather than geography, and the Commission should allow potential non-IOU POLRs to request POLR responsibilities only for certain customer classes. Moreover, the statute does not expressly bar a non-IOU POLR from serving only a category of customers within that service territory.

[4] Cal. Pub. Util. Code § 387(c).

In comments in response to the Scoping Memo, the IOUs attempted to argue that Public Utilities Code § 387 somehow barred assignment of POLR responsibilities based on customer class. Those arguments are based upon a strained and erroneous interpretation of Section 387.

SCE claimed in opening comments that Section 387(c)(7) "requires the POLR to offer universal service."[5] The actual statutory language says no such thing. In full, it states that an application for POLR service will include "[a]n implementation plan to provide for universal access, equitable treatment of all classes of customers, and other customer protections including electric service disconnection procedures…."[6] In context, it is clear that the cited subsection is addressing equitable access to utility services, and has nothing to do with mandating that a POLR assume responsibility for all customer classes in a certain territory.

SDG&E and PG&E similarly distorted the statutory language in Section 387 in their reply comments.[7] Both reiterate the same flawed argument asserted by SCE in opening comments. In addition, PG&E also claimed that assignment based upon customer class "does not comport" with the statutory definition of a new POLR as "a load serving entity that the commission determines meets the minimum requirements of this article and designates to provide electrical service to any retail customer whose service is transferred … because the customer's load-serving entity … failed to meet its obligations."[8] PG&E claimed that if the Commission designates a new POLR, such new POLR must stand ready to serve "any retail customer" of a failed LSE in its POLR service area.

This is clearly a distorted interpretation of the statute. A POLR is designated to serve not "any retail customer," which would involve assignment of all retail customers in the state, but

[5] SCE Opening Comments at 4 (citing Cal. Pub. Util. Code § 387(c)(7)).
[6] Cal. Pub. Util. Code § 387(c)(7).
[7] SDG&E Reply Comments at 18-19; PG&E Reply Comments at 2-3.
[8] PG&E Reply Comments at 2.

rather a certain subset of retail customers for which it becomes responsible. The current IOU POLRs are only responsible for retail customers in their service territory, not all retail customers. The statute expressly contemplates that a POLR could be assigned responsibility for retail customers only in a "portion of [an IOU] service territory,"[9] directly contracting PG&E's claim that the statute requires assuming responsibility for "any retail customer." As explained above, a POLR could also be assigned responsibility for "any retail customer" within a certain customer class, rather than retail customers in a particular geographic area. Contrary to the claims of SCE, SDG&E and PG&E, nothing in the statute prevents the Commission from assigning POLR responsibilities on that basis.

Finally, in reply comments, SDG&E also claimed that the statutory cap on Direct Access somehow would prevent Shell Energy from serving POLR customers.[10] This is also nonsensical. POLR service is different and distinct from Direct Access service, as parties repeatedly made clear in discussions of the scope of the Commission's jurisdiction over POLR responsibilities, as opposed to its jurisdiction over ESPs (or CCAs). The Direct Access cap has no bearing on unrelated POLR services that a non-IOU LSE might assume. The service being provided is not Direct Access service, but POLR service.

Given Shell Energy's interest in serving only C&I customers, it is important for the Commission to make a determination on this issue now, as it is material to whether Shell Energy invests the resources to pursue a PFR and a subsequent application for POLR status. Shell Energy requests that the Commission confirm that a non-IOU POLR such as Shell Energy may seek to serve distinct customer classes.

[9] Cal. Pub. Util. Code § 387(c).
[10] SDG&E Reply Comments at 18-19.

B. An IOU Is Not Required to Consent to a Non-IOU POLR Application

The Scoping Memo (Threshold Question No. 5) asked whether "an IOU [is] required to join in a Section 387(c) 'joint application' when a non-IOU proposes to become a non-IOU POLR." As Shell Energy explained in response to the Scoping Memo, it does not make logical sense to interpret Section 387(c) as requiring the assent of the current IOU POLR before an application is filed to transfer POLR duties to a non-IOU POLR. Section 387 makes absolutely clear that it is this Commission that determines and designates the POLR.[11] Nowhere does Section 387 expressly state that the incumbent utility or current POLR has any authority to determine if or when POLR duties are assigned to another LSE. Nor would giving the IOUs that authority make any sense—it would effectively shift the authority to determine the appropriate POLR from this Commission to the IOU.

POLR responsibilities involve the involuntary return of customers from LSEs that can no longer provide service. It is the Commission's responsibility to ensure that those customers have a POLR that can continue to provide services in that circumstance. And, while the IOUs have traditionally provided that service, there is no guarantee, given the continuing impacts of climate change and resulting wildfire risk on the IOUs' transmission and distribution infrastructure, that the IOUs will continue to be best suited to provide that service, at least for some classes of customers. It is the Commission's responsibility to determine how to address those risks, and ensure that the customers within its jurisdiction are adequately protected.

The Commission's authority to determine which entity is best suited to assume POLR

[11] *See* Cal. Pub. Util. Code § 387(a)(3) ("'Provider of last resort' means a load-serving entity that *the commission* determines meets the minimum requirements of this article and designates to provide electrical service to any retail customer…." (emphasis added)); *id.*, § 387(b) (stating that the POLR is the IOU "unless another load-serving entity is designated *by the commission* pursuant to subdivision (c)" (emphasis added)); *id.*, § 387(c) (stating that "*[t]he commission* may designate a load-serving entity other than the electrical corporation to serve as a provider of last resort….").

duties cannot, and should not, be constrained by the IOUs having the authority to decide whether a non-IOU LSE can seek to assume those duties. Public Utilities Code § 216 mandates that "[a] provider of last resort, as defined in Section 387… is a public utility subject to the jurisdiction, control, and regulation of the commission…."[12] The Commission has the obligation to ensure that public utility rates and tariffs are just and reasonable.[13] In exercising that authority, the Commission should perform its own evaluation of whether a non-IOU is best suited to assume duties as a POLR. It is the Commission, not the IOU, who is tasked with determining whether the POLR meets the requirements to fulfill that role. Section 387(a)(3) specifically states "*the commission determines*" whether the POLR "meets the minimum requirements of this article…."[14] The Commission should not relinquish the authority expressly designated to it by the Legislature under Section 387 by deferring to the IOUs to determine whether an application may be filed to designate a new POLR, and how and whether such applications fulfill the requirements set forth in Section 387 and established by this Commission.

As Shell Energy explained in comments in response to the Scoping Memo, when the Commission examines whether POLR duties should shift from an IOU to a non-IOU POLR, the current IOU POLR is a necessary party to that proceeding. But the Commission has the authority to direct an IOU to participate in a non-IOU's application to become a POLR, whether or not that IOU is interested in relinquishing its role as POLR for its service territory.

Shell Energy requests that the Commission confirm its authority to select the appropriate POLR or POLRs to ensure that customers are adequately protected in the event of involuntary return is not contingent upon the consent of the current IOU POLR. Absent such confirmation, it

[12] Cal. Pub. Util. Code § 216(a)(2).
[13] Cal. Pub. Util. Code § 451.
[14] Cal. Pub. Util. Code § 387(a)(3) (emphasis added).

will be uncertain, at best, whether the Commission will fulfill its statutory obligation to consider non-IOU POLRs, rendering any PFR and associated application a costly and time-consuming exercise that may in the end be rejected simply because an IOU determines it is not interested in relinquishing POLR duties.

IV. CONCLUSION

Shell Energy requests that, prior to closing this proceeding, the Commission confirm that: (1) POLRs may serve not only geographic regions but also select classes of customers (including C&I customers), and (2) assignment of POLR services to a non-IOU LSE is not contingent upon the consent of the current IOU POLR to relinquish those responsibilities.

Respectfully submitted,

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