

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As-Available Capacity Prices adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities beginning July 2003 and Associated Relief.

A.08-11-001
(Filed November 4, 2008)

And Related Matters.

R.06-02-013
R.04-04-003
R.04-04-025
R.99-11-022

**NOTICE OF EX PARTE COMMUNICATION BY THE ALLIANCE FOR
RETAIL ENERGY MARKETS**

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December 14, 2010

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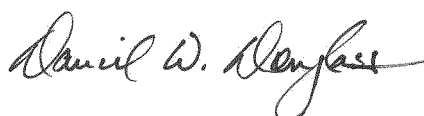
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R.06-02-013
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**NOTICE OF EX PARTE COMMUNICATION BY THE ALLIANCE FOR RETAIL
ENERGY MARKETS**

In accordance with the provisions of Article 8 of the Rules of Practice and Procedure of the California Public Utilities Commission, this notice of ex parte communication is provided by the Alliance for Retail Energy Markets (“AReM”). On this day, AReM sent the attached *ex parte* letter to the offices of President Michael Peevey, Commissioner John Bohn, Commissioner Dian Grueneich, Commissioner Nancy Ryan, and Commissioner Timothy Simon.

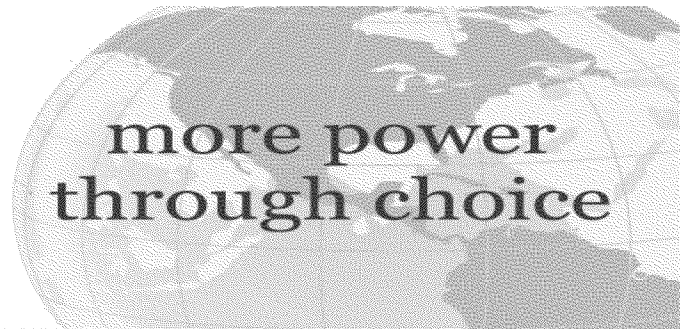
Respectfully submitted,



Daniel W. Douglass

Attorney for
ALLIANCE FOR RETAIL ENERGY MARKETS

December 14, 2010



www.retailenergymarkets.com

December 14, 2010

President Michael Peevey
Commissioner John Bohn
Commissioner Dian Grueneich
Commissioner Nancy Ryan
Commissioner Timothy Simon
California Public Utilities Commission
505 Van Ness Avenue, San Francisco, CA 94102

Re: Rulemaking 08-11-001 and related matters R.06-12-013, R.04-04-003, R.04-04-025, and R.99-11-022

Dear Commissioners:

There is a proposed decision before you in the above referenced proceedings that, if adopted, will require customers of Electricity Service Providers (“ESPs”) and Community Choice Aggregators (“CCAs”) to pay the net capacity costs for utility procurement of 3000 MW of CHP resources that will occur over the next several years. Moreover, the decision would require ESPs and CCAs to meet specific GHG emission reduction targets through additional purchases of CHP.

AReM, in concert with other parties, has already submitted arguments explaining why the aspects of the decisions relative to ESPs and CCAs should be rejected, including the fact that they were not afforded sufficient opportunity to participate in the development of the settlement that will have far-reaching impacts on their business. Moreover, the decision relies on interpretations of SB 695 to reach a conclusion that all procurement by the Investor-Owned Utilities (“IOUs”) under what is referred to as the MW Target constitutes procurement of reliability resources for which all load-serving entities in the utility footprint must pay, and to reach a conclusion that ESPs and CCAs must be required to meet the GHG Emissions Reduction Targets in the same manner as IOUs – that is through the purchase of CHP resources alone.

AReM, as noted in its pleading, has explained why it believes that the decision misinterprets the statute with respect to these rulings, and will not repeat those arguments here.

Since those comments were submitted, California State Senator Christine Kehoe (D-San Diego), the author of SB 695, has sent to each of you a letter that is attached to this *ex parte* notice. While, of course, Senator Kehoe does not opine on specific issues before you, the letter states her intent, as author of the bill, that the Commission should continue careful deliberation in crafting fair and thoughtful policies that recognize the differences between ESP and IOUs. As noted by the Senator:

“I did not intend that Section 365.1(c) be interpreted in a manner that the ESPs must be subject to each and every detailed program applicable to the IOUs, as if the two types of entities must be treated identically. As you know, ESPs and IOUs operate under different regulatory and business frameworks.”

The Commission should acknowledge that it was not her intent that the reopening of direct access provided for in SB 695 would then be compromised by the failure of the Commission to take into account the differences between ESPs and IOUs in designing the programs pursuant which the reliability and environmental goals of the State are met. However, the proposed decision does precisely that as it imposes unquantifiable obligations on direct access and community choice aggregation suppliers with no analysis, no meaningful record and no attention paid to the profoundly negative impacts that it has on the emerging direct access market.

AReM therefore urges the Commission to modify the decision to eliminate the aspects of the decision that impact ESPs and CCAs so that the manner in which they would participate in any CHP program can be more fully and fairly vetted.

Sincerely,

A handwritten signature in cursive script that reads "Andrea Morrison".

Andrea Morrison
President of the Alliance for Retail Energy Markets

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California State Senate

SENATOR
CHRISTINE KEHOE

THIRTY-NINTH SENATE DISTRICT



- STANDING COMMITTEES
- APPROPRIATIONS AND
- BANKING, FINANCE AND
- INSURANCE
- ENERGY, UTILITIES AND
- COMMUNICATIONS
- LOCAL GOVERNMENT
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- WATER
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- LEGISLATIVE COUNSEL
- MEMBERS
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- COMMUNICATIONS
- LEGISLATIVE COUNSEL
- LEGISLATIVE WOMEN'S COUNCIL

December 7, 2010

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

SUBJECT: Senate Bill 695 (Kehoe, Chapter 337, Statutes of 2009): Legislative Intent of Section 365.1 (c) of the Public Utilities Code.

Dear President Peevey:

It has been brought to my attention that there are pending decisions before the Commission that require an interpretation of language found in SB 695 (Statutes 2009), a bill that I authored.

The code section under consideration is 365.1(c) of the Public Utilities Code and reads:

(c) Once the commission has authorized additional direct transactions pursuant to subdivision (b), it shall do both of the following:

(1) Ensure that other providers are subject to the same requirements [emphasis added] that are applicable to the state's three largest electrical corporations under any programs or rules adopted by the commission to implement the resource adequacy provisions of Section 380, the renewable portfolio standard provisions of Article 16 (commencing with Section 399.11), and the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code). This requirement applies notwithstanding any prior decision of the commission to the contrary.

Michael Peevey
December 7, 2010
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The intent of this statutory language is to ensure that with the lifting of the direct access suspension, the Electric Service Providers ("ESPs") would meet California's existing environmental and reliability programs, including greenhouse gas ("GHG") emission reductions, the renewable portfolio standard ("RPS"), and the resource adequacy ("RA") programs that the Investor Owned Utilities ("IOUs") must meet. In fact, I insisted that ESPs not be let "off-the-hook" with respect to doing their share to help meet the State's environmental and reliability goals.

However, I did not intend that Section 363.1(c) be interpreted in a manner that the ESPs must be subject to each and every detailed program applicable to the IOUs, as if the two types of entities must be treated identically. As you know, ESPs and the IOUs operate under different regulatory and business frameworks.

One fundamental distinction between these entities is that IOUs receive rate protection from the Commissions, while ESPs, and their customers, are subject to market price risks and stranded costs. This difference has been recognized and institutionalized in laws passed by the Legislature¹ and in regulatory policies implemented by the Commission.²

SB 695's "same requirements" language cited above does not reverse or rewrite the preexisting statutory framework. Nor is it intended to circumscribe the Commission's authority to craft appropriate policies and rules by which the ESPs will meet the State's RPS, RA, and GHG goals so long as they meet the same State's important reliability and environmental goals. Imposing identical implementation details for RPS, RA or GHG reduction programs on both ESPs and IOUs ignores important distinctions between competitive and regulated entities that this Legislature created and recognizes.

¹ Pub. Util. Code Section 344(f): "Registration with the commission is an exercise of its licensing function, of the commission, and does not constitute regulation of the rates or terms and conditions of service offered by electric service providers. Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by electric service providers."

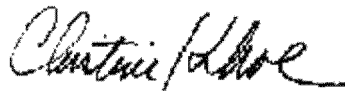
² This Commission has had overall control over how ESPs and IOUs operate. You will remember how utilities operate. Also, to the extent we concern ESP and IOU operations, our concerns about their operations differ somewhat from our concerns about the operations of the investor-owned utilities. In the context of the RPS program, our primary concern is to ensure that ESPs and IOUs do in fact, and in the end, if 100% renewable energy by 2050. We are, however, somewhat less concerned about the details of how they get there" (page 10-13 of Decision 12-11-022 in R.02-04-020.)

Michael Feevey
December 7, 2020
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A broad interpretation of section 365.1 (c) of SB 695 will profoundly affect the continued emergence of the direct access market, which has received an overwhelming positive response by California businesses. Additionally, I would not have authored legislation that lifts the suspension on direct access, only to include other provisions that allow parties to argue in favor of the exact opposite before the CPLC by virtue of requirements that do not take into full consideration the differences between the IOIs and the ESPs.

Therefore, I urge the Commission to continue its same deliberative path that it has followed in the past by establishing fair and thoughtful policies and regulations that acknowledge the differences between the ESPs, the IOIs and their customers, while ensuring that both types of entities meet the State's important reliability and environmental goals.

Sincerely,



CHRISTINE KEHOE
Senator, District 39

cc: Commissioner Bohn
Commissioner Grunreich
Commissioner Simon
Commissioner Ryan

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached *Notice of Ex Parte Communication by the Alliance for Retail Energy Markets* on all parties of record in proceedings *R.08-11-001, R.06-02-013, R.04-04-003, R.04-04-025 and R.99-11-022* by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on December 14, 2010, at Woodland Hills, California.



Michelle Dangott

SERVICE LISTS FOR
A.08-11-001, R.06-02-013, R.04-04-003, R.04-04-025 and R.99-11-022

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