

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

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

Rulemaking 10-05-006

(Filed May 6, 2010)

NOTICE OF EX PARTE COMMUNICATIONS

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Dated: April 18, 2012

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NOTICE OF EX PARTE COMMUNICATIONS

Pursuant to Article 8 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Panoche Energy Center, LLC ("PEC") submits the following notice of ex parte communications.

The meetings took place on April 17, 2012 at the Commission's offices at 505 Van Ness Avenue, San Francisco, California. The meetings were scheduled at PEC's request. Don Burkard, General Manager, PEC; and David Huard and Jon Costantino of Manatt Phelps & Phillips, LLP, outside counsel for PEC, were in attendance. Jack Stoddard of Manatt Phelps & Phillips attended the 11:30 a.m. meeting with Scott Murtishaw, described further below.

PEC briefed Commissioner's Advisors regarding the need for clarity on A.B. 32 compliance cost responsibility in legacy power purchase agreements.

At 10:30 a.m. PEC met with Colette Kersten, advisor to Commissioner Catherine J.K. Sandoval, for approximately thirty minutes. PEC briefed Ms. Kersten on greenhouse gas emissions reduction cost responsibility in pre-AB32 contracts per above. PEC subsequently provided the attached handout, Exhibit A, on April 18, 2012 via email, which includes publicly available materials referenced at the meeting.

At 11:30 a.m. PEC met with Scott Murtishaw, advisor to President Michael R. Peevey, for approximately thirty minutes. PEC briefed Mr. Murtishaw on greenhouse gas emissions reduction cost responsibility in pre-AB32 contracts per above.

At 3:00 p.m. PEC met with Bishu Chatterjee, advisor to Commissioner Timothy Alan Simon, for approximately thirty minutes. PEC briefed Mr. Chatterjee on greenhouse gas emissions reduction cost responsibility in pre-AB32 contracts per above.

At 3:30 p.m. PEC met with Sarah Kamins, advisor to Commissioner Mark J. Ferron for approximately thirty minutes. PEC briefed Ms. Kamins on greenhouse gas emissions reduction cost responsibility in pre-AB32 contracts per above.

Dated: April 18, 2012

Respectfully submitted,

By: /s/ Jack Stoddard

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EXHIBIT A

CALIFORNIA REGULATION OF GREENHOUSE GAS COST RESPONSIBILITY

I. RELEVANT LANGUAGE FROM RECENT LONG TERM PROCUREMENT PLAN DECISION

The following is language from Administrative Law Judge Peter V. Allen's Proposed *Decision On System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement*, filed February 21, 2012 in R.10-05-006 ("Proposed Decision"), which directs the utilities and the generators to work out the issue of Greenhouse Gas ("GHG") cost responsibility.

In D.08-10-037, we emphasized the importance of treating all market participants equitably and fairly, and reiterated our statement in D.08-03-018 that, "[I]t is not our intent to treat any market participants unfairly based on their past investments or decisions made prior to the passage of AB 32." (D.08-10-037 at 144-145, citing D.08-03-018 at 18.) While we do not need to treat everyone identically, and we are not in the business of bailing unregulated market participants out from their own past missteps, this fundamental concept still holds true: we do not want to inadvertently create or maintain unfair competitive impacts.

The parties should be able to renegotiate any contracts that currently do not address the allocation of AB 32 compliance costs, so that the contracts are modified to be consistent with Commission policy. Rather than rewrite the existing contracts based on the limited record before us, we direct the utilities to renegotiate the contracts at issue so that they reasonably address the allocation of AB 32 compliance costs. Because of the limited record we have on this issue, we do not prejudge how the contracts should be modified, as we believe the parties are in a better position to address that issue, including questions of whether the existing contract may have taken the passage of AB 32 into consideration. If the contracts have not been renegotiated and submitted to the Commission for approval 60 days from the effective date of this decision, the Commission will address and resolve this issue in R.11-03-012.¹

...

The Commission may also choose to address the issue in this proceeding or a successor proceeding.²

II. RELEVANT PROVISIONS AND EXCERPTS FROM CALIFORNIA AIR RESOURCES BOARD CAP AND TRADE REGULATION

Following are excerpts from the Cap and Trade rulemaking record demonstrating the California Air Resources Board's ("CARB") intent for the cost of carbon to be passed on to the ultimate consumer, which can be found on CARB's regulation webpage for Cap and Trade at <http://www.arb.ca.gov/regact/2010/capandtrade10/capandtrade10.htm>.

CARB's *Cap-and-Trade Program Resolution 11-32* ("Resolution 11-32") directs the Executive Officer to work with the Commission to encourage resolution

¹ Proposed Decision, pp. 57-58. R.11-03-012 is the GHG revenue allocation proceeding.

² Proposed Decision, p. 59, fn 20.

CALIFORNIA REGULATION OF GREENHOUSE GAS COST RESPONSIBILITY

between contract counterparties for fixed-price contracts between independent generators and utilities:

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor progress on bilateral negotiations between counterparties with existing contracts that do not have a mechanism for recovery of carbon costs associated with cap-and-trade for industries receiving free allowances pursuant to Section 95891, and identify and propose a possible solution, if necessary. For fixed-price contracts between independent generators and Investor Owned Utilities, the Board further directs the Executive Officer to work with the California Public Utilities Commission (CPUC) to encourage resolution between contract counterparties.³

In the supplement to the Final Statement of Reasons, CARB noted that “the CPUC’s comment indicates a commitment to address concerns with ‘legacy contracts signed before AB 32 went into effect or before AB 32 was adopted that do not allow for GHG pass-through.’”⁴

Discussion from CARB on ratepayers bearing the Cap and Trade program costs can be found in *Appendix 1: Staff Proposal for 15-day Changes to Address Electricity Sector Allowance Allocation* (“Appendix 1”):

To support these two purposes for free allocation, staff recommends the following policy objectives for the allocation of allowances within the electricity sector:

ffi reflect the expected ratepayer “cost burden” associated with the cap-and-trade program emissions costs that is anticipated to be borne by the ratepayers for each distribution utility;⁵

The following policy document is found in *Appendix A: Staff Proposal for Allocating Allowances to the Electric Sector* (“Appendix A”):

Allocation to Individual Utilities

ARB staff recommends that the method incorporate the three main elements discussed above: ratepayer cost burden; energy efficiency accomplishment; and early action as measured by investments in qualifying renewable resources.⁶

³ Resolution 11-32, p. 12, available at <http://www.arb.ca.gov/regact/2010/capandtrade10/res11-32.pdf>.

⁴ State of California Environmental Protection Agency, Air Resources Board, Supplement to the Final Statement of Reasons, pp. 84-85.

⁵ Appendix 1, p. 2, available at <http://www.arb.ca.gov/regact/2010/capandtrade10/res1042app1.pdf>.

⁶ Appendix A, p. 2, available at <http://www.arb.ca.gov/regact/2010/capandtrade10/candtappa2.pdf>.