

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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**NOTICE OF EX PARTE COMMUNICATION**

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And on behalf of the Alliance for Retail Energy Markets  
and the Western Power Trading Forum

Date: July 29, 2013

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In accordance with Rule 8.4 of the Commission's Rules of Practice and Procedure, Shell Energy North America (US), L.P. ("Shell Energy"), the Alliance for Retail Energy Markets ("AREM"), and the Western Power Trading Forum ("WPTF") file this notice of three ex parte communications that occurred in the above-referenced proceeding on Wednesday, July 24, 2013. The three ex parte communications were oral, in-person meetings with advisors to three of the Commissioners. No written materials were provided. The three ex parte meetings were held in a meeting room or an office on the fifth floor of the Commission's San Francisco headquarters.

**I.**

The first ex parte communication occurred through a meeting between representatives of Shell Energy and AREM, and Marcelo Poirier, advisor to Commissioner Florio. Shell Energy's representative was John Leslie, the undersigned attorney. Also in attendance were the following representatives of AREM: Jed Gibson, attorney, and Mary Lynch, Vice President, Regulatory Affairs, Constellation NewEnergy. The meeting was held from approximately 11:05 a.m. to 11:30 a.m. The communication was initiated by the undersigned counsel. The meeting lasted approximately 25 minutes.

The second ex parte communication occurred through a meeting between representatives of Shell Energy, AREM, and WPTF, and Sara Kamins and Charlyn Hook, advisors to

Commissioner Ferron. Shell Energy's representatives were Marcie Milner, Vice President, Regulatory Affairs, and John Leslie, the undersigned attorney. WPTF's representative was Dan Douglass, attorney. AReM's representatives were Jed Gibson, attorney, Greg Bass, Director, Regulatory Affairs, Noble Solutions, and Mary Lynch, Vice President, Regulatory Affairs, Constellation NewEnergy. This meeting was held from 1:30 p.m. to 2:00 p.m. The communication was initiated by the undersigned counsel. The meeting lasted approximately 30 minutes.

The third ex parte communication occurred through a meeting between representatives of Shell Energy, AReM, and WPTF, and Melicia Charles, advisor to Commissioner Peterman. Shell Energy's representatives were Marcie Milner and the undersigned. WPTF's representative was Dan Douglass. AReM's representatives were Jed Gibson, Greg Bass, and Mary Lynch. This meeting was held from 2:30 p.m. to 3:00 p.m. The communication was initiated by the undersigned counsel. The meeting lasted approximately 30 minutes.

## II.

The purpose of each meeting was to discuss Presiding Judge Anne Simon's July 1, 2013 Ruling in the above-referenced proceeding, in which the Judge solicited comments on a preliminary Energy Division staff proposal that addresses the treatment of LSEs' confidential RPS procurement and compliance information. The preliminary staff proposal, which is incorporated in the Judge's Ruling, includes a series of proposed revisions to the Commission's existing confidentiality rules.

The representatives of Shell Energy, AReM and WPTF stated, in these meetings, that there are three proposals that should be withdrawn because the proposals exceed the Commission's legal authority. The three proposals are as follows:

1. Public Disclosure of ESP RPS Procurement Contract Prices: The staff proposes that the Commission require ESPs to make their RPS procurement contract prices 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.

2. Public Disclosure of ESP Actual Annual RPS Procurement Costs and Forecast RPS Contract Generation Costs: The staff proposes that the Commission require ESPs to publicly disclose their annual total RPS procurement cost information for any previous year, as well as their forecasts of RPS procurement contract generation costs for future years (aggregated by resource category).

3. Public Disclosure of ESP RPS Procurement Contract Terms: The staff proposes that the Commission require ESPs to make most of their RPS procurement contract terms publicly available 30 days after deliveries begin under the contract, and to make all other ESP RPS procurement contract information publicly available on the earlier of three years after contract execution, or upon contract expiration.

The representatives of Shell Energy, AReM and WPTF stated that these three proposals improperly -- unlawfully -- seek to require ESPs to publicly disclose confidential RPS procurement price information and confidential RPS cost and contract information. The representatives stated that the Commission does not have jurisdiction over the prices paid by ESPs for their RPS supplies, or the prices charged by ESPs to their retail customers. The representatives cited P.U. Code Section 394(f), which states that the Commission does not have authority over the “rates or terms and conditions of service offered by [ESPs].”

The representatives of Shell Energy, AReM and WPTF stated that because the Commission does not have legal authority over the prices paid (or charged) by ESPs, and because the Commission does not guarantee ESP recovery of its RPS procurement costs, the Commission does not have authority to require ESPs to disclose their RPS prices or costs. Moreover, because the Commission does not have the authority to review ESPs’ RPS

procurement prices, the Commission does not have authority to order ESPs to disclose their RPS procurement prices, costs, or contract terms.

The representatives of Shell Energy, AReM and WPTF noted that the Energy Division’s preliminary staff proposal cites Senate Bill (SB) 695 as support for the proposal to require ESPs to disclose their RPS procurement prices, costs, and contract terms. The representatives stated that the Commission made it clear, in D.11-01-026, 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 or require disclosure of ESPs’ RPS procurement prices, or RPS procurement contracts.

The representatives of Shell Energy, AReM and WPTF requested that the Commission direct the Energy Division to withdraw these three proposals. The representatives stated that responding to these proposals would require parties to expend valuable time and resources to address matters that are outside the Commission’s authority. In addition, the representatives stated that for as long as the proposals remain a part of the preliminary Energy Division staff proposal, ESPs and RPS suppliers will face uncertainty as to whether they will have to reveal their confidential RPS contract prices and other contract terms. This uncertainty could have a chilling effect on RPS procurement transactions, and could affect the allocation of risks and costs between parties.

Finally, the representatives of Shell Energy, AReM and WPTF stated that disclosure of ESPs’ RPS procurement prices and costs would impair competition, disadvantage ESPs in the RPS procurement market, and could increase RPS costs for all customers. The representatives expressed concern that if all LSEs (and RPS suppliers) were aware of the prices paid by ESPs for RPS products, the disclosed prices could establish a “floor” for future negotiations. Price competition in the wholesale RPS market would diminish. The representatives also stated that requiring ESPs to disclose their RPS procurement prices could result in “apples-to-oranges” comparisons because prices in RPS contracts may be linked to other contract terms.

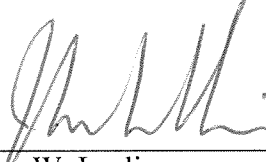
The representatives of Shell Energy, AReM and WPTF urged the Commissioners' advisors to encourage the Presiding Judge and/or the Energy Division to withdraw these three proposals from the preliminary staff proposal.

**III.**

To obtain a copy of this notice, please contact:

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Respectfully submitted,



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