

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA



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Order Instituting Rulemaking Pursuant to Senate Bill No. 790 to Consider and Adopt a Code of Conduct, Rules and Enforcement Procedures Governing the Conduct of Electrical Corporations Relative to the Consideration, Formation and Implementation of Community Choice Aggregation Programs.

R.12-02-009

**OPENING COMMENTS OF SHELL ENERGY
NORTH AMERICA (US), L.P.**

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In accordance with the procedural schedule adopted in the February 16, 2012 Order Instituting Rulemaking (“OIR”), Shell Energy North America (US), L.P. (“Shell Energy”) submits its opening comments on the scope of issues and proposals advanced in the OIR. Shell Energy supports the Commission’s proposals to ensure that there is a clear separation between an electric corporation’s “utility” functions and its “marketing” functions. Shell Energy also supports the expedited complaint process proposed in the OIR.

To comply with SB 790, however, the Commission must also address how to “facilitate the development of community choice aggregation [CCA] programs,” “foster fair competition,” and “protect against cross-subsidization” with respect to the CCA program. The Commission should establish a process to solicit proposals to meet these critical competitive objectives of SB 790.

In addition, the Commission should consider how proposals to “foster competition” in the CCA program may apply to other retail choice programs administered by the Commission. The

Commission should adopt similar requirements to foster competition in both the direct access program and the gas industry's core aggregation program.

In support of its position, Shell Energy states the following:

I.

INTRODUCTION

Shell Energy is a wholesale marketing and trading company that serves energy markets throughout the United States. Shell Energy is a wholesale supplier of energy to the Marin Energy Authority ("MEA"), the first CCA to serve customers in California. Shell Energy is also an Energy Service Provider ("ESP") providing retail service to direct access customers in California.

Shell Energy is an active participant in a number of Commission proceedings addressing competitive market issues in the natural gas and electric industries. In accordance with SB 790, fostering fair competition is a central issue to be addressed in this proceeding.

Shell Energy supports the Commission's proposals to ensure separation of an electric corporation's traditional "utility" functions from the "marketing" functions of an electric corporation's independent marketing division or marketing affiliate. The proposed rules with respect to "separation" appear to be designed to ensure against subsidization of a marketing entity's operations by utility ratepayers, and to ensure against the sharing of competitively sensitive information between an electric corporation and its marketing division/affiliate.

Shell Energy also supports the expedited "complaint" process that is proposed in the OIR. In view of the competitive harm that can be inflicted on a CCA as a result of an electric corporation's violation of the "code of conduct," it is appropriate to conduct a hearing on a "fast track." As proposed by the CCA Alliance in separate comments filed today, the Commission

should also designate one or more Commission officials for a CCA (or a prospective CCA) to contact in order to initiate the expedited complaint process.

The Commission should also specify that among the forms of relief that may be provided through the expedited complaint process, the Commission may award compensation to a CCA (or a prospective CCA) for violations of the code of conduct by an electric corporation. If a CCA suffers losses or other damages as a result of an electric corporation's violation of the code of conduct, the adopted rules should provide that the Commission may award monetary damages to the CCA in addition to any other relief allowed by law.

It is not enough, however, under SB 790, that the Commission adopt rules to prevent an electric corporation from actively interfering with a CCA program. The statute also directs the Commission, in this proceeding, to address how to promote and expand the CCA program. Unfortunately, the Commission's proposed rules are limited to maintaining an electric utility's "neutrality" regarding a CCA program. The OIR fails to respond to the statutory directive to enhance the competitive environment for the CCA program.

SB 790 directs the Commission to adopt rules that "facilitate the development of [CCA] programs, [] foster fair competition, and [] protect against cross-subsidization paid by ratepayers." P.U. Code Section 707(a)(4)(A) (emphasis added); see OIR at p. 17. The OIR does not include proposals that are intended to affirmatively "facilitate development" of the CCA program, or to "foster fair competition." This is a significant deficiency in the OIR's proposed rules. The Commission must establish a process to solicit proposals to enhance development of the CCA program.

II.

THE COMMISSION MUST ADDRESS HOW TO FOSTER COMPETITION TO “FACILITATE” THE CCA PROGRAM

The Commission must address, in this OIR proceeding, the regulatory hurdles, including electric utility rate design, cost allocation, and energy procurement policies, that impede the development of the CCA program. The underlying premise of this OIR - - and SB 790 - - is that the incumbent electric utilities have market power in their service territories, making it difficult, under any circumstances, for prospective CCAs to compete. The Commission should entertain proposals in this proceeding that, when implemented, will reduce the barriers to competition and encourage development of the CCA program. As a first step, Shell Energy supports the proposal by the CCA Alliance to hold a workshop to address the barriers to competition that impede development of the CCA program, and to address proposed means to reduce or eliminate these barriers.

For example, in accordance with SB 790, the Commission should address how to “maximize the ability of [CCAs] to determine the generation resources used to serve their customers.” P. U. Code Section 380 (b)(4). In this connection, the Commission must examine current rules that effectively encourage the electric utilities to enter into capacity procurement contracts on behalf of all system customers under the cost allocation mechanism (“CAM”). At a minimum, the Commission should ensure that there is transparency in identifying the cost of capacity purchased by the utilities for the benefit of all system customers under the CAM.

Moreover, it is essential that the Commission address how the costs associated with utility procurement are allocated among an electric utility’s generation, transmission and distribution charges. If any of an electric utility’s generation (or procurement) - related costs are allocated to the transmission or distribution charge, customers of CCAs and ESPs will subsidize the electric utility’s procurement efforts. The Commission should undertake a comprehensive

review of the electric utilities' generation and procurement-related costs to ensure that CCA customers and direct access customers do not bear any portion of (subsidize) the electric utilities' generation/procurement efforts and costs.

Finally, the Commission should address how to minimize the stranded utility procurement costs that are borne by CCA customers and direct access customers through "exit fees." Consistent with the requirement to maintain bundled customer "indifference" with respect to the costs associated with departing customer load, the Commission should consider, in this proceeding, how to prevent electric utilities' procurement of excess capacity for their bundled sales customers. In this connection, the Commission must ensure that all electric utility procurement is sized to recognize the "migration" of a portion of an electric utility's bundled load to the CCA program and direct access. The Commission should ensure that the electric utilities do not over-procure for their bundled sales load.

III.

CONCLUSION

Shell Energy appreciates the opportunity to provide its comments on the matters addressed in the OIR. Consistent with SB 790, the Commission should establish a process to address proposals that facilitate development of the CCA program and foster fair competition in the CCA market. In addition, the Commission should consider how proposals to “foster competition” for the CCA program may be applied to enhance competition in the direct access market and the core aggregation market.

Respectfully submitted,



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