

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

STATE OF RHODE ISLAND,

Plaintiff

v.

CHEVRON CORP.; CHEVRON USA, INC.; EXXON MOBIL CORP.; BP, PLC; BP AMERICA, INC.; BP PRODUCTS NORTH AMERICA, INC.; ROYAL DUTCH SHELL, PLC; MOTIVA ENTERPRISES, LLC; SHELL OIL PRODUCTS COMPANY, LLC; CITGO PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; MARATHON PETROLEUM CORP.; MARATHON PETROLEUM COMPANY, LP; SPEEDWAY, LLC; HESS CORP.; MARATHON OIL COMPANY; MARATHON OIL CORPORATION; LUKOIL PAN AMERICAS, LLC; GETTY PETROLEUM MARKETING, INC.; AND DOES 1 through 100, inclusive

Defendants.

C.A. No. PC-2018-4716

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS'
JOINT MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Defendants Chevron Corporation; Chevron U.S.A., Inc.; Exxon Mobil Corporation; BP Products North America Inc.; BP P.L.C.; BP America Inc.; Royal Dutch Shell, PLC; Motiva Enterprises, LLC; Shell Oil Products Company LLC; Citgo Petroleum Corporation; ConocoPhillips; ConocoPhillips Company; Phillips 66; Marathon Petroleum Corporation; Marathon Petroleum Company LP; Speedway, LLC; Hess Corp.; Marathon Oil Company; and Marathon Oil Corporation (collectively "Defendants"), by their undersigned attorneys, pursuant to Rhode Island Rule of Evidence 201(d), hereby request that the Court, in consideration of their Joint Motion to Dismiss for Lack of Personal Jurisdiction filed concurrently herewith (the "Motion"), take judicial notice of data reflected in the following public records of the U.S.

Energy Information Administration (“EIA”) and cited in the Motion. True and correct copies of the public records are attached hereto as Exhibits 1 and 2:

Exhibit 1 U.S. Energy Info. Admin., *Table PT1. Primary Energy Production Estimates in Physical Units, Rhode Island, 1960 – 2017* (June 28, 2019), https://www.eia.gov/state/seds/sep_prod/pdf/PT1_RI.pdf.

Exhibit 2 U.S. Energy Info. Admin., *Table PT2. Primary Energy Production Estimates in Trillion Btu, Rhode Island, 1960 – 2017* (June 28, 2019), https://www.eia.gov/state/seds/sep_prod/pdf/PT2_RI.pdf.

ARGUMENT

These documents are properly considered in connection with the Motion because they are public records the contents of which are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” R.I. R. Evid. 201(b)(2).

“Judicial notice may be taken at any stage of the proceeding.” R.I. R. Evid. 201(f). At the motion to dismiss stage, a court may properly look to “any facts and laws of which the trial court could properly take judicial notice.” *Casperson v. AAA S. New England*, 2015 WL 9582091, at *5 (R.I. Super. Ct. Dec. 22, 2015) (quoting *Berberian v. New England Tel. & Tel. Co.*, 330 A.2d 813, 815 (R.I. 1975)).

Public records and official reports of administrative agencies are proper subjects for judicial notice. *See Hamilton v. Ballard*, 161 A.3d 470, 475 n.10 (R.I. 2017) (concluding that Rhode Island courts “may take judicial notice of public records, including deeds”); *State Terminal Corp. v. Gen. Scrap Iron, Inc.*, 264 A.2d 334, 337 (R.I. 1970) (taking judicial notice of public records in the form of legislative journals for sessions of the General Assembly); *see also Massachusetts v. Westcott*, 431 U.S. 322, 322 n.2 (1977) (per curiam) (public records of administrative agencies may be judicially noticed); *Ms. S. v. Reg’l Sch. Unit 72*, 829 F.3d 95, 103 n.4 (1st Cir. 2016) (taking judicial notice of public record materials relating to Maine

Department of Education's rulemaking process).¹

The records for which Defendants seek judicial notice are administrative records that are publicly available on the EIA's website. Specifically:

- Exhibit 1 is a table of primary energy production estimates in physical units for Rhode Island from 1960 to 2017. This document is maintained as part of the EIA's interactive State Energy Data System relating to energy production and consumption in the United States, and is available on the EIA's website at the URL listed above. It reports that from 1960 to 2017, no crude oil, natural gas, or coal have been produced in Rhode Island.
- Exhibit 2 is a table of primary energy production estimates in trillion btu for Rhode Island from 1960 to 2017. This document is maintained as part of the EIA's interactive State Energy Data System relating to energy production and consumption in the United States, and is available on the EIA's website at the URL listed above. It reports that from 1960 to 2017, no crude oil, natural gas, or coal have been produced in Rhode Island.

Because these exhibits are public records the authenticity of which is not subject to reasonable dispute and the contents of which are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," R.I. R. Evid. 201(b)(2), each is the proper subject of judicial notice.

¹ Because the Rhode Island Rules of Evidence "are based upon the federal rules," Rhode Island courts routinely look to federal decisions interpreting analogous federal rules for persuasive authority. *See, e.g., Rhode Island v. Damiano*, 587 A.2d 396, 400-01 (R.I. 1991); *Rhode Island v. Bunnell*, 47 A.3d 220, 231 & n.15 (R.I. 2012).

CONCLUSION

For the foregoing reasons, Defendants request that the Court take judicial notice of the data contained in Exhibits 1 and 2, attached hereto, in connection with its consideration of the Motion.

Dated: January 13, 2020

Respectfully submitted,

Daniel B. Levin (*pro hac vice*)
MUNGER, TOLLES & OLSON LLP
350 S. Grand Ave. 50th Fl.
Los Angeles, CA 90071
Tel: (213) 683-9100
Fax: (213) 687-3702
Email: daniel.levin@mto.com

Jerome C. Roth (*pro hac vice*)
Elizabeth A. Kim (*pro hac vice*)
MUNGER, TOLLES & OLSON LLP
560 Mission Street
Twenty-Seventh Floor
San Francisco, CA 94105-2907
Tel: (415) 512-4000
Fax: (415) 512-4077
Email: jerome.roth@mto.com
Email: elizabeth.kim@mto.com

/s/ Jeffrey S. Brenner
Jeffrey S. Brenner (#04369)
Justin S. Smith (#10083)
NIXON PEABODY LLP
One Citizens Plaza, Suite 500
Providence, RI 02903
Tel: (401) 454-1042
Fax: (866) 947-0883
Email: jrbrenner@nixonpeabody.com
Email: jssmith@nixonpeabody.com

David C. Frederick (*pro hac vice*)
Brendan J. Crimmins (*pro hac vice*)
Grace W. Knofczynski (*pro hac vice*)
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, DC 20036
Tel: (202) 326-7900
Fax: (202) 326-7999
Email: dfrederick@kellogghansen.com
Email: bcrimmins@kellogghansen.com
Email: gknofczynski@kellogghansen.com

Attorneys for Shell Oil Products Company LLC, and Royal Dutch Shell, PLC

** The electronic signatory has obtained approval from all other signatories.

By: /s/ Gerald J. Petros

Gerald J. Petros (#2931)
Robin L. Main (#4222)
Ryan M. Gainor (#9353)
HINCKLEY, ALLEN & SNYDER LLP
100 Westminster Street, Suite 1500
Providence, RI 02903
Tel: (401) 274-2000
Fax: (401) 277-9600
Email: gpetros@hinckleyallen.com
Email: rmain@hinckleyallen.com
Email: rgainor@hinckleyallen.com

Theodore J. Boutrous, Jr. (*pro hac vice*)
Joshua S. Lipshutz (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Tel: (213) 229-7000
Fax: (213) 229-7520
Email: tboutrous@gibsondunn.com
Email: jlipshutz@gibsondunn.com

Anne Champion (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193
Tel: (212) 351-4000
Fax: (212) 351-5281
Email: achampion@gibsondunn.com

Neal S. Manne (*pro hac vice*)
Erica W. Harris (*pro hac vice*)
Johnny W. Carter
SUSMAN GODFREY LLP
1000 Louisiana, Suite 5100
Houston, TX 77002
Tel: (713) 651-9366
Fax: (713) 654-6666
Email: nmanne@susmangodfrey.com
Email: eharris@susmangodfrey.com
Email: jcarter@susmangodfrey.com

*Attorneys for Defendants Chevron Corporation
and Chevron U.S.A., Inc.*

By: /s/ Matthew T. Oliverio

Matthew T. Oliverio, Esquire (#3372)
Raymond A. Marcaccio, Esquire (#3569)
Santiago H. Posas, Esquire (#9519)
OLIVERIO & MARCACCIO LLP
55 Dorrance Street, Suite 400
Providence, RI 02903
Tel: (401) 861-2900
Fax: (401) 861-2922
Email: mto@om-rilaw.com
Email: ram@om-rilaw.com
Email: shp@om-rilaw.com

Theodore V. Wells, Jr. (*pro hac vice*)
Daniel J. Toal (*pro hac vice*)
Jaren Janghorbani (*pro hac vice*)
PAUL, WEISS, RIFKIND,
WHARTON, GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Tel: (212) 373-3089
Fax: (212) 492-0089
Email: twells@paulweiss.com
Email: dtoal@paulweiss.com
Email: jjanghorbani@paulweiss.com

*Attorneys for Defendants Exxon Mobil
Corporation*

/s/ John A. Tarantino

John A. Tarantino (#2586)
Patricia K. Rocha (#2793)
Nicole J. Benjamin (#7540)
ADLER POLLOCK & SHEEHAN P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903
Tel.: (401) 427-6262
Fax: (401) 351-4607
Email: jtarantino@apslaw.com
Email: procha@apslaw.com
Email: nbenjamin@apslaw.com

Philip H. Curtis (*pro hac vice*)
Nancy Milburn (*pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, New York 10019-9710
Tel.: 212.836.8000
Fax: 212.836.8689
Email: philip.curtis@arnoldporter.com
Email: nancy.milburn@arnoldporter.com

Jonathan W. Hughes (*pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
Three Embarcadero Center, 10th Floor
San Francisco, California 94111-4024
Tel.: 415.471.3100
Fax: 415.471.3400
Email: jonathan.hughes@arnoldporter.com

Matthew T. Heartney (*pro hac vice*)
John D. Lombardo (*pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017-5844
Tel.: 213.243.4000
Fax: 213.243.4199
Email: matthew.heartney@arnoldporter.com
Email: john.lombardo@arnoldporter.com

*Attorneys for Defendants BP P.L.C., BP
America, Inc., and BP Products North America,
Inc.*

By: /s/ Jeffrey S. Brenner

Jeffrey S. Brenner (#04369)
Justin S. Smith (#10083)
NIXON PEABODY LLP
One Citizens Plaza, Suite 500
Providence, RI 02903
Tel: (401) 454-1042
Fax: (866) 947-0883
Email: jrbrenner@nixonpeabody.com
Email: jssmith@nixonpeabody.com

*Attorneys for Defendant Motiva Enterprises,
LLC*

By: /s/ Stephen J. MacGillivray

John E. Bulman (#3147)
Stephen J. MacGillivray (#5416)
PIERCE ATWOOD LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
Tel: (401) 588-5113
Fax: (401) 588-5166
Email: jbulman@pierceatwood.com
Email: smacgillivray@pierceatwood.com

Nathan P. Eimer (*pro hac vice*)
Pamela R. Hanebutt (*pro hac vice*)
Lisa S. Meyer (*pro hac vice*)
EIMER STAHL LLP
224 South Michigan Avenue, Ste. 1100
Chicago, IL 60604
Tel: (312) 660-7600
Fax: (312) 692-1718
Email: neimer@EimerStahl.com
Email: phanebutt@EimerStahl.com
Email: lmeyer@Eimerstahl.com

Attorneys for Defendant CITGO Petroleum Corporation

By: /s/ Michael J. Colucci

Michael J. Colucci, Esq. (#3302)
Krista J. Schmitz, Esq. (#7709)
OLENN & PENZA, LLP
530 Greenwich Avenue
Warwick, RI 02886
Tel: (401) 737-3700
Fax: (401) 737-5499
Email: mjc@olenn-penza.com
Email: kjs@olenn-penza.com

Steven M. Bauer (*pro hac vice*)
Margaret A. Tough (*pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Tel: (415) 391-0600
Fax: (415) 395-8095
Email: steven.bauer@lw.com
Email: margaret.tough@lw.com

Sean C. Grimsley (*pro hac vice*)
Jameson R. Jones (*pro hac vice*)
Daniel R. Brody (*pro hac vice*)
BARTLIT BECK LLP
1801 Wewatta Street, Suite 1200
Denver, CO 80202
Tel: (303) 592-3123
Fax: (303) 592-3140
Email: sean.grimsley@bartlit-beck.com
Email: jameson.jones@bartlit-beck.com
Email: dan.brody@bartlit-beck.com

Attorneys for Defendants ConocoPhillips and ConocoPhillips Company

By: /s/ Robert G. Flanders, Jr.

Robert G. Flanders, Jr. (#1785)
Timothy K. Baldwin (#7889)
WHELAN, CORRENTE, FLANDERS,
KINDER & SIKET LLP
100 Westminster Street, Suite 710
Providence, RI 02903
Tel: (401) 270-4500
Fax: (401) 270-3760
Email: rflanders@whelancorrente.com
Email: tbaldwin@whelancorrente.com

Steven M. Bauer (*pro hac vice*)
Margaret A. Tough (*pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Tel: (415) 391-0600
Fax: (415) 395-8095
Email: steven.bauer@lw.com
Email: margaret.tough@lw.com

Attorneys for Defendants Phillips 66

By: /s/ Jeffrey B. Pine

Jeffrey B. Pine (#2278)
Patrick C. Lynch (#4867)
LYNCH & PINE
One Park Row, 5th Floor
Providence, RI 02903
Tel: (401) 274-3306
Fax: (401) 274-3326
Email: JPine@lynchpine.com
Email: Plynch@lynchpine.com

Shannon S. Broome (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
50 California Street
San Francisco, CA 94111
Tel: (415) 975-3718
Fax: (415) 975-3701
Email: SBroome@HuntonAK.com

Shawn Patrick Regan (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
200 Park Avenue
New York, NY 10166
Tel: (212) 309-1046
Fax: (212) 309-1100
Email: SRegan@HuntonAK.com

Ann Marie Mortimer (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
Tel: (213) 532-2103
Fax: (213) 312-4752
Email: AMortimer@HuntonAK.com

*Attorneys for Defendants Marathon Petroleum
Corporation; Marathon Petroleum Company
LP; Speedway LLC*

By: /s/ Jason C. Preciphs

Jason C. Preciphs (#6727)
ROBERTS, CARROLL, FELDSTEIN &
PIERCE, INC.
Ten Weybosset Street
Providence, RI 02903
Tel: (401) 521-2331
Fax: (401) 521-1328
Email: jpreciphs@rcfp.com

Scott Janoe (*pro hac vice*)
Matt Allen (*pro hac vice*)
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, TX 77002
Tel: (713) 229-1553
Fax: (713) 229 7953
Email: scott.janoe@bakerbotts.com
Email: matt.allen@bakerbotts.com

Megan Berge (*pro hac vice*)
Thomas C. Jackson (*pro hac vice*)
BAKER BOTTS L.L.P.
1299 Pennsylvania Ave, NW
Washington, DC 20004
Tel: (202) 639-1308
Fax: (202) 639-1171
Email: megan.berge@bakerbotts.com
Email: thomas.jackson@bakerbotts.com

Attorneys for Defendant Hess Corp.

By: /s/ Stephen M. Prignano

Stephen M. Prignano (#3649)
MCINTYRE TATE LLP
321 South Main Street, Suite 400
Providence, RI 02903
Tel.: (401) 351-7700
Email: sprignano@mcintyretate.com

James Stengel (*pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019-6142
Tel: (212) 506-5000
Facsimile: (212) 506-5151
Email: jstengel@orrick.com

Robert Reznick (*pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15TH Street NW
Washington, DC 20005
Tel: (202) 339-8400
Facsimile: (202) 339-8500
Email: rreznick@orrick.com

Catherine Y. Lui (*pro hac vice pending*)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
405 Howard Street
San Francisco, CA 94105-2669
Tel: (415) 773-5571
Fax: (415) 773-5759
Email: clui@orrick.com

*Attorneys for Defendants Marathon Oil
Corporation and Marathon Oil Company*

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2020, I filed and served this document through the Rhode Island Judiciary's Electronic Filing System on all counsel who are registered for e-service. This document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Jeffrey S. Brenner

EXHIBIT 1

Table PT1. Primary Energy Production Estimates in Physical Units, Rhode Island, 1960 - 2017

Year	Fossil Fuels			Renewable Energy
	Coal ^a	Natural Gas ^b	Crude Oil ^c	Fuel Ethanol ^d
	Thousand Short Tons	Million Cubic Feet	Thousand Barrels	Thousand Barrels
1960	0	0	0	NA
1961	0	0	0	NA
1962	0	0	0	NA
1963	0	0	0	NA
1964	0	0	0	NA
1965	0	0	0	NA
1966	0	0	0	NA
1967	0	0	0	NA
1968	0	0	0	NA
1969	0	0	0	NA
1970	0	0	0	NA
1971	0	0	0	NA
1972	0	0	0	NA
1973	0	0	0	NA
1974	0	0	0	NA
1975	0	0	0	NA
1976	0	0	0	NA
1977	0	0	0	NA
1978	0	0	0	NA
1979	0	0	0	NA
1980	0	0	0	NA
1981	0	0	0	0
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2011	0	0	0	0
2012	0	0	0	0
2013	0	0	0	0
2014	0	0	0	0
2015	0	0	0	0
2016	0	0	0	0
2017	0	0	0	0

^a Beginning in 2001, includes refuse recovery. and production capacity data.
^b Marketed production. NA = Not available.
^c Includes lease condensate. Where shown, R = Revised.
^d Includes denaturant. Estimated using production Where shown, (s) = Less than 0.5 of published unit.

Sources: Data sources, estimation procedures, and assumptions are described in the documentation at <http://www.eia.gov/state/seds/seds-technical-notes-complete.php>

EXHIBIT 2

Table PT2. Primary Energy Production Estimates in Trillion Btu, Rhode Island, 1960 - 2017

Year	Fossil Fuels			Nuclear Electric	Renewable Energy			Total
	Coal ^a	Natural Gas ^b	Crude Oil ^c		Biofuels ^d	Other ^e	Total ^f	
Trillion Btu								
1960	0.0	0.0	0.0	0.0	NA	3.0	3.0	3.0
1961	0.0	0.0	0.0	0.0	NA	3.0	3.0	3.0
1962	0.0	0.0	0.0	0.0	NA	3.1	3.1	3.1
1963	0.0	0.0	0.0	0.0	NA	3.2	3.2	3.2
1964	0.0	0.0	0.0	0.0	NA	3.5	3.5	3.5
1965	0.0	0.0	0.0	0.0	NA	3.6	3.6	3.6
1966	0.0	0.0	0.0	0.0	NA	3.8	3.8	3.8
1967	0.0	0.0	0.0	0.0	NA	4.2	4.2	4.2
1968	0.0	0.0	0.0	0.0	NA	4.3	4.3	4.3
1969	0.0	0.0	0.0	0.0	NA	4.4	4.4	4.4
1970	0.0	0.0	0.0	0.0	NA	5.3	5.3	5.3
1971	0.0	0.0	0.0	0.0	NA	4.9	4.9	4.9
1972	0.0	0.0	0.0	0.0	NA	4.9	4.9	4.9
1973	0.0	0.0	0.0	0.0	NA	5.1	5.1	5.1
1974	0.0	0.0	0.0	0.0	NA	5.0	5.0	5.0
1975	0.0	0.0	0.0	0.0	NA	4.1	4.1	4.1
1976	0.0	0.0	0.0	0.0	NA	4.7	4.7	4.7
1977	0.0	0.0	0.0	0.0	NA	5.3	5.3	5.3
1978	0.0	0.0	0.0	0.0	NA	6.6	6.6	6.6
1979	0.0	0.0	0.0	0.0	NA	7.1	7.1	7.1
1980	0.0	0.0	0.0	0.0	NA	7.3	7.3	7.3
1981	0.0	0.0	0.0	0.0	0.0	6.6	6.6	6.6
1982	0.0	0.0	0.0	0.0	0.0	6.1	6.1	6.1
1983	0.0	0.0	0.0	0.0	0.0	7.4	7.4	7.4
1984	0.0	0.0	0.0	0.0	0.0	4.9	4.9	4.9
1985	0.0	0.0	0.0	0.0	0.0	5.1	5.1	5.1
1986	0.0	0.0	0.0	0.0	0.0	4.7	4.7	4.7
1987	0.0	0.0	0.0	0.0	0.0	3.3	3.3	3.3
1988	0.0	0.0	0.0	0.0	0.0	3.5	3.5	3.5
1989	0.0	0.0	0.0	0.0	0.0	3.8	3.8	3.8
1990	0.0	0.0	0.0	0.0	0.0	4.5	4.5	4.5
1991	0.0	0.0	0.0	0.0	0.0	4.6	4.6	4.6
1992	0.0	0.0	0.0	0.0	0.0	4.8	4.8	4.8
1993	0.0	0.0	0.0	0.0	0.0	5.2	5.2	5.2
1994	0.0	0.0	0.0	0.0	0.0	5.1	5.1	5.1
1995	0.0	0.0	0.0	0.0	0.0	5.1	5.1	5.1
1996	0.0	0.0	0.0	0.0	0.0	5.6	5.6	5.6
1997	0.0	0.0	0.0	0.0	0.0	4.3	4.3	4.3
1998	0.0	0.0	0.0	0.0	0.0	4.2	4.2	4.2
1999	0.0	0.0	0.0	0.0	0.0	4.4	4.4	4.4
2000	0.0	0.0	0.0	0.0	0.0	4.5	4.5	4.5
2001	0.0	0.0	0.0	0.0	0.0	3.9	3.9	3.9
2002	0.0	0.0	0.0	0.0	0.0	3.7	3.7	3.7
2003	0.0	0.0	0.0	0.0	0.0	3.8	3.8	3.8
2004	0.0	0.0	0.0	0.0	0.0	3.8	3.8	3.8
2005	0.0	0.0	0.0	0.0	0.0	0.9	0.9	0.9
2006	0.0	0.0	0.0	0.0	0.0	2.6	2.6	2.6
2007	0.0	0.0	0.0	0.0	0.0	2.8	2.8	2.8
2008	0.0	0.0	0.0	0.0	0.0	2.9	2.9	2.9
2009	0.0	0.0	0.0	0.0	0.0	3.5	3.5	3.5
2010	0.0	0.0	0.0	0.0	0.0	3.7 R	3.7 R	3.7 R
2011	0.0	0.0	0.0	0.0	0.0	3.7 R	3.7 R	3.7 R
2012	0.0	0.0	0.0	0.0	0.0	2.9	2.9	2.9
2013	0.0	0.0	0.0	0.0	0.0	2.7	2.7	2.7
2014	0.0	0.0	0.0	0.0	0.0	4.4	4.4	4.4
2015	0.0	0.0	0.0	0.0	0.0	4.8 R	4.8 R	4.8 R
2016	0.0	0.0	0.0	0.0	0.0	4.6 R	4.6 R	4.6 R
2017	0.0	0.0	0.0	0.0	0.0	5.8	5.8	5.8

^a Beginning in 2001, includes refuse recovery.

^b Marketed production.

^c Includes lease condensate.

^d Biomass inputs (feedstock) for fuel ethanol production.

^e Wood energy production plus consumption of geothermal,

hydroelectric power, solar, wind, and biomass waste energy.

^f Before 1981, excludes biofuels.

NA = Not available.

Where shown, R = Revised.

Where shown, (s) = Less than 0.05 trillion Btu.

Note: Totals may not equal sum of components due to independent rounding.

Sources: Data sources, estimation procedures, and assumptions are described in the documentation at <http://www.eia.gov/state/seds/seds-technical-notes-complete.php>

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

STATE OF RHODE ISLAND,

Plaintiff

v.

CHEVRON CORP.; CHEVRON USA, INC.; EXXON
MOBIL CORP.; BP, PLC; BP AMERICA, INC.; BP
PRODUCTS NORTH AMERICA, INC.; ROYAL
DUTCH SHELL, PLC; MOTIVA ENTERPRISES, LLC;
SHELL OIL PRODUCTS COMPANY, LLC; CITGO
PETROLEUM CORP.; CONOCOPHILLIPS;
CONOCOPHILLIPS COMPANY; PHILLIPS 66;
MARATHON PETROLEUM CORP.; MARATHON
PETROLEUM COMPANY, LP; SPEEDWAY, LLC;
HESS CORP.; MARATHON OIL COMPANY;
MARATHON OIL CORPORATION; LUKOIL PAN
AMERICAS, LLC; GETTY PETROLEUM
MARKETING, INC.; AND DOES 1 through 100,
inclusive

Defendants.

C.A. No. PC-2018-4716

[PROPOSED] ORDER

**GRANTING DEFENDANTS' REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF DEFENDANTS' JOINT MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION**

Upon consideration of Defendants' Request for Judicial Notice in Support of Defendants'
Joint Motion to Dismiss for Lack of Personal Jurisdiction, for good cause show, it is hereby

ORDERED

Defendants' Request for Judicial Notice in Support of Defendants' Joint Motion to
Dismiss for Lack of Personal Jurisdiction is **GRANTED**.

ENTER

BY ORDER

Vogel, J.

Clerk

Dated: _____

Dated: _____

ORDER PREPARED AND PRESENTED BY

/s/ Jeffrey S. Brenner
Jeffrey S. Brenner (#4369)
NIXON PEABODY LLP
One Citizens Plaza, Suite 500
Providence, RI 02903
Tel: (401) 454-1042
Fax: (866) 947-0883
Email: jbrenner@nixonpeabody.com
*Counsel for Defendants Royal Dutch Shell PLC,
Shell Oil Products Company, LLC, and
Motiva Enterprises, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2020, I filed and served this document through the Rhode Island Judiciary's Electronic Filing System on all counsel who are registered for e-service. This document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Jeffrey S. Brenner