

**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.

Filed Public Utilities Commission
May 6, 2010 San Francisco, California
Rulemaking 10-05-006

REPLY BRIEF OF THE ALLIANCE FOR RETAIL MARKETS

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This reply brief is submitted on behalf of the Alliance for Retail Energy Markets (“AReM”)¹ in accordance with the directive provided by Administrative Law Judge (“ALJ”) Peter Allen and Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”).

AReM replies herein to opening briefs of three other parties, the Western Power Trading Forum (“WPTF”), Pacific Gas & Electric Company (“PG&E”),² and Southern California Edison Company (“SCE”)³ pertaining to the issue of how the Cost Allocation Mechanism (“CAM”) is to be implemented. In its opening brief, WPTF noted that Attachment 1 of Appendix B of the June 10 Ruling included a Staff proposal with respect to CAM that purportedly, “explains the rules related to participation, roles, and meeting protocols for the CAM group.”⁴ WPTF notes, however, that the Staff Proposal:

¹ AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

² PG&E Opening Brief, at pp. 16-18

³ SCE Opening Brief, at pp. 17-21.

⁴ See June 13 Ruling, at p. 3.

. . . ignores the fundamental changes in the CAM that have occurred due to the passage of SB 695. The same bill that provided for the transitional reopening of direct access retail choice also said that once the Commission had authorized that reopening, it must also ensure that if utility generation resources are determined to be needed to meet system or local area reliability requirements for the benefit of all customers, that the net capacity costs are to be allocated on a fully nonbypassable basis to (a) bundled service customers; (b) customers that purchase electricity through a direct transaction with other providers; and (c) customers of community choice aggregators.

In D.11-05-005, the Commission addressed some CAM issues, but left for future clarification the most fundamental issue of just which utility investments are eligible to be afforded CAM treatment. D.11-05-005 in fact notes that there are some issues that remain to be resolved, which include:

1. The development of policies and processes for distinguishing between system and bundled resource needs, and related cost allocation.
2. Whether there should be a test of “who benefits” under SB 695, and if so, the construction of such a test.⁵

The decision also notes that “we intend to further develop the record in later phases of this proceeding in order to resolve these issues.”⁶

In its opening brief, WPTF recommended that the Commission should direct that the outstanding CAM issues will be specifically addressed in the forthcoming Rules Track III Issues proceeding. AReM concurs with and supports this recommendation.

As a trade association representing electric service providers (“ESPs”), AReM has a significant and abiding interest in issues affecting the direct access (“DA”) market and the competitive options that are available to California ratepayers through both DA and community choice aggregation (“CCA”). DA and CCA offer benefits to ratepayers through the availability of alternative choices for energy supply; the ability to create green portfolios that exceed what is available from the investor-owned utilities (“IOUs”); and the option to receive special service options that are custom-tailored to individual customer needs.

⁵ D.11-05-005, at p. 16 (footnote in original); see WPTF Opening Brief, at pp. 13-14.

⁶ Id, at p. 17.

The CAM is clearly an element that has the potential to affect the competitiveness of DA and CCA options. More specifically, as pointed out by WPTF, when CAM is imposed by the Commission as the cost allocation mechanism for specific utility procurement decisions, it confers on DDA and CCA suppliers a share of the underlying resource, thus reducing the amount of resource they would otherwise procure to serve their load. Lack of clarity about when and how CAM will be applied to utility procurement decisions and when their own procurement efforts will be “trumped” by utility procurement decisions exposes DA and CCA suppliers, and their customers, to potentially costly procurement mistakes.

SCE is singularly unconcerned about the very real harm that this lack of clarity creates, as evidenced by the statement in its opening brief that WPTF’s comments with respect to CAM were out of scope and procedurally improper.⁷ SCE’s lack of concern is understandable given the competitive advantage the lack of clarity confers to SCE. Simply put, by usurping control of procurement decisions by DA and CCA suppliers, the CAM eliminates the ability for customers to manage their energy supply independently of utility procurement decisions. To have utility procurements imposed on DA and CCA is harmful enough. But to have them imposed in the absence of clearly defined criteria under which such impositions will occur, cannot be allowed to continue if DA and CCA are expected to continue to offer meaningful choices to consumers. Even more directly, SCE’s likely desire to see retail competition wither and disappear is not a valid reason for the Commission to delay in dealing with the unresolved issues in the ongoing CAM debate. It is, to the contrary, precisely the reason why the uncertainties surrounding CAM and its application needs to be resolved.

⁷ SCE Opening Brief, at p. 37.

Contrary to SCE’s position, PG&E at least tacitly acknowledges that there are unresolved CAM issues; specifically, PG&E states that certain elements of the proposed rules are incorrect and need to be updated. For example, “the Cost Allocation Mechanism (‘CAM’) Group rules included in the Procurement Oversight Rules need to be updated to reflect changes resulting from SB 695 and D.11-05-005 that addresses cost allocation issues.”⁸ While this does not go as far as AReM would prefer, it at least acknowledges that there are unresolved CAM/SB 695 issues that need to be more fully and clearly addressed.

It must be stressed that is not merely an academic issue. The SB 695 CAM has already been approved by the Commission both in the PG&E Marsh Landing proceeding⁹ and with respect to the QF/CHP settlement,¹⁰ *before* the Commission has clearly defined the rules for its implementation. Another example is pending before the Commission in A.11-05-023.¹¹ In that proceeding, SDG&E has requested that the CAM be applied to certain long-term power tolling agreements, supposedly in accordance with Commission decision D.11-05-005. AReM has joined with WPTF, the Energy Users Forum and the Direct Access Customer Coalition in protesting this request, on the grounds that, “SDG&E seriously mischaracterizes the provisions of D.11-05-005 with respect to the application of the CAM and whether it permits SDG&E to seek CAM treatment for the PPTAs.”¹²

⁸ PG&E Opening Brief, at p. 34.

⁹ D.10-07-045, at pp. 44-45.

¹⁰ D.10-12-035, at pp. 47-50.

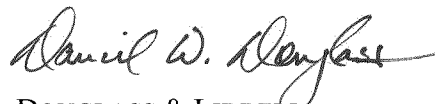
¹¹ Application of San Diego Gas & Electric Company (U 902 E) for Authority to Enter into Purchase Power Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center and Quail Brush Power.

¹² June 24, 2011, Protest of the Alliance for Retail Energy Markets, Energy Users Forum, Direct Access Customer Coalition and the Western Power Trading Forum to Application of San Diego Gas & Electric for Authority to Enter into Purchase Power Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center, and Quail Brush Power, at p. 2.

The Commission has already ruled that the application of CAM will be determined by the Commission and will not be left to utility discretion to determine when and where the CAM may be applied.¹³ However, the Commission has not yet established the criteria pursuant to which CAM will – and will not- be applicable to utility procurement authorizations. Such criteria are urgently needed, and the Commission should clearly provide parties with a meaningful opportunity to provide input regarding the criteria that should apply and how the unresolved issues should be resolved. These issues cannot be left half-done and incompletely addressed.

In conclusion, AReM concurs with and supports WPTF’s call for the Commission to clarify in the forthcoming Rules Track III proceeding how the CAM is to be implemented; how to distinguish between system and bundled resource needs; and whether there should be a test of “who benefits” under Senate Bill (“SB”) 695. AReM thanks the Commission for its attention to these issues.

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¹³ D.11-05-005, at pp. 6-7.