**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 | R.12-03-014<br>(Filed March 22, 2012) |

# OPENING BRIEF OF THE ALLIANCE FOR RETAIL ENERGY MARKETS, DIRECT ACCESS CUSTOMER COALITION AND MARIN ENERGY AUTHORITY


Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, CA 91367
Telephone: (818) 961-3001
Facsimile: (818) 961-3004
E-mail: douglass@energyattorney.com

Attorneys for the
**ALLIANCE FOR RETAIL ENERGY MARKETS**
**DIRECT ACCESS CUSTOMER COALITION**
**MARIN ENERGY AUTHORITY**


September 24, 2012

## SUBJECT INDEX

1. Process changes for utility procurement to meet bundled customer load and load growth.
2. Legal and policy requirements of Commission approval of the use of the cost allocation mechanism ("CAM").
3. Criteria for the Commission to apply in approving CAM procurement.
4. Recommended CAM modifications.
5. Opt out from the CAM by load-serving entities ("LSEs").

# TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### LEGISLATION



### CPUC DECISIONS, DOCKETS, RULINGS



### STATE STATUTES, CODES, REGULATIONS

## SUMMARY OF RECOMMENDATIONS

### Application of Cost Allocation Mechanism ("CAM")

- The Commission has already approved more than 7,000 megawatts of CAM procurement by the investor-owned utilities ("IOUs"), all in the absence of defined criteria for doing so. It is time for the Commission to consider and adopt a comprehensive process and reasonable criteria to ensure compliance with applicable statutes and Commission policies for CAM procurement going forward.

- The Commission should adopt and apply the proposed criteria of the Alliance for Retail Energy Markets ("AReM"), Direct Access Customer Coalition ("DACC") and Marin Energy Authority ("MEA") for determining whether to authorize an IOU's proposed CAM procurement; the proposed criteria achieve the twin goals of meeting statutory requirements and enabling retail choice.

- The Commission should implement and follow a two-stage process for evaluating and imposing CAM treatment in which it would: (1) identify the megawatts of system or local reliability need that may be subject to future CAM procurement; and (2) apply the defined criteria to an IOU's application for approval of a CAM project.

- The Commission should determine that each criterion has been met before authorizing a particular CAM procurement and should require the IOU to provide evidence to demonstrate that the project identified in its application meets the Commission-defined reliability need and cannot be reasonably met by any other resources, including economic demand response and energy efficiency.

- To determine the reliability need potentially subject to CAM procurement, the Commission should first enforce Public Utilities Code Section 454.5 and apply cost causation principles to ensure that the IOUs procure to meet the load, load growth and peak load characteristics of their bundled utility customers over the long term, including procurement of new generation resources and resources to replace terminating power purchase agreements ("PPAs") and retiring power plants. Such IOUs' long-term bundled customer needs would be taken off the top of the need potentially subject to CAM procurement.

- The Commission should specify clearly that procurement to meet the long-term needs of the IOUs' bundled customers is not subject to CAM.

- Commission consideration and implementation of a multi-year forward Resource Adequacy ("RA") procurement obligation for load-serving entities ("LSEs") should adhere to principles that minimize CAM procurement, facilitate wholesale and retail markets, and promote retail choice.

**Modifications to the Calculation of CAM**

- The net capacity costs calculation from the Joint Parties Proposal[1] should be modified to better reflect the increased ancillary service value and value of other products and services that the new PPAs or utility-owned generation ("UOG") plants will be able to provide.

[1] The Joint Parties' Proposal is an alternative to the energy auction that calculates net capacity costs on a proxy basis by imputing energy costs and revenues retroactively based on day-ahead market prices. (D.07-09-044, Appendix A)

- The net capacity costs calculation for UOG plants should start with the levelized fixed costs rather than the fixed portion of the annual revenue requirement. To do otherwise would overvalue the plants' capacity in early years and undervalue it in later ones.
- The CAM cost associated with any PPA or UOG asset should be capped, as discussed herein.

**LSE Opt-Out from CAM**

- The Commission should adopt the LSE Opt-Out proposal of AReM, DACC and MEA to address the anti-competitive aspects of the CAM, provide market incentives for ESPs and LSEs to procure multi-year forward RA resources, promote efficient RA procurement, and allow ESPs and CCAs to better manage their own energy portfolios based on their respective customers' needs and preferences.

- The Commission should find that the proposed LSE Opt-Out is consistent with, and achieves the objectives of, Senate Bill ("SB") 695 and is required to comply with SB 790.

**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 | R.12-03-014 (Filed March 22, 2012) |

# OPENING BRIEF OF THE ALLIANCE FOR RETAIL ENERGY MARKETS, DIRECT ACCESS CUSTOMER COALITION AND MARIN ENERGY AUTHORITY

The Alliance for Retail Energy Markets[2] ("AReM"), the Direct Access Customer Coalition[3] ("DACC") and the Marin Energy Authority[4] ("MEA") respectfully submit this opening brief in Track 1 of the Long-Term Procurement Plan ("LTPP") proceeding pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC") and the schedule set forth by Administrative Law Judge David Gamson on August 17, 2012 at the conclusion of hearings. This opening brief conforms to the common briefing outline submitted by Southern California Edison Company ("SCE") on August 24, 2012. For ease of review and to reduce the length of the document, we include only the sections in the briefing outline on which we have substantive comments. We take no position at this time on the sections not addressed in this opening brief, but reserve the right to reply to the opening briefs on such other sections as we find necessary.

[2] AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California's direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

[3] DACC is a regulatory alliance of educational, commercial, industrial and governmental customers who have opted for direct access to meet some or all of their electricity needs.

[4] MEA is the not-for-profit public agency that administers the Marin Clean Energy community choice aggregation ("CCA") program. MEA launched electricity service to customers in May 2010. It is the first operating CCA program in the state of California.

## I. EXECUTIVE SUMMARY

The development of competitive wholesale and retail markets continues to be undermined by the imposition of non-bypassable charges on customers who have elected to take service from competitive retail suppliers. Action by the Commission is needed to address what has become a largely an unfettered expansion of the non-bypassable cost allocation mechanism ("CAM"), now at 7,000 megawatts ("MWs") and growing. AReM, a coalition of Electric Service Providers ("ESPs"), DACC, a coalition of direct access ("DA") customers, and MEA, the only operating community choice aggregation ("CCA") program in California, are the only parties representing the interests of the competitive markets in this proceeding.

ESPs and CCAs are load-serving entities ("LSEs") and, as such, must procure energy, capacity, and ancillary services to meet their load and comply with System and Local Resource Adequacy ("RA") requirements, the Renewable Portfolio Standards ("RPS"), and applicable provisions of the Greenhouse Gas ("GHG") Emission Reduction requirements. When the Commission authorizes the Investor-Owned Utilities ("IOUs") to procure resources whose costs are allocated pursuant to the CAM, ESPs and CCAs lose the ability to fully manage their own procurement with respect to the quality, quantity and cost of the resources, which hinders them from procuring efficiently and offering the specific products and services that their customers want. This undermines the competitive market, a concern that the Commission acknowledged when it established the CAM.[5] Thus, the Commission should strive to minimize use of the CAM to only those situations specifically required by statute.

[5] See D.06-07-029, pp. 23-25.

AReM, DACC and MEA have carefully reviewed the applicable statutes and Commission policy. Senate Bill ("SB") 695,[6] enacted in 2009, and SB 790,[7] enacted in 2011, are evidence that the Legislature intends for the Commission to maintain reliability and ensure fair IOU cost recovery, but in a manner that does not unnecessarily impede or compromise the competitive retail choice market. AReM, DACC and MEA are jointly the only party in this proceeding to submit proposals to ensure that any CAM procurement authorized by the Commission complies with the applicable statutes and Commission policies, while minimizing CAM procurement and maintaining reliability. These proposals made by AReM, DACC, and MEA do all of the following:

- Establish clear criteria for the Commission to apply when determining whether to authorize CAM procurement by the IOUs, as required by statute;
- Set forth a two-stage process to determine the megawatts of system or local reliability need that may be subject to potential CAM procurement and authorize its procurement if needed;
- Provide recommendations for enforcing Public Utilities ("P.U.") Code Section 454.5 and cost causation principles to ensure that the IOUs procure to meet the long-term needs of their bundled customers, which is not subject to CAM treatment;
- Recommend modifications to the calculation of CAM and how CAM-eligible utility procurement costs are to be reasonably calculated and fairly allocated to all benefiting customers;

[6] Stats 2009, Ch 337.

[7] Stats 2011, Ch 599.

- Establish a mechanism by which LSEs can opt-out of CAM before specific projects are authorized by the Commission for utility procurement, thereby reducing CAM procurement and providing market incentives for LSEs to procure multi-year forward RA capacity; and
- Provide three opt-out options, any one of which could be elected by an ESP or CCA: (1) Load-Ratio Share; (2) Load-Based; and (3) Customer-Based; and a process by which the LSE would make a showing to the Commission that it has procured generation resources that meet the Commission's reliability requirements for a 5-year period. The 5-year period is reasonable to address anti-competitive concerns and the LSE's procurement risk.

Importantly, the Commission has adequate time now to: (1) adopt and implement the CAM-related proposals of AReM, DACC and MEA and still ensure that any designated local reliability needs are met; and (2) coordinate with the RA proceeding (Rulemaking ["R."] 11-10-023), which is expected to address flexible capacity requirements and a multi-year forward RA procurement obligation for LSEs. ESPs and CCAs should not be burdened by unknowable and unquantifiable CAM procurements in this proceeding while the Commission imposes flexible capacity RA procurement obligations on all LSEs in the RA proceeding.

AReM, DACC and MEA urge the Commission to adopt and implement their recommendations and proposals in Track 1 of this proceeding, thereby complying with applicable statutes and Commission policies, maintaining reliability, minimizing CAM, and supporting retail choice.

## IV. PROCUREMENT OF LCR RESOURCES AND INCORPORATION OF THE PREFERRED LOADING ORDER IN LCR PROCUREMENT

### B. Other Commission Policies and Consideration Affecting LCR Procurement

#### *B.1 Utilities must procure to meet the long-term needs of their bundled utility customers to comply with statutory obligations and Commission policy.*

Assembly Bill ("AB") 57[8] was enacted in 2002 and set forth the requirements that the IOUs must meet to serve their bundled utility customers.[9] Under the AB 57 paradigm, the IOUs seek and receive up-front approval of their procurement plans and are generally assured of full cost recovery of any procurement made in compliance with those plans. AB 57 requires the IOUs to meet their bundled load and load growth over the long term. However, a significant number of the Commission's decisions beginning with Decision ("D.") 06-07-029 and thereafter have required that the IOUs' procurement of specified new generating resources are subject to CAM without considering (1) whether such resources are actually needed to meet bundled load and load growth or (2) whether all customers truly benefit from the procurement. In fact, this concern was substantiated in part by SCE's witness, Mr. Colin Cushnie, who admitted that to meet its Local RA requirements SCE only procures existing resources under short-term to medium-term contracts.[10] Apparently, the very resources being considered for procurement in this Track 1 proceeding—new, long-term Local RA resources—are not part of SCE's bundled load procurement plans at this time.

---

[8] Stats 2002, Ch 835.

[9] P.U. Code Section 454.5.

[10] SCE Witness Cushnie, Tr., p. 570, lines 15-20.

As explained in the testimony of AReM, DACC and MEA,[11] the Commission has a statutory obligation to ensure that procurement afforded CAM treatment is needed to meet a specified reliability need pursuant to P.U. Code Section 365.1(c)(2)(B). Obviously, this "need" must be incremental to "needs" associated with an IOU's bundled load and load growth. If the supposed CAM "need" is actually an unmet need of the IOUs' bundled customers, the conditions for CAM procurement required by statute have not been met and the CAM procurement cannot be authorized. Moreover, the IOUs' AB 57 obligation to procure for bundled customers extends to replacing energy and capacity lost from terminating contracts or retiring power plants. While closing these plants or terminating contracts may create a need to replace those facilities to maintain reliability, P.U. Code Section 454.5 must first be satisfied such that the IOUs determine what needs to be replaced to meet their bundled load. Any non-utility LSE faced with terminating power contracts or retiring power plants takes the steps necessary to replace those generating resources to serve its load and the IOUs should be obligated to do the same. In fact, Mr. Kevin Woodruff, witness for The Utility Reform Network ("TURN"), agreed that the IOUs would be obligated to replace terminating power purchase agreements ("PPAs") and potentially with new generation:

> If the IOU cannot meet its RA obligations without that PPA, then the IOU will need to replace at least part of the capacity provided by the PPA to meet its RA requirements. The IOU will also need to replace the energy provided by the PPA, but may do so by different means than it uses to replace its RA capacity.[12]
>
> Energy needs and RA requirements [associated with the replacement PPA] can be met by either new or existing generation.[13]

---

[11] Please see discussion in Exhibit AReM-1, pp. 24-29.

[12] TURN Witness Woodruff, response to AReM, DACC and MEA September 14, 2012 Interrogatory to TURN, Answer to Question 4, p. 3 (tentatively marked as Exhibit AReM-5 subject to the final approval of ALJ Gamson).

[13] TURN Witness Woodruff, response to AReM, DACC and MEA September 14, 2012 Interrogatory to TURN, Answer to Question 4(a), p. 3 (tentatively marked as Exhibit AReM-5 subject to the final approval of ALJ Gamson).

As discussed more fully in Section VI below, the IOUs' unmet needs do not qualify for CAM treatment and should not be authorized as such.

To ensure that CAM treatment is appropriately authorized, all MWs associated with the IOUs' long-term bundled needs would be taken off the top of the need potentially subject to CAM procurement. San Diego Gas & Electric Company's ("SDG&E") witness acknowledged that the Commission has the necessary authority to order the IOUs to procure to meet the needs of their bundled customers.[14]

During cross examination, Ms. Sue Mara, the witness for AReM, DACC and MEA, also clarified the expected IOU procurement process pursuant to P.U. Code 454.5.[15] In response to questions from TURN, Ms. Mara explained that any MWs procured by the IOUs to meet bundled load but subsequently found to be in excess of actual bundled needs would not be treated as CAM, but should be made available to the market, the same way ESPs and CCAs handle their excess procurement.[16] If ESPs and CCAs have procured energy or capacity that exceeds their actual needs at any time, they "have to sell it or eat it."[17] The IOUs should be no different.

Simply put, the Commission has both the authority and the obligation pursuant to Section 454.5 of the P.U. Code to require the IOUs to procure new, long-term resources to meet their bundled load and load growth. This bundled load procurement should not be confused with procurement that is subject to the CAM so that DA and CCA customers are not unfairly asked to subsidize procurement for bundled customers.

---

[14] SDG&E Witness Anderson, Tr., p. 1198, lines 1-9.

[15] AReM-DACC-MEA Witness Mara, Tr., p. 1176, line 12 through p. 1177, line 17.

[16] AReM-DACC-MEA Witness Mara, Tr., p. 1177, line 18 through p. 1179, line 18.

[17] AReM-DACC-MEA Witness Mara, Tr., p. 1179, line 4.

### *B.2 The Commission should direct the IOUs to procure to meet their bundled needs first to avoid cost shifting and comply with cost causation principles.*

As discussed above, as an essential component of this process, the Commission should direct the IOUs to procure both new and existing resources to meet the long-term needs of their bundled utility customers, including replacing terminating contracts and retiring power plants. Such IOU procurement would be subtracted from overall "reliability needs," ensuring that any CAM procurement is not providing a cross subsidy from DA and CCA customers to bundled customers.

SCE[18] and the Division of Ratepayer Advocates ("DRA")[19] have noted, and we concur, that cost shifting between bundled customers and DA/CCA customers is prohibited by statute and Commission policy.[20] As SDG&E's witness confirmed: "[N]either group subsidizes the other group."[21] DRA's witness further agreed that the prohibition on cost shifting, works both ways:

> Q Would you agree that prohibitions on cost shifting works both ways and that costs also should not be shifted from bundled service to CCA or direct access service?
> A Yes, that is correct.[22]

If the IOUs are permitted to impose the costs to meet their bundled customers' need on DA and CCA customers as CAM procurement, they will have successfully and impermissibly shifted costs.

---

[18] Exhibit SCE-2, p. 25, lines 1-4.

[19] Exhibit DRA-5, p. lines 6-12.

[20] P.U. Code Section 380(b)(2) as to all LSEs and P.U. Code Section 366.2(a)(4) as to CCAs and bundled customers.

[21] SDG&E Witness Anderson, Tr., p. 206, lines 9-10.

[22] DRA Witness Ciupagea, Tr., p. 1238, line 28 through p. 1239, line 4. See also, Mr. Ciupagea's confirmation that this same interpretation applies to P.U. Code Section 366.2(a)(4) at Tr., p. 1239, line 21 through p. 1240, line 22.

As described in the testimony of AReM, DACC and MEA,[23] the Commission previously committed in D.07-12-052 to evaluate the potential for improper cross subsidies stemming from CAM procurement of new resources. Specifically, the Commission was concerned that CAM might be used "inappropriately" when new resources were actually needed to meet bundled load[24] and determined that cross subsidies related to bundled customer load should be considered when authorizing CAM procurement.[25] The Commission further found that differences in load characteristics between the IOUs and the ESPs may lead to cross subsidies: "[i]f bundled customers' load is exacerbating the peak or decreasing the load factor (as SCE suggested), then the bundled customers should pay for the resources necessary to meet that need."[26] As explained by Ms. Mara:

> [I]n my view, if the IOUs' bundled load is actually driving the peak and driving the need for new generation, then obviously it would be reasonable for the Commission to determine that IOUs should be required to procure some new generation to meet that additional load that is added to the system by their bundled customers.[27]

In the 2011 LTPP decision (D.11-05-005) addressing SB 695 and CAM policy, the Commission recognized the need to distinguish bundled load from system load to ensure proper cost allocation and committed to develop applicable "policies and processes" when conducting its further review of CAM procurement.[28] The results of that analysis will determine cost causation for new generation and, therefore, provide the foundation needed for a rational and

[23] Exhibit AReM-1, pp. 21-24.

[24] D.07-12-052, p. 118.

[25] D.07-12-052, pp. 117-119.

[26] D.07-12-052, p. 117.

[27] AReM-DACC-MEA Witness Mara, Tr., p. 1177, lines 10-17.

[28] D.11-05-005, p. 16.

non-discriminatory allocation of those costs. This is the proceeding in which that analysis is to occur.

Without Commission consideration and action to eliminate cross subsidies, the IOUs will continue to insist that all procurement of new resources should be afforded CAM cost recovery, thereby burdening the competitive market with undesirable, unfair and unwarranted non-bypassable charges. Moreover, failing to analyze the characteristics of the departed load (both DA and CCA) versus the characteristics of bundled utility load will prevent the Commission from allocating costs to "benefiting customers" in accordance with cost causation principles and statutory requirements. In short, the IOUs are obligated to demonstrate to the Commission that they have verified plans in place to meet the long-term load and load growth of their bundled customers through procurement of a mix of existing and new resources and the Commission should enforce these obligations.

### C. If a Need is Determined, How the Commission should Direct Need to be Met

The Commission should adopt and implement the two-stage process proposed by AReM, DACC and MEA, as discussed in Section VI below, which will meet reliability needs, comply with statutory requirements, and reduce the potential that CAM be used inappropriately to meet bundled customer load.

### D. Timing of Procurement

AReM, DACC and MEA recommend that the Commission not authorize additional CAM procurement until the Commission adopts and implements defined criteria for CAM and a process to follow for authorizing CAM procurement. There is adequate time for the Commission to adopt and implement the proposals of AReM, DACC and MEA, which address these two

factors, as described herein and in testimony.[29] With the Commission's approval, these proposals could be implemented by the end of 2013, thereby minimizing CAM procurement, meeting essential reliability needs, and ensuring compliance with statutory requirements and Commission policy.

Moreover, this time frame is consistent with the schedule in the RA proceeding (R.11-10-023), which will soon begin considering modifications to RA procurements, including issues associated with the need for flexible resources and whether the RA obligation should be imposed on a multi-year forward basis. It makes no sense for the Commission to impose a multi-year forward obligation *on all LSEs* in the RA proceeding at the same time it is directing IOU procurement of RA *on behalf of all LSEs* in this Track 1 LTPP proceeding. A more logical and reasonable approach would be for the Commission to complete the RA assessment and adopt and implement the CAM proposals of AReM, DACC and MEA by the end of 2013. A coordinated effort of this nature would minimize the need for CAM and ensure reliability requirements are met. Both SCE[30] and SDG&E[31] agree that a multi-year forward obligation for LSEs is properly addressed in the RA proceeding.

Finally, the Commission should move forward expeditiously with implementation of all the AReM-DACC-MEA proposals provided herein, including LSE Opt-Out, the concept for which was first introduced in R.01-10-024.[32] In addition to the policy and equity reasons for doing so, SB 790 enacted in 2011 added Section 707 to the P.U. Code, which directed the Commission to implement the changes dictated therein for CCAs by January 1, 2013.[33] While

[29] Exhibit AReM-2, pp. 6-7.

[30] Exhibit SCE-1, p. 18, lines 1-2.

[31] Exhibit SDG&E-1, p. 12, lines 5-12.

[32] D.06-07-029, p. 8.

[33] Exhibit AReM-1, p. 16, lines 17-33.

SCE[34] and TURN[35] disagree with that interpretation, the clear wording of the statute argues otherwise.[36] Thus, time is of the essence and the Commission should consider and adopt the proposals of AReM, DACC and MEA in Track 1 of this proceeding.

## VI. COST ALLOCATION MECHANISM

### A. Proposed Allocation of Costs of Needed LCR Resources

#### *A.1 The Commission must adopt CAM criteria to comply with statutory requirements and fulfill Commission policy.*

The Commission previously determined in D.11-05-005 that SB 695 required adoption of criteria[37] or a "benefits test" to ensure compliance with the statute.[38] SDG&E made the same point in its testimony.[39] Subsequently, SB 790 added new Commission obligations that must also be incorporated.[40] The testimony submitted by AReM, DACC and MEA thoroughly reviewed applicable statutes and Commission policy, which are relevant to establishing the appropriate criteria or "test" to use when authorizing CAM procurement.[41]

Track 1 of this LTPP proceeding is the time and place to definitively implement a mechanism that complies with the statutory requirements. CAM procurement now exceeds 7,000 MW and is growing.[42] While the relevant statutes clearly limit when CAM procurement

---

[34] Exhibit SCE-2, p. 26, lines 2-5.

[35] Exhibit TURN-2, p. 14, lines 1-10.

[36] P.U. Code Section 707(a)(4)(A) makes clear that rules to be implemented by January 1, 2013 include those "necessary or convenient" to "facilitate" CCAs, "foster fair competition," and "protect against cross-subsidization."

[37] D.11-05-005, p. 7; see discussion in Exhibit AReM-1, p. 11.

[38] D.11-05-005, p. 16; see discussion in Exhibit AReM-1, p. 12.

[39] Exhibit SDG&E-1, p. 11, lines 11-12.

[40] Exhibit AReM-1, p. 15-16.

[41] Exhibit AReM-1, pp. 8-20.

[42] Exhibit AReM-2, p. 5, lines 10-21 and Attachment.

applies, the Commission has not yet acted to implement these limitations by establishing the criteria it must use when determining whether to approve a particular CAM project.

### *A.2 Applicable statutes restrict the use of the CAM; all IOU procurement is not automatically CAM procurement.*

The IOUs would have the Commission take a simplistic view when determining whether CAM should apply to their procurement activities. This view is best summarized by SCE's witness Cushnie:

> As contemplated in this proceeding, the Commission will make a finding of need. If it's -- **if it's a nonzero value** and it authorizes Edison to meet that need, then Edison will submit contracts or -- or programs or solutions to meet that need. And if the Commission finds those contracts reasonable, **then they would be eligible for the CAM treatment,** and, therefore, the cost would be allocated on a fully non-bypassable basis.[43] (emphasis added)

In other words, in SCE's point of view, any "non-zero" need is subject to CAM procurement. This concept that "all IOU procurement is CAM procurement" was also on display in the testimonies of SCE,[44] SDG&E[45] and TURN.[46] This approach is overly simplistic and, more importantly, this interpretation is unsupported by the applicable statutes or by Commission policy regarding cost causation and cost shifting. Moreover, it is entirely unfair to DA and CCA customers as it creates inappropriate subsidization of bundled customer load.

The wording of the most relevant section of the P.U. Code that was added by SB 695,[47] does not at all comport with the IOUs' and TURN's position:

> 365.1(c)(2)(A) Ensure that, in the event that the commission authorizes, in the situation of a contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation **resources that**

[43] SCE Witness Cushnie, Tr., p. 585, lines 2-13.

[44] SCE Exhibit-1, p. 2, lines 8-9.

[45] Exhibit SDG&E-1, p. 8, line 15.

[46] Exhibit TURN-1, p. 22, lines 3-5.

[47] Stats 2009, Ch 337

> **the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory**, the net capacity costs of those generation resources are allocated on a fully nonbypassable basis ...[48] (Emphasis added.)

The Legislature could have clearly and unambiguously stated that all procurement by the IOUs is subject to the CAM, but it did not. Instead, it set forth reasonable limitations on the application of the CAM and put the Commission in charge of determining when the CAM should apply. It is now the Commission's obligation to interpret and implement these statutory limitations, especially since 7000 MWs have already been approved for CAM treatment.

First, and most obviously, the specific CAM resource must benefit all customers in the IOUs' service territory. As discussed above, procurement to meet an IOU's bundled customers' needs does not meet this requirement. Second, the Commission is obligated to consider a specific resource when determining whether the CAM should apply. Thus, as AReM, DACC and MEA have proposed, the Commission may identify the MWs of potential CAM procurement, but may not approve application of the CAM until an IOU has presented a specific resource for the Commission's consideration. Third, the Commission must make a determination that the specific CAM resource is needed to meet system or local area reliability needs.[49] This requirement is not met by procurement needed to meet an IOU's load or load growth or replace a terminating power contract or retiring power plant that happens to provide tangential reliability benefits. Fourth, procurement to meet a local area reliability need that benefits only the customers in the local area does not meet this requirement. As testified by

[48] P.U. Code Section 365.1(c)(2).

[49] Further, in 2011, SB 790 was signed into law. It added a requirement that the Commission "ensure" that the resources it authorizes for CAM procurement meet specific reliability needs that "benefit all customers" and, if the Commission makes that determination, that the associated costs are allocated in a "fair and equitable" manner to all such customers. See, P.U. Code Section 365.1(c)(2)(B).

AReM, DACC and MEA's witness Mara, these are the "clear words of the statute" and it is now the Commission's job to apply them fairly and equitably.[50]

These conclusions did find some support from parties to this proceeding. Witnesses for both SCE[51] and SDG&E[52] agreed that CAM did not apply when the resource was procured to meet bundled customer load. SDG&E further agreed that the Commission must "distinguish" between resources "relied upon by the utilities to provide delivered energy and capacity solely to bundled customers" and those "providing additional resource adequacy benefits by meeting system or local reliability requirements."[53] As discussed above, AReM, DACC and MEA have included a Commission determination of procurement to meet long-term bundled needs as a key component in our proposed process and criteria.

Moreover, SDG&E's witness agreed that all generating resources provide some level of reliability benefits:

> Q At lines 5 to 7 on page 4, you state that the generation resources deliver an intrinsic and inherent reliability benefit. Do you see that testimony?
> A Yes.
> Q So would you agree that all generation resources deliver these benefits, including those provided by ESPs and CCAs?
> A Yes. There may be some variability as to overall contribution. They all provide some benefit.[54]

TURN's witness provided a similar assessment in response to an interrogatory from AReM, DACC and MEA:

---

[50] AReM-DACC-MEA witness Mara, Tr., p. 1182, lines 13-26.

[51] SCE Witness Cushnie, Tr., p. 582, lines 12-23.

[52] SDG&E Witness Anderson, Tr., p. 1204, lines 18-28; Exhibit SDG&E-2, p. 4, lines 3-4.

[53] Exhibit SDG&E-2, p. 3, lines 23-24, p. 4, lines 1-3.

[54] SDG&E Witness Anderson, Tr., p. 1203, lines 17-27.

> ESP or CCA additions of generation or [Dispatchable Demand Response] should also enhance grid reliability, even if only by a *de minimus* amount, and should not hurt reliability.[55]

Therefore, because all resources provide reliability benefits, the fact that a particular resource provides such benefits is an insufficient measure on which to base a determination that the CAM should apply. Indeed, as AReM, DACC and MEA have testified[56] and SDG&E and TURN agree, all resources provide some degree of reliability benefits. Significantly, the applicable statutes do not apply the CAM to all resources, but only to those that meet certain specified criteria.

In fact, the IOUs and TURN have variously argued that utility procurement is *de facto* CAM procurement because it represents a "societal good" (SCE),[57] provides "intrinsic and inherent" value (SDG&E),[58] "serves state policies and interests" (SDG&E),[59] or provides a "good" in which all share (TURN).[60] These arguments fail to acknowledge that non-utility LSE procurement provides these same benefits. Furthermore, these words and concepts do not appear in the enabling legislation and thus should be disregarded. In making its "societal good" argument, SCE also argued that AReM, DACC and MEA had proposed an "unworkable standard" in concluding that the Commission should only apply the CAM when the need creating the costs can be attributed to all customers.[61] SCE apparently believes that the notion of a "societal good" trumps the statutory requirement that all must benefit in order for the CAM to

---

[55] TURN Witness Woodruff, response to AReM, DACC and MEA September 14, 2012 Interrogatory to TURN, Answer to Question 5(c), p. 4 (tentatively marked as Exhibit AReM-5 subject to the final approval of ALJ Gamson).

[56] Exhibit AReM-1, pp. 27-29.

[57] Exhibit SCE-2, p. 27, lines 22-23.

[58] Exhibit SDG&E-2, p. 4, lines 4-8.

[59] Exhibit SDG&E-2, p. 3, lines 1-2.

[60] Exhibit TURN-2, p. 3, lines 16-20.

[61] Exhibit SCE-2, p. 27, lines 19-20.

apply. As mentioned above, any such purported "societal" benefits derive from all resources, regardless of ownership or contractual arrangement, and whether procured by IOUs, ESPs or CCAs. In fact, SDG&E's witness acknowledged that generation resources procured by ESPs and CCAs serve those very same "state policies and interests"[62] and provide the same "intrinsic and inherent reliability" benefits as do utility-controlled generation.[63]

### *A.3 CAM should be the exception, not the rule.*

CAM procurement should be the exception, not the rule. The Legislature has imposed requirements the Commission must follow in imposing CAM charges on all customers. As explained in the testimony of AReM, DACC and MEA,[64] CAM procurement must meet the conditions specified in P.U. Code Sections 365.1(c)(2)(A), (B) and (C) and comply with the Commission objectives for the RA program set forth in P.U. Code Section 380. In addition, the Commission must enforce the provisions of P.U. Code 454.5 by setting the requirements the IOUs must meet to serve their own bundled customer load, thereby reducing the potential for CAM to be used for that purpose.

Moreover, in 2011, the Legislature approved CCA legislation that provided further guidance to the Commission on the application of CAM. In SB 790, the Legislature added provisions to P.U. Code Section 380, which had been enacted in 2005 by AB 380[65] and provided guidance to the Commission in establishing its RA program for LSEs. Significantly, SB 790 added Section 380(b)(4), which established a new Commission objective for setting RA requirements for LSEs, namely to "[m]aximize the ability of community choice aggregators to determine the generation resources used to serve their customers." SB 790 also added this same

[62] SDG&E Witness Anderson, Tr., discussion beginning at p. 1198, line 23 through p. 1201, line 24.

[63] SDG&E Witness Anderson, Tr., p. 1203, lines 17-27.

[64] Exhibit AReM-1, p. 18-21.

[65] Stats 2005, Ch. 357.

requirement to Section 380(h)(5), which enumerates the Commission's obligations to "determine the most efficient and equitable means" to achieve the stated requirements with respect to its RA program. Clearly, allowing CCAs to "maximize" their ability to select their own generation resources can only be achieved if CAM procurement by the IOUs is kept to a minimum.

Finally, the Commission must consider and apply its long-standing policy regarding cost causation to ensure that the CAM procurement and associated allocation of benefits are properly designed and implemented and fulfill its commitment to "competition and customer choice."[66] This requires that the Commission make every effort to minimize CAM procurement, while continuing to ensure that reliability requirements are met.

In fact, SCE's testimony stated that Commission should minimize CAM procurement "to the greatest extent possible."[67] This point was affirmed by SCE's witness Cushnie in cross examination ("Edison believes CAM procurement should be minimized."[68]). However, unlike AReM, DACC and MEA, SCE has no plan for how to accomplish that objective:

> Q What is Edison's proposal for the CPUC to accomplish this goal of minimizing CAM procurement?
> A Edison does not have a specific proposal at this time.[69]

As AReM, DACC and MEA have explained, CAM undermines competitive markets and imposes unknowable and unquantifiable costs on ESPs and CCAs and their customers.[70] During cross examination, SCE's witness Cushnie conceded that CAM procurement has no price transparency for DA and CCA customers[71] and that the ESPs and CCAs have no control over the

[66] Exhibit AReM-1, pp. 21-24.

[67] Exhibit SCE-2, p. 26, lines 14-15.

[68] SCE Witness Cushnie, Tr., p. 580, lines 12-14.

[69] SCE Witness Cushnie, Tr., p. 580, lines 21-24; see also, Tr., p. 581, lines 10-15.

[70] Exhibit AReM-1, p. 3, lines 16-19, p. 52, and p. 64, lines 1-8; Exhibit AReM-2, p. 4, lines 10-19.

[71] SCE Witness Cushnie, Tr., p. 573, lines 14-18.

specific CAM resources procured by the IOUs.[72] In other words, CAM procurement impairs the ability of an ESP or CCA to manage their own energy portfolios and meet the needs and objectives of their own customers. Minimizing CAM is therefore necessary to ensure robust, competitive markets.

### *A.4 The Commission should adopt the CAM criteria proposed by AReM, DACC and MEA.*

As discussed above, the Commission determined in D.11-05-005 that SB 695 requires adoption of specific criteria or a "benefits test" to ensure compliance with the statute when determining whether to authorize CAM procurement. Accordingly, AReM, DACC and MEA have proposed such criteria and are the only parties to do so.[73] Importantly, the proposed criteria fully comply with applicable statutes and Commission policy on cost causation and cost shifting, thereby achieving the twin goals of meeting statutory requirements and enabling retail choice.

The statute requires the Commission to follow clear steps in authorizing CAM procurement, which the proposed criteria incorporate. The Commission must make the CAM determination on an application submitted by an IOU. The Commission may separately identify potential MWs of need, but can only authorize CAM procurement after being presented with a specific application from an IOU for approval of a CAM resource and then making the determination that it meets the statutory and other applicable requirements. As proposed by AReM, DACC and MEA, the Commission must determine that each of the following criteria has been met before a particular CAM procurement can be authorized:

1. The IOU's Application requests, as required by P.U. Code Section 365.1(c)(2)(A): (i) approval for a specific contract with a third party to procure generation resources; or (ii) an order to procure a specific utility-owned generation ("UOG") resource.

[72] SCE Witness Cushnie, Tr., p. 574, lines 5-9.

[73] Exhibit AReM-1, pp. 30-32.

2. The Commission has previously determined that the MWs identified in the Application may be subject to CAM procurement.[74]
3. The Commission determines that the project identified in the Application fulfill an unmet need that is not attributable to any individual LSE.
4. The Commission determines that the project identified in the Application is required by the CAISO to meet a specific System or Local RA need that cannot be reasonably met by other existing resources, demand response, energy efficiency or other alternatives and is required to be operational as of the timeline proposed in the IOU's Application to avoid degrading grid reliability.
5. The Commission determines that the project identified in the Application benefits all customers within the IOU's service territory, including DA and CCA customers, by the way in which it meets the reliability needs specified by the CAISO, as required by P.U. Code Section 365.1(c)(2)(B).
6. Local RA projects in an IOU's Local RA Area provide comparable reliability benefits, as specified by the CAISO, to all customers located in the entire IOU's service area, as required by P.U. Code Sections 365.1(c)(2)(A) and 365.1(c)(2)(B). Projects that provide the specified reliability benefits primarily to customers located within the Local RA Area where the project will be developed must be rejected as inconsistent with the P.U. Code Sections noted.

These criteria are essentially a "checklist" to be reviewed and assessed by the Commission for each CAM application submitted by the IOUs. The Commission would assess each criterion and determine if it has been met through consideration of the IOU's Application and accompanying testimony, evidence provided by parties, and the outcome of hearings if necessary. If the Commission's answer to each is "yes," then the Commission may authorize the CAM procurement. If any of the criteria is not met (*i.e.*, a "no" answer), the Commission must reject CAM as the applicable cost allocation treatment for the Application.

These proposed criteria are clear, simple and reasonable. The Commission has itself noted that criteria are required to comply with the law. Accordingly, AReM, DACC and MEA

[74] This step is addressed in the proposed CAM approval process discussed below and in Exhibit AReM-1, pp. 32-34.

urge the Commission to adopt the proposed criteria without modification in the forthcoming Track 1 decision.

### *A.5 The Commission should adopt the CAM process proposed by AReM, DACC and MEA for determining when to authorize CAM procurement.*

Along with setting reasonable criteria for determining when to authorize CAM procurement, the Commission should also set forth a process by which it makes its CAM determination in compliance with the applicable statutes. AReM, DACC and MEA are the only parties to propose such a process.[75]

In the first stage, the Commission would establish the megawatts of unmet need that cannot be attributed to any specific LSE. A critical component of this first stage, as discussed above, would be the Commission's consideration and identification of the procurement requirements to meet the bundled load obligations of the IOUs pursuant to P.U. Code Section 454.5 and cost causation principles, which would not be subject to CAM procurement. After completing this assessment, the Commission would issue a decision identifying the megawatt amount of the unmet need potentially subject to CAM procurement and the time frame in which the need occurs. In the decision, the Commission would also direct the IOUs to pursue CAM procurement activities. The issuance of that decision would trigger the option for ESPs and CCAs to pursue LSE Opt-Out, which is discussed below.

In the second stage, the IOUs would submit a CAM application for a particular project or PPA and the Commission would conduct the assessment required by the criteria proposed above. The IOUs would be obligated to provide evidence to confirm that the criteria have been met. The application process may require hearings and parties should be encouraged to provide evidence to demonstrate that the project identified in the IOU's Application: (i) meets the

[75] Exhibit AReM-1, pp. 32-34.

reliability need identified in stage one; and (2) and cannot be reasonably met by any other existing or new resource, including economic demand response and energy efficiency. If the Application meets each criterion, the Commission could approve it.

AReM, DACC and MEA submit that establishing this process will improve transparency, ensure compliance with applicable statutes and Commission policy, and, with approval of LSE Opt-Out, ultimately lead to a reduced level of CAM procurements. We urge its adoption.

## B. Should CAM Be Modified at this Time?

### *B.1 CAM calculation methodologies need to be revised.*

Allocation of net capacity costs and benefits to "benefiting customers" was first approved in D.06-07-029, which determined that benefiting customers would pay for the net cost of capacity defined as "a net of the total cost of the contract minus the energy revenues associated with dispatch of the contract."[76] The CAM was further refined in a settlement adopted by the Commission in D.07-09-044, which established an "energy auction" to value the net capacity cost for CAM rate treatment and an administrative mechanism referred to as the "Joint Parties' Proposal"[77] to value the net capacity cost for CAM rate treatment if the energy auction failed. The Joint Parties' Proposal calculates a proxy for the "energy revenues associated with dispatch of the contract" by summing the energy revenues the plant would have generated if cost-effectively operated plus the non-spinning reserve ancillary service value when the plant would not have been in operation.

[76] D.06-07-029. p. 26.

[77] The Joint Parties' Proposal is an alternative to the energy auction that calculates net capacity costs on a proxy basis by imputing energy costs and revenues retroactively based on day-ahead market prices. (D.07-09-044, Appendix A)

While the D.07-09-044 Settlement laid out a reasonable groundwork for CAM, as presented in testimony of AReM, DACC and MEA, it can be improved upon to better align what DA and CCA customers pay for through the CAM charge and what they receive. A fundamental concern with the Joint Parties' Proposal is that it relies upon a short-term value of energy to calculate the capacity value of a long-term contract. This creates results that are fundamentally problematic and do not accurately reflect the value of RA capacity for which the DA and CCA customer is being charged.

To address this problem, the AReM, DACC and MEA testimony provided refinements to the CAM calculation.[78] First, D.07-09-044 requires that the Energy Auction be limited to a term not to exceed five years.[79] This provision should be modified to restrict the auction products, when and if an Energy Auction is used, to a minimum of five-years, not a maximum, as longer-term tolling products would more accurately reflect capacity value of the PPA.

Second, the AReM, DACC and MEA testimony provided changes to the Joint Parties' Proposal that would ensure that the full value of energy and other products are taken into account when calculating the CAM charge.[80] In particular, the Joint Parties' Proposal post-hoc calculation subtracts only the CAISO day-ahead energy value and the value of one ancillary service—non-spinning reserves—from the contract cost to estimate the capacity cost of a contract for CAM rate treatment. AReM, DACC and MEA simply recommend that the value of energy and the value of all potential ancillary services that the plant in question could provide be at least considered in the calculation. As other products are incorporated into the CAISO market design, such as flexible capacity, the calculation should be modified to incorporate the expected

[78] Exhibit AReM-1, pp. 34-50.

[79] *See,* D.07-09-044, Appendix A, p. 5.

[80] Exhibit AReM-1, pp. 38-44.

revenues from those products, too. By considering all of these additional products that a power plant can provide to the CAISO or others, a more accurate estimate of the energy revenues associated with dispatch of the contract can be made.

AReM, DACC, and MEA acknowledge that the details of these proposed modifications to the Joint Parties' Proposal would need to be worked out, and recommend that a workshop or workshops be held among interested parties to arrive at a revision to the Joint Parties' Proposal that considers this broader range of ancillary services. This approach is supported by SDG&E, which while more concerned about the Energy Auction than the Joint Parties' Proposal, also recommended the convening of workshops "to explore this or other methods that could potentially be used to establish net capacity costs."[81]

### *B.2 Proposed CAM treatment for UOG should be adopted.*

Since D.07-09-024 was issued, SB 695 widened the universe of CAM-eligible resources to include UOG. Because of unique differences between the rate treatment of UOG assets and PPAs, in particular the front-loaded depreciation schedule for generation assets that is reflected in the plant's revenue requirement, AReM, DACC and MEA recommend that the fixed cost of a UOG be levelized for the purpose of setting the CAM cost allocation for a UOG asset. This would allow CAM treatment for UOG to more closely resemble a tolling contract and avoids potential issues associated with front-loaded depreciation.

AReM, DACC and MEA's proposal was further clarified by witness Fulmer while being cross-examined by TURN:

> Q (By Mr. Freedman) Sir, do you believe that it would be appropriate for the fixed costs of UOG to be levelized for purposes of rate basing the entire asset, or just for purposes of calculating the CAM?

[81] Exhibit SDG&E-1, page 10.

A (By Mr. Mr. Fulmer) Just for purposes of calculating the CAM.

Q So there would be one calculation for purposes of CAM and another calculation for purposes of rate recovery from bundled customers?

A Yes.[82]

The fact that the revenue requirement for a UOG asset would vary while the levelized cost of the asset used in the CAM calculation was also raised by TURN during hearings and addressed by Mr. Fulmer:

> A Mr. Freedman and I are in agreement that in the earlier years under the two scenarios the CAM charge … would be higher in the early years and lower in the later. While in the levelized case it would be levelized.
>
> The difference in the revenue requirement, be it positive or negative, would either be borne by the bundled customers or benefited by the bundled customers.
>
> Yes, in the earlier years, using the annual revenue requirement calculation, the bundled customers would be paying somewhat less because the CAM charge would be higher. And vice versa in later years.[83]

As clearly stated here, while the levelized cost used in the CAM calculation generally will not precisely meet the revenue requirement in a given year, over the life of the asset (for which CAM will be charged) no customer will end up paying more than their fair share.

### *B.3 The CAM should be capped.*

AReM, DACC and MEA also recommend that a cap to the CAM cost associated with a particular PPA or UOG asset would serve to ensure that a reasonable rate is established. As long as the resulting imputed price for capacity used to set the CAM rate is reasonable and below the cap, the implementation method laid out in SB 695 is maintained. Therefore, a cap does not replace or supersede the legislatively-directed calculation of the CAM. Rather, it merely

[82] AReM-DACC-MEA Witness Fulmer, Tr., p. 1152, lines 7-18.

[83] AReM-DACC-MEA Witness Fulmer, Tr., p, 1155, line 24 through p. 1156, line 8.

provides a backstop. This reasonableness in calculating CAM is precisely what is called for by the language in P.U. Code Section 365.1(b)(2)(B) that was added by SB 790:

> The commission shall allocate the costs of those generation resources to ratepayers in a manner ***that is fair and equitable to all customers***, whether they receive electric service from the electrical corporation, a community choice aggregator, or an electric service provider. (Emphasis added.)

Without the capping proposed by AReM, DACC and MEA, unfair and inequitable costs could be imposed on CCA and DA customers. Therefore, AReM, DACC and MEA recommend that the Commission approve the concept of a CAM cap and direct a workshop to be held addressing how the cap should be set.

## C. Should Load-Serving Entities be Able to Opt Out of CAM?

### *C.1 The Commission should adopt the LSE Opt-Out proposal of AReM, DACC and MEA.*

The Commission has consistently expressed interest in adopting a mechanism by which LSEs could opt out of the IOUs' CAM procurement.[84] As explained by AReM, DACC and MEA, a LSE Opt-Out mechanism is needed to mitigate the anti-competitive effects of the CAM, and specifically to comply with SB 790, which requires the Commission to ensure CCAs can "maximize" the ability to determine their own generation resources.[85]

AReM, DACC and MEA are the only parties to submit a proposal for LSE Opt-Out and urge the Commission to adopt it. The proposal includes three opt-out mechanisms: (1) Load-Ratio Share; (2) Load-Based; and (3) Customer-Based.[86] The ESP or CCA would be able to select which approach works best for its own circumstances and would apply to the Commission for approval of the proposed opt-out. The ESP or CCA would be obligated to submit its

[84] Exhibit AReM-1, pp. 50-51.

[85] Exhibit AReM-1, pp. 52-53.

[86] Please refer to full proposal provided in Exhibit AReM-1, pp. 50-66.

proposed opt-out any time after the Commission identifies potential megawatts that may be subject to CAM procurement, but *before* the IOU completes its Request For Offer process for a PPA.[87] Ms. Mara, the witness for AReM, DACC and MEA, clarified during cross examination that the LSE would be obligated to propose opting out of CAM treatment for a resource that meets the reliability requirements determined by the Commission. She also explained that, under the Load-Based and Customer-Based Options, the LSE could propose a mix of existing and new resources.[88] In addition, the LSE Opt-Out proposal establishes clear guidelines for the LSE – an essential requirement to ensure the proposal is both workable and effective. As Ms. Mara explained: "the objective [of the proposal] is to give LSEs some clear guidelines of what they would need to do to be able to opt out."[89]

### *C.2 No party has provided credible objections to the LSE Opt-Out proposal.*

Objections raised in other parties' testimonies to the LSE Opt-Out proposal are unfounded. For example, the three IOUs[90] and DRA[91] all registered concern that the proposal would shift costs to bundled customers or create some kind of "free riding" by ESPs and CCAs, but were unable to explain how this would occur. TURN argued that the opt-out proposal would allow DA and CCA customers to "avoid responsibility" for the costs of new construction.[92] Neither of these objections is valid, especially considering that an ESP or CCA using the opt-out

[87] The timing for a LSE to submit an Opt-Out proposal is discussed on p. 56 of Exhibit AReM-1 and differs depending on whether the IOU plans enter into a PPA or propose UOG for the CAM procurement.

[88] AReM-DACC-MEA Witness Mara, Tr., p. 1148, line 25 through p. 1150, line 2; p. 1165, line 5 through p. 1166, line 5.

[89] AReM-DACC-MEA Witness Mara, Tr., p. 1165, lines 3-5.

[90] See, Exhibit PG&E-2, p. 12, lines 1-3; Exhibit SCE-2, p. 38. Line 24 to p. 39, line 2; Exhibit SDG&E-2, p. 13, lines 8-10.

[91] Exhibit DRA-5, p. 3, line 3-4.

[92] Exhibit TURN-1, p. 6, lines 13-19.

mechanism would be required to procure new capacity if required by the Commission.[93] In fact, during cross examination, the witnesses for both Pacific Gas and Electric Company ("PG&E") and SDG&E admitted that they had misunderstood the opt-out proposal in this regard.[94]

In reality, the LSE Opt-Out proposal is designed to *avoid* cost shifting and certainly provides no opportunity for free ridership. The ESP or CCA requesting and implementing the Opt-Out engages in its own procurement and meets the reliability requirements determined by the Commission. No costs are "shifted." Instead, the LSE takes on its own costs at its own risk. Unlike the IOUs, the LSE assumes full risk of cost recovery from its customers. In other words, this is a better deal for bundled ratepayers than the IOUs can provide – any cost overruns or contract issues have no economic consequences for the bundled customers. Accordingly, the Commission must disregard the cost-shifting arguments raised by parties to this proceeding.

SCE also argues that LSE Opt-Out proposals are *per se* prohibited by statute.[95] AReM, DACC and MEA disagree as explained in testimony.[96] In summary, the applicable statute, P.U. Code Section 365.1(c)(2)(A), provides no such prohibition and the proposed opt-out maintains "fully nonbypassable charges" to all benefiting customers if approved by the Commission, but *reduces* the amount of the CAM authorization in the first instance. In addition, SCE asserts that an opt-out mechanism would be inconsistent with the "same requirements" language in P.U. Code Sections 380(e) and 365.1(c)(1).[97] However, the cited language relates solely to the LSEs'

[93] AREM-DACC-MEA Witness Mara, Tr., p. 1165, lines 8-22.

[94] PG&E Witness Williams, Tr., p. 55, lines 6-14; SDG&E Witness Anderson, Tr., p. 1208, line 12 through p. 1209, line 6.

[95] Exhibit SCE-2, pp. 39-40.

[96] Exhibit AReM-1, p. 55, lines 5-18.

[97] Exhibit SCE-2, p. 40, lines 9-12.

obligations to meet the Commission's requirements for RA, RPS and GHG. It has nothing at all to do with CAM. The Commission should thus disregard SCE's arguments.

### *C.3 LSE Opt Out provides incentives to LSEs to procure and minimizes CAM, which benefits all customers.*

As AReM, DACC and MEA have testified, the proposed LSE Opt-Out *reduces* megawatts subject to CAM and provides market incentives for ESPs and CCAs to enter into multi-year contracts for RA capacity.[98] In fact, the witnesses for SCE and SDG&E agreed that the LSE Opt-Out proposal does have the potential to minimize or reduce CAM procurement.[99] TURN's witness also agreed:

> Commission approval of an opt-out proposal might reduce IOU CAM procurement, depending on the design of the program and the amount of generation actually procured pursuant to such an opt-out.[100]

As Ms. Mara summarized during cross examination:

> [T]here's little incentive for the LSE to go out and try to do this on their own because they know they're going to be faced with these … CAM procurements by the utilities that will be imposed on them and their customers.
>
> So to the extent that's going on, it's very difficult to know what you can do on your own and what you can procure on your own. So by adopting the proposal, it gives that incentive. It helps [the LSE] to control their own destiny, and it actually meets the Commission's goals of providing reliability and meeting competition and ultimately reducing the CAM. I think that's what we all like to see. We'd like to see the CAM go down. This is a way to do it.[101]

---

[98] Exhibit AReM-1, pp. 54-56.

[99] SCE Witness Cushnie, Tr., p. 589, lines 9-15; SDG&E Witness Anderson, Tr., p. 1197, lines 28 through p. 1198, line 8.

[100] TURN Witness Woodruff, response to AReM, DACC and MEA September 14, 2012 Interrogatory, Question 11, p. 6 (tentatively marked as Exhibit AReM-5 subject to the final approval of ALJ Gamson).

[101] AReM-DACC-MEA Witness Mara, Tr., p. 1189, lines 1-17,

### *C.4 Rejecting LSE Opt Out would harm California's competitive retail market.*

The anti-competitive effects of the CAM are well known and acknowledged by the Commission.[102] As noted above, the Commission has already approved 7,000 MW of CAM procurement by the IOUs. Each MW of CAM procurement is a MW that the non-IOU LSE does not and cannot manage from a cost, quantity or quality perspective. In short, the ESPs and CCAs are in the unenviable position of having their competitors dictate a portion of their resource portfolio for them, undermining their ability to offer products and services that meet their customers' preferences. In addition, SB 790 provides a clear requirement that the Commission ensure CCAs can manage their resource portfolios. The concept of a LSE Opt-Out was first introduced in R.01-10-024 as a way to mitigate the anti-competitive effects of the CAM.[103] Now is the time for the Commission to mitigate this harm and take positive action to reduce future CAM procurement. Accordingly, AReM, DACC and MEA urge the Commission to adopt the LSE Opt-Out proposal.

## VII. OTHER ISSUES

### B. Coordination of Overlapping Issues Among R.12-03-014 (LTPP), R.11-10-023 (RA) And A.11-05-023

Questions introduced by the Assigned Commissioner during the course of this Track 1 proceeding address the possibility that the Commission would impose a multi-year forward RA procurement obligation on non-IOU LSEs in this proceeding.[104] As noted in Section IV above, the issue of a multi-year forward procurement obligation for LSEs is logically addressed in the RA proceeding, where the Commission has traditionally determined the scope of the RA

[102] See D.06-07-029, pp. 24-25.

[103] Exhibit AReM-1, pp. 50-51.

[104] *Assigned Commissioner's Ruling*, R.12-03-014, July 13, 2012, Question 1, p. 1.

requirements that apply to all LSEs. LTPP proceedings have traditionally addressed IOU procurement obligations. Moreover, as also explained above, there is adequate time for: (1) a decision in the RA proceeding; and (2) the Commission to adopt and implement in this LTPP proceeding the process to follow and criteria to apply in determining whether CAM procurement by the IOUs is warranted in compliance with statutory obligations and Commission policies. The significant issues regarding a multi-year forward RA procurement obligation for LSEs must be carefully considered by the Commission and AReM, DACC and MEA have proposed a set of principles for the Commission to apply in that consideration.[105] In short, the Commission has the necessary time for proper coordination of these complex issues and should make such coordination a high priority.

### C. SCE Statewide Cost Allocation Proposal

SCE's statewide cost allocation "proposal" consists of one sentence in its opening testimony: "In addition, to the extent the LCR resources provide flexibility benefits (i.e., integration services for intermittent resources) to the entire CAISO system, SCE is interested in seeking a broader cost allocation from all CPUC-jurisdictional customers benefitting from the increased flexible capacity."[106] As the sponsoring SCE witness Cushnie explained under cross-examination:

> What Edison is proposing is that to the extent that Edison identifies what it believes to be a least cost solution for meeting the LCR needs in its service territory and it brings those to the Commission for approval and the Commission rejects that proposal and instead orders Edison to pursue a different solution that has on the basis of having more flexibility in terms of the resource that's are being procured, Edison wants to reserve the ability to allocate the cost difference between the solution that would have met its LCR needs and the solution the

[105] Exhibit AReM-2, pp. 8-9.

[106] Exhibit SCE-1, p. 26.

> Commission authorized or ordered us then to pursue because it also captured incremental flexibility that is a system benefit.[107]

In other words, SCE is proposing that an IOU can charge all CPUC-jurisdictional LSEs the cost difference between the resources it believes are needed to meet its Local Capacity Requirements ("LCR") needs and the costs of those resources ultimately approved by the Commission. This is *prima facie* unreasonable and must be rejected. SCE has not provided any reason that PG&E or SDG&E or the customers of a CCA or ESP in those jurisdictions should be charged some part of SCE's LCR procurement cost solely because SCE disagrees with the Commission on which resources it should procure. As PG&E argues, "SCE has provided neither any analysis nor credible precedent" to support its proposal, which also appears to be unsupported by the CAISO's testimony.[108] Simply because the Commission approves a different portfolio of resources than what SCE would have preferred cannot be used as a rationale for a differing cost allocation or passing on procurement costs to other LSEs.

## VIII. CONCLUSION

As detailed above and in the record of this proceeding, AReM, DACC and MEA conclude the following:

- SB 695 and SB 790 are evidence that the Legislature intends for the Commission to ensure fair IOU cost recovery, but in a manner that does not unnecessarily impede or compromise the competitive retail choice market.
- SB 695 specified conditions that Commission must meet in authorizing CAM procurement by the IOUs. These conditions are to be considered and adopted in this proceeding.

[107] SCE Witness Cushnie, Tr., p. 703, line 12 to p. 704, line 1.

[108] Exhibit PG&E-1, p. 4, line 33 through p. 5, line 19.

- SB 695 modified CAM procurement policy and cost allocation methods, but the implementation details of the cost allocation methods were not fully addressed by the Commission in D.11-05-005 and are to be considered and adopted in this proceeding.
- SB 790 placed the burden on the Commission to demonstrate that any proposed CAM procurement by the IOUs meets the statutory requirements, which includes an obligation to identify and apply defined criteria before approving CAM procurement.
- SB 790 added new Commission obligations for cost allocation relative to CAM procurement and treatment of CCAs.
- SB 790 directs the Commission to implement the new CAM rules by no later than January 1, 2013.
- The Commission has previously determined that its CAM review must be comprehensive and evaluate CAM modifications in the context of relevant provisions of the P.U. Code.
- Various parties' contentions that CAM should be applied to any and all new generation authorized in Track 1 is unjustified, unsupported by statute, and inconsistent with Commission policies, including its policies to promote retail choice.
- CAM burdens the competitive market with unknowable and unquantifiable costs; the Commission's goal should be to minimize CAM procurement, while continuing to ensure that reliability requirements are met, in order to fulfill its commitment to competition and customer choice. Ordered CAM procurement should be the exception, not the rule.

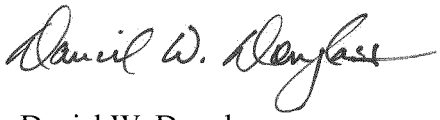
- The Commission should adopt and apply the proposed criteria for determining whether to authorize an IOU's proposed CAM procurement; the proposed criteria achieve the twin goals of meeting statutory requirements and enabling retail choice.
- The Commission should implement and follow the proposed two-stage process, in which it would: (1) identify the megawatts of system or local reliability need that may be subject to future CAM procurement; and (2) apply the defined criteria to an IOU's application for approval of a CAM project.
- The Commission should determine that each criterion has been met before authorizing a particular CAM procurement and should require the IOU to provide evidence to demonstrate that the project identified in its application meets the defined reliability need and cannot be reasonably met by any other resources, including economic demand response and energy efficiency.
- To determine the reliability need potentially subject to CAM procurement, the Commission should first enforce P.U. Code Section 454.5 and apply cost causation principles to ensure that the IOUs procure to meet the load, load growth and peak load characteristics of their bundled utility customers over the long term, including procurement of new generation resources and resources to replace terminating PPAs and retiring power plants. Such IOUs' long-term bundled customer needs would be taken off the top of the need potentially subject to CAM procurement.
- The Commission should specify clearly that procurement to meet the long-term needs of the IOUs' bundled customers is not subject to CAM.

- The net capacity costs calculation must be modified to better reflect the increased ancillary service value and value of other products and services that the new PPAs or UOG plants will be able to provide.
- Because of how utility assets are depreciated, the net capacity costs calculation for UOG plants should start with the levelized fixed costs rather than the fixed revenue requirement. To do otherwise would overvalue the plants' capacity in early years and undervalue it in later ones.
- The CAM cost associated with any PPA or UOG asset should be capped.
- Once the Commission determines the need that may be subject to future CAM procurement and the timing of that need, an ESP or CCA should have the option to request an opt-out from the prospective CAM procurement by selecting one of three proposed opt-out options: (1) Load-Ratio Share; (2) Load-Based; and (3) Customer-Based.
- The Commission has acknowledged the legitimate need to establish an LSE Opt-Out from CAM procurement in previous decisions.
- LSE Opt-Out provides market incentives for ESPs and CCAs to enter into multi-year contracts for RA capacity, thereby reducing the need for CAM procurement by the IOUs; the current CAM approach provides no such incentives.
- To qualify for an opt-out, an ESP or CCA would make a showing to the Commission that it has procured generation resources for a 5-year period that meets the Commission's reliability requirements. The 5-year period is reasonable to address anti-competitive concerns and the LSE's procurement risk.

- The ESP or CCA would be required to request the opt-out before the Commission authorizes CAM projects proposed by an IOU. This approach eliminates the potential for stranded-cost claims by the IOUs if an ESP or CCA were allowed to opt-out after the CAM project was approved or operational.
- The Commission has adequate time to: (1) adopt and implement the CAM-related proposals included herein and still ensure that any designated local reliability needs are met; and (2) coordinate with the RA proceeding, which is addressing flexible capacity requirements and a multi-year forward RA procurement obligation for LSEs.
- The Commission's consideration of a multi-year forward RA procurement obligation for LSEs should adhere to principles that minimize CAM procurement, facilitate wholesale and retail markets, and promote retail choice.

Accordingly, AReM, DACC and MEA urge the Commission to adopt and implement the recommendations and proposals provided by them in this Track 1 proceeding, thereby complying with applicable statutes and Commission policies, maintaining reliability, minimizing CAM, and supporting retail choice.

Respectfully submitted,



Daniel W. Douglass
DOUGLASS & LIDDELL

Attorneys for the
**ALLIANCE FOR RETAIL ENERGY MARKETS**
**DIRECT ACCESS CUSTOMER COALITION**
**MARIN ENERGY AUTHORITY**

September 24, 2012