

**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 SOUTH SAN JOAQUIN IRRIGATION DISTRICT
CONCERNING LONG TERM PROCUREMENT PLAN TRACK 1: LOCAL
RELIABILITY ISSUES**

Edward W. O'Neill
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Email: edwardoneill@dwt.com

Attorneys for South San Joaquin Irrigation District

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Pursuant to Rule 13.11 of The California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the South San Joaquin Irrigation District (“SSJID”) respectfully submits this opening brief addressing Track 1 local reliability issues.

- I. **EXECUTIVE SUMMARY¹**

- II.

- III.

- IV.

- V.

- VI. **COST ALLOCATION MECHANISM (CAM)**

¹ SSJID has not included headings for most of the sections it is not addressing in its Opening Brief.

A. Proposed Allocation of Costs of Needed LCR Resources

1. The Commission has not yet made a determination as to large municipalizations' responsibility for CAM charges

The CAM was designed to fill a need for long-term procurement that was not being met by direct access (DA) service providers and to protect the investor-owned utilities (IOUs) in case of DA providers failing and returning their customers to IOU service.² These concerns are not relevant to publicly owned utilities (POUs), as POUs operate under business models that are much closer to the IOUs' when it comes to long-term procurement, and they cannot return their customers to the IOU in the way that DA providers can. The CAM should therefore not be charged to POU customers.

In its surrebuttal testimony, Southern California Edison (SCE) claims that the Commission has "explicitly stated that CAM would still apply to large municipalizations."³ SCE cited to decision D.08-09-012, Conclusion of Law 4 to support this claim. However, SCE is incorrect in its interpretation of this decision. Conclusion of Law 4 makes it quite clear that, the Commission has not yet ruled on whether it is fair to charge large municipal departing load CAM and other exit fees related to new generation. It states:

For departing loads of large municipalizations that are not reflected in the historical trends used in developing the adopted [Long-Term Procurement Plan (LTPP)] load forecasts, the IOUs should file an application requesting a Commission determination of the fair share of these customers for paying the D.04-12-048 and D.06-07-029 NBCs.⁴

The decision's summary also confirms that no decision as to whether a large municipalization should be allocated such costs shall be made until further proceedings have been held and concluded. The summary states: "[This decision determines] that for large municipalizations whose loads are included in the adopted load forecasts, the Commission will

² Exhibit SSJID-1(Shields) at 9-10.

³ Exhibit SCE-5 (Cushnie) at 1.

⁴ D.08-09-012, mimeo at 104(Conclusion of Law 4).

address the cost responsibility for payment of the new generation related [non-bypassable charges (NBCs)] through an application process.”⁵ Rather than making a determination on this matter in D.08-09-012, the Commission determined only that a separate application should be filed to determine the “fair share” of both exit fees and CAM charges on a case-by-case basis. The fair share may be zero.

SCE also alleges that Pub. Util. Code Section 365.1 (c)(2)(A) requires that CAM costs be allocated to large municipalizations.⁶ This statute says no such thing, however. The statute reads:

[T]he net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the Commission, to all of the following:

- (i) Bundled service customers of the electrical corporation.
- (ii) Customers that purchase electricity through a direct transaction with other providers.
- (iii) Customers of community choice aggregators.⁷

In D.11-05-005 the Commission concluded that subsections (i), (ii) and (iii) refer to bundled, direct access, and CCA customers,⁸ not municipal departing load. SCE’s allegation that the statute refers to large municipalizations is based on the statute’s use of the phrase “consistent with departing load provisions as determined by the Commission.”⁹ SCE has taken this phrase out of context, however, and attempted to extend it to municipal departing load based on its misreading of the Commission’s decision in D.08-09-012 discussed above. Since D.08-09-012 did not actually extend CAM charges to any municipal departing load and since Pub.

⁵ D.08-09-012, mimeo at 3.

⁶ Exhibit SCE-5 (Cushnie) at 3.

⁷ Pub.Util. Code Section 365.1 (c)(2)(A).

⁸ D.11-05-005, mimeo at 7-8.

⁹ Pub.Util. Code Section 365.1 (c)(2)(A).

Util. Code Section 365.1 (c)(2)(A) does not contain any specific requirement that CAM costs be allocated to large municipalizations, there is no basis for SCE 's interpretation or claims regarding the statute.

California law does not require CAM charges to be assigned to municipal departing load, and neither does any Commission decision. In fact, as discussed below, charging POU's CAM charges would be in violation of numerous Commission decisions upholding the principle of bundled customer indifference.

2. Charging POU's CAM charges would violate the Commission's indifference principle

The principle of bundled customer indifference was laid out in decision D.02-04-067 with respect to DA exit fees. In this decision, the Commission stated:

“We emphasize that the direct access surcharges or exit fees to be developed in A.00-11-038 must prevent any significant cost-shifting...in order to ensure an overall equitable outcome, and make bundled service customer indifferent.”¹⁰

In subsequent decisions, the Commission expanded this concept to municipal departing load and clarified that “indifference” requires that bundled customers be no worse off or better off on account of the departing load (DL). For example, consider the following statements from D.07-05-005:

1. Consistent with the principles of bundled customer indifference, the goal of the [Cost Responsibility Surcharge] over time is to balance out to zero any under- or overcollections so as to avoid cost shifting;¹¹ and
2. By allowing for negative indifference amounts to be netted against future positive amounts, the goal of bundled customer indifference is preserved. By contrast, PG&E's proposed modification would not result in bundled customer indifference. By recognizing only positive indifference amounts, but not tracking offsetting effects attributable to negative

¹⁰ D.02-04-067, mimeo at 22 (Ordering Paragraph 1).

¹¹ D.07-05-005, mimeo at 26 (Finding of Fact 9) (emphasis added).

indifference, PG&E's proposed method could result in a permanent net positive indifference amount charged to DA/DL customers. The indifference charge is intended to capture the applicable above-market procurement costs. Indifference is achieved when there is neither an under-or-over recovery of such indifference charges from DA/DL customers."¹²

Charging CAM charges to POUs would violate this principle because it would make bundled customers better off on account of the departing load. This is because POUs as well as IOUs incur costs for generation that provide local reliability benefits and the costs POUs incur for such generation may benefit IOU customers as well as POU customers.¹³ There is no means or mechanism in place for compensating POUs for the local reliability benefits POU generation investments provide to IOUs, so IOUs and their customers receive these benefits without paying POUs anything in return. Charging POU customers for benefits they may receive from IOU generation investments without charging IOU customers for benefits they may receive from POU generation creates an asymmetrical benefit to bundled customers.

This is not an academic issue. POUs have, in fact, been constructing new generation that provides local reliability benefits that extend to IOU customers. For example, SSJID and neighboring POUs have constructed over 500 MW of new generation in the local area encompassing the South San Joaquin Irrigation District (SSJID) during the past year.¹⁴ This generation provides system benefits to PG&E and PG&E's customers.¹⁵ If the CAM were to be charged to POU customers, the departure of IOU load to municipal utilities would provide bundled customers with system benefits from new generation that the POU develops and with payments by the POU departing load for system benefits they may receive from PG&E power, without requiring any compensating payments from PG&E customers for benefits they receive from POU generation. Bundled IOU customers would therefore be made better off on account of

¹² D.07-05-005 , mimeo at 18-19 (emphasis added).

¹³ There is no room for debate about this point. Even TURN has conceded the point. See Exhibit AREM-5 (Freeman).

¹⁴ SSJID/Shields, Hearing Transcript, volume 9 at 1369.

¹⁵ SSJID/Shields, Hearing Transcript, volume 9 at 1370.

the load departure. This is in direct violation of the indifference principle. Allocating local reliability CAM costs to POU customers will not and cannot achieve "ratepayer indifference" if the cost allocation mechanism works only one way.

The CAM charge under Pub. Util. Code Section 365.1 (c)(2)(A) is designed to maintain customer indifference by allocating both the cost and the benefits of capacity to benefiting customers; however, there is no mechanism to provide the benefit to POUs.¹⁶ Allocating POUs with the costs while allowing bundled IOU customers to retain the benefits would provide bundled IOU customers a net benefit in violation of the indifference principle.

B. Should CAM Be Modified At This Time?

SSJID currently has no comment on this matter.

C. Should Load Serving Entities (LSEs) Be Able To Opt Out Of CAM?

1. SSJID should be exempted from the CAM

PG&E in its surrebuttal argues that SSJID should be considered a "large municipalization." PG&E's argument is misplaced. The status of SSJID's municipalization as a "small" or "large municipalization" is outside the scope of this proceeding and should not be ruled upon at this time.

In addition, PG&E's argument is unpersuasive. PG&E presents a table from the PG&E load forecast used in the 2010 Long-Term Procurement Plan and notes that there is no specific forecast of municipal departing load shown in the table.¹⁷ PG&E concludes from this that there is no basis to support the claim that SSJID's load has been included in the forecast. However, the table that PG&E provided is a results table. There is no way to conclude from the

¹⁶ Exhibit SSJID-1 (Shields) at 11-12. Note that the benefit can be provided as a resource adequacy (RA) credit, which has no value for a POU, or as a credit off the CAM that approximates the monetary value of the RA credit. However, the CAM cost is itself the best measure of the value of long-term RA credits. No other reliable measure exists. Subtracting the CAM value from the CAM cost yields zero charge. The only way to assign the costs and value of the capacity to a POU is therefore to charge them a CAM charge of zero.

¹⁷ Exhibit PG&E-2(Rubin) at 2.

table whether or not municipal departing load has been incorporated in the underlying data in the table. Furthermore, even if PG&E's assertion is correct, this raises the question as to why PG&E has not included the "forecasted load that may be lost or added by...a newly formed publicly owned electric utility"¹⁸ in its load forecast for Long-Term Procurement, as required by California law. Additional discovery and discussion related to the PG&E load forecast and its applicability to the question of the categorization of SSJID's municipalization as "small" or "large" is required prior to any determination on this matter. PG&E should not be permitted to inappropriately exclude SSJID from its load forecast in order to influence the decision as to whether SSJID's plan to provide retail electric service shall be considered a "small" or "large municipalization" for purposes of determining the allocation of CAM costs. This matter should therefore be deferred, however, to a subsequent proceeding.

Regardless of SSJID's categorization as a small or a large municipalization and regardless of whether other POU's are exempted from the CAM, there are good grounds for exempting SSJID customers from the CAM because it would be unreasonable for PG&E to be procuring capacity on behalf of SSJID at this time.

PG&E is well aware of SSJID's plans for forming a municipal electric utility.¹⁹ As mentioned above, PG&E is obligated to forecast municipal departing load in the load forecasts that it uses as the basis for procurement.²⁰ It would therefore be unreasonable for PG&E not to account for SSJID's municipalization in its procurement forecasts.

PG&E rejects this argument on the grounds that SSJID's initial application to form a municipal utility was denied and that SSJID customers have consequently remained on PG&E's system longer than anticipated.²¹ However, since PG&E is aware of SSJID's municipalization efforts, PG&E should be planning for SSJID's potential municipalization even

¹⁸ Calif. Pub. Res. Code Section 25302.5 (a).

¹⁹ Exhibit PG&E-2 (Rubin) at 3.

²⁰ Calif. Pub. Res. Code Section 25302.5 (a).

²¹ Exhibit PG&E-2(Rubin) at 2 and 3.

if it does not know with complete certainty when or even whether the municipalization will occur. PG&E and the other utilities address all sorts of uncertainties in their procurement, including uncertain hydro conditions and load growth and uncertainty as to whether the nuclear plants will be relicensed that impact their loads in a far more significant manner than PG&E's loss of a small amount of load to SSJID. Utilities do not procure for the worst-case scenario. Instead, they select a mid-case scenario and have mechanisms in place, such as shorter term contracting, to deal with deviations from such forecasts.

Given the likelihood of SSJID's municipalization, the loss of SSJID's load should be a part of the base scenario PG&E uses for procurement. The uncertainty as to whether and when this relatively small amount of load²² may depart should not be a significant matter for PG&E to address in its contracting, particularly given the more than 500 MW of new capacity developed by SSJID and by POUs in the SSJID resource area over the past year.²³ Even if SSJID's plans were to be deferred over the next few years, it is unlikely that there will be any capacity shortage in the SSJID service area given this significant new capacity. There is therefore no reason for PG&E to be procuring new capacity on behalf of SSJID's customers at this time.

PG&E is obligated to plan for anticipated load departures, such as the departure of SSJID's customers when the SSJID commences providing retail electric service. If PG&E complies with this obligation and accounts for this in its procurement, there will be no stranded costs for bundled customers to bear on account of new capacity procurements. There are therefore good grounds to exempt SSJID from CAM charges.

²² Exhibit SSJID-1 (Shields) at 8.

²³ SSJID/Shields, Hearing Transcript, volume 9 at 1369.

VII.

VIII. CONCLUSIONS

CAM charges should not be charged to any POU customer, including large MDL, because: (1) the CAM was developed to address procurements shortfalls and potential shortfalls that POUs do not contribute to, (2) there is no requirement under California law to charge CAM to POUs, and (3) charging POUs CAM charges would violate the Commission's indifference principle.

Regardless of whether all POU customers are exempted from CAM charges, there are good grounds for exempting SSJID's customers because it would be unreasonable for PG&E to procure capacity on behalf of SSJID customers at this time. PG&E is obligated to forecast municipal departing load in its procurement forecasts, is well aware of SSJID's plan to provide retail electric service and can easily accommodate this contingency in its load forecasting. Should SSJID's plans be delayed, PG&E can accommodate such a delay in the same way that it accommodates other unexpected load growth or supply constraints. Moreover, given the significant additional new capacity that has recently been added in the SSJID area, there is no realistic probability that a capacity shortfall will ensue in the area even if SSJID's plan to provide retail electric service is delayed and PG&E does not procure capacity on behalf of SSJID for the next few years. There is therefore no reason for PG&E to be procuring capacity on behalf of SSJID customers at this time and no grounds for extending CAM costs to SSJID.

The Commission should not make a determination in this proceeding, however, as to whether SSJID should be considered a "large" municipalization as any such decision is beyond the scope of this proceeding.

By: _____/s/
Edward W. O'Neill
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Email: edwardoneill@dwt.com

Dated: September 24, 2012

Attorneys for South San Joaquin Irrigation District