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.	Rulemaking 12-03-014 (Filed March 22, 2012)

TRACK 1 REPLY BRIEF OF THE CITY AND COUNTY OF SAN FRANCISCO

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I. EXECUTIVE SUMMARY.

The City agrees with the Alliance for Retail Energy Markets, the Direct Access Customer Coalition and the Marin Energy Authority (AReM, DACC, MEA) that Cost Allocation Mechanism (CAM) cost-recovery should be available only for Investor Owned Utility (IOU) commitments made to meet needs beyond those of the IOUs' bundled customer load and expected load growth; IOU resources needed to meet an IOUs' bundled customer load should not be eligible for CAM cost recovery. Unlike the approach recommended by The Utility Reform Network (TURN) and the IOUs, this approach is consistent with the Public Utilities Code. This approach also supports effective retail competition and fairness.

The City joins DRA in recommending workshops to explore further changes needed to fairly implement CAM, and suggests that the workshops also explore criteria for Load Serving Entities (LSEs) to opt-out of the CAM.

Finally, the City agrees with the South San Joaquin Irrigation District (SSJID) that applying CAM to municipal departing load violates the principle of bundled customer indifference.

VI. COST ALLOCATION MECHANISM (CAM).

A. Proposed Allocation of Costs of Needed LCR Resources.

Section 365.1(c)(2)(A)[1] provides that "in the event that the Commission authorizes, in the situation of a contract with a third party, or order, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the Commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical

[1] All references are to the California Public Utilities Code unless otherwise noted.

corporation's distribution service territory" the Commission must afford CAM cost-recovery for those resources.

The City agrees with AReM/DACC/MEA that the Commission must develop criteria to determine which resources meet the CAM standard, i.e. "are needed to meet system or local reliability needs for the benefit of all customers in the electrical corporation's distribution territory." In D.11-05-005, the Commission identified the following outstanding issues to be resolved with respect to the CAM as follows:

> 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.

D.11.05-005 at 16.

AReM/DACC/MEA propose a common sense test that the City supports: namely, if a resource is needed to meet bundled customer load and expected load growth, it is not eligible for CAM cost-recovery because it was not authorized or ordered "for the benefit of <u>all</u> customers in the electrical corporation's distribution service territory" but rather to meet bundled customer needs.[2] The City strongly disagrees with TURN, and the IOUs that the CAM must apply to all resources that provide any reliability benefit to the electric system. TURN Opening Brief at 20-21; PG&E Opening Brief at 9-10; SCE Opening Brief at 22-23, 25; SDG&E Opening Brief at 15-17. The TURN/IOU position makes all resources procured to meet bundled customer load also system resources (since all resource provide some form of reliability benefits) and so,

[2] The AReM/DACC/MEA proposal is more detailed and complete than this summary suggests. The City supports the entire AReM/DACC/MEA proposal for CAM criteria. In the interest of brevity, the City has "collapsed" the proposed criteria and process into its fundamental concept.

contrary to D.11-05-005, there is no need for any policies or processes to distinguish between system and bundled resources, the one category swallows up the other. Also contrary to D.11-0-005, there is no need for a test of "who benefits" since all resources are deemed to benefit all customers. This position is inconsistent with California Law; undermines effective retail competition; and is unfair.

1. Broad Application of CAM Cost-Recovery is Contrary to the Law.

As AReM/DACC/MEA point out, pursuant to Section 454.5, the IOUs must develop and implement procurement plans to meet the needs of their bundled customers. The Commission has developed an extensive approach for recovery from departing load of above market costs of commitments made by the IOUs pursuant to Section 454.5 beginning with decision D.04-12-048. See D.04-12-048 at 55-63, COC-16. This cost recovery has been refined in subsequent decisions including D.08-09-012 and D.11-12-018. No party has argued explicitly that cost-recovery pursuant to D.04-12-048 has been superseded by the CAM and there is nothing in Section 365.1(c)(2)(A) to suggest that it was intended to do so. However, this would be the effect if the more extreme positions espoused by TURN/IOUs are adopted.

Section 365.1(c)(2)(A) was adopted well after D.04-12-048 and largely codified a new cost recovery mechanism made available by the Commission in D.06-07-029. D.06-07-029 made it clear that CAM cost recovery would not be available for resources "essentially dedicated to bundled customers." See D.06-07-029 at 4 ("We will not approve this cost allocation for any additional utility-owned generation, since that generation is essentially dedicated to bundled customers.") Although section 365.1(c)(2)(A) extended CAM treatment to utility-owned generation that meets the criteria set forth in the statute, it did not change the fundamental distinction between cost-recovery for resources obtained for bundled customers, and cost-

recovery for resources obtained "for the benefit of all customers in the electrical corporation's distribution service territory", or make CAM treatment available for all resources procured by the IOUs. To the contrary, in contrast to D.06-07-029 which allowed the IOUs to opt for CAM treatment for certain resources, Section 365.1(c)(2)(A) made CAM treatment mandatory for those resources that meet the statutory standard, and unavailable for other resources.

In the case of CCAs, state law is particularly clear that CAM treatment should be the exception and not the rule. As a rule, stranded cost-recovery for CCAs is carefully spelled out in Section 366.2(f). Section 366.2(f) clearly provides for cost recovery for IOU commitments made before CCA customers depart IOU service as follows:

> (f) A retail end-use customer purchasing power from a community aggregator pursuant to subdivision (b) shall reimburse the electrical corporation that previously served the customer for all of the following:
>
> (1) The electrical corporation's unrecovered past undercollections, including all financing costs attributable to that customer, that the Commission lawfully determines may be recovered in rates.
>
> (2) The costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community aggregator, through the expiration of all then existing power purchase contracts entered into by the electrical corporation.

If, as TURN/IOUs argue, any resource that provides a reliability benefit is subject to cost recovery pursuant to Section 365.1(c)(2)(A), recovery pursuant to section 366.2(f) would be rendered superfluous. This is because virtually any generating resource will have reliability benefits. See AReM/DACC/MEA Opening Brief at 16. If the costs of all generating resources are subject to recovery under Section 365.1(c)(2)(A), no generation resources would be subject to recovery under Section 366.2(f). Case law is clear that courts should avoid statutory

interpretations that render other statutory language superfluous. See California Jurisprudence 3d, Statutes § 91 (2012).

Moreover, Section 380 (h)(5) requires the Commission to strive to ensure that "community choice aggregators can determine the generation resources used to serve their customers" and Section 366.2 (a)(5) provides that "A community choice aggregator shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute." Further, Section 380 (b) requires the Commission to achieve several objectives in establishing resource adequacy requirements, including "[m]aximiz[ing] the ability of community choice aggregators to determine the generation resources used to serve their customers." As is explained in further detail below, an unduly expansive use of CAM cost recovery pursuant to Section 365.1(c)(2)(A) eliminates rather than maximizes the ability of CCAs to determine the generation resources used to serve their customers, contrary to Section 380(b)(4).

2. Broad Application of CAM Cost-Recovery Undermines the Existence of Effective of Retail Competition, including CCAs.

The distinction between cost recovery pursuant to Section 366.2(f) and D.04-12-048, on the one hand, and CAM cost recovery pursuant to Section 365.1(c)(2)(A) on the other hand, is important. Section 366.2(f) and D.04-12-048 cost recovery is available only from customers who were IOU customers at the time a commitment was made, and except in the case of RPS procurement, is only available for a ten year period. D.04-12-048, COL 16, and D.08-09-012 at 52. In contrast, CAM treatment applies to commitments made years after a customer departed

IOU service and for the life of the commitment.[3] Section 361.1(c)(2)(A). Accordingly, pursuant to CAM, a CCA that enters into long term capacity commitments to meet the resource needs of its customers can be forced to accept IOU capacity purchases and have to back-down or sell the resulting excess in its own commitments. If CAM treatment is afforded to a large volume of IOU resources, CCAs lose the ability to determine the generating resources that will be used to serve the capacity needs of their customers. In fact, a broad application of CAM treatment will discourage CCAs from entering into long-term capacity commitments because they will face a high risk of having those commitments rendered superfluous by IOU commitments.

Thus, a broad application of CAM, in addition to being inconsistent with law, would have the effect of narrowing retail competition to primarily energy only. This outcome reduces true retail customer choice. It is also at odds with a statutory scheme that repeatedly makes resource adequacy requirements applicable to all Load Serving entities. See Section 380; and Section 365.1(c)(1).

3. Broad Application of Section 365.1(c)(2)(A) is Unfair; and the PG&E Suggestion Regarding Procurement Plans is Nonsensical.

The City agrees with AReM/DACC/MEA that a broad application of Section 365.1(c)(2)(A) to any resource that provides reliability benefit is unfair. As AReM/DACC/MEA point out in their opening brief, all resources provide some reliability benefit. AReM/DACC/MEA at 16. This includes resources procured by the IOUs and resources procured by CCAs and ESPs. If CCA and ESP customers must pay a share of all resources an IOU procures, on the theory that they provide some reliability benefit, IOU customers should similarly pay a share of all resources a CCA or ESP procure for the same reason. Of course, having all customers pay for all resources that provide a reliability benefit would undermine any

[3] In addition, of course, the costs that can be recovered from departing load vary as between D.04-12-048 cost recovery and CAM cost recovery.

form of retail competition. Section 365.1(c)(2)(A) does not and need not lay the grounds for this outcome.

PG&E argues that, if Section 365.1(c)(2)(A) is limited to resources beyond those needed to meet IOU bundled customer needs, ESPs and CCAs should be required to present long-term procurement plans to the CPUC. PG&E Opening Brief at 10. This argument is nonsensical and suggests that it is only insufficient purchases by ESPs and CCAs that could give rise to a system or local reliability need. It is worth noting that CAM treatment was devised by the Commission to address a refusal on the part of an IOU (Southern California Edison) to procure resources the Commission deemed to be needed to maintain reliability. See D. 06-07-029. Moreover, PG&E's suggestion ignores the reality that, like IOUs, CCAs and ESPs must meet Commission and California Independent System Operator (CAISO) resource adequacy requirements, and like IOUs, CCAs and ESPs must make judgments about the right mix of short, medium and long-term resources to procure in order to afford their customers an acceptable degree of price certainty. Section 365.1(c)(2)(A) provides a safety valve to ensure that if these systems collectively result in an underinvestment in the resources needed to maintain system and local reliability, all customers including bundled IOU customers, CCA customers, and ESP customers share in the cost of ensuring these resources are procured.

4. AReM/DACC/MEA's Proposed Criteria Are Consistent with the Statute.

AReM/DACC/MEA propose that the Commission must first determine the resources needed to meet an IOUs bundled load and expected load growth. Resources needed to meet an IOU's bundled customer load should not be eligible for CAM cost recovery. AReM/DACC/MEA Opening Brief at 9-10; 13-16. CAM cost recovery should be limited to any additional resources required to meet any residual system and local reliability needs.

The AReM/DACC/MEA approach properly gives meaning to both Sections 366.2(f) and 365.1(c)(2)(A). It properly makes CAM, with its anti-competitive effects, the exception rather than the rule. Consistent with Section 380(b)(4), it maximizes the ability of CCAs to determine the generation resources used to meet CCA customer needs.

B. Should CAM Be Modified at this Time?

The City supports a Commission decision at this time establishing criteria for application of CAM as proposed by AReM/DACC/MEA. The City also supports the Division of Ratepayer Advocates' (DRA) recommendation for a work shop to explore what further changes to CAM are appropriate. See DRA Opening Brief at 36.

C. Should Load Serving Entities (LSEs) Be Able to Opt Out of CAM.

As explained above, CAM cost recovery places LSEs at risk of over procurement through no fault of their own, and limits an LSE's ability to control its resources and costs. This is particularly true with respect to LSEs that enter into robust long-term commitments for capacity for their customers. Accordingly, criteria should exist to allow LSEs to opt out of CAM. Thus, the criteria for a CAM opt-out should be a topic for discussion in workshops to explore the need for further changes to the CAM.

D. The South San Joaquin Irrigation District (SSJID) Proposal.

The City strongly supports the South San Joaquin Irrigation District (SSJID) Opening Brief and agrees that California law does not require CAM charges to be assessed to municipal departing load, and neither does any Commission decision. SSJID Opening Brief at 4. The City also agrees with SSJID that assessing CAM charges to municipal departing load violates the principle of bundled customer indifference because it would make bundled customers better off on account of the departing load. SSJID Opening Brief at 5. This is because POUs must procure the resources needed to meet the needs of their customers, and this generation benefits IOU

customers as much as any IOU procured resource may benefit POU customers. Moreover, there is no mechanism to ascribe to POU customers the capacity benefits from IOU commitments to which the CAM applies. SSJID Opening Brief at 6.

VIII. CONCLUSION.

Consistent with California law, CAM cost recovery should be the exception rather than the rule. The City supports the CAM criteria recommended by AReM/DACC/MEA: use of CAM only for resources that are needed, beyond those required to meet the needs of IOU bundled load. Further the City supports a workshop to explore further changes to the CAM as well as criteria for an LSE opt out from CAM. Finally, the City agrees with SSJID that applying CAM to municipal departing load violates the principle of bundled customer indifference.

Respectfully submitted,

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