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)

COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS, DIRECT ACCESS CUSTOMER COALITION AND MARIN ENERGY AUTHORITY ON THE PROPOSED DECISION FOR TRACK ONE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

LEGISLATION

CPUC DECISIONS, DOCKETS, RULINGS

STATE STATUTES, CODES, REGULATIONS

SUMMARY OF RECOMMENDATIONS

)The Alliance for Retail Energy Markets[1] ("AReM"), the Direct Access Customer Coalition[2] ("DACC") and the Marin Energy Authority[3] ("MEA") recommend as follows:

1. Section 9 of the proposed decision, dealing with the Cost Allocation Mechanism ("CAM") and the suggested modifications thereto should be substantially rewritten so as to approve the AReM, DACC, and MEA recommendations in this regard. Wording in this regard to accomplish these changes is included in Attachment A hereto.
2. In the alternative, if the Commission is unwilling to reverse the inadequate CAM discussion in Section 9 of the proposed decision, the entire section should be deleted and replaced with a directive that consideration of the CAM issues considered herein will be addressed in the proceeding to be established pursuant to P.12-12-010, issued in response to the petition for a rulemaking filed by a wide range of petitioners and supporters including CCAs, local governments, universities, schools, environmental groups, direct access customers, and ESPs. Wording to accomplish this alternative proposed change is also included in Attachment A hereto.

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[1] 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.

[2] 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.

[3] 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.

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In accordance with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission") The Alliance for Retail Energy Markets[4] ("AReM"), the Direct Access Customer Coalition[5] ("DACC") and the Marin Energy Authority[6] ("MEA") respectfully submit these joint opening comments on the December 21, 2012, proposed Decision Authorizing Long Term Procurement for Local Capacity Requirements of Administrative Law Judge ("ALJ") David M. Gamson ("PD") in Track 1 of the Long-Term Procurement Plan ("LTPP") proceeding.

I. Executive Summary

These opening comments primarily address Section 9 of the PD pertaining to the Cost Allocation Mechanism ("CAM") discussion and findings.[7] As written, this section of the PD

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[5] 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.

[6] 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.

[7] AReM, DACC, and MEA take no position at this time on the sections of the PD not addressed in this opening brief, but reserve the right to reply to the opening comments on such other sections as we find necessary.

fails to provide a reasoned review of the extensive testimony and recommendations presented by AReM, DACC, and MEA. As a result, the PD is irreparably flawed and should not be adopted by the Commission unless it is significantly modified, as described herein.

Fundamentally, the PD's proposed implementation of state laws that govern CAM is inconsistent with the intent and plain wording of those statutes, and as a result violates applicable law. Moreover, in its failure to address the deleterious effect that the growing CAM burden has on competitive markets, the PD also fails to adhere to the Commission's historic commitment to cost causation principles, and as a result contributes to anticompetitive outcomes that benefit the investor-owned utilities ("IOU") and their bundled customers at the expense of direct access ("DA") customers, the electric service providers ("ESPs") who serve them and community choice aggregation ("CCA") customers.

It is evident that ratepayers throughout the state seek competitive options. The CCA movement is growing and each phase of the expansion of DA has been immediately oversubscribed. Yet the PD fails to address the legitimate concerns of AReM, DACC, and MEA with respect to CAM. Put simply, this growing constituency deserves better. In these comments, AReM, DACC, and MEA discuss how the PD should be significantly modified to comply with state law and the Commission's commitment to competitive markets.[8]

II. The PD Violates Applicable Statutes And Commission Policy In Its Unfettered Expansion of CAM.

As noted in the PD, the Scoping Memo set forth three questions to be addressed in this proceeding with respect to CAM:

[8] AReM, DACC, and MEA also take note of the fact that its coalition is referred to as "AReM" throughout the PD, shorthand that the coalition finds not only misleading to readers, but indicative of the broadly dismissive approach in the PD to the issues to the issues raised by the coalition.

(1) How should the costs of any additional local reliability needs be allocated among LSEs in light of the CAM?

(2) Should the CAM be modified at this time? and

(3) Should LSEs be able to opt-out of the CAM, and if so, what should the requirements be to permit such an opt-out?[9]

Instead of rigorously examining the evidence presented in this proceeding on these issues and making a reasoned determination on the facts presented, the PD, if adopted by the Commission, would result in an unfettered and impermissible expansion of the application of the non-bypassable CAM, beyond that contemplated in the statutes that govern the Commission's oversight of CAM – Senate Bill ("SB") 695 and SB 790 – as well as the statute that governs the Commission's oversight of utility procurement, Assembly Bill ("AB") 57.

Simply put, if the Legislature had intended SB 695 apply CAM to all utility procurement, it could have said so, but it did not. What the statute does do is require this Commission to define and determine criteria when such procurement provides a benefit to all customers, as the Commission itself has recognized.[10] Moreover, the PD ignores the relevant statutory requirements set forth in SB 790 that amend SB 695 by requiring specific restrictions on the application of CAM,[11] which the proposed opt-out mechanism for community choice aggregators ("CCAs") and electric service providers ("ESPs") recommended by AReM, DACC, and MEA would satisfy,[12] and the statutory requirements of AB 57 under which the IOUs have an

[9] See PD, page 96.

[10] D.11-05-005, pp. 16-17. In addition, San Diego Gas & Electric Company agreed with AReM, DACC, and MEA that the Commission was required by statute to set criteria by which it would apply the CAM. *See*, SDG&E Opening Testimony, June 25, 2012, pp. 16-22.

[11] AReM, DACC, and MEA Opening Testimony, Exhibit AReM-1, R.12-03-014, June 25, 2012, pp. 14-17.

[12] AReM, DACC, and MEA Opening Testimony, Exhibit AReM-1, R.12-03-014, June 25, 2012, pp. 50-66.

obligation to procure long-term to meet the reliability requirements of their own bundled customers.[13]

This PD continues the Commission's recent turning of a blind eye to the purpose of CAM and how the development of competitive wholesale and retail markets continues to be undermined by the imposition of non-bypassable charges ("NBCs") on customers who have elected to take service from competitive retail suppliers. In doing so, the Commission has also abandoned its long-held cost causation principles, as least as they apply to competitive retail markets. While the Commission has previously identified cross subsidies associated with the CAM,[14] the PD ignores that concern and the related testimony of AReM, DACC, and MEA on this point.[15] Instead, the PD lands on a notion of "fairness" in authorizing the CAM that is unsupported either by the applicable statutes or the record in this proceeding.

A review of the history of CAM is warranted. The Commission first approved CAM in D.06-07-029. The Commission stated at the time that it took this action as an interim measure and in the face of a potentially serious reliability issue in Southern California to ensure that new generation capacity would be constructed and begin to come on-line by 2009.[16] That decision repeatedly refers to the policy as "interim" and "transitional"[17] and also notes its stated intent "not to undermine the ESP business model."[18] The Commission also repeatedly affirmed its goal for robust and competitive wholesale and retail markets in California, but noted concern that its

[13] AReM, DACC, and MEA Opening Testimony, Exhibit AReM-1, R.12-03-014, June 25, 2012, pp. 20-29.

[14] D.07-12-052, December 20, 2007, pp. 117-119; Order Instituting Rulemaking, R.08-02-007, February 14, 2008, Attachment A, Preliminary Scoping Memo, p. A-27.

[15] AReM, DACC, and MEA Opening Testimony, Exhibit AReM-1, R.12-03-014, June 25, 2012, pp. 20-24.

[16] D.06-07-029, p. 3 and Finding of Fact No. 1, p. 54.

[17] See, for example, D.06-07-029, pp. 2, 4, 7, 13, 25, 32, and Findings of Fact No. 13, p. 55 and No. 18, p. 56.

[18] D.06-07-029, p. 2.

actions could undermine their development.[19] Yet, this "interim" and emergency policy from 2006 has grown into an apparent entitlement by the IOUs to impose costs on their competitors' customers at every turn, due to an over-expansive interpretation of SB 695 that contradicts the Commission's stated support for competitive markets and due to an inappropriate implementation of the newer statute, SB 790, that expressly limits such expansive interpretations. In short, the IOUs have successfully created a policy to undermine their competition and the PD would sanction this expanded and anti-competitive result.

AReM, DACC, and MEA urge that Section 9 of the PD be substantially modified so as to avoid this anti-competitive result and ensure that the Commission meets its statutorily-imposed obligation to limit the application of CAM to utility procurement decisions that benefit all customers, as detailed in Attachment A hereto. Approximately 7,000 MW[20] have already been afforded CAM treatment, all in the absence of any guidelines as to how the Commission is making the benefiting customer determination. It is not sufficient to presume that every utility investment meets this test – such a determination by the Commission would mean that a retail choice provider has little to no bandwidth to procure separately from that allocated to it through CAM, and the resources that they assemble to serve their load will ultimately be no different than the IOU portfolio. As extensively discussed in the testimony of AReM, DACC, and MEA,[21] there is no interpretation of the SB 695 statute – the same statute that expanded customer retail choice – that supports such an outcome.

AReM, DACC, and MEA recognize a decision to limit the application of CAM will be met with resistance by some parties, but limiting CAM is precisely required by statute, and

[19] See, for example, D.06-07-029, pp. 3, 4, 24 and 25.

[20] AReM, DACC, and MEA Reply Testimony, Exhibit AReM-2, R.12-03-014, July 23, 2012, p. 5 and Attachment.

[21] AReM, DACC, and MEA Opening Testimony, Exhibit AReM-1, R.12-03-014, June 25, 2012, pp. 9-13 and 18-20; AReM, DACC, and MEA Reply Testimony, Exhibit AReM-2, R.12-03-014, July 23, 2012, p. 5.

therefore must be addressed by this Commission. AReM, DACC, and MEA have set forth a comprehensive proposal to do just that in a manner that is fair to all customers;[22] and should be adopted by the Commission in this decision.

While AReM, DACC, and MEA believe that its proposals should be adopted in this decision, should the Commission determine that the proposals need further vetting, it should immediately set a schedule for doing so and should suspend the application of any further CAM treatment until there are specific guidelines and an opt-out mechanism in place. AReM, DACC, and MEA note that Petition ("P").12-12-010, which was docketed in response to the December 18, 2012, Petition for Rulemaking filed by a wide range of petitioners and supporters including CCAs, local governments, universities, schools, environmental groups, direct access customers, and ESPs ("Petition")[23] could serve as the venue for this further review. It expressly addresses the numerous and significant issues regarding lack of competitive neutrality, improper cost causation and the irreparable harm that unreasonable NBCs are causing to the important choices customers make regarding their electricity supply.

III. SB 695 Does Not Direct That All Utility Procurement Is CAM Procurement.

Since SB 695 was enacted, the Commission has consistently avoided addressing the issue of determining when and how CAM will be applied to IOU investments, even while acknowledging a statutory requirement to do precisely that.[24] And yet, if the PD is adopted, that important work would again remain unfinished and ignored. The difference this time, however,

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[22] AReM, DACC, and MEA Opening Testimony, Exhibit AReM-1, R.12-03-014, June 25, 2012, pp. 20-29.

[23] *See*, Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5 of Marin Energy Authority, Alliance for Retail Energy Markets, City and County of Santa Cruz, Climate Protection Campaign, Constellation NewEnergy, Inc., Direct Access Customer Coalition, Direct Energy, LLC, Energy Users Forum, IGS Energy, Retail Energy Supply Association, Sam's West, Inc., Shell Energy North America (US), L.P., South San Joaquin Irrigation District, Texas Retail Energy, LLC, and Wal-Mart Stores, Inc.

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

is that AReM, DACC, and MEA went to great lengths to provide the Commission a reasoned and comprehensive approach to address the CAM-related issues in the context of an evidentiary record, only to have that work set aside in this PD without any analysis or meaningful review. In fact, this PD seems to suggest that the *ad hoc* approach employed by the Commission to date, in applying CAM to approximately 7,000 MW[25] of existing and authorized utility investment is tenable and appropriate for the long term. It is not. Not only will such an approach cause irreparable harm to the competitive retail choice markets, the very markets that SB 695 expanded, it is blatantly inconsistent with the applicable legislation. This is the important point – SB 695 could have said that all utility investment to meet system and local requirements should receive CAM treatment. It does not, and therefore the Commission cannot continue its *ad hoc* approach, nor can it rotely apply CAM to all utility investment. It must develop a mechanism for determining when CAM is and IS NOT appropriate, and the only way to do that in a meaningful way, is to link the imposition of CAM to a determination as to whether or not the reliability needs of retail choice customers – who do not receive their electricity supply from the utilities – are being met by the competitive suppliers they have chosen. If so, then IOU investment by definition does not benefit them, and the costs should not be allocated to them. In addition, the Commission must ensure that the IOUs are meeting their long-term obligations pursuant to P.U. Code 454.5 to ensure proper cost causation and avoid cross subsidies.

The proposals provided by AReM, DACC, and MEA provide a precise mechanism by which the Commission can define and implement appropriate criteria for CAM.[26] The Commission should incorporate those recommendations into its Decision in this proceeding.

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[25] AReM, DACC, and MEA Reply Testimony, Exhibit AReM-2, R.12-03-014, July 23, 2012, Attachment.

[26] AReM, DACC, and MEA Opening Testimony, Exhibit AReM-1, R.12-03-014, June 25, 2012, pp. 20-34.

IV. SB 790 Further Limits The Application Of CAM.

SB 790 calls for specific limitations to CAM, predicated upon a finding that the "exercise of market power by electrical corporations is a deterrent to the consideration, development, and implementation of community choice aggregation programs."[27] To remedy this problem, SB 790 says:

> It is therefore necessary to establish a code of conduct, associated rules, and enforcement procedures, applicable to electrical corporations in order to facilitate the consideration, development, and implementation of community choice aggregation programs, ***to foster fair competition, and to protect against cross-subsidization by ratepayers. [emphasis added]***[28]

The issue at hand is one of fair competition and the IOUs' use of CAM to impose their procurement costs on CCAs and direct access customers and the ESPs who serve those customers. To begin to remedy these problems, SB 790 specifically included new provisions and strengthened existing ones regarding CAM and regarding the procurement rights and responsibilities of CCAs.

New Section 365.1(c)(2)(B), which was added to the California Public Utilities ("P.U.") Code as part of SB 790, requires that:

> If the commission authorizes or orders an electrical corporation to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation. 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).

[27] *See* Section 2(f).

[28] SB 790, Section 2(h).

The Commission has made no determination or clarification on how it shall ensure that the resources meet these requirements, which should be rooted in a determination as to whether or not customers' reliability needs are being met with an alternative competitive supplier.

Furthermore, under the new SB 790 legislation, the objectives associated with the Commission's resource adequacy ("RA") requirements were expanded to include the following additional objective:

> (4) Maximize the ability of community choice aggregators to determine the generation resources used to serve their customers.[29]

Simply put, the PD's unfettered approach with respect to the imposition of CAM will do just the opposite of what is required by the statutory language quoted here. Take the example of MEA, which is contracting for its RA requirements on a prospective basis to fully meet the needs of its existing and projected loads. Under the PD's proposal, the Commission could determine that anywhere between 100% and 0% of any new contracts entered into by an IOU in the future area afforded CAM treatment. This leaves the CCA with significant uncertainty regarding its own procurement decisions. The Commission has developed robust RA requirements for CCAs – equivalent to those of IOUs – requirements with which MEA has complied, and will continue to comply. However, this uncertainty regarding RA procurement will inevitably cause stranded RA costs and significant inefficiencies for CCAs, thereby reducing their competitiveness vis-à-vis utility bundled service.

In the case of MEA, it has a stable customer base and enters into long-term contracts on a regular basis to serve its existing and projected loads. These contracts include provisions regarding resource adequacy. By creating extreme uncertainty regarding the amount of procurement which will be done by Pacific Gas & Electric ("PG&E") "on behalf of" MEA, the

[29] P.U. Code Section 380(b)(4).

Commission is creating a significant perverse incentive to encourage shorter-term contracting, rather than the long-term planning processes approved by the MEA Board in its approved Integrated Resource Plan.

These same issues are equally applicable to ESPs, who have also met and will continue to meet their RA requirements, and whose service to DA customers is similarly compromised by the imposition of CAM. The opt-out proposed by AReM, DACC, and MEA[30] provide a clear and compelling approach for ensuring that CCAs can "maximize" their ability to determine the generation to procure for their customers. By failing to adopt a CAM opt-out and failing to set reasonable parameters surrounding when IOU procurement on behalf of CCAs through the CAM is warranted, the Commission is in clear violation of the requirements of the legislation.

V. The PD Views "Fairness" Only From The Perspective Of Bundled Utility Advocates Like TURN And The IOUs, Who Are Direct Competitors Of Direct Access And Community Choice Aggregation Suppliers.

The PD's perfunctory dismissal of the AReM, DACC and MEA's proposals is predicated in part on the following rationale:

> …..we do not adopt AReM's two-step/six criteria framework. AReM's approach imposes additional requirements designed to limit CAM allocation, and appears to create a precise determination of "benefitting customers." However, precision is not the same as fairness. The Commission's previously adopted criteria fairly apportion costs to customers as envisioned by past Commission and the legislature actions. While creating more complexity, nothing in AReM's proposal improves on the fairness of the current allocation. Thus, the costs of local reliability needs shall continue to be allocated in accordance with previous Commission decisions.[31]

[30] AReM, DACC and MEA Opening Testimony, Exhibit AReM-1, R.12-03-014, June 25, 2012, pp. 50-66.

[31] PD, at p. 102, emphasis added.

The above excerpt from the PD merely reiterates the statements of the interests represented by The Utility Reform Network ("TURN")[32] and the IOUs that are direct competitors of ESPs and CCAs.[33] It is not surprising that parties who have made no secret of their opposition to retail choice would argue for unfettered application of CAM, but the PD's failure to perform a detailed and critical analysis of the proposals put forth by AReM, DACC, and MEA – proposals that would make the process of imposing CAM transparent and fair for **all** customers, not just the bundled utility customers – should not be allowed to stand. The adoption of the unsubstantiated claims of TURN and the IOUs with no critical analysis of these proposals it is rejecting, nor any attempt to weigh the relative merits and/or demerits of the parties' various positions, is a disturbing departure from due process. The PD simply dismisses the extensive effort put forth by AReM, DACC, and MEA to encourage a thoughtful and reasoned examination of cost allocation issues and make the process and criteria for imposing CAM transparent and fair, consistent with statutory requirements.

VI. The PD Does Not Meaningfully Examine Whether The CAM Should Be Modified At This Time.

Similarly, the PD rejects any changes to energy auction terms and the adopted program's proxy calculation; rejects modifying the net capacity cost calculation to better reflect the increased ancillary service value and value of other products and services provided by the new Power Purchase Agreements ("PPAs") or Utility-Owned Generation ("UOG") plants beyond non-spinning reserves; rejects a levelized annual revenue requirement for UOG plants in order to account for the reality that the imputed capacity costs of a UOG generating plant changes over time as the plant is depreciated; and rejects the proposal that the CAM should be capped.

[32] TURN Opening Brief, at pp. 22 and 24.

[33] SCE Opening Brief at pp. 1-2, 22, 24-26; PG&E Opening Brief at pp. 2, 9-1`4; SDG&E Opening Brief at p. 21.

We can sympathize with the desire of the Commission for expediency. However, when a proceeding is specifically scoped to invite proposals to improve upon existing programs, policies, and regulations, and legitimate proposals are offered to do just that, such proposals deserve to be reviewed and considered seriously on their merits.

At best, with regard to the energy auction and proxy calculation proposals offered by AReM, DACC, and MEA, the PD states, "We may consider taking a more focused look at these issues in the future." Yet it offers no rationale as to why the issue should be deferred to future, nor does it provide any procedural vehicle for such a future examination, and fails to rule on the request for workshops that were made or endorsed not only by AReM, DACC, and MEA[34] but also by San Diego Gas & Electric Company and the Division of Ratepayer Advocates.[35] At the very least, the PD should be modified to provide for workshops to examine these issues, rather than simply sweeping them under the table.

VII. The Proposed Decision Establishes an Unrealistic Precondition to any Future Consideration of a CAM Opt-Out

The Scoping Memo asked, "Should LSEs be able to opt-out of the CAM, and if so, what should the requirements be to permit such an opt-out?"[36] AReM, DACC, and MEA has long held that the answer to this question is "yes" and took the Scoping Memo at its word that proposals to implement an opt-out mechanism would be duly considered. Yet the PD fails to provide any reasoned analysis of the proposal, and instead – once again – defers the issue for future consideration. Moreover, not only does it defer the issue for future consideration, it also

[34] AReM/DACC/MEA Reply Testimony, Exhibit AReM-2, R.12-03-014, July 23, 2012, p. 10.

[35] SDG&E Opening Brief, at p. 20; DRA Opening Brief, at pp. 35-36.

[36] *See*, May 17, 2012, Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, at p. 6.

imposes an unreasonable, unrealistic and likely unachievable precondition for any such future consideration:

> We will not rule out consideration of a CAM opt-out at a future date. However, we have considered parties' positions on more than one occasion, and declined to adopt a CAM opt-out. Therefore, we are disinclined to relitigate this issue in the future unless all or nearly all impacted parties can agree on a specific, detailed and implementable proposal, or there are significant changed circumstances.[37]

The likelihood that TURN or the IOUs, who are ESP and CCA competitors, could ever agree on a "specific, detailed and implementable" proposal on the CAM opt-out is infinitesimal, and the imposition of a precondition that parties much reach settlement on such an issue before the Commission will consider it, is a wholly unreasonable and unacceptable approach. The Commission's job is to make the hard decisions, to give fair consideration to reasonable proposals and not merely to impose unreasonable preconditions as a means of effectively killing any future consideration. The PD is thus both unreasonable and unrealistic. The opt-out proposal put forth by AReM, DACC, and MEA is well-thought-out and reasonable[38] and should be adopted by the Commission. In no event, should there be a requirement that AReM, DACC, and MEA reach settlement with its opponents in order to get a ruling from the Commission on the merits of its proposal.

VIII. Alternatively, The Proposed Decision Could Incorporate The Record Evidence In This Proceeding On CAM-Related Issues Into P.12-12-010

The CAM Petition filed on December 18, 2012, requests that the Commission initiate an OIR proceeding to pursue the following objectives:

- Develop cost allocation and cross-subsidization principles that align with the requirements of SB 790;

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[37] PD, at p. 108.

[38] AReM, DACC, and MEA Opening Testimony, Exhibit AReM-1, R.12-03-014, June 25, 2012, pp. 50-66.

- Phase-out stranded cost recovery by the IOUs;
- Reform the calculation of non-bypassable charges that are imposed on departing load customers;
- Impose new transparency requirements on IOUs to ensure against improper cross-subsidization;
- Adopt a formal requirement that any new OIR that may impact CCA and competitive retail markets must identify potential cost allocation and cross-subsidization issues;
- Impose a burden of proof on the IOUs to demonstrate, in any application proceeding, that a proposed allocation of costs to non-utility generation customers through distribution rates (or other non-bypassable charges) complies with the Commission's standards pertaining to cost causation; and
- Incorporate rules that are necessary to facilitate the development of CCA and retail choice programs, to foster fair competition, and to protect against cross-subsidization paid by ratepayers, as set forth in SB 790.

If, despite the direction provided in the Scoping Memo to this proceeding, the Commission is not prepared to rule directly on the AReM, DACC, and MEA CAM-related issues discussed herein, it should direct that the record evidence on these topics will be incorporated in the proceeding to be instituted pursuant to P.12-12-010, where the proposals will be further discussed and ruled upon, and until that proceeding is concluded there should be a moratorium on any further CAM application.

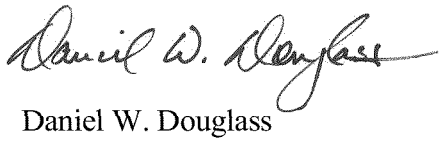
IX. Conclusion

AReM, DACC, and MEA put forth extensive CAM-related proposals in this Track 1 proceeding that were designed to comply with applicable statutes and Commission policies, maintaining reliability, minimizing CAM, applying proper cost causation principles and supporting retail choice, and in full conformance with the Scoping Memo for this proceeding. Decisions on these issues are no less important than the local reliability issues pertaining to the West Los Angeles sub-area of the Los Angeles basin local reliability area and the Moorpark sub-area of the Big Creek/Ventura local reliability area.

However, the PD is bereft of any meaningful analysis of these proposals, and instead simply accepts the viewpoints of TURN and the IOUs, who are direct competitors to DA and CCA suppliers without critical review or analysis. The PD should be modified to provide a meaningful analysis, which AReM, DACC, and MEA are certain will lead the Commission to adopt its proposals. A distant and very second best alternative would be for the Commission to rule that the record evidence in this proceeding on the CAM related issued will be incorporated in the record of the proceeding to be established pursuant to P.12-12-010, and that the Commission so note this in the Scoping Memo to that proceeding. Moreover, until that proceeding is concluded, there will be a moratorium on any further CAM application.

Suggested wording to accomplish these alternative proposals is provided in Attachment A hereto. AReM, DACC, and MEA thank the Commission for its attention to the issues discussed herein

Respectfully submitted,



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January 14, 2013

Attachment A
Suggested Revisions to the Proposed Decision

AReM, DACC and MEA propose herein two alternative modifications to the Proposed Decision (footnotes omitted). Option 1 are changes that AReM, DACC, and MEA strongly urge the Commission to adopt in order to approve the CAM modification proposals recommended by AReM, DACC, and MEA. Option 2 are changes necessary for the Commission to move consideration of the proposals recommended by AReM, DACC, and MEA and the evidence submitted in this proceeding on CAM-related issues to the proceeding that will be initiated as a result of P.12-12-010.

Option 1:

The following changes should be made to the body of the Proposed Decision, Findings of Fact ("FOF"), Conclusions of Law ("COL") and Ordering Paragraphs ("OP"):

9.3. Discussion
Section 365.1(c)(2)(A)-(B) holds that in instances when the Commission determines that new generation is needed to meet local or system area reliability needs for the benefit of all customers in the IOU's service area, the net capacity costs for the new capacity shall be allocated in a fair and equitable manner to all benefiting customers, including DA, CCA and bundled load. Simply put, each customer must pay their fair share for the benefits that flow to them from the new generation for the full life of the asset. The critical question, of course, is what constitutes a fair share.

AReM, DACC, and MEA have persuasively shown that both statute and adherence to our historic and traditional principles of cost causation require rejection of the utilities' viewpoint that all new generation must be subject to the CAM. Acceptance of that position would effectively over time undermine our support for competitive wholesale and retail markets as it would layer so many of the utilities' costs on to DA and CCA providers so as to make their service options ultimately uncompetitive. ~~AReM's driving peak/decreasing load proposal fails to recognize the interrelated nature of the electric system and the reality that some individual customers of ESPs, CCAs and IOUs have static load profiles, while others are driving the need for new resources. In addition, the retirement of existing resources creates the need for new resources to serve customers that may not be driving increases.~~ Therefore, we cannot continue the current Commission policy of allocating CAM costs and benefits at the IOU service area level without critical analysis as to whether the costs are driven by DA and CCA customer demand, and whether the suppliers for DA and CCA customers are meeting the reliability needs of their customers, and whether all customers benefit or merely the bundled customers of the utilities.

~~In addition, we do not~~ It is notable that despite the fact that the CAM issues were clearly included in the Scoping Memo issued in this proceeding that no parties other than AReM, DACC, and MEA offered proposals to refine the CAM while other parties relied solely on supporting the status quo. However, for the reasons mentioned above, maintenance of the status quo is unacceptable. We therefore adopt AReM, DACC, and MEA's two-step/six criteria

framework. ~~AReM's~~ Their approach imposes additional requirements designed to limit CAM allocation~~,~~ and ~~appears to~~ create~~s~~ a precise determination of "benefitting customers~~.~~" ~~However, precision is not the same as~~ that complies with applicable statute, principles of cost causation and fundamental fairness. ~~The Commission's previously adopted criteria fairly apportion costs to customers as envisioned by past Commission and the legislature actions. While creating more complexity, nothing in AReM's proposal improves on the fairness of the current allocation.~~ Thus, the costs of local reliability needs shall ~~continue to~~ be allocated in accordance with ~~previous Commission decisions~~ the AReM, DACC, and MEA proposals.

9.4. Should the CAM be Modified at This Time?

AReM, DACC, and MEA propose~~s~~ several further modifications to the CAM, including changes to energy auction terms and the adopted program's proxy calculation. ~~AReM~~ They suggest~~s~~ that the Commission make the current five-year maximum ceiling on energy auctions products to a five-year minimum floor. AReM, DACC, and MEA contend~~s~~ that longer term tolling would more accurately reflect "the incremental hedging value of the PPA."

AReM, DACC, and MEA also opine~~s~~ that the net capacity cost calculation from the adopted program should be changed to better reflect the increased ancillary service value and value of "other products and services" provided by the new PPAs or UOG plants beyond non-spinning reserves. In addition, ~~AReM~~ they propose~~s~~ that the Commission modify the adopted program in order to account for the options value associated with a long-term tolling contract. By failing to incorporate this value, ~~AReM contends,~~ it is contended that the current CAM framework "ignores one of the primary driver of PPA cost: the opportunity value of purchasing energy with agreed-upon terms in a market characterized by energy price volatility.

AReM, DACC, and MEA also support~~s~~ a levelized annual revenue requirement for UOG plants in order to account for the reality the imputed capacity costs of a UOG generating plant changes over time as the plant is depreciated. Finally, ~~AReM~~ they assert~~s~~ that the CAM should be capped, as a "backstop to ensure reasonable results." AReM, DACC, and MEA recommend~~s~~ that the Commission convene~~s~~ workshops to discuss the details of implementing some of their suggested design modifications.

SDG&E believes that the current auction mechanism is administratively unwieldy and not necessarily conducive to efficient capacity costs. SDG&E supports the use of the adopted program as an alternative to the use of an energy auction to determine the net capacity costs for CAM resources. SDG&E suggests that the Commission eliminate the IOUs' obligation to auction the right to the energy, unless the Commission directs otherwise; toward that end, SDG&E opines that the Commission should convene workshops to construct a permanent alternative to energy auctions. In addition, SDG&E specifically rejects AReM's proposal to amend the adopted program to include all major ancillary service products currently available in the ISO market, levelize the annual revenue requirement for utility-owned generation, and cap the CAM.

DRA supports SDG&E's proposal to change the energy auctions. DRA encourages the Commission to convene workshops to explore possible modifications to the net capacity cost allocation, the valuation for energy and ancillary services and pursue the reduction of capacity

costs for all parties. The three IOUs and TURN oppose AReM's proposal to incorporate ancillary services in calculating energy dispatch value. SCE and PG&E align with SDG&E in objecting a levelized annual revenue requirement, while all three IOUs and TURN expressly object to AReM's proposal to cap the CAM.

~~We reject the proposed cap on CAM. We find that AReM's proposal to levelize the annual revenue requirement obviates the plain language of § 365.1(c)(2)(C), which states that the net capacity costs shall be determined by "subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource." (emphasis added.) Once the CAM contract has lapsed, bundled customers would overpay for the depreciated value of the generating asset capacity, while non IOU customers would have paid less than their fair share of the full value of the asset's capacity value. Further, the proposal to cap the CAM contradicts its central purpose: apportioning system and local reliability costs to all benefiting customers in an IOU service area so that each benefitting customer pays their fair share.~~

We have stated an openness to revisit the energy auction mechanism adopted in D.07-09-044. Toward that end, we appreciate the suggestions from parties in the current proceeding to consider improvements toward the current auction mechanism structure, including valuing net capacity costs. The record, however, fails to provide an adequate basis upon which to comprehensively consider and adopt any potential changes to the auction mechanism. We ~~may consider taking a more focused look at these issues in the future~~ therefore direct that the Energy Division shall within 90 days following the issuance of this decision schedule workshops to examine the issues discussed herein in greater detail.

9.5. CAM Opt-Out

In D.06-07-029, the Commission found the concept of a CAM opt-out mechanism for LSEs appealing, upon the demonstration that an LSE is fully resourced with new generation for ten years forward. However, D.06-07-029 stated "the reality is that we have no viable enforcement program or mechanism for doing so," such as a "multi-year RA program where an LSE could demonstrate it is fully resourced for the next four or 10 years."

AReM, DACC and MEA strongly support~~s~~ an LSE opt-out, asserting that it is essential to maintaining market choice. ~~AReM's~~Their opt-out would function as follows. Once the Commission determines unmet need subject to the CAM, an ESP or CCA would have the option to request an opt-out from the CAM. The LSE has until the IOUs submit any proposed CAM projects to request an opt-out. In order to qualify for an opt-out, an LSE would make a showing to the Commission that it has procured adequate generation resources for a five-year period.

AReM, DACC and MEA propose~~s~~ three types of out-out: (1) Load Ratio Share Opt-Out; (2) Load-Based Opt-Out; and (3) Customer-Based Opt-Out, which are described in detail in its testimony. The three IOUs, TURN and DRA all categorically reject AReM, DACC and MEA's opt-out proposals. Each asserts that AReM, DACC, and MEA's proposed five-year forward contract term showing is insufficient time to procure and finance new generation resources given the reality of long lead time for building new generation. SDG&E contends that a CAM opt-out

would encourage LSE free riding at the expense of utility ratepayers. SCE asserts that a CAM opt out stands in direct contrast to the Legislature's intent to pass along costs to all benefiting customers in a fair and equitable manner. PG&E points out that keeping track of all the potential LSEs who choose to opt out of the CAM via one of the three ways proposed by AReM will result in high administrative costs.

TURN asserts that AReM, DACC and MEA's proposal would result in DA and CCA customers paying for less than a proportionate share of the costs of local reliability needs, with virtually no responsibility for new capacity needed to meet load reliably. DRA argues that it is unclear how AReM, DACC, and MEA's proposal would be enforceable to "ensure that 'there will be no free riders' vis-à-vis the cost of capacity of new generation," and disagrees with AReM, DACC and MEA that only non-IOU LSEs should be allowed to opt out of the CAM.

9.6. Discussion

The issue of a CAM opt-out is complex. AReM has properly raised legitimate questions regarding equity of the current CAM structure. ~~However, while~~ AReM's detailed proposal of a potential opt-out structure is helpful and is adopted in principle. We direct that the details of this issue shall be further discussed and refined in the workshops to be scheduled by Energy Division. ~~, it is unclear how its five-year contract term/project life requirement would adequately ensure investment in new resources. Further, it is not at all clear that a CAM opt-out could be implemented without undue administrative burden.~~

~~After considering comments from parties, we find the record insufficient to resolve these questions, and therefore do not adopt an opt-out at this time. We will not rule out consideration of a CAM opt-out at a future date However, we have considered parties' positions on more than one occasion, and declined to adopt a CAM opt-out. Therefore, we are disinclined to relitigate this issue in the future unless all or nearly all impacted parties can agree on a specific, detailed and implementable proposal, or there are significant changed circumstances.~~

FOF

48. AReM's driving peak/decreasing load CAM proposal is ~~in~~consistent with the principle that each customer must pay their fair share for the benefits that flow to them from the new generation.

49. AReM's two-step/six criteria framework for CAM allocation imposes additional requirements designed to limit CAM allocation, ~~but does not~~ and improves on the fairness of the current allocation.

50. AReM's proposal to levelize the annual revenue requirement would result in bundled and unbundled customers ~~over~~paying for ~~the depreciated value of the generating asset capacity, while non-IOU customers would have paid less than their fair~~ equitable shares of the full value of the asset's capacity value.

51. The record does not provide an adequate basis upon which to comprehensively consider and adopt any potential changes to the auction mechanism. Therefore, workshops should be scheduled to address this issue more thoroughly.

~~52. In AReM's CAM opt-out proposal, it is unclear how AReM's five-year contract term/project life requirement would adequately ensure investment in new resources.~~

53. ~~It is not clear that a~~ A CAM opt-out could be implemented without undue administrative burden.

COL

17. The cost allocation mechanism established in D.06-07-029 and refined in D.07-09-04, D.08-09-012 and D.11-05-005 ~~remains reasonable for application in this proceeding without~~ requires significant modification to comply with the requirements of SB 695 and SB 790..

19. The record is ~~in~~sufficient to resolve outstanding questions about a CAM opt-out at this time.

OP

Add new OP 13 as follows and renumber the current OP 13 and OP 14 sequentially:

13. The CAM methodology and CAM opt-out changes proposed by AReM, DACC, and MEA shall be adopted. The auction proposals shall be analyzed in workshops to be scheduled by the Energy Division within the next 90 days.

Option 2:

Alternatively, in the event the Commission is unwilling to make the changes recommended above in Option 1 to adopt the CAM-related proposals recommended by AReM, DACC and MEA, then AReM, DACC, and MEA recommend that Section 9 of the PD should be eliminated in its entirety and replaced with the following:

9. Cost Allocation Methodology (CAM)

The Scoping Memo posed three questions related to the CAM:

(1) How should the costs of any additional local reliability needs be allocated among LSEs in light of the CAM?

(2) Should the CAM be modified at this time?

(3) Should LSEs be able to opt-out of the CAM, and if so, what should the requirements be to permit such an opt-out?

In addition to the questions posed by the Commission, SSJID raised specific questions regarding its classification as a large municipalization and the CAM's application in its particular case. SSJID also questioned whether the CAM applies to municipal departing load in general. The Commission notes that on December 18, 2012, a Petition for Rulemaking was filed by AReM,

DACC, MEA and numerous other parties ("Petition").[39] Specifically, the Petition asks the Commission, "to review and reform existing cost allocation practices, as well as the mechanisms used to determine non-bypassable charges imposed on departing load customers in accordance with the directives contained in Senate Bill ("SB") 790."[40] As P.12-12-010 will become the proceeding in which CAM and cost subsidization issues are examined in detail, the Commission chooses to defer action on the CAM proposals under consideration in this LTPP proceeding and directs that the new docket will exclusively consider and resolve issues related to the CAM and related topics and that the evidence provided in this proceeding shall be incorporated into the record of that new proceeding.

FOF

~~48. AReM's driving peak/decreasing load CAM proposal is inconsistent with the principle that each customer must pay their fair share for the benefits that flow to them from the new generation.~~

49. AReM's two-step/six criteria framework for CAM allocation ~~imposes additional requirements designed to limit CAM allocation, but does not~~ and ~~improves~~ on the fairness of the ~~current allocation~~ can be examined in P.12-12-010 as it will become the proceeding in which CAM and cost subsidization issues are examined in detail.

~~50. AReM's proposal to levelize the annual revenue requirement would result in bundled customers overpaying for the depreciated value of the generating asset capacity, while non-IOU customers would have paid less than their fair share of the full value of the asset's capacity value.~~

51. ~~The record does not provide an adequate basis upon which to comprehensively consider and adopt any potential changes to the auction mechanism.~~ The record established herein on potential changes to the auction mechanism can be examined in P.12-12-010 as it will become the proceeding in which CAM and cost subsidization issues are to be examined in detail.

~~52. In AReM's CAM opt-out proposal, it is unclear how AReM's five-year contract term/project life requirement would adequately ensure investment in new resources.~~

~~53. It is not clear that a CAM opt-out could be implemented without undue administrative burden.~~

COL

17. The cost allocation mechanism established in D.06-07-029 and refined in D.07-09-04, D.08-09-012 and D.11-05-005 ~~remains reasonable for application in this proceeding without~~ requires significant modification to comply with the requirements of SB 695 and SB 790..

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[39] *See*, Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5 of Marin Energy Authority, Alliance for Retail Energy Markets, City and County of Santa Cruz, Climate Protection Campaign, Constellation NewEnergy, Inc., Direct Access Customer Coalition, Direct Energy, LLC, Energy Users Forum, IGS Energy, Retail Energy Supply Association, Sam's West, Inc., Shell Energy North America (US), L.P., South San Joaquin Irrigation District, Texas Retail Energy, LLC, and Wal-Mart Stores, Inc.

[40] Petition, at p. 2.

19. The record ~~is insufficient to resolve outstanding questions about a CAM opt-out at this time~~ in this proceeding shall be incorporated into the record of P.12-12-010 which will exclusively consider and resolve issues related to the CAM and related topics.

OP

Add new OP 13 as follows and renumber the current OP 13 and OP 14 sequentially:

13. The CAM methodology record created herein shall be incorporated into the record of P.12-12-010 which will exclusively consider and resolve issues related to the CAM and related topics.