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)

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

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

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SUMMARY OF RECOMMENDATIONS

The treatment of CAM concerns by the PD is unfair because it disregards relevant statute, creates significant uncertainty and fails to address meaningfully the proposals set forth by the entities which are directly impacted by CAM. There is an urgent need to provide guidance on when CAM is appropriate and the criterion for when a Load-Serving Entity ("LSE") may opt out. The Alliance for Retail Energy Markets ("AReM"), the Direct Access Customer Coalition ("DACC") and the Marin Energy Authority ("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 was included in Attachment A to the January 14, 2013 opening comments of AReM, DACC, and MEA.
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 was also included in Attachment A to the AReM, DACC and MEA opening comments.

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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[1] ("AReM"), the Direct Access Customer Coalition[2] ("DACC") and the Marin Energy Authority[3] ("MEA") respectfully submit these joint reply comments on the December 21, 2012, proposed "Decision Authorizing Long Term Procurement for Local Capacity Requirements" ("PD") of Administrative Law Judge David M. Gamson in Track 1 of the Long-Term Procurement Plan ("LTPP") proceeding.

I. Executive Summary

It is notable that the preponderance of the PD focuses on the local capacity requirements for SCE, while few parties even offered opening comments that address Section 9 of the PD pertaining to the Cost Allocation Mechanism ("CAM") discussion and findings. The City and County of San Francisco expressed opposition to the PD's findings and support for the recommendations of AReM, DACC, and MEA; the Division of Ratepayer Advocates ("DRA") and Pacific Gas & Electric Company ("PG&E") offered brief support for the PD's CAM findings; The Utility Reform Network said simply that the AReM, DACC and MEA proposals were correctly rejected; San Diego Gas & Electric Company ("SDG&E") noted that the PD dealt

[1] AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California's direct access ("DA") 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.

with the subject but then offered no opinions on the topic;[4] and Southern California Edison ("SCE") did not mention CAM at all.

This dearth of comments and active discussion of the issue is symptomatic of the short shrift given the issue in the PD, which takes several pages to recite the history of the CAM and the AReM, DACC, and MEA proposals but then offers limited discussion and sparse rationales for their rejection. The PD fails to reflect that no other parties made proposals dealing with the CAM and that the discussion, such as it was, consisted solely of AReM, DACC and MEA offering well-reasoned, thoughtful proposals and those parties in opposition responding with general statements regarding fairness without supportive rationale or evidence, and offering no concrete proposals of their own. Specifically, the one-sided "fairness" perspective of the opponents utterly fails to incorporate any element of "fairness" from the perspective of direct access ("DA") or community choice aggregation ("CCA") suppliers and their customers and, as a result, is blatantly *unfair* when one considers that failing to restrict the application of CAM erodes, and over time, will eliminate any opportunity for DA and CCA suppliers to manage resource adequacy ("RA") procurement on behalf of their customers. In short, the end game from this PD is utility procurement dictating the long-term resource portfolios of their competitors – an outcome in direct conflict with Senate Bills ("SB") 790 and 695, which envisioned and expanded competitive retail choice markets, and Assembly Bill 57, which obligated the utilities to procure long term to meet the needs of their bundled customers.

The PD's one-sided review and discussion of the CAM-related issues, and the lack of clarity and market uncertainty that the adoption of the PD would perpetuate with respect to when CAM should and *SHOULD NOT* be applied, consistent with applicable statutes cannot be allowed to stand. And therefore, first and foremost, AReM, MEA and DACC urge the Commission to recognize the ample evidentiary record provided by the testimony offered by AReM, MEA and DACC, and modify the PD to adopt their proposals.[5] Alternatively, the Commission should adopt the alternative proposal set forth in AReM, MEA, and DACC's opening comments to move the evidentiary record on the CAM related issues to the proceeding

[44] SDG&E merely observes without comment that the PD "declines to adopt proposed changes to the Cost Allocation Mechanism ("CAM") approved in Decisions ("D.") 06-07-029, D.07-09-044, D.08-09-012 and D.11-05-005." SDG&E Opening Comments, at p. 1.

[5] See, opening comments of AReM, DACC and MEA, R.12-04-014, January 14, 2013, Attachment A.

requested in Petition 12-12-010,[6] so that there can be further reasoned discussion of the issues in order to reach a resolution that serves the interests of as many parties as possible.

II. DRA Recites the PD Findings without Any Attempt to Explore the Implications of Those Conclusions

DRA states that, "[t]he PD would continue the current Commission policy of allocating the costs and benefits of new generation to meet LCR need in an investor-owned utility's (IOU) service area to all benefiting customers in the IOU's service territory, including Community Choice Aggregation (CCA), and Direct Access (DA) customers, and bundled customers."[7] However, DRA makes no effort to explain how the Commission is to know when all customers benefit and what those benefits are. The PD offers no criteria or quantification and DRA joins in this omission, perpetuating the stark absence of criteria that will allow DA and CCA suppliers to manage RA procurement on behalf of their customers without fear that their commitments will be rendered valueless by the imposition of utility procurement on their behalf. DRA also observes that "the PD correctly notes that the retirement of existing resources creates the need for new resources to serve customers that may not be driving increases."[8] Yet DRA fails to explore the fact that the existing resources served solely the needs of bundled customers and that the replacement would likely do so as well. Moreover, DRA fails to note that the PDs' imposition of CAM on customers "that may not be driving increases" directly conflicts with the Commission's cost causation policy – a policy strongly supported by DRA over the years.[9] In short, there is a total lack of any sort of in-depth inquiry by DRA, as it merely recites with favor the PD's conclusions because it leads to lower costs for DRA's constituency of bundled customers who benefit from subsidization by DA and CCA customers.

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[6] Petition for Rulemaking 12-12-010 was filed by a wide range of petitioners and supporters including CCAs, local governments, universities, schools, environmental groups, direct access customers, and electric service providers to institute a rulemaking and investigation into the issues of cost allocation, cross-subsidization and non-bypassable charges as set forth in Senate Bill 790 and in the Petition.

[7] DRA Opening Comments, at p. 12.

[8] Id at p. 13.

[9] *See, e.g.* December 26, 2012, *Comments of the Division of Ratepayer Advocates on Resource Adequacy and Flexible Capacity Procurement Joint Parties' Proposal"* at p. 8 in, R.11-10-023: "Ideally, flexible capacity procurement obligations would be based on cost causation principles." *See, also* April 11, 2012 *Comments of the Division of Ratepayer Advocates on Phase I Workshop Issues*, at p. 7 in R.11-10-023: "DRA generally supports the principle whereby all LSEs should face costs consistent with cost causation."

III. PG&E Simply Seeks to See Its Competitors' Costs Increased.

PG&E's discussion of the CAM is remarkably similar to that of DRA, as the utility presents an entirely superficial examination of the issues associated with CAM. For example, PG&E states that, "[a]ll benefitting customers should pay their fair share of reliability costs."[10] Yet nowhere does PG&E make any effort to define what is meant by the phrases "benefitting customer" or "fair share" and therefore also perpetuates the procurement uncertainty that an unfettered and/or *ad hoc* approach to the application of CAM creates for DA and CCA suppliers. More importantly, PG&E casts the "fairness" argument from the same narrow perspective of bundled customers only, *i.e.,* an outcome that provides bundled customers with a subsidy from DA and CCA customers may seem "fair" if the unfair impact of that the subsidy has on DA and CCA suppliers is ignored, as is the case in the PD and in PG&E's argument.

IV. Neither DRA nor PG&E Note the PD's Omission of Any Discussion of Senate Bill 790

In their joint testimony and briefs, AReM, DACC and MEA have stressed the importance of SB 790,[11] yet the PD is almost entirely devoid of any discussion of this hugely relevant legislation. The PD states simply, at p. 96, that "SB 790 in 2011 codified the Commission requirement that the costs to ratepayers for CAM procurement are allocated to ratepayers in a 'fair and equitable' manner." Significantly, SB 790 added Public Utilities ("P.U.") Code 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 requirement to P.U. Code 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 and a CAM opt-out program is implemented by the Commission. Further, the reasonableness in calculating CAM is mandated 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

[10] PG&E Opening Comments, at p. 2.

[11] See, for example, AReM, DACC, and MEA Opening Testimony, Exhibit AReM-1, R.12-03-014, June 25, 2012, pp. 4-5, 9, 14-20, 27, 29, 48, 53, 55, and 65.

> receive electric service from the electrical corporation, a community choice aggregator, or an electric service provider. (Emphasis added.)

Yet this highly significant legislation is passed over as if it had no significance in the analysis of the CAM issue. The PD is therefore seriously legally flawed.

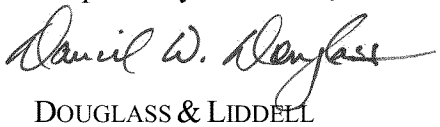
V. The PD Fails to Consider the Long-Term Ramifications of its Findings

The PD's findings with regard to the CAM are sadly short-sighted as they ignore the critical long-term issue of whether the unfettered growth of CAM will undermine both CCA and DA. AReM, DACC, and MEA have noted the 7,000 MW approved to date for CAM treatment.[12] With its new authorization for SCE, if those investments are afforded CAM treatment, the PD would increase that amount by over 25% and if CAISO, and SCE are successful in having the PD's authorization increased, that amount will increase by about 30%. It does not take a crystal ball to foresee that the increasing imposition of utility costs on their competitors will end with DA and CCA being rendered uneconomic, customers returning to bundled service and the competitive check on the utilities' actions being lost again. Effectively, the Commission is drawing lines in this PD that are on the side of monopoly, one-size-fits-all markets with no concern for the viability of competitive alternatives.

VI. Conclusion

While AReM, DACC, and MEA believe that the PD should be modified to adopt its proposals, an alternative is for the Commission to determine that the proposals need further vetting and that the proceeding to be established pursuant to the P.12-12-010 is an appropriate forum for doing so. AReM, DACC, and MEA thank the Commission for its attention to the discussion herein.

Respectfully submitted,



DOUGLASS & LIDDELL
Attorneys for the

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