

**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)**

**RESPONSE OF  
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)  
TO THE MARIN ENERGY AUTHORITY'S  
APPLICATION FOR REHEARING  
OF DECISION 13-02-015**

CHARLES R. MIDDLEKAUFF  
MARK R. HUFFMAN

Pacific Gas and Electric Company  
77 Beale Street, B30A-3147  
San Francisco, CA 94105  
Telephone: (415) 973-3842  
Facsimile: (415) 973-0516  
E-Mail: MRH2@pge.com

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Attorneys for  
PACIFIC GAS AND ELECTRIC COMPANY

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Pursuant to Rule 16.1(d) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E") provides this response to the Marin Energy Authority's Application for Rehearing of Decision 13 -02-015 Authorizing Long-Term Procurement For Local Capacity Requirements ("MEA Application for Rehearing").

The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously. (Rule 16.1(c), Commission's Rules of Practice and Procedure). An application for rehearing is required to set forth specifically the grounds on which the applicant considers the decision to be unlawful or erroneous. (*Id.*) The MEA Application for Rehearing does not identify any legal error in D.13 -02-015 and therefore should be denied.

**I. BACKGROUND.**

**A. Description of the Cost Allocation Method ("CAM") and the CAM Questions Addressed In D.13-02-015.**

In its Application for Rehearing MEA raises questions, concerns, and objections about the "Cost Allocation Method" ("CAM") first adopted by the Commission in D.06-07-029. D.13-02-015 provides a brief description of CAM.

D.06-07-029 in the 2006 long-term procurement proceeding decision adopted the CAM, which allows the costs and benefits of new generation to be shared by all benefiting customers in an IOU's [Investor-Owned Utility's] service territory. The Commission designated IOUs to procure the new generation through long-term PPAs [Power Purchase Agreements], and the rights to the capacity were allocated among all LSEs [Load Serving Entities] in the IOU's service territory. The allocated capacity rights can be applied toward each LSE's RA [Resource Adequacy] requirements. In exchange for those benefits, the LSEs' customers – termed “benefitting customers” – pay for the net cost of the capacity.

The basic framework for the CAM was set forth in D.06-07-029 as follows: The IOU would contract with an Independent Evaluator to oversee an RFO [Request for Offers] for new resource contracts. At the conclusion of the RFO, the IOU would sign a long-term contract with the generator of a new resource. The IOU would seek contract approval from the Commission, and at that time, select whether or not it intends for the CAM to apply to the contract. The Commission's decision on the IOU's application determines the applicable CAM based on allocating the appropriate net capacity costs to all benefiting customers in the IOU service area. (D.13-02-015, pp. 98-99 (footnotes omitted).)

As the Commission notes, CAM has been modified in subsequent Commission decisions. (D.13-02-015, p. 99.) D.13-02-015 also notes that legislation has been adopted relating to CAM. (D.13-02-015, pp. 99-100.)

Finally, D.13-02-015 notes that three questions related to CAM were at issue in the proceeding:

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? (D.13-02-015, p. 101.)

The first question, in essence, is whether CAM should be applied to any resources required to be procured as a part of this proceeding.

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**B. Overview of MEA’s Challenges.**

In its Application for Rehearing , MEA makes it clear t hat it is not challenging D.13 -02-015’s answer to the first question, should CAM be applied to any resources required to be procured as a part of this proceeding. MEA states “it is for those customers [affected by the Los Angeles Basin generation resources mandated in the decision] to raise the issue of whether or not the resource as set forth therein would in fact comply with the requirements of CAM. MEA does not raise that issue herein. . . .” (MEA Application for Rehearing, p. 3.) Later in its pleadi ng MEA reinforces this point, stating “MEA does not take a position on the CAM determinations made in this proceeding.” (MEA Application for Rehearing, p. 6.)

In D.13-02-015, the Commission declined to make any changes to CAM in response to the second and third questions. MEA takes issue with D.13-02-015 on these items. However, as explained in more detail in the following sections, MEA has identified no legal error in D.13 -02-015, and so MEA’s Application for Rehearing should be denied.

**II. MEA HAS NOT IDENT IFIED ANY LEGAL ERRO R IN D.13 -02-015, AND SO MEA’S APPLICATION FOR REHEARING SHOULD BE DENIED.**

MEA describes the four parts of its Application for Rehearing as follows:

1. A request for clarification of the decision;
2. An analysis of the legal errors in the decision;
3. An analysis of the policy issues raised by the decision; and
4. Proposed changes to the decision to make it lawful from MEA’s perspective. (MEA Application for Rehearing, p. 2.)

Each of these sections of MEA’s Application for Rehearing is discussed below. None show legal error in D.13-02-015, and none justify any modification to the decision. Therefore, MEA’s Application for Rehearing should be denied.

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**A. D.13-02-015's Discussion of CAM Opt -Out is Applicable to MEA; the Commission Should Deny MEA's Request That the Decision be "Clarified" To Say That It Does Not.**

D.13-02-015 rejects the proposals of some parties to the proceeding, including MEA, to include an "opt-out" provision in CAM. (D.13-02-105, pp. 110-12.) Further, D.13-02-015 states that "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." (D.13-02-015, p. 112.)

In the first substantive part of its Application for Rehearing (Section II), MEA asks the Commission to state that the CAM opt -out provisions of the decision are policy determinations which apply only to service territories in southern California. ( See, MEA Application for Rehearing, pp. 2 -3.) However, the "CAM opt -out" policy issue was not litigated based on any limitation that the outcome would be applicable only to southern California service territories. There is nothing in the Commission's CAM opt -out policy determination that would make it applicable to service territories in southern California but not northern California. When it identified the issue as within the scope of the proceeding, the Commission did not limit the applicability of the outcome of the issue to southern California service territories.

The only basis MEA offers for its position is that the identified need for new resources was only found for southern California. However, nothing in the proceeding linked the applicability of the policy determinations regarding CAM to only those service territories for which a local need was identified in the proceeding.

In short, MEA has offered no reasoned justification for its requested "clarification" that the decision's CAM opt -out determination does not apply to MEA, and so its request to modify the decision should be rejected.

**B. MEA Has Not Identified Any Legal Errors in D.13-02-015.**

In the second substantive part of its Application for Rehearing (Section III), MEA asserts that the Commission made legal errors in D.13-02-015.

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As noted above, MEA is not challenging the Commission's determination to apply CAM to the resources that will be procured to meet the local need in southern California identified in D.13-02-015. MEA is asserting that the Commission acted unlawfully by deciding not to modify CAM. Contrary to MEA's assertions, the Commission did not commit legal error.

**1. MEA Has Shown No Legal Error Relating to the Requirement That the Commission is to Ensure That CAM Resources Meet a Local or System Reliability Need in a Manner That Benefits All Customers of the Electrical Corporation.**

MEA raises the question of whether the Commission has met its obligation to ensure that CAM resources meet a local or system area reliability need in a manner that benefits all customers of the electrical corporation. (MEA Application for Rehearing, pp. 6-8.) MEA argues that "the Commission must set criteria which provide guidance to all LSEs and stakeholders on what resources are or are not CAM -eligible." (MEA Application for Rehearing, p. 8.) The Commission has met its obligations, and no modifications of D.13-02-015 are required.

MEA has made it clear that it is not taking issue with the Commission's determinations with respect to the resources to be procured as a result of this decision. So when MEA asserts that "the Commission must determine the criteria for when CAM does or does not apply" (MEA Application for Rehearing, p. 6), it is not alleging that the Commission applied CAM unlawfully with respect to the resources to be procured as a result of this proceeding.

What MEA is arguing is that the Commission was obligated, in D.13 -02-015, to modify CAM in some way "to ensure that resources meet a local or system area reliability need in a manner that benefits all customers of the electrical corporation" whenever CAM is applied in the future.

No such modification is required or appropriate. The Commission must make the required determination when the Commission applies CAM to a particular resource. MEA has not taken issue with the Commission's determination that it is appropriate to apply CAM to the resources required to be obtained as a result of this proceeding. If and when the Commission determines to apply CAM to another resource in the future, MEA will have an opportunity at that

time to raise any concern it might have that the Commission has not ensured that CAM treatment is appropriate for the resource in question.

In summary, contrary to MEA’s assertion, the requirement that the Commission “ensure that CAM resources meet a local or system area reliability need in a manner that benefits all customers of the electrical corporation” does not require the Commission to make any modifications to CAM at this time.

**2. MEA Has Shown No Legal Error Relating to the Requirement That the Allocation of CAM Costs Be Fair and Equitable.**

MEA raises the question of whether the Commission has met its obligation to allocate costs for CAM procurement to ratepayers in a fair and equitable manner. (MEA Application for Rehearing, pp. 9-10.)

MEA has made it clear that it is not taking issue with the Commission’s determinations with respect to the resources to be procured as a result of this decision. So when MEA asserts that the Commission must ensure that CAM costs are allocated in a fair and equitable manner, it is not alleging that the Commission applied CAM unlawfully with respect to the resources to be procured as a result of this proceeding.

While MEA does not challenge the Commission’s determination in this proceeding, it does describe the Commission’s conclusion that retirement of existing resources can create need as “illogical.” (MEA Application for Rehearing, p. 9.) MEA is simply reasserting the position it put forward in the proceeding, which the Commission then rejected. The Commission’s conclusion that “the retirement of existing resources creates the need for new resources to serve customers that may not be driving increases” (D.13 -02-015, p. 106) is well-reasoned. Contrary to MEA’s position, load growth is not the only driver of the need for new resources. The Commission’s determination is not illogical, and does not constitute legal error.

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**3. D.13-02-105's Rejection of CAM Opt -Out Proposals Does Not Constitute Legal Error.**

MEA asserts that the failure to provide a CAM opt -out for MEA is unlawful. (MEA Application for Rehearing, pp. 10 -11.) However, MEA concedes that “in some circumstances, CAM may be appropriate.” (MEA Application for Rehearing, p. 10.) Further, there is no statutory language that requires a CAM opt-out. Finally, statutory language clearly contemplates that under appropriate circumstances CAM may be applied.

In short, there is simply nothing in the statutes that requires the inclusion of an opt -out mechanism in CAM. Therefore, D.13 -02-015 did not commit legal error by declining to adopt parties' opt-out proposals.

**C. D.13-02-015 Should Not Be Modified in Response to the Policy Arguments MEA Puts Forth in Its Application for Rehearing.**

In the third substantive part of its Application for Rehearing (Section IV ), MEA raises several policy issues. MEA asserts that CAM favors IOUs over Community Choice Aggregators (“CCAs”), that it creates regulatory uncertainty for CCAs, that CCAs are not privy to the pricing of the resources that receive CAM treatment, and that C AM policy should encourage responsible and efficient procurement. (MEA Application for Rehearing, pp. 12-14.)

An application for rehearing is not the appropriate vehicle to reargue policy issues. Further, MEA does not propose specific modifications to D. 13-02-015 relating to these policy issues. Therefore, no modifications to D.13 -02-015 are necessary or appropriate in response to the arguments MEA raises in this section of its Application for Rehearing.

**D. The Specific Modifications to D.13 -02-015 Proposed by M EA Are Not Justified, and Should Be Rejected.**

In the fourth substantive part of its Application for Rehearing (Section V), MEA proposes specific modifications to D.13 -02-015 based on the arguments presented earlier in its pleading. As discussed above, MEA has not demonstrated any legal error in D.13 -02-015. Therefore, the specific changes that MEA proposes to the decision should not be adopted.

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**III. CONCLUSION.**

For the foregoing reasons, PG&E respectfully requests that the MEA Application for Rehearing be denied.

DATED: April 1, 2013

Respectfully Submitted,

CHARLES R. MIDDLEKAUFF  
MARK R. HUFFMAN

By:           /s/ Mark R. Huffman            
**MARK R. HUFFMAN**

Pacific Gas and Electric Company  
77 Beale Street, B30A-3147  
San Francisco, CA 94105  
Telephone: (415) 973-3842  
Facsimile: (415) 973-0516  
E-Mail: MRH2@pge.com

Attorneys for  
PACIFIC GAS AND ELECTRIC COMPANY