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)

RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) TO APPLICATION FOR REHEARING OF DECISION 13-02-015

AIMEE M. SMITH

101 Ash Street, HQ-12
San Diego, California 92101
Telephone: (619) 699-5042
Facsimile: (619) 699-5027
amsmith@semprautilities.com

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

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I. INTRODUCTION

Pursuant to Rule 16.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), San Diego Gas & Electric Company ("SDG&E") hereby submits this response to the application for rehearing ("AFR") of Decision ("D.") 13-02-015 (the "Decision") submitted by the Marin Energy Authority ("MEA") on March 15, 2013.

The Decision, *inter alia*, rejects modifications to the Cost Allocation Mechanism ("CAM") established in D.06-07-029, *et seq.*, that were proposed jointly by MEA, the Alliance for Retail Energy Markets ("AReM") and the Direct Access Customer Coalition ("DACC") in Track 1 of the instant proceeding.[1/] As is discussed in more detail below, MEA fails to identify legal error in the Decision. MEA instead repeats the arguments in favor of the CAM modifications proposed by MEA/AReM/DACC in Track 1 and asks the Commission to re-weigh the record evidence in its favor. The Commission considered and properly rejected the arguments presented in the AFR in adopting D.13-

[1/] The CAM established in D.06-07-029 was subsequently clarified and amended by the Commission in D.07-09-044, D.08-09-012 and D.11-05-005.

02-015 and need not revisit them here. MEA has failed to demonstrate that the Decision is unlawful or erroneous.[2/] Accordingly, good cause for granting rehearing has not been shown and the AFR should be rejected.

II.
THE AFR FAILS TO IDENTIFY ERRORS THAT MERIT REHEARING OF D.13-02-015

Public Utilities Code § 1732 requires rehearing applicants to "set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful."[3/] Likewise, Rule 16.1(c) of the Commission's Rules of Practice and Procedure requires that "[a]pplications for rehearing shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law." The Commission has made clear that "[a]n application for rehearing is not a vehicle for relitigation; rather, the purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."[4/] It has declared that a party's "attempt to relitigate the position it lost does not support an allegation of legal error."[5/]

MEA asserts in the AFR that the Commission's adoption of D.13-02-015 violates Public Utilities Code § 365.1(c)(2)(B) and Senate Bill ("SB") 790. As discussed below, these claims lack merit. MEA also presents various policy arguments "in order for the Commission to understand the policy implications of CAM and CAM opt-out."[6/] As noted above, however, the purpose of an application for rehearing is to alert the

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[2/] *See* Rule 16.1.
[3/] All statutory references herein are to the Public Utilities Code unless otherwise noted.
[4/] D.10-12-064, *mimeo*, p. 11 (internal citation omitted).
[5/] D.09-10-029, *mimeo*, p. 3.
[6/] AFR, p. 12.

Commission to the existence of *legal* error.[7/] Policy arguments are not relevant to the question of the lawfulness of a Commission action. Hence, inclusion of such arguments in an application for rehearing is improper. Accordingly, the policy arguments presented by MEA in the AFR are inapposite and may not be considered by the Commission in determining whether to grant the AFR.

A. The Decision Complies with § 365.1(c)(2(B)

In arguing that the Decision violates § 365.1(c)(2)(B), MEA mischaracterizes the determinations made by the Commission and recycles arguments already considered by the Commission and rejected in the Decision. Under § 365.1(c)(2)(A)-(B), upon a Commission determination that new generation is required to meet local or system area reliability needs for the benefit of all customers in an IOU's service area, the net capacity costs for the new capacity must be allocated in a fair and equitable manner to all benefitting customers, including direct access ("DA"), community choice aggregator ("CCA") and bundled load customers. MEA's challenge to the Decision focuses on this concept of "benefitting customers," and the Commission's determination regarding the customer benefit conferred by IOU procurement of generation resources to meet system or local area reliability needs.

In Track 1 of the proceeding, MEA/AReM/DACC proposed a modified CAM framework based upon a narrow definition of "benefitting customer" that would have greatly restricted allocation of costs through the CAM. The proposed approach involved a two-step process for identifying "benefitting customers" and allocating cost through the CAM. The first step would have required the Commission to determine the megawatts of unmet need that could not be attributed to any specific load-serving entity ("LSE"), and

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[7/] *See* D.10-12-064, *mimeo*, p. 11.

to then issue a decision identifying the megawatt amount of unmet need potentially subject to CAM procurement and the time-frame in which the need occurs.[8/] The second step would have required IOU submittal of a CAM application and Commission review based on various criteria proposed by MEA/AReM/DACC.[9/] As the Decision notes, MEA/AReM/DACC presented various arguments in favor of their joint proposal:

> AReM asserts that the Commission's goal should be to minimize CAM procurement. AReM testified that it is only fair to allocate CAM costs when the need creating the costs can be attributed to all customers, and not solely to IOU bundled load. To that end, AReM maintains that the Commission must evaluate the characteristics of the load served by the IOUs versus the characteristics of the load served by the other LSEs in the IOU service area to determine the different rates at which they grow. If this analysis finds that bundled customer load is driving the peak or decreasing the system load factor, then AReM contends bundled customers should pay for the resources necessary to meet that need.
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> Further, AReM states that per its obligation under § 454.5, the Commission should ensure that CAM procurement is needed to meet a specified reliability need as defined by § 365.1(c)(2)(B). AReM contends that this means that the reliability need must be incremental to the needs associated with LSEs. For example, AReM argues that if a generation plant that "primarily" served bundled load retired or shut down and the IOU filed for approval for CAM procurement to replace the unit, the Commission should reject this application. According to AReM, while "incidental reliability benefits [from the replacement unit] would likely accrue to '*all*' customers, bundled customers would benefit disproportionately more, because the customers of other LSEs would subsidize their '*unmet needs*.' Therefore, AReM reasons, CAM procurement should not be authorized.[10/]

[8/] AReM/DACC/MEA/Mara, Exh. AReM-1, pp. 32-33.
[9/] *Id.* at p. 33.
[10/] D.13-02-015, *mimeo,* p. 102.

The CAM modifications proposed by MEA/AReM/DACC were roundly criticized and received support from no party to the proceeding.[11/] Parties, including SDG&E, addressed the inherent and significant benefit conferred on *all* customers in the IOU's distribution service territory by Commission authorization of IOU procurement to meet system or local reliability need.[12/] The Commission agreed that the MEA/AReM/DACC proposal was flawed, declaring that it "fails to recognize the interrelated nature of the electric system . . ." and that "[w]hile creating more complexity, nothing in AReM's proposal improves on the fairness of the current allocation," and rejected it.[13/]

In challenging the lawfulness of the Commission's determination, MEA argues that in order to comply with § 365.1(c)(2)(B), the Commission must base CAM eligibility on a determination that the resource meets a "special" need and confers a benefit above and beyond the "standard benefit" afforded by IOU procurement to meet system or local reliability need.[14/] As noted above, however, the Commission considered the same argument concerning "benefitting customers" presented by MEA/AReM/DACC in Track 1 – *i.e.*, that to provide a benefit and be eligible for CAM treatment the resource must be necessary to meet a specified reliability need and be incremental to the needs associated with LSEs[15/] – and found it to be without merit. The Commission rejected the narrow

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[11/] *See, e.g.*, SDG&E Track 1 Opening Brief filed September 24, 2012 ("SDG&E OB"), pp. 20-29; Southern California Edison Company Track 1 Opening Brief filed September 24, 2012 ("SCE OB"), pp. 23-29; Pacific Gas & Electric Company Track 1 Opening Brief filed September 24, 2012 ("PG&E OB"), pp. 9-17; The Utility Reform Network Track 1 Opening Brief filed September 24, 2012 ("TURN OB"), pp. 21-26; the Division of Ratepayer Advocates Track 1 Opening Brief filed September 24, 2012 ("DRA OB"), pp. 35-36; California Large Energy Consumers Association Track 1 Opening Brief filed September 24, 2012 ("CLECA OB"), p. 33.

[12/] SDG&E/Anderson, Exh. SDG&E-2.

[13/] D.13-020015, *mimeo*, pp. 106, 107.

[14/] AFR, pp. 6-8.

[15/] *See* D.13-02-015*, mimeo,* p. 102.

construction of "benefitting customer" advocated by MEA/AReM/DACC and recognized the inherent benefit conferred on all customers by IOU procurement to meet system or local reliability need.[16/]

Thus, MEA's claim that the Decision violates § 365.1(c)(2)(B) must be rejected. As explained above, a rehearing applicant must do more than merely ask the Commission to reweigh the record evidence and find in its favor. Nevertheless, that is precisely the request made by MEA. While it is plain that MEA disagrees with the determinations reached by the Commission in the Decision, the mere fact that MEA might have preferred a different outcome does not support an allegation of error. The attempt by MEA to relitigate the arguments it lost should be soundly rejected in accordance with § 1732, Rule 16.1(c) and Commission precedent.

B. The Decision Complies with SB 790

MEA claims that the Decision violates the requirement set forth in SB 790 that costs to ratepayers for CAM procurement be allocated in a "fair and equitable" manner.[17/] It asserts further that the Commission's decision not to adopt the "opt-out" proposal presented by MEA/AReM/DACC violates the requirement under SB 790 that a CCA be able to determine the generation resources used to serve its customer. MEA's claims lack merit.

With regard to the first claim, MEA argues that the Commission "has not ensured that application of CAM is 'fair and equitable' as required by P.U. Code Section 365.1(c)(2)(B)," and therefore that the requirements of SB 790 have not been met.[18/] MEA's argument is based upon the false premises that the Commission's determination

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[16/] *Id.* at pp. 106, 107.
[17/] AFR, pp. 9-10.
[18/] *Id.* at p. 9.

in the Decision regarding "benefitting customers" for purposes of § 365.1(c)(2)(A)-(B) is erroneous and fails to allocate CAM costs in a "fair and equitable" manner. As discussed above, however, the claim by MEA that the Decision violates § 365.1(c)(2)(B) is incorrect; the Commission has in fact ensured that application of CAM is "fair and equitable" as required by § 365.1(c)(2)(B), therefore the requirements of SB 790 have been met.

As additional support for its assertion that the Decision violates SB 790, MEA repeats the "driving peak/decreasing load" argument presented by MEA/AReM/DACC in Track 1. Specifically, as noted above, MEA/AReM/DACC argued in Track 1 that:

> . . . the Commission must evaluate the characteristics of the load served by the IOUs versus the characteristics of the load served by the other LSEs in the IOU service area to determine the different rates at which they grow. If this analysis finds that bundled customer load is driving the peak or decreasing the system load factor, then AReM contends bundled customers should pay for the resources necessary to meet that need.[19/]

The Commission rejected the flawed logic of this argument, noting that "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 [Energy Service Providers ("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."[20/] Nevertheless, MEA repeats this argument in the AFR, claiming that in order to make a

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[19/] D.13-02-015, *mimeo,* p. 102.
[20/] AFR, p. 106.

"benefitting customer" determination, the Commission must examine "who is driving the need for generation resources."[21/]

MEA's attempt to use the AFR as a vehicle for relitigating arguments that were previously found by the Commission to be unpersuasive is improper. While it is clear that MEA disagrees with the Commission's findings, it is equally clear that mere disagreement on a particular issue does not signify the existence of legal error. Accordingly, MEA's claim that the Decision violates the requirement set forth in SB 790 that CAM costs be allocated in a "fair and equitable" manner must be rejected.

MEA's claim that the Commission's decision not to adopt the "opt-out" proposal presented by MEA/AReM/DACC violates SB 790 must also be rejected. MEA/AReM/DACC's opt-out proposal was poorly conceived and deeply flawed, as several parties to the proceeding pointed out. Indeed, parties in addition to SDG&E that addressed the opt-out proposal were uniformly opposed to it.[22/] Even the California Large Energy Consumers Association ("CLECA"), which pointed out that it "has supported and continues to support the concept of an opt out," declared that it "does not support the opt-out proposed by AReM/DACC/MEA here."[23/] In the Decision, the Commission acknowledged some of the major shortcomings of the proposal and determined that the record did not support its adoption.[24/]

MEA does not dispute the Commission's finding that MEA/AReM/DACC's opt-out proposal is not workable. Its allegation of legal error related to the opt-out proposal is based upon the general claim, unsupported by record evidence, that the existence of the

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[21/] *Id.* at p. 9.
[22/] *See, e.g.*, DRA OB, p. 36; SCE OB, pp. 27-29; PG&E OB, pp. 14-17; TURN OB, pp. 24-26.
[23/] CLECA OB, p. 33.
[24/] D.13-02-015, *mimeo*, p. 12.

CAM interferes with CCA's procurement ability, and the failed argument, discussed above, that the Commission should "ensure that IOUs first meet the needs of their bundled loads . . . and then determine if additional resources are needed for system or local area reliability."[25/] It is clear under Rule 16.1(c) that in order to justify rehearing, MEA must demonstrate that the Commission's rejection of the specific opt-out proposal presented by MEA/AReM/DACC in Track 1 was unlawful or erroneous. The record of the proceeding supports the Commission's conclusion that the opt-out proposal would harm the public interest, and MEA has failed to cite any record evidence demonstrating otherwise or that the Commission's conclusion on this point was unlawful.

While failing to effectively cite to record evidence to support its claim of error, MEA seeks to bolster its assertion with evidence not contained within the record of the proceeding, specifically discussion of its Integrated Resource Plan ("IRP").[26/] SDG&E submits that MEA's analysis related to its IRP is flawed, but notes in any event that Rule 16.1(c) requires that an applicant for rehearing rely upon evidence contained within the record of the proceeding. Thus, MEA's reference to its IRP as support for the claims in its AFR is improper. Plainly, MEA's assertion of legal error is unsupportable. The Commission correctly concluded that adoption of the opt-out mechanism proposed by MEA/AReM/DACC was not in the public interest.

III.
THE DISCUSSION OF THE OPT-OUT PROPOSAL DOES NOT REQUIRE CLARIFICATION

MEA requests clarification as to whether the Decision's rejection of the CAM opt-out proposal "applies only to the Los Angeles Basin determinations made in the

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[25/] AFR, pp. 10-11.
[26/] *Id.* at p. 11.

decision."[27] The testimony of MEA/AReM/DACC regarding the opt-out proposal submitted during Track 1 of the proceeding makes clear that the proposal was intended to apply generally to the CAM allocation process on a statewide basis; nowhere did MEA/AReM/DACC suggest that the opt-out proposal was intended to apply solely to resources procured by Southern California Edison Company ("SCE") in the Los Angeles Basin. Indeed, the testimony submitted by MEA/AReM/ expressly states that "[t]his opt-out mechanism would apply to CAM charges imposed pursuant to D.06-07-029, D.11-12-035, or any other Commission decision that imposes a non-bypassable charge for IOU procurement."[28] It provides further that "[m]aking the opt-out prospective will eliminate any potential for ***the IOUs*** to incur stranded costs that could result if an ESP or CCA were allowed to opt-out after the CAM project was approved or operational."[29] The testimony makes clear that MEA/AReM/DACC contemplated that, if adopted, the opt-out mechanism would allow ESPs/CCAs to avoid CAM charges associated with resources procured by *any* of the three IOUs.

As noted above, the Decision rejects MEA/AReM/DACC's opt-out proposal in its entirety. Since the opt-out mechanism was proposed as a general modification to the current CAM process (*i.e.*., was not limited to the circumstance of procurement in the Los Angeles basin), the only reasonable conclusion is that in rejecting the opt-out proposal, the Decision rejects the proposal as a general proposition. There is no reasonable basis to argue that the Commission's rejection was of anything other than the proposal as it was presented by MEA/AReM/DACC. Likewise, the Decision's discussion of the Commission's future consideration of the opt-out concept is properly understood as

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[27] *Id.* at p. 2.
[28] AReM/DACC/MEA/Mara, AReM-1, p. 54.
[29] *Id.* (Emphasis added).

applying generally, rather than to the specific circumstance of future procurement in the Los Angeles basin. Thus, the Decision is sufficiently clear on this issue and MEA's claim to the contrary should be rejected.

IV.
CONCLUSION

For the reasons set forth herein, the Commission should reject the AFR filed by MEA.

Dated this 2nd day of April, 2013 in San Diego, California

Respectfully submitted,

/s/ Aimee M. Smith
AIMEE M. SMITH

101 Ash Street, HQ-12
San Diego, California 92101
Telephone: (619) 699-5042
Facsimile: (619) 699-5027
amsmith@semprautilities.com

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY