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)

COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U-902-E) IN RESPONSE TO RULING SEEKING COMMENT ON TRACK III RULES ISSUES

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I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), the *Administrative Law Judge's Ruling Seeking Comments on Track III Rules Issues* issued in the above-captioned proceeding on March 21, 2013 (the "Ruling"), and the March 28, 2013 e-mail ruling of Administrative Law Judge ("ALJ") David M. Gamson extending the comment filing deadline, San Diego Gas & Electric Company ("SDG&E") provides these comments in response to questions sets forth in the Ruling concerning issues relevant to Track III of the long term procurement plan ("LTPP") proceeding.

II. SPECIFIC TRACK III PROCUREMENT RULES AND QUESTIONS

1. Maximum and minimum limits on IOU forward purchasing of energy, capacity, fuel, and hedges

a. Should the Commission modify the Assembly Bill (AB) 57 bundled procurement guidelines to indicate minimum and maximum limits for which the three IOUs must procure for future years? If so, should these minimum and maximum limits address energy, system resource adequacy (RA), local RA, and/or flexibility?

RESPONSE:

No. With regard to energy products, minimum and maximum procurement limits are already addressed in SDG&E's bundled plan. Appendix B, Original Sheets B-1

through B-9 of SDG&E's 2012 LTPP sets forth SDG&E's hedging plan, which involves procurement of physical and financial energy products to meet percentage based hedging thresholds.[1/] The hedging plan includes guidelines establishing ranges for procurement of energy in future years. Thus, the limits contemplated in the question above are already incorporated into SDG&E's LTPP and no modification of AB 57 bundled procurement guidelines is required.

Adoption of minimum and maximum limits on forward procurement of system, local RA and/or flexibility should be addressed comprehensively as part of the ongoing RA Rulemaking.[2/] At a foundational level, SDG&E believes that *any* new forward procurement targets (or more appropriately, requirements) that look beyond the current one year-ahead RA compliance cycle must be borne by all jurisdictional load serving entities ("LSEs"), and not limited to the IOUs. Consequently, simply modifying the IOUs' bundled procurement guidelines to address forward procurement requirements as contemplated here is an incomplete tool.

b. How may the Commission best balance issues regarding departing load in any future requirements for procurement?

RESPONSE:

Departing load issues associated with multi-year forward procurement requirements should be addressed in the ongoing RA proceeding.

1/ *See also* Appendix I.

2/ Either as a separate track in the current docket addressing Local Capacity Requirements for 2014 (R.11-10-023), or in the successor docket that will address 2015 Local Capacity Requirements.

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2. Impacts of transparency on forward procurement

a. Should the Commission require the three major electric IOUs to provide more public transparency into the levels of future procurement for which each has entered into a contract? What confidentiality rules could be changed or removed? In particular how can IOUs provide visibility to the California Independent System Operator (CAISO) regarding their midterm procurement contracts?

RESPONSE:

As a threshold matter, SDG&E notes that the question of whether the confidentiality rules adopted in D.06-06-066, *et seq*., should be changed or removed is outside the scope of this proceeding. The *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* issued in instant proceeding on May 17, 2012 (the "Scoping Memo") specifically identifies 19 issues that are within the scope of Track III. This list excludes potential modification of the confidentiality rules adopted in Rulemaking ("R.") 05-06-040. Accordingly, this issue is outside the scope of Track III. Moreover, Public Utilities Code § 1708 requires that in order to amend a prior decision, the Commission must provide notice to the parties and an opportunity to be heard.[3/] While certain parties to R.05-06-040, which adopted D.0-06-066, *et seq*., are parties to the instant proceeding, many are not. Thus, consideration of proposed modifications, if any, to the Commission's existing confidentiality rules in this proceeding is improper from a procedural perspective.

If, as is suggested by Question 2.a, the focus of the inquiry is how the IOUs can provide visibility to the CAISO regarding their respective midterm procurement contracts, SDG&E submits that it is not necessary to reach the question of whether to eliminate current confidentiality protections applicable to this information. SDG&E routinely provide confidential information to the CAISO through established non-disclosure procedures and does not perceive any impediment to doing so here. SDG&E will work with the CAISO to identify what

[3/] All statutory references herein are to the Public Utilities Code unless otherwise noted.

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information regarding SDG&E's midterm procurement contracts the CAISO requires, and will provide such information to the CAISO under an appropriate non-disclosure agreement.

To the extent the Commission elects, notwithstanding the procedural concerns outlined above, to consider dismantling in the instant proceeding the protections adopted in R.05-06-040, it is clear that disclosure of the data identified in the question is statutorily prohibited. The information at issue here – contracted future procurement – is protected under §§ 454.5(g) and 583, as well as Govt. Code § 6254(k). The Commission has explained that § 583 establishes a right to confidential treatment of information otherwise protected by law.[4/] Both § 454.5(g) and Govt. Code § 6254(k) protect information related to the IOUs' contracted future procurement.

Section 454.5(g) requires the Commission to protect from disclosure market sensitive information related to a utility's procurement plan:

> The Commission shall adopt appropriate procedures to ensure the confidentiality of *any market sensitive information* submitted in an electrical corporation's proposed procurement plan or resulting from *or related to* its approved procurement plan, including, *but not limited to*, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are non-market participants shall be provided access to this information under confidentiality procedures authorized by the Commission. (Emphasis added)

The Commission has declared that information is "market sensitive" if it has "the potential to materially affect an electricity buyer's market price for electricity."[5/] If disclosed, information regarding SDG&E's contracted future procurement would provide market participants with insight into SDG&E's procurement needs, which would potentially materially affect the price paid by SDG&E ratepayers. Thus, given the strong potential that disclosure of

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[4/] *See* D.06-06-066, as amended by D.07-05-032, *mimeo*, pp. 27-30.
[5/] *See id.* at pp. 2-3, 41-42, 46-47.

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specific net open information would affect market pricing, net open information is clearly "market sensitive" procurement data that must be protected under § 454.5(g). Moreover, while § 454.5(g) focuses solely on the market sensitivity of the data at issue, and does not include a "ratepayer harm" requirement, it is clear that disclosure of information regarding SDG&E's procurement needs could ultimately result in increased cost to ratepayers. Accordingly, it is in the public interest to protect this information from disclosure.

In addition, information regarding SDG&E's contracted procurement is protected under the Public Records Act, Govt. Code § 6254(k). Under Govt. Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed.[6/] Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in pertinent part, as information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure. Since information regarding SDG&E's contracted future procurement confers independent economic value (in the form of avoided procurement costs) from not being generally known to market participants who could obtain value from its disclosure, the information is properly characterized as trade secret information and must therefore be protected under Govt. Code § 6254(k).

The protections outlined in the Commission's IOU Matrix adopted in D.06-06-066 (the "Matrix") are derived from the above statutory and other protections extended to non-public market sensitive and trade secret information.[7/] Contracted future procurement is protected, *inter alia*, under Category VI of the Matrix.[8/] Indeed, the fact that this information is protected under the Matrix is readily admitted in the question itself, which acknowledges that confidentiality

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6/ *See also* Govt. Code § 6254.7(d).
7/ *See* D.06-06-066, *mimeo*, Ordering Paragraph 1.
8/ *Id.* at Appendix 1. Category VI of the Matrix protects the utility net open position, which is the difference between contracted capacity and the forecasted need for capacity.

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rules must be "changed or removed" in order to require disclosure of this information. Plainly, the Commission's determination in D.06-06-066 that this information must be protected signifies that it is market sensitive and trade secret information that the Commission is obligated to protect from disclosure. The nature of the information at issue here, and the potential harm caused by its disclosure, has not changed since adoption of D.06-06-066, thus grounds do not exist to alter the Commission's original conclusion that this information must be protected.

Finally, information regarding SDG&E's contracted future procurement is protected by Commission General Order ("G.O.") 66-C, which operates to protect those "reports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage." Disclosure of SDG&E's contracted future procurement would place SDG&E at a significant disadvantage in future procurement negotiations. It would provide unfair negotiating leverage to counter-parties, potentially allowing them to raise prices or impose unfavorable conditions that would disadvantage SDG&E and its ratepayers. Accordingly, this data must be protected under §§ 454.5(g) and 583, and Govt. Code § 6254(k), as well as D.06-06-066, *et seq*. and G.O. 66-C.

b. How can bids and offers into request for offers (RFOs) be released publically? What other information could be released?

RESPONSE:

Please see Response to 2.a. As discussed above, this issue is outside the scope of this proceeding. Moreover, the Commission had previously found that it is statutorily obligated to protect RFO bid data from disclosure – bid information is protected under Matrix Category VIII, which provides that certain bid information becomes public after final contracts have been submitted for Commission approval, while other market sensitive bid information (*e.g.*, bid prices, cost adders, etc.) is protected for three years after the winning bidders are selected. The

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nature of bid information and the potential harm caused by its disclosure has not changed since adoption of D.06-06-066. Thus, there exists no reasonable basis for altering the Commission's determination.

Disclosure of pricing and other bid information clearly has "the potential to materially affect an electricity buyer's market price for electricity."[9/] The information also confers independent economic value (in the form of avoided costs) from not being generally known to market participants, who could obtain value from its disclosure.[10/] Accordingly, this information must be protected under Public Utilities Code §§ 454.5(g) and 583, and Govt. Code § 6254(k). In addition, disclosure of RFO bid data would provide market participants with information regarding the commercial options available to SDG&E, which would unfairly undermine SDG&E's negotiation position and could ultimately result in increased cost to ratepayers. Thus, this information is protected under G.O. 66-C. Plainly, the Commission's conclusion in R.05-06-040 that this data is market sensitive, trade secret information that must be protected from disclosure should not be disturbed.

3. Long-term contract solicitation rules

a. Should the Commission adopt a rule that explicitly indicates that existing power plants may bid upgrades or repowers into new-generation RFOs?

RESPONSE:

SDG&E does not object to allowing existing facilities to bid upgrades or repowers into new-generation RFOs.[11/] An existing facility may provide value to IOU ratepayers if it (i) has a useful life extending beyond its current contract; or (ii) is able to lengthen its useful life by upgrading or repowering various facility components. The Commission should make clear,

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9/ *See id.* at pp. 2-3, 41-42, 46-47.

10/ *See* Govt. Code § 6254(k); *see also* Evidence Code § 1060 and Civil Code § 3426.1.

11/ SDG&E's understanding of the term "repower" is that it signifies a replacement of portion(s) of the facility and/or equipment.

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however, that allowing upgrades or repowers to bid into new-generation RFOs does not change or override any additional requirements in an RFO such as locational requirements or operational characteristics.

i. How should the existing and upgraded components of the repowers be valued differently in an RFO? How can additions such as energy storage be added to existing facilities and be valued against other types of offers?

RESPONSE:

Upgrades and repower proposals do create some complexity in the evaluation, but the product they provide should be valued no differently than any other offer. SDG&E's bid analysis process is designed to assess and compare the merits of all RFO bids on an equal footing, without prejudice towards any one counterparty or product, in order to ultimately identify and shortlist the project(s) with the maximum value to SDG&E's ratepayers.[12/] A characteristic that enhances a facility's value will already be reflected in the facility's generation profile and product(s) offered and will therefore inherently be taken into account in SDG&E's bid analysis process.

The existing and upgraded components of repowered facilities should be valued in a holistic fashion as one complete, integrated facility. In a case where the facility is already under contract with the IOU and the contract specifically addresses the facility's technical components, the repowered facility should be evaluated as new and the analysis should account for the benefits of the new resource net of any attribute(s) lost as a result of the repower. If a bid merely represents an upgrade to an existing project, the evaluation must recognize that only the upgrade or increased output may qualify as to meeting a new generation need, unless the existing facility was assumed to be retired as part of the need determination. If not, the remaining portion of the

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[12/] *See* San Diego Gas & Electric Company, 2012 Long Term Procurement Plan, Appendix G.

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plant may also have value to meet other needs such as meeting local or system resource adequacy and should be evaluated accordingly.

ii. Should contracts for repowering or upgrading of facilities be restricted to the same length of contracts as new facilities? If not, please explain why there would be different contract lengths or different terms, and how these differences would be reflected in the valuation of the bids.

RESPONSE:

Contract term length for repowered or upgraded facilities should be restricted to the remaining useful life of the overall asset. It would be illogical to extend the term past this point as the facility would likely no longer be able to fulfill its contractual obligations. No change to the current process would be required in order to accurately evaluate repowered or upgraded facilities; SDG&E's current bid evaluation process accounts for differences in contract length when determining bid value.

iii. Is there any information (additional or subtracted) from the RFO or application templates that would need to be changed? Would Energy Division review the RFO differently?

RESPONSE:

The RFO application and templates do not require amendment, except to add clear definitions for the following terms: upgrade, repower, and energy storage. This would be a purely administrative change. No change to the Energy Division's current RFO review process is necessary.

iv. How should cost allocation issues be addressed?

RESPONSE:

If an upgrade or repower of an existing power plant is bid into a new-generation RFO and the Commission determines that the resource is needed to meet local or system area reliability needs for the benefit of all customers in the IOU's service area, the total capacity cost of the

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repowered or upgraded resource should be allocated to all benefitting customers through the Cost Allocation Mechanism ("CAM") established pursuant to § 365.1(c)(2). In other words, if a resource is treated as "new generation" for RFO purposes, it should be treated as "new generation" for cost allocation purposes.

v. How would bilateral negotiations for upgraded or repowered facilities be reviewed?

RESPONSE:

No change to the current review process for bilateral contracts would be necessary. Review of a bilateral contract for an upgraded or repowered facility is currently performed by comparing the bilateral contract to other price benchmarks that are reasonably contemporaneous. For example, the bilateral contract could be compared with bids from the latest RFO or with contracts that had been recently signed. As is standard practice, the review process would consider the value added by the bilateral contract, and the cost(s) and benefit(s) relative to current alternatives.

4. Specification of the rules that, if followed, would allow the IOUs to execute bundled procurement contracts without additional review by the Commission

a. Please comment on the following potential new or modified rules to ensure competitive bundled procurement transactions:

i. The IOUs must submit an advice letter or application if they follow their established AB 57 bundled procurement plan authorization, and:

1. The contract unit price is a higher than a particular percentage (such as 80%) of the CAISO Capacity Procurement Mechanism or other administratively or market established price,

2. The RFO did not attract sufficient participants, or

3. The total megawatts (MW) procurement is over a specified level of MW.

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RESPONSE:

SDG&E does not support these new rules, which violate AB 57 and are contrary to Commission precedent.[13/] The rules currently in place effectively ensure that IOU transactions are reasonable; there is no demonstrated need for the new rules proposed. Proposed Rule 3, for example, is unnecessary inasmuch as procurement limitations in the form of ratable rates are already included in SDG&E's 2012 LTPP.[14/] The proposed rules would provide no clear benefit to ratepayers, but would increase administrative burden, impose delay and create regulatory uncertainly. Accordingly, the proposed rules should be rejected.

ii. Any bilateral contract for a facility that did not make the shortlist of an RFO or an offer that has subsequently been negotiating with the utility for longer than six months since making the shortlist of an RFO must seek Commission approval through a tier III advice letter or application.

RESPONSE:

The proposal to require a bilateral contract to seek approval through the advice letter or application process if (i) the project did not make the shortlist of an RFO; or (ii) the negotiation period of the contract exceeded six months since being placed on the RFO shortlist, should be rejected. The proposed rule is arbitrary and unnecessary, and would create administrative burden. First, the proposal is predicated on the unreasonable assumption that a project's failure to make the shortlist of a prior RFO signifies that a later transaction involving the project is less likely to be in in the public interest. As a practical matter, a project's omission from an RFO shortlist can be the result of factors that do not impact on later transactions, for example the project's fit at the time of a particular RFO. This proposal would discourage developers from participating in RFOs, lest their projects become tainted with an unjustified assumption of sub-par value.

13/ *See, e.g.,* D.07-12-052, *mimeo*, pp. 171-172.
14/ *See* San Diego Gas & Electric Company 2012 Long Term Procurement Plan, Appendix I, pp. I1-I4.

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In addition, the proposal's assumption that a six-month negotiation window is standard, and that a negotiation period greater than six months should trigger additional scrutiny, is arbitrary and misguided. A contract's value to ratepayers is not a function of the period of time it takes to negotiate. Every deal is different; varying levels of transactional complexity and counter-party sophistication, evolving market conditions, etc. prevent a "one-size fits all" assumption regarding the appropriate length of time for negotiation of a contract. If adopted, this proposal would increase administrative burden and create delay, with no corresponding benefit to the public. Accordingly, the proposed rule should not be adopted.

b. What rules are needed to determine whether an IOU transaction is reasonable and therefore does not require additional review and Commission action?

RESPONSE:

Please see Response to 4.a.i. The rules currently in place are effective.

5. Changes to the Commission's adopted Cost Allocation Mechanism (CAM) per Senate Bill (SB) 695, SB 790, Decision 11-05-005 and relevant previous decisions

a. Is the CAM currently implemented in a manner that is sufficiently transparent or least cost?

RESPONSE:

Yes. Both the language of the statute and the Commission's discussion of the CAM clearly define the circumstances in which the CAM must be applied to IOU procurement. Under § 365.1(c)(2), when an IOU procures a new generation resource that is necessary to serve its distribution service territory, the cost and benefits of the capacity associated with the new resources must be shared by all "benefitting parties" located in that IOU's service territory. As the Commission made clear in D.11-05-005, application of the CAM is mandatory where the statutory conditions are met.[15/] The analysis is straightforward – if the Commission makes a

[15/] D.11-05-005, *mimeo*, p. 6.

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determination that the generation resource in question is "needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory," the costs of procuring such resource *must* be allocated through the CAM.[16/]

The Commission described the process for determining CAM applicability in D.13-02-015.[17/] The Commission makes its CAM applicability determination and evaluates least cost criteria when it considers an IOU's application for approval of a specific resource bid into an IOU solicitation. Because the Commission arrives at its determination regarding CAM applicability and satisfaction of least-cost principles through a formal, public Commission proceeding, the CAM is applied in a manner that is fully transparent.

b. Should the Commission reform the CAM energy auctions? If so, how?

RESPONSE:

The Commission has expressly acknowledged the shortcomings of energy auctions as a means of determining the "net capacity costs" of resources to be allocated through the CAM, observing that "the existing energy auction mechanism adopted in D.07-09-044 may need to be revised."[18/] Energy auctions create administrative burden and cause delay, and may not always be an effective means of minimizing net capacity costs. Thus, in addition to considering reforms to the energy auction process, the Commission should approve a non-auction methodology that can be used to determine the net capacity costs to be allocated through the CAM.

Under § 365.1(c)(2)(C), the net capacity cost to be allocated through the CAM is determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the IOU pursuant to a third-party contract or, in the case of utility-owned

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16/ *Id.* at pp. 6-7.
17/ D.13-02-015, *mimeo*, pp. 99-100.
18/ D.11-05-005, *mimeo*, p. 14.

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generation ("UOG"), the annual revenue requirement for the UOG resource. The provision emphasizes that "[a]n energy auction *shall not be required as a condition for applying this allocation*, but may be allowed as a means to establish the energy and ancillary services value of the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph . . ."[19/] SDG&E submits that an alternative and better methodology for determining net capacity costs would be one that relies on public data to calculate how the relevant resource would have operated had it been made available to the CAISO markets at cost. This data could be used to estimate market revenues and thus profits to determine the net capacity payment, thereby reducing the costs that flow through the CAM to all benefitting parties.

In previously considering application of the CAM to IOU procurement, the Commission permitted parties to establish a proxy calculation similar to the non-auction cost calculation mechanism adopted in D.07-09-044 (referred to as the "Joint Parties Proposal" or "JPP").[20/] The JPP mechanism for calculating net capacity costs was established as part of Joint Settlement Agreement adopted in D.07-09-044, which outlines the principles to be applied in energy auctions used to determine net capacity costs. Under D.07-09-044, the JPP is an alternative to

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[19/] Pub. Util. Code § 365.1(c)(2)(C) (emphasis added).

[20/] In D.10-07-045, the Commission approved a Partial Settlement Agreement ("PSA") that involved limited use of an administrative methodology similar to the JPP for determining net capacity costs. D.10-07-045, *mimeo*, pp. 43-50, Attachment A. The "Net Capacity Cost Charge" methodology proposed in the PSA:

> [D]etermines the capacity value for a project by netting the project costs with imputed energy and ancillary services revenues based upon the California Independent System Operator's day-ahead market. This net capacity cost is then allocated to benefitting customers (*e.g.*, bundled utility, Community Choice Aggregation, and direct access customers) based upon their pro-rata share of the coincident peak load. These customers are also allocated a pro-rata share of the resource adequacy ("RA") value for the resource. *Id.* at Attachment A, p.7.

The PSA explained that the "[p]arties selected this method because it has been the subject of extensive workshops, public comments and Commission review, and ultimately was approved by the Commission as a method for determining the net capacity value of a project prior to implementation of an energy auction approach." *Id.*

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energy auctions that is available where an auction is unsuccessful or has not yet occurred.[21/] Thus, the JPP is a currently-existing mechanism that has already been approved by the Commission for use in determining net capacity costs on a non-auction basis.

SDG&E proposes that the JPP (or an administrative methodology based on the JPP) be deemed to be a fully-available alternative to the use of an energy auction to determine the net capacity costs for resources subject to CAM. The Commission should eliminate the restriction that the administrative methodology may be used only if an auction is unsuccessful or has not yet occurred, and should deem the administrative methodology to be a permanently available alternative to the energy auction approach to determining net capacity costs. At the time the utility files its application, it would state its preference for which method (energy auction or administrative) would be employed to determine net capacity costs. Removing the restriction on use of the JPP/administrative method and establishing it as a fully-available non-auction mechanism for determining net capacity costs would serve the public interest inasmuch as it would provide an immediate means of addressing the Commission's concerns regarding the existing energy auction mechanism adopted in D.07-09-044.[22/]

c. How does the capacity allocation interact with other allocated costs such as energy efficiency and demand response funding?

RESPONSE:

It is not contemplated in § 356.1(c)(2) that the CAM will interact with other allocated costs such as energy efficiency ("EE") or demand response ("DR") funding. The need for resources that are eligible for CAM treatment is identified *after* consideration of all cost-effective EE and DR that can meet the need.

21/ *See* D.07-09-044, *mimeo*, p. 1, Appendix A, § IV.
22/ *See* D.11-05-005, *mimeo*, p. 14.

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d. At what stage in procurement should procurement be deemed CAM eligible, and what criteria should govern Commission decision regarding CAM allocation?

RESPONSE:

Please see response to 5.a. Under § 356.1(c)(2), when the Commission orders an IOU to procure a generation resource in order to meet system or local area reliability needs for the benefit of all customers in the IOU's distribution service territory, the costs of procuring such resource must be allocated through the CAM.[23/] As the Commission recently observed, "[t]he Commission's previously adopted criteria fairly apportion costs to customers as envisioned by past Commission and the legislature actions."[24/] Accordingly, the criteria set forth in § 356.1(c)(2) should continue to govern application of the CAM.

e. How should the Commission address flexibility in regards to the CAM? For example, should resources built in one IOU's service territory spread costs across all the California Public Utilities Commission's jurisdictional load-serving entities?

RESPONSE:

It is premature to address this issue at this time. To date, the Commission has not ordered procurement of new resources solely for flexibility. In addition, to the extent a market develops for flexibility, the service can be valued (*i.e.*, sold to the market) and any profit from flexibility services used to reduce the net capacity cost that is allowed to all benefiting customers.

f. Should the CAM rules be differentiated to best account for benefit and cost allocation among community-choice aggregators and electric-service providers, based on their different business models or portfolio of other contracts? If so, how?

RESPONSE:

No. This approach would add undue complexity to the CAM process and is not contemplated in § 356.1(c)(2).

[23/] *See, e.g.,* D.13-02-105, *mimeo*, p. 106; D.11-05-005, *mimeo*, pp. 6-7.
[24/] D.13-02-105, *mimeo*, p. 107.

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6. Energy Resource Recovery Account compliance filing requirements

a. Should the Commission require more consistency among the quarterly compliance reports (QCR) for the three major electric IOUs? If so, what areas of the QCRs currently lack consistency?

RESPONSE:

The current QCR form is the result of a collaborative effort undertaken by the Energy Division and the IOUs in 2008 to establish consistency in the IOUs' QCR reporting. As the result of this effort, a high degree of consistency currently exists between the IOUs' respective QCRs. It is important to note that due to differences in the procurement activity of the individual IOUs, some level of inconsistency between the IOUs' QCRs is to be expected. While it is SDG&E's perception that the IOUs' QCRs are consistent, it is difficult as a practical matter to determine areas of inconsistency that exist in the QCRs of the IOUs since most attachments are confidential.

b. Are any changes to information filed in QCRs necessary to ensure that IOU procurement is compliant with Commission rules?

RESPONSE:

The information currently included in the QCR ensures that IOU procurement is compliant with Commission rules. SDG&E has received no feedback identifying a concern regarding the information provided in its QCR, and does not perceive that any change to information provided is necessary to communicate its compliance.

c. Should the QCR evaluation process be moved from a quarterly evaluation to an annual, semiannual (or other term) process?

RESPONSE:

SDG&E believes that the quarterly evaluation is the best approach. A shorter time period would be overly burdensome for both the IOUs and the Commission staff responsible for

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reviewing the QCRs. A longer period between evaluations would increase the IOUs' uncertainty regarding approval of their procurement activities to an unacceptable level.

7. Refinements to the Independent Evaluator (IE) program

a. Please comment on the following proposal:

i. The rules for whom or which entity may qualify to be in the IE pool remain the same.

RESPONSE:

SDG&E supports the IE qualifications detailed in D.04-12-048 summarized below, and does not perceive a need to modify these requirements. Per D.04-12-048, an IE must:

- Be available to testify as an expert witness if required;
- Possess technical expertise that is relevant to evaluating resource solicitation power products;
- Have prior experience analyzing bid reasonableness and a range of power market derivatives;
- Be familiar with the various standard contracts and industry practices;
- Be able to evaluate all bids on a side-by-side basis;
- Make periodic presentations on findings to the IOU and its PRG;
- Reasonably coordinate with assigned ED and staff to check on the process; and
- Abide by clear conflict of interest standards.[25/]

ii. The IOUs may not limit the IE's interactions with the Commission, specifically in terms of nondisclosure agreements that restriction information sharing.

RESPONSE:

SDG&E's Nondisclosure Agreement does not restrict IE interactions with the Commission; SDG&E does not attempt in any way to restrict information-sharing between the IE and the Commission.

[25/] D.04-12-048, *mimeo*, pp. 135-137.

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iii. IEs are positioned on particular assignments through a random selection process, removing IOU influence over which IE may be assigned.

RESPONSE:

The current approach of IOUs determining IE assignments should be retained as it ensures the best fit between project characteristics and IE expertise. The proposal to randomly assign IEs rests on two faulty assumptions: (i) IE qualifications and project specifications are irrelevant when determining assignments; and (ii) IOU involvement in the selection process undermines the validity of the process and occurs without appropriate oversight.

It is typically the case that each IE in an IOU pool has expertise in a specific area. Thus, IE assignments involve determining the best match between an IE's core competencies and the project characteristics. Indeed, the Commission recognized in D.04-12-048 the importance of ensuring that IEs have the skill set necessary to perform their function, observing that "IEs should not be general observers hoping to be educated on the job."[26/] Assigning IEs to projects on a randomized basis is directly contrary to the imperative articulated in D.04-12-048 – it would result in a mismatch between IE expertise and project characteristics, to the ultimate detriment of ratepayers. In short, when assigning projects, it is critical to have a thorough understanding of the individual qualifications of each IE and the nature of the relevant project. In most cases, the IOU is in the best position to determine which of the IEs in its pool has the expertise and skills most applicable to a particular assignment.

It is clear that a randomized approach to IE assignment is unworkable inasmuch as it ignores the critical relationship between IE qualifications and project characteristics. It is equally plain that IOU involvement in the selection process *ensures* the validity of the process, rather than undermining it. SDG&E's interaction with its IEs occurs in an environment of

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[26/] Id. at p. 136.

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transparency and of independence on the part of the IE. IEs are selected for the pool with the input of SDG&E's Procurement Review Group ("PRG") and approved by the Energy Division. SDG&E maintains an open dialogue with Energy Division and will continue to respond to any requests from Energy Division staff regarding particular IE assignments. Thus, the proposal to randomly assign IEs to particular projects should be rejected.

iv. IEs may remain in the selection pool for 10 years (rather than up to 6 years), subject to evaluation every 3 years (maintain current requirement for reassessment).

RESPONSE:

SDG&E has no position at this time regarding this proposal. It reserves the right, however, to comment on this proposal in the future.

Dated this 26th of April, 2013 in San Diego, California.

Respectfully submitted,

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