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)

OPENING BRIEF OF THE DIRECT ACCESS CUSTOMER COALITION AND ALLIANCE FOR RETAIL ENERGY MARKETS ON TRACK 4 ISSUES

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

Attorney for the
DIRECT ACCESS CUSTOMER COALITION
ALLIANCE FOR RETAIL ENERGY MARKETS

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1. The obligation of Southern California Edison ("SCE") and San Diego Gas & Electric Company ("SDG&E") to replace the capacity and energy lost because of the closure of the San Onofre Nuclear Generating Station ("SONGS") to meet the current and long-term needs of their bundled utility customers.

2. The question of whether it is fair or reasonable to approve application of the Cost Allocation Mechanism ("CAM") for procurement to replace SONGS.

TABLE OF AUTHORITIES

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RECOMMENDATIONS

1. Southern California Edison ("SCE") and San Diego Gas & Electric ("SDG&E") are obligated to replace the capacity and energy lost because of the closure of the San Onofre Nuclear Generating Station ("SONGS") to meet the current and long-term needs of their bundled utility customers and the associated procurement costs must therefore be recovered from bundled customers.

2. D.13-08-023 requires the utilities to provide clear explanations of and support for their CAM proposals in applications and supporting testimony, to facilitate the development of a sufficient record on which to evaluate such proposals, a requirement with which both SCE and SDG&E have failed to comply, such that the request for CAM treatment must be rejected.

3. Any proposals by SCE and SDG&E to apply the Cost Allocation Mechanism ("CAM") to bundled procurement must be rejected as unfair, unreasonable, and inconsistent with the applicable statutes.

4. SCE's request for CAM treatment for its contingent gas-fired generation option contracts should be denied as it does not comply with the statutory requirements for how the CAM is to be calculated.

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The Direct Access Customer Coalition[1] ("DACC") and the Alliance for Retail Energy Markets[2] ("AReM") respectfully submit this joint opening brief in Track 4 of the Long-Term Procurement Plan ("LTPP") proceeding pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC") and the schedule set forth by Administrative Law Judge ("ALJ") David Gamson on November, 1, 2013 at the conclusion of hearings.

This opening brief also conforms to the directives concerning briefs that were contained in ALJ Gamson's November 4, 2013 email, which directed that, "Based solely upon the record in this proceeding, briefs should include a clear argument setting forth the party's position on what determinations the CPUC should make on the following issues." DACC/AReM initially respond herein to each of the five issues identified by ALJ Gamson.

[1] 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. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

[2] 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.

I. Response to ALJ Gamson's Questions

A. Should the CPUC authorize SCE and/or SDG&E to procure additional resources at this time for the purposes within the scope of this proceeding?

DACC/AReM take no position on whether or not SCE and SDG&E should be authorized to procure additional resources within the scope of this proceeding. DACC/AReM focus their joint attention on whether any such procurement that may be authorized should be made subject to the CAM and conclude that:

- SCE and SDG&E are obligated to procure to meet their bundled customers' needs – needs that were created as a direct result of the closure of SONGS.
- Neither SCE nor SDG&E have met the Commission's requirements for demonstrating CAM eligibility, as set forth in D.13-08-023.
- Procurement to meet bundled customer needs is not eligible for CAM treatment.
- CAM treatment for procurement to replace SONGS must be rejected as unfair, unreasonable, and inconsistent with the applicable statutes.

These conclusions are fully discussed and supported in Section II below.

B. If so, what additional procurement amounts should be authorized at this time? Please specify any calculation that leads to this position.

DACC/AReM take no position on what additional procurement amounts SCE and SDG&E should be authorized to procure at this time.

C. What additional resources, if any, should be authorized to fill procurement needs? Should there be any requirements or restrictions on procurement amounts for any specific resources or categories of resources?

DACC/AReM take no position on what additional resources, or specific resources or categories of resources, should be authorized to fill procurement needs that may be authorized at that time.

D. What process should the utilities use to fill any procurement amounts authorized at this time?

DACC/AReM take no position on what processes should be utilized by SCE and SDG&E to fill any procurement amounts authorized at this time.

E. Are there other determinations the CPUC should consider, or conditions the CPUC should impose, regarding Track 4 procurement?

Yes. The Commission should recognize that neither SCE nor SDG&E have met the burden established in D.13-08-023 to justify CAM treatment for this Track 4 procurement; in fact, both the SCE and SDG&E showings in this regard are bereft of the type of clear explanation and support that the Commission determined to be a necessary *prerequisite* to consideration of a request for CAM treatment,.

This is not surprising, since there is no justification for CAM treatment that is consistent with the applicable statutes. Specifically, CAM cannot and should not apply to utility procurement to meet the bundled customers' needs caused by the utilities' decision to close SONGS. Therefore, the Commission should reach a determination that the utilities have not demonstrated why CAM should be applied to their proposed procurement, nor is there any credible justification for doing so that would be fair, reasonable or consistent with applicable statutes, as discussed more fully in Section II below.

II. Discussion and Analysis of the Utilities' Cost Allocation Mechanism Requests and Explanation of Why They Should be Rejected.

SCE's request for Track 4 procurement authorization for 500 MW of new resources and potential contingent gas-fired generation Option Contracts, as well as the Contingent Site Development are all premised on SCE receiving CAM treatment.[3] SDG&E similarly requests

[3] SCE-1, at pp. 59-60.

CAM treatment for procurement authorization it seeks,[4] including 500-550 MW of supply-side resources, an additional 300 MW if the Commission does not approve SDG&E's Pio Pico Application,[5] and possibly another 600 MW, if the Imperial Valley-NCGen Direct Current ("DC") Regional Transmission Project does not come to fruition.[6] These requests for CAM treatment for any of these projects should be rejected for the following reasons.

A. The Utilities' Requests for CAM Treatment Fall Far Short of Commission and Statutory Requirements.

1. *SCE Premises its Request Solely on the Commission's Approval of CAM Treatment in Track 1, which did not address procurement to replace SONGS.*

SCE premised its brief and cursory request for CAM on the fact that CAM was approved in Track 1 of this proceeding, albeit for different procurement. The entirety of SCE's opening testimony on the matter spanned less than one full page of its total 64 pages of testimony.[7] What SCE seeks to do is to impermissibly conflate the CAM authorization made in Track 1 with the entirely different procurement authorization it seeks in this Track 4. As SCE points out in its testimony, the procurement authorized by the Commission in Track 1 addresses the local needs in SCE's service territory associated with the possible retirement of the Once-Through Cooling ("OTC") plants, but not the closure of SONGS.[8] As a result, the statement in SCE's testimony that, "[t]he Commission has already litigated this issue in Track 1, and found that these kinds of

[4] SDG&E-1, at pp. 12-13.

[5] Id, at p. 5, see footnote 2. SDG&E's Pio Pico application is under consideration by the Commission in A.13-06-015.

[6] SDG&E-2, at pp. 2-3.

[7] SCE-1, at pp. 59-60.

[8] SCE-1, at pp. 1-2.

procurement are eligible for CAM" is wholly incorrect.[9] Equally incorrect is SCE's rebuttal testimony statement that, "[t]he Commission should ignore the testimony of AReM/DACC and WPTF in this Track 4 as it attempts to reopen issues already resolved in D.13-02-015 on Track 1."[10]

In fact, a request for CAM treatment for SONGS replacement procurement was not resolved in Track 1 because Track 1 did not deal with either SONGS procurement or CAM treatment for SONGS replacement power, as SCE has acknowledged in its written testimony[11] and as acknowledged in the cross-examination of SCE witness Colin Cushnie:

> Q. Did that decision last February deal with the permanent closure of SONGS and the need to procure LCR in the wake of the closure decision?
>
> A. That decision dealt with the retirement of OTC facilities. It did not specifically address SONGS.[12]

Therefore, any suggestion that the CAM approval in Track 1 is sufficient grounds for CAM approval in this Track 4 is incorrect. CAM approval for a different procurement in a different Track does not justify its imposition here.

2. *SCE and SDG&E Ignore the Fact that the Commission Specified that CAM Decisions are to be Made on a Case-by-Case Basis.*

Both SCE[13] and SDG&E[14] argue that the Commission must approve CAM treatment for procurement to replace SONGS simply because it has approved CAM for similar procurement in the past. First, the applicable statute requires that CAM eligibility be determined in a

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[9] Id, at pp. 59-60.

[10] SCE-2, at p. 3.

[11] SCE-1, at pp. 1-2.

[12] Transcript ("TR"), at p. 1986.

[13] SCE-1, at p. 60.

[14] SDG&E-1, at p. 13.

Commission decision with respect to a specific contract or on a specific proposal for installing utility-owned generation.[15] Second, the Commission recently established in D.13-08-023 that it will determine on a case-by-case basis the appropriate cost allocation treatment that projects will receive. The Commission stated as follows:

> It is not only reasonable but necessary to make cost-allocation decisions on a case-by-case basis informed by the specific contexts in which costs are incurred. (emphasis added)[16]

The clear import of this language is that current Commission policy requires that CAM requests must be made individually, as confirmed in Finding of Fact 5 in D.13-08-023:

> The determination of whether a specific IOU proposal meets the requirements for collection from unbundled customers can only be determined through a thorough review of the proposal itself by this Commission.[17]

Further, Conclusion of Law 6 in D.13-08-023 states:

> It is reasonable to address cost allocation and non-bypassable charge mechanisms as they arise in proceedings, on a case-by-case basis.[18]

Reliance on prior CAM approvals, as SCE and SDG&E have done, therefore clearly fails to comply with the case-by-case requirement.

Moreover, SCE and SDG&E were well aware of this decision and participated actively in the proceeding. The proposed decision was issued on June 11 of this year. On July 1, 2013, SCE filed and served on behalf of it, SDG&E and Pacific Gas & Electric ("PG&E") joint comments in support of the proposed decision.[19] Notably, the IOUs' joint comments offered neither discussion

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[15] See Section 365.1(c)(2)(A): "… in the event that the commission authorizes, in the situation of a contract with a third party, or orders, in the situation of utility-owned generation …"

[16] D.13-08-023, at p. 14, emphasis added.

[17] Id, at p. 23.

[18] Ibid.

[19] July 1, 2013, Joint Reply Comments of Southern California Edison Company (U 338-E), Pacific Gas & Electric Company (U 39 E), And San Diego Gas & Electric Company (U 902 M) To Marin Energy Authority et al.'s Petition to Adopt, Amend, or Repeal a Regulation.

of nor opposition to the requirement that any request for CAM would be evaluated on a case-by-case basis, and with the request supported and justified on a case-specific basis.

The proposed decision, the IOUs' joint comments, and the Commission's adoption of D.13-08-023 all predated the SCE and SDG&E opening testimony in this Track 4, which was served on August 26, 2013. The utilities were thus aware of this decision and had sufficient time to comply with its requirements. However, they chose not to do so and their respective showings are thus deficient for having failed to do so.

In fact, under cross-examination showed that SCE witness Cushnie concurred with the case-by-case requirement:

> Q. Would you agree that the decision to apply the CAM, or the cost allocation mechanism, is for each separate Commission procurement authorization and, therefore, each one is an independent decision?
>
> A. I believe CAM is a construct that is embodied by state law which requires the Commission to allow the utilities to recover the cost incurred for new generation that is developed to support system reliability, and those costs are allocated all benefitting customers.
>
> So there is a universal application in CAM regardless of the Commission decision. I would agree though that the Commission has to determine in each proceeding whether the CAM is applicable.[20]

As it is clear that CAM determinations are to be made on a case-by-case basis, the next question that must next be considered is whether each utility's application has made the required case for CAM treatment for any procurement authorizations that may be approved in Track 4. For reasons that are explained and discussed more thoroughly below, they have not.

[20] TR, at p. 1987, emphasis added.

3. *D.13-08-023 is Explicit Regarding the Showings that Must be Made to Justify a CAM Request and the Utilities Have Failed to Make Such a Showing.*

D.13-08-023 requires the utilities to make a persuasive case for justifying CAM treatment and makes clear the Commission's emphasis on the need for there to be a sufficient record. As noted above, the decision states:

> At the same time, we emphasize that IOUs must provide *clear explanations of and support for their cost allocation proposals in applications* and supporting testimony, to facilitate the development of a sufficient record on which to evaluate such proposals.[21]

Where, then, are the utilities' "clear explanation and support" for their respective CAM proposals? Where is their supporting testimony?" Where is a "sufficient record" on which the Commission may evaluate the CAM requests?

The answer, quite simply, is that none of these exist.

As discussed above, the utilities provided scant testimony of "support," totaling only two pages between them. SCE relied on a past CAM approval in Track 1, ignoring both the "case-by-case" and the "clear explanations of and support" requirements that were enunciated by the Commission in D.13-08-023. SDG&E's entirety of its showing as to CAM treatment is a recitation of the statute, one sentence saying that the new resources are required for reliability purposes, and the irrelevant observation that CAM was approved for Escondido.[22] Again, the "case-by-case" requirement imposed by D.13-08-023 makes evidence of prior CAM determinations, to the extent they exist, immaterial.

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[21] D.13-08-023, at p. 16, emphasis added.

[22] Escondido was approved in D.13-02-029, which found the SONGS outage (at the time) to be outside the scope of the proceeding (p. 18): "We cannot, on this record, find that the PPTAs are needed to meet SDG&E's resource requirements as a result of SONGS' outage."

There is, in fact, no explanation of the most fundamental elements of CAM eligibility: How do all customers benefit? Why do they benefit? For example, the most SCE says to address these subjects is contained in its rebuttal testimony, where the utility states, "Consistent with the Commission's conclusions in Track 1, the resources procured in Track 4 of this LTPP are necessary to reliably operate the grid and, as such, will benefit all customers in the SCE service territory."[23] SDG&E's rebuttal testimony also repeats the same argument that "all benefit, therefore all must pay" and asserts it would be "unfair" and "inequitable" if only bundled customers had to pay for new resources to replace SONGS.[24] These trite and brief statements are remarkably deficient in meeting the Commission's "clear explanations and support" requirement.

An analysis of the utilities' testimonies shows CAM to be treated solely as an inconsequential issue for which the most *de minimus* effort was presented. Put simply, assertions are not showings. For these reasons, the Commission must reject the CAM requests made by SCE and SDG&E in this proceeding in order to highlight the inadequate showing made by the utilities to justify CAM treatment and send a strong signal that future requests for CAM treatment must comply with the directives in D.13-08-023.

4. *The Holdings in D.13-08-023 are Not Mere Dicta and are Directly Relevant to this Proceeding.*

The Commission's must hold SCE and SDG&E to the standards pronounced in D.13-08-023 with regard to the showing required for CAM treatment to apply in a particular case. The Commission's pronouncements in D.13-08-023 were not mere dicta. As the Commission recently explained, the difference between precedential pronouncements on the one hand, and mere dicta on the other, is that dicta consist of "general observations" that were "unnecessary to

[23] SCE-2, at p. 39.

[24] SDG&E-2, at p. 5.

the decision."[25] In D.13-08-023, the Commission's pronouncements regarding the showing required for CAM treatment were to the core issue of whether or not a separate rulemaking on cost allocation policies and practices was warranted. The centrality of those pronouncements to the Commission's decision not to open a separate rulemaking, but rather to address cost allocation issues when they arise in individual proceedings using, in the instance of CAM, the standards pronounced in the decision, is demonstrated by the closely related findings and conclusions, including:

> Some issues raised in the Petition, including the calculation and application of the procurement Cost Allocation Mechanism, are currently under review in ongoing proceedings, including the current LTPP proceeding, R.12-03-014. (Finding of Fact 2)
>
> The determination of whether a specific IOU proposal meets the requirements for collection from unbundled customers can only be determined through a thorough review of the proposal itself by this Commission. (Finding of Fact 5)
>
> State law requires the Commission to allocate the cost of generation resources to ratepayers in a manner that is fair and equitable to all customers. (Conclusion of Law 1)
>
> It is reasonable to address cost allocation and non-bypassable charge mechanisms as they arise in proceedings, on a case-by-case basis. (Conclusion of Law 6)

SCE and SDG&E are simply not free to ignore the Commission's pronouncements in D.13-08-023 just because those pronouncements were made in a decision issued in a different docket.[26] Likewise, the Commission cannot ignore or deviate from its own decisions, unless it does so after fulfilling the due process requirements as codified in Section 1708, which clearly have not been met here. Section 1708 provides as follows:

> 1708. The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or

[25] See D.12-02-038 at fn. 6.

[26] See Section 1709, which provides: "In all collateral actions or proceedings, the orders and decisions of the [C]omission which have become final shall be conclusive."

> amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

D.13-08-023 was issued just three months ago. It was not challenged by the original petitioners, the IOUs or any other parties. It thus is in full force and effect. Furthermore, Section 1709 provides: "In all collateral actions or proceedings, the orders and decisions of the [C]omission which have become final shall be conclusive." Therefore, the utilities should have complied with the Commission's directives in that proceeding, which they have clearly failed to do.

Another consideration weighing in favor of holding SCE and SDG&E to the standard pronounced in D.13-08-023 is the public interest in regulatory consistency. As the Commission has previously held, "the Commission has an obligation to employ regulatory consistency in its decisions. Consumers, regulated utilities and the economy as a whole benefit when the Commission maintains a regular and consistent regulatory program, as this provides the predictability necessary to plan investment and budgetary decisions."[27] The corollary of this is, of course, that the Commission's failure to act in this instance in a manner that is consistent with its pronouncements in D.13-08-023 would be to the detriment of consumers and the public interest.

B. SCE and SDG&E Are Obligated to Replace SONGS to Meet Their Bundled Customers' Needs and Their Bundled Customers Must Therefore Pay for Such Procurement.

In Section A of these comments, DACC/AReM have demonstrated that the record in this case clearly shows that SCE and SDG&E have failed to properly justify the application of CAM to any authorization approved by the Commission in this Track 4, as required pursuant to D.13-

[27] D.02-03-055 at 15, finding public interest is better served by maintaining previously announced direct access suspension date.

08-023. As noted in the introduction to this Section II, that failure is not surprising because, quite simply, there is no such justification that they could offer. Indeed, the case that CAM should be impermissible for this Track 4 procurement is simple and straightforward – this is a case about the obligation of SCE and SDG&E to replace a resource they have used to serve bundled customers and who should pay to replace it. Here are the salient points with relevant citations to the record:

1. SCE and SDG&E are obligated to meet their bundled customers' needs reliably both today and long term.[28]
2. SONGS provided capacity and energy to meet the needs of SCE's and SDG&E's bundled customers.[29]
3. SONGS was shut down and is now being retired.
4. The IOUs are obligated to fill any shortfall left by the SONGS closure in their bundled procurement both today and in the long term to continue to meet their bundled customers' needs reliably.[30]
5. Bundled customers are therefore obligated to pay for all procurement by SCE and SDG&E to replace SONGS.[31]
6. The Commission is charged with the responsibility of determining what specific procurement is needed to replace SONGS. If the Commission decides that new generation should be procured to replace SONGS, then SCE and SDG&E are obligated to procure it and the bundled customers are obligated to pay for it.

[28] See discussion of Commission decisions imposing this obligation in DACC-1, at pp. 9-10.

[29] Id, at p. 10 and confirmed by Kevin Woodruff, witness for The Utility Reform Network ("TURN"), TR, at pp. 2265-2266.

[30] DACC-1, at pp. 8-10.

[31] Id, at pp. 12-13.

In fact, in its rebuttal testimony, SDG&E agrees with DACC/AReM that, as a load-serving entity ("LSE"), it has an obligation to replace SONGS for its bundled customers:

> SDG&E, as the LSE for its bundled customers, must replace the energy and capacity that it previously received from SONGS.[32]

The Commission must enforce statutes and ensure good public policy by requiring SCE and SDG&E to procure to replace SONGS capacity and energy for the utilities' bundled customers. To the extent new resources are required to meet this bundled customer need, the utilities must procure those resources and recover the costs from the customers creating those needs, their bundled customers. By seeking CAM treatment for fulfilling their obligation to serve their bundled customers, SCE and SDG&E are seeking to improperly shift bundled customers' costs to non-bundled customers, including direct access customers.

There simply is no justification, nor has any been offered, to support a contention that new build to meet bundled customer needs should get some sort of *"a priori"* approval for CAM treatment. Indeed, the question that DACC and AReM have long been asking this Commission to clarify is precisely this: Given that the statute implementing CAM clearly does not contemplate that every single investment made by the utilities will be afforded CAM treatment, what investments will not and should not be afforded such treatment?[33] SDG&E's statements drive home the need for the Commission to provide such clarity.

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[32] SDG&E-2, at p. 4.

[33] Public Utilities Code Section 365.1(c)(2)(A) obviously contemplates that some utility procurement of new resources *will not* be eligible for CAM treatment by virtue of its requirement for a case-by-case need determination that all customers benefit. The statute could have been constructed to state that *all* utility procurement authorized by the Commission is subject to CAM treatment, but it was not. All further code citations are to the Public Utilities Code, unless indicated otherwise.

C. CAM Treatment of Procurement to Replace SONGS Must Be Rejected as Unfair, Unreasonable, and Inconsistent with the Applicable Statutes.

The utilities base their claim for CAM treatment on the simplistic argument that "everyone benefits, so everyone must pay.[34] However, this a misleading argument that obscures the real issue in this case, which is:

> *Must IOUs fulfill their LSE obligations to their bundled customers and, if so, should they be permitted to shift a portion of the costs of meeting those obligations onto the customers of other LSEs?*

DACC/AReM have provided testimony and supporting evidence to demonstrate that the utilities are indeed *obligated* to procure replacement power for SONGS to serve their bundled customers' needs.[35] The only question remaining to be answered, then, is whether bundled customer procurement is *eligible* for CAM treatment. It is not – and application of CAM to the bundled customer procurement which SCE and SDG&E propose is unfair, and inconsistent with the applicable statutes.

1. *Procurement to Replace SONGS Is Ineligible for CAM Treatment Under Applicable Statutes.*

The Commission has consistently determined that the utilities are statutorily obligated to procure energy and capacity to meet their bundled load reliably today and tomorrow.[36] Moreover, Section 454.5 codified this utility obligation to serve their bundled customers[37] and

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[34] The utilities' claims are discussed more fully in Section II.C below.

[35] DACC-1, at pp. 8-13.

[36] See, for example, D.02-10-062, p. 29: "We also make explicit, in this decision, that the IOUs are responsible for procuring reserves on behalf of their customers' needs, as part of their continuing obligation to serve in order ***to ensure a stable, reliable power system***. (emphasis added) and Conclusion of Law No. 2: "Consistent with Pub. Util. Code Sections 451, 761, 762, 768, 770 and proposed 454.5(a), the utilities have an obligation to serve."

[37] See, for example, Section 454.5(d): "(d) A procurement plan approved by the commission shall accomplish each of the following objectives: (1) Enable the electrical corporation to ***fulfill its obligation to serve its customers*** at just and reasonable rates." (emphasis added)

further required that the Commission assess and approve a procurement plan for meeting each utility's bundled customers' needs both short- *and long-term*.[38] TURN asserts, without providing any supporting citations, that the utilities "do not even have the ability … to replace SONGS capacity and energy" under their Bundled Procurement Plans.[39] Certainly the SCE and SDG&E current bundled procurement plans contain no such authority for the simple reason that they predate the utilities' decision to remove SONGS from service. However, the Commission's broad authority under Section 454.5 empowers it at any time to direct long-term procurement of resources, including new generation, even if it has not done so thus far. Nonetheless, the utility claims for CAM treatment focus myopically on "reliability." As discussed below, incidental reliability effects do not require the imposition of CAM, particularly when the lowered reliability is the result of the loss of facilities that have historically been used only to serve bundled customers, and the application of CAM, if approved, would allow shifting of bundled customer costs to non-bundled customers.

2. *Diminished Reliability with Subsequent "Improvement" Does Not Require that "Everyone" Must Pay for the Improvement.*

The utilities argue that procurement of new resources improves reliability for everyone and therefore all customers are required to pay for it under Section 365.1(c)(2)(A). However, this simplistic approach overlooks the reality that: (1) it is the unexpected *closure of SONGS* that *created* the reliability need in the first instance; and (2) none of this reliability need can be attributed to direct access load, which is fixed by statute.[40]

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[38] See, Section 454.5(b)(9)(B), requiring that the utility "shall create or maintain a diversified ***procurement portfolio consisting of both short-term and long-term electricity and electricity-related … products***." (emphasis added)

[39] TURN-2, at p. 12, lines 23-24.

[40] DACC-1, at pp. 10-12.

For example, SDG&E argues that failure to add new resources to meet the reliability need created from the closure of SONGS "will result in decreased system reliability for all customers in the load pocket" and thereby concludes that all customers will benefit from new resource additions and thus CAM treatment should be approved.[41] SDG&E conveniently ignores that reliability has *already diminished* as a direct result of the utilities' decision to close SONGS. The utilities are, in fact, requesting to have everyone pay to improve the diminished reliability that was created by the decision to close SONGS, simply because solving the diminished reliability that the closure creates will restore the system to an acceptable level of reliability, The restoration of reliability in the wake of SONGS closure does not justify turning a blind eye to the fact that the resources that have been lost served bundled customers, and established cost causation principles would dictate that the costs for its replacement also be recovered from those customers. In short, the reliability requirements of Section 395.1(c)(2)(A) do not require that the Commission abandon fair and reasonable application of cost causation principles.

Significantly, in another cost allocation case, the Commission determined that allocating costs based on indirect societal benefits to those who consume none of the power was arbitrary and speculative. The case, in R.02-01-011, involved the proposed allocation of a bond charge to all customers for costs incurred by the utilities in procuring electricity from the California Department of Water Resources during the Energy Crisis, including to those who had procured no electricity from the utilities. The Commission stated: "Attempting to assign a charge to DA customers *based solely on indirect societal benefits* would be arbitrary and speculative."[42] The relevance here is clear: bundled customers are the *direct beneficiaries* of the Track 4 procurement and any incidental reliability benefits falling to "all" are indirect societal benefits at

[41] SDG&E-2, at p. 5.

[42] D.02-11-022, at p. 61.

best. A Commission decision to impose CAM treatment on "all" because of incidental reliability benefits would fit squarely in the realm of "arbitrary and speculative."

3. *"Fairness" Requires that Replacement Costs for SONGS Fall on Those Who Were Served by SONGS*

Both the Track 1 decision and statute require that the cost allocation be "fair."[43] The Commission also recently reaffirmed its commitment to fair cost allocation in D.13-08-023:

> The Commission remains committed to ensuring that Community Choice Aggregators and other non-utility LSEs may compete on a fair and equal basis with regulated utilities. Towards this end, ***we will continue to consider both the mechanics and overall fairness of cost allocation*** and departing load charge methodologies proposed in the future, with the ***specific goal of avoiding cross-subsidization***.[44]

DACC/AReM's testimony states that the principle of fairness requires the Commission to reject CAM treatment for Track 4 procurement.[45] SDG&E argued to the contrary that, because the new resources are needed to meet the reliability needs of all customers, the only "fair" option was to impose CAM.[46] However, SDG&E's premise is incorrect; these are bundled customers' reliability needs, and it is only *fair* that those who created such reliability needs pay to address it.

4. *SCE's Proposed Contingent Gas-Fired Generation Contracts are, by Their Nature, Ineligible for CAM.*

SCE's application also includes a Mesa Loop-In contingency proposal, in which it would solicit and execute additional long-term gas-fired generation ("GFG") PPAs that contain a buyer's right to terminate subject to a termination payment, referred to as "Option Contracts."[47] These Option Contracts would be solicited in the same RFO that will be conducted as a result of

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[43] D.13-02-015, at p. 100, citing Section 365.1(c)(2)(B): "The commission shall allocate the costs … in a manner that is fair and equitable to all customers."

[44] D.13-08-023, at p. 17 (emphasis added).

[45] DACC-1, at pp. 14-15.

[46] SDG&E-2, at p. 5.

[47] SCE-1, at p. 58.

the Track 1 authorization. However, SCE has not provided any estimate of the number of MWs of such contracts it proposes to enter into and has not explained how the net capacity costs of each could even be calculated should CAM treatment be afforded to these Option Contracts.[48] In his rebuttal testimony, SCE witness Cushnie acknowledged that "current law does not require" CAM treatment for such contracts, but then asserted that nothing precludes the Commission from applying CAM to such costs.[49] DACC/AReM strongly disagree.

SCE's suggestion that the Commission can *expand* upon the statutory framework for CAM is inaccurate, as the statute is precise as to the type of calculation that must be made. Pursuant to statute, CAM treatment requires an operating power plant producing energy so that a calculation can be made of the net capacity costs by accounting for the revenues generated by the production of electricity and other related products.[50] SCE witness Cushnie confirmed this required calculation during cross-examination:

> Q Are net capacity costs to be calculated by subtracting the energy and ancillary services value of the resources from the total cost paid by the utility?
>
> A. That is how it is currently done.
>
> Q. You really can't do that with an option contract, can you?
>
> A. There is no energy option revenues or ancillary service value to subtract if it is just an option cost. If the option is exercised and the contract moves forward and results in a developed power plant, there would be the ability to have an energy option and an ability to evaluate the ancillary service revenues.
>
> Q. But not unless it went forward to an actual contract -- plant. Is that your testimony?
>
> A. Correct.[51]

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[48] SCE-1, at pp. 58-59.

[49] SCE-2, at pp. 40-41.

[50] See, Section 365.1(c)(2)(C): "…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."

[51] TR, at p. 1989.

SCE's insistence that it will only pursue the contingent GFG contracts if granted CAM treatment is contrary to statute and should be rejected.

5. *TURN's Position with Regard to the Impact of the CAM on Non-Regulated Load-Serving Entities is Not Supported.*

TURN witness, Kevin Woodruff, responds to the competitive concerns raised in DACC/AReM,[52] by stating in his testimony that, "ESPs are free to assemble portfolios of energy resources to meet their customers' needs as they see fit, provided they comply with requirements such as their RA obligations."[53] This statement conveniently ignores the impact that the CAM has on non-utility LSEs.

ESPs and CCAs must procure energy, capacity, and ancillary services to meet their individual load requirements and comply with System and Local Resource Adequacy ("RA") requirements, the Renewable Portfolio Standards ("RPS"), and applicable provisions of the Greenhouse Gas ("GHG") Emission Reduction requirements. When the Commission authorizes CAM procurement, the ability of ESPs and CCAs to fully manage their own procurement with respect to the quality, quantity and cost of the resources is diminished, thereby hindering them from procuring efficiently and from offering the specific products and services that their customers want.

TURN's witness' statement about the ability of ESPs and CCAs to develop portfolios reveals his limited understanding of the competitive difficulties that CAM creates. Indeed, cross-examination of Mr. Woodruff revealed that his statements as to the ease with which ESPs could alter the portfolios was based on pure speculation rather than any first-hand knowledge:

> Q. How often have you worked for or consulted with an ESP on procurement matters?

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[52] Ibid.

[53] TURN-2, at p. 15.

A. I haven't. This is -- I make this statement based on my general knowledge of ESP business models and my own sense of what their risk management policies must be.

Q. So you're familiar and knowledgeable about ESP procurement activities?

A. I have a fairly general idea. And it depends how far you want -- how far you want to ask me questions about the matter.

Q. All right. But your opinions are not based on any firsthand personal experience working with ESPs?

A. No, they're not.[54]

Furthermore, additional cross revealed TURN's motivation for supporting CAM treatment for SONGS replacement power:

Q. Have the costs associated with SONGS energy and capacity historically been allocated to TURN's constituency, that is to say, bundled customers?

A. That's my understanding, yes.

…

Q. If your recommendation to apply the CAM is adopted, will that reduce costs for bundled customers because DA and CCA customers will pick up a share of the costs of the replacement power?

A. Yeah. They would share the costs of more expensive new generation.[55]

TURN of course has every right to advocate for cost shifting to lessen costs for its constituency, although as a general principle witness Woodruff said that cost shifting should be avoided:

Q. Do you agree as a general principle that cost shifting between customer classes should be avoided?

A. As a general principle. There are social policy reason not to or to do otherwise, but as a general rule.

Q. As a general rule, yes?

A. Yes.[56]

TURN's inconsistency between its general principle that cost shifts should be avoided and its support of CAM treatment for Track 4 procurement seems to be clearly motivated by its

[54] TR, at pp. 2269-2270.

[55] Id, at pp. 2265-2266.

[56] Id, at p. 2269.

objective to reduce costs for its bundled customer constituency rather than being premised on any logical or principled explanation as to how the planned utility procurement justifies the associated CAM requests. As a result, TURN's arguments in support of CAM treatment for Track 4 procurement should be rejected.

III. Conclusion

DACC/AReM reiterate the recommendations made above that:

1. SCE and SDG&E are obligated to replace the capacity and energy lost because of the closure of the SONGS to meet the current and long-term needs of their bundled utility customers and the associated procurement costs must therefore be recovered from bundled customers.

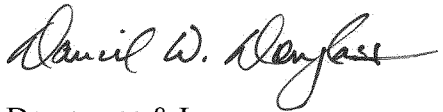
2. D.13-08-023 requires the utilities to provide clear explanations of and support for their CAM proposals in applications and supporting testimony, to facilitate the development of a sufficient record on which to evaluate such proposals, a requirement with which both SCE and SDG&E have failed to comply, such that the request for CAM treatment must be rejected.

3. Any proposals by SCE and SDG&E to apply the CAM to bundled procurement must be rejected as unfair, unreasonable, and inconsistent with the applicable statutes.

4. SCE's request for CAM treatment for its contingent gas-fired generation option contracts should be denied as it does not comply with the statutory requirements for how the CAM is to be calculated.

DACC/AReM thank the Commission for its attention to the issues and discussion contained herein.

Respectfully submitted,



DOUGLASS & LIDDELL

Attorneys for the
DIRECT ACCESS CUSTOMER COALITION
ALLIANCE FOR RETAIL ENERGY MARKETS

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