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 MARIN ENERGY AUTHORITY ON TRACK 4 ISSUES

Elizabeth Kelly
Legal Director
MARIN ENERGY AUTHORITY
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Telephone:(415) 464-6022
Facsimile: (415) 459-8095
E-Mail: ekelly@marinenergy.com

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1. The Commission should ensure that the applicability of Cost Allocation Mechanism ("CAM") to Community Choice Aggregators ("CCAs") and their customers is evaluated in a comprehensive manner in Track 3 of R.12-03-014.

2. Costs resulting from CAM the must be made more transparent to CCAs in order to maximize their ability to control their own procurement.

3. CCAs should be able to participate in the CAM Peer Review Group in order to receive notice of upcoming costs.

4. The Commission should take a three -step process in the implementation of CAM treatment for resources: (1) The basic requirements of responsible procurement must be met; (2) Competitively neutral solutions must be considered; and (3) Specified criteria must be met for a resource to be deemed CAM eligible.

5. When requesting CAM treatment for resources, investor-owned utilities ("IOUs") must provide sufficient support to determine cost allocation, prove that a resource is needed, that the resource will benefit all customers, the resource must be ordered at the discretion of the Commission, and the costs of CAM must be reasonable.

6. The Commission should differentiate the application of Non -Bypassable Charges ("NBCS") to different customers, including IOUs, Direct Access customers, and CCA customers.

7. The Commission must recognize SB 790 (2011) and its provisions that ensure CCA autonomy in procurement, including Sections 366.2(a), 390(b)(4), and 380(h)(5) of the California Public Utilities Code.

8. The Commission must recognize the numerous policy considerations of forcing CCA customers to bear CAM costs: (1) Current CAM methodology does not acknowledge the new resources brought onto the grid by CCAs; (2) CAM limits the central mission of a CCA to procure for its own load; (3) A CCA's renewable energy and greenhouse gas reduction goals are damaged by CAM treatment of resources; (4) CCAs are unable to participate in the CAM review process; (5) No notice is given to CCAs of their CAM obligations; (6) Resource Adequacy ("RA") rules have not incorporated CAM; and (7) CCAs cannot rely on CAM.

9. The Commission should approve a three -step process in applying CAM resources to CCAs and their customers: (1) CAM should only apply in exigent circumstances; (2) CCAs should be allowed to demonstrate what resources they can provide to deal with the exigent circumstances; and (3) CCAs should not be subject to any CAM costs in the first five years of operation.

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This opening brief of the Marin Energy Authority ("MEA") on Track 4 issues is submitted in accordance with the schedule provided in the September 12, 2013, Scoping Memo and Ruling of Assigned Commissioner ("Scoping Memo "). MEA is a Community Choice Aggregator ("CCA") that has been serving customers within the Pacific Gas and Ele ctric Company ("PG&E") service territory since May 7, 2010. MEA was the first operational CCA in California, although other jurisdictions are also moving forward expeditiously with CCA plans of their own. MEA currently provides electric service to approx imately 120,000 retail customers in the City of Richmond and the County of Marin . Utilizing the Cost Allocation Mechanism ("CAM") as proposed by Southern California Edison Company ("SCE"), San Diego Gas and Electric Company ("SDG&E") and PG&E (together wi th SCE and SDG&E, the investor -owned utilities or "IOUs"), resources procured in response to the San Onofre Nuclear Generation Station's ("SONGS") shutdown would adversely affect potential CCAs in the service territories it serves, and sets a dangerous precedent for future shortage issues.

I. INTRODUCTION

The California Public Utilities Commission ("CPUC" or "Commission") is in the process of determining the applicability of CAM rules to CCAs. [1] Until such a determination is made by the Commission, this Track of the instant proceeding should not predetermine this issue for any CCAs or potential CCA that may be affected by the closure of SONGS. Therefore, MEA requests the Commission include in its Conclusions of Law that the applicability of CAM to CCAs and their customers will be determined in Track 3 of R.12-03-014.

Should the Commission decide to address the applicability of CAM to CCAs in the instant matter, MEA submits this brief to guarantee that the customers of other CCAs are not negatively impacted by the proposed methodologies to address the shortage of resources due to the shutdown of SONGS.

The brief first raises CCA concerns in the larger paradigm of the energy market structure in California the regulation of the market by the Commission. Second, fundamental questions in the instant proceeding are addressed: what are the driving motivations of some parties and why are the investor -owned utilities ("IOUs") so intent on receiving CAM treatment in this matter? Third, a historical analysis of the development and application of CAM is provided. Fourth, the brief explores the steps the Commissio n should consider when applying CAM: (1) the basic requirements of responsible procurement must be met; (2) competitively neutral solutions must be considered; and (3) specified criteria must be met in order for a resource to be considered eligible for CAM . Last, the applicability of CAM to CCAs is investigated, including the legal

[1] R.12-03-014, Track III, Administrative Law Judge's Ruling Seeking Comment on Track III Rules Issues, at 4.

and policy limitations of CAM, and proposes methodology for the Commission to implement when considering CAM application to CCAs.

II. CCA IS A NEW PROCUREMENT STRUCTURE WHICH HAS NOT YET BEEN REFLECTED FULLY IN COMMISSION POLICY

MEA began service to customers on May 7, 2010. MEA was formed specifically to pursue environmental goals, such as the reduction of greenhouse gas emissions and to increase renewable energy resources on the e lectric grid. Consequently, MEA does not procure any energy from nuclear power plants. Although CCAs are not required to have an environmental mission, all the communities in California that are currently pursuing the formation of a CCA have included envir onmental benefits in their motivations. [2] Therefore, one of the central missions of a CCA is to determine what resources serve its customers. For example, MEA offers two products in its service territory: a 50% renewable product and a 100% renewable product . CAM circumvents this control by forcing resources upon CCAs that are not only fully resourced, but that also have sought a precise resource mix for its portfolio.

The Commission is required to protect the ability of CCAs to procure for their own customers by law . Section 380(b) (4) of the California Public Utilities Code [3] mandates the Commission shall "maximize the ability of community choice aggregators to determine the generation resources used to serve their customers." [4] As CAM is currently applied, the Commission is not in compliance with Section 380(b)(4), with the result that CCA customers not

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[2] This is in large part due to the fact that many communities, including those evaluating CCA, have developed Climate Action Plans, which address sources of greenhouse gases, including energy and transportation.

[3] All Section references are to the California Public Utilities Code unless otherwise indicated.

[4] Section 380(b)(4).

only subsidize IOU bundled customers, but also lose funds selling off the excess capacity they are obligated to buy under Commission Resource Adequacy ("RA") procurement rules.

This also violates a number of statutes, including statutes that: prohibit cost-shifting between CCA and bundled IOU customers,[5] ensure CCAs are solely responsible for all generation procurement activities on behalf of its customers,[6] and require a fair and equitable allocation of generation resource costs to all customers, including CCA customers.[7] These statutes are addressed in detail below; however, the statutes are all a result of the "CCA Bill of Rights", SB 790, passed by the California Legislature in 2011. SB 790 wrote into law that "California has a substantial governmental interest in ensuring that conduct by electrical corporations does not threaten the consideration, development, and implementation of CCA programs."[8] As currently implemented, CAM procurement rules threaten all three CCA objectives.

CCAs represent significant market transformation and unique CCA issues must be addressed immediately by the Commission. MEA's annual peak load is approximately 210 MW, and is a relatively small amount compared to the load of the California IOUs. However, this will not be the case forever, or even the period of time new generation resources are required that the instant proceeding seeks to address. Sonoma Clean Power, another CCA, expects to launch service to its customers in spring 2014. Clean Power SF, San Francisco's CCA effort, is in development. Other communities in various exploratory phases of launching CCA's include Albany, Arcata, Davis, El Cerrito, Lancaster, San Pablo, San Ramon, Santa Barbara, Santa Cruz,

[5] Section 366.2(a)(4).
[6] Section 366.2(a)(5).
[7] Section 365.1(c)(2)(B).
[8] Senate Bill ("SB") 790, Section 2(g).

and the County of Napa. Monterey County, San Luis Obispo County, and Yolo County are also exploring launching CCA service for all cities and towns within their territories. Most relevant to this proceeding is San Diego, whose County Board of Supervisors have approved a plan to pursue CCA. These cities and counties represent just the first major wave of CCA implementation in California—the Commission must ensure that the paradigm is modified to include these communities and their choices within its regulatory framework.

III. PRELIMINARY QUESTIONS TO FRAME THE COST ALLOCATION MECHANISM ISSUES RAISED IN THE PRESENT PROCEEDING

In evaluating the proposals set forth in this Track 4, the Commission should be mindful of the greater context of the interests at hand when it evaluates the policies being applied, particularly with regards to the Cost Allocation Mechanism. First, each Load Serving Entity's ("LSE's") interests have competing and conflicting interests, but may have overlapping recommendations. These motivations are important to determining the overall conflict between competing recommendations. Second, this brief presents an analysis of the advantages to the IOUs to seek CAM treatment for resources within this proceeding. This includes the benefits of minimizing risk in their own portfolios and shifting costs to other LSEs, such as CCAs.

A. What Interests Are Being Represented in the Present Proceeding?

In this case, the Commission must be aware of the specific interests being supported in the present proceeding with regards to the Cost Allocation Mechanism issue at hand.

1. Investor Owned Utilities

The IOUs necessarily represent their own business interests, the interests of their shareholders, and their interests as a near-monopoly provider of utility service in California. In this specific instance, the IOUs' testimony focuses on the MW needs that must be addressed resulting from the closure of SONGS. The issue of cost allocation with regards to investor-

owned utilities is one of ensuring that the IOUs' competitors and the competitors' customers bear as high of costs as possible. This results in two benefits for the IOUs. First, forcing undue costs on non-customers reduces the costs their own customers pay. Second, by forcing these costs onto competitors and their customers, this makes the competitors artificially less economic vis-à-vis bundled service, or, uneconomic and unable to provide competitive services.

2. Smaller Bundled Customers

The Utility Reform Network ("TURN") is an advocacy organization that represents the interests of consumers. Primarily, this involves ensuring that the least costs are passed onto the consumer. However, in this particular matter, TURN represented bundled customers, those who receive both generation, transmission, and distribution services from the same provider. Mr. Woodruff, for example, stated: "I am providing this Rebuttal Testimony on behalf of The Utility Reform Network (TURN), an organization that has long represented the interest of smaller consumers before this Commission." [9] However, in response to a question regarding whether TURN represents "all smaller customers or bundled smaller customers" in his cross-examination, Mr. Woodruff clarified that: "Depends on the context. In this case, it's bundled consumers, this particular piece of testimony."[10]

In this case, TURN's interest in cost allocation is twofold. One, that costs be borne by larger customers; and, two, that costs be borne by non-bundled ratepayers. By representing smaller bundled customers, TURN's interests in this proceeding are directly adverse to Direct Access ("DA") providers and their customers. DA customers are neither bundled customers, nor,

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[9] Exhibit TURN-2, Rebuttal Testimony of Kevin Woodruff on Behalf of The Utility Reform Network Regarding Track 4 – SONGS Retirement, October 14, 2013, at 1. (Emphasis Added.)
[10] Hearing, November 1, 2013, Transcript at 2272 Lines 12 through 25.

in general, small customers. As discussed below, this leaves out an important segment of the market, CCAs, which also serve small customers.

3. Direct Access Interests

DA customers are unbundled customers, which include retail end-use customers and educational, commercial, industrial, and governmental customers who have receive generation services from different electric service providers ("ESPs").[11] DA was implemented in California in the late 1990s, approximately ten years before a CCA launched in California. In this proceeding, the DA interest is to advocate that bundled customers should bear any and all costs of new procurement resulting from the SONGS shutdown. Key factors supporting this position include that the driver of the need for new resources are bundled customers and that the IOUs were utilizing SONGS for their bundled customer loads.

4. Only to the Limited Extent of MEA's Involvement, Existing and Future Community Choice Aggregation Customers and the CCAs that Serve Them

CCAs are local government entities that provide the generation function to their customers and utilize the incumbent IOU's transmission and distribution services within their service territories. Thus, CCA customers are also unbundled customers. Although Assembly Bill ("AB") 117 authorized the formation of CCAs in 2002, no CCAs were launched in California until 2010, and there is only one operational CCA in California. Given the relatively recent addition of CCAs to the California marketplace, the Commission has yet to integrate CCAs into its paradigm of stakeholder interests in all matters. Often, CCA interests are deemed to replicate DA interests. However, CCAs and DA customers are different for several reasons.

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[11] Exhibit DACC-1, Testimony on Behalf of the Alliance for Retail Energy Markets and Direct Access Customer Coalition at 1.

First, unlike DA customers, CCA customers are primarily residential. Indeed, 88% of MEA's customer base is residential customers. Second, to date, CCAs in California have only been developed around a mission to reduce greenhouse gas emissions. Therefore, CCAs also serve an important environmental choice, as well as a customer choice. Third, CCAs procure energy in long-term contracts. MEA regularly contracts for twenty or twenty-five years of electric supply. Fourth, CCAs have set long-term integrated resource plans for bringing new resources onto the grid. To date, MEA has contracted for and/or brought online over 60 MW of new resources. The peak load of MEA is only 210 MW.

MEA operates solely in PG&E service territory and has limited bandwidth to address issues outside that service territory. However, as the only operational CCA in California, MEA must advocate for CCA interests due to the significant adverse impact on CCA customers that would result from the extensive applicability of CAM requested by the IOUs.

B. Why Are the Investor-Owned Utilities So Intent on Receiving CAM Treatment for SONGS Replacement Facilities?

The IOUs in this case have argued that 100 percent of resource needs identified in this Track 4 should receive CAM treatment. Conversely, the Direct Access ("DA") interests in this proceeding have argued that zero percent of resource needs identified in this Track 4 should receive CAM treatment. MEA believes that neither of these approaches are reasonable or workable – and that CAM should be denied in this Track 4 until such time as the IOUs make sufficient showings that may support a Commission determination of partial CAM

applicability.[12] However, in this subsection MEA discusses the benefits of CAM to the IOU, including increasing risk borne by competitors and shifting costs to CCA customers.

1. Increase Risks Borne By Competitors

First, IOUs seek CAM treatment since it increases the risks borne by its competitors. Under the CAM methodology, competitors, such as CCAs, have RA forced into their portfolios. When RA is allocated through CAM, CCAs have no control over what quantity of RA they receive or at what cost, and cannot rely upon CAM resources until they are allocated. As CAM has been allocated to MEA, MEA has been forced to sell off RA that it had already procured for its portfolio. Furthermore, MEA is required to meet its RA requirements pursuant to Section 380 and is not in control of the timing of the on-lining of the facilities.[13]

2. CCA Customers Are Double Charged Through CAM; Costs Are Not Known By Market Participants

Second, IOUs seek CAM treatment since it increases the costs borne by its competitors. This has two impacts: making the portfolio of competitors less cost-effective, and passing uncertainty of costs to competitors and their customers due to the confidential nature of CAM contracts.

a) CAM Costs Are Higher Than Other RA Costs and Results in CCA Customers Paying Twice – and More – for New Resources

CAM represents a "double charge" for CCA customers. CCAs bring new resources onto the grid, which CCA customers pay for; yet CCA customers are also required to pay for high CAM costs for the IOUs' new resources. In these two ways, CCA customers are disadvantaged through CAM and IOUs reap the rewards through lower RA costs.

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[12] MEA discusses the general applicability of CAM below, followed by additional briefing regarding the specific constraints on CAM applicability to CCA customers.

[13] Nor is MEA in control of any off-lining of CAM facilities.

The costs of RA through CAM are significantly higher than those through customary RA contract or RA procured in the market through existing facilities . Mr. Woodruff (TURN) addresses this issue in his testimony, though he does not provide an apples -to-apples comparison of costs. He states:

> In its 2011 Resource Adequacy Report, the Commission's Energy Division reported 4 a me dian price for "RA / Capacity only" contracts of $2.20/kW -mo or $26.40/kW-yr. But according to a California Energy Commission analysis, the annual fixed costs of new gas -fired generating units are about $175/kW -yr to $190/kW-yr, of which the CAISO project s only one -sixth to one -third would be recovered from sales of energy and ancillary services.[14]

Mr. Woodruff's comparison is not consistent since the more appropriate metric is the cost of RA through new bundled resources, not an unbundled RA product. Howe ver, the result is the same: CAM costs are higher , since new resources cost more . This means that at the same time as MEA is bringing new bundled resources online, it is also paying for expensive new resources being brought online by PG&E. The same will hold true for CCAs that form in the SCE and SDG&E service territories.

b) Double Charging of CCA Customers Results in Outcomes Contrary to CCA Objectives; CCAs Do Not Have Guaranteed Cost Recovery Like the IOUs

As discussed above, the double charging of CCA customers for new resources is not only improper, it limits the ability of the CCA to cost effectively – comparative to the IOU – bring on the greener and more renewable resources used to serve its load. Furthermore, it is imposing these double costs on a n entity that does not receive the same guaranteed cost recovery as the IOUs.

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[14] Exhibit TURN-2, Rebuttal Testimony of Kevin Woodruff on Behalf of The Utility Reform Network Regarding Track 4 – SONGS Retirement, October 14, 2013, at 8. (Footnotes Omitted.)

IOUs face miniscule risk related to cost recovery when procuring resources for its customers. With the passage of Assembly Bill 57 (September 24, 2002) and Section 454.5 therein, the legislature provided the ultimate risk assurance to the IOUs : they receive full cost recovery of their procurement. Through this provision, the I OUs were required to develop Long Term Procurement Plans which, if approved by the Commission, would "eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan."[15] As has been demonstrated by the IOUs in the present proceeding, even with no risk of the costs of these contracts being recovered, they have argued that they, simply stated, are not responsible for procuring responsibly on a long -term basis for their bundled customers.[16]

Competitors of IOUs – those who bear the cost of CAM – do not receive such cost assurances and are subject to market risks (and the risks imposed by the market's dominant participants, the IOUs). CCAs do not receive assurances of full cost recovery of contracts. Rather, CCAs project what their needs will be and procure responsibly to meet those needs, while bearing the risks themselves.

c) Unknown CAM Costs Results in CCAs; Inability to Craft Balanced Portfolios; CAM Resource Costs Should Be Public

CAM costs, which are currently confidential, should be made public. To t he extent the IOUs seek to socialize costs, the costs proposed to be socialized should be fully disclosed.

IOUs should not be allowed to protect contract information where that information is being used to impact CCAs and other LSEs. Market participants – that is, those who pay the

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[15] Section 454.5(d)(2).

[16] *See, e.g.* , Exhibit SDG&E -2, Prepared Track 4 Rebuttal Testimony of SDG&E, Robert B. Anderson, October 14, 2013, at 4 (Emphasis Added).

costs of CAM – are not privy to the costs of the resources or the expected costs that their customers will bear. In the most recent PG&E ERRA, PG&E has proposed tripling CAM costs in one year.[17] Those costs cannot be anticipate d by the CCA and impact the ability of the CCA to optimize its portfolio to meet its short -, medium-, and long-term objectives. While CCAs are allowed to have a "representative" in the CAM Peer Review Group ("PRG") which reviews the CAM costs, such a representative cannot be a market participant. CCAs, by their very nature, are market participants. The current rules eliminate any possibility of a CCA representative.

Through CAM, the IOUs can shift both risk and costs onto CCAs through several mechanisms. First, the IOUs benefit from the new resources brought onto the grid by CCAs and are also able to foist a portion of their own RA costs onto the CCAs; an IOU is able to more effectively compete against a CCA that does not have a guaranteed rate of return, a nd are able to keep CAM costs confidential even after they are forced upon CCAs. The Commission must remedy these consequences through modifying the CAM process for CCAs (discussed below), and ensuring more transparency in the CAM process.

IV. BACKGROUND TO CAM AND ITS IMPLICATIONS IN THE PRESENT PROCEEDING

CAM was developed as a discrete tool to address significant needs on the grid. Its evolution as a procurement tool has developed fay beyond the original scope of CAM and with little regard to limitations, such as those applicable to CCAs.

A. Concerns Regarding the Allocation of Responsibility for Reliability Needs Emerged Soon After the Energy Crisis of 2000-2001

The issue of who should bear the costs of reliability improvements is not new. After the suspension of the competitive market during the Energy Crisis, the current "hybrid market" was

[17] Compare A.13-05-015 and A.11-06-004.

formed where competitive providers coexist with incumbent IOUs. During this unsteady transition period to after the Energy Crisis, the Commission found that:

> A major issue in this proceeding is the extent to which the utilities will be compensated for investments or purchases that they must make in order to meet their obligations to provide reliable service to their customers. The implementation of CCA, departing municipal load, and the potential for lifting, in some form or another, the current ban on allowing new direct access, all create uncertainty as to the amount of load the existing utilities will be responsible for serving in the future.[18]

This concept predated CAM as is currently implemented. At that time, the key considerations for policy related to striking a balance between the needs for competition and stability. Since no CCAs had yet formed, it more specifically addressed a model focused on IOUs and DA. While the enabling legislation existed for CCA, no CCAs yet existed, and the Commission required that the IOUs' Long Term Procurement Plans ("LTPPs") be required to be updated with "changes occurring as a result of Commission decisions implementing Community Choice Aggregation (CCA) in R.03-10-033."[19] To date, the IOUs have not reflected projected CCA loads into their LTPPs.

B. The Cost Allocation Mechanism Was Developed on a "Limited and Transitional Basis"

Subsequent to D.04-12-048, the Commission developed a temporary CAM structure.[20] This temporary structure was intended to be a stopgap for final guidance on how to resolve the reliability questions the Commission had raised. In adopting CAM, the Commission stated its intent "to pursue policies to develop and maintain a viable and workably competitive wholesale

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[18] D.04-12-048, at 196-197, Finding of Fact 10.

[19] D.04-12-048 at 237, Ordering Paragraph 1.

[20] A final structure has not yet been developed by the Commission to address the reliability questions raised which resulted in CAM.

generation sector in order to assure least cost procurement for bundled utility customers." [21] As part of this "workably competitive" market, the following temporary CAM structure was adopted:

> Accordingly, we will adopt a modifi ed version of the [Joint Parties'] proposal on a limited and transitional basis . This new cost -allocation mechanism will not apply to commitments made after new institutions are decided upon, developed and in place.[22]

The Commission was to subsequently develop and decide upon "new institutions" to address the issue of reliability. Such new institutions were not developed. At this same time, the Commission adopted an approach to allow for differing treatment of LSEs:

> We are supportive of the proposal tha t load serving entities (LSEs) that can demonstrate that they are fully resource adequate over a sufficiently long time horizon should be allowed to opt-out of the cost-allocation system.[23]

D.07-09-044 set forth the implementation details of the CAM charge.

Therefore, the temporary CAM structure that set the stage for its later implementation was only developed to be used on a limited and transitional basis and give LSE's a "safety valve" of an opt -out if they could demonstrated they were fully resource adequate over a sufficient period of time.

C. Exigent Circumstances Drove the Preliminary Use of the Cost Allocation Mechanism

CAM was utilized for the first time with a 10 -year power purchase agreement betwee n Long Beach Generation LLC and SCE. The impetus for authorizing CAM in D.07 -01-041was one of urgency.

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[21] D.06-07-029 at 2.

[22] D.06-07-029 at 4, emphasis o riginal. MEA notes that the proposed multi -year framework would serve as this alternative.

[23] D.06-07-029 at 5.

> The Commission is approving this resource to ensure electric reliability for summers 2007 through 20 09 in light of the unprecedented record -breaking demand on the system during the heat storm of summer 2006 and the tight reserves in the Southern California service territory.[24]

The consequences of not bringing the facility onto the system in southern Cali fornia would have resulted in significant risks of blackouts in the region. The Decision estimated that "the addition of new resources reduces the probability of the Stage 3 blackout in summer 2007 from 1-in-15 to 1-in-100."[25]

The use of CAM for exigent needs is reasonable since it addresses unforeseeable circumstances where the resource adequacy framework does not suffice. However, CAM is simply not intended for use as an additional requirement above and beyond the resource adequacy framework. If the resource adequacy framework is insufficient, the RA framework should be revised.[26]

D. CAM Was Codified in Law in 2009

Subsequent to the development of the CAM framework at the Commission, CAM was codified – and modified – into law. S enate Bill 695 (October 11, 2009) provided for a limited expansion of DA and also included Section 365.1(c) (2)(A) related to CAM. As a result of this legislative revision, the Commiss ion addressed SB 695 CAM reforms in D.11 -05-005. Specifically, the Decision required that determinations be made at the discretion of the Commission not the IOU ; allowed CAM treatment f or utility-owned generation; and allowed CAM duration to match the duration of the underlying contract.

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[24] D.07-01-041, at 1.

[25] D.07-01-041at 10, footnote omitted.

[26] Such changes a re taking place in the multi -year RA framework discussions, but to date those have not made reference to its impact on CAM.

E. Subsequent to Its Codification in Law, CAM Became Utilized as a Policy Tool

Prior to its codification in law, CAM was not used as a policy tool by the Commission to achieve non-exigent ends.[27] For example, leading up to D.08-09-012, the investor-owned utilities requested special non-bypassable charge treatment for Qualifying Facilities ("QFs") and their contract costs. Specifically, the investor-owned utilities requested CAM treatment for these contracts. The Commission denied the utilities' request in D.08-09-012. Specifically, the Commission stated:

> We agree that the IOUs should be able to impose NBCs for the above market costs of these new QF contracts. This can be accomplished through the D.04-12-048 NBC [PCIA], and we will authorize that NBC for this purpose. However, there has been no demonstration of need for cost recovery of these new QF contracts through the CAM that was authorized by D.06-07-029, and we will not do so. The CAM was designed to get new system reliability resources built and the resigning of QF contracts does not accomplish that. Even for contracts with new QFs, cost recovery under the CAM may not make sense due to the requirements and costs associated with the energy auction process.[28]

However, subsequent to CAM's codification in law, the Commission reversed course on these policy determinations. Specifically, in D.10-12-035 the Commission authorized recovery of QF/CHP through CAM.

F. In Response to Concerns Over CAM Use, SB 790 Limited the Use of CAM for CCAs.

On October 8, 2011, the Legislature adopted Senate Bill 790 a CCA "Bill of Rights." This legislation responded to the increased use of CAM by the Commission, among other issues. Specifically with regards to CAM and CCA procurement, SB 790 introduced Section

[27] MEA does not address here the issue of lawfulness of the Commission's recent use of CAM.
[28] D.08-09-012 at 37.

365.1(c)(2)(B), Section 366.2(a)(4) and (5), Section 366.2(g), Section 380(b)(4), and Section 380(h)(5) among other protections. These provisions are discussed below in Section VIII(A).

G. CAM is an Additional Burden to CCA Customers Who Already Bear Significant and Burdensome Exit Fees

CAM coexists among a host of additional – and in many cases burdensome – exit fees and non-bypassable charges ("NBCs"). These include:

- Nuclear Decommissioning.
- Competition Transition Charge ("CTC"): Pre-energy crisis costs related to the transition to the competitive market. Such charges were intended to be temporary, but these charges continue today.
- Department of Water Resource ("DWR") Charges: Costs resulting from DWR's procurement of energy during the 2000-01 crisis. These charges are also ongoing.
- Power Charge Indifference Adjustment ("PCIA"): Allocation of above market cost of power purchased on a customer's behalf prior to their departure from bundled service. This originated from the Cost Responsibility Surcharge ("CRS"). This represents one of the most significant charges borne by CCA customers.
- Energy Cost Recovery Amount ("ECRA") and Historical Procurement Charge ("HPC"): Costs resulting from the bankruptcy and near-bankruptcy of PG&E (ECRA) and SCE (HPC). These charges have recently ended.

When evaluating the fairness of cost allocation proposals in the present proceeding, the Commission should be mindful of the impacts of this ever-expanding and incredibly complex and burdensome exit fee and NBC regime.

H. Overview of the Present Request in Track 4

This Track 4 specifically pertains to the resources that may be brought online after the shutdown of SONGS. SONGS was a facility used by both SCE and SDG&E was "a resource that served bundled customer needs."[29] Other than nuclear decommissioning and storage costs, the costs and benefits of SONGS specifically served the bundled customers of the SCE and SDG&E service territories. The shutdown of SONGS means that certain resources may need to be brought online to replace the facility. These are "needs" faced by bundled customers, and potentially are needs for local or system reliability purposes. A key question in this proceeding is the appro priate cost allocation of any new resources which are to be brought online: Should those costs continue to be borne by bundled ratepayers?

The contentious proposal of the IOUs in this case is that the proposed new facilities to be utilized to fill the needs identified in Track 4 receive CAM treatment, meaning that costs would be shifted to CCA customers and other unbundled ratepayers. In order to determine appropriate cost allocation, MEA has set forth below a series of steps in order to reach a fair cost allocation determination.

V. STEP ONE: THE BASIC REQUIREMENTS OF RESPONSIBLE PROCUREMENT MUST BE MET

While testimony is supposed to reflect the facts necessary for the Commission to make an appropriate determination based upon those facts, in the present ins tance, witnesses have waded well into legal territory. The result is statements which significantly misstate the law and mislead the Commission. The disconcerting result is that the IOUs – particularly SDG&E – assert that

[29] Exhibit TURN-2, Rebuttal Testimony of Kevin Woodruff on Behalf of The Utility Reform Network Regarding Track 4 – Songs Retirement, October 14, 2013, at 2-3.

they have absolutely no responsibility toward their bundled customers to develop and maintain a diverse and secure portfolio.[30]

The first step in evaluating whether a resource is CAM eligible is to look at whether the IOUs have already procured, or set a plan to procure, based upon reasonable assumptions regarding the bundled load they serve. Specifically, (1) the IOUs are responsible for procuring responsibly for their bundled loads on a short-, medium-, and long-term basis; and (2) the IOUs must meet the basic requirements of procurement, such as meeting the RA requirements.

A. The Investor-Owned Utilities Have Abdicated Their Responsibility to Reasonably Procure for Their Bundled Customers

Some of the need discussed in this Track 4 – and possibly the entire need discussed in this Track 4 – should be borne by IOUs in their service of their bundled customers either under their Bundled Procurement Plans ("BPPs") or through other existing legal and regulatory requirements.

Contrary to law and good policy, the IOUs have gone to great lengths to assert that they have no responsibility to responsibly procure for their bundled loads. For example, SDG&E states: "in its role as the LSE for its bundled customers, SDG&E has no obligation to ensure that new resources are built to replace SONGS."[31] SCE similarly asserts that since it is meeting its short-term RA obligations and serving its customers' short-term energy needs, CAM should

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[30] *See,* Exhibit SDG&E-2, Prepared Track 4 Rebuttal Testimony of SDG&E, Robert B. Anderson, October 14, 2013, at 4-5.

[31] Exhibit SDG&E-2, Prepared Track 4 Rebuttal Testimony of SDG&E, Robert B. Anderson, October 14, 2013, at 4 (Emphasis Added).

apply to any procurement authorized in this Track 4. SCE further threatens to not procure certain resources unless SCE receives CAM treatment for those resources.[32]

1. Law Requires that IOUs Be Responsible for Their Bundled Loads

The position of the utilities that they are not responsible for their bundled load is clearly contrary to law. For example, Section 454.5(b)(9) provides that an IOU's procurement plan must make a showing that:

> (B) The electrical corporation shall create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reduction products.

The legally mandated BPPs of the IOUs were scarcely touched upon in this proceeding. This raises a significant red flag, since without that discussion, the Commission will not have sufficient information to determine whether the needs set forth in this Track 4 are properly borne by bundled customers or if the analysis should continue whether or not the resources are CAM eligible. Mr. Woodruff (TURN) asserted in his Rebuttal Testimony that "the utilities have no other obligation to make long-term investments in resources to meet local reliability needs other than as directed by the Commission in a docket such as this Long-Term Procurement Plan (LTPP)."[33] This ignores the fact that the BPPs are a key – and legally required – part of this LTPP.[34]

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[32] Exhibit SCE-2, Track 4 Rebuttal Testimony of Southern California Edison Company, Colin Cushnie, October 14, 2013, at 41, lines 5-7.

[33] Exhibit TURN-2, Rebuttal Testimony of Kevin Woodruff on Behalf of The Utility Reform Network Regarding Track 4 – Songs Retirement, October 14, 2013, at 3.

[34] *See*, Exhibit PG&E-2, Pacific Gas and Electric Company 2012 Long-Term Procurement Plan Track 4 – Local Reliability Needs Without SONGS Rebuttal Testimony, Rick Martyn, October 14, 2013 at 6: "Bundled procurement plans are properly addressed in Track 3 of this LTPP proceeding."

Section 380(g) clearly states that it is both through the IOUs' BPPs as well as through other mechanisms that RA costs be collected:

> An electrical corporation's costs of meeting resource adequacy requirements, including, but not limited to, the costs associated with system reliability and local area reliability, that are determined to be reasonable by the commissio n, or are otherwise recoverable under a procurement plan approved by the commission pursuant to Section 454.5 , shall be fully recoverable from those customers on whose behalf the costs are incurred, as determined by the commission, at the time the commitment to incur the cost is made, on a fully nonbypassable basis, as determined by the commission.

Mr. Anderson (SDG&E) acknowledged these basic bundled customer procurement requirements during cross-examination:

> Q. [Kelly] Did SDG&E have any contingency plans for serving its bundled customers if SONGS were to go offline?
> A. [Anderson] […] We would have the same -- we would do the same as any other LSE in the state, which is once that resource is gone, we then proceed to contract for t he additional energy or capacity we need in order to meet our obligations of being an LSE.
> Q [Kelly] And that would comprise a variety of different types of contracts, whether short term or long term?
> A It may, yes.[35]

As Mr. Woodruff (TURN) states in his Rebuttal Testimony, in part, it is the BPPs which "give the utilities [direction] on forward procurement of capacity and energy." [36] Such BPPs have not been undertaken in this proceeding. This issue was further fleshed out in the cross-examination of Mr. Woodruff, who noted the applicability of "ratable rates" in his Rebuttal Testimony.

> Q [Kelly] And so by SONGS going off line, doesn't that leave the gap in that ratable rate calculation for each of these utilities?
> A [Woodruff] Well, the utilities update t heir bundled procurement plans to reflect their current positions.

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[35] Hearing, October 30, 2013, Transcript at 1822 Lines 16 through 26.

[36] Exhibit TURN-2, Rebuttal Testimony of Kevin Woodruff on Behalf of The Utility Reform Network Regarding Track 4 – Songs Retirement, October 14, 2013, at 10.

Q [Kelly] And how far forward does the ratable rates table go?
A [Woodruff] Eight or ten years.[37]

Simply stated, under the existing BPPs and ratable rate requirements for forward procurement, it is required that the IOUs procure responsibly for their own bundled loads. Mr. Woodruff (TURN) asserted in his testimony that:

> The IOUs have no obligation to replace SONGS capacity on a MW -for-MW, type-for-type, year -by-year basis. […]The BPPs limit the IOUs' forward purchases of capacity within a given year to a fraction of future years' projected net open positions; these limits take the form of "position limits" and maximum rates of transaction, which are known as the "ratable rates."[38]

However, even taking for arguments' sake that the IOUs have no such "MW -for-MW" requirement to replace resources that go offline, there is IOU responsibility to procure for its bundled customers which is contrary to Mr. Woodruff's assertion that all of the Track 4 need be granted CAM treatment.

2. Good Policy Also Requires that IOUs Should Be Responsible for Their Bundled Loads

Responsible LSEs procure resources needed to serve the loads of its customers. While MEA does not operate in the southern California territories at issue, its Integrated Resource Plan is a useful metric for responsible procurement.[39] MEA has consistently brought online new generation resources, contracted for on a long -term basis, to meet the needs of its customers. IOUs are expected to do the same.

> Q [Kelly] MEA, as a load serving entity, will be bringing on and has brought on a lot of new resources onto the grid as part of enhancing system reliability, and that is something also that SDG&E does; is that correct?

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[37] Hearing, November 1, 2013, Transcript at 2275 Lines 9 through 20.

[38] Exhibit TURN-2, Rebuttal Testimony of Kevin Woodruff on Behalf of The Utility Reform Network Regarding Track 4 – Songs Retirement, October 14, 2013, at 12.

[39] *See*, Exhibit MEAxSDG&E-1, Marin Clean Energy Integrated Resource Plan Annual Update , November 2012.

A [Anderson] We have done that, yes. [40]

Q [Kelly] Does SDG&E enter into long -term generation contracts with new resources for its own bundled customers?
A [Anderson] Yes, we have. [41]

This IOU responsibility to reasonably procure for its bundled customers has not ceased. Furthermore, responsible LSEs, such as MEA and other CCAs should not bear the costs and uncertainties of CAM resources.

B. The Investor Owned Utilities Have Failed to Demonstrate That the Present Procurement Is Not Part of Other Commission Procurement Requirements, Such as RA

The IOUs must make a showing that the procurement they request CAM treatment for are not covered by other Commission policies or mechanisms. For example, Section 380 mandates that all LSEs establish RA requirements, and that within these RA requirements, the ability of CCAs to determine the generation resources used to serve their customers should be maximized.[42] The Commission must address whether the new procurement is deriving from the IOUs' existing RA obligations or other obligations t o serve bundled customers and subtract procurement required by law from any procurement plans.

For example, TURN's witness Woodruff indicated that there were a number of Commission policies, such as the Renewable Portfolio Standard ("RPS"), that must be co mplied with before any new generation procurement is undertaken. Mr. Woodruff identified consumer risk tolerance, as well as upcoming storage requirements as other examples of policies that the

[40] Hearing, October 30, 2013, Transcript at 1824 Line 24 through 1825, Line 2.
[41] Hearing, October 30, 2013, Transcript at 1825, Lines 9 through 12.
[42] Section 380 (a) – (b)(4).

IOUs must adhere to. [43] IOUs must comply with their legal and re gulatory requirements, including those of the BPP, prior to CAM being considered by the Commission.

VI. STEP TWO: COMPETITIVELY NEUTRAL SOLUTIONS MUST BE CONSIDERED

After evaluating whether the requirements for an IOU to procure responsibly for its bundled load have been met, to the extent there is residual need that is unmet, the Commission should first turn to competitively neutral solutions, not CAM. The requirement that customers "pay equally" under CAM does not necessarily mean that CAM is competitively n eutral. Additionally, alternative reliability solutions that are competitively neutral must be examined. Such alternative reliability solutions have not been addressed, except in passing by Mr. Cushnie (SCE) in his Rebuttal Testimony. Mr. Cushnie provides two potential reliability solutions as alternatives to CAM procurement – transmission improvements and demand response.[44]

A. The Requirement that Customers "Pay Equally" Under CAM Does Not Mean CAM is Competitively Neutral

Before evaluating Mr. Cushnie's proposals, it is worth briefly identifying a key issue: the requirement that customers "pay equally" does not result in those customers or their LSEs being treated equally. Rather, the question is one of responsibility to procure, not cost responsibility.

For example, Mr. Woodruff (TURN) confuses exactly this point. He states: "grid reliability is a "good" that is shared equally by all customers. Since the cost of the new capacity needed to maintain reliability far exceeds the cost of existing capacity, an equitable allocation of

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[43] Hearing, November 1, 2013, Transcript at 2277 Lines 8 through 20.

[44] Mr. Cushnie asserts: "AReM/DACC's and WPTF's proposals to limit the costs of replacing SONGS to only bundled customers are also inconsistent with the allocation of costs associated with other potential reliability solutions." While Mr. Cushnie raises the important issue of evaluating potential alternatives to meet reliability needs, his analysis regarding cost allocation is misleading in each case. Exhibit SCE -2, Track 4 Rebuttal Testimony of Southern California Edison Company, Colin Cushnie, October 14, 2013, at 40.

the costs of capacity needed for reliability requires all customers to fund an equal allocation of new capacity.[45,46] This ignores the fundamental premise of competition: that customers will see better results if the resources procured on their behalf are procured competitively.

B. Alternative Reliability Solutions Are More Competitively Neutral

In Mr. Cushnie's first example, "if the local area reliability needs were met with transmission, the costs associated with the new transmission would be widely allocated through the CAISO's Transmission Access Charge."[47] In the case of increased transmission, such development would be competitively neutral, as it would allow for all LSEs to equally supply the grid with reliability services throug h the new resources. This example highlights the difference between customers "paying equally" and using a solution that is competitively neutral. Relying on CAM to force all ratepayers contribution to capacity costs reduces the autonomy of non-IOU LSEs to conduct their own procurement, and also creates a disincentive for these non-IOU LSEs to meet their own RA requirements through long-term contracts that provide stability and certainty to the capacity market.

In his second example, Mr. Cushnie posits a solution through demand side management programs. Depending upon the nature of the demand response program, the primary benefits realized can either be distribution-related, through increased grid reliability and avoidance of additional distribution grid infrastructure investments, or be generation-related, by either

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[45] Exhibit TURN-2, Rebuttal Testimony of Kevin Woodruff on Behalf of The Utility Reform Network Regarding Track 4 – Songs Retirement, October 14, 2013, at 5.

[46] Similarly, Mr. Woodruff (TURN) states: "Given this lack of difference in service reliability, all customers should expect to pay equally for the costs of investing in new resources needed to provide reliability." Exhibit TURN-2, Rebuttal Testimony of Kevin Woodruff on Behalf of The Utility Reform Network Regarding Track 4 – Songs Retirement, October 14, 2013, at 6.

[47] Track 4 Rebuttal Testimony of Southern California Edison Company, Col in Cushnie, October 14, 2013, at 40.

reducing or helping to meet individual LSEs' RA requirements. Where Mr. Cushnie errs in his assumption that Demand Side Management program costs are appropriately allocated to all customers. He states: "If a portion of the solution is met through existing utility Demand Side Management (DSM) programs, the costs of such programs would be allocated to all SCE customers, including DA and CCA." [48] The Commission has launched proceeding R.13 -09-011 to address cost allocation issues and other structural reforms relating to demand response. While DSM programs could be leveraged in competitively neutral manners, this has mostly not occurred to date. Though up to this point demand response programs cost have been recovered through IOU distribution rates, there has not been a through vetting of the cost allocation for demand response. MEA believes that the utilization of DSM could also reach competi tively neutral results depending on the outcome of R.13-09-011.

Additional transmission capacity and DSM programs can be examples of competitively neutral means for addressing local energy and capacity shortages. These and other sim ilar options should be considered prior to resorting to procurement of new generation resources coupled with CAM treatment. It is highly questionable that the only proposed strategy to fill this need is through all new resources to serve this replacement energy and capacity.

VII. STEP THREE: SPECIFIED CRITERIA MUST BE MET FOR A RESOURCE TO BE CAM ELIGIBLE

Once the first two steps have been evaluated, and there remains a new generation resource need, the IOUs must make a showing that the proposed need and the pr oposed new generation procurement meet the statutory requirements of CAM. The IOUs must provide sufficient support to determine cost allocation ; the IOUs must prove that the resource is needed,

[48] Exhibit SCE-2, Track 4 Rebuttal Testimony of Southern California Edison Company, Colin Cushnie, October 14, 2013, at 40.

the resource benefits all customers, the resource be mandated by the Commission, and the costs of CAM are reasonable.

A. The Commission Requires that IOUs Provide Sufficient Support to Determine Cost Allocation, Such as Through the Cost Allocation Mechanism

In the time since the adoption of the Track 1 LTPP Decision, the Commission has made it clear that:

> 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.[49]

In this case, the IOUs have not provided sufficient information for the Commission to make appropriate determinations on cost allocation and whether CAM should be applicable.

For example, rather than providing specific support f or the IOUs' assertions that CAM should apply to the entirety of the need described in this Track 4, IOUs instead only provide blanket statements – or in certain cases, clear misstatements of law – to assert that CAM should be applicable. For example, SDG&E witness Robert B. Anderson asserts that:

> Under the cost allocation mechanism (CAM) that exists pursuant to § 365.1(c) , each investor -owned utility (IOU) must procure the new generation resources necessary to serve its distrib ution service territory , with the cost and benefits of the capacity associated with these new resources being shared by all "benefitting parties" located in that IOU's service territory.[50]

This blanket statement that any "new procurement" must receive CAM is not supported by law or policy.

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[49] D.13-08-023 at 16.

[50] Exhibit SDG&E -2, Prepared Track 4 Direct Testimony of San Diego Gas & Electric Company, Robert B. Anderson, August 26, 2013, at 12.

Mr. Cushnie of SCE provides no basis for the applicability of CAM. [51] Furthermore, he makes reference to D.13-02-015, and claims that applicability of CAM in Track 1 necessarily requires CAM applicability in Track 4. Mr. Cushnie states: "Nothing has changed since the Commission issued D.13-02-015 to change this finding [that CAM remains reasonable for application in Track 1]. As a result any Track 4 procurement authorized by the Commission should be eligible for CAM consistent with the Commission's findings in Track 1." [52]

First, it is important to note that D.13-08-023 – which has occurred since the Track 1 Decision – requires IOUs to provide sufficient support for their cost allocation proposals, which in this case the IOUs have not done. [53] Second, Mr. Cushnie's testimony is rife with legal and policy error. Third, SCE does not demonstrate in his testimony that the purported needs set forth in the testimony of SCE: (1) are not base requirements of bundled ratepayers or of the resource adequacy regime; and (2) meet the relevant criteria for applicability of CAM. Third, SCE has

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[51] Exhibit SCE-1, Track 4 Testimony of Southern California Edison Company, Colin Cushnie, August 26, 2013, at 59-60.

[52] Exhibit SCE-1, Track 4 Testimony of Southern California Edison Company, Colin Cushnie, August 26, 2013, at 60.

[53] Mr. Cushnie provides the following generalization:
"In Track 1, the Commission concluded that when new generation is needed to meet local or system area reliability needs for the benefits of all customers in the IOU's service area, the CAM should apply:

> Section 365.1(c)(2)(A)-(B) holds that in instances when the Commission determines that new generation is needed to meet local or system area reliability needs for the benefit of all customers in the IOU's service area, the net capacity costs for the new capacity shall be allocated in a fair and equitable manner to all benefiting customers, including DA, CCA and bundled load. Simply put, each customer must pay their fair share for the benefits that flow to them from the new generation for the full life of the asset. [Citing D.13-02-014 at 106.]

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."
Exhibit SCE-2, Track 4 Rebuttal Testimony of Southern California Edison Company, Colin Cushnie, October 14, 2013, at 39.

not set forth alternatives to CAM that are more competitively neutral. Fourth, SCE assumes that the Track 4 procurement " authorized" by the Commission should CAM -eligible. Rather, such procurement must meet the CAM criteria and be ordered to be procured or must otherwise meet the CAM eligibility criteria.

B. The Resource Must Be Needed

The firs t component of the CAM eligibility criteria relates to system or local area reliability need. CAM applies solely when the Commission determines that certain resources "are needed to meet system or local area reliability needs ."[54] In this case the specific need for resources that meet the system or local area reliability need has not been quantified. All resources brought online provide certain system or local area reliability benefits. However, CAM is only an option when there is a specific need. Here, (1) the post-SONGs need must be clearly identified, and (2) those needs must be served by the proposed solution.

1. The Need Resulting From the SONGS Outage Has Not Been Identified

The specific SONGS -related need (that is not the responsibility of bundled customers) has not been quantified. When Mr. Anderson (SDG&E) was questioned regarding need his response was clear that not all of the SONGS outage resulted in a system or local ar ea reliability need.

> Q [Kelly] So you're saying that 100 percent of the SONGS outage results in a system or local area of reliability need; is that correct?
> A [Anderson] No, I'm not saying that. [55]

Even TURN did not assert that the needs being driven by the SONGS outage are not solely for the need to serve all customers. Rather, Mr. Woodruff states:

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[54] Section 365.1(c)(2)(A).

[55] Hearing, October 30, 2013, Transcript at 1826, Lines 4 through 18.

> Local reliability needs – including those driven by expected resource retirements – are not solely the responsibility of bundled customers, even when they may be driven in part by the retirement of a resource that served bundled customer needs, such as the San Onofre Nuclear Generating Station (SONGS).[56]

The question that has not been answered in this proceeding is what portion of the SONGS outage should be borne through the CAM mechanism.[57]

2. Option Contracts Do Not Serve Need and Are Not CAM Eligible

Furthermore, it is clear that CAM requires that there be a need to serve. Option contracts do not fill this requirement. Either a resource is needed and should be built and receive CAM, or a resource is not needed and could be built, but should not receive CAM.

SCE's requests for CAM treatment for "contingent contracts with GFG [conventional gas-fired generation] in the LA Basin" should be denied.[58] Such proposed procurement does not meet a "straight-faced" test.

Mr. Cushnie states that: "SCE agrees that these contracts are options. As such, they will not, unless the option is exercised, provide any energy. The option is to develop GHG resources that, if they are built, will benefit all customers by providing capacity and energy needed for local area reliability."[59] This violates the need requirement, and it further violates the requirement that the Commission "order" the procurement under CAM. SCE is correct in stating that: "In advocating for CAM treatment of contingent contract, SCE acknowledges that current

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[56] Exhibit TURN-2, Rebuttal Testimony of Kevin Woodruff on Behalf of The Utility Reform Network Regarding Track 4 – Songs Retirement, October 14, 2013, at 2-3.

[57] No netting of specific identified needs in CAISO studies has been offset against projected procurement, such as through the IEPR. *See,* Hearing, October 30, 2013, Transcript at 1828, Lines 1 through 13. (Questioning of Mr. Anderson of SDG&E.)

[58] Exhibit SCE-2, Track 4 Rebuttal Testimony of Southern California Edison Company, Colin Cushnie, October 14, 2013, at 40.

[59] Exhibit SCE-2, Track 4 Rebuttal Testimony of Southern California Edison Company, Colin Cushnie, October 14, 2013, at 40. (Emphasis added.)

law does not require such an allocation."[60] More accurately, law prohibits CAM treatment in the circumstance of contingent contracts.

C. The Resource Must Benefit All Customers

A second requirement of CAM is one of benefit. CAM applies solely when the Commission determines that certain resources benefit "all customers in the electrical corporation's distribution service territory."[61] The concept of "all customers" benefitting should be clarified to ensure that while all customers benefit from certain resources coming online, not all customers benefit from utilities bringing those resources online. A key underlying assumption that has not proven true for CCAs – which will be more extensively discussed below – is that non-utilities don't bring new resources on the grid.

Even knowledgeable experts such as Mr. Woodruff (TURN) are not aware of the significant transformations in the market.

> Q [Kelly] You state that you are not aware of any new capacities that has been constructed in California based on commitments from energy service providers. Are you aware of any new capacity that has been constructed in California based on commitments from community choice aggregators?
> A [Woodruff] I'm not aware of any. [62]

MEA has demonstrated new capacity that has been brought online by CCAs in its Integrated Resource Plan, Exhibit MEAxSDG&E-1. Mr. Woodruff acknowledged that non-entities bringing resources online would require a fresh look at the applicability of CAM:

> Q [Kelly] If there were ESPs that were bringing on new generation capacity based on long-term commitments from energy service providers, would that change your analysis in this proceeding?

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[60] Exhibit SCE-2, Track 4 Rebuttal Testimony of Southern California Edison Company, Colin Cushnie, October 14, 2013, at 41. (Emphasis added.)

[61] Section 365.1(c)(2)(A).

[62] Hearing, November 1, 2013, Transcript at 2277 Line 26 through 2278 Line 6.

A [Woodruff] That would be a major change in the environment. I would have to look at it, yes.
Q [Kelly] So as a substantial change in how entities procure?
A [Woodruff] A substantial change. [63]

This substantial change in the market has occurred with CCAs and should now be considered. To the extent a non -IOU brings new resources online, such pr ocurement must be reflected in the CAM. This was also confirmed by Mr. Anderson (SDG&E).

Q [Kelly] And going back to the question of new resources. If you have another entity such as a CCA that's bringing on new resources online that benefit this load pocket, does -- do the customers of that entity benefit from the CCA's procurement?
A [Anderson] Just like the CCA benefits when SDG&E's bundled customers bring on new resources in that load pocket.
Q [Kelly] Okay. So it's a two -way street. So if you're addin g on resources that benefit a specific area, that's sort of a two-way transaction; everybody benefits?
A [Anderson] If you're saying does new resources in a given area then help the overall reliability that everyone shares, yes. [64]

The time is ripe for the Commission to reflect the fact that procurement is a "two -way street" for who benefits in its methodology implementation of CAM.

D. Resource Must Be Ordered at the Discretion of the Commission.

Once the previous tests have been met, the Commission has the discretion – but not the obligation – to assign CAM to the facility. It also has the discretion to assign the costs of the facility to bundled customers. The IOUs have lost sight that it is the Commission's discretion, not the IOUs' discretion, which determines CAM.

The IOUs suggest that the Commission does not have this discretion, contrary to law and good policy. For example, Mr. Anderson (SDG&E) asserts that "r equiring bundled customers, and only bundled customers, to pay for new resources necessary to m eet the reliability needs of

[63] Hearing, November 1, 2013, Transcript at 2278 Line 29 through 2279 Line 14.
[64] Hearing, October 30, 2013, Transcript at 1829 Line 21 through 1830 Line 8.

all customers would be inequitable and contrary to the Commission's statutory obligation under § 365.1(c) (2)(A)."[65] No such statutory obligation exists in Section 365.1(c) (2)(A). Rather, Section 365.1(c)(2)(A) only applies " in the event that the commission authorizes … or orders… an electrical corporation to obtain generation resources." Section 365.1(c) (2)(A) does not require the Commission to authorize or order any generation resources pursuant to CAM; it provides the Commission with the option to impose CAM treatment in specific scenarios.

E. Furthermore, the Costs of CAM Must Be Reasonable

It is essential that the Commission evaluate the reasonableness of the CAM charge in two regards: (1) the cost of the resource itself, and (2) the fairness of the CAM methodology in evaluating those costs.

1. The Cost of the Resource Must Be Fair

As with all utility procurement authorized by the Commission, the costs of such procurement must be just and reasonable. This includes charges of the utility to unbundled customers. Specifically, Section 451 states:

> All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

At this point in time, CCAs and other entities whose customers are charged CAM are not privy to the cost information of resources proposed to receive CAM treatment. First, such costs should be public, not confidential, to ensure those paying for the costs can participate in the

[65] Exhibit SDG&E-2, Prepared Track 4 Rebuttal Testimony of SDG&E, Robert B. Anderson, October 14, 2013, at 5.

decision-making process regarding those resources. Second, such costs must be just and reasonable, both to bundled and unbundled ratepayers.

2. The CAM Methodology for Applying Costs Must Be Fair

It is also important for the values of the energy and the resource adequacy related to the resource to receive CAM treatment to be just and reasonable. Currently, the CAM methodology minimizes the cost of energy under the methodology by using a short-term market cost of energy to subtract from the total bundled product price to arrive at the resource adequacy value. A much more reasonable approach would be to take a long term energy contract value and subtract that figure from the bundled product price to arrive at the capacity price. Such changes to the CAM calculation methodology should be addressed as soon as practicable by the Commission. In fact, Section 365.1(c)(2)(D) sets forth the specific intent of CAM:

> It is the intent of the Legislature, in enacting this paragraph, to provide additional guidance to the commission with respect to the implementation of subdivision (g) of Section 380, as well as to ensure that the customers to whom the net costs and benefits of capacity are allocated are not required to pay for the cost of electricity they do not consume.

As a result of the unbalanced methodology applied to CAM, the result is a subsidized energy price for bundled customers and an inflated resource adequacy price (which includes energy value) paid by both unbundled and bundled customers. As a result, bundled customers benefit more from the shifting of costs to unbundled ratepayers, including CCA residential customers.

Since the methodology is unbalanced, the presumptions that the IOUs have set forth before the Commission in this proceeding are untrue. For example, Mr. Martyn (PG&E) claims that: "The CAM fairly allocates net capacity costs to all customers and is the appropriate way to

prevent cost shifting or subsidization of costs that maintain reliability." [66] Mr. Anderson (SDG&E) also holds erroneous assumptions regarding the fairness of CAM. Specifically, he asserts: "It is the failure to CAM the new resources required to meet reliability needs that would create the unfairness… By subjecting these new resources to the CAM, both bundled and non-bundled customers receive an equal share of the RA value and each group pays the same net capacity costs." [67] Specifically, Mr. Anderson makes two false assumptions. First, that each load-serving entity *wants* the RA value provided by the resources. Second, that paying the "same net capacity costs" means that those costs result in fairness.

As a result, it is incumbent upon the Commission to undertake an analysis of the CAM methodology to ensure fairness for all customers, including CCA customers.

VIII. FURTHER RESTRICTIONS ON CAM APPLY IN THE CASE OF COMMUNITY CHOICE AGGREGATORS

There are a wide variety of legal and policy restrictions that should limit CAM's application to CCAs.

A. There Are Numerous Legal Restrictions on CAM with Regards to Community Choice Aggregators

The IOUs have not fully addressed the applicability of CAM to the customers of CCAs. First, NBCs can be differentiated and do not have to be collected equally from all customers. Second, CCAs and their procurement mechanisms are unique. SB 790 (2011) was passed not only to protect CCA autonomy, but also protects CCA autonomy in procurement of resources for

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[66] *See*, Exhibit PG&E-2, Pacific Gas and Electric Company 2012 Long-Term Procurement Plan Track 4 – Local Reliability Needs Without SONGS Rebuttal Testimony, Rick Martyn, October 14, 2013 at 6: "Bundled procurement plans are properly addressed in Track 3 of this LTPP proceeding."

[67] Exhibit SDG&E-2, Prepared Track 4 Rebuttal Testimony of SDG&E, Robert B. Anderson, October 14, 2013, at 5.

their customers. Third, CAM is an additional burden to CCA customers who already bear the costs of exit fees, such as the Public Charge Indi fference Adjustment ("PCIA") and Department of Water Resources ("DWR") Bond Payments.

1. Bundled, DA and CCA Customers Should Not Bear CAM Costs According to the Same Methodology

Different LSEs and their customers must pay different types of NBCs. [68] NBCs can b e differentiated by the Commission and the Commission here can differentiate the assign ment of CAM costs to LSEs according to their type . According to Section 365.1(c)(2)(C): "The resource adequacy benefits of generation resourc es acquired by an electrical corporation… shall be allocated to all customers who pay their net capacity costs ." Therefore, any customer who does not pay net capacity costs is not required to pay for RA.

Although CAM is required to be paid on a non -bypassable basis, CAM does not require that the charges be equivalent for bundled, DA, or CCA customers. Specifically, the statute requires that "the net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the commission , to all of the following: (i) Bundled service customers of the electrical corporation. (ii) Customers that purchase electricity through a direct transaction with other providers. (iii) Customers of community choice aggregators." [69] Given that these three types of customers are delineated, different rules may apply to each.

Additionally, Section 365.1(c)(2)(B) indicates:

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[68] *See,* D.08-09-012, Appendix D, entitled Summary of Consumer Responsibility for Various IOU/DWR Cost Elements. For example, "Continuous DA" customers are not responsible for the NBCs of New World Generation Costs, Pre -2003 Generation Costs, DWR Power Charges, or DWR Bond Charges. They are, however, responsible for Ongoing CTC.

[69] Section 365.1(c)(2)(A).

> If the commission authorizes or orders an electrical cor poration to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation. The commission shall alloc ate the costs of those generation resources to ratepayers in a manner that is fair and equitable to all customers, whether they receive electric service from the electrical corporation, a community choice aggregator, or an electric service provider.

The Commission should differentiate the CAM methodology to the various LSE types. The closure of SONGS is likely the largest single CAM-eligible event in the foreseeable future with the largest potential costs. It is crucial at this point that the Commission identify and implement clear CAM guidelines to implement this extremely large procurement need in a fair and equitable manner to all customers in accordance with statute. Should the Commission implement these rules at a later time, such in Track 3 of the instant proceeding, there will be no opportunity to apply those new rules to the Decision that the Commission makes in this Track 4. Therefore, the analysis of CAM rules and applicability to different customer types must be made immediately, but especially to CCAs, who are not only delineated in statute, but also serve primarily residential customers.

2. Law Protects CCA Customers from Cross-Subsidization and Other Anticompetitive Functions

SB 790 was enacted into law in 2011 in order to protect and encourage CCA development in California and to protect CCA autonomy generally and in procurement for CCA customers. The Commission was given the responsibility of incorporating "rules that the Commission finds to be necessary or convenient in order to facilitate the development of CCA programs, to foster fair competition, and to protect against cross-subsidization paid by ratepayers."[70]

[70] Section 707(a)(4)(A).

Section 2(c) of SB 790 indicates that electrical corporations have "the potential to cross-subsidize competitive generation services." In the instant proceeding, the costs of SONGS were originally assigned only to bundled customers. By proposing CAM treatment, the IOUs may lower their own generation rates in a clear example of cross-subsidization.

Additionally, Section 2(g) of SB 790 proclaims, "California has a substantial government interests in ensuring that conduct by electrical corporations does not threaten the consideration, development, and implementation of CCA programs."

As noted above, San Diego County and other municipalities within SDG&E and SCE service territories are in exploratory stages of forming CCAs. Adding these CAM costs to these potential CCAs will stifle their development and implementation because the added costs of CAM to their own generation rates may make any CCA plan financially problematic. The Commission must identify rules pertaining to CAM treatment both for existing CCAs and developing CCAs in a manner that fosters fair competition.

SCE submitted testimony that the AReM/DACC and WPTF proposals "would also have a chilling effect on the desire and ability of an entity to support the development of new generation because of the perpetual replacement obligation that AReM/DACC' and WPTF's illogical proposal would attach to it." [71] However, the concern of SCE is clearly misplaced because the never-ending imposition of CAM has an even greater chilling effect on the development of new generation.

[71] Exhibit SCE-2, Track 4 Rebuttal Testimony of Southern California Edison Company, Colin Cushnie, October 14, 2013, at 40.

3. CCA Procurement is Autonomous and Should Not Be Undermined.

In addition to CCA autonomy concerns generally, there are a number of statutes that protect a CCA's ability to procure its own resources. Most important, Section 366.2(a) mandates: "A CCA shall be solely responsible for all generation procurement activities on behalf of the CCA's customers, except where other generation procurement arrangements are expressly authorized by statute."

Additionally, regarding RA, Section 380(b)(4) mandates: " In establishing resource adequacy requirements, the commission shall… maximize the ability of community choice aggregators to determine the generation resources used to serve their customers." Additionally, Section 380(h)(5) mandates: " The commission shall determine and authorize the most efficient and equitable means for… ensuring that community choice aggregators can determine the generation resources used to serve their customers."

The IOUs and TURN have voiced concern that without CAM, other LSEs would not procure to meet the need. [72] TURN argued: "The potential for "free rider" behavior – in which some customers receive reliable service based on the commitments to new cap acity paid by other customers – is why it is so critical to allocate the costs of new capacity needed to provide reliable service equally among all customers…. [73] However, upon cross -examination, TURN's expert indicated that this did not address CCAs[74] or their ability to address its energy needs. [75]

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[72] MEA has shown that CCAs can and do bring online new resources.

[73] Exhibit TURN-2, Rebuttal Testimony of Kevin Woodruff on Behalf of The Utility Reform Network Regarding Track 4 – Songs Retirement, October 14, 2013, at 7.

[74] Hearing, November 1, 2013, Transcript at 2280 Lines 5 through 9.

[75] Hearing, November 1, 2013, Transcript at 2279 Line 16 through 2279 Line 14; Transcript at 2280 Lines 5 through 9.

Although CAM is authorized by statute, as discussed above, the rules regarding how CAM applies to CCAs has not been determined in a manner that maximizes a CCA's ability to determine generation resources in accordance with statute . Generation services are central to a CCA's mission, otherwise a community pursuing CCA would either remain with the incumbent IOU or municipalize if they wished to control transmission and distribution. Subverting a CCA's sole res ponsibility to determine its own generation resources cuts at the heart of a CCA's mission. For example, MEA often contracts for a bundle of energy products from a facility at one time: energy, RA capacity and renewable attributes under MEA's renewable ene rgy power purchase agreements. The current implementation of CAM affects those capacity purchases, forcing MEA to sell unbundled capacity on the open market. For an entity whose mission includes adding more renewable resources to the grid, the sale of care fully selected renewable capacity due to the receipt of brown or unknown capacity from an IOU is untenable.

B. Policy Considerations Require a Thorough Review of CAM's Effect on CCAs

Pursuant to its reliability requirements under Section 380 , the Commission "must balance its reliability mandate with other statutory and policy considerations." [76] There are a number of policy considerations that demand action from the Commission regarding CAM's application to CCAs.

CCAs are required by law to acquire RA for their portfolios. [77] When CAM is applied to CCAs, they not only fail to control their generation procurement, but they are also saddled with

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[76] D.13-02-015 at 126 -27, Conclusion of Law 1. "Primarily, these considerations are reasonableness of rates under § 451 and § 454 and a commitment to a clean environment under Pub. Util. Code sections including § 399.11 (Renewables Portfolio St andard) and § 454.5(b)(9)(C) (Loading Order)."

[77] Section 380, *et al.*

capacity above and beyond their requirements. Thus, a CCA is forced to sell off c apacity on the open market, and at a loss. Costs are increased both due to the extra CAM procurement costs which are foisted upon customers, but also because of the loss that occurs because of the below market value of RA sold. In turn, CCA customers must bear these costs through inefficient procurement and use of cash reserves. Especially because a CCA is a not -for-profit organization, there are few places for these charges to be assigned to that do not directly impact CCA customers. Again, 88% of MEA's cu stomers are residential customers. These issues have not been addressed by the IOUs or, to date, by the Commission, although the Commission will examine CAM methodology in Track 3 of this proceeding. Therefore, the Commission must closely examine the application of CAM to CCAs.

The application of CAM to CCA customers is unsound from a policy perspective because the CAM process should not apply to CCAs that bring new resources onto the grid, curtails the ability of CCAs to procure for its own loads, undermin es a CCA's carefully selected resource mix, and because there is no notice, structure, or applicable rules in which CCAs can effectively utilize CAM.

1. CCA Procurement Must Be Reflected in CAM Methodology

CAM is a policy which only works in one direction: it allocates the costs undertaken by an IOU and passes them through to a CCA customer or other LSE customers. CAM as currently implemented does not acknowledge the value of the resources brought online by a CCA or another LSEs.

CCAs procure on a long -term basis. For example, MEA is largely resourced for the next several years, having contracted for most of its projected needs for bundled renewable electricity through 2017, non -renewable energy through 2017, and capacity through 2015. MEA's power purchase agreements often long-term agreements for 20 and 25 years. Therefore, should there be

an urgent need for resources for bundled customers, CCAs should be largely unaffected because they procure power through separate contracts and means than the IOUs.

Indeed, SDG&E's expert indicated that if an LSE adds resources onto the grid in a specific area it will help the reliability of everyone. [78] Therefore, CCAs that bring new resources onto the grid should not be penalized for contributing to the reliability of the g rid aside from the IOU. To ignore CCA procurement is inequitable and results in unjust rates for CCA customers.

2. CAM Limits the Ability of a CCA to Procure for Its Own Load

As discussed above, there are a number of statutes that serve to maximize a CCA's so le responsibility for its own procurement, outside of statutory requirements. [79] However, it must be noted that communities who complete the arduous process of forming their own CCA naturally must have strong opinions on the inadequacy of their current gener ation procurement. To limit the generation procurement ability of a CCA is to nullify the efforts of not only the CCA, but the community advocates, staff, and elected officials who all created the political will for the CCA. Procurement is at the heart and soul of a CCA. Mandating a certain type of procurement undermines a CCA's core purpose.

On September 18th, 2013, MEA was provided with its RA requirements and CAM allocation to be used in its year -ahead compliance filing for 2014, which was due on October 31st. MEA adjusted its RA portfolio consistent with these requirements. On October 7th, MEA received its adjusted CAM allocation to be used in the month -ahead compliance filing for January, 2014. The CAM allocation was increased from 19.10 MW to 28.22 MW. As a result,

[78] Hearing, October 30, 2013, Transcript at 1830 Lines 6 through 8.
[79] Sections 366.2(a), 380(b)(4), and 380(h)(5).

MEA had procured excess RA and remarketed the extra RA at a loss. 28.22 MW represents over 13% of MEA's total RA requirements.[80]

3. A CCA's Central Greenhouse Gas and RPS Goals Are Damaged by CAM Treatment of Resources.

The external procure ment issue is especially troublesome for CCAs, like MEA, who formed in order to combat climate change, reduce greenhouse gas emissions, and increase access to renewable energy on the California grid. Gas contracts forced upon CCAs through CAM do not achiev e these goals . Furthermore, future CAM treatment will thwart MEA's long -term objective of offering one 100% renewable energy product throughout its entire service territory.

4. CCAs Are Unable to Participate in the CAM Review Process

CAM procurement is undert aken through the PRG, which consists of "non -market participants." This means that CCAs will not be privy to the pricing of CAM resources, or other RA resources. As such, a CCA cannot determine whether the RA being passed through to its customers is priced above market rates. While it is the Commission's determination whether a resource receives CAM, it is generally encouraged by the IOUs when they claim that a "system or local area reliability need" would be met. As such, there is a certain measure of " picking and choosing" that can be open to abuse by selecting more expensive procurement for CAM treatment.

5. No Prior Notice is Given of CAM Obligations

Given that CCAs are unable to participate in the CAM review group, CCAs are never given meaningful prior notice as to when CAM may apply to their loads and increase costs for their entities and customers. For example, CAM is expected to triple in 2014, pursuant to

[80] MEA's January 2014 total RA requirement totaled 212 MW.

PG&E's most recent Energy Resource Recovery Account application, well after MEA had fully procured its RA for 2014.

6. Resource Adequacy Rules Have Not Incorporated CAM

At this point, CAM is only one tool in a large tool belt that the Commission uses to address RA. For example, the Commission recently approved an agreement to develop a Joint Reliability Plan with the California Energy Commission and the California Independent System Operator. This Reliability Plan does not address its impact on CAM. As of now, CAM exists as a separate procurement mechanism that must be integrated into the larger whole of the Commission's RA procurement processes in order to ensure fair implementation of all procurement tools.

7. CCAs Cannot Rely on CAM

Even if CCAs were not required to meet their RA requirements, CCAs could not fully utilize CAM if they wanted to. As noted above, CCAs are not provided with meaningful advance notice of CAM coming online. Nor are CCAs provided with notice if a CAM facility is to go offline. If a CAM facility goes offline, the CCA would continue to be responsible for RA notwithstanding the IOU's failure to provide RA under CAM.

Simply put, the standard usage of CAM for CCAs is unsound from a policy perspective because the CAM process does not apply to CCAs that bring new resources onto the grid, significantly impacts the ability of CCAs to procure for its own loads, affects a CCA's carefully selected resource mix, and because there is no notice, structure, or applicable rules in which CCAs can effectively utilize CAM.

C. CAM Proposal with Regards to CCA

Once the Commission has determined that CAM charges will be applied to CCAs, the Commission should follow a three-step process:

- Ensure that CAM applies only in exigent circumstances;
- Allow the CCA to demonstrate what resources it can provide; and
- Disallow CAM for CCAs within the CCA's first five years of operation.

1. First, When CAM Applies, it Should Only be for Exigent Circumstances

If there is an exigent need, or a unique and necessary characteristic of a certain generation facility, CAM may be appropriate such that all uniquely "bene fitting" customers pay their fair share for those resources. However, if the Commission is considering CAM treatment for a resource, it should be only apply CAM in response to an unforeseeable and exigent circumstance.

2. Second, When the CAM Period Applies, the CCA Can Demonstrate What Resources it Can Provide

When CAM is applied to CCAs, each CCA should be able to submit comments into the record as to its own generation resources on the grid. This can be done quite simply through a filing of an annual Integr ated Resource Plan, or can be a filing specific to each consideration of CAM treatment. This satisfies Section 380(b) (4), which mandates: " In establishing resource adequacy requirements, the commission shall… maximize the ability of community choice aggregators to determine the generation resources used to serve their customers. " For example, MEA currently has in place 17 power purchase agreements for energy. A CCA like MEA should be able to incorporate the information as to its o wn generation resources into the record in order to offset potential CAM obligations.

3. Third, CAM Should Not Apply to the First Five Years of a CCA's Existence

After a CCA has made its showing as to its own resources, the Commission should not apply CAM to CCAs that have been in operation for less than five years. CCAs already face many barriers to implementation. First, it is not likely that a CCA in its early stages would have a

significant impact on IOU procurement. In D.04-12-048, the Commission found: "Since CCA has been set in statute and is the subject of an on-going CPUC implementation proceeding, it is reasonable to assume that some CCA will start to occur in 2006. There was not sufficient evidence in this proceeding to prove that CCA alone will have a material effect on IOU resource needs in the next few years." [81] New CCAs often launch in phases, with procurement and customer base growing over a period of years. In these stages, it is unlikely that a CCA would make a significant impact on an IOUs overall portfolio resource needs.

Second, even though AB 117 was passed in 2002, there is still only one operational CCA in the state. Clean Power SF, San Francisco's CCA, has faced implementation barriers even though the Board of Supervisors passed the Clean Power SF proposal with a veto-proof majority. There are already a number of hurdles and obstacles to the implementation of a diverse and robust CCA ecosystem in California. To add another roadblock, in the form of burdensome CAM costs, would prevent the development and implementation of new CCAs, contrary to SB 790.

IX. CONCLUSION

MEA requests that the Commission directly address issues relating to CCAs within the instant proceeding. CCAs have not yet been fully recognized within the Commission's IOU-DA paradigm, with the result that CCAs' primarily residential customers are forced to bear unfair and unreasonable costs. Although there is only operational CCA currently in California, the CCA movement is gaining ground in all of the IOUs' service territories. The Commission must address CCA issues in order to address both the growing need, and to ensure fair and equitable

[81] D.04-12-048 Finding of Fact 9 at 196.

treatment of those customers in the City of Richmond and the County of Marin who already receive service from a CCA.

The Commission should base its decision upon an informed view of the interests of each party in the proceeding, as well as an exploration into the motivations of the IOUs in their request to receive CAM treatment for all resources coming on-line due to the SONGS shutdown. Should the Commission approve CAM treatment for all required resources, it would increase the risks borne by other market competitions and thwart competitive neutrality; would result in double charging of CCA customers due to their own resource procurement and the procurement imposed by CAM; and limits the ability of CCAs to effectively craft balanced portfolios. MEA recommends transparency in the CAM PRG process to include CCAs in order to provide them with an avenue to receive notice as to upcoming CAM contracts.

The Commission should consider the historical development of CAM charges and their creation as a temporary and transitional mechanism in response to the Energy Crisis. The Commission should ensure CAM is kept to historical goals, including the use of CAM for exigent circumstances and limiting its use for CCA customers, who already bear the burden of exorbitant exit fees.

The Commission should follow a three step process in the implementation of CAM treatment for resources in the instant proceeding. First, the Commission should ensure that the basic requirements of responsible procurement are met. This ensures that the IOUs claim full responsibility to reasonably procure for their bundled customers, and that the procurement resulting from the closure of SONGS is not part of other Commission procurement requirements.

Second, competitively neutral solutions must be considered. This includes an understanding that the requirement for customers to "pay equally" under CAM does not

necessarily entail that CAM is competitively neutral. Rather, the Commission could utilize mechanisms such as CAISO's Transmission Access Charge or DSM solutions in order to address the local and system needs resulting from the SONGS shutdown.

Third, the Commission must set specific criteria for a resource to be considered eligible for CAM treatment. The IOUs must provide sufficient information to determine cost allocation, the resource must be needed, the resource must benefit all customers, the resource must be ordered at the discretion of the Commission, and the CAM methodology and costs must be reasonable and fair.

Finally, the Commission must acknowledge the numerous legal and policy restrictions that limit CAM's application to CCAs and their primarily residential customers. CAM costs should be differentiated according to bundled, DA, or CCA customer status. The Commission must recognize the statutory limitations that maximize a CCA's sole responsibility for its own procurement. The copious policy considerations affecting CCA procurement must be acknowledged: long-term procurement by CCAs increases reliability of the grid, CCAs are fully resourced without any IOU interference, CCAs are autonomous and so is their procurement; a CCA's greenhouse gas reduction goals are damaged by CAM procurement; CCAs are unable to participate in the RPG, which results in a lack of transparency and notice; holistic RA rule frameworks have not included CAM; and CCAs cannot rely on CAM either legally or in reality.

MEA proposes a three-step process when imposing CAM treatment of resources for CCAs: (1) ensure that CAM applies only in exigent circumstances; (2) allow the CCA to demonstrate what resources it can provide; and (3) disallow CAM for CCAs within their first five years of operation.

MEA thanks the Commission, ALJ Gamson and Commissioner Florio for their attention to the issues discussed herein and asks that the proposed decision to be issued herein act upon the MEA recommendations discussed above.

Respectfully submitted,

/s/ Elizabeth Kelly

Elizabeth Kelly
Legal Director
MARIN ENERGY AUTHORITY
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Telephone: (415) 464-6022
Facsimile: (415) 459-8095
E-Mail: ekelly@marinenergy.com

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APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact:

1. Pro rata application of the Cost Allocation Mechanisms has a significant negative impact on non-investor-owned utility load-serving entities that procure on a long-term basis.

2. The Cost Allocation Mechanism was developed solely to be limited and transitional.

3. The Cost Allocation Mechanism was developed to be used solely in exigent circumstances.

4. It remains reas onable to utilize the Cost Allocation Mechanism only where exigent circumstances have been identified. SCE and SDG&E have not demonstrated that such exigent circumstances exist.

5. Utilities are required to "provide clear explanations of and support for the ir cost allocation proposals… to facilitate the development of a sufficient record on which to evaluate such proposals." (Decision 13-08-023 at 16.)

6. In this case, the utilities have not provided sufficient support for their cost allocation proposal of the Cost Allocation Mechanism.

7. It is at the discretion of the Commission, not the utilities, to determine when the Cost Allocation Mechanism applies.

8. It is reasonable to authorize procurement in the amount of [XX] MW at this time; however, it is not reasonable to grant Cost Allocation Mechanism treatment at this time.

9. Option contracts are not eligible for Cost Allocation Mechanism treatment.

10. As a result of the recent development of community choice aggregation, it is reasonable to address how non -utility procurement impacts the applicability of the Cost Allocation Mechanism.

11. One of the central purposes of a Community Choice Aggregator is to determine what generation resources serve its constituent communities.

12. The Cost Allocation Mechanism circumve nts a Community Choice Aggregator 's control of the resources used to serve its customers.

13. Although they are not required to have environmental missions, Community Choice Aggregators in California have developed in order to reduce greenhouse gas emissions and increase renewable energy resources on the California grid.

14. The only operating Community Choice Aggregator in California, Marin Energy Authority, procures from new resources on a long -term basis. Other developing community choice aggregation programs similarly have planned to procure on a long-term basis.

15. Under current Cost Allocation Mechanism methodology, Community Choice Aggregators have capacity forced into their portfolios. Community Choice Aggregators have no control over what quantity of capac ity they receive, or at what cost, and cannot reply upon Cost Allocation Mechanism resources until they are allocated.

16. If load-serving entities procure on a long -term basis for new generation resources, such procurement reduces the need for investor -owned utilities to procure new resources which would otherwise receive Cost Allocation Mechanism treatment.

17. Unlike investor-owned utilities, Community Choice Aggregators do not assurances of full cost recovery of contracts.

18. IOUs have responsibility to procure on a long-term basis for their bundled customer needs.

19. The IOUs have failed to demonstrate that the request for Cost Allocation Mechanism treatment affects procurement that is not part of other Commission procurement requirements.

20. As a result of the unbalanced methodology applied to Cost Allocation Mechanism , the result is a subsidized energy price for bundled customers and an inflated resource adequacy price paid by both unbundled and bundled customers. As a result, bundled customers benefit more from the shifting of costs to unbundled ratepayers, including Community Choice Aggregator residential customers.

21. Cost Allocation Mechanism is an additional burden to Community Choice Aggregator customers who already bear the costs of numerous other exit fees.

22. Different Load Serving Entity types pay different non -bypassable charges related to procurement, such as the Competition Transition Charge, Department of Water Resource Charges and the Power Charge Indifference Adjustment.

23. The Cost A llocation Mechanism non -bypassable charge should be differentiated based upon Load Serving Entity type.

24. Alternative generation procurement is a fundamental purpose and mission of Community Choice Aggregators.

25. As currently implemented, the Cost Allocation Mechanism does not acknowledge the value of the resources brought online by a Community Choice Aggregator or other load serving entity.

26. The Cost Allocation Mechanism limits the ability of a Community Choice Aggregator to procure for its own load and dama ges a Community Choice Aggregator's mission of reduced greenhouse gas emissions and increasing access to renewable energy.

27. It is not reasonable for IOU costs proposed to receive Cost Allocation Mechanism treatment to be confidential since those costs are borne by bundled and unbundled customers.

28. Community Choice Aggregator s are currently unable to participate directly in the Cost Allocation Mechanism peer review process, which results in a lack of notice to Community Choice Aggregator s about the upcoming Cost Allocation Mechanism costs and resources they will bear.

29. Community Choice Aggregators cannot rely on the timing of on-lining and off-lining of Cost Allocation Mechanism facilities.

30. Resource Adequacy rules have not incorporated Cost Allocation Mechanism.

31. In order to not chill the development of community choice aggregation, it is reasonable to exempt customers of newly-formed community choice aggregators from receiving Cost Allocation Mechanism non-bypassable charges for a period of five years; duri ng that time, the community choice aggregator would not receive the corresponding allocations of resource adequacy from those resources.

If CAM is Granted, such findings should include:

32. It is the policy of the Commission to facilitate the development of Community Choice Aggregators. It is reasonable to provide a temporary exemption to Community Choice Aggregators of Cost Allocation Mechanism Charges for five years.

Conclusions of Law:

1. The Cost Allocation Mechanism was originally developed for use on a transitional and limited basis, and driven by exigent circumstances.

2. Investor-owned utilities must comply with law and Commission policies, including their bundled procurement plans.

3. When considering the application of Cost Allocation Mechanism treatment to resources, the Commission will follow a three step process:

   a. Ensure that the basic requirements of responsible procurement have been met;
   b. Consider competitive neutral solutions; and
   c. Require that the entity requesting Cost Allocation Mechanism has me t with specific criteria for Cost Allocation Mechanism treatment.

   These criteria includes a showing of: sufficient support to determine cost allocation in accordance with D.13 -08-023; the need for the resource; the benefit to all customers of the resource; the reasonableness of the costs.

4. Section 454.5(b)(9) requires that IOUs are responsible for their bundled loads by creating or maintaining a diversified procurement portfolio consisting of both short - term and long-term electricity and electricity-related and demand reduction products.

5. The requirement that customers "pay equally" under Cost Allocation Mechanism does not indicate that Cost Allocation Mechanism is inherently competitively neutral. Reliability solutions that are competitively neutral must be considered to CAM must be considered as alternatives.

6. All charges of the utility, whether to bundled or unbundled customers, must be just and reasonable pursuant to Section 451 of the California Public Utilities Code.

7. Section 380(b)(4) of the California Public Utilities Code requires that the Commission shall "maximize the ability of Community Choice Aggregator s to determine the generation resources used to serve their customers."

8. The Cost Allocation Mechanism limits the ability of Community Choice Aggregators to determine the generation resources used to serve their customers pursuant to Section 380(b)(4) of the California Public Utilities Code.

9. Section 3 80(h)(5) of the California Public Utilities Code requires that the Commission "determine and authorize the most efficient and equitable means for… ensuring that community choice aggregators can determine the generation resources used to serve their customers."

10. The Cost Allocation Mechanism is not the most efficient and equitable means to ensure that Community Choice Aggregators can determine the resources used to serve their customers pursuant to Section 380(b)(4) of the California Public Utilities Code.

11. Senate Bill 790 (2011) significantly revised the applicability of the Cost Allocation Mechanism to community choice aggregation customers through its inclusion of Sections 365.1(c)(2)(B), 366.2(a)(4) and (5), Section 366.2(g) and Section 380(b)(4), *inter alia*.

12. Greater transparency is required in the application of the Cost Allocation Mechanism to Community Choice Aggregators in order to foster fair competition, protect against cross-subsidization by ratepayers, and facilitate the consideration, development, and implementation of Community Choice Aggregator programs in accordance with SB 790 (2011). Community Choice Aggregators should be able to participate directly in the Cost Allocation Mechanism Peer Review Group.

13. In accordance with Section 365.1(c)(2)(A) of the California Public Utilities Code, Cost Allocation Mechanism applies solely when the Commission determines that certain resources are needed to meet system or local area reliability needs and that certain resources benefit all customers in the electrical corporation's distribution service territory.

14. Section 365.1(c)(2)(A) of the California Public Utilities Code does not require the Commission to authorize or order any generation resources pursuant to Cost Allocation Mechanism; it provides the Commission with the option to impose Cost Allocation Mechanism treatment in specific scenarios.

15. Section 365.1(c) does not require that all customer types (bundled, direct access, community choice aggregation) be equally responsible for new generation resources procured by investor-owned utilities.

16. SB 790 (2011) protects Community Choice Aggregator autonomy in procurement of resources for its customers.

17. Section 366.2 of the California Public Utilities Code mandates "a community choice aggregator shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute."

18. Section 380(h)(5) of the California Public Utilities Code mandates, "The Commission shall determine and authorize the most efficient and equitable means for… ensuring that Community Choice Aggregators can determine the generation resources used to serve their customers."

19. Once the Commission has determined Cost Allocation Mechanism charges will be applied to Community Choice Aggregators, the following three step process should be applied: (1) CAM should only apply in exigent circumstances; (2) Community Choice Aggregators should demonstrate what resources they can provide; and (3) Cost Allocation Mechanism is disallowed for Community Choice Aggregators within the first five years of operation.