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)

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) MOTION TO STRIKE ADDITIONAL PORTIONS OF THE OPENING BRIEF OF THE MARIN ENERGY AUTHORITY

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Dated: December 5, 2013

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Pacific Gas and Electric Company (PG&E) respectfully moves to strike the portions of the Opening Brief of the Marin Energy Authority on Track 4 Issues (MEA Opening Brief) identified by strikeout in the Attachment to this pleading.

Yesterday, Southern California Edison Company (SCE) filed a motion to strike portions of the MEA Opening Brief. PG&E strongly supports SCE's motion, and urges the California Public Utilities Commission to grant it.

PG&E has identified several additional portions of the MEA Opening Brief that are factual assertions unsupported by any citation to record evidence, and so moves to strike these additional portions of the MEA Opening Brief, as well.

As just indicated, the basis for PG&E's motion to strike is that the additional portions of the MEA Opening Brief are factual assertions that are not supported by any citation to the record. PG&E echoes SCE's statement that the effort by MEA to rely in its brief on factual assertions not provided to parties in testimony, or through the hearing room process, where the opportunity to rebut or cross-examine would have been available, is completely inappropriate. With that opportunity no longer available, the appropriate remedy is for the offending portions of the MEA Opening Brief to be stricken.

PG&E requests that parties be required to respond to this motion at the same time that they are required to respond to SCE's motion. This should not place any significant additional burden on parties as PG&E's motion to strike does not raise any new legal arguments beyond those raised by SCE in its motion to strike. PG&E does not intend to file any additional pleading in response to the SCE motion.

Respectfully Submitted,
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Attachment

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OPENING BRIEF OF THE MARIN ENERGY AUTHORITY ON TRACK 4 ISSUES

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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 electric 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 environmental 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~~

[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).

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

[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.

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 appropriate 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 instance, 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

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[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.

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 through 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, Colin Cushnie, October 14, 2013, at 40.

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

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.