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)

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

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December 16, 2013

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RECOMMENDATIONS

1. Southern California Edison ("SCE") and San Diego Gas & Electric ("SDG&E") are obligated to replace the capacity and energy lost because of the closure of the San Onofre Nuclear Generating Station ("SONGS") to meet the current and long-term needs of their bundled utility customers and the associated procurement costs must therefore be recovered from bundled customers.
2. D.13-08-023 requires the utilities to provide clear explanations of and support for their CAM proposals in applications and supporting testimony, to facilitate the development of a sufficient record on which to evaluate such proposals, a requirement with which both SCE and SDG&E have failed to comply, such that the request for CAM treatment must be rejected.
3. Any proposals by SCE and SDG&E to apply the Cost Allocation Mechanism ("CAM") to bundled procurement must be rejected as unfair, unreasonable, and inconsistent with the applicable statutes.
4. SCE's request for CAM treatment for its contingent gas-fired generation option contracts should be denied as it does not comply with the statutory requirements for how the CAM is to be calculated.

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

The DACC/AReM opening brief initially responded to each of the five issues identified by ALJ Gamson in his November 4, 2013 email and does not discuss them further. It focuses in this reply brief on the question of whether the Commission should impose any conditions regarding Track 4 procurement. Specifically, DACC/AReM respond to the issue of whether the utilities should be permitted to have the cost allocation mechanism ("CAM") applied to their

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[1] DACC is a regulatory alliance of educational, commercial, industrial and governmental customers who have opted for direct access to meet some or all of their electricity needs. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

[2] AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California's direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

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respective procurement costs that arise due to their joint decision to close the San Onofre Generating Station ("SONGS"). Six parties addressed this issue in opening briefs and are collectively, and sometimes individually, responded to herein.

From the perspective of DACC/AReM, the six parties fall into three categories. First, there are the three investor-owned utilities ("IOUs"), Southern California Edison ("SCE"), San Diego Gas & Electric ("SDG&E") and Pacific Gas and Electric ("PG&E"), who share a common interest in layering costs on their competitor electric service providers ("ESPs") so as to make direct access less economic and less of a threat to their monopoly status. Second there are the ratepayer advocacy groups, the Office of Ratepayer Advocates ("ORA") and The Utility Reform Network ("TURN") who represent the interests of residential and small commercial customers and who share a common interest in having a portion of the costs that have historically been borne by their constituency shifted to direct access ("DA") customers. Third, there is the Marin Energy Authority ("MEA"), the state's only operating community choice aggregator ("CCA") who shares with DACC/AReM a growing concern about this (and other) applications of the CAM to unbundled customers without any meaningful showings by the requesting utilities, and in the absence of the Commission providing any clear criteria as to what manner of procurement should – and should NOT – be eligible for CAM.

I. Response to the IOUs

The IOUs can be replied to collectively because they continued their joint and individual practice of making no meaningful arguments in support of CAM applications. Each is responded to briefly in turn below:

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A. Reply to SDG&E

SDG&E prefaces its discussion by simply reiterating the words of the statute, noting that, "Public Utilities Code § 365.1(c)(2)(A)-(B) requires that upon a Commission determination that new generation is required to meet local or system area reliability needs for the benefit of all customers in an IOU's service area, the net capacity costs for the new capacity must be allocated in a fair and equitable manner to all benefitting customers, including DA, CCA and bundled load customers." DACC/AReM does not take issue that the SDG&E quote is found in the statute. However, reading from the statute does not constitute an adequate showing that its requested procurement authorization meets the statutory standard, nor is it adequate demonstration that it has complied with the Commission's recently enunciated standard 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."[3] SDG&E falls short of meeting this standard.

First, it concedes that "In its role as an LSE procuring energy and capacity to serve its bundled customers, SDG&E's procurement activity provides a benefit only to its bundled customers."[4] This is a critical admission, because in replacing SONGS, a facility that was used solely to serve the interests of bundled customers, SDG&E is in fact providing a benefit solely to its respective bundled customer bases. SDG&E then tries to argue that when it acts "to ensure grid reliability, on the other hand, SDG&E's procurement activity provides a benefit to *all* customers in SDG&E's service area."[5]

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

[4] SDG&E, at p. 36.

[5] Ibid.

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However, this is followed by the improbable conclusion that "the need for new resources to replace SONGS capacity is driven by system reliability concerns rather than a need for energy and capacity to serve SDG&E's bundled customers." This assertion is thoroughly unreasonable. SDG&E would have us believe that it and SCE can collectively lose approximately 2,340 MW of supply when they make their unilateral decision to close SONGS but that any new energy and capacity that is to be procured as a result is not driven by a need to serve their own bundled customers.

Furthermore, this unreasonable conclusion is entirely symptomatic of the approach that the utilities have taken regarding CAM application to date, both in this and in other CAM-related proceedings. The utilities propose procurement; they pronounce the mystical words that "everyone benefits" from their procurement; and they then insist that costs be imposed on their competitors without further meaningful analysis. However, it is neither fair nor equitable (the standard in the statute for CAM application), to have any of the costs of SONGS replacement power procured to serve bundled customers allocated to DA or CCA customers.

SDG&E makes the further error of conflating past CAM approvals with its current request. It notes that in D.13-03-029, the Commission authorized SDG&E to recover the capacity costs of the Wellhead Escondido Power Purchase and Tolling Agreement from all bundled service, DA and CCA customers in SDG&E's service territory on a non-bypassable basis and that in the Commission's Track 1 decision, it also authorized CAM treatment. Put simply, any such prior authorizations are entirely irrelevant.

As noted in the DACC/AReM opening brief, the Commission recently established in D.13-08-023 that it will determine on a case-by-case basis the appropriate cost allocation treatment that projects will receive. The Commission stated as follows:

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> It is not only reasonable but necessary to make cost-allocation decisions on a case-by-case basis informed by the specific contexts in which costs are incurred. (emphasis added)[6]

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

> The determination of whether a specific IOU proposal meets the requirements for collection from unbundled customers can only be determined through a thorough review of the proposal itself by this Commission.[7]

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

> It is reasonable to address cost allocation and non-bypassable charge mechanisms as they arise in proceedings, on a case-by-case basis.[8]

SDG&E's citation of prior CAM authorizations is irrelevant. Instead, they must be held to the Commission standard of having to provide *clear explanations of and support for their cost allocation proposals in applications*, which SDG&E fails to do.

B. Reply to SCE

Each argument made above with respect to SDG&E is equally applicable to SCE. SCE's position is stated simply: "the Commission should assure that all benefitting customers pay for any new LCR resources providing energy and capacity to the system through the Cost Allocation Mechanism (CAM), consistent with Public Utilities Code Section 365.1."[9] Where SCE fails, however, is in demonstrating that any customers other than its own bundled customers benefit in having SCE replace power that was lost due to its decision to shutter SONGS. As with its initial request, SCE devotes little time in its opening brief to the CAM issue. The DACC/AReM

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

[7] Id, at p. 23.

[8] Ibid.

[9] SCE at p. 2.

opening brief observed that the entirety of SCE's opening testimony on the matter spanned less than one full page of its total 64 pages of testimony.[10] The SCE opening brief matches the testimony in both brevity and lack of meaningful content.

After first citing the statute, SCE then observes that, "In Track 1, the parties fully litigated and the Commission determined in D.13-02-015 that SCE's procurement of new resources to meet local or system reliability is subject to CAM treatment."[11] It then adds for seeming emphasis that "nothing has changed" since that authorization was issued.[12]

Certainly, nothing has changed with regard to the fact that SCE has made no meaningful showing as to why all customers are benefitted when it replaces power lost to its bundled customers through the closure of SONGS. Further, nothing has changed with regard to the Commission's directive that utilities must provide *clear explanations of and support for their cost allocation proposals in applications*, which SCE fails to do. And finally, nothing has changed with regard to the Commission's directive, as explained above in the reply to SDG&E, that each CAM request must stand on its own and be considered individually. The remarkable brevity of SCE's discussion of this issue and its total disregard of the Commission's directives in D.13-08-023 is worthy of rebuke in the only way possible… by rejection of its unsupported CAM request.

C. Reply to PG&E

PG&E is of course a bit of an observer in this proceeding. As it had no ownership interest in SONGS, its bundled customers did not lose supply, as did SCE's and SDG&E's, which must be replaced. However, the utility has its own reasons for seeing that the CAM

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

[11] SCE at pp. 15-16.

[12] Id at p. 16.

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continues to be applied to its ESP competitors so that DA becomes less economic. PG&E's main argument commits the same flaw as SDG&E and SCE. It states that, "For the same reasons the Commission applied CAM in Track 1, it should also apply CAM for any resources procured as a result of Track 4."[13] Like its IOU brethren to the south, PG&E totally ignores the fact that the Commission has said that each CAM request must be individually justified. It also makes the unsupported statement that, "the purpose of Track 4 is to identify whether new generation is needed to meet local area reliability needs in southern California."[14] This of course conveniently ignores the fact that when SCE and SDG&E decided to close SONGS, a glaring hole suddenly occurred in their <u>bundled customer</u> energy supply portfolios.

The IOUs would have it that all procurement enhances reliability and thus all procurement should be subject to the CAM. This serves their anticompetitive motivations to impose extra costs on those customers who seek alternatives to their services in search of more economic and often greener power than the IOUs can provide. By doing so, of course, they hope to see DA or CCA over time rendered less attractive to customers and ultimately uneconomic. The Commission simply cannot turn a blind eye to these self-evident motivations.

II. Response to Other Parties

A. Reply to ORA

ORA devotes one sentence of its 37-page brief to the CAM: "ORA agrees that bundled customers do not have an obligation to replace LCR assets in perpetuity, and that the Commission should therefore authorize SCE and SDG&E to allocate Track 4 procurement costs

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[13] PG&E at p. 4.

[14] Id at p. 19.

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using the Cost Allocation Mechanism (CAM)."[15] This statement ignores the statutory underpinnings of CAM, the fundamental issues that exist with respect to CAM and the Commission's decision on the showing the IOUs must make to justify CAM application. As such, it should be disregarded.

B. Reply to TURN

TURN cites the regulatory and legislative history of the CAM and then makes the following inaccurate statement:

> The only condition precedent which must be satisfied in this Track 4 so as to require cost allocation using the CAM is that the generation capacity be needed to "meet local area reliability needs." That condition is implicit in the very structure of this Track 4, and is distinct from the determination of the energy procurement needs for bundled customers, which occurs in a separate phase of the LTPP.[16]

The Track 3/4 "distinction" that TURN attempts to create is purely a procedural process created by the Commission and is totally unrelated to any statutory requirement. In fact, the Commission's determinations are clear that AB 57 and related statutes require the IOUs to procure long term to meet their bundled customer loads.[17] Although, the IOUs' planning process pursuant to the AB 57 requirements has been bifurcated into "system/local" and "bundled" plans,[18] AB 57 in fact contains no requirement for such bifurcation. While "system plans" can certainly be pursued by the IOUs and the Commission, "system plans" cannot replace or supersede the IOUs' obligation to prepare and seek approval for a bundled plan that includes long-term procurement.

Moreover, in the previous LTPP Rulemaking ("R.") 10-05-006, the Scoping Memo, at

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[15] ORA, at p. 37 (footnote omitted).

[16] TURN at p. 19.

[17] Public Utilities Code Section 454.5 (a) and (b)(9)(B)

[18] The first such bifurcation we could find appears in R.10-05-006, pp. 2 and 9.

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the IOUs' behest, restricted their bundled procurement plans to consideration of short-term and medium-term options only.[19] The ruling stated that the restriction was necessary to "reach a decision in a timely fashion."[20] While this was perhaps an expedient element for that round of the LTPP, that shorter-term focus for bundled procurement plans is not a restriction imposed by AB 57 requirements. Nevertheless, the bifurcation of system/local requirements and bundled procurement has made it all too easy for the IOUs to claim that all long-term procurement must be addressed only *outside* of the IOUs' bundled plans, and that everything approved in the system/local tracks meets reliability needs and is therefore subject to CAM. However, as explained throughout these comments, the statutory framework for CAM simply does not permit the Commission to endorse this overly simplistic interpretation.

In addition, satisfying bundled procurement requirements includes meeting bundled load growth and required reserves, as well as procurement to replace expiring contracts, retiring power plants, and bundled peak load requirements. Bundled load growth is driving the need for new generation[21] in California and the long-standing principle of cost causation[22] requires that bundled load should therefore be responsible for the associated costs and new generation required to serve it. The Commission in fact expressed concern in Decision ("D.") 07-05-052

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[19] Scoping Memo, R.10-05-006, January 3, 2011, p. 3: Track II Bundled Procurement should "focus solely on the "short-to-medium term operational needs of the utilities, and should not result in construction of new generation facilities."

[20] Scoping Memo, R.10-05-006, January 3, 2011, p. 1. At the same time, R.10-05-006, pp. 2-3, stated that the Commission intended that the bundled plan be informed by the results of the system planning effort.[20]

[21] This issue arose as early as R.06-02-013. See D.07-05-052, p. 117, citing AReM's testimony, which referred to Southern California Edison's filed procurement plan: *Southern California Edison's 2006 Procurement Plan, Volume 1A (Public Version)*, December 11, 2006, at pp. 22-23.

[22] In R.12-06-013, the Commission is examining the IOUs' residential rate structure. The Rulemaking states: "Developing equitable rates based on the principle of cost causation is one of the underlying goals of the Commission's ratemaking process." (p. 13, issued June 28, 2012)

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that the CAM might be used “inappropriately” because the new resources were actually needed to meet bundled load.[23]

Spending other people’s money is always preferable to spending your own (or that of your constituency). In fact, TURN’s motivation for supporting CAM treatment for SONGS replacement power was made evident in hearings, through cross-examination of its witness Kevin Woodruff:

> Q. Have the costs associated with SONGS energy and capacity historically been allocated to TURN's constituency, that is to say, bundled customers?
>
> A. That's my understanding, yes.
>
> …
>
> Q. If your recommendation to apply the CAM is adopted, will that reduce costs for bundled customers because DA and CCA customers will pick up a share of the costs of the replacement power?
>
> A. Yeah. They would share the costs of more expensive new generation.[24]

TURN of course has every right to advocate for cost shifting to lessen costs for its constituency, but that right of advocacy does not add credibility to its inherently flawed arguments in support of CAM treatment.

C. Reply to MEA

MEA provides an extensive and well-justified explanation as to the deleterious effect on CCAs of indiscriminate CAM application. The effectiveness of its presentation was in fact highlighted by the spurious and flawed attempts by all three IOUs to strike all or portions of MEA’s opening brief. DACC/AReM fully concur with the following statement in the Conclusion of the MEA brief:

> Should the Commission approve CAM treatment for all required resources, it would increase the risks borne by other market competitions and thwart

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[23] D.07-12-052, p. 118.

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

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> 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.[25]

As a competitive market alternative to utility bundled service, MEA has been a champion for offering economic and greener supplies than customers can obtain from PG&E. Further, the attractiveness of the CCA model is highlighted by the fact that Sonoma Clean Power is also about to commence CCA operations in May of next year. The CCA model should not be compromised and undercut by unfair, inequitable and unjustified application of the CAM. Furthermore, the arguments that MEA makes with regard to CCAs are equally applicable to ESPs. ESPs will also see their risk profile increased by additional unjustified CAM application. Their DA customers also run the risk of being double charged when utility CAM charges replicate the procurement already made by their serving ESP. Finally, ESPs also see their ability to craft balanced procurement profiles compromised by the imposition of unwanted CAM-related procurement.

III. Conclusion

DACC/AReM reiterate our opening recommendations as follows:

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

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

[25] MEA at p. 47.

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

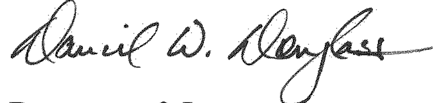
4. SCE's request for CAM treatment for its contingent gas-fired generation option contracts should be denied as it does not comply with the statutory requirements for how the CAM is to be calculated.

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

This is not surprising, since there is no justification for CAM treatment to this Track 4 procurement that is consistent with the applicable statutes. Specifically, CAM cannot and should not apply to utility procurement to meet the bundled customers' needs caused by the utilities' decision to close SONGS. Therefore, the Commission should reach a determination that the utilities have not demonstrated why CAM should be applied to their proposed procurement, nor is there any credible justification for doing so that would be fair, reasonable or consistent with applicable statutes or commission directives in D.13-08-023.

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

Respectfully submitted,



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