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 OF THE ALLIANCE FOR RETAIL ENERGY MARKETS AND DIRECT ACCESS CUSTOMER COALITION TO COMMENTS ON TRACK 3 PROPOSED DECISION

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In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure, the Alliance for Retail Energy Markets[1] ("AReM") and Direct Access Customer Coalition[2] ("DACC") respectfully submit this reply to comments filed February 18, 2014 on the proposed decision ("PD") issued by Administrative Law Judge ("ALJ") David M. Gamson in this proceeding on January 28, 2014 and subsequently updated on February 4, 2014.[3]

I. UTILITY PROCUREMENT FOR FORECASTED DEPARTING LOAD SHOULD END WHEN THE BUNDLED PLANS ARE APPROVED.

AReM and DACC agree with Marin Clean Energy ("MCE") -- the utilities should be required to modify their procurement as of the date their Bundled Plans are approved by the Commission and the departing load forecast in the Bundled Plan should therefore be exempt

[1] AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California's direct access ("DA") 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.

[2] 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.

[3] AReM/DACC's comments and citations herein address version 3 of the PD sent by ALJ Gamson to t he service list via electronic mail on February 4, 2014. Because the revised PD was released as a Word document, pagination may differ from copy to copy. Therefore, Section references are provided in addition to page cites herein.

from stranded costs recovery as of the date of that approval. [4] This rational approach provides both clarity and a much-needed "date certain" to all market participants. Utilities would have clear Commission direction on when procurement for departing load must end and departing load customers and their suppliers, either electric service providers ("ESPs") or community choice aggregators ("CCAs"), would have a date certain beyond which no further stranded cost recovery would apply.

In fact, no party opposed the PD's requirements that the utilities be obligated to include forecasts of departing load in their 10-year bundled procurement plans, to exclude such forecasted load from their future procurement activities, and then to exempt the departing load from stranded-cost recovery charges.[5] However, applying the PD's "assumed date of departure" rule for ending utility procurement means that the utilities can continue to procure for load that they already know is departing, leading to needless over-procurement and likely stranded-cost claims that could easily have been avoided. As MCE explains, if a utility's Bundled Plan is approved in 2015 and forecasts departing load beginning in 2020, the utility should immediately incorporate that knowledge into its bundled procurement plans and no longer procure for that 2020 departing load as of 2015. [6] Thus, the 2020 departing load should only be subject to stranded cost recovery up to the date the Bundled Plan was approved in 2015. Put simply, MCE's approach is a clear "win-win" for all concerned -- providing certainty for the departing customers and avoiding unneeded procurement by the utilities.

[4] MCE, pp. 6-7.

[5] PD, Section 4.2.3, pp. 14-15. See also, PD, Ordering Paragraph 1, pp. 66-67.

[6] MCE, p. 7.

AReM and DACC further support the associated modifications to the body of the PD proposed by MCE,[7] but believe that additional conforming modifications are required to Ordering Paragraph 1, which AReM and DACC propose herein in Attachment A.

II. CHANGES TO ORDERING PARAGRAPH 1 PROPOSED BY SOUTHERN CALIFORNIA EDISON AND PACIFIC GAS AND ELECTRIC CONFUSE, RATHER THAN CLARIFY, AND SHOULD BE REJECTED.

Ordering Paragraph 1 is the enabling provision setting forth the Commission policy that forecasted departing load is exempt from stranded cost recovery. As discussed above, AReM and DACC support modifications to Ordering Paragraph 1 to minimize potential over-procurement by the utilities and to set a date certain for when the stranded-cost exemption applies. However, Southern California Edison Company ("SCE") and Pacific Gas and Electric Company ("PG&E") have proposed changes to Ordering Paragraph 1, which confuse, rather than clarify, and should be rejected.

SCE seeks to modify when the exemption for stranded cost recovery would begin. SCE proposes that the exemption would begin when the "customer has announced it intends to depart."[8] This proposal adds confusion and undercuts the Commission's intent that, once departing load is forecast, the utilities have an obligation to no longer procure for such departing load.[9] The proposal also raises a host of questions. How would a customer make such an "announcement"? What protocol would the utilities require the customers to follow to prove their "intention" to leave? With SCE's approach, the departing load forecast ordered by the Commission has neither meaning nor effect. The utilities could continue to procure to meet load they know will depart, thereby procuring power that is unneeded by their remaining bundled

[7] MCE, Appendix A, modifications to body of PD at 2 and 17.

[8] SCE, p. 14 and Appendix A, p. A-2.

[9] PD, Section 4.2.3, p. 15.

customers. In short, SCE's proposal undermines the PD's common-sense determination that the utilities refrain from procuring for forecasted departing load. Accordingly, AReM and DACC respectfully request that SCE's proposal be rejected.

For its part, PG&E requests that the reference to forecasting departing load "using information provided by the California Energy Commission" be deleted. [10] AReM and DACC have long argued that the utilities should be required to use the best available data, including data from the California Energy Commission ("CEC"), in preparing load forecasts and opposes the deletion of that requirement in the PD's Ordering Paragraph. Also, PG&E seeks to avoid making direct access forecasts until the market re-opens, another change that AReM and DACC oppose and which no other utility requested. While true that the level of direct access is capped by statute, the Commission allows a small degree of flexibility above the cap [11] and the Commission should, in any event, ensure that the utilities continue to exclude all such load from their Bundled Plans. Finally, PG&E asks to add a sentence to Ordering Paragraph 1 stating that the paragraph "does not apply to the Cost Allocation Mechanism ("CAM") charge." [12] AReM and DACC agree that CAM charges are separate and distinct from stranded costs. Accordingly, PG&E's proposed sentence is unnecessary and simply adds confusion. As the PD notes, the Commission may in the future address a mechanism by which load-serving entities will be permitted to opt-out of CAM changes [13] and thus the PD should not include a statement that is not necessary now, and could later create confusion. Therefore, AReM and DACC request that PG&E's proposed changes to Ordering Paragraph 1 be rejected and that the Commission instead approve the modifications proposed by AReM and DACC as set forth in Attachment A.

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[10] PG&E, Appendix A.

[11] D.10-03-022, Ordering Paragraph 5, pp. 35-36, and Appendix 2.

[12] PG&E, Appendix A.

[13] PD. Section 8.3.3, pp. 49-50.

III. THE "PRIMARY PURPOSE" TEST PROPOSED BY THE WESTERN POWER TRADING FORUM SHOULD BE ADOPTED TO ESTABLISH WHEN CAM APPLIES.

The Western Power Trading Forum ("WPTF") shares the concerns of AReM and DACC that the PD fails to provide clear guidance on when CAM charges are justified, which can lead to improper cost shifting by the utilities. [14] WPTF proposes that the Commission adopt a "primary purpose" test. So, "if the resource was added primarily to provide supply to bundled customers, then any tangential reliability improvement should not be sufficient to justify CAM treatment." [15] AReM and DACC support this test as a significant improvement over existing vague generalizations of "reliability benefits" that have created a world in which CAM is the rule rather than the exception and Commission-approved CAM resources represent 21% of CAISO system load.[16] To implement this improvement, AReM and DACC request that a new Ordering Paragraph be added, as set forth in Attachment A.

IV. CONCLUSION.

AReM and DACC respectfully request that the Commission take the actions requested above and adopt the modifications to the PD specified in Attachment A.

Respectfully submitted,

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[14] WPTF, p. 9; AReM-DACC, pp. 3-7.

[15] WPTF, p. 9.

[16] *Track III Comments of the Alliance for Retail Energy Markets and the Direct Access Customer Coalition*, R.12-03-014, April 26, 2013, pp. 19-20.

ATTACHMENT A

CONSOLIDATED RECOMMENDED MODIFICATIONS TO PROPOSED DECISION
(Modifications proposed by AReM and DACC in February 18, 2014 Comments and in this February 24, 2014 Reply)

Corrections to Body of PD, Section 8.3.1, p. 43:

The Commission administers a variety of centralized procurement programs, each with impacts to bundled and non-bundled benefitting customers. The Commission may create more programs of that nature in the future, and allocate further costs to benefitting customers. No Commission determinations have been made as to how the different types of centralized procurement (CHP procurement, demand response, **and** new generation resources pursuant to LTPP**, and the recently approved energy storage procurement mandate**) relate and how all these types should be evaluated in combination with the goal of providing cost effective reliability and adherence to the Commission's Loading Order.

Corrections to Body of PD, Section 8.3.3, pp. 48-49:

Because various parties have continued to question the basis upon which the Commission determines the eligibility of a particular resource procurement for CAM treatment, we take this opportunity to explain our policy further. Bundled procurement undertaken pursuant to a utility's AB 57 bundled procurement plan is **normally** not subject to the CAM, **nor is any other bundled procurement**. On the other hand, procurement that a utility is authorized or directed to undertake in **the "system track" of** the LTPP, **to which the Commission determines is needed to** meet local or system (including flexibility) reliability needs **for the benefit of all customers**, will ordinarily be subject to the CAM. Thus, the answer to the fourth question in this section: "At what stage in procurement should procurement be deemed CAM eligible, and what criteria should govern Commission decision[s] regarding CAM allocation?" follows directly from these basic principles. When the Commission in the LTPP (or other appropriate proceeding) authorizes or directs a utility to procure resources **that it determines are needed** to meet system or local reliability needs **for the benefit of all customers**, the CAM applies. Absent such

authorization or direction, CAM does not apply, unless otherwise stated in a specific Commission decision. Since bundled plans **do not benefit all customers** ~~**rarely if ever direct particular procurements**~~, this distinction should be reasonably transparent to all parties.

Addition to Conclusion of Law 10

10. Energy auctions should no longer be required to net capacity costs for CAM facilities. Instead all utilities should use the mechanism adopted in the JPP to set the residual capacity costs that would be allocated to benefitting customers. **Energy Division shall reexamine this mechanism to ensure that all sources of revenue for energy and ancillary services are incorporated into the calculation**.

Modifications to Ordering Paragraph 1

1. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (collectively, the IOUs) shall estimate reasonable levels of expected Direct Access and Community Choice Aggregation departing load over the 10-year term of the IOUs bundled plans, using information provided by the California Energy Commission and/or by a Community Choice Aggregator in its Binding Notice of Intent. The IOUs shall then exclude this departing load from their future bundled procurement plans, and only procure for the assumed amounts of retained bundled load. Having been excluded from the bundled portfolio planning scenarios, the forecasted Direct Access and Community Choice Aggregation departing load shall not be subject to non-bypassable charges for any incremental stranded procurement costs incurred by the IOUs ~~**for the period**~~ after the date of ~~**departure assumed in their approved**~~ **approval of their** bundled plans.

Addition to Ordering Paragraph 4

4. Energy auctions shall no longer be required to net capacity costs for facilities subject to the Cost Allocation Mechanism. Instead Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall use the mechanism adopted in Decision 07-09-044, known as the "Joint Parties' Proposal," to set

the residual capacity costs that would be allocated to benefitting customer. **Within 90 days after the effective date of this proceeding, Energy Division shall reexamine this mechanism to ensure that all sources of revenue for energy and ancillary services are incorporated into the calculation**.

Additional New Ordering Paragraph

X. The Commission shall determine the primary purpose for each proposed utility procurement. When the primary purpose of the utility's procurement is to meet the needs of bundled customers, the costs shall be recovered solely from bundled customers and the Cost Allocation Mechanism shall not apply, regardless whether the procurement provides tangential reliability benefits to all customers.