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)

COMMENTS OF THE DIRECT ACCESS CUSTOMER COALITION AND ALLIANCE FOR RETAIL ENERGY MARKETS ON THE TRACK 4 PROPOSED DECISION

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 Oxnard Street, Suite 1030
Woodland Hills, CA 91367
Telephone: (818) 961-3001
Facsimile: (818) 961-3004
E-mail: douglass@energyattorney.com

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

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In accordance with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Direct Access Customer Coalition[1] ("DACC") and the Alliance for Retail Energy Markets[2] ("AReM") respectfully submit these joint opening comments on the February 11, 2014, proposed decision ("PD") of Administrative Law Judge ("ALJ") David Gamson in Track 4 of the Long-Term Procurement Plan ("LTPP") proceeding.

I. Introduction and Summary

DACC and AReM have no position on whether or not SCE and SDG&E should be authorized to procure additional resources or the type of resources that should be procured within the scope of this proceeding. DACC and AReM instead focus their joint attention on whether any such procurement that may be authorized should be made subject to the cost allocation mechanism ("CAM") – and conclude that, indeed, CAM is not permissible or appropriate for this Track 4 procurement, for the following reasons:

- SONGS was not addressed in Track 1 of this proceeding, and therefore reliance on Decision ("D") 13-02-015 issued in Track 1 to support the application of CAM in Track 4 is inconsistent with the requirement of the underlying statute and

[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.

Commission policy, both of which require that each CAM authorization must be applied to separately-authorized procurements.

- The underlying statute and Commission policy set forth in D.13-08-023 require that application of CAM must be fully supported on a case-by-case basis.
- SCE and SDG&E are obligated to procure to meet their bundled customers' needs – needs that were created as a direct result of the closure of SONGS. Neither SCE nor SDG&E have met the Commission's requirements, set forth in D.13-08-023, for demonstrating CAM eligibility for such bundled customer needs.
- Procurement to meet bundled customers' needs is not eligible for CAM treatment pursuant to D.14-02-040.
- CAM treatment for option contracts is not permissible.
- CAM treatment for energy storage conflicts with D.13-10-040, which sets individual procurement targets for each Load-Serving Entity ("LSE").

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 for utility procurement that replaces the retiring SONGS facility.[3] SONGS was maintained by SCE and SDG&E to serve its bundled customers; replacement of it will maintain the reliability that is lost by its retirement, and most certainly does not create any incremental new reliability resources for which CAM can or should be considered. Therefore, the Commission should reach a determination that the utilities have not demonstrated why CAM should be applied to their proposed procurement, nor is there any credible justification for doing so that would be fair, reasonable or consistent with applicable statutes, as discussed more fully in Section II below. DACC's and AReM's suggested changes to the PD are included in Attachment A to these comments.

[3] In fact, DACC and AReM have argued repeatedly that CAM is not justified when competitive LSEs are meeting all the reliability obligations imposed upon them. Simply put, direct access customers simply do not derive any benefit from any procurement by the utilities to meet a reliability need that their own freely chosen LSE has already met.

II. The PD's Discussion and Analysis of the Utilities' Cost Allocation Mechanism Requests are Insufficient and Inadequate.

Approximately four and one-half pages of the one hundred sixty-eight page PD are devoted to the topic of CAM treatment, which breaks down as follows:

Topic	Pages
Summary of parties' positions on CAM	2.25
Summary of statute	.25
Citation from Track 1 decision	.50
Actual analysis of CAM applicability to SONGS replacement procurement	.50
Discussion of applicability to CAM to contingency or option contracts	1.00
Total	4.50

It is, of course, typical for a proposed decision to summarize all parties' positions and applicable statutes. The fact that the PD allocates all of five sentences to its summary of the DACC and AReM positions on this threshold issue is troubling, just as is the fact that the actual analysis of the CAM applicability to SONGS replacement procurement is sorely lacking, as discussed below.

A. The Approval of CAM in Track 1 is Irrelevant and as such, the Citations from D.13-02-015 should be Deleted from the PD.

Conclusions of Law 51, Ordering Paragraph 12, and a number of citations throughout the PD reference D.13-02-015, the Commission authorization in Track 1 of this proceeding. Reliance on D.13-02-015 to support the application of CAM in this Track 4 is entirely misplaced and irrelevant, and should be eliminated. There are two reasons for this irrelevance that justify eliminating those references, as follows:

1. Track 1 did not Address SONGS Replacement Power

The PD states that, "The basic question related to CAM in this decision is whether procurement authorized in this decision should be treated any differently from procurement authorized in D.13-02-015."[4] However, Track 1 did not deal with either SONGS procurement or

[4] PD, at p. 116.

CAM treatment for SONGS replacement power, as SCE has acknowledged in its written testimony[5] and as acknowledged in the cross-examination of SCE witness Colin Cushnie:

> Q. Did that decision last February deal with the permanent closure of SONGS and the need to procure LCR in the wake of the closure decision?
>
> A. That decision dealt with the retirement of OTC facilities. It did not specifically address SONGS.[6]

Therefore, any suggestion that the CAM approval in Track 1 is sufficient grounds for CAM approval in this Track 4 is incorrect. CAM approval for a different procurement in a different Track does not justify its imposition here. As fully explained in DACC and AReM's Opening Brief, SCE's opening testimony on the issue of CAM treatment was sparse, inaccurate and misleading.[7] As DACC and AReM fully demonstrated in the record of this proceeding, D.13-02-015 resolved the LA Basin-area procurement requests of SCE and the applicability of CAM to those requests. It did not and does not, however, constitute binding precedent for the Track 4 SONGS replacement power request.

Despite its written and oral testimony that Track 1 did not address SONGS replacement, SCE nevertheless seeks CAM treatment for its Track 4 SONGS replacement procurement based on a non-existent Track 1 precedent, despite the fact that there is no factual or legal nexus or binding precedent between the two separate and distinct tracks. Meanwhile, SDG&E[8] argued that the Commission must approve CAM treatment for procurement to replace SONGS simply because it has approved CAM for similar procurement in the past. SDG&E's entirety of its showing as to CAM treatment is a recitation of the statute, one sentence saying that the new resources are required for reliability purposes, and the irrelevant observation that CAM was approved for Escondido.[9]

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

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

[7] DACC-AReM Opening Brief, November 25, 2013, p. 4-5.

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

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

2. Each CAM Request Must be Examined Individually

The Commission has been explicit that each CAM request must be considered individually. There are two reasons for this. First, the applicable statute requires that CAM eligibility be determined in a Commission decision with respect to a specific contract or on a specific proposal for installing utility-owned generation.[10] Second, the Commission recently established in D.13-08-023 that it will determine on a case-by-case basis the appropriate cost allocation treatment that procurement contracts will receive.[11] Each of these issues is discussed below.

Public Utilities ("P.U.") Code Section 380(g) provides in part as follows:

> 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 commission, 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... [emphasis added]

Therefore, the statute makes it clear that each procurement commitment is to be looked at individually, on a case-by-case basis. The commitment approved in Track 1 is hence irrelevant to the commitment authorization sought here in Track 4.

This case-by-case analysis is further supported by a reading of P.U. Code 365.1(c)(2)(A), which requires that the Commission make individual determinations on the application of CAM.[12] The statute refers specifically to "a contract with a third party" and to utility-owned generation ("UOG"). Since the utility requests in this Track 4 proceeding foresee the conduct of requests for offers ("RFOs") that will ultimately result in contracts, and potentially bilateral negotiations to achieve contracts with third parties, the associated CAM requests relate specifically to those contracts that will result from whatever procurement authorizations are

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

[11] D.13-08-023, at p. 14

[12] P.U. Code 365.1(c)(2)(A) states that the Commission shall: Ensure that, in the event that the commission authorizes, in the situation of a contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory. . . [emphasis added]

ultimately approved by the Commission. Those contracts are separate and apart from the contracts authorized in Track 1, and therefore, the fact that the Commission approved CAM treatment for Track 1 is irrelevant, and relying on it to authorize CAM here represents legal error.

Commission policy has already recognized what the underlying statute plainly says – that CAM must be authorized on a case-by-case basis. Specifically, in D.13-08-023, the Commission stated as follows:

> It is not only reasonable but necessary to make cost-allocation decisions on a case-by-case basis informed by the specific contexts in which costs are incurred. (emphasis added)[13]

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.[14]

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.[15]

Reliance on prior CAM approvals, as SCE and SDG&E have done, therefore clearly fails to comply with the case-by-case requirement.[16] Indeed, SCE witness Cushnie admitted that a case-by-case review is a requirement for CAM authorization[17]

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

[14] Id, at p. 23.

[15] Ibid.

[16] Moreover, SCE and SDG&E were well aware of this decision and participated actively in the proceeding. The proposed decision was issued on June 11 of 2013. On July 1, 2013, SCE filed and served on behalf of it, SDG&E and Pacific Gas & Electric ("PG&E") joint comments in support of the proposed decision. Notably, the utilities' joint comments offered neither discussion of nor opposition to the requirement that any request for CAM would be evaluated on a case-by-case basis, and with the request supported and justified on a case-specific basis.

[17] "I would agree though that the Commission has to determine in each proceeding whether the CAM is applicable." TR, at p. 1987.

DACC and AReM therefore reiterate their request that the citations from D.13-02-015 be removed from the PD as they are irrelevant from both a statutory and Commission precedent basis.

B. The All-Too Brief Analysis of Whether CAM should be Applied to SONGS Replacement Power is Flawed and Insufficient

Only one paragraph of the PD is devoted to an analysis of whether CAM should be applied to the SONGS replacement power procurement activities.[18] First, as explained above, the PD's reference to a "basic question" on whether procurement authorized in Track 4 should be treated any differently than procurement in Track 1 is, in fact, incorrect and constitutes legal error. The question that *should* have been addressed is whether the utilities justified their requests for CAM treatment with regard to their respective SONGS replacement power requests with a proper showing as is required by Section 454(a).[19] As noted in the DACC and AReM opening brief, their showings were in fact bereft of any meaningful analysis that justified CAM treatment.[20]

Next, the PD states that, "There is no significant difference between procurement authorized in this decision and procurement authorized in D.13-02-015." This is an error of fact, as Finding of Fact 10 from that decision states:

> It is reasonable to assume that the OTC plants in the SCE territory required to comply with SWRCB regulations will comply through retirement or repowering consistent with the SWRCB schedule, for the purpose of LCR forecasting in this proceeding. However, no finding on this point is intended to apply to SONGS.[21]

It defies logic for this PD to rely on D.13-02-15 to justify CAM for SONGS replacement when D.13-02-015 specifically disavows any such linkage. In short, if this Track 4 is the vehicle for addressing the replacement of SONGS (which no one denies), and the decision issued in Track 1 specifically did not address SONGS replacements, then it simply cannot be accurate for this PD

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[18] PD, at pp. 116-117.

[19] PU Code Section 454 states: "(a) Except as provided in Section 455, no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. . . ."

[20] DACC-AReM Opening Brief, pp. 3-11.

[21] Id at p. 120, emphasis added.

to state that, "There is no significant difference between procurement authorized in this decision and procurement authorized in D.13-02-015." As noted above, this is an error of fact.

The PD then states that, "In both cases, procurement is pursuant to local reliability determinations starting with ISO studies for this purpose, as modified by our analysis." To the contrary, the requested procurement in this matter did not "start" with ISO local reliability studies. Instead, it "started" with the decision by SCE and SDG&E to shutter SONGS, a plant that was specifically and solely utilized to serve bundled customer needs.

Nevertheless, the PD then approves CAM treatment for the SONGS replacement power procurement, on the basis that, "the procurement authorized in this decision is for the purpose of ensuring local reliability in the SONGS service area, for the benefit of all utility distribution customers in that area." However, there is no record demonstrating that this statement is in fact true. Certainly, as discussed above, the utility showings made no effort to demonstrate how all customers benefit from replacing a generating facility that was used to serve only the utilities' bundled customers, and, as such, does not represent any incremental reliability benefit. Once again, the Commission is relying solely on a notion that anything that serves to enhance reliability by definition benefits all customers, even when the reliability that needs to be enhanced is nothing more than replacing a retiring facility used to serve a subset of "all" customers.

The paucity of any record and the failure of the utilities to make the showing required under Section 454(a) is evidenced by the fact that the PD draws the conclusion that all customers benefit without making any demonstration as to why this is so and without discussing to any degree whatsoever why this conclusion is correct. This is an error of both fact and law. To merely "conclude that such procurement meets the criteria of Section 365.1(c)(2)(A)-(B)" without making any effort to justify that conclusion conflicts with the Commission's finding in D.13-08-023 that, "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."[22]

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

[22] D.13-08-023, at p. 23.

> At the same time, we emphasize that IOUs must provide *clear explanations of and support for their cost allocation proposals in applications* and supporting testimony, to facilitate the development of a sufficient record on which to evaluate such proposals.[23]

Where, then, are the utilities' "clear explanation and support" for their respective CAM proposals? Where is their supporting testimony?" Where is a "sufficient record" on which the Commission may evaluate the CAM requests and the showings required by Section 454(a)? The answer, quite simply, is that none of these exist. There is, in fact, no explanation of the most fundamental elements of CAM eligibility: How do all customers benefit? Why do they benefit? How is it "fair and equitable" to apply CAM when the reliability "need" was of the utilities own making?[24] The PD is deficient because the promised "thorough review" that is a cornerstone of the underlying statute and Commission policy does not exist. Its absence constitutes both legal and factual error.

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

C. The SONGS Replacement Power is Needed to Meet Bundled Customers' Needs, and Does Not Provide Any Incremental Reliability

The rationale for why CAM should be inapplicable for the Track 4 procurement is simple and straightforward – the procurement is driven by the obligation of SCE and SDG&E to replace a reliability gap created by the retirement of SONGS, a resource used solely to serve bundled customers. The salient points that are ignored by the PD are as follows, with relevant citations to the record:

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

[24] P.U. Code Section 365.1(c)(2)(B) requires that cost allocation must be "fair and equitable to all customers."

1. SCE and SDG&E are obligated to meet their bundled customers' needs reliably both today and long term.[25]
2. Prior to its retirement, SONGS provided capacity and energy to meet the needs of SCE's and SDG&E's bundled customers.[26]
3. SCE and SDG&E are obligated to fill any shortfall left by the SONGS closure in their bundled procurement both today and in the long term to continue to meet their bundled customers' needs reliably.[27]
4. Bundled customers are therefore obligated to pay for the SONGS replacement power procurement by SCE and SDG&E,[28] and the application of CAM for these resources is wholly inappropriate.

To the extent new resources are required to meet the bundled customer need caused by the SONGS retirement, the utilities must procure those resources and recover the costs from the customers creating those needs. By seeking CAM treatment for fulfilling their obligation to serve their bundled customers, SCE and SDG&E are seeking to improperly shift bundled customers' costs to non-bundled customers, including direct access customers. In short, the reliability requirements of Section 395.1(c)(2)(A) do not require that the Commission abandon fair and reasonable application of cost causation principles based on nothing more than an unsubstantiated claim of general societal benefits.

If an electric service provider ("ESP") relied on a facility to serve its retail choice customers, and that facility retired, there would most likely be some detriment to system or local reliability, but that would not entitle the ESP to claim that the reliability issues created by its

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[25] See, for example, D.02-10-062, Conclusion of Law No. 2: "Consistent with Pub. Util. Code Sections 451, 761, 762, 768, 770 and proposed 454.5(a), the utilities have an obligation to serve." See also Finding of Fact No. 19: "It is reasonable to require the utilities to meet a reserve requirement, as part and parcel of their obligation to serve," as cited in DACC-1, at pp. 9-10.

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

[27] See Pub. Util. Code Sections 451, 454.5(a), 761, 762, 768 and 770.

[28] Ibid. See also D.13-02-040 which states that "Bundled procurement undertaken pursuant to a utility's AB 57 bundled procurement plan is not subject to the CAM" (page citation omitted as final version not yet posted). In this case, SCE and SDG&E seek to transform what clearly is bundled procurement to system procurement simply by the device of having it considered outside of their bundled procurement plans. Had the Commission not deferred the filing of bundled procurement plans in this docket, the SONGS replacement power could have been considered and dealt with in their bundled procurement plans.

decision to purchase power from a facility that was retiring is a problem that utility customers must pay for. The same logic must apply in this instance. SCE and SDG&E's decision to retire SONGS is an issue that it must address on behalf of their bundled customers – *i.e.,* when SCE and SDG&E decided to interrupt their access to reliable power with the retirement of SONGS, that was their decision to make, and their decision on how to replace the unit is a decision they should and must make on behalf of their bundled customers. In short, it is neither "fair" nor "equitable," as required by law,[29] for the utilities to create their own reliability need and then expect others to pay for it. The Commission is obligated to fulfill its statutory requirements and reject this egregious abuse of CAM.

Significantly, in another cost allocation case, the Commission determined that allocating costs based on indirect societal benefits to those who consume none of the power was arbitrary and speculative. The case involved the proposed allocation of a bond charge to all customers for costs incurred by the utilities in procuring electricity from the California Department of Water Resources during the Energy Crisis, including to those who had procured no electricity from the utilities.[30] The Commission stated: "Attempting to assign a charge to DA customers *based solely on indirect societal benefits* would be arbitrary and speculative."[31] The relevance here is clear: bundled customers are the *direct beneficiaries* of the SONGS replacement power procurement and any incidental reliability benefits falling to "all" are indirect societal benefits at best. A Commission decision to impose CAM treatment on "all" because of incidental reliability benefits would fit squarely in the realm of "arbitrary and speculative."

D. The PD Correctly Holds that it is Premature to Provide that SCE's Proposed Contingent Gas-Fired Generation Contracts are Eligible for CAM Treatment

SCE's application also includes a Mesa Loop-In contingency proposal, in which it would solicit and execute additional long-term gas-fired generation ("GFG") contracts that contain a buyer's right to terminate subject to a termination payment, referred to as "Option Contracts."[32]

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[29] Public Utilities Code Section 365.1(c)(2)(B).

[30] See R.02-01-011.

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

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

These Option Contracts would be solicited in the same RFO that will be conducted as a result of the Track 1 authorization. SCE sought CAM treatment for these contracts.

The PD cites the DACC and AReM arguments that these contracts cannot be subjected to CAM because there is no way to calculate net capacity costs by accounting for revenues from generation or related products as required by statute (P.U. Code Section 365.1(c)(2)(C)). It notes also that TURN argues that "it is not possible to make a determination regarding CAM or some similar cost-sharing mechanism for contingent generation contracts until the utilities have filed for approval of such programs."[33] The PD then declines to make any determination about whether contingency or options contracts will be eligible for CAM and states that when or if "SCE and/or SDG&E propose such contracts, they should propose whether certain costs should be allocated through CAM, and, if so determined, propose a methodology for allocation."[34] DACC and AReM support this conclusion, with the added caveat that, should exercise of the option contracts become necessary to effectuate the replacement of SONGS, their related costs should be as ineligible for CAM as any other authorizations granted in this Track 4.

E. Certain Preferred Resources are Ineligible for CAM Treatment. Further, the PD Fails to Provide an Explanation or Methodology for How CAM Treatment can be Applied to Certain Preferred Resources

Setting aside for the moment AReM's arguments that CAM cannot and should not be applied to any utility procurement to replace SONGS, any attempt to apply CAM to certain preferred resources creates several new issues.

First, the relevant statutes prescribe CAM treatment solely for "generation resources" and certain preferred resources, such as demand response, energy efficiency, and energy storage, cannot be so classified. As noted above, P.U. Code 365.1(c)(2)(A) refers specifically to "generation resources." Therefore, the PD commits legal error to the extent it prescribes CAM treatment for the preferred resources elements of the utility procurement mandates that do not involve actual generation.

Furthermore, while the Commission does allocate RA associated with utilities' Commission-authorized DR programs, the process of determining the net capacity costs of DR resources, energy efficiency, and energy storage projects has not yet even been contemplated,

[33] PD, at pp. 117-118.

[34] Id at p. 118.

much less resolved. The process of counting RA from DR, energy efficiency and energy storage is an ongoing one, and will be inextricably linked with any attempt to determining the net capacity costs of such resources. If the statutory impediments to using CAM for non-generation resources are ignored, and CAM is authorized for DR, energy efficiency, and energy storage, the Commission should direct staff to conduct workshops to develop the specifics as to how the residual capacity value of such resources will be calculated.

Finally, it should also be noted that certain of the preferred resources such as some DR and energy efficiency are already being paid for by all customers including DA and CCA customer through distribution rates on other non-bypassable charges. Should cost recovery for these programs shift to CAM, the impact on transmission and distribution rates would need to be addressed as well.

F. The PD conflicts with D.13-10-040, which set energy storage procurement targets for all Load-Serving Entities ("LSEs").

The PD describes current Commission policy regarding energy storage procurement targets as set forth in D.13-10-040, but conveniently omits noting that such targets apply to *all LSEs*, including ESPs and community choice aggregators ("CCAs").[35] Specifically, Ordering Paragraph 2 of D.13-10-040 requires all LSEs to comply with the Energy Storage Procurement and Design Program, and Ordering Paragraph 4 requires ESPs and CCAs to procure 1% of their 2020 annual peak load from energy storage projects with such projects installed and delivering by no later than the end of 2024. Moreover, the PD fails to acknowledge that some of the reliability benefits expected from such energy storage procurement ordered pursuant to D.13-10-040 will undoubtedly be derived from the procurement by *non-utility LSEs.*[36] Thus, to the extent that non-utility LSEs procure energy storage in the SONGS service area, those resources provide free "reliability benefits" to utilities' bundled customers, as neither ESPs nor CCAs are (or should be) afforded CAM. Attachment A provides recommended modifications to PD to correct these errors.

In addition to these omissions with respect to the storage obligations that exist for ESPs and CCAs, the PD fails to recognize that, in making ESPs and CCAs responsible for meeting their

[35] See, PD, Section 3.3.9.

[36] PD, Finding of Fact 50, p. 124.

own energy storage requirement, D.13-10-040 specifically rejected CAM for the utilities' energy storage projects. Therefore, the PD's determination that energy storage is subject to CAM treatment conflicts with established Commission policies. To the extent the Commission elects to move forward with this Track 4 procurement, DACC and AReM respectfully request that the PD be modified to resolve this direct conflict with D.13-10-040 and clarify that any Track 4-related procurement of energy storage by SCE or SDG&E is not subject to CAM and instead recoverable solely from their bundled customers. Alternatively, if CAM is nevertheless applied, the energy storage procurement targets of the affected ESPs and CCAs must be reduced on a MW-by-MW basis in reflection of the principles used by the Commission in setting the ESP/CCA procurement targets in D.13-10-040.[37]

III. Conclusion

The PD contains several instances of legal and factual error with regard to its discussion of the CAM issue.

1. Its reliance on the Track 1 approval as justification for CAM treatment in Track 4 constitutes legal error.
2. Its conclusion that "the basic question related to CAM in this decision is whether procurement authorized in this decision should be treated any differently from procurement authorized in D.13-02-015" is both factually incorrect and constitutes legal error and contradicts the Commissions own directives in D.13-08-023.
3. The statement that, "There is no significant difference between procurement authorized in this decision and procurement authorized in D.13-02-015" is an error of fact.
4. The PD's conclusion that all customers benefit without making any demonstration as to why this is so and without discussing to any degree whatsoever why this conclusion is correct is an error of both fact and law and is contrary to the Commissions own directives in D.13-08-023 and D.14-02-040.
5. The PD is deficient because the promised "thorough review" of the utilities' required showings, as specified in D.13-08-023 and as required under P.U. Code Section 454.5(a), does not exist, meaning its absence constitutes both legal and factual error.

[37] See discussion of how the ESP/CCA procurement targets were set in D.13-10-040, p. 46.

6. As the statute refers specifically to "generation resources," the PD commits legal error to the extent it prescribes CAM treatment for the preferred resources elements of the utility procurement mandates.
7. The PD conflicts with D.13-10-040, which set energy storage procurement targets for all LSEs and rejected CAM procurement by the utilities.

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

Respectfully submitted,

DOUGLASS & LIDDELL

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

March 3, 2014

ATTACHMENT A

RECOMMENDED MODIFICATIONS TO PROPOSED DECISION

Section 1, p. 4

Both SCE and SDG&E are authorized to include the costs of the procurement authorized today ~~**through the Cost Allocation Mechanism**~~ **in their generation rates for recovery from their bundled customers**.

Section 3.3.9, pp. 57-58 (footnotes omitted)

On October 17, 2013, the Commission issued D.13-10-040, the "Decision Adopting Storage Procurement Framework and Design Program"**, which established energy storage procurement targets for all Load-Serving Entities (LSEs), including the utilities, Electric Service Providers (ESPs) and Community Choice Aggregators (CCAs)**. That decision, in Appendix A, at 1., states that a "guiding principle" for energy storage is: "The optimization of the grid, including peak reduction, contribution to reliability needs, or deferment of transmission and distribution upgrade investments." D.13-10-040, Appendix A, at 2, sets energy storage targets of 580 MW for SCE and 165 MW for SDG&E. These targets are to be procured gradually through biennial solicitations from 2014 through 2020. Though the utilities may defer up to 80% of their MWs to later procurement periods, they must ultimately have 100% of their respective storage targets online no later than December 31, 2024.

Section 3.3.9, p. 60

D.13-10-040, Ordering Paragraph 3, orders SCE and SDG&E (as well as PG&E) to file applications containing a proposal for procuring energy storage resources by March 1, 2014, with the solicitation to occur no later than December 1, 2014. Ordering Paragraph 4 of that decision requires these utilities to file applications for future biennial energy storage procurement periods in 2016, 2018 and 2020, with any proposed modifications based on data and experiences from previous procurement periods. **Similarly, Ordering Paragraph 4 of D.13-10-040 requires ESPs and CCAs to file advice letters biennially beginning on January 1, 2016 to**

report their progress in procuring 1% of their 2020 annual peak load from energy storage projects under contract by 2020. Much more will be known about procurement of energy storage resources and their impact on reliability as these processes develop.

Section 8, p. 114

The Cost Allocation Mechanism, or CAM, is designed to ensure that the costs of new resources **authorized by the Commission to be** procured to ~~**ensure**~~ **meet** local or system reliability **needs for the benefit of all utility distribution customers** are shared equally among all **such** utility distribution customers, regardless of their generation provider. ~~**CAM is based on the principle that reliability is a collective good and that the customers of Electrical Service Providers (ESPs) and Community Choice Aggregators (CCAs) will also benefit from investments in system reliability made by regulated utilities.**~~ The current CAM achieves this goal by subtracting the energy value of new generation out from long-term contracts for new generation and sharing the residual capacity costs equally among all bundled and un-bundled customers within the utility service-area.

Section 8, pp. 116-117

> ~~**D.13-02-015, Conclusion of Law 21 states:**~~
> ~~**"The cost allocation mechanism established in D.06-07-029 and refined in D.07-09-04, D.08-09-012 and D.11-05-005 remains reasonable for application in this proceeding without modification, and is fair and equitable as required by Section 365.1(c)(2)(A)-(B)."**~~
>
> ~~**Ordering Paragraph 15 of D.13-02-015 states:**~~
>
> ~~**"Southern California Edison Company shall allocate costs incurred as a result of procurement authorized in this decision and approved by the Commission consistent with the cost allocation mechanism approved in Decisions (D.) 06-07-029, D.07-09-044, D.08-09-012 and D.11-05-005."**~~

The basic question related to CAM in this decision is whether procurement authorized in this decision should be treated any differently from procurement authorized in D.13-02-015. ~~**There is no**~~ **We find a** significant difference between procurement authorized in this decision and procurement authorized in D.13-02-015. In both cases, procurement is pursuant to local reliability determinations starting with ISO studies for this purpose, as modified by our analysis.

However, we ~~**We**~~ find that the procurement authorized in this decision is for the purpose of **replacing energy and capacity formerly provided by SONGS and used solely to meet the needs of the utilities' bundled customers** ~~**ensuring local reliability**~~ in the SONGS service area~~**, for the benefit of all utility distribution customers in that area**~~. **Such replacement power is needed to meet the needs of utilities' bundled customers reliably pursuant to Section 454.5 of the Public Utilities Code and is for their benefit.** We conclude **therefore** that such **bundled** procurement **does not meet** ~~**meets**~~ the criteria of Section 365.1(c)(2)(A)-(B). Therefore, SCE and SDG&E shall allocate costs incurred as a result of procurement authorized in this decision, and approved by the Commission, **to their bundled utility customers for recovery through their generation rates** ~~**consistent with D.13-02-015 and the CAM adopted in D.06-07-029, D.07-09-044, D.08-09-012 and D.11-05-005**~~.

Section 8, p. 118

Contingency or options contracts raise issues concerning cost allocation that have not been contemplated by the Commission to date. SCE does not have a specific proposal for contingency or options contracts before us at this time. SCE and/or SDG&E may propose such contracts in their future procurement applications stemming from this decision. **While we reject application of CAM for procurement authorized pursuant to this proceeding,** ~~**We**~~ **we** do not make any determination about whether contingency or options contracts will be eligible for CAM **in other instances**. If and when ~~**S**~~SCE and/or SDG&E propose such contracts, they should propose whether certain costs should be allocated through CAM, and, if so determined, propose a methodology for allocation.

1. MODIFICATIONS TO FINDINGS OF FACT

Finding of Fact 48, p. 124

48. D.13-10-040 sets energy storage **procurement** targets **for all LSEs. Targets** of 580 MW for SCE and 165 MW for SDG&E **are** to be procured gradually through biennial solicitations from 2014 through 2020 and to online no later than December 31, 2024.

Finding of Fact 50, p. 124

50. It is likely that some of the energy storage targets **procured by the utilities and other LSEs** will available and effective to meet LCR needs in the SONGS service area before 2022.

Finding of Fact 92, p. 130

92. The procurement authorized in this decision is for the purpose of **replacing power formerly provided by SONGS and used solely to meet the needs of the utilities' bundled customers** in the SONGS service area~~, for the benefit of all utility distribution customers in that area~~. **Such replacement power is needed to meet the needs of utilities' bundled customers reliably and is for their benefit.**

2. MODIFICATIONS TO CONCLUSIONS OF LAW

Conclusion of Law 20, p. 132

20. While the LCR effect of potential energy storage resources cannot be quantified at this time, the targets and requirements of D.13-10-040 lead to a conclusion that energy storage resources **procured by the utilities and other LSEs** will reduce LCR needs in the SONGS service area to some extent in the future.

Conclusion of Law 45, p. 135

45. There is insufficient information to modify the energy storage procurement targets **for SCE and SDG&E** established in D.13-10-040.

Conclusion of Law 50, p. 136

50. The procurement authorized in this decision **is needed to replace energy and capacity lost due to the closure of SONGS, which was used solely to meet the needs of the utilities' bundled customers, and therefore does not meet** ~~meets~~ the criteria of Section 365.1(c)(2)(A)-(B) for the purposes of cost allocation.

Conclusion of Law 51, p. 136

51. The cost allocation mechanism established in D.06-07-029 and refined in D.07-09-004, D.08-09-012 and D.11-05-005 (and as applied in D.13-02-015) **is not applicable to the procurement authorized** ~~**remains reasonable for application**~~ in this proceeding ~~**without modification, and is fair and equitable as required by Section 365.1(c)(2)(A)-(B)**~~, **because such procurement is being authorized to replace power used solely to meet the utilities' bundled customers' needs. Pursuant to Section 454.5, procurement for bundled customers is recoverable from those bundled customers.**

3. MODIFICATIONS TO ORDERING PARAGRAPH

Ordering Paragraph 12, pp. 141-142

12. Southern California Edison Company and San Diego Gas & Electric Company shall allocate costs incurred as a result of procurement authorized in this decision and approved by the Commission **to their bundled utility customers for recovery through their generation rates** ~~**consistent with the cost allocation mechanism approved in Decision (D.) 06-07-029, D.07-09-044, D.08-09-012, D.11-05-005 and D.13-02-015**~~.