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.	Rulemaking 12-03-014 (Filed March 22, 2012)

REPLY COMMENTS OF SAN DIEGO GAS AND ELECTRIC COMPANY(U 902 E) ON TRACK 4 PROPOSED DECISION

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), San Diego Gas and Electric Company ("SDG&E") provides these reply comments regarding the proposed *Decision Authorizing Long-Term Procurement for Local Capacity Requirements Due to Permanent Retirement of the San Onofre Nuclear Generations Stations* [*sic*] (the "PD") issued in Track 4 of the above-captioned long-term procurement plan ("LTPP") proceeding.

The PD concludes that new resources will be required to meet local capacity need resulting from the retirement of the San Onofre Nuclear Generating Station ("SONGS"), as well as the mandatory retirement of once-through cooling ("OTC") resources located in Southern California.[1/] The PD directs SDG&E to procure between 500 MW and 700 MW of electrical capacity in its service territory, including (i) at least 25 MW of energy storage resources; and (ii) at least 175 MW of incremental preferred resources consistent with the Loading Order of the Energy Action Plan.[2/] The PD requires, *inter alia*, that SDG&E submit a procurement plan explaining how it plans to accomplish the procurement of resources authorized in Track 4, which must be reviewed and approved by the Commission's Energy Division ("ED").

1/ PD, p. 2.
2/ *Id.* at Ordering Paragraph 2.

As discussed in SDG&E's opening comments, SDG&E supports a minimum 700 MW procurement authorization and notes that evidence in the record supports an even higher procurement authorization. Parties to the proceeding expressed myriad views regarding the determinations in the PD. SDG&E does not respond here to all comments offered by parties, but addresses below the discussion by the Office of Ratepayer Advocates ("ORA") of service of the Track 4 procurement plan in advance of the Request for Offers ("RFO"), as well as arguments by Direct Access Coalition and Alliance for Retail Energy Markets ("DACC/AReM") regarding the applicability of the cost allocation mechanism established pursuant to Public Utilities Code § 365.1(c)(2)(A)-(B) to preferred resources used for reliability.[3/]

II.
DISCUSSION

A. The Public Version of SDG&E's Track 4 Procurement Plan Should be Made Available at the time RFO Documents are Publicly Available

In its opening comments, ORA proposes that to the extent doing so would not cause delay, SDG&E should be required to file and serve on parties in R.12-03-014 a public version of its Track 4 procurement plan within 90 days of a final decision, and further that SDG&E should be required to "submit answers to the questions posed on the contingent (options) contracts in its procurement plan if it plans to pursue contingent contracts."[4/] SDG&E does not object to the proposal that it make available a public version of its Track 4 procurement plan, but submits that the procurement plan should be made available at the time the RFO documents are made public.

First, disclosure of the procurement plan in advance of the RFO could provide potential counterparties with insight regarding the resources that SDG&E intends to procure and in what specific amounts. Since the procurement plan must be approved by the Energy Division ("ED"),

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[3/] All statutory references herein are to the Public Utilities Code unless otherwise noted.

[4/] *The Office of Ratepayer Advocates' Comments on Proposed Decision Authorizing Long-Term Procurement for Local Capacity Requirements Due to Permanent Retirement of the San Onofre Nuclear Generating Stations* [*sic*] ("ORA Comments"), filed May 3, 2014 in R.12-03-014, p. 7.

counterparties would be aware that SDG&E has little flexibility to alter its procurement strategy, and can therefore use information regarding SDG&E's planned procurement to their negotiating advantage. The result of proving this unfair leverage to bidders would likely be increased procurement costs for utility ratepayers.

While the potential harm caused by premature disclosure of the procurement plan is evident, it is less clear what advantage would be gained by such a requirement. The PD does not contemplate a comment period related to the procurement plan; nor should it as such a requirement would unreasonably delay the procurement process. Thus, no purpose is served by earlier availability of the procurement plan. While ORA suggests that its proposal would allow parties to obtain answers to questions regarding contingent (options) contracts, the proper forum for addressing such questions is in the application proceeding related to the relevant contract rather than at the time SDG&E submits its Track 4 procurement plan. Accordingly, ORA's proposal regarding early availability of the procurement plan should not be adopted.

B. The Claim that Preferred Resources are not Subject to the CAM Must be Rejected

In keeping with their well-established opposition to allocation of costs through the CAM, DACC/AReM challenge the PD's conclusion that "[t]he procurement authorized in this decision meets the criteria of § 365.1(c)(2)(A)-(B) for the purposes of cost allocation."[5/] They argue that under the relevant statutes, CAM treatment is "solely for 'generation resources' and certain preferred resources, such as demand response, energy efficiency, and energy storage, cannot be so classified," and further that "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."[6/] DACC/AReM's argument is premised upon an unreasonably narrow interpretation of the statute that is wholly inconsistent with the policy framework adopted

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5/ PD, Conclusion of Law 50.

6/ *Comments of the Direct Access Coalition and Alliance for Retail Energy Markets on the Track 4 Proposed Decision* ("DACC/AReM Comments"), filed March 3, 2014 in R.12-03-014, p. 12.

by the State. It should also be noted that DACC/AReM failed to raise this argument in testimony or in briefing, waiting instead until comments on the PD to present its analysis. In any event, DACC/AReM's argument is without merit and should be rejected.

It is an established rule of statutory construction that statutes should be interpreted with reference to the whole system of law, so that all may be harmonized.[7/] The California Supreme Court has declared that "[i]n construing a statute, a court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose."[8/] If the costs of preferred resources used to meet local or system reliability needs were to be exempted from CAM treatment, the result would be a direct and significant undermining of policies supporting reliance on preferred resources and principles of ratepayer protection. First, a CAM exemption for preferred resources would establish a major disincentive for use of preferred resources to meet local or system reliability. This is plainly inconsistent with the State's fundamental commitment to reliance on and promotion of preferred resources. Second, to the extent the investor-owned utilities ("IOUs") use preferred resources to meet a portion of system or local reliability (as was assumed in all of the Track 4 modeling), a CAM exemption for such resources would result in utility's bundled ratepayers absorbing the *entirety* of the costs associated with such procurement despite the fact that all customers in the service area receive the benefits of improved reliability. Given this outcome – which would plainly be in direct contravention of California's stated policy goals – the interpretation of § 365.1(c)(2)(A)-(B) offered by DACC/AReM must be rejected.

7/ 58 Cal Jur. 3d § 108.

8/ *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147.

SDG&E notes further that the assertion by DACC/AReM that "the PD's determination that energy storage is subject to CAM treatment conflicts with established Commission policies," is unsupportable.[9/] As noted above, it is the claim that energy storage is *not* subject to CAM treatment that conflicts with established Commission policies. Commission precedent supports application of CAM to energy storage that is used to meet local or system reliability.[10/] DACC/AReM fail to cite any specific language or finding in D.13-10-040 that supports their claim that the Commission has expressly determined that the costs of energy storage used to meet local or system reliability must be borne solely be utility ratepayers. DACC/AReM's reliance on D.12-10-040 to support this claim is misguided. Accordingly, its proposal to exempt energy storage from CAM treatment must be rejected.

III.
CONCLUSION

For the reasons set forth above and in SDG&E's opening comments, the PD should be revised in accordance with the recommendations described herein and set forth in Attachment A to SDG&E's opening comments.

Dated this 10th day of March, 2014 in San Diego, California.

Respectfully submitted,
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9/ *See* DACC/AReM Comments, p. 14.
10/ D.13-02-015, *mimeo*, Ordering Paragraph 15.