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

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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 reply 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 note that the opening comments of only three other parties spoke to the issue of the cost allocation mechanism ("CAM") and its applicability to the procurement authorizations sought by Southern California Edison ("SCE") and San Diego Gas & Electric ("SDG&E"). The three parties were The Utility Reform Network ("TURN"), Western Power Trading Forum ("WPTF") and Marin Clean Energy ("MCE"). Both SCE and SDG&E elected not to speak to the issue. These reply comments focus on the statements made by the three parties that recognized that CAM treatment is a major issue in this proceeding.

II. REPLY TO TURN

TURN's opening comments support the PD's findings with respect to CAM, and in so doing, TURN gives the same short shrift to the CAM issue and recites platitudes rather than provide meaningful analysis. First, TURN states its agreement with the PD's finding that "all of

[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.

the new resources it authorizes SCE and SDG&E to procure are needed to meet local reliability criteria for the benefit of all utility distribution customers in the affected area."[3] DACC and AReM suspect that, should the PD have ruled against the application of CAM to the Track 4 procurement, TURN would be strenuously objecting to the lack of any meaningful record to support the proposed cost allocation, citing an egregious failure of the Commission to comply with the policies stated in D.13-08-023 to apply a "thorough review" to cost allocation requests.

Of course, the converse is true in this case. TURN's bundled customer constituency is getting a gift from the Commission in terms of reducing the costs they have historically paid for SONGS due to the fact that it exclusively served bundled customer needs[4] by invoking an unsubstantiated and unsupportable claim that "everyone benefits." In this case, it is clear where the economic interests of TURN's clients lie, and hence from which apparently comes their unstinting support for the CAM directive included in this PD. Essentially, TURN ignores the fact that P.U. Code Section 1757 requires that a Commission decision must be "supported by the findings" and that the findings must be "supported by substantial evidence in light of the whole record." As the California Court of Appeals recently stated:

> The 'in the light of the whole record' language means that the court reviewing the agency's decision cannot just isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the record.[5]

DACC and AReM also noted in their opening comments that Section 454 states, in part, that: "a public utility shall not charge 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." In this regard, the Commission has stated that:

> …the fundamental principle involving public utilities and their regulation by governmental authority [is] that the burden rests heavily upon a utility to prove that it is entitled to rate relief and not its Staff, or any interested party or protestant, such as TURN, to prove the contrary.[6]

The failure of the utilities to create a substantial record to support their respective CAM requests is fatal to the conclusion that CAM is justified. And it is this fatal flaw that will undercut

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[3] TURN Opening Comments, at p. 3.

[4] TURN's witness confirmed during cross-examination that its constituency would see reduced costs if the utilities' CAM requests were approved. TR, at pp. 2265-2266.

[5] *Utility Reform Network v. Public Utilities Commission*, 2014 WL 526411, Cal. Rptr. 3d, (Feb. 5, 2014) (citing *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal. App., 3d 130, 141-42, 284 Cal. Rptr. 427.

[6] *See,* D.83-05-036, *Re Southern California Edison Company* (1983) 11 CPUC 2d 474, 475.

TURN's final statement in its opening comments, that it, "is hopeful that the PD's simple, straight-forward findings will serve to limit redundant litigation over these issues in the future." In fact, this is highly unlikely. The legal flaws and errors of fact contained in the PD significantly increase the chance of future and continued litigation over the Commission's failure to comply with provisions of California law.

III. REPLY TO WPTF

WPTF concludes that CAM is not permissible or appropriate for this Track 4 procurement because (a) a review of the brief discussion on the utilities' CAM requests reveal that the approval in the PD is not supported by the record; (b) the PD's reliance on the fact that allegedly "similar" procurement was authorized in Track 1 conflicts with the principle established in D.13-08-023 that CAM requests will be determined on a case-by-case basis; (c) the reliance on the Track 1 CAM authorization, despite the fact that SONGS was explicitly not addressed in Track 1, is inconsistent with the requirements of underlying statute and Commission policy, both of which require that each CAM authorization must be applied to separately-authorized procurements; and (d) it should be the Commission's practice when reviewing CAM requests to do so with an in depth and probing review that gives more focused attention to the full implications of these repeated CAM requests that are being so casually approved.[7]

DACC and AReM concur with the points made by WPTF. It is worth noting that WPTF describes itself as being:

> . . . a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.[8]

Entities that support competitive power markets recognize that rote application of the CAM, with little to no probing analysis and implicit acquiescence in inadequate showings by the affected utilities, are in fact antithetical to competitive electricity markets. Rubber-stamped CAM approvals, without the "thorough review" by the Commission that was promised in D.13-08-023,[9] will inevitably lead to a deterioration of California's competitive electric market.

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[7] WPTF Opening Comments at pp. 7-9.
[8] Id at p. 1.
[9] D.13-08-023, at p. 23.

IV. REPLY TO MCE

MCE has frequently raised concerns with the misapplication of CAM in circumstances where it clearly is not justified. Also, MCE is supportive of the Commission's conclusion that, "While the procurement objectives of utilities are often aligned with the public interest…, utilities may also have objectives (e.g., additions to rate base, competitive concerns) that differ from the public interest. Such divergent interests may result in higher ratepayer costs than with more close regulation."[10] DACC and AReM concur as well with this statement in the PD. However, the PD does not go far enough in examining those "competitive concerns" or it would recognize they play a major role in the SCE and SDG&E requests for CAM treatment. By layering more and more costs on direct access and community choice aggregation, despite the facts that the load-serving entities who supply these customers meet their own resource adequacy requirements, the utilities attempt to squelch retail competition. The fact that the Commission abets this anti-competitive activity is deeply troubling to parties such as DACC and AReM, who both support and participate in competitive markets.

MCE also recommends that "the Commission clarify that any decision made in this proceeding will not affect future analysis should PG&E's Diablo Canyon retire due to unforeseen circumstances."[11] DACC and AReM concur with this recommendation. Doing so would be wholly consistent with the promise the Commission made in D.13-08-023 that "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.[12] While the Commission has not fulfilled that commitment with regard to the SONGS replacement power procurement, DACC and AReM concur with MCE that it should do so with regard to any Diablo Canyon retirement that might occur. Finally, "MCE strenuously objects to the Commission's characterization that MCE's briefing 'wastes the time and resource of both parties and Commission staff.'"[13] DACC and AReM find it appalling that the fuller discussion of CAM that MCE provided was so characterized and recommends the cited language should be deleted. MCE's brief raised issues of significance with regard to the ongoing CAM discussion and it should not have been stricken. Instead of taking MCE to task for providing a comprehensive analysis, the Commission should

[10] MCE Opening Comments, at pp. 2-3.
[11] Id at p. 3.
[12] D.13-08-023, at p. 14, emphasis added.
[13] Id at p. 4, citing PD at p. 19.

instead be taking the utilities to task for having provided NO meaningful analysis to support their CAM requests.

V. CONCLUSION

As noted in the opening comments of DACC and AReM, the PD contains several instances of legal and factual error in its discussion of the CAM issue. Prime among them are its reliance on the Track 1 approval as justification for CAM treatment in Track 4; the absence of substantial evidence in light of the whole record, as required by Section 1757; its failure to conduct the promised "thorough review" of the utilities' required showings, as specified in D.13-08-023 and as required under Section 454.5(a); and its conclusion that all customers benefit without requiring the utilities to make any demonstration as to why this is so and without discussing to any degree whatsoever why this conclusion is correct. In addition, the PD utterly fails to explain how utilities can close a powerplant used to provide service to their bundled customers, thereby creating a "reliability need," and then force customers of other LSEs to pay for replacing it. The utilities' proposed application of CAM to such obvious bundled procurement is egregious and must be rejected. DACC and AReM thank the Commission for its attention to the issues and discussion contained herein.

Respectfully submitted,

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