

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 THE UTILITY REFORM NETWORK ON  
THE TRACK 4 PROPOSED DECISION OF ALJ GAMSON



Matthew Freedman  
The Utility Reform Network  
785 Market Street, 14<sup>th</sup> floor  
San Francisco, CA 94103  
415-929-8876 x304  
[matthew@turn.org](mailto:matthew@turn.org)  
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## **REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE TRACK 4 PROPOSED DECISION OF ALJ GAMSON**

Pursuant to Rule 14.3 of the Rules of Practice and Procedure, The Utility Reform Network (TURN) submits these reply comments in response to several other parties' opening comments on the Proposed Decision (PD) of ALJ Gamson in Track 4 of this proceeding.

### **I. THE COMMISSION SHOULD REJECT IEP'S CALL FOR AN ADDITIONAL 588 MW OF PROCUREMENT**

Only one party – the Independent Energy Producers (IEP) – argues that the PD's finding of need should be increased and that it is unreasonable to base the need determination, in part, on the assumption that load shedding should be considered an acceptable means of mitigating the N-1-1 contingency that drives local need in both the SCE and SDG&E service territories.<sup>1</sup> Two other parties also expressed concern with the PD's finding regarding load shedding: SDG&E and the California Independent System Operator (CAISO).<sup>2</sup> However, both SDG&E and the CAISO agreed with the PD's procurement authorization, rendering their concerns over the load shedding issue moot for the time being. TURN noted in its comments that the PD allows review of this finding at a later date.<sup>3</sup> TURN believes the PD's language on this issue and its need findings are reasonable as written.

### **II. THE COMMISSION SHOULD REJECT THE AREM/WPTF ARGUMENTS REGARDING THE ALLOCATION OF NEW RESOURCE COSTS**

The Alliance for Retail Energy Markets (AReM) argues that the costs of any procurement authorized by the PD should be borne entirely by SCE's and SDG&E's bundled customers rather than allocated to all customers pursuant to the CAM.<sup>4</sup> Space only permits TURN to respond to AReM's most basic arguments. The crux of AReM's

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<sup>1</sup> IEP Comments, pp. 2-9.

<sup>2</sup> SDG&E Comments, pp. 13-14 and CAISO Comments, pp. 2-3.

<sup>3</sup> TURN Comments, p. 3.

<sup>4</sup> AReM Comments, pp. 1-15. In its comments at pp. 7-9, the Western Power Trading Forum made similar arguments in a more abbreviated fashion, to which TURN is also responding.

argument appears to be the convenient sound bite that “Bundled customers bought all SONGS power; therefore bundled customers should pay for all SONGS replacement”.

AReM is wrong in several respects. First, the notion that SONGS capacity served only bundled customers is unproven.<sup>5</sup> More importantly, SCE and SDG&E, acting pursuant to their Bundled Procurement Plans (BPPs) and other obligations, have already – at the sole expense of bundled customers – fully replaced SONGS capacity and energy in their bundled customers’ portfolios. In fact, absent the type of specific authorization the PD would provide, the utilities do not even have the authority to replace SONGS capacity over the long-term.<sup>6</sup> Instead, the new resources the PD would authorize will help meet local reliability needs starting several years from now. All customers should pay equally for the reliability benefits they will receive from these new resources at that time.

Moreover, AReM offers the hypothetical example in which an ESP relies upon the output of a facility that retires and creates “some detriment to system or local reliability” and complains that the ESP would not be entitled to charge bundled utility customers for replacement resources.<sup>7</sup> This argument reveals AReM’s lack of understanding of Commission procurement policies. Under Commission policy, in the above case, the ESP – at its Direct Access (DA) customers’ sole expense – should procure new capacity to meet its customers’ Resource Adequacy (RA) obligations, just as SCE and SDG&E have already done to meet their bundled customers’ post-SONGS RA obligations (and other BPP obligations). If AReM’s hypothetical unit retirement also led to a reliability deficit, Commission policy would have bundled, DA and Community Choice Aggregation customers each pay, pursuant to the CAM, their proportionate share of the net costs of any new capacity needed to preserve reliability. This is the

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<sup>5</sup> SCE Reply Brief, p. 39.

<sup>6</sup> TURN Reply Brief, p. 10.

<sup>7</sup> AReM Comments, pp. 10-11.

same principle the PD would correctly apply to allocating the costs of replacing SONGS local reliability benefits.

**III. THE COMMISSION SHOULD ADOPT ORA’S SUGGESTION THAT SCE BE PROVIDED SPECIFIC DIRECTION TO AVOID “DOUBLE-COUNTING” ENERGY EFFICIENCY AND DEMAND RESPONSE RESOURCES**

In its comments, the Office of Ratepayer Advocates (ORA) noted the importance of not “double-counting” Energy Efficiency (EE) and Demand Response (DR) resources in the utilities’ procurements.<sup>8</sup> The PD gave detailed direction to SDG&E to include language in its procurement plan designed to avoid this outcome.<sup>9</sup> ORA asked that this language also apply to SCE’s ongoing procurement. TURN agrees with ORA’s recommendation.

**IV. THE PD’S REQUIREMENT THAT ANY BILATERAL CONTRACTS INCLUDE COST-OF-SERVICE PRICING IS REASONABLE, BUT NEEDS CLARIFICATION**

The PD grants SCE and SDG&E authority to procure new capacity via either an RFO or a bilateral contract containing “cost-of-service” pricing, and prominently cites Public Utilities Code 454.6, which authorizes bilateral cost-of-service contracts for repowered or replacement facilities on existing generation sites.<sup>10</sup> In its comments, SDG&E argues the PD should be changed to eliminate the requirement that any bilateral contract include cost-of-service pricing.<sup>11</sup> Three other parties – IEP, WPTF, and the California Environmental Justice Alliance (CEJA) – either oppose (or want to impose) conditions on bilateral contracting, but do not address the PD’s cost-of-service pricing requirement.<sup>12</sup>

Though TURN prefers competitive RFOs to bilateral procurement, TURN believes that bilateral contracting can serve as an important procurement option. For bilateral

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<sup>8</sup> ORA Comments, pp. 6-7.

<sup>9</sup> PD, Attachment B, paragraph 4 (pp. 1-2).

<sup>10</sup> PD, Ordering Paragraphs 3 and 8.d.

<sup>11</sup> SDG&E Comments, pp. 11-12.

<sup>12</sup> See IEP Comments, pp. 10-11, WPTF Comments, p. 7 and CEJA Comments, pp. 14-15.

contracts with repowered or replacement facilities to be located on existing generation sites that are critical to local reliability, the Legislature stated that such agreements must be based on cost of service pricing.<sup>13</sup> The PD should clarify that any bilateral contract for this type of facility should be subject to the requirements of Section 454.6.

SDG&E argues that there is no basis in the record for requiring a cost-of-service pricing basis for bilateral contracts.<sup>14</sup> Though parties may not have addressed this provision in their testimony in this Track 4, the Commission has already adopted a cost-of-service requirement for bilateral contracts in its Track 1 decision in this case.<sup>15</sup> The existence of Section 454.6, and the Legislature's related findings, also provide the Commission a strong basis for imposing this requirement for repowered or replacement generation.

Absent such a requirement, the explicit language of Section 454.6 would be made largely irrelevant. The creation of optional cost-of-service pricing for bilateral contracts with replacement or repowered facilities is almost certain to never be utilized. Any developer seeking to exercise market power due to their control of unique generation sites critical to local reliability could decline the invitation for cost-of-service pricing and insist on a bilateral contract at a highly inflated price. Absent a Commission requirement that this bilateral contract be priced at cost-of-service, the utility could be forced to execute a PPA at above-market pricing dictated by the seller. This outcome

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<sup>13</sup> Chapter 374 of 2005 (Assembly Bill 1576), Section 1(g) ("it is in the public interest for the state to facilitate investment in the replacement or repowering of older, less-efficient electric generating facilities in order to improve local area reliability and enhance the environmental performance, reliability, efficiency, and cost-effectiveness of these facilities"), Section 1(h) ("[a]n effective means for facilitating that investment, while ensuring adequate ratepayer protection, is to authorize electrical corporations to enter into long-term contracts for the electricity generated from these facilities on a cost-of-service basis.")

<sup>14</sup> SDG&E Comments, pp. 11-12.

<sup>15</sup> PD, footnote 190 (p. 89).

would not serve ratepayers or assist utilities in conducting fair and reasonable negotiations.

The PD should clarify what types of bilateral contract must comply with all the provisions of Section 454.6. In requiring the utilities to make a showing how “applicable bilateral contracts” comply with Section 454.6, Ordering Paragraph (OP) 8.d leaves open the possibility that *only* such contracts will be allowed. However, OP 3 would allow the utilities to “procure bilateral cost-of-service contracts...including bilateral contracts consistent with the provisions of Public Utilities Code Section 454.6” (emphasis added), suggesting that bilateral contracts do not necessarily need to comply with all aspects of that section.<sup>16</sup>

TURN believes the PD’s language should unambiguously require cost-of-service treatment for *all* bilateral contracts with a “replacement or repowered facility” that meet the criteria of Section 454.6(b). This would ensure that any bilateral contract with projects that replace or repower existing thermal plants (and meet the other criteria of §454.6(b)) cannot refuse to participate in a competitive solicitation and subsequently abuse their local market power to dictate above-market bilateral contract pricing. Such a requirement would be consistent with the Legislature’s intent and would enhance the position of competitive RFOs as the preferred procurement option for any resource seeking a market-based (rather than a cost-based) price.

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<sup>16</sup> Other passages of the PD support this latter interpretation, including footnote 190 (p. 89) and the reference to SCE’s authority at the bottom of page 107. OP 9 of D.13-02-015 in Track 1 of this docket also contained the language suggesting compliance with Section 454.6 was optional.

**V. CONCLUSION**

The Commission should adopt the Track 4 PD largely as published, with the two changes advocated above to (a) require SCE to avoid double-counting EE and DR in its procurement, and (b) clarify whether all bilateral contracts the utilities propose must be consistent with Section 454.6.

Respectfully submitted,

By: \_\_\_\_\_/s/\_\_\_\_\_  
MATTHEW FREEDMAN

Matthew Freedman, Staff Attorney  
**THE UTILITY REFORM NETWORK**  
785 Market Street, Suite 1400  
San Francisco, CA 94103  
Phone: (415) 929-8876  
Fax: (415) 929-1132  
Email: matthew@turn.org

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