

**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)

**RESPONSE OF THE PROTECT OUR COMMUNITIES FOUNDATION  
AREM/DACC'S PETITION FOR MODIFICATON OF DECISION 14-03-004**

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**I. INTRODUCTION**

Pursuant to Rule 16.4 of the Commission's Rules of Practice and Procedure, the Protect Our Communities Foundation ("POC") submits the following Response to the Joint Petition for Modification of Decision 14-03-004 filed by the Alliance for Retail Energy Markets ("AREM") and the Direct Access Customer Coalition ("DACC") on July 29, 2014 (the "PFM").

The Commission's Conclusions of Law and Ordering Paragraphs in D.14-03-004 show that the Commission does not intend to pre-approve CAM treatment for resources procured to meet the Decision's identified local capacity need. However, POC shares AREM/DACC's concern that despite the Commission's intent and the language in the Conclusions of Law and the Ordering Paragraphs, the Decision's wording, especially in the discussion section, is sufficiently ambiguous to create a loophole that the utilities may attempt to use to suppress discussion or debate of CAM applicability in subsequent procurement proceedings. In order to

close this loophole, eliminate any ambiguity in the Decision, and avoid inefficient and time-consuming argument about the fact that the Commission did not pre-approve CAM treatment in this decision in future procurement proceedings, the Commission should grant AREM and DACC's Petition for Modification and adopt all modifications to the Decision recommended therein.

## **II. THE COMMISSION DID NOT INTEND TO PRE-APPROVE CAM TREATMENT**

A complete reading of the Commission's Conclusions of Law and Ordering Paragraphs in D.14-03-004, confirms that the Commission did not intend to pre-approve CAM treatment for procurement applications filed pursuant to that decision.

Ordering Paragraph 13 requires that utilities filing procurement applications to meet the need identified in the Decision "recommend" a method of cost allocation (either CAM or another Commission authorized method) in their applications. Ordering Paragraph 13 states:

In applications for contract approval, Southern California Edison and San Diego Gas & Electric Company shall recommend a method of cost allocation appropriate for the resources being procured as authorized in this decision, either consistent with the cost allocation mechanism... or through another Commission-authorized method.

The Decision holds that whether the CAM or another cost-allocation method is appropriate is an open question to be decided by the Commission for each resource application on an individual basis. Conclusion of Law 51 states that while the CAM "remains reasonable for application in this proceeding without modification... [o]ther Commission-authorized cost allocation methods may instead be appropriate for certain resources."

Taken together, the Commission's intent in Conclusion of Law 51 and Ordering Paragraph 13 confirm that the Commission did not intend to pre-approve CAM treatment. Conclusion of Law 51 provides that the reasonableness of the CAM as a general principal is

established, but leaves the question of whether the CAM or another commission-approved allocation mechanism is more appropriate for each specific resource as an open issue of fact and law to be determined in subsequent proceedings. Ordering Paragraph 13 provides that each utility procurement application is to *recommend* either the CAM or another mechanism, but leaves the question of whether the CAM or another mechanism is more appropriate as an open question.

As pointed out by AREM/DACC, the meaning of Ordering Paragraph 13 and Conclusion of Law 51 is supported by Commissioner Peterman’s statement that “while this decision allows the procurement authorized here to be eligible for CAM treatment, it doesn’t specifically authorize CAM treatment for specific resources.”

The decision does not contain any other ordering paragraphs, findings of fact, or conclusions of law that would support the conclusion that the Decision “pre-approves” CAM treatment of contracts to meet the LCR need identified in the Decision.

Although POC does not believe that Conclusion of Law 51 and Ordering Paragraph 13 are open to interpretation, POC agrees with AREM/DACC that these provisions should be worded more clearly to prevent any misunderstanding in subsequent procurement proceedings. As such, Ordering Paragraph 13 and Conclusion of Law 51 should be modified to eliminate any ambiguity as set forth in Attachment A to the PFM. Specifically, POC agrees with AREM/DACC that Conclusion of Law 51 should be modified to read:

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) may be reasonable for application in this proceeding without modification, and may be fair and equitable as required by Section 365.1(c)(2)(A)-(B). Other Commission-authorized cost allocation methods may instead be appropriate for certain resources.

POC further agrees with AREM/DACC that Ordering Paragraph 13 should be modified to read:

3. In applications for contract approval, Southern California Edison Company and San

Diego Gas & Electric Company may request authority to allocate costs and, if requested, shall recommend a method of cost allocation appropriate for the resources being procured as authorized in this decision, either 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 or through another Commission-authorized method.

### **III. LANGUAGE IN THE DECISION’S DISCUSSION SECTION SHOULD BE CLARIFIED**

POC shares AREM and DACC’s concern that ambiguous language from the Decision’s discussion section may be misinterpreted as providing a “pre-approval” of CAM treatment.

In its discussion section, the Decision notes that in the proceeding, both SCE and SDG&E argued that all Track 4 procurement should receive CAM treatment. The Decision then states:

We find 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. We conclude that such procurement 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. In most cases we expect this allocation to be 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, but there may be resources where an existing alternative method of allocating resources costs may be preferred; for example, cost may be recoverable through the Energy Program Investment Charge.

POC agrees with AREM/DACC’s concern that this language is sufficiently ambiguous to raise the question of interpreting this language as “pre-approving” CAM treatment and granting the utilities, not the Commission, the discretion to determine whether other cost allocation methods are “preferred.” To the extent that this language is open to such an interpretation, it is inconsistent with the controlling sections of the Decision – the Ordering Paragraphs and Conclusions of Law – and should be modified as set forth in Attachment A to the PFM to remedy any inconsistent and erroneous interpretation.

Granting AREM/DACC's PFM is the best and most efficient avenue for the Commission to address these issues. Because the source of the potential ambiguity is the Decision in this proceeding, this proceeding, not the various upcoming procurement proceedings, is the appropriate place to resolve this issue. Further, granting AREM/DACC's PFM at this juncture is far more efficient than having the question of whether D.14-03-004 pre-approves CAM treatment argued again and again in future procurement proceedings.

#### **IV. THE REASONABLENESS OF CAM TREATMENT IS A KEY ISSUE THAT SHOULD BE FULLY LITIGATED IN EACH PROCUREMENT APPLICATION**

CAM inhibits the ability of customers to move to Community Choice Aggregation or Direct Access by allowing the utility they are attempting to leave to burden them with additional costs. Whether CAM or another Commission-approved cost-allocation mechanism should be authorized for each resource is thus a key issue that should be fully litigated in each procurement application.

OTC capacity is much cheaper than the proposed CAM capacity, fills the same function, and can be phased-out when most convenient as permanent sustainable solutions, specifically energy storage, are phased-in over the next decade. The capacity cost of existing Encina OTC units is \$70 per kW/year,<sup>1</sup> one-third or less than the \$214 per kW-year<sup>2</sup> capacity cost of SDG&E's Pio Pico peaker plant. This cost relationship would also hold for SDG&E's recently filed Carlsbad Energy Center application, which was filed pursuant to D.14-03-004. Thus,

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<sup>1</sup> See prepared Supplemental Testimony of Jan Strack on Behalf of the San Diego Gas & Electric Company, 2012, proceeding 03-0023, p. 215.

<sup>2</sup> SDG&E's Pio Pico Bill Insert, July 2010, states that it provides 500 MW of capacity for a term at a total cost of \$1,634 million. <https://www.sdge.com/sites/default/files/documents/920709556/PioPico.pdf?nid=8101>

existing generation capacity costs are much lower than then capacity costs of new generation that is approved to fulfill the same function.

The SONGS shutdown has by itself met state OTC policy goals in Southern California, so extending operation at Southern California OTC plants for a few years beyond their current OTC phase-out dates to “bridge the gap,” if any need gap presents itself, will not impact OTC policy goals even if the OTC plant operators take no further action. However, OTC plant operators, including Encina’s owner NRG, have prepared OTC compliance plans and can take action to get into compliance if necessary.<sup>3</sup> In contrast, CAM peaker projects cost three times or more as much as OTC capacity per year, and will be under contract for 25 years. The high cost over the long term of these CAM projects ties-up ratepayer resources on an inflexible “one trick pony” resource that cannot store solar and wind energy for nighttime use while also filling-in for daytime variations in solar/wind output, as energy storage can (with no GHG emissions).

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<sup>3</sup> Implementation Plan for Compliance with the Clean Air Act for Use of Coastal and Estuarine Plant Communities. Encina Power Station, LLC, Encina Power Station, March 2011. Available at: [http://www.water\\_issues/programs/ocean/cwa316/powerplants/encina/docs/eps\\_ipan2011.pdf](http://www.water_issues/programs/ocean/cwa316/powerplants/encina/docs/eps_ipan2011.pdf)

