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 OF THE ALLIANCE FOR RETAIL ENERGY MARKETS AND THE DIRECT ACCESS CUSTOMER COALITION TO RESPONSES TO PETITION FOR MODIFICATION OF DECISION 14-03-004

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September 8, 2014

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In accordance with the provisions of Section 16.4(g) of the Commission's Rules of Practice and Procedure, the Alliance for Retail Energy Markets[1] ("AReM") and the Direct Access Customer Coalition[2] ("DACC") file this reply to responses to their July 29, 2014, petition for modification ("Petition") of Decision ("D.") 14-03-004 (the "Decision"), issued on March 14, 2014, in Track 4 of the above-captioned proceeding. Rule 16.4(g) provides in part, as follows:

> With the permission of the Administrative Law Judge, the petitioner may reply to responses to the petition. Replies must be filed and served within 10 days of the last day for filing responses, unless the Administrative Law Judge sets a different date.

This Petition complies with this requirement as Administrative Law Judge David Gamson responded by email on August 29, 2014, to a request for permission to file a reply made by AReM/DACC counsel and authorized September 8 as a date for such reply.

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[1] AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California's direct access ("DA") 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.

[2] 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.

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I. Background to Petition

The Petition sought clarity with respect to when and how the Cost Allocation Mechanism ("CAM") will be applied to the procurement undertaken by Southern California Edison ("SCE") and San Diego Gas & Electric ("SDG&E") as a result of the authorizations granted by the Decision in Track 4 of the long-term procurement plan ("LTPP") proceeding. The Petition noted its timeliness by observing that on July 2, 2014, SDG&E filed its Application 14-07-009 seeking approval to partially fill the needs identified in the Decision.[3] Since the SDG&E Application seeks to allocate the costs incurred as a result of the agreement described therein pursuant to the CAM, it is important to determine precisely the procedural requirements and the evidentiary showing necessary to determine how and/or whether the CAM should apply.

The Decision states as follows:

> 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.[4]

Further, Ordering Paragraph 13 directs that:

> In applications for contract approval, Southern California Edison Company 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 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.[5]

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[3] Application of San Diego Gas & Electric Company (U902E) for Authority to Partially Fill the Local Capacity Requirement Need Identified in D.14-03-004 and Enter into a Purchase Power Tolling Agreement with Carlsbad Energy Center, LLC.

[4] Decision, at p. 120.

[5] Id, at p. 147.

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The Petition noted that one interpretation would be that CAM is already approved for whatever Track 4 procurement is brought to the Commission by SCE and SDG&E, whereas another interpretation would be that the ultimate decision about CAM for the Track 4 procurement appears to be deferred until specific applications are brought before the Commission. The Petition suggested that a more nuanced conclusion about this question was appropriate and that the final Decision should be modified accordingly, as discussed in the Petition in greater detail.

II. Reply to Responses to the Petition

There were five filings in response to the Petition, Pacific Gas & Electric ("PG&E"), Southern California Edison and San Diego Gas Electric ("SCE/SDG&E") jointly, and the Office of Ratepayer Advocates and The Utility Reform Network ("ORA/TURN") jointly all opposed the Petition. Marin Clean Energy ("MCE") and the Protect Our Communities Foundation supported the Petition. Put simply, the opponents each missed the point of the Petition. It is, quite simply, as follows:

> How can the Commission provide advance approval of CAM treatment when the actual details of the procurement are not known at the time of the Decision's issuance?

Or, as stated by Commissioner Peterman at the meeting that approved the Decision, "I appreciate the modifications made this week to the decision to acknowledge 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." [Emphasis added]

The opponents to the Petition simply reiterate the wording of the statute, specifically P.U. Code Section 365.1(c)(2)(A). AReM and DACC do not dispute the existence of the statute. However, merely arguing that it exists and that the AReM/DACC Petition would somehow

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"undermine"[6] the state's intent to allocate the costs of new resources that support system or local reliability is not persuasive.

By way of analogy, it is a well-known legal principle that courts do not give "advisory opinions." Rather, courts at all levels have enunciated an historical insistence on well-formed and concrete disputes. The Commission has a similar historical principle. In D.03-09-027 issued in R.02-01-011, the Commission rejected an SCE application for rehearing of D. 03-01-078, which granted the City of Corona's petition for modification of D.02-03-055 to clarify that D.02-03-055 did not change the continuing obligation of a utility distribution company ("UDC") to process and execute new service agreements with any qualified electric service provider ("ESP") that wants to provide direct access service in the UDC's service territory to existing direct access customers. (See D.03-01-078, p. 7 [Finding of Fact No. 4.].):

> Like courts, we have a long-standing policy against issuing advisory opinions in the absence of a case or controversy, unless there are extraordinary circumstances presented. (See Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Etc. [D.00-01-052, pp. 12-13 (slip op.)] (2000) Cal.P.U.C.2d, 2000 Cal. PUC LEXIS 108, citing Pacific Legal Foundation v. California Coastal Com. (1982) 33 Cal.3d 158, 170; Re Pacific Gas and Electric Company [D.00-06-002, pp. 3-4 (slip op.)] (2000) Cal.P.U.C.2d , 2000 Cal. PUC LEXIS 278.)" D.03-09-027, 2002 Cal. PUC LEXIS 1012, *5.

Approving CAM for procurement before the actual details of that procurement (such as price, term, contribution, if any, to local reliability) are known is in effect an advisory opinion. As such, it represents poor Commission practice and also may well be in fact violative of the statute.

Section 365.1(B) provides as follows:

> If the commission authorizes or orders an electrical corporation to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation. The commission shall allocate

[6] SCE/SDG&E, at p. 2.

> the costs of those generation resources to ratepayers in a manner that is fair and equitable to all customers, whether they receive electric service from the electrical corporation, a community choice aggregator, or an electric service provider.

The opponents of the Petition would have the Commission determine that any procurement subsequent to issuance of the Decision would in fact "meet a system or local reliability need in a manner that benefits all customers of the electrical corporation" before any of the details of the procurement are even known! This is not only putting the cart before the horse, it is putting the Commission's imprimatur on procurement before it ever knows the details of what may be proposed.

The opponents to the Petition would have the Commission believe that the Petition is "inconsistent with the plain language and clear intent"[7] of the relevant Code provisions. Or, in the case of TURN/ORA, allege that the changes proposed by the Petition "fundamentally undermine the entire rationale for the need authorization in D.14-03-004."[8] Statements like these are pure hyperbole. The Petition makes a simple request – the Commission should look at the details of the subject procurement before pronouncing a final decision on cost allocation. This is simple; this is appropriate; and it meets the statute's requirement that the costs of those generation resources be allocated "to ratepayers in a manner that is fair and equitable to all customers."

III. Conclusion

The imprecision and inconsistencies in the final decision can and should be rectified. It is inappropriate from a policy perspective for the Commission to render "advisory decisions." Yet,

[7] SCE/SDG&E, at p. 3.

[8] TURN/ORA, at p. 4. It is of course highly doubtful that TURN or ORA would be quite so sanguine about the Commission approving procurement cost allocation in advance of knowing the details of the subject procurement if the associated costs were to be borne solely by their constituency, bundled customers.

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in its essence, that is precisely what the Decision did with regard to the SDG&E CAM request. The Petition's opponents would have the Commission believe that the Petition would violate the statute or even allegedly "overturn long-standing precedent."[9] This is bluster and bombast.

Rather, what AReM and DACC ask is simply that the Commission should examine the details of any utility procurement before determining the appropriate cost allocation. If the Commission determines that the utilities' respective procurement proposals meet the statute standards, then cost allocation to all customers will result. AReM and DACC merely request that the Commission comply with the statute by examining the actual procurement details before making a final CAM decision. Doing so would be "fair and equitable to all customers" and would create a record of reasoned decisionmaking that should be the hallmark of all Commission action. The Commission should make the changes proposed in Attachment A to the Petition (attached hereto as well). Further, AReM and DACC thank the Commission for its attention to the issues raised by the Petition.

Respectfully submitted,

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[9] SCE/SDG&E at p. 2.

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Attachment A
Proposed Revisions to the Decision

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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 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. 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 may meet the criteria of Section 365.1(c)(2)(A)-(B~~). Therefore,~~ and that SCE and SDG&E ~~shall~~ may request authority to allocate costs incurred as a result of procurement authorized in this decision, and approved by the Commission in their respective applications for contract approval. 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. As SCE states in its Reply Comments on the Proposed Decision at 3, it will "propose an RA allocation method in its application for approval of the results of its LCR RFO when those results are fully understood." We will require that, in applications for contract approval, the IOU may request authority to allocate costs and, if such a request is made, shall recommend a method of cost allocation appropriate for the resource being procured.

Conclusion of Law 51:

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) ~~remains~~ may be reasonable for application in this proceeding without modification, and ~~is~~ 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.

Ordering Paragraph 13:

13. 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.

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