BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)

POST-WORKSHOP REPLY COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS ON ASSIGNED COMMISSIONER'S RULING REGARDING NEXT STEPS IN PROCUREMENT PROCEEDING

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Staff of the California Public Utilities Commission ("Commission") conducted the two separate workshops on December 14, 2005, with respect to the 2006 Long Term Procurement Plan ("LTPP") process and transmission planning. In accordance with the schedule for comments established by the Assigned Commissioner,[1] the Alliance for Retail Energy Markets ("AReM")[2] hereby submits these post-workshop reply comments with respect to post-workshop comments on the 2006 Long Term Procurement Plan ("2006 LTPP") process that were filed by certain parties on January 5, 2006. AReM indicates its disagreement with certain of the comments made by each of the three investor-owned utilities,[3] as well as its agreement with certain comments made by SCE, SDG&E, the Division of Ratepayer Advocates ("DRA"), the City and County of San Francisco ("CCSF"), Constellation Energy ("Constellation") and the Western Power Trading Forum ("WPTF").

[1] *See*, Assigned Commissioner's Ruling Regarding Next Steps in the Procurement Proceeding ("ACR") and the Staff Draft Proposal for Long-Term Procurement Planning Proceeding Work Plan ("Draft Work Plan") issued on December 2, 2005, at p. 11.

[2] AReM is a California non-profit mutual benefit corporation comprised of electric service providers that serve the majority of the state's direct access load. The comments contained in this filing represent the position of AReM, but not necessarily the view of any affiliates of its members with respect to any specific issue.

[3] Pacific Gas & Electric Company ("PG&E"); Southern California Edison Company ("SCE"); and San Diego Gas & Electric Company ("SDG&E").

I. COMMENTS IN OPPOSITION

A. PG&E is the only party recommending that all LSEs should be required to submit a LTPP. Its recommendation should be rejected.

Of the ten parties that saw fit to file post-workshop comments, only PG&E recommended that ESPs be required to submit long-term procurement plans to the Commission for review and approval.[4] PG&E states that such a requirement would be "an essential part of insuring resource adequacy,"[5] It appears that the utility is confused by the purpose of this proceeding, as opposed to the separate resource adequacy docket established in R.05-12-013 (December 20, 2005). As noted in the resource adequacy OIR, "investor-owned utilities (IOUs) as well as the electric service providers (ESPs) and community choice aggregators (CCAs) operating within the IOUs' service territories (collectively, load serving entities or LSEs) are required to demonstrate that they have acquired the resources needed to meet their forecasted retail customer load plus a reserve margin."

Attempting to require ESPs or Community Choice Aggregators ("CCAs")[6] to provide LTPPs would be an unnecessary regulatory encroachment and burden, particularly when the Commission has no legal authority to do so. Moreover, the plans themselves would be less than useful due to the fact that direct access customers do not sign long-term contracts and therefore ESPs do not engage in long-term procurement. In conclusion, AReM continues to urge strongly that PG&E's recommendation be rejected, the Draft Work Plan be revised accordingly and that the Commission not require either ESPs or CCAs to file LTPPs.

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[4] PG&E comments at p.9: "Requiring all Commission-jurisdictional LSEs to submit an LTPP that is reviewed by the Commission is an essential part of insuring resource adequacy, including issues regarding new generation procurement and cost allocation.

[5] Ibid.

[6] CCSF notes at p. 1 of its comments that this issue needs to be addressed for CCAs as well, and AReM concurs with this statement.

B. SCE's call for workshops on allocating its procurement costs should be rejected, and its interpretation of AB 380 is overreaching.

SCE recommends that the Commission must address how to implement Assembly Bill (AB) 380's mandate to "equitably allocate the cost of generating capacity."[7] The utility suggests that this subject can best be addressed in workshops where parties can present and discuss proposals regarding how this can be accomplished and that the workshops "should be structured to require concrete straw proposals from parties wishing to advocate a certain structure."[8] This is, of course, an obvious attempt by SCE to renew its proposal in Docket A.05-06-003 for the allocation of its procurement costs to customers of all LSEs, including those that are not served by SCE. While one can perhaps, in abstract, admire SCE's tenacity in continuing to advocate a proposal that has already been rejected by multiple parties as impractical and infeasible, the fact remains that if it wishes to resurrect its earlier proposal, it need only file a new application. However, burdening this proceeding with the "son of A.05-06-003" is reminiscent of those legislators that attempt to add a rider to a bill under consideration in order to push through some pet project.

Moreover, SCE's vague summary of the provisions of AB 380 is overreaching. While it is accurate that the phrase, "equitably allocate the cost of generating capacity" is in the legislation, it is important to read the entire phrase to get the full flavor of the Legislature's direction. AB 380(a) (statutorily implemented as P.U. Code § 380(a)) provides that "The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements for all load-serving entities. P.U. Code § 380(b) then states that, "(b) In

[7] SCE comments at p. 5.

[8] Ibid.

establishing resource adequacy requirements, the commission shall achieve all of the following objectives…." and that among those objectives, the Commission should "Equitably allocate the cost of generating capacity and prevent shifting of costs between customer classes." [Emphasis added] While SCE apparently interprets the cited statutory wording as justification for its proposed allocation of its procurement costs to customers served by other LSEs, the cited words can just as easily be read to prohibit the "shifting of costs between customer classes" within the utilities' own rate structures. Or, read more expansively, cost shifting that would occur if direct access, or CCA or utility customers in other service territories were required to contribute to the costs of SCE's procurement efforts. In summary, the Commission should not be under the mistaken impression that AB 380 somehow specifically authorizes the type of cost-sharing that SCE has unsuccessfully proposed in the past.

C. SDG&E's recommendation for a "centralized market backstop procurement" function should be rejected.

SDG&E suggests that one procurement option would be for the utilities to act as a "centralized market backstop procurement" agent until CAISO establishes a capacity market. Alternatively, the CAISO could also provide the "centralized market backstop procurement" function.[9] LSEs should be responsible for their own procurement, are responsible under the exisiting CPUC decisions and this proceeding should not be burdened by proposals for such a centralized procurement function that would be complicated and controversial. In the January 3, 2006, ruling issued by ALJ Allen in the renewable portfolio standards docket (R.04-04-026), it was noted that, "Procurement entities were considered by all parties to be a lower-priority

[9] SDG&E comments, at p. 11.

topic."[10] It should also be a low priority in this proceeding. Moreover, it is puzzling that SDG&E would make such a suggestion, when it also states that SCE should not be permitted to revive its prior SP-15 proposal to allocate costs across service territories (see Section II. B below). Consistency would suggest that any such centralized procurement should be objectionable.

D. SDG&E's comments about load growth for direct access is factually incorrect.

SDG&E responds to a comment by AReM by saying that "SDG&E disagrees that the need for new generation should be attributed to increases in utility load; even usage for Direct Access customers is increasing."[11] The utility has made what appears to be an inadvertent factual error. In fact, the following table indicates that direct access load has decreased over the past eighteen months, from 13.5% of statewide load to its current 11.9% of statewide load:

Summary of Statewide Direct Access[12]

Monthly Report Dated	Direct Access as a % of Statewide Load
12/15/05	11.9
9/15/05	12.4
6/15/05	12.4
3/15/05	13.1
12/15/04	13.0
9/15/04	13.2
6/15/04	13.5

In conclusion, load growth may be occurring, but it certainly is not attributable to DA customers, as demonstrated by the Commission's own data.

[10] Administrative Law Judge's Ruling Setting Schedule for Submission of Proposals for RPS Participation, at p. 3.

[11] SDG&E comments at p. 18.

[12] All data taken from the Commission's website, in its Supplemental Direct Access Implementation Activities Reports; http://www.cpuc.ca.gov/static/energy/electric/electric+markets/direct+access/00thru05.htm

II. COMMENTS IN SUPPORT

A. SCE is correct to call for a careful definition of the roles and responsibilities of all LSEs but it does not belong in this proceeding.

SCE notes that it sees little value in reexamining the "hybrid market" for generation in this proceeding, saying that, "Of far greater importance is defining the retail market, including the roles and responsibilities of LSEs."[13] While AReM does not agree with SCE's defense of the current market structure,[14] it does concur that "The silence of the Legislature and the Commission on critical matters regarding the retail market – such as who has the responsibility of assuring new generation is built and whether and when Direct Access will be reopened to all customers – has substantially inhibited investment in generation and the viability of many retail service providers."[15] Although this is not the proper proceeding in which to do so, AReM encourages the Commission to consider seriously the commencement of a proceeding to determine precisely when, and how, the retail market should be reopened in California. Doing so, and providing a firm schedule for accomplishing such a goal, will provide far greater certainty to market participants. This will, in turn, lead to greater incentives for new generation to be built as there will be more parties in the market for long-term generation. As customers gain an understanding that direct access is here to stay and that their efforts to seek competitive sources of supply will not be constantly hamstrung by a myriad of petty regulations, the incentive to contract for longer terms will be a natural result. This will enable ESPs to enter into

[13] SCE comments at p. 3.

[14] Rather, AReM concurs with the WPTF observation that, "A level playing field is necessary for all market participants. WPTF does not believe a hybrid market can work to the benefit of consumers', because it skews the economics in favor of the incumbent utilities."

[15] Id, at p. 11.

longer-term contracts and provide the multiple markets for generation that is missing in the current monopsony market in California. But, again, these topics do not belong in this LTTP proceeding.

B. SDG&E appropriately notes that there is no need to develop a "new portfolio standard" for all LSEs and that SCE should not be permitted to revive its prior SP-15 proposal to allocate costs across service territories.

SDG&E does not believe there is a need to develop a "new portfolio standard" for all LSEs.[16] SDG&E also states that SCE should not be permitted to revive its prior SP-15 proposal to allocate costs across service territories.[17] As noted above, AReM agrees. If SCE wishes to do so, it should file yet another application that parties can respond to in detail. This proceeding, however, should not be burdened by SCE's attempt to piggyback its unsuccessful proposal on to the already crowded agenda that exists.

C. DRA is right to urge that LSEs must be compelled to plan with retail market uncertainty and move ahead with their procurement efforts.

DRA observes that, "Most Load Serving Entities (LSE) suggest that the Commission begin to resolve the future of the retail market structure to reduce uncertainty across the board."[18] They note, for example, that Sempra is "one of the several parties to suggest or imply that we must get a fix on where the retail market is going. If indeed, direct access could resume as early as 2010 it is time to talk about the framework under which this will occur, with clear roles and

[16] Id, at p. 10.

[17] Id, at p. 11.

[18] DRA comments at p. 2.

obligations among IOUs, CCAs, and ESPs toward retail customers."[19] DRA also notes that the current uncertainty about the future of the retail market "has been the rationale for the current procurement paralysis – especially at SCE." AReM concurs with all these observations, and especially the DRA recommendation that the Commission should begin to resolve this.

AReM further agrees with DRA that "LSEs must be compelled to plan with this uncertainty and procure. Procurement in times of market uncertainty has been the California experience even before the electricity crisis...."[20] Far too much of the Commission's time over the last several years has been taken up by utility requests driven largely by the desire to eliminate all procurement risk. It is time for the Commission to refrain from indulging these requests and let utility shareholders actually be exposed to some risks for those guaranteed rates of return.

D. Constellation's and WPTF's concerns about load migration need to be addressed by the Commission with expedition.

Both Constellation and WPTF address the issue of load migration in a similar manner. Constellation observes that, "If no new load migration assumptions are used as a basis for utility purchases on a long-term basis, it is more likely than not that the utilities will purchase more supplies than may be required if reasonable load migration estimates were incorporated into their LTPP."[21] WPTF states that, "The future reopening of retail direct access should be a required factor to be considered by all LSEs required to submit a LTPP."[22] AReM concurs with both

[19] Id, at p. 3.

[20] Ibid.

[21] Constellation comments, at p. 4.

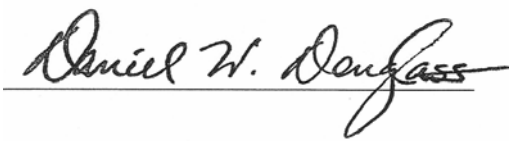
[22] WPTF comments, at p. 1.

observations. As stated in AreM's opening post-workshop comments, the Commission needs to be clear in its directives to the IOUs that any need for new generation in the near term should take into account the load migration that will occur when direct access re-opens (either through a core/noncore model or some other yet-to-be-determined approach), as well as the growth of CCA.

III. CONCLUSION

As the representative of the state's leading ESPs, AReM appreciates the opportunity to offer these post-workshop reply comments and thanks the Commission for its attention to its observations and recommendations.

Respectfully submitted,



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January 12, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document on all parties of record in the above captioned proceedings by serving an electronic copy on their email addresses of record and, for those parties without an email address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

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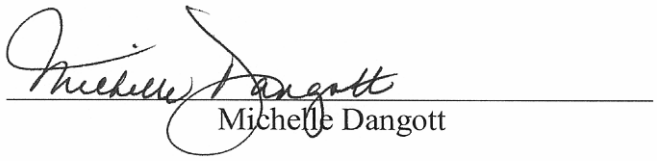

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