

Decision PROPOSED DECISION OF ALJ GAMSON (Mailed 10/21/14)

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)

DECISION DENYING ALLIANCE FOR RETAIL ENERGY MARKETS AND DIRECT ACCESS CUSTOMER COALITION PETITION FOR MODIFICATION OF DECISION 14-03-004**Summary**

This decision denies a Petition for Modification of Decision 14-03-004 from Alliance for Retail Energy Markets and the Direct Access Customer Coalition regarding when and how the Cost Allocation Mechanism will be applied to the procurement undertaken by Southern California Edison Company and San Diego Gas & Electric Company as a result of the authorizations in Track 4 of the long-term procurement plan proceeding.

1. Background

This proceeding is the Commission's 2012 Long-Term Procurement Plan (LTPP) proceeding. Among other things, decisions have been issued in this proceeding to ensure reliability by authorizing Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) to procure sufficient local capacity through 2022 in capacity-constrained local areas in California under the Commission's jurisdiction.

Decision (D.) 13-02-015 authorized SCE to procure between 1400 and 1800 Megawatts (MW) in the Los Angeles Local Reliability Area, and between

215 and 290 MW in the Big Creek/Ventura Local Reliability Area, by 2022. That decision determined that SCE's procurement must include specified amounts of gas-fired resources, preferred resources (including renewable, energy efficiency and demand response resources) and energy storage resources.

D.14-03-004 authorized additional local procurement in southern California due to the early retirement of the approximately 2200 MW San Onofre Nuclear Generation Stations (SONGS). That decision authorized SCE to procure by 2022 between 500 and 700 MW in the Los Angeles Local Reliability Area (in addition to the amount authorized for that local area in D.13-02-015), and authorized SDG&E to procure between 500 and 800 MW in the San Diego Local Reliability Area. Similar to D.13-02-015, D.14-03-004 determined that SCE and SDG&E's procurement must include specified amounts of gas-fired resources, preferred resources (including renewable, energy efficiency and demand response resources) and energy storage resources.

Public Utilities Code Section (C) 365.1(c)(2)(A)-(B) is specifically relevant to this Petition, and states:

(c) Once the commission has authorized additional direct transactions pursuant to subdivision (b), it shall do both of the following:

...

(2) (A) Ensure that, in the event that the commission authorizes, in the situation of a contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory, the net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with

departing load provisions as determined by the commission, to all of the following:

- (i) Bundled service customers of the electrical corporation.
- (ii) Customers that purchase electricity through a direct transaction with other providers.
- (iii) Customers of community choice aggregators.

(B) 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 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.

D.13-02-015 at 98 -100 in this proceeding provides background information about the Commission's activities regarding the Commission's cost allocation mechanism (CAM) relevant to this Petition (footnotes omitted):

In D.04-12-048, the Commission adopted the investor-owned utilities' (IOUs') 2004 long-term procurement plans. As part of its efforts to ensure a long-term, reliable energy supply for California customers, the Commission authorized the IOUs to recover stranded costs associated with new Power Purchase Agreements (PPAs) and utility-owned generation (UOG) from all customers, with the goal of providing "the need for reasonable certainty of rate recovery." By doing so, the Commission sought to address utilities' concern that they could end up over-procuring resources and incurring the associated stranded costs given the potential for a significant portion of their load to take service from a different electric service provider (ESP).

D.04-12-048 did not specify the actual implementation mechanism for recovering these costs. D.06-07-029 in the 2006 long-term procurement proceeding decision adopted the CAM, which allows the costs and benefits of new generation to be shared by all benefiting customers in an IOU's service territory. The Commission designated IOUs to procure the new generation through long-term PPAs, and the rights to the capacity were allocated among all Load Serving Entities (LSEs) in the IOU's service territory. The allocated capacity rights can be applied toward each LSE's Resource Adequacy (RA) requirements. In exchange for those benefits, the LSEs' customers - termed "benefitting customers" - pay for the net cost of the capacity.

The basic framework for the CAM was set forth in D.06-07-029 as follows: The IOU would contract with an Independent Evaluator to oversee a Refueling Outage (RFO) for new resource contracts. At the conclusion of the RFO, the IOU would sign a long-term contract with the generator of a new resource. The IOU would seek contract approval from the Commission, and at that time, select whether or not it intends for the CAM to apply to the contract. The Commission's decision on the IOU's application determines the applicable CAM based on allocating the appropriate net capacity costs to all benefiting customers in the IOU service area. The IOU would then request Commission approval to conduct periodic auctions with an Independent Evaluator for the energy rights of the resource, essentially selling the tolling right - the energy component - and retaining the RA benefit, which it then shares with all customers paying for the capacity. D.06-07-029 at 26 explained that "benefitting customers" referred to all bundled service, direct access (DA), Community Choice Aggregator (CCA) customers and "other customers who are located within a utility distribution service territory but take service from a local publicly-owned utility subsequent to the date the new generation goes into service." D.06-07-029 at 26 (footnote 21) specified that current customers of publicly-owned utilities were exempt from the CAM.

Subsequent decisions clarified and amended the CAM.

D.07-09-044 presented in greater depth the procedures for the energy auctions. The procedures established a backstop for the auctions. Should an auction fail to produce a successful bid for the energy products, the capacity costs would be calculated via a specified alternative mechanism.

D.08-09-012 set forth that customer generation departing load was exempt from the CAM. That decision clarified that only large municipalizations were subject to the CAM, while exempting other classes of municipal departing load.

Senate Bill (SB) 695, signed into law in 2009, requires that the net capacity costs of new generation resources deemed “needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation’s distribution service territory” must be passed on to bundled service customers, DA and CCA customers. In order to align the CAM with the requirements of SB 695, D.11-05-005 did the following:

- (1) Removed the right for the utility to elect or not elect CAM treatment for a resource that meets the conditions of the statutes;
- (2) Widened the scope of the CAM to apply to utility-owned generation resources, and
- (3) Extended the duration of CAM treatment to match the duration of the underlying contract, eliminating the 10-year cap.

SB 790 in 2011 codified the Commission requirement that the costs to ratepayers for CAM procurement are allocated to ratepayers in a “fair and equitable” manner.

Regarding CAM, Ordering Paragraph 15 of D.13-02-015 states:

Southern California Edison Company shall allocate costs incurred as a result of procurement authorized in this decision and approved by the Commission consistent with the cost allocation mechanism approved in Decisions (D.) 06-07-029, D.07-09-044, D.08-09-012 and D.11-05-005.

D.14-03-004 at 120 addresses CAM 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.

The procurement of new Local Capacity Requirements (LCR) resources authorized in D.14-03-004 was found to be required to meet local reliability needs of all distribution customers, including DA and CCA customers.

D.14-03-004, in Finding of Fact 92, specifically finds: “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.” D.14-03-004, Conclusion of Law 50, determines: “The procurement authorized in this decision meets the criteria of Section 365.1(c)(2)(A)-(B) for the purposes of cost allocation.”

Further, Ordering Paragraph 13 of D.14-03-004 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.

2. AReM/DACC Petition for Modification of D.14-03-004

On July 29, 2014, Alliance for Retail Energy Markets and the Direct Access Customer Coalition (AReM/DACC) filed a Petition for Modification of D.14-03-004. This petition seeks clarity with respect to when and how the CAM

will be applied to the procurement undertaken by SCE and SDG&E as a result of the authorizations in Track 4 of the LTPP proceeding (D.14-03-004).

AReM/DACC claims that one interpretation of D.14-03-004 would be that use of the CAM has already been approved for Track 4 procurement, while another interpretation would be that the ultimate decision about use of the CAM for the Track 4 procurement was deferred until specific applications are brought before the Commission. AReM/DACC claims that this is an inconsistency within D.14-03-004. AReM/DACC recommends that D.14-03-004 be modified to provide that while D.14-03-004 allowed the procurement authorized therein to be eligible for CAM treatment, it did not specifically authorize CAM treatment for specific resources. Instead, AReM/DACC recommends that D.14-03-004 be modified to state that final determination of CAM eligibility is to be made upon the filing of the procurement applications authorized by D.14-03-004, based on a showing by each utility as to what cost allocation method would be justified and appropriate. AReM/DACC provides specific recommended modifications to D.14-03-004 for these purposes.

3. Comments on Petition for Modification

SCE and SDG&E request that the Commission deny this Petition as contrary to established state law and regulation. SCE/SDG&E claims the Petition offers no justification for its requested changes, and should be summarily rejected. PG&E opposes the Petition, contending that the Petition does not make reference to any record evidence conflicting in any way with Finding of Fact 92. Instead, PG&E asserts that Finding of Fact 92 is specifically supported by the record. PG&E cites to D.14-03-004 at 120, which states that the authorized “procurement is pursuant to local reliability determinations starting with

[California Independent System Operator] studies for this purpose, as modified by our analysis.”

Office of Ratepayer Advocates (ORA) asserts there is no need to modify D.14-03-004, and the Commission should reject the Petition. ORA contends the import of D.14-03-004 is that utilities can propose alternate allocation methods only for preferred resources, which might be treated differently than “generation resources” as specified in Section 365.1(c)(2)(A) even when needed to meet system or local reliability. D.14-03-004 at 120 states that 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.”

Protect Our Communities Foundation (POC) contends that 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 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 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, and avoid inefficient and time-consuming argument about pre-approval of CAM treatment in this decision in future procurement proceedings, POC recommends that the Commission grant AReM/DACC’s Petition and adopt all proposed modifications.

Marin Clean Energy (MCE) contends that the issue in the Petition is time-sensitive. MCE points to SDG&E's Application (A.) 14-07-009, where SDG&E seeks approval of and cost recovery for a Power Purchase and Tolling Agreement with the Carlsbad Energy Center (Carlsbad PPTA). Therein, SDG&E requests recovery of a significant portion of the costs of the Carlsbad PPA through application of the CAM. MCE argues that SDG&E appears to presume that D.14-03-004 conclusively establishes that CAM treatment should apply to all resource acquisitions authorized by D.14-03-004. MCE contends that such a presumption is improper, and reflects what MCE perceives to be an increasing and concerning trend by the IOUs to claim that all new resource acquisitions should be given CAM treatment.

4. Discussion

Consistent with Pub. Util. Code § 365.1(c)(2)(A)-(B) and several Commission decisions, the costs of new resources acquired by the IOUs to meet either system or local reliability needs for the benefit of all customers must be allocated to DA and CCA customers, as well as bundled customers.

AReM/DACC seeks substantive modification of the key Finding of Fact in D.14-03-004 that the procurement authorized in the decision meets the criteria of Section 365.1(c)(2)(A)-(B) of the Public Utilities Code. The changes to D.14-03-004 recommended by AReM/DACC are inconsistent with the plain language and clear intent of Pub. Util. Code § 365.1(c)(2)(A)-(B) that the Commission should allocate the costs of all new generation resources procured by the IOUs to meet system or local reliability need to all benefitting customers.

As ORA points out, the CAM has historically applied to conventional generation resources that support system or local reliability, and Section 365.1(c)(2)(A) mandates that the net capacity costs of "generation

resources ... needed for system or local area reliability needs” must be allocated to all benefitting customers, including DA and CCA. But D.14-03-004 directed the utilities to procure preferred resources as well as conventional resources to meet local reliability needs. D.14-03-004 at 120 recognized that CAM might not be an appropriate cost allocator for some of the preferred resources being procured to maintain reliability (*e.g.*, storage, energy efficiency, distributed generation) – not all of which are necessarily considered “generation resources” -- and directed the utilities to propose an appropriate method of cost allocation when they filed their applications for authorization of specific resources to meet Track 4 need.

The clear intention of D.14-03-004 is that allocation of costs to all benefitting customers for resources – “generation resources” or not -- procured for the local reliability purposes of that decision is appropriate. However, the actual mechanism utilized to accomplish this could be CAM or another mechanism. The question of appropriate mechanism remains to be determined in applications pursuant to D.14-03-004. In the first such application (A.14-07-009 regarding the Carlsbad PPTA), the September 12, 2014 Scoping Memo at 3 states: “In light of Finding of Fact 92 and Conclusions of Law 50 and 51 in D.14-03-004, is Cost Allocation Methodology treatment appropriate ratemaking treatment for the costs of the Carlsbad PPTA?” It is clear that potential CAM treatment is a live issue in A.14-07-009 and no clarification or modification of D.14-03-004 is necessary to cause this inquiry.

Finally, we note that AReM/DACC’s Petition cites to comments by a Commissioner at the meeting when D.14-03-004 was adopted, as support for the Petition. Commissioner comments are important for understanding the perspectives of the Commissioners and their rationales for their votes. However, the decision speaks for itself. In addition, AReM/DACC cites to modifications

between the Proposed Decision and the final Decision in this proceeding in support of its Petition. Proposed Decisions may be modified on the basis of comments, as properly occurred in this situation. However, only the final decision represents the official action of the Commission. Nevertheless, the changes from the Proposed Decision to the final Decision do not support a need to modify D.14-03-004 as proposed by AReM/DACC. Specifically, the changes cited by ORA in D.14-03-004 at 120 – which changed and added language compared with the Proposed Decision -- show that the Decision is clear that not all procurement authorized by D.14-03-004 would necessarily be allocated through the CAM (but may be allocated through some other method).

We determine that there is no ambiguity in D.14-03-003 and thus no need to modify D.14-03-004.

5. Comments on Proposed Decision

The proposed decision the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

6. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and David M. Gamson is the assigned ALJ in this proceeding.

Findings of Fact

1. D.14-03-004 determined that local reliability resources should be allocated to all benefitting customers, either through the CAM or other cost allocation mechanism.

Conclusions of Law

1. There is no factual error and no need to modify D.14-03-004 regarding allocation of the cost of local reliability resources through CAM or other mechanisms.
2. The AReM/DACC Petition should be denied.

O R D E R

IT IS ORDERED that:

1. The July 29, 2014 Alliance for Retail Energy Markets and Direct Access Customer Coalition Petition for Modification of Decision 14-03-004 is denied.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.