

1 **[San Francisco Resolution Approving Protest Letter to the California Public Utilities**  
2 **Commission and the Procurement Review Committee Regarding Approval of Proposed**  
3 **Pacific Gas & Electric Power Purchase Agreements and Energy Efficiency Programs]**

4 **Resolution Approving a Protest Letter to the California Public Utilities Commission and**  
5 **the Procurement Review Committee Regarding Approval of Proposed Pacific Gas &**  
6 **Electric Power Purchase Agreements and Energy Efficiency Programs.**

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9 WHEREAS, The Board of Supervisors unanimously passed, and the Mayor signed  
10 ordinance 86-04 ("Energy Independence Ordinance", Ammiano) on May 27, 2004  
11 establishing a Community Choice Aggregation (CCA) Program in San Francisco pursuant to  
12 California Public Utilities Code 366.2( c )(10);

13  
14 WHEREAS, San Francisco's Community Choice Aggregation Ordinance established a  
15 mechanism for Electric Service Providers to bid against Pacific Gas & Electric's electricity  
16 rates for the non-wires, non meter-reading, non-billing energy portion of its electricity service,  
17 provided significant details concerning its program, including the installation of 107 Megawatts  
18 of energy efficiency and conservation measures within the jurisdictional boundaries of the City  
19 and County of San Francisco;

20  
21 WHEREAS, The City's CCA ordinance directed City Departments to prepare and  
22 submit a CCA Implementation Plan consistent with its CCA ordinance to the Board of  
23 Supervisors, and the Board of Supervisors subsequently directed City Departments to submit  
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1 the Implementation Plan to the Board on April 24, 2005, for amendment and adoption in May,  
2 2005;

3 WHEREAS, Ordinance 86-04 directed City Departments to prepare and submit a  
4 corresponding Request for Proposals to the Board of Supervisors to Electric Service  
5 Providers three months after its adoption of the Implementation Plan for amendment and  
6 adoption;  
7

8 WHEREAS, Section 366.2( c )(9) of the Public Utilities Code requires that "All electrical  
9 corporations shall cooperate fully with any community choice aggregators that investigate,  
10 pursue, or implement community choice aggregation programs";  
11

12 WHEREAS, Pacific Gas and Electric Company filed an Advice Letter with the  
13 Commission on February 23, 2005 announcing that it has entered into a power purchase  
14 agreement with Duke Energy Marketing Americas (DEMA) providing PG&E with exclusive  
15 rights to dispatch Morro Bay Units 3 and 4, each 325 megawatts, to meet PG&E's capacity  
16 and energy needs for the period 2005-2007, and seeking regulatory review and approval of  
17 this power purchase agreement with DEMA by April 4, 2005;  
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19  
20 WHEREAS, In January, 2005 PG&E announced a settlement agreement with Mirant to  
21 obtain the rights to dispatch some of the power from Mirant's Contra Costa and Pittsburg  
22 Power Plants, as well as the opportunity to complete construction of and operate Contra  
23 Costa Unit 8, a 530-megawatt facility.  
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1           WHEREAS, In addition to these agreements, PG&E is currently conducting  
2 competitive solicitations for not only near-term supply but also long-term supply and  
3 generating capacity, which if approved could increase the Customer Responsibility Surcharge  
4 (CRS) for San Francisco ratepayers for decades, and potentially deny San Francisco  
5 ratepayers the right to proceed with Community Choice Aggregation;  
6

7           WHEREAS, In Decision 04-12-046 adopted December 16, 2004, the Commission  
8 provided that "Utility resource plans will need to balance supply security with enough flexibility  
9 to accommodate many market contingencies in addition to those associated with the CCA  
10 program, as we have recognized. Because it would ideally recognize and anticipate changing  
11 markets and supply sources, resource planning will necessarily be an ongoing, interactive  
12 exercise";  
13

14           WHEREAS, In D.04-12-046 the Commission decided that "The objective of AB 117 in  
15 requiring CCAs to pay a CRS is to protect the utilities and their bundled utility customers from  
16 paying for the liabilities incurred on behalf of CCA customers. Our complementary objective is  
17 to minimize the CRS (and all utility liabilities that are not required) and promote good resource  
18 planning by the utilities";  
19

20           WHEREAS, In D.04-12-046 the Commission decided that ""We share the parties'  
21 concerns that the utilities must recognize CCA load in their resource planning and should not  
22 sign contracts that might create new liabilities for CCA customers and utility customers where  
23 available information suggests the power might not be needed. We understand the utilities  
24 face a difficult balancing act by assuring adequate and reliable power supplies in amounts  
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1 that reflect forecasts that are changing constantly. However, the utilities are accustomed to  
2 using available information to forecast customer demand and should incorporate CCA load  
3 losses into their planning efforts, just as they would include any other forecast variable related  
4 to expected changes in supply or demand";

5  
6 WHEREAS, In D.04-12-045 the Commission approved in Finding of Fact 20 that "AB  
7 117 provides that the CRS should include all costs that the utilities reasonably incurred on  
8 behalf of ratepayers, which may include costs incurred after the passage of AB 117 but  
9 should not include any costs that were "avoidable" or those that are not attributable to the  
10 CCA's customers";

11  
12 WHEREAS, In D.04-12-046 the Commission approved in Finding of Fact # 49 that  
13 "Requiring a CCA to participate in an open season immediately would unreasonably delay  
14 initiation of service by CCAs because the Commission will not adopt guidelines for open  
15 seasons until Phase II of this proceeding";

16  
17 WHEREAS, In D.04-12-045 the Commission ordered in Order #9 "In all respects, utility  
18 tariffs and practices shall permit CCAs to initiate service immediately following the filing of  
19 tariffs described in Ordering Paragraph 2," the referenced date being February 16, 2005;

20  
21 WHEREAS, In D.04-12-046 The Commission concluded in Conclusion of Law #41 that  
22 "CCAs may initiate service prior to the Commission's adoption of open season guidelines";  
23  
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1           WHEREAS, San Francisco residents and businesses contribute between Seven  
2 Million and ten million dollars annually to the Public Goods Charge fund for Energy Efficiency  
3 programs;

4  
5           WHEREAS, Section 381.1 (a) of the California Public Utilities Code requires that, "No  
6 later than July 15, 2003, the commission shall establish policies and procedures by which any  
7 party, including, but not limited to, a local entity that establishes a community choice  
8 aggregation program, may apply to become administrators for cost-effective energy efficiency  
9 and conservation programs established pursuant to Section 381;

10  
11           WHEREAS, Section 381.1 ( c ) of the California Public Utilities Code requires that, "If a  
12 community choice aggregator is not the administrator of energy efficiency and conservation  
13 programs for which its customers are eligible, the commission shall require the administrator  
14 of cost-effective energy efficiency and conservation programs to direct a proportional share of  
15 its approved energy efficiency program activities for which the community choice aggregator's  
16 customers are eligible, to the community choice aggregator's territory without regard to  
17 customer class";

18  
19           WHEREAS, The CPUC decided in Decision 05-01-055 on January 27, 2005 that  
20 California's large investor owned utilities including PG&E shall be administrators of all energy  
21 efficiency programs within their territories, including in Community Choice jurisdictions, citing  
22 among other things the utilities' need to create "integrated resources plans;"  
23  
24  
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1           WHEREAS CPUC Decision 05-01-055 also stated that it may revisit the issue of  
2 allocating energy efficiency Public Goods Charge funds to CCAs, and affirmed its earlier  
3 Decision 03-07-034 of July 15, 2003, which stated that the CPUC may ultimately decide that  
4 CCAs are independent agencies that should have considerable deference to use energy  
5 efficiency funds authorized by Public Utilities Code Section 381;  
6  
7

8           WHEREAS, CPUC Decision 05-01-055 ordered the utilities, including PG&E, to file  
9 applications June 1, 2005 for energy efficiency program plans for a three-year cycle from  
10 January 2006 through December 2008, which may be approved by the CPUC in summer  
11 2005, which would effectively preclude San Francisco, as a CCA, from making its own  
12 decisions on the use of energy efficiency funds collected in its territory until 2009;  
13  
14

15           WHEREAS, San Francisco, as a CCA, has the need, desire and the statutory authority  
16 to create an integrated resources plan, and the energy efficiency funds are a crucial part of  
17 such plan, as they are potentially the least expensive resource and therefore the State of  
18 California has designated energy efficiency number one in its adopted "loading order" for  
19 resource planning;  
20

21           WHEREAS, Section 381.1 ( c ) furthermore directs that if the Commission approves  
22 any party to administer energy efficiency programs within a CCA's jurisdictional boundaries,  
23 "(t)he commission shall also direct the administrator to work with the community choice  
24 aggregator, to provide advance information where appropriate about the likely impacts of  
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1 energy efficiency programs and to accommodate any unique community program needs by  
2 placing more, or less, emphasis on particular approved programs to the extent that these  
3 special shifts in emphasis in no way diminish the effectiveness of broader statewide or  
4 regional programs";

5  
6 WHEREAS, the Commission has not directed PG&E to work with the City and County  
7 of San Francisco in the manner required by state law;

8  
9 WHEREAS, Section 381.1( c ) further directs that "(i)f the community choice  
10 aggregator proposes energy efficiency programs other than programs already approved for  
11 implementation in its territory, it shall do so under established commission policies and  
12 procedures. The commission may order an adjustment to the share of energy efficiency  
13 program activities directed to a community aggregator's territory if necessary to ensure an  
14 equitable and cost-effective allocation of energy efficiency program activities;"

15  
16 WHEREAS, Section 366(a) of the Public Utilities Code directs that "The commission  
17 shall take actions as needed to facilitate direct transactions between electricity suppliers and  
18 end-use customers";

19  
20 NOW THEREFORE, BE IT RESOLVED, That the Board of Supervisors hereby  
21 protests the proposed contracts of Pacific Gas and Electric, and urges both the Commission  
22 and the Procurement Review Committee in 04-04-003 to deny approval of any proposed  
23 PG&E contract or contracts that would incur any new or additional Customer Responsibility  
24  
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1 Surcharges for San Francisco ratepayers departing from PG&E procurement starting in  
2 January, 2006;and be it;

3  
4 FURTHER RESOLVED, That the San Francisco Board of Supervisors hereby urges  
5 the Commission not to approve any energy efficiency program administered by PG&E in San  
6 Francisco with Public Goods Charge funds, and to immediately provide an avenue for San  
7 Francisco, as a CCA, to request and receive all Public Goods Charge energy efficiency funds  
8 paid by customers within its jurisdictional boundaries, so that it may make its own decisions  
9 on the administration and use of such funds for programs beginning in January, 2006; and be  
10 it;

11  
12 FURTHER RESOLVED, That the San Francisco Board of Supervisors hereby directs  
13 the City Attorney, effective immediately, to take all necessary legal actions to protect its rights  
14 as a Community Choice Aggregator and the rights of San Francisco. ratepayers, under both  
15 AB117 and CPUC Decision 04-12-046 in R.03-10-003, as referenced in this resolution; and  
16 be it;

17  
18 FURTHER RESOLVED, That the San Francisco Board of Supervisors requests that  
19 both the Commission and the R.04-04-003 Procurement Review Committee act in  
20 accordance with D.04-12-046, as referenced in this resolution.  
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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails
Resolution

File Number: 050472

Date Passed:

Resolution approving a Protest Letter to the California Public Utilities Commission and the Procurement Review Committee regarding approval of proposed Pacific Gas & Electric Power Purchase Agreements and Energy Efficiency Programs.

March 22, 2005 Board of Supervisors — ADOPTED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 050472

I hereby certify that the foregoing Resolution was ADOPTED on March 22, 2005 by the Board of Supervisors of the City and County of San Francisco.

APR 03 2005

Handwritten signature of Gloria L. Young
Gloria L. Young
Clerk of the Board

Date Approved

Mayor Gavin Newsom

Date: April 1, 2005

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter.

Handwritten signature
Clerk of the Board

File No. 050472