

1 [Letter of Protest against Approval of Proposed PG&E Power Purchase Agreement]

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3 **Resolution approving a Protest Letter to the California Public Utilities Commission and**
4 **the Procurement Review Committee regarding approval of proposed Pacific Gas &**
5 **Electric Power Purchase Agreements**

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

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

15 WHEREAS, The City's CCA ordinance directed City Departments to prepare and
16 submit a CCA Implementation Plan consistent with its CCA ordinance to the Board of
17 Supervisors, and the Board of Supervisors subsequently directed City Departments to submit
18 the Implementation Plan to the Board on April 24, 2005, for amendment and adoption in May,
19 2005; and

20 WHEREAS, Ordinance 86-04 directed City Departments to prepare and submit a
21 corresponding Request for Proposals to the Board of Supervisors to Electric Service
22 Providers three months after its adoption of the Implementation Plan for amendment and
23 adoption; and

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

4 WHEREAS, Pacific Gas and Electric Company filed an Advice Letter with the
5 Commission on February 23, 2005 announcing that it has entered into a power purchase
6 agreement with Duke Energy Marketing Americas (DEMA) providing PG&E with exclusive
7 rights to dispatch Morro Bay Units 3 and 4, each 325 megawatts, to meet PG&E's capacity
8 and energy needs for the period 2005-2007, and seeking regulatory review and approval of
9 this power purchase agreement with DEMA by April 4, 2005; and

10 WHEREAS, In January, 2005 PG&E announced a settlement agreement with Mirant to
11 obtain the rights to dispatch some of the power from Mirant's Contra Costa and Pittsburg
12 Power Plants, as well as the opportunity to complete construction of and operate Contra
13 Costa Unit 8, a 530-megawatt facility; and

14 WHEREAS, In addition to these agreements, PG&E is currently conducting competitive
15 solicitations for not only near-term supply but also long-term supply and generating capacity,
16 which if approved could increase the Customer Responsibility Surcharge (CRS) for San
17 Francisco ratepayers for decades, and potentially deny San Francisco ratepayers the right to
18 proceed with Community Choice Aggregation; and

19 WHEREAS, In Decision 04-12-046 adopted December 16, 2004, the Commission
20 provided that "Utility resource plans will need to balance supply security with enough flexibility
21 to accommodate many market contingencies in addition to those associated with the CCA
22 program, as we have recognized. Because it would ideally recognize and anticipate changing
23 markets and supply sources, resource planning will necessarily be an ongoing, interactive
24 exercise"; and
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1 WHEREAS, In D.04-12-046 the Commission decided that "The objective of AB 117 in
2 requiring CCAs to pay a CRS is to protect the utilities and their bundled utility customers from
3 paying for the liabilities incurred on behalf of CCA customers. Our complementary objective is
4 to minimize the CRS (and all utility liabilities that are not required) and promote good resource
5 planning by the utilities"; and

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

15 WHEREAS, In D.04-12-045 the Commission approved in Finding of Fact 20 that "AB
16 117 provides that the CRS should include all costs that the utilities reasonably incurred on
17 behalf of ratepayers, which may include costs incurred after the passage of AB 117 but should
18 not include any costs that were "avoidable" or those that are not attributable to the CCA's
19 customers"; and

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

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

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WHEREAS, In D.04-12-046 The Commission concluded in Conclusion of Law #41 that "CCAs may initiate service prior to the Commission's adoption of open season guidelines"; and

WHEREAS, San Francisco residents and businesses contribute between Seven Million and ten million dollars annually to the Public Goods Charge fund for Energy Efficiency programs; and

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

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

WHEREAS, The CPUC decided in Decision 05-01-055 on January 27, 2005 that California's large investor owned utilities including PG&E shall be administrators of all energy efficiency programs within their territories, including in Community Choice jurisdictions, citing among other things the utilities' need to create "integrated resources plans;"

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; and

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

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

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

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

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

7 WHEREAS, Section 366(a) of the Public Utilities Code directs that "The commission
8 shall take actions as needed to facilitate direct transactions between electricity suppliers and
9 end-use customers"; now therefore, be it

10 RESOLVED, That the Board of Supervisors hereby protests the proposed contracts of
11 Pacific Gas and Electric, and urges both the Commission and the Procurement Review
12 Committee in 04-04-003 to deny approval of any proposed PG&E contract or contracts that
13 would incur any new or additional Customer Responsibility Surcharges for San Francisco
14 ratepayers departing from PG&E procurement starting in January, 2006; and be it

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

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

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

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