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RESOLUTION NO.

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[San Francisco Resolution Approving 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]

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.

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

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

WHEREAS, The City’s CCA ordinance directed City Departments to prepare and submit a

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2 CCA Implementation Plan consistent with its CCA ordinance to the Board of Supervisors, and the
3 Board of Supervisors subsequently directed City Departments to submit the Implementation Plan to the
4 Board on April 24, 2005, for amendment and adoption in May, 2005;

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

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

12
13 WHEREAS, Pacific Gas and Electric Company filed an Advice Letter with the Commission on
14 February 23, 2005 announcing that it has entered into a power purchase agreement with Duke Energy
15 Marketing Americas (DEMA) providing PG&E with exclusive rights to dispatch Morro Bay Units 3
16 and 4, each 325 megawatts, to meet PG&E's capacity and energy needs for the period 2005-2007, and
17 seeking regulatory review and approval of this power purchase agreement with DEMA by April 4,
18 2005;

19
20 WHEREAS, In January, 2005 PG&E announced a settlement agreement with Mirant to obtain
21 the rights to dispatch some of the power from Mirant's Contra Costa and Pittsburg Power Plants, as well
22 as the opportunity to complete construction of and operate Contra Costa Unit 8, a 530-megawatt
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2 facility.

3 WHEREAS, In addition to these agreements, PG&E is currently conducting competitive
4 solicitations for not only near-term supply but also long-term supply and generating capacity, which if
5 approved could increase the Customer Responsibility Surcharge (CRS) for San Francisco ratepayers for
6 decades, and potentially deny San Francisco ratepayers the right to proceed with Community Choice
7 Aggregation;
8

9 WHEREAS, In Decision 04-12-046 adopted December 16, 2004, the Commission provided that
10 "Utility resource plans will need to balance supply security with enough flexibility to accommodate
11 many market contingencies in addition to those associated with the CCA program, as we have
12 recognized. Because it would ideally recognize and anticipate changing markets and supply sources,
13 resource planning will necessarily be an ongoing, interactive exercise";
14

15 WHEREAS, In D.04-12-046 the Commission decided that "The objective of AB 117 in
16 requiring CCAs to pay a CRS is to protect the utilities and their bundled utility customers from paying
17 for the liabilities incurred on behalf of CCA customers. Our complementary objective is to minimize
18 the CRS (and all utility liabilities that are not required) and promote good resource planning by the
19 utilities";
20

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

9 WHEREAS, In D.04-12-045 the Commission approved in Finding of Fact 20 that "AB 117
10 provides that the CRS should include all costs that the utilities reasonably incurred on behalf of
11 ratepayers, which may include costs incurred after the passage of AB 117 but should not include any
12 costs that were "avoidable" or those that are not attributable to the CCA's customers";
13

14 WHEREAS, In D.04-12-046 the Commission approved in Finding of Fact # 49 that "Requiring
15 a CCA to participate in an open season immediately would unreasonably delay initiation of service by
16 CCAs because the Commission will not adopt guidelines for open seasons until Phase II of this
17 proceeding";
18

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

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

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

5 WHEREAS, Section 381.1 (a) of the California Public Utilities Code requires that, "No later
6 than July 15, 2003, the commission shall establish policies and procedures by which any party,
7 including, but not limited to, a local entity that establishes a community choice aggregation program,
8 may apply to become administrators for cost-effective energy efficiency and conservation programs
9 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 programs
13 for which its customers are eligible, the commission shall require the administrator of cost-effective
14 energy efficiency and conservation programs to direct a proportional share of its approved energy
15 efficiency program activities for which the community choice aggregator's customers are eligible, to the
16 community choice aggregator's territory without regard to customer class";
17

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

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

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

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

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

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

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

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

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departing from PG&E procurement starting in January, 2006;and be it;

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

FURTHER RESOLVED, That the San Francisco Board of Supervisors hereby directs the City Attorney, effective immediately, to take all necessary legal actions to protect its rights as a Community Choice Aggregator and the rights of San Francisco. ratepayers, under both 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.