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

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

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

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

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

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

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

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

WHEREAS, In D.04-12-046 the Commission decided that "We share the parties' concerns that the utilities must recognize CCA load in their resource planning and should not sign contracts that might create new liabilities for CCA customers and utility customers where available information suggests the power might not be needed. We understand the utilities face a difficult balancing act by assuring adequate and reliable power supplies in amounts

**Mirkarimi**
BOARD OF SUPERVISORS
that reflect forecasts that are changing constantly. However, the utilities are accustomed to using available information to forecast customer demand and should incorporate CCA load losses into their planning efforts, just as they would include any other forecast variable related to expected changes in supply or demand;
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;

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;"

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;"

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;"
WHEREAS CPUC Decision 05-01-055 also stated that it may revisit the issue of allocating energy efficiency Public Goods Charge funds to CCAs, and affirmed its earlier Decision 03-07-034 of July 15, 2003, which stated that the CPUC may ultimately decide that CCAs are independent agencies that should have considerable deference to use energy efficiency funds authorized by Public Utilities Code Section 381;

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

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

WHEREAS, Section 381.1 (c) furthermore directs that if the Commission approves any party to administer energy efficiency programs within a CCA's jurisdictional boundaries, "(t)he commission shall also direct the administrator to work with the community choice aggregator, to provide advance information where appropriate about the likely impacts of

**Mirkarimi**
BOARD OF SUPERVISORS

Page 6
3/15/2005
energy efficiency programs and to accommodate any unique community program needs by
placing more, or less, emphasis on particular approved programs to the extent that these
special shifts in emphasis in no way diminish the effectiveness of broader statewide or
regional programs;"

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

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

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

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

**Mirkarimi**
BOARD OF SUPERVISORS
Surcharges for San Francisco ratepayers 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.
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, Duffy, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

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.

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.

Clerk of the Board