

APPENDIX A
SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”), dated as set forth in the signature block of this Agreement, is by and between the San Joaquin Valley Power Authority (“SJVPA”), complainant, and Pacific Gas and Electric Company (“PG&E”), defendant. Hereinafter the word “Party” may refer individually to SJVPA or PG&E, and the word “Parties” will refer collectively to SJVPA and PG&E.

- RECITALS -

A. WHEREAS, SJVPA is a California joint powers agency formed under the provisions of California Government Code Section 6500, *et seq.*, and was established in order to implement a Community Choice Aggregation (“CCA”) program.

B. WHEREAS, SJVPA's Program Agreement 1 provides that the Participating Communities have "authorize[d] the Authority to act as their respective agent to implement the CCA Program with respect to the CCA Customers" (Section 6.2.1), "transferred to the Authority their rights to serve CCA Customers . . ." (Section 5.4.1), and empowered SJVPA's Board to "govern and be responsible for the . . . operation of the CCA Program" (Section 5.2).

C. WHEREAS, PG&E is an investor-owned public utility that generates, procures, transmits and distributes electricity and is regulated by the California Public Utilities Commission (“Commission” or “CPUC”).

D. WHEREAS, on June 25, 2007, SJVPA initiated a complaint proceeding against PG&E before the CPUC, designated as Case 07-06-025 (the “Complaint”).

E. WHEREAS, PG&E timely answered the Complaint on August 2, 2007, disputing all of SJVPA’s claims to relief (the “Answer”).

F. WHEREAS, on December 4, 2007, the CPUC issued the Scoping Memo and Ruling of Assigned Commissioner (“Scoping Memo”).

G. WHEREAS, the Parties have engaged in discovery and otherwise litigated the Complaint, and the Parties now wish to settle, compromise, and resolve all claims between them, pertaining to the claims and issues contained in the Complaint, Answer, and Scoping Memo in accordance with Rule 12, *et seq.* of the CPUC Rules of Practice and Procedure.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual terms, obligations, covenants, conditions, and promises contained in this Agreement, the Parties agree as follows:

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- AGREEMENT -

ARTICLE 1 - DEFINITIONS

“Customer” means (a) any individual person or entity that resides or is located within the geographic boundaries of any city that is a Participating Community or within the unincorporated areas of any county that is a Participating Community and (b) is a retail electricity customer of PG&E, including a customer who receives electric commodity service from SJVPA. For the purposes of this Agreement, and as reflected in the definition of “Lobbying/Petitioning,” the term “Customer” expressly excludes the city and county governments that comprise the Participating and Regional Communities, including public officials and personnel of such governments working in their professional capacities and candidates for elected public office of such governments and their staffs in their capacities as political candidates. The term “Customer” also expressly excludes state and federal public officials and their staffs in their professional capacities and candidates for elected public office of such governments and their staffs in their capacities as political candidates. To the extent that a Customer has multiple locations that are both within and without the Participating Communities, this definition only applies to communications that address locations within the Participating Communities, regardless of the geographic location in which the communication occurs. (For example, a communication occurring at the San Jose-based headquarters of a company would be subject to this Agreement if such communication specifically pertained to that company’s facility located in Clovis, a Participating Community.)

“Marketing” means communications with Customers, whether in oral, electronic, or written form, including but not limited to letters, delivery of printed materials, phone calls, spoken word, emails, and advertising (including on the Internet, radio, and television), and:

(a) with respect to PG&E, is reasonably related to SJVPA’s CCA program and does any or all of the following: (i) promotes PG&E and its energy supply services and rates; (ii) encourages Customers to opt-out of SJVPA’s CCA program; and (iii) evaluates SJVPA’s CCA program (except as to matters pertaining to the program’s compliance with PG&E’s CCA rules). This does not include system-wide communications provided by PG&E to PG&E’s retail electricity customers that do not reference CCA or SJVPA, nor communications that are authorized or approved by the CPUC as part of a specific program, including but not limited to customer energy efficiency, demand response, SmartMeter™, ClimateSmart™, and renewable energy rebate, or tariffed programs such as the California Solar Initiative or other similar CPUC-approved or authorized programs;

(b) with respect to SJVPA, does any or all of the following: (i) promotes SJVPA and its energy supply services and rates; (ii) encourages Customers to depart from PG&E service by electing not to opt out of SJVPA’s CCA program; and (iii) evaluates PG&E’s energy supply services and rates.

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“Lobbying/Petitioning” means communications of any kind, regardless of the geographic location in which the communication occurs, which are reasonably related to SJVPA’s CCA program and are with (a) the city and county governments that comprise the Participating and Regional Communities, including public officials and personnel of such governments in their professional capacities, and including candidates for elected public office of such governments and their staffs in their capacities as political candidates and/or (b) state and federal public officials and their staffs in their professional capacities who live or conduct business in the Participating or Regional Communities, and candidates for elected public office of such governments and their staffs in their capacities as political candidates.

“Employee” means any PG&E employee at the Manager level (PG&E’s PL II level) or below working in his or her professional capacity; provided, however, the exclusion from this definition of employees at levels higher than Manager shall not be construed as permitting such employees to principally interact with Customers in conducting PG&E’s Marketing in the Participating Communities, as further described in Section 7.2.

“Participating Community” means (a) a city or county that is a member of SJVPA and has executed SJVPA’s Program Agreement 1 and/or (b) a city or county that has satisfied the condition set forth in Section 3.1(a) of the SJVPA Joint Powers Agreement relating to membership by such city/county, namely, requiring “the adoption of a resolution by the governing body of such incorporated municipality or such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority.”

“Regional Community” means a city or county within the geographic boundaries of the counties of Fresno, Kings, Tulare, and Madera, California.

ARTICLE 2 - EFFECTIVENESS

2.1 Joint Motion. The Parties shall cooperate fully in the timely preparation and filing of a joint motion for approval of the settlement of the Complaint, for the approval of the terms and conditions of this Agreement, and for the dismissal of the Complaint with prejudice upon approval of the terms and conditions of this Agreement.

2.2 CPUC Approval Condition Precedent; Effective Date. The effectiveness of this Agreement is expressly subject to a condition precedent of an order by the CPUC no longer subject to appeal approving this Agreement and dismissing the Complaint with prejudice, with no required modifications or conditions to the Agreement. The date on which such condition precedent is satisfied shall be referred to as the “Effective Date.” Should the CPUC approve a settlement subject to modifications or conditions, the Parties agree to meet and confer concerning whether such modifications or conditions are acceptable.

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ARTICLE 3 - PURPOSE

As reflected in the Complaint, Answer, and Scoping Memo, the Parties dispute the applicability and scope of standards of conduct under CPUC Decision (“D.”) 05-12-041 with respect to PG&E’s Marketing in relation to SJVPA’s CCA program. Specifically, in D.05-12-041, the CPUC ruled, among other things, that “...if [investor-owned utilities] affirmatively contact customers in efforts to retain them or otherwise engage in actively marketing services, they should conduct those activities at shareholder expense” and that “[u]tility marketing of procurement services to CCA customers and providing information about a CCA’s services and rates to customers may create conflicts of interest and costs that may not be offset by benefits.” Further, PG&E disputes that it has misled the CPUC in any way. The purpose of this Agreement is to address PG&E’s past Marketing, to specify mutually-agreeable standards that shall apply to future PG&E and SJVPA Marketing with respect to SJVPA’s CCA program, and to resolve fully and finally all issues raised in the Complaint, Answer, and Scoping Memo.

ARTICLE 4 - PG&E’S POSITION ON MARKETING

4.1 Description. During the CPUC’s CCA Phase II Rulemaking (R.03-10-003), in which the Commission established various rules regarding CCA, PG&E testified, among other things, that it would “not disparage the customers from joining a CCA program or encourage them to opt out of such a program.” PG&E further testified that it could “reasonably be expected to cooperate to refrain from ‘marketing’ to the CCA Provider’s customers if the scope of marketing is defined as actions to dissuade customers from taking service from the CCA Provider.” On or about January 16, 2007, PG&E changed its position, contrary to its original position of neutrality, and began making public statements to this effect beginning on or about April/May 2007. PG&E’s revised position regarding CCA programs includes marketing its energy supply services to retain customers.

4.2 Mitigation of Effects of PG&E’s Changed Position. The Parties intend by this Agreement to address and mitigate the negative effects that SJVPA has alleged it experienced as a result of PG&E’s change in position on CCA.

4.3 Equitable Reimbursement of SJVPA’s Litigation Costs. PG&E agrees to pay SJVPA for its reasonably-incurred litigation costs in connection with the Complaint through the Effective Date. SJVPA has provided PG&E a written estimate of such costs prior to executing this Agreement. By no later than 45 days after the Effective Date, SJVPA shall present an invoice to PG&E for such reasonably-incurred litigation costs, together with non-privileged substantiation of such costs and their reasonableness. Within 30 days of its receipt of the invoice from SJVPA, PG&E shall make payment to SJVPA for SJVPA’s reasonably-incurred and substantiated litigation costs, except that PG&E shall not be required to pay more than \$450,000 to SJVPA for such costs.

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ARTICLE 5 - MUTUALLY APPLICABLE STANDARDS

5.1 Applicability. The terms of this Article 5 are applicable to PG&E and SJVPA, and their respective agents and contractors, as part of any Marketing in Participating Communities and any Lobbying/Petitioning in either Participating and/or Regional Communities.

5.2 Truthful and Non-Misleading. The Parties agree that their respective Marketing and Lobbying/Petitioning shall be truthful and non-misleading and that their respective Marketing and Lobbying/Petitioning shall be capable of substantiation.

5.3 Disclaimers. In carrying out their respective Marketing and Lobbying/Petitioning, PG&E and SJVPA shall provide disclaimers, as follows.

5.3.1 Written Communications. For written communications, including advertisements in any written form and written presentations, the disclaimer shall be written in plain, legible language on the first page in reasonably close proximity to the Party's name.

5.3.2 Broadcast Advertisements. For radio advertisements, the disclaimer shall be spoken in plain, audible language and may be provided at the end of the advertisement. For television advertisements, the disclaimer either (a) may be spoken in plain, audible language, or (b) may be written in plain, legible language appearing on the screen for not less than (i) 5 seconds for broadcasts of 30 seconds or less or (ii) 10 seconds for broadcasts of more than 30 seconds (unless otherwise mutually agreed); provided, however, if the disclaimer is provided in writing, the following spoken disclaimer shall also be provided in plain, audible language: with respect to PG&E, "Paid for by PG&E's shareholders, not its customers" and with respect to SJVPA, "Paid for by the San Joaquin Valley Power Authority."

5.3.3 Oral Communications. For oral communications, such as oral presentations, the disclaimer shall be spoken in plain, audible language at or reasonably close to the first point where the Party's name is spoken. The disclaimer must be provided as part of the initial communication with a recipient occurring after the Effective Date, and must be reiterated in subsequent communications with the recipient, but need not be repeated as part of every subsequent communication with that recipient unless the recipient so requests. For oral communications to more than one recipient occurring after the Effective Date where not all of the recipients have previously been provided the disclaimer, the disclaimer must be provided as part of that communication.

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5.3.4 Content of PG&E’s Disclaimer. PG&E shall provide the following disclaimer:

“Both PG&E and SJVPA are interested in selling electric energy to you. You do not need to buy your electric energy from PG&E in order to receive other regulated services and programs from PG&E, except for those programs we are not allowed by law to provide if you buy your electric energy from someone other than PG&E. Our shareholders are paying for this communication and it reflects their views, not necessarily the views of our customers.”

5.3.5 Content of SJVPA’s Disclaimer. SJVPA shall provide the following disclaimer:

“Both PG&E and SJVPA are interested in selling electric energy to you. This information and the services offered by SJVPA are provided to you solely by SJVPA, separate from and independent of your city and county governments and the services that they provide. The views we state are those of SJVPA and not necessarily those of your city or county governments.”

ARTICLE 6 - FINANCIAL ACCOUNTING

6.1 Standard. Costs associated with PG&E’s Marketing and Lobbying/Petitioning activities shall be borne solely by PG&E’s shareholders, not PG&E’s retail electricity customers, unless the CPUC modifies D.05-12-041 to permit otherwise. Such costs shall be treated at all times and accounted for in accordance with regulatory accounting requirements of the CPUC and PG&E’s Below The Line Accounting Procedures, as such procedures may be revised from time to time consistent with CPUC requirements and not inconsistent with this Agreement. Set forth in Appendix A is a copy of PG&E’s currently applicable Below The Line Accounting Procedure, as relevant to allocating costs associated with PG&E’s Marketing and Lobbying/Petitioning activities.

6.2 Review. Costs associated with PG&E’s Marketing and Lobbying/Petitioning activities shall be subject to reasonable review but not approval by SJVPA. SJVPA may request a review of such costs in any reasonable manner, including during a Standard or Emergency Meeting held pursuant to Section 9.1 and/or Section 9.3 of this Agreement.

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ARTICLE 7 - PG&E'S MARKETING IN PARTICIPATING COMMUNITIES

7.1 General. The requirements described in this Article 7 regarding functional separation and other matters shall apply for purposes of PG&E's Marketing within the geographic boundaries of the Participating Communities.

7.2 Functional Separation. PG&E shall identify a functional group (the "PG&E Marketing Group") that shall principally interact with Customers in conducting PG&E's Marketing in the Participating Communities.

7.2.1 PG&E's Marketing Group. PG&E shall assign certain Employees to the PG&E Marketing Group. PG&E shall disclose to SJVPA the identities of Employees included within the PG&E Marketing Group, including any additions to or removals from the PG&E Marketing Group. Except as otherwise provided in this Agreement, PG&E Marketing Group Employees shall not knowingly communicate with Customers in the Participating Communities about matters unrelated to PG&E's Marketing, but may communicate with Customers outside of the Participating Communities on all matters, including PG&E's Marketing.

7.2.2 PG&E Employees Not in the PG&E Marketing Group. PG&E Employees not assigned to the PG&E Marketing Group may conduct non-Marketing activities in the Participating Communities, including but not limited to technical activities related to the implementation of SJVPA's CCA program, but shall not knowingly conduct PG&E's Marketing in those Participating Communities, except as otherwise provided in this Agreement.

7.3 Communications.

7.3.1 No Joint Communications to Customers. PG&E Marketing Group Employees and non-PG&E Marketing Group Employees shall not concurrently participate in any joint activities with Customers in the Participating Communities. The term "joint activities" includes, but is not necessarily limited to, meetings, presentations, workshops and communications. With respect to successive activities with Customers involving CCA and non-CCA matters, PG&E shall make a reasonable, good faith effort under the circumstances (a) to avoid scheduling such successive activities and (b) where such successive activities occur, to participate in such activities in a manner that makes it reasonably apparent that the activity or portion of the activity involving CCA matters is separate and distinct from the activity involving non-CCA matters.

7.3.2 Questions to PG&E Marketing Group Employees. If a Customer in a Participating Community asks a PG&E Marketing Group Employee a question about a non-CCA matter, the Employee may: (a) refer the Customer to an Employee not in the PG&E Marketing Group and/or (b) inform an Employee not in the PG&E Marketing Group of the Customer's inquiry.

7.3.3 Questions to Employees Not in the PG&E Marketing Group. If a Customer in a Participating Community asks an Employee not in the PG&E Marketing Group a question about CCA, the Employee may: (a) answer the Customer's questions about

implementation and opting out of SJVPA's CCA program, including but not limited to the processing of opt out requests in compliance with PG&E's CCA tariffs; (b) answer the Customer's questions about CCA programs generally, but not conduct PG&E's Marketing; (c) provide the Customer with pre-printed written materials about implementation and opting out of SJVPA's CCA program, and about CCA generally, but not provide PG&E's Marketing materials; (d) refer the Customer to a PG&E Marketing Group Employee; and/or (e) inform a PG&E Marketing Group Employee of the Customer's inquiry.

7.4 Transfer of Employees. A PG&E Marketing Group Employee may be reassigned out of the PG&E Marketing Group at any time; provided, however, any such Employee may not return to the PG&E Marketing Group for a period of 60 days after such reassignment.

7.5 Compliance Notice. As soon as reasonably practicable following the Effective Date, but in no event later than 45 days after the Effective Date, PG&E will notify SJVPA in writing of its implementation of these terms, including but not limited to the identities of those Employees included within the PG&E Marketing Group.

ARTICLE 8 - PG&E'S LOBBYING/PETITIONING

8.1 General. The requirements described in this Article 8 shall apply to PG&E's Lobbying/Petitioning in both Participating and Regional Communities, unless otherwise specified.

8.2 Subject to Article 5. PG&E's Lobbying/Petitioning in both Participating and Regional Communities is subject to the provisions of Article 5 relating to the use of a disclaimer and truthful and non-misleading statements.

8.3 Joint/Successive Activities. This Agreement does not restrict PG&E Lobbying/Petitioning employees from participating with PG&E Marketing Group Employees in joint activities. However, consistent with Section 7.3.1, PG&E shall make a reasonable, good faith effort under the circumstances to participate in such activities in a manner that makes it reasonably apparent that the activity or portion of the activity involving CCA matters is separate and distinct from the portion of the activity involving non-CCA matters.

8.4 Communication of Issues. With respect to any perceived problems, risks or other shortcomings ("Issues") identified by PG&E concerning SJVPA's CCA program, prior to the communication of the Issues to Participating Communities, PG&E shall make a reasonable, good faith effort under the circumstances to apprise SJVPA of the Issues and to provide an opportunity under the circumstances for SJVPA to timely respond to PG&E on the Issues; provided, however, nothing herein shall (a) create an affirmative obligation on either Party to resolve such Issues nor (b) impede PG&E, after PG&E appraises SJVPA of the Issues, from timely communicating with Participating Communities.

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ARTICLE 9 - DISPUTE RESOLUTION

9.1 Standard Meetings. The Parties agree to meet on a bi-monthly basis (“Standard Meetings”). The primary purpose of the Standard Meetings shall be to meet and confer to attempt to informally address matters relating to this Agreement that may arise during the preceding two-month period.

9.2 Escalated Meetings. If the Parties are unable to resolve a dispute through their Standard Meeting process, the Parties shall escalate the specific issue(s) to higher-level employees for a second meeting (“Escalated Meeting”). The Parties shall exercise reasonable, good faith efforts to promptly schedule such Escalated Meetings.

9.3 Emergency Meetings. Should a matter relating to this Agreement arise that either Party believes requires immediate discussion in advance of a Standard Meeting, the Parties shall exercise reasonable, good faith efforts to promptly schedule an emergency dispute resolution meeting (“Emergency Meeting”).

9.4 Location. Unless the Parties otherwise agree, the Standard Meetings shall take place in the Fresno area, alternating between SJVPA’s offices in Fresno and PG&E’s offices in Fresno. Emergency Meetings and Escalated Meetings shall take place in the location most practical to the Parties under the circumstances. The Parties may agree to conduct any Standard Meeting, Emergency Meeting, and/or Escalated Meeting (hereafter, collectively “Meetings”) by telephone if the Parties so choose.

9.5 Representatives. For the Parties’ Standard Meetings, PG&E shall designate a representative who is a Director-level employee (PG&E’s PL III level) or higher, and SJVPA shall designate a representative who is at a comparable level to the representative designated by PG&E. For the Parties’ Escalated Meetings, in addition to the Standard Meeting representatives, PG&E designates Thomas Bottorff, Senior Vice President, Regulatory Relations, or his successor, and SJVPA designates David Orth, General Manager, or his successor.

9.6 Alternative Dispute Resolution. If the Parties fail to resolve a dispute through the Standard/Escalated and Emergency Meeting processes described above, then they shall seek to mediate the matter through a mutually agreed process, including the CPUC’s Alternative Dispute Resolution process. If the Parties agree to mediate the matter through the CPUC’s Alternative Dispute Resolution process, the Parties agree to request a meeting with Administrative Law Judge (“ALJ”) Steven Weissman if he is available; if ALJ Weissman is unavailable, the Parties shall ask the CPUC to assign a different mediator. The Parties also may mutually agree to engage the services of a private mediator for such a mediation.

9.7 Expenses. Each Party shall bear its own expenses associated with any Meetings and any Alternative Dispute Resolution efforts.

9.8 Requests for Injunctive Relief. Notwithstanding anything to the contrary above, including Section 9.6, neither Party needs to await a mediation of a dispute before seeking,

through the CPUC or the courts as applicable, such injunctive relief as may be consistent with law and the circumstances.

ARTICLE 10 - MUTUAL RELEASE AND DISCHARGE

10.1 Mutual General Release and Discharge. This Agreement constitutes a mutual general release of all claims that SJVPA may now have against PG&E pertaining to the allegations, claims and issues contained in the Complaint, Answer, and Scoping Memo, and to all claims that PG&E may now have against SJVPA pertaining to the allegations, claims and issues contained in the Complaint, Answer, and Scoping Memo, whether before the Commission or in State or Federal civil court, as follows: (a) SJVPA and its respective members, agents, officers, employees, attorneys, representatives, successors, affiliates, parents, subsidiaries and assigns, and each and all of them, relinquish, release, waive, quit and forever discharge PG&E, and its agents, officers, employees, attorneys, representatives, successors, affiliates, parents, subsidiaries and assigns, and each and all of them (“PG&E Releasees”), from any and all claims, damages, restitution, reparations, liabilities, demands, debts, obligations, and causes of action, whether actual or contingent, legal or equitable, known or unknown, of any kind or nature whatsoever against the PG&E Releasees as of, or prior to, the Effective Date, which relate to the allegations, claims and issues contained in the Complaint, Answer, and Scoping Memo; and (b) PG&E and its respective agents, officers, employees, attorneys, representatives, successors, affiliates, parents, subsidiaries and assigns, and each and all of them, relinquish, release, waive, quit and forever discharge SJVPA, and its members, agents, officers, employees, attorneys, representatives, successors, affiliates, parents, subsidiaries and assigns, and each and all of them (“SJVPA Releasees”), from any and all claims, damages, costs, expenses, restitution, reparations, liabilities, attorneys’ fees, demands, debts, obligations, and causes of action, whether actual or contingent, legal or equitable, known or unknown, of any kind or nature whatsoever against the SJVPA Releasees as of, or prior to, the Effective Date, which relate to the allegations, claims, and issues contained in the Complaint, Answer, and Scoping Memo.

10.2 Waiver of Civil Code Section 1542. The releases set forth herein are full and final releases applying to all unknown and unanticipated liability as described above, as well as to all liability now known or disclosed pertaining to the allegations, claims and issues contained in the Complaint, Answer, and Scoping Memo. Each Party represents and agrees that it has read and fully understands California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Party expressly and specifically waives any and all of the rights, remedies, or benefits provided by California Civil Code Section 1542, or under the statute or common law of any jurisdiction applicable hereto which has the same effect as the provisions of said Section 1542, whether known or unknown, provided that the Parties do not waive those claims, rights,

remedies or rights arising after the Effective Date, or expressly reserved or retained, or not released, by the Parties pursuant to the terms of this Agreement.

10.3 Other Matters Concerning CCA. With the exception of the claims that the Parties have released and/or waived under Sections 10.1 and/or 10.2, the Parties expressly agree and acknowledge that each may make any contention or argument, and/or take any advocacy position, that it so wishes in any other presently pending and/or any future legislative, regulatory, and/or judicial proceeding (collectively “Other Matters”). Without limiting the generality of the foregoing, this provision is specifically intended to preserve each Party’s rights to enforce this Agreement and to participate in Other Matters that may arise after the Effective Date concerning CCA issues, including but not limited to prospective marketing rules, while achieving the Parties’ intent set forth in Article 3 of this Agreement “to resolve fully and finally all issues raised in this Complaint proceeding (C.07-06-025).”

ARTICLE 11 - MISCELLANEOUS

11.1 No Admission of Wrongdoing. This Agreement, including but not limited to PG&E’s equitable reimbursement of SJVPA’s litigation costs (Section 4.3), represents a compromise of disputed claims, and this Agreement and its terms shall not constitute nor be taken to indicate an admission of liability or wrongdoing by any Party, that any Party’s position on any issue lacks merit, or that any Party’s position on any issue is of greater or lesser merit than that of the other Party.

11.2 Authority. Each Party represents and warrants that at the time it executes this Agreement, it has full legal authority to enter into and be bound by this Agreement, and that the person executing this Agreement on behalf of each Party at that time is duly authorized to do so.

11.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11.4 Entire Agreement. Each Party understands and agrees that this Agreement contains the entire agreement between the Parties hereto with respect to the subject matter of this Agreement; and that the terms of the Agreement supersede any prior discussions, oral understandings, oral agreements, or written documents between or among any of the Parties relative to the subject matter of this Agreement. The terms of this Agreement are intended to constitute a binding contract between the Parties for the express benefit of those Parties, and this Agreement is not based on any representations, conditions or understandings not contained in this Agreement. This Agreement may be amended or modified only by an agreement in writing signed by each of the Parties hereto which is filed with and, if necessary, approved by, the Commission.

11.5 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. In lieu thereof, the Parties shall meet and

confer to add a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and that is legal, valid and enforceable.

11.6 Rule of Construction. Each Party and its attorneys have been actively involved in the negotiation and drafting of this Agreement and have reviewed this Agreement in draft and final form, and the Parties therefore agree that any legal rule of construction or interpretation to the effect that ambiguities or uncertainties in written instruments are to be resolved against the drafting Party shall not apply to the construction or interpretation of this Agreement.

11.7 Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and assigns.

11.8 Further Assurances. The Parties agree to execute any and all further documents that may be reasonably necessary or appropriate to further effectuate and accomplish the purposes and intentions of this Agreement.

11.9 Captions. Captions are included for reference only and are not intended to affect the meaning of the contents or the scope of this Agreement.

11.10 Counterparts. This Agreement may be executed and approved as to form in one or more counterparts, each of which taken together shall constitute a single agreement binding upon the Parties.

11.11 Notices. All notices required under this Agreement shall be made to the following:

- a. For SJVPA: San Joaquin Valley Power Authority
4886 East Jensen Avenue
Fresno, CA 93725
Attention: Chair of the Board of Directors
Tel: (559) 585-2521
Fax: (559) 582-1152

With copies to:

Jane E. Luckhardt
Downey Brand LLP

Before October 27, 2008:
555 Capitol Mall 10th Floor
Sacramento, CA 95814

On or after October 27, 2008:
621 Capitol Mall
Sacramento, CA 95814
Tel: (916) 444-1000
Fax: (916) 444-2100

Scott Blaising
Braun & Blaising, P.C.
915 L Street
Suite 1270
Sacramento, CA 95814
Tel: (916) 326-5812
Fax: (916) 563-8855

b. For PG&E: Thomas E. Bottorff
Senior Vice President, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, B32
P.O. Box 7442
San Francisco, CA 94120
Tel: (415) 973-3889
Fax: (415) 973-8531

With copies to:

Cliff Gleicher
Pacific Gas and Electric Company
77 Beale Street, B30A
P.O. Box 7442
San Francisco, CA 94120
Tel: (415) 973-2095
Fax: (415) 973-5520

Jonathan Pendleton
Pacific Gas and Electric Company
77 Beale Street, B31A
P.O. Box 7442
San Francisco, CA 94120
Tel: (415) 973-2916
Fax: (415) 973-5520

IN WITNESS WHEREOF, each of the undersigned parties has signed this Agreement on the date indicated herein:

**SAN JOAQUIN VALLEY
POWER AUTHORITY**

**PACIFIC GAS AND
ELECTRIC COMPANY**

By: _____/s/_____

By: _____/s/_____

Name: Thomas J. Haglund
Title: Chair, Board of Directors
Date: April 10, 2008

Name: Thomas E. Bottorff
Title: Senior Vice President, Regulatory Relations
Date: April 10, 2008

Approved as to form.

Dated: April 10, 2008

BRAUN & BLAISING, P.C.

By: _____/s/_____
Scott Blaising, Esq.
Attorneys for SJVPA

Dated: April 10, 2008

PACIFIC GAS AND ELECTRIC COMPANY

By: _____/s/_____
Cliff Gleicher, Esq.
Attorneys for PG&E

APPENDIX B

**COMMENTS OF THE CITY AND COUNTY OF
SAN FRANCISCO ON THE JOINT MOTION
FOR APPROVAL OF SETTLEMENT**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAN JOAQUIN VALLEY POWER AUTHORITY,)	
)	
Complainant,)	
)	
v.)	Case 07-06-025
)	(Filed June 26, 2007)
)	
PACIFIC GAS AND ELECTRIC COMPANY,)	
)	
Defendant.)	

COMMENTS OF THE CITY & COUNTY OF SAN FRANCISCO ON THE JOINT MOTION FOR APPROVAL OF SETTLEMENT

I. INTRODUCTION

Pursuant to Rule 12.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) the City and County of San Francisco (City) respectfully submits the following comments on the settlement agreement proposed by San Joaquin Valley Power Authority (SJVPA) and Pacific Gas And Electric Company (PG&E) (together the Parties), which was filed on April 10, 2008. (Settlement)

SJVPA initiated a complaint against PG&E on June 25, 2007 alleging, *inter alia*, violations by PG&E of Commission Decision (D.) 05-12-041 regarding marketing-related activities by the utility. PG&E denied any wrongdoing related to SJVPA. On September 7, 2007 the City filed a motion to intervene in the complaint proceeding. The proceeding's principal Administrative Law Judge (ALJ) subsequently denied that motion without prejudice

during a prehearing conference on the scope of the proceeding. Thereafter the Parties litigated and, ultimately, negotiated the Settlement now proposed to the Commission. The City does not oppose the Settlement in whole or in part but believes that settlement of SJVPA's complaint denies the City, and other CCAs, the benefits of a Commission decision on the issues raised in the complaint.

II. COMMENTS

The instant complaint proceeding was initiated by SJVPA, a joint powers entity formed specifically for the purpose of establishing a Community Choice Aggregation (CCA) program in the San Joaquin valley area. SJVPA alleged a number of actions by PG&E designed to impede the development of the SJVPA CCA program. The issues raised by SJVPA also included whether or not PG&E misled the Commission during Phase II of the Commission's CCA Rulemaking. Ultimately, SJVPA sought to have the Commission condition the behavior of PG&E to bring it in line with the commitments made by PG&E during the CCA Rulemaking, the existing directions of D.05-12-041, and the obligations imposed by law.¹

There are substantial similarities between the City's CCA circumstances and those of SJVPA. The City is currently developing its own CCA program.² The City CCA will, like the SJVPA CCA, be within the service territory of PG&E. PG&E has made little secret of its opposition to the City's CCA plans and, as the City indicated in its Motion to Intervene:

¹ See SJVPA Complaint paragraph 24 at p. 17 *et seq.* Additionally the City notes that "[a]ll electrical corporations shall *cooperate fully* with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs." Public Utilities Code 366.2(c) (9) [emphasis added]. PG&E is such an "electrical corporation", as that term is defined in the Public Utilities Code.

² See the details set out in the City's *Motion to Intervene*, dated September 7, 2007, p.2.

The City expects PG&E will employ no less vigor in opposing the City's CCA plans than has been evident thus far with respect to the SJVPA CCA.³

PG&E even expressly acknowledged that it viewed the arguments put forward by SJVPA and those put forward by the City in the same light.⁴

As a future CCA party, the City voiced its concerns about the issues raised in the complaint proceeding in its Motion to Intervene.⁵ Those concerns remain, notwithstanding the denial of the City's Motion to Intervene and notwithstanding the proposed Settlement. The City did not wish to impede the possibility that SJVPA could receive expedited relief from the activities it complained of (either by a decision of the Commission or a settlement on favorable terms), therefore the City did not seek to renew its Motion to Intervene at the juncture where that was possible. The City has no desire to impede adoption of the Settlement. However, as a non-precedential agreement, the Settlement does not extend to the City or other CCAs any of the benefits of the Settlement, particularly the commitments to more appropriate behavior by PG&E. Specifically, the City believes the Commission should ensure that the behavior of any investor owned utility (IOU), vis-à-vis any CCA, will conform to Commission decisions and the law *and* to the terms PG&E has accepted in the Settlement.

In reviewing a proposed settlement, the Commission must take into account more than just the interests of the parties to the settlement. The Commission also must consider what is reasonable in light of the record, what is consistent with the law and what is in the public interest.⁶ The City believes that the Settlement passes those tests as to the Parties. However, in reviewing the Settlement in light of those considerations, it is appropriate for the

³ *Id* at p. 3.

⁴ Opposition of Defendant Pacific Gas and Electric Company to Motion to intervene of City and County of San Francisco, dated September 26, 2007, p. 3.

⁵ City *Motion to Intervene* at p. 3.

⁶ Rule 12.1 (d), Commission Rules of Practice and Procedure.

CERTIFICATE OF SERVICE

I, KIANA V. DAVIS, declare that:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4698.

On May 12, 2008, I served **COMMENTS OF THE CITY & COUNTY OF SAN FRANCISCO ON THE JOINT MOTION FOR APPROVAL OF SETTLEMENT** by electronic mail in Proceeding No. C.07-06-025.

The following addresses without an email address were served:

BY UNITED STATES MAIL: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 12, 2008, at San Francisco, California.

/s/

KIANA V. DAVIS