

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**I.D.# 8768  
RESOLUTION E-4250  
January 21, 2010**

**R E S O L U T I O N**

**RESOLUTION E-4250:** This Resolution has been initiated by the Commission's Energy Division Staff. It has not been issued in response to an advice letter filing.

**PROPOSED OUTCOME:**

This Resolution directs PG&E, SCE, and SDG&E to modify their CCA tariffs and clarifies rules that are intended to:

1. Describe when customers may opt-out of Community Choice Aggregation (CCA) service.
2. Prevent utilities from refusing to sell electricity to CCAs.
3. Prevent utilities from offering goods, services, or programs as an inducement for a local government not to participate in a CCA.

**ESTIMATED COST:** No impact on utilities' revenue requirements.

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**SUMMARY**

Assembly Bill (AB) 117 enables cities and/or counties to implement a Community Choice Aggregation (CCA) program which allows communities to offer procurement service to electric customers within their political boundaries. The CCA rules include a process that allows customers to opt-out of the CCA-provided service in order to remain a utility bundled service customer. This Resolution clarifies that the utilities should not solicit or accept opt-out requests until the necessary information for an informed decision is made available to customers through the initiation of the notification period provided by Public Utilities (P.U.) Code Section 366.2 (c)(13)(A-C). This Resolution also promulgates rules preventing utilities from (i) refusing to sell electricity to CCAs

and (ii) offering goods, services, or programs as an inducement for a local government not to participate in a CCA.

## **BACKGROUND**

The CCA program rules include a process that allows customers to opt-out of CCA-provided service in order to remain a utility bundled service customer. P.U. Code Section 366.2 (c)(13)(A-C) states that CCAs shall provide customers with at least two notices during a 60 day period prior to the commencement of CCA service and at least two additional notices within a 60 day period following the customers' automatic enrollment into the program. These notices must inform customers that they are automatically enrolled into CCA service and that they can opt-out of CCA service during either of these two notification periods without penalty. Pursuant to this code section, customers must also receive the "terms and conditions of the services offered" by the CCA with each of the (at minimum) four customer notices, which will enable customers to make an informed decision to either opt-out of CCA service or to take no action and receive procurement service from the CCA.

P.U. Code Section 366.2 (c)(13)(A) states:

The community choice aggregator shall fully inform participating customers at least twice within two calendar months, or 60 days, in advance of the date of commencing automatic enrollment. Notifications may occur concurrently with billing cycles. Following enrollment, the aggregated entity shall fully inform participating customers for not less than two consecutive billing cycles. Notification may include, but is not limited to, direct mailings to customers, or inserts in water, sewer, or other utility bills. Any notification shall inform customers of both of the following:

- i. That they are to be automatically enrolled and that the customer has the right to opt-out of the community choice aggregator without penalty.
- ii. The terms and conditions of the services offered.

San Joaquin Valley Power Authority (SJVPA) is the first CCA in California to have its Implementation Plan (IP) certified by the California Public Utilities Commission (Commission). SJVPA<sup>1</sup> has been established in order to implement a CCA program in the Central Valley and has expressed concerns to the Energy Division regarding PG&E's CCA-dedicated webpage and PG&E's marketing trifolds that include a return mailer, which enables potential SJVPA customers to opt-out of CCA service at anytime prior to its commencement.

Marin County is also considering whether to implement a CCA program and has voiced concerns to the Energy Division about PG&E's website which provided PG&E customers with an opportunity to opt-out of any future CCA service to be offered in the PG&E service area. Marin County<sup>2</sup> is concerned that potential CCA customers will seek to opt-out of the CCA program before they are fully informed of the pertinent information concerning the terms and conditions of CCA service planned to be offered in Marin County. Accordingly, SJVPA and Marin County request that PG&E stop this early opt-out process.

PG&E believes that its actions related to the early opt-out process are consistent with Commission rules. PG&E contends that Rule 23 I.3. of PG&E's electric tariffs enables it to process opt-out notices prior to the CCA formal notification period described in P.U. Code Section 366.2 (c)(13)(A-C). Therefore, PG&E believes that it is acting in accordance with the Commission's established rules pertaining to the CCA program.

A first draft of this Resolution (the "First Draft Resolution") was issued on August 7, 2009. A second draft of this Resolution (the "Second Draft Resolution"), which incorporates important changes to this Order, has been issued on December 22, 2009.

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<sup>1</sup> As of the latest SJVPA Implementation Plan certified by the Commission on April 30, 2007, SJVPA consists of Kings County and the cities Clovis, Corcoran, Dinuba, Reedley, Selma, Kingsburg, Lemoore, Parlier, Hanford, Kerman, and Sanger. On June 25, 2009, SJVPA temporarily suspended its efforts to implement the CCA program, stating that resource constraints, market conditions, and the continued marketing against the CCA program by PG&E led to the temporary suspension.

<sup>2</sup> Municipalities within Marin County have created the Marin Energy Authority, which includes Belvedere, Fairfax, Mill Valley, Ross, San Anselmo, San Rafael, Sausalito, Tiburon, and Marin County.

**NOTICE**

The Commission is issuing this Resolution on its own motion. Notice of this Resolution has been provided by distributing the Resolution to all persons or entities<sup>3</sup> served with Resolution E-4013 (which approved the current CCA tariffs of the three utilities) and any additional persons or entities listed on the current R.03-10-003 service list for the CCA proceeding. In this manner PG&E, SCE, SDG&E, SJVPA, Novato, and Marin County will be among those served with this notice.

**DISCUSSION**

**P.U. Code Section 366.2 (c)(13)(A-C) establishes an orderly process that CCAs must follow when informing customers of their CCA service option.** During the CCA program's formal customer notification periods ordered in P.U. Code Section 366.2 (c)(13)(A-C), potential customers receive at least four notices regarding the CCA service being rendered by their community including information about rates, terms, and conditions of service. After receiving this information about the terms and conditions of the CCA's electric service, individual customers may make a decision to either: 1) take no action and therefore be automatically enrolled in CCA service, or 2) opt-out of CCA service and remain a bundled service customer of the utility. Thus, the purpose of this code section is that potential CCA customers be given an opportunity to make an *informed* decision.

**PG&E, SCE and SDG&E (the "utilities") must not solicit or accept opt-out requests until the necessary information is made available to customers through the initiation of the notification periods provided by P.U. Code Section 366.2 (c)(13)(A-C).** CCA-specific information about the terms and conditions of service becomes available to customers when the CCA provides this information in compliance with the P.U. Code Section 366.2 (c)(13)(A-C), notification requirement. Accordingly, to further the statutory purpose of allowing customers to make an informed decision, we direct PG&E, SCE and

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<sup>3</sup> Both the First Draft Resolution and the Second Draft Resolution have been distributed to these persons or entities.

SDG&E (the “utilities”) not to solicit or accept opt-out requests until the necessary information is made available to customers through the initiation of the notification periods provided by P.U. Code Section 366.2 (c)(13)(A-C). In addition, we direct the utilities to modify their CCA tariffs to be consistent with this limitation on the opt-out period; this will require changes to two subsections of the CCA tariffs<sup>4</sup>. First, in subsection B.22 of these tariffs, the utilities shall delete the words “at any time prior to the” (that currently appear immediately preceding the words “Automatic Enrollment”), and the utilities shall add the language bolded below, so that subsection B.22 shall read as follows:

**B.22. GENERAL TERMS: Opt-Out of Automatic Enrollment**

The term “opt-out” is the customer’s election not to be served under CCA Service and to continue to receive its existing service. In order to exercise its right not to participate in CCA Service, a customer must request to “opt-out” of CCA Service through the required action as prescribed in the CCA Notification. A customer may exercise its opt-out right **during a 60 day period prior to the Automatic Enrollment of a customer’s account in CCA Service and during an additional 60 day period subsequent to the Automatic Enrollment of a customer’s account in CCA Service. The terms and conditions of CCA service will be made available by the CCA. This CCA-specific information will be provided to customers pursuant to P.U. Code Section 366.2 (c)(13)(A-C) – either by the CCA or by [the utility] – and will enable customers to make an informed decision whether or not to opt-out of CCA service. Customers receiving section 366.2(c)(13)(A-C) notices from a CCA with more than one planned CCA phase-in date will be provided at least two 60-day notices based around the date their particular phase-in commences.**

PG&E, SCE, and SDG&E shall also modify subsection I.3 of the CCA tariffs by deleting the bolded language below:

**I.3. CCA CUSTOMER OPT-OUT PROCESSES**

A customer opting out of CCA Service **before or** during the Initial Notification Period shall be removed from the Automatic Enrollment process.

So that subsection I.3 shall read:

**I.3. CCA CUSTOMER OPT-OUT PROCESSES**

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<sup>4</sup> The CCA tariffs are Electric Tariff Rule 23 for PG&E and SCE and Electric Tariff Rule 27 for SDG&E.

A customer opting out of CCA Service during the Initial Notification Period shall be removed from the Automatic Enrollment process.

PG&E should cease providing opportunities to its customers to opt-out of CCA service before the initiation of the statutory notification periods provided by P.U. Code Section 366.2 (c)(13)(A-C).

PG&E shall modify the language currently posted on its CCA dedicated webpage to state the following:

“You have the right to opt-out of Community Choice Aggregation (CCA) procurement service during the CCA program’s two formal notification periods. If you opt-out, PG&E will continue to procure electricity for you. If you do not opt-out during these two notification periods, you will be automatically enrolled in CCA procurement service. In either event, PG&E will continue providing transmission and distribution services to you. Regardless of whether or not you opt-out of CCA service you will continue to benefit from ratepayer-funded programs, such as the California Solar Initiative and energy efficiency programs that are funded by distribution surcharges.

As part of these notification periods, you will receive at least two notices during a 60-day period prior to CCA service commencement and at least two additional notices during a 60-day period after CCA service commencement. These notices will describe the terms and conditions of the CCA service made available to you by the CCA formed in your community and will inform you as to how you may opt-out of the program if you choose to do so.

You also have the right to return to PG&E’s bundled service after the two 60-day notification periods end; your options for returning during this later period are:

- 1) You can notify PG&E at least six months before the date you want to return to PG&E bundled service that you wish to return to bundled service. When you return to bundled service six months later, you will pay PG&E’s then-existing bundled electric generation rate, which will be identical to similarly situated PG&E customers in your customer class.
- 2) If you do not provide PG&E with a full six-months notice, you can return to PG&E bundled service at any time, but you will pay the then-existing transitional electric generation rate – which may be higher or lower than PG&E’s then existing bundled electric generation rate – until six months after you first gave PG&E notice; thereafter, your bundled electric generation rate will be identical to similarly situated PG&E customers in your customer class.

Whichever option you choose to exercise in order to return to bundled service will require you to make a three-year commitment to PG&E's bundled electric service.

The terms and conditions provided to you during a CCA's formal notification period will inform you of any potential fees charged to – or service limitations placed on – your account by the CCA offering electric procurement service to you.

**When PG&E modifies the language on its CCA dedicated webpage, it shall notify the Energy Division on the same day it makes the modification.**

Similarly, if SCE and SDG&E establish webpages dedicated to CCA issues, they shall notify the Energy Division on the same day they launch these webpages. The Energy Division will review the utilities' webpages to ensure that the information included is consistent with the orders contained in this Resolution and is not misleading (either by inclusion or omission of content). The Energy Division will direct the utilities to make changes to any information it finds incorrect or misleading.

**PG&E – and SCE and SDG&E to the extent necessary – must take the following actions to correct the situation that PG&E's early CCA opt-out option has created.**

- 1) Any customer who has already chosen to opt-out of the CCA program by returning a completed and signed marketing trifold or filling out the electronic opt-out form on PG&E's website should not be removed from the list of potential CCA customers that may eventually be provided to SJVPA, or any other community, wishing to implement a CCA program. All customers need to understand the full terms and conditions of the CCA service being offered in order to make an informed decision as to whether or not to opt-out of CCA service.
- 2) PG&E shall send a letter, and provide a copy to the Energy Division, to any customer that has either opted-out of CCA service using the PG&E website's electronic opt-out form prior to its disablement, or has filled out and submitted the CCA opt-out form from PG&E's marketing trifold, or any similar marketing trifold, mailing, or oral/written communication, explaining that the opt-out request will not take effect in light of the changes this Resolution makes to the CCA tariffs. Prior to sending this letter PG&E shall provide the Energy Division, for its

review and approval, a draft of this letter. This letter shall be sent to the Energy Division for review and approval within 10 days of the effective date of this Resolution. We encourage PG&E to use the following language in this letter:

“Your opt-out request will not take effect because the community your account is located in has not initiated the statutorily mandated CCA opt-out notification process.

You will receive at least two notices during a 60-day window period before CCA service commencement and at least two additional notices during a 60-day window period after CCA service commencement containing the terms and conditions that will be provided to you by the CCA program in your community. If you seek to opt-out of CCA service, you will be able to do so during these two separate 60-day notification periods at no additional cost to you.

If you do not opt-out of the CCA program during these two separate 60-day notification periods, you still have the right to return to PG&E’s bundled service after the two 60-day notification periods end by providing PG&E with a six-month advance notice requesting to have your account return to PG&E bundled service. If you do not provide PG&E with a full six-month advance notice when returning to PG&E bundled service, you will pay the then-existing transitional electric generation rate – which may be higher or lower than PG&E’s then existing bundled electric generation rate – for no more than six months after your return to PG&E bundled service. Regardless of when you choose to return to PG&E bundled service, you will be required to make a three-year commitment to PG&E’s bundled electric service.

The terms and conditions provided to you during a CCA’s formal notification period will inform you of any potential fees charged to – or service limitations placed on – your account by the CCA offering electric procurement service to you.

- 3) Any future opt-out form that PG&E receives that has been initiated by PG&E’s marketing trifold circulated in SJVPA’s service territory – or any similar marketing trifold, mailing, or oral/written communication – after the date that this Resolution is effective shall be returned to the customer by PG&E; PG&E shall send the same letter discussed in 2), above, to those customers (and also send a copy to the Energy Division), and those customers shall not be removed from the list of potential CCA customers that will eventually be provided to SJVPA or any other community wishing to implement a CCA program.



**In the future, the utilities will need to notify the Energy Division when posting on their websites language, illustrations, or images regarding the CCA program, or when making any changes to such language, illustrations, or images that are already posted on their website.** This notification needs to take place on the same day any language, illustrations, or images are posted or changed. Any existing language, illustrations, or images regarding the CCA program currently posted to the utilities' websites needs to be forwarded to the Energy Division for review within 10 days of the effective date of this order. The Energy Division will review utility web pages to ensure information posted there is consistent with this Resolution and is not misleading (either by inclusion or omission of content). The Energy Division will direct the utilities to make changes to any incorrect or misleading information.

## **COMMENTS**

P. U. Code Section 311(g) (1) generally requires resolutions to be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this Draft Resolution will be placed on the Commission's agenda no earlier than 30 days after it is made available for comment and distributed to the service list in R.03-10-003 and to all persons/entities served with draft resolution E-4013.

In response to the First Draft Resolution, comments were provided by PG&E, SCE, SDG&E, the Local Governments<sup>5</sup>, Marin Energy Authority (MEA), and The Utility Reform Network (TURN), and reply comments were provided by PG&E, SCE, the Local Governments, TURN, and the Division of Ratepayer Advocates (DRA). Some of the changes included in the Second Draft Resolution were made in response to this first round of comments.

### **First Amendment Issues**

The utilities argue, to varying degrees, that the First Draft Resolution violates or potentially violates the First Amendment of the United States Constitution. The focus of the utilities' concerns seems to be with the First Draft Resolution's

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<sup>5</sup> The local governments consist of the City and County of San Francisco and the San Joaquin Valley Power Authority.

requirement for the inclusion of specific content on opt-out procedures in shareholder-funded communications.<sup>6</sup>

In addition to their First Amendment arguments, the utilities maintain that requiring utilities to include specific content in their communications with customers is (a) unnecessary given the First Draft Resolution's changes to the CCA opt-out procedures and (b) impractical to implement (e.g., with respect to certain marketing media) and that (c) it should be sufficient for the Commission to give clear direction to the utilities on when customers may be permitted to opt-out of automatic enrollment in a CCA program and allow the utilities reasonable discretion in implementing this requirement in the most efficient and cost effective way possible.

In contrast, TURN, the Local Governments and MEA not only believe that the First Draft Resolution is consistent with the First Amendment<sup>7</sup>, but some of these parties seek even greater restrictions on utilities and, in their comments, ask the Commission to restrict utilities from marketing against CCA programs until after the initial notification has been provided. In their reply comments, the utilities object on First Amendment grounds to these proposals.

Having reviewed these comments, we agree that a number of the requirements proposed in the First Draft Resolution are not strictly necessary at this time. These modifications to the Resolution are reflected in the Discussion section above. If First Amendment or other constitutional issues arise in the future, we will address them at that time, as necessary.

#### Use Of The Term "Error"

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<sup>6</sup> Also, SDG&E claims that the First Draft Resolution's requirement that SDG&E place certain information relating to CCAs on its websites also violates the First Amendment and the Fifth Amendment Takings Clause. This requirement has been omitted from the Second Draft Resolution and, therefore, we no longer need to consider SDG&E's concerns.

<sup>7</sup> For example, TURN argues that "if the government can require tobacco companies to include very specific warning labels on their products" the utilities incorrectly maintain that the "Commission cannot direct a regulated utility to provide a certain form of notice to its customers".

PG&E disagrees with the proposed language included in the First Draft Resolution which would have ordered PG&E to send a letter to customers that have opted-out of CCA service, stating in part that “PG&E solicited your CCA opt-out request in error”. PG&E states that it has not committed an error in allowing customers to opt-out early, since the current CCA tariffs, to date, have allowed early opt-outs from the CCA program.

#### Issues Involving The Opt-Out Notices

The utilities raise/make various objections and/or suggestions to the First Draft Resolution’s proposed requirement that utilities post CCA program terms and conditions on opt-out forms posted on utility websites. This requirement in the First Draft Resolution has been omitted and therefore we no longer need to consider arguments raised with respect to this matter.

In its reply comments to the First Draft Resolution, the Local Governments point out that no party objected to the revision of the CCA tariffs that prohibit the utilities from soliciting customer opt-outs of CCA service until after the CCA has provided the formal notification pursuant to P.U. Code Section 366.2(c)(13).

Moreover, The Local Governments and MEA recommend that the Commission, through this Resolution, require that the list of customers that have opted-out of CCA service in their potential CCA territories be made available to them.

Regarding this request, SCE states that the utilities cannot provide this information without the customers’ consent, as customers’ names and addresses are confidential. Given the changes to the First Draft Resolution, as reflected in this Second Draft Resolution, the Local Governments and MEA should not need this customer information; all customers will be informed of the CCA services being offered in their communities.

In its reply comments, SCE agrees with several issues raised by PG&E and SDG&E in their respective comments. Unlike PG&E however, SCE states that it does not intend to market against the CCA program. In its comments, SDG&E acknowledges that “the Commission may have a substantial interest in ensuring that customers receive fair, accurate, and balanced information regarding CCA services”.

#### Public Program Funds

The Local Governments and MEA argue that this Resolution should clarify that it is improper for the utilities to link receipt of ratepayer funded public program funds to a locality's decision not to pursue a CCA program's implementation. The Local Governments attached a letter dated June 30, 2009, sent by Joshua Townsend, PG&E Public Affairs Manager, to Michael Frank, City Manager of Novato.

PG&E denies that it has or will link, or make conditional, any local government's receipt of public goods charge funds on the local government's decision whether or not to participate in a CCA program. PG&E believes this allegation made by the Local Governments and MEA is outside the scope of the CCA proceeding and that any such complaints or issues should be addressed in the Commission's 2009-2011 Energy Efficiency Programs proceeding in A.08-07-031.

In its comments to the First Draft Resolution, TURN urges the Commission to adopt the Draft Resolution as written. In its reply comments to the First Draft Resolution, TURN generally supports the recommendations made by the Local Governments and MEA in their opening comments. TURN notes it is disturbed by at least one utility's (i.e., for now PG&E's) apparent use of energy efficiency funds in an attempt to "buy off" communities from supporting CCA program implementation. TURN "reminds" the Commission that when the CCA program rules and tariffs developed, all the utilities claimed they did not intend to actively market against the formation of CCAs. TURN states that the intent of at least one utility (i.e. PG&E) "to oppose the formation of CCAs in their service territory by any and all available means...suggests that there may be a need for this Commission to reopen R.03-10-003 to consider more specific rules and regulations to control such activity and ensure that fair competition is preserved".

In DRA's reply comments to the initial comments submitted by parties on the First Draft Resolution, DRA supports the request made by City and County of San Francisco and MEA to modify the Draft Resolution in order to clarify that it is inappropriate for the utilities to link receipt of ratepayer-funded public program funds to a community's decision not to pursue CCA program implementation. DRA recommends that this Resolution should expand the CCA rules in order to ensure that energy efficiency funds cannot be misused by the utilities. DRA also recommends that this Resolution ensure that any category of ratepayer funds may not be withheld from communities investigating CCA program implementation in a manner that could discourage CCA formation.

We address this last issue related to ratepayer-funded public program funds in the “ratepayer funds” section immediately below.

### Ratepayer Funds

The Local Governments attached to their opening comments a letter dated June 30, 2009, addressed to Michael Frank, Novato City Manager, from Joshua Townsend, PG&E Public Affairs Manager. In this letter, PG&E outlines a proposed collaboration between PG&E and the city of Novato<sup>8</sup>. Contained in this proposal are the following commitments made by PG&E:

“We reiterate our commitment to Novato to provide, free of charge, a one-half time equivalent staff to support the City in the implementation of this Collaboration, AB 32, SB 375, AB 811 and other related programs and efforts”. (p2)

"PG&E will partner with the City and Novato residents and businesses to expand PG&E's existing Energy Efficiency programs with energy savings achieved through Mass Market, Target Market, and Third-Party channels. Through a PG&E point person, approved by the city, a task force will be created to help navigate through the utilization of existing opportunities and the creation of new programs". (p6)

“If created, this LGP [Local Government Partnership] would provide Novato with additional resources to drive significant energy savings through energy efficiency”. (p8)

“We believe that our Collaboration Proposal provides a pathway for Novato to meet its climate change objectives faster, cheaper and with better results without exposing itself, the City, our customers and taxpayers to the uncertainty and risk of a Community Choice Aggregation scheme. (p16)

This letter raises the appearance that a utility is seeking to link the utility's provision of services to a decision by a local government not to participate in a CCA. We want to promote a level playing field in competition between the investor owned utilities and CCAs. Accordingly, we will take this opportunity to provide direction to the utilities. The utilities cannot offer to provide, or

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<sup>8</sup> The city of Novato was initially mentioned as part of Marin County's CCA efforts in its “Final Report – CCA Business Plan” issued April 2008. The city of Novato has not joined Marin County's CCA program per the December 4, 2009 filing of Marin Energy Authority's CCA Implementation Plan submitted to the CPUC for review.

provide, any goods, services, or programs to a local government, or to the electricity customers within that jurisdiction, on the condition that the local government not participate in a CCA, or for the purpose of inducing the local government not to participate in a CCA. This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. (This restriction would also apply to any plan whereby the utility would pay someone to provide such goods, services or programs.)

#### Intending not to Sell Electricity to CCAs

Energy Division has also been provided a copy of a letter sent by Joshua Townsend of PG&E to the members of Marin Energy Authority (MEA), dated February 3, 2009. In that letter, PG&E makes the following statement:

“...as PG&E has made clear, we intend to continue to provide safe and reliable electric service at reasonable cost to our retail customer in Marin, and we do not intend to respond to requests to supply electricity to Marin Energy Authority or to participate in any way in supplying electricity to a Community Choice Aggregation program in Marin.”

This statement appears to conflict with our existing rules that require each utility to dispatch its resources on a least cost basis for the benefit of its bundled customers' electric procurement portfolio. Accordingly, and to promote a level playing field in competition between the utilities and CCAs, we reiterate here that utilities may not refuse to make economic sales of excess electricity to a CCA, or refuse in advance to deal with any CCA in selling electricity, as there is no way of determining in advance, without analysis of the specific facts, whether such a sale would benefit the utility's remaining bundled electric customers.

#### **FINDINGS:**

1. No CCA has commenced CCA service in California, pursuant to AB 117.
2. No CCA has provided information about the terms and conditions of its service through the process mandated by P.U. Code Section 366.2 (c)(13)(A-C); such information is necessary in order for customers to make an informed decision as to whether they should opt-out of CCA service.

3. PG&E posted an electronic opt-out form on its website, offering PG&E's bundled electric customers an opportunity to opt-out of future CCA service that might be offered anywhere in PG&E's service territory.
4. PG&E circulated marketing trifolds to customers within SJVPA's service territory offering them the opportunity to opt-out early from CCA service.
5. The purpose of P.U. Code Section 366.2 (c)(13)(A-C) is to provide potential CCA customers with an opportunity to make an informed decision as to whether to opt-out of CCA service.
6. PG&E should cease soliciting customers to opt-out of CCA service before the statutory notification period provided by P.U. Code Section 366.2 (c)(13)(A-C).
7. Any other information that PG&E, or the other utilities, provide describing customers' ability to opt-out of CCA service should be consistent with the statutory purpose of P.U. Code Section 366.2 (c)(13)(A-C), the CCA tariffs, the orders contained in this Resolution, and should not be misleading (either by inclusion or omission of content).
8. PG&E has sent at least one letter to Novato's City Manager, appearing to link the utility's provision of services to a decision by a local government not to participate in a CCA.
9. The utilities cannot offer to provide, or provide, any goods, services, or programs to a local government, or to the electricity customers within that jurisdiction, on the condition that the local government not participate in a CCA, or for the purpose of inducing the local government not to participate in a CCA. This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. (This restriction would also apply to any plan whereby the utility would pay someone to provide such goods, services or programs.)
10. The Energy Division has also been provided a copy of a letter sent by Joshua Townsend of PG&E to the members of Marin Energy Authority, dated February 3, 2009. In that letter, PG&E makes the following statement:

“...as PG&E has made clear, we intend to continue to provide safe and reliable electric service at reasonable cost to our retail customer in Marin, and we do not intend to respond to requests to supply electricity to Marin Energy Authority or to participate in any way in supplying electricity to a Community Choice Aggregation program in Marin.”

11. The utilities may not refuse to make economic sales of excess electricity to a CCA, or refuse in advance to deal with any CCA in selling electricity, as there is no way of determining in advance, without analysis of the specific facts, whether such a sale would benefit the utility’s remaining bundled electric customers.

### **THEREFORE IT IS ORDERED THAT:**

1. PG&E, SCE, and SDG&E shall modify two subsections of their CCA tariffs – Electric Tariff Rule 23 B.22 and I.3 for PG&E and SCE and Electric Tariff Rule 27 B.22 and I.3 for SDG&E – as follows:

A. Subsection B.22 shall be revised to read:

#### **B.22. GENERAL TERMS: Opt-Out of Automatic Enrollment**

The term “opt-out” is the customer’s election not to be served under CCA Service and to continue to receive its existing service. In order to exercise its right not to participate in CCA Service, a customer must request to “opt-out” of CCA Service through the required action as prescribed in the CCA Notification. A customer may exercise its opt-out right **during a 60 day period prior to the Automatic Enrollment of a customer’s account in CCA Service and during an additional 60 day period subsequent to the Automatic Enrollment of a customer’s account in CCA Service. The terms and conditions of CCA service will be made available by the CCA. This CCA-specific information will be provided to customers pursuant to P.U. Code Section 366.2 (c)(13)(A-C) – either by the CCA or by [the utility] – and will enable customers to make an informed decision whether or not to opt-out of CCA service. Customers receiving section 366.2(c)(13)(A-C) notices from a CCA with more than one planned CCA phase-in date will be provided at least two 60-day notices based around the date their particular phase-in commences.**

B. Subsection I.3 shall be revised to read:

#### **I.3. CCA CUSTOMER OPT-OUT PROCESSES**

A customer opting out of CCA Service during the Initial Notification Period shall be removed from the Automatic Enrollment process.



2. PG&E – and SCE and SDG&E to the extent necessary – shall take the following actions to correct the misunderstanding that PG&E’s early CCA opt-out option has created:

- A. Any customer who has already chosen to opt-out of the CCA program by returning a completed and signed marketing trifold or by filling out the electronic opt-out form on PG&E’s website shall not be removed from the list of potential CCA customers that will eventually be provided to SJVPA, or any other community, wishing to implement a CCA program.

- B. PG&E shall modify the language currently posted on its CCA dedicated webpage within 10 days of the effective date of this Resolution. PG&E shall notify the Energy Division on the same day it makes this modification; the modified language shall state the following:

“You have the right to opt-out of Community Choice Aggregation (CCA) procurement service during the CCA program’s two formal notification periods. If you opt out, PG&E will continue to procure electricity for you. If you do not opt out during these two notification periods, you will be automatically enrolled in CCA procurement service. In either event, PG&E will continue providing transmission and distribution services to you. Regardless of whether or not you opt-out of CCA service you will still continue to benefit from ratepayer-funded programs, such as the California Solar Initiative and energy efficiency programs that are funded by distribution surcharges.

As part of these notification periods, you will receive at least two notices during a 60-day period prior to CCA service commencement and at least two additional notices during a 60-day period after CCA service commencement. These notices will describe the terms and conditions of the CCA service made available to you by the CCA formed in your community and will inform you as to how you may opt-out of the program if you choose to do so.

You also have the right to return to PG&E’s bundled service after the two 60-day notification periods end; your options for returning during this later period are:

- 1) You can notify PG&E at least six months before the date you want to return to PG&E bundled service that you wish to return to bundled service. When you return to bundled service six months later, you will pay PG&E’s then-existing bundled electric generation rate, which will be identical to similarly situated PG&E customers in your customer class.

2) If you do not provide PG&E with a full six-months notice, you can return to PG&E bundled service at any time, but you will pay the then-existing transitional electric generation rate – which may be higher or lower than PG&E’s then existing bundled electric generation rate – until six months after you first gave PG&E notice; thereafter, your bundled electric generation rate will be identical to similarly situated PG&E customers in your customer class.

Whichever option you choose to exercise in order to return to bundled service, you will be required to make a three-year commitment to PG&E’s bundled service.

The terms and conditions provided to you during a CCA’s formal notification period will inform you of any potential fees charged to – or service limitations placed on – your account by the CCA offering generation service to you.

C. If SCE and SDG&E establish webpages dedicated to general CCA issues, they shall notify the Energy Division on the same day they launch these webpages. The Energy Division shall review these webpages to ensure that the information contained there is not in any way misleading and will direct the utilities to make changes to any information it finds misleading.

D. PG&E shall send a letter, and provide a copy to the Energy Division, to any customer that has either opted-out of CCA service using the PG&E website’s electronic opt-out form prior to its disablement, or has filled out and submitted the CCA opt-out form from PG&E’s marketing trifold, or any similar marketing trifold, mailing, or oral/written communication, explaining that the opt-out request will not take effect in light of the changes this Resolution makes to the CCA tariffs. Prior to sending this letter PG&E shall provide the Energy Division, for its review and approval, a draft of this letter. This letter shall be sent to the Energy Division for review and approval within 10 days of the effective date of this Resolution. We encourage PG&E to use the following language in this letter:

“Your opt-out request will not take effect because the community your account is located in has not initiated the statutorily mandated CCA opt-out notification process.

You will receive at least two notices during a 60-day window period before CCA service commencement and at least two additional notices during a 60-day window period after CCA service commencement containing the terms and

conditions that will be provided to you by the CCA program in your community. If you seek to opt-out of CCA service, you will be able to do so during these two separate 60-day notification periods at no additional cost to you.

If you do not opt-out of the CCA program during these two separate 60-day notification periods, you still have the right to return to PG&E's bundled service after the two 60-day notification periods end by providing PG&E with a six-month advance notice requesting to have your account return to PG&E bundled service. If you do not provide PG&E with a full six-month advance notice when returning to PG&E bundled service, you will pay the then-existing transitional electric generation rate – which may be higher or lower than PG&E's then existing bundled electric generation rate – for no more than six months after your return to PG&E bundled service. Regardless of when you choose to return to PG&E bundled service, you will be required to make a three-year commitment to PG&E's bundled electric service.

The terms and conditions provided to you during a CCA's formal notification period will inform you of any potential fees charged to – or service limitations placed on – your account by the CCA offering electric procurement service to you.

E. Any future opt-out form that PG&E receives that has been initiated by PG&E's marketing trifold circulated in SJVPA's service territory – or any similar marketing trifold, mailing, or oral/written communication – after the date that this Resolution is effective shall be returned to the customer by PG&E; PG&E shall send the same letter discussed in Ordering Paragraph 2.D. above to those customers (and also send a copy to the Energy Division), and those customers shall not be removed from the list of potential CCA customers that will eventually be provided to SJVPA or any other community, wishing to implement a CCA program.

3. In the future, the utilities will need to notify the Energy Division when posting on their websites language, illustrations, or images regarding the CCA program, or when making any changes to such language, illustrations, or images that is already posted on their website. This notification needs to take place on the same day any language, illustrations, or images are posted or changed. Any existing language, illustrations, or images regarding the CCA program currently posted to the utilities' websites needs to be forwarded to the Energy Division for review within 10 days of the effective date of this order. The Energy Division will review utility web pages to ensure information posted there is not misleading and will direct the utilities to make changes to any misleading information.

4. PG&E shall cease providing opportunities to its customers to opt-out of CCA service before the commencement of the statutorily mandated notification period. PG&E shall only provide such opportunities once the notification period provided by P.U. Code Section 366.2 (c)(13)(A-C), for a specific CCA, has begun.
5. Electric utilities cannot offer to provide, or provide, any goods, services, or programs to a local government, or the electricity customers within that jurisdiction, on the condition that the local government not participate in a CCA or for the purpose of inducing the local government not to participate in a CCA. This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. (This restriction also applies to any plan whereby the utility would pay someone to provide such goods, services, or programs.)
6. Electric utilities may not refuse to make economic sales of excess electricity to a CCA, or refuse in advance to deal with any CCA in selling electricity.
7. The modified tariff language pursuant to this Resolution shall be filed within 10 days of the effective date of this Resolution, and shall be effective as of the effective date of this Resolution.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on January 21, 2010, the following Commissioners voting favorably thereon:

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Paul Clanon  
Executive Director

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor***PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

December 22, 2010

I.D.# 8768

RESOLUTION E-4250

January 21, 2010

TO: PG&amp;E, SCE, and SDG&amp;E

Enclosed is the Second Draft Resolution E-4250 initiated and written by the Commissions' Energy Division. The Commission may vote on this Second Draft Resolution during the next scheduled Commission meeting, which will be held on January 21, 2010, or it may postpone a vote until a later Commission meeting. When the Commission votes on this Second Draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does this Resolution become binding on the parties.

All comments on the Second Draft Resolution are due by **January 11, 2010**. Reply Comments are due by **January 19, 2010**. Comments shall be served on parties, as outlined below.

1) An original and two copies, along with a certificate of service to:

Honesto Gatchalian  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

2) All persons served with Resolution E-4013, which approved the current CCA tariffs for PG&E, SCE, and SDG&E, and any additional names on the current R.03-10-003 service list for the CCA proceeding.

3) Carlos A. Velasquez  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Email: los@cpuc.ca.gov

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the Second Draft Resolution.

Comments shall focus on factual, legal, or technical errors in the proposed Second Draft Resolution. Late submitted comments will not be considered. However, late submitted comments may be considered if they are accompanied by a declaration under penalty of perjury that set forth the reasons for the late submittal of the comments.

Please contact Carlos Velasquez of the Energy Division at 415-703-1124 if you have questions or need assistance.

Sincerely,

Stephen C. Roscow  
Program and Project Supervisor  
Energy Division

Enclosure: Service List  
Certificate of Service

**CERTIFICATE OF SERVICE**

I certify that I have, by electronic mail this day, served a true copy of the Second Draft Resolution E-4250 on all persons served with Resolution E-4013, any additional names on the current R.03-10-003 service list for the CCA proceeding, or to their attorneys as shown on the attached list.

Dated December 22, 2010 at San Francisco, California.

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*Carlos Velasquez*

**NOTICE**

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.

## Service List

Persons served with Resolution E-4013, which approved the current CCA tariffs of the three utilities, and any additional names on the current R.03-10-003 service list for the CCA proceeding

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