

1 [Urging the California Public Utilities Commission to Establish a Fair Methodology for
2 Calculating Re-Entry Fees and Bonds]

3 **Resolution of the San Francisco Local Agency Formation Commission urging the**
4 **California Public Utilities Commission to establish a fair methodology for calculating**
5 **re-entry fees and bonds applicable to Community Choice Aggregation programs.**

7 NOTE: Amendment additions are double-underlined;
8 Amendment deletions are ~~strikethrough normal~~.

9
10 WHEREAS, Public Utilities Code Section 394.25(e) requires that, in the event that a
11 Community Choice Aggregation (CCA) program terminates service to its customers, the CCA
12 should pay "re-entry fees" to cover any additional costs the utility may incur to procure
13 electricity on behalf of the former CCA customers who would return to the utility; and

14 WHEREAS, Section 394-25(e) also requires that CCAs post a bond or other security
15 for such re-entry fees before they may begin serving customers; and

16 WHEREAS, the California Public Utilities Commission (CPUC) is responsible for
17 determining the methodology by which the re-entry fees and bond amounts will be calculated;
18 and

19 WHEREAS, on June 24, 2009, California's three largest electric utilities (including
20 PG&E), the City of Victorville, the San Joaquin Valley Power Authority, and The Utility Reform
21 Network requested that the CPUC approve a settlement among those parties that would
22 establish a methodology for calculating re-entry fees and bond amounts; and

23 WHEREAS, in its July 2009 comments on the proposed settlement, the City and
24 County of San Francisco (CCSF) neither supported nor opposed the settlement, pointing out
25 that at that time, it lacked sufficient experience to make an informed judgment about how

1 appropriate or feasible the re-entry fee and bond amounts resulting from the settlement would
2 prove to be for CCAs; and

3 WHEREAS, on September 28, 2010, a CPUC administrative law judge (ALJ) issued a
4 recommended decision proposing to adopt the settlement; and

5 WHEREAS, in December 2010, both CCSF and the Marin Energy Authority (MEA)
6 submitted comments to the CPUC urging the CPUC to reject the recommended decision and
7 settlement; and

8 WHEREAS, CCSF's comments pointed out that in the intervening year and a half since
9 the settlement was proposed, CCSF had gained considerable experience in attempting to
10 implement a CCA program and had learned from the experience of MEA, the first and only
11 operating CCA program in California, which began serving customers in May 2010; and

12 WHEREAS, CCSF's comments further explained that: (1) based on that experience
13 and the additional resources CCSF has devoted to analyzing the complex provisions of the
14 settlement, it is apparent that the settlement is unworkable and unfair to CCAs; (2) the
15 statutory purpose of the bond amount is to provide "sufficient" coverage for re-entry fees, but
16 the settlement provides a grossly excessive cushion above re-entry fees; (3) historical data
17 provided by the utilities shows that, had the settlement been used to calculate bond amounts
18 and re-entry fees from 2005 to the present, the average bond amount during that period would
19 have been six times higher than the average re-entry fees and that, for CCSF, the bond
20 amount over that period would have averaged approximately \$90 million and would have
21 been as high as \$214 million, which is more than half of CCSF's projected annual gross
22 revenue; and (4) the settlement goes far beyond the goal of preserving bundled customer
23 indifference to CCA programs and instead provides the utilities excessive protection that only
24 serves to erect significant and anti-competitive financial barriers to implementation and
25 ongoing operation of a CCA program; and

1 WHEREAS, CCSF's comments further pointed out that the settlement's methodology
2 for calculating re-entry fees resulted in re-entry fees that were double (or more) the amount
3 necessary to allow utilities to cover any additional procurement costs they may incur, because
4 the settlement assumed utilities would need twelve months to adjust their procurement
5 practices, whereas current CPUC rules require a maximum of six months for the utilities to
6 make this transition; and

7 WHEREAS, CCSF's comments further showed that: (1) the Settlement relies heavily
8 on "implied volatility data" to calculate a stress factor that has a significant effect on the bond
9 amount and that these volatility data are neither independently verifiable nor reliable; (2) the
10 settlement's flawed stress factor calculation results in systematically biased and excessive
11 bond amounts that provide far more financial security and collateral than needed to maintain
12 bundled customer indifference, to the enormous detriment of CCAs and their customers; (3)
13 based on the market experience of MEA, CCSF has learned that bonding, insurance and
14 finance companies do not currently offer and are not willing to provide the bond or other
15 security instruments in the settlement, regardless of the risk profile of a CCA's operations and
16 that, as a result, CCAs will be forced to post cash to meet the settlement's bond requirement;
17 and (4) consequently, even if a CCA's risk of ceasing operations is minimal, the expense of
18 the bond requirement, by itself, could force a CCA out of business, and the settlement lacks
19 necessary safety valves to prevent such a result; and

20 WHEREAS, the CPUC, on January 14, 2011, withdrew the ALJ's recommended
21 decision and reopened the record on the re-entry fee and bond issue; now, therefore, be it

22 RESOLVED, that the San Francisco Local Agency Formation Commission (SF LAFCo)
23 applauds the CPUC for reopening the record to address concerns that the CCSF raised
24 during the comment period on the ALJ proposed decision; and, be it
25

1 FURTHER RESOLVED, that the SF LAFCo urges the CPUC to adopt a methodology
2 for determining re-entry fees and bond amounts for CCAs that does not unfairly or adversely
3 affect the ability of CCAs to form or sustain CCA programs; and, be it

4 FURTHER RESOLVED, that the Executive Officer of LAFCo is directed to transmit fully
5 conformed copies of this resolution to: the Clerk of the Board of Supervisors of the City and
6 County of San Francisco for inclusion on its next printed agenda as a communication and for
7 distribution to its membership; the Director of Governmental Affairs; the General Manager of
8 the San Francisco Public Utilities Commission; and the California Public Utilities Commission.

9
10 On a motion by Commissioner Mirkarimi, se conded by Commissioner Schmeltzer, the foregoing
11 Resolution was passed and adopted by the San Francisco Local Agency Formation Commission, State
12 of California, this 28th day of January 2011, by the following vote:

13
14 AYES: Chairperson Campos, Commissioners Avalos, Mirkarimi, and
Schmeltzer.
15 NOES: None.
16 ABSTAIN: None.
17 ABSENT: Commissioner Mar.

18
19 

20 DAVID CAMPOS, CHAIRPERSON
San Francisco Local Agency Formation Commission

21 ATTEST:

22
23 
24 NANCY MILLER
Interim Executive Officer