

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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SAN JOAQUIN VALLEY POWER AUTHORITY,

Complainant,

v.

PACIFIC GAS AND ELECTRIC COMPANY,  
(U39E)

Defendant.

Case 07-06-025  
(Filed June 26, 2007)

**JOINT MOTION FOR APPROVAL OF  
SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

Pursuant to Rule 12.1(a) of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or the “Commission”), complainant San Joaquin Valley Power Authority (“SJVPA”) and defendant Pacific Gas and Electric Company (U39E) (“PG&E”) (collectively referred to as the “Parties”) hereby request prompt Commission approval of the attached Settlement Agreement and Release of Claims (“Settlement Agreement”).<sup>1</sup> As required by Rule 12.1(d), the Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

On the grounds detailed in this motion, the Commission should approve the Settlement Agreement, without modification.

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<sup>1</sup> This Joint Motion is filed on behalf of both PG&E and SJVPA, but signed by counsel for PG&E pursuant to Rule 1.8(d).

## II. BACKGROUND

SJVPA is a California joint powers agency formed under the provisions of California Government Code Section 6500, *et seq.*, and was established for the purpose of implementing a Community Choice Aggregation (“CCA”) program.

On June 25, 2007, SJVPA initiated this complaint proceeding, alleging that PG&E’s marketing to prospective CCA customers and communications with city and county governments regarding SJVPA’s planned CCA program violated Commission Decision No. 05-12-041. (*See* Complaint 07-06-025.) On August 2, 2007, PG&E timely answered the Complaint, disputing all of SJVPA’s claims to relief.

Shortly after PG&E filed its Answer, the Parties agreed to participate in the Commission’s Alternative Dispute Resolution program in an attempt to mediate a resolution of their dispute. The Parties participated in a mediation session with Administrative Law Judge Steven A. Weissman on August 21, 2007, and also participated in several telephonic discussions with ALJ Weissman on issues related to the mediation and settlement possibilities. These initial discussions did not result in settlement.

On September 7, 2007, the City and County of San Francisco (CCSF) filed a motion to intervene in the complaint proceeding. Both Parties filed responses to CCSF’s motion.

ALJ Sarah R. Thomas held a prehearing conference in this proceeding on October 11, 2007. As part of that prehearing conference, ALJ Thomas denied CCSF’s motion to intervene without prejudice. CCSF has not renewed its motion to intervene and no other such motions have been filed.

Also at the prehearing conference, ALJ Thomas identified several issues on which she requested information and briefing by the Parties. ALJ Thomas indicated that she would utilize the Parties’ briefs in issuing a scoping memorandum for the proceeding. Depending upon the

Commission's determination of the appropriate scope of this proceeding, ALJ Thomas set alternative hearing dates for either January 23-25, 2008 or February 27-29, 2008.<sup>2</sup>

On October 19, 2007, the Parties filed their respective initial comments in response to the requests for information made by ALJ Thomas at the prehearing conference.

On November 1, 2007, ALJ Thomas issued a Ruling Setting Procedural Schedule ("Ruling") that identified several procedural issues on which she requested additional briefing from the Parties and outlined the alternative hearing schedules, depending upon her determination of the appropriate scope of the complaint proceeding.

The Parties filed their respective opening briefs in response to the Ruling on November 9, 2007, and filed their respective reply briefs on November 16, 2007.

On December 4, 2007, ALJ Thomas and Assigned Commissioner Dian M. Grueneich issued a Scoping Memo and Ruling ("Scoping Memo") that set forth the issues that the Commission would determine in the complaint proceeding and established a testimony and discovery schedule, with evidentiary hearings set for February 27-29, 2008.

Following the issuance of the Scoping Memo, the Parties engaged in extensive discovery efforts, propounding and responding to multiple data requests. Each Party had produced thousands of pages of documents at the time the Parties suspended litigation activities for settlement discussions, as described below.

The Parties renewed their settlement discussions before ALJ Weissman beginning in February 2008. In order to allow sufficient time for these discussions to conclude, the Parties requested and obtained extensions of the discovery and hearing schedule.<sup>3</sup>

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<sup>2</sup> See Notices of Evidentiary Hearing issued on October 25, 2007.

<sup>3</sup> See Rulings Regarding Notice of Rescheduled Hearing and Change in Proceeding Schedule, issued on January 18, 2008 and March 13, 2008.

As a result of intensive negotiations and with the active assistance of ALJ Weissman, the Parties reached the Settlement Agreement attached hereto as Exhibit A. By this motion, the Parties respectfully seek Commission approval of the Settlement Agreement as presented.

### **III. SUMMARY OF SETTLEMENT**

The Settlement Agreement provides a global settlement on the matters raised in SJVPA's Complaint, PG&E's Answer, and the Scoping Memo. A description of the key terms of the Settlement Agreement, embodied in various paragraphs of the Settlement Agreement and not necessarily under these specific headings or order, are highlighted here.

- Purpose. The purpose of the Settlement Agreement is to address PG&E's past CCA 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 this Complaint proceeding, as reflected in the Complaint, Answer and Scoping Memo. [Article 3.]
- PG&E's Position on CCA Marketing. PG&E acknowledges the statements that it made regarding CCA-related marketing during the CPUC's CCA Phase II Rulemaking (R.03-10-003), in which the Commission established various rules regarding CCA. PG&E disputes that it has misled the Commission in any way, but does make clear as part of the Settlement Agreement that it changed its previously neutral position on CCA in January 2007. PG&E's revised position regarding CCA programs includes marketing its energy supply services to retain customers. [Article 3 and Section 4.1.]
- Mitigation of Effects of PG&E's Changed Position on CCA Marketing. The Parties intend by their settlement as memorialized in the Settlement 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. [Section 4.2.]

- Equitable Reimbursement of SJVPA's Litigation Costs. PG&E will pay SJVPA up to \$450,000 for its reasonably-incurred litigation costs in connection with the Complaint proceeding. [Section 4.3.]
- Truthful and Non-Misleading Statements. The Parties agree that their respective CCA marketing and lobbying/petitioning shall be truthful and non-misleading, and that their respective CCA marketing and lobbying/petitioning shall be capable of substantiation. [Section 5.2.]
- Disclaimers. In carrying out their respective CCA marketing and lobbying/petitioning in specified communities, the Settlement Agreement requires the Parties to use designated disclaimers. [Section 5.3.]
- Financial Accounting. Costs associated with PG&E's CCA marketing activities shall be accounted for in accordance with the Commission's regulatory accounting requirements and PG&E's Below The Line Accounting Procedures except as otherwise required by the Settlement Agreement, and shall be subject to reasonable review but not approval by SJVPA. [Article 6.]
- Functional Separation Regarding PG&E's CCA Marketing. PG&E shall identify a functional group (the "PG&E Marketing Group") that shall principally interact with customers in conducting PG&E's CCA marketing in the communities participating in SJVPA's CCA program. [Article 7.]
- Lobbying/Petitioning. PG&E's lobbying and petitioning of certain governmental entities, public officials and candidates for elected public office regarding

SJVPA's CCA program shall be subject to the use of a designated disclaimer and shall be truthful and non-misleading. Further, with respect to any perceived problems, risks or other shortcomings identified by PG&E concerning SJVPA's CCA program, prior to the communication of those issues to the city and county governments participating in SJVPA's CCA program, 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. However, the Settlement Agreement shall not create an affirmative obligation on either Party to resolve any such issues and shall not impede PG&E, after PG&E appraises SJVPA of issues, from timely communicating with the city and county governments participating in SJVPA's CCA program. [Article 8.]

- Dispute Resolution. The Settlement Agreement establishes a process for resolving additional disputes between the Parties should they arise, including bi-monthly standard meetings and provisions for escalated and emergency meetings as necessary. The Settlement Agreement also establishes an alternative dispute resolution process. [Article 9.]
- No Admission of Wrongdoing. The Settlement Agreement and its terms shall not constitute nor be taken to indicate an admission of liability or wrongdoing by either Party, or that either Party's position on any issue lacks merit.  
[Section 11.1.]
- Effective Date of Provisions. The Settlement Agreement provides that it shall become effective upon an order by the Commission no longer subject to appeal

approving the Agreement and dismissing the Complaint with prejudice, with no required modifications or conditions to the Agreement. Should the Commission approve the Settlement Agreement subject to modifications or conditions, the Parties agree to meet and confer concerning whether such modifications or conditions are acceptable. [Section 2.2.]

- Dismissal of Complaint. The Settlement Agreement provides that, upon approval by the CPUC, the CPUC shall also concurrently order the dismissal of the Complaint with prejudice. [Section 2.2.]
- Mutual Releases. Upon approval of the Settlement Agreement by the CPUC, releases by each of the Parties of the claims raised in the Complaint, Answer and Scoping Memo will become effective. The Settlement Agreement does not preclude the Parties' respective rights to advance whatever position they desire in any other presently pending and/or future legislative, regulatory or judicial proceeding, other than as set forth in the Settlement Agreement with respect to the claims of either Party relating to issues raised in the Complaint, Answer or Scoping Memo. [Article 10.]

#### **IV. REASONABLENESS OF THE SETTLEMENT**

##### **A. The Standard for Approving Settlement Agreements.**

Before approving a settlement, the Commission must find that it is “reasonable in light of the whole record, consistent with law, and in the public interest.” Rule 12.1(d). Factors to be considered include whether the settlement reflects the relative risks and costs of litigation, whether it fairly and reasonably resolves the disputed issues and conserves public and private resources, and whether it falls well within the range of possible outcomes had the lawsuit gone to trial. *Application of Southern California Edison for Order Approving Settlement Agreement*

*Between Southern California Edison Company and Joseph M. Keating*, 66 CPUC2d 314, CPUC Decision No. 96-05-070 (May 22, 1996). The Commission also has considered factors such as whether the settlement negotiations were at arms' length and without collusion, whether the parties were adequately represented, and how far the proceedings had progressed when the parties settled. *Application of Southern California Edison for Order Approving Settlement Agreement Between Southern California Edison Company and Del Ranch, L.P. and Elmore, L.P.*, CPUC Decision No. 00-05-046 (May 18, 2000).

**B. The Settlement Agreement Meets the Standard for Commission Approval.**

The Settlement Agreement represents a fair compromise of the disputes between the Parties relating to the matters at issue in the Complaint, Answer and Scoping Memo, and fully satisfies this standard. Each of the factors to be considered supports approval of the Settlement Agreement.

**1. Range of Possible Outcomes, Expense of Litigation, and Progress of Case**

This settlement falls well within the range of possible outcomes of the litigation, and represents a significant benefit to each Party by eliminating the significant litigation risk, cost, and uncertainty that each Party would have faced in the absence of the settlement. Because the Complaint raised not only difficult issues of facts, but also questions of legal interpretation on which the Commission may or may not have spoken before, each Party faced pronounced and identifiable risks of litigation.

The Parties engaged in substantial briefing and were engaged in extensive and at times contentious discovery practice at the time they reached settlement. Indeed, under the schedule in place at that time, the case was only weeks away from trial. Given the briefing, settlement discussions, and exchanges of documents and other information between the Parties, the Parties

were well aware of their respective positions, litigation exposure, and the substantial expense involved in pursuing the matter through trial and beyond. The Parties recognized the possibility that the Commission could resolve the issues in this matter in favor of either SJVPA or PG&E, or in a fashion where each Party “won some and lost some.” PG&E recognized that if SJVPA principally prevailed in this litigation, PG&E was exposed to remedies that could include penalties and mandated changes to certain business operations. On the other side of the table, SJVPA recognized that if PG&E principally prevailed in this litigation, there could be no remedies related to the allegations made in the Complaint, and the PG&E activities challenged by SJVPA could continue prospectively with the Commission’s clear blessing. Both Parties also recognized the possibility that even if the Commission found in their favor, the non-prevailing Party might seek to appeal the Commission’s decision and if such an appeal were granted and successful, the Commission decision might be overturned or delayed by the appeal, leading to further consumption of time and financial as well as personnel resources.

## **2. Arms’ Length Negotiation**

There can be no serious claim that the Parties did anything other than engage, both in the litigation and settlement negotiations, at arms’ length. Indeed, the Parties vigorously litigated the case, including at times forceful dispute over discovery issues, up until the time of settlement and, in the settlement talks, engaged in intensive and extensive settlement negotiations spanning multiple mediation sessions in reaching settlement principles and thereafter in arriving at the final form of the Settlement Agreement.

### **3. Adequate Representation**

Both Parties were more than adequately represented. PG&E was represented by inside counsel with significant civil litigation experience as well as regulatory litigation experience before the Commission, with the assistance of outside counsel from a major San Francisco law firm with respect to discovery matters. SJVPA was represented by attorneys from two Sacramento law firms, both of whom are familiar to the Commission as experienced regulatory litigators in a variety of matters before the Commission, and one of whom also has many years of civil litigation experience.

### **4. Public Interest and Conservation of Resources**

Finally, the settlement is in the public interest. It will both address PG&E's past CCA marketing regarding SJVPA's CCA program and specify mutually-agreeable standards that will apply to future marketing regarding SJVPA's CCA program. It will allow both Parties, whose ultimate interest (as applicable in this matter) is to provide electric service to California businesses and residents, to dedicate resources to that interest rather than contentious, costly, and time-consuming litigation. Last but certainly not least, the settlement will also allow the Commission to resolve the issues raised by the Complaint, Answer and Scoping Memo without further expenditure of scarce public resources and thus dedicate those scarce resources to other pending and more pressing regulatory matters.

Based on the foregoing, the Settlement Agreement fairly balances all the pertinent considerations and meets the requirements of Rule 12.1(d). It is a reasonable compromise, consistent with law, and in the public interest. As such, the Commission should approve this Settlement Agreement, without modifications.

**V. WAIVER OF RULE 12.1(b)**

There are only two Parties to this complaint proceeding – complainant SJVPA and defendant PG&E. The Commission denied CCSF’s motion to intervene in the proceeding without prejudice, which CCSF did not renew. No other party moved to intervene. For this reason, the Parties request that the Commission waive Rule 12.1(b), which provides as most pertinent here: “Prior to signing any settlement, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing settlements in the proceeding. Notice of the date, time, and place shall be served on all parties at least seven (7) days in advance of the conference.”

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**VI. CONCLUSION**

WHEREFORE, for the reasons set forth above, the Parties urge the Commission to approve the Settlement Agreement expeditiously, without modification, as a reasonable resolution of this intensive litigation, consistent with the public interest.

Respectfully submitted,

STEPHEN L. GARBER  
CLIFFORD J. GLEICHER  
JONATHAN D. PENDLETON

By: \_\_\_\_\_ /s/  
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Dated: April 10, 2008

**EXHIBIT 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 apprises 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 10<sup>th</sup> 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 A



**Purpose**

Describe PG&E's procedures for "below-the-line" (BTL) activities and expenses. BTL costs are borne solely by shareholders, not customers.

**Applicability**

These procedures are applicable to all departments at Pacific Gas and Electric Company that perform work activities for which the costs are borne by shareholders.

**Definitions**

**Provider Cost Centers (PCCs):** Cost centers that provide services to other cost centers or to orders. Each PCC must have a responsible person assigned to monitor its costs and manage the life-cycle of the PCC. The name of this person is on the SAP cost center master record.

**Orders:** SAP Planning Orders are used to plan costs; Actual Orders are used to record costs. Each order must have a responsible person assigned to monitor its costs and manage the life cycle of the order. The name of this person is on the SAP order master record.

**Positive Time Reporting:** Employee time reporting for time spent working on all activities. This includes work for both above- and below-the-line activities.

**Receiver Cost Centers (RCCs):** Receiver Cost Centers (RCCs) can be either a productive asset (e.g., a power plant), or products and services produced or provided for an external customer. RCCs develop and maintain budgets to operate, maintain, and/or improve their assets based on major work categories (MWCs, such as Maintain Boiler). All costs ultimately flow to RCCs, making it easier to determine what assets are worth, what they cost to own and operate, and how their product should be priced.

**Guidelines**

In general, expenses attributable to normal utility operations are "above the line" (ATL) and recoverable in rates. The California Public Utilities Commission requires that certain other costs be borne solely by shareholders, not customers, and therefore those costs are classified "below the line." (The terms "above the line" and "below the line" refer to whether an income or expense item appears above or below the operating income line on a utility's regulatory income statement.) Examples of below-the-line activities/expenses include:

1. Political activities and contributions
2. Charitable contributions
3. Brand image advertising

All costs charged "below the line" are recorded in FERC Account 426. The subaccounts within FERC Account 426 are as follows:

- 426.1 - Donations
- 426.2 - Life Insurance
- 426.3 - Penalties
- 426.4 - Expenditures for Certain Civic, Political and Related Activities
- 426.5 - Other Deductions

Please see Attachment C for more specific information on identifying and

**Time and Expense  
Guidelines**

tracking BTL activities and costs.

Time and expenses can be recorded BTL in the following two ways:

**1. Automatic Allocation of Costs to BTL Activities:**

For departments that perform 100% BTL activities, and employees (e.g., officers, managers, supervisors) who provide supervision and support to employees who perform BTL activities, allocations can be established to automatically charge time and expenses to BTL activities in SAP.

Some departments perform 100% BTL activities. Allocations for such departments will be automated in SAP, and all time and expenses for employees in such departments will be charged directly to BTL orders.

Some departments perform BTL activities on a regular basis in addition to above-the-line activities. These departments' officers and supervisors may not perform BTL activities directly, but since they oversee BTL activities, a portion of their time and expenses are allocated to BTL activities. For example, a Vice President responsible for employees who perform BTL activities as well as ATL activities allocate a proportionate amount of his or her time BTL. The allocation for officers and department heads is automated in SAP.

A list of departments that currently allocate expenses BTL is in Attachment A.

**2. Direct Charging for Time and Expenses, Including Corporate Items**

**a. Positive Time Reporting**

Departments that *regularly* perform both ATL and BTL activities must direct charge their time to the appropriate SAP orders. These departments are listed in Attachment B.

A list of departments that currently direct charge is in Attachment B.

Attachment E provides more specific details on the appropriate accounting. Attachment C describes BTL activities.

**b. Exception Time Reporting**

Departments that *occasionally* perform both ATL and BTL activities must direct charge time to appropriate SAP orders.

**c. Expenses**

Travel and personal expenses (e.g., mileage, parking, hotel) are charged to the employee's PCC. (When time is charged to an order, the hours are

converted to a dollar amount that includes expenses in addition to labor. Therefore, charging personal expenses to an order would be double counting.)

BTL contract and materials expenses should be recorded directly to the appropriate BTL order.

**d. Corporate Items**

Corporate Items should be charged to the appropriate cost element and PCC or RCC. For questions about how to record Corporate Items, please contact:

Lucy Ma, Management Reporting, 223-2482, [LSM2@pge.com](mailto:LSM2@pge.com)

***Guideline Owners***

All recorded BTL charges will be reviewed by Operations Proceedings to ensure consistency in the resulting financial and regulatory recovery treatment for these expenditures. For more information, please contact:

Karen Crowley, Operations Proceedings, 223-0660, [KJCI@pge.com](mailto:KJCI@pge.com)

Bruce Fraser, Operations Proceedings, 223-1991, [BPF2@pge.com](mailto:BPF2@pge.com)

***Roles and Responsibilities***

Employee - Ensure familiarity with BTL procedures and direct charge orders if necessary.

Supervisors - Ensure familiarity with BTL procedures and approve individual time records to ensure accurate charging of time.

Directors and Vice Presidents - Ensure familiarity with BTL procedures and ensure controls are in place for employees to properly record the department's activities.

Operations Proceedings - Perform a reasonableness review of allocations and time recorded to BTL orders and resolve any issues in a timely manner.

Business Planning - Inform Operations Proceedings when structural changes to PCCs that time charge or allocate occur. Establish and maintain ATL and BTL orders.

Management Reporting - Ensure allocations to BTL orders are created and maintained in a timely manner.

***Attachments***

- A) Cost Centers that Allocate BTL
- B) Cost Centers that Direct Charge
- C) Guidelines on Activities that Must be Tracked BTL
- D) Procedures for Tracking and Recording Municipalization Campaign Activities and Expenses
- E) Below the Line Cost Elements

**Attachment A: Cost Centers that Allocate BTL**

The following cost centers are allocated 100% BTL in SAP:

<b><u>PCC</u></b>	<b><u>Cost Center Description</u></b>
10308	State Government Relations
10309	Charitable Contributions
10313	Advertising

A portion of the costs for each cost center listed below are automatically allocated BTL each month in SAP. Generally, these cost centers may not perform BTL activities directly, but supervise other cost centers that record time and expenses BTL. The allocations are determined based on the BTL percentages of the departments that report to it. Operations Proceedings will review these allocations on a quarterly basis and work with Management Reporting to adjust them as necessary.

<b><u>PCC</u></b>	<b><u>Cost Center Description</u></b>
10305	Governmental Relations <i>(BTL percentage equals percentage for PCC 20060)</i>
10311	VP Communications
12853	VP Civic Partnership and Community Initiatives

**Attachment B: Cost Centers that Direct Charge**

The following departments *regularly* direct charge to ATL and BTL orders. The departments that direct charge are subject to change based on the extent to which they engage in BTL activities.

<b><u>PCC</u></b>	<b><u>Cost Center Description</u></b>
10306	Political Affairs
10892	Extnl Rel Outreach & coalition efforts ( <i>Community Relations group only</i> )
12243	Public Affairs Area 1
12244	Public Affairs Area 2
12245	Public Affairs Area 3
12246	Public Affairs Area 4 Los Padres
12514	Public Affairs Area 4 Fresno/Kern
12247	Public Affairs Area 5
12248	Public Affairs Area 6/7

## **Attachment C: Guidelines on Activities that Must be Tracked BTL**

### **I. Political Activities**

#### **Influencing federal, state, and local legislation**

Costs associated with influencing federal, state, and local legislation must be charged BTL. Influencing legislation includes any attempt through communication to influence any government official or employee regarding a legislative matter. Legislative matters include acts, bills, resolutions, or similar items coming before Congress, any state legislature, county board of supervisors, or city council, and ballot measures, propositions, referenda and initiatives placed on the ballot for vote by the electorate.

Not all time or expenses associated with interacting with government officials or employees needs to be recorded BTL. The following are examples of activities and costs that should be charged ATL:

- Communicating with regulatory agencies including but not limited to the California Public Utilities Commission (CPUC), Nuclear Regulatory Commission (NRC), California Energy Commission (CEC), Federal Energy Regulatory Commission (FERC) and Local Area Formation Commissions (LAFCo) to the extent the topic involves regulation
- Analyzing and monitoring proposed legislation or regulation to determine impact on the Company
- Responding to requests for information on legislative or regulatory proposals, such as assessing the potential impact or suggesting alternatives
- Reviewing and providing input to assist the Company on making a determination as to whether to take a position on a legislative or regulatory proposal
- Providing technical or ministerial information to public officials
- Providing information on issues of general interest
- Working on contracts, permits or licenses

#### **Municipalization**

Time and expenses in direct support of campaigns on proposed or actual municipalization ballot measures must be recorded BTL. Until a municipalization effort becomes a proposed or actual ballot measure, however, the associated activities and expenses should be charged ATL. See Attachment D for additional procedures on municipalization campaigns.

#### **Community Choice Aggregation (CCA)**

BTL activities include efforts to persuade government officials or customers to support a particular position, or marketing in order to retain customers as PG&E customers. This would include the time associated with attending meetings within the communities potentially affected. Although the purpose for attending these types of meetings could simply be to provide information rather than promote a particular outcome, the Company records this time BTL. PG&E reserves the right to seek recovery for costs associated with these activities.

ATL activities include responding to requests for information from government or regulatory officials, or participating on behalf of PG&E or supporting PG&E's participation in legal, regulatory or governmental proceedings in which PG&E's participation is mandatory, not discretionary. For example, time spent on activities necessary to implement a proposed CCA program is ATL.

## **II. Political Contributions and Memberships**

Contributions to "political" 501(c)(4) organizations and 527 committees must be charged BTL using Cost Element 5030300, "Exp Certain Civic/Political & Rel Actvs" or Cost Element 5030010, "Donations - Non Cash." In addition, labor and other costs associated with political contributions must be charged BTL. Political contributions support efforts including election campaigns, voter initiatives and referendums, voter registration and "get out the vote" campaigns. Political contributions can be monetary or non-monetary (e.g., use of company facilities for campaign purposes, employee time during the work day devoted to a political campaign), and in either case must be charged BTL.

Memberships in Chambers of Commerce must be charged BTL, using Cost Element 5030001, "Other Contribution (non 501c3)." Certain fees paid to professional organizations may be charged above-the-line (e.g., dues paid to California Bar Association or renewal of a Certified Public Accountant (CPA) license).

## **III. Charitable Contributions**

All charitable contributions must be charged BTL using Cost Element 5030000, "Charitable Contribution" or Cost Element 5030010, "Donations - Non Cash." In addition, labor and related costs associated with administering charitable contributions should be charged BTL. Charitable contributions include donations of money as well as other assets (e.g., land, computers).

## **IV. Advertising**

Costs related to advertising conducted to enhance PG&E's brand image or corporate identity must be charged BTL using Cost Element 5040130, "Other Inc & Deds - Advertising Expense."

Certain advertising costs, including associated labor and materials, may be charged above-the-line. Examples of advertising costs that can be charged above the line are legally required bill inserts, public purpose program messages (e.g., energy efficiency), and storm safety alerts.

## **V. Mergers and Acquisitions (M&A)**

Time and expenses related to the possible or actual merger with or acquisition of other entities must be charged BTL if incurred by the Utility. M&A costs incurred by PG&E Corporation must not be allocated to the Utility.

## **VI. Penalties and Notices of Violation**

All imposed civil penalties must be charged BTL using Cost Element 5030200, "Penalties." All Notices of Violation should be charged BTL using Cost Element 5030203, "Violation Notice-BTL."

## **VII. Other Non-Utility Activities**

Other non-utility activities must be charged BTL.

## **Attachment D: Procedures for Tracking and Recording Municipalization Campaign Activities and Expenses**

### **I. Purpose**

Describe PG&E's procedures for the defining, tracking, recording, and reporting of all labor and expenditures in direct support of campaigns on proposed or actual municipalization ballot measures.

### **II. Notification**

As soon as PG&E enters a "Campaign," notice must be provided to the Operations Proceedings and Law Departments to insure appropriate oversight and assistance.

### **III. Accounting**

Specific order numbers will be created to track all ballot measure campaign related expenses. Generally, two unique order numbers would be required for each campaign: one order for political contributions, and one for non-monetary (in-kind) contributions:

- An order number will be established to record political contributions to a separate, outside entity (usually a non-profit corporation formed under Internal Revenue Code section 501(c)(4)). This category of expenditure is pursuant to actions of the Boards of Directors of PG&E Corporation and Pacific Gas and Electric Company relative to political contributions.
- A second order number will be established to record any non-monetary (in-kind) contributions. This category of expenditure is also pursuant to actions of the Boards of Directors of PG&E Corporation and Pacific Gas and Electric Company. Non-monetary contributions will include the campaign related time charged through the payroll accounting system (see Timekeeping Requirements), payments to outside vendors and consultants, and the recording via journal entry of the value associated with the use of PG&E facilities.

Additional order numbers can be created as necessary.

### **IV. Ballot Measure Campaign Contributions**

All ballot measure campaign contributions will be processed by the "Political Contributions" unit of State Governmental Relations. Contribution requests will be forwarded to the Political Contributions unit with any supporting documentation. The Political Contributions unit will complete the appropriate approval forms and obtain all required signatures. The check will be requested and posted to the designated order number. The payment will be posted to the designated order number as well as the NetFile tracking and reporting system.

### **V. Non-Monetary Contributions**

All information related to non-monetary contributions to ballot measure committees, excluding employee work time, should be submitted to the Political Contributions unit in a timely manner. These contributions will also be processed by the "Political Contributions" unit of State Governmental Relations. Contribution requests will be forwarded to Political Contributions with any supporting documentation. Political Contributions will complete the appropriate approval forms and obtain all required signatures. Non-monetary contributions consisting of payments to outside vendors will be processed as an invoice. The check will be requested and forwarded to the vendor. The payment will be posted to the designated order number as well as the NetFile tracking and reporting system. Non-monetary contributions consisting of the use of internal PG&E facilities will be valued by the PG&E Campaign Lead and the valuation criteria will be vetted with outside political law counsel, documented and then recorded and reported to the Operations

Proceedings and Law Departments. The value of the non-monetary contribution will be reimbursed to the providing department via journal entry.

## **VI. Timekeeping Requirements**

Timekeeping records will be kept and campaign time will be charged to the campaign order number using the SAP time entry system called "CATS". All time devoted to the campaign will be recorded in one hour intervals. All time reporting will also be in compliance with the monthly questionnaire used to track campaign related labor for Fair Political Practices Commission (FPPC) and California Public Utilities Commission (CPUC) purposes. Please see the following section for those requirements.

The Government Relations employee assigned to coordinating the campaign will notify every employee involved in a ballot measure campaign of the time reporting responsibilities and campaign-related expense reimbursement.

## **VII. Campaign Volunteer Activities**

Employees who volunteer for campaign activities outside normal business hours and on their own personal time, specifically on weekends and evenings, are not compensated for these activities. As a result, their time is not includible in PG&E's payroll, expense or time reporting system. As such it is not appropriate for employees to drive a Company vehicle to these activities or be reimbursed for mileage, gasoline, lodging, meals or any other expenses.

## **VIII. FPPC and CPUC Reporting Requirements**

Relative to the employee involved in campaign activities during normal business hours, there is a separate but parallel reporting requirement dictated by the Fair Political Practices Commission. The collection of data is the responsibility of the Law Department. A monthly questionnaire will be distributed to all employees, IBEW members and contractors working on the campaign during normal business hours as identified by the PG&E Campaign Lead. The forms will be completed and submitted on a monthly basis or more frequently if there is a shorter reporting period, using the timekeeping records already created (see Timekeeping Requirements above) as the source documents. The distributions list for the questionnaires is expanded on a regular basis to capture new personnel that join campaign activities. It is imperative that the two documents and processes yield consistent accounting totals.

## **IX. Training**

The Manager of the Political Contributions unit of State Government Relations is responsible for providing comprehensive training to all employees involved in any ballot measure campaign. This includes employees required to report time and those responsible for other forms of non-monetary expenditures.

## **X. Monitoring**

The monitoring of the accounting of campaign expenses will be performed on an on-going basis. The Senior Vice President of Public Affairs will be responsible for the proper tracking and accounting of expenses. This function may be delegated to a Director level employee, generally the person directing the campaign day-to-day activities. A review of the accounting structure and compliance with this procedure will be performed periodically throughout the campaign. The review will include a comparison of the timekeeping reporting forms and the FPPC reporting forms to ensure they provide consistent information. At the conclusion of the campaign the accounting will be finalized and a final audit will be performed to ensure full compliance. The responsible Director will report regularly to the Senior Vice President of Public Affairs and confirm compliance with this procedure.

**Attachment E: Below The Line Cost Elements**

The following cost elements (CE's) are charged BTL:

Departmental

5030000 Charitable Contribution  
5030001 Other Contribution (non 501c3)  
5030010 Donations - Non Cash  
5030200 Penalties  
5030203 Violation Notice-BTL  
5030300 Exp Certain Civic/Political & Rel Actvs  
5040010 Other Income & Deductions - REACH  
5040020 Other Inc & Deds - Cancelled Jobs  
5040025 Other Inc & Deds - Miscellaneous Amortiz  
5040040 Other Inc & Deds - Abandoned Projects  
5040120 Other Inc & Ded - Legislative Expenses  
5040125 Other Deductions - Reorganization Costs  
5040130 Other Inc & Deds - Advertising Expense

Corporate Items

Corporate Items should be charged to the appropriate cost element and PCC or RCC. For questions about how to record Corporate Items, please contact:

Lucy Ma, Management Reporting, 223-2482, [LSM2@pge.com](mailto:LSM2@pge.com)

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, Post Office Box 7442, San Francisco, CA 94120.

On the 10th day of April 2008, I served a true copy of:

**JOINT MOTION FOR APPROVAL  
OF SETTLEMENT AGREEMENT**

- [XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for C.07-06-025 with an e-mail address.
- [XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for C.07-06-025 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 10th day of April 2008 at San Francisco, California.

\_\_\_\_\_  
/s/  
LINDA S. DANNEWITZ

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Downloaded April 10, 2008, last updated on April 3, 2008

Commissioner Assigned: Dian Grueneich on July 3, 2007; ALJ Assigned: Sarah R. Thomas on July 3, 2007

## CPUC DOCKET NO. C0706025 CPUC REV 04-03-08

Total number of addressees: 24

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

Downloaded April 10, 2008, last updated on April 3, 2008

**Commissioner Assigned:** Dian Grueneich on July 3, 2007; **ALJ Assigned:** Sarah R. Thomas on July 3, 2007

**CPUC DOCKET NO. C0706025 CPUC REV 04-03-08**

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**THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
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**Commissioner Assigned:** Dian Grueneich on July 3, 2007;

**ALJ Assigned:** Sarah R. Thomas on July 3, 2007

**CPUC DOCKET NO. C0706025**

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