PUBLIC UTILITIES COMMISSION
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December 22, 2008

Oakland City Council
City Hall
1 Frank H. Ogawa Plaza
Oakland, California 94612

TO: Oakland City Councilmembers

FROM: Stephen C. Roscow
Supervisor, California Public Utilities Commission

RE: Community Choice Aggregation

Dear Council President and Council members:

This letter provides follow-up information related to statements made by California Public Utilities Commission (CPUC) staff at a December 16, 2008 hearing of the Special Public Works Committee, regarding Agenda Item 3, a recommendation to adopt a resolution receiving the East Bay Cities Community Choice Aggregation business plan and directing the City Administrator to re-allocate three hundred ninety thousand dollars ($390,000.00) to implementing the Energy and Climate Action Plan

In remarks presented at the hearing, staff from the CPUC's Energy Division identified five items in the Public Works staff responses to Council questions that we wished to further clarify. Those items are summarized below. In addition, Councilmember Kernighan asked that we specifically address the process around the potential for Oakland to receive $12 million in certain specified energy efficiency funds. That information is included in our response to item #5 below.

Item #1

Page 2 of the Supplemental Report presents a bulleted list of "the major barriers to recommending that Oakland join Berkeley and Emeryville in creating a Joint Powers Authority (JPA) to implement a CCA" including the statement that "*Regulations covering CCA are uncertain and potentially expensive*." As I stated in my remarks, this statement is inaccurate with respect to the CPUC regulations related to CCAs. The Commission's approach to regulating CCA's is limited to its mandates under AB117, and indicated by the Commission's statement in its second CCA implementation decision, where it addressed, among other topics, implementing CCA implementation plans and the process for CCA registration: *"the procedures we adopt are designed to comply with AB 117 and facilitate a CCA's program while protecting utility customers."* (CPUC Decision (D.)05-12-041, pg 18). Furthermore, nearly all of the necessary regulatory framework has already been established by the Commission, with the exception of finalizing the CCA bond requirement. That proceeding that is currently underway, with a final Commission decision expected in March, 2009. While that decision may impose some financial obligation on CCAs, it is an obligation that is required by AB117.

Item #2

Page 5 of the Supplemental Report includes this question from Chairperson Nadel: "Page 15 of the Business Plan says that "PG&E is compelled by law to assist cities in their efforts to establish CCA programs." How does that jibe with PG&E actively lobbying against it with councilmembers, and bringing speakers from its advisory committee to speak against it?", to which staff responds, "No comment".

At the hearing, I provided some background and context for this exchange, by describing a recent formal Complaint proceeding at the Commission that involved PG&E and San Joaquin Valley Power Authority (SJVPA), which is in the process of forming a CCA (see Complaint C.07-06-025). The essence of my remarks was that PG&E and SJVPA entered into a settlement to resolve the complaint. The Commission adopted that settlement in D.08-06-016. As part of the settlement, PG&E acknowledges that its corporate position with regard to marketing its energy supply services had changed since the Commission began its CCA Implementation Rulemaking; the section from the settlement provided below provides a succinct summary:

> **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.

Furthermore, as part of the settlement, PG&E and SJVPA agreed that "in carrying out their respective Marketing and Lobbying/Petitioning, PG&E and SJVPA shall provide disclaimers" as part of their written communications, broadcast advertisements, and oral communications.

At the December 16 hearing, I read the following disclaimer that was included in the settlement, which PG&E agreed to make at public meetings:

> *"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."

In my remarks, I did not mention that SJVPA representatives also agreed to read a similar 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."

Item #3

Page 7 of the Supplemental Report includes text that summarizes a Councilmember challenge to a statement in the October 28 staff report that "the CPUC could overrule [a] CCA rate-setting decision if the CPUC decided the rate was unjustifiable", to which staff responded, "*the CPUC has some limited authority over CCAs that may extend to rates as events unfold*".

As I said in my remarks on December 16, both the initial and follow-up staff statements are incorrect. The CPUC cannot overrule any CCA rate-setting decision, and the CPUC will not have any ratemaking authority over CCAs as events unfold. The only ratemaking activity by the CPUC that will, indirectly, affect CCAs will relate to the "cost responsibility surcharge", which is a payment that departing load in PG&E's territory must make to PG&E's remaining customers, in order to ensure that those customers do not experience increased costs due to the departure of load to a CCA. Again, this is a statutory requirement imposed by AB 117 (see Section 366.2(d)(1) of the Public Utilities Code, as enacted by AB 117 (2002)).

Item #4

Page 8 of the Supplemental Report includes a discussion of the potential costs of carbon allowances, should Oakland form a CCA. As I noted in my remarks, the discussion is incomplete or inaccurate for a number of reasons. The Question and Answer are reproduced below, then followed by explanatory material regarding CPUC policies in this area.

Q: "Staff should indicate the assumptions that led to:

b. The assertion that the potential cost of carbon allowances could be $13 million in the first year of the CCA"

A: "The assumptions are as follows:

b. In the joint CEC/CPUC draft Final Opinion and Recommendations on GHG Regulatory Strategies of October 2008, Section 5.2.1.1 titled Distributions in Proportion to Deliverers Historical Emissions states that "one option would distribute allowances to deliverers in proportion to their historical emissions in a fixed prior baseline year or multi-year period." Accordingly, staff assumed that the first year's emissions allowance may be equal to the prior year's emissions, allocating a fixed number of carbon emissions allowances to the CCA based PG&E's historic average level of emissions per kWh.

Using hydroelectric and nuclear supplies, PG&E's average emissions are 222 Metric Tons of C02 equivalent (MT C02e) per GWh (1,000,000 Kilowatt-Hours). In Year 1, a CCA supplying from 20% renewable and 80% combined cycle natural gas-fired (400 MT C02e per GWh) sources would emit 800,000 MT C02e, or 244,000 MT more than its allocation, based PG&E's historic emissions. Purchased carbon emission allowances at $55 per MT C02e, the cost in the first year would be approximately $13 million."

Much of the above material is incomplete, or not fully accurate, but this is mainly because California's carbon policy-making efforts are not yet complete. The following information is provided to correct the record as it stands today.

First, the staff response refers to the Commission's "draft decision", but that Decision was final, having been issued on October 22, 2008 (see Decision 08-10-037).

Second, it is important to clarify that the California Air Resources Board (CARB) is the agency that will enforce carbon regulations in California. Decision 08-10-037 was issued in concert with the California Energy Commission, in the form of recommendations to CARB as to how CARB might approach its regulatory policy for the electricity sector in California. CARB, in turn, is just beginning the process of finalizing its regulations, which would take effect in January, 2012.

Third, it is important to clarify that the "point of compliance" for regulatory purposes is likely to be the "deliverer" of energy onto the electrical grid in California, not the CCA, as staff suggested. In simple terms, this means that the generators of electricity must obtain and surrender carbon allowances in order to comply with AB32; a CCA would only have this compliance obligation if it generated its own electricity. Furthermore, Decision 08-10-037 contemplates that, to the extent that "deliverers" of energy were required to purchase allowances, and subsequently included those purchase costs in the price that they charged to retail providers, those retail providers would actually be allocated some proportionate share of the revenues collected from the "deliverers"—thus indirectly being compensated for the higher prices they pay for carbon. A CCA, as a retail provider, would be likely to receive a fair share of these proceeds.

Fourth, though as noted immediately above, the net cost to a CCA will be the difference between the cost of carbon that is included in future energy costs, and the offsetting revenues received by the CCA from the proceeds of any sale of carbon allowances, CPUC staff point out that one cost assumption in the Public Works staff response seems too high. That response includes this statement: "purchased carbon emission allowances at $55 per MT C02e, the cost in the first year would be approximately $13 million." CPUC staff notes that Decision 08-10-037 bases its analyses on an assumed carbon price of $30 per MT C02e, not $55. Thus, using the lower price, the $13 million estimate becomes about $7 million. The larger point, however, is that the entire example appears inconsistent with the actual recommendations made to CARB by the CPUC and the CEC.

Item #5

Page 10 of the Supplemental Report included the following exchange:

> Q: "The staff report seems to suggest that a CCA could not have the energy efficiency programs that PG&E currently implements. There are, however, PG&E programs, funded by the state, which could also be tapped by a CCA. Staff should identify PG&E energy conservation programs, and ascertain show how each is funded."
>
> A: CCA customers would have access to PG&E programs administered by PG&E (the CPUC has stated that CCAs are not allowed to administer the energy program funds without explicit CPUC authorization). Staff continuously reviews PG&E programs for energy efficiency, demand response, and renewable generation opportunities to apply in Oakland.

During the hearing, CPUC staff committed to obtaining more complete information around this question, and the related question of whether Oakland might be at risk of losing energy efficiency funding if it continues to consider formation of a CCA.

First, the short answer to Oakland's concern is that there is no relationship between receiving energy efficiency funding and a local government's decision to form a CCA. CPUC staff are searching for verification of the Public Works staff's statement that "the CPUC has stated that CCAs are not allowed to administer the energy program funds without explicit CPUC authorization", but have not yet succeeded.

Second, regarding Commission policies on Energy Efficiency funds, in its original October 28, 2008 report, Oakland staff described two programs that PG&E had identified as potential funding sources to assist Oakland with meeting its goals of (1) reducing Oakland's community-wide electricity use and (2) creating a shared, sustainable business plan to serve all of the remaining load using electricity generated from renewable sources.

In its response a request from the City Administrator, PG&E identified two such programs:

- Through the "Innovator Pilots Program" spend **<u>$5 million</u>** on working with Berkeley, Emeryville and Oakland on energy and greenhouse gas reduction strategic planning

- Through the "East Bay Energy Watch" (EBEW), target **$7 million** of EBEW Program funds for energy efficiency programs serving business and residents in Berkeley, Emeryville and Oakland.

The funding referenced above would be awarded by the Commission as part of the 2009-2011 energy efficiency funding cycle. The Commission has not yet issued a decision on the proposals it has received for this cycle—that decision is expected sometime in the first half of 2009. In the meantime, nothing that Oakland does, or does not do, regarding the CCA option will in any way impact the Commission's decisions on funding proposals, or the likelihood that Oakland will, or will not, receive the proposed funding outlined by PG&E. To the extent that PG&E suggested otherwise at the December 16 hearing, that suggestion was incorrect.

Thank you again for the opportunity to comment on the Public Works Supplemental Staff Report. Please feel free to contact either myself or Carlos Velasquez, Regulatory Analyst, (415) 703-1124 with any further feedback or questions.

Sincerely,

Stephen C. Roscow

Program and Project Supervisor
California Public Utilities Commission, Energy Division