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Office of the President

TO MEMBERS OF THE COMMITTEE ON FINANCE:

ACTION ITEM – CONSENT

For Meeting of November 17, 2010

APPROVAL OF DELEGATION OF AUTHORITY AUTHORIZING THE PRESIDENT TO EXECUTE A JOINT POWERS AGREEMENT FOR THE PURPOSE OF PURCHASING NATURAL GAS

EXECUTIVE SUMMARY

Currently, the University purchases natural gas through a program operated by the California Department of General Services (DGS). Anticipated changes within DGS have led to an examination of alternate structures for the aggregated purchase of low-cost natural gas. The creation of a Joint Powers Authority would supersede and replace the existing program and allow the University to partner with other public sector entities to achieve significant economies of scale in the purchase of natural gas as well as other energy related projects and programs. Original signatories to the California Public Energy Agency Joint Powers Agreement (Agreement) would be DGS (representing California State Executive Agencies) and the University. The Agreement may be found in Attachment 1. The Agreement would not take effect until such time as it is signed by at least three members and the total annual dollar natural gas purchases of the initial members equal at least 75 percent of the volume of annual purchases within the current DGS gas program (current list of DGS clients and potential Agency members is attached in Attachment 3).

An Agreement in principle to form a Joint Powers Authority has been reached between the University of California and DGS. Under Government Code Section 6502, the formation of the Joint Powers Authority requires the Regents' approval, authorizing the President or his designee to commit the University to the formation of a new legal entity.

The terms of the proposed Agency are outlined in principle and detailed below but remain the subject of negotiations. The proposed action would authorize the President, or designee to approve the final terms, in consultation with the Office of General Counsel, so long as they do not materially increase the obligation or risk to the Regents as described herein.

RECOMMENDATION

The President recommends that the Committee on Finance recommend to the Regents that:

A. The University be authorized to participate as a full voting member of the California Public Power Agency (Agency) including, without limitation, a Joint Exercise of Powers Agreement substantially in the form shown in Attachment 1, such Agreement to include the following provisions:

(1) The purpose of the Agency would be to produce, generate, acquire, own, manage, store, pool, bank, transmit and distribute Energy, Environmental Attributes and related services for its Members and participants with whom the Agency may enter into Project or Program Agreements.

(2) The Agreement forming the Agency would remain in effect until the earlier of the withdrawal of all Members or termination by the then remaining Members.

(3) The Agency would be authorized to do all acts necessary for the exercise of its powers, including, but not limited to those powers substantially as enumerated in Article III of the Joint Exercise of Powers Agreement attached as Attachment 1.

B. The President be authorized to administer the University's participation in the Agency, including, but not limited to, appointing the University of California representative to the Board of the Agency.

C. The President be authorized to approve the allocation of and transfer of funds to the Agency for the purpose of providing initial start up and operating capital for the Agency per the Final Business Plan substantially as set forth in Attachment 2, and as reviewed by the President prior to implementation of the Joint Powers Authority.

D. The President, after consultation with the General Counsel, be authorized to approve and to execute any documents reasonably required for the University's participation in the Agency.

BACKGROUND

Proposed Action

Since 1995, DGS has provided the bulk of the University's natural gas needs. Anticipated changes within that agency have become a matter of concern to the University. Because of the State's current fiscal and political environment, including continuing lay-offs and hiring freezes as well as the limitations of civil service hiring practices, it is unclear that DGS management will have the ability to address the management transition required to continue effective natural gas purchasing services to the University and its other customers. For this reason it is proposed that the President be granted authority to execute a Joint Exercise of Powers Agreement (Agreement) per Sections 6500-6536 of the California Government Code. The new Joint Powers Authority would be named the California Public Energy Agency (CPEA). It is proposed that an Agreement be executed initially by the University and the DGS, but it would not take effect unless also executed by at least three members and that the total annual dollar volume of CPEA must be equal to at least 75 percent of current DGS volume.

Current Status of Natural Gas Procurement Practices

The University's current energy profile is heavily weighted toward the use of natural gas. Approximately 70 percent of the University's energy needs are supplied by natural gas, due in large part to the University's utilization of cogeneration for the on-site generation of electricity.

The University currently purchases $120 million of natural gas per year, and of that approximately three quarters is purchased through DGS. Through judicious natural gas purchasing and mixing future purchases with spot index purchases, DGS has provided the University with stable competitive gas pricing through its gas portfolio (Pool) product in the face of a turbulent natural gas market. In addition, DGS has made special purchases on behalf of UC Campuses outside of this Pool in response to individual campus risk management requirements. In order to enable DGS to purchase natural gas futures on an ongoing basis, customers' five year contracts are renewed each year unless the customer opts out of the program.

Because natural gas deliveries are required to be in balance with actual gas use, natural gas purchases and deliveries require close managing. DGS currently manages natural gas scheduling for the University as well as assuming responsibility for any penalties resulting from its management. DGS charges the University approximately $237,000 per year to manage its $90 million in annual gas purchases from DGS. The University's purchases represent approximately 38 percent of the DGS's total purchase volume.

Transition to the Joint Powers Authority (CPEA)

In response to the aforementioned concerns regarding the ongoing viability of gas procurement within DGS, the University and top level DGS management developed an alternative program framework that would transition to a Joint Powers Authority (JPA) as an effective method of shifting gas purchasing functions to a more stable structure. It is proposed that a Joint Exercise of Powers Agreement be executed initially by the University and DGS, and that agreement would not take effect unless also executed by at least three members and that total annual dollar volume of the CPEA will be equal to at least 75 percent of current DGS volume.

This two step process recognizes that State and Consumer Services Agency leadership is politically appointed, and thus it is advantageous to reach an agreement before January 1, 2011 to avoid the delays in decision making as a new State administration is constituted.

Joint Powers Authority (CPEA) Agreement

The proposed Joint Exercise of Powers Agreement has been developed by the University's outside counsel in consultation with DGS (Attachment 1). This Agreement provides that the CPEA be governed by a Board of Directors. The Board of Directors consisting of as few as three but no more than nine representatives of the Agency members. Actions of the Board of Directors may be taken by a majority vote, but certain actions may require a supermajority vote. The Members further retain the right to call for a vote weighted according to their dollar percentage participation in CPEA programs. The University's voting percentage would be between 40 percent and 50 percent (based on volume and number of current DGS customers).

Summary of CPEA Business Case

As a unit within State Government, DGS's natural gas purchasing program has been able to minimize costs due to below market salary and nominal costs for office space and administrative services. Perhaps as importantly, because it is part of California State Government, DGS has not been required to provide either working capital or collateral. Revenues from gas purchasing are pooled with other DGS funds ensuring that any temporary cash flow issues are bridged by the fund. With the backing of the State of California, DGS has avoided the normal working capital and collateral requirements typically demanded of other large natural gas customers.

As a separate entity, CPEA would not have these advantages. It would need to meet its administrative and salary requirements at market rates. Furthermore, because the liabilities of a JPA would not be the liabilities of its members, CPEA would not have an established credit rating at the beginning of operations and would thus need to arrange for collateral. Strategies for addressing these issues are outlined in the draft Business Plan attached as Attachment 2. A formal business plan, commissioned by DGS and California State University (another prospective CPEA member) is forthcoming and expected to be complete by July 1, 2011 prior to CPEA's becoming operational. A satisfactory business plan would be the basis of University operational commitments to the CPEA.

After taking into account start-up costs and working capital needs, overhead costs are estimated to increase by 20 percent-40 percent per year. In addition, members and participants would need to provide collateral normally required by gas suppliers. Given that CPEA would not have a credit rating at startup, participants might be required to contribute to an insurance fund to provide collateral, or members and participants may need to provide a liquidity commitment in an amount equal to three months' natural gas purchases (in the University's case this would be approximately $22.5 million), to be funded from University campuses in proportion to their participation in the CPEA natural gas program.

Alternatives to a Joint Powers Authority

Although there are two pre-existing JPAs with gas purchasing programs in California, SPURR (School Project for Utility Rate Reduction) and ABAG (Association of Bay Area Governments) Power, neither is a feasible fit for the University. The former, by charter, is constituted to primarily serve K-14 public education; the latter is restricted to ABAG members.

It is conceivable that the University could implement its own natural gas purchasing program, either via the Office of the President or through one of the campuses. One advantage of such an approach is that the University could rely upon its credit rating and thus avoid the collateral requirements anticipated through its participation in a newly-formed JPA, although it would also expose itself directly to the risks inherent in the purchase of natural gas.

The drawbacks of this model is that the University would lose the economies of scale and purchasing power currently provided by DGS and anticipated to be available through CPEA. Furthermore the University would be exposed to a significantly higher level of risk in an operational area that is not part of its core competence. The University would need to hire, supervise, and train its own staff instead of relying on CPEA expertise. Keeping in mind the large ($90 million) gas budget of the University, any purchasing or gas scheduling error could have a significant negative impact on the University's utilities budget. Further complicating this model, the University's current contract with DGS, which stretches to 2015, includes complex natural gas future positions that would need to be unwound and then assigned to the University. In contrast, under the proposed CPEA it is anticipated that all or nearly all customer and supplier contracts will be assigned to the new JPA.

Other University JPAs

Where it is in the best interests of the University, the Regents have in the past provided the President with authority for the University to participate in Joint Power Agencies to combine forces with other public agencies to for mutual benefit.

In 2009 (March 16 Interim Item), the Regents approved a recommendation that the President be authorized to administer the University's participation in a JPA with Los Angeles City, Los Angeles County and other public entities adjacent to the Los Angeles campus, for purposes of developing a shared radio communications network. Likewise, in 2004 the Regents authorized the President to administer the University's participation in a JPA the purpose of which would be to undertake acquisition, ownership, planning, management, improvement, and operation of the Conaway Ranch (17,300 acres in Yolo County).

Next Steps

It is anticipated that the Department of General Services is prepared to execute a Joint Exercise of Powers Agreement by January 1, 2011. Subject to the approval of the Regents, and with the concurrence of General Counsel, the President or his designee would enter into the Joint Exercise of Powers Agreement substantially in the form attached as Attachment 1 with terms acceptable to the University. The proposed Joint Exercise of Powers Agreement would not take effect until executed by at least three signatories and sufficient participation to bring total per year dollar volume of the new Joint Powers Authority to 75 percent of current DGS volume. With these additional members, the Agency would be formed and the JPA Agreement become effective at which time DGS gas procurement customers, including the University, predicated upon a satisfactory business plan would begin the transition to the new Agency.

(Attachments below)

CALIFORNIA PUBLIC ENERGY AGENCY
JOINT POWERS AGREEMENT

DRAFT

This California Public Energy Agency Joint Powers Agreement ("the Agreement") is made and dated as of ______________ , 2011 with reference to the following recitals:

RECITALS

WHEREAS,

A. The Joint Exercise of Powers Act, California Government Code section 6500 *et seq*., permits two or more public agencies by agreement to jointly exercise any power common to them;

B. Each of the Parties to this Agreement is a "public agency" as defined in Government Code section 6500;

C. Each of the Parties to this Agreement consumes energy in the performance of its essential governmental functions and has the authority to purchase acquire, or generate energy for its own consumption;

D. It is the desire of the Parties to this Agreement to use any power common to them that will make more efficient the use of their individual powers to purchase, store, pool, transmit and distribute and acquire natural gas, electricity, and other forms of energy, or to generate electricity for their own consumption;

E. It is the intent of the Parties to this Agreement to form a joint powers agency, separate and apart from any of them individually or collectively, to purchase, acquire, or generate natural gas, electricity , on behalf of themselves and other Participants which are not Parties but which may choose to contract for such commodities or energy services with the joint powers agency, and over time to supersede and replace the current Natural Gas Services Program operated by the State of California Department of General Services which currently provides those services to the executive departments of the State of California and to other public agencies within the State of California;

F. This Agreement is being executed initially by the University of California and the State of California Department of General Services, but shall not take effect unless and until also executed by at least three (3) additional Parties as provided in Article I, section 4 of this Agreement. Each of the the signatories to this Agreement is a "Party", and each Party is a Member of the the joint powers agency formed hereby; and

G. The Agency formed hereby shall be based upon such operating principles as may be established by its Board, including equitable treatment of all Members or Participants, regardless of size, with a basis in cost causation such that the Members or Participants causing the Agency to incur a given cost, or receiving a particular benefit, shall bear the burden of paying such costs proportionate to their causation or the benefits received.

AGREEMENT

ARTICLE I – FORMATION OF CALIFORNIA PUBLIC ENERGY AGENCY

1. Formation of CPEA. There is hereby established a public agency, separate and apart from any of the Parties to this Agreement, to be known as the CALIFORNIA PUBLIC ENERGY AGENCY ("the CPEA" or "the Agency").

2. Purpose – Common Powers. The purpose of the CPEA is to acquire, for use by the Members, and for those other Participants with whom CPEA may enter into Project or Program Agreements for this purpose, natural gas and other energy products and services, including without limitation the purchase or acquisition, storage, pooling, transmission, or generation of gas and/or electricity, including any environmental attributes associated with any such actions.

This Agreement is made pursuant to the Act and its purposes are to provide for the joint exercise of powers common to the Members and for the exercise of such additional powers as are conferred by the Act and otherwise under California law. The Members are each empowered by the laws of the State of California to exercise the powers specified herein, and in connection therewith the planning, financing, construction, acquisition, operation, maintenance, trading, sale, lease or other disposition of Programs and Projects, and these common powers shall be exercised for the benefit of any one or more of the Members or otherwise as hereinafter authorized

3. Definitions. The following terms as used in this Agreement shall have the meanings ascribed to them in this section:

Act: The term “the Act” shall mean the Joint Exercise of Powers Act, Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, as it may be amended from time to time.

Agency: The term "the Agency" means the California Public Energy Agency ("CPEA") formed by this Agreement.

Board: The term "Board" means the Board of Directors of the Agency, as provided in Article II section 2.

Brown Act: The term "Brown Act" means the Ralph M. Brown Act, California Government Code section 54950, *et seq.*, as it now exists or may hereafter be amended.

CPEA: The term "CPEA" means the California Public Energy Agency formed by this Agreement. It is synonymous with the term "Agency."

CPEA Natural Gas Services Program or "CPEA-NGSP": The terms CPEA Natural Gas Services Program" or "CPEA-NGSP" mean a Program, as provided in Article VI section 2 of this Agreement, by which CPEA will arrange for the acquisition of natural gas and related services for delivery to the Participants in the CPEA-NGSP, and which Program is intended to be a replacement service for the DGS Program.

Director: The term "Director" means a member of the Board.

DGS: The term "DGS" means the State of California Department of General Services.

DGS Program: The term "DGS Program" means the Natural Gas Services Program operated by DGS in the form it existed on July 1, 2010.

Effective Date: The term "Effective Date" means the date established by Article I section 4 of this Agreement and upon which this Agreement is to take effect.

Member: The term "Member" means any any Public Agency which is a   signatory to this Agreement and has become a Member pursuant to Article II section 1.

Member Agency Participation Percentage: The term “Member Agency Participation Percentage” means, for any given Member, means the ratio that (i) the total dollar amount that such Member paid for participating all Programs in which they participated during the period from the most recent Record Date to the Record Date previous to the most recent Record Date, plus (ii) the total dollar amount that such Member paid for participating in all Projects in which they participated during that same period, bears to the total dollar amount paid by all Members during that same period in participating in all Programs and Projects, expressed as a percentage. The Member Agency Participation Percentage is utilized in Board voting in accordance with Article II section 3(b). [MOVED INTO ALPHABETICAL ORDER]

Member Program Participation Percentage: The term “Member Program Participation Percentage” means, for any given Member relative to a given Program, the ratio that the dollar amount that Member paid in participating in a particular Program during the period from the most recent Record Date to the Record Date previous to the most recent Record Date, bears to the total dollar amount paid by all Members during that same period in participating in that same Program, expressed as a percentage. The Member Program Participation Percentage is utilized in decision making for Programs in accordance with Article II section 3(c).

Member Project Participation Percentage: The term “Member Project Participation Percentage” means, for any given Member relative to a given Project,the ratio that the dollar amount of the capital contributed, assessed, paid or allocated to the Member for the applicable Project bears to the total capital contributed, assessed, paid or allocated to all Members for that same Project , expressed as a percentage. The Member Project Participation Percentage is utilized in decision making for Projects, in accordance with Article II section 3(c).

Participant: The term "Participant" means any Member or other California Public Agency, or other entity as approved by the Board, which has executed a Program Service

Agreement or Project Agreement with the Agency and thereby agreed to participate in either the CPEA Natural Gas Services Program or any other Program of the Agency.

Participant Agency Participation Percentage: The term “Participant Agency Participation Percentage” means, for any given Participant, the ratio that the total dollar amount that Participant paid in participating all Agency Programs during the period from the prior Record Date to the Record Date previous to the prior Record Date, bears to the total dollar amount paid by all Participants during that same period in participating in all Agency Programs, expressed as a percentage. The Participant Agency Participation Percentage is utilized to determine the eligibility of a Participant for membership in the Agency in accordance with Article II section 1.

Party: The term "Party" means any signatory to this Agreement.

Program: The term "Program" means either the CPEA Natural Gas Services Program, as established in Article V section 2 for the purchase of natural gas by the Agency on behalf of those Members and other Participants in the Natural Gas Purchase Program and as a replacement for the DGS Program, or another Program for the purchase of a different energy related commodity or service, as established in Article V, for those Members and other Participants choosing to participate in such Program.

Program Committee: The term "Program Committee" means a committee, established by the Board, to administer a Program.

Program Agreement: The term "Program Agreement" means an agreement, the terms of which are approved by the Board, between the Agency and a Member or other Participant and by which a Member or other Participant chooses to participate in a Program and agrees to pay for the cost of the commodity or service provided by the Program.

Project: The term “Project” shall mean:

a. a facility or any interest therein, including but not limited to ownership interests or capacity rights or purchases of output, relating to the generation, storage or transmission of energy for public or private uses, and all rights, properties, and improvements necessary therefore, including fuel and water facilities and resources, including without limitation a facility for the development of energy from renewable sources or energy in other forms, and rights thereto, to be acquired, constructed, or operated by or on behalf of the Agency pursuant to this Agreement;

b. the acquisition, construction, maintenance and operation of energy facilities capacity or the purchase or acquisition, storage, pooling, transmission, or generation of gas and/or electricity, including any environmental attributes associated with any such actions (including, without limitation, gas extraction, digestion, gathering, storage, pipeline transportation or other gas facilities) and the purchase and sale of output from such facilities and the purchase and sale of gas (including, without limitation, natural gas reserves, sales, brokering, exchanges (including gas for power), storage and transportation of gas), to the extent deemed necessary or advisable by the Agency, and all rights, properties, and improvements necessary therefor and rights thereto, to be acquired, constructed, or operated by or on behalf of the Agency;

c. the acquisition, registration and sale of any environmental commodity designated by the Board as a Project for purposes of this Agreement, including but not limited to: (1) renewable energy credits (also known as renewable energy certificates, green tags and tradable renewable certificates) (collectively, "REC's"), such as REC's created pursuant to California Public Utilities Code Sections 399.11 and following; (2) emissions reduction credits or allowances, such as the credits created pursuant to California Health and Safety Code Sections 40709 and following; (3) permits or allocations for carbon offsets and (4) other interests in environmental attributes or benefits of renewable energy projects or other types of green projects and the corresponding rights to offset the environmental impacts of conventional energy use and similar commodities, credits, rights and interests that may be authorized pursuant to AB 32 or similar legislation; and

d. any other project, facility, improvement, asset, commodity or interest therein related to the generation, or transmission of energy as may be designated by the Board as a Project for purposes of this Agreement.

Project Agreement: the term “Project Agreement” means an agreement , the terms of which are approved by the Board, between the Agency and a Member or other Participant and by which a Member or other Participant chooses to participate in a Project and agrees to pay for Project costs and obtain the energy or other benefits provided by the Project.

Project Committee: the term "Project Committee" means a committee, established by the Board, to administer a Project or advise the Board regarding it.

Public Agency: The term "Public Agency" means an entity as defined by California Government Code section 6500, as it now exists or may hereafter be amended.

Record Date: The term "Record Date" means the June 30th of every year.

Revenue Obligations: The term “Revenue Obligations” shall mean revenue bonds, notes, commercial paper or any other evidences of indebtedness of the Agency or any interest rate swap, commodity price swap, basis swap and similar hedging contract intended to hedge payment, rate, cost or similar exposure, or any credit enhancement agreement or similar instrument, including without limitation the principal, interest, termination or other payments to be made by the Agency with respect thereto, whether now or hereafter authorized to be issued or executed and delivered pursuant to the Act or any other applicable law in connection with the financing of any Project or Program.

UC: The term "UC" means the University of California.

4. Effective Date. This Agreement shall take effect upon the execution of this Agreement by Public Agencies representing seventy-five percent (75%) or more of the annual dollar volume of the DGS Program measured as of the Record Date in 2010. Provided, however, that in the event full execution of this Agreement by Public Agencies representing seventy-five percent (75%) or more of the annual dollar volume of the DGS Program measured as of the Record Date in 2010 has not occurred by December 31, 2011, then this Agreement shall terminate without taking effect and it shall be of no force or effect.

5. Debts and Liabilities of the Agency.

a. None of the debts, liabilities, or obligations of the CPEA shall be the debts, liabilities, or obligations of any of the Members unless and to the extent assumed in a particular case by resolution of the governing board of the Member to be charged.

Except as provided in this Section, neither the Agency nor the Board shall have the power or authority to bind the Members, or any of them, to any debt, liability, contract, obligation, employee or agent of the Agency or the Board. No action or omission of the Agency shall be attributable to the Members, and no action or omission of any Member shall be attributable to the Agency or the other Members, except as provided in subsection (b).

b, As, but only to the extent, required by California Government Code Section 895 and following, the Members shall be jointly and severally liable to third persons for damages arising from the performance of this Agreement, and shall be entitled to contribution and indemnity from each other. Provided, however, that such contribution and indemnity shall be based upon the Member Program or Project Participation Percentage, as may be applicable, rather than based upon pro-rata shares.

ARTICLE II –ORGANIZATION AND GOVERNANCE OF CPEA

1. . CPEA Membership .

a. Joining Agency. Any California Public Agency may become a signatory to this Agreement and thereby become a Member in CPEA if: (i) such Public Agency has a Participant Agency Participation Percentage greater than one (1%) percent as of the Record Date prior to execution of the Agreement; and (ii) if such joinder is approved by a vote of not less than sixty-six (66%) of the membership of the Board.

b. Loss of Agency Membership. Any Member whose Participant Agency Participation Percentage is equal to or less than one (1%) percent on three (3) or more Record Dates in a five (5) year period, shall be notified in writing by the Agency that its Member status has become probationary. Such Member shall cease to be a Member upon the next Record Date, occurring within two (2) years of the notice, on which its Participant Agency Participation Percentage is one (1%) percent or less. Loss of membership status shall not affect (i) the ability of such Public Agency to act as a Participant; (ii) the liability of such Public Agency for any debts or obligations incurred prior to loss of membership status, nor shall such loss of membership affect any Program Agreement or Project Agreement then in effect.

2. CPEA Board. The CPEA shall be governed by a Board of Directors of between five (5) and nine (9) persons, consisting of one Director appointed by each Member, if nine (9) or fewer Members exist as of the last Record Date. In the event that ten (10) or more Members exist as of the last Record Date, then the Board shall consist of nine (9) Directors, one of whom is appointed by each of the nine Members having the largest Member Agency Participation Percentage as of the last Record Date. Each Director shall serve at the pleasure of the Member which appointed him or her. Each Member may appoint an alternate Director, who shall serve in the absence of that Member's Board appointee.

The Members shall be responsible for advising the General Manager and Chair of the appointment or removal of Directors or alternate Directors, and for providing the correct contact information for all such persons.

3. Board Voting Procedures.

a. A quorum of the Board shall consist of a majority of the of Directors. .

b. Each Director shall normally have one (1) vote. A majority of a quorum shall be required to adopt any motion. Provided, however, that, except as otherwise provided by this Agreement, at the request of any Director or as otherwise required by this Agreement, voting with respect to any matter shall be by Member Agency Participation Percentage, in which case a vote of at least sixty-six (66%) percent shall be required to adopt any motion.

c. Project or Program Votes. Any actions involving any particular Program or Project, and not affecting the rights of a non-participant in such Program or Project, may be taken by vote of those Directors appointed by Member participants of such Program or Project in accordance with their Member Program Participation Percentage or Member Project Participation Percentage, unless the applicable Program or Project Agreement provides for other standards of governance. If only one Director is appointed by a Member which is a participant in a Program or Project, then all actions involving that Program or Project, and not affecting the rights of a non-Participant in such Program or Project, may be taken by the designated Director of the participating Member, exercising for that purpose the powers of the Board. Provided, however, that not withstanding the provisions of this subsection, any such actions or votes as permitted by this subsection shall occur at a meeting of the Board at which a quorum of the Board is present. And further provided, that in the event no Director is appointed by a Member which a participant in the Program or Project in question, then the action shall be taken by the entire Board as provided in subsection (b).

4. Chair of the Board. The Board of the Agency shall elect from among them a Chair and a Vice-Chair. The Chair and Vice-Chair shall be elected annually, at the first meeting of the Board following the Record Date. He or she shall preside at meetings of the Board, and perform such other duties as the Board may direct. The Vice-Chair shall act in the absence of the Chair

5. Meetings. The Board shall provide for regular and special meetings in accordance with the Brown Act. The Agency is declared to be a joint powers agency with membership "throughout the state" in accordance with Government Code section 54954(d), and which may therefore meet at any location within the State.

6. Bylaws –Rules of Procedure. The Board may adopt such Bylaws governing the operations of the Agency and meetings of the Board as may appear to be proper, including the adoption of Programs or Projects, and the establishment of Program Committees or Project Committees. To the extent not in conflict with the Brown Act or otherwise provided in such Bylaws, meetings of the Board and any committees established by the Board shall be subject to Roberts Rules of Order, as revised.

7. Committees. The Board may appoint such advisory committees as are appropriate, consisting either of Board members or other representatives of the Participants in the Programs or Projects.

a. Committees shall be subject to the Brown Act.

b. The Board may delegate the advisory oversight of a given Program or Project to a Program or Project Committee, as set forth in the Bylaws, provided that any such Program or Project Committee shall include representatives of each Member participating in the Program.

8. Officers. The officers of the CPEA shall consist of the Chair and Vice-Chair of the Board as provided in Article II, section 4 above, and a General Manager, a Treasurer-Controller, and a General Counsel.

a. General Manager. The Board shall appoint a General Manager, who shall serve at the pleasure of the Board. The Board may either directly employ the General Manager or contract with one of the Members for such services. The General Manager shall have charge of, handle, and have access to, all property of the Agency, and shall hire, supervise, terminate and otherwise be in charge of the staff of the Agency, in conformance with such personnel rules as are adopted by the Board. The General Manager shall have such purchasing and contracting authority as may be delegated to him or her by Board resolution.

b. Treasurer and Controller. The Board shall appoint a Treasurer and Controller, who shall serve at the pleasure of the Board. The Board may either directly employ the Treasurer and Controller or alternatively the ____________ of _______________ shall serve as the Treasurer and Controller. The Treasurer and Controller may be required to maintain a fidelity bond by the Board. [PARTIES ARE STILL CONSIDERING IDENTITY OF TREASURER –MUST IDENTIFY IN JPA, ALTHO THE BOARD MAY LATER CHANGE]

c. General Counsel. The Board shall appoint a General Counsel, who shall serve at the pleasure of the Board. The Board may either direct employ or contract for the services of the General Counsel, or it may contract with one of the Members for such services.

ARTICLE III --- POWERS

1. <u>CPEA Powers.</u> The Agency is authorized, in its own name, to do all acts necessary or convenient to fulfill the purposes of this Agreement referred to in Article I, section 2, including but not limited to the following:

a. To make and enter into contracts.

b. To incur debts, liabilities, and obligations including Revenue Obligations; provided that no debt, liability or obligation of CPEA shall be a debt, liability, or obligation of any Member except as such Member may expressly agree.

c. To acquire, hold, construct, manage, operate, maintain, sell or otherwise dispose of real and personal property and Projects by any appropriate means.

d. To acquire property by eminent domain.

e. To receive contributions and donations of property, funds, services, and other forms of assistance from any source.

f. To sue and be sued in its own name.

g. To employ agents and employees.

h. To receive, collect, invest and disburse monies.

i. To issue Revenue Obligations or other forms of indebtedness, as provided by law.

j. To carry out other duties as required to accomplish such other responsibilities as may be set out in this Agreement.

k. To assign, delegate or contract with any Member or third party to perform any of the duties of the Board or the officers of CPEA, including but not limited to acting as General Manager.

l. To acquire, construct, operate, maintain, finance, trade, own, lease, sell and otherwise dispose of any Program or Project for the purposes authorized under this Agreement.

m. To enter into Program or Project Agreements and provide security for the repayment of any Revenue Obligations issued or executed and delivered to finance a Program or Project, subject, however, to the conditions and restrictions contained in this Agreement.

n. To exercise all other powers necessary and property to carry out the provisions of this Agreement.

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The Agency is authorized, in its own name, to do all acts necessary or convenient for the exercise of such powers for such purposes that each of its Members could do separately, and all other acts authorized by the Act and any other laws of the State of California or the United States of America.

2. Manner of Performance. The Agency shall undertake its duties in accordance with the laws governing the University of California.

3. Interim Performance of DGS Program. In recognition that this Agreement is intended to supersede the DGS Program, but that the contract term of many of the Gas Services Agreements entered into by DGS with various participants will not have expired prior to the Effective Date of this Agreement, CPEA shall enter into an agreement with DGS, upon such terms as approved by the Board, by which CPEA provides the administration of the those remaining Gas Services Agreements until their term has expired. [IN LIGHT OF THE MANDATORY NATURE OF THE CPEA/DGS AGREEMENT, THE TERMS OF THE AGREEMENT –INCLUDING ANY COST TO CPEA—SHOULD BE AGREED UPON PRIOR TO FORMATION]

4. Loans from Members. Contributions or advances of public funds and of personnel, equipment or property may be made to the Agency by any Member for any of the purposes of this Agreement, with the consent of the Agency. Any such advance may be made subject to repayment, and in such case shall be repaid in the manner agreed upon by the Member making such advance and the Agency.

ARTICLE IV – FINANCES

1. Fiscal Year. The first fiscal year of the Agency shall be from the Effective Date until the following June 30th. The subsequent fiscal years of the Agency shall be from July 1 until the following June 30th.

2. Budget. Prior to April 1 of each year, the Board shall adopt an annual budget for each fiscal year. The Board may, in its sole discretion, adopt a multi-year budget for not to exceed three (3) fiscal years. Each budget shall be balanced such that the costs charged to those Members participating in any Program or Project are sufficient to pay for that Program or Project and a prorata share of Agency administrative costs without subsidy from Members who do not participate in such Program or Project.

3. Administrative Costs.

a. Members shall pay an annual fee, as established by the Board in the annual budget, to cover their proportionate share of the costs (based upon Member Agency Participation Percentage) of Agency administration and overhead, if any, not covered by the Program or Project Agreements, including payment of Phase One Project costs as provided in Article VI section 1 .

b. Members joining CPEA within five (5) years of the Effective Date shall pay a fee, as established by the Board, to repay the start-up costs of the Agency incurred by DGS and UC, including legal fees.

c. The Board may impose a special assessment upon either or both Members and Participants to cover unanticipated expenses. Provided, however, that any such special assessment shall require the approval of both sixty-six (66%) of the membership of the Board and a Member Agency Participation Percentage vote of sixty-six (66%) of the Board.

4. Payment of Costs. By execution of this Agreement, Members agree that they will pay administrative costs as invoiced to them pursuant to section 3, and pay the costs for participation in Programs or Projects as established in Program or Project Agreements.

5. Annual Audits and Audit Costs. The Treasurer-Controller shall cause an annual fiscal audit to be made by an independent certified public accountant with respect to all receipts, disbursements, and other transactions and entries into the books of the Agency. A report of the fiscal audit shall be filed as a public record with each Member. The costs of such audit shall be paid by the Agency and charged to the Members as an Administrative Cost pursuant to Article V, sections 3 and 4. The requirements for preparing and filing annual audits for the Agency shall conform to the requirements of the Act.

6. Funds.

a. The Agency shall be strictly accountable for all funds, receipts and disbursements. It will comply with all provisions of law regarding the establishment and administration of funds, including but not limited to Government Code section 6505.

b. The Agency shall account for funds on an accrual basis.

c. The Treasurer-Controller shall receive, invest and disburse funds only in accordance with the procedures established by the Board and in conformity with applicable law.

ARTICLE VI-- PROGRAMS

1. Programs in General. The Board may in its discretion adopt Programs other than the CPEA Natural Gas Services Program established by section 2 of this Article, Such Programs may include, without limitation by reason of enumeration, services relating to the purchase, or acquisition, storage, pooling, transmission, use or generation of (i) natural gas or other gas products or alternative sources of energy, whether or not from renewable resources, (ii) electricity, whether or not from renewable resources, (iii) telecommunications services; and (iv) environmental attributes relating to any of the foregoing. The Members and other Participants may choose to participate in such Programs by execution of Program Agreements, in a form approved by the Board, which provide for the payment of the costs of such Program or Programs as well as the payment of a proportionate share of the administrative and overhead costs of the Agency as provided in Article IV section 3,, and provides for such collateral and security provisions on the part of Members and Participants as the Board considers necessary to protect the Agency from market risks inherent in commodity or other Programs.

2. Natural Gas Services Program Established. The CPEA Natural Gas Services Program is hereby established. The CPEA-NGSP is a Program by which the Agency, on behalf of those of its Members and other Participants in the NGSP, provides a comprehensive program of natural gas procurement, with a focus on supply reliability and cost risk management. CPEA will arrange for the acquisition of natural gas and related services for delivery to the Participants in the CPEA-NGSP, and which Program is intended to be a replacement service for the DGS Program.

a. Members shall, and other Participants may, participate in the CPEA-NGSP by executing a Program Agreement in a form approved by the Board which obligates the Member or Participant to among other matters : (i) pay for the natural gas contracted for; (ii) provide security or collateral to the Agency as required; (iii) accept delivery of the natural gas; and (iv) pay for a proportionate share of the administrative and overhead costs of the Agency.

b. The Agency shall enter into such commodity purchase and other related agreements, including gas transportation and pipeline management agreements, as may be required to implement the NGSP in forms approved by the Board and the General Counsel.

c. The Program Agreement for the CPEA-NGSP shall include such security and collaterization requirements as the Board considers necessary to protect the Agency from market risks inherent in commodity agreements.

3. Ownership. The Agency shall hold title to all Program assets in trust for the use of the Members who participate in such Program. The Members who participate in a Program shall defend, indemnify and hold harmless the Members who do not participate in such Program from liability of any kind resulting from or in any way related to the operation of such Project. The Members who participate in a Program agree to defend, indemnify and hold harmless the Members who do not participate and their officers, employees and agents, from and against any and all losses, claims, damages, liabilities or expenses arising solely from the carrying out of any of the Program Agreements or other transactions approved by the Board related to such Program. Notwithstanding the provisions of Section 895.6 of the Government Code of the State of California, Members who participate in a Program shall have no right of contribution from the Members who do not participate for any judgment for damages caused by a negligent or wrongful act or omission occurring in performance of the provisions of this Agreement with respect to such Program.

ARTICLE VI—PROJECTS

1. Projects in General. The Board may in its discretion adopt Projects. Projects shall normally be developed in three phases as follows:

Phase One: The first phase of a Project is an investigatory and preliminary phase. It consists of all preliminary investigation performed by CPEA staff or consultants solely out of the general funds of the Agency and prior to the time that the Board declares the matter to be a CPEA Project. For the purposes of ending Phase One, the Board may declare a termination of investigation regarding the proposed Project or declare the proposed Project to be a CPEA Project by entering into a Phase Two or Phase Three Project Agreement with one or more Members or other Participants.

Phase Two: Phase Two consists of all work done after one or more Members or other Participants has signed a Phase Two Project Agreement with CPEA for project study, design or development, but before any Member or other Participant has signed an agreement with CPEA for Phase Three of the Project. The Phase Two Project Agreement shall provide for the payment of Phase Two costs based upon Participant Project Participation Percentage, including the repayment to CPEA of any Phase One costs incurred. No signatory to a Phase Two Project Agreement shall be required to execute a Phase Three Project Agreement, however, in the discretion of the Board and the Project Participants, a Phase Two Project Agreement may be eliminated and the Project may progress directly to Phase Three.

Phase Three: Phase Three consists of all work done after one or more Members or other Participants has contracted with CPEA to participate in the financing, construction, and / or rights to the output of a Project. A Phase Three Project Agreement shall provide for the reimbursement of Phase Two expenditures by those Members or other Participants which executed a Phase Two Project Agreement but have chosen not to execute a Phase Three Project Agreement. The Phase Three Project Agreement shall provide that the Agency agrees to provide gas, energy or other Project benefits to such Members or other Participants from such Project. It will extend at least to the last maturity date or termination date of any Revenue Obligations issued or executed and delivered to finance the acquisition or construction of such Project. Such Phase Three Project Agreement shall provide for such payments as shall be agreed upon, but which will be at least sufficient to pay and discharge all obligations of the Agency incurred in connection with the planning, development, financing, construction, acquisition, operation, maintenance, trading, sale, lease, closure or other disposition of such Project. The Agency shall have power to proceed with the final acquisition and construction of a Project when a Phase Three Project Agreement shall have been entered into which provides arrangements for obtaining funds sufficient to pay all costs of such Project.

2. Financing of Projects. The Agency shall have power to issue or execute and deliver Revenue Obligations from time to time in accordance with the provisions of the Act for the purpose of raising funds necessary to finance a Project under a Phase Three Project Agreement and to carry out its powers under this Agreement, but the issuance or execution and delivery by the Agency of Revenue Obligations shall be subject to the prior approval of the Members who participate in such Project.

3. Ownership. The Agency shall hold title to each Project in trust for the use of the Members who participate in it. The Members who participate in a Project shall defend, indemnify and hold harmless the Members who do not participate from liability of any kind resulting from or in any way related to the planning, development, financing, construction, acquisition, operation, maintenance, trading, sale, lease or other disposition of such Project. The Members who participate in a Project agree to defend, indemnify and hold harmless the Members who do not participate and their officers, employees and agents, from and against any and all losses, claims, damages, liabilities or expenses arising solely from the carrying out of any of the Project Agreements or other transactions approved by the Board related to such Project. Notwithstanding the provisions of Section 895.6 of the Government Code of the State of California, Members who participate in a Project shall have no right of contribution from the Members who do not participate for any judgment for damages caused by a negligent or wrongful act or omission occurring in performance of the provisions of this Agreement with respect to such Project.

ARTICLE VII- TERMINATION

1. Termination in General. This Agreement will continue until terminated. However, it cannot be terminated until such time as all principal and interest on all Revenue Obligations and other forms of indebtedness issued by the Agency are paid in full or defeased, and all Program and Project Agreements have terminated. Thereafter, this Agreement may be terminated by the unanimous written consent of the Members .

2. Surplus Property or Assets. Upon termination, any surplus property or assets (including cash) on deposit in any fund or account of CPEA which are not held in connection with a specific Program or Project shall be returned to the Members as of the time of termination, in proportion to their participation in the Agency as of the Record Date preceding the termination. In the event that Revenue Obligations to finance any Program or Project are issued or executed and delivered, or if there is a Program or Project Agreement, whether or not Revenue Obligations are issued or executed and delivered, then upon termination of the Program or Project Agreement, any remaining assets constituting the Program or Project financed thereby shall be transferred to the Members involved in such Program or Project in proportion to their respective Member Program/Project Participation Percentages, if the Program or Project Agreement so provides for such transfer.

3. Board Authority. The Board is vested with all powers of the CPEA for the purposes of concluding and dissolving the business affairs of the CPEA upon termination.

ARTICLE IX – GENERAL PROVISIONS

1. Business Address. The Board shall establish a business address for CPEA in California, which it may from time to time revise. The Board shall provide written notice to all Members of the place of business.

2. Notice. Notice to each Member under this Agreement shall be sufficient if mailed to the Member by U.S. Mail, first class postage prepaid, at the address last on file with CPEA. Each Member shall be responsible for providing the Agency an updated address for notice. Notices shall be deemed received on the second (2nd) business day after mailing.

3. No Assignment. No Member may assign any right, claim or interest under this Agreement to any third person. No creditor, assignee, or third party beneficiary of a Member has a right, claim or title to any part, share, fund or asset of CPEA. Provided, however, that nothing in this section limits: (i) the right of CPEA to assign any interest or right it has under this agreement to a third party and (ii) the right of any Member to sell, transfer or assign any right to receive natural gas, alternative energy, electricity or other commodity acquired from CPEA pursuant to a Program Agreement where such sale, transfer or assignment will not jeopardize the tax-exempt status of any financing by which the natural gas, alternative energy, electricity or other commodity was acquired.

4. Amendment. This Agreement may be amended in writing upon the later of: (i) the approval of of the Board by not less than a 75% Member Agency Participation Percentage vote; and (ii) the approval of the governing boards of each Member. A proposed amendment must be submitted to each Member at least thirty (30) days in advance of the time when the Board considers the matter and at least thirty (30)

days in advance of when the governing board of the Member considers its approval . An amendment shall be effective immediately unless otherwise designated.

5. Severability. This Agreement is severable. If any portion, condition, or provision of this Agreement is determined by a court to be illegal or non-enforceable, or is otherwise rendered ineffectual, the validity of the remaining portions, conditions, or provisions shall not be affected.

6. Defense and Indemnity. Subject to the limitations contained in any trust or other financing document pursuant to which financing of CPEA activities are implemented, the funds of CPEA may be used to defend, indemnify and hold harmless CPEA, its Members, and their respective officers, agents and employees for actions taken within the scope of their duties while acting on behalf of the Agency.

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

8. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this California Public Energy Agency Joint Powers Agreement to be executed:

MEMBERS:

UNIVERSITY OF CALIFORNIA:	STATE OF CALIFORNIA, DEPARTMENT OF GENERAL SERVICES
By: ______________________________	By: ______________________________
Its: ______________________________	Its: ______________________________
Date: ______________________________	Date: ______________________________
Approved as to form:	Approved as to form:
By: ______________________________	By: ______________________________

ADDITIONAL MEMBERS

PUBLIC AGENCY #1

By:

____

Its:

____

Approved as to form:

By:______________________________

PUBLIC AGENCY #2

By:

____

Its:

____

Approved as to form:

By:______________________________

PUBLIC AGENCY #3
By:

____

Its:

____

Approved as to form:

By: ______________________________

UCOP

Business Plan

Transition of Department of General Services Gas Program to a Joint Powers Agency with the University of California

Budget and Capital Resources – Facilities Management Services

10/13/2010

This business plan outlines the reasons and steps involved in transitioning the current Department of General Services Gas Program to a JPA with University of California. The University currently purchases approximately $90 million annually from this program, which represents approximately 40% of the gas sold by the program and approximately 75% of all the gas purchased by the University.

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Executive Summary:
The University's current energy profile is heavily weighted toward the use of natural gas. This is in large part due to the University's utilization of six cogeneration facilities that it operates. The majority of the University's natural gas purchases since 1995 have been procured through the Department of General Services (DGS), via its Natural Gas Services Program (NGS). All University campuses, except Riverside, utilize NGS and are very satisfied customers.

The future management of NGS has become a serious concern to the University. Current NGS management is near retirement and DGS does not have a transition plan. Because of the State's current fiscal and political environment, DGS management is extremely handicapped in its ability to seriously address NGS management transition. DGS is further challenged because its limitations in hiring within the existing civil service pool for positions that are dependent on specialized knowledge and experience.

Senior management of the University has met with the Undersecretary of the State and Consumer Services Agency (Agency) May 13, 2010 to express the transition concerns described above. In turn the Secretary and Undersecretary of the Agency met with top management of DGS and NGS in May and June 2010 to evaluate the best way to mitigate the concerns raised by the University. The end result of these meetings was a unanimous decision by the Agency and DGS that the best way to ensure a smooth transition of the NGS program moving forward was to transition it away from DGS and into a Joint Power Agency (JPA).

The pending retirement status of current NGS management and the political status of current Agency and DGS management dictate that the legal formation of this proposed JPA needs to be accomplished prior to January 1, 2011. Given this tight time frame, it is not envisioned that a new gas/energy JPA would be targeted to be operational any sooner than the start of fiscal year 2011/2012. The time period between these two milestones would be utilized to transition the current NGS operation to the newly formed gas/energy JPA.

Key Considerations

- Seventy percent of the University of California's overall energy needs are supplied by natural gas, at a cost of approximately $121 million. Since 1995, nearly 75% of these natural gas purchases have been made through NGS.
- Over the last 15 years, NGS has provided the University with stable competitive gas pricing through its gas portfolio ("Pool") product in the face of a turbulent natural gas market. NGS has permitted individual university campuses to develop their own purchasing strategies and coordinated with the gas supplier and the university to implement said strategies. NGS contracts with its customers for five year "evergreen" contracts (renewed every year), enabling NGS and its customers to avoid the fluctuations of market pricing through long term purchase commitments.
- It would take the University campus customers of NGS five years to contractually separate themselves from the current NGS program.
- It is vital that these gas services currently provided by NGS under contract continue unabated.

- At the present time, key NGS staff is nearing retirement. Gas purchasing is an extraordinarily complex business and the effectiveness of NGS is dependent upon the expertise of its staff.
- While DGS does not have a succession plan internally, conversations between the University and the Agency point toward a partnership between DGS and the University to initially start the gas/energy JPA, with other public customers potentially becoming JPA members over time.
- State and Consumer Services Agency leadership is politically appointed. Therefore, understandings reached on this issue with the University need to be finalized before January 1, 2011, as the new Administration may or may not support the current Agency decision allowing DGS to enter into the proposed new gas/energy JPA.

Background:
NGS aggregates gas purchases for 53 public agencies (see Attachment 'B') representing approximately 1.5% of total gas consumption within the State of California. CPUC and gas utility rules require that large gas customers ("non-core" = >250,000 therms per year through a single gas meter) buy their gas commodity from a non-utility supplier. An abbreviated list of NGS customers includes CSU, Community College System, State Executive Agencies, County of Los Angeles, City and of County of San Francisco and many other governmental entities. Of the 330M Therms provided by NGS, approximately 39% goes to UC campuses, with much of this going to UC cogeneration plants for the production of on-site thermal and electrical energy.

Through competitive bidding process NGS is currently under contract until 2016 with British Petroleum Energy to provide natural gas at wholesale indexed pricing and to provide gas scheduling ("nominations and imbalances") and full requirements supply.   The NGS management team, including its outside consultant, makes purchase decisions to populate an ongoing gas portfolio product ("Pool"). The Pool is managed within established NGS risk management guidelines and has the primary objective to levelize market risk, or more simply put, to avoid major market price fluctuations. The Pool is an ideal product for governmental entities that desire to have stable and predictable gas pricing to meet the requirements of their respective fixed utility budgets. The Pool is comprised of forward gas supply purchases and market priced gas supply that minimize exposure to gas price fluctuations. In addition, customers may purchase a portion of their natural gas independently ("Special Purchases") to meet individual pricing requirements. Overall, approximately 16% of the University's purchases through NGS are through the "Pool", with actual ratios varying by campus.

NGS program is currently self supporting within DGS and in fact returns a surplus to the state of approximately $560K per year. Wholesale natural gas commodity costs contracted by its customers are fully paid by its customers. The management cost of the NGS is funded by a markup applied to all customer contractual purchases.   The current markup rate is $.0065/Therm and capped at $27,000 per account. The University currently pays $237,000/Year in markup to NGS. The total revenue collected by this markup is currently $1.25 million+/- and works out to be approximately 0.5% on a program portfolio basis. Twelve accounts have reached this cap, including UCLA, UCSF (Parnassus), UCI, UCD Medical Center, and UCD main campus.

As a unit within a governmental entity, NGS is has a staff of staff of four, including the general manager. Staffing costs, including benefits are $432,000 annually. Routine office costs and travel total $70,000 annually. NGS pays DGS $175,000 annually for ancillary services (accounting, HR, Space, etc.). In addition, they employ an outside consultant at approximately $65,000 annually to provide gas purchasing consulting. The total cost of annual operations is $740,000. NGS participates in a revolving account for business-like entities within DGS. Excess revenue collected, or "profits", are returned to the program account (in this case $560,000). The account also currently serves to meet cash flow needs of NGS, and Because of its size, it has insulated NGS from immediate cash flow concerns.

Alternatives Considered:
Practically speaking, the options discussed below are problematic given the fact that the contracts entered into by the NGS customers are "evergreen" in nature due to the Pool. Most customers participate in the Pool which represents a collection of purchases that go out over a five year period. Customers must provide notice by February of a given year to start the process of removing themselves from their respective contractual commitment associated with the Pool, meaning effectively a customer would have to give a "five year notice" to fully remove itself from its NGS contractual obligations. By not providing this notice by February of a given year, the five year commitment is renewed, which is referred to as a "evergreen" contract. So any solution described below would have to be engaged such that is complementary to the NGS program over this initial five year period.

Should a customer not renew the "evergreen"contract, they would still be obligated to honor all future purchases. Any alternative would need to "fill in" gas requirements either through additional future purchases or through the index, or "spot" market.

Continue Program with DGS - This option was effectively examined when senior management of the University met with the Undersecretary of the Agency. As mentioned previously it was determined by the Agency and DGS management that the JPA was the preferred choice to assure management transition of the NGS program. The University could elect to wait for the new administration to be placed in January 2011 and revisit if NGS management transition can be effectively handled by DGS in lieu of creating a JPA for program transition. The inherent risk to this approach is that current NGS management potentially could retire prior to an effective transition being accomplished.

Run UC-only Gas Program from UCOP – This option seems counter to the direction of the University in minimizing staff positions and overhead, as it would require adding to UCOP similar staff levels and expense as NGS or the proposed JPA. The current NGS cost is $740,000 annually, operating under civil service salary limitations, undoubtedly this same staff would cost substantially more when hired on a market basis. Total markup fees could be implemented to cover UCOP management cost, but this would be unfavorable when compared to the anticipated markups by the gas/energy JPA that would be spread over a larger volume/customer base.

UC to Join another Gas JPA– There are at least two other gas purchasing JPAs in existence. They are SPURR and ABAG, neither one of which is a good fit for UC.

ABAG Power is a JPA that was formed in 1997 from members of Association of Bay Area Government. Membership is limited to members of ABAG , thus not a viable option for the University to consider.

Another Gas JPA, SPURR (School Project for Utility Rate Reduction), while currently servicing a few UC accounts (some core accounts at Berkeley, Davis, and San Francisco), was chartered primarily to serve K-14 core School Accounts. At 40M Therms/Year, SPURR's scale is significantly less than that of NGS. Even if SPURR is operationally able to handle the over 100M Therms currently supplied by NGS, there are potential legal issues involving SPURR's charter which is primarily aimed at serving K-14 institutions. The limit for non K-14 Accounts is 30%. In addition at $.185/Therm for Core Accounts and .093 for non Core accounts, SPURR's overhead is significantly larger than that of NGS. Thus SPURR does not present a viable option.

Legal Authority and Rational for Creation of a gas/energy JPA:
Sections 6500-6536 of the California Government Code grant to public entities, including the University, the ability to form Join Power Authorities (JPA). Such a JPA appropriately constituted for the purpose of large-scale energy purchases and distribution to other public entities would enable the continuance of the NGS services within an independent agency governed by its members.

In a two step process we propose: 1) create the JPA as a legal entity initially with DGS and UC as founding members. 2) bring on additional members and implement the new JPA, to be called the California Public Energy Agency (CPEA). The Agreement would not become effective until an additional three members joined, whose gas purchases would bring total JPA volume to 75% of existing. CPEA would act as a single centralized group spreading the operating costs of developing expertise in (1) gas market practices and dynamics, (2) bidding for gas supplies, and (3) managing gas suppliers and gas supply contracts with a team of state specialists, assisted by expert consultants, working full-time on the topic – and at a much lower overhead cost per unit of gas purchased than with multiple individual facility or department efforts.

- CPEA is a centralized public sector gas-buying organization assuring each component customers' full public-sector review of all natural gas cost elements, including associated overhead, invoices, and accounting. This approach makes full use of the private-sector gas suppliers, while maintaining public-sector oversight of costs and performance.
- With its many customers, CPEA aggregates a large portion of the public-sector gas requirements and provides a form of market power – a volume large enough to command attention on the market and elicit highly responsive bids from gas suppliers who greatly value gaining such a large market share from a single group. (NGS currently buys 32 billion cubic feet per year of natural gas, approximately 1.5% of the total gas use in California annually, and worth in the range of $200 million-$300 million – dependent on current volume and market prices.)
- The aggregated gas requirements through a JPA gives the option for more managed procurement; large volumes can be purchased in a variety of ways, providing a deeper and

broader portfolio of gas purchases, which in turn provide for significant opportunities for risk management of the very high levels of natural gas price volatility which are a strong feature of North American natural gas markets.

CPEA Implementation:

As described above, the fact that the gas/energy JPA would need to be legally formed prior to January 1, 2011 has played a significant role in implementation planning.

The four fundamental phases included: (1) legal formation, (2) CPEA becomes effective with three additional members comprising at least 75% of current DGS gas purchase volume. (3) initial start-up period of gas/energy JPA, and (4) fully functional ongoing enterprise of gas/energy JPA. These phases are more fully described below:

1) Legal Formation – With the limited time period available to create the gas/energy JPA, a joint decision was reached by DGS and the University that it was necessary to form the JPA with only two initial members. This alleviates the additional time requirements associated with other entities considering membership. The time required for each prospective member to provide review/input and obtain full legal approval would have been out of the control of DGS and the University to meet the January 1, 2011 deadline. The intention is to fully encourage additional members that meet threshold requirements of the gas/energy JPA agreement and bylaws after the legal formation of the gas/energy JPA is accomplished.

2) JPA Becomes Effective - The JPA Agreement creating CPEA will become effective when signed by three additional members who upon joining will bring member gas purchases to 75% of the current DGS gas purchase volume.

3) Transition Phase – Substantial work will be required during the transition phase. Employment contracts must be put in place to transfer current/willing NGS employees to the employment of the gas/energy JPA. Administrative service agreements will need to be put in place to handle office space and ancillary support (e.g. human resources, accounting, payroll, IT, etc). Current contracts of suppliers will need to be assigned to the new gas/energy JPA. Current customer contracts will need to be assigned by DGS to the new gas/energy JPA. Additional staff will need to be hired to ideally coincide with the initial start-up date of the gas/energy JPA (e.g., one of the first hires needs to be an Assistant General Manager, to start the management transition that is fundamentally driving the formation of the gas/energy JPA;**.** also will need to hire/replace any current NGS staff, if any, that decline employment contracts with gas/energy JPA).

4) Initial Start-Up Period – There will be a period of operational transition to get the new gas/energy JPA into the same operational condition as the current NGS program, including relocating staff to new office space, Accounts Payable operating under the new administrative services provider, etc. During this period, the new operating norm will entail the gas/energy JPA General Manager reporting to the board of the gas/energy JPA. There will also be a period of training new personnel to assure long-term management of the

program and the identification of business improvements to insure best management practices going forward. One opportunity has been already identified by current NGS management to create a better means to model gas purchases and their impact to the Pool. It is envisioned that during the initial start-up period that the development of this computer modeling tool will be pursued. It would be ideal to develop this tool during this phase while the new Assistant General Manager and key consultants have the opportunity to provide input

5) Fully Functional Gas/Energy JPA – After the initial start-up period, it is expected that the gas/energy JPA will provide the same customer service as NGS and explore business opportunities that best serve its members and customers. Several entities have expressed interest in becoming members or customers of the new gas/energy JPA, NCPA and California Department of Water Resources. With a fully functional gas/energy JPA, there would be no limitations in serving the desires of the members in the gas and energy area within the scope of the JPA agreement and bylaws. Depending on what the gas/energy JPA board elects to approve and how the size of the gas program develops, there are numerous possible future areas that the gas/energy JPA could consider. Some examples include pursuing the development of projects financially supported by members, such as gas storage, development/operation of biogas facilities, special purchases (e.g. biogas), and/or special energy services (e.g. Energy Service Provider).

New gas/energy JPA Profile:

The current preliminary Business Plan reflects some initial input from Benjamin Frank, LLC, a management consultant hired by DGS and the CSU system to provide a road map for the formation of CPEA. This preliminary plan reflects a conservative staffing and cost profile, which may change significantly as the actual Plan is further developed by the management consultant. Some cost avoidance strategies proposed by the consultant are not reflected in this preliminary version of the Business Plan. A draft version of the consultant Business Plan will be available in late November and a final by June, 2011. It is expected that as the final Plan is developed assumptions will be clarified and a realistic cost loaded schedule for implementation will be developed.

Staffing - See Attachment 'A' for a five year pro forma of the DGS restructured gas business. Staffing would be increased to accommodate a new organizational structure that will better address transition of management and operating stability. In addition to bringing over current NGS staff, with pay rates adjusted to reflect market rates, it is planned to add three additional staff members. The first anticipated hire would be an Assistant General Manager, who initially would help with the transition but ultimately be trained to take over the General Manager position in Year Four, providing long term continuity to the Program. The pricing/purchasing model developed and currently run by consultant Nancy Moon needs to be brought in-house for future continuity purposes and would require an additional staff member to run (who would also have other duties.) As an independent entity, CPEA will need to keep its own books and manage its own administrative and support services. An accountant/office manager will need to be hired to serve this role. It is anticipated that salaries to staff CPEA will increase compared to the civil service salaries now in place with NGS. Salaries of CPEA will be market based. The new salaries and benefits are estimated at approximately $900K.

Overhead Functions – Some preliminary consideration has been given to outsourcing administrative and support services. One possibility under discussion is to work with the Northern California Power Agency – NCPA (another energy-related JPA) to share space and administrative services. Bickmore Risk Services has also provided a preliminary proposal for support services. The current business plan assumes a self-supporting operation with in-house administrative services complemented by consultant expertise. . Attachment 'A' details costs incurred with the assumption that the JPA will be renting space and securing services in the Sacramento area.

Credit Issues **-** As a branch of the California State Government, DGS has been able to negotiate favorable credit terms with its gas supplier. Given that CPEA would have no credit rating initially and since by statute, except for tort cases, the liabilities of the JPA do not flow to its members. BP Energy or any large natural gas supplier will require some sort of collateral from CPEA. Especially where future purchases are made, suppliers need assurance that their customers will honor future purchase price agreements as well as maintain their credit rating in the future. To meet such requirements the Northern California Power Authority (NCPA), for example, requires customers to maintain a deposit equal to three months energy purchases. One solution currently being explored with BP Energy is to charge each participant one to one and half cents per decatherm (or MMBTU) to purchase insurance to meet the credit requirements of BP. In UC's case this would amount to $125K to $187K per year, assessed to the campuses proportionately to their gas purchases. In any event, these new collateral requirements are likely to increase the University's gas purchase costs. Assumptions at this stage about the cost of meeting collateral requirements are provisional since there have been no formal negotiations with BP Energy at this point.

Ongoing Revenue and Costs - Currently NGS collects $0.0065 for each therm provided, up to a maximum of $27, 000 per account. There are 12 accounts at the maximum, for a total of $324,000 annually. The remaining smaller accounts account for 141,200,000 therms, for a total of $917,800 in additional annual revenue. The total current revenue of NGS is $1,241,800 annually and at the current DGS cost structure it sends approximately $560K to the State as profit. The preliminary Business Plan as reflected in Attachment 'A' calls for a 30% increase in fees .

Working Capital - As a unit within DGS, NGS has access to sufficient working capital to bridge any temporary cash flow shortages; it implicitly offers creditors the full faith and credit of the State of California. In the future the members of the gas/energy JPA will need to collectively fill this role. Currently NGS receives gas payments from its customers and forwards them to their respective suppliers. Given the leverage NGS has of cutting off gas supply to a delinquent customer, there have been no non-payment issues for the fifteen years the program has been in existence. The few late payments incurred have been the result of administrative oversight (missing bill, new employee, etc.).

There are two components to CPEA's working capital needs. 1) Capital will be required to meet first year expenses (Attachment 'A') and 2) Some way needs to be found to bridge operational cash flow imbalances that may result from late payments or other exigencies.

First Year capital needs are estimated to be in the neighborhood of $850K reflecting the gap between revenues and expenses incurred just prior to and during the first year of operations. The new gas/energy JPA will be phasing in an existing business that handles a volume of business approaching $500 million per year. Given the fact that at startup, CPEA will have no credit history, it will fall on its members to provide initial startup cash. Attachment 'A' reflects a five year loan paid off at 5% interest.

The second component of working capital needs stems from the need to synchronize customer payments and payments to the utilities for transmission and gas suppliers for commodity costs. Late payment or failure to pay on the part of CPEA's participants could result in significant liabilities. A suggested mechanism for dealing with this issue, other than maintaining large cash reserves, is to require members to pay one month in advance (estimated fees). This would provide ample revenue to pay utility transmission fees that are due 10 days after the consumption month, Transmission fees are a small (.5%) fraction of monthly gas costs. BP Energy's invoices for commodity charges are submitted within 30 days after the end of the consumption month and are required to be paid within 45 days. Thus for example, customers would be billed for July consumption on July 1, with payment due July 15. BP Energy bills for that July would not be due until mid October. The resulting lag between customer and supplier payments would hopefully provide enough cushion to mitigate operational cash flow problems. In the out years it is anticipated that CPEA will be able to develop additional cash reserve (see Attachment 'A').

<u>CPEA Participation and Membership</u>

It is anticipated, based on NGS informal surveys of existing customers that the majority will accept contract assignment and potential fee increases as a means to continue the Pool service that they currently enjoy from the program. In the event that a current customer does not accept both, it is planned that NGS would start the termination process of these contracts. If they do not accept contract assignment, then NGS would need to either serve these customers up to their full contract termination date or contract with the gas/energy JPA to service these contracts on behalf of DGS (due to DGS's current contractual obligation associated with these customers).

Because of the tight time frame in which to form the gas/energy JPA, it is anticipated that at the beginning, DGS and the University would be the only two signatories. The JPA Agreement (attached) will not become effective until at least three additional members join bringing CPEA participation to 75% of the current DGS/NGS participation. CPEA membership may be expanded to a maximum of nine (the nine largest participants). All others would participate in the program but would not be members nor participate in governance. For revenue projections, it is assumed that all current customers will have transferred to the new JPA by the beginning of Year 2. All (see Attachment 'A') All current NGS customers have been informed about the potential of the NGS program migrating to a JPA to address its management transition challenges. In addition to the current customers of NGS, NCPA, DWR, and other sizable cities have expressed interest in either becoming customers or members of the new gas/energy JPA.

<u>Summary:</u>

Given political exigencies and the pending NGS management retirements, it is essential that the President or his designee sign a JPA Agreement prior to January 1st with DGS as a co-signatory. NGS has been a successful program that its customers would like to see move forward in a similar capacity. A gas/energy JPA accomplishes a transition of the NGS program to a more stable business platform that brings potential to address additional energy needs of its members. The options of not going forward with the gas/energy JPA are limited. If the NGS program were allowed to go forward with less than seasoned management it could cause financial harm to the University. Gas purchasing and delivery management is complex. The expertise of DGS's Natural Gas Services has served the University well and it is in the interests of the University to continue that management under the egis of a new JPA.

YEARLY COSTS (FIRST FIVE YEARS) CPI INFLATION ADJUSTED: 2.500%

			Pre- Operational*	Year one	Year Two	Year Three	Year Four	Year Five
Income	**Revenue From Administrative Costs (30% increase in rates)**	**First Year 75% of current DGS volume**	**0**	**$ 1,209,000**	**$ 1,612,000**	**$ 1,612,000**	**$ 1,612,000**	**$ 1,612,000**
	Startup Funds	**Member Loan repaid over 5 years @ 5%**	**$ 320,000**	**$ 500,000**				
Salaries	**Permanent Staff Salaries/Benefits Included (at 50% of base salary)**							
	General Manager	Current Staff at estimated current market		$ (180,000)	$ (184,500)	$ (189,113)	$ (193,840)	$ (198,686)
	Assistant General Manager	Needed for Continuity in senior management -- (assume retirement of current general manager and assumption of post by Assistant in Year 4)		$ (180,000)	$ (184,500)	$ (189,113)		
	Accountant/Office Manager	New Position to manage office/accounting and personnel issues		$ (150,000)	$ (153,750)	$ (157,594)	$ (161,534)	$ (165,572)
	Special Projects Manager	Current Staff at estimated current market		$ (120,000)	$ (107,625)	$ (110,316)	$ (113,074)	$ (115,900)
	Information Specialist	Additional Staff for Pricing Model - hired year 2			$ (120,000)	$ (123,000)	$ (126,075)	$ (129,227)
	Member Service Specialist	Current Staff at estimated current market		$ (105,000)	$ (107,625)	$ (110,316)	$ (113,074)	$ (115,900)
	Member Service Specialist	Current Staff at estimated current market		$ (105,000)	$ (107,625)	$ (110,316)	$ (113,074)	$ (115,900)
	SubTotalSalaries			**$ (840,000)**	**$ (965,625)**	**$ (989,766)**	**$ (820,669)**	**$ (841,186)**
Consultants	**Consultant Fees**							
	Gas Purchasing Consulting (600 hrs. @ $200/hr - 30% time)	Bringing model in house will reduce costs in out years (see Information specialist)		$ (70,000)	$ (53,813)	$ (27,579)	$ (28,268)	$ (28,975)
	Accounting Consulting	CPA set up chart of accounts/accounting system. Keep books at startup. Yearly audits	$ (70,000)	$ (50,000)	$ (20,000)	$ (20,000)	$ (20,000)	$ (20,000)
	Legal Consulting	Front loaded to include administrative startup and initial filings/contract assignments	$ (100,000)	$ (75,000)	$ (75,000)	$ (75,000)	$ (75,000)	$ (75,000)
	Pension Aministrative and setup costs/HR Consulting Ongoing	Includes development of employment contracts and pensions	$ (75,000)	$ (20,000)	$ (20,000)	$ (20,000)	$ (20,000)	$ (20,000)
	Gas pricing computer model	Keep as allowance may not be needed		$ (20,000)				
	SubTotalConsulting		**$ (245,000)**	**$ (235,000)**	**$ (168,813)**	**$ (142,579)**	**$ (143,268)**	**$ (143,975)**
Office	**Office**							
	Lease (1,500 sq. ft. Triple Net Roseville @ 3.00/sq. ft./month) net work ready etc.	Based on Sacramento Area Costs -- Benjamin Frank LLC estimate		$ (54,000)	$ (54,000)	$ (54,000)	$ (54,000)	$ (54,000)
	Furniture/Cubicles/incl. installation	Based on UCOP Costs - One time Startup		$ (17,600)				
	Subtotal Office			**$ (71,600)**	**$ (54,000)**	**$ (54,000)**	**$ (54,000)**	**$ (54,000)**
Office Equipment	**IT/Telephone/Misc**							
	Telephone System	Initial Purchase		$ (1,200)				
	WebHosting/Server/Backup/ Work Station Support/Software	Sacramento Area Vendor Cost Estimate		$ (12,000)	$ (12,300)	$ (12,608)	$ (12,923)	$ (13,246)
	Desktop/Laptop Computers	One time purchase		$ (20,000)				
	Printer/Copier/Fax	One time purchase		$ (3,500)				
	Network Installation	One time purchase		$ (2,500)				
	Telephone/Yr. @600/mo			$ (7,200)	$ (7,380)	$ (7,565)	$ (7,754)	$ (7,947)
	Misc Office Supplies/copier maintenance/computer replacement allowance			$ (40,000)	$ (41,000)	$ (42,025)	$ (43,076)	$ (44,153)
	Subtotal IT/Telephone/Misc			**$ (86,400)**	**$ (60,680)**	**$ (62,197)**	**$ (63,752)**	**$ (65,346)**
	Travel		**$ (20,000)**	**$ (20,000)**	**$ (20,500)**	**$ (21,013)**	**$ (21,538)**	**$ (22,076)**
	Insurance Costs	**Allowance Only**		**$ (50,000)**	**$ (51,250)**	**$ (52,531)**	**$ (53,845)**	**$ (55,191)**
	Total Annual Operational Costs		**$ (265,000)**	**$ (1,303,000)**	**$ (1,320,868)**	**$ (1,322,085)**	**$ (1,157,072)**	**$ (1,181,774)**
	Contingency:	**15.0%**	**$ (39,750)**	**$ (195,450)**	**$ (198,130)**	**$ (198,313)**	**$ (173,561)**	**$ (177,266)**
	Total Including Contingency		**$ (304,750)**	**$ (1,498,450)**	**$ (1,518,998)**	**$ (1,520,398)**	**$ (1,330,633)**	**$ (1,359,040)**
	Startup Loan Repayment			**$ (189,399)**	**$ (189,399)**	**$ (189,399)**	**$ (189,399)**	**$ (189,399)**
	Net		**$ 15,250**	**$ 21,151**	**$ 93,002**	**$ 91,602**	**$ 281,367**	**$ 252,960**

* Pre-operational -- After Agreement becomes effective will require legal and other consulting services prior to becoming operational

Interest Rate:	5.00%
Inflation	2.5%
contingency	15.0%
Loan amount	$ 820,000
Revenue Increase	30%

09-10 FY Therms Consumption Data by Customer

	Customer Name	Consumption in Therms	% of Total	Cumulative %
1	University of California system	125,885,844	39.5%	39.5%
2	State Executive Agencies collective	55,932,978	17.5%	57.0%
3	CO Los Angeles	47,904,011	15.0%	72.0%
4	California State University system	30,586,915	9.6%	81.6%
5	City & County San Francisco	12,251,524	3.8%	85.4%
6	CO Orange	5,343,125	1.7%	87.1%
7	SD West Kern Water Districts	4,738,539	1.5%	88.6%
8	CO Santa Clara	4,195,113	1.3%	89.9%
9	SD Sacramento Regional Transit	3,646,279	1.1%	91.1%
10	CITY Fresno	2,828,781	0.9%	91.9%
11	SD LACSD	2,560,452	0.8%	92.7%
12	CITY San Jose	2,419,492	0.8%	93.5%
13	CO San Joaquin	1,524,714	0.5%	94.0%
14	CO Alameda	1,343,734	0.4%	94.4%
15	CO Fresno	1,340,027	0.4%	94.8%
16	CO Solano	1,266,913	0.4%	95.2%
17	SD ACMC	1,242,203	0.4%	95.6%
18	CCD Mt San Antonio	1,150,043	0.4%	96.0%
19	CO Kern	1,051,955	0.3%	96.3%
20	CCD Los Rios	971,355	0.3%	96.6%
21	CO Riverside	929,845	0.3%	96.9%
22	SD Encina Wastewater	860,999	0.3%	97.2%
23	CCD Foothill-DeAnza	800,267	0.3%	97.4%
24	SD Dublin San Ramon	763,355	0.2%	97.7%
25	CITY Los Angeles City Hall	648,527	0.2%	97.9%
26	CITY Pittsburg Mare Island	467,633	0.1%	98.0%
27	CITY Sunnyvale	466,338	0.1%	98.1%
28	CO Ventura	420,174	0.1%	98.3%
29	CITY Fairfield	393,060	0.1%	98.4%
30	CCD San Diego	386,728	0.1%	98.5%
31	CCD Cabrillo	364,152	0.1%	98.6%
32	SD Monterey RWPC	363,853	0.1%	98.8%
33	SD Delta Diablo Sanitation	327,607	0.1%	98.9%
34	CCD Hartnell	316,673	0.1%	99.0%
35	CCD LA	313,344	0.1%	99.1%
36	CCD Solano	294,510	0.1%	99.1%
37	CO Sacramento	258,718	0.1%	99.2%
38	CO Santa Cruz	239,653	0.1%	99.3%
39	CCD Yosemite	238,571	0.1%	99.4%

40	CITY Riverside	233,128	0.1%	99.4%
41	CITY Santa Cruz	217,641	0.1%	99.5%
42	CCD Gavilan	197,172	0.1%	99.6%
43	CITY Oxnard Wastewater	184,237	0.1%	99.6%
44	CCD Butte	174,051	0.1%	99.7%
45	CCD Napa Valley	172,555	0.1%	99.7%
46	SD Oro Loma Sanitary	162,260	0.1%	99.8%
47	CCD Yuba	161,285	0.1%	99.8%
48	CO Santa Barbara	152,297	0.0%	99.9%
49	SD Fairfield Suisun Sewer	112,354	0.0%	99.9%
50	CO Kings	85,286	0.0%	100.0%
51	CITY Chico	55,983	0.0%	100.0%
52	CO San Luis Obispo	49,637	0.0%	100.0%
53	CITY Coronado	38,202	0.0%	100.0%
		319,034,092	100.0%	