

AMENDMENT OF THE WHOLE

FILE NO. 012056
[Energy Self Sufficiency]

[SIXTH DRAFT]

CHARTER AMENDMENT

PROPOSITION ____

Describing and setting forth a proposal to the qualified voters of the City of San Francisco to amend the Charter of the City by amending Section 4.112 and adding a new Chapter 8B addressing Commission governance, goals and objectives related to energy, powers of the Commission related to energy, siting of energy facilities and rates for energy services.

The Board of Supervisors hereby submits to the qualified voters of the City at an election to be held on November 5, 2002, a proposal to amend the Charter of the City by amending Section 4.112 and adding a new Chapter 8B, to read as follows:

Note: Additions are single-underline italics Times New Roman.
Deletions are ~~strikethrough italics Times New Roman~~.

SECTION 4.112. PUBLIC UTILITIES COMMISSION.

~~The Public Utilities Commission shall consists of five members appointed by the Mayor, pursuant to Section 3.100, for four year terms. Members may be removed by the Mayor only pursuant to Section 15.105.~~

The Public Utilities Commission shall have charge of the construction, management, supervision, maintenance, extension, operation, use and control of all water and energy supplies and utilities of the City as well as the real, personal and financial assets, which are under the Commission's jurisdiction on the operative date of this Charter, or assigned pursuant to Section 4.132.

8B.100. GOVERNANCE OF THE PUBLIC UTILITIES COMMISSION.

(a) The Commission shall be governed by eleven commissioners, one elected from each supervisorial district as defined in Section 13.110, commencing with the general municipal election in November 2003. The initial members of the Commission shall be appointed. Each member of the Board of Supervisors shall appoint one commissioner who shall serve until the commissioners elected in November 2003 take office. The initial terms of office of all appointed commissioners shall begin in March 2003. The term of office of elected Commissioners shall commence at 12:00 noon on the eighth day of January as provided by Section 13.101 of this Charter. Commissioners shall be elected by district for a term of office of four years, in the same manner as the members of the Board of Supervisors, as provided in Charter Section 13.101. The qualifications and election of commissioners shall be governed in the same fashion as set forth in Charter Section 13.101, except that whenever that section refers to the Board of Supervisors it shall be deemed for purposes of this section to refer to the Commission. In order to provide for the staggering of terms of office, the Executive Secretary of the Commission shall determine, by lot, which of the initial members elected in 2003 from the even- and odd- numbered districts shall have terms of office expiring at 12:00 noon on the eighth day of January 2006 and which shall have terms of office expiring at 12:00 noon on the eighth day of January 2008. Commencing with the general municipal election in November 2005, the terms of office of the commissioners elected from all districts shall be for a term of four years and shall continue as such thereafter. The provisions of Section 13.102 of this Charter governing runoff elections for members of the Board of Supervisors or any successor provision thereto shall govern runoff elections for members of the board of directors of the Agency. If any seat on the Commission becomes vacant because of death, resignation, recall, permanent disability, or the inability of the commissioner to carry out the responsibilities of the office, the member of the Board of Supervisors representing the district from which the commissioner was

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elected shall appoint an individual qualified to fill the vacancy under this Charter and state laws. Vacancies shall otherwise be governed by 13.101.5(c) and (d).

(b) Commissioners shall receive reasonable compensation for attending meetings of the Commission, which shall not exceed the average of the two highest compensations paid to the members of any board or commission with similar authority and responsibility in the nine Bay Area counties.

(c) The provisions of Charter Section 4.102, (4), (5) and (6) shall not apply.

8B.101. GOALS AND OBJECTIVES RELATED TO ENERGY.

(a) The Commission shall develop, periodically update and implement programs to achieve goals and objectives consistent with the following:

(1) Develop City owned or controlled energy resources sufficient to shutdown the Hunters Point power plant by January 2005. Not later than November 2003, submit a plan to the ISO for the shutdown of Hunters Point power plant. Develop plans and energy resources sufficient to allow the closure of other inefficient, polluting power plants.

(2) Ensure the provision of reasonably-priced, reliable electric service to San Francisco residents, businesses and City departments, consistent with the Raker Act.

(3) Remedy the inequities in the historic placement and operation of industrial facilities in communities of color and lower-income neighborhoods and the damage to public health and the environment caused by such facilities.

(4) Create opportunities for meaningful and informed citizen participation, with an emphasis on involving affected communities as equal partners in the needs assessments, planning, evaluation, and implementation of Commission policies and programs.

(5) Maximize contracting and employment opportunities for economically disadvantaged residents, and specifically for those residents living in neighborhoods that bear the public health and environmental burdens of power generation and transmission.

(6) Ensure the development of adequate City owned or controlled generation and transmission resources to serve San Francisco. Periodically develop through a public process and publish a resource plan that includes load projections and demand-side management programs for the City and the region to guide the development of energy resources.

(7) Establish a Renewable Portfolio Standard of 25% of San Francisco load served by the Commission by 2010, excluding hydroelectric generation, subject to the Commission's obligation to ensure reasonably-priced electricity.

(8) Establish energy conservation and efficiency goals, including peak load reduction goal, for electric load within the City, including municipal load. Develop design review, retrofit and incentive programs to maximize the effectiveness of energy efficiency programs.

(b) The Commission shall periodically review and report on its success in achieving the goals identified in this section and recommend changes to existing local and state laws needed to increase the Commission's effectiveness in carrying out its responsibilities. In January 2006, the Board of Supervisors shall hold a hearing to consider the Commission's performance and shall consider changes that would improve the Commission's performance, including changes to the governance of the Commission that would improve the Commission's ability to meet its goals.

8B.102. POWERS OF THE COMMISSION RELATED TO ENERGY.

The Commission shall have all powers granted to Boards and Commissions by the Charter, and in addition, shall have the following powers in carrying out its responsibilities related to energy:

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(a) Notwithstanding the requirements of Section 9.118 or any other section of this Charter, enter into long term contracts for energy and related services subject to requirements for approval by the Board of Supervisors which shall be specified by the Board of Supervisors by ordinance.

(b) Enter into joint powers agreements with other public entities in furtherance of the responsibilities of the Commission without approval of the Board of Supervisors.

(c) Serve as the default provider of energy to San Francisco residents and businesses, consistent with state law.

(d) Notwithstanding the requirements of Section 9.107 of this Charter, issue revenue bonds, loans and/or any other forms of indebtedness to be repaid from revenues of the Commission in accordance with State law and any outstanding bond covenants, with approval of the Board of Supervisors. Notwithstanding any other provision of this Charter or of any ordinance of the City and County, the Board of Supervisors may take any and all actions necessary to authorize, issue and repay such bonds, indebtedness or loans, including but not limited to modifying schedules of rates and charges to provide for the payment and retirement of such bonds, subject to all of the following conditions:

(1) The Controller certifies in writing that sufficient unencumbered Commission revenues will be available to timely meet all of its obligations arising from such issuance or obligation;

(2) An independent engineer selected by the Public Utilities Commission certifies that the projects to be funded by the bonds, loans or other obligation meet appropriate utility standards; and

(3) The San Francisco Planning Department certifies that facilities under the jurisdiction of the Public Utilities Commission funded with such bonds will comply with applicable requirements of the California Environmental Quality Act.

Except as expressly provided in this Charter, all revenue bonds may be issued and sold in accordance with state law or any procedure provided for by ordinance of the Board of Supervisors.

(e) Revenue bonds issued pursuant to this subsection may be used for the following purposes:

(1) Development and construction of new energy facilities and energy efficiency projects;

(2) Repair and replacement of city-owned energy facilities;

(3) Acquisition of generation facilities;

(4) Acquisition of transmission and distribution facilities serving San Francisco owned by the local distribution utility, after completing an independent cost-benefit analysis, and certification by the Controller that any one or more of the following circumstances exists:

(A) The Commission has not after good faith efforts been able to secure timely, cost-effective grid interconnections necessary for development of City infrastructure with the local utility distribution company for new sources of generation, and the local utility distribution company declines to enter into binding arbitration to resolve the dispute.

(B) The Commission has not after good faith efforts been able to secure from the local utility distribution company the information and operational agreements necessary for the Commission to sell electricity to San Francisco residents and businesses, and the local utility distribution company declines to enter into binding arbitration to resolve the dispute.

(C) The City is not selling electricity to San Francisco residents and businesses, and the Commission has not after good faith efforts secured a competitive agreement with the local utility distribution company, consistent with state law and regulation, for power or capacity

from existing or proposed City-owned generating facilities or other resources to which the City has rights, and the local utility distribution company declines to enter into binding arbitration to resolve the dispute.

(D) The City has modified its agreements with Modesto or Turlock Irrigation District to make additional Hetch Hetchy power available for delivery to City customers, and the Commission has not after good faith efforts secured a reasonable agreement with the local utility distribution company to wheel that power to City customers, and the local utility distribution company declines to enter into binding arbitration to resolve the dispute.

(E) The City has reached an agreement with the local utility distribution company to purchase its facilities.

(f) Enter into project labor agreements with appropriate Building and Construction Trades Councils for significant capital projects where appropriate.

(g) Undertake all actions necessary or convenient to the full exercise of the powers granted to the Commission by this Charter or other law.

(h) Exercise such other powers and duties as may be prescribed by ordinance of the Board of Supervisors.

8B.103 SITING OF ENERGY FACILITIES.

(a) In decisions related to siting new energy facilities, the Commission must consider and make findings on each of the following:

(i) Consistency of the project with environmental justice ordinances and policies of the City.

(ii) Public health and environmental impacts of the project.

(iii) Project need and alternatives.

(b) For new generation projects, the Commission shall not site or support facilities in Southeast San Francisco unless an independent air quality expert selected by the Commission documents that the project will result in a significant net decrease in criteria pollutants in Southeast San Francisco, consistent with the standards set forth in Ordinance 124-01 or any other ordinance. In other locations, the Commission shall not site or support facilities unless an independent air quality expert selected by the Commission documents that the project will result in no net increase in criteria pollutants. The Commission shall not site or support nuclear generating facilities.

(c) In siting clean technologies, the Commission shall give preferences to locations in Southeast San Francisco to maximize public health, environmental, and economic benefits for local residents.

8B.104. RATES FOR ENERGY SERVICES.

Notwithstanding Charter sections 2.109, 3.100 and 4.102 or any ordinance including Administrative Code Appendix 39, the Commission shall set rates, fees and other charges in connection with providing the utility services under its direction, subject to approval or rejection within 30 days of submission by resolution of the Board of Supervisors. In setting rates, fees and charges the Commission shall:

(a) Establish just and reasonable cost-based rates that encourage the efficient use of energy for its residential, commercial, and municipal customers. The Commission may establish rate surcharges to fund implementation of energy efficiency and/or renewable energy generation projects. The Commission shall provide rate discount programs generally consistent with the programs mandated by state and federal law for utility services.

(b) Establish rates, fees and charges at levels sufficient to maintain a positive financial condition and bond ratings of each enterprise under its jurisdiction, meet requirements and covenants under all loan agreements, bond resolutions and indentures,

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and provide sufficient resources for the continued financial health of each utility, including sufficient revenues to fund appropriate reserves, operation, maintenance and repair of each enterprise consistent with good utility practice;

(c) Retain an independent rate consultant to conduct rate and cost of service studies for each utility at least every five years;

(d) Annually adopt a rolling 5-year forecast of rates, fees and other charges;

(e) Establish a Rate Fairness Board consisting of seven members: the City Administrator; the Controller; the Director of the Mayor's Office of Public Finance; two City residential retail customers: one appointed by the Mayor and one by the Board of Supervisors; two city retail business customers: a large business customer appointed by the Mayor and a small business customer appointed by the Board of Supervisors. The Rate Fairness Board will:

(i) Annually review the five-year rate forecast;

(ii) Participate in one or more public hearings with respect to rate recommendations prior to the Commission adoption of rates;

(iii) Provide a report and recommendations to the Commission with respect to the rate recommendations.

(f) The Rate Fairness Board may, in connection with periodic rate studies, submit to the Commission rate policy recommendations for the Commission's consideration, including recommendations to reallocate costs among various retail utility customer classes.

(g) The Commission may transfer revenue to the City's general fund only after meeting both of the following conditions:

(i) The Commission is serving San Francisco retail customers and the Controller certifies that the Commission's rates, including any surcharges, are below the rates that would be charged by the local utility distribution company, and

(ii) Revenues are adequate to meet the financial requirements of subsection (b), above.

8B.105 DISPLACEMENT OF UTILITY WORKERS.

The City shall negotiate with non-City employees laid off as a result of the City's acquisition of any electric generating facility or electric distribution and/or transmission system as a result of the City providing electric service to residential and commercial customers located in San Francisco regarding an appropriate severance allowance.

If any part or provision of the amendments to the Charter provided herein, or their application to any person or circumstance is held invalid, the remainder of the amendments, including their application to other persons or circumstances, shall not be affected by such a holding and shall continue in force and effect. To this end, these amendments are severable.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney