

File No. 100282

Committee Item No. _____

Board Item No. ~~1532~~ _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Board of Supervisors Meeting

Date March 16, 2010

Cmte Board

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
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| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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OTHER (Use back side if additional space is needed)

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Completed by: Annette Lonich Date March 11, 2010

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

INTRODUCTION FORM
By a member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2010 MAR 10 PM 12:00
BY _____
Time Stamp of Meeting Date

I hereby submit the following item for introduction:

- _____ 1. For reference to Committee:
An ordinance, resolution, motion, or charter amendment.
- X 2. Request for next printed agenda without reference to Committee
- _____ 3. Request for Committee hearing on a subject matter.
- _____ 4. Request for letter beginning "Supervisor _____ inquires...".
- _____ 5. City Attorney request.
- _____ 6. Call file from Committee.
- _____ 7. Budget Analyst request (attach written motion).
- _____ 8. Substitute Legislation File Nos.
- _____ 9. Request for Closed Session
- _____ 10. Board to Sit as A Committee of the Whole

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- | | |
|---|--|
| <input type="checkbox"/> Small Business Commission | <input type="checkbox"/> Youth Commission |
| <input type="checkbox"/> Ethics Commission | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Building Inspection Commission | |

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.]

Sponsor(s): Supervisor Ross Mirkarimi *Sephia Maxwell*

SUBJECT: Resolution – Opposing Proposition 16 on the June 8, 2010 Statewide Ballot

The text is listed below or attached:

Signature of Sponsoring Supervisor: *[Handwritten Signature]*

For Clerk's Use Only:

282

1 [Opposing Proposition 16 on the June 8, 2010 Statewide Ballot.]
2
3

4 **Resolution opposing Proposition 16, the "New Two-Thirds Vote Requirement for Local**
5 **Public Electricity Providers. Initiative Constitutional Amendment."**
6

7 **A. Overview of Proposition 16**

8 WHEREAS, Proposition 16 is an initiative constitutional amendment that has qualified
9 to appear on the June 8, 2010 statewide ballot; and,

10 WHEREAS, Proposition 16 would require a local government to obtain approval by a
11 two-thirds vote in order to spend public funds to (i) establish or expand electric delivery
12 service to a new territory or new customers, or (ii) implement a plan to become an aggregate
13 electricity provider; and,

14 WHEREAS, Proposition 16 defines "local government" broadly to include all local
15 public entities and also defines "public funds" very broadly to include any taxes, funds, cash,
16 income, equity, assets, proceeds of bonds or other financing or borrowing, or rates paid by
17 ratepayers; and,

18 WHEREAS, The official proponent of Proposition 16 is Robert Lee Pence; and,

19 WHEREAS, Pacific Gas & Electric Company (PG&E) has been the sole donor to the
20 campaign committee organized to support the measure; and,

21 WHEREAS, PG&E has contributed \$15.5 million as of February 26, 2010 ([http://cal-](http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1318623&session=2009&view=late)
22 [access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1318623&session=2009&view=late](http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1318623&session=2009&view=late)
23 1) and has said it will spend up to \$35 million to get Proposition 16 approved by voters (SF
24 Chronicle, 2/20/2010); and,
25

1 WHEREAS, The proponents called Proposition 16 the "Taxpayers Right to Vote Act,"
2 but the Attorney General renamed it the "New Two-Thirds Vote Requirement for Local Public
3 Electricity Providers." and,

4 WHEREAS, The Board of Supervisors opposed this measure in Resolution 278-09,
5 dated July 10, 2009, before it qualified for the ballot; and,

6 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) urged the Board
7 of Supervisors to consider the impacts on SFPUC operations and projects and adopt a City
8 position on Proposition 16 in Resolution 10-00021, adopted on February 9, 2010, which
9 resolution is on file with the Clerk of the Board of Supervisors in File No. , and hereby
10 declared to be a part of this motion as if set forth fully herein; and,

11
12 **B. Background**

13 **1. Legal Framework**

14 WHEREAS, Both state and federal laws give public entities the right to provide electric
15 service. This initiative would make those laws ineffective by creating unnecessary barriers to
16 stop public entities from providing electric service; and,

17 WHEREAS, Article XI, section 9 of the California Constitution establishes the sovereign
18 authority of local municipalities to provide electric services to their inhabitants. It also allows
19 private corporations to provide such services, subject to requirements established by the
20 municipality. Similar provisions have been part of the Constitution for more than 100 years.
21 In addition, numerous state laws already establish requirements for specific electric services
22 or for particular types of public entities.

23 WHEREAS, The Federal Power Act requires investor-owned utilities to allow public
24 entities that meet certain requirements to connect to the electric grid in order to provide
25 electric service to customers; and,

1 **2. Electric Service by Public and Private Entities**

2 WHEREAS, For decades, public entities have provided electric services to their
3 citizens; and,

4 WHEREAS, Electric service by public entities provides substantial benefits to
5 customers and taxpayers. Providing electric services can assist local entities in achieving a
6 variety of policy objectives, including revenue enhancement, economic development, job
7 creation, local accountability, lower rates, clean energy, and conservation. In 2007, 47 public
8 entities provided power to more than 3 million customers in California. (APPA Report 2009-
9 10).

10 WHEREAS, In addition to full-service publicly owned electric utilities, many other public
11 entities provide electric service on a more limited scale. In recent years, many public entities
12 have turned to the incremental, targeted provision of electric service as an attractive and
13 feasible means of achieving various local objectives; and,

14 WHEREAS, The rates charged by publicly owned electric utilities are usually
15 significantly lower than the rates charged by private corporations for the same service. In
16 California, public power rates are 30% less on average than the rates of investor-owned
17 utilities (<http://www.appanet.org/files/PDFs/utilityratecompstate2006.pdf>); and,

18 WHEREAS, The revenues obtained by public entities from providing electricity are
19 used to fund local services and programs that otherwise would be funded by taxpayers; and,

20 WHEREAS, Public entities provide electric service subject to open meeting and public
21 records laws that provide customers the opportunity to be informed and involved in decision
22 making; and,

23 WHEREAS, Voters have broad control over local government decisions including
24 decisions about providing electric service. State law requires voter approval to issue general
25 obligation bonds and, in many cases, to initiate or expand electric service; and,

1

2 WHEREAS, Private utilities like PG&E provide electric service to most Californians
3 without any vote from taxpayers or ratepayers about whether they want that company to
4 provide their services. These companies establish priorities, raise rates and make
5 investments that might be risky without any vote of their ratepayers. These companies
6 conduct their business and make decisions in private, and are not subject to public meeting
7 and public records laws; and,

8

9 **C. Potential Impacts of Proposition 16**

10 **1. Undermines ability of local governments to provide electric services**

11 WHEREAS, While Proposition 16 does not take away the right of local governments to
12 provide electric service, it imposes a barrier that will unnecessarily increase the cost of such
13 service and create delays and may dissuade public entities from attempting to provide such
14 service at all; and,

15 WHEREAS, Under Proposition 16, a public entity that already serves all customers
16 within its jurisdiction may be able to continue to do so without complying with the two-thirds
17 vote requirement, unless it wants to expand its service to customers outside its current
18 territory; and,

19 WHEREAS, A public entity that currently serves no customers or only some of the
20 customers within its jurisdiction could be subject to the two-thirds vote requirement to serve
21 even one new customer. There is no minimum threshold that triggers the vote requirement.
22 In this way, Proposition 16 targets the incremental, limited provision of electric service which
23 many public entities have undertaken over the last decade as an attractive and feasible
24 means of achieving various local objectives, including revenue enhancement, economic
25 development, job creation, and the expansion of clean, sustainable energy resources; and,

1 WHEREAS, Proposition 16 contains various exemptions and exclusions that further
2 complicate any understanding of the likely impacts of the measure, including

3 (i) Service to existing customers or for the local government's own end use.

4 The practical effect of these exclusions is hard to determine since PG&E already routinely
5 challenges electric service by local entities. In San Francisco, PG&E is currently challenging
6 the City's electric service to existing customers including service to the Municipal
7 Transportation Agency, City-owned buildings, and maritime services provided by Port. PG&E
8 makes such challenges even where service has been provided by the City over many years.

9 (ii) Funds used solely for the purpose of purchasing or providing renewable
10 energy. An exemption for renewable resources alone may not be practical since renewable
11 energy must be paired with other resources in order to ensure reliable power supply. Further,
12 if local entities are precluded from serving customers, it may not be economic for local
13 governments to invest in these resources. Public power entities have been leaders in
14 developing renewable energy resources, but investments by public entities in renewable
15 energy facilities will decline if public entities cannot provide the clean energy they generate to
16 their customers.

17 (iii) "Federal funds" excluded from the definition of "public funds." Federal
18 funds, including stimulus funds, often require local matching funds. The federal funds
19 exemption in Proposition 16 may have no practical benefit to local entities if they are unable to
20 comply with the two-thirds vote requirement in time to qualify for federal funds. In this way,
21 Proposition 16 may limit the ability of public entities to receive stimulus funds, a large portion
22 of which is directed to energy projects.

23 2. Types of Projects Potentially Affected by Proposition 16

24 WHEREAS, It is impossible at this time to identify all of the potential impacts of
25 Proposition 16 or to determine in advance which specific projects would be subject to the new

1 two-thirds vote requirement. The following is a list of types of projects might be subject to the
2 two-thirds vote requirement:

3 (i) Electric service projects associated with reuse of former military bases
4 under the base realignment and closure process.

5 (ii) Electric service to new developments, including retail and commercial
6 centers, industrial facilities, and residential developments.

7 (iii) Electric service associated with redevelopment projects, including low
8 income and affordable housing projects.

9 (iv) Routine extensions of existing service to a new customer or a new facility
10 for an existing customer.

11 (v) Community Choice Aggregation programs; and,

12 **3. Impacts on San Francisco Projects**

13 WHEREAS, The broad language in Proposition 16 could inhibit the SFPUC's ability to
14 conduct routine business, such as building enhancements and upgrades to existing service
15 and service to new City facilities; and,

16 WHEREAS, Proposition 16 could affect the City's plans to initiate or expand energy
17 services to redevelopment projects and other City developments. The City currently provides
18 electric service to City facilities, Treasure Island and Hunters Point Shipyard. It intends to
19 continue service in those areas as well as initiate service to customers in other City
20 developments and through the CCA program, CleanPowerSF. It could also affect the
21 developers building the projects; and,

22 WHEREAS, Proposition 16 could increase project costs and delay project development
23 due to the cost of elections and the time required to seek voter approval. Additional costs
24 may be incurred by the City and developers if the construction schedule for projects is
25 delayed due to election schedules; and,

1 Lost Revenues

2 WHEREAS, Proposition 16 could cost the City revenue opportunities if voters do not
3 approve new energy service projects that are subject to a two-thirds vote requirement. The
4 City currently generates revenue from the sale of energy services to its customers and
5 anticipates expanding that revenue by adding new customers and service areas; and,

6 WHEREAS, The City currently serves or has agreements in place to serve nearly 6
7 megawatts (MW) of energy to customers at Treasure Island and Hunters Point. It proposes to
8 serve an additional 64 MW at Treasure Island, Hunters Point and other redevelopment
9 projects; and,

10 WHEREAS, The City may also seek to provide energy to new homes that are built as
11 part of its SF HOPE program, the City initiative to revitalize distressed public housing and
12 create mixed-income communities; and,

13 WHEREAS, The projected total electric demand for Treasure Island, Hunters Point and
14 other redevelopment projects is more than 400,000 MW hours per year by 2022. The City's
15 projected system average cost of delivering power for 2010 is approximately \$0.10 per KWh.
16 Applying this rate, the City could see estimated revenue of \$40 million per year by 2022; and,

17 Increased Electric Service Costs

18 WHEREAS, Energy services provided by the City are typically less costly than the
19 same services provided by PG&E. If a project does not have the option to receive service
20 from the City due to the requirements of Proposition 16, the electric service costs for the
21 project will be higher; and,

22 WHEREAS, One reason is the cost of PG&E's income taxes. Developers building a
23 new project that will be served by PG&E are required to build the energy infrastructure, and
24 then deed the system to PG&E before energy service can begin. The developer is required to
25 pay PG&E the income taxes that PG&E will owe for acquiring the new asset. The tax rate

1 varies each year, but typically ranges from 22% to 34% of the value of the infrastructure. The
2 City does not pay income tax, and thus none is owed when developers transfer assets to the
3 City; and,

4 WHEREAS, While the costs of building the required infrastructure depends on the
5 specifics of each project, the SFPUC estimates, by way of example, that the distribution
6 system created for Phase 1 of the Hunters Point project cost approximately \$10 million. The
7 tax rate in place at the time of completion was 34%, resulting in savings for the developer of
8 \$3.4 million. Similarly, when the City provides the electric service to City projects, the project
9 costs less than it would if electric service was provided by PG&E; and,

10 **4. Diminishes local control**

11 WHEREAS, Local voters elect local officials, establish local priorities, and mandate
12 requirements for local decision-making. Local voters in various jurisdictions have established
13 additional requirements for voter approval. In San Francisco, the Charter generally requires
14 voter approval before issuing revenue bonds and ensures voters additional control through
15 the right to referendum and initiative; and,

16 WHEREAS, Proposition 16 harms local taxpayers by making it more difficult for the
17 City to comply with local laws and priorities established by the voters. Such provisions include
18 the following:

19 (i) Charter Section 9.107(8) authorizes the Board of Supervisors to authorize
20 bonds "to finance or refinance the acquisition, construction, installation, equipping,
21 improvement or rehabilitation of equipment or facilities for renewable energy and energy
22 conservation."

23 (ii) Charter section 16.101, which states "It is the declared purpose and
24 intention of the people of the City and County, when public interest and necessity demand,
25 that public utilities shall be gradually acquired and ultimately owned by the City and County."

1 (iii) Administrative Code Chapter 99, which requires the City to" examine the
2 feasibility of supplying electricity to all new City developments, including, without limitation,
3 military base reuse projects, redevelopment projects and other City projects."; and,

4 WHEREAS, The two-thirds vote requirement of Proposition 16 diminishes the rights of
5 the majority of voters by allowing a minority to control the outcome of the vote; and,

6 WHEREAS, Adoption of Proposition 16 would further impair the power of local
7 governments to provide the services their constituents expect; now, therefore, be it

8 RESOLVED, That the Board of Supervisors opposes Proposition 16 for the following
9 reasons:

10 1. Proposition 16 is misleading in that it does not protect taxpayers or customers.
11 It only protects utility monopolies by handicapping a lower cost competitor;

12 2. Proposition 16 takes away local control in an area where local jurisdictions have
13 traditionally had pervasive authority. This should concern all public entities, even those that
14 do not intend to provide electric services of any kind;

15 3. Proposition 16 will impair the City's ability to achieve priorities established by
16 local laws;

17 4. Proposition 16 will harm electric consumers by limiting choices and increasing
18 the ability of monopoly providers to raise rates;

19 3. Proposition 16 may adversely impact the development of renewable energy
20 resources;

21 4. Proposition 16 may result in increased costs and reduced revenues to the City
22 and to developers of new projects;

23 5. Proposition 16 may cause delays in redevelopment projects;

24 6. Proposition 16 may limit the ability of local entities to develop community choice
25 aggregation programs and other programs that promote consumer choice and local control;

1 7. Proposition 16 may limit the ability of public entities in California to receive or
2 use federal funds, including federal stimulus funds.

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 10-0021

WHEREAS, A proposed initiative to amend the California Constitution, entitled "New Two-Thirds Vote Requirement for Local Public Electricity Providers – Initiative Constitutional Amendment" has qualified to appear on the June 2010 ballot as Proposition 16; and

WHEREAS, The initiative would require local governments to obtain voter approval by a two-thirds vote in order to spend public funds to establish or expand electric delivery service to a new territory or new customers or to implement a plan to become an aggregate electricity provider; and

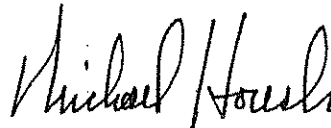
WHEREAS, The initiative could create delays and additional costs for many projects of high importance to San Francisco; and

WHEREAS, The initiative could impede the City and the SFPUC in fulfilling responsibilities of the Charter, mandates of the voters, and other local ordinances, including directives to provide more sustainable, renewable or affordable power for San Franciscans; now, therefore, be it

RESOLVED, That the SFPUC authorizes the General Manager to work with the City Attorney to recommend that the San Francisco Board of Supervisors establish a City position on Proposition 16, the "New Two-Thirds Vote Requirement for Local Public Electricity Providers – Initiative Constitutional Amendment"; and be it

FURTHER RESOLVED, That the SFPUC urges the Board of Supervisors to address the concerns of the SFPUC regarding the potential impacts of this initiative in adopting a City position.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of February 9, 2010



Secretary, Public Utilities Commission

