

Item 4
File 11-1154

Department :
Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would (a) authorize the City and County of San Francisco, through the Public Utilities Commission (PUC), to approve a new agreement with the Western Renewable Energy Generation Information System (WREGIS), a system developed by the State in collaboration with agencies from other states, for documenting and tracking environmental attributions, or the environmental benefits of renewable energy, at an estimated initial cost of \$4,537 per year payable by the PUC to WREGIS, depending on account activity, (b) authorize the PUC to enter into other similar future agreements for tracking environmental attributes, without obtaining Board of Supervisors approval, so long as the total expenditures for those other agreements do not exceed \$2,500,000, (c) waive the competitive procurement requirements of San Francisco Administrative Code Chapter 21 for this service, (d) waive the requirement of Administrative Code Section 21.9 that City contracts not include an automatic renewal provision, (e) waive the requirement of Administrative Code Section 21.35 that every agreement contain a statement regarding liability of claimants for submitting false claims, (f) waive the requirement of Administrative Code Section 12F.5 that every contract contain a statement urging companies abide by the MacBride Principles, and (g) waive the requirement of Administrative Code Section 12O.2 that every contractor provide Earned Income Credit forms to eligible employees.

Key Points

- The PUC owns facilities that generate renewable energy, such as solar energy facilities, including those located at Moscone Center and the Chinatown Library, and hydroelectric energy, including the Hetch Hetchy Regional Water System. The PUC also purchases renewable energy generated by others, such as solar energy from Recurrent Energy, which have recognizable environmental benefits or attributes. These environmental attributes, once certified by the State-authorized entity, can become instruments which have financial value if traded or sold by the PUC to other utilities or entities subject to similar state-mandated programs in the energy markets, such as Pacific Gas and Electric (PG&E).
- In addition, the Community Choice Aggregation program (CleanPowerSF), will offer San Francisco's residents and businesses 100 percent renewable energy procured by the PUC, as an alternative to energy provided by PG&E by mid-2012.

Fiscal Impacts

- The proposed agreement between the PUC and WREGIS would authorize the PUC to pay WREGIS (a) approximately \$1,575 in annual fixed fees for each account with WREGIS that the PUC chooses to open to certify and track its renewable energy, (b) \$2,400 annual costs for tagging of renewable energy, and (c) additional volumetric fees of \$.015 per megawatt hour of WREGIS-certified renewable energy. The PUC has estimated total costs based on two scenarios: (1) only the PUC's solar facilities are certified and registered by WREGIS or (2) all of the PUC facilities, including the first phase of CleanPowerSF, are certified and registered by

WREGIS.

- If only the PUC's solar facilities are certified and registered by WREGIS, the annual cost of an account with WREGIS payable by the PUC to WREGIS would be approximately \$4,532. If all of the PUC renewable energy facilities are certified and registered by WREGIS as well as a second account established for the first phase of the Community Choice Aggregation Program, CleanPowerSF, are certified and registered, the annual cost to the PUC for the two accounts payable to WREGIS would be approximately \$32,545.

Policy Considerations

- The City Attorney's Office advises that waiving the City's Administrative Code requirements, as stated above, is necessary because, in order to establish an account with WREGIS and be compliant with State regulations, the PUC must sign a standard WREGIS form agreement that is not subject to any negotiation or modification and the waiving of City Administrative Codes poses little risk to the City.
- The Budget and Legislative Analyst notes that the proposed ordinance allows the PUC to enter into other similar agreements in the future to track environmental attributes, or the environmental benefits of renewable energy, without obtaining Board of Supervisors approval. The PUC does not believe it is necessary to obtain Board of Supervisors approval for these types of future agreements on a case-by-case basis because (a) any future agreements the PUC would enter into are mandated by State statute or regulation and the PUC does not have discretion to not enter into such agreements, (b) the costs of each agreement are expected to be modest, similar to the proposed agreement, (c) the terms of these future agreements, like the proposed agreement with WREGIS, are not negotiable, such that the PUC cannot negotiate the provisions, (d) the additional time required to obtain Board of Supervisors approval may have negative consequences on the PUC since regulatory deadlines and the process of certifying the meeting of those regulatory deadlines often do not allow sufficient time for the Board of Supervisors approval process, (e) requiring Board of Supervisors approval for future agreements could place the PUC at risk of losing the value of environmental attributes due to such process delays, and (f) all expenditures under the proposed agreement or future agreements are subject to Board of Supervisors appropriation approval.

Recommendations

- Approve the proposed agreement with WREGIS.
- Approval of the proposed ordinance as it relates to authorizing the General Manager of the PUC authority to enter into similar future agreements without obtaining Board of Supervisors approval is a policy decision for the Board of Supervisors.

MANDATE STATEMENT/ BACKGROUND**Mandate Statement**

In accordance with Charter Section 9.118(b), City agreements with a term in excess of ten years or anticipated expenditures in excess of \$10,000,000 are subject to approval by the Board

of Supervisors. Because the proposed agreement would automatically renew on annual basis, and therefore result in a term in excess of ten years, this proposed ordinance is subject to approval by the Board of Supervisors.

Background

The State of California recently modified its Renewable Portfolio Standards. Effective December 10, 2011, the State's Renewable Portfolio Standards will now require most utilities in the State to obtain at least 33 percent of their energy from clean, renewable sources, such as wind or solar power, by 2020. However, the Public Utilities Commission (PUC) is not one of those utilities required to meet the 33 percent standard. However, in order to comply with the State's modified Renewable Portfolio Standards regulations, the San Francisco Public Utilities Commission (PUC) must begin reporting to the State, on an annual basis, its renewable energy procurements and generation, or energy that is derived from natural resources such as sunlight or wind, by certifying that renewable energy. The PUC owns facilities that generate renewable energy, such as solar energy facilities, including those located at Moscone Center and the Chinatown Library, and hydroelectric energy, such as the Hetch Hetchy Regional Water System. The PUC also procures renewable energy generated by others, such as solar energy from Recurrent Energy.

Renewable energy has environmental benefits or attributes. These environmental attributes, once certified, can become an instrument which has financial value if traded or sold by the PUC to other utilities or entities, such as Pacific Gas and Electric (PG&E), subject to greenhouse gas regulations in the energy markets. One example of such an environmental instrument is a Renewable Energy Credit¹, which can be used to demonstrate the PUC's compliance with the State's Renewable Portfolio Standards regulations. According to Mr. Bart Broome, Government Affairs Manager at the PUC, other environmental instruments besides Renewable Energy Credits that may be used by the PUC to capture the City's environmental attributes include:

- (a) Cap-and-Trade² Emission Allowances³: Issued by the State and given to the PUC without cost as a publicly-owned electric utility to mitigate the increased cost of electricity as a result of the Cap-and-Trade market. The PUC expects to receive Cap-and-Trade Emissions Allowances annually from the State, starting in the second half of 2012. State regulations will be developed to determine how these Cap-and-Trade Emissions Allowances will be certified, tracked, banked, and retired by the California Air Resources Board before State-required participation in a State allowance tracking system is required on July 16, 2012.⁴ The PUC will need to participate in an allowance

¹ A Renewable Energy Credit represents the environmental attributes of one unit of electricity generated and delivered from a renewable energy source. These RECs may be sold or traded separately from the unit of electricity itself.

² The State's Cap-and-Trade Program places a State-wide limit or cap on the amount of greenhouse gas emissions. Under the State's Cap-and-Trade Program, stationary-source greenhouse gas emitters must acquire emissions allowances representing one unit of greenhouse gas emissions through assignment, purchase, or trade which are proportional to their emissions. These emission allowances can then be bought and sold between entities.

³ An emissions allowance is a permit representing one unit of greenhouse gas emissions.

⁴ The California Air Resources Board has issued Requests for Proposals to contract with one or more third parties to administer these functions.

tracking system beginning July 16, 2012 and will need to enter into at least one contract to track its emissions allowances received under the State's Cap-and-Trade Program.

- (b) Cap-and-Trade Offsets⁵: May be earned by the PUC from the sequestration of greenhouse gases through forestry projects or through the capture of greenhouse gases in the PUC's wastewater treatment operations. Offsets earned, and certified, could be sold to greenhouse gas emitters who are obligated to comply with the Cap-and-Trade Program regulations. The regulations and tracking system for these offsets will be developed by the California Air Resources Board during 2012.
- (c) Low Carbon Fuel Credits: May be earned by the PUC through the State's Low Carbon Fuel Standard⁶, which rewards entities that supply low-carbon fuels and related infrastructure for transportation, such as electricity and electricity charging infrastructure for electrified mass transit and electric vehicles, by providing those entities with credits that may be sold to other entities who are obligated to comply with the Low Carbon Fuel Standard regulations.

Mr. Broome advises that, in order to certify, track, and ultimately trade the PUC's Renewable Energy Credits and other environmental instruments, the PUC needs to establish one or more accounts with tracking entities, such as the Western Renewable Energy Generation Information System (WREGIS). WREGIS was developed by the California Energy Commission (CEC)⁷, the Western Governors' Association⁸, and the Western Regional Air Partnership⁹ and is administered by the Western Electricity Coordinating Council¹⁰. WREGIS is a single, centralized entity responsible for issuing and tracking WREGIS-certified Renewable Energy Credits for electricity from renewable facilities in the western United States. WREGIS-certified Renewable Energy Credits have more value in the electricity market than those certified by other sources because WREGIS is the only entity which can register Renewable Energy Credits for the purposes of compliance with California's State laws mandating the use of renewable energy, such as the State's Renewable Portfolio Standards.

According to Mr. Broome, the PUC cannot get credit, in the form of Renewable Energy Credits, for the renewable energy it is currently generating unless the PUC has an account with WREGIS and those renewable energy resources have been certified and registered with

⁵ A Cap-and-Trade Offset is a reduction in greenhouse gas emissions made in order to compensate for or to offset a greenhouse gas emission occurring elsewhere. The State permits a percentage of greenhouse gas emissions to not be counted towards the emission allowance cap through the purchase of such Cap-and-Trade Offsets.

⁶ The Low Carbon Fuel Standard, effective as of January 1, 2011, requires fuel providers to demonstrate a continual decrease of greenhouse gas emissions for every unit of energy delivered to a vehicle.

⁷ The California Energy Commission is the State's primary energy policy and planning agency.

⁸ The Western Governors' Association is an independent, non-partisan organization of Governors from 19 Western states, two Pacific-flag territories and one commonwealth.

⁹ The Western Regional Air Partnership is a collaborative effort of tribal governments, state governments and various federal agencies to develop the technical and policy tools needed by western states and tribes to comply with the U.S. Environmental Protection Agency's regional haze regulations and improve air quality in the Colorado Plateau wilderness and national parks, including the Grand Canyon.

¹⁰ The Western Electricity Coordinating Council is the regional entity responsible for coordinating and promoting bulk electric system reliability in the Western region, including the Canadian provinces of Alberta and British Columbia, the northern portion of Baja California, Mexico, and all or portions of the 14 Western states.

WREGIS by July 1, 2012. Pursuant to State regulations, if the PUC does not meet that July 1, 2012 deadline, the PUC will (a) lose the ability to claim the Renewable Energy Credits for renewable energy generation that occurred between January 1, 2011 and the date of registration, (b) lose both the dollar value and diminish the compliance value of those Renewable Energy Credits, and (c) could face financial penalties for failing to comply with the State's Renewable Portfolio Standards regulation. Mr. Broome also advises that it is likely that the California Energy Commission will mandate registration with WREGIS as it implements the requirements of the State's Renewable Portfolio Standards regulations, because current State legislation requires the California Energy Commission to verify compliance with the Renewable Portfolio Standards requirements by retail sellers and local publicly-owned electric utilities, such as the PUC.

Community Choice Aggregation Program (CleanPowerSF)

The Community Choice Aggregation program (CleanPowerSF), will offer San Francisco's residents and businesses energy procured by the PUC, as an alternative to energy obtained from Pacific Gas and Electric (PG&E). The Board of Supervisors approved the establishment of the City's CleanPowerSF program in May, 2004 (Ordinance No. 86-04). On November 10, 2011, a public hearing regarding the CleanPowerSF program and the proposed term sheet for an agreement with a provider was held before the Board of Supervisors' Government Audit and Oversight Committee.

According to Ms. Meg Meal, PUC Manager of Regulatory and Legislative Affairs for the Power Enterprise, an agreement between the PUC and Shell Energy North America regarding Community Choice Aggregation through CleanPowerSF is anticipated to be submitted to the Board of Supervisors for approval mid-December, 2011. The Budget and Legislative Analyst will be reporting on that proposed agreement when it is submitted to the Board of Supervisors.

Subject to approval by the Board of Supervisors, the first phase of CleanPowerSF is currently expected to be implemented in mid-2012, which will provide participating residential customers in San Francisco with electricity supplies that are 100 percent renewable, as defined by State regulations. The target participation for the first phase is 50,000-75,000 participating residential accounts out of approximately 340,000 residential accounts in San Francisco, comprising a total of approximately 20-30 megawatts of energy. Ms. Meal advises that subsequent phases of CleanPowerSF would be implemented based on results of the first phase, including actual customer participation rates, future market conditions and renewable procurement opportunities that are available at the time.

Ms. Meal advises that the PUC would need to open a second, separate account with WREGIS which will track the PUC's Renewable Energy Credits to demonstrate its compliance with the State's Renewable Portfolio Standards regulations and demonstrate achievement of CleanPowerSF goals, which include providing only renewable energy that has been certified compliant with State regulations. The State requires community choice aggregation programs to open accounts with WREGIS to demonstrate compliance with State Renewable Portfolio Standards regulations.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would (a) authorize the City and County of San Francisco, through the Public Utilities Commission (PUC), to approve a new agreement with the Western Renewable Energy Generation Information System (WREGIS) allowing for the opening of accounts which would register, document and track the PUC's environmental attributes (the environmental benefits of renewable energy) which are certified by WREGIS, at an estimated initial cost of \$4,532 per year, payable by the PUC to WREGIS, depending on account activity in an amount not to exceed \$1,000,000, (b) authorize the PUC to enter into other similar future agreements for tracking environmental attributes, without obtaining Board of Supervisors approval, so long as the total expenditures for those other agreements do not exceed \$2,500,000, (c) waive the competitive procurement requirements of San Francisco Administrative Code Chapter 21 for this service, (d) waive the requirement of Administrative Code Section 21.9 that City agreements not include an automatic renewal provision, (e) waive the requirement of Administrative Code Section 21.35 that every agreement contain a statement regarding liability of claimants for submitting false claims, (f) waive the requirement of Administrative Code Section 12F.5 that every contract contain a statement urging companies abide by the MacBride Principles¹¹, and (g) waive the requirement of Administrative Code Section 12O.2 that every contractor provide Earned Income Credit forms to eligible employees.

According to Mr. Broome, this is the first time the PUC is proposing to directly have the City's renewable energy resources certified by any entity, such as WREGIS. However, this is now necessary due to Renewable Portfolio Standards regulations as required by the State. Therefore the PUC is seeking approval to enter into an agreement with WREGIS which will allow the PUC to establish an account with WREGIS in order to demonstrate compliance with the recently enacted State Renewable Portfolio Standards regulations. Mr. Broome notes that establishing accounts with WREGIS will allow the PUC to accurately track and report the environmental attributes, or the environmental benefits of renewable energy, of the City's renewable resources including solar and hydroelectric generation. According to Mr. Broome, if the PUC does not enter into the proposed agreement with WREGIS and therefore fails to open an account with WREGIS, the PUC's renewable energy resources can not be certified. If the PUC does not certify its renewable energy resources in compliance with Renewable Portfolio Standards regulations, the PUC could be subject to enforcement action by the California Energy Commission and California Air Resource Board.

FISCAL IMPACTS

The proposed WREGIS agreement between the PUC and WREGIS authorizes the PUC to pay WREGIS (a) approximately \$1,575 in annual fixed fees per account, (b) \$2,400 annual costs for electronic tagging of renewable energy, or a total of \$3,975, and (c) additional volumetric fees of \$.015 per megawatt hour of WREGIS-certified renewable energy. According to Ms. Meal, there are two scenarios for which the PUC has estimated costs to establish the subject WREGIS accounts: (1) only the PUC's solar facilities, such as those located at Moscone Center and the

¹¹ The MacBride Principles, consisting of nine fair employment principles, are a corporate code of conduct for United States companies doing business in Northern Ireland.

Chinatown Library, are certified and registered by WREGIS or (2) all of the PUC facilities, including the first phase of CleanPowerSF are certified and registered by WREGIS. As shown in Table 1 below, if only the PUC's solar facilities are certified and registered by WREGIS, the annual cost of an account payable by the PUC to WREGIS would be approximately \$4,532.

	Quantity	Cost
Annual Fixed Fees ¹²	1	\$1,575
Electronic Tagging Fee ¹³	1	2,400
Total Fixed Fees		\$3,975
	Megawatt Hours	Estimated Cost
Volumetric Fees for Solar Facilities (\$0.15 per megawatt hour)	9,638	\$145
10 % Contingency ¹⁴		412
Total Annual Fees		\$4,532

As shown in Table 2 below, if all of the PUC facilities are certified and registered by WREGIS as well as a second account established for the Community Choice Aggregation Program, CleanPowerSF, the annual cost to the PUC of the two accounts payable to WREGIS would be approximately \$32,545.

Item	Quantity	Cost
Annual Fixed Fees (2 Accounts)	2	\$3,150
Electronic Tagging Fee ¹⁵	1	2,400
Total Fixed Fees		\$5,550
Volumetric Fees (\$0.15 per megawatt hour)	Megawatt Hours	Estimated Cost
Solar Facilities	9,638	\$145
CleanPowerSF - Phase 1	300,000	4,500
Hetch Hetchy Hydroelectric Generation	1,490,000	22,350
Total Volumetric Fees	1,800,000	\$26,995
Total Annual Fees		\$32,545

If approved, the PUC would initially open one account with WREGIS exclusively for its solar generation. A second account will be opened if the Community Choice Aggregation Program, CleanPowerSF, is approved.

¹² Annual fixed fees under the proposed agreement are comprised of (a) a flat subscription fee of \$1,500 and (b) \$75 for the delivery of an annual report required by State regulations, to be delivered to the CEC in both electronic and paper format, specifying the renewable energy the PUC has procured and generated over the year.

¹³ A fixed fee of \$2,400, or \$200 per month, for annual electronic tagging of certified renewable energy in order to track the source of the energy and the point of usage, which is also required by State regulations.

¹⁴ Ms. Meal advises that a ten percent contingency was included due to potential variation in energy procurement and generation and the possibility of other modifications in how the PUC's energy needs to be accounted.

¹⁵ Ms. Meal advises that one \$2,400 annual fee for annual electronic tagging would be sufficient to perform these services for both WREGIS accounts.

POLICY CONSIDERATIONS

The Budget and Legislative Analyst notes that the proposed ordinance includes several waivers of City requirements for agreements, including (a) waiving the competitive procurement requirements of the San Francisco Administrative Code Chapter 21 for this service, (b) waiving the requirement of Administrative Code Section 21.9 that City contracts not include an automatic renewal provision, (c) waiving the requirement of Administrative Code Section 21.35 that every agreement contain a statement regarding liability of claimants for submitting false claims, (d) waiving the requirement of Administrative Code Section 12F.5 that every contract contain a statement urging companies abide by the MacBride Principles, and (e) waiving the requirement of Administrative Code Section 12O.2 that every contractor provide Earned Income Credit forms to eligible employees.

Ms. Margarita Gutierrez at the City Attorney's Office advises that waiving these requirements is necessary because, in order to establish an account with WREGIS and be compliant with the State's Renewable Portfolio Standards, the PUC must sign WREGIS's standard form agreement that is not subject to any negotiation or modification and the waiving of the City's Administrative Code poses little risk to the City. Ms. Gutierrez believes that, for the reasons explained below, the requested waivers are reasonable.

According to Ms. Gutierrez, waiving the competitive procurement requirements for the proposed agreement is reasonable because WREGIS is the only entity which provides Renewable Energy Credits compliant with the State's Renewable Portfolio Standards. Therefore, there are no other potential contractors which provide the service that WREGIS does. The PUC needs to enter into a sole source agreement with WREGIS in order to be in full compliance with the State's Renewable Portfolio Standards and receive full credit for its renewable energy sources.

Ms. Gutierrez also advises that waiving the requirement that City contracts not include an automatic renewable provision is reasonable because, while the proposed agreement with WREGIS will automatically renew, the proposed ordinance only authorizes the agreement to extend so long as total expenditures for the WREGIS agreement does not exceed \$1,000,000. If additional expenditures under the existing agreement exceed the not-to-exceed amount of \$1,000,000 by over \$500,000, the PUC will be required to obtain Board of Supervisors approval. The proposed agreement may be terminated by either party with 60 days written notice, although Mr. Broome acknowledges that the PUC will likely need this service for the foreseeable future.

According to Ms. Gutierrez, the waiver of the requirement that every agreement contain a statement regarding the liability of claimants submitting false claims is reasonable because the fees that the PUC would be paying WREGIS will be based on a fixed annual fee and other fees, based on the volume of certifications, which can be easily verified by the PUC based on the actual volume of energy procured and/or generated.

Ms. Gutierrez also advises that the waiver of the requirement that every City agreement contain a statement urging companies to abide by the MacBride Principles is reasonable because

WREGIS conducts no business with Northern Ireland and therefore, by default abides by the MacBride Principles. And finally, Ms. Gutierrez advises that the waiver of the requirement that every City contractor provide Earned Income Credit forms to eligible employees is reasonable because the agreement cannot be modified to include this provision. Ms. Meal advises that the PUC was informed that WREGIS has not distributed Earned Income Credit forms to its employees.

Given the PUC's need to certify its renewable energy generation and procurement in order to get credit and prove compliance with the State's Renewable Portfolio Standards regulations and the likelihood that the California Energy Commission will mandate that all utilities have their environmental attributes, the environmental benefits of renewable energy, certified and registered with WREGIS, the Budget and Legislative Analyst recommends that the proposed agreement with WREGIS be approved.

However, the Budget and Legislative Analyst also notes that the proposed ordinance allows the PUC to enter into other similar agreements in the future to track environmental attributes without obtaining Board of Supervisors approval. Any additional costs of these agreements would be subject to annual appropriation by the Board of Supervisors and would only allow the PUC to enter in other agreements so long as total expenditures for those other agreements do not exceed \$2,500,000

According to Mr. Broome, the PUC does not believe it should be necessary to obtain Board of Supervisors approval for entering into these types of future agreements on a case-by-case basis because (a) these agreements are mandated by State statute and regulations and the PUC does not have discretion to not enter into such certification agreements, (b) the costs of each agreement are expected to be modest, similar to the proposed agreement, (c) the terms of these agreements, like the proposed agreement with WREGIS, are not negotiable, such that the PUC cannot negotiate various provisions, (d) the additional time required to request and receive Board of Supervisors approval may have negative consequences on the PUC since regulatory deadlines and the process of certifying the meeting of those regulatory deadlines often do not allow sufficient time for the Board of Supervisors approval process, (e) requiring receiving Board of Supervisors approval could place the PUC at risk of losing the value of environmental attributes due to such process delays, and (f) all expenditures under the proposed agreement or future agreements are subject to Board of Supervisors approval.

RECOMMENDATIONS

1. Approve the proposed agreement with WREGIS.
2. Approval of the proposed ordinance as it relates to authorizing the General Manager of the PUC to enter into similar future agreements, without obtaining Board of Supervisors approval, is a policy decision for the Board of Supervisors.