

AMENDMENT OF THE WHOLE – 11/17/04

FILE NO. 041551

ORDINANCE NO.

1 [Settlement Of Lawsuit]

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3 **Ordinance authorizing settlement of the lawsuit filed by the City and County of San**  
4 **Francisco, on behalf of the People of California, against the Duke Energy Companies;**  
5 **the lawsuit entitled People v. Dynege, et al. was filed on January 18, 2001, and has been**  
6 **consolidated as Wholesale Electricity Antitrust Cases I & II in the United States District**  
7 **Court, Southern District of California, Case Nos. 02 CV 0990-RHW, CV 02-1000-RHW, 02**  
8 **CV-1001 RHW; the settlement provides \$500,000 to San Francisco to be used for**  
9 **energy efficiency, renewable energy or environmental justice projects in areas affected**  
10 **by electric generation in San Francisco and \$172 million in benefits to California**  
11 **electric ratepayers, among other provisions.**

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13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. The City Attorney is hereby authorized to settle the action entitled "Wholesale  
15 Electricity Antitrust Cases I & II," United States District Court, Southern District of California,  
16 Case Nos. 02 CV 0990-RHW, CV 02-1000-RHW, 02 CV-1001 RHW against the Duke Energy  
17 Companies (Duke) by entering the settlement agreement with Duke negotiated by the State of  
18 California through the Attorney General. The settlement agreement is on file with the Clerk of  
19 the Board of Supervisors in File No. \_\_\_\_\_. The allocation of settlement proceeds among  
20 settling parties is governed by the California Litigation Escrow Allocation Agreement on file  
21 with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

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23 San Francisco's litigation against all other defendants in the Wholesale Electricity Antitrust  
24 Case will continue. The primary benefits to San Francisco from the settlement include the  
25 following: (1) San Francisco will receive \$500,000 to be used for energy efficiency, renewable

SUPERVISOR MAXWELL  
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BOARD OF SUPERVISORS

1 energy or environmental justice projects in areas affected by electric generation in San  
2 Francisco; (2) California electric ratepayers will receive \$172 million in benefits from the  
3 settlement, of which \$86.3 million is expected to benefit PG&E's customers, including San  
4 Francisco residents and businesses; (3) Duke will pay approximately \$20 million in attorney  
5 fees, of which \$7 million will be allocated among the attorneys representing private plaintiffs  
6 and local governments, including those representing San Francisco. Section 1.53 of the  
7 settlement agreement requires approval of the Board of Supervisors by December 31, 2004.

8 Section 2. The above-named action was filed in the Superior Court in the County of  
9 San Francisco on January 18, 2001 and has been consolidated as Wholesale Electricity  
10 Antitrust Cases I & II in the United States District Court, Southern District of California. The  
11 following parties were named in the lawsuit: the People of the State of California, by and  
12 through the San Francisco City Attorney, Plaintiffs, and more than one dozen defendants,  
13 including the Duke Energy Companies.

14 Section 3. Funds received by the City from this settlement shall be used to carry out  
15 the purpose for which funds have been received, and shall be appropriated to departments in  
16 accordance with the terms and conditions under which said funds have been received. The  
17 \$500,000 payment shall be appropriated as follows: (1) \$250,000 for purchasing and  
18 installing small scale solar power systems in non-profit organizations and homes of low-  
19 income homeowners in areas of San Francisco affected by electric generation. The  
20 Department of the Environment and the Public Utilities Commission shall work together to  
21 develop and implement this program. (2) \$250,000 for purchase and planting of trees in  
22 areas of San Francisco affected by electric generation. The Department of the Environment  
23 and the Department of Public Works shall work together to develop and implement this  
24 program.

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1           The named departments shall not use more than 10% of these funds for overhead or  
2 administrative costs and shall give weight to the following considerations: (a) utilization of  
3 current programs operated by the City, community or non-profits that could implement the  
4 program in a cost-effective and timely manner; and (b) provision of jobs to underemployed  
5 residents of San Francisco. The named departments shall complete a plan for  
6 implementation of these programs and shall seek Commission approval within 60 days after  
7 the City receives payment of the \$500,000 from Duke. The named departments shall seek  
8 public input in the development of these programs..

9 APPROVED AS TO FORM AND  
10 RECOMMENDED:

11 DENNIS J. HERRERA  
12 City Attorney

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Theresa L. Mueller  
15 Deputy City Attorney  
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