

**Item 1
File 11-1096***Continued on November 16, 2011***Department :**
Public Utilities Commission (PUC)**EXECUTIVE SUMMARY****Legislative Objectives**

- The proposed ordinance would (a) authorize the City, through the Public Utilities Commission (PUC), to execute the second amendment to an existing agreement with the United States, through the Department of Energy's Western Area Power Administration (WAPA) to approve, (a) retroactive to September 30, 2011, the extension of the existing Full Load Service (FLS) agreement, which currently expires on September 30, 2015 by five years which would result in the existing agreement expiring on September 30, 2020, (b) increase the estimated cost of the existing agreement, from September 1, 2005 through September 30, 2020, or 15 years and one month, to not exceed \$13,890,000, although the existing agreement would not include a not-to-exceed amount, (c) indemnify and hold WAPA harmless against claims arising from the activities of the PUC under the agreement, (d) waive the requirement of Administrative Code Section 21.35 that every agreement contain a statement regarding the liabilities of claimants submitting false claims, and (e) waive the requirement that every agreement contain a statement regarding guaranteed maximum costs (a not-to-exceed amount).

Key Points

- On January 11, 2005, the Board of Supervisors approved a FLS agreement between the PUC and WAPA for the term from September 1, 2005 through September 30, 2010 for WAPA to provide supplemental electricity for Treasure Island from third party electricity generators (Ordinance No. 17-05). On December 4, 2007, the Board of Supervisors approved the first amendment to this FLS agreement with WAPA, to extend the term by five years through September 30, 2015 (Ordinance No. 276-07). The PUC approved a resolution that this amended agreement, from September 1, 2005 through September 30, 2010, can not exceed \$4,240,000.
- The PUC has expended a total of \$3,479,545 under the existing FLS agreement from September 1, 2005 through September 30, 2011. The PUC estimates expending an additional approximately \$2,827,800 for the four-year period from October 1, 2011 through September 30, 2015 when the existing agreement expires. Therefore, the PUC anticipates expending a total of approximately \$6,307,345 for the 10 years and one month period from September 1, 2005 through September 30, 2015, or \$2,067,345 more than the existing \$4,240,000 not to exceed amount.

Fiscal Impact

- The total estimated cost to the PUC for purchasing supplemental electricity and related portfolio management charges under the proposed five-year extension of the existing agreement, from October 1, 2015 through September 30, 2020, is \$9,643,543.
- The total estimated costs under the existing agreement, including the proposed amendment, extending the existing agreement by five years, resulting in a total term of 15 years and one month, from September 1, 2005 through September 30, 2020, are \$15,950,888 (\$9,643,543 for the proposed five-year extension plus \$6,307,345 for the existing agreement term of 10 years and one month), which is \$2,060,888 more than the currently estimated not-to-exceed amount of \$13,890,000 included in the proposed ordinance.

Policy Consideration

- A competitive process has not been initiated in order to ascertain what the specific costs would be from another third party provider to ensure that the City is obtaining the lowest price possible for the purchase of the supplemental electricity. No competitive process has been initiated because (a) the PUC is purchasing small amounts of electricity in comparison to other purchasers and would pay a premium for the amounts it would purchase, (b) WAPA purchases large amounts of electricity and receives cost savings which it passes on to the PUC, and (c) the purchased electricity would need to be delivered to WAPA's transmission center which is located in Oakland that would require transmission agreements by the PUC in addition to the cost of purchasing the electricity itself. Therefore, the PUC believes that it is getting the lowest price possible for this supplemental electricity. It should be noted that, for the same reasons stated above, the existing agreement between the PUC and WAPA, as previously approved by the Board of Supervisors, was awarded on a sole source basis without utilizing competitive bid processes.
- While the proposed amendment to the existing agreement does not include a not-to-exceed amount, per the waiving of Administrative Code Section 21.19, the proposed ordinance originally specified a not-to-exceed amount of \$13,890,000, which was amended to \$15,950,888 by the Budget and Finance Committee. The PUC will continue to monitor its expenditures on the existing agreement and, if it is anticipated that the PUC will exceed the not-to-exceed amount, the PUC would be required to obtain approval by the Public Utilities Commission and subsequently the Board of Supervisors to increase that not-to-exceed amount if that increase exceeds \$500,000 as is required by Charter Section 9.118(b).
- The Budget and Finance Committee, at its meeting of November 16, 2011, amended the proposed ordinance to reflect the updated estimate of \$15,950,888 as the not-to-exceed amount, rather than the \$13,890,000 amount as previously included in the proposed ordinance.

Recommendations

- Approve the proposed ordinance.

MANDATE STATEMENT/ BACKGROUND**Mandate Statement**

In accordance with Charter Section 9.118(b), City agreements with anticipated expenditures of \$10,000,000, or more or amendments to such City agreements with anticipated expenditures of more than \$500,000 are subject to approval by the Board of Supervisors.

Background

The City, through the Public Utilities Commission (PUC), is currently providing electricity to Treasure Island and Yerba Buena Island under a multi-year cooperative agreement that the City, through the Treasure Island Development Authority (TIDA), has with the United States Navy.¹

In order to provide that electricity, the PUC currently has an existing agreement with the U.S. Department of Energy's Western Area Power Administration (WAPA) for the delivery of low-cost Federal electricity services to Treasure Island and Yerba Buena Island from January 1, 2005 through December 31, 2024, which was approved by the Board of Supervisors on January 22, 2001 (Resolution No. 56-01). The existing agreement provides baseline electricity to Treasure Island and Yerba Buena Island from electricity sourced from two federal hydropower projects, the Central Valley Project and the Washoe Project, but does not provide supplemental electricity² if electricity needs are in excess of the baseline electricity needs.³ The costs of the electricity under the existing agreement are recovered in full through Treasure Island and Yerba Buena Island electric utility rates and are included in the PUC's annual budget. From 2009 through 2010, WAPA provided baseline electricity at an average of 7,226 megawatt hours per year.

In order to provide supplemental electricity to Treasure Island and Yerba Buena Island in the event that the baseline electricity provided is not sufficient, the PUC entered into a separate Full Load Service (FLS) agreement with WAPA, with a term from September 1, 2005 through September 30, 2010, which was approved by the Board of Supervisors on January 11, 2005 (Ordinance No. 17-05) in which WAPA provides supplemental electricity from third party electricity generators at market rates. On December 4, 2007, the Board of Supervisors approved the first amendment to the existing FLS agreement with WAPA, which extended the FLS agreement by five years through September 30, 2015 in order to allow WAPA to begin purchasing electricity beyond September 30, 2010 (Ordinance No. 276-07). In addition to providing supplemental electricity, the existing FLS agreement also provides portfolio management services⁴ to meet Treasure Island and Yerba Buena Island's electricity needs. All of the costs of the electricity under the existing FLS agreement are recovered in full through Treasure Island and Yerba Buena Island electric utility rates and are included in the PUC's annual budget.

¹ Under the cooperative agreement between the TIDA and the United States Navy, TIDA assumes responsibility for (a) operating and maintaining water, waste water, storm water, electricity and gas utility systems, (b) security and public health and safety services, (c) grounds and street maintenance and repair, and (d) property management and caretaker services. On September 13, 2011, the Board of Supervisors authorized the extension of the existing cooperative agreement from October 1, 2011 through September 30, 2012 (Resolution No. 372-11).

² Supplemental electricity is electricity provided by WAPA in addition to the baseline electricity provided to meet the PUC's electricity needs on Treasure Island and Yerba Buena Island.

³ Under the existing agreement, the amount of baseline electricity that the PUC receives is .17264 percent of the electricity available for market after (a) meeting the electricity needs of the Central Valley Project and the Washoe Project and first preference customers who are wholly located in Trinity, Calaveras, or Tuolumne Counties within California and (b) any other adjustments required for maintenance, regulation, reserves, transformation losses and ancillary services.

⁴ Portfolio management services consist of providing (a) historical electricity load data, (b) expected future electricity loads to determine electric power schedules for Treasure Island and Yerba Buena Island, and (c) purchasing and selling electricity from and to third party providers.

The ordinances approving both the original FLS agreement, and the existing amended FLS agreement, as previously approved by the Board of Supervisors, (a) indemnified and held WAPA harmless against claims arising from the activities of the PUC under the agreement, (b) waived the requirement of Administrative Code Section 21.35 that every agreement contain a statement regarding the liabilities of claimants submitting false claims, and (c) waived the requirement that every agreement contain a statement regarding guaranteed maximum costs (a not-to-exceed amount). However, the Public Utilities Commission adopted a resolution on October 9, 2007, which limited the amount of the amended agreement to not exceed \$4,240,000 from September 1, 2005 through September 30, 2015, but that not-to-exceed amount was not approved by the Board of Supervisors, although an estimate of the total costs of the agreement was included in the ordinance that was approved. According to a previous Budget and Legislative Analyst report on the first amendment to the existing agreement, dated November 14, 2007, the City Attorney's Office advised that these indemnification and waiver provisions are standard language required by agreements with WAPA and pose little risk to the City. All expenditures under the WAPA agreements are included in the PUC's budget and therefore subject to appropriation approval by the Board of Supervisors. In addition, the existing FLS agreement contains a provision allowing the PUC to terminate the existing FLS agreement without cause, with three months written notice.

According to Mr. Sam Laraño, Manager of Interconnection Services and Redevelopment at the PUC, as shown in Table 1 below, the PUC has expended a total of \$3,479,545 for supplemental electricity and related portfolio management charges under the existing FLS agreement from September 1, 2005 through September 30, 2011, with a total megawatt-hour⁵ usage of 51,243 megawatt-hours. Based on the PUC's total expenditures of \$3,479,545 from September 1, 2005 through September 30, 2011, the PUC expended an average of \$571,980 per year over this six-year period.

Table 1: Total Electricity Usage and Cost under FLS Agreement with WAPA for the Six Year and One Month Period from September 1, 2005 through September 30, 2011					
	Actual Electricity Usage in Megawatt-hours under FLS Agreement	Cost per Megawatt-hour	Total Cost of Electricity Usage Under FLS Agreement	Portfolio Management Charges (See Footnote 4 Above)	Total Cost of Electricity Plus Portfolio Management Under FLS Agreement
9/2005 - 12/2005	2,823	\$76.31	\$215,389	\$10,200	\$225,589
1/2006 - 12/2006	3,654	67.53	246,715	30,600	277,315
1/2006 - 12/2007	9,512	66.16	629,349	30,600	659,949
1/2008 - 12/2008	10,209	74.85	764,097	30,600	794,697
1/2009 - 12/2009	11,182	57.44	642,282	30,600	672,882
1/2010 - 12/2010	9,548	58.35	557,134	30,600	587,734
1/2011 - 9/2011	4,315	\$55.26	238,429	22,950	261,379
Total	51,243		\$3,293,395	\$186,150	\$3,479,545*
* - Average annual cost of \$571,980					

⁵ A megawatt-hour is a unit of energy equivalent to one megawatt of electricity expended for one hour of time.

Mr. Laraño estimates that, as shown in Table 2 below, the PUC will expend approximately \$2,827,801 for electricity usage and portfolio management charges for the remaining four-year period under the existing agreement, or from October 1, 2011 through September 30, 2015.

Table 2: Projected Cost of Remaining Four-Year Period under the Existing Agreement, from October 1, 2011 through September 30, 2015					
	Estimated Electricity Usage Under FLS Agreement (in Megawatt-Hours)	Projected Cost Per Megawatt-Hour	Projected Cost of Electricity Usage Under FLS Agreement	Estimated Portfolio Management Charges	Estimated Total Cost of Electricity Plus Portfolio Management Under FLS Agreement
10/2011-12/2011	3,263	\$41.00	\$133,787	\$8,500	\$142,287
1/2012-12/2012	10,333	42.24	436,453	34,000	470,453
1/2013-12/2013	10,303	54.50	561,526	34,000	595,526
1/2014-12/2014	10,457	58.75	614,325	34,000	648,325
1/2015-9/2015	15,131	62.50	945,710	25,500	971,210
Total			\$2,691,801	\$136,000	\$2,827,801

The Budget and Legislative Analyst notes that, given that the PUC has already expended \$3,479,545 for supplemental electricity and portfolio management charges for the six-year and one month period from September 1, 2005 through September 30, 2011 and the PUC estimates expending an additional \$2,827,801 for the four-year period from October 1, 2011 through September 30, 2015, an estimated total of \$6,307,346 will be incurred for supplemental electricity and related portfolio management charges under the existing September 1, 2005 through September 30, 2015 agreement. The Budget and Legislative Analyst also notes that this estimated total of \$6,307,346 is \$2,067,346 more than the not-to-exceed \$4,240,000 amount that the PUC has currently committed to not exceeding.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would authorize the City and County of San Francisco, through the Public Utilities Commission (PUC), to execute the second amendment to the existing agreement between the United States, through the Department of Energy's Western Area Power Administration (WAPA), enabling the PUC to approve (a) retroactive to September 30, 2011, the extension of the existing Full Load Service (FLS) agreement⁶, which currently expires on September 30, 2015 by five years which would result in the existing agreement expiring on September 30, 2020, (b) increase the estimated cost of the agreement to a not-to-exceed amount of \$13,890,000, (c) indemnify and hold WAPA harmless against claims arising from the activities of the PUC under the agreement, (d) waive the requirement of Administrative Code

⁶ A FLS agreement is an agreement by which WAPA provides the PUC with supplemental electricity to meet its electricity needs beyond the baseline electricity provided by WAPA under a separate agreement.

Section 21.35 that every agreement contain a statement regarding the liabilities of claimants submitting false claims, and (e) waive the requirement that every agreement contain a statement regarding guaranteed maximum costs (a not-to-exceed amount).

The proposed five-year extension (proposed second amendment) of the existing agreement between the PUC and WAPA, until September 30, 2020 would allow WAPA to begin purchasing electricity for periods beyond the existing agreement's expiration date of September 30, 2015. The proposed ordinance would be retroactive to September 30, 2011 to accommodate WAPA's requirement that the existing agreement be amended by September 30, 2011 if the PUC wishes to continue their FLS agreement beyond September 30, 2015 when the existing agreement expires.

On September 13, 2011 the Public Utilities Commission approved the subject proposed second amendment to the agreement (Resolution No. 1100153).

FISCAL IMPACTS

According to Mr. Laraño, as shown in Table 3 below, the total estimated cost of purchasing supplemental electricity and the related portfolio management service charges under the proposed five year extension of the existing agreement from October 1, 2015 through September 30, 2020 is \$9,643,543 for 125,529 mega-watt hours of electricity.

Table 3: Projected Cost of Proposed Five-Year Extension of Existing Agreement, from October 1, 2015 through September 30, 2020					
	Estimated Electricity Usage Under FLS Agreement (in Megawatt-Hours)	Projected Price Per Megawatt-Hour⁷ Under FLS Agreement	Projected Cost of Electricity Usage Under FLS Agreement	Estimated Portfolio Management Charges	Estimated Total Cost of Electricity Plus Portfolio Management Under FLS Agreement
10/2015-12/2015	6,020	\$62.50	\$376,257	\$8,500	\$384,757
1/2016-12/2016	22,713	66.25	1,504,752	34,000	1,538,752
1/2017-12/2017	23,581	70.00	1,650,662	34,000	1,684,662
1/2018-12/2018	25,680	76.89	1,974,550	34,000	2,008,550
1/2019-12/2019	25,881	81.94	2,120,681	34,000	2,154,681
1/2020 - 9/2020	21,654	\$85.28	1,846,640	25,500	1,872,140
Total	125,529		\$9,473,543	\$170,000	\$9,643,543

Therefore, under the proposed amended agreement, the estimated cost of \$9,643,543 to purchase supplemental electricity for the five year period from October 1, 2015 through September 30,

⁷ According to Mr. Larano, the projected prices used to determine total cost of the proposed ordinance are based on the Forward Price Curve for Electricity, which is the industry standard for forward pricing of electricity. The electricity prices provided are location and area-specific based on the point of delivery for the energy.

2020 is an average of \$1,928,709 per year, which is \$1,356,729, or over 237 percent more than the current average of \$571,980 (See Table 1 above) annually expended under the existing agreement from September 1, 2005 through September 30, 2011. According to Mr. Laraño, this increase in demand for supplemental electricity is due to the anticipated development of Treasure Island⁸, which includes the development of new housing and commercial offices, estimated to be completed by 2015 at the earliest. The Budget and Legislative Analyst also notes that, as shown in Table 3 above, the projected price per megawatt-hour is also anticipated to increase annually, resulting in higher total costs per mega-watt hour under the proposed extended agreement. However, Mr. Laraño advises that these prices are determined in a standard manner across electricity providers and would not vary if another electricity provider were chosen by the PUC to provide supplemental electricity to Treasure Island and Yerba Buena Island.

The total costs under the agreement, including the proposed five-year extension, from September 1, 2005 through September 30, 2020, or a total term of 15 years and one month, are estimated to be \$15,950,888 (\$9,643,543 for the five-year extension plus \$6,307,345 for the existing agreement of 10 years and one month), which is \$2,060,888 more than the previously estimated not-to-exceed amount of \$13,890,000 included in the proposed ordinance. Therefore, the Budget and Finance Committee amended the not-to-exceed amount to \$15,950,888 at its meeting of November 16, 2012, in order to account for the total estimated supplemental electricity costs and related portfolio management charges from September 1, 2005 through September 30, 2020. The Budget and Legislative Analyst notes that the cost of the proposed increase in the not-to-exceed amount from \$13,890,000 to \$15,950,888 are fully reimbursed to the PUC from the electricity revenues received by the PUC for electricity charged to customers on Treasure Island and Yerba Buena Island.

POLICY CONSIDERATIONS

The Budget and Legislative Analyst notes that the primary purpose for extending the existing agreement is the assumption that purchasing supplemental electricity for Treasure Island and Yerba Buena Island from another third party provider, such as Pacific Gas & Electric (PG&E), would be more expensive than continuing to purchase supplemental electricity through the existing agreement with WAPA. According to Mr. Laraño, the cost of purchasing supplemental electricity from third party providers from 2015 through 2020 would be determined in the same way that WAPA bases its prices, but that there would be additional costs to provide the service due to the need to coordinate with WAPA to determine the availability of WAPA's base resource energy, and to schedule, procure, and deliver the balance of the energy required to Treasure Island on a timely basis. According to Mr. Larano, while WAPA provides this service at cost to

⁸ According to Mr. Laraño, initial transfer of property at Treasure Island to the developer is estimated to occur in 2012. After that initial property transfer, initial design work, including development of new roadways and utility infrastructure, on the transferred property would take from 12 to 24 months. If the planned transfer occurs in the beginning of 2012, the design can be completed by early 2014. Initial infrastructure construction is anticipated to take 12 to 24 months to complete and is currently estimated to be completed between 2014 and 2015. Construction of housing, offices, etc., is anticipated to begin with the first new homes and offices to be occupied between 2015 and 2016.

the PUC, a third party, such as PG&E, would need to cover its costs and would also add additional fees in order to make a profit, making purchasing electricity from a different third party provider more expensive.

However, the Budget and Legislative Analyst notes that a competitive process was not initiated for the subject proposed five-year extension in order to ascertain what the specific costs would be for purchasing supplemental electricity for Treasure Island and Yerba Buena Island from alternative third party providers in order to ensure that the City is obtaining the lowest price possible for this supplemental electricity. Mr. Larano advises that this proposed five-year extension is recommended for award by the PUC on a sole source basis and that no competitive process has been initiated because (a) the PUC is purchasing small amounts of electricity in comparison to other purchasers and would pay a premium for the amounts it would purchase, (b) WAPA purchases large amounts of electricity and receives cost savings which it passes on to the PUC, and (c) the purchased electricity would need to be delivered to WAPA's transmission center which is located in Oakland that would require transmission agreements by the PUC in addition to the cost of purchasing the electricity itself. Therefore, the PUC believes that it is getting the lowest price possible for this supplemental electricity.

It should be noted that for the same reasons stated above, the existing agreement between the PUC and WAPA, as previously approved by the Board of Supervisors, was awarded on a sole source basis without utilizing competitive bid processes.

The Budget and Legislative Analyst also notes that the proposed ordinance (a) approves indemnifying and holding WAPA harmless against claims arising from the activities of the City, (b) waives the Administrative Code Section 21.35 requirement that every agreement contain a statement regarding liability of claimants for submitting false claims, and (c) waives the Administrative Code Section 21.19 requirement that every agreement contain a statement regarding guaranteed maximum costs, or a not-to-exceed amount. However, the City Attorney's Office advises that the above provisions are standard language required by agreements with WAPA, have been included in previous agreements with WAPA for decades, as previously approved by the Board of Supervisors, and pose little risk to the City. The City Attorney's Office also advises that all expenditures under the proposed amendment are subject to appropriations approval by the Board of Supervisors and that the PUC can terminate the FLS agreement without cause, with three months written notice, leaving little risk to the City in approving such waivers.

The Budget and Legislative Analyst also notes that while the proposed amendment to the existing agreement does not specify a not-to-exceed amount, since the proposed ordinance waives Administrative Code Section 21.19, the proposed ordinance originally specified a not-to-exceed amount of \$13,890,000 which was amended to \$15,950,888 by the Budget and Finance Committee. Ms. Margarita Gutierrez of the City Attorney's Office advises that if the proposed ordinance is approved, the Board of Supervisors will only have granted the PUC the authority to purchase electricity up to the not-to-exceed amount and therefore the PUC would be required to request approval by the Board of Supervisors for all expenditures which exceed the not-to-exceed amount by more than \$500,000. In any event, expenditures are subject to appropriation approval by the Board of Supervisors.

As noted above, the Budget and Finance Committee, at its meeting of November 16, 2011, amended the proposed ordinance to reflect the updated estimate of \$15,950,888 as the not-to-exceed amount, rather than the \$13,890,000 amount as previously included in the proposed ordinance

RECOMMENDATION

Approve the proposed ordinance.