

File No. 100282

Committee Item No. 8

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date March 29, 2010

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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#### OTHER

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|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Public Utilities Commission Resolution No. 10-0021</u> |
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Completed by: Alisa Somera Date March 25, 2010

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document can be found in the file and the online version.

1  
2 [Initiative Constitutional Amendment – Opposing Proposition 16, the “New Two-Thirds Vote  
3 Requirement for Local Public Electricity Providers”]

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

6  
7  
8 **A. Overview of Proposition 16**

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

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

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

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

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

22 WHEREAS, PG&E has contributed \$15.5 million as of February 26, 2010 ([http://cal-  
23 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)

24 1) and has said it will spend up to \$35 million to get Proposition 16 approved by voters (SF  
25 Chronicle, 2/20/2010); and

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

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

7 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) urged the Board  
8 of Supervisors to consider the impacts on SFPUC operations and projects and adopt a City  
9 position on Proposition 16 in Resolution 10-0021, adopted on February 9, 2010, which  
10 resolution is on file with the Clerk of the Board of Supervisors in File No. 100282, and hereby  
11 declared to be a part of this motion as if set forth fully herein; and

12  
13 **B. Background**

14 **1. Legal Framework**

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

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

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

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

5           WHEREAS, For decades, public entities have provided electric services to their  
6 citizens; and

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

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

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

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

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

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

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

10  
11 **C. Potential Impacts of Proposition 16**

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

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

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

21           WHEREAS, A public entity that currently serves no customers or only some of the  
22 customers within its jurisdiction could be subject to the two-thirds vote requirement to serve  
23 even one new customers. There is no minimum threshold that triggers the vote requirement.  
24 In this way, Proposition 16 targets the incremental, limited provision of electric service which  
25 many public entities have undertaken over the last decade as an attractive and feasibly

1 means of achieving various local objectives, including revenue enhancement, economic  
2 development, job creation, and the expansion of clean sustainable energy resources; and

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

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

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

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

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

1           **2.     Types of Projects Potentially Affected by Proposition 16**

2           WHEREAS, It is impossible at this time to identify all of the potential impacts of  
3 Proposition 16 or to determine in advance which specific projects would be subject to the new  
4 two-thirds vote requirement. The following is a list of types of projects that might be subject to  
5 the two-thirds vote requirement:

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

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

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

12                  (iv)    Routine extensions of existing service to a new customers or a new  
13 facility for an existing customer.

14                  (v)     Community Choice Aggregation programs; and

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

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

19           WHEREAS, Proposition 16 could affect the City's plans to initiate or expand energy  
20 services to redevelopment projects and other City developments. The City currently provides  
21 electric service to City facilities, Treasure Island and Hunters Point Shipyard. It intends to  
22 continue service in those areas as well as initiate service to customers in other City  
23 developments and through the CCA program, CleanPowerSF. It could also affect the  
24 developers building the projects; and  
25

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

5           **Lost Revenues**

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

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

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

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

21           **Increased Electric Service Costs**

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



1           WHEREAS, One reason is the cost of PG&E's income taxes. Developers building a  
2 new project that will be served by PG&E are required to build the energy infrastructure, and  
3 then deed the system to PG&E before energy service can begin. The developer is required to  
4 pay PG&E the income taxes that PG&E will owe for acquiring the new asset. The tax rate  
5 varies each year, but typically ranges from 22% to 34% of the value of the infrastructure. The  
6 City does not pay income tax, and thus none is owed when developers transfer assets to the  
7 City; and

8           WHEREAS, While the costs of building the required infrastructure depends on the  
9 specifics of each project, the SFPUC estimates, by way of example, that the distribution  
10 system created for Phase 1 of the Hunters Point project cost approximately \$10 million. The  
11 tax rate in place at the time of completion was 34%, resulting in savings for the developer of  
12 \$3.4 million. Similarly, when the City provides the electric service to City projects, the project  
13 costs less than it would if electric service was provided by PG&E; and

14           **4. Diminishes local control**

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

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

23           (i) Charter Section 9.107(8) authorizes the Board of Supervisors to authorize  
24 bonds "to finance or refinance the acquisition, construction, installation, equipping,  
25

1 improvement or rehabilitation of equipment or facilities for renewable energy and energy  
2 conservation.”

3 (ii) Charter Section 16.101, which states “It is the declared purpose and  
4 intention of the people of the City and County, when public interest and necessity demand,  
5 that public utilities shall be gradually acquired and ultimately owned by the City and County.”

6 (iii) Administrative Code Chapter 99, which requires the City to “examine the  
7 feasibility of supplying electricity to all new City developments, including, without limitation,  
8 military base reuse projects, redevelopment projects and other City projects;” and

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

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

13 RESOLVED, That the Board of Supervisors opposes Proposition 16 for the following  
14 reasons:

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

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

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

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

24 5. Proposition 16 may adversely impact the development of renewable energy  
25 resources;

1           6.     Proposition 16 may result in increased costs and reduced revenues to the City  
2 and to developers of new projects;

3           7.     Proposition 16 may cause delays in redevelopment projects;

4           8.     Proposition 16 may limit the ability of local entities to develop community choice  
5 aggregation programs and other programs that promote customer choice and local control;  
6 and

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

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**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*

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Secretary, Public Utilities Commission