

Agenda Report

DATE: March 22, 2010

TO: Honorable Mayor and City Council

THROUGH: Legislative Policy Committee (March 17, 2010)

FROM: Pasadena Water and Power

SUBJECT: OPPOSITION TO PROPOSITION 16: NEW TWO-THIRDS VOTE REQUIREMENT FOR PUBLIC ELECTRICITY PROVIDERS

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the action taken herein is exempt from the California Environmental Quality Act pursuant to state CEQA Guidelines Sections 15061(b)(3) (general rule); and
2. Authorize the Mayor to send correspondence to the appropriate officials opposing Proposition 16, the "New Two-Thirds Vote Requirement for Public Electricity Providers" – Initiative Constitutional Amendment

BACKGROUND:

On June 1, 2009, California State Ballot Petition 09-0015, the "New Two-Thirds Vote Requirement for Public Electricity Providers," was filed with the California State Attorney General for the June 2010 statewide ballot. The proposed initiative is being sponsored by Pacific Gas and Electric (PG&E), and if passed would impact the ability of publicly owned electric utilities to expand electricity service beyond their current boundaries. The Initiative would also impact the ability of cities and counties to engage in community choice aggregation (CCA).

CCA, authorized by the State Legislature in 2002, allows a city or a county, or a combination of both, to procure and provide electricity to residents and businesses within its jurisdictions with an electric service provider other than the investor owned utility (IOU). The IOU would continue to provide distribution and other electricity services within the area served by CCA. Though no CCA programs currently exist to provide electricity service in California at this time, many CCA start up efforts in the San Joaquin Valley, Marin County, San Francisco and the East Bay have been met with strong resistance and opposition from PG&E.

PROPOSITION SUMMARY:

Under existing California law, annexations that include the expansion of electric service into a newly annexed portion of the City or to any portion of the City where the City's utility is not the sole provider of electricity require approval of a majority of voters in the area to be annexed.

The proposed initiative would place new voter approval requirements on local governments before they can use "public funds" to start up electricity service, expand electricity service into a new territory, or to create a Community Choice Aggregation (CCA) program. "Public funds" is defined broadly in the measure to include ratepayer funds, tax revenues, and various forms of debt. The measure would have the following effects:

- 1) If an existing publicly owned utility (POU) seeks to expand its electric delivery service into a new territory, it would require that the POU obtain two-thirds voter approval of both the voters in the existing territory and the voters in its proposed expanded territory.
- 2) If an authorized local government entity seeks to start up electricity service, it must receive approval by two-thirds of the voters in the area proposed to be served.
- 3) Creation of a Community Choice Aggregation (CCA) program by a local government would also require two-thirds voter approval.

The measure provides to local governments three exemptions from the two-third voter approval requirements:

- 1) If the use of public funds has been previously approved by the voters both within the existing jurisdiction of the local government and the territory proposed for expansion.
- 2) If the public funds would be used solely to purchase, provide, or supply specified types of renewable electricity, such as wind or solar power.
- 3) If the public funds would be used only to provide electric delivery service for the local government's own use.

This initiative will encroach on the City's authority by imposing a two-third voter approval requirement towards the use of its public funds. Though the City is not envisioning expanding its electric service territory, this initiative will also encroach on the City's authority to expand its electric service should it choose to do so some time in the future. As a result of the two-third voter threshold, existing city residents could prevent other residents within an annexed area to receive the reliability and cost benefits of the City's electric service, should they elect to do so. It is also important to note that these same two-third voter requirements are not being imposed on the IOU's when they choose to expand their service territories.

COUNCIL POLICY CONSIDERATION

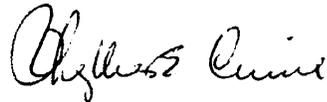
The proposed initiative would violate the City's Guiding Principles in its Legislative Platform of preserving the local funding and authority of the City Council.

FISCAL IMPACT:

According to the analysis conducted by the California Legislative Analyst's Office (Attachment A), the fiscal effects of this initiative are unknown. The net impact on state and local government costs and revenues are dependent on future voter decisions, due to the measure's potential effects on electricity rates and publicly owned utility operations.

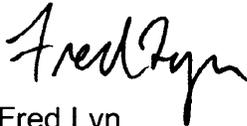
Some local government agencies might not start up or expand a publicly owned utility into a new territory or create a community choice aggregate as a result of the measure's new voter approval requirements. In this event, the rates paid by electricity customers in that and neighboring jurisdictions could be higher or lower than would otherwise have been the case.

Respectfully submitted,



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Proposition 16
New Two-Thirds Vote Requirement for Local Public Electricity
Providers. Initiative Constitutional Amendment.

BACKGROUND

Provision of Electricity Service in California

California Electricity Providers. Californians generally receive their electricity service from one of three types of providers: investor-owned utilities (IOUs), local publicly owned electric utilities, or electric service providers (ESPs). These provide 68 percent, 24 percent, and 8 percent, respectively, of retail electricity service in the state.

Investor-Owned Utilities. The IOUs are owned by private investors and provide electricity service for profit. The three largest electricity IOUs in the state are Pacific Gas and Electric (PG&E), Southern California Edison, and San Diego Gas and Electric. Each IOU has a unique, defined geographic service area and is required by law to serve customers in that area. The California Public Utilities Commission (CPUC) regulates the rates charged by IOUs and how they provide electricity service to their customers.

Publicly Owned Utilities. Publicly owned electric utilities are public entities that provide electricity service to residents and businesses in their local area. While not regulated by CPUC, publicly owned electric utilities are governed by locally elected boards which set their own terms of service, including the rates charged to their customers. Electricity service is currently provided by local governments through several different governmental structures authorized under state law, including:

- Utility departments of cities, such as the Los Angeles Department of Water and Power.
- Municipal utility districts, such as the Sacramento Municipal Utility District (SMUD).
- Public utility districts, such as the Truckee Donner Public Utility District.
- Irrigation districts, such as the Imperial Irrigation District.

Electric Service Providers. The ESPs provide electricity to customers who have chosen not to receive electricity from the IOU or publicly owned utility that would otherwise serve their geographic area. Under this approach, an electricity customer enters into what is termed a "direct access" contract with an ESP that delivers electricity to the customer through the local utility's transmission and distribution system.

The Creation and Expansion of Publicly Provided Electricity Services

Community Choice Aggregation. In addition to the ESP arrangements discussed above, state law allows a city or a county, or a combination of the two, to arrange to provide electricity within their jurisdiction through a contract with an electricity provider other than the IOU that would otherwise serve that local area. This is referred to as “community choice aggregation.” Although only one community choice aggregator (CCA) currently exists to provide electricity in California, several communities are exploring this option. A CCA could get its electricity from an ESP, using the transmission and distribution system of the IOU serving that local area. Electricity customers within that area would automatically get their electricity from the CCA unless they elected to continue to receive service from the IOU.

Proposals to Create and Expand Public Electricity Providers. In recent years, a limited number of local governments in the state have explored the idea of creating new public providers of electricity or expanding publicly owned utilities into new territory currently served by an IOU. For example, the City and County of San Francisco has considered creating a CCA that would include territory currently served by PG&E. As another example, Yolo County explored having SMUD provide electricity service to territory within the county currently served by PG&E. In some cases, these proposals have been put before the voters for their approval, under provisions of state law discussed below.

Voter Approval Requirements for Publicly Owned Electricity Providers. As noted above, publicly owned utilities can be organized under several different types of government structures. Each type of local government entity that is authorized to provide electricity service, and that is considering either the start-up of electricity service or the expansion of existing service beyond its current service area, is subject to certain state requirements.

Various statutes specify whether voter approval is required for the *start-up* of electricity service by authorized local government entities. Under state law, if a local government intends to *expand* its electricity service into a new territory, that new area must be annexed and, in certain cases, a majority of the voters in the area proposed for annexation must approve the expansion. In such cases, however, no vote of the public is generally required within the existing service territory of the local governmental entity that is proposing the expansion. (In some cases, a local commission requires such a vote as a condition of approving the annexation.) In contrast, local agency action to *create and begin implementation of a CCA* may be undertaken upon a vote of the local agency governing board and does not require local voter approval.

PROPOSAL

The measure places new voter approval requirements on local governments before they can use “public funds”—defined broadly in the measure to include tax revenues,

various forms of debt, and ratepayer funds—to start up electricity service, expand electricity service into a new territory, or implement a CCA.

- First, before an authorized local government entity can start up electricity service, it must receive approval by two-thirds of the voters in the area proposed to be served.
- Second, before an existing publicly owned utility can expand its electric delivery service into a new territory, it must receive approval by two-thirds of the voters in the area currently served by the utility and two-thirds of the voters in the new area proposed to be served.
- Third, the measure requires two-thirds voter approval for a local government to implement a CCA.

The measure provides three exemptions to local governments from these voter approval requirements:

- If the use of public funds has been previously approved by the voters both within the existing local jurisdiction and the territory proposed for expansion.
- If the public funds would be used solely to purchase, provide, or supply specified types of electricity from renewable sources, such as wind or solar power.
- If the public funds would be used only to provide electric delivery service for the local government's own use.

FISCAL EFFECTS

Local Administrative Costs for Elections. Because this measure requires voter approval for specified local government actions that can currently be accomplished without such votes, it would result in additional elections costs. These costs would primarily be related to preparing and mailing election-related materials. In most cases, the balloting could be consolidated with already scheduled elections. As a result, the increased election-related costs due to this measure would probably be minor.

Potential Impact on State and Local Government Costs and Revenues. This measure could affect local government costs and revenues due to its potential effects on the operation of publicly owned utilities and CCAs. It could also affect the finances of state and local government agencies in California because of its potential impact on electricity rates. These effects would largely depend upon future actions of voters and local governments. We discuss these potential effects in more detail below.

First, the new public voter approval requirements for the start-up or expansion of publicly owned utilities or the implementation of CCAs could result in public disapproval of such changes. Also, the existence of these new voter approval requirements could deter some local government agencies from proceeding with such

plans. To the extent that this occurred, these local government agencies would be somewhat smaller in size and have fewer customers than would otherwise be the case. As a result, they would have lower total revenues and costs.

Second, the enactment of this measure could also affect the finances of state and local government agencies in California due to its potential impact on electricity rates. As noted above, some local government agencies might not start up or expand a publicly owned utility into a new territory or implement a CCA as a result of the measure's new voter approval requirements. In this event, the rates paid by electricity customers in that and neighboring jurisdictions could be higher or lower than would otherwise have been the case. For example, if this measure prevented the expansion of publicly provided electrical service that depended upon the construction of new energy infrastructure, rates might be held lower than might otherwise occur. On the other hand, if this measure lessened the competitive pressures on private electricity providers by reducing the opportunities for expansion of publicly provided electrical service, the rates charged to electricity customers might eventually be higher than otherwise. These impacts could affect state and local government costs, since many public agencies are themselves large consumers of electricity. To the extent that changes in electricity rates affect business profits, sales, and taxable income, these factors could also affect state and local tax revenues.

In the short run, the net fiscal effect of all of these factors on the finances of state and local government agencies is unlikely to be significant on a statewide basis. This is due to the relatively limited number of local government agencies considering the start-up or expansion of electricity services into new territory. In the long run, the net fiscal effect of the measure is unknown and would depend on future actions of local governments and voters.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact

- **Fiscal Impact:** Unknown net impact on state and local government costs and revenues—unlikely to be significant in the short run—due to the measure's uncertain effects on public electricity providers and on electricity rates.

Yes/No Statement

A **YES** vote on this measure means: Local governments would generally be required to receive two-thirds voter approval before they could start up electricity services or expand electricity service into a new territory.

A **NO** vote on this measure means: Local governments generally could continue to implement proposals involving the start-up or expansion of electricity service either through approval by a majority of voters or actions by governing boards.