

SAN FRANCISCO PUBLIC UTILITIES COMMISSION
City and County of San Francisco

Edwin M. Lee
MAYOR

DRAFT MINUTES
Tuesday, August 13, 2013

1:30 P.M.
1 Dr. Carlton B. Goodlett Place
City Hall, Room 400
San Francisco, CA 94102

Commissioners

Art Torres, President
Vince Courtney, Vice President
Ann Moller Caen
Francesca Vietor
Anson Moran

Harlan L. Kelly, Jr.
General Manager

Donna Hood
Secretary



For information, contact the Commission Secretary at 554-3165.
Minutes and other information are available on the SFPUC web site: www.sfwater.org
Gavel-to-Gavel coverage available at:
http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=22

perform work under “fully gassy” tunneling conditions, the need for probing and grouting to control groundwater seepage, and differing site conditions such as harder rock encountered during excavation. ([Resolution 13-0128](#))

Mr. Jeet Bajwa, SFPUC Project Management Bureau, provided a brief introduction of the item, noting approval allows for the transfer of previously Commission-approved funds into concession contingencies and authorizes use of those funds.

Public Comments

None.

On Motion to Approve Item 9

AYES: Torres, Courtney, Caen, Viotor and Moran

10. Approve an increase in the construction contract cost contingency for Contract No. WD-2551, Calaveras Dam Replacement Project (CDRP), in the amount of \$46,914,611; and Authorize the General Manager to approve future modifications to the contract for a total revised contract amount up to \$449,443,646. The requested increase in the contract contingency is accounted for in the CDRP revised budget approved by the Commission on January 22 and April 23, 2013. The increase is due to the balance of funding required for the changes to the left abutment differing site condition in Observation Hill, as well as future pending and potential changes, trends and remaining risks associated with the Project. ([Resolution 13-0129](#))

Mr. Bajwa, introduced the item, noting approval allows for the transfer of previously Commission-approved funds into concession contingencies.

Public Comments

None.

On Motion to Approve Item 10

AYES: Torres, Courtney, Caen, Viotor and Moran

11. Public Hearing: Discussion and possible action regarding schedules of rates and charges of the San Francisco Public Utilities Commission Power Enterprise for Phase One of the CleanPowerSF Community Choice Aggregation Program for renewable power procurement within San Francisco.

General Manager Kelly, Jr., reviewed what the Commission requested of staff at the July 9, 2013 meeting, including reducing the not-to-exceed rate to 11.5 cents, and to conduct meetings with labor. He requested that Ms. Hale provide additional detail on the meetings with labor.

Ms. Hale stated that meetings had occurred with representatives from various labor unions. She indicated during those meetings the practicality of implementing the

Labor Council's three principles were discussed. She stated those principles and indicated what the SFPUC was able to with regard to each principle.

Mr. Kelly, Jr., thanked staff for their work on the CleanPowerSF Program.

President Torres asked Deputy City Attorney Ambrose if the Board ordinance compels the Commission to set rates and sign a contract with Shell, or merely authorize the Commission to do so if certain goals and standards are met.

Ms. Ambrose stated that the Board resolution of 2012 authorized the General Manager to execute the contract with Shell, subject to certain conditions, one of which was adopting rates and forwarding those to the Board for their subsequent action. She stated the resolution doesn't compel the signing of the contract, but authorizes the setting of rates.

President Torres asked what the impact would be if the Commission did not adopt the not-to-exceed rates. Ms. Ambrose stated the General Manager would not be able to meet the effectiveness of the Shell Contract, nor be able to implement the contract. President Torres asked for confirmation that that the Board action was an authorization to act, not a compulsion to act, which Ms. Ambrose confirmed it was authorization to act.

Commissioner Vietor provided a statement which noted the historic significance and impact of the CleanPowerSF Program, shows the City's dedication to reducing Greenhouse Gas Emissions, and shows the City's efforts to become a leader in combating climate change. She stated that although the vote is only on the not-to-exceed rates, that it will help create a new generation of green collar workers and build a local clean power system. She offered her thanks to the Commission for their leadership and expertise, and thanked the staff for their work on the Program, which offers a "sweet spot" rate that will meet policy objectives and move the Program forward. She stated that action needed to be taken on the not-to-exceed rate, noting that Program details can be finalized once the rate is set. She urged action without delay.

Commissioner Vietor moved to approve the not-to-exceed rate, at 11.5 cents, without further delay. Seconded by Commissioner Moran.

In response to a question from President Torres, Mr. Rydstrom noted that the supporting documents in the packet were for information only, as they had been previously presented on July 9th.

Public Comments

- *Jeremy Pollock, aide to Supervisor John Avalos, read a statement on behalf of the Supervisor, urging the Commission to approval the not-to-exceed rate. He noted possible Board action if there is failure to approve the rate.*

- *Josh Arce, President, Environment Commission, stated his Commission had a long discussion on the proposal at their last meeting and indicated that they were unable to come to a consensus position. He stated they had questions about the local build-out, nature of the renewable energy credits, and with local hiring. He stated there were concerns with the lack of concrete plans. He suggested a solar bond sale for local build-out, in order to move forward. He noted his Commission's concerns on how to fix everything once rates are set, and reiterated that they do not have a position.*

Commissioner Vietor stated that everyone is eager for the draft plan for the Program, and repeated that the vote before the Commission is on the not-to-exceed rates. She stated that once rates are set plans can be developed. She noted that launch of the Program can occur 242 days once rates are approved, and that plan details will be worked out during that time.

At the request of Commissioner Vietor, Ms. Kim Malcolm, SFPUC, provided a brief overview of the CleanPowerSF presentation she gave to the Environment Commission.

- *Angelo King, Environment Commission, stated he cast a vote against sending a statement to the SFPUC in lieu of coming to the meeting. He stated that the green initiative must make dollars and make sense. He stated the metrics of the Program needs to show the economic impact and show jobs for those who are not connected to green programs, and that everyone needs to come together. He repeated that the economic potential needs to be shown, with jobs first. He stated that the current Program is a downgrade from the original stated goals of jobs and in-city generation, which can't be done because it is overpriced. He stated that Project Labor Agreements and unbundled REC's need to be considered before rates are set. He indicated he spoke for the majority of his Commission in saying that it needs to go back to the drawing board. He noted that the Environment Commission is willing to work with the SFPUC to ensure the program works for all.*
- *Ken Cleveland, Building Owners and Managers Association and Treasurer of the Alliance for Jobs and Sustainable Growth, noted correspondence had been sent to the Commission on this item. He stated agreement with Mr. King that the current proposal is a downgrade and that that the jobs component needs to be reviewed prior to passage.*

Commissioner Vietor clarified that there was no resolution for consideration before the Environment Commission. Mr. Cleveland indicated his reference was in agreement to the verbal comments of Mr. King. Commissioner Vietor stated that the Environment Commission did not take action, nor take a position.

- *Jamie Tuckey, Marin Energy Authority, encouraged passage of the not-to-exceed rates. She provided information on the Marin/Richmond Program and thoughts on the Shell Shock campaign.*
- *Shawn Marshall, LEAN Energy U.S., stated that additional requests of staff by the Commission is delaying the Program and making it more expensive for rate-payers. She stated politics with the Mayor's office is at play, to which President Torres strongly objected. She requested that the Commission look at the long view.*
- *Hunter Stern, IBEW Local 1245 and Stop the Shell Shock Campaign, discussed IBEW jobs, local build-out opportunities, and the Labor Council resolution.*
- *Rob Black, Golden Gate Restaurant Association, provided background on and requirements of the original Board legislation. He stated that what was before the Commission for consideration is a different program and that it doesn't respond to the early requirements of local generation.*

At the request of Commissioner Vietor, Mr. Jason Fried, LAFCo staff, stated the original ordinance provided goals, and that after studies occurred, changes to the program were allowed.

In response to a question from Commissioner Vietor on how many responses were received for the original RFP, Ms. Barbara Hale stated that the first round had one responsive bidder who was found to be unable to perform under the financial requirements.

- *Paul Kangas, Solar One, expressed concerns over environmental impacts and stated Feed in Tariffs laws should be considered over CCA.*
- *John Rizzo, Sierra Club, stated they have been critical in the past, but feels that the proposed not-to-exceed rates are fair, the pricing structure is reasonable and competitive with PG&E, and the energy is clean. He felt the Environment Commission speakers misrepresented. He stated that it is public record that President Arce's motion failed and that he was speaking for the minority of the Commission. He noted the final plan details cannot be made until rates are set. He encouraged passage to enable the city to meet its Greenhouse Gas goals.*
- *Elizabeth Klebaner, Counsel for IBEW Local 1245, distributed a letter to the Commission. She addressed the City's environmental compliance obligations, and stated that the project is subject to CEQA and recommends that no passage occur until an EIR is prepared.*
- *David McCord, Sierra Club, expressed support for passage of the not-to-exceed rates.*
- *Jerry Takeuchi, IBEW Local 1245, stated he works as an electrician for PG&E and that Shell cannot provide clean power and will not work for the greater good of the community.*
- *Aleta Dupree expressed support for the program and encouraged approval of the not-to-exceed rates.*

- *Ed Abriam, IBEW Local 1245, stated that environmental review needs to take place prior to approval.*
- *Jed Holtzman concurred with Commissioner Vietor that the build-out cannot be achieved without the not-to-exceed rates being set. He expressed his thoughts on staff efforts to get the rates reduced and noted that IBEW is still referring to the higher rates in the Shell Shock campaign. He encouraged passage.*
- *Michelle Myers, Sierra Club, encouraged passage of the not-to-exceed rates, expressed support for renewable energy and wants a local-build out. She encouraged passage.*
- *Jennifer Dierkens thanked the Commission and staff for their work and encouraged passage of the not-to-exceed rates*
- *Dawn Weisz, Executive Officer, Marin Energy Authority, detailed the history and struggles of the Marin program and stated that their program is working well and serves over 120,000 customers. She encouraged passage of the not-to-exceed rates. She provided a handout of their cost comparison.*
- *Sue Vaughan, Sierra Club, expressed support for the not-to-exceed rates and urged passage.*
- *Gwen Mackellen, expressed support for the not-to-exceed rates and the local build out. She expressed thoughts on the Shell Shock Campaign and encouraged passage.*
- *Carol DiBenedetto expressed support for clean energy and CleanPowerSF. She asked if the letter received by the Commission and signed by Vince Courtney, Sr., posed a conflict of interest for Commissioner Courtney. Deputy City Attorney Ambrose stated there was not conflict of interest.*
- *Jay Carmona, 350.org, expressed concerns over climate change and support for the program.*
- *Jim Lazarus, San Francisco Chamber of Commerce, stated that the Chamber feels the plan is flawed and that it does not meet the State's Community Choice Aggregation goals. He stated that they do not support an opt-out program and that the proposed rates are not fair to consumers. He did not encourage passage.*
- *Michael Theriault, San Francisco Building Trades Council, stated that the Council does not have a formal position on the setting of rates and that they have presented three principles via the previously submitted resolution. He provided comments and rebuttal to Ms. Hale's earlier comments regarding project labor agreements. He looks forward to continuing to work with staff.*
- *Cameron Bingley stated that due to climate change the transition to 100 percent renewable energy needs to occur. He expressed support for the not-to-exceed rates.*
- *David Zebker expresses support for renewable energy and requested approval of the not-to-exceed rates.*
- *Dr. Espanola Jackson distributed her electric bill and expressed support for solar for all of San Francisco.*

- *Eric Brooks, Green Party of San Francisco and grassroots organization Our City, expressed support for the local build-out. He commended Kim Malcolm for her work and encouraged passage of the not-to-exceed rates.*
- *Ben Pittenger provided comments on the Shell contract and his understanding that it was a transitional contract. He encouraged support of the not-to-exceed rate.*
- *Francisco DaCosta stated that little has been done in the Southeast sector as well as his thoughts on clean energy.*
- *David DeLaTorre, Laborers Local 261, stated that jobs need to be created for Local 261 members and the local community workforce. He stated in March they asked three critical questions: will the program create jobs for members and the local workforce; how many jobs will be created; and where and when will the jobs be created happen. He noted they have not received concrete answers to the questions, and that Local 261 cannot support the current program. He noted they will support the immediate issuance of solar bonds and local build-out of renewables that create jobs.*
- *Chris Wright, Executive Director, Committee on Jobs, expressed concerns with the current program and the automatic opt-in. He is not confident with the jobs forecast provided. He did not support passage.*
- *Jess Dervin-Ackerman, Sierra Club, stated the vote is for the not-to-exceed rates and nothing else. She handed out a list of 1,700 individuals who have signed their petition in support over the last two years.*
- *Jason Fried, LAFCo staff, recapped the Board's direction to the SFPUC and stated that the PUC should be a policy body, not a political body, and make good policy decisions. He noted that concerns can be addressed once the rates have been approved and encouraged passage.*

Commissioner Caen stated that the resolution up for vote includes several issues for consideration, not just approval of the not-to-exceed rate.

President Torres thanked everyone for taking the time to attend and for their input and comments.

Vice President Courtney echoed the sentiments of President Torres and expressed respect for all parties and stakeholders. He stated that he is a member of the San Francisco Labor Council, the San Francisco Building and Construction Trades Council, and is a delegate for the Alliance for Jobs and Sustainable Growth. He recapped the stated position of each organization, noting that the Building and Construction Trades Council would be willing to work with Shell Energy as a provider with a project labor agreement; the Labor Council has not expressed opposition to Shell and have presented specific principles they would like to see followed; and that the Alliance for Jobs and Sustainable Growth has expressed environmental concerns and concerns over deliverables. Vice President Courtney stated the Shell Shock campaign was initiated by IBEW 1245, and that only one other union has expressed opposition to working with Shell. He stated he attended

the Environment Commission's meeting and that a different conversation would be taking place if that Commission had taken a position on rate setting. He discussed the needs of the community, specifically the Southeast sector, concerns regarding jobs, and concerns over environmental goals. He stated in order to address those needs and concerns a plan needs to be in place. He indicated he was not ready to support the proposed not-to-exceed rates.

Commissioner Moran stated that CCA is city policy that the SFPUC has been designated to implement. He noted in the beginning he was agnostic to CCA and that he set two criteria for his support of realistic program: use assumptions that are realistic, and that financial risks are identified, disclosed, and be mitigated or funded. He stated that over the past few years that his criteria had been met. He believes that what is before the Commission is good enough and that it offers significant benefits, including local build-out and finding customers for excess Hetch Hetchy generation. He feels that the details on those can be worked out once the rates are approved. He expressed his support for the proposed not-to-exceed rates.

Commissioner Caen thanked everyone for their work and input. She expressed concern over the financial aspect of the program, and with the opt-out requirement, as she has expressed over the past nine years. She noted the survey showed that only 17 percent of the people would definitely stay in the Program and that 28 percent probably would. She noted CleanPowerSF states that 45 percent would stay in their program and questioned that figure. She stated that the mission of the SFPUC is water first and doesn't feel it is wise to go into a new line of business when others will be offering green options, such as the new PG&E program, and state legislation (SB 43) that is being crafted. She stated CCA has become a distraction from the core work of the Power Enterprise and there are other ways to achieve our goals around greenhouse gas reduction. She suggested that the allocation of the \$19.5 M be used for local renewable build-out such as a PPA, similar to Sunset Solar, but only 10 years with 10 MW program. She stated that she cannot support the item until it is reworked financially.

President Torres thanked SFPUC and LAFCo staffs, along with the advocates for their work, input and participation. He stated that the Program has to be one of clean energy goals. He indicated that he has studied the Program's pros and cons and that he stands by his environmental record. He expressed his concerns that the labor issues haven't been fully addressed, that the Program for consideration is fundamentally different than from what was proposed, and that although the rates have gone down, the greenest program isn't being offered. He stated he wants the ratepayer to be protected and the current program doesn't do that. He referenced SB43, as noted by Commissioner Caen, and that there are alternatives available. He stated that the vote isn't just about rates, but rather the whole program. He indicated that he cannot support the item.

At the request of President Torres, Commissioner Vietor re-state her motion:

Commissioner Vietor restated her motion to approve the not-to-exceed rate, at 11.5 cents, without further delay. Re-seconded by Commissioner Moran.

On Motion to Approve Item 11

AYES: Vietor and Moran

NOS: Torres, Courtney and Caen

12. Public Comments on matters to be discussed in Closed Session.
None.
13. Motion on whether to assert the attorney-client privilege regarding the matters listed below as Conference with Legal Counsel.

On Motion to ASSERT

Torres, Courtney, Caen, Vietor and Moran

CLOSED SESSION

Commissioner Vietor departed the meeting at 4:00 PM.

14. Conference with Legal Counsel - Pursuant to California Government Code Section 54956.9(d)(1) and San Francisco Administrative Code Section 67.10 (d)(1).
(Resolution 13-0130)
Existing Claim:
Proposed Settlement Agreement – Offer to participate in Expedited Payment Program Relating to Violation of NPDES Permit Order No. R2-2008-0102, San Francisco Bay Regional Water Quality Control Board
15. Conference with Legal Counsel - Pursuant to California Government Code Section 54956.9(d)(1) and San Francisco Administrative Code Section 67.10 (d)(1).
(Resolution 13-0131)
Existing Claim:
Proposed Settlement Agreement – Relating to violations of NPDES Permit Orders No. R2-2009-0033 and No. R2-2008-0102, San Francisco Bay Regional Water Quality Control Board, Proposed Civil Liability Order R-2-2013-XXX
16. Conference with Real Property Negotiator pursuant to Government Code Section 54956.8 and Administrative Code Section 67.8(a)(2)

Property:
Property owned by Kenneth and Janice Mackin, located at 7484 Sheridan Avenue, Sunol, California (APN 096-0001-020-03)

Persons Negotiating:
SFPUC: Brian Morelli and Dan Wade
Other Party: Kenneth and Janice Mackin