

Review by Council
ITEM NO. 5

FILE NO.
November 13, 2001
[Municipal Water and Power Agency]

CHARTER AMENDMENT

PROPOSITION ____

Describing and setting forth a proposal to the qualified voters of the City of San Francisco to amend the Charter of the City by repealing sections 4.112, 16.103, and A8.508, amending sections 9.107, 13.101, and A8.500, and adding a new Chapter 8B, to: (1) eliminate the Public Utilities Commission; (2) form a Municipal Water and Power Agency, which shall succeed to all powers and responsibilities of the Public Utilities Commission and, for the generation, sale and transmission of electricity, steam and other energy and for proposing ordinances setting energy and water efficiency goals and standards to the Board of Supervisors; (3) adopt a two year budget; and, (4) permit the transfer of excess surplus utility funds to the City's General Fund after 5 years only upon a two-thirds vote of the Board of Supervisors.

The Board of Supervisors hereby submits to the qualified voters of the City at an election to be held on November 6, 2001, a proposal to amend the Charter of the City by repealing sections 4.112, 16.103 and A8.508, amending sections 9.107, 13.101, and A8.500, and adding a new Chapter 8B, to read as follows:

Note: Additions are single-underline italics Times New Roman; deletions are ~~strikethrough italics Times New Roman~~.

Section 1. Section 4.112 of the San Francisco Charter is hereby repealed.

~~SEC. 4.112. PUBLIC UTILITIES COMMISSION~~

~~The Public Utilities Commission shall consist of five members appointed by the Mayor, pursuant to Section 3.100, for four-year terms. Members may be removed by the Mayor only pursuant to Section 15.105.~~

~~The Public Utilities Commission shall have charge of the construction, management, supervision, maintenance, extension, operation, use and control of all water and energy supplies and utilities of the City as well as the real, personal and financial assets, which are under the Public Utilities Commission's jurisdiction on the operative date of this Charter, or assigned pursuant to Section 4.132.~~

Section 2. Section A8.508 of the San Francisco Charter is hereby repealed.

~~A8.508 PACIFIC GAS & ELECTRIC COMPANY EMPLOYEES~~

~~— The board of supervisors shall have the power to provide by ordinance retirement benefits for persons who become employees of the City of San Francisco under any lease, or other temporary arrangement, entered into between said City and the Pacific Gas & Electric Company, and because of their employment by said company at the effective date of said lease, or other temporary arrangement. The effect of said ordinance shall be to provide essentially the same retirement benefits for said employees on account of service rendered under said lease, or other temporary arrangement, as if said persons had been employees of said company throughout the term of said lease.~~

~~— The further effect of said ordinance shall be to provide for permanent retirement rights for said persons, in the event they become employees of said City upon purchase or other permanent acquisition of the properties of said company, essentially the same benefits on account of service rendered as employees of said City, as they would have received if they had been members throughout said service of the San Francisco City Employees Retirement System on the same basis as other employees of said City, except members of fire or police departments.~~

Section 3. The San Francisco Charter is hereby amended by adding a new Article VIII B, to read as follows:

SEC. 8B.100. MUNICIPAL WATER AND POWER AGENCY

(a) There is hereby established a Municipal Water and Power Agency (“Agency”) as an department of the City. The Agency shall have charge of the construction, management, supervision, maintenance, extension, operation, use and control of all water, water pollution control, and energy supplies and utilities of the City, wherever located. The Agency shall integrate the management of water, power, water pollution control and natural resources into its operations.

(b) Effective January 1, 2003, the Agency shall succeed to and assume all powers and responsibilities of the Public Utilities Commission, including responsibility for the supplies and utilities of the City, as well as all real and personal property and financial assets that are under the Public Utilities Commission’s jurisdiction. The Agency shall have power and responsibility over all supplies, utilities, real and personal property, financial assets and any other assets related to water, water pollution control and energy subsequently acquired by the City.

SEC. 8B.101. AGENCY GOALS AND OBJECTIVES.

(a) After public review and hearing, the Agency shall adopt and periodically update goals consistent with the following:

(1) To provide water, water pollution control and electric service to San Francisco residents, businesses and City departments at rates that are both affordable and stable for ratepayers;

(2) To provide reliable water, water pollution control and electric service and optimize the system’s ability to withstand natural and manmade disasters. The Agency shall work with its wholesale customers, potentially affected communities and other agencies to develop a Crisis Management Plan to

prepare for extended outages of San Francisco's regional water system following a major earthquake or other catastrophic event;

(3) To protect and manage lands and natural resources used by the Agency to provide utility services consistent with applicable local, state and federal laws. The operation of hydroelectricity facilities shall be conducted in a manner such that generation of hydroelectricity power causes no reasonably anticipated adverse impacts on water service;

(4) To provide for and protect the health and safety of residents, customers and employees;

(5) To maintain beneficial uses consistent with applicable state and federal laws.

(b) After public review and hearing, the Agency shall adopt and periodically update goals consistent with the following objectives:

(1) To develop and implement programs to integrate the management of water, power, water pollution control and natural resources into Agency operations;

(2) To develop and implement energy conservation and efficiency programs resulting in one hundred Megawatts of reduction in local power consumption within three years of the effective date of this Section;

(3) To develop and implement one hundred Megawatts of renewable wind, solar, fuel cell and/or other alternative energy generation facilities within ten years of the effective date of this Section;

(4) To develop and implement programs to increase and to monitor water use efficiency systemwide through a variety of cost-effective programs accompanied by public education/outreach and incentives, including but not limited to, increasing recycled water use; reducing residential use by increasing the use of water efficient fixtures; and, studying the feasibility of adopting

commercial, industrial and institutional (CII) cost effective water use efficiency measures;

(5) To develop and implement programs to reduce, subject to and consistent with applicable local, state and federal laws and regulations, the incidence of street flooding resulting from storm water overflow or other events, which may include programs for constructing wetlands, riparian corridor restoration and onsite stormwater drainage and detention;

(6) To develop and implement programs that result in complete odor control at the property line of all water pollution control facilities within three years of the effective date of this Section. Such programs may include development of decentralized sewage treatment facilities to better meet demand from new residential and commercial developments;

(7) The construction, acquisition, and operation of facilities for the provision of energy to public and private users within the City, including the implementation of energy generation or system reliability measures that result in the closure of Hunters Point power plant and the clean-up of electricity generation at the Potrero power plant, consistent with the requirements of Ordinance 124-01 and any subsequent ordinances of the City; and,

(8) To preserve the beneficial uses of the Bay and safeguard public health through the Agency's pollution prevention, toxicity reduction and nonpoint source control programs subject to and consistent with applicable local, state and federal law.

(9) To develop and implement a comprehensive set of environmental justice guidelines to be used for evaluating Agency policy and projects, including but not limited to:

a. The upgrade and/or siting of power generation facilities, transmission lines, water pollution control infrastructure and facilities and other major capital projects.

b. System-wide operational impacts

c. Long-range strategic plans.

SEC. 8B.102. GOVERNANCE AND DUTIES.

(a) A seven-member board of directors shall govern the Agency. The initial directors shall be elected at the November 2003 general municipal election according to districts adopted by the Board of Supervisors no later than January 1, 2002. Terms of office of directors shall commence at 12:00 noon on the eighth day of January as provided by Section 13.101 of this Charter. Commencing with the general municipal election in November 2003, the directors shall be elected by district for a term of office of four years, in the same manner as the members of the Board of Supervisors, as provided in Charter Section 13.110. The districts shall be set and adjusted, the residence of voters established, and the qualifications and election of directors shall be governed in the same fashion as set forth in Charter Section 13.110, except that whenever that section refers to the Board of Supervisors it shall be deemed for purposes of this section to refer to the board of directors of the Agency and whenever that section refers to eleven districts it shall be deemed for purposes of this section to refer to seven districts. In order to provide for the staggering of terms of office, the Executive Secretary of the Agency shall determine, by lot, which of the initial members elected in 2003 from the even- and odd- numbered districts shall have terms of office expiring at 12:00 noon on the eighth day of January 2005 and which shall have terms of office expiring at 12:00 noon on the eighth day of January 2007. Commencing with the general municipal election in November 2003 and the general municipal election in November 2005, the terms of office of the directors elected from all districts shall be for a term of four years and shall continue as such thereafter. The provisions of Section 13.102 of this Charter governing

runoff elections for members of the Board of Supervisors or any successor provision thereto shall govern runoff elections for members of the board of directors of the Agency.

(b) The Civil Service Commission shall determine the annual compensation to be paid to members of the Agency board of directors based on an independent survey of the compensation of directors of other publicly held utility corporations located in the nine-county Bay Area that most closely resemble the Agency in size, mission, and complexity.

(c) Notwithstanding Section 3.100, the board of directors shall appoint persons to fill vacancies on the board of directors for the unexpired term of office of the director vacating office.

(d) A person appointed to fill a vacancy shall relinquish their right to run for a seat on the board of directors at the first election following his or her appointment.

(e) Elected officials of the City of San Francisco are prohibited from being candidates for or serving on the Agency board of directors.

(f) Campaigns and candidates for board of directors of the Agency shall be subject to all City ordinances and regulations and applicable state and federal laws governing campaign contributions and campaign financing.

(h) Except as otherwise expressly provided in this Section, the Agency shall be subject to the provisions of this Charter applicable to boards, commissions, and departments of the City except that Charter Sections 4.126 (general provisions regarding departments) and 4.132 (executive branch reorganization) shall not apply to the Agency. Charter Section 10.104(15) shall apply.

(i) The provisions of Charter Section 4.102 shall not apply except that the board of directors of the Agency, and its individual directors, shall deal with administrative matters solely through the general manager or the general manager's designee. Any interference by a director in the administrative affairs of the Agency, other than through the general manager, shall constitute official misconduct; provided,

that nothing contained in this Section is intended to restrict the authority of the board of directors to conduct hearings and inquiries as otherwise provided in Section 8B.100 et seq.

(j) The board of directors of the Agency shall:

(1) Elect a president of the board of directors from among its members to preside over all meetings of the board. The president shall serve for a term of two years, and may not serve as president for more than two consecutive terms. The board of directors may appoint such other officers as may be necessary or convenient for the conduct of the board's business. The board of directors shall adopt bylaws governing its affairs and the conduct of its meetings.

(2) Appoint a general manager, who shall serve at the pleasure of the board of directors. The board of directors shall adopt minimum qualifications for the position of general manager. His or her compensation shall be comparable, with regional cost of living adjustments, to the compensation of chief executive officers of public water and power agencies in the United States, which the directors, after an independent survey, determine most closely resemble the Agency in size, mission, and complexity.

(3) Notwithstanding Section 6.102, appoint general counsel for the Agency, who shall serve at the pleasure of the board of directors. The board of directors may appoint the City Attorney to serve as general counsel for the Agency. Upon recommendation of the general counsel and the approval of the Agency board of directors, the general counsel may compromise, settle or dismiss any litigation, legal proceedings, claims, demands or grievances in connection with any matter or property solely under the jurisdiction of the Agency. Unlitigated claims or demands for or against the Agency shall be handled as set forth in Charter Section 6.102. Any payment pursuant to the compromise, settlement, or dismissal of such litigation, legal proceedings, claims, demands, or grievances shall be made from the funds under the control of the Agency.

(k) There shall be a comprehensive accounting of the Agency's budget, determination of rates, issuance of bonds and such other financial and economic matters as determined by the board of directors or general manager.

(l) The administrative duties of the board of directors shall include:

(1) Enter into or renew long-term contracts for the provision of energy outside of the City and for the expansion of existing wholesale water delivery contracts outside of the City only if the board of directors of the Agency in each instance finds that the provision of such extraterritorial service will not materially impair the provision of such service to municipal, residential and business users located within the City and the general manager certifies this finding in writing. All provisions of such contracts shall be consistent with Section 8B.102. This authority includes consideration of all possible means of modifying or terminating long-term energy contracts in existence as of the date of adoption of this measure with the Modesto and Turlock Irrigation Districts and Pacific Gas & Electric Company, or their successors, if such action would be beneficial to the City. For purposes of this subsection, "long-term" shall mean the provision of service for a period of two years or more, inclusive any options to renew or extend the term of the contract.

(A) The Agency may enter a joint powers agreement solely for the purpose of providing electric services within the geographical limits of the separate public agencies that executed the joint powers agreement; provided, however, the terms and conditions of providing electric service to areas outside of San Francisco do not detrimentally affect the reasonable, reliable and affordable provision of electric services to residents and businesses of San Francisco.

(B) For purposes of subsection (A), the Agency may be advised on issues pertaining to water service and rates by

the Suburban Representatives, a five-member body representing suburban water purchasers, as set forth in Section 8.13 of the 1984 Settlement Agreement and Master Water Sales Contract.

(2) The Agency may, with two-thirds approval of the Agency board of directors and without voter approval, issue revenue bonds and/or any other forms of indebtedness to be repaid from revenues of the Agency in accordance with State law. Notwithstanding the provisions of Section 9.107, the Agency board of directors shall not be required to obtain the approval of the Board of Supervisors to do so. The Agency may not issue any revenue bond or other form of indebtedness unless and until the Controller certifies in writing that sufficient unencumbered Agency revenues will be available to timely meet all of its obligations arising from such issuance.

Any single issuance of revenue bonds and/or other forms of indebtedness of the Agency that exceeds \$100 million shall, regardless of the type of legislative action of the Agency, be subject to the referendum requirements of Section 14.102 of this Charter. The Agency action shall not become effective until 30 days after its adoption

(3) Set rates for the provision of water, water pollution control and, if applicable, electricity and natural gas service to residents, businesses and City departments.

(4) Notwithstanding the requirements of Section 9.118 of this Charter, execute contracts without Board of Supervisors approval, provided however, that any service contracts shall be submitted to the Board of Supervisors and any service contracts not acted upon by the Board of Supervisors within 60 days of the Agency's action recommending approval of such contract shall deemed valid.

(5) Recommend the exercise of eminent domain to the Board of Supervisors for the acquisition of property and facilities necessary or convenient for the Agency to achieve the objectives and perform the functions of the Agency provided.

however, that the Agency may independently exercise eminent domain if applicable state law provides for such powers. Resolutions approving the exercise of eminent domain by the Board of Supervisors shall not be subject to mayoral approval.

(6) Recommend to the Board of Supervisors the adoption of water, water pollution control and energy impact development fees and/or connection fees upon new development within the City related directly to the incremental financial burden on the Agency both for initial capital outlay for the acquisition of water, water pollution control and energy generating capacity and the construction of related facilities, and for the long-term operation, maintenance and replacement of those facilities once they are in place.

(7) Undertake all actions necessary or convenient to the full exercise of the powers granted to the Agency by this Charter or other law.

(8) Exercise such other powers and duties as may be prescribed by ordinance of the Board of Supervisors provided that voter approval at a general or special election shall be required for the Agency to provide any utility service other than water, water pollution control, and energy supplies and utilities.

(m) The general manager shall have all the powers and duties of a department head. The general manager may: (i) appoint qualified individuals to fill all positions within the department that are exempt from the Civil Service provisions of this Charter; (ii) adopt rules and regulations governing matters within the Agency's jurisdiction, and (iii) subject to approval of the board of directors, reorganize the Agency.

(n) After five years from the effective date of this Article Agency funds may be transferred to the general fund of the City only by a two-thirds vote of the Board of Supervisors. Only funds of the Agency transferred to the general fund under this Section may be used for purposes other than achieving the objectives and performing the functions of the Agency, including capital improvement and maintenance projects and as set forth in 8B.103(a).

SEC. 8B.103. BUDGET.

The Agency shall establish its own Office of Finance. The general manager shall appoint a finance manager, who shall serve at the pleasure of the general manager. The Agency shall be exempt from the budget provisions of Article IX of this Charter. Each year the board of directors shall enact or update a ten-year capital and long-range financial plan, a five-year business plan, and a two-year budget as follows:

(a) Not later than March 1 each year, the board of directors shall enact a ten-year capital and long-range financial plan that:

(1) Includes a prioritized schedule of capital projects designed to meet or exceed Agency goals and objectives provided by Section 8B.102;

(2) Provides the Agency with the most cost effective and stable bond rating to ensure low-cost issuance of debt;

(3) Prioritizes use of annual rate revenue to finance capital improvements and eliminate use of long-term debt to finance maintenance activities;

(4) Identifies the anticipated sources of funding for each capital project; and,

(5) Includes narrative descriptions of plans that allow the public to clearly understand the capital projects proposed for each operating division.

(b) Not later than March 1 each year, the board of directors shall enact a five-year business plan that:

(1) Details proposed programs designed to meet or exceed Agency goals and objectives for each operating division set according to Section 8B.102;

(2) Details projected capital and operating budgets, personnel requirements, and contract obligations sufficient to implement the Agency's ten-year capital plan;

(3) Provides a five-year schedule of water, water pollution control and power rates sufficient to finance the Agency's operations and capital plan, avoid sudden increases in rates and stabilize rates for consumers; and

(4) Includes narrative descriptions of programs that allow the public to clearly understand proposed operations and projects.

(c) Not later than July 1 of each year, the board of directors shall enact a two-year budget and a two-year rate schedule for provision of water, water pollution control and power service, provided however that if the Agency board of directors finds after a public hearing an emergency requiring a change in any or all of the rate schedule then in effect, rates may change prior to the termination of the two year period.

The two-year budget shall be developed and submitted for public review according to the following schedule:

(1) Not later than February 1 of each year, the Agency shall submit its proposed appropriation and rate schedules to the Controller for review and certification that the revenue estimates are sufficient to meet proposed expenditures. Not later than March 1 of each year, the Controller shall submit an opinion to the board of directors regarding the accuracy of economic assumptions underlying the revenue estimates and the reasonableness of such estimates and revisions.

(2) Not later than March 1 of each year, the Agency shall hold public hearings on its proposed two-year budget. The budget shall contain a description of the financial records required by Section 3.105 of this Charter and contain information relating to the types and extent of services to be delivered, anticipated revenues and proposed expenditures in a manner that, to the extent feasible, allows comparison of revenue and rate trends and expected expenditures over time. The budget shall also contain proposed performance measures for each operating division of the Agency, including but not limited to: (i) progress toward

and costs incurred completing proposed capital projects compared to previously proposed costs and schedules for completion; (ii) proposed rates compared to projected rates from prior Agency five-year business plans and utility rates charged statewide by public and private utilities; (iii) current bond ratings and proposed levels of indebtedness compared to prior ratings and indebtedness; (iv) employee, health, safety and satisfaction; (v) compliance with environmental laws and regulations; (vi) customer satisfaction and reliability of service; and (vii) progress toward meeting such other goals and objectives as may be established by the Agency.

(3) Not later than April 1 of each year, the Agency shall submit its proposed two-year budget for accounting review and analysis. Not later than June 1 of each year, such accounting analysis shall be provided to the board of directors as detailed recommendations for spending consistent with the Agency's most recently adopted five-year business plan. At least every two years there shall be an audit of the Agency furnished to the board of directors.

(4) Not later than June 1 of each year, the Agency shall hold public hearings in each board of directors district, at a transit-accessible location noticed at least 30-days in advance in utility bill mailings and in local print media, to consider public comment on its proposed ten-year capital and long-range financial plan, its proposed five-year business plan, its proposed two-year budget and accounting recommendations.

(5) Not later than July 1 of each year, and after consideration of public comment received on the proposed budget and accounting recommendations, the Agency shall adopt a balanced two-year budget, with a certification that rate and other revenues are sufficient to meet expenditures and that proposed operating and capital programs are sufficient to meet or exceed the goals and objectives articulated in its most recently adopted five-year business plan.

SEC. 8B.104. RATES.

(a) Rates, fees and charges shall be fixed by the Agency at a level sufficient to meet any rate covenant relative to any bonded indebtedness issued by the Agency or any of the Agency's predecessors, to meet operating and long-term capital costs and maintain a prudent reserve. The Agency may adopt rate structures for each utility service designed to induce conservation and deter waste by providing (i) discounts for industrial, commercial and residential users that consume less than the average annual consumption of their user category and (ii) surcharges for industrial, commercial and residential users that consume more than the average annual consumption of their user category.

(b) After an analysis of potential rate impacts using generally accepted accounting principles, the Agency may establish water and/or water pollution control rate surcharges designed to fund implementation of water conservation, environmental and public health, odor control and/or alternative water pollution projects. After an analysis of potential rate impacts of enacting a low income discount rate for water and/or water pollution control service, the Agency may adopt low income rate discounts for provision of water and water pollution control service to low-income ratepayers, subject to and consistent with applicable state and federal laws.

(c) After an analysis of potential rate impacts, the Agency may establish energy and/or natural gas rate surcharges designed to fund implementation of conservation and/or renewable energy generation projects.

(d) If the Agency enters retail energy or natural gas markets, the Agency shall provide rate discounts to low-income ratepayers subject to and consistent with applicable state and federal law.

(e) If the Agency acquires energy distribution systems or power generation facilities that previously produced tax or franchise revenue to the City, the Agency shall establish rate surcharges to collect revenue sufficient to compensate the greater of the (i) loss of such tax and franchise revenue to the City general fund, the Community College

District, the Bay Area Rapid Transit District (BART), the Bay Area Air Quality Management District (BAAQMD) and the San Francisco Unified School District or (ii) amount equal to the percentage of local tax contributions required under state law for municipal utility districts. The Agency shall give the appropriate amount of tax revenue to City Treasurer for disbursement provided however that the Board of Supervisors may by ordinance, waive the Agency's obligation to reimburse the City general fund for all or part of such lost revenue.

(f) If the Agency adopts any rate increase applicable to general fund departments, the Agency shall transfer to general fund departments the revenue equal to the difference between the current rates and the new rates. In succeeding fiscal years a general fund department that received such a transfer from the Agency shall continue to do so during every year that the Agency maintains a rate above the current level. The Board of Supervisors may, by ordinance, waive the requirement to reimburse the City general fund for all or part of such lost revenue. As a conservation incentive to general fund departments, the Agency may determine that general fund departments that reduce energy consumption over a fiscal year may retain as revenue the funds transferred from the Agency pursuant to this subsection.

(g) Nothing in this measure is intended to modify the provisions of Proposition H, adopted by the voters on June 2, 1998, regarding the setting of rates, fees and charges for water and sewer service.

SEC. 8B.105 PUBLIC POWER FEASIBILITY AND MANDATE.

(a) Within two months of the effective date of this measure, the Agency shall initiate feasibility studies to determine the costs and benefits of providing public power to residents and businesses in the City of San Francisco, consistent with the Raker Act, including detailed analyses of the following public power alternatives:

(1) Agency acquisition and/or construction and operation of electric distribution facilities inside and outside the City;

(2) Agency acquisition and/or construction and operation of power generation facilities inside or outside the City; and/or

(3) Community aggregation of power.

(b) Within ten months of the effective date of this measure, the Agency shall hold no fewer than three public hearings to consider draft findings of such feasibility studies.

(c) The Agency may not enter into any contract to analyze the costs and benefits of any public power alternatives with Pacific Gas & Electric Company, their subsidiaries or affiliates. In lieu of or in addition to contracting for such feasibility studies, the Agency may use studies performed by the San Francisco Local Agency Formation Commission for the same purposes.

(d) Consistent with Section 16.101 of this Charter and the feasibility studies, not later than one year after the effective date of this measure, the Agency shall implement a public power plan to provide residential and/or commercial electric service via generation, distribution or aggregation in the City. If feasibility studies performed under subsections (a) or (c) indicate that either Agency acquisition and/or construction of power generation capacity or Agency acquisition and/or construction of distribution facilities will be cost-effective, the Agency shall undertake to acquire such generation capacity or distribution facilities.

(e) Within two years of the effective date of this measure, the Agency shall initiate feasibility studies to determine the costs and benefits of acquiring and/or constructing and operating natural gas distribution facilities in the City.

SEC. 8B.106 LABOR RELATIONS.

(a) All employees under the jurisdiction of the Public Utilities Commission shall be transferred to the Agency without any loss or reduction of compensation, seniority, benefits or other employee rights and protections as of the effective date of this Section. All such employees shall continue to be assigned to their existing bargaining

units and shall continue to be covered by the applicable Memorandum of Understanding or Collective Bargaining Agreement.

(b) In conjunction with Agency action to acquire generation or distribution facilities of privately-held utilities, all employees of facilities acquired by the Agency who become City employees shall be granted civil service status consistent with the provisions of the Charter and Civil Service Commission Rules. The City shall assign the employees to civil service classifications consistent with job function and qualifications under the procedures established by the Civil Service Commission.

(1) Employees of acquired facilities employed in occupational classifications that are comparable in job function and required qualifications with city classifications shall be assigned to the comparable city classification and shall be represented by the employee organization that represents the bargaining unit to which the classification is assigned.

(2) Employees of acquired facilities in occupational classifications for which there is no comparable city classification shall be assigned to new classifications. New classifications shall be assigned to new bargaining units under procedures established by the City's Employee Relations Ordinance provided, however, that employees assigned to new bargaining units shall continue to be represented by any employee organization that represented them at the privately-held utility.

(3) Unrepresented employees of acquired facilities in occupational classifications for which there is no comparable city classification shall be assigned by the City to new classifications that shall be allocated to the appropriate City bargaining units under procedures established by the City's Employee Relations Ordinance or applicable memoranda of understanding with employee organizations.

(4) Unresolved disputes regarding the bargaining unit allocation of employees of acquired privately-held utilities shall be submitted to final and binding arbitration by a neutral person appointed through the procedures of the State Mediation and Conciliation Service.

(c) Employees of acquired facilities who become city employees shall be granted by the City the date of hire seniority they possessed with the privately held utility on the date of the city's acquisition for purposes of calculating vacation and sick leave.

(d) If the City acquires a privately-held facility with a pension plan in operation, members and beneficiaries of such pension plan shall not involuntarily forfeit any accrued rights, privileges, benefits, obligations or status with respect to such established system.

(1) The persons entitled to pension benefits and the benefits that are provided under the acquired facility's pension plan shall be specified in the agreement or order by which any privately held facility is acquired by the City. The outstanding obligations and liabilities of such privately held facility by reason of such pension plan must be considered and allowance made for in the purchase price of such facility.

(e) Employees of acquired facilities who become city employees shall be covered by Charter Section A8.587 (or its successor miscellaneous plan) effective on the first date of city employment.

(1) As set forth in Charter Section A8.500, the Board of Supervisors is empowered to provide, by ordinance, for the transfer of service credit to the Retirement System for service earned as an employee of an acquired facility. Any such ordinance shall not allow credit for the same service under more than one pension plan.

Section 4. Section 9.107 of the San Francisco Charter is hereby amended to read as follows:

SEC. 9.107. REVENUE BONDS.

The Board of Supervisors is hereby authorized to provide for the issuance of revenue bonds. Revenue bonds shall be issued only with the assent of a majority of the voters upon any proposition for the issuance of revenue bonds, except that no voter approval shall be required with respect to revenue bonds:

1. Approved by three-fourths of all the Board of Supervisors if the bonds are to finance buildings, fixtures or equipment which are deemed necessary by the Board of Supervisors to comply with an order of a duly constituted state or federal authority having jurisdiction over the subject matter;
2. Approved by the Board of Supervisors prior to January 1, 1977;
3. Approved by the Board of Supervisors if the bonds are to establish a fund for the purpose of financing or refinancing for acquisition, construction or rehabilitation of housing in the City;
4. Authorized and issued by the Port Commission for any Port-related purpose and secured solely by Port revenues, or authorized and issued for any Airport-related purpose and secured solely by Airport revenues;
5. Issued for the purposes of assisting private parties and not-for-profit entities in the financing and refinancing of the acquisition, construction, reconstruction or equipping of any improvement for industrial, manufacturing, research and development, commercial and energy uses or other facilities and activities incidental thereto, provided the bonds are not secured or payable from any monies of the City or its commissions.
- ~~6. Issued for the purpose of the reconstruction or replacement of existing water facilities or electricity power facilities or combinations of water and electricity power facilities under the jurisdiction of the Public Utilities Commission, when~~

~~authorized by resolution adopted by a three-fourths affirmative vote of all members of the Board of Supervisors.~~

7. Approved and authorized by the Board of Supervisors and secured solely by an assessment imposed by the City.

Except as expressly provided in this Charter, all revenue bonds may be issued and sold in accordance with state law or any procedure provided for by ordinance.

Section 5. Section 13.101 of the San Francisco Charter is hereby amended to read as follows:

SEC. 13.101. TERMS OF ELECTIVE OFFICE.

Except in the case of an appointment or election to fill a vacancy, the term of office of each elected officer shall commence at 12:00 noon on the eighth day of January following the date of the election.

Subject to the applicable provisions for municipal runoff elections, the elected officers of the City shall be elected as follows:

At the general municipal election in 1995 and every fourth year thereafter, a Mayor, a Sheriff and a District Attorney shall be elected.

At the statewide general election in 1996 and every fourth year thereafter, four members of the Board of Education and four members of the Governing Board of the Community College District shall be elected.

At the general municipal election in 1997 and every fourth year thereafter, a City Attorney and a Treasurer shall be elected.

At the statewide primary election in 1998 and every fourth year thereafter, an Assessor-Recorder and Public Defender shall be elected.

At the statewide general election in 1998 and every fourth year thereafter, three members of the Board of Education and three members of the Governing Board of the Community College District shall be elected.

Sections 8B.102 and 13.110 shall govern the election and terms of office of members of the Municipal Water and Power Agency board of directors.

The election and terms of office of members of the Board of Supervisors shall be governed by Section 13.110.

Section 6. Section A8.500 of the San Francisco Charter is hereby amended to read as follows:

A8.500 RETIREMENT SYSTEM FOR OFFICERS AND EMPLOYEES

In order to continue in force provisions already existing for retirement and death benefits for officers and employees of the City, the San Francisco City Employees' Retirement System, hereinafter referred to as the retirement system or the system, is hereby continued. The enactment of Sections 12.100, 12.103 ~~and~~, Sections A8.500 to A8.581, and Chapter 8B inclusive, of this charter is not intended to, and shall not in any way, alter or modify the rights, benefits, or obligations of any member or beneficiary of the retirement system or of the City with respect to that system as they exist at the time this charter becomes effective.

Ordinance provisions already existing with respect to the retirement system shall continue in force until amended or revoked by the board of supervisors as provided in this section. The board of supervisors is hereby empowered to enact, by a vote of three-fourths of its members, any and all ordinances necessary to carry into effect the provisions of Sections 12.100 - 12.103, Sections A8.500 through A8.588-15 and Chapter 8B inclusive of this charter; provided that the board of supervisors shall secure, through the retirement board, an actuarial report of the cost and effect of any proposed change in the benefits under the retirement system, before enacting an ordinance or before voting to submit any proposed charter amendment providing for such change.

Subject to the vested rights rule, the board of supervisors is further empowered to enact, by a vote of three-fourths of its members, ordinances to conform the provisions of the retirement system to any changes in the tax laws of the United States to the extent

necessary to maintain the qualified tax status of the retirement system provided that the board of supervisors shall first secure, from the retirement board, an actuarial report of the cost and effect of any such change and the recommendation from the retirement board that such an ordinance is necessary.

The board of supervisors is further empowered to enact, by a vote of three-fourths of its members, ordinances to allow Internal Revenue Code section 414(h)(2) tax treatment of members' contributions to the retirement system provided that the board of supervisors shall first secure from the retirement board an actuarial report which certifies that such ordinances will not increase costs, other than administrative costs, for the City.

Section 7. Section 16.103 of the San Francisco Charter is hereby repealed.

~~SEC. 16.103. UTILITY REVENUES AND EXPENDITURES.~~

~~(a) Receipts from each utility operated by the Public Utilities Commission shall be paid into the City treasury and maintained in a separate fund for each such utility. Appropriations from such funds shall be made for the following purposes for each such utility in the order named, viz:~~

~~1. For the payment of operating expenses, pension charges and proportionate payments to such compensation and other insurance and accident reserve funds as the Commission may establish or the Board of Supervisors may require;~~

~~2. For repairs and maintenance;~~

~~3. For reconstruction and replacements as hereinafter described;~~

~~4. For the payment of interest and sinking funds on the bonds issued for acquisition, construction or extension;~~

~~5. For extensions and improvements; and~~

~~6. For a surplus fund.~~

~~(b) For the purpose of providing funds for reconstruction and replacements due to physical and functional depreciation of each of the utilities under the jurisdiction of the Commission must create and maintain a reconstruction and replacement fund for~~

~~each such utility, sufficient for the purposes mentioned in this section, and in accordance with an established practice for utilities of similar character, which shall be the basis for the amount necessary to be appropriated annually to provide for said reconstruction and replacements.~~

~~1. If, at the end of any fiscal year, the Controller certifies that excess surplus funds of a utility exist, then such excess surplus funds may be transferred by the Board of Supervisors to the General Fund of the City, and shall be deposited by the Commission with the Treasurer to the credit of such General Fund. For the purposes of this subsection, excess surplus funds shall exist if the utility has unappropriated, unencumbered funds in excess of 25 percent of the total expenditures of such utility in the previous fiscal year for costs of operation, repair and maintenance.~~

~~2. If, as part of the budgeting process, the Controller estimates that there will exist, at the end of the budget year, excess surplus funds of a utility, the Board of Supervisors may budget such excess as revenue to the General Fund for that budget year. During the budget year, the Commission shall deposit with the Treasurer a pro rata portion of the then estimated excess surplus funds no less frequently than quarterly. For the purposes of this subsection, excess surplus funds shall exist if the utility has unappropriated, unencumbered funds in excess of 25 percent of the total expenditure of such utility in the previous fiscal year for costs of operation, repair and maintenance.~~

~~3. At any time, the Commission may, with the concurrence of two thirds of the Board of Supervisors, authorize the transfer of any portion of a utility's surplus funds to the General Fund upon making all of the following findings of fact and judgment:~~

~~(A) That a surplus exists or is projected to exist after meeting the requirements of this section;~~

~~(B) That there is no unfunded operating or capital program that by its lack of funding could jeopardize health, safety, water supply or power production;~~

~~(C) That there is no reasonably foreseeable operating contingency that cannot be funded without General Fund subsidy; and~~

~~(D) That such a transfer of funds in all other respects reflects prudent utility practice.~~

~~The Commission shall make such findings having received reports from the manager of utilities and a public hearing which shall have received no less than 30 days of public notice.~~

~~4. The provisions of subsection (b) above shall not be applied in a manner that would be inconsistent with the provisions of any outstanding or future indentures, resolutions, contracts or other agreements of the City relating to bonded indebtedness issued in connection with the utility, or with any applicable state or federal laws.~~

Section 8. The rights and responsibilities of the Public Utilities Commission set forth in Section 3.104, 14.103, 15.105, 16.101, A8.346 and B3.581 of this Charter shall hereafter be read as referring to the rights and responsibilities of the Municipal Water and Power Agency. The City Attorney shall hereafter substitute the Municipal Water and Power Agency for the Public Utilities Commission when printing those Sections. The functions of the General Manager of Public Utilities as set forth in Section 18.101 with respect to the Initiative Refuse Collection and Disposal Ordinance are hereby transferred to the General Manager of the Agency.

Section 9. If any part or provision of the amendments to the Charter provided herein, or their application to any person or circumstance is held invalid, the remainder of the amendments, including their application to other persons or circumstances, shall not be affected by such a holding and shall continue in force and effect. To this end, these amendments are severable.

APPROVED AS TO FORM:
LOUISE H. RENNE, City Attorney

By: _____
Deputy City Attorney