

**San Francisco  
Local Agency  
Formation Commission**

**ITEM NO. 2**

City Hall  
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**MINUTES**  
**Special Meeting**  
**Friday, October 18, 2002, 2:00 p.m.**  
**City Hall, Room 263**

Chairperson: Commissioner Gonzalez; Vice Chairperson: Commissioner McGoldrick  
Members: Commissioners Ammiano, Hall and Schmeltzer  
Alternate: Commissioners Peskin and Fellman

Clerk: Monica Fish

**SPECIAL AGENDA**

(There will be public comment on each item)

1. Call to Order and Roll Call

The meeting was called to order by Chairperson Gonzalez at 2:09 p.m.

Members Present: Chairperson Commissioner Gonzalez, Commissioners Ammiano, Hall, and Fellman.

Member Absent: Vice-Chairperson Commissioner McGoldrick and Commissioner Schmeltzer.

Gloria L. Young, Executive Officer and Nancy Miller, Esquire were noted as present.

2. Approval of Minutes for the Commission Meeting of September 20, 2002 (Action Item).

No Public Comment

Chairperson Gonzalez moved to approve the September 20, 2002 meeting Minutes. Duly seconded. The Minutes were unanimously approved with no objection.

3. Resolution adopting the Energy Services Study and Recommendations for Electric Utility Service (Action Item).

Public Comment

Mr. Landis Marttila, Business Representative with IBW 1245 stated that his associate Hunter Stern submitted a two or three page letter regarding his comments. One thing that was absent in his letter that he would like to get in the record is as follows: Although the study alludes to General Order 95 and 128, what the study does not allude to is General Order 165 for a rational reason. General Order 165 is an inspection and maintenance California Public Utilities Commission (CPUC) Code that is imposed on all of the privately-owned investor utilities in California. General Order 165 compels privately-owned investor utilities to do inspections, record those inspections, and make the results of those inspections and the follow-up repairs a matter of public record with the CPUC. IBW 1245 fears that a municipal will be in the interesting situation of policing itself if it buys a distribution system. They feel that is an onerous and difficult position to be in and believes there will probably be a deterioration in the distribution system because other legitimate priorities will come up regarding the City budget and the expenditures to maintain it, which is a very expensive proposition.

Chairperson Gonzalez asked Mr. Marttila if he or Local 1245 represents employees that work with public utilities.

Mr. Marttila stated that he represents employees that work with PG&E and various municipal utilities throughout the state, between 19,000 and 20,000 members.

Chairperson Gonzalez asked Mr. Marttila if he wants to reconcile the General Order, the concern that he is raising at today's meeting, the representation that has been given to the unions working for public utilities.

Mr. Marttila stated that he does not understand the question. He was commenting on the Energy Services Study. The Energy Services Study refers to construction standards. There is a chart that refers to similarities and differences between a public municipal utility and a privately-owned utility. What is absent there is essentially any allusion to the Maintenance Order, State General Order 165, which they worked very hard on. He personally worked on that Order to get viable inspection of maintenance regulation on the books with the State of California.

Nancy Miller, Esquire stated that she believes that Mr. Marttila is saying that he has a concern that if there was a municipal utility, that that particular Order isn't subject to them. However, she works for SMUD and does not totally concur with the conclusion that that means that maintenance is perhaps done at a lesser scale.

Commissioner Ammiano asked if it is scale or standard?

Ms. Miller stated that standard would be a better word.

Chairperson Gonzalez asked Mr. Marttila if he represents employees that work with the public utilities and if he is alerting the Commission that there is something missing from the study.

Mr. Marttila stated, yes. Also, the other paramount piece is that even if you include a reference to General Order 165 like you have to the construction standards that dictate what size pull, what size wire, what you have to do under General Order 195 and 128. The reason General Order 165 works is that there are sanctions. The State of California will fine them or require Southern Cal Edison in an expedited fashion to make necessary repairs if they are out of compliance with General Order 165. He does not know how the City can impose sanctions on its own entity if they do acquire the electric distribution system.

Chairperson Gonzalez asked Ms. Miller why the state wouldn't be stepping in and handling the standard issue.

Ms. Miller stated that the state has certain minimum standards. What Mr. Marttila is saying is that in terms of recourse with private-investor utilities, many times rate payers don't have recourse where there might be failure to maintain. In the public utility system, basically what happens is a march on City Hall. There is a different kind of check and balance. In a municipal utility, you have the political aspect which you don't have access to in the private-investor utility.

Commissioner Fellman asked Ms. Young if with respect to the letter from Mr. Stern, even though the public-comment period had been closed on the report, if his memo could be incorporated as one of the official comments on the report.

Gloria L. Young, Executive Officer stated that staff would incorporate Mr. Stern's memo that the Commission has before them today as part of the public comments on the Energy Services Study. In addition, Commissioner Schmeltzer stated that she regrets that she is not here today, but strongly wanted to encourage the adoption of the Resolution before you today.

No further public comment. Public comment closed.

Chairperson Gonzalez stated that the Commission was not able to vote on the item because of the manner in which it was previously agendaized and asked if the Commissioners had any comment on the Resolution. He stated to Commissioner Hall that the Commission is going to vote on the Resolution adopting the Energy Services Study. The larger question is what the directive is for the agency in the future and what the Commission is interested in doing in the future.

Commissioner Hall stated that he would have to vote against the Resolution because of his stand on the November ballot measures D and E referencing the

Resolved clause on page 3 of the proposed Charter Amendments. He stated that since his vote would not alter the direction of the result of the vote, the Commission understands that voting for the Resolution would be inconsistent with his position.

The Resolution adopting the Energy Services Study and Recommendations for Electric Utility Service was adopted by the following vote:

AYES: Commissioners Ammiano, Fellman and Chairperson Gonzalez

NOE: Commissioner Hall

ABSENT: Vice-Chairperson McGoldrick and Commissioner Schmeltzer

4. Discussion and action regarding the San Francisco Local Agency Formation Commission's Future Work Plan (Discussion and Action Item).

Ms. Young stated that the Commissioners have in their packets a memo indicating their desires for LAFCo's future work plans. The primary comments submitted by the Commissioners were to follow-up with the recommendations the Commission just approved as a part of the Resolution. Secondly, there was interest in looking at participating with the City in the study of a tidal current generation, as well as the implementation of the use of recycled water. As a part of this request, a request was made to R. W. Beck to provide the Commission with a letter that is included in the packet that identifies the costs if the Commission wishes to move ahead with the recommendations made in the Energy Services Study. R. W. Beck did indicate that the San Francisco Public Utilities Commission had contracted with them to do the Risk Management Plan, and that would provide a portion of the work that would be required if the Commission wishes to go forward with the risk management portion of the recommendations. Commissioner Hall had indicated that one of his interests would be reviewing the services provided by publicly funded non-profits. Legal counsel was asked to provide us with information regarding the possibilities.

Ms. Miller stated to the extent that you have non-profits that are receiving public funds to provide a municipal service, you may study that service. It's called a municipal service review. It is done in other LAFCo's where government is contracting with non-profit entities.

Commissioner Hall asked if Ms. Miller knows which jurisdictions have undertaken such a study.

Ms. Miller stated that she could provide the Commission with a list. She is familiar with a study done in Sacramento about twelve years ago on some of the water providers, which are private companies. Then they also had a study that was done on non-profits that provided recreation services to the City through Parks and Recs to park districts. She can provide other examples from other LAFCo's.

Commissioner Hall stated then it is entirely possible that this agency could undertake a study of non-profits providing a service in "xyz" field.

Ms. Miller stated, yes. There are a lot of cities, particularly smaller newer cities that are called contract cities that contract out for a lot of their services. You will see many times the LAFCo's when they undertake their municipal service reviews are actually not looking at a municipal entity, they are looking at whoever the contractor is that is providing the service.

Commissioner Hall stated it is all under the title "municipal services review."

Ms. Miller stated that is how you would want to structure it.

Commissioner Hall stated that was his strongest recommendation. Another recommendation is regarding recycled water.

Ms. Young stated that she did not mention Commissioner Fellman's other item which was to explore desalinization. In addition, correspondence has been received that there will be a great deal of discussion at the LAFCo conference in Santa Barbara about municipal service reviews and what is going on in other organizations.

Ms. Miller stated the state has actually just issued Municipal Service Review Guidelines. It's a draft and fairly lengthy, but it is available.

Ms. Young stated that we would request a copy to send to the Commissioners.

Chairperson Gonzalez stated to Ms. Miller that it would seem that much of the continuing work of the Resolution that has been adopted in large part necessitates entering into further contracts, perhaps with R. W. Beck to do further work. The actions that LAFCo, in terms of the kind of role that we play, is somewhat different than what it would be if we took up let's say public hearings related to municipal service reviews and other forms of energy. It seems that the LAFCo can do both. We could essentially have an entity doing this kind of study work that would later report to us, but we ourselves could be conducting hearings in other areas of government efficiency.

Ms. Miller stated that makes sense. You are under the law required to do some municipal service reviews. You are supposed to periodically be doing those. In addition, you have the proposal that you received two years ago, and the study is really an outgrowth of the issue of utility service in the City and County. It's entirely appropriate to look at different kinds of studies as a LAFCo.

Commissioner Fellman asked what the LAFCo's legal obligations are with respect to municipal services review.

Ms. Miller stated that LAFCo is to periodically review a City's municipal services every five years. It's a global term. It is typically tied to their Sphere of Influence,

which really isn't germane to your situation here because you are a City and County. Typically, what other LAFCo's are doing every five years is deciding how big a City should get ultimately, should there be other cities, and what the continuing role of the County is. That is where they are looking at their municipal services review. You are also supposed to, as you decide periodically, to review municipal services that are being provided--Recreation and Park, Health, Welfare, and Housing. There's no statutory requirement that you look at those specific services at any particular time, but you do have the authority to look at it whenever you deem necessary.

Chairperson Gonzalez asked Ms. Young and Ms. Miller to assist in the individual topic areas that the Commission may wish to explore and get into. Perhaps we should be thinking about getting our colleagues at the Board of Supervisors to weigh on whether or not they are interested in having us take a particular direction. I know a number of us are Board of Supervisors. To the extent that there is that existing relationship, it would be helpful to introduce a Resolution at the Board saying that the Board of Supervisors would like to see the LAFCo pursue certain areas, let's say municipal service reviews or some of the issues related to the R. W. Beck original findings. The idea is to essentially have a few more eyes take a look at what the future has for LAFCo.

Ms. Young stated that as part of the Cortese-Knox-Hertzberg bill, the SF LAFCo Commission did adopt as their Sphere of Influence the General Plan of the City and County of San Francisco, which includes looking at the areas of land use, parking, transportation, and economic development. Chairperson Gonzalez asked that the request for information from the Work Plan be distributed to the other Board members so they would have an opportunity to input their comments. The Commission might want to consider having a joint meeting with one of the Subcommittees of the Board of Supervisors or the Board of Supervisors once the Commission determines which issues to move into in conjunction with the Energy Plan.

Chairperson Gonzalez stated that he was thinking less of having a joint meeting because there are a number of LAFCo Commissioners that are on the Board. LAFCo can work on everything that has been proposed--there is no problem. Before the Commission continues on a particular path, it would be beneficial to open it to a discussion at the Board and see what other members are thinking. It could very well be that we might be surprised about something that we are not thinking of that might be helpful. He would not be surprised if any one of the various suggestions that had been made would be approved.

Ms. Young stated that perhaps putting something before the Board of Supervisors in the form of a Resolution or legislation would engender the same kind of participation. Her concern is that we sent out a memo, and we haven't gotten any response from the other Board members other than the ones that sit on the LAFCo Board. Perhaps

some other opportunity to meet in a different way or to have it on the Board's agenda so there is the dialogue that needs to occur.

Chairperson Gonzalez stated that one way of doing it would be to offer one Resolution instead of separate Resolutions. The Resolution would say that these are the issues that LAFCo is considering pursuing and ask if the Board concurs.

Ms. Young stated that could be done once the Commission determines whether these or other items are the ones they wish to pursue.

Ms. Fellman stated that she would request that the Commission go through a public comment period. She thinks it is a good idea to go through the Board of Supervisors and then put together a Work Plan that is available for public comment. We do have a number of dollars left in our budget, and we want to make sure that we spend that in the best way we can.

Commissioner Hall asked Chairperson Gonzalez for clarification on his recommendation. Once the Commission decides what general areas the LAFCo wants to look at, would the Commission send a notification asking for comments from the Board, or would there actually be a hearing?

Chairperson Gonzalez stated that he is thinking more about a Resolution that the Commission would put on the agenda for Board adoption without Committee reference. If there is a member that wants it to go to the Board Committee, that would be fine. That discussion should be expedited. He certainly has not heard anybody make a suggestion about an area of inquiry that he thinks is not appropriate. All of these items fit well as to what the charges the LAFCo has. He asked Ms. Young to put together a Resolution to consider at the next LAFCo meeting. The Commission can review the wording and then have someone introduce it at the Board.

Ms. Young agreed to put together a Resolution to consider at the next LAFCo meeting.

Ms. Fellman stated that in putting together the Resolution, there is overlap in what the Commissioners wanted. There is really a water topic there that addresses areas that might not otherwise be addressed in City and County policies. Perhaps we could group all the water/energy nexus. Tidal generation. Desalinization is very popular now in Southern California as a water source, which always entails in the new proposals a co-generation plant associated with it, so you are getting it cheaper there. Recycled water is another thing you can use. Maybe you should clarify what your recycled water is.

Commissioner Hall stated that we are the last county in the state that doesn't have a recycled water program. It is going to happen sooner or later. We might as well dictate or study at this working group how it should be done. If we follow tradition

around here, it is probably going to be done the wrong way. It's going to happen sooner or later. San Mateo County just adopted theirs, and there were two counties that did not have a complete recycled water program, of which we are still remaining. I think it's an excellent opportunity for us to do something for the City and take the lead on this issue. Desalinization is certainly important. He would rank it second behind recycled water because of its necessity. The sooner we deal with it the better we are able to address the problems all the way from Hetch Hetchy to Lake Merced to our water supply to how we are using water to irrigate our parks and what not.

Commissioner Fellman stated that she thinks that is a separate topic, and it would be worth some elaboration. With Commissioner Hall's summary, she thinks it would be useful to put before the Board.

Public Comment. No public comment. Public comment closed

Chairperson Gonzalez stated that we would agendize this item in the future.

5. Biennial review of San Francisco LAFCo's Conflict of Interest Code (Informational Item).

Ms. Young stated that LAFCo is required to adopt LAFCo's Conflict of Interest Code every two years and asked if there were any changes to the Code. This item is before the Commission as an informational item. There is no need for changes, so it is provided for the Commission's information and comments.

Chairperson Gonzalez asked Ms. Miller if the Commission would simply approve the item.

Ms. Miller stated that since there was no change, there is no approval necessary.

Public Comment. No public comment. Public comment closed.

6. Future Agenda Items.

Chairperson Gonzalez stated that he talked with Ms. Young informally about discussing the terms of office of the members of the LAFCo. He knows that was somewhat open-ended. Rather than drawing lots, he would be inclined to adopt a term of office that applies to everyone equally and then when we get to the expiration of that date, figure out what we are doing. He would be interested in hearing Ms. Young's thoughts on the subject.

Ms. Young stated that the Commission did not set standard terms and at some point has to do that. We could bring back a Resolution, a change in policy. We have not had a chance to talk to legal counsel about this issue, but we will bring it up after discussion at this meeting.



Chairperson Gonzalez stated that he was suggesting that the Commission try to resolve the question of the LAFCo terms of office. It was something that was left open-ended because there was some degree of uncertainty as to how long the LAFCo would be in operation.

Ms. Young stated that the terms are four-year terms, but we do not have Commissioners that are staggered. Generally, you draw lots and some of the Commissioners are two years and some are four years so you can get continuity and changes. That did not happen.

Chairperson Gonzalez stated that Commissioner Fellman made reference to the budget, and we should probably have an update on where we are.

Ms. Young stated that a budget update will be put in the Commission packet for the next meeting, as well as a Resolution detailing the Commission's comments about the future Work Plan that the Commission can review and comment on. We also need to have a closed session agendaized as well.

Chairperson Gonzalez stated that the other item he was thinking of was the hearing before the Public Works and Protection Committee recently. Supervisor Daly called a hearing recently, and it addressed reporting that appeared in the Bay Guardian around the Long Island Power Authority. There was an economist that apparently looked at the extent to which a publicly-owned utility was able to invigorate the local economy because the local dollars essentially stayed in that economy. He thinks there are a number of assumptions made in the data to reach that conclusion. He is wondering if there is some way that we can look into the question of whether or not those calculations made sense. The testimony was fairly compelling. The data had been put together by a professor, Irwin Kellner, at Hofstra University.

Ms. Young stated that she would get the information for the Commission regarding this issue. A couple of years ago, there were representatives from the Long Island Authority at the APPA meeting that she attended. We do have the ability to get someone who is knowledgeable about the subject speak before the Commission.

Chairperson Gonzalez stated that in particular, there was a position that for every dollar in the local public authority, there was a multiplier of five in terms of the amount of money that was stimulated in the local economy.

Ms. Young stated that it sounds familiar, and that we may even have those records on file. When the subject of municipal utilities was at the forefront a couple of years ago, there were a number of people at the APPA meeting that spoke and documentation was handed out. She will check the files to see if we have the information.

Chairperson Gonzalez stated there was continuing discussion about representation by the City Attorney. He doesn't have the legal case in front of him. The City Attorney for the City and County of San Francisco, Mr. Herrera, made available to him an interesting case that he believes was decided in San Diego or one of the other counties here in California. It related to what had happened visa vie the conflict that his office declared in the litigation over the Elections Commission and Civil Service Commission. Although he has been a critic of the requirement to declare a conflict, the case he had provided appeared to so conclude. He had problems with some of the reasoning in it. It was interesting that much of the reasoning would apply to a LAFCo, the idea of a Civil Service Commission had a certain quasi-independent function that he thinks the LAFCo would qualify under. What came to mind was that it would be a strong argument for the Commission's need to continue a relationship with outside counsel, but not necessarily for everything that we do. In the event that we are ever in a situation that the City Attorney feels that they need to declare that kind of conflict it would be better that the Commission is not in a position where we are starting a whole new relationship with outside counsel. It would be better if we manage over time to keep a relationship going so there is not this startup energy going out looking for a new attorney.

Ms. Young stated that we currently have an ongoing contract with outside counsel. The inside legal counsel support item was deferred until after November. We weren't planning on bringing that back on the agenda until after the first of the year.

Chairperson Gonzalez stated that he would forward the case to Ms. Young and asked Ms. Miller if at some future date we could have a discussion.

Ms. Miller stated that she thinks she knows the case. It is entirely appropriate for the City to say there might be a conflict because in fact you might be reviewing an entity or a department that already has City Attorney representation. She works with County Counsel, City Attorneys with LAFCo. You can decide what you want to do. You can have an independent counsel, you can have two. You can use the City Attorney when you want, use an independent counsel when you want or simply use the City Attorney. It is up to the Commission legally. You can do all of the three. The City Attorney would have to let you know that there is the potential for the conflict.

Ms. Fellman asked if in the meantime we are on a month-to-month contract basis with our existing counsel.

Ms. Young stated that it is ongoing until it allows for the thirty-day termination period, and we have not terminated.

Chairperson Gonzalez asked for a date of when we should have a future meeting related to the Resolution that we would want presented at the Board.

Ms. Young stated that if the Commission wants to meet in November, we could prepare the Resolution and have it ready.

Chairperson Gonzalez recommended the second week of November.

Public Comment. No public comment. Public comment closed.

7. Public Comment on Items not on the Agenda.

Female speaker asked if the Commission could introduce a new Resolution to preserve and stop the eviction of the Musee Mecanique, the Ordinance amending Sections 3305, 3307, and 3310 of the Police Code to prohibit discrimination against business establishments. The File Number is 021463. She handed in a petition to the LAFCo Commission Clerk regarding ballot-measure M that was originally scheduled for the November 5, 2002 election. It was not adopted and refused to be put on as a ballot measure. The people of San Francisco, California want the Musee Mecanique to stay open, not be evicted and to restore and not demolish the Cliff House by designating the whole area historic. Also, to ask that funding be provided by the federal government and other organizations for this private business sector to restore and not demolish the Musee Mecanique's Big Camera, snack bar and Sutro Baths.

No further public comment. Public comment closed.

Chairperson Gonzalez stated that a number of members of the Board are concerned about the issue, but he wouldn't want to pursue this issue at the LAFCo unless somebody feels otherwise.

Ms. Young stated that she concurred with Chairperson Gonzalez.

Chairperson Gonzalez stated that the public speaker is talking about an issue that many Board members are concerned about.

8. Adjournment.

The meeting of the San Francisco Local Agency Formation Commission adjourned at 2:47 p.m.

