



## AGENDA REPORT

**Meeting Date:** April 22, 2010  
**Item Number:** G-5  
**To:** Honorable Mayor & City Council  
**From:** Shana Epstein, Environmental Utilities Manager  
Daniel E. Cartagena, Senior Management Analyst  
**Subject:** RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS  
SETTING FORTH THE POSITION OF THE CITY OF BEVERLY HILLS  
OPPOSING PROPOSITION 16  
**Attachments:** 1. Resolution  
2. Proposition 16 – Title & Summary and Legislative Analyst’s Analysis  
3. Proposition 16 – Ballot Arguments

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### **RECOMMENDATION**

It is recommended that the City Council adopt “Resolution of the Council of the City of Beverly Hills Setting Forth the Position of the City of Beverly Hills Opposing Proposition 16” the proposed “New Two-Thirds Requirement for Local Public Electricity Providers.”

### **INTRODUCTION**

Proposition 16 is an initiative constitutional amendment that has qualified for the California’s June 8, 2010 statewide ballot. This measure, if approved by voters, would impose new two-thirds approval requirement for local public electricity providers.

### **DISCUSSION**

There are two significant impacts should Proposition 16 be approved by voters. The first affects Community Choice Aggregates (CCA). The second hinders Public or Municipally Owned Utilities (POU).

The energy industry is divided into three segments – generation, transmission and distribution. CCA is an opportunity for local jurisdictions to purchase generation for their communities in aggregate on the open market. Local agencies with POU business or

plan to enter the market can control the generation portion and leaving the transmission and distribution to the incumbent energy provider.

Current state law allows local governments if interested or anticipating expansion of its electricity service into a new territory that the new area must be annexed and, in certain cases, a majority of the voters in the area proposed for annexation must approve the expansion. In such cases, however, no vote of the public is generally required within the existing service territory of the POU that is considering the expansion. Local agencies may implement a CCA to expand electricity service in a new territory.

The City of Beverly Hills is among a number of local governments, such as Marin, San Francisco, and Sonoma Counties, across California that have studied the benefits and flexibility afforded by CCAs. In these communities, it is contended that the benefits of this type of organization are: local control, rate stability, energy independence, increased renewable energy portfolio leading to lower greenhouse gas emissions and increased competition leading to lower rates.

Proposition 16, if approved by voters, would place new voter approval requirement on local governments before they can use public funds. To start-up electricity service, expand electricity service into a new territory or implement a CCA, communities would be precluded from doing so without the following:

- Require local governments to obtain the approval of two-thirds of the voters before providing electricity services to new customers or expanding such service to new territories using public funds or bonds.
- Require same two-thirds vote to provide electricity service through a community choice program using public funds or bonds.
- Require the vote to be in the jurisdiction of the local government and any new territory to be served
- Provides exception to the voting requirement for a limited number of identified projects.

If adopted by voters, Proposition 16 would diminish local control by preventing city councils from determining whether to institute a Community Choice Aggregation, reduce competition thereby opening the way for future rate increases by Investor Owned Utilities and limit a community's option to purchase electricity from renewable energy sources.

### **FISCAL IMPACT**

This measure, if approved, would result in additional elections costs for both the city/utility service area currently served and adjacent areas considered for annexation. These costs would include preparing and producing election-related materials and conducting the election. Further, this measure could affect local government's costs and revenues due to its potential effects on the operation of its POU or diminish the option to establish a CCA.

 David Gustavson  
Approved By

RESOLUTION NO. 10-R-

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS  
SETTING FORTH THE POSITION OF THE CITY OF BEVERLY HILLS  
OPPOSING PROPOSITION 16

WHEREAS, the "New Two-Thirds Vote Requirement for Public Electricity Providers" Initiative ("Initiative") has qualified for the June 8, 2010 Statewide Primary Election; and

WHEREAS, the Initiative is a Constitutional Amendment; and

WHEREAS, the primary sponsor for the Proposition is Pacific Gas and Electric, an Investor Owned Utility; and

WHEREAS, this Proposition would erode the autonomy of existing municipal utilities and potentially impact the autonomy of other local governmental functions; and

WHEREAS, if adopted by voters, this Proposition would prevent the City Council from participating in Community Choice Aggregation (CCA), a program authorized by the State Legislature in 2007 that allows a city, county or group of government agencies to procure and provide electricity to residents and businesses within its jurisdiction; and

WHEREAS, the City of Beverly Hills investigated Community Choice Aggregation in 2005 and completed an initial study that was presented to the City Council; and,

WHEREAS, a second phase of the study was completed with the City of West Hollywood as a partner in 2007 and in this model the City of Beverly Hills became an aggregator; and

WHEREAS, past City Councils have considered the benefits and flexibility afforded by CCAs relative to maintaining local control, ability to purchase more green power and as an alternative to increased generation costs resulting from Investor Owned Utilities rate increases; and

WHEREAS, if adopted, this initiative would have a potentially significant impact on local government costs and revenues due to its potential effect on electricity rates; and

WHEREAS, the League of California Cities opposes this Proposition.

NOW, THEREFORE, the Council of the City of Beverly Hills resolves as follows:

Section 1. The City of Beverly Hills opposes Proposition 16, the proposed “New Two Thirds Requirement for Local Public Electricity Providers.”

Section 2. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolution of the Council of this City.

Adopted:

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JIMMY DELSHAD  
Mayor of the City of  
Beverly Hills, California

ATTEST:

\_\_\_\_\_  
(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
DAVID D. GUSTAVSON  
Director of Public Works & Transportation

**IMPOSES NEW TWO-THIRDS VOTER APPROVAL REQUIREMENT FOR LOCAL PUBLIC ELECTRICITY PROVIDERS. INITIATIVE CONSTITUTIONAL AMENDMENT.**

- Requires local governments to obtain the approval of two-thirds of the voters before providing electricity service to new customers or expanding such service to new territories using public funds or bonds.
- Requires same two-thirds vote to provide electricity service through a community choice program using public funds or bonds.
- Requires the vote to be in the jurisdiction of the local government and any new territory to be served.
- Provides exceptions to the voting requirements for a limited number of identified projects.

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

- **Unknown net impact on state and local government costs and revenues due to uncertainty as to the measure's effects on public electricity providers and on electricity rates. These effects are unlikely to be significant in the short run.**

## ANALYSIS BY THE LEGISLATIVE ANALYST

**BACKGROUND****Provision of Electricity Service in California**

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

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

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

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

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

### **The Creation and Expansion of Publicly Provided Electricity Services**

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

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

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

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

### **PROPOSAL**

The measure places new voter approval requirements on local governments before they can use “public funds”—defined broadly in the measure to include tax revenues, various forms of debt, and ratepayer funds—to start up electricity service, expand electricity service into a new territory, or implement a CCA.

- First, before an authorized local government entity can start up electricity service, it must receive approval by two-thirds of the voters in the area proposed to be served.
- Second, before an existing publicly owned utility can expand its electric delivery service

into a new territory, it must receive approval by two-thirds of the voters in the area currently served by the utility and two-thirds of the voters in the new area proposed to be served.

- Third, the measure requires two-thirds voter approval for a local government to implement a CCA.

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

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

## FISCAL EFFECTS

### *Local Administrative Costs for Elections.*

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

### *Potential Impact on State and Local*

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

First, the new public voter approval requirements for the start-up or expansion of publicly owned utilities or the implementation of CCAs could result in public disapproval of such changes. Also, the existence of these new voter approval requirements could deter some local government agencies from proceeding with such plans. To the extent that this occurred, these local government agencies would be somewhat smaller in size and have fewer customers than would otherwise be the case. As a result, they would have lower total revenues and costs.

Second, the enactment of this measure could also affect the finances of state and local government agencies in California due to its potential impact on electricity rates. As noted above, some local government agencies might not start up or expand a publicly owned utility into a new territory or implement a CCA as a result of the measure's new voter approval requirements. In this event, the rates paid by electricity customers in that and neighboring jurisdictions could be higher or lower than would otherwise have been the case. For example, if this measure prevented

**PROP**  
**16** **IMPOSES NEW TWO-THIRDS VOTER APPROVAL REQUIREMENT FOR LOCAL PUBLIC ELECTRICITY PROVIDERS. INITIATIVE CONSTITUTIONAL AMENDMENT.**

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**ANALYSIS BY THE LEGISLATIVE ANALYST**

**CONTINUED**

the expansion of publicly provided electrical service that depended upon the construction of new energy infrastructure, rates might be held lower than might otherwise occur. On the other hand, if this measure lessened the competitive pressures on private electricity providers by reducing the opportunities for expansion of publicly provided electrical service, the rates charged to electricity customers might eventually be higher than otherwise. These impacts could affect state and local government costs, since many public agencies are themselves large consumers of electricity. To the extent that changes in electricity

rates affect business profits, sales, and taxable income, these factors could also affect state and local tax revenues.

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

# PROP 16 IMPOSES NEW TWO-THIRDS VOTER APPROVAL REQUIREMENT FOR LOCAL PUBLIC ELECTRICITY PROVIDERS. INITIATIVE CONSTITUTIONAL AMENDMENT.

## ★ ARGUMENT IN FAVOR OF PROPOSITION 16 ★

Vote YES on Proposition 16, the Taxpayers Right to Vote Act.

Proposition 16, the Taxpayers Right to Vote Act, does one simple thing: It requires voter approval before local governments can spend public money or incur public debt to get into the electricity business. And like most local special tax and bond decisions in California, two-thirds voter approval will be required.

In tough economic times like these, local voters have every right to have the final say on an issue as important as who provides them with local electric service, and how much it will cost.

Two-thirds voter approval is our best protection against costly and risky government schemes to take over local electric service.

Several local governments in California are trying to take over private electric businesses—often using eminent domain—and are refusing to let local voters have the final say in the decision, because state law doesn't require it. This measure establishes clear voter approval requirements before local governments can spend public money or incur public debt to go into the local electricity business.

These days, with government spending out of control and mounting government debt—the best financial safeguard for taxpayers is to give voters the final say in these decisions.

Supporters of Proposition 16, the Taxpayers Right to Vote Act, including the California Taxpayers' Association, the California Chamber of Commerce and Pacific Gas and Electric Company, believe that the voters should decide. It is our electric service, our public money and, in the end, it is everyone's problem if a government-run electricity business fails. We, the voters, deserve the right to have the final say about how our money is spent.

Vote YES on Proposition 16, the Taxpayers Right to Vote Act.

[www.taxpayerstrighttovote.com](http://www.taxpayerstrighttovote.com)

**TERESA CASAZZA**, President  
California Taxpayers' Association

**ALLAN ZAREMBERG**, President  
California Chamber of Commerce

## ★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 16 ★

Vote No on Proposition 16 to stop the worst case yet of a big special interest—this time it's PG&E, the giant, for-profit private utility—misusing the initiative process.

Don't let PG&E fool you. Proposition 16 doesn't touch your taxes one way or the other. It's all about PG&E maintaining its monopoly and eliminating its competition. That could mean higher electric bills and poorer service for all Californians—regardless of where you live.

PG&E is making up a threat that doesn't exist to distract you. What's really bothering PG&E is many communities are now choosing to purchase renewable energy at wholesale prices. We believe that residents should be allowed to have the choice of buying electricity at lower cost without requiring a 2/3 supermajority vote. But that choice is what PG&E designed Proposition 16 to stop.

So when you see TV ads for Proposition 16, remember that most of the money for each one came from people's utility bills. The Utility Reform Network says, "It's just wrong for

PG&E to take money from families, and then spend it on a political campaign to benefit itself." Especially considering that PG&E recently paid big bonuses to its executives after going bankrupt—just like Wall Street.

The League of Women Voters of California urges you to Vote NO, joining AARP, every newspaper that's reviewed it, and groups representing California's consumers, taxpayers, environmentalists and farmers. Vote NO to give local, nonprofit utilities the chance to compete for your service—with low-cost, renewable energy.

**MICHAEL BOCCADORO**, Executive Director  
Agricultural Energy Consumers Association

**LENNY GOLDBERG**, Executive Director  
California Tax Reform Association

**JANIS R. HIROHAMA**, President  
League of Women Voters of California

# PROP 16 IMPOSES NEW TWO-THIRDS VOTER APPROVAL REQUIREMENT FOR LOCAL PUBLIC ELECTRICITY PROVIDERS. INITIATIVE CONSTITUTIONAL AMENDMENT.

## ★ ARGUMENT AGAINST PROPOSITION 16 ★

Proposition 16 does two things:

First, it drastically limits your choices on who provides you with electricity.

Second, it makes it easier for the for-profit utilities in California to raise your electricity rates.

It's cleverly written, because the backers of Proposition 16 want to fool the voters. They say this measure is about protecting taxpayers. But what it really protects is the monopoly enjoyed by a giant, for-profit electric utility.

You should be allowed to have more choices in who provides your electricity, if those choices would give you lower cost and better service. Vote No on Proposition 16.

Most people would agree that if a local nonprofit organization wants to buy green power at wholesale rates, and sell it to communities at an affordable cost, it should be allowed to do so. But Proposition 16 makes it just about impossible.

Severely limiting your choice in the source of your electricity. No lower cost green energy. Fewer choices and higher costs. That's what Proposition 16 does to you.

Who's the *sole* sponsor of Proposition 16?

PG&E, the largest for-profit utility in the state. When this argument was written, PG&E had contributed \$6.5 million to the "yes" campaign and signaled they're prepared to spend tens of millions more. PG&E was the *only* contributor to put this proposition on the ballot.

Why? Again, PG&E wants to protect its monopoly. Proposition 16 isn't about protecting taxpayers—it's about protecting PG&E's for-profit monopoly on electricity.

Just read the ballot title and summary, and you'll see.

As the Fresno Bee put it, "The PG&E ballot measure (Proposition 16) is another example of the initiative process going awry in California, of a powerful special interest seizing the initiative process for its own narrow benefit."

AARP urges No on Proposition 16 because by restricting competition, Proposition 16 could mean higher electricity costs for you. A No vote protects you against the potential for crippling rate hikes.

In fact, PG&E and other for-profit utilities already charge higher rates than municipal, nonprofit utilities. And now they want to increase rates another \$5 billion.

The Consumer Federation of California says VOTE NO because like Wall Street, PG&E paid huge bonuses to its executives, even after it went bankrupt and ratepayers bailed it out. Now PG&E wants to lock-in its monopoly once and for all—so smaller, local nonprofit utilities are not allowed to compete.

Sierra Club says VOTE NO because Proposition 16 requires a 2/3 supermajority vote before communities can purchase clean power and other power at competitive prices. These community choice programs are voluntary and do not raise taxes.

Proposition 16 "is a dagger aimed directly at a movement to enable municipalities to offer renewable green power to their residents in competition with private utilities," said Michael Hiltzik, a columnist for the Los Angeles Times.

Say NO to another wasteful initiative that says one thing but really does something very different. Vote No on Proposition 16 to keep money in your pocket and to protect your utility choices.

**JEANNINE ENGLISH**, California State President  
AARP

**ANDY KATZ**, Chair  
Sierra Club California

**RICHARD HOLOBER**, Executive Director  
Consumer Federation of California

## ★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 16 ★

Why are the opponents of Proposition 16 afraid to give taxpayers the right to vote? Voting gives you the ultimate choice on how government spends your money. Opponents of Proposition 16 want to deny you that right.

Opponents of Proposition 16 are not telling the truth. Let's be clear:

- Proposition 16 does NOT affect electric rates.
- Proposition 16 does NOT threaten green power.

Yes on Proposition 16 simply gives taxpayers the right to vote before local governments spend your money or go deeper into debt to get into the retail electricity business.

The last time government thought they knew more about the electricity business than the electric utility companies,

we had the 2001 energy crisis. Rates skyrocketed and we had rolling blackouts. The cost to consumers was devastating and it created chaos throughout California.

Yes on Proposition 16. Voter approval is everyone's best protection against costly and risky local government schemes to get into the retail electricity business.

[www.taxpayersrighttovote.com](http://www.taxpayersrighttovote.com)

**TERESA CASAZZA**, President  
California Taxpayers' Association

**ALLAN ZAREMBERG**, President  
California Chamber of Commerce