



Agenda Item No: **8B**
Council Meeting of **March 15, 2010**

Prepared By: *Liz Kirkley*
Liz Kirkley, Electric Utility Director

Approved By: *Marjie Pettus*
Marjie Pettus, City Manager

REQUEST FOR CITY COUNCIL ACTION

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

RECOMMENDED ACTION:

Adopt a Resolution opposing Proposition 16, known as the “New Two-Thirds Vote Requirement for Local Public Electricity Providers”.

BACKGROUND:

Proposition 16, known as the “New Two-Thirds Requirement for Local Public Electricity Providers”, has qualified for the June 2010 California Primary Election ballot. Proposition 16 is being sponsored by PG&E, and if passed would require multiple two-thirds votes for any public power utility to expand electric service outside of its territory to serve existing customers. In addition, Proposition 16 would impact the ability of cities and counties to engage in community choice aggregation. Its provisions also extend to joint powers agencies such as the Northern California Power Agency, (“NCPA”), which the City of Healdsburg (“City”) is a member.

NCPA and six NCPA member City Councils – Gridley, Lodi, Lompoc, Palo Alto, Redding, and Roseville – have so far passed their own resolutions opposing Proposition 16.

DISCUSSION:

There are no costs associated with the City taking a position on Proposition 16. The costs associated with the potential passage of Proposition 16, however, are potentially enormous.

Proposition 16 requires that any bonded indebtedness or use of public funds to “expand electric delivery service” must be approved by two-thirds of the voters within the territory (including newly annexed territory, even where the annexation has been approved by the Local Agency Formation Commission (“LAFCo”) and the local government has been designated by LAFCo as the electric service provider), then the two-thirds voter approval must occur both within the existing territorial boundary of the local government and also within the new territory to be served. The only exception to this is if the local government is the “sole” provider of such services within its jurisdiction.

Proposition 16’s exemption for local governments that are the “sole providers” of such services appears likely to not be effective in many cases. That is because few if any publicly owned electric utilities are without at least some customers either served by an investor owned utility, direct connected, or owning distributed power resources. Hence, it is questionable whether many NCPA members would qualify as the “sole provider” of “electric delivery serviced” as is required by Proposition 16 in order to avoid the vote requirement. This is the case for the City.

Because “eligible renewable resources” would be exempted from the requirements of Proposition 16, utilities – after having failed to reach the two-thirds voter threshold to acquire conventional sources of generation would have no choice but to purchase electricity likely to be generated at far higher costs, which in turn may have a dramatic impact on rates for electricity customers. The impact of higher costs and decreased reliability would be particularly negative for business customers that need reliable and affordable electricity to remain competitive. The fiscal impacts of Proposition 16 would therefore cascade through the City’s economy, resulting in further lost revenue for the City.

CITY OF HEALDSBURG

RESOLUTION NO. -2010

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG
OPPOSING PROPOSITION 16, KNOWN AS THE “NEW TWO-THIRDS
VOTE REQUIREMENT FOR LOCAL PUBLIC ELECTRICITY PROVIDERS”

WHEREAS, Proposition 16 known as the “New Two-Thirds Requirement for Local Public Electricity Providers”, has qualified for the June 2010 California Primary Election ballot; and

WHEREAS, Proposition 16 is being sponsored by PG&E, and if passed would require multiple two-thirds votes for any public power utility to expand electric service outside of its territory to serve existing customers; and

WHEREAS, in addition, Proposition 16 would impact the ability of cities and counties to engage in community choice aggregation; and

WHEREAS, its provisions also extend to joint powers agencies such as the Northern California Power Agency, (“NCPA”), for which the City of Healdsburg (“City”) is a member; and

WHEREAS, NCPA and six NCPA member City Councils – Gridley, Lodi, Lompoc, Palo Alto, Redding, and Roseville – have so far passed their own resolutions opposing Proposition 16; and

WHEREAS, there are no costs associated with the City taking a position on Proposition 16, the costs associated with the potential passage of Proposition 16, however, are potentially enormous; and

WHEREAS, Proposition 16 requires that any bonded indebtedness or use of public funds to “expand electric delivery service” must be approved by two-thirds of the voters within the territory (including newly annexed territory, even where the annexation has been approved by the Local Agency Formation Commission (“LAFCo”) and the local government has been designated by LAFCo as the electric service provider), then the two-thirds voter approval must occur both within the existing territorial boundary of the local government and also within the new territory to be served, the only exception to this is if the local government is the “sole” provider of such services within its jurisdiction; and

WHEREAS, Proposition 16’s exemption for local governments that are the “sole providers” of such services appears likely to not be effective in many cases, that is because few if any publicly owned electric utilities are without at least some customers either served by an investor owned utility, direct connected, or owning distributed power resources, hence, it is questionable whether many NCPA members would qualify as the “sole provider” of “electric delivery serviced” as is required by Proposition 16 in order to avoid the vote requirement, this is the case for the City; and

WHEREAS, because “eligible renewable resources” would be exempted from the requirements of Proposition 16, utilities – after having failed to reach the two-thirds voter threshold to acquire conventional sources of generation would have no choice but to purchase electricity likely to be generated at far higher costs, which in turn may have a dramatic impact on rates for electricity customers; and

WHEREAS, the impact of higher costs and decreased reliability would be particularly negative for business customers that need reliable and affordable electricity to remain competitive, the fiscal impacts of Proposition 16 would therefore cascade through the City’s economy, resulting in further lost revenue for the City; and

WHEREAS, prior to expanding electricity service into a newly annexed portion of the City or to any portion of the City where the City’s utility is not the sole provider of electricity, Proposition 16 would require that a public power provider obtain two-thirds voter approval of both the voters in the existing territory and the voters in its proposed expanded territory, under existing California law, annexations that include the expansion of electric service require approval of a majority of voters in the area to be annexed; and

WHEREAS, cities or counties intending to pursue community choice aggregation (“CCA”) would be required to obtain two-thirds voter approval before proceeding with a CCA, as CCA, authorized by the State legislature in 2007, to allow a city or a county (or group of government agencies) to procure and provide electricity to residents and businesses within its jurisdictions, the investor owned utility would continue to provide distribution and other electricity services within the area served by the CCA; and

WHEREAS, the requirements of Proposition 16 would apply whenever there is an expenditure of public funds and would impact:

1. The City’s expansion of its electric service territory by imposing the voting requirement;
2. The City’s expansion of its boundaries if the City wants to provide electric service as part of its bundle of services associated with the expansion;
3. A city’s/county’s ability to create a new publicly owned utility or community choice aggregation; and

WHEREAS, Proposition 16 would also have an unknown on local government costs and revenues due to its potential effects on electricity rates and electric operations, as well as the costs associated with any special elections that would be required under the initiative; and

WHEREAS, the City Council and City staff may not advocate on behalf of or against Proposition 16 if public funds or public resources are anyway involved, however, local governing boards may adopt a resolution that officially supports or opposes a ballot initiative during an open meeting; and

WHEREAS, according to the California Legislative Analyst's Office, the fiscal effects of this initiative are unknown, the net impact on state and local government costs and revenues are dependant on future voter decisions. Due to the measure's potential effects on electricity rates and publicly owned utility operations, the enactment of this measure could affect the utility's finances due to its potential impact on electricity rates; and

WHEREAS, some local government agencies might not start up or expand a publicly owned utility into a new territory or create 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, which could effect state and local government costs, since many public agencies are themselves large consumers of electricity; and

WHEREAS, this activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposed of Section 21065, the Environmental Quality Act, therefore no environmental review is necessary; and

WHEREAS, Proposition 16 could effect the City's ability to expand and offer electric utility services, as well as potential fiscal impacts on electric utility rates and the City's economy.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg does hereby oppose Proposition 16, the "New Two-Thirds Vote Requirement for Local Public Electricity Providers".

DATED: March 15, 2010

VOTE upon the foregoing resolution was as follows:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAINING: Councilmembers:

SO ORDERED:

ATTEST:

James Wood, Mayor

Maria Curiel, City Clerk

PROPOSITION 16
“New Two-Thirds Requirement for Local Public Electricity Providers”
Education Information

Background

- Proposition 16 was entered in the initiative process originally named “The Taxpayers Right to Vote Act.” The San Francisco Local Agency Formation Commission (LAFCO) argued that this title was misleading, and as a result, the Attorney General renamed the initiative to its current title.
- Will be on the June 8, 2010 ballot.

Existing Law

- Cities are allowed to complete annexations that include the expansion of electric service by the approval of a simple majority of voters in the area to be annexed.
- An election can be held within the city’s existing jurisdiction if requested by 25 percent of the city’s residents or by the area’s LAFCO.

Initiative Proposed Changes

- Cities must obtain 2/3rds voter approval from both the existing service area and newly annexed area if electric service is to be expanded.
- Any city or county pursuing Community Choice Aggregation (CCA) or the formation of a new publicly-owned electric utility must obtain 2/3rds voter approval before proceeding.
- Voting requirements only apply if there will be an expenditure of public funds for construction, acquisition, or services used to expand delivery service.

Exemptions

- Voter approval would not be required for electricity expansions within the jurisdiction of the local government and within the territory to be served.
- A 2/3rds vote would not apply if funds are used solely for purchasing, providing, or supplying renewable electricity, or if electric delivery service is for the local government’s own end use.

Major Impacts to Existing Publicly Owned Utilities

- Annexation of new territories will require a 2/3rds vote before cities can serve those areas with municipally-owned electricity.
- The initiative language is vague and it is unclear if a 2/3rds vote would also be required for the development of non-renewable generation facilities or transmission lines located outside of the city’s jurisdiction.
- The Legislative Analysts office concluded that the initiative would create an unknown impact to state and local government costs and revenues, due to the potential impacts on electricity rates and publicly-owned electric utility operations.