AGENDA ITEM D-10

CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: **Adopt Resolution Opposing the "New Two-Thirds Vote Requirement for Public Electricity Providers" Initiative (EUD)**

MEETING DATE: **November 18,2009**

PREPARED BY: **Interim Electric Utility Director**

RECOMMENDED ACTION: Adopt a resolution opposing the "New Two-Thirds Vote Requirement for Public Electricity Providers" Initiative.

BACKGROUND INFORMATION: On June 1, 2009, California State Ballot Petition 09-0015, the "New Two-Thirds Vote Requirement for Public Electricity Providers" Initiative was filed with the California State Attorney General for the June 2010 statewide ballot. The proposed initiative is being sponsored by Pacific Gas & Electric Company (PG&E) and has the potential to significantly affect the way publicly owned electric utilities do business within California.

The proposed initiative would require a public power provider to obtain a two-thirds voter majority in the existing territory ***and*** the proposed expanded territory prior to spending funds for expansion or construction of facilities outside current boundaries. In effect, the requirement would prevent elected representatives or a simple majority of citizens from determining whether they want to have public power in any newly annexed areas and impede the City's ability to provide the full range of services as it builds out pursuant to its General Plan. The initiative, if approved, would significantly limit Lodi's provision of services in newly annexed areas.

The initiative also contains a number of ambiguities that could affect the utility's operations within the existing city limits as well. For example, although the initiative states that it exempts expansions within the city's existing city limits, the exception only applies if the municipal utility is the "sole provider" within those limits. It remains unclear whether PG&E service to 23 grandfathered accounts in Lodi would disqualify the City from this exemption. If it did, the City may be prevented from serving in recently annexed areas (Southwest Gateway, Westside and Reynolds Ranch) and infill areas without the vote.

The initiative would also have a potentially significant impact on efficiency of electric operations. For example, different results in elections of different areas of annexation would lead to discontinuous (checkerboard) service, detracting from operating efficiency.

The estimated cost of a special election in Lodi would be approximately $67,500 to $135,000 for each proposed expansion. According to the California Legislative Analyst's Office (please see attached correspondence dated July 7, 2009 for the complete document), the financial impacts on municipal organizations have yet to be fully determined.

APPROVED: _____
Blair King, City Manager

Under California statute, the following is a brief description of those actions City staff is both permitted and not permitted to take regarding informing the public about this issue:

- We ***can*** provide balanced educational materials as they relate to the initiative. These materials must not promote a specific position on the issue and cannot be biased in one way or another. Any materials must be distributed through our regular communication channels;

- We ***can*** ask our local governing boards to adopt a resolution that officially supports or opposes the ballot initiative during an open meeting;

- We ***cannof*** discuss or engage in campaign activities during compensated work hours;

- We ***cannof*** use work computers, e-mail addresses, or phones, including cell phones paid for by the City, for campaign communication activities; and,

- We ***cannot*** use City or Utility resources (including office equipment, staff time, vehicles or public funds) to engage in advocacy-related activities regarding the ballot initiative.

Based upon the research conducted on this ballot initiative, the EUD respectfully requests that the City Council take an oppose position on this initiative.

FISCAL IMPACT: If the initiative were to pass, the impact on the Electric Utility could be significant.

Kenneth A. Weisel
Interim Electric Utility Director

PREPARED B Y Rob Lechner, Manager, Customer Service and Programs

KAW/RL/lst

Attachment: California Legislative Analyst – letter dated July 7, 2009

LAO
65 YEARS OF SERVICE

July 7, 2009

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed a proposed constitutional amendment initiative relating to voting requirements for expanding or establishing publicly owned electricity providers (A.G. File No. 09-0015).

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, and electric service providers (ESPs). These providers 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, 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. Not regulated by CPUC, publicly owned electric utilities 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.

- 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 service to customers who have chosen not to receive service 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. Electric service provider rates are not regulated by CPUC. There are currently eighteen registered ESPs, mainly serving large industrial and commercial customers. Individual electricity consumers are currently barred from entering into ESP contracts, although state law will again permit this to occur several years from now.

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 electrical service within their jurisdiction through a contract with an electricity provider other than the IOU that would otherwise serve that local area. This version of direct access is referred to as "community choice aggregation." Although no community choice aggregator (CCA) currently exists to provide electricity service in California, several communities are exploring this option.

Under this approach, electricity would be purchased by the CCA from an ESP instead of the local IOU. However, the transmission and distribution system of the IOU serving that local area would continue to be used to deliver the electricity to the customers. Electricity customers within that jurisdiction would automatically get their electricity from the CCA unless they elected to continue to receive service from the IOU serving their local area.

Voter Approval Requirements for Publicly Owned Electricity Providers

As noted above, publicly owned utilities can be organized under several different types of government structures, such as municipal utility districts. 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 a majority of the voters in the area proposed for annexation must approve the expansion. However, no vote of the public is generally required in such cases 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.) Lo-

cal agency action to *create a CCA*, in contrast, 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 to create a CCA. First, if an authorized local government entity seeks to start up electricity service, it must receive approval by two-thirds of the voters in the area proposed to be served. Second, if an existing publicly owned utility seeks to expand its electric delivery service into a new territory, it must receive an approval by two-thirds of the voters in both the area currently served by the utility and the new area proposed to be served. Third, the measure requires two-thirds voter approval for a local government to create 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 jurisdiction of the local government and the territory proposed for expansion.
- If the public funds would be used solely to purchase, provide, or supply specified types of renewable electricity, 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, it would result in additional costs to local governments each time a proposal requiring voter approval was placed on the ballot. 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. 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 formation of CCAs could, in some cases, 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, local government agencies could collect lower revenues from electricity customers, and incur lower costs for the operation and coordination of electricity services, than would otherwise be the case.

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 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. This 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 affect state and local tax revenues.

The net fiscal effect of all of these factors on the finances of state and local government agencies is unknown.

SUMMARY

In summary, the initiative would have the following major fiscal effect:

- Unknown net impact on state and local government costs and revenues, depending on future voter decisions, due to the measure's potential effects on electricity rates and publicly owned utility operations.

Sincerely,

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Mac Taylor
Legislative Analyst

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Michael C. Genest
Director of Finance

RESOLUTION NO. 2009-163

A RESOLUTION OF THE LODI CITY COUNCIL TO
OPPOSE THE "NEW TWO-THIRDS VOTE REQUIREMENT
FOR PUBLIC ELECTRICITY PROVIDERS" INITIATIVE

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WHEREAS, the California Attorney General has approved the "New Two-Thirds Vote Requirement for Public Electricity Providers" Initiative for signature-gathering for the June 2010 ballot; and

WHEREAS, the Initiative would require a public power provider to obtain a 2/3 voter majority in both existing territory and proposed territory expansions prior to spending funds for the utility system expansion; and

WHEREAS, the proposed Initiative would limit the City of Lodi's ability to expand its electric service territory pursuant to its General Plan, while adding significant taxpayer-funded costs for special elections.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby oppose the "New Two-Thirds Vote Requirement for Public Electricity Providers" Initiative; and

BE IT FURTHER RESOLVED that the City Council directs the Electric Utility Department to appropriately and proactively inform the citizens of Lodi, California, regarding the ballot petition in accordance with California Fair Political Practices Commission regulations.

Dated: November 18, 2009

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I hereby certify that Resolution No. 2009-163 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 18, 2009, by the following Vote:

AYES: COUNCIL MEMBERS – Hitchcock, Johnson, Katzakian, Mounce, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

Jennifer M. Robison

JENNIFER M. ROBISON
Assistant City Clerk