

**NIELSEN, MERKSAMER,  
PARRINELLO, MUELLER & NAYLOR, LLP**  
ATTORNEYS AT LAW  
2350 KERNER BOULEVARD, SUITE 250, SAN RAFAEL, CALIFORNIA 94901  
TELEPHONE (415) 389-6800 FAX (415) 388-6874

WWW.NMGOVLAW.COM

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VIA HAND DELIVERY

Members of  
The San Francisco Ballot Simplification Committee  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102

SAN FRANCISCO  
FILED  
2008 AUG -4 PM 12:33  
DEPARTMENT OF ELECTIONS

Re: REQUEST FOR RECONSIDERATION - Working Draft Digest for  
Proposed Charter Amendment Authorizing the Issuance of Revenue  
Bonds to Acquire Public Utilities

Dear Committee Members:

As you know, I represent the Committee to Stop the Blank Check, which opposes this measure.

First, I would like to thank you for the care you took in developing your working draft Digest for the so-called "Clean Energy Act". The new language in the "WAY IT IS NOW," "PROPOSAL", and "A 'YES' VOTE MEANS" sections now accurately discloses the chief purpose of the proposed Charter amendment, and virtually the only reason a Charter amendment is necessary at all. (See, *Horneff v. City & County of San Francisco* (2003) 110 Cal.App.4<sup>th</sup> 814, 820 [Ballot Simplification Digest is required to contain a statement of the chief purposes and points of the measure].) That purpose clearly is to authorize the Board of Supervisors to issue revenue bonds to acquire or construct public utilities without the prior assent of the voters of San Francisco.

My client, however, requests that the Committee reconsider the language in three paragraphs of its working draft in order to ensure its accuracy and impartiality.

1. **PROPOSAL ¶ 1.** The language in this paragraph is biased and must be amended to comply with law. The paragraph accurately paraphrases the loaded language of proposed Charter sections 8B120(a)(8) & (9), but by adopting that biased language, the sentence violates both the Elections Code requirement that the Digest's language be impartial and the prohibition against using public resources to promulgate a digest that is biased. The language in this paragraph of the working draft mentions only possible "benefits", "cost

savings”, and “control of development of clean energy”, all outcomes that would encourage a “yes” vote for the proposal. The paragraph gives no hint that there are significant detriments and risks as well to a takeover of PG&E’s electric system, increased costs, rather than savings, reduced reliability, and avoidance of strict state standards and definitions for renewable energy (i.e. the proposed Charter amendment excludes nuclear from the definition of “renewable and/or clean resources”, but would permit coal).

The Elections Code requires that the digests composed by this Committee, “give a true and impartial statement of the purpose of the measure in such language that the ballot [digest] shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure.” (Elec. Code § 9051; *Horneff. v. City & County of San Francisco* (*supra*) 110 Cal.App.4<sup>th</sup> 814, 820.)

In a situation very similar to what we have here, the California Court of Appeal held that a biased digest is not permissible even if it uses the language of the Charter amendment being proposed. In *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4<sup>th</sup> 1199, the court struck down as illegal a ballot title despite the fact that the language used to set forth the possible benefits of the measure was directly from the proposal itself. (*Id.*, at 1228.) The Court stated, “[B]y selectively mentioning two favorable impacts [new jobs and new city revenue] without mentioning possible adverse impacts, the ballot language had the effect of stating a partisan position favoring proponents of the measure.” (*Id.* at 1227; see also, *Earls v. Myers* (Or. 2000) 999 P.2d 1134, 1136 [“Proponents of a measure are not entitled to engineer a favorable ballot title by incorporating politically inflated terms or phrases in the text of the measure.”])

We suggest the following modifications to eliminate the bias (suggested amendments are shown with strikethrough text):

“Proposition \_\_\_\_ is a Charter Amendment that would require the PUC to evaluate ~~the benefits of making the City the primary provider of electric power in San Francisco, including costs savings and control over development of clean energy and energy efficiency.~~”

2. A **“YES” VOTE MEANS**. Consistent with the principles set forth in section 1, above, the first bullet in this section should be amended to avoid bias. I would suggest language that tracks the above changes:

~~“evaluate the benefits of making the City the primary provider of electric power in San Francisco, including costs savings and control over development of clean energy and energy efficiency.”~~

**3. WAY IT IS NOW, ¶ 2.**

a. In the sentence, “The City’s Public Utilities Commission (PUC) oversees the City’s electric power and water utilities,” the word “oversees” should be changed to “operates” for accuracy. The SFPUC is not a regulatory agency like the California Public Utilities Commission (“CPUC”). The San Francisco Public Utilities Commission is a department of the City and County of San Francisco that actually provides water service, and generates electricity. Section 4.112 sets forth the jurisdiction of the SFPUC. It states:

The 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 Commission’s jurisdiction on the operative date of the Charter, or assigned pursuant to Section 4.132

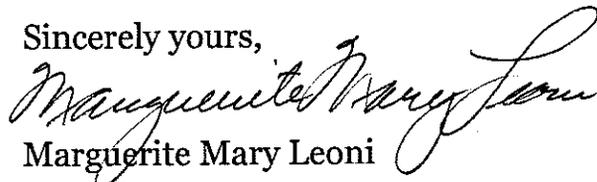
Inserting the word “operates” in place of the word “oversees” in this paragraph would accurately reflect the function of the SFPUC and not leave the misleading impression that it is exclusively a regulatory agency like the CPUC.

b. In the next sentence of this same paragraph, the correct name for PG&E is, Pacific Gas and Electric Company.

Again, my client thanks you for your important service to the integrity of San Francisco elections by educating voters about the nature of the complicated matters they are asked to decide and the impact of their vote.

I will be present at the reconsideration hearing on the working draft Digest should you have any questions.

Sincerely yours,



Marguerite Mary Leoni