



UTILITIES ADVISORY COMMISSION MEETING FINAL MINUTES OF NOVEMBER 7, 2012

CALL TO ORDER

Chair Cook called to order at 7:06 p.m. the meeting of the Utilities Advisory Commission (UAC).

Present: Commissioners Chang, Cook, Foster, Hall, Melton and Waldfogel

Absent: Commissioner Eglash and Council Member Liaison Scharff

Commissioners Chang arrived at 7:48 p.m. in middle of New Business Item #2.

ORAL COMMUNICATIONS

None.

APPROVAL OF THE MINUTES

The Minutes from the October 3, 2012 UAC meeting was approved as presented.

AGENDA REVIEW

No changes to the agenda.

REPORTS FROM COMMISSION MEETING/EVENTS

Commissioner Melton represented the UAC at Leadership Palo Alto as part of their training agenda. He was asked to describe why he wished to serve on the commission and to name an issue the Commission is dealing with. Commissioner Melton chose to discuss electric undergrounding and said that his description was captivating for the attendees. Commissioner Melton stated that the program is a very good way to learn about what's happening in the City—both in City government and with Palo Alto businesses. Vice Chair Foster added he also supports the program and recommends identifying potential participants to apply for the program.

UTILITIES DIRECTOR REPORT

1. Council Action this week:

- a. Council approved the renewable energy contract with Brannon Solar. The energy from this project is expected to begin flowing in August 2014 and will result in the City providing renewable energy for 32.7% of the total sales volume by 2015.

- b. Council approved the definition of carbon neutrality for the electric supply portfolio. Staff is working on the carbon neutral plan and plans to present it to the UAC at its December meeting.
2. **Emerging Technology Program Update:** We received five applications from the second round and are currently reviewing them.
3. **Demand Response Program participant Recognition:** We would like to extend our sincere appreciation for the seven large customers who participated in CPAU's Summer 2012 Demand Response Pilot: SAP, CPI, PARC, VA, Palo Alto Office Center, Stanford Hospital, and City Hall. The customers will be presented with certificates of appreciation at the next facilities managers meeting.
4. **Demand-Side Management Update:**
 - a. Open House for the EcoHome: next one is scheduled for 3 to 5pm on Thursday, November 29.
 - b. New residential efficiency programs video: Filmed at the EcoHome and featuring Account Rep Lacey Lutes, it is now posted on the utilities main residential web page.
 - c. Efficiency Program Updates:
 - (1) New Holiday Light Exchange Program: starts November 23rd. Up to two strands of working incandescent holiday lights can be exchanged for strands of LED lights at Palo Alto Hardware or Mid-peninsula Hardware.
 - (2) Hospitality program is looking at analyzing savings from a motion-sensor based system at pilot installations. This type of system is an alternative to key card control of electric use for lighting and air conditioning.
 - (3) Small Commercial Direct Installation of certain water and energy efficiency measures --run by third party vendor SBW--ends in December. A small pilot project for direct installation in multi-family residents starts in January.
 - (4) Residential New Construction Program is going through a boom. We are working with several individual homeowners, plus a 37-unit, single-family residential complex. Our new residential account representative is working closely with the Green Building Planner to review actual construction and related plans with residents.
 - (5) Spring 2013 LED lighting program: Now in development following a meeting between CPAU staff, the UC Davis lighting consortium and the Consortium for Energy Efficiency where they discussed upcoming lighting models and appropriate programs.
 - (6) Home Energy Report contract ends in May. An RFP for a replacement behavior program is likely to go out in November.
5. **Communications Update:**
 - a. CPAU's Halloween "Performance Art" to educate the public about the energy wasted by vampire electric loads was very successful. A Media Center video broadcast of the event was posted yesterday.

- b. PG&E—As the Pipeline Turns—the Charleston Road segment replacement project is now completely finished. Miranda Ave segment project is on track to be completed by the first week in December.
- c. My CPAU Ad Campaign is continuing with new ads in production focusing on residential and commercial program marketing and Field Operations. Expect to see these fresh faces soon! A total of 24 CPAU employees have now been featured in this ad series that gives a “human face” to CPAU while promoting our programs and services to various target customer groups.

UNFINISHED BUSINESS

None.

NEW BUSINESS

ITEM 1: PRESENTATION: Presentation on Standby Electric Rates for the City’s Energy/Compost Facility

Resource Planner Jon Abendschein gave a presentation on standby rates. He stated that utilities generally have standby electric rates so that customers who have on-site generators pay for their reliance on backup power provided by the utility. Most utilities have a standby rate, but the City of Palo Alto Utilities (CPAU) has not needed to have one due to a lack of previous proposals to develop large or non-renewable generators. Renewable generators smaller than one megawatt (MW) are exempt from standby rates under State Law. The Public Works Department, however, was seeking proposals for its Energy/Compost (E/C) Facility project, which could involve on-site generation, and would need to know the CPAU standby rate in order to evaluate proposals. Abendschein stated that the standby rate is designed to recover distribution system costs, generating capacity costs, and billing and administrative costs. The costs the standby rate was intended to recover were part of the demand charges in the E-4 and E-7 retail rate schedules, and the standby charge would be designed to recover all of the distribution system demand charge and the portion of the generation demand charge related to providing reserve generating capacity. Staff expected to propose a rate based on the generator size, and had calculated a preliminary standby rate for E-7 customers of \$13.51/kW in the summer billing periods and \$6.86/kW in the winter. Abendschein gave an example calculation of a customer bill for a customer with an on-site generator. He noted that with no standby rate, the utility would not recover costs unless the generator had an outage during the month, and that cost recovery would be irregular, dependent on the frequency of generator outages. With a standby rate the customer’s share of the utility’s costs were properly collected each month regardless of outages. He also showed that the proposed rate was in-line with those of other California utilities.

Commissioner Foster asked who this rate was needed for, and whether it was only necessary for the Energy/Compost Facility. Abendschein stated that it would apply to any non-renewable generator or large renewable generator in Palo Alto, but that the Energy/Compost Facility was the only project he was currently aware of that might involve such a facility. Commissioner Foster asked Abendschein to summarize why the rate was necessary. Abendschein stated that the rate was necessary for the utility to recover its costs associated with providing standby service. The State prohibited CPAU from recovering those costs for small renewable generators, but the rate was still necessary for other generators.

Commissioner Hall asked whether the standby rate would provide an incentive for a customer to build their own gas-fired generator to reduce their electric bill. Abendschein stated that the rate was designed to recover the utility's costs and was not an incentive. He stated that gas-fired generators were unlikely to be cost-effective due to the low electric rates compared to the CPAU gas rates.

Commissioner Waldfogel asked if the rate could be avoided if the customer built more than 1 MW of on-site generation capacity but used multiple renewable generators, keeping each generator smaller than 1 MW. Abendschein said he believed the State's exemption applied to the total generation behind the customer meter, not each individual generator, so the rate could not be avoided under that scenario. Commissioner Waldfogel then asked how the reduced customer load would affect the CPAU RPS requirements. Assistant Director, Resource Management Jane Ratchye stated that CPAU's RPS requirements were based on sales, so the reduced customer load would reduce the RPS requirement some. Commissioner Waldfogel also asked what would happen if the generator ran infrequently in a month, asking whether the customer would be charged both the standby rate as well as the applicable retail demand rate. Abendschein said the customer would pay only one or the other, not both.

Commissioner Melton asked whether staff had reviewed both investor-owned and publicly-owned utilities' rates when developing the rate. Abendschein said staff had surveyed large and small publicly-owned utilities' rate schedules as well as Pacific Gas and Electric's (PG&E's) rate. Commissioner Melton asked whether staff had reviewed the CPUC rules applicable to PG&E and related to standby rates and asked whether there were any that should be incorporated into the CPAU rates and policies. Abendschein said he had looked at PG&E's rate and found it very complex. He said it included some features not necessary for CPAU's rate schedule, but that there were some other features he had incorporated. Staff had done a comprehensive review of State regulations as well. Commissioner Melton then asked would this rate would be an incentive for customers to install gas-fired generation like Bloom Energy fuel cells to avoid the City's electric charges. Abendschein stated that since fuel cells ran on natural gas they were unlikely to be cost-effective due to the low electric rates compared to the CPAU gas rates. Fuel cells were also relatively high cost solutions and were currently dependent on significant rebates and incentives in other utilities' territories.

Commissioner Hall asked whether the E/C Facility developer could the market the power outside the City. Abendschein said that it is possible, but unlikely. Commissioner Hall asked whether staff had conceived of a situation in which part of the E/C Facility output was used on site and the remainder was exported. Abendschein said that the owner would pay the standby charge for the portion of the output used on site and a wheeling charge for the remainder.

ITEM 2: PRESENTATION: Presentation on Propositions 218 and 26

City Attorney Molly Stump made a presentation and described ratemaking before the passage of Proposition 13. At that time, there was broad discretion and rates were presumed to be reasonable, fair and lawful, and rates were only overturned if found "unreasonable" or "unreasonably discriminatory." During this time, transfers to the General Fund, life-line rates and other cross-subsidies were OK and courts rarely overturned rates. After 1978 when the

voters approved Proposition 13, property taxes were limited and special taxes required a 2/3 voter approval.

In 1996, voters approved Proposition 218, which created a new category of "property related fees" that included water, wastewater, storm drain and refuse services, but not gas, electric, or fiber services. Stump stated that when imposing or increasing property-related fees under Prop. 218, you must look at procedural requirements as well as substantive requirements. The substantive requirements include that revenues cannot exceed the cost of providing the service, fees cannot exceed the proportional cost of the service attributable to the parcel, fee revenue cannot be used for any other purpose besides that for which the fee or charge is imposed, and no fees or charges for service not actually used by or immediately available to the owners of the property in question.

Senior Deputy City Attorney Amy Bartell discussed how conservation is dealt with under Proposition 218. The constitution includes a requirement that "waste or unreasonable use of water be prevented" and many state laws encourage conservation and efficient use of other utility services. "Reasonable costs of service" do include cost of compliance with state mandates such as RPS and public benefits programs. In addition, tiered rates are common to promote conservation such that higher volume users pay higher unit costs. However, the use of tiers must be reconciled with Prop. 218's constitutional provision requiring that rates reflect "proportional cost of service attributable to the parcel."

Bartell described the City of Palmdale versus Palmdale Water District Case, in which the District Board approved an option that was not described by the consultant who prepared the cost of service study as the "cost of service" option. The court ruled against the District (and for the City). Bartell stated that the lessons learned from the Palmdale case are that tiered rates can be OK, but the agency must show how the costs are compliant with Prop. 218 since the burden of proof is on the agency. In addition, agencies should know that the courts may get deeply into the details of cost of service studies and ratemaking.

Bartell stated that Proposition 26, which was passed in 2010, expanded the definition of a "tax" to include "any levy, charge, or exaction of any kind imposed by a local government." If a charge is a tax under this definition, it requires voter approval. Prop. 26 applies to gas and electric services and requires that charges do not exceed the cost of providing the service.

Vice Chair Foster asked that if Palmdale is a court of appeals decision, will it be appealed to the Supreme Court? Stump stated that this hasn't occurred yet, but she can check on whether any appeal has been filed. Vice Chair Foster requested that he would like to hear about any significant cases before they are relevant for a specific rate being considered. Stump said that her office plans to make such issues known as needed to the relevant City commissions.

Commissioner Melton noted that the UAC dealt with this when it considered a proposed rate and wanted to adjust the rates recommended by the consultant to be more conservation oriented. He wondered if there was any ability for the UAC to recommend or the Council to approve a rate different from what is recommended by the consultant. Stump responded that rate setting is still a legislative activity, but that there is not total freedom to impose any rate

desired. Stump said that the Council can and should adopt rate-setting goals, which will inform the staff and consultant. Technical experts are needed, but they should be aware of the City's policies and goals. There is still a role for policy makers, but there are now constraints.

Commissioner Waldfogel asked if the term "customer class" is used in the law? Stump said that it is not used, but is a term of art in the industry and you must be able to group customers in some way. In the Palmdale case, the difference between how the three customer groups were charged was at the base of the complaint. Commissioner Waldfogel asked what the state of the art is for how a decision is made. Stump stated that her advice is to work with the consultant to come up with a rational methodology and follow that method. Commissioner Waldfogel asked what to do if a consultant does not use good economic models. Stump said that there was a place for a variety of models and perspectives, and the Commissioners, Council and staff could all inform that process. Waldfogel asked what happens if we get it wrong. Stump stated that a court could invalidate the rates, may request rebates to be provided to customers and direct the agency to develop new rates, and the losing party could be responsible for attorney's fees.

Commissioner Hall asked if the noticing, etc. must be done if a rate decrease is called for. Bartell said that no, Prop. 218 and 26 generally only apply to rates that are newly imposed or increased. So if the City wants to effect a rate decrease, it has several options. It can factor the temporary surplus into the next rate setting process, it can apply the funds to related costs incurred in providing service, or it could offer a rebate. The agency does not have to select one of these options immediately upon determining that a rate adjustment may be needed; it can take a reasonable amount time to consider the options.

Chair Cook asked if gas and electric rates were not affected by Prop. 218. Bartell verified that this was true. Chair Cook asked if the court defined how tiered rates can be "proportional cost of service attributable to the parcel." Stump stated that the court did not define how this could be done, but that the court will look for some justification for the proposed rates.

Chair Cook wants to find out where in the rate-setting process the UAC and Council has discretion to request something different from what's proposed. Stump said that this feels very constraining due to the requirements. The policy interest can be brought to bear especially prior to the development of the cost of service study. For example, the consultant can be directed to evaluate different customer groups.

Cook asked if there was any guidance as to how often a cost of service study needs to be done. Bartell stated that there is no hard and fast rule as to how often a study must be completed. Stump added that any rate adjustment needs to be justified and, if the rate adjustment is substantial, a study may be needed.

Commissioner Waldfogel asked if the Council could order that a cost of service study be conducted through the City Auditor's Office.

Chair Cook asked if a cost of service study needs to be complete for the proposed standby electric rate. Stump stated that some analysis needs to be done and a consultant is not required if the analysis can be done in-house.

ITEM 3: DISCUSSION: Review of Legislative Action in 2012 and the 2012 Utilities Legislative Policy Guidelines

Senior Resource Planner Debbie Lloyd provided a presentation which reviewed the legislative activity from 2012 and the 2012 legislative policy guidelines. Lloyd stated that the guidelines are needed to provide advocacy direction since often the legislative development process can occur rapidly. Lloyd described how the guidelines are organized under four general areas: local accountability, climate protection, security and reliability of supply and infrastructure, and cost control.

Lloyd reviewed the key State bills that were approved in 2012 that impact Palo Alto. The accompanying report provided a summary of those bills. At the federal level, the budget and deficit was the primary focus, but cybersecurity was much discussed. In addition, potential changes to the functions of the federal Power Marketing Agencies, which includes the Western Area Power Administration, were focused on by Secretary of Energy Chu.

Commissioner Chang asked if there was legislative interest in extending the public goods charge mandates. Lloyd explained that the failure to extend the public goods charges did not affect publicly-owned utilities (POUs) because the regulation did not include a sunset date for the POU charges as it had for the investor owned utilities (IOUs). Further legislation is not expected at this time for the IOUs, pending the results of the Public Utilities Commission's (PUC) direction to maintain the programs for gas and electric IOUs. Commissioner Chang asked if there was an update on the PUC's proceeding on how the electric IOU's would be allowed to spend proceeds from the greenhouse gas (GHG) cap-and-trade allowance auctions. Lloyd explained that the PUC had requested the IOUs to resubmit their proposed plans following passage of SB 1018 that placed further restrictions on the IOUs use of the revenues.

Commissioner Hall stated that he supports continuing the beneficiary pays section of the guidelines related to water (guideline #10) as there are proposals for expensive capital upgrades of the state water system. He also suggested that language be included that would allow for homeowner requirements related to wastewater systems having sufficient capacity so that storm flows do not overflow. Commission Hall also advised staff to keep an eye on items related to Emergency preparedness and possible introduction of Federal standards on water reliability given the extent of damage following the East coast storms this year.

ITEM 4: ACTION: Gas Utility Proposed Rate Decrease Effective January 1, 2013

Assistant Director Jane Ratchye advised that there was no presentation on this item, but staff is available to answer questions about the proposal.

Commissioner Waldfogel asked if there is any issue with respect to the reserve levels after such a rate decrease. Ratchye responded that the reserve levels after the rate decrease will be within the Council-approved reserve guidelines.

ACTION:

Vice Chair Foster moved that the UAC recommend that the Council amend proposed Utility Rate Schedules G-1, G-2, G-3, G-4, G-10, G-11, and G-12 to be effective January 1, 2013. Commissioner Hall seconded the motion. The motion carried unanimously (6-0) with Commissioner Eglash absent.

ITEM 5: ACTION: Formation of Subcommittee on Emerging Technology Program

Chair Cook stated that he would like to form a subcommittee to review the applications for the emerging technology program and that he would like to personally serve on the subcommittee and asked for two additional members. Vice Chair Foster indicated that he could participate, but is time-limited and would like to be able to participate by phone or webinar rather than in person. Commissioner Hall indicated that he would be available as well.

ACTION:

Chair Cook appointed Vice Chair Foster and Commissioner Hall to serve on the subcommittee along with himself.

ITEM 6: ACTION: Selection of Potential Topics for Joint UAC/Council Meeting

Since the joint meeting with Council is not until after the new year when the new Council is seated, Vice Chair Foster requested that the item be continued until the next meeting to allow more time for commissioners to identify potential topics.

ACTION:

None.

ITEM 7: ACTION: Selection of Potential Topic(s) for Discussion at Future UAC Meeting

Vice Chair Foster asked about the timeline for reviewing the carbon neutral plan. Referring to the 12-month rolling calendar, Director Fong advised that the UAC is scheduled to review the carbon neutral plan at its December meeting followed by the Finance Committee in January and the Council in February, if that schedule can be accommodated by the Finance Committee and Council.

ACTION:

None.

COMMISSIONER COMMENTS

None.

Meeting adjourned at 9:20 p.m.

Respectfully submitted,

Marites Ward
City of Palo Alto Utilities