



TO: Mayor and City Council
FROM: William A. Gaines, Director of Utilities/CEO
COPY: T. C. Broadnax, City Manager and City Clerk
 Elizabeth Pauli, City Attorney
SUBJECT: Click! Policy Directive Resolutions
DATE: December 8, 2015

SUMMARY:

On April 8, 1997, the City Council passed Substitute Resolution No. 33668, which approved Tacoma Power’s Business Plan to construct and operate a broadband telecommunication system (System). The Council Resolution further provided that the broadband “telecommunication system shall be owned, operated and controlled by the City of Tacoma, Department of Public Utilities, Light Division, with the Public Utility Board providing oversight and approval of third party agreements, as appropriate under the City Charter, Tacoma Municipal Code and other applicable laws, and the City Council shall continue to be involved in the major policy decisions.”

On December 3, 2015, the Public Utility Board (Board) passed two resolutions that significantly deviate from the Business Plan approved by the City Council. Amended Resolution No. U-10828, requires Tacoma Power to develop a new Business Plan related to Click!. The Business Plan will also require Tacoma Power to fund significant capital upgrades to the existing System and then use Power staff to directly provide retail internet services to customers. Substitute Resolution No. U-10829, essentially an alternative to the first proposal, requires Tacoma Power to solicit proposals for third-party operators to lease portions of the System to provide retail cable and internet services, and agree to maintain portions of the System it uses.

The City Council has mandated that it be involved in all major policy decisions involving the commercial aspects of the System. The Board’s action has triggered a major policy decision; therefore, TPU Management is transmitting the Click! policy directive resolutions to City Council for consideration and action.

STRATEGIC POLICY PRIORITY:

Tacoma Power provides electric service to the citizens of Tacoma, its franchise cities, and unincorporated Pierce County at reasonable rates, while providing well-paying jobs to its employees. In 1997 the Board approved Amended Substitute Resolution U-9258 authorizing Tacoma Power to develop a state of the art fiber optic system to: (1) support enhanced electric system control, reliability and efficiency, (2) develop capability to meet the expanding telecommunication requirements in an evolving competitive electric market, the most critical of which is real-time, two-way interactive communications with individual energy consumers, (3) create greater revenue diversification through new business lines (i.e. internet transport, cable TV, etc.), (4) enhance traditional products, and (5) maximize the return on Light Division assets.

The Business Plan associated with the project anticipated that the commercial telecommunication ventures (internet and cable TV) (now known as Click! Network or Click!) would not only be revenue self-sufficient but would contribute to lowering the cost of constructing and maintaining the System. This Business Plan was approved by the Board and City Council in 1997. Unfortunately, Click! is currently not revenue self-sufficient, nor is it able to financially contribute to lowering the initial costs of constructing the System or pay for all of the System maintenance costs associated with its use. The goals



of bringing financial benefits to Tacoma Power customers related to (1) a diverse revenue lines or (2) obtaining a maximum return on Power's assets has not occurred. Consequently, the initial premise that the non-utility commercial telecom business lines could be of financial value to Power through implementation of the approved 1997 Business Plan has not proven out.

Due to unanticipated evolution in power utility metering technology and in telecommunications technology and the CATV and broadband marketplace, Click! is now costing electric ratepayers approximately \$5.5 – 7.5 million per year more than it is collecting for its services. The 1997 Business Plan is no longer viable and offers no financial value to Power or the electric ratepayers, which necessitated the action of the Board. Given financial losses that are inconsistent with the 1997 Business Plan and concerns raised by the City Attorney's office, Tacoma Power can no longer continue its commercial telecommunication business lines under the 1997 Plan.

Therefore, the two recent Public Utility Board resolutions support the following Strategic Policy Priorities:

- Foster a vibrant and diverse economy with good jobs for all Tacoma residents.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

BACKGROUND:

The Board has passed two alternative resolutions to replace the existing Tacoma Power 1997 telecommunication systems Business Plan.

Amended Resolution No. U-10828 will, upon concurrence by the City Council, authorize Click! to work with outside consultants to develop a detailed business, financial and marketing plan to provide customers with cable television and retail internet services including voice over data internet protocol, retail and commercial broadband, and Gigabit service. The business plan must be presented to the Board and the City Council for approval by April 7, 2016. The resolution further requires if expenditures made on behalf Click! by Power exceed Click!'s revenues during any month, such expenditures shall constitute a loan or advance from Power that shall be reimbursed from future Click! revenues by December 31, 2021, or a date when the cumulative unreimbursed expenditures reach \$31.6 million, whichever comes first (this is referred to as the Target Date). In the event future Click! revenues are insufficient to reimburse the loans or advances fully by the Target Date, then the City of Tacoma shall use non-utility revenue along with Click! revenues to pay the loans or advances back within 10 years of the Target Date. The Board and City Council may fulfil the obligation to reimburse the loans or advances with non-utility funds or by applying the proceeds of any future transaction that transfers some or all of the City's telecommunication system business to a private third party. In addition, the Resolution calls for either a third party legal opinion or a declaratory judgment action to determine whether electric ratepayer funds can be utilized to fund financial losses in the Click! telecommunications system and/or to fund the aforementioned loan. A fiscal note attached to the resolution summarizes the anticipated financial impacts over a five-year period.

Substitute Resolution No. U-10829 authorizes Power, upon concurrence by the Tacoma City Council, to solicit proposals from third-party operators desiring to lease portions of Tacoma Power's telecommunication network that are determined to be surplus to the utility's needs to offer cable television and retail internet services including voice over data internet protocol, commercial broadband and Gigabit service to residential and commercial customers within Power's service territory. Solicitation of proposals should occur by February 15, 2016, and Power is required to make a recommendation to the Board and City Council by March 1, 2016. In addition, the Resolution calls for either a third party legal



opinion or a declaratory judgment action to determine whether TPU can enter into the arrangements contemplated with a third party. A fiscal note attached to the resolution summarizes the anticipated financial impacts over a five-year period.

ISSUE:

Tacoma Power/Click!'s commercial telecommunication service costs have dramatically increased while customer counts and revenues are down. Tacoma Power/Click! can no longer effectively operate under the approved 1997 Business Plan. Tacoma City Charter Section 4.10 places authority over the operations of the utility portions of the Tacoma Power telecommunication systems solely with the Board. The City Council, through Substitute Resolution No. 33668, delegated oversight authority to the Board of the non-utility related commercial telecom uses of the System (i.e. Click!), but retained for itself authority to be involved in all major policy decisions involving Click!. The Board has passed two alternative resolutions that reconcile its sole authority under the City Charter to govern the operations of the utility portions of the System along with terms the Board would deem financially and legally acceptable if the City Council requests Power to continue to use the System to offer non-utility related commercial telecom services.

ALTERNATIVES:

Because the resolutions take into consideration subject matters that involve specific authority of the Board and City Council, the City Attorney's office has advised that any material changes to such resolutions by the City Council would require concurrence by the Board. As also advised by the City Attorney's office, failure of the City Council to act on the Board resolutions would potentially result in the Board lacking authority to continue to provide oversight of Click! operations given that the 1997 Business Plan can no longer be implemented as approved (e.g., non-utility telecom services provided cannot pay for themselves as anticipated). If no action were taken Power could be forced to end non-utility commercial telecom services, or in the alternative turn over such functions to the City Council for oversight and funding through another department.

RECOMMENDATION:

Utility Board members will be sharing their individual perspectives with City Council members regarding Amended Resolution U-10828 or Substitute Resolution U-10829 as passed by the Board.



FISCAL IMPACT:

If you are making a commitment on the City’s behalf to receive or expend funds, then the fiscal impact section should be completed. If this does not apply, enter “There is no fiscal impact” and delete everything below this line. If you are unsure, please contact the Budget Office. If the action is to accept a donation, you do not need to complete the fiscal impact section, just note the estimated value of the donation in the background section.

EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
TOTAL			

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
TOTAL			

POTENTIAL POSITION IMPACT:

POSITION TITLE	PERMANENT/ PROJECT TEMPORARY POSITION	FTE IMPACT	POSITION END DATE
TOTAL			

This section should only be completed if a subsequent request will be made to increase or decrease the current position count.

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET:

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED?

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.