

## CHAPTER 14

*PG&E and the Politics of Public Power*

July 1, 1925, was a day of eclipse for San Francisco; subtle, yet in hindsight nearly as earthshaking as April 18, 1906. An agreement signed that day between the city and PG&E cast the fate of Hetch Hetchy hydroelectricity, scuttling the promise of public power. The city has suffered the consequences ever since, perhaps costing electricity consumers a billion dollars or more in higher rates and years of poorer service. No smoking gun makes the case for the damage done by the agreement; it rarely does in such matters, but the circumstantial evidence is compelling, regardless of one's attitudes toward politics and corporate influence peddling.

However, the most insidious result might be the way the outcome has perpetuated the disease of governance based on economic self-interest and political expediency, gradually undermining public trust and a sense of civic responsibility, breeding apathy, and fostering a feeling of futility. Idealism and civic vision suffered in this sacrifice of municipal innocence. James Duval Phelan waged his crusade in the early 1900s to cleanse city hall of that debilitating disease of the public spirit. Other Progressive reformers carried the cause to cities all across America.

Bruce Brugmann has been telling the Bay Area this story for decades in articles in the *San Francisco Bay Guardian*, the independent weekly newspaper he publishes. The free paper looks like a magazine-format tabloid targeted to the Bay Area counterculture, with articles and ads tailored to the young, liberal wings of the political and social spectrums. The paper thrives catering to readers and covering issues largely overlooked by the dailies. It is not the sort of source one would usually rely on for probing investigative journalism into important issues. Yet in this case the activist-oriented *Bay Guardian* has scooped the more prominent, staid, and politically correct competitors for more than thirty years. "The greatest scandal in American urban history," Brugmann calls the story. Most Califor-

nians haven't listened to him, being quick to dismiss his message because of the brash tone and the alternative method of delivery. But they should listen.

Bruce Brugmann is a bear of a man, looming well over six feet tall with a massive frame and a full silver-white beard. When he recounts the history of the *Guardian's* coverage of the public power story his restrained demeanor and quiet voice belie an underlying sense of anger, defiance, and indignation. "I'm for public power, and I'll tell you why. I come from a little town in Iowa called Rock Rapids, population 2,800, full of conservative German farmers and Republicans of the most conservative stripe. They've had public power for years and they love it. In the 1950s I could see that the town prospered more than nearby towns served by private power companies. One summer I worked for a Rural Electrification Administration crew and realized how much rural farmers benefited from electrification brought by FDR's programs. Private industry would not have provided it."

Brugmann then attended the University of Nebraska and gravitated toward the liberal, Progressive philosophy of George Norris. He began his journalism career at the *Lincoln Journal Star*, where his editor ghost-authored Norris's autobiography and the paper covered public power as a regular beat. Nebraska, Brugmann continues, "also has reliable, cheap, public power brought to you by the city or brought to you by the state." After a stint in the army working for *Stars and Stripes* and another with the *Milwaukee Journal Sentinel*, he migrated west to California in 1964 with the hope of starting a paper; the *Bay Guardian* was born in 1966.

"I went along fighting against the war in Vietnam and the normal causes of the time," he recounts, "when I received a message from Joe Neilands, a biochemistry professor at the University of California-Berkeley who was leading the successful campaign against PG&E's proposed Bodega Bay nuclear power plant just upwind from San Francisco. He told me there was a big scandal here involving the Raker Act and that he'd like to write a story about it for the *Guardian*."

Professor Neilands learned of the scandal from Franck Havenner. Neilands recalled, "A few months before he died [in 1967], Franck Havenner sat up in his bed in a nursing home in San Francisco and

told me of how the Pacific Gas & Electric Co. swindled San Francisco out of hundreds of millions of dollars of cheap hydroelectric power." Havenner would know; he served on the San Francisco Board of Supervisors from 1926 to 1936 and in the U.S. Congress from 1937 to 1941 and 1945 to 1953, with a stint on the California State Railroad Commission (now the California Public Utilities Commission) from 1941 to 1944 in between. He saw the scandal develop from several sides.

"The story was incredible," Neilands said. "PG&E and its political allies had defeated eight successive bond issues to establish a municipal electrical system in San Francisco and grant city residents and businesses the benefit of low-cost power produced by the city's Hetch Hetchy water system in the Sierras." As a result, Neilands later wrote, San Franciscans for decades had been paying PG&E through the nose for power, losing "about \$30 million a year in profits [the city] would get from a public system." Havenner told his shocked confidant how in the beginning the Progressive advocates of public power had the support of some newspapers, "but in the end PG&E was able to buy them [the papers] all out with their newspaper ads." Neilands carefully researched Havenner's claims. The *Guardian* published the resulting exposé on March 27, 1969. The story found a kindred spirit and an enthusiastic advocate in Bruce Brugmann.

"So 1969 marked the start of the paper's campaign to bring public power to San Francisco and enforce the Raker Act," Brugmann states. "It's the greatest scandal in American history involving a city, in terms of money, tenure, and corruption at city hall. And that's why San Francisco is in such a mess. Power is an essential service and as such its provision should not be entrusted to the private sector. Just look at what recently happened in California with deregulation. You can't let market forces play with essential services." The dangers have been known from the outset. In 1905 *Arena* magazine summarized a series of scathing articles and editorials on the behavior of privately owned utilities, saying, "No influence in political, business or general life has proved so corrupting to government, so demoralizing to the press and other public opinion-forming organs, or so vicious in lowering the moral ideals and integrity of the people as private companies operating public utilities."

“Sacramento has a municipal utility district, Los Angeles has a public power authority, and thirty-three or so other cities throughout the state have public power,” Brugmann said. “We went into the Yosemite National Park, dammed the beautiful Hetch Hetchy Valley, and drove John Muir off the cliff; we brought the water into San Francisco, but we never got the public power, even though we’re the only city in the U.S. mandated to have public power because of the Raker Act. That was a condition of the grant, later upheld by the U.S. Supreme Court. Hetch Hetchy was supposed to be the Magna Carta of public power and public water. Why didn’t we get the public power—our own Hetch Hetchy power that we paid hundreds of millions of dollars for by building dams, powerhouses, pipelines, and tunnels to provide it? The political power of PG&E, that’s why.

“This is a political problem and a journalistic problem. You never read about this story in the old *San Francisco Examiner*, the old *San Francisco Chronicle*, or the new *Chronicle*. And since the local papers don’t cover the story, it doesn’t make the newswire or come to the attention of national papers like the *New York Times*.

“The local media has blacked out the story ever since William Randolph Hearst needed to get a batch of money from Herbert Fleishhacker, who ran the bank that handled much of PG&E’s financing and was a board member of the transit and power trusts [Herbert’s brother Mortimer was president of Great Western Power Company]. In the early days, when the *Chronicle* was already a staunch supporter of PG&E, William Randolph Hearst’s *Call* and *Examiner* were strong proponents of municipal power, running big front-page stories rooted in populist, anti-big business belief. But by the mid-1920s, all Hearst’s papers were promoting a position much friendlier to PG&E. Hearst would no longer stand in the way of a privatized water and electricity system.

“Franck Havenner thought that Hearst was paid off by PG&E after the utility started buying full-page ads in Hearst’s papers. But there may be another reason why Hearst abandoned the Raker Act mandate. In the mid-1920s, overleveraged and desperate that no bank would lend him funds to keep his growing and nationwide empire afloat, Hearst turned to Herbert Fleishhacker, president of the London and Paris National Bank in San Francisco. Fleishhacker was one of the leading advocates in the push to privatize the city’s

water and electricity systems. Soon thereafter, Hearst was instructing his ranks to maintain 'pleasant relations' with Mr. Fleishhacker and to refrain from criticizing his enterprises.

"Part of the condition of the loan was that Hearst changes his position on Hetch Hetchy. His papers have been friendly to PG&E ever since. The Hearst media empire and the new *Chronicle* still maintain this position: no coverage of the Raker Act. It's an incredible media scandal that the local monopoly paper doesn't cover this issue. Monopoly supports monopoly here in San Francisco, and throughout the state. A big reason that we have public power in Sacramento is because of the McClatchy family, who own the *Sacramento Bee*, among other papers, and they've long been champions of public power.

"What are we to do about it? Public power has been taken off the agenda in California for decades. Labor took it off, coopted by big business. The newspapers took it off because they get a lot of advertising from PG&E. Culburt Olson was the last governor [1939–43] who advocated public power. The reason for this is that if you're a politician and you go against PG&E, they make sure you're not a politician for very long. We've watched this here in San Francisco. Politicians get elected, get to city hall, and then PG&E rolls them over and the scandal continues. When PG&E spits, city hall swims."

Colorful. Opinionated. Passionate. One senses that Bruce Brugmann needs this crusade against the great corporate-political-press combine in part because of a Don Quixote-like personality. It's who he is and how he has shaped his paper. And city hall knows Bruce Brugmann well, as do the political reporters and editors around the region; he's been in their faces for years. The crusade wears comfortably on him, like a well-worn overcoat. Yet even his critics know he serves a very important public role. Perhaps he overstates the collusion, but much of what he says rings true. His alternative paper is making a difference. Public power is once again becoming an issue in the Bay Area, attracting the attention of city hall, voters, and the daily papers. San Francisco at long last may be moving toward some form of a municipal utility district, finally undoing the decision of 1925 and the subsequent events that perpetuated it.

Several events in 1923 conspired to trigger that decision. First, fearful that the city would have no means to distribute Moccasin electricity when it came online—thus wasting the potential power and profit—the board of supervisors passed a resolution in July recommending that San Francisco either build its own distribution system or purchase an existing grid. A complementary resolution instructed the city engineer to develop cost estimates for both possibilities. Michael O’Shaughnessy’s position covered the gamut; at times he asserted his commitment to public power, and at other times advocated the sale of power to the private utilities on the grounds that a city-owned system could not be completed until well after Moccasin was operational. Various cost estimates for the city to construct either a complete system or a partial system, and the revenues the city could expect from each, were bandied about by O’Shaughnessy and others, and squabbling continued over the legality of using existing bond monies for power purposes.

In an effort to settle some of the issues, Mayor Rolph empowered an advisory committee, including a former chief justice of the California Supreme Court, former mayor James Duval Phelan, and several other men of impeccable integrity. In October the committee unanimously declared that the Raker Act prohibited the city from selling Hetch Hetchy power to a private company and called upon the board of supervisors to pursue the purchase of an existing distribution system with the assistance of the state railroad commission. The board concurred and promptly charged the advisory committee to begin immediate negotiations with PG&E and Great Western.

It didn’t take long for the negotiations to break down, so the advisory committee recommended the city initiate eminent domain proceedings against the companies. The issues featured prominently in the pending municipal elections in November. The board quickly passed a resolution directing the railroad commission to determine a fair purchase price, and committed itself to placing a bond issue before the voters to finance the acquisitions as soon as a price could be set following the pending election. However, two weeks after the election, the board inexplicably postponed the railroad commission’s valuation. Accusations of political meddling by the power companies ran rampant. (The commission’s valuation report was completed in 1929, but by then the city’s plan to use eminent

domain to purchase the power companies' assets in San Francisco had been dropped.)

Concurrent with these efforts, city hall adopted the strategy of funding the water and power components of the Hetch Hetchy project separately, even though separate bonds for power projects would be much less likely to win voter approval. Complete as much of the water system as possible with the original bond money, proponents thought, and let the final components of the power system, especially the long-distance transmission and local distribution lines, be funded separately and/or be subcontracted to PG&E. Presumably, city hall knew the implications of this approach: voters would likely approve the funding to finish the water system; how could they not? But they probably would not approve separate bonds for the power system, forcing the city into a cooperative agreement with PG&E. The board of supervisors authorized the city engineer to see how much PG&E would pay for the Moccasin output. O'Shaughnessy and the PG&E president agreed on an annual \$2 million fee based on the former's desire that the fee cover the city's 5 percent interest payment on the \$40 million in Hetch Hetchy bonds used so far. The \$2 million annual fee also meant that PG&E would pay a half cent per kilowatt for the 400 million kilowatts O'Shaughnessy estimated the plant would generate.

Swirling about San Francisco's deliberations on how to dispose of the Moccasin hydropower were another set of negotiations between the monopoly and the Modesto and Turlock Irrigation Districts over disposal of hydropower about to come online from their new power plant at Don Pedro Reservoir. The districts' water and power needs had loomed just behind those of San Francisco since the Freeman plan enlarged the scope of the Hetch Hetchy project. Provision for the districts' water rights had figured prominently in the Raker Act, although the city had always fought to assert its wants and wishes over those of the districts.

Modesto and Turlock had long eyed the deep, narrow gorge on the Tuolumne River just downstream from Don Pedro Bar, along with the two canyons that branched out above, as a perfect dam and reservoir site to satisfy their storage need for irrigation water. The impoundment several miles below Moccasin Creek would inundate Don Pedro Bar, Red Mountain Bar, and Six Bit Gulch, once three of the richest placer mining areas in the world. But the gold had been

## DAM!

harvested, leaving the landscape idle and the little mining towns nearby lifeless and abandoned. The districts moved ahead with plans for a dam and reservoir at Don Pedro in the 1910s based on their original water rights. However, they filed new rights specifically for the storage project when confronted with opposition from the California State Water Commission, prompted by San Francisco, which had been placed by the Raker Act in a position to potentially threaten the districts' water rights on the upper Tuolumne River, rights that had to be put to beneficial use or they could be forfeited. Turlock led the way, with Modesto finally joining the project in 1918. And as was the case for San Francisco and Hetch Hetchy, while the water part of the Don Pedro project was always clear to the districts, the power part was not.

In the 1910s demand for electricity in the districts came mostly from the needs of irrigation pumps and other agricultural uses. Few rural households were wired, and the small towns generated little retail demand. Electricity remained a luxury for most, not yet a necessity. And state law did not grant the districts the specific authority to generate hydropower for any uses other than those related to irrigation. However, a power plant that could generate far more electricity than those needs currently required could easily be developed at Don Pedro—power that could either be sold wholesale for profit, as San Francisco intended to do with its Hetch Hetchy power, or electricity that could be used as the cornerstone of a public power system to benefit local residents and businesses. This was, of course, the same debate being argued in San Francisco. But the districts, like many jurisdictions throughout the nation, would come to a different conclusion than the city. In 1919 the districts agreed to proceed with construction of the dam and reservoir, and the powerhouse, three days before the state law that enabled irrigation districts to develop power for nonagricultural uses took effect, over San Francisco's objection.

Work on the project commenced immediately. The 1,040-foot-long and 283-foot-high solid concrete gravity dam, the highest gravity dam in the world, would impound a 14-mile-long reservoir capable of holding more than 285,000 acre feet of water for irrigation and hydropower, with the products split between the districts based on their amount of acreage. Turlock, with 176,210 acres, would receive

68.46 percent of the output. Modesto, with 81,183 acres, would receive 31.54 percent. The official dedication was held in 1923, two years to the day since the official start and just two weeks after the reservoir had reached full pool. The stunning accomplishment triggered the same problem for Modesto that San Francisco confronted with its completion of Moccasin: what to do with the hydropower?

For those past two years Modesto had acrimoniously debated how to dispose of the pending hydropower, although the decision to include a powerhouse in the Don Pedro project had been made in 1919. (Turlock had taken the plunge into public power from the outset.) PG&E and its subsidiaries supplied power to the region and looked with hostility upon the possible competition from the districts. The monopoly fought vigorously to retain its dominance during negotiations with the districts over their long-term power supply and transmission needs, which had to interconnect with PG&E's regional grid. Despite the company's obstinacy, members of the Modesto district overwhelmingly supported public power, and they approved the necessary funding to construct Modesto's own distribution system. The districts began delivering power generated at Don Pedro to the public on May 20, 1923.

Over the coming years, Modesto and Turlock incrementally expanded their systems in competition with PG&E. Both public power systems proved to be more successful than originally envisioned, delivering significantly cheaper power and developing a customer base faster than did the private monopoly. Turlock purchased the company's assets in the district in 1931, having previously acquired the assets of the other private electricity provider. But the monopoly competed tenaciously in the Modesto district. This competition lasted a decade. Defeated, and no longer profitable because of its dwindling Modesto client base, PG&E finally sold its assets to the district in 1940, agreeing to provide wholesale supplemental power to Modesto as needed in the future. Twenty years of competition and litigation between the company and the district over the provision of power to retail consumers came to an end, concurrent with the Supreme Court ruling that San Francisco's power distribution agreement with PG&E was illegal. (That decision would again conjoin the city, the company, and the districts in the 1940s, when the city would seek an alternate market for its excess power in place of

PG&E and further cement the increasingly cooperative relationship between the parties begun in the mid-1930s.)

Meanwhile, in 1923, when administrators at the National Park Service heard of a possible deal between PG&E and the City of San Francisco, they wrote a letter to the secretary of the interior asking for an opinion about whether the Raker Act permitted the city to sell power to a private power company. In June the solicitor for the department responded: "I have indicated that in my opinion the law prohibits the sale of electric energy by the grantee for resale. The method of enforcing the Act is plainly stated." The Raker Act declares "That the grantee shall at all times comply with and observe on its part all the conditions specified in this Act, and in the event that the same are not reasonably complied with and carried out by the grantee, upon written request of the Secretary of the Interior, it is the duty of the Attorney General in the name of the United States to commence all necessary suits or proceedings . . . for the purpose of enforcing and carrying out the provisions of this Act."

Despite the legal grounds for federal intervention, the department's solicitor sought to avoid it. "I may add, however, that I would not recommend [that we] resort to that extremity at this time, but would make known to the grantee the views of this Department in the matter with a suggestion that an arrangement be made for the distribution of the surplus electric energy by a method which would not conflict with the law. . . . Instead of selling this power for resale and distribution, as has been done and further proposed, it occurs to me that it would be feasible for the parties to agree upon terms by which the grantee would have its power transmitted over the lines of the concern owning or controlling the existing distribution system." The solicitor must have been clairvoyant.

In early 1925, the original \$45 million bond was nearly spent and Moccasin neared final completion, with power due to come online around June 1. Yet the electric transmission line needed to carry that current to San Francisco had not been completed, nor had a distribution grid in the city been acquired or constructed. The ninety-nine-mile-long Hetch Hetchy transmission line terminated about forty miles from the city—coincidentally only a few hundred yards from the PG&E Newark substation on the eastern shore of San Francisco Bay, where a new transbay high-voltage cable and transmission line

from the substation to San Francisco had just been brought into service. The city claimed it had simply run out of funds to finish its own transmission line. The copper wire the city had purchased and stored in a warehouse to be used for the line was quietly sold for scrap several years later. Fortunately, the city line could connect into PG&E's regional grid at the Newark substation and the power could be transmitted over the company's lines virtually anywhere.

In April, desperate to make some use of Moccasin power, the board of supervisors instructed the mayor and the chairman of the finance and public utilities committee to negotiate a contract with PG&E to purchase or distribute the power until such time as the city could make permanent arrangements. The city's asking price for the power was \$2 million per year, although at the prevailing rates PG&E could resell the power to municipal customers at more than four times that amount. (Had the city been able to distribute the power and receive its market value at the time, the net revenues could have been sufficient to finance the purchase of the entire PG&E grid in a relatively short time frame, after which the public's price for power could have been cut significantly.) The negotiations were hardly that; PG&E knew the city was in no position to dictate terms; time was running out. The deal was struck on July 1:

Whereas, the City has now completed the construction of the Moccasin power plant . . . , and has also completed the building of a transmission line to the vicinity of Newark in Alameda County . . . ; and

Whereas, the City has not yet constructed or acquired a transmission line from the point near Newark to the City limits, and has not yet constructed or acquired a distribution system for utilizing the power produced at Moccasin plant and delivering the same for general municipal uses and for sale to consumers of electric energy within the limits of the City and County; and

Whereas, pursuant to resolutions of its Board of Supervisors looking to the acquisition of a municipal owned electric distribution system, the City has commenced and there is now pending before the Railroad Commission of the State of California, proceedings for the determination by the Commission of the compensation to be paid by the City for the local distribution systems and certain steam plants

## DAM!

now owned and operated by the Pacific Gas and Electric Company and the Great Western Power Company of California, respectively, when the same shall be taken over by the City under eminent domain proceedings, or otherwise;

Whereas, the City has not the funds available at the present time with which to purchase or construct a distribution system of its own and it will be necessary to submit a proposition to the people to vote bonds to provide money for that purpose, before a distribution system can be purchased or constructed, and the City cannot well determine whether to purchase one or both of the local distribution systems, or to construct a distribution system of its own until the Railroad Commission determines the amount of compensation to be paid by the City for the taking of either or both of said local distribution systems under the proceedings now pending before the Commission; and

Whereas, the City intends to complete its power transmission line from Newark to San Francisco and to acquire or construct a distribution system of its own; and

Whereas, the said Moccasin Power Plant is now in condition to operate at its full capacity of 70,000 kilowatts and unless some temporary arrangement is made between the City and County for the distribution to consumers of the electric energy which can be purchased at said plant during the period that must elapse before the City can acquire, own and operate a distribution system of its own, there will be a great waste of said potential energy and a great loss of potential revenue to the City and its taxpayers.

The contract was just what PG&E wanted. The company retained control of Hetch Hetchy power bought at a fixed wholesale rate from the city and resold it to the city at a flexible retail rate that could float with market fluctuations as permitted by the railroad commission. The city received \$2 million per year in nontax-generated municipal revenues (while continuing to pay over \$8 million annually in tax dollars for power used by city services). That was better than allowing the power to go to waste, but it was a far cry from the Raker Act's idea of "public power." And the contract continued the practice of selling Hetch Hetchy power to a private company that had started with the sale of excess electricity from Early Intake. The latter had

been initially a special exception due to the world war; but the exigent circumstances were now the result of municipal negligence or malfeasance, not a war.

The public was not pleased. At the next election, they voted those supervisors who approved the contract and were running for reelection out of office. Yet local politics and public opinion toward public power were complicated. In 1924, voters had approved \$10 million for additional work on the Hetch Hetchy water system and knew in the near future they'd again be asked to approve a major bond (of some \$40 million) to purchase Spring Valley. By 1927 they feared the added expense of additional bonds for the power system, often confusing the tax implications of general obligation bonds with revenue bonds, which would be paid for by utility receipts. Public power and public water sounded wonderful in principle, but what was the cost to the taxpayer? City hall kept upping the ante in a seemingly endless series of bond requests. Meanwhile, few people agreed on the legal issues or the costs and benefits: not the factions in city hall, or the press, or the private companies, or the other government agencies, or the public.

Of course, PG&E exploited the confusion, using its influence in city hall and the press to promote its opposition to public power. The company also successfully marketed stock in the Bay Area, and then sent flyers to its 20,000 shareholders which decried public power due to the likely loss of corporate profits and the resulting decline in stock price. In November 1927 voters were asked to approve a \$2 million bond to fund completion of a city transmission line from Newark into San Francisco, which would lessen the city's dependence on PG&E and be a necessary precursor to the creation of a public power distribution system. The company campaigned aggressively against the proposal, spending heavily for ads that misled voters into believing Congress could easily be convinced to remove the public power proviso in the Raker Act. San Franciscans failed to give the required two-thirds majority for the bond, with a vote of 52,216 for and 50,727 against. The following May, voters approved another \$24 million in Hetch Hetchy water bonds and \$41 million to finally purchase Spring Valley, ending the decades-long struggle to acquire the water monopoly.

Perhaps with that success, the public and politicians felt the prom-

ise of Hetch Hetchy had been realized, which further dampened interest in public power. In November 1928 voters rejected a general charter amendment for the issuance of revenue bonds to fund the acquisition, construction, or extension of a public (electric) utility; in August 1930, they voted down \$44.6 million in bonds to acquire PG&E, \$18.9 million to acquire Great Western, \$3.5 million to build the transmission line from Newark to San Francisco, and \$1 million to build a powerhouse at Red Mountain Bar. While voters would repeatedly approve bonds for the water system over the following decades, they would repeatedly reject bonds for the power system: in 1933 they rejected a \$6.3 million bond for the Red Mountain Bar power plant; in 1935 they again rejected a general charter amendment for the issuance of revenue bonds to fund the acquisition, construction, or extension of a public (electric) utility; in 1937 they rejected a \$50 million bond to acquire PG&E's local assets plus the construction of the Red Mountain Bar powerhouse; in 1939 they rejected a \$55 million bond for the same purpose; and in 1941 they rejected a \$66.5 million bond for the same again. Not until 1955 did they approve funds for a power purpose—\$54 million to build two of the powerhouses originally proposed by Freeman. But they would never approve funds to acquire a local distribution grid.

On October 28, 1934, Harold L. Ickes, the new secretary of the interior, toasted the arrival of Hetch Hetchy water at the official ceremony near the Crystal Springs Reservoir. The celebration had been postponed due to conflicts in his schedule. Michael O'Shaughnessy had died during the delay. Eighty-nine workers had been killed while working on the project. The ceremony was aired on the radio coast to coast over the Columbia Broadcasting System. Ickes later wrote, "San Francisco also develops power from this water. . . . Unfortunately, private utilities have such a grip on San Francisco that it cannot actually sell its own power to users in San Francisco. I held there was a violation of the [Raker] Act. . . . The newspapers and most of the politicians have seen to it, by propaganda and other devious methods, that a method of complying with the Act has been defeated."

Senator George Norris recalled the situation in his autobiography, "Among other assignments which fell to me when I entered the

United States Senate in 1913 was one to the Public Lands Committee.

"It had before it the bitterly controversial issue of developing the water and power resources of the Hetch Hetchy watershed for the benefit of the people of the city and county of San Francisco.

"There could be, in my judgment, no better example of the slow and painful processes through which the American people ultimately in their wisdom may come into the full benefits of some of the great natural wealth which belongs to them.

"Now, thirty years later—three full decades—the powerfully entrenched private interest which prevented San Franciscans from enjoying what belongs to them still thwart the express will of the American Congress, the clear-cut mandates of the federal courts, and the Department of the Interior, under both conservative and liberal administrations. Strangely, these forces flaunt their defiance seemingly with the approval and support of the government of the city of San Francisco, and indirectly its people, for whom the project was undertaken and to whom Congress granted rights with certain sound limitations."

The villain was as clear then to Senator Norris as it is now to Bruce Brugmann. "I underestimated the resourcefulness of the Pacific Gas and Electric Company," continued the Senator. "When I spoke so hopefully and so confidently (not only I but many others) it was incredible that a great utility could control the policies of city government in San Francisco, with all of the resources at its command could battle through the courts to defeat—only to stave off that defeat by delaying rear-guard actions, and then reappear in the halls of Congress itself to renew the fight, and at all times and under all circumstances continue to defeat the original purpose and spirit of Hetch Hetchy. But, it has done all this."

San Francisco's contract with PG&E and the company's political meddling outraged Harold Ickes, who led a campaign throughout his thirteen-year tenure as the secretary of the interior (1933–46) to remedy the travesties by trying to enforce the public power provisos in the Raker Act. His inability to do so defies reason. Irascible, at times tactless, and a stickler for details, his fastidious management style and constant crusade against corruption earned him the nick-

name "Honest Harold." Ickes seemed the perfect person to lead the fight to enforce the Raker Act.

A Republican lawyer from Chicago, he had fought the endemic corruption there for three decades with leading political and social reformers including Jane Addams, who was a close personal friend. Ickes was a staunch, lifelong Progressive and conservationist. He campaigned for Theodore Roosevelt's unsuccessful Bull Moose Progressive Republican Party in 1912, and for successive Progressive presidential candidates. However, by 1932 he no longer agreed with the policies of President Herbert Hoover (1929–33) and headed a committee of liberal Republicans who switched their support to the New Deal platform of Franklin D. Roosevelt (1933–45). In return, FDR appointed Ickes to be the secretary of the interior.

Secretary Ickes sought to redefine the department into the "Department of Conservation" by merging it with the U.S. Forest Service and other land management agencies, but failed, only able to add what would become the U.S. Fish and Wildlife Service to the department. Yet under his leadership the National Park System flourished, expanding in size from 8.2 million acres to more than 20 million acres. He advocated the establishment of a national wilderness system and national seashore program, both of which would occur after his tenure, and supported the multipurpose dam-building conservation programs conducted by the Bureau of Reclamation.

His leadership of the Public Works Administration from 1933 to 1939 marked his greatest accomplishment while secretary. The enormous \$3.3 billion New Deal construction program built public buildings, bridges, dams, and housing developments, and made loans to states and municipalities for similar plans. Among the thousands of projects were the Triborough Bridge and the Lincoln Tunnel in New York City, the Grand Coulee Dam in Washington State, and the Key West Highway in Florida.

How could San Francisco dodge its legal obligations with Ickes on the case? He would wrestle with San Francisco to compel the city into compliance throughout his tenure, most of the time with Mayor Angelo J. Rossi (1931–44). But Rossi and San Francisco escaped every move Ickes made by craftily stalling when confronted with federal orders and timetables, relying on the same tactic it used so

successfully to avoid the withdrawal of the Garfield permit and ultimately gain congressional approval for Hetch Hetchy.

San Francisco city hall must have known that the federal government was loath to actually exercise its authority to take over the project. That was likely the last outcome the federal government sought, and would have been a political and administrative nightmare. Perhaps in some other place and time, the federal government could successfully provide water or power to the public through some form of quasipublic agency, such as the Tennessee Valley Authority or the Bonneville Power Authority, but not in the 1930s and 1940s in San Francisco; the local politics prevented it. In hindsight, one suspects Mayor Rossi knew exactly what he was doing, and Secretary Ickes was powerless to prevent him.

A proud Italian-American man, bald and stout, always impeccably dressed in striped trousers and cutaway, Angelo Rossi was James Rolph's hand-picked successor as mayor. A lifelong florist, Rossi always wore a white-carnation boutonniere—Mayor Rolph always wore a gardenia. When Rolph resigned to become governor, he appointed his dapper protégé from the board of supervisors to succeed him, providing extraordinary continuity in city policy for the project over their combined thirty-two years in office. During Rossi's tenure the Golden Gate Bridge and the San Francisco–Oakland Bay Bridge were built and Hetch Hetchy was completed, among other major civic improvements. The city certainly had the ability to complete the public power system; it just never had the will to do so.

The clash between Ickes and Rossi had probably begun before they toasted the completion of the Hetch Hetchy water system that day in October 1934. In preparing for the visit, Ickes must have learned of the three-year plan his predecessor and Mayor Rossi had negotiated several years earlier, for San Francisco to create a public power agency. The plan called for the board of supervisors to place bond issues on the ballot to finance the agency. But voters rejected the \$68 million in bonds to purchase PG&E and Great Western and build additional facilities in 1930, after a vigorous campaign in opposition to the proposals was mounted by the power companies. Given the start of the Great Depression, the vociferous opposition of PG&E, and the tepid support of the city administration for the

bonds—as well as the public’s general confusion—the huge offering had no chance of approval. The city claimed it had tried to comply; even a small bond was rejected in 1933. What else could they do?

Ickes had also learned of the sweetheart deal for the handling of Moccasin power between the city and PG&E, and of the 1923 solicitor general’s opinion in response to the National Park Service inquiry. He instructed the solicitor to reexamine the situation. In August 1934, Ickes concluded that the contract remained a clear violation of the Raker Act and urged San Francisco to remedy the situation by establishing a municipal power system as quickly as possible. Mayor Rossi acknowledged the instruction and referred the matter to the city’s public utilities commission, and there the issue died. In 1935 the administration again gave little support to a charter amendment for public power, which lost decisively under an onslaught of propaganda from PG&E.

Ickes persisted, repeatedly warning San Francisco about complying with the law. The city responded by placing a self-financing revenue bond issue to purchase PG&E on the 1937 ballot, instead of general obligation bonds as had been offered before. It made no difference. The solicitor general concluded the issue failed due “to lack of support by the Mayor and his failure to campaign for it.” (PG&E’s campaign contributed as well.) Two days later Ickes cabled Mayor Rossi, giving him fifteen days to show how San Francisco was serious about complying with the Raker Act. When Rossi failed to respond, Secretary Ickes ordered the U.S. attorney general to file suit against the city. That got Rossi’s attention. He immediately cabled Ickes and requested a delay in the legal action and a meeting in Washington to resolve the issue. Ickes responded that for two years he had “patiently tried to persuade San Francisco to obey the mandate in a law which it originally concurred in, but without success.” There was no point in further discussion for Ickes; the city’s motives were clear. “Apparently,” the solicitor for the Department of the Interior commented to Ickes, “the Mayor was completely bewildered and disconcerted by the knowledge of the fact that conferences and delays would no longer be the regular order of things.” Now the courts would compel compliance.

As expected, on April 11, 1938, the U.S. District Court for Northern California ruled that the sales agreement between San

San Francisco and PG&E violated the Raker Act. However, hoping that the city would accept the court judgment and comply, Ickes didn't ask for a forfeiture ruling in which the Hetch Hetchy grant would revert to the federal government. In response, the judge issued an injunction forbidding the city from selling power to a private company, and then suspended enforcement for six months to enable the city to devise a plan for compliance that would be acceptable to the interior secretary. Ickes announced that he was "ready to consider any proposals officials of San Francisco might have to offer." Rossi's response was to appeal the court decision, vowing to fight the ruling all the way to the U.S. Supreme Court if need be, or "if worst comes to worst . . . the city should move for amendment by Congress of the Raker Act." There no longer could be any lingering doubt about the city's intentions for Hetch Hetchy hydroelectricity or the creation of a public power system.

The U.S. Ninth Circuit Court of Appeals reversed the district court's decision on September 13, 1939. The appeals court agreed with San Francisco's contention that the city had no choice but to use PG&E as its "agent" to distribute Moccasin power as long as local voters rejected the bond issues and charter amendments that were needed to acquire or build a public power system. Motives didn't matter; methods didn't matter. Only the results mattered. And the results were that voters repeatedly rejected the city's meager attempts to create a public power system. However, motives and methods *did* matter to Secretary Ickes, who requested the solicitor general to appeal the ruling to the U.S. Supreme Court.

Justice Hugo Black wrote the April 22, 1940, Supreme Court opinion on behalf of the eight-to-one majority. The Raker Act and congressional intent were unequivocal: there was to be public power with no transmission, transferral, or sale of any power permitted to any private entity for any reason. "The City has in fact followed a course of conduct which Congress, by Section 6, has forbidden," Justice Black wrote. "Mere words and ingenuity of contractual expression, whatever their effect between the parties, cannot by description make permissible a course of conduct forbidden by law." Motives and means also mattered to the Supreme Court. "When we look behind the word description of the arrangement between the City and the power company to what was actually done," Justice

Black continued, “we see that the City has—contrary to the terms of Section 6—abdicated its control over the sale and ultimate distribution of Hetch-Hetchy power. . . . The City is availing itself of valuable rights and privileges granted by the Government and yet persists in violating the very conditions upon which those benefits were granted.”

The Court showed no sympathy to the city’s arguments: “Congress clearly intended to require—as a condition of its grant—sale and distribution of Hetch-Hetchy power exclusively by San Francisco and municipal agencies directly to consumers in the belief that consumers would thus be afforded power at cheap rates in competition with private power companies, particularly Pacific Gas & Electric Company.” However, the Court concluded, “the City does not itself distribute and sell the power directly to consumers; it has not provided competition with the private power company; and it has transferred the right to sell and distribute the power to a private company in violation of the express prohibition of Section 6 of the Act.”

With thinly veiled irritation, the Court chastised the city’s hypocrisy. “When the Raker Bill was before Congress, the City filed with the Public Lands Committee of the House a brief and argument in support of the Bill. Citing authorities, including this Court’s opinions, and legislative precedents, the City submitted to Congress that as grantee it would be bound by and as grantor Congress was empowered to impose ‘the conditions set forth in the Hetch-Hetchy bill.’ After passage of the Bill the City accepted the grant by formal ordinance, assenting to all the conditions contained in the grant, constructed the required power and water facilities and up to date has utilized the rights, privileges and benefits granted by Congress. Now the City seeks to retain the benefits of the Act while attacking the constitutionality of one of its important conditions.” The Supreme Court forcefully affirmed the decision of the district court and reinstated the injunction against the continued sale of power to PG&E.

What was the reaction in San Francisco? The *Chronicle* and the *Examiner* both excoriated the decision and lampooned Ickes and Congressman Franck Havenner for trying to impose public power on the city. The papers editorialized that the city’s interests would be better served by the continued sale of power to PG&E; they asserted

that public power would cost the city the millions of dollars it received annually from the PG&E contract. Only the *San Francisco News* supported the decision, pointing out that every other city with public power had found it very lucrative, and that the potential benefits from public power would dwarf the annual fee paid by PG&E. Nor did the obstinate civic and political leaders accept the Court's ruling; they enlisted Thomas Rolph, a local U.S. representative, to propose legislation in Congress to amend the Raker Act and remove the public power mandate, with the support of California senator Hiram Johnson. Hearings in the House Committee on Public Lands were eventually held on the proposed bill (77 H.R. 5964) in December 1941 and January 1942, but the bill failed in committee.

In the meantime, a month after the Supreme Court decision, a contingent from San Francisco met in Washington with Secretary Ickes to resolve the issue. The group included Mayor Rossi, the city attorney, the president of the board of supervisors, and the manager of the public utilities commission. Ickes told them that he intended to revoke the grant if the city didn't quickly come up with an acceptable plan for the disposal of Hetch Hetchy power. "You would be here on a much better footing," he stated, "if the record of delay, evasion and double-crossing hadn't been what it has been on the part of officials of San Francisco." The utilities manager responded that the city "has seen the handwriting on the wall," and that something could be worked out in time. "Yes," Ickes retorted, "all you want is time until I'm out of office. . . . I have always believed that a man can be fooled once, but a man is a damn fool who allows himself to be fooled a second time, and this isn't only the second time."

The contingent returned with plan in hand a month later. The city proposed to lease PG&E lines and distribution facilities, for a flat annual fee, and hire the company's local sales, service, and repair staffs. PG&E had already approved the lease in principle. Although not pleased, Ickes agreed to ask the district court to grant a temporary stay in the injunction to give the city several months to renegotiate several components of the deal with PG&E. If the negotiations didn't work out, Mayor Rossi promised to place a new bond issue to acquire PG&E's assets before the voters as soon as possible.

In April 1941 the city forwarded the renegotiated lease to Ickes for review and approval. Ickes sent the lease to the chairman of the

federal power commission, who responded, "It is clear that the proposed arrangement not only does not offer the city the advantages of public distribution of Hetch Hetchy power, but may even have the effect of freezing high rates." So the secretary rejected the plan and called another meeting with city officials to try again to resolve the differences. During the May meeting, Mayor Rossi admitted the plan favored PG&E at the expense of the city, but justified it as the best deal the city could get from the monopoly. He then asked Ickes to request the district court to grant another extension of the stay in order for the city to place another bond issue before the voters in November. Ickes acquiesced, *provided* city hall and civic leaders actively campaigned in favor of the bonds.

Word of the deal between Ickes and the mayor raised the ire of the papers and civic groups like the Chamber of Commerce and the Downtown Association, who decried it as tantamount to extortion and a gag order designed to suppress public debate. In response, they joined PG&E in an aggressive campaign against the bonds. Several weeks before the vote, the front page of the *Chronicle* heralded a sweeping reduction in local electricity rates by PG&E. The bond issue failed.

Secretary Ickes then informed Mayor Rossi that he now had no alternative but to begin proceedings to revoke the Hetch Hetchy grant. No more delays would be approved; no more excuses would be accepted. Time had finally run out for the city. Time had finally run out for the nation, too. Several weeks later the Hetch Hetchy public power issue in San Francisco was swept aside as bombs fell on Pearl Harbor in the early-morning hours of December 7, 1941.

As it had for the small amount of Early Intake power during World War I, the federal government purchased the power from the Moccasin plant during World War II and diverted it to an aluminum-smelting facility built near Modesto. When the facility shut down in June 1944 and the district court injunction was about to be reinstated, San Francisco did what it had done so many times before: it requested a delay so it could make arrangements for the disposal of the power. And once again the tactic worked, despite angry comments about it from the district court. In August the new mayor, Roger Lapham (1944-48), submitted a scheme in which PG&E would transmit about 200 million kilowatt-hours a year of Hetch Hetchy power from its

Newark substation to municipal facilities in San Francisco in return for the free use of the remaining Hetch Hetchy hydropower, which was thought to be roughly 300 million kilowatt-hours a year. Undersecretary Abe Fortas rejected the plan while Secretary Ickes was on vacation. Although increasingly frustrated with the city, the district court granted it one final chance to propose an acceptable plan.

On it went: Lapham wrote Ickes with a draft scheme in December based on negotiations between the city, the monopoly, and the irrigation districts. He now proposed that the city pay PG&E an annual wheeling fee to transmit enough Hetch Hetchy power from Newark to San Francisco to satisfy municipal needs. Excess power would be sold to the Modesto and Turlock Irrigation Districts as permitted in the Raker Act, instead of to PG&E. Modesto had been buying substantial amounts of supplemental power from PG&E for several years, and so the proposed arrangement would sharply reduce the cost of that power. In contrast, Turlock's share of Don Pedro power exceeded the district's need, so it had been wholesaling excess to PG&E for years. In the mid-1930s Modesto had offered to buy any surplus Hetch Hetchy power from San Francisco. The city refused. Lapham's latest scheme also enabled the districts to sell to PG&E any Hetch Hetchy power that remained after their needs were met, to avoid the excess power from going to waste.

Secretary Ickes was initially noncommittal on the scheme, reminding the mayor that the final plan was due by year's end and that the Department of the Interior would "not participate in any evasion of the law, however complex and ingenious." He warned Lapham, "I hope that your leadership will not, this time, have to waste time, energy and newsprint in the fruitless pastime of beating the devil around the PG&E bush."

In January 1945, Ickes rejected the latest Lapham scheme, writing, "The proposed agreements do not carry out the intent of the Congress in the Raker Act, which was designed to bring City-owned power, over the City's transmission and distribution system, directly to the citizens of San Francisco." The many plans proposed by San Francisco were in effect simply subtle variations on the basic idea of placing the power under the control of PG&E, which was a fundamental violation of the Raker Act, regardless of the contractual nuances between the city and the monopoly.

For several more months, plans and promises and warnings flew back and forth between San Francisco and Washington. Negotiations between all the parties and the district court continued. The nagging problem posed by Turlock's power glut and past practice of selling excess to PG&E was resolved by permitting the district to continue to sell excess power to the company when it received Hetch Hetchy power, but only up to the same amount of excess Don Pedro power it had sold the company in 1944. (Turlock's power needs would soon exceed the power supply it obtained from Don Pedro, ending the sale of excess power to PG&E.) Beyond the resolution of that problem, nothing of substance changed in the city's proposed arrangement with PG&E.

Ickes finally conceded in June, perhaps out of frustration and a sense of futility as his tenure was about to end, or perhaps out of a recognition that the circumstances had changed. The district court concurred. Grudgingly Ickes accepted the city's proposal for a four-year contract with the company, while asserting that the agreement still violated the Raker Act. With the usual caveat that during the contract term the city would find an acceptable way to permanently dispose of the power and that the Department of the Interior would oppose continuation of the agreement if they hadn't done so after that time, the deal was done. Twenty years in the making, it still dodged the intent of Congress and the courts. In 1945, San Francisco began the sale of excess Hetch Hetchy hydropower to the Turlock and Modesto Irrigation Districts, in place of PG&E, for which the city continued to earn a profit, and PG&E retained control of the city's retail market. While the districts had displaced PG&E and developed public power in their service areas, San Francisco had not.

Eventually circumstances had changed in San Francisco's favor, just as city hall had hoped all along. The politics in Washington had changed, and public opinion had changed nationwide. The New Deal and the Progressive Era were over. Ickes had departed. The postwar economy was beginning, and it desperately needed electricity to power expansion. A new conservative agenda was rapidly replacing the populist, liberal idealism of the past. And the proponents of that new agenda simply didn't care that San Francisco continued to violate the Raker Act and the Supreme Court ruling.

## CHAPTER 15

### *Restoring the Promise*

While electricity consumption surged nationwide during the postwar economic boom, generation capacity lagged in some regions. This spurred development of the untapped Hetch Hetchy potential that Freeman had designed into the system. Since the completion of Moccasin Powerhouse in 1925, few improvements had been made in the system's power generation or transmission capacities. Inexpensive power was readily available from PG&E and other private suppliers, so the profit potential for the city from the development of additional Hetch Hetchy generation capacity did not warrant the effort. By the mid-1950s the economics and politics of power were changing. San Francisco's municipal needs were growing rapidly, as were the demands of the Turlock and Modesto Irrigation Districts. The price of power was also increasing, and political pressure was rising to make full use of Hetch Hetchy's hydroelectricity potential. These forces justified the construction of the two additional powerhouses Freeman proposed in the plan. Completion of a massive dam on Cherry Creek in 1956 to provide water storage for irrigation and power generation set the stage for Holm Powerhouse to come online in 1960, at which time Early Intake went offline. Completion of the Canyon Tunnel in 1965 enabled Kirkwood Powerhouse to replace Early Intake in 1967. Two years later, when the new powerhouse at Moccasin came online, followed by a small low-head generating plant just downstream in 1986, Hetch Hetchy's maximum hydroelectric potential had finally been fully tapped. But the promise of public power had not.

Since 1945, the city and PG&E have renegotiated their distribution agreement on several occasions. Each long-term contract has been more complex than its predecessor, but each also has retained many of the basic tenets first proposed by Mayor Lapham in December 1944. Today the city has an "interconnection agreement" with PG&E through 2015, allowing the City and County of San

Francisco (CCSF) to transmit or wheel up to 200 megawatts of Hetch Hetchy hydropower over PG&E lines to municipal consumers. (Peak demand of municipal load is approximately 130 megawatts.) The primary consumers of this municipal load power include the airport, the water and clean water enterprises, the municipal railway, and other city departments.

This municipal load power is delivered over CCSF lines to the PG&E Newark substation, where it enters into the utility's overall system and in theory is transmitted to CCSF users within the city limits and in selected locations on the peninsula over PG&E lines. (In fact, the power delivered to CCSF customers may have been generated at any power plant contributing current to the Newark network.) For this service, CCSF pays PG&E an annual wheeling fee, typically \$15 million to \$18 million, based on the amount and voltage of power taken by the CCSF customers. Other fees associated with the transmission may also apply, including those for firm transmission services and demand. On the other hand, the CCSF collects an annual franchise fee from PG&E of several million dollars, as regulated by the California State Public Utilities Commission, for the utility's use of the public right of way.

The amount of power generated by the four Hetch Hetchy hydropower plants can fluctuate daily and seasonally. Similarly, the power demands of its consumers vary, creating a relationship called the "load shape." Matching power generation to the load shape challenges system management, especially since HHWP hydropower generation is typically dictated by the requirements for the delivery of water to its consumers, and the flow of water varies dramatically during the year. The contractual provisions for the handling of power excesses and shortages are extremely complex and intertwined with regionwide electricity supply and demand. And the various parties involved often have very different perceptions and concerns.

Until the late 1980s the amount of power generated exceeded municipal needs for most of the year, with all the excess power purchased by the irrigation districts at the prevailing rate and transmitted over HHWP lines directly to the districts, in accordance with the Raker Act and existing contracts. To maximize the value of this excess, during the Feinstein mayoral administration in the mid-1980s

the CCSF sought to “firm” the power sold to the districts by guaranteeing that power in amount and time. The districts would pay a premium for the certainty of supply, because that certainty better enabled them to efficiently manage their systems. At times when HHWP generated insufficient power to meet both the municipal needs and the amount guaranteed the districts, the CCSF could go to the spot market, like any other wholesale buyer, and purchase the supplemental power needed to satisfy the shortfall, for less than the contract price to the districts. So in 1987 the CCSF and the districts signed a thirty-year contract that firmed the city’s power obligations to the districts. Throughout the 1990s CCSF profited handsomely, with revenues of several hundred million dollars.

Around 2000 the situation changed dramatically. The wholesale price of power on the spot market spiked well above the \$35 per megawatt-hour price for firm power CCSF had guaranteed the districts. Hence, when HHWP generation was unable to meet total demand—primarily because of insufficient water flow from the reservoirs during the latter part of the year and during drought conditions—CCSF was purchasing spot power at an average cost of around \$150 per megawatt-hour to meet its obligations to the districts, losing tens of millions of dollars in the process.

To hedge its losses, in May 2001 CCSF signed a five-year contract with another power company to buy a set amount of supplemental power for about \$75 per megawatt-hour whether or not the power was actually needed. Shortly thereafter the spot price of power dropped back to the pre-spike levels of the 1990s, leaving CCSF locked into a costly \$173.5 million contract with the supplemental supplier.

In August 2001, CCSF filed a lawsuit in San Francisco Superior Court to void its firm-power contracts with the districts. The litigants are now arguing over a range of issues arising not only from the 1987 contract but also from the Raker Act and the historical water and power relationships of the districts to the city. Old animosities, fundamentally differing perceptions of rights, and perhaps even distrust lie just below the surface.

During spring runoff, when inflows to the reservoirs exceed storage capacity and consumer demands, CCSF enjoys another opportunity. Rather than simply permitting this unused flow to continue

down the Tuolumne River, additional power beyond the needs of the CCSF and the irrigation districts can be generated as the water is "spilled" back into the river. CCSF can sell this "dump" power on the open market to other public entities, yielding about \$5 million annually, although CCSF pays PG&E a transmission fee for the delivery of the dump power to purchasers other than the irrigation districts.

The total cost to generate Hetch Hetchy power, including overhead, is currently about \$17 per megawatt-hour. This compares favorably with the market rate for wholesale power, which recently has fluctuated between \$20 and \$50 per megawatt-hour.

To cover the cost of generating Hetch Hetchy power and the costs associated with purchasing additional power over the course of a fiscal year, CCSF internally charges itself different rates for different departments. For example, general fund or nonrevenue-generating departments are charged an electrical rate of \$37.5 per megawatt-hour, a lower rate than they would be charged by an investor-owned utility like PG&E. For enterprise or revenue-generating departments, a retail rate equivalent to that approved by the California Public Utilities Commission, or the same as would be paid to PG&E for like service, is applied. The aggregate of the internal city charges typically balance or exceed what it needs to cover all costs associated with meeting its own obligations and needs.

San Francisco city hall believes these arrangements comply with both the letter of the law and the Supreme Court decision. It argues that since 1945 no SFPUC contract with PG&E has violated the Raker Act. As Patricia E. Martel, general manager of SFPUC, explained, "Those who claim the City has been in constant violation of the Raker Act believe the City is obligated to serve residents and businesses within San Francisco with Hetch Hetchy power. They are wrong. The Raker Act allows and encourages the City to serve Hetch Hetchy power to its residents, and it is the official City policy to do so some day, but the Raker Act does not require the City to do so. The City's power contracts comply with Section 6 of the Raker Act. The Department of the Interior has reviewed and approved every power contract that the City has entered since 1945, including the current contract with PG&E."

Does the SFPUC-PG&E contract in fact comply, or is Martel's statement simply political rhetoric? Ultimately only the courts can

decide whether the current contract violates the Raker Act and the Supreme Court ruling. Unfortunately, from the late 1940s until the present, despite repeated reports and rulings that the questionable relationship between the city and PG&E continued, few people in San Francisco city hall or Washington have been willing to question that relationship, and fewer still in positions of power have been willing to act on such allegations.

In 1955 few people listened or responded when Representative Clair Engle, a powerful, ambitious, and flamboyant Democrat from California who chaired the House Committee on Interior and Insular Affairs, presented his committee with compelling evidence obtained from the federal power commission, and from damning cross-examination of witnesses, that the Modesto and Turlock Irrigation Districts had been reselling more than 10 percent of the Hetch Hetchy power they received to PG&E, in direct violation of the Raker Act and the 1945 agreement with Secretary Ickes. The districts denied the allegation. Engle was a longtime antagonist of PG&E and a supporter of public water and power projects.

The committee hearings resulted from a bill Engle had proposed (H.R. 2388) on behalf of his district to enable Tuolumne County to build a power plant on the site just below Early Intake that the Raker Act had allocated to the City of San Francisco. Boosters in Tuolumne County, eager to promote economic growth and development there, had targeted the site for their purposes and enlisted Engle's support, hoping he would champion their cause in Congress by sponsoring the legislation needed to transfer the development rights from San Francisco to Tuolumne County. The county claimed that the city had forfeited its claim to the site due to the forty-year delay in developing it and because of the ongoing violations of the Raker Act in municipal disposal of hydropower. The contentious hearings continued the acrimonious political fight begun between the mountain county, San Francisco, PG&E, and the irrigation districts, as soon as county officials announced their plan several years earlier. The bill died when San Francisco voters overwhelmingly approved the \$54 million funding for the Holm and Kirkwood power plants, but the debate had helped prompt the city to develop the plants in order to safeguard these sources of income.

Nor did many people listen or respond in 1973 when a San

Francisco grand jury concluded that the contract between the city and PG&E was of “questionable legality” especially with regard to the wheeling agreement. The grand jury had been convened to investigate possible Raker Act violations in those contracts. It recommended that the city acquire its own electricity distribution system and purchase whatever PG&E assets were needed to conform to the spirit and letter of the law. In response, the board of supervisors held a hearing the next year to discuss the authorization of a feasibility study for the acquisition of PG&E’s assets, as recommended by the grand jury. The eight-hour meeting featured extensive testimony from PG&E, which claimed the value of its local assets was \$600 million, despite the fact that the existing tax rolls valued them at only \$300 million. Key public power advocates were not invited to the hearing, and not one board member supported funding the feasibility study. As had been the case for nearly fifty years—from the late 1940s to the late 1990s—the public power intentions of the Raker Act were again ignored in the corridors of political power and public office.

However, the public did try to keep the issue alive. In 1972–73, at the behest of the San Francisco Neighborhood Legal Assistance Foundation, a group of volunteer CPAs called San Francisco Accountants for the Public Interest studied the economic implications of public power in San Francisco. Relying on publicly available data (since PG&E would not cooperate), they concluded the city could “profit” by \$15 million to \$22 million annually if it acquired PG&E’s distribution system and created a true public power system. That cost savings could then double after the bonds used to finance the acquisition were paid off. Like the grand jury, which was running its investigation around the same time, the accountants urged the city to conduct an independent feasibility study for the purchase of PG&E’s assets. PG&E vehemently disagreed with their findings. Curiously, the San Francisco Accountants for the Public Interest were not invited to the hearing held by the board of supervisors.

In 1974, neighborhood activist Charles Starbuck had had enough of what he perceived to be evasion behavior and collusion on the part of city hall and PG&E. He filed suit in federal court alleging that the city was in violation of the Raker Act. If the city attorney wouldn’t do it and the U.S. attorney general wouldn’t do it, as charged in the

act, then he would do it as a private citizen. Mr. Starbuck claimed he and all other electricity consumers in San Francisco had been injured by the years of paying higher rates and receiving poorer service than they would have had the city obeyed the law and established public power. He argued the wheeling agreement was illegal according to Section 6 of the act and that PG&E directly benefited from that violation. And he asserted that the act intended Hetch Hetchy power to compete with power provided by PG&E, not to be complicit with it.

His complaint was never heard on the merits. In 1977 the federal court of appeals threw the case out, concluding, as had the district court, that the plaintiffs lacked standing to bring the suit. Only the San Francisco city attorney, the U.S. attorney general, groups specifically named in the law—such as the Modesto and Turlock Irrigation Districts—or those with a demonstrable benefit from the law, such as other municipalities, could bring suit (as had, for instance, the City of Palo Alto). An important factor in the court's decision was its conclusion that the plaintiffs failed to show that electricity rates would decline if their complaint was affirmed. The court no longer was willing to assume public power automatically meant lower rates in this specific instance; because of this, if the court granted the plaintiffs relief, it might be contradicting a key intention of the Raker Act—that is, to provide the public with electric power as inexpensively as possible. The court wrote,

In 1913, Congress anticipated that San Francisco would shortly build its own transmission lines and that direct service to consumers would provide consumers with abundant power more cheaply than that supplied by private utilities. The congressional assumptions might have come true had the taxpayers seen it Congress' way in the decades that followed the Raker Act. But the taxpayers repeatedly refused to approve the bond issues that would have supplied the revenue to build the transmission facilities. In the meantime, energy shortages, inflation and escalating costs of rights of way, of construction, and of the debt service have obliterated Congress' rosy vision of San Francisco's energy future. Even if we could reasonably assume that Bay Area taxpayers would now be willing to assume the debt burden to build these facilities, we cannot infer that energy delivered over those newly constructed lines would be cheaper than energy deliv-

ered over PG&E's lines. The rate structure for direct delivery would necessarily reflect the enormous costs involved in building the system. If any inference would be permissible, it would be that the cost of energy to the consumers would be more, not less, than that available under the present wheeling arrangements. In short, the dominant cheaper energy purpose of the Raker Act would be defeated, rather than fulfilled, if appellants were to be given the remedy they seek.

Ironically, while the public power mandate in the Raker Act had been affirmed several times in the courts, and while the courts had recognized that the city had been in violation of that mandate for decades, circumstances may well have arisen over those many years to render the mandate no longer practical—no matter what the motives were for the violations, and no matter what the means were for them, only the outcome mattered. In effect, allowing the city to violate the law might constitute the better fulfillment of the law's most basic intent for cheap electricity than actually enforcing the law's public power proviso—the ultimate realization of San Francisco city hall's delaying tactic.

Yet how could the court conclude that public power was no longer cost-effective, given the San Francisco accountants' calculation and abundant data from public power cities nationwide? Potential plaintiffs would now carry the burden of proof for the economic advantages of public power in San Francisco, necessitating a detailed, and expensive, independent feasibility study.

In 1978 the board of supervisors again considered a resolution to municipalize PG&E. The company claimed that that would cost perhaps a billion dollars, although the board of equalization calculated the cost to be less than half that amount. The factions also squabbled over the likely cost of a feasibility study for the buyout, the necessary first step toward public power. After a heated hearing, packed with PG&E supporters, the board voted eight to three against that first step. One supervisor commented, "We lost because of political pressure. There's never been a more dramatic case of big corporate interest on one side of an issue and the interest of the public on the other."

A citizen group called San Franciscans for Public Power continued the fight in 1982, placing Proposition K on the ballot, which

required the city to conduct the long-sought feasibility study. As it had in response to every previous challenge to its monopoly, PG&E again mounted an aggressive campaign against the initiative, mobilizing shareholders and asserting its influence in city hall and the media. Opponents of the proposition received 93 percent of their large campaign war chest from PG&E. Mayor Dianne Feinstein opposed the initiative. The daily papers opposed the initiative. PG&E again claimed the cost would be prohibitive, based on suspect data. Proponents challenged in court some of the outrageous figures published in the voters guide, but the judge ruled the figures acceptable. At a press conference outside company headquarters, Assemblyman Art Agnos denounced the monolith's blatant attempt to buy San Francisco's vote. In the end, the initiative failed.

Another decade passed, and little changed on the surface. By the mid-1990s PG&E and the city had renegotiated their contract, and public power proponents cried foul over its terms and the backroom politics that led to them. The transfer of the Presidio from the U.S. Army to the National Park Service, and the potential supply of the new park's power from a public source—Hetch Hetchy—presented another threat to the PG&E monopoly and triggered a heated controversy ultimately decided in the company's favor. And an investigation into the small franchise fee paid the city by PG&E for the right to deliver Hetch Hetchy power over the public right of way, versus the generous wheeling fee it collected from the city for transmitting that power, led to a policy by the board of supervisors that the franchise fee be raised over several years, to up to eight times the historical rate, to bring it closer to national norms. When PG&E balked at paying the fee increase, city hall blinked; the higher fee was contested and the payment ignored.

Throughout, Bruce Brugmann and the *San Francisco Bay Guardian* have continued their crusade to enforce the Raker Act and create a public power authority in San Francisco. "PG&E has always fought like hell to stop the public from controlling any basic utility asset; they want to keep those assets under private control," he asserts. "They'll tolerate no footholds; each potentially weakens their control of electric power. That's why they fought so hard to privatize the Presidio." He believes that the California Public Utilities Commission has never been able to control PG&E; the monopoly is

too powerful and has too much money. "Despite being regulated by the state PUC, PG&E is not like other private companies," he explains. "General Motors, for example, is set up to compete against other automakers. As a monopoly, PG&E has no competition, and they fight like hell to keep it that way. So they have the arrogance and inefficiency and overexpense of that dominance, and they don't have to answer to anybody." Ultimately, he believes, "PG&E is to blame for the city's violation of the Raker Act and the absence of public power here; *it's* the villain, not the public officials. Politicians can't resist the pressure the company can exert. It has money and influence and continuity. Politicians need money and support to get elected, and they come and go. But PG&E is always there."

Have the daily papers been complicit in this by purposely blacking out the story, or have they simply ignored it because the story just isn't of interest? Chuck Finnie, the investigative reporter and now editor on local politics and legal matters for the *San Francisco Chronicle*, and the coauthor of the exposé on the Hetch Hetchy water and power systems, agrees with some of Bruce Brugmann's beliefs about the Hetch Hetchy story, but attributes the lack of coverage of the story in the major dailies to different reasons. In his experience at the *Examiner* and the *Chronicle* covering this and other similar stories about local political issues, he hasn't seen overt censorship. "Reporters find stories and pitch story ideas to the editor," he explained, "and I've never been told that I can't do a story that I was interested in doing. I believe the lack of attention to the Hetch Hetchy story, as I look back through the clips, simply comes from the reporters' lack of interest in the story whose beat might naturally bring them to cover the SFPUC."

"It wasn't until the energy crisis in California in the late 1990s that daily newspapers started paying attention to whether or not our light switches really work, where the power comes from, and how the market is organized. Coverage of deregulation of the power industry in 1996 was mostly focused on heavy nuts-and-bolts and policy issues—not very sexy. Coverage, or the lack thereof, was the same for the Hetch Hetchy water issues. No conspiracy, just a focus mostly on other, sexier, social issues that seem to more directly affect people. Now we're beginning to wake up to the issue of potable water both locally and globally. I come at the water and power issues

from a municipal finance perspective since I spend a lot of time covering money and politics. On the money side, it's a fascinating story: what San Francisco has done with Hetch Hetchy and how the system's use has been diverted from what was clearly intended."

Yet the conservative political status quo on public power that has been in place for the past fifty years, since the end of the Progressive Era, is giving way to a more liberal and populist political climate. Public power has recently reappeared on San Francisco's political agenda, together with rising concerns over the security of the water system. In 1994–95 the board of supervisors, composed of several new liberal members, approved legislation that required the city to conduct a preliminary feasibility study of public power. City hall fought the proposal, but the board mustered the votes to override the mayor's veto. The gloves had finally been removed in the political fight for public power: the mandate also established that any city official who blocked implementation would be guilty of misconduct and subject to removal from office. The first feasibility study was completed by a consultant in 1996, under suspect contracting circumstances that triggered more heated accusations of political meddling. The report concluded that public power probably would not be worth the effort. Advocates claimed the report was purposely slanted in favor of privatization and PG&E. Calls on the board for a more complete feasibility study were squelched as the balance of power shifted after retirements due to term limits and new elections. However, Pandora's box had been pried open by the advocates. By the late 1990s, public power was again on the front page.

P. J. Johnston, former mayor Willie Brown's press secretary, explained it this way: "PG&E certainly has had a lot of influence through the years by virtue of its size as an employer and taxpayer, but that went out the window with the blackouts, their bankruptcy, and the other power crises of the past few years, and their cavalier attitudes. Now it's politically expedient to dump on them. At some point in this city, people believe a corporate utility becomes too big, unpopular, and unresponsive to the public consumer. The recent energy crisis has shown that the profit motive is a real problem when it comes to a lifeline resource. You can live without cable TV, even phone service, but you need power and water. The crisis showed the Bay Area and the state that it's problematic when the large corporate

utility, with its responsibilities not only to customers but to shareholders, to its parent company, and to distant investors, has to generate profits. Beyond the power outages, people reacted more to the sense that PG&E was acting on behalf of its corporate needs than public responsibilities.”

Public power advocates led a successful petition drive in 2000 to place an initiative for a municipal utility district on the November ballot. City hall fought the initiative, causing it to be postponed until the 2001 election. Proposition F called for the SFPUC to be replaced by a new municipal water and power agency, governed by an elected board, with a goal to provide public power to San Francisco. Another proposition went even further: Proposition I called for the formation of a regional municipal utility district that would manage a broad range of utilities beyond water and electricity. As it had always done, PG&E waged war against the propositions, presumably to protect its profitable business in the Bay Area. (In fact, for years these profits offset other corporate losses.)

Proposition F lost by just 500 or so votes, less than a half a percent of the total. The more sweeping Proposition I lost by several thousand votes. Buoyed by the close call, advocates tried again the next year, placing Proposition D on the November 2002 ballot. The ballot also contained Proposition A—the \$1.6 billion bond issue to fund the repair and improvement of the Hetch Hetchy water system and a revenue bond oversight committee, thus commingling the politics of Hetch Hetchy water and power issues. Water won, again. Proposition D, the proposed charter amendment to make the SFPUC the primary provider of electricity to San Francisco residents and businesses lost, again.

What does it all mean? Larry Weis, general manager of the Turlock Irrigation District, views Hetch Hetchy from a much different perspective than that of the City of San Francisco. History, self-interest, and civic pride color the city’s perspective. Like the suburban wholesale water customers, the Turlock and Modesto Irrigation Districts also see the project through those same tints, but their resulting views from the Central Valley differ with the view from San Francisco as much as the differences in lifestyles and landscapes between the two vantage points. Since the project’s inception, the districts have been integral participants. Weis thinks San

Francisco just hasn't fully recognized that fact. From his outsider's perspective, he believes opportunities abound for cooperation between the city and the irrigation districts—opportunities for greater efficiency and equity in the development of both water and power—if the city can look past its narrow focus. Sadly, he senses that the days when visionary municipal leaders could mobilize the public and private sectors behind great infrastructure projects may be past. He feels that, too often, projects now move along propelled by bureaucratic momentum rather than enlightened leadership. “There're three issues with Hetch Hetchy: water, power, and money,” Weis says. “And what's the most important of the three?” he asks rhetorically. “Money,” he answers.

Tom Ammiano, president of the Board of Supervisors for the City and County of San Francisco, has an insider's perspective. He thinks the city has been very possessive of the Hetchy Hetchy system over the years, and perhaps rightly so, since one of the primary reasons for the project was to enable the city to have a water supply independent of private companies or other municipalities. Consequently, he believes the transfer of excess hydropower revenues from HHWP to the general municipal fund was appropriate. “I think it's fine to use some of that money for city projects, that's the whole point of it, that you would have that extra money,” he said. “But there has also been some injudicious transferring of funds while the infrastructure was not attended to.” He helped place the public power initiatives before the voters in 2001 and again in 2002, while he also led efforts to pass Proposition A in 2002 to fund long-neglected system repairs and improvements. Among the city hall insiders, Ammiano has been particularly sensitive to the way Hetch Hetchy management affects both the city internally and the other external stakeholders.

And always behind the scenes he's sensed the presence of PG&E—at least until recently. “I think the Raker Act has been violated,” he stated, “and I think a lot of it has to do with the money PG&E has spread around. The company has been the thousand-pound gorilla all along. Their influence might have started small, but the company certainly soon came to see the benefits of controlling transmission and the potential for profit-making. PG&E preceded many people to the city. Those recent arrivals might have had water and public power as concerns, but not as prominent as their con-

cerns for civil rights, feminist and gay issues, and antiwar campaigns. This enabled PG&E to take root and infiltrate public opinion in the sense that they could spread their influence by selling stock, serving as an employer, and other means. For many people, PG&E was a way to make money and pay the rent. The company was very patriarchal, creating a built-in sense of loyalty and allegiance." When the company voiced a position on an issue, the public listened.

Ammiano senses conflicting tendencies in San Francisco politics as portrayed in the city's historical handling of Hetch Hetchy. The split between the populist tendencies seen in social and environmental activism, and the political interests of big business and powerful political bosses, might not be schizophrenic, but it's certainly bipolar, he says. "And it seems to me that papers like the *Chronicle* have been dissuaded from covering the Hetch Hetchy story. They've never come out for public power or even supported a feasibility study for it because they have downtown interests too. Occasionally they'd give some coverage of the issues, but rarely, and in general only with a paucity of analysis. The movement for public power was ridiculed and trivialized by some papers in past years. However, they're getting better now."

Chuck Finnie at the *Chronicle* sees it this way: "In passing the Raker Act Congress clearly envisioned the delivery of cheap, clean hydroelectricity to San Franciscans, but it did not explicitly require the city to do so. It did not say that power *had* to be sold to San Franciscans; instead, it prohibited the sale of Hetch Hetchy hydropower to any private company. In 1940 the Supreme Court ruled the city was selling power directly to PG&E for resale, in direct violation of the act. What's the difference now in how SFPUC disposes of its power? Instead of selling power to PG&E, it sells power to the Modesto and Turlock Irrigation Districts, public power utilities who then sell the power to their consumers. The city essentially swapped out the irrigation districts for PG&E, instead of making that power available to its residents. What the city is doing is not illegal, but it certainly is not what Congress intended.

"From the beginning there was a vested powerful interest held by PG&E to stop development of public power, which would require the city to pass bonds to finance construction or purchase of power plants and transmission lines. Was there collusion between city offi-

cials and PG&E to maintain the status quo and the company's monopoly? We don't know because we weren't there to talk with the participants or watch them. But it wouldn't surprise me if there was. Yet sometimes people simply come from the same economic position and so naturally share the same political agenda. They have the same predispositions. They might own PG&E stock, play golf and socialize together, and share a similar worldview. Collusion—no; they just agree. The city and PG&E formed an alliance in 1942 when they joined to lobby Congress to change the law. Why did they do that? Maybe it was because they were colluding. Or maybe it was because they were advocates for public power but couldn't get the voters to go along, perhaps because they were only making a halfhearted effort. Or maybe the change just fit both their agendas. It's hard to tell.

“There's no question that PG&E has never wanted competition in the city from public power. After the Raker Act passed, San Francisco built power plants and transmission lines but never completed the lines into the city, and it started selling off to PG&E excess power for profit after the municipal and irrigation districts' needs were met. That relationship served PG&E very well. Not only was the company getting power from Hetch Hetchy at wholesale that it could resell at retail rates, but the monopoly was avoiding competition. After the interior department sued and the Supreme Court upheld Harold Ickes's position, San Francisco continued to treat Hetch Hetchy as a cash cow for city government. It left San Francisco's retail electricity market to PG&E, which definitely benefited the company. The share of the company's overall revenues that come from that market is substantial. PG&E no longer got excess Hetch Hetchy power, but they kept the lucrative retail market. That's what they wanted to preserve. In short, residents and businesses in San Francisco today are probably paying substantially more for electricity from PG&E than they would have had the city developed a public power system around the Hetch Hetchy foundation. Hetch Hetchy can't supply all the city's power needs, but it was quite an asset around which they could have built a public power system. On the other hand, some people point out that the city makes money selling excess power to the irrigation districts and on the franchise fee it charges PG&E for the monopoly, and the city collects

business taxes from the company; so the arrangement is a financial winner for San Francisco. Legal? Yeah. What the Raker Act intended? No.

“Once the promise was made by the City of San Francisco, even one on the scale as that embodied in the act, there’s still a heck of a lot of work to do to ensure that promise is kept. On the water side, the promise was kept in the sense that the city built the aqueduct, but the city has certainly not been managing the water system very well. On the power side, the city never delivered on the promise. It turned the power side into a cash cow for city government. It left the city market to PG&E, and it did the bare bones to comply with the act. The downside of that broken promise is seen in the electricity rates paid by the public.”

To Bruce Brugmann and other believers in public power, the cause has gained ground. “The walls are closing in on PG&E. Mayor Willie Brown hired a veteran public power administrator from Sacramento to be the city’s principal energy planner. The board of supervisors voted eight to three to place the charter amendment to create public power on the 2002 ballot. The *Guardian* led the cause, while the dailies remained silent, at least until the last moment. But it’s no longer possible for a city official to come out publicly and say he’s for PG&E, even someone who has been a strong supporter all along. Those days are gone. We now win votes on council eight to three, when we used get beat nine to two or ten to one. That’s the wave of the future. It’s inevitable now: we *will* have public power.” Only the timing and the vehicle to achieve it, and the details of its form, remain uncertain.

Perhaps a century after the city made a promise to the American people for public power, to gain congressional support for the damming of Hetch Hetchy, the promise will finally be fully realized. And with that realization, perhaps the San Francisco Public Utilities Commission will be reorganized in a way to more efficiently and effectively manage the dynamic nature of a utility, placing more responsibility in the hands of technical staff and less in the hands of politically appointed commissioners with little technical expertise. We can only hope for this, given how poorly politics has mixed with the provision of public water and power in San Francisco.