

1 [Administrative Code - Purchase and Sale of Electricity and Related Products - Public Utilities
Commission]

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3 **Ordinance amending the Administrative Code to approve the use of certain form**
4 **contracts to purchase and sell electricity and related products by the Public Utilities**
5 **Commission (PUC), grant waivers of specified contract-related requirements in the**
6 **Administrative and Environment Codes for these transactions, and delegate to the**
7 **General Manager of the PUC authority under Charter section 9.118 to execute certain**
8 **contracts with terms in excess of 10 years or requiring expenditures of \$10,000,000 or**
9 **having anticipated revenue of one million dollars or more subject to specified**
10 **limitations through June 30, 2025~~2027~~.**

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
14 **Board amendment additions** are in double-underlined Arial font.
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.
16 **Asterisks (* * * *)** indicate the omission of unchanged Code
17 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. Chapter 21 of the Administrative Code is amended by adding Section 21.43,
20 to read as follows:

21 **SEC. 21.43. PURCHASE AND SALE OF CERTAIN ELECTRICITY AND RELATED**
PRODUCTS BY THE PUBLIC UTILITIES COMMISSION.

22 *(a) Findings.*

23 (1) The Power Enterprise (“Power Enterprise”) of the Public Utilities Commission
24 (“PUC”) operates a municipal utility, Hetch Hetchy Power, and a community choice aggregation

1 (“CCA”) program, CleanPowerSF. Both Hetch Hetchy Power and CleanPowerSF purchase and sell
2 electricity in the wholesale markets to serve their respective retail customers in San Francisco.

3 (2) In May 2016, the City launched CleanPowerSF to provide San Francisco
4 residents and businesses the option to receive cleaner, more sustainable electricity at rates comparable
5 to PG&E's rates. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12, 78-14 and 75-15 and
6 Resolution Nos. 348-12 and 331-13.

7 (3) Hetch Hetchy Power serves its customers primarily with electricity generated by
8 City-owned generation resources; CleanPowerSF serves its customers entirely with electricity
9 purchased through wholesale market transactions. Both Hetch Hetchy Power and CleanPowerSF
10 comply with state law and California Independent System Operator market rules, including
11 requirements to procure renewable energy, Resource Adequacy (RA), and energy storage. In addition,
12 as a CCA, CleanPowerSF is subject to numerous energy procurement requirements under state law
13 and California Public Utilities Commission decisions.

14 (4) The PUC is in a unique market position because both Hetch Hetchy Power and
15 CleanPowerSF directly compete with PG&E and private power providers for retail electricity
16 customers and with other load serving entities for supplies of electricity and electricity-related products
17 in the highly competitive wholesale markets. This competitive environment heightens the need to
18 maintain prices at a level that is competitive with PG&E despite the many regulatory burdens and costs
19 placed on CCAs and the unique challenges faced by Hetch Hetchy Power due to its reliance on PG&E
20 for wholesale distribution service.

21 (5) To meet regulatory requirements, secure the best possible prices and terms, keep
22 rates affordable and competitive, and manage procurement risk, the PUC engages in a continual
23 process of procuring power and simultaneously negotiating a mix of short, medium, and long-term
24 contracts for a diverse supply of energy and energy-related products with multiple suppliers, all in an
25 expedited time frame consistent with regulatory deadlines.

1 (6) The PUC is engaged in a number of procurement efforts to fulfill the City's goals
2 for a carbon-free future, energy independence, equity in access to 100% renewable energy supply;
3 ensure stable and affordable rates, meet Hetch Hetchy Power's and CleanPowerSF's regulatory
4 obligations; and contribute to the reliability of the state's energy grid and resource supply.

5 (7) These efforts include CleanPowerSF programs to secure a significant number of
6 long-term agreements to purchase electricity from new renewable and energy storage projects,
7 including from small renewable projects located in disadvantaged communities under the
8 Disadvantaged Communities ("DAC") Green Tariff and the Community Solar ("CS") Green Tariff
9 programs, and renewable and energy storage projects located on City reservoirs within the City. The
10 DAC and CS Green Tariff programs will provide 100% renewable energy at discounted rates to
11 residents of disadvantaged communities within the City. The costs expended on procuring energy for
12 Hetch Hetchy Power and CleanPowerSF are fully recovered by PUC through customer billing.

13 (8) Hetch Hetchy Power and CleanPowerSF will also engage in procurement efforts
14 through competitive bidding processes as necessary for short- and medium-term agreements for energy
15 and energy-related products. As the PUC manages fluctuations in supply and demand and navigates
16 the constantly changing regulatory requirements of multiple agencies, it also engages in the sale of
17 excess energy.

18 (9) In Ordinance Nos. 75-15, 223-15, 08-18, and 11-20 (collectively, the "Procurement
19 Ordinances"), the Board of Supervisors authorized the PUC to use two commonly used industry form
20 contracts and PUC pro forma contracts with terms that deviated from the City's standard contract
21 terms, and authorized modifications to the form agreements so long as such modifications, in the
22 judgment of the General Manager and the City Attorney, did not materially decrease the City's rights
23 or materially increase its liabilities. These agreements were:

24 (A) Western System Power Pool ("WSPP") Agreement;

25 (B) Edison Electric Institute (EEI) Master Agreement;

1 (C) PUC Renewable Power Purchase Agreement; and

2 (D) PUC Energy Purchase and Sale Master Agreement.

3 The Procurement Ordinances approved the use of these contracts and certain waivers for specific
4 energy and related product procurements starting in 2015.

5 (10) For ~~three~~ five years, ending in ~~2025~~ 2027, the PUC will continue to enter into
6 contracts to meet the energy requirements for Hetch Hetchy Power and CleanPowerSF, and for this
7 purpose has developed three new form contracts. Each of these form agreements is on file with the
8 Clerk of the Board of Supervisors, in File No. 220652 and is incorporated herein by reference as
9 though fully set forth:

10 (A) PUC Renewable Power and Energy Storage Purchase Agreement;

11 (B) PUC Energy Storage Purchase Agreement; and

12 (C) PUC Small Renewable Power Purchase Agreement.

13 (11) The PUC will also enter into contracts to meet the energy requirements for
14 CleanPowerSF, with the Joint Powers Authority California Community Power and will use form
15 contracts developed by California Community Power with terms that deviate from the City's standard
16 contract terms. These form agreements are on file with the Clerk of the Board of Supervisors, in File
17 No. 220652 and are incorporated herein by reference as though fully set forth:

18 (A) Buyer Liability Pass Through Agreement;

19 (B) Project Participation Share Agreement; and

20 (C) Coordinated Operations Agreement.

21 (b) Approval of Form Agreements. The Board of Supervisors approves the use of the pro
22 forma contracts and substantially similar agreements described in subsections (a)(9), (a)(10 and
23 (a)(11)) for the purchase and sale of power and related products, including the indemnification and
24 limitation of liability provisions therein, notwithstanding that the terms of those agreements may
25 deviate from the City's standard contract terms. Further, the Board of Supervisors approves hold

1 harmless agreements for the purchase of power and related products. The Board of Supervisors also
2 authorizes modifications to these form agreements so long as such modifications, in the judgment of the
3 General Manager of the PUC, the City's Risk Manager, and the City Attorney, do not materially
4 decrease the City's rights or materially increase its liabilities.

5 (c) Delegation of Approval Authority under Charter Section 9.118. Pursuant to its
6 authority under Charter Section 9.118, the Board of Supervisors delegates to the General Manager of
7 the PUC authority to enter into purchases power and related products using contracts with terms in
8 excess of 10 years or requiring expenditures of 10 million dollars or more including amendments to
9 such agreements with an impact of greater than \$500,000, so long as the contract term, including any
10 amendments, does not exceed 25 years. The annual expenditure for all agreements entered under this
11 section (c) may not exceed 150 million dollars per year. This annual expenditure cap may be increased
12 by Board of Supervisors Resolution.

13 (d) Delegation of Approval Authority under Charter Section 9.118. Pursuant to its
14 authority under Charter Section 9.118, the Board of Supervisors delegates to the General Manager of
15 the PUC authority to enter into contracts for the sale of power and related products having anticipated
16 revenue in excess of one million dollars or more. The annual revenue for all agreements entered under
17 this section (d) may not exceed 10 million dollars per year. This annual revenue cap may be increased
18 by Board of Supervisors Resolution.

19 (e) ~~Annual Reports~~Reporting. The PUC shall ~~quarterly~~ annually report to the Board of
20 Supervisors the duration, product purchased, and cost of contracts entered into pursuant to subsection
21 (c). The PUC shall also annually report to the Board the program costs, the rates charged to
22 CleanPowerSF customers to recover those costs, and a comparison of those rates to PG&E rates.

23 (f) Waiver of Contract-Related Requirements. Where the General Manager of the PUC
24 finds and documents in writing both that the transaction represents the best opportunity available to the
25 City to obtain essential services and products in a manner beneficial to the City, and that it is not

1 feasible to add all standard City contract provisions to the agreement, the Board of Supervisors finds
2 the following waivers to be reasonable and in the public interest, for contracts procured through
3 competitive bidding processes that include language requiring compliance with all applicable federal,
4 state, and local laws:

- 5 (1) Nondiscrimination in contracts (Admin. Code Chapter 12B);
- 6 (2) MacBride Principles (Admin. Code Chapter 12F);
- 7 (3) Local business enterprise utilization and non-discrimination in contracting
8 ordinance (Admin. Code Chapter 14B);
- 9 (4) Consideration of criminal history in hiring (Admin. Code Section 12T);
- 10 (5) Consideration of salary history in hiring (Admin. Code Section 12K);
- 11 (6) Prohibition on contracting in certain states (Admin. Code Section 12X);
- 12 (7) First source hiring (Admin. Code Chapter 83);
- 13 (8) Competitive bidding requirements (Admin. Code Section 21.1); and
- 14 (9) Tropical hardwood and virgin redwood ban (Environ. Code Chapter 8).
- 15 (g) For purposes of the delegation, authorizations, and waivers in this Section 21.43, power
16 and related products and services shall include power supplies, RA, the conveyance or transmission of
17 same, or ancillary services such as spinning reserve, voltage control, as required for assuring reliable
18 services in accordance with good utility practices and applicable laws.

19 (h) Sunset Date. This Section 21.43 shall expire by operation of law on July 1, ~~2025~~ 2027.
20 Upon expiration of this Section, the City Attorney is authorized to remove this from the Administrative
21 Code.

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1 Section 2. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

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8 APPROVED AS TO FORM:
9 DAVID CHIU, City Attorney

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11 By: /s/
12 MARGARITA GUTIERREZ
13 Deputy City Attorney

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