

File No. 180708

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 13, 2018

Board of Supervisors Meeting

Date _____

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OTHER (Use back side if additional space is needed)

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Completed by: Linda Wong Date September 7, 2018

Completed by: Linda Wong Date _____

1 [Authorizing Agreements - Binding Arbitration for Purchase of Electricity and Related Products
2 - Public Utilities Commission - Total Costs of \$13,762,490]

3 **Ordinance delegating authority to the General Manager of the Public Utilities**
4 **Commission to enter into agreements requiring binding arbitration for purchase of**
5 **electricity and related products within certain parameters and where necessary to meet**
6 **legal requirements; and retroactively authorizing three agreements for CleanPowerSF**
7 **with Pacific Gas & Electric Company requiring binding arbitration, with a combined**
8 **term of two years and five months from August 2018, through December 2020, and total**
9 **costs of \$13,762,490 for purchase of electricity-related products.**

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

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

18 **Section 1. Background.**

19 (a) For the last 100 years, the Public Utilities Commission (PUC) has operated a
20 municipal electric utility providing service to City agencies and other customers using
21 greenhouse-gas-free energy produced by the Hetch Hetchy system. The PUC supplements
22 the energy produced by Hetch Hetchy and other City-owned facilities with purchases of
23 electricity and related products to satisfy the energy demand of its customers and meet legal
24 requirements.

25 (b) In May 2016, the PUC launched a Community Choice Aggregation (CCA) program
called CleanPowerSF to provide San Francisco residents and businesses the option

1 to receive cleaner, more sustainable electricity at rates comparable to Pacific Gas & Electric
2 Company's (PG&E) rates. CleanPowerSF uses clean and renewable energy purchased from
3 various facilities, including energy from Hetch Hetchy.

4
5 **Section 2. Pacific Gas and Electric Company Agreements; Retroactive**
6 **Authorization.**

7 (a) State law requires entities that provide electric service to customers, including
8 CleanPowerSF and the City's municipal electric utility operated by PUC, to meet certain
9 requirements such as those intended to ensure reliable service. One such requirement is for
10 Resource Adequacy, an electricity-related product that ensures sufficient electric generation
11 resources are available to meet unusually high levels of demand.

12 (b) CleanPowerSF has issued competitive solicitations for Resource Adequacy
13 supplies and has participated in PG&E's solicitations to sell such supplies. The PUC has
14 executed agreements with several suppliers, but must also make purchases from PG&E to
15 procure sufficient supplies for CleanPowerSF for 2018-2020.

16 (c) To timely comply with state law requirements, the PUC has executed the
17 following three agreements with PG&E: one for August through December 2018 for
18 \$3,411,740; one for September through December 2018 for \$504,000; and one for January
19 2019 through December 2020 for \$ 9,846,750. These agreements use the Edison Electric
20 Institute form agreement authorized by Ordinance No. 75-15; that form agreement is already
21 on file with the Clerk of the Board of Supervisors in File No. 150408.

22 (d) PG&E requires a three-step dispute resolution process that includes negotiation,
23 mediation, and binding arbitration in accordance with the JAMS Commercial Arbitration Rules.

24 (e) The Board of Supervisors hereby authorizes retroactively the three PG&E
25 agreements, described in subsection (c) of this Section 2, with binding arbitration provisions.

1 **Section 3. Limited Delegation of Authority to Enter Into Certain Contracts**
2 **Requiring Binding Arbitration.**

3 (a) State law requires entities that provide electricity service to customers to
4 demonstrate compliance with rules to ensure reliable service, meet renewable energy
5 standards, and achieve other goals. These rules apply to the City's municipal electric utility
6 and CleanPowerSF.

7 (b) The Board of Supervisors has previously granted the PUC additional flexibility in
8 contracting to ensure it can secure electricity products needed for operating CleanPowerSF
9 and its municipal electric utility. See, e.g., Ordinance Nos. 75-15, 223-15, and 8-18.

10 (c) It is reasonable and in the public interest to allow the General Manager of the
11 PUC to agree to binding arbitration in certain limited circumstances, without Board of
12 Supervisors approval. Accordingly, the Board hereby delegates authority to the General
13 Manager of the PUC to enter into agreements that require binding arbitration, provided that
14 the agreement meets all of the following conditions:

- 15 1. The agreement is to purchase electricity or an electricity-related product
16 such as, by way of illustration but not limitation, Resource Adequacy;
- 17 2. The purchase is necessary to meet a legal requirement;
- 18 3. No other purchase that would meet the legal requirement and does not
19 require binding arbitration is available; and
- 20 4. The agreement would not otherwise require Board of Supervisors
21 approval.

22 (d) The General Manager of the PUC shall notify the Board of Supervisors in writing
23 of any agreements executed under the authority granted in subsection (c) of this Section 3,
24 and shall provide a copy of the agreement along with the notice.

LEGISLATIVE DIGEST

[Authorizing Agreements - Binding Arbitration for Purchase of Electricity and Related Products - Public Utilities Commission - Total Costs of \$13,762,490]

Ordinance delegating authority to the General Manager of the Public Utilities Commission to enter into agreements requiring binding arbitration for purchase of electricity and related products within certain parameters and where necessary to meet legal requirements; and retroactively authorizing three agreements for CleanPowerSF with Pacific Gas & Electric Company requiring binding arbitration, with a combined term of two years and five months from August 2018, through December 2020, and total costs of \$13,762,490 for purchase of electricity-related products.

Existing Law

Binding arbitration clauses in contracts require Board of Supervisors approval.

Amendments to Current Law

None.

Background Information

Settlements of claims and lawsuits require Board of Supervisors approval. For this reason, Board of Supervisors approval also is required before any dispute is submitted to a binding dispute resolution process, including entering a contract that requires a binding dispute resolution process such as arbitration.

The Board of Supervisors has delegated authority to other City officials to resolve certain types of claims and disputes, specified in Article II of the Administrative Code beginning with Section 10.20-1.

In this ordinance, the Board of Supervisors would delegate to the General Manager of the Public Utilities Commission authority to enter certain agreements that require binding arbitration without seeking Board approval. The delegation would apply only to agreements that meet the four conditions specified in section 3(c) of the ordinance.

This ordinance would also approve retroactively three contracts with binding arbitration provisions.

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Item 2
File 18-0708

Department:
Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Legislative Objectives

The proposed ordinance (1) delegates authority to the SFPUC General Manager to enter into agreements requiring binding arbitration for purchase of electricity and related products; and (2) retroactively authorizes three agreements for CleanPowerSF with Pacific Gas & Electric Company (PG&E) requiring binding arbitration, with a combined term of two years and five months from August 2018 through December 2020 and total costs of \$13,762,490 for purchase of electricity-related products.

Key Points

- State regulators are requiring CleanPowerSF to obtain additional resource capacity between 2018 and 2020 to demonstrate that sufficient electric generation resources are available to meet peak levels of customer demand. CleanPowerSF conducted solicitations for additional supplies for 2018 to 2020, but was not able to obtain sufficient supplies from the pool of respondents. Instead, CleanPowerSF submitted bids to purchase supplies from PG&E covering August 2018 through December 2020. The proposed agreements between SFPUC and PG&E for the additional supplies for CleanPowerSF require binding arbitration.

Fiscal Impact

- The three agreements with PG&E to purchase electricity products, with a total cost of \$13,762,490, use the Edison Electric Institute form agreement previously authorized by the Board of Supervisors. The agreements will be funded by CleanPowerSF revenues.

Policy Consideration

- The Board of Supervisors has authority over settlements, including approval before any dispute is submitted to binding dispute resolution or before entering into an agreement that requires binding dispute resolution such as arbitration. The proposed ordinance approves binding arbitration in the three proposed agreements between SFPUC and PG&E, and delegates authority to enter future agreements between SFPUC and other power providers, including PG&E, that require binding arbitration. Such future agreements could be for CleanPowerSF or Hetch Hetchy Power Enterprise, and would need to meet specific conditions, including if the purchase is necessary to meet a legal requirement, other purchase options that would meet the legal requirement and do not require binding arbitration are not available, and the agreement would not otherwise require Board of Supervisors approval.
- Because the proposed ordinance delegates the Board of Supervisors' authority to approve binding arbitration in future agreements with power providers, including PG&E, that meet specific conditions, approval of the proposed ordinance is a policy matter for the Board of Supervisors.

Recommendation

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

Section 6.102 of the City's Charter states that legal proceedings shall be settled or dismissed by ordinance by the Board of Supervisors upon recommendation of the City Attorney.

BACKGROUND

Community Choice Aggregation

State law allows cities and counties to develop Community Choice Aggregation (CCA) programs, through which local governments supply electricity to serve the needs of participating customers within their jurisdictions while the existing private utility (PG&E in San Francisco) continues to provide various services including billing, transmission, and distribution. San Francisco's CCA program ("CleanPowerSF") is in the process of phasing in service to residential customers citywide.

CleanPowerSF offers two levels of supply service: (1) Green, the default service which contains 40 percent renewable energy; and (2) SuperGreen, a premium option which offers 100 percent renewable energy. Customers are automatically phased into the CleanPowerSF program based on their location and are given opportunities to opt-out of participating in the program.

Approximately 108,000 customer accounts with average electricity demand of about 250 megawatts (MW) are currently enrolled in CleanPowerSF. Full-scale citywide enrollment is planned to occur by July 2019 and would involve approximately 260,000 additional customers, for a total of approximately 368,000 customer accounts with average electricity demand of approximately 400 MW.

Previous CleanPowerSF Legislation

In May 2015, the Board of Supervisors authorized the San Francisco Public Utilities Commission (SFPUC) General Manager to use pro forma agreements to purchase and sell electricity to operate the CleanPowerSF program without further Board of Supervisors approval (File No. 15-0408; Ordinance No. 75-15).

In December 2015, the Board of Supervisors authorized the SFPUC General Manager to enter into agreements requiring expenditures of \$10 million or more for power and related products and services to launch the initial phases of CleanPowerSF (File No. 15-1123; Ordinance No. 223-15).

In January 2018, the Board of Supervisors authorized the SFPUC General Manager to enter into agreements with terms in excess of ten years or requiring expenditures of \$10 million or more for power and related products and services for citywide expansion of CleanPowerSF; and authorized deviations from contract requirements in the Administrative Code and the Environment Code (File No. 17-1172; Ordinance No. 8-18).

Resource Adequacy Supplies for 2018 to 2020

"Resource adequacy" is a State requirement applicable to all entities that provide electric service to customers, including CleanPowerSF. The requirement is intended ensure service

reliability by demonstrating that sufficient electric generation resources are available to meet peak levels of customer demand.

Due to the expansion of CleanPowerSF, the State assigned additional resource adequacy capacity requirements for CleanPowerSF to meet between 2018 and 2020. According to Mr. Michael Hyams, Director of CleanPowerSF, CleanPowerSF conducted solicitations for resource adequacy supplies for 2018 to 2020, but was not able to obtain sufficient supplies from the pool of respondents. CleanPowerSF submitted bids to purchase resource adequacy supply from PG&E on March 15, and April 23, 2018. The March 15 bid was accepted and is reflected in the proposed agreement with PG&E for supply in 2019 to 2020. A portion of the April 23 bid was accepted and is reflected in the proposed agreement with PG&E for supply from September through December 2018.

On May 7, 2018, CleanPowerSF issued a Request for Offers for resource adequacy supplies for deliveries for July through December 2018. CleanPowerSF received six bids including a bid from PG&E for resource adequacy supplies covering August through December 2018. That PG&E bid is reflected in the proposed agreement for supply from August through December 2018.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance (1) delegates authority to the SFPUC General Manager to enter into agreements requiring binding arbitration for purchase of electricity and related products for both CleanPowerSF and Hetch Hetchy Water and Power; and (2) retroactively authorizes three agreements for CleanPowerSF with Pacific Gas & Electric Company (PG&E) requiring binding arbitration, with a combined term of two years and five months from August 2018 through December 2020 and total costs of \$13,762,490 for purchase of electricity-related products. The SFPUC Commission approved the three proposed agreements between SFPUC and PG&E in June 2018. SFPUC submitted the proposed ordinance to the Board of Supervisors for approval on July 10, 2018.

Future Agreements Requiring Binding Arbitration

The proposed ordinance would allow the SFPUC General Manager to enter into future agreements with energy suppliers that require binding arbitration. The SFPUC General Manager could enter into these agreements for CleanPowerSF and Hetch Hetchy Power Enterprise without further Board of Supervisors approval if the agreement meets all of the following conditions:

1. The agreement is to purchase electricity or an electricity-related product such as, by way of illustration but not limitation, Resource Adequacy;
2. The purchase is necessary to meet a legal requirement;
3. No other purchase that would meet the legal requirement and does not require binding arbitration is available; and
4. The agreement would not otherwise require Board of Supervisors approval.

Proposed Agreements between SFPUC and PG&E

The terms and not-to-exceed amount for the three resource adequacy agreements requiring binding arbitration between CleanPowerSF and PG&E are shown below.

| Term | Amount |
|------------------------------|---------------------|
| Calendar years 2019 and 2020 | \$9,846,750 |
| September to December 2018 | 504,000 |
| August to December 2018 | 3,411,740 |
| Total | \$13,762,490 |

The PG&E agreements use the Edison Electric Institute form agreement previously authorized by the Board of Supervisors (File No. 15-0408; Ordinance No. 75-15). PG&E requires a three-step dispute resolution process that includes negotiation, mediation, and binding arbitration in accordance with the JAMS (Judicial Arbitration and Mediation Services) Commercial Arbitration Rules.

FISCAL IMPACT

The three agreements with a combined term from August 2018 through December 2020 and total costs of \$13,762,490 will be funded by CleanPowerSF revenues. CleanPowerSF revenues are projected to increase from \$38.0 million in FY 2017-18 to \$208.4 million in FY 2019-20.

Future agreements to purchase electricity or an electricity-related product that meet the conditions of the proposed ordinance would be funded by either CleanPowerSF or Hetch Hetchy Power revenues, depending on the entity entering the agreement.

POLICY CONSIDERATION

Delegating Authority over Settlements

Under the City Charter, the Board of Supervisors retains authority over settlements that have not been specifically delegated to other entities. According to the legislative digest for the proposed ordinance, in accordance with the City Charter, Board of Supervisors approval is also required before any dispute is submitted to a binding dispute resolution process, including entering into an agreement that requires a binding dispute resolution process such as arbitration. Under this ordinance the Board of Supervisors would delegate its Charter authority to the SFPUC General Manager to enter into agreements for the purchase of electricity that require binding arbitration.¹

The delegated authority applies to future agreements between SFPUC and other providers to purchase power products for CleanPowerSF or Hetch Hetchy Power Enterprise. As noted above, any future agreements would need to meet several conditions, including if the purchase is necessary to meet a legal requirement, other purchase options that would meet the legal requirement and do not require binding arbitration are not available, and the agreement would not otherwise require Board of Supervisors approval.

¹ As noted above, the proposed ordinance lists four conditions which such agreements must meet.

Risks of Binding Arbitration under the Proposed Agreements between PG&E and SFPUC

If a dispute arises in the three proposed agreements between PG&E and SFPUC, the dispute would be resolved privately by an arbitrator chosen by the two parties instead of by a judge in a public court proceeding with public records and opportunities for appeal. Arbitration does not allow for appeal of the arbitrator's decision.

The proposed agreements with PG&E are short term, fixed price contracts, and include provisions requiring PG&E to either pay damages for failure to deliver the resources or to provide replacement resources. According to SFPUC, PG&E requires binding arbitration for all resource adequacy contracts that it enters into with other CCA programs.

Approval of the proposed ordinance is a policy matter for the Board of Supervisors because, should a dispute arise, the proposed ordinance delegates the Board of Supervisors' authority over settlements in the proposed three agreements between SFPUC and PG&E as well as in future agreements with power providers, including PG&#, that meet specific conditions.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.



San Francisco
Water Power Sewer

Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488


TO: Angela Calvillo, Clerk of the Board
FROM: Christopher Whitmore, Policy and Government Affairs
DATE: June 25, 2018
SUBJECT: Ordinance Authorizing Agreements with Binding Arbitration for Purchase of Electricity and Related Products

Attached please find an ordinance delegating authority to the General Manager of the Public Utilities Commission to enter into agreements requiring binding arbitration for purchase of electricity and related products within certain parameters and where necessary to meet legal requirements; and retroactively authorizing three agreements for CleanPowerSF with Pacific Gas & Electric Company requiring binding arbitration, with a combined term of two years and five months (August 2018 – December 2020) and total costs of \$13,762,490 for purchase of electricity-related products.

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Resolution
2. Legislative Digest

Please contact Christopher Whitmore at 415-934-3906 if you need any additional information on these items.

BY 
2018 JUN 25 PM 2:02
RECEIVED
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Mayor
- Ike Kwon
President
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Vice President
- Ann Moller Caen
Commissioner
- Francesca Vietor
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