

LEGISLATIVE DIGEST

[Purchase and Sale of Electricity and Related Products and Services - Public Utilities Commission]

Ordinance authorizing the Public Utilities Commission (PUC) to use pro forma agreements to purchase and sell electricity and related products and services to operate the City's municipal electric utility and community choice aggregation program; authorizing the General Manager of the PUC, in such agreements, to deviate from certain otherwise applicable requirements of City law, under certain circumstances; and authorizing the PUC, within specified parameters, to approve agreements with terms in excess of ten years or requiring expenditures of \$10,000,000 or more for renewable and greenhouse-gas-free power and related products and services.

Existing Law

Section 9.118(b) of the Charter requires approval by the Board of Supervisors for agreements with an expected term longer than ten years or requiring expenditures of 10 million dollars or more.

The San Francisco municipal code contains many contracting requirements for the procurement of goods and services. In certain instances, the Board of Supervisors may exempt contracts from these requirements via ordinance.

Amendments to Current Law

This ordinance will not amend any current law.

Authorizations

To support the City and County of San Francisco's (City) municipal electric utility and new Community Choice Aggregation (CCA) program, both operated by the Public Utilities Commission (PUC), this ordinance: (1) authorizes the PUC to use certain pro forma contracts, (2) exempts purchases using those contracts from certain requirements in the municipal codes, and (3) delegates to the General Manager the authority to enter into contracts for power from renewable and/or greenhouse-gas-free resources for periods longer than 10 years and with expenditures of 10 million dollars or more.

Pro Forma Contracts

This ordinance authorizes PUC to use two industry standardized contracts - the Western Systems Power Pool Agreement and the Edison Electric Institute Master Agreement – for the purchase and sale of power and related products and services.

This ordinance also authorizes the PUC to develop one or more standard agreements for the purchase and sale of power and related products and services that are substantially similar to the WSPP and EEI contracts. It also authorizes the PUC to develop a standard power purchase agreement that could be used to support a Feed in Tariff. The authorizations to use pro forma contracts under this section can be used for purchases and sales up to the limits in Charter Section 9.118.

Waivers of Contracting Requirements in Municipal Code

This ordinance exempts contracts using the specified pro forma agreements from some contracting provisions of the Administrative Code and the Environment Code. Some of the exemptions waive the applicability of the specified ordinances and some of the exemptions waive only the requirement that the contract refer explicitly to the specified ordinance. The ordinance does not waive contracting provisions required by the Charter or those required by voter initiative. All contracts will contain a provision that states the contractor must comply with all applicable federal, state and local laws.

Delegation to the General Manager

This ordinance authorizes the General Manager to purchase renewable and greenhouse-gas-free power using contracts with terms in excess of ten years or requiring expenditures of 10 million dollars or more. This authority is limited to purchases of renewable and greenhouse-gas-free power and is subject to certain fiscal limitations, including that no contract may exceed total costs of \$5 million per year or \$125 million over the life of the contract. Contracts pursuant to this delegation must still go through a competitive bidding process and be approved by the Public Utilities Commission in a public meeting.

It is possible that PUC may execute an agreement using one of the pro forma agreements for renewable and greenhouse-gas-free power. In that event, both the authorizations and waivers applicable to the pro forma contracts and the additional authorizations in section 3 would apply.

Background Information

PUC operates a power utility, which supplies clean greenhouse-gas-free energy to San Francisco's municipal facilities, services and customers. Under the Raker Act, PUC may not sell Hetch Hetchy power to private entities who intend to resell the power. (Raker Act of 1913, ch. 4, 38 Stat. 242). In addition, PUC's operations adhere to the City's "water first" policy. (Cal. Water Code 73504(b) and Charter Section 8B.122).

PUC is also implementing a CCA program that will require it to purchase energy using its in-house expertise and staff resources. State law allows cities and counties to develop CCA programs, through which local governments may choose to supply electricity to serve the needs of participating customers within their jurisdictions while the existing utility continues to provide many services including billing, transmission and distribution. (See AB 117 (2002) implementing Cal. Pub. Util. § 366 *et seq.*).

San Francisco has already taken many steps towards implementing a CCA program. In 2012, the PUC negotiated a contract Shell Energy North America to procure the necessary power for the CCA. Although the contract was approved by the Board of Supervisors, the contract was never executed. In 2015, the Local Agency Formation Commission sponsored a report from EnerNex describing the local build out of energy resources to support a CCA program.¹ One of the primary recommendations in that report was for PUC staff to perform necessary power procurement on behalf of the CCA program on an on-going and as-needed basis. The report states that this will provide benefits of cost-efficiency, mitigate risks of contract failure, and leverage efficiencies by using staff's in-house knowledge.

PUC anticipates that in order to perform these additional responsibilities and secure the best possible prices and terms for this new program, PUC will need to negotiate a mix of electricity contracts with multiple renewable energy projects simultaneously in an expedited time frame.

In order to take advantage of this pricing, PUC believes that it may need to make contractual commitments of greater than 10 years and/or greater than 10 million dollars for certain purchases of renewable and greenhouse-gas-free power.

¹ The EnerNex Report is available on the Board of Supervisors' website: <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=50676> (last checked April 21, 2015).