

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-5184
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MEMORANDUM

TO: Dennis Herrera, General Manager, Public Utilities Commission

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: November 4, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed Ordinance:

File No. 241070

Ordinance amending the Administrative Code to modify the waivers of specified contract-related requirements in the Administrative, Labor and Employment, and Environment Codes for electricity and related product transactions, authorizing binding arbitration, and increasing the annual expenditure limit for energy procurements from \$200 million to \$300 million and the revenue collection limit from \$10 million to \$300 million.

If you have comments or reports to be included with the file, please forward them to Victor Young at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Masood Ordikhani, Public Utilities Commission
Jeremy Spitz, Public Utilities Commission



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 241070 **File Type:** Ordinance **Status:** 30 Day Rule

Enacted: _____ **Effective:** _____

Version: 1 **In Control:** Rules Committee

File Name: Administrative Code - Purchase and Sale of Electricity and Related Products - Public Utilities Commission **Date Introduced:** 10/29/2024

Requester: _____ **Cost:** _____ **Final Action:** _____

Comment: _____ **Title:** Ordinance amending the Administrative Code to modify the waivers of specified contract-related requirements in the Administrative, Labor and Employment, and Environment Codes for electricity and related product transactions, authorizing binding arbitration, and increasing the annual expenditure limit for energy procurements from \$200 million to \$300 million and the revenue collection limit from \$10 million to \$300 million.

Companion Files: 150408, 151123, 171172, 180708, 191203 **Sponsor:** Mandelman

History of Legislative File 241070

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	10/29/2024	ASSIGNED UNDER 30 DAY RULE	Rules Committee	11/28/2024	

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

3 **Ordinance amending the Administrative Code to modify the waivers of specified**
4 **contract-related requirements in the Administrative, Labor and Employment, and**
5 **Environment Codes for electricity and related product transactions, authorizing**
6 **binding arbitration, and increasing the annual expenditure limit for energy**
7 **procurements from \$200 million to \$300 million and the revenue collection limit from**
8 **\$10 million to \$300 million.**

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

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

17 Section 1. Chapter 21 of the Administrative Code is amended by revising Section
18 21.43, to read as follows:

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

21 (a) **Findings.**

22 (1) The Power Enterprise (“Power Enterprise”) of the Public Utilities
23 Commission (“PUC”) operates a municipal utility, Hetch Hetchy Power, and a community
24 choice aggregation (“CCA”) program, CleanPowerSF. Both Hetch Hetchy Power and
25 CleanPowerSF purchase and sell electricity in the wholesale markets to serve their respective
retail customers in San Francisco.

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

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

14 *(3) To meet regulatory requirements, secure the best possible prices and terms, keep*
15 *rates affordable and competitive, and manage procurement risk, the PUC engages in a continual*
16 *process of procuring power and simultaneously negotiating a mix of short, medium, and long-term*
17 *contracts for a diverse supply of energy and energy-related products with multiple suppliers, all in an*
18 *expedited time frame consistent with commercial expectations and regulatory deadlines. The costs*
19 *expended on procuring energy for Hetch Hetchy Power and CleanPowerSF are recovered by PUC*
20 *through customer billing.*

21 (4) The PUC is in a unique market position because both Hetch Hetchy Power and
22 CleanPowerSF directly compete with PG&E and private power providers for retail electricity
23 customers and with other *PG&E and* load serving entities for supplies of electricity and
24 electricity-related products in the highly competitive wholesale markets. *Hetch Hetchy Power*
25 *and CleanPowerSF engage in procurement efforts through competitive bidding processes as necessary*

1 *for agreements for energy and energy-related products. As the PUC manages fluctuations in supply*
2 *and demand and navigates the constantly changing regulatory requirements of multiple agencies, it*
3 *also engages in the sale of excess energy. This competitive environment heightens the need to maintain*
4 *prices at a level that is competitive with PG&E despite the many regulatory burdens and costs placed*
5 *on CCAs and the unique challenges faced by Hetch Hetchy Power due to its reliance on PG&E for*
6 *wholesale distribution service.*

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

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

16 ~~—— (7) These efforts include CleanPowerSF programs to secure a significant number of~~
17 ~~long-term agreements to purchase electricity from new renewable and energy storage projects,~~
18 ~~including from small renewable projects located in disadvantaged communities under the~~
19 ~~Disadvantaged Communities (“DAC”) Green Tariff and the Community Solar (“CS”) Green Tariff~~
20 ~~programs, and renewable and energy storage projects located on City reservoirs within the City. The~~
21 ~~DAC and CS Green Tariff programs will provide 100% renewable energy at discounted rates to~~
22 ~~residents of disadvantaged communities within the City. The costs expended on procuring energy for~~
23 ~~Hetch Hetchy Power and CleanPowerSF are fully recovered by PUC through customer billing.~~

24 ~~—— (8) Hetch Hetchy Power and CleanPowerSF will also engage in procurement efforts~~
25 ~~through competitive bidding processes as necessary for short- and medium-term agreements for energy~~

1 ~~and energy-related products. As the PUC manages fluctuations in supply and demand and navigates~~
2 ~~the constantly changing regulatory requirements of multiple agencies, it also engages in the sale of~~
3 ~~excess energy.~~

4 (5) In order to procure energy and energy-related products in California’s highly
5 competitive wholesale market, the PUC relies on industry standard terms and conditions which deviate
6 from the City’s standard contract requirements. The United States Department of Energy also requires
7 pro forma agreements without City standard terms when it sells PUC low cost energy and services. In
8 Ordinance No. 188-23, the Board of Supervisors authorized the PUC to use the Western Area Power
9 Administration (“WAPA”) agreements for power and scheduling coordinator services. ~~(9)~~ In
10 Ordinance Nos. 75-15, 223-15, 08-18, and 11-20 (collectively, the “Procurement
11 Ordinances”), the Board of Supervisors authorized the PUC to use ~~the~~ commonly used
12 industry form contracts and PUC pro forma contracts with terms that deviated from the City’s
13 standard contract terms, and authorized modifications to the form agreements so long as such
14 modifications, in the judgment of the General Manager and the City Attorney, did not
15 materially decrease the City’s rights or materially increase its liabilities. These agreements
16 ~~were~~ are:

- 17 (A) Western System Power Pool (“WSPP”) Agreement;
- 18 (B) Edison Electric Institute (EEI) Master Agreement;
- 19 (C) PUC Renewable Power Purchase Agreement; ~~and~~
- 20 (D) PUC Energy Purchase and Sale Master Agreement;

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

23 ~~—— (10) For three years, ending in 2025, the PUC will continue to enter into contracts to~~
24 ~~meet the energy requirements for Hetch Hetchy Power and CleanPowerSF, and for this purpose has~~
25 ~~developed three new form contracts. Each of these form agreements is on file with the Clerk of the~~

1 *Board of Supervisors, in File No. 220652 and is incorporated herein by reference as though fully set*
2 *forth:*

3 _____ ~~(A)(E)~~ PUC Renewable Power and Energy Storage Purchase
4 Agreement; ~~and~~

5 _____ ~~(B)(F)~~ PUC Energy Storage Purchase Agreement; ~~and~~

6 _____ ~~(C)(G)~~ PUC Small Renewable Power Purchase Agreement; ~~;~~

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

12 _____ ~~(H) California Community Power (A)~~ Buyer Liability Pass Through
13 Agreement;

14 _____ ~~(I) California Community Power (B)~~ Project Participation Share
15 Agreement; ~~and~~

16 _____ ~~(J) California Community Power (C)~~ Coordinated Operations Agreement.

17 _____ ~~(K) United States Department of Energy WAPA Full Load Service Agreement;~~

18 ~~and~~

19 _____ ~~(L) United States Department of Energy WAPA Scheduling Coordinator~~
20 ~~Agreement.~~

21 _____ ~~(6)(12)~~ In order for CleanPowerSF and Hetch Hetchy Power to meet State law
22 requirements for RA, defined as electricity-related products that ensure sufficient electric
23 generation resources are available to meet unusually high levels of demand, ~~and~~ the
24 Renewable Portfolio Standard ("RPS"), the state's program for continuously increasing
25 purchases from renewable energy facilities, and meet City clean energy requirements, the PUC

1 ~~purchases RA and RPS from for such products with~~ transacts for such products from a variety of
2 ~~suppliers counterparties,; but on occasion must rely on transactions with Investor Owned Utilities~~
3 ~~(“IOUs”) in California. The IOUs in California, PG&E, Southern California Edison, and San Diego~~
4 ~~Gas & Electric, all require RA and RPS buyers counterparties to agree to binding arbitration when~~
5 ~~purchasing these products with California IOUs. These counterparties are increasingly requiring~~
6 ~~binding arbitration in contracts.~~

7 ~~(13)~~ In Ordinance No. 227-18, the Board of Supervisors authorized binding arbitration
8 provisions in certain limited circumstances and approved three PG&E agreements with
9 binding arbitration provisions. For the ordinance in Board File No. _____, amending this Section
10 21.43, the PUC sought approval to allow the inclusion of binding arbitration in contracts with all
11 counterparties, not just investor owned utilities. In order to reliably meet the State’s legal
12 requirements for RA and RPS compliance, it is imperative to authorize the PUC to include binding
13 arbitration provisions in agreements for RA and/or RPS with California IOUs.

14 (b) **Approval of Form Agreements.** The Board of Supervisors approves the use of
15 the pro forma contracts and substantially similar agreements described in subsections ~~(a)(5)~~
16 ~~(9), (a)(10) and (a)(11))~~ for the purchase and sale of power and related products, including the
17 indemnification and limitation of liability provisions therein, notwithstanding that the terms of
18 those agreements may deviate from the City’s standard contract terms. The list of pro forma
19 agreements in subsection (a)(5) may be modified by Board of Supervisors Resolution. Further, the
20 Board of Supervisors approves hold harmless agreements for the purchase of power and
21 related products. The Board of Supervisors also authorizes modifications to these form
22 agreements so long as such modifications, in the judgment of the General Manager of the
23 PUC, the City’s Risk Manager, and the City Attorney, as required, do not materially decrease
24 the City’s rights or materially increase its liabilities. For the avoidance of doubt, the use of any pro
25 forma agreement included in subsection (a)(5) and any modification approved by the General Manager

1 of the PUC, the City's Risk Manager, and the City Attorney is deemed to include waivers of contract
2 requirements in subsections (e), (f), and (g).

3 (c) **Delegation of Approval Authority under Charter Section 9.118.** Pursuant to
4 its authority under Charter Section 9.118, the Board of Supervisors delegates to the General
5 Manager of the PUC authority to enter into purchases of power and related products using
6 contracts with terms in excess of 10 years or requiring expenditures of 10 million dollars or
7 more including amendments to such agreements with an impact of greater than \$500,000, so
8 long as the contract term, including any amendments, does not exceed 25 years. The annual
9 expenditure for all agreements entered under this subsection (c) may not exceed ~~200~~ 300
10 million dollars per year. ~~per year.~~² This annual expenditure cap may be increased by Board of
11 Supervisors Resolution.

12 (d) **Delegation of Approval Authority under Charter Section 9.118.** Pursuant to
13 its authority under Charter Section 9.118, the Board of Supervisors delegates to the General
14 Manager of the PUC authority to enter into contracts for the sale of power and related
15 products having anticipated revenue in excess of one million dollars or more. The annual
16 revenue for all agreements entered under this section (d) may not exceed ~~10~~ 300 million
17 dollars per year. This annual revenue cap may be increased by Board of Supervisors
18 Resolution.

19 (e) **Delegation of Approval of Binding Arbitration for Agreements.** The Board of
20 Supervisors finds it is reasonable and in the public interest to delegate to the General Manager of the
21 PUC the authority to enter into contracts for power and related products and services with binding
22 arbitration provisions on approval of the City Attorney, and hereby delegates said authority to the
23 General Manager of the PUC. **Reporting.** ~~The PUC shall quarterly report to the Board of Supervisors~~
24 ~~the duration, product purchased, and cost of contracts entered into pursuant to subsection (e). The~~
25

1 ~~PUC shall also annually report to the Board the program costs, the rates charged to CleanPowerSF~~
2 ~~customers to recover those costs, and a comparison of those rates to PG&E rates.~~

3 (f) **Waiver of Certain Procurement-Related Requirements.** The Board of Supervisors finds
4 the waivers identified in subsection (g) below to be reasonable and in the public interest, for the entire
5 procurement process for power and related products and services, where the General Manager of the
6 PUC finds and documents in writing that the procurement process represents the best opportunity
7 available to the City to obtain essential services and products in a manner beneficial to the City, and,
8 for waiver of the competitive bidding requirements of Administrative Code Chapter 21 or a transaction
9 otherwise designated as a sole source transaction by the General Manager of the PUC, the
10 procurement process is consistent with industry standards followed by other community choice
11 aggregation providers or other publicly owned utilities.

12 (g) **Waiver of Certain Contract-Related Requirements.** The Board of Supervisors
13 finds the waivers identified below to be reasonable and in the public interest, for ~~individual a~~
14 ~~particular~~ contract whether arising out of the procurement process described in subsection (f) or
15 otherwise designated as a sole source transaction by the General Manager of the PUCs or an entire
16 procurement process, where the General Manager of the PUC finds and documents in writing
17 ~~both that the agreement or solicitation represents the best opportunity available to the City to obtain~~
18 ~~essential services and products in a manner beneficial to the City, and~~ that it is not feasible to add all
19 standard City contract provisions to the contract and the contract includes ~~agreement or~~
20 ~~solicitation; these waivers apply to agreements procured through competitive bidding processes that~~
21 ~~include~~ language requiring compliance with all applicable federal, state, and local laws:

- 22 (1) Nondiscrimination in contracts (Lab. and Emp. Code Article 131);
- 23 (2) MacBride Principles (Admin. Code Chapter 12F);
- 24 (3) Local business enterprise utilization and non-discrimination in contracting
25 ordinance (Admin. Code Chapter 14B);

- 1 (4) Consideration of criminal history in hiring (Lab. and Emp. Code Article 142);
2 (5) Consideration of salary history in hiring (Lab. and Emp. Code Article 141);
3 ~~(6) Prohibition on contracting in certain states (Admin. Code Section 12X);~~
4 ~~——(7) (6) First source hiring (Admin. Code Chapter 83);~~
5 ~~——(8) (7) Competitive bidding requirements (Admin. Code Section 21.1); and~~
6 ~~——(9) (8) Tropical hardwood and virgin redwood ban (Environ. Code Chapter 8).~~
7 ~~——(10) (9) Minimum Compensation Ordinance (Lab. and Emp. Code Article 111);~~
8 ~~(11) (10) Health Care Accountability Ordinance (Lab. and Emp. Code Article~~
9 121);
10 ~~——(12) (11) Public access to meetings and records of non-profit organizations~~
11 (Admin. Code Section 12L.2);
12 ~~——(13) (12) Sweatfree contracting (Lab. and Emp. Code Article 151); and~~
13 ~~——(14) (13) Food service waste reduction (Environ. Code Section Chapter 16).~~

14 ~~(g) **Delegation of Approval of Binding Arbitration for RA and/or RPS Agreements with**~~
15 ~~**IOUs. The Board of Supervisors finds it is reasonable and in the public interest to delegate to the**~~
16 ~~**General Manager of the PUC the authority to enter into contracts for RA and/or RPS from California**~~
17 ~~**IOU's with binding arbitration provisions, and hereby delegates said authority to the General Manager**~~
18 ~~**of the PUC.**~~

19 (h) **Power and Related Products and Services.** For purposes of the delegation,
20 authorizations, and waivers in this Section 21.43, power and related products and services as
21 required for assuring reliable services in accordance with good utility practices and applicable laws
22 shall include power supplies, RA, the conveyance or transmission of same, or ancillary
23 services such as spinning reserve, and voltage control, ~~as required for assuring reliable services~~
24 ~~in accordance with good utility practices and applicable laws.~~

LEGISLATIVE DIGEST

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

Ordinance amending the Administrative Code to modify the waivers of specified contract-related requirements in the Administrative, Labor and Employment, and Environment Codes for electricity and related product transactions, authorizing binding arbitration, and increasing the annual expenditure limit for energy procurements from \$200 million to \$300 million and the revenue collection limit from \$10 million to \$300 million.

Existing Law

Chapter 21.43 of the San Francisco Administrative Code delegated authority to the General Manager of the Public Utilities Commission (PUC) to enter contracts for the purchase of electricity and related services that exceed ten years in duration for more than 10 million dollars. The ordinance made the procurement approval subject to several conditions, including: the duration of any individual contract could not exceed 25 years, inclusive of contract extensions, and; the total cost of the contracts could not exceed 200 million dollars per year. The ordinance also delegated authority to the PUC to enter contracts for the sale of power in excess of \$1 million dollars to \$10 million dollars. Chapter 21.43 also allows the General Manager to waive certain City contracting requirements for these agreements.

Amendments to Current Law

The ordinance would amend Chapter 21.43 of the Administrative Code by increasing delegated authority to enter into contracts with an annual expenditure maximum amount of 300 million dollars and to enter into contracts for the sale of power up to \$300 million per year. The ordinance would allow the General Manager to waive certain City requirements for the procurement and resulting contract subject to certain conditions being met including if the procurement process is consistent with industry standards followed by other community choice aggregation providers and other publicly owned utilities. The ordinance would also authorize the General Manager to enter into agreements with binding arbitration provisions. It would also add two form agreements required when purchasing power and related services from the United States Department of Energy Western Area Power Authority (“WAPA”) to the list of approved pro form agreements.

Background Information

The PUC operates two power businesses—its municipal electric utility, Hetch Hetchy Power (HHP), and its community choice aggregation program, CleanPowerSF (CPSF). HHP mostly uses clean hydro power from Hetch Hetchy and renewable energy from City facilities, but it

sometimes needs to engage in other purchases and sales. CPSF obtains all of its energy through purchases, to meet the needs of enrolled San Franciscans under PG&E tariffs approved by the California Public Utilities Commission (CPUC). PG&E provides transmission, distribution and billing service for CPSF customers. The program has grown from 8,000 customers to 380,000 customers in eight years. CleanPowerSF competes for wholesale power supplies in the highly competitive and highly volatile California Independent System Operator energy market and competes with PG&E and private energy suppliers for customers in San Francisco.

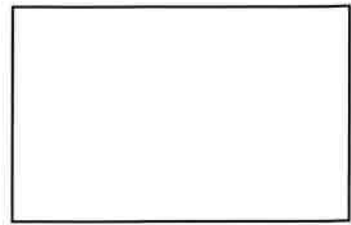
CPSF must enter into a large number of contracts for a variety of electricity products and services under compressed timelines to comply with state law, CPUC regulations and San Francisco clean energy policies. This makes Board approval of every power and related service contract in the usual manner neither practical nor possible. The energy industry relies on standard terms that deviate from general city contracting terms including but not limited to binding arbitration. In order to compete with commercial and other government energy providers, CPSF must include these terms in transactions for power and related services. The ordinance sets out a process for approval of these terms and delegates waiver and approval authority for these agreements to the General Manager of the PUC.

Due to growth of the programs and the number of energy procurements needed in the future, PUC is seeking delegated authority and contract waivers for CPSF and HHP procurements through June 30, 2030.

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor _____ inquires..."
- 5. City Attorney Request
- 6. Call File No. _____ from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No. _____
- 9. Reactivate File No. _____
- 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Mandelman

Subject:

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

Long Title or text listed:

Ordinance amending the Administrative Code to modify the waivers of specified contract-related requirements in the Administrative, Labor and Employment, and Environment Codes for electricity and related product transactions, authorizing binding arbitration and increasing the annual expenditure limit for energy procurements from \$200 million to \$300 million and the revenue collection limit from \$10 million to \$300 million.

Signature of Sponsoring Supervisor:

From: [DeRuff, Henry \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Calvillo, Angela \(BOS\)](#); [GUTIERREZ, MARGARITA \(CAT\)](#)
Cc: [Mandelman, Rafael \(BOS\)](#); [Spitz, Jeremy \(PUC\)](#); [Thongsavat, Adam \(BOS\)](#); [RUSSI, BRAD \(CAT\)](#)
Subject: Mandelman Introduction: Administrative Code - Purchase and Sale of Electricity and Related Products - Public Utilities Commission
Date: Monday, October 28, 2024 10:59:00 AM
Attachments: [Delegation Ordinance 2025 FINAL for BOS.docx](#)
[Delegation Ord. Legislative Digest FINAL for BOS.docx](#)
[0119_001.pdf](#)

Good morning all,

Supervisor Mandelman will be introducing the attached legislation tomorrow. I've included [@GUTIERREZ, MARGARITA \(CAT\)](#), who can confirm this legislation is as to form. I've included the legislation, digest, and intro form on this email. Please let me know if there is anything else you need from us!

Thank you,
Henry

Henry DeRuff

Legislative Aide

Office of Supervisor Rafael Mandelman, District 8

henry.deruff@sfgov.org | (415) 554-6987

he/him/his

From: [Gutierrez, Margarita \(CAT\)](#)
To: [DeRuff, Henry \(BOS\)](#); [BOS Legislation, \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Calvillo, Angela \(BOS\)](#)
Cc: [Mandelman, Rafael \(BOS\)](#); [Spitz, Jeremy \(PUC\)](#); [Thongsavat, Adam \(BOS\)](#); [RUSSI, BRAD \(CAT\)](#)
Subject: RE: Mandelman Introduction: Administrative Code - Purchase and Sale of Electricity and Related Products - Public Utilities Commission
Date: Monday, October 28, 2024 11:04:05 AM

Via the email I confirm the use of my electronic signature on the legislation and approve as to form.

Margarita Gutierrez
Pronouns: She/Her
Deputy City Attorney
Office of City Attorney David Chiu
(415) 638-3841
www.sfcityattorney.org

Please Note: I am working remotely part of each week. Email is the best way to reach me. Thank you.

This message and any attachments are solely for the intended recipient and may include privileged or confidential information. If you have received this message in error, any disclosure, copying, use or distribution of the information contained in this message and any attachments is strictly prohibited. If you have received this communication in error, please notify the sender immediately, and permanently delete this message and any attachments.

From: DeRuff, Henry (BOS) <henry.deruff@sfgov.org>
Sent: Monday, October 28, 2024 10:59 AM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Somera, Alisa (BOS) <alisa.somera@sfgov.org>; Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Gutierrez, Margarita (CAT) <Margarita.Gutierrez@sfcityatty.org>
Cc: Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Spitz, Jeremy (PUC) <JSpitz@sfgwater.org>; Thongsavat, Adam (BOS) <adam.thongsavat@sfgov.org>; Russi, Brad (CAT) <Brad.Russi@sfcityatty.org>
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Thank you,
Henry

Henry DeRuff

Legislative Aide
Office of Supervisor Rafael Mandelman, District 8
henry.deruff@sfgov.org | (415) 554-6987
he/him/his

1 [Administrative Code - Purchase and Sale of Electricity and Related Products - Public Utilities
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24 choice aggregation (“CCA”) program, CleanPowerSF. Both Hetch Hetchy Power and
25 CleanPowerSF purchase and sell electricity in the wholesale markets to serve their respective
retail customers in San Francisco.

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

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

14 (3) To meet regulatory requirements, secure the best possible prices and terms, keep
15 rates affordable and competitive, and manage procurement risk, the PUC engages in a continual
16 process of procuring power and simultaneously negotiating a mix of short, medium, and long-term
17 contracts for a diverse supply of energy and energy-related products with multiple suppliers, all in an
18 expedited time frame consistent with commercial expectations and regulatory deadlines. The costs
19 expended on procuring energy for Hetch Hetchy Power and CleanPowerSF are recovered by PUC
20 through customer billing.

21 (4) The PUC is in a unique market position because both Hetch Hetchy Power and
22 CleanPowerSF directly compete with PG&E and private power providers for retail electricity
23 customers and with other PG&E and load serving entities for supplies of electricity and
24 electricity-related products in the highly competitive wholesale markets. Hetch Hetchy Power
25 and CleanPowerSF engage in procurement efforts through competitive bidding processes as necessary

1 *for agreements for energy and energy-related products. As the PUC manages fluctuations in supply*
2 *and demand and navigates the constantly changing regulatory requirements of multiple agencies, it*
3 *also engages in the sale of excess energy. This competitive environment heightens the need to maintain*
4 *prices at a level that is competitive with PG&E despite the many regulatory burdens and costs placed*
5 *on CCAs and the unique challenges faced by Hetch Hetchy Power due to its reliance on PG&E for*
6 *wholesale distribution service.*

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

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

16 *—— (7) These efforts include CleanPowerSF programs to secure a significant number of*
17 *long-term agreements to purchase electricity from new renewable and energy storage projects,*
18 *including from small renewable projects located in disadvantaged communities under the*
19 *Disadvantaged Communities (“DAC”) Green Tariff and the Community Solar (“CS”) Green Tariff*
20 *programs, and renewable and energy storage projects located on City reservoirs within the City. The*
21 *DAC and CS Green Tariff programs will provide 100% renewable energy at discounted rates to*
22 *residents of disadvantaged communities within the City. The costs expended on procuring energy for*
23 *Hetch Hetchy Power and CleanPowerSF are fully recovered by PUC through customer billing.*

24 *—— (8) Hetch Hetchy Power and CleanPowerSF will also engage in procurement efforts*
25 *through competitive bidding processes as necessary for short- and medium-term agreements for energy*

1 ~~and energy-related products. As the PUC manages fluctuations in supply and demand and navigates~~
2 ~~the constantly changing regulatory requirements of multiple agencies, it also engages in the sale of~~
3 ~~excess energy.~~

4 (5) In order to procure energy and energy-related products in California’s highly
5 competitive wholesale market, the PUC relies on industry standard terms and conditions which deviate
6 from the City’s standard contract requirements. The United States Department of Energy also requires
7 pro forma agreements without City standard terms when it sells PUC low cost energy and services. In
8 Ordinance No. 188-23, the Board of Supervisors authorized the PUC to use the Western Area Power
9 Administration (“WAPA”) agreements for power and scheduling coordinator services. (9) In

10 Ordinance Nos. 75-15, 223-15, 08-18, and 11-20 (collectively, the “Procurement
11 Ordinances”), the Board of Supervisors authorized the PUC to use ~~the~~ commonly used
12 industry form contracts and PUC pro forma contracts with terms that deviated from the City’s
13 standard contract terms, and authorized modifications to the form agreements so long as such
14 modifications, in the judgment of the General Manager and the City Attorney, did not
15 materially decrease the City’s rights or materially increase its liabilities. These agreements
16 ~~were~~ are:

- 17 (A) Western System Power Pool (“WSPP”) Agreement;
- 18 (B) Edison Electric Institute (EEI) Master Agreement;
- 19 (C) PUC Renewable Power Purchase Agreement; ~~and~~
- 20 (D) PUC Energy Purchase and Sale Master Agreement;

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

23 ~~—— (10) For three years, ending in 2025, the PUC will continue to enter into contracts to~~
24 ~~meet the energy requirements for Hetch Hetchy Power and CleanPowerSF, and for this purpose has~~
25 ~~developed three new form contracts. Each of these form agreements is on file with the Clerk of the~~

1 *Board of Supervisors, in File No. 220652 and is incorporated herein by reference as though fully set*
2 *forth:*

3 _____ ~~(A)(E)~~ PUC Renewable Power and Energy Storage Purchase
4 Agreement; ~~and~~

5 _____ ~~(B)(F)~~ PUC Energy Storage Purchase Agreement; ~~and~~

6 _____ ~~(C)(G)~~ PUC Small Renewable Power Purchase Agreement; ;

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

12 _____ ~~(H) California Community Power (A)~~ Buyer Liability Pass Through
13 Agreement;

14 _____ ~~(I) California Community Power (B)~~ Project Participation Share
15 Agreement; ~~and~~

16 _____ ~~(J) California Community Power (C)~~ Coordinated Operations Agreement.

17 _____ ~~(K) United States Department of Energy WAPA Full Load Service Agreement;~~

18 ~~and~~

19 _____ ~~(L) United States Department of Energy WAPA Scheduling Coordinator~~
20 ~~Agreement.~~

21 _____ ~~(6)(12)~~ In order for CleanPowerSF and Hetch Hetchy Power to meet State law
22 requirements for RA, defined as electricity-related products that ensure sufficient electric
23 generation resources are available to meet unusually high levels of demand, ~~and~~ the
24 Renewable Portfolio Standard ("RPS"), the state's program for continuously increasing
25 purchases from renewable energy facilities, and meet City clean energy requirements, the PUC

1 ~~purchases RA and RPS from for such products with~~ transacts for such products from a variety of
2 ~~suppliers counterparties,; but on occasion must rely on transactions with Investor Owned Utilities~~
3 ~~(“IOUs”) in California. The IOUs in California, PG&E, Southern California Edison, and San Diego~~
4 ~~Gas & Electric, all require RA and RPS buyers counterparties to agree to binding arbitration when~~
5 ~~purchasing these products with California IOUs. These counterparties are increasingly requiring~~
6 ~~binding arbitration in contracts.~~

7 ~~(13)~~ In Ordinance No. 227-18, the Board of Supervisors authorized binding arbitration
8 provisions in certain limited circumstances and approved three PG&E agreements with
9 binding arbitration provisions. For the ordinance in Board File No. _____, amending this Section
10 21.43, the PUC sought approval to allow the inclusion of binding arbitration in contracts with all
11 counterparties, not just investor owned utilities. In order to reliably meet the State’s legal
12 requirements for RA and RPS compliance, it is imperative to authorize the PUC to include binding
13 arbitration provisions in agreements for RA and/or RPS with California IOUs.

14 (b) **Approval of Form Agreements.** The Board of Supervisors approves the use of
15 the pro forma contracts and substantially similar agreements described in subsections ~~(a)(5)~~
16 ~~(9), (a)(10) and (a)(11))~~ for the purchase and sale of power and related products, including the
17 indemnification and limitation of liability provisions therein, notwithstanding that the terms of
18 those agreements may deviate from the City’s standard contract terms. The list of pro forma
19 agreements in subsection (a)(5) may be modified by Board of Supervisors Resolution. Further, the
20 Board of Supervisors approves hold harmless agreements for the purchase of power and
21 related products. The Board of Supervisors also authorizes modifications to these form
22 agreements so long as such modifications, in the judgment of the General Manager of the
23 PUC, the City’s Risk Manager, and the City Attorney, as required, do not materially decrease
24 the City’s rights or materially increase its liabilities. For the avoidance of doubt, the use of any pro
25 forma agreement included in subsection (a)(5) and any modification approved by the General Manager

1 of the PUC, the City's Risk Manager, and the City Attorney is deemed to include waivers of contract
2 requirements in subsections (e), (f), and (g).

3 (c) **Delegation of Approval Authority under Charter Section 9.118.** Pursuant to
4 its authority under Charter Section 9.118, the Board of Supervisors delegates to the General
5 Manager of the PUC authority to enter into purchases of power and related products using
6 contracts with terms in excess of 10 years or requiring expenditures of 10 million dollars or
7 more including amendments to such agreements with an impact of greater than \$500,000, so
8 long as the contract term, including any amendments, does not exceed 25 years. The annual
9 expenditure for all agreements entered under this subsection (c) may not exceed ~~200~~ 300
10 million dollars per year. ~~per year.~~² This annual expenditure cap may be increased by Board of
11 Supervisors Resolution.

12 (d) **Delegation of Approval Authority under Charter Section 9.118.** Pursuant to
13 its authority under Charter Section 9.118, the Board of Supervisors delegates to the General
14 Manager of the PUC authority to enter into contracts for the sale of power and related
15 products having anticipated revenue in excess of one million dollars or more. The annual
16 revenue for all agreements entered under this section (d) may not exceed ~~10~~ 300 million
17 dollars per year. This annual revenue cap may be increased by Board of Supervisors
18 Resolution.

19 (e) **Delegation of Approval of Binding Arbitration for Agreements.** The Board of
20 Supervisors finds it is reasonable and in the public interest to delegate to the General Manager of the
21 PUC the authority to enter into contracts for power and related products and services with binding
22 arbitration provisions on approval of the City Attorney, and hereby delegates said authority to the
23 General Manager of the PUC. **Reporting.** ~~The PUC shall quarterly report to the Board of Supervisors~~
24 ~~the duration, product purchased, and cost of contracts entered into pursuant to subsection (e). The~~
25

1 ~~PUC shall also annually report to the Board the program costs, the rates charged to CleanPowerSF~~
2 ~~customers to recover those costs, and a comparison of those rates to PG&E rates.~~

3 (f) **Waiver of Certain Procurement-Related Requirements.** The Board of Supervisors finds
4 the waivers identified in subsection (g) below to be reasonable and in the public interest, for the entire
5 procurement process for power and related products and services, where the General Manager of the
6 PUC finds and documents in writing that the procurement process represents the best opportunity
7 available to the City to obtain essential services and products in a manner beneficial to the City, and,
8 for waiver of the competitive bidding requirements of Administrative Code Chapter 21 or a transaction
9 otherwise designated as a sole source transaction by the General Manager of the PUC, the
10 procurement process is consistent with industry standards followed by other community choice
11 aggregation providers or other publicly owned utilities.

12 (g) **Waiver of Certain Contract-Related Requirements.** The Board of Supervisors
13 finds the waivers identified below to be reasonable and in the public interest, for ~~individual a~~
14 ~~particular~~ contract whether arising out of the procurement process described in subsection (f) or
15 otherwise designated as a sole source transaction by the General Manager of the PUCs or an entire
16 procurement process, where the General Manager of the PUC finds and documents in writing
17 ~~both that the agreement or solicitation represents the best opportunity available to the City to obtain~~
18 ~~essential services and products in a manner beneficial to the City, and~~ that it is not feasible to add all
19 standard City contract provisions to the contract and the contract includes ~~agreement or~~
20 ~~solicitation; these waivers apply to agreements procured through competitive bidding processes that~~
21 ~~include~~ language requiring compliance with all applicable federal, state, and local laws:

- 22 (1) Nondiscrimination in contracts (Lab. and Emp. Code Article 131);
- 23 (2) MacBride Principles (Admin. Code Chapter 12F);
- 24 (3) Local business enterprise utilization and non-discrimination in contracting
25 ordinance (Admin. Code Chapter 14B);

- 1 (4) Consideration of criminal history in hiring (Lab. and Emp. Code Article 142);
2 (5) Consideration of salary history in hiring (Lab. and Emp. Code Article 141);
3 ~~(6) Prohibition on contracting in certain states (Admin. Code Section 12X);~~
4 ~~——(7) (6) First source hiring (Admin. Code Chapter 83);~~
5 ~~——(8) (7) Competitive bidding requirements (Admin. Code Section 21.1); and~~
6 ~~——(9) (8) Tropical hardwood and virgin redwood ban (Environ. Code Chapter 8).~~
7 ~~——(10) (9) Minimum Compensation Ordinance (Lab. and Emp. Code Article 111);~~
8 ~~(11) (10) Health Care Accountability Ordinance (Lab. and Emp. Code Article~~
9 121);
10 ~~——(12) (11) Public access to meetings and records of non-profit organizations~~
11 (Admin. Code Section 12L.2);
12 ~~——(13) (12) Sweatfree contracting (Lab. and Emp. Code Article 151); and~~
13 ~~——(14) (13) Food service waste reduction (Environ. Code Section Chapter 16).~~

14 ~~(g) Delegation of Approval of Binding Arbitration for RA and/or RPS Agreements with~~
15 ~~IOUs. The Board of Supervisors finds it is reasonable and in the public interest to delegate to the~~
16 ~~General Manager of the PUC the authority to enter into contracts for RA and/or RPS from California~~
17 ~~IOU's with binding arbitration provisions, and hereby delegates said authority to the General Manager~~
18 ~~of the PUC.~~

19 (h) **Power and Related Products and Services.** For purposes of the delegation,
20 authorizations, and waivers in this Section 21.43, power and related products and services as
21 required for assuring reliable services in accordance with good utility practices and applicable laws
22 shall include power supplies, RA, the conveyance or transmission of same, or ancillary
23 services such as spinning reserve, and voltage control, ~~as required for assuring reliable services~~
24 ~~in accordance with good utility practices and applicable laws.~~

