

File No. 111123

Committee Item No. 5

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Government Audit & Oversight

Date: November 10, 2011

Board of Supervisors Meeting

Date: \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement (Approved as to Form)     |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Term Sheet Parameters for Program and Contract Negotiations</u> |
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Completed by: Andrea S. Ausberry

Date November 4, 2011

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

**UPDATED TERM SHEET PARAMETERS for PROGRAM AND CONTRACT**  
**NEGOTIATIONS**  
**Updated - As of October 3, 2011**

This document and its appendix describes the status of the efforts by the San Francisco Public Utilities Commission staff to develop the details of a Community Choice Aggregation ("CCA") Program, the CleanPowerSF Program, and negotiate a contract with Shell Energy North America (US), L.P. ("Shell Energy") for electric supply and other related products and services to the CleanPowerSF Program. The City and County of San Francisco (the "City") acting by and through the SFPUC is in the process of implementing the CleanPowerSF Program. As part of that process, SFPUC staff has defined the parameters of the program in further detail and has been negotiating with Shell Energy for energy supply and other related products and services for the CleanPowerSF Program. This document makes no commitments to Shell Energy of any kind in relation to the CCA Program. The SFPUC, and the Board, may each in its sole discretion approve or reject any proposed contract with Shell Energy submitted to such body for its approval irrespective of whether or not such contract is consistent with the status of the program and negotiations described in this Term Sheet on Parameters for CleanPowerSF Program and Contract Negotiations ("Term Sheet"). This Term Sheet does not constitute an agreement between the City and Shell Energy. Any such binding agreement would only arise as a result of the negotiation, approval, execution and delivery of a contract as contemplated hereby. Neither the City nor Shell Energy may bring any claim or action against the other party as a result of a failure to agree on or enter into such contract.

This Term Sheet is informed by the experience gained by the SFPUC through the process of one Request for Information, one Request for Qualifications, and two Request for Proposals, and ongoing discussions with Shell Energy.

**Program Parameters for CleanPowerSF**

The CleanPowerSF program will offer 100% renewable electric supply that consists of: power offset by tradeable renewable certificates (approximately 5%), bundled renewable resources (kWh and renewable attributes purchased together, approximately 10%), and firmed and shaped renewable resources (approximately 85%).<sup>1</sup> All San Franciscans may participate in the program at commencement by opting-in to the program. Prior to the commencement of service, geographic regions across the City will be identified for the state-required, formal opt-out notification process. Numerous opt-out notices will be provided to customers throughout the City until every customer has been formally notified of their right to opt-out.<sup>2</sup>

The Term Sheet Parameters for Program and Contract Negotiations are designed to address the following elements:

1. Anticipated Program Rates
2. Energy Supply and Renewables
3. Customer Enrollment Strategy
4. City Risk and Flow of Funds

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<sup>1</sup> All renewable supplies purchased will be qualified as eligible renewable resources pursuant to California's Renewable Portfolio Standard pursuant to Senate Bill SBX1-2, signed into law by Governor Brown on April 12, 2011.

<sup>2</sup> Consistent with state law, two notices will be provided to customers prior to commencement of service (one within 60 days of commencement, and one within 30 days). Two additional notices will be provided within 60 days after commencement of service. Customers who elect to opt out during these notification periods retain the incumbent utility as their energy supplier without penalty.

## 5. Development of New Renewable Resources

### **Anticipated Program Rates**

Prior to commencement of service to customers, initial rates for service from CleanPowerSF will be set by the SFPUC (subject to required review and input from the Rate Fairness Board and the Board of Supervisors) such that revenues from participating customers are projected to be sufficient to cover ongoing operating and capital costs of the CleanPowerSF program. Current SFPUC modeling based on latest indicative pricing from Shell shows that the rates are expected to be approximately 11.0 cents per kWh (compared to PG&E's current average residential generation rate of 6.4 cents per kWh).<sup>3</sup> CleanPowerSF market research demonstrates a strong interest in participation and willingness to pay this rate premium by a core group of San Franciscans that value renewable energy and desire an opportunity to take meaningful action to limit the effects of global climate change.

Customer rates will include a charge of approximately 0.2 cents per kWh that will be deposited in a rate stabilization reserve account.<sup>4</sup> The rate stabilization reserve account will be controlled solely by the CleanPowerSF program and will be used to maintain stable customer rates in the context of price fluctuations in the electricity market and other factors. The rate stabilization reserve account may also be used to fund other program financial requirements such as the Termination Payment, or augmenting the financing for development of new renewable resources in the later years of the program.

Low income customers that participate in PG&E's CARE program will be eligible for the CCA program and will receive a discounted rate. Low-income customers will receive the same amount of money per month as a discount from their electricity bill regardless of whether they join CleanPowerSF or remain PG&E electric supply customers.

#### **Shell Energy to provide:**

- Fixed pricing for specified volume of renewable generation sources and resource adequacy. Renewable categories, as defined by State regulations, will each have a defined quantity of annual energy to be provided.
- Fixed pricing for specified volume of GHG free resources whereby such pricing and volumes may be determined on an annual basis.
- Electricity for the anticipated term of the Contract of 4.5 years.

### **Energy Supply and Renewables**

CleanPowerSF will offer a premium product comprised of 100% California Renewable Portfolio Standard eligible resources, as opposed to PG&E's existing product which, in 2010, was comprised of only 18% California Renewable Portfolio Standard eligible resources.

#### **Shell Energy to provide:**

- Electricity supply requirements, including system energy, resource adequacy, renewable energy and greenhouse gas free energy satisfying CleanPowerSF's customer load and specified RPS and Greenhouse-gas-free (GHG-free) requirements. Energy is anticipated

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<sup>3</sup> Note: In July, indicative pricing resulted in an average rate of 11.5 cents per kilowatt hour. Prices have continued to decline, but prices may increase between the time of contract finalization, approval, and final execution.

<sup>4</sup> The rate also includes an allowance for anticipated "uncollectibles" to ensure that non-payment or late payment by some customers does not result in insufficient program revenues. The uncollectibles rate is set at \$0.0004 cents per kwh.

to be delivered by Shell Energy to the City at the City's load aggregation point with pricing based at the NP15 EZ Gen Hub and as such any congestion costs or congestion revenue rights required with such a transaction would be to the account of the City. Delivery of RPS and GHG-free components would be based on regulations of the CPUC, CEC, CARB and California statutes in effect as of the execution date of the contract. The City and Shell Energy would agree on what energy generation types would qualify as 'renewable' pursuant to the final contract, and consistent with the law.

- Management of the Congestion Revenue Rights available to the City, for the City's financial benefit.
- Scheduling coordinator services, including scheduling of CleanPowerSF supply and load into the CAISO and managing applicable CAISO settlement processes for the Proposed Transaction.
- Necessary information regarding energy procurement sources to enable the City to prepare and file required applicable reports to regulatory agencies.

The City will:

- Not be required to contract with Shell Energy nor would Shell Energy be required to provide service for any future phases.

**Customer Enrollment Strategy**

All 372,000 residential and non-residential accounts will be eligible to opt-in to the program at launch. However, the state-mandated opt-out process will be rolled out to the City's approximately 340,000 residential accounts in phases in order to mitigate initial opt-out risks. The first phase of opt-out notices will be sent to approximately 229,000 residential account holders. Based on anticipated opt-out rates, the target for the first phase is 75,000 participating residential accounts, comprising approximately 30 MW of electricity supply.

The phased approach provides two significant benefits:

- (1) Mitigation of financial risks associated with opt-out rates being higher than expected. The contract structure with Shell Energy requires the City to commit to purchasing a given volume of electricity supply. By phasing participation and contract volumes in stages, if opt-outs are higher than expected, additional residential accounts (110,000 after the first phase) remain available for enrollment through additional opt-out phases to make up any shortfalls in participation. Subsequent phases may be added as customer enrollment stabilizes, demand for the program grows, and additional load is required.
- (2) Development of new City-owned resources could be timed and sized to match demands from additional loads brought into the program in future phases.

The City will:

- Manage the customer enrollment process, including marketing the program, program phasing, selection and management of customers and customer groups to be included in individual "opt-out" phases, and management of the "opt-in" process to allow for all residential and non-residential accounts to be eligible for the program at launch. The City will be responsible for all aspects of program offerings, pricing and rate design.

**Risk Allocation and Flow of Funds**

It is anticipated that funding will be appropriated from the Power Enterprise Fund Balance to cover initial program start-up costs and a prudent level of financial support for program revenue and cost uncertainties. The SFPUC staff anticipates the CCA-related appropriations related to

the Shell Energy contract to total approximately \$19 million dollars.<sup>5</sup> These appropriations will be used to provide funds for:

- (1) A Program Reserve of \$2.5 million to be deposited into a customer revenues secured account.<sup>6</sup> The Program Reserve is intended to provide security to Shell Energy that there will be sufficient cash on hand in the customer revenues secured account to cover Shell Energy's monthly bills.
- (2) A \$1.5 million Operating Reserve, to ensure short-term unanticipated costs associated with startup and initial operations do not create long-term program stability issues (for example, additional costs associated with bringing in additional customers, or delays in receipt of revenues, in the event that opt-out rates are higher than anticipated).
- (3) \$15 Million to be deposited into an escrow account to provide sufficient financial support or other assurances (such as maintenance of defined credit metrics and sufficiency of program cash flow) to cover payments owing to Shell Energy (the Termination Payment) should the City default on its contract for power supply with Shell Energy. The Termination Payment is being requested to cover reasonable costs that might be incurred by Shell should the contract be terminated by Shell or the City prior to the end of the contract term upon a City default. The \$15 million appropriated is the cap on the City's liability for early program termination, in the event that the program does not have sufficient revenues to cover costs (for example, if the City is unable to retain sufficient customer base to meet contractual obligations for energy purchases from Shell).<sup>7</sup> No cap will apply if the agreement is terminated when the program is operating successfully.

### ***Risk Allocation***

The contract with Shell should allocate risks fairly between the City and Shell Energy.

#### **Shell Energy to provide:**

- Fixed pricing for specified energy volumes for the term of the contract, within a bandwidth that is presently expected to be  $\pm 5\%$ . The City would be exposed to market prices for energy and RPS needs above the bandwidth and Shell Energy would resell unused supply (with a credit to the City for such resales) for usage below the bandwidth. The City would be able to direct Shell Energy regarding the disposition of surplus RPS credits.
- Pay a settlement amount in the event of an early termination. In the event of an uncured default by Shell Energy that results in termination of the program by the City, the City shall calculate and Shell Energy shall pay a settlement amount to compensate the City for costs incurred due to early termination of the Contract. These costs would include the cost necessary to either 1) maintain service to CleanPowerSF customers by replacing the services provided by Shell, being the incremental cost of such services less the cost of such services agreed to be paid by the City pursuant to the contract between the City and Shell Energy or 2) or terminate the CCA program being (i) any costs paid from the CCA Bond posted by the City, and (ii) any actual reentry fees assessed by PG&E, regardless of the amount of the security posted.
- The contract will be structured to allow for increases in volumes and price adjustments to accommodate customer enrollments in excess of the initial 75,000 target, subject to agreement on pricing terms by both parties.

<sup>5</sup> An additional appropriation to provide for a termination payment for the back-office services may be required; staff anticipates this termination payment to be no more than \$500,000.

<sup>6</sup> The customer revenues secured account is a segregated account to receive customer payments and provide Shell Energy with first priority of payment from those receipts.

<sup>7</sup> An uncapped termination payment is under negotiation, should the City terminate the program for other reasons than general lack of success of the program.

- Provide collateral, capped at \$15 million, to cover the City's exposure to market prices compared to contract prices, should Shell be on the verge of losing its creditworthiness (At "BBB with negative outlook" or worse).

The City will:

- Maintain the Program Reserve (\$2.5 million) on deposit in the customer revenues secured account; such amount on deposit in a specified account prior to executing the contract and to be appropriated for the entire term of the contract.
- Provide necessary working capital to the CleanPowerSF program to address leads and lags in cash flows (timing of receipts for revenues relative to payment obligations for program costs).
- Appropriate \$1.5 million for the Operating Reserve to cover unanticipated program losses (not cash flow lags that will be addressed by working capital).
- Manage and execute other agreements necessary to operate a CCA program (e.g., data services, service agreement with PG&E, bank account agreements, etc).
- Pay for, from CCA revenues, all electricity supply, including system energy, resource adequacy, renewable energy and greenhouse gas free energy satisfying specified RPS and GHG-free elements provided by Shell Energy as well as all schedule coordinator services performed by Shell Energy on the City's behalf. The City would be responsible for all CAISO charges and charges, including ancillary charges, imposed on Shell Energy by the CAISO in relation to Shell Energy's contract with CleanPowerSF.
- The City must: (1) adequately fund the CleanPowerSF Program such that on the last day of each month, during the term of the Contract, the sum of (i) the balance in the Operating Reserve for the program and (ii) the balance of the Unrestricted Reserve for the program is equal to at least zero dollars; and (2) pay the non-contested charges in the CleanPowerSF customer services and billing provider invoices as they become due. A failure by the City to meet either of these requirements shall be events of default that would entitle Shell to terminate the Contract. The Contract provisions related to this item will take into account that City monthly financial reports are typically unavailable until the middle of next month, and monthly financial reporting is subject to adjustment.
- Pay a termination payment to Shell Energy in the event of a termination prior to the end of the contract term (an early termination). In the event of an uncured default by the City, that is not coupled by an uncured default by Shell, and that results in termination of the contract, Shell Energy shall calculate and the City shall pay a termination payment to compensate Shell Energy for auditable costs incurred by Shell due to early termination of the Contract. The settlement shall be capped at a specified amount. The cap will only apply if the program is operating successfully (determined based on objective measures) at the time of the default by the City.
- As a condition precedent of the Contract, the City shall appropriate fifteen (15) million dollars to the CleanPowerSF Program to hold in reserve for a possible termination and shall hold these funds in an escrow account with clear instructions regarding how disbursements are to be made in the case of early termination and that provides that interest on the funds shall be disbursed to the City on a monthly basis. Funds from the escrow account shall be released to the City during the course of the Term, in accordance with a schedule set forth in the Contract.
- Even after SFPUC and Board of Supervisors approval, the General Manager would not be required to execute the contract. Subsequent events, including but not limited to, unfavorable pricing terms from Shell Energy or adverse regulatory outcomes may be cause for determining that the contract may not be executed by the General Manager.

## ***Flow of Funds***

All customer revenues will be deposited into a secured account along with the Program Reserve. Instructions that control the account would stipulate that Shell Energy has primary rights to the funds in the customer revenues secured account, with contractual performance language to ensure there are methods to cure any inappropriate disbursements. Shell Energy's recourse to funds under the Contract, including for any and all damages arising under the Contract, shall be limited to funds in the secured account and funds in the escrow account for the termination payment. This limitation shall not apply as to the termination payment in the context of an uncured default by the City, that is not coupled by an uncured default by Shell, when the program is operating successfully.

### **Shell Energy will:**

- Receive payment of the amount of Shell Energy's monthly invoice that is not otherwise disputed in good faith by the City directly from the customer revenues secured account. Shell Energy would provide a draft invoice to the City on an agreed schedule to allow for review and reconciliation prior to payment.
- Transfer to the City on or immediately after the date on which Shell Energy's invoice is paid any amounts remaining in the customer revenues secured account following retention of the Reserve Amount, payment to Shell Energy for its monthly invoice and other agreed payments.
- Process withdrawals from the customer revenues secured account in accordance with a pre-agreed waterfall distribution procedure to be set forth in the contract between the City and Shell Energy.

### **The City will:**

- Be responsible for maintaining the Reserve Amount on deposit in the customer revenues secured account at all times.
- Grant Shell Energy a first priority security against the customer revenues secured account and all funds on deposit.
- The City would direct PG&E to deposit CleanPowerSF customer receipts directly into a customer revenues secured account, per the contractual agreement with Shell Energy. The City would not redirect PG&E to deposit funds into any other account unless (1) Shell Energy withdraws funds from customer revenues secured account that (i) are not due and owing to Shell Energy pursuant to the contract (ii) are in excess of amounts invoiced by Shell Energy and approved by the City, or (iii) are being disputed by the City in good faith (each such event an 'Incorrect Withdrawal'), and (2) Shell Energy fails to return such amounts to the City within no more than two business days of the City's notice to Shell Energy regarding such Incorrect Withdrawal. If the City believes that an Incorrect Withdrawal has occurred and provides notice of such belief to Shell Energy prior to 11am Houston time on any business day, Shell Energy would agree to confirm to the City the receipt of such notice and Shell Energy's intention (if Shell Energy agrees that an Incorrect Withdrawal has occurred) to return the funds subject to the Incorrect Withdrawal not later than close of business on the second business day following delivery of the City's notice regarding the Incorrect Withdrawal.

## **Development of New Renewable Resources**

On a parallel path, the SFPUC continues to work on development of new renewable resources to serve future loads, and may substitute new resources for energy otherwise supplied by Shell Energy. The development of new renewable resources will increase the City's energy independence, and act as insurance against future price fluctuations for clean energy supplies.

Contract terms with Shell Energy will specifically allow for the City to substitute its own resources for a portion of the supply volumes to be purchased from Shell Energy.

Shell Energy to provide:

- The City with the ability, at its own cost, to substitute resources in the Shell Energy electricity portfolio provided the City is responsible for any costs incurred by Shell Energy in unwinding or reselling quantities (electricity, resource adequacy, RPS / GHG-free amounts) previously committed to the City.

The City will:

- Develop opportunities for the incorporation of new resources, including renewable generation and demand-side resources, into the CCA portfolio.
- Issue RFPs as appropriate to solicit new resources capable of improving the long-term rate stability for CCA customers while improving the City's energy independence.



## **INTRODUCTION FORM**

By a member of the Board of Supervisors or the Mayor

Time Stamp or  
Meeting Date

I hereby submit the following item for introduction:

- ☐ 1. For reference to Committee: \_\_\_\_\_  
An ordinance, resolution, motion, or charter amendment
- ☐ 2. Request for next printed agenda without reference to Committee
- ☒ 3. Request for hearing on a subject matter at Committee: Government Audit & Oversight
- ☐ 4. Request for letter beginning "Supervisor \_\_\_\_\_ inquires..."
- ☐ 5. City Attorney request
- ☐ 6. Call file from Committee
- ☐ 7. Budget Analyst request (attach written motion).
- ☐ 8. Substitute Legislation File Nos.
- ☐ 9. Request for Closed Session
- ☐ 10. Board to Sit as A Committee of the Whole
- ☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on \_\_\_\_\_

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

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| <input type="checkbox"/> Small Business Commission      | <input type="checkbox"/> Youth Commission    |
| <input type="checkbox"/> Ethics Commission              | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Building Inspection Commission |  |

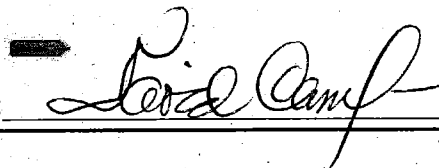
**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.]**

**Sponsor(s):** Supervisor David Campos

**Subject:** Update from the San Francisco Public Utilities Commission on Ordinance 147-07  
(Community Choice Aggregation) and their Term Sheet to move this program forward.

The text is listed below or attached:

Signature of Sponsoring Supervisor: \_\_\_\_\_



**For Clerk's Use Only:**

