

[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.

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

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

Section 1. Findings. The Board of Supervisors of the City and County of San Francisco hereby finds:

(a) For decades, the City and County of San Francisco (City), through its Public Utilities Commission (PUC), has operated a municipal electric utility that supplies clean greenhouse-gas-free electricity to San Francisco's municipal facilities, services, and customers.

1 (b) The PUC supplements electricity from its Hetch Hetchy hydroelectric facilities
2 with 11 megawatts of renewable energy from City-owned facilities and with purchases of
3 electricity from other sources. PUC makes many of these purchases using industry-standard
4 pro forma contracts that the Board of Supervisors has authorized in advance. See Ordinance
5 Nos. 54-92 and 39-01.

6 (c) The City has adopted aggressive goals for greenhouse gas reduction and use of
7 renewable energy. In Ordinance No. 81-08, the Board of Supervisors articulated the goal of
8 having a greenhouse-gas-free electric system by 2030, and meeting all City electricity needs
9 with renewable and greenhouse-gas-free sources.

10 (d) State law allows cities and counties to develop Community Choice Aggregation
11 (CCA) programs, through which local governments may choose to supply electricity to serve
12 the needs of participating customers within their jurisdictions while the existing utility continues
13 to provide services such as customer billing, transmission and distribution.

14 (e) For many years, the City has considered developing a CCA program to allow
15 San Francisco residents and businesses the option to receive cleaner, more sustainable
16 electricity at rates comparable to the incumbent utility. See Ordinance Nos. 86-04, 147-07,
17 232-09, 45-10, 200-12 and 78-14; and Resolution Nos. 348-12 and 331-13.

18 (f) In 2012, the Board of Supervisors approved a contract with Shell Energy North
19 America that required Shell to procure all power needed for the early phases of the City's
20 CCA program, called CleanPowerSF. See Resolution 348-12. The Shell contract was never
21 executed.

22 (g) In response to interest from City leaders and community members, PUC is
23 developing a new CCA program that would offer participating customers a choice of two levels
24 of renewable energy service: a 100% renewable option and a 33%-50% renewable option.
25 These options would be offered to groups of customers in phases, and over time would be

1 offered to all customers within San Francisco. PUC expects to implement this program
2 expeditiously by purchasing energy using its in-house expertise and staff resources. At the
3 same time, PUC would immediately begin the process of developing new local renewable
4 energy resources that would over time replace purchased energy, if such projects are
5 approved following any necessary environmental review.

6 (h) PUC anticipates that it will need to procure no less than 30 megawatts of
7 renewable energy for the first phase of CCA service. To meet aggressive implementation date
8 targets and secure the best possible prices and terms, PUC staff will need to negotiate a mix
9 of electricity contracts with multiple renewable energy projects simultaneously in an expedited
10 time frame.

11 (i) PUC already uses some standardized contracting methods to streamline its
12 procurement practices. Increased ability to purchase power and related products and services
13 using pro forma contracts that meet specified criteria will enable PUC to implement CCA
14 expeditiously and capture maximum price benefits for CCA customers and customers of the
15 City's municipal utility.

16 (j) Most utilities and the existing CCA programs, Marin Clean Energy and Sonoma
17 Clean Power, use standardized contracts for their procurement practices.

18 (k) City law requires standard contract provisions to protect the City's interests,
19 ensure accountability, and promote important social values. The Board of Supervisors may
20 waive certain contract provisions by ordinance. When the PUC uses pro forma contracts for
21 the purchase and sale of power and related products and services, it may be appropriate to
22 waive some of the City's standard contract provisions, if the General Manager finds and
23 documents in writing that doing so is in the best interest of the City.

1 **Section 2.** Approval of Pro Forma Contracts and Related Waivers of Certain
2 Requirements of City Law.

3 (a) Background.

4 Utilities and energy suppliers use industry-standard pro forma contracts to ensure the
5 availability of essential services in a timely and cost-effective manner. Using these
6 agreements can help facilitate negotiations by focusing the parties on the elements that are
7 most likely to differ from one transaction to another: e.g., price, quantity, location, and
8 duration. These contracts provide standard terms and conditions that address common
9 issues, but allow parties to determine which provisions to include in a particular contract.
10 These contracts do not contain all contractual provisions required by local law.

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12 (b) Specific Pro Forma Contracts.

13 (1) Western System Power Pool Agreement.

14 (A) The Western System Power Pool ("WSPP") is a group of more than 300
15 publicly-owned and private utilities, including Alameda Municipal Power, the City of Palo Alto,
16 the City of Roseville, the Sacramento Municipal Utility District, and Silicon Valley Power, all of
17 which operate publicly-owned utilities. The City, through PUC, is a member of the WSPP.
18 The WSPP has developed an agreement that sets forth standard terms and conditions for the
19 purchase and sale of power and related products and services. A copy of the current WSPP
20 agreement is on file with the Clerk of the Board of Supervisors in File No. _____
21 and available on the Board's website, and is incorporated herein by reference as though fully
22 set forth. The WSPP agreement has been approved by the Federal Energy Regulatory
23 Commission ("FERC"). The WSPP agreement is periodically updated and modified subject
24 to the approval of FERC.

1 (B) The Board of Supervisors has previously authorized the General
2 Manager to use the WSPP agreement for transactions with a duration of up to five years and
3 waived for those transactions the requirements of section 12.F of the Administrative Code and
4 Chapter 8 of the Environment Code (formerly Administrative Code Section 12I.5(b)). See
5 Ordinance 54-92 and Ordinance 39-01, which are on file with the Clerk of the Board of
6 Supervisors in File No._____.

7 (C) Using the WSPP Agreement, PUC routinely engages in short term
8 transactions of five years or less in order to supplement power generated by Hetch Hetchy or
9 sell excess power. These purchases are subject to the PUC's risk management procedures
10 and policies, while sales of Hetch Hetchy energy are subject to the City's "water first" policy
11 and requirements of the Raker Act. See Raker Act of 1913, ch. 4, 38 Stat. 242.

12 (2) The Edison Electric Institute Master Agreement.

13 (A) The Edison Electric Institute (EEI) in collaboration with more than 80
14 member utilities, affiliated and independent power marketers, merchant power, and end-use
15 representatives, developed an agreement that sets forth standard terms and conditions for the
16 purchase and sale of power and related products and services. The EEI agreement is
17 updated as needed to reflect market changes. A copy of the current EEI agreement is on file
18 with the Clerk of the Board of Supervisors in File No. _____ and available on the
19 Board's website, and is incorporated herein by reference as though fully set forth

20 (B) In Resolution 348-12, the Board of Supervisors authorized the General
21 Manager to execute an agreement based on the EEI agreement with Shell Energy North
22 America to provide services require to launch a CCA.

23 (3) Other Pro Forma Agreements.

24 (A) Feed-in-Tariff (FIT).
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1 A FIT Program is a standard tariff for purchases of electricity from distributed
2 generation facilities, such as a roof-top solar photovoltaic systems. The FIT establishes
3 uniform rules for participation, standard-offer prices, and a form contract. Because the term of
4 the contract is typically 10-20 years, a FIT can incentivize the development of local renewable
5 resources by assuring project owners of a stable long-term revenue stream.

6 (B) City Standard Contracts.

7 PUC may find it beneficial and efficient to develop City-specific standard contracts for
8 the purchase and sale of power and related products and services.

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10 (c) Authorization to Use Pro Forma Contracts.

11 (1) The Board of Supervisors authorizes the use of the WSPP agreement and the
12 EEI agreement, as those agreements may be modified over time, for the PUC's purchase and
13 sale of power and related products and services, notwithstanding that the terms of those
14 agreements may deviate from the City's standard contract forms; provided that if those
15 agreements are modified in a manner that, in the judgment of the General Manager and the
16 City Attorney, materially decreases the City's rights or materially increases its liabilities, then
17 the General Manager shall seek approval from the Board of Supervisors to enter into any
18 agreement that would be subject to such approval absent the authorization granted in this
19 subsection 2(c).

20 (2) The Board of Supervisors authorizes the use of one or more pro forma contracts
21 developed by PUC for the purchase and sale of power and related products and services;
22 provided that if those agreements, in the judgment of the General Manager and the City
23 Attorney, materially decrease the City's rights or materially increase its liabilities as compared
24 to the forms of the WSPP agreement and EEI agreement authorized for use by this ordinance,
25 then the General Manager shall seek approval from the Board of Supervisors to enter into any

1 agreement that would be subject to such approval absent the authorization granted in this
2 subsection 2(c).

3 (3) The Board of Supervisors authorizes the use of a pro forma contract to support
4 a FIT or similar mechanism to purchase electricity from distributed generation facilities that is
5 consistent with industry standards; provided that if the contract contains terms that in the
6 judgment of the General Manager and the City Attorney materially decrease the City's rights
7 or materially increase its liabilities as compared to the forms of the WSPP agreement and EEI
8 agreement authorized for use by this ordinance, then the General Manager shall seek
9 approval from the Board of Supervisors to enter into any agreement that would be subject to
10 such approval absent the authorization granted in this subsection 2(c).

11 (4) The authority granted in this subsection 2(c) shall be limited to agreements that
12 do not exceed ten years or require expenditures by the City of ten million dollars or more.

13 (5) For purposes of the authorizations and waivers in this section, power and
14 related products and services shall include power supplies, the conveyance or transmission of
15 same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as
16 required for assuring reliable services in accordance with good utility practice and applicable
17 laws.

18 (d) Waivers of Required City Contract Provisions.

19 (1) For purchase or sale of power and related products and services, where the
20 General Manager finds and documents in writing both that the transaction represents the best
21 opportunity available to the City to obtain essential services and products or dispose of
22 excess power in a manner beneficial to the City, and that it is not feasible to add all standard
23 City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of
24 the following standard contract provisions to the extent found necessary by the General
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1 Manager, and finds such waivers to be reasonable and in the public interest, for purchases
2 made using the pro forma contracts identified in subsection 2(c) above:

3 (A) Review of the City's support of the MacBride Principles (Admin. Code
4 Chapter 12F);

5 (B) Increased participation by small and micro local businesses in City
6 contracts (Admin. Code Chapter 14B);

7 (C) The competitive bidding requirement (Admin. Code Section 21.1);

8 (D) First source hiring requirements (Admin. Code Chapter 83); and

9 (E) The tropical hardwood and virgin redwood ban (Environ. Code Chapter
10 8).

11 (2) For purchase or sale of power and related products and services, where the
12 General Manager finds and documents in writing both that the agreement represents the best
13 opportunity available to the City to obtain essential services and products or dispose of
14 excess power in a manner beneficial to the City, and that it is not feasible to add all standard
15 City contract provisions to the agreement, the Board of Supervisors waives the requirement
16 to include in the agreement references to the following City Code provisions to the extent
17 found necessary by the General Manager and finds such waivers to be reasonable and in the
18 public interest for transactions using the pro forma contracts identified in subsection 2(c)
19 above:

20 (A) Public access to meeting and records for non-profit organizations (Admin.
21 Code Section 12L.2);

22 (B) Sweatfree Contracting (Admin. Code Section 12U.4);

23 (C) Food service waste reduction (Environ. Code Section 1605).
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1 (3) The waivers specified in subsection 2(d) shall apply only to procurement
2 contracts using the pro forma contracts referenced in subsection 2(c) above, which include
3 language requiring compliance with all applicable federal, state, and local laws.
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5 **Section 3.** Authorization Pursuant to Charter Section 9.118(b) for Purchases of
6 Renewable and Greenhouse-Gas-Free Energy.

7 (a) Background.

8 (1) PUC anticipates it will need at least 30 megawatts of renewable energy for the
9 first phase of CCA service. Under the new program design, PUC will manage the supply
10 portfolio for CCA customers, rather than contracting with a third party to purchase the energy
11 needed for the program. This approach will be more cost-effective than paying a third party to
12 enter into and manage contracts, but it will require PUC to negotiate and manage many
13 contracts.

14 (2) PUC anticipates issuing competitive solicitations for renewable energy supplies
15 and related services. It expects to enter into contracts of varying terms (up to 25 years) with
16 multiple sellers for a variety of resource types including solar, wind, and geothermal. This
17 approach will facilitate diversity of sellers and resource types while also reducing the risk of
18 failure that would be present in relying on a single entity for all energy supply. Long term
19 contracts of up to 25 years also encourage the development of local resources by limiting
20 development risk and providing revenue certainty.

21 (3) This new approach requires negotiating a number of contracts in a short time
22 period in order to meet the aggressive implementation schedule established for the program.
23 The ability to enter into agreements quickly will also allow PUC to capture attractive pricing
24 and finalize important terms in a time frame that is expected in commercial transactions.
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1 (4) PUC's energy needs for serving the customers of its municipal utility are met
2 almost entirely by Hetch Hetchy supplies. But there may be limited circumstances where
3 purchases of renewable or greenhouse-gas-free supplies will be needed to ensure operations
4 consistent with good utility practices or to comply with legal requirements. The ability to make
5 these purchases in a timely manner will enable PUC to ensure the best prices and terms for
6 its municipal utility energy supply.

7
8 (b) Authorizations.

9 (1) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
10 authorizes the General Manager to purchase renewable and greenhouse-gas-free energy
11 supplies from facilities in California using contracts with terms in excess of ten years or
12 requiring expenditures of ten million dollars or more including amendments to such
13 agreements with an impact of greater than \$500,000, so long as the contract term, including
14 any amendments, does not exceed 25 years or require expenditures in excess of five million
15 per year or \$125 million over the life of the contract, and further provided that such contracts
16 are procured through a competitive process and approved by the PUC acting through its
17 Commission at a public meeting.

18 (2) Waivers. For such purchases of renewable and greenhouse-gas-free energy
19 supplies and capacity pursuant to the authority delegated in subsection 3(b)(1) that use the
20 pro forma standard agreements described in subsection 2(c) above, the Board of Supervisors
21 authorizes the waivers set forth in section 2(d) above.

22 (3) Contracts authorized under this subsection 3(b) for CCA shall be subject to a
23 maximum aggregate limit of \$500 million. PUC shall annually report to the Board of
24 Supervisors the duration, product purchased and cost of contracts entered into pursuant to
25 this section 3(b).

1 (4) The cost of procurement contracts entered into under this section 3(b) for the
2 City's municipal electric utility and CCA program shall be subject to the PUC's existing budget
3 and appropriation process.

4 (5) For purposes of the authorizations and waivers in this section 3(b), power and
5 related products and services shall include power supplies, the conveyance or transmission of
6 same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as
7 required for assuring reliable services in accordance with good utility practice and applicable
8 laws.

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10 **Section 4. Severability.**

11 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
12 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
13 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
14 remaining portions or applications of the ordinance. The Board of Supervisors hereby
15 declares that it would have passed this ordinance and each and every section, subsection,
16 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to
17 whether any other portion of this ordinance or application thereof would be subsequently
18 declared invalid or unconstitutional.

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20 **Section 5. Effective Date.** This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor's veto of the ordinance.

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2 APPROVED AS TO FORM:
3 DENNIS J. HERRERA, City Attorney

4 By: _____
5 THERESA L. MUELLER
6 Deputy City Attorney
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