

FILE NO. 151123

ORDINANCE NO.

1 [Purchase and Sale of Electricity and Related Products and Services for CleanPowerSF - San
2 Francisco Public Utilities Commission]

3 **Ordinance conditionally authorizing the San Francisco Public Utilities Commission**
4 **(SFPUC) to enter into one or more agreements requiring expenditures of \$10,000,000 or**
5 **more for electric power and related products and services to launch the City's**
6 **community choice aggregation program, CleanPowerSF, and authorizing the General**
7 **Manager of the SFPUC to deviate from certain otherwise applicable requirements of**
8 **City law in such agreements.**

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 *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough 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. Findings.

18 **San Francisco Community Choice Aggregation Program**

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

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

1 (c) The Public Utilities Commission (SFPUC) has developed a CCA program called
2 CleanPowerSF. On May 12, 2015, in SFPUC Resolution 15-0112, on file with the Clerk of the
3 Supervisors in File No. 151123, the SFPUC approved initial not-to-exceed rates and a rate-
4 setting methodology for CleanPowerSF.

5 (d) In May 2015, the City enacted Ordinance No. 75-15. Ordinance No. 75-15
6 authorized the General Manager of the SFPUC to use certain pro forma contracts, such as
7 the Western System Power Pool (WSPP) agreement and the Edison Electric Institute (EEI)
8 agreement to purchase electricity and authorized the General Manager to deviate from certain
9 requirements under City law in such contracts. That ordinance also authorized the SFPUC
10 within specified parameters to approve agreements with terms in excess of 10 years or
11 requiring expenditures of \$10,000,000 or more, for renewable and greenhouse-gas-free
12 energy supplies from facilities in California.

13 **SFPUC Competitive Processes for Power and Related Products to Launch**
14 **CleanPowerSF, Short Listing of Bidders and Approval of Contract Negotiations**

15 (e) On August 11, 2015, the SFPUC issued a Request for Offers (RFO) for power
16 supplies to launch CleanPowerSF. The RFO requested bids for energy to support the first
17 phase of CleanPowerSF that would initially be 30 to 50 megawatts (MW).

18 (f) The RFO sought proposals for three types of products: firmed and shaped
19 renewable and conventional energy with a term of three to five years (Bid Option 1); firmed
20 and shaped or as available renewable energy with a term of one to 25 years (Bid Option 2);
21 and resource adequacy capacity (RA Capacity).

22 (g) The SFPUC received six bids from respondents offering Bid Option 1 products;
23 52 bids from respondents offering Bid Option 2 products; and six bids from respondents
24 offering RA Capacity. SFPUC staff reviewed the bids to ensure their compliance with the
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1 minimum bid requirements, and an evaluation team reviewed the bids against the RFO
2 evaluation criteria.

3 (h) The evaluation team recommended the following respondents for further
4 consideration and negotiations:

5 (1) for Bid Option 1 products: Calpine Energy Services; L.P., Constellation;
6 and Morgan Stanley;

7 (2) for Bid Option 2 products: Calpine Energy Services, L.P.; E.ON; EDF
8 Renewable Development, LLC; First Solar; FTP Power LLC; dba Sustainable Power Group
9 (sPower); Iberdrola Renewables; Republic Services of Sonoma County, Inc.; 8minutenergy;
10 Centaurus Renewable Energy LLC/Clenera, LLC; and

11 (3) for RA Capacity: Calpine Energy Service, L.P.; Constellation; and EWP
12 Renewable Development Corporation.

13 (i) On October 27, 2015, in SFPUC Resolution 15-0222, on file with the Clerk of the
14 Board of Supervisors in File No. 151123, the SFPUC approved the pool of qualified
15 respondents recommended by the evaluation team, authorized the General Manager to
16 negotiate energy supply contracts with one or more of the respondents, and authorized the
17 General Manager to execute energy supply contracts with one or more of the qualified
18 respondents subject to specified conditions. The SFPUC authorized the General Manager to
19 submit the contracts to the Board of Supervisors for its review, if required.

20 (j) SFPUC Resolution 15-0222 imposed the following conditions, among others:

21 (1) contract pricing must be consistent with the rate setting priorities set forth
22 in SFPUC Resolution 15-0112;

23 (2) contractors must maintain an investment grade credit rating, or provide
24 equivalent credit support during the duration of the contract;

25 (3) contracts for Bid Option 1 products may not exceed five years;

- 1 (4) contracts for Bid Option 2 products may not exceed 25 years;
2 (5) contracts for RA Capacity may not exceed five years; and
3 (6) the total cost of all CleanPowerSF energy supply contracts entered into
4 pursuant to SFPUC Resolution 15-0222 may not exceed \$365 million a year.

5 (k) SFPUC Resolution 15-0222 also provides:

6 (1) The SFPUC intends to review the expected costs of CCA service and
7 consider authorizing the General Manager to finalize the schedule of rates and charges for the
8 initial offering, prior to commencement of the opt-out process;

9 (2) The contracts will not be effective until the SFPUC has reviewed the
10 CleanPowerSF business plan and risk assessment and adopted business practice policies for
11 CleanPowerSF;

12 (3) The General Manager will report to the SFPUC on the final schedule of
13 rates and charges for the initial offering, prior to commencement of the opt-out process; and

14 (4) Before making any future decisions to construct or cause the construction
15 of specific renewable energy projects subject to the California Environmental Quality Act
16 (CEQA), the SFPUC will consider any environmental review documents prepared by the City
17 or another lead agency in compliance with CEQA and, if it approves such projects, the
18 SFPUC will make or adopt any required CEQA findings as part of such approval actions.

19 (l) If the City defaults or elects to terminate an agreement, the SFPUC may be
20 required to make termination payments under Bid Option 1 product contracts, and such
21 termination payments could be in the tens of millions of dollars.

22 (m) In order to secure this potential exposure the SFPUC issued a request for
23 proposals in August 2015 to obtain an irrevocable letter of credit to secure such termination
24 payments.

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1 (n) After a review of responsive proposals from qualified commercial banks the
2 SFPUC determined to negotiate the terms of a letter of credit with JPMorgan Chase Bank,
3 National Association.

4 **Need for Further Contracting Authority for Bid Option 1 Products.**

5 (o) Based on its review of the competitive process responses and program needs,
6 the SFPUC in its expert judgment has determined that in order to obtain the best service for
7 the best price, it may require the ability to enter into contracts for Bid Option 1 products and
8 related letters of credit that exceed \$10,000,000.

9 Section 2. Authorizations.

10 (a) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
11 hereby authorizes the General Manager to ~~(i)~~ enter into no more than one agreements per
12 bidder for Bid Option 1 products with one or more of the three bidders specified in SFPUC
13 Resolution 15-0222 (Calpine Energy Services, L.P., Constellation, and Morgan Stanley),
14 requiring expenditures of \$10,000,000 or more, including amendments to such contracts with
15 an impact of greater than \$500,000, provided that the total aggregate cost of any such
16 agreement(s) authorized by this Section 2(a) may not exceed \$30 million a year.

17 (b) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
18 hereby authorizes the General Manager to and ~~(ii)~~ enter into one or more credit agreements
19 with JPMorgan Chase Bank for one or more letters of credit to secure termination payments
20 under any contract for Bid Option 1 products, ~~in either case~~ requiring expenditures of
21 \$10,000,000 or more, including amendments to such contracts with an impact of greater than
22 \$500,000, provided that the total aggregate value of such letter(s) of credit authorized by this
23 Section 2(b) may not exceed \$40 million.

24 ~~(b)(c)~~ The Board of Supervisors hereby extends to contracts authorized pursuant to
25 Section 2(a)~~(i)~~ above the authorization to use pro forma contracts set forth in Section 2(c) of

1 Ordinance No. 75-15, and the waivers of required City Contracting Provisions set forth in
2 Section 2(d) of Ordinance No. 75-15.

3 ~~(e)~~(d) The authorization in Section 2(a)~~(i)~~ and authorization and waivers in Section
4 2(~~cb~~) above apply only to contracts authorized by SFPUC Resolution 15-0222 that meet all of
5 the requirements set forth in SFPUC Resolution 15-0222. The authorization in Section
6 2(~~ba~~)~~(ii)~~ applies only for letters of credit to secure termination payments in contracts
7 authorized by SFPUC Resolution 15-0222 that meet all of the requirements set forth in
8 SFPUC Resolution 15-0222.

9 ~~(d)~~(e) The authorizations in Sections 2(a) and 2(b) and the authorization and waivers
10 in Section 2(~~cb~~) are subject to all other requirements of Ordinance No. 75-15.

11 ~~(e)~~(f) The cost of procurement contracts entered into under Section 2 shall be subject
12 to the Charter budget and fiscal provisions.

13 (g) The SFPUC shall submit annual reports to the Board of Supervisors that include
14 annual program costs, the rates charged by the SFPUC to CleanPowerSF customers to
15 recover the costs, and a comparison of those CleanPowerSF rates to PG&E rates.

16 (h) This Ordinance adds to but does not otherwise modify the authority granted in
17 Ordinance No. 75-15.

18 Section 3. Effective Date.

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

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

3 By: _____
4 JEANNE M. SOLE
5 Deputy City Attorney

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