

File No. 180708

Committee Item No. A

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

### COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget & Finance Committee

Date September 6, 2018

Board of Supervisors Meeting

Date \_\_\_\_\_

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Completed by: Linda Wong

Date August 27, 2018

Completed by: Linda Wong

Date \_\_\_\_\_

1 [Authorizing Agreements - Binding Arbitration for Purchase of Electricity and Related Products  
2 - Public Utilities Commission - Total Costs of \$13,762,490]

3 **Ordinance delegating authority to the General Manager of the Public Utilities**  
4 **Commission to enter into agreements requiring binding arbitration for purchase of**  
5 **electricity and related products within certain parameters and where necessary to meet**  
6 **legal requirements; and retroactively authorizing three agreements for CleanPowerSF**  
7 **with Pacific Gas & Electric Company requiring binding arbitration, with a combined**  
8 **term of two years and five months from August 2018, through December 2020, and total**  
9 **costs of \$13,762,490 for purchase of electricity-related products.**

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

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

18 **Section 1. Background.**

19 (a) For the last 100 years, the Public Utilities Commission (PUC) has operated a  
20 municipal electric utility providing service to City agencies and other customers using  
21 greenhouse-gas-free energy produced by the Hetch Hetchy system. The PUC supplements  
22 the energy produced by Hetch Hetchy and other City-owned facilities with purchases of  
23 electricity and related products to satisfy the energy demand of its customers and meet legal  
24 requirements.

25 (b) In May 2016, the PUC launched a Community Choice Aggregation (CCA) program  
called CleanPowerSF to provide San Francisco residents and businesses the option

1 to receive cleaner, more sustainable electricity at rates comparable to Pacific Gas & Electric  
2 Company's (PG&E) rates. CleanPowerSF uses clean and renewable energy purchased from  
3 various facilities, including energy from Hetch Hetchy.

4  
5 **Section 2. Pacific Gas and Electric Company Agreements; Retroactive**  
6 **Authorization.**

7 (a) State law requires entities that provide electric service to customers, including  
8 CleanPowerSF and the City's municipal electric utility operated by PUC, to meet certain  
9 requirements such as those intended to ensure reliable service. One such requirement is for  
10 Resource Adequacy, an electricity-related product that ensures sufficient electric generation  
11 resources are available to meet unusually high levels of demand.

12 (b) CleanPowerSF has issued competitive solicitations for Resource Adequacy  
13 supplies and has participated in PG&E's solicitations to sell such supplies. The PUC has  
14 executed agreements with several suppliers, but must also make purchases from PG&E to  
15 procure sufficient supplies for CleanPowerSF for 2018-2020.

16 (c) To timely comply with state law requirements, the PUC has executed the  
17 following three agreements with PG&E: one for August through December 2018 for  
18 \$3,411,740; one for September through December 2018 for \$504,000; and one for January  
19 2019 through December 2020 for \$ 9,846,750. These agreements use the Edison Electric  
20 Institute form agreement authorized by Ordinance No. 75-15; that form agreement is already  
21 on file with the Clerk of the Board of Supervisors in File No. 150408.

22 (d) PG&E requires a three-step dispute resolution process that includes negotiation,  
23 mediation, and binding arbitration in accordance with the JAMS Commercial Arbitration Rules.

24 (e) The Board of Supervisors hereby authorizes retroactively the three PG&E  
25 agreements, described in subsection (c) of this Section 2, with binding arbitration provisions.

1           **Section 3. Limited Delegation of Authority to Enter Into Certain Contracts**  
2 **Requiring Binding Arbitration.**

3           (a) State law requires entities that provide electricity service to customers to  
4 demonstrate compliance with rules to ensure reliable service, meet renewable energy  
5 standards, and achieve other goals. These rules apply to the City's municipal electric utility  
6 and CleanPowerSF.

7           (b) The Board of Supervisors has previously granted the PUC additional flexibility in  
8 contracting to ensure it can secure electricity products needed for operating CleanPowerSF  
9 and its municipal electric utility. See, e.g., Ordinance Nos. 75-15, 223-15, and 8-18.

10           (c) It is reasonable and in the public interest to allow the General Manager of the  
11 PUC to agree to binding arbitration in certain limited circumstances, without Board of  
12 Supervisors approval. Accordingly, the Board hereby delegates authority to the General  
13 Manager of the PUC to enter into agreements that require binding arbitration, provided that  
14 the agreement meets all of the following conditions:

- 15                     1. The agreement is to purchase electricity or an electricity-related product  
16 such as, by way of illustration but not limitation, Resource Adequacy;
- 17                     2. The purchase is necessary to meet a legal requirement;
- 18                     3. No other purchase that would meet the legal requirement and does not  
19 require binding arbitration is available; and
- 20                     4. The agreement would not otherwise require Board of Supervisors  
21 approval.

22           (d) The General Manager of the PUC shall notify the Board of Supervisors in writing  
23 of any agreements executed under the authority granted in subsection (c) of this Section 3,  
24 and shall provide a copy of the agreement along with the notice.

25

1           **Section 4. Effective Date; Retroactivity.**

2           (a)     This ordinance shall become effective 30 days after enactment. Enactment  
3 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or  
4 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors  
5 overrides the Mayor's veto of the ordinance.

6           (b)     Upon the effective date of this ordinance, Section 2 of this ordinance shall be  
7 retroactive to May 29, 2018.

8  
9 APPROVED AS TO FORM:  
10 DENNIS J. HERRERA, City Attorney

11 By:   
12       THERESA L. MUELLER  
13       Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Authorizing Agreements - Binding Arbitration for Purchase of Electricity and Related Products - Public Utilities Commission - Total Costs of \$13,762,490]

**Ordinance delegating authority to the General Manager of the Public Utilities Commission to enter into agreements requiring binding arbitration for purchase of electricity and related products within certain parameters and where necessary to meet legal requirements; and retroactively authorizing three agreements for CleanPowerSF with Pacific Gas & Electric Company requiring binding arbitration, with a combined term of two years and five months from August 2018, through December 2020, and total costs of \$13,762,490 for purchase of electricity-related products.**

Existing Law

Binding arbitration clauses in contracts require Board of Supervisors approval.

Amendments to Current Law

None.

Background Information

Settlements of claims and lawsuits require Board of Supervisors approval. For this reason, Board of Supervisors approval also is required before any dispute is submitted to a binding dispute resolution process, including entering a contract that requires a binding dispute resolution process such as arbitration.

The Board of Supervisors has delegated authority to other City officials to resolve certain types of claims and disputes, specified in Article II of the Administrative Code beginning with Section 10.20-1.

In this ordinance, the Board of Supervisors would delegate to the General Manager of the Public Utilities Commission authority to enter certain agreements that require binding arbitration without seeking Board approval. The delegation would apply only to agreements that meet the four conditions specified in section 3(c) of the ordinance.

This ordinance would also approve retroactively three contracts with binding arbitration provisions.

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# San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor  
San Francisco, CA 94102  
T 415.554.3155  
F 415.554.3161  
TTY 415.554.3488

**TO:** Angela Calvillo, Clerk of the Board  
**FROM:** Christopher Whitmore, Policy and Government Affairs  
**DATE:** June 25, 2018  
**SUBJECT:** Ordinance Authorizing Agreements with Binding Arbitration for Purchase of Electricity and Related Products


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Attached please find an ordinance delegating authority to the General Manager of the Public Utilities Commission to enter into agreements requiring binding arbitration for purchase of electricity and related products within certain parameters and where necessary to meet legal requirements; and retroactively authorizing three agreements for CleanPowerSF with Pacific Gas & Electric Company requiring binding arbitration, with a combined term of two years and five months (August 2018 – December 2020) and total costs of \$13,762,490 for purchase of electricity-related products.

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Resolution
2. Legislative Digest

Please contact Christopher Whitmore at 415-934-3906 if you need any additional information on these items.

BY   
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RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

**Mark Farrell**  
Mayor

**Ike Kwon**  
President

**Vince Courtney**  
Vice President

**Ann Moller Caen**  
Commissioner

**Francesca Vietor**  
Commissioner

**Anson Moran**  
Commissioner

**Harlan L. Kelly, Jr.**  
General Manager

**OUR MISSION:** To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



