

[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.

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

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

(a) Findings.

(1) The Power Enterprise ("Power Enterprise") of the Public Utilities Commission ("PUC") operates a municipal utility, Hetch Hetchy Power, and a community choice aggregation ("CCA") program, CleanPowerSF. Both Hetch Hetchy Power and 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 ~~two~~ 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~~

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

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

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

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

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

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

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

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

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

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

_____ ~~(6))(12)~~ In order for CleanPowerSF and Hetch Hetchy Power to meet State law requirements for RA, defined as electricity-related products that ensure sufficient electric generation resources are available to meet unusually high levels of demand, ~~and~~ the Renewable Portfolio Standard ("RPS"), the state's program for continuously increasing 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. 241070, 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 (c). 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);

(4) Consideration of criminal history in hiring (Lab. and Emp. Code Article 142);
(5) Consideration of salary history in hiring (Lab. and Emp. Code Article 141);
~~(6) Prohibition on contracting in certain states (Admin. Code Section 12X);~~
~~————(7) (6) First source hiring (Admin. Code Chapter 83);~~
~~————(8) (7) Competitive bidding requirements (Admin. Code Section 21.1); and~~
~~————(9) (8) Tropical hardwood and virgin redwood ban (Environ. Code Chapter 8).~~
~~————(10) (9) Minimum Compensation Ordinance (Lab. and Emp. Code Article 111);~~
~~(11) (10) Health Care Accountability Ordinance (Lab. and Emp. Code Article~~
121);
~~————(12) (11) Public access to meetings and records of non-profit organizations~~
(Admin. Code Section 12L.2);
~~————(13) (12) Sweatfree contracting (Lab. and Emp. Code Article 151); and~~
~~————(14) (13) Food service waste reduction (Environ. Code Section Chapter 16).~~
~~(g) **Delegation of Approval of Binding Arbitration for RA and/or RPS Agreements with**~~
~~**IOUs.** The Board of Supervisors finds it is reasonable and in the public interest to delegate to the~~
~~General Manager of the PUC the authority to enter into contracts for RA and/or RPS from California~~
~~IOU's with binding arbitration provisions, and hereby delegates said authority to the General Manager~~
~~of the PUC.~~

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

1 (i) **Reporting.** *The PUC shall quarterly report to the Board of Supervisors the duration,*
2 *product purchased, and cost of contracts entered into pursuant to subsection (c). The PUC shall also*
3 *annually report to the Board the program costs, the rates charged to CleanPowerSF customers to*
4 *recover those costs, and a comparison of those rates to PG&E rates.*

5 ~~(j)~~(i) **Projects on City Property.** The delegation, authorizations, and waivers in
6 Section 21.43 shall not apply to projects being constructed on City property.

7 ~~(j)~~(i)(k) **Sunset Date.** This Section 21.43 shall expire by operation of law on July 1,
8 ~~2030~~2025. Upon expiration of this Section, the City Attorney is authorized to remove this
9 Section from the Administrative Code.

10 Section 2. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.

14 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the "Note" that appears under
19 the official title of the ordinance.

20
21 APPROVED AS TO FORM:
22 DAVID CHIU, City Attorney

23 By: /s/
24 MARGARITA GUTIERREZ
25 Deputy City Attorney

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City and County of San Francisco
Tails
Ordinance

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

File Number: 241070

Date Passed: March 04, 2025

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.

February 12, 2025 Budget and Finance Committee - RECOMMENDED

February 25, 2025 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Chan, Chen, Dorsey, Engardio, Fielder, Mahmood, Mandelman, Melgar, Sauter, Sherrill and Walton

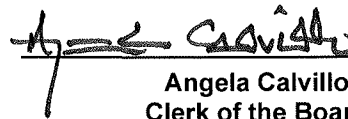
March 04, 2025 Board of Supervisors - FINALLY PASSED


Ayes: 10 - Chan, Chen, Dorsey, Engardio, Mahmood, Mandelman, Melgar, Sauter, Sherrill and Walton

Excused: 1 - Fielder

File No. 241070

I hereby certify that the foregoing
Ordinance was **FINALLY PASSED** on
3/4/2025 by the Board of Supervisors of the
City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Daniel Lurie
Mayor

3.14.25
Date Approved