



## City Council Staff Report

**From: City Manager**

**Report Type: CONSENT CALENDAR**

**Lead Department: Utilities**

**Meeting Date: March 18, 2024**

Staff Report: 2401-2549

### **TITLE**

Adoption of a Resolution Approving an Edison Electric Institute Master Power Purchase and Sale Agreement With Silicon Valley Clean Energy Authority and Delegating Authority to the City Manager to Transact Under the Master Agreement for Electricity-Related Commodities and Services CEQA Status: Not a project under CEQA Guidelines 15378(b)(5)

### **RECOMMENDATION**

Staff recommends that Council adopt a Resolution (Attachment A):

- (a) Approving the Edison Electric Institute Master Power Purchase and Sale Agreement with Silicon Valley Clean Energy Authority (SVCE) (Exhibit A to Attachment A); and
- (b) Delegating authority to the City Manager or their designee, the Director of Utilities, to transact under the Master Agreement for electricity-related commodities and services subject to the following limitations:
  - a. The date for delivery of the electricity products for each transaction shall not exceed 36 months from the date the transaction is executed;
  - b. The delivery date for any transaction shall not extend beyond December 2027;
  - c. The maximum aggregate transaction limit under each Master Agreement shall be \$25 million;
  - d. All transactions shall be subject to the Palo Alto Municipal Code; and
  - e. All transactions shall be subject to the City's Energy Risk Management Policies, Guidelines, and Procedures.

### **EXECUTIVE SUMMARY**

An active set of creditworthy counterparties is essential to ensure that the City can continue to meet its electric supply portfolio planning objectives, internal risk management controls, and external operational and regulatory requirements. Approval of the recommended electric master agreement with SVCE provides the City with an additional electric supplier with which to transact in a timely and competitive manner ensuring that the City's objectives are met efficiently.

Executing the master agreement does not commit the City to any transactions with SVCE, but it allows for transactions to be executed efficiently in the future. The recommended master agreement was negotiated under terms and conditions acceptable to the City and has been reviewed and approved by the City Attorney's Office and the City's Energy Risk Manager.

## **BACKGROUND**

Palo Alto Municipal Code (PAMC) Section 2.30.340 (Contracts for Wholesale Utility Commodities) allows for the use of Master Agreements to buy and/or sell electricity, gas, and related services through various preapproved ("enabled") suppliers. Contracts or transactions executed under the Council-approved Master Agreements must be done in accordance with the City's Energy Risk Management Policy, Guidelines, and Procedures.

Historically, the process for entering into Master Agreements with wholesale utility suppliers has been to: issue a request for proposals (RFP); select multiple suppliers; negotiate terms and conditions with the potential suppliers; and seek Council approval of and authority to transact under the Master Agreements. This process took upwards of one year, and was how the City established its current set of Electric Master Agreements ([Resolution 9324](#)<sup>1</sup>). This set of agreements, which were all approved by Council in March 2013, includes:

1. BP Energy Company
2. Cargill Power Markets, LLC
3. Constellation Energy Generation, LLC (formerly Exelon Generation Company, LLC)
4. Avangrid Renewables, LLC (formerly Iberdrola Renewables, LLC)
5. NextEra Energy Marketing, LLC
6. PacifiCorp
7. Powerex Corp.
8. Shell Energy North America (US), L.P.
9. Turlock Irrigation District

However, in August 2016 Council streamlined this process, approving [Ordinance No 5387](#)<sup>2</sup>, which modified the Municipal Code to explicitly allow for Council-approved standard form master agreements. The ordinance modified PAMC Section 2.30.140, clarifying the process to enable new suppliers by specifically allowing the use of a standard form agreement that contains the City's minimum contract terms and conditions. Negotiations could then be carried out with qualified suppliers on an ongoing basis without the need to issue successive formal requests for proposals. Under this process, execution of, and delegation of authority to transact under, standard form master agreements with specific suppliers remains subject to Council approval before any transactions may be completed.

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<sup>1</sup> Resolution 9324: <https://www.cityofpaloalto.org/files/assets/public/v/1/city-clerk/resolutions/reso-9324.pdf>

<sup>2</sup> Ordinance 5387: <https://www.cityofpaloalto.org/files/assets/public/v/1/city-clerk/ordinances/ord-5387.pdf>.

In December 2016 Council approved a standard form electric master agreement ([Resolution 9652](#)<sup>3</sup>), based on the year 2000 version of the Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement. This standard form agreement has been made available to any wholesale utility supplier on the City's website since that time, although to date this has not yielded any new enabled suppliers.

## **ANALYSIS**

In 2023 Palo Alto Utilities reached out to SVCE about the possibility of entering into an electric master agreement with the City. SVCE is a non-profit, community-owned agency (commonly known as a Community Choice Aggregator, or CCA) that provides clean electricity to more than 270,000 residential and business customers in 13 Santa Clara County communities. SVCE was formed in 2016 by 12 South Bay communities to source clean electricity at lower rates than PG&E, and recently had its investment-grade issuer credit ratings affirmed by both Standard & Poor's (A) and Moody's Investors Services (Baa1).

Over the course of 2023 Utilities staff worked with the City Attorney's Office to negotiate master agreement language with SVCE staff and attorneys. The resulting agreement (Attachment A) meets the City's "must-have" contract provisions<sup>4</sup>, has been approved as to form by the City Attorney's Office, and has also been approved by the City's Energy Risk Manager.

Consistent with the City's other electric master agreements, the Energy Risk Manager recommends that transactions executed under the master agreement with SVCE be subject to the following limitations:

- a. The date for delivery of the electricity products for each transaction shall not exceed 36 months from the date the transaction is executed;
- b. The delivery date for any transaction shall not extend beyond December 2027;
- c. The maximum aggregate transaction limit under each Master Agreement shall be \$25 million;
- d. All transactions shall be subject to the Palo Alto Municipal Code; and

In addition, all transactions shall be subject to the City's Energy Risk Management Policies, Guidelines, and Procedures. Staff will seek Council approval prior to execution of any transaction outside of the above limitations.

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<sup>3</sup> Resolution 9652: <https://www.cityofpaloalto.org/files/assets/public/v/1/city-clerk/resolutions/reso-9652.pdf>.

<sup>4</sup> PAMC Section 2.30.340(c) requires that utilities contracts incorporate the following contract terms and conditions: (1) governing law shall be the laws of the State of California; (2) choice of venue shall be the County of Santa Clara; and (3) a counterparty shall obtain and maintain during the term of the contract the minimum credit rating established as of the date of award of contract of not less than a BBB- credit rating established by Standard & Poor's and a Baa3 credit rating established by Moody's Investors Services.

**FISCAL/RESOURCE IMPACT**

Approval of the electric master agreement with SVCE will help ensure that the City continues to have an active set of suppliers in the future so that it can continue to competitively and efficiently meet its electric supply portfolio objectives. Further, approval of this electric master agreement does not commit the City to any transactions with SVCE; therefore, this action will not result in any direct fiscal impact to the City. Costs and revenues associated with future transactions under the recommended master agreement will be accounted for in the Electric Utility Fund budget.

**STAKEHOLDER ENGAGEMENT**

Utilities staff has coordinated with key staff from departments involved in the negotiation and/or implementation of electric master agreements, including the Administrative Services Department and the City Attorney's Office.

**ENVIRONMENTAL REVIEW**

The City Council's approval of this electric master agreement does not meet the definition of a project under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065 and CEQA Guidelines 15378(b)(5) because this activity would not result in a reasonably foreseeable direct or indirect change in the environment.

**ATTACHMENTS**

Attachment A: Resolution Approving the EEI Master Purchase and Sale Agreement with Silicon Valley Clean Energy Authority

**APPROVED BY:**

Dean Batchelor, Director Utilities

Staff: James Stack, PhD., Sr. Resource Planner