



# Memorandum

**TO:** TRANSPORTATION AND  
ENVIRONMENT COMMITTEE

**FROM:** Lori Mitchell

**SUBJECT: SEE BELOW**

**DATE:** September 15, 2021

Approved

Date

**09/23/21**

**SUBJECT: LABOR POLICIES AND COMMUNITY BENEFITS BEST PRACTICES FOR LONG-TERM RENEWABLE ENERGY CONTRACTS REPORT**

## RECOMMENDATION

Accept this report on labor policies and community benefits best practices for San José Clean Energy's (SJCE) long-term renewable energy contracts.

## OUTCOME

The report on labor policies and community benefits best practices for long-term renewable energy contracts will be accepted at the October 4, 2021 Transportation and Environment Committee meeting.

## BACKGROUND

San José City Council has authorized SJCE to procure power products, including renewable power pursuant to long term contracts in a series of resolutions, set forth in the table below:

Resolution Number	Date Adopted	Date Range for Procurement	Total Not to Exceed Amount
79109	6/4/19	2020-2043	\$1,080,000,000
79692	8/25/20	2024-2043	\$1,500,000,000
80091	6/15/21	2021-2043	\$2,671,700,000

The California Renewables Portfolio Standard Program,<sup>1</sup> requires that SJCE procure at least the following percentages of the power it sells to its customers from renewable resources: 44 percent by December 31, 2024, 52 percent by December 31, 2027, and 60 percent by December

<sup>1</sup> Clean Energy and Pollution Reduction Act (de Leon, Chapter 547, Statutes of 2015) (SB 350) and California Renewables Portfolio Standard Program: emissions of greenhouse gases (de Leon, Chapter 312, Statutes of 2018) (SB 100)

31, 2030. The law requires that beginning January 1, 2021, at least 65 percent of the renewable power must be bought from contracts with a term of at least 10 years.

The Climate Smart San José plan also states the following:

- SJCE will offer at least one power mix option at 10 percent or more renewables than PG&E.
- SJCE will offer at least one power mix option that is 100 percent renewable.
- SJCE's initial resource mix will include a proportion of renewable energy exceeding California's prevailing Renewables Portfolio Standard procurement mandate.
- By 2030, SJCE's base offering will be at least 60 percent renewable.

As part of the several activities that SJCE has undertaken to meet these requirements, SJCE has entered into four long-term power purchase agreements (PPAs) that will result in the construction of three solar projects and one wind project.

On June 15, 2021, SJCE sought from Council an increase in its authority to procure power products, including additional authority to execute long-term renewable power contracts that have a term of ten years or more.

During that meeting, Councilmember David Cohen requested that SJCE prepare a report to the Transportation and Environment Committee with a study for aligning SJCE standards with Peninsula Clean Energy and other Community Choice Aggregation (CCA) providers. Additionally, the Council requested the report give a cross-industry analysis to determine the prevailing labor standards within the California Community Choice Association ("CalCCA") membership. This report responds to Councilmember Cohen's request.

## **ANALYSIS**

### **City of San José Labor Policies**

The City of San José employs approximately 6250 employees, the majority of whom are represented by 11 bargaining units (unions). SJCE is a department of San José and SJCE employees are City employees. Thus, City of San José labor practices embodied in memorandums of agreement (MOAs) with applicable unions are applicable to most SJCE employees, and San José Municipal Code labor requirements are applicable to SJCE contracts.

The City of San José has three (3) major labor policies: Living Wage, Prevailing Wage, and Minimum Wage policies.

1. The City's main living wage policy is Council Policy 3-3. The policy applies to employers that contract with the City to provide services directly to the City. The policy requires such employers to pay their workers a "livable wage."
2. The City's main prevailing wage policy is set forth in Chapter 14.09 of the San José Municipal Code, which states that the City will follow State prevailing wage requirements for any City project that is a "public work." For prevailing wage purposes, a "public work" is generally defined as any construction project paid for in whole or in part with public funds. Similar to the living wage policy, this policy applies when the City is contracting for the construction of a "public work."

As noted in Chapter 14.09, a few aspects of the City's prevailing wage policy are still set forth in certain resolutions. However, these aspects of the policy are very limited and not applicable to this discussion.

3. Unlike the living and prevailing wage policies, the minimum wage policy is regulatory. It requires all employers in the City that meet certain criteria to pay their workers at least the "minimum" wage. Unlike the living and prevailing wage policies, its application does not depend on the City contracting with the employer. The City's minimum wage policy is in Chapter 4.100 of the San José Municipal Code.

The San José Office of Equality Assurance (OEA), part of the Department of Public Works, is responsible for implementing these policies and enforcement to ensure that San José businesses and City contractors and vendors pay their employees the correct wage and benefit rates.

SJCE has four long-term contracts that provide for a private developer to construct, own, and operate an energy facility. Under these PPAs, SJCE, the buyer or "oftaker" agrees to purchase the energy output, associated environmental attributes, and capacity (also known as resource adequacy) from the energy facility. Therefore, SJCE long-term renewable contracts are not public works projects. In addition, the power facilities are located where applicable renewable resources are most valuable and transmission is either in place or to be built, which in the case of SJCE's long-term PPAs is outside of the City's boundaries, and the seller will not transfer ownership of the facility to SJCE. SJCE has primarily taken this contracting approach because it allows private developers to take advantage of the Federal Investment Tax Credit and reduce the cost SJCE pays for power.

*The City's policies do not apply for the following reasons:*

- The Living Wage policy is not applicable because electricity is a product, not a service.
- The Prevailing Wage policy is not applicable because the City is not contracting for a "public works" project.
- The Minimum Wage policy is not applicable because the employer (i.e., PPA seller) is not located within the City's boundaries.

SJCE Practices

SJCE does not have a formal labor policy for its PPAs. However, SJCE encourages PPA sellers to adopt favorable labor policies and practices and to offer community benefits/workforce development funds to SJCE and the City. SJCE's PPAs all include a provision requiring use of prevailing wages, which can be (but does not have to be) demonstrated with a project labor agreement. SJCE's most recent proforma for any new PPAs includes a certification from the seller that it will not rely on equipment or resources built with forced labor.

SJCE Long-Term Power Contracts

SJCE has entered into four long-term PPAs:

PPA Seller/Project	Term	Technology	MW	Date Signed	Online Date	Location
EDPR Sonrisa	20 years	Solar + Storage	100 + 10	8/6/19	12/31/2022	Fresno, CA
Terra-Gen Edwards V	15 years	Solar	100	12/16/19	12/31/2022	Kern, CA
Terra-Gen Edwards IV (7x16)	12 years	Solar	62	4/22/20	12/31/2021	Kern, CA
Pattern Clines Corner	15 years	Wind	225	8/31/20	12/31/2021	New Mexico

*Community and Workforce Development Funds*

SJCE has negotiated community and workforce development fund contributions from entities from which it purchases electricity in all of these PPAs. ***The commitments from the agreements to date total \$870,000.*** The first round of funding, comprised of \$275,000, was directed to SJ Works, an initiative that offers students from low-income and underserved communities their first jobs to set them on a path to success. These funds will allow the placement of roughly 150 participants in internships with partner companies. SJCE is working with the Office of Economic Development to direct future funds to ensure the City maximizes the benefits of these contracts. The funds must be used in programs having a connection to energy.

*Use of Union Labor*

Staff inquired into PPA sellers' labor practices. SJCE learned that at least a portion of the electrical generation facilities under construction pursuant to the existing four PPAs involve the use of union labor as follows:

Terra-Gen has informed SJCE that it has a project labor agreement (“PLA”) in place to build Edwards IV and V. The following unions are included:

- Southern California District Council of Laborers
- Laborers Local 220
- Southwest Regional Council of Carpenters
- International Brotherhood of Electrical Workers, Local 428
- Ironworkers Local 416.

The PPA with EDPR for Sonrisa requires the use of a five-party project labor agreement, or other agreement reasonably acceptable to both parties for the primary engineering, procurement and construction (“EPC”) contract. EDPR has not selected the EPC contractor, so it has not yet executed a PLA. Likewise, the local union chapters that would be engaged in the project are not known at this early stage.

Pattern has informed SJCE that the Clines Corner wind farm in New Mexico was not constructed using union labor, but the transmission line that brings the energy into California is being built using union labor. The union labor is organized through Local Albuquerque NM IBEW 611, and the work will support 156 jobs. Wind is an important renewable resource that has a complimentary generation profile to solar. This is particularly true about New Mexico wind.

### CCA Labor Policies

California now has over 20 CCAs. SJCE identified three CCAs that have Board adopted labor and environmental policies: Peninsula Clean Energy (“PCE”), MCE Clean Energy (“MCE”), and San Diego Community Power (“SDCP”). These three CCAs are public entities formed as Joint Power Authorities (“JPAs”) whose members are local governments that include cities and counties in their respective territories.

PCE requires bidders on long-term power contracts to provide information on their labor practices. PCE’s policy states that:

*Relevant information submitted by proposers will be used to evaluate potential workforce impacts of proposed projects with the goal of promoting fair compensation, fair worker treatment, multi-trade collaboration, and support of the existing wage base in local communities where contracted projects will be located.*

MCE encourages direct use of union members from multiple trades and has an agreement with IBEW Local 302 to use union labor for solar plants built in Contra Costa County, which is part of its service territory. Neither PCE nor MCE’s policies expressly require use of union labor. Instead, PCE scores bids on whether or not they include information on labor practices and MCE may use labor practices as a tie breaker among projects with similar scores. SDCP has a policy of neutrality between union and non-union labor.

California Community Power (CCP) is a JPA formed by ten CCAs, including SJCE, to procure products and services on behalf of its members. CCP is subject to the procurement authority of its members. The structure allows the CCAs to aggregate their purchasing power to enter into agreements for energy projects that are too large for individual entities. On April 21, 2021, the CCP Board approved a labor policy for use in its ongoing Request for Proposal (RFP) for long duration storage. On September 15, 2021, the CCP Board approved use of this same policy for an RFP for firm clean resources. The policy encourages but does not require a PLA. It allocates up to 5 points out of 100 in the scoring rubric to labor practices. Moreover, for projects that do not implement a PLA, CCP requires an audit to ensure compliance with payment of prevailing wages and to evaluate use of apprenticeship programs. The CCP Board will consider a broadly applicable labor and environmental policy in the Fall of 2021.

Several CCAs without a board approved policy nonetheless request long-term power contract RFP respondents to provide information on their labor practices and efforts to support disadvantaged communities. CCAs generally encourage their suppliers to use union labor, and many include supplier contributions to community benefits/workforce development in their agreements. Flexibility allows these CCAs to balance labor considerations alongside other important factors such as project value, counterparty strength, impact on the environment and communities, etc. Also, it is a common practice for developers to use union labor and have a PLA for solar projects located in California to increase local acceptance in the permitting process.

### Regulatory Requirements

CCAs are primarily regulated by their local regulatory bodies and for state requirements by the California Public Utilities Commission (CPUC). The CPUC does not enforce labor rules but does have some workforce development-related regulations applicable to CCAs. The CPUC collects information on workforce development and training under the Renewables Portfolio Standard Program<sup>2</sup> (PU Code 913.4). The CPUC also oversees the General Order 156 Supplier Diversity Program<sup>3</sup>, which applies to CCAs as of 2020. Participating utilities must annually submit data on procurement from women, minority, disabled veterans, and LGBT business enterprises and a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises.

State Proposition 209 does not allow municipalities and government organizations, such as CCAs, to give preferences based on race, sex, or ethnicity, specifically in the areas of public employment, public contracting, and public education. However, consistent with City procurement processes, in its solicitations SJCE does award additional points for small and local businesses. Moreover, SJCE is using community investment and workforce contribution funds to benefit its disadvantaged communities.

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<sup>2</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=4.&article=11](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=4.&article=11)

<sup>3</sup> <https://www.cpuc.ca.gov/supplierdiversity>

The CalCCA is a trade association formed by member CCAs and is not a regulatory body. CalCCA has not adopted labor requirements for its members, and it has no regulatory authority to enact or enforce labor requirements for CCAs.

## **CONCLUSION**

SJCE staff have successfully negotiated favorable labor characteristics in its long-term PPAs. Various CCAs across California have formal or informal labor policies which are summarized in this memo. SJCE staff will continue to monitor this policy landscape, begin collecting project labor information in its RFPs for evaluation, and continue to work to negotiate favorable labor and workforce development terms in its PPAs.

## **EVALUATION AND FOLLOW-UP**

No additional follow up is expected.

## **CLIMATE SMART SAN JOSÉ**

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the October 4, 2021 Transportation and Environment Committee agenda.

## **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office; the Office of Employee Relations; the Office of Equality Assurance; and the City Manager's Office of Administration, Policy, and Intergovernmental Relations.

## **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

October 4, 2021

**Subject: Labor Policies and Community Benefits Best Practices for Long-Term Renewable Energy Contracts Report**

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**CEQA**

Not a project, File NO. PP17-009. Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/

LORI MITCHELL

Director, Community Energy

For questions, please contact Lori Mitchell, Director of Community Energy, at (408) 535-4880.

**Attachments**

Attachment A: Summary of Board Approved CCA Labor Policies for Power Purchase Agreements

Attachment B: PCE Inclusive and Sustainable Workforce Policy

Attachment C: MCE Sustainable Workforce and Diversity Policy

Attachment D: SDCP Inclusive and Sustainable Workforce Policy