

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING REVISIONS TO COUNCIL POLICY NO. 1-23 RELATING TO THE ENERGY RISK MANAGEMENT POLICY

WHEREAS, the City Council of the City of San José (“City”) initially adopted City Council Policy 1-23, “Energy Risk Management Policy” by City Council action on May 1, 2018 (“Policy”) pursuant to Resolution No. 78574; and

WHEREAS, the City Council desires to amend the Policy to provide the Community Energy Department the authority to efficiently procure and contract for power products, and to ensure timely collection of revenues; and

WHEREAS, the City Council will concurrently consider a proposed ordinance to amend Section 2.04.4620 of Chapter 2.04 of Title 2, and Title 26 of the San José Municipal Code;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

- A. The revisions to City Council Policy No. 1-23 entitled “Energy Risk Management Policy,” attached as Exhibit “A” are approved and shall be effective the same day as the ordinance amending the San José Municipal Code.
- B. This Resolution supersedes Resolution No. 78574.

ADOPTED this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A

City of San José, California

COUNCIL POLICY

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EFFECTIVE DATE May 1, 2018	REVISED DATE June XX, 2023	
APPROVED BY COUNCIL ACTION 5/1/2018, Item 7.1, Res. No. 78574		

1.0 PHILOSOPHY, OBJECTIVES, AND SCOPE

~~This~~The Energy Risk Management Policy (~~ERMPPolicy~~) outlines the philosophies and objectives ~~of San José related to energy risk management for the San José Clean Energy (SJCE) program. The Community Energy (SJCE) as set by the San José Department (CED) is the administrator of the SJCE program for the City Council (“Council”). of San José (City). A Risk Oversight Committee (ROC) reviews and recommends approval of~~ the Energy Risk Management Regulations (ERMR) also adopted by SJCE expands on ~~which further details~~ the roles, strategies, controls, and authorities ~~authorized in~~ under this ~~P~~policy to form a comprehensive energy risk management program. The ERMR shall be read in conjunction with this ~~ERMPPolicy. Chapter 2.04 of Title 2 and Title 26 of the San José Municipal Code, the Policy, and the ERMR shall be interpreted in descending order of precedence to the extent there is a conflict.~~

1.1 Risk Philosophy

The overall goal of this ~~ERMPPolicy~~ is to:

- ~~a. Serve SJCE’s customers’ needs subject to Council approved risk tolerance limits.~~
- ~~a~~b. Provide as much energy supply cost certainty for SJCE’s customers as possible while maintaining a least cost supply portfolio;
- ~~b~~c. Meet ~~all~~ the portfolio objectives regulatory requirements and local clean energy goals, such as renewable energy content ~~and greenhouse gas free supplies,~~ low carbon content, and adequate capacity; and
- c. Establish risk controls, contract authority limits, and procedures for the purchase and sale of power products, consistent with prudent energy risk management practices.

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~~As a city, SJCE~~ CED is in the business of generation, transmission, and procurement of ~~energy for~~ electricity to meet the ~~benefit~~ needs of ~~its~~ the SJCE program's customers. ~~SJCE's objective is to~~ CED should develop the least cost a supply portfolio to meet ~~the~~ load requirements of ~~its~~ SJCE's customers, ~~while maximizing revenues from sales of surplus energy, capacity, and other wholesale energy and transmission services (e.g. resource optimization).~~ ~~cost effectively within acceptable risks.~~ However, unlike a private-sector entity, ~~SJCE's~~ CED's primary purpose in the power supply business is to serve ~~its~~ SJCE's customers. ~~SJCE's goal is to be a cost hedger for its customers' load and, is therefore, Therefore, CED is~~ precluded by this ~~policy~~ Policy from engaging in speculative activities typical to many organizations orientated toward profit maximization ~~buying and selling.~~

~~SJCE management~~ The City Council recognizes that certain risks are incidental to normal power supply operations and hedging activities. ~~SJCE's goal is~~ CED aims to avoid unnecessary risk and ~~to~~ limit, to the extent practicable, ~~any~~ risks associated with ~~normal cost hedging~~ power procurement activities. ~~This document serves as a vehicle to describe~~ Policy further defines CED's contract and ~~define the limits~~ procurement authority for activities considered appropriate for SJCE in a normal course ~~the purchase and sale~~ of ~~business~~ power products.

1.2 Business Activities

A primary part of ~~SJCE's~~ CED's main business ~~in the operation of SJCE~~ is to ~~procure the purchase and sale of~~ power supplies, capacity, and reserves ~~products~~ to meet ~~its~~ customer load ~~and related~~ requirements. ~~The resource (capacity/energy)~~ The supply portfolio may consist of fixed and variable priced ~~supply contracts of varying lengths and~~ agreements for ~~other related supplies~~ power products of different durations (short-term, medium-term, and ~~services~~ long-term agreements) needed to ensure reliable, ~~cost-effective, and stable~~ delivery of electricity to SJCE's customers.

1.3 ~~Transacting~~ Purchase and Sale Objectives

~~SJCE's overall transacting objective is to meet the load requirements of its customers with an optimized resource supply portfolio. SJCE's objectives when transacting on behalf of its customers~~ CED's objectives for the ~~procurement~~ purchase and sale of energy and energy related supplies and ~~services~~ power products are as follows:

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- a. Meet customer load requirements, including ~~energy, capacity, and reserves~~ all necessary power products, with an optimized resource supply portfolio;
- b. Provide stable rates for SJCE's customers;
- c. Obtain ~~the best available price for~~ cost effective power ~~supply products~~ while complying with ~~the regulatory~~ requirements ~~of~~, this ~~policy~~ Policy, and other objectives established by the Council (e.g., equity, renewable energy and ~~GHG-free policy~~ carbon reduction goals);
- d. Act to limit exposure to ~~extreme~~ market system ~~changes~~ fluctuations and manage risks;
- e. Follow effective wholesale counterparty credit management procedures; and
- f. ~~Develop~~ Achieve and maintain ~~SJCE's~~ an investment grade credit rating for SJCE.

1.4 Scope of Policy

This ERMPP Policy addresses risks arising from ~~SJCE's~~ CED's participation in the ~~wholesale~~ energy markets, ~~on behalf of SJCE~~ and applies to all ~~energy of City's agreements for the purchase and energy related transactions made by SJCE.~~ sale of power products to operate the program. This ERMPP Policy does not address the following types of general property and casualty business risk: - fire, accident, and casualty; health, safety, and workers' compensation; general liability; and other such typically insurable perils. -The term "risk management," as used herein, is therefore understood to refer solely to risks related to participation in ~~wholesale~~ energy markets ~~as herein defined~~.

SJCE is exposed to three quantifiable risks: load and resource variability (volumetric), cost variability (price), and counterparty credit risk. From the perspective of risk mitigation, ~~SJCE's~~ CED's primary objective is to cover SJCE's customer load and optimize the value of ~~assets~~ power supply resources. Taking risks to arbitrage market opportunities, or risks unrelated to ~~SJCE's~~ normal power supply business activities, is not permitted.

SJCE is also exposed to regulatory and operational risks. ~~However;~~ however, these ~~exposures~~ risks are ~~not quantifiable as they affect structural change~~ difficult to quantify. As a result, these risk categories are ~~managed as separate~~ enterprise risk exposures and are not directly governed by this ERMPP Policy.

This ERMPP Policy prescribes the management organization, authority, and processes to monitor, measure, and control the risks to which SJCE is exposed in the normal course of business in accordance with sound utility practices. ~~Methodologies used to measure, monitor, and control these risks shall be~~

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~~established by the City Manager's Risk Oversight Committee (ROC), in accordance with sound utility practices as included in the ERMP.~~

1.5 Applicability

This ~~ERMP is effective immediately upon its adoption by the Council. It~~Policy applies to ~~SJCE's wholesale~~CED's power supply operations, ~~short~~purchase and ~~long-term contracting for energy, capacity~~sale of power products, credit risk management, and ~~other~~related ~~ancillary~~activities ~~undertaken by SJCE.~~

1.6 Policy Review and Amendments

~~This Policy shall be reviewed annually. Prudence is~~Amendments to the Policy ~~may be~~required in implementing all policies and procedures. Market to address ~~extraordinary market~~ and industry norms, technology and risk tolerances tend to change over time. ~~Therefore risks between annual reviews, this policy should be reviewed as needed, to make adjustments in response to changes in business objectives and/or industry norms. At a minimum this policy should be reviewed annually.~~ Amendments to this ~~ERMP shall~~Policy must be ~~done only by~~approved by Resolution of the City Council.

2.0 RISK STRATEGY & PARAMETERS

An important aspect of implementing an overall energy risk management policy is the development of related strategies to mitigate ~~all~~related risks associated with ~~energy transacting activities~~the purchase and sale of power products. The key strategies ~~of CED for the administration~~ of SJCE are outlined below.

2.1 Counterparty Risk Management

Counterparty risk is defined as the exposure to economic loss resulting from default by a party to ~~a contract (an agreement (i.e.g., a counterparty).~~ Counterparty risk affects both ~~contracts~~agreements requiring physical settlement and those specifying monetary settlement. ~~For all fixed price energy transactions, the counterparty must possess at least a BBB+ (or equivalent investment grade rating) by a nationally recognized statistical rating organization (NRSRO). SJCE~~CED staff may consider counterparties with a rating below ~~BBB- (or equivalent investment grade, rating)~~ or a counterparty without a NRSRO rating on a case-by-case basis, with the approval of the ~~ROC~~City Manager or designee.

Effective wholesale counterparty management and credit analysis is essential to mitigate the counterparty risks associated with commodity transactions in the

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energy markets. -The objective is to preserve SJCE’s capital, liquidity, and supply reliability by limiting counterparty credit risk and supplier concentration to acceptable levels. -Methodologies to achieve this objective are set forth in the ERMR.

Guaranty or security using instruments identified in the ERMR may be required to address counterparty risk. -Requirements for guaranty or security are set forth in the ERMR.

2.2 Balanced Load

~~SJCE~~ shall maintain an integrated and balanced portfolio of resources to cover ~~its~~ SJCE’s customer load with a risk framework that includes both volume and cost of the portfolio.

2.3 Minimum Coverage Requirements

~~SJCE~~ shall establish minimum coverage requirements for ~~capacity and energy as determined by the ROC and~~ outlined in the ERMR, and shall comply with legal requirements and local directives for capacity, renewable energy credits and carbon-free attributes.

2.4 Diversification of Portfolio

~~SJCE~~ shall strive to develop a resource portfolio for SJCE that includes diversification in the type of resources, ~~contract agreement~~ duration, geographic location, counterparty, pricing terms, cash reserves, and types of products.

2.5 Purchase to Cover Load Serving Obligations – ~~No~~ Speculation Prohibited

As discussed in Section 1.3, ~~SJCE’s of this Policy, CED’s~~ overall objective for energy procurement activities the purchase and sale of power products for SJCE is to cover the meet customers’ load ~~servicing obligations of its customers~~. In the course of performing these activities, ~~SJCE~~ shall not engage in activities that expose ~~its~~ SJCE’s customers to speculative transactional risks, buying and selling and shall only utilize approved transaction parameters as ~~determined by the ROC and~~ outlined in the ERMR.

2.6 Use of Derivatives ~~and Financial Transactions~~

~~Use of financial derivatives or transactions (as opposed to physical or “embedded” options)~~ CED is ~~not~~ allowed by to use derivatives in the

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administration of the SJCE program. These include transactions used to set price caps and floors, ~~or hedge against load/price volatility~~. Examples include:

- Exchange ~~traded~~ Traded or Over-the-Counter Puts and Calls;
- Electric Futures;
- Electric Options; and
- Weather Derivatives.

~~The CED is permitted to use of Congestion Revenue Rights (CRR's) is permitted by SJCE CRRs~~, and this activity is not considered ~~use of derivatives or financial transactions a derivative~~. CRR's CRRs are financial instruments acquired primarily to offset transmission congestion costs and made available through the CAISO's CRR Allocations and Auctions. ~~CRRs are acquired primarily to offset transmission congestion costs.~~

3.0 RISK CONTROLS

3.1 Control Principles

SJCECED will strive to conduct its energy risk management activities for SJCE in accordance with best practices of the energy industry, ~~but~~; implementing such practices must be ~~cost~~-justified and balanced between balance risks, costs, and benefits. ~~Processes and control systems must be in place that allow~~ SJCECED to identify, measure, monitor, control, and track ~~its~~ risk exposures. These processes and control systems shall include the following risk management control principles:

- ~~Appropriate~~ Use appropriate segregation of duties and internal controls ~~will be used~~;
- ~~Appropriate~~ Adopt appropriate systems to ensure accurate and effective management reporting;
- ~~Necessary~~ Implement necessary resources ~~in place~~ to achieve management objectives;
- Attract and retain skilled and trained personnel;
- ~~Cross-train and provide~~ Provide cross-~~training and cross~~-coverage;
- ~~Employees~~ Verify that employees conducting energy transactions are free of conflicts of interest;
- ~~Authority~~ Ensure that procurement and approval contract authority and delegation of approvals is commensurate with accountability and capability;
- ~~Performance~~ Incorporate risk and return metrics in performance measurement and reporting ~~incorporate risk and return measures; and~~;

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- ~~Ongoing monitoring of control~~ Monitor the effectiveness of control strategies on an ongoing basis; and
- Preserve integrity in CED's procurement and contracting procedures.

3.2 Internal Controls

Internal controls shall be based on proven principles that meet the stringent requirements of generally accepted auditing standards (GAAS), financial institutions, and credit rating agencies. - The required controls shall include all customary and usual business practices designed to 1) prevent errors and improprieties, 2) ensure accurate and timely reporting of results of operations and other information pertinent to management, and 3) facilitate attainment of business objectives.

3.3 Segregation of Duties

Responsibilities related to ~~energy transacting power product purchase and sale agreements~~ shall be segregated in a manner consistent with the control principles listed above by means of clearly defined roles and responsibilities for the Front Office, Middle Office, and Back Office operations. -Such roles and responsibilities can also be provided by a qualified third-party services provider. Specific roles, responsibilities, and organizational structure of these functions are outlined in Section 4 of the ~~ERMPP~~ Policy.

These controls shall be fully integrated into all business activities of CED related to SJCE, and ~~there shall be active participation by CED~~ senior management shall actively participate in risk management processes.

3.4 Conflicts of Interest

~~City employees in CED designated in the City Conflict of Interest Code, members of the Risk Oversight Committee, and certain consultants retained by CED are required to comply in accordance with state conflict of interest law under the California Political Reform Act. State law requires that each person, consultants shall cause each person performing services for the SJCE to complete annual conflict of interest filings (Form 700), and disclose reportable economic interests including investments as required by the Fair Political Practices Commission (FPPC) regulations and this Section.~~

~~All SJCE employees who are engaged in energy supply resource transactions, counterparty credit evaluation, or oversight of the foregoing and are employed in any job classification listed in the SJCE Conflict of Interest Code are required to~~

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~~complete annual conflict of interest filings on FPPC Form 700 and disclose investments as required by that code.~~

~~In addition to state law, the foregoing disclosure requirement, City employees in CED SJCE employees who are making or participating in the making of decisions relating to engaged in energy supply resource transactionthe purchase and sale of power products, counterparty credit evaluation and monitoring, or oversight of the foregoing, are barred from investingshall not have a financial interest in any company with whom SJCEthe City has consummated energy or related purchases or sales transacted within the last two years. Such City employees in CED are also prohibited from acquiring any financial interest in companies that respond to a procurement for the purchase and sale of power products and services. For example, any stock ownership would be a financial interest for the purposes of this paragraph even if it is not reportable under state law. Failure to comply with this requirement is a conflict of interest and requires the City employee in CED to recuse themselves from the transaction or task.~~

~~Such employees must divest existing direct holdings in energy counterparties prior to engaging in any negotiating, evaluating, transacting, or oversight functions. The ban on investment and requirement for divestment applies regardless of whether or not the investment would be of sufficient size (\$2,000) to require disclosure on FPPC Form 700.~~

~~SJCE employees~~ Once a year, CED supervising staff who are subject to this policy are responsible for routinely reviewing the Form 700 of each such staff member for the purpose of identifying potential financial conflicts of interest. ~~City Attorney will assist in reviewing these forms and providing legal advice in connection with such reviews upon request~~ CED may seek assistance from the City Attorney's Office regarding conflicts of interest requirements.

4.0 ROLES, RESPONSIBILITIES, & ORGANIZATION

This section of the ERMPPolicy defines the overall roles and responsibilities of each organizational function for the implementation of this ERMPPolicy. The coordinated efforts of personnel across several Departments are required to successfully implement SJCE'sCED's risk management program. ~~Section 4 of related to the ERMPadministration of SJCE. The ERMR outlines the basic roles and responsibilities of each organizational function. Specific details and the specific details, roles, and responsibilities of the oversight and operational divisions within the CED's energy risk management program structure at SJCE are outlined in the ERMR, as developed by the City Manager's ROC and revised from time to time. ROC advises the CED on the development of the ERMR and proposed amendments.~~

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4.1 City Council

~~The Council has the ultimate oversight over SJCE operations and is responsible for establishing an organizational-wide framework for risk management and ensuring that risk management results are achieved as planned. The City Council shall approve and establish organizational-wide framework and policies for risk management and delegate to the City Manager the responsibility for implementing the PolicyERMP. With responsibility for the ultimate oversight over SJCE operations, the Council shall be responsible to ensure the risk management results are achieved in accordance with the ERMP.~~

The City Council shall approve long-term agreements for the purchase and sale of power products; use of standard master power purchase and sale agreements; and any other agreements not specifically delegated to the City Manager or the Director under Title 26 of the Municipal Code.

4.2 City Manager

~~Pursuant to Section 701 of the City Charter of the City of San José, theThe City Manager serves as the chief administrative officer of the City. The City Manager and is responsible for administering City operations and staff, advising the City Council, managing the day-to-day delivery of public services, and implementing Council policies. The Council acknowledges that the City Manager shall establish the ROC and may delegate certain functions to the ROC, which delegation is ratified by this ERMP. the administration of all departments, offices, and agencies of the City.~~

The City Manager or designee may also enter into and execute for and on behalf of the City, without the prior approval of the City Council, short-term and medium-term agreements to procure power products and master power purchase and sale agreements pursuant to Title 26 of the Municipal Code.

The City Manager or designee shall approve the ERMR and any amendments. The ERMR shall define in detail the internal controls, strategies, and processes for managing risks covered under the Policy.

4.3 Director of Community Energy

The Director of Community Energy (~~“Director”~~) has overall responsibility for implementing the ~~ERMP~~Policy and for communicating risk management issues to the City Manager and Council. -The Director of Community Energy shall be responsible for delegating specific duties ~~for carrying to carry~~ out the ~~policy~~Policy

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and ensuring compliance with ~~it~~the Policy by ~~all-affected SJCE~~CED employees, ~~or service providers, and~~ contractors.

The Director of Community Energy may also enter into and execute for and on behalf of the City, without the prior approval of the City Council, short-term agreements to procure power products pursuant to Title 26 of the Municipal Code. The Director may authorize a designee pursuant to an authorizing memorandum that may be updated from time to time.

4.4 Risk Oversight Committee

The ~~Risk Oversight Committee (ROC)~~ is responsible for ~~overseeing~~advising the CED on compliance with risk management policies ~~within SJCE. The ROC serves as the highest level of organizational risk management related to SJCE activities, advising on whether the ERMR is adequate to achieve the requirements of the Policy and advising on whether financial reserves are adequate to meet CED's operational and liquidity needs.~~

The ROC shall consist of seven voting members: the City Manager, the Director of Community Energy, the Director of Finance, the City's Risk Manager, the Budget Director, ~~the Community Energy Department's~~CED's Deputy Director of Power Resources, and ~~the Community Energy Department's~~CED's Division Manager ~~for of Risk Management and Contracts Administration and Finance. The City Attorney will provide legal advice to the~~ The ROC may request the City Attorney's assistance on legal matters. A quorum for the ROC to do business shall be no less than five ROC Committee members, ~~or their designees.~~

Each ROC member shall have one vote, and shall appoint a voting alternate. The ROC will meet at least quarterly, to act on the responsibilities mentioned above. ~~Minutes to each meeting will be maintained per the City's record retention policy, and will include a summary of the material discussion on each action item. The Director of Community Energy shall make annual reports to the appropriate Committee and Council regarding business transacted by the ROC.~~

CED is responsible for bringing SJCE program matters before the ROC so~~The ROC shall have the responsibility for ensuring that business is conducted~~the ROC can determine whether CED is administering the SJCE program in accordance~~compliance~~ with the ERMPPolicy and make recommendations to support this outcome. CED shall bring any proposed changes to the ERMR for ROC consideration and recommendation prior to adoption of the changes. The City Manager's ROC shall adopt and keep current "Energy Risk Management Regulations," which shall define in detail the internal controls, strategies, and

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~~processes for managing risks covered under the ERMP. Specific ROC responsibilities are outlined in detail in the ERMR.~~

4.5 Community Energy Department Staff

~~CED has integrated, but segregated, responsibilities to control risks by means of clearly defined roles and responsibilities for the Front Office, Middle Office, and Back Office. Oversight functions are performed at an operational level by these offices and managed at an executive level by the City Manager, Director of Community Energy, and the ROC.~~

~~From time to time, to address CED vacancies, staff reporting to 1) CED's Division Manager of Risk Management and Contracts Administration and 2) CED's Division Manager of Budget and Financial Planning may cover various tasks in the Middle and Back Offices, as needed, to support CED operations. Under no circumstance may these employees cover tasks in the Front Office, and staff reporting to CED's Deputy Director of Power Resources may not cover tasks in the Middle and Back Offices.~~

4.5.1 Front Office (Planning and Procurement)

~~The CED's Deputy Director of Power Resources is responsible for managing the Front Office, and can be supported by qualified third-party suppliers/service providers. The Front Office is responsible for resource planning and procuring resources the purchase and sale of power products to meet the physical, financial, regulatory, and contractual requirements of applicable to SJCE, with load/resource balancing provisions and such other arrangements as may be approved by the Council in the future. The function includes contract administration/origination, managing the risk assumptions for electricity transactions, including associated with the purchase and sale of power products, (e.g., physical and financial needs analyses, energy purchases and sales, procurements of capacity, ancillary services), and coordinating load and energy delivery scheduling. -The Front Office is responsible to ensure for ensuring that the applicable procedures and processes needed to transact business within the ERMP Policy are in place implemented and they perform all duties related to actual transacting in the wholesale energy market the purchase and sale of power products. The Front Office is the primary interface with potential wholesale transacting counterparties. -Front Office activities and detailed responsibilities are outlined in the ERMR.~~

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4.65.2 Middle Office (Controls and Reporting)

~~The Community Energy Department's~~CED's Division Manager of Risk Management and Contracts Administration ~~and Finance~~ is responsible for managing the Middle Office in collaboration with the City's Finance Department. ~~The Community Energy Department's~~CED's Risk Management and Contracts Administration ~~and Finance~~ Division will conduct the duties of the Middle Office, and ~~or~~ are supported by a qualified third-party consultants and service providers. ~~Its~~The primary purpose of the Middle Office is to manage risk oversight and controls. ~~The~~ Middle Office provides independent oversight of the risks assumed by the Front Office in the course of ~~transacting energy the purchase and sale of power~~ products and related wholesale energy services. ~~The~~ Middle Office must be independent from the Front Office functions. The Middle Office is also responsible for contract administration, contract compliance, and invoice verification. Detailed responsibilities of the Middle Office are described in the ERMR.

4.75.3 Back Office (Settlements and Recording)

~~The Community Energy Department's~~CED's Division Manager of Administration~~Budget~~ and Finance~~Financial Planning~~ is responsible for managing the Back Office in collaboration with the City's Finance Department and the Middle Office. The Back Office is primarily responsible for settlement of bills, recording transactions, bookkeeping, and accounting, ~~and contract compliance.~~ ~~It is responsible for providing assurance of~~ The Back Office ensures accurate transaction records and settlements. ~~Back Office functions are conducted by personnel in the~~ Community Energy Department's ~~Administration and Finance~~CED's Budget and Financial Planning Division and are supported by staff in the City's Finance Department, the Middle Office, and qualified third-party consultants and service providers. ~~Detailed responsibilities of the Back Office are described in the ERMR.~~

4.86 Auxiliary Functions

Additional issues impacting the overall power supply and risk management program include establishment of financial reserve requirements, which are generated by auxiliary support functions in ~~the Community Energy Department's~~ Administration~~CED's Budget~~ and Finance~~Financial Planning~~ Division, Account Management Group, and the City Manager's Budget Office.

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~~The Community Energy Department's Administration~~ CED's Budget and ~~Finance~~ Financial Planning Division, Account Management Group, in collaboration with the City Manager's Budget Office, is responsible for preparation of the budget and the calculation of rates used to bill customers for their related power supply usage. ~~They~~ These groups are also responsible for the establishment of reserves necessary ~~for to address~~ credit risks related to counterparty credit, as ~~mentioned~~ laid out in the ~~ERMP~~, but as Policy and more clearly defined in the ERMR.

~~4.9 Authorities, Delegations, Limits, and Prohibitions~~

5.0 AUTHORITIES, LIMITS & PROCEDURES

All executed ~~transactions~~ agreements shall conform to the policies set forth herein. ~~It shall be the responsibility of the ROC, to establish appropriate individual~~ Appropriate transacting authority limits for the various levels of personnel involved in the Front Office function shall be established in the ERMR. All staff with designated responsibility for Middle Office or Back Office functions are strictly prohibited from executing any ~~wholesale transactions~~ agreements for the purchase or sale of power products. The Middle Office shall be responsible for informing counterparties of such approved authorizations, including ~~transacting~~ contract authority and restrictions, along with product types and/or term and dollar limits.

5.1 Procurement and Contract Authority for Purchase and Sale of Power Products

Pursuant to Chapter 26.40 of Title 26 of the Municipal Code and the requirements of this Policy, the City Manager and the Director of Community Energy, or their respective designees, may enter into and execute for and on behalf of the City and without the prior approval of the Council, the following agreements:

- **City Manager or designee:** short-term and medium-term agreements for the purchase and sale of power products, and master power purchase and sale agreements of any duration, on a form previously approved for use by the City Council.
- **Director of Community Energy or designee:** short-term agreements for the purchase or sale of power products, including associated CAISO administrative fees. CAISO administrative fees result daily from the scheduling of load and resources with the CAISO.

City of San José, California

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In addition, the period between the initial delivery date and the agreement execution date shall be no later than the times specified in the chart below:

<u>Contract Authority</u>	<u>Agreement Type by Term</u>	<u>Term/ Duration of the Agreement</u>	<u>Initial Delivery Date from the Agreement Execution Date (no later than)</u>
<u>Council</u>	<u>Long-term</u>	<u>10 years or more</u>	<u>As approved by Council</u>
<u>City Manager or Designee</u>	<u>Medium-term</u>	<u>More than 3 years and less than 10 years</u>	<u>5 years</u>
<u>City Manager, Director of Community Energy, or Designee</u>	<u>Short-term</u>	<u>3 years or less</u>	<u>3 years</u>

5.1.1. Purchase and Sale Agreements

All agreements for the purchase or sale of power products shall be in writing and approved as to form by the City Attorney prior to execution.

Any master power purchase and sale agreement shall use the standard Edison Electric Institute (“EEI”) Agreement, the Western Systems Power Pool (“WSPP”) Agreement form approved for use by the City Council, with modifications as appropriate and developed in consultation with the City Attorney. The Council may also authorize the use of other standard agreement forms by Resolution.

Upon execution of any such agreement, CED shall file with the City Clerk’s Office a redacted copy of the executed agreement, in accordance with applicable exemptions under the Public Records Act and the original unredacted agreement will be retained by CED consistent with the records retention policies.

5.2 Procurement Procedures

This Section specifies the procurement procedures applicable to CED’s purchase and sale of power products for SJCE’s operations consistent with Chapter 26.40.

In addition to the procedures laid out below, CED shall also comply with the City's Procurement and Contract Process Integrity and Conflict of Interest Policy to the maximum extent possible if not in direct conflict with this Policy.

5.2.1 Competitive Bidding

CED shall competitively purchase or sell power products. CED must post all solicitations in the appropriate section of the SJCE website and notify known suppliers, as well as suppliers who have asked to be notified. CED shall select the most advantageous bid. Bids are to be evaluated on an equivalent basis (similar quality, volume, duration, and options), adjusted for such factors as transmission, losses, etc. The most advantageous bid shall be determined based on the best value to CED. Relevant factors to evaluate value include but may not be limited to: life cycle costs; cash-flow considerations; concentration risk; maintenance costs; operating efficiency; quality; financial strength, capabilities and/or expertise of the bidder; agreement terms including collateral terms; and adherence to applicable Council policies.

CED may also enter into agreements to purchase and sell power products by participating in competitive solicitations of other load serving entities and public agencies. CED shall submit bids to others that are in line with market prices for power products, as shown by bids received by CED in its competitive solicitations, broker quotes, and/or reputable industry indexes and reports.

5.2.2 Procurement Where Competitive Bidding is Not Practicable

5.2.2.1 Procurement With Deliveries Within One Week or Less and Balance-of-Month

CED may negotiate and execute agreements to purchase or sell power products without a competitive solicitation where delivery of the power product commences within one week or less, or exchange traded (e.g. NYMEX, ISO, ICE, etc.), or Balance-of-Month. Such agreements are time-sensitive. However, even in the case of such agreements, CED shall seek to obtain bids as competitively as possible from potential counterparties, consistent with the size and type of agreements and counterparty. CED shall seek to obtain quotes from at least three qualified suppliers, if three qualified suppliers are available. CED shall report to the ROC all purchases and sales entered into pursuant to this Section.

5.2.2.2 Unique Service

CED must procure some types of power products for SJCE such as capacity and RECs, among others, to comply with statutory or regulatory or local requirements. From time to time, the market for these power products may experience limited supply or other disruptions that make the application of the requirements for a competitive solicitation contrary to the public interest.

The Director of Community Energy may seek an exemption from the City Manager or designee for a limited period of time from the requirement to procure power products using a competitive solicitation if such exemption would be necessary for the above stated reasons. Any such request must be in writing and provide information to support the duration of the exemption such as the results of any competitive solicitations undertaken by CED or other reputable market data. The City Manager or designee may approve the Director of Community Energy's request, with any appropriate modifications, if the City Manager or designee agrees that the exemption would be necessary for the above stated reasons.

CED may buy or sell power products without a competitive solicitation during the time period approved by the City Manager or designee, provided that such agreements shall be 1) for power products required to meet compliance requirements; and 2) in line with market prices, as shown by bids received by CED in its competitive solicitations, broker quotes and/or reputable industry indexes and reports. If adverse conditions persist, the City Manager or designee may approve extending the duration for an exemption from the requirement to use a competitive solicitation, upon written request by the Director of Community Energy.

Any agreements entered into under this Section shall be made with such competition as is practicable under the circumstance. CED shall seek to obtain bids as competitively as possible from potential counterparties, consistent with the size and type of the agreement and counterparty. CED shall seek to obtain quotes from at least three qualified suppliers, if three qualified suppliers are available. CED shall report to the ROC all purchases and sales entered into without a competitive solicitation.

5.2.2.3 Joint Solicitations and Public Agency Procurement

CED may, without observing the competitive solicitation requirements prescribed by Section 5.2.1 of this Policy:

- a. Purchase or acquire power products from another governmental body or agency, or
- b. Contract with any public agency for the purchase or sale of any power products by such public agency for or on behalf of CED under the following circumstances:
 - i. Purchase or sale of power products directly from or to another public agency; or
 - ii. Joint purchasing or sales of power products by two or more public agencies wherein CED is included as a purchaser and the public agency used a competitive procurement process, either directly or through a consultant; or
 - iii. Direct purchases from vendors on terms obtained pursuant to competitive procurement processes undertaken by another public agency which substantially comply with the competitive bidding procedures described in this Section and the executed contract resulting from the procurement includes language allowing other entities to use said contract.

CED may join one or more public agencies operating a CCA to purchase or sell power products in a coordinated manner. Under direction of CED and subject to the required approvals, the consultant may provisionally accept offers for power products on behalf of CED through competitive solicitations or a procurement process. All purchases and sales of power products is subject to City Attorney approval as to form and execution of a written agreement.

5.2.3 Emergency purchases

CED may undertake emergency purchases, provided that it complies with the requirements of Chapter 4.12.220 for emergency purchases.

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5.3 Protest

Any interested party may protest a procurement decision issued in connection with a competitive bidding process for the purchase of power products under a long-term agreement. Competitive solicitations for the purchase or sale of power products for short term and middle term agreements are not subject to protest.

The unsuccessful proposer must submit a protest in accordance with the instructions contained in the solicitation that is the subject of the protest no later than 10 calendar days after notice of award is issued. The protest must detail the grounds and factual basis and must include all supporting information. Failure to submit a timely written protest to the agreement will bar consideration of the protest.

The City Manager shall issue a written decision on the protest. The City Manager may base the decision on the written protest alone, documents from the solicitations, or may informally gather evidence from the person filing the protest or any other person having relevant information. The City Manager may delegate review of a protest to a designee provided the designee was not involved with the procurement that is the subject of the protest.

An appeal of the City Manager's decision may be filed with the Council. All such appeals must be in writing, and shall be filed with the City Clerk within 10 calendar days from the date of the City Manager's decision.

6.0 Reserves

CED will comply with SJCE's Financial Reserves Policy. The ROC is responsible for advising on the level of adequate reserves for energy price exposure and credit losses.

75.0 POLICY COMPLIANCE

75.1 Compliance Exceptions

Compliance exceptions are actions which violate the authority limits or directives set forth herein or in the ERMR ~~as developed and adopted pursuant hereto by the ROC.~~

75.2 Reporting of Exceptions

The Director of Community Energy shall notify the ROC of exceptions to mandated policies, procedures, and regulations within 48 hours after they are

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identified, and ensure the Front Office ~~prepare~~prepares a full report for review and discussion at the next ROC regular meeting or at a special meeting if the regular meeting is not scheduled within 30 days of the Director's notification of the exception.

75.3 Audit

Compliance with this ERMPPolicy and with the specific ERMR requirements instituted pursuant to this ERMPPolicy, shall be subject to examination by the City Auditor and SJCE'sthe City's independent auditors or by such other reviewers that the City ManagerSJCE or ROC may appoint to evaluate the effectiveness of mandated controls.

5.4 Reserves

~~The ROC is responsible for ensuring adequate reserves for energy price exposure and credit losses are maintained by SJCE. The reserve estimate methodology, should be established in collaboration with the City Manager's Budget Office and it shall be reviewed and approved as needed to ensure appropriate reserve levels are maintained and funded. It should be set and reviewed annually as part of the Budget process.~~

75.45 Systems, Tools, and Training

~~SJCE~~CED employees and City staff providing support to the SJCE program who are authorized to perform energy risk management functions on behalf of CED for the administration of SJCE shall be provided with the necessary systems and tools to support all risk management processes.

Provision shall be made in the budgets submitted for each group which performs market risk management functions on behalf of SJCE~~CED~~ for the acquisition and maintenance of computer systems, software, communications equipment, data services, and other analytical, measurement, and reporting tools.

Provision shall also be made in the budgets submitted for each group ~~which~~that performs market risk management functions on behalf of SJCE~~CED~~ for managers and staff to attend seminars and courses in risk management on a regular basis.

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EXHIBIT A

GLOSSARY

Balance-of-month

“Balance-of-month” means the purchase or sale of power products for a term not greater than one month to be performed or delivered within the current or next succeeding calendar month.

CAISO

“CAISO” has the meaning set forth in Chapter 26.10 of the Municipal Code.

Capacity

“Capacity” means the qualifying megawatt amount from a project under the CAISO and the CPUC rules that establish Resource Adequacy Requirements applicable to San José Clean Energy.

Community Choice Aggregation or CCA

“Community Choice Aggregation” or “CCA” means the program established under Public Utilities Code Sections 331.1, 366.2, and 381.1, which authorizes cities, counties, and other qualifying governmental entities within the service areas of investor-owned utilities (IOUs) to combine, upon approval of its governing board, the electricity loads of residents, businesses, and municipal facilities in a community-wide electricity buyers' program. The IOU continues to deliver the electricity through its transmission and distribution system and provide meter reading, billing, and maintenance services for CCA customers.

Clean Energy

“Clean Energy” means energy that is generated with little to no greenhouse gas emissions, including, but not limited to, renewable and carbon-free sources. This is in contrast to energy generated by fossil fuels, which emit a significant amount of greenhouse gases, such as carbon dioxide and methane, among many others.

Community Energy Department or CED

The “Community Energy Department” or “CED” has the meaning set forth in set forth in Chapter 26.10 of the Municipal Code.

Counterparty

“Counterparty” has the meaning set forth in Chapter 26.10 of the Municipal Code.

CPUC

“CPUC” has the meaning set forth in Chapter 26.10 of the Municipal Code.

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Director of Community Energy

“Director of Community Energy” has the meaning set forth in Section 2.04.4610 of the Municipal Code.

Energy

“Energy” means electrical energy measured in megawatt hours.

Long-Term Agreement

“Long-Term Agreement” has the meaning set forth in Chapter 26.10 of the Municipal Code.

Master Power Purchase and Sale Agreement

“Master Power Purchase and Sale Agreement” has the meaning set forth in Chapter 26.10 of the Municipal Code.

Medium-Term Agreement

“Medium-Term Agreement” has the meaning set forth in Chapter 26.10 of the Municipal Code.

Municipal Code

“Municipal Code” means the San José Municipal Code.

Power Products

“Power Products” has the meaning set forth in Chapter 26.10 of the Municipal Code.

Procurement Authority

“Procurement Authority,” as used in this Policy, means the City Manager, Director or designee authorized to procure Power Products.

Renewable Energy Credit or REC

“Renewable Energy Credit” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by law.

San José Clean Energy or SJCE

“San José Clean Energy” or “SJCE” has the meaning set forth in Chapter 26.10 of the Municipal Code.

Short-Term Agreement

“Short-Term Agreement” has the meaning set forth in Chapter 26.10 of the Municipal Code.