



Staff Report – Item 6

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 6: Approve Resolution Delegating Authority to the Chief Executive Officer to Execute Master Agreements for Power Supply with 3 Phases Renewables Inc., Energy America, LLC, Exelon Generation Company, LLC, Morgan Stanley Capital Group, Inc., Powerex Corp., and Shell Energy North America (US), L.P.

Date: 11/9/2016

RECOMMENDATION

Approve resolution delegating authority to the Chief Executive Officer to execute Master Agreements (as defined below) with each of the six short listed power suppliers with terms consistent with those contained in the attached agreements.

BACKGROUND

On August 15, 2016, SVCE issued a request for proposals for power supply and scheduling coordination services. On September 19, 2016 we received twelve proposals, and contract negotiations commenced with six power suppliers. The power supply proposals contained indicative pricing with the understanding that pricing will be refreshed after other terms and conditions are finalized and prior to agreement on any specific power purchase transactions. This is expected to occur in January 2017, in preparation for the commencement of power sales to SVCEA customers in April 2017.

SVCEA is basing its power supply agreements on the industry-standard Edison Electric Institute master power purchase and sale agreement ("Master Agreement"). The Master Agreement is a widely used standard form agreement containing general terms and conditions for electric power transactions. The first section of the Master Agreement, known as the "Cover Sheet", enables election of certain optional provisions and allows for modifications to the standard terms agreed to between the parties. Generally speaking, the Cover Sheet represents the product of negotiations that have occurred among the parties as those relate to the Master Agreement.

ANALYSIS & DISCUSSION

The CEO, working in close coordination with outside legal counsel and SVCE consultants, has negotiated Master Agreements with six power suppliers, which will enable SVCE to purchase energy from a diverse set of suppliers from the outset of SVCE operations. These power suppliers are listed as follows:

- Exelon Generation Company, LLC (a.k.a. Constellation)
- Energy America, LLC (a.k.a. Direct Energy)
- Morgan Stanley Capital Group, Inc.
- Powerex Corp.
- Shell Energy North America (US), L.P.

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- 3 Phases Renewables Inc.

It is important to understand that execution of the Master Agreements does not itself obligate SVCE to purchase energy. Energy transactions will be made through written "Confirmations" setting forth the specifics of the purchase such as product, volume, and price. SVCEA is currently negotiating Confirmations with each power supplier and anticipates finalizing the form of the Confirmations and any associated credit agreements in December, with execution of the Confirmations and credit agreements expected to take place in January 2017.

While the requested authority only relates to execution of the Master Agreements, it is helpful to have a contextual understanding of the full set of agreements that will be required to supply SVCE's energy needs. The power supply agreements include the following documents:

- The Edison Electric Institute Master Power Purchase & Sale Agreement: This is the master contract between SVCE and each power provider, and includes standard, boilerplate terms and conditions, with modifications negotiated by the parties as well as certain global credit provisions.
- The Confirmations: These agreements set forth the commercial terms and conditions of each separate purchase transaction. In the present case, the Confirmations will provide the price, quantity, and delivery specifications for the energy, renewable energy, carbon free energy and capacity being purchased by SVCEA.
- The Intercreditor and Collateral Agency Agreement, the Security Agreement and the Deposit Account Control Agreement ("Lockbox Agreements"). These three agreements all relate to the creation of a "multi-party lockbox". Because SVCE is a new entity with few assets at this time, absent forms of credit assurance, power suppliers are generally unwilling to sell SVCE large volumes of energy. One form of assurance that SVCE can provide is agreeing to place ratepayer revenues into a "lockbox" with instructions that the power supplier has a priority interest in the ratepayer funds. The "multi-party lockbox" will facilitate contracting with multiple power suppliers by allowing SVCE to authorize distribution of lockbox proceeds to more than one power supplier. The lockbox is managed by a bank, acting as collateral agent for the benefit of the secured power suppliers.

Unlike the Master Agreements and Confirmations, which are negotiated and executed separately with each power supplier, there will be a single set of Lockbox Agreements for the benefit of all secured power suppliers. Three of the six power suppliers will be utilizing the lockbox credit structure, and each of these as well as the bank must agree to the same set of Lockbox Agreements.

Assuming Board Authorization, the CEO intends to execute Master Agreements in substantially the same form as attached to this memorandum, and SVCE will be well positioned to purchase energy from a diverse group of power suppliers. We will continue to negotiate the Confirmation and Lockbox agreements with the intent to seek approval of these agreements at the next Board meeting in December. Following execution of the Master Agreements and once all terms and conditions of the other agreements are finalized, we will request updated pricing from the power suppliers and select among the best offers for execution of Confirmations.

ATTACHMENTS

1. Resolution Delegating Authority to the Chief Executive Officer to Execute An EEI Master Agreement with Terms Consistent with Those Presented With Each of the Short-Listed Energy Service Providers
2. 3 Phases Renewables Inc., EEI Master Agreement
3. Energy America, LLC, EEI Master Agreement
4. Exelon Generation Company, LLC, EEI Master Agreement
5. Morgan Stanley Capital Group, Inc., EEI Master Agreement
6. Powerex Corp., EEI Master Agreement
7. Shell Energy North America (US), L.P., EEI Master Agreement

RESOLUTION NO. 2016-09

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN EEI MASTER AGREEMENT WITH TERMS CONSISTENT WITH THOSE PRESENTED WITH EACH OF THE SHORT-LISTED ENERGY SERVICE PROVIDERS.

THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the Silicon Valley Clean Energy Authority (“Silicon Valley Clean Energy”) was formed on March 31, 2016; and

WHEREAS, launch of service of the community choice aggregation program is planned for April 3, 2017; and

WHEREAS, Silicon Valley Clean Energy administered a competitive process to select contractors capable of providing energy, renewable energy, carbon free energy, and related products and services (the “Product”) from energy generating sources that are cleaner and have a higher percentage of renewable energy than that provided by the incumbent utility and at competitive prices; and

WHEREAS, Silicon Valley Clean Energy has identified six energy service providers (each, an “Energy Service Provider” or “ESP”) as having competitive proposals and the ability to meet the aforementioned goals;

WHEREAS, Silicon Valley Clean Energy has negotiated a separate EEI Master Agreement (the “Master Agreement”) with each ESP;

WHEREAS, the Master Agreement is an industry standard framework agreement between an energy purchaser and an energy supplier that establishes certain terms and conditions for the contractual relationship between an energy purchaser and energy supplier, but which does not require a purchaser to purchase or a supplier to supply the Product without further written agreements known as “confirmations,” which confirmations shall be presented to the Board for review and approval at the appropriate time;

WHEREAS, there are minor differences in each form of Master Agreement based upon changes requested by each ESP, these differences are not material in the overall context of the proposed transaction;

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute each of the aforementioned Master Agreements for the reasons provided above;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

Execute a Master Agreement with terms consistent with the form of agreement presented to the Board of Directors with the following short-listed Energy Service Providers:

3 Phases Renewables, Inc.

Direct Energy Business, LLC

Exelon Generation Company, LLC

Morgan Stanley Capital Group Inc.

Powerex Corp.

Shell Energy North America

ADOPTED AND APPROVED this ____ day of November, 2016.

Chair

ATTEST:

Secretary