



BOARD OF DIRECTORS

Agenda Report

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File #: 2022-2572

Agenda Date: 10/26/2022

Agenda Item No: 4.

FROM: James D. Herberg, General Manager
Originator: Riaz Moinuddin, Director of Operations & Maintenance

SUBJECT:

DIRECT ACCESS ENERGY PURCHASE CONTRACT - CONSTELLATION NEWENERGY, INC.

GENERAL MANAGER'S RECOMMENDATION

RECOMMENDATION:

Approve Master Service Agreement with Constellation NewEnergy, Inc.

BACKGROUND

In 2009, California Senate Bill 695 established the Direct Access (DA) program, a retail electric service that allows customers to purchase electricity from a competitive provider, called Electric Service Providers (ESP), instead of from a regulated electric utility. The utility delivers the electricity that the customer purchases from the ESP over its distribution system and collects a fee for doing so.

Orange County Sanitation District (OC San) transferred its major treatment plant accounts to the DA program starting in January 2022. OC San was able to transfer its remaining accounts (pump stations and various treatment plant buildings) starting in April 2022.

When the Board approved the DA program participation in December 2021, staff was directed to initiate the procurement of a long-term purchase agreement for continuation of service for Board approval by June 30, 2022. Statements of Qualifications were received from three energy providers on March 18, 2022. The submittals were reviewed for completeness and the proposed forms of contract were reviewed by OC San's legal counsel. All three proposers were found responsive and qualified to provide service. In May 2022, the Board authorized entering into Master Agreements with all three proposers.

RELEVANT STANDARDS

- 24/7/365 treatment plant reliability
- Ensure the public's money is wisely spent

PROBLEM

The DA electricity market is very dynamic, and costs are currently at higher-than-normal levels. One of the three vendors, Constellation NewEnergy, Inc. has requested minor changes to contract terms.

Executing this third Master Agreement with a qualified ESP provides the flexibility in purchasing electricity supply and offers the advantage of competitive pricing.

PROPOSED SOLUTION

Enter into a Master Service Agreement with Constellation NewEnergy, Inc. to allow for future flexibility for electricity supply management. This will allow staff to adapt to market conditions and more creatively utilize its electrical assets to minimize cost and resilience.

TIMING CONCERNS

The electricity supply market is variable and OC San may need to utilize the proposed Master Service Agreement with limited advance notice.

RAMIFICATIONS OF NOT TAKING ACTION

OC San has Master Service Agreements with two other electricity suppliers. This third Master Service Agreement would allow for more competition when securing future transaction agreements.

PRIOR COMMITTEE/BOARD ACTIONS

May 2022 - Approved Master Service Agreements with two additional energy service providers: Constellation NewEnergy and NRG/Direct Energy; and delegated to the General Manager and Purchasing Manager the authority to enter into Transaction Agreements, in a form approved by General Counsel, with the following energy service providers: Shell Energy Solutions, Constellation NewEnergy, or NRG/Direct Energy.

December 2021 - Approved Orange County Sanitation District's participation in the Southern California Edison DA Program, authorized the General Manager to select an energy service provider and execute a DA Purchase Contract with a registered vendor for the period of January 11, 2022 to June 30, 2022, in a form approved by General Counsel, and directed staff to initiate the procurement of a long-term direct access purchase agreement for continuation of service for Board approval by June 30, 2022.

ADDITIONAL INFORMATION

In May 2022, the Board authorized entering into Master Agreements with all three proposers; however, contractual terms with Constellation NewEnergy, Inc. have since been updated and negotiated. This is to authorize approval of the new mutually agreed upon Master Agreement.

Approving this third Master Service Agreement will allow staff to adapt to market conditions and more creatively utilize its electrical assets to minimize cost and resilience, by entering into a Transaction Agreement with any of the successful proposers, as needed.

CEQA

N/A

FINANCIAL CONSIDERATIONS

This request complies with authority levels of OC San's Purchasing Ordinance. This item has been budgeted. In the longer term, staff anticipates lower costs with DA program participation.

ATTACHMENT

The following attachment(s) may be viewed on-line at the OC San website (www.ocsan.gov) with the complete agenda package:

- Master Service Agreement - Constellation NewEnergy, Inc.