



SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

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To: Board of Directors

From: Executive Director

Date: 9/10/2020

Re: Framework and Authority of SCPPA to Facilitate Service Contracts for Members in Connection with Projects, Energy Efficiency and Demand Reduction.

BACKGROUND

The Southern California Public Power Authority (“SCPPA”) was created pursuant to a joint powers agreement (“JPA”) by its members as a separate public entity with broad express powers to carry out the planning, development, operation and maintenance of electric generation and transmission projects. From its inception in 1980, SCPPA has served as an instrumental source for its members (the “Members”) to collaborate, engage in pooled procurement and benefit from economies of scale in their procurement of electric generation and transmission assets and resources to meet the electric energy needs of their customers.

The success in delivering these important services to Members, the increasing regulatory and legislative demands on the electric utility operation in California and Members’ growing reliance on SCPPA to cost effectively, timely and efficiently deliver needed services has resulted in SCPPA expanding the breadth of services offered to Members. These services have included, among others, important technical, engineering and consulting services facilitated by SCPPA for the benefit of Members pursuant to various services contracts with providers of those services.

At the direction of the Executive Director, SCPPA has over the years formed various working groups where Member employees come together to collaborate, share ideas, best practices and other relevant information during regularly held meetings at the SCPPA offices. This forum for engagement among Members has served as an important vehicle of collaboration for Members and has been the impetus for many of the service contracts that SCPPA has successfully facilitated for the benefit of Members.

Recently, SCPPA and certain Members have taken an interest in evaluating whether the services facilitated by SCPPA are aligned with the scope of authority granted under the JPA and the applicable provisions of the California Government Code, including among others the provisions commonly referred to as the California Joint Exercise of Powers Act (“California Law”).

In undertaking this effort, SCPPA initiated a deliberate process, with help from the firm of Norton Rose Fulbright US LLP, to research and evaluate the extent of its authority under California Law and the JPA to develop an articulated framework through which it can evaluate and facilitate the services requested by Members through service contracts for the benefit of Members, to the extent the facilitation of such services is within the scope of authority granted to SCPPA under California Law, the JPA or both.

The framework developed by SCPPA, as more fully discussed below, initially resulted in SCPPA presenting to the Board of Directors Resolution No. 2020-012 to consider establishing an energy efficiency and demand reduction program pursuant to which SCPPA would facilitate energy efficiency and demand reduction service contracts as requested by Members. The Board of Directors consideration of the resolution and ensuing discussions resulted in SCPPA refining the framework and implementing the framework administratively at the direction of the Executive Director.

SCOPE OF AUTHORITY TO FACILITATE SERVICE CONTRACTS

As an initial step, the SCPPA legal team and the Executive Director with consultation from attorneys with the law firm of Norton Rose Fulbright US LLP, worked to develop and articulate the scope of authority, rooted in the JPA and California Law, pursuant to which SCPPA may facilitate various services requested by Members pursuant to service contracts.

PROJECTS

The JPA provides SCPPA with the authority to develop electric energy transmission and generation projects. Specifically, consistent with California Law, Section 5 of the JPA provides SCPPA with the authority to “finance, construct, maintain and operate one or more Projects.” The term, Projects, is broadly defined as facilities for the generation or transmission of electrical energy and all rights, properties and improvements necessary therefor, and an ownership interest or capacity right in any facility for the generation or transmission of electric energy.

ENERGY EFFICIENCY AND DEMAND REDUCTION

SCPPA also has the authority to, and must necessarily, offer energy efficiency and demand reduction services in connection with its development of Projects. Precisely, in exercising its authority to plan, finance construct, maintain and operate Projects, SCPPA is subject to and must comply with certain statutory and regulatory requirements, including the provisions of Section 9615 of the California Public Utilities Code (“Section 9615”).

Section 9615 requires that each local publicly owned electric utility, in procuring electrical energy, “shall first acquire all available energy efficiency and demand reduction resources that are cost effective, reliable and feasible.” For purposes of Section 9615 SCPPA is considered a local publicly owned electric utility, as defined in Section 224.3 of the Public Utilities Code.

Section 9615 directly mandates the procurement of cost effective, reliable and feasible energy efficiency and demand reduction resources as a condition to the exercise by SCPPA of its authority,

pursuant to Section 5 of the JPA, to procure rights in electric energy generation and transmission resources and facilities.

Section 9615 does not provide a definition for the terms “cost effective, reliable and feasible” and no relevant definition is offered in the legislative history for Section 9615. Given this, SCPPA is guided by the definition of these terms as used in the electric utility industry and dictionary definition, whereby, “energy efficiency” means using less electrical energy to do the same task, as applied to the customer or the utility, which can be achieved through, among other means, resources to facilitate behavioral changes of energy users, use of more efficient equipment or materials, or application of control devices, and “demand reduction” means any measure, system or tool that serves to reduce or avoid the peak or off-peak electric energy service requirement, electric energy generation or transmission capacity or energy requirements.

In light of the above, the SCPPA staff determined that SCPPA may facilitate service contracts to Members for services related to existing or future Projects, as defined in the JPA, and services related to the acquisition of cost effective, reliable and feasible “energy efficiency” or “demand reduction” resources.

FRAMEWORK FOR FACILITATION OF SERVICES

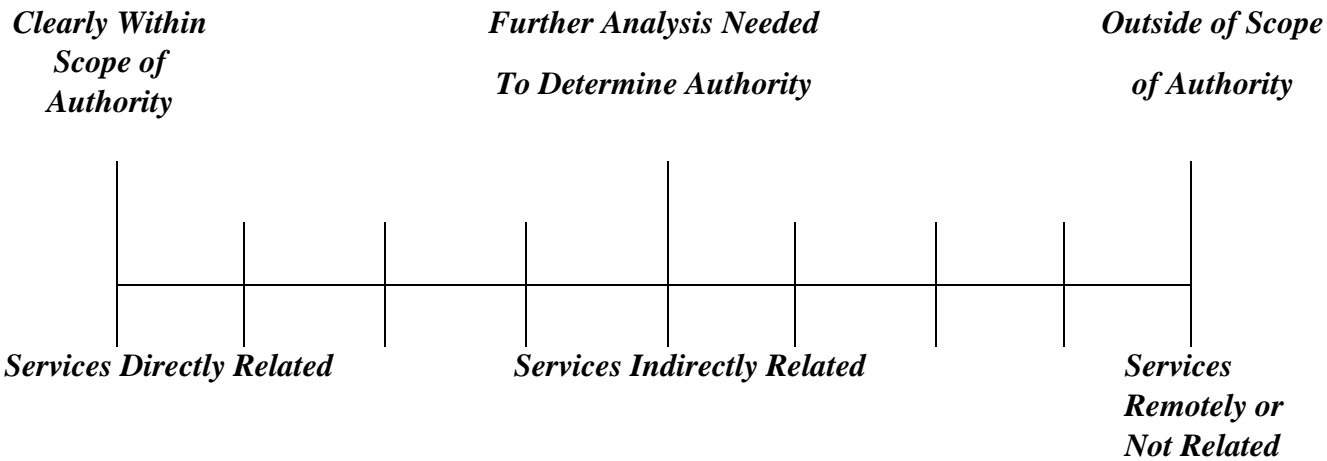
Having established SCPPA’s authority to facilitate services in connection with existing or future Projects, energy efficiency or demand reduction at the request of and for the benefit of Members, SCPPA Staff developed a framework to analyze whether a given service contract facilitated by SCPPA, based on a request from Members, is within the scope of authority granted by the JPA and California Law.

In analyzing the service contracts facilitated by SCPPA to Members and the authority under the JPA and California Law, SCPPA Staff developed a few primary considerations to guide its analysis. Specifically, whether a given service requested by Members is directly, indirectly or remotely related to the areas of service for which SCPPA has established its authority to facilitate such service pursuant to service contracts. Depending on the answer to this question, SCPPA can determine whether the facilitation of the requested service pursuant to a service contract is within the scope of authority provided to SCPPA under the JPA and California Law.

In particular, service contracts that are directly related to existing or future Projects and/or directly related to energy efficiency or demand reduction find more clear support, while service contracts not directly related or remotely related to existing or future Projects and/or energy efficiency or demand reduction have less clear support. In other words, service contracts that find the most support for compliance with the JPA and California Law are ones that are unequivocally related directly to the authority granted pursuant to Section 5 of the JPA and/or Section 9615, while other service contracts not directly related or remotely related to such authority find less support to conclude it is compliant. This in turn forms the basis for the framework through which prospective request for services by Members and the resulting service contracts to be facilitated by SCPPA for the benefit of Members will be evaluated.

The framework developed by SCPPA does not provide bright line tests; however, it prescribes a continuum of authority granted by the JPA and California Law through which the scope of authority for SCPPA to facilitate service contracts requested by Members may be evaluated. The continuum spectrum of the framework, as applied to a given service request by Members and the service contract to be facilitated by SCPPA ranges from those that are clearly and obviously within the scope of authority granted to SCPPA by the JPA and California Law, those that need further analysis and deliberation prior to a determination of the existence of authority, or the lack thereof, and those that may be outside of the scope of authority of SCPPA.

A graphical illustration of the continuum spectrum of the framework is provided below, where the left end of the continuum represents service contracts that are directly related to existing or future Projects and/or energy efficiency or demand reduction services, the middle section represents service contracts that may be indirectly related to existing or future Projects and/or energy efficiency or demand reduction services, and the right end of the spectrum represents service contracts that are not related to or remotely related to existing or future Projects and/or energy efficiency or demand reduction services (Note: the chart is a simplified visual depiction of the framework for illustration purposes only).



IMPLEMENTATION OF FRAMEWORK

Applying the framework, Member request for services, whether initiated as part of the working groups mentioned earlier, pursuant to any SCPPA RFP, or otherwise, will first be evaluated by the Executive Director, in consultation with the SCPPA General Counsel, to determine whether the services are directly, indirectly or remotely related to existing or future Projects, energy efficiency or demand reduction.

Member request for services that are directly or indirectly, but closely, related to existing or future Projects, energy efficiency or demand reduction—where the facilitation of such services pursuant to service contracts by SCPPA presents a meaningful value proposition, such as economies of scale resulting in lower pricing or other similar benefits—may be facilitated by SCPPA pursuant to one or more services contracts. On the other hand, if such services are remotely related or not related to

existing or future Projects, energy efficiency or demand reduction such services may not be facilitated by SCPPA.

DOCUMENTATION

In addition to the above, SCPPA has put in place additional measures, including a documentation procedure, to assure that it conducts a sound review of prospective requests for services by Members and documents its review and determination of its authority to facilitate specific service requests by Members pursuant to service contracts. Among the documentation measures implemented, SCPPA now requires the completion of a request form for each service request by Members that will require the issuance by SCPPA of a request for proposals. The form will include, among other things, an articulated statement of the authority under the JPA or California law pursuant to which SCPPA may facilitate the requested services by Members and issue one or more request for proposals.

Another similar measure implemented by SCPPA is the addition of an articulated statement of SCPPA's authority, under the JPA and California Law, for facilitation of any service contracts requested by Members in each of its staff reports presented to the Board of Directors. This additional documentation measure will serve as an additional means to assure that SCPPA has the requisite authority to facilitate such service contracts and will serve to inform the Board of Director's about SCPPA's authority prior to the Board of Director's action on such services contracts.

These additional documentation requirements, together with other procedural measures, beginning from the point prior to the issuance of a request for proposals by SCPPA, for services requested by Members, up to, and including, the presentation of the eventual service contract to the SCPPA Board of Directors, will help to assure that SCPPA has in place a sound review process for its facilitation of services requested by Members. These measures will also enable SCPPA to maintain an appropriate record and documentation that clearly articulates the authority of SCPPA under the JPA and California Law to facilitate the services requested by Members pursuant to service contracts.

CONCLUSION

SCPPA will continue to serve as an instrumental resource to Members by facilitating services requested by Members pursuant to service contracts that are directly or indirectly, but closely, related to existing or future Projects, energy efficiency or demand reduction. The efforts described in this memorandum and the framework developed by SCPPA will further increase SCPPA's value to Members and enable its continued excellence in serving as a vital resource to Members while remaining consistent with the authority granted under the JPA and California Law.