

# Choosing Strategic Partners Wisely

## How Public Power Vets Third-Party Services

BY JOHN EGAN, CONTRIBUTING WRITER



As operating a public power utility becomes increasingly complex, utilities are relying on a broad array of third-party partners that can help them prepare for the future or offer expertise in a new or niche area. Public power leaders seek strategic partnerships with third parties to perform certain specialized tasks, such as complying with standards developed by the North American Electric Reliability Corporation; infrastructure grant writing; complex engineering, design, and construction projects; installing an enterprise resource planning platform; and negotiating power purchase agreements.

As these partnerships become more common, utilities are reevaluating their approaches to contracting to ensure the vendor is the right fit, both parties gain from the deal, and risks are minimized.



### Negotiating Win-Win Contracts

The cost of renewable generation has plummeted over the last 15 years, driven by technology advances and tax-based incentives. Given their not-for-profit status, many public power utilities cannot take direct advantage of the tax-based incentives as they are currently designed. This is one reason many public power utilities negotiate power purchase agreements, or PPAs.

With prices and policies related to sources of renewable generation in flux, negotiating a PPA today requires understanding both where the market is and where it is likely to go.

Muscatine Power and Water, a public power utility in Iowa, used an outside lawyer to negotiate a PPA for a 13-megawatt wind project, the South Fork Wind Farm, which came online in 2016. The utility is using the same lawyer to negotiate a PPA for a 24- to 30-MW solar project that is expected to begin operating in late 2024.

In both cases, in-house staff took the lead in negotiations with direct support from outside counsel, explained Gage Huston, Muscatine’s general manager. “This approach has worked well. Our staff understand our utility’s specific circumstances, and the outside counsel brings a wealth of experience, expertise, and perspective on renewable PPAs. It’s a good complement.”

A decision to “go it alone” could be costly, as the market for some services is extremely complex and dynamic.

Jamie Mahne, vice president of client services and chief client officer at The Energy Authority, or TEA, said his firm has seen sharp swings in the renewable energy market since COVID-19 hit the U.S. nearly two years ago.

“Cost reductions for solar and wind have flattened, and, in some cases, costs are rising,” he said, citing the latest Levelized Cost of Energy study by the investment firm Lazard.

“Supply chain difficulties have increased the cost of materials. Labor is harder to find and more expensive now. Inflation once again is a factor in the economy,” said Mahne. “Renewable energy projects, and thus renewable energy PPAs, may not always be cheaper in the future.”

For years, Taunton Municipal Lighting Plant in Massachusetts has used master agreements prepared by attorneys and trusted business partners to seek and sign PPAs for renewable generation, according to Devon Tremont, lead resource analyst for the utility.

“It simplifies the process to use a master agreement where counter parties are aware of the general terms and conditions, thus making the process more efficient,” he said.

The timeless truism — “caveat emptor,” or buyer beware — is particularly true now when considering a PPA for renewable energy, as many public power utilities are doing today. Those dense legal documents can run to 90 pages or more, with 10 or more pages devoted to definitions, MPW’s Huston said. “Outside legal assistance is extremely valuable when negotiating a PPA. We have a very good internal legal staff, but we need outside legal counsel that knows the utility industry and PPAs inside and out.”

Outside counsel can be particularly helpful in separating the sheep from the goats when it comes to renewable energy developers. “Ever since the extension of the federal production tax credit and investment tax credits, we’ve encountered hundreds of entities that call themselves solar developers,” said TEA’s Mahne. “When we issue an RFP for a client, we might get 200 responses, but not all of those firms will be around in five years.”

As utilities rapidly work to evolve, there is increased demand for third parties to perform a broader array of specialized niche tasks.

Mahne noted how TEA, which is owned by seven public power entities and serves about 60 utilities across the country, has seen a substantial increase in utilities wanting help with requests for proposals related to renewable generation and storage.

“Three years ago, we might do one managed procurement transaction per year, but over the last three years we have done over two gigawatts of managed procurement transactions with an aggregate value of over \$1 billion.”

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“From your customer’s perspective, anything having to do with electricity all traces back to you, even if your name is not on the truck. You never want to lose sight of that.”

Gage Huston, general manager, Muscatine Water and Power, Iowa

Platte River Power Authority, a joint action agency based in Colorado, echoes some of Huston’s criteria. “Two significant elements to a successful relationship with an external partner are the solutions provider’s reputation and track record,” said Steve Roalstad, communications and marketing manager at Platte River. “A solutions provider with a good industry reputation, reliable staff, and a solid reputation for obtaining the necessary approvals will typically lead to favorable outcomes.”

Roalstad said the successful completion of the 300-MW Roundhouse Wind Farm in Cheyenne, Wyoming, was due in part to the solutions provider’s reputation and track record.

Getting to Win-Win Situations

The book *Getting to Yes* helped introduce the concept of “win-win” into the business vocabulary four decades ago. It posits that stable, mutually beneficial strategic partnerships result from interest-based bargaining, where both sides understand the strategic interests of the other and work in good faith to find common ground. “Win-win” agreements ensure that both sides benefit, but “win-lose” deals, where one party wins and the other loses, do not lead to a stable strategic partnership.

Some considerations that public power utilities might want to weigh in contracting services include:

- If you invest time and effort to build trust with a third party, you will get a better result. If you don’t, you won’t.
- Maintain some oversight or control over contractors. In other words, “finding an external partner” doesn’t mean “abdicate.”
- Understand your expectations going into a negotiation. With some degree of specificity, define what “success” and “failure” look like.
- Don’t be afraid to have periodic “check-in” meetings with contractors to ensure both of you are still on the same page. You can use those meetings to make minor changes to your agreements, if necessary.
- Estimated cost savings don’t always pan out. If there’s not a really strong case for going outside the organization, try to find a way to keep the work inside.
- The market for some services is extremely dynamic and complex. Do your due diligence, particularly among your public power peers. Joint action agencies, the American Public Power Association, state and regional associations, or specialist firms might have resources to help

navigate the market. Good research leads to better contracts with third parties.

- Don’t go into a negotiation thinking, “I’m going to beat up on this vendor.” Instead, examine where the strategic interests of both sides are accommodated and honored. Expect a lot of discussion.
- Make sure the reasons for going outside are clear and communicated not only among the leadership team, but also among those whose work may be affected by that decision.
- Think strategically: “One and done” transactions can be expensive for both parties. Could your first partnering decision become the basis for a long-term relationship with a particular solutions provider?

When Outside Expertise Makes Sense

“There’s a lot of state and federal grant funds available for infrastructure, but you need to know how to write those applications,” said Ken Goulart, general manager of Taunton Municipal Lighting Plant, which serves about 38,000 customers in Massachusetts. “This is not the kind of skill set we currently have internally, so we turn to third parties who are experts.”

TMLP has used third parties for over 30 years for vegetation management across its heavily wooded 100-square-mile service area. Goulart estimated that TMLP would have to significantly increase its employee ranks, and purchase new equipment, if it wanted to insource vegetation management.

“Every week, trees somewhere in our service are being trimmed,” he commented. “It is more cost-effective to have a well-resourced third party expert perform that work.”

Goulart estimated that the utility saves its customer-owners about \$5 million per year by using strategic partners to perform tasks like vegetation management and NERC compliance. The utility has about \$100 million in annual electric revenue, so the 5% cost savings is meaningful.

When to Keep Tasks In-House

The conventional wisdom goes that companies should rely on third parties to perform tasks that are peripheral to their core business. But that may be easier said than done, as public power utilities might define “core” and “peripheral” differently.

As utilities focus more on managing relationships with their customers, how much a task involves direct interaction with customer-owners and

other stakeholders might become a deciding factor in whether to handle it in-house or via a third party.

MPW recently hired an external firm to perform land easements as part of a plan to build a new 161-kilovolt transmission line. “The vendor we used got off on the wrong foot with landowners, so we pivoted and brought the task of managing those relationships back in-house,” recalled Huston.

“While these landowners were not actually our customers, they were key stakeholders in this project and we needed to treat them well,” he continued. “From your customer’s perspective, anything having to do with electricity all traces back to you, even if your name is not on the truck. You never want to lose sight of that.”

MPW’s experience is notable because the work it turned over to a third party was specialized and not something the utility did on an ongoing basis.

For example, Huston said, a lot of MPW’s vegetation management is done by employees, as is the horizontal directional drilling it uses to place underground conduit and lay cable. “Employees bring a higher sense of ownership to their work, which we feel results in higher-quality work. Also, when we insource a task, we have greater control over it.”

In other words, customer-facing employees are more likely than third parties to interact positively with customers in the field.

MPW uses a hybrid approach when it comes to performing scheduled maintenance at its coal-fired generating units that will be retired over the coming decade. “We have scaled back staffing at our coal-fired units. Some of this scheduled maintenance work is only done periodically and some of it requires specialized skills and equipment. It makes sense to look for qualified third parties to augment our in-house staff to accomplish this maintenance work,” Huston said.