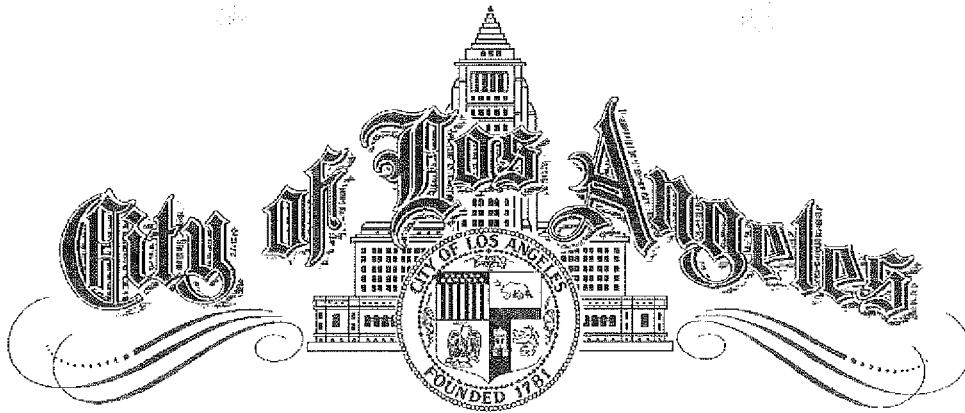


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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 2 - 0 3 6 0
NOV 1 5 2012

REPORT RE:

DRAFT ORDINANCE APPROVING THE MOAPA SOLAR POWER PURCHASE AGREEMENT, NO. BP 12-017, BETWEEN THE CITY OF LOS ANGELES, ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, AND K ROAD MOAPA SOLAR, LLC

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. This draft ordinance provides for the approval of the Moapa Solar Power Purchase Agreement, No. BP 12-017 (PPA), which includes (1) the purchase of electric energy, (2) the purchase of a transmission line, and (3) a purchase option, by and between the City of Los Angeles, acting by and through the Department of Water and Power (LADWP), and K Road Moapa Solar, LLC (K Road). K Road is a wholly-owned subsidiary of KRM Holdings, LLC, which is a wholly-owned subsidiary of K Road Solar Power, LLC. K Road is the owner of a solar generating facility that will be constructed on land located about 30 miles north of the City of Las Vegas (Solar Facility). The PPA provides for LADWP's purchase of the Solar Facility's solar energy from K Road.

Background

As part of its Renewable Portfolio Standard, LADWP must meet a target to supply 33 percent of its retail energy from renewable energy sources by 2020. To assist in achieving that goal, on April 4, 2006, the LADWP Board of Water and Power Commissioners approved SCPPA Development Agreement No. 96125-76 under Resolution No. 006-157, which authorized LADWP to participate with other SCPPA members for the purpose of investigating potential new renewable resources.

SCPPA issued a Request for Proposal (RFP), a competitive selection process, for the purchase and/or acquisition of renewable energy resources. Two Hundred Twenty (220) proposals were received from several firms having the capability to provide renewable energy from sources such as solar, wind, biomass, landfill gas, geothermal, hydroelectric and other sources.

The Solar Facility was shortlisted by several SCPPA participants. The SCPPA team negotiated the PPA with K Road, in which K Road would sell to SCPPA 200 MW of renewable energy from solar power generating facilities located 30 miles north of Las Vegas, Nevada.

Due to the location and limited transmission availability to other SCPPA members, the other SCPPA members decided to withdraw from the Solar Facility leaving LADWP as the only participant. To limit administrative costs and centralize management functions, it was decided to redefine the PPA exclusively between K Road and LADWP.

The PPA between LADWP and K Road allows for the purchase of renewable energy, environmental attributes and generating capacity rights for a twenty-five (25) year term. The PPA also allows LADWP the option to purchase the Solar Facility at the end of the tenth, fifteenth, twentieth and twenty-fourth anniversary of the full commercial operation date, provided that LADWP provides a notice to exercise the option six months after the above-mentioned option year anniversary dates.

The Solar Facility is located on tribal land, belonging to the Moapa Band of Paiutes, a federally recognized Indian Tribe (Moapa Band). K Road has negotiated a lease with the Moapa Band, which has been approved by United States Department of Interior (DOI), Bureau of Indian Affairs. If LADWP were to exercise its purchase option for the Solar Facility, it would become the tenant under the lease with the Moapa Band. The lease term is for 50 years.

There are certain limitations under the current lease. One is that the solar technology cannot use a field of heliostats or mirrors concentrating solar energy onto a solar power tower and use the resulting heat to create electricity, without prior written consent of the Moapa Band. If new technological breakthroughs are achieved and

LADWP wanted to implement them at this location, LADWP would have to renegotiate the terms of the lease. Another limitation under the lease is that the Moapa Band has agreed to a limited waiver of sovereign immunity. This includes an ability to seek direct damages against the tribe in Nevada courts, but excludes consequential, incidental, special, or punitive damages or lost profits against the tribe.

The purchase of up to 250 MWs of renewable energy capacity, or 706,647 MWhs annually, will enable LADWP to meet approximately 2.95% of LADWP's resource requirements. The total capacity of the Solar Facility will be determined no later than six months following the effective date of the PPA or the execution of the Interconnection Agreement. This is due to K Road finalizing the design of the Solar Facility and determining if Single Access Tracking System will be incorporated into the overall design.

The type of technology used will affect the Guaranteed Generation. If K Road uses Fixed Tilt, the first year Guaranteed Generation will be at least 501 gigawatt hours (GWh) and if K Road uses Single Access Tracking System, the first year of Guaranteed Generation will be at least 631 GWh. The renewable energy will be delivered through the Crystal Substation, which is directly connected to LADWP's balancing authority for its transmission system.

Before the guaranteed commercial operation date, LADWP is required to purchase approximately 5.5 miles of a 500 kV transmission line and equipment within a Bureau of Land Management (BLM) Utility Corridor connected to the Crystal Substation for an amount not to exceed \$18 million, as set forth in the PPA and in Appendices O and P attached thereto (collectively, Transmission Agreement). This excludes the generator lead line and equipment over tribal land, connecting the K Road Moapa 500 kV substation with the transmission line located in the BLM Utility Corridor. LADWP would be the sole owner and operator of the transmission line through the term of the PPA. If LADWP does not purchase the Solar Facility during the term of the PPA, then K Road can exercise its option to purchase the transmission line at fair market value (FMV) within six months after the end of the PPA term of 25 years.

Summary of Ordinance Provisions

Charter Section 674(a)(1) provides that the City Council has the power to approve contracts for the construction, ownership, operation and maintenance of facilities for the generation, transformation and transmission of electric energy. Charter Section 674(a)(2) provides that the City Council has the power to approve contracts for the sale, purchase, exchange or pooling of electric energy or electric generating capacity.

CEQA Findings

The Solar Facility will be permitted and constructed outside of the state of California. Facilities located outside California which are subject to environmental impact review pursuant to the National Environmental Policy Act (NEPA) are statutorily exempt from the California Environmental Quality Act per the California Code of Regulations Title 14, Chapter 3, Article 18, Section 15277. The DOI, the Bureau of Indian Affairs and the BLM issued a Record of Decision pursuant to NEPA for the Solar Facility on June 21, 2012. Additionally, in accordance with CEQA, a "Notice of Exemption" will be posted in Clark County, Nevada and in Los Angeles County, California.

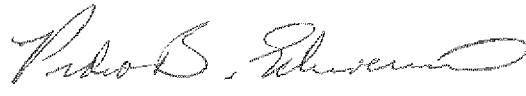
Council Rule 38 Referral

This draft ordinance has been presented to the Board of Water and Power Commissioners pursuant to Council Rule 38.

If you have any questions regarding this matter, please contact Deputy City Attorney Jean-Claude Bertet at (213) 367-4500. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PE:JCB:pj
Transmittal