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CITY ATTORNEY

REPORT NO. R 16 - 0 0 1 5
JAN 1 4 2016

REPORT RE:

DRAFT ORDINANCE APPROVING THE FIRST AMENDMENT TO 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 MOAPA SOUTHERN PAIUTE 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. The draft ordinance provides for the approval of a first amendment to the Moapa Solar Power Purchase Agreement, No. BP 12-017 (PPA Amendment). An affiliate of First Solar, Inc. (Developer) and the City of Los Angeles, acting by and through the Department of Water and Power (LADWP), negotiated certain provisions of the PPA, including the Purchase Option, where the definitive minimum and maximum prices set forth in the Purchase Option are removed while LADWP achieves a reduction in the purchase price for solar energy, a waiver of the project management and administrative costs for the Transmission Facilities, and additional curtailment rights, resulting in substantial savings to the City's ratepayers.

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 target, in 2012 the Board of Water and Power Commissioners (Board), via Resolution No. 013 073, and the Los Angeles City Council, via Ordinance No. 182333, approved the Moapa Solar Power Purchase Agreement No. BP 12-017 (PPA) for LADWP's acquisition of all the solar energy, associated environmental

attributes, and generating capacity rights associated with the solar facility for a 25-year term (Solar Facility).

The Solar Facility will be on Moapa tribal land, located 30 miles north of Las Vegas, Nevada. The Solar Facility will be connected directly to the LADWP transmission system at the Crystal Substation, enabling LADWP to meet its renewable energy targets.

In 2013, the Developer acquired the entity formed for the PPA and changed the entity's name to Moapa Southern Paiute Solar, LLC (Seller), and informed LADWP that after the Solar Facility was built, it would be sold. In 2015 the Developer requested to modify the Purchase Option, due to changing market conditions, where the definitive minimum and maximum prices set forth in the Purchase Option would be removed to facilitate the sale of the Solar Facility.

LADWP and the Developer negotiated to remove the definitive minimum and maximum prices set forth in the Purchase Option in exchange for a: (1) reduction in the purchase price of solar energy; (2) a waiver by the Developer of its right to be reimbursed for project management and transmission administrative costs, for a savings of roughly \$1.5 million; and (3) with additional curtailment rights at a reduced price for solar energy. These provisions are estimated by LADWP staff to result in substantial savings over the life of the agreement.

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 pursuant to 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.

In addition, LADWP's action of amending a power purchase agreement for the purchase of power from an approved project does not itself meet the definition of a

project. In accordance with Section 15060 (c)(3) of the CEQA Guidelines, an activity is not subject to CEQA if it does not meet the definition of a project. Section 15378 (b)(5) states that organizational or administrative activities that will not result in direct or indirect physical changes in the environment do not meet that definition. Since the proposed action is only for authorization to amend an existing power purchase agreement to purchase power, but not to exercise the Purchase Option, the proposed action is not subject to CEQA.

Council Rule 38 Referral

A copy of the 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,

MICHAEL N. FEUER, City Attorney

By 

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DM:JCB:pj
Transmittal