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CITY ATTORNEY

REPORT NO. R 1 5 - 0 1 5 8
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REPORT RE:

DRAFT ORDINANCE APPROVING THE SECOND AMENDATORY POWER SALES CONTRACT, LADWP AGREEMENT NO. 10437, BY AND BETWEEN THE CITY OF LOS ANGELES, ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, AND THE INTERMOUNTAIN POWER AGENCY AND RELATED CONTRACTS ALLOWING FOR CONTINUING PARTICIPATION IN THE INTERMOUNTAIN POWER PROJECT BEYOND CURRENT PARTICIPATION TERMINATION DATE OF JUNE 15, 2027

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: (1) Second Amendatory Power Sales Contract, LADWP Agreement No. 10437 (Amendatory Contract), by and between the City of Los Angeles, acting by and through the Department of Water and Power (LADWP), and the Intermountain Power Agency (IPA) for participation in the Intermountain Power Project (IPP); (2) Power Purchase Termination Agreement, by and between LADWP and IPP participant PacifiCorp; (3) delegated authority to enter into Renewal Power Sales Contract, by and between LADWP and IPA; and (4) delegated authority to enter into Agreement for Sale of Renewal Excess Power, by and between LADWP, IPA and certain other IPP participants, and limited authority for the Board of Water and Power Commissioners (Board) to amend such agreements. IPA owns and operates IPP, which currently generates electricity through coal-fired generation. LADWP procures electricity from IPP pursuant to a Power Sales Contract, LADWP Agreement No. 10437, running through June 15, 2027. The Amendatory Contract provides for the replacement of the

coal-fired generating units at IPP with combined cycle natural gas-fired units with lower design capacity that would commence operation before the term of such Power Sales Contract ends on June 15, 2027. Thus, the Amendatory Contract allows LADWP the ability to continue participating in IPP beyond June 15, 2027, and the associated agreements are in furtherance of that coal replacement strategy and continued participation.

Background

In order for LADWP to be able to enter the Renewal Power Sales Contract with IPA extending the term for electricity procured from IPP beyond June 15, 2027, the IPP facility must be repowered. Current California state law (commonly referenced as SB 1368) in effect prohibits California electric utilities from entering into new or renewal long-term contracts for the purchase of power from coal-fired facilities. Thus, for the California participants involved in IPP, including LADWP, to enter into Renewal Power Sales Contracts with a term ending in 2077, the fuel supply for power production must be converted from coal to SB 1368-compliant natural gas. The Amendatory Contract provides for the IPP coal-fired units to be replaced with SB 1368-compliant natural gas.

This Amendatory Contract will also provide for a reduction in the electric generating capacity at IPP. There will be at least a one-third reduction in IPP's current generating capacity of 1800 Megawatts (MWs), and, depending on how the subscription to the Renewal Power Sales Contracts plays out with all of the current IPP participants, there could be an even greater reduction in the IPP generating capacity. The Amendatory Contract specifically provides for a generating capacity no greater than 1200 MWs.

The Amendatory Contract provides several benefits for LADWP and the other IPP participants. It allows for efficiently utilizing existing IPP infrastructure, staffing and transmission assets. It allows IPA to offer LADWP and other California IPP participants a Renewal Power Sales Contract that they can accept under SB 1368. It provides for a reduced generating capacity at IPP so that the difference can be made up through LADWP's ongoing efforts to increase energy efficiency, demand response programs and renewable energy. It provides compliance with SB 1368's emission performance standard under regulations adopted by the California Energy Commission. It frees up additional capacity on the 500 mile-long transmission system emanating from IPP's switchyard in Delta, Utah and terminating in Southern California, for increasing renewable energy brought to LADWP. It also allows for an alternate means of compliance with future requirements under Environmental Protection Agency regulations pertaining to coal-fired generation by switching to natural gas as a generation fuel.

The Amendatory Contract requires permitting and construction to begin on the replacement of the IPP coal units with combined-cycle natural gas units by no later than January 1, 2020. Such replacement must be completed by no later than July 1, 2025. It provides for decommissioning and retirement of the replaced coal-fired units. It provides flexibility to decrease the capacity of the new gas units to less than 1200MWs. It also provides for the ability of IPA and the IPP participants to choose an Alternative Repowering in place of or in combination with the gas repowering so long as it is authorized and complies with applicable laws and regulations, including SB 1368. LADWP would need the Board's prior approval before voting in favor of any Alternative Repowering.

The Amendatory Contract would be effective only upon all IPP participants' approval of same agreement, PacifiCorp's early exit from IPP and a corresponding early termination of LADWP Agreement No. 10050, a Power Purchase Agreement entered into in 1989 between PacifiCorp and LADWP (1989 Agreement) whereby PacifiCorp has been selling power to LADWP that is equivalent to PacifiCorp's 4% IPP generation entitlement share. The Power Purchase Termination Agreement would terminate that 1989 Agreement, which otherwise would continue until June 15, 2027, coterminous with LADWP's current Power Sales Contract with IPA, and in effect would allow for a streamlining of contractual arrangements with the elimination of PacifiCorp's participation in IPP.

After the Amendatory Contract becomes effective, IPA will make a renewal offer to the IPP participants pursuant to the Renewal Power Sales Contract and Agreement for Sale of Renewal Excess Power (Renewal Contracts). Under the Renewal Contracts, pursuant to the delegated authority provided for in the draft ordinance, LADWP would be subscribing to a combined minimum Generation Entitlement Share of 48.617% (equal to no more than 583 MWs of generation capacity) and a combined maximum Generation Entitlement Share of up to 100% (equal to no more than 1200 MWs of generation capacity).

Enabling Charter Sections

Charter Section 674(a)(2) provides that, subject to approval by ordinance, the Board shall have the power to approve contracts for the sale, purchase, exchange or pooling of electric energy or electric generating capacity. Additionally, pursuant to Charter Section 101, the Council has the power to authorize the Board to amend the agreements without further Council approval.

CEQA Findings

In accordance with the California Environmental Quality Act (CEQA) it has been determined that approving the Amendatory Contract and Renewal Contracts is exempt from CEQA for the following reasons:

1. The approval of the Amendatory Contract and Renewal Contracts is categorically exempt pursuant to CEQA Guidelines Section 15301 as a minor alteration to an existing facility used to provide electric power.
2. The approval of the Amendatory Contract and Renewal Contracts is categorically exempt pursuant to CEQA Guidelines Section 15301 as a replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity. Repowering pursuant to the contracts would replace 1,800 MWs of coal-fired electric generation units with not more than 1,200 MWs of gas-fired electric generation units (Repowering).
3. The approval of the Amendatory Contract and Renewal Contracts would not have a significant effect on the environment and is therefore exempt from CEQA under the "common sense exemption" set forth in CEQA Guidelines Section 15061(b)(3).
4. No unusual circumstances exist, and thus the categorical exemptions are not subject to any applicable exception. IPA's existing facility IPP has been in operation since the 1980s, and Repowering pursuant to the Amendatory Contract would reduce air emissions compared to baseline conditions. There is nothing unusual about the Amendatory Contract, Renewal Contracts or the Repowering.

Council Rule 38 Referral

Pursuant to Council Rule 38, this draft ordinance has been presented to the Board of Water and Power Commissioners, and its comments have been incorporated or resolved with LADWP.

If you have any questions regarding this matter, please contact Deputy City Attorney Vaughn Minassian at (213) 367-5297. 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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