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CITY ATTORNEY

REPORT NO. R 16 - 0 4 0 3

DEC 8 0 2016

**REPORT RE:**

**DRAFT ORDINANCE APPROVING THE FIRST AMENDMENT TO THE BEACON SOLAR POWER PURCHASE AGREEMENTS BETWEEN THE CITY OF LOS ANGELES, ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, AND SUNE BEACON SITE 2 LLC, UNDER CONTRACT NUMBER BP 14-006, AND SUNE BEACON SITE 5 LLC, UNDER CONTRACT NUMBER BP 14-013; AND DELEGATING TO THE BOARD OF WATER AND POWER COMMISSIONERS LIMITED AUTHORITY TO AMEND SUCH AGREEMENTS**

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 First Amendments to the Beacon Solar Power Purchase Agreements (PPAs) between the City of Los Angeles, acting by and through the Department of Water and Power (LADWP), and the following project entities of Capital Dynamics LLC (Developer): (1) SunE Beacon Site 2 LLC, under contract number BP 14-006; and (2) SunE Beacon Site 5 LLC, under contract number BP 14-013. The draft ordinance also would delegate to the Board of Water and Power Commissioners limited authority to amend such agreements. The parties re-negotiated certain provisions of the PPAs, including amending the Default Cure Periods, Commercial Operation Dates, Performance Security, timing for the Exercise of the Purchase Option, and lowering the Contract Price.

### Background

As part of its Renewable Portfolio Standard (RPS), LADWP must meet a target to supply 33% of its retail energy from renewable energy sources by 2020 and 50% by 2030 in accordance with Senate Bill 350. To assist in achieving its RPS targets, in 2014 the Board via Resolution Numbers 014-228 and 014-229 (Beacon Resolutions), and the Los Angeles City Council (City Council) via Ordinance Numbers 183139 and 183140 (Beacon Ordinances), approved PPAs with five project development entities on LADWP-owned land consisting of over 2,500 acres near Mojave, California, which is called the Beacon Property.

There are five different sites on the Beacon Property. All of the sites are planned for development of solar generating facilities where LADWP will acquire all of the solar energy, environmental attributes, and generating capacity rights associated with the solar facilities for a 25-year term. The sites combined, identified as Site 1, Site 2, Site 3, Site 4 and Site 5, will generate up to 250 Megawatts of solar energy.

### First Amendment

In 2016, the Developer informed LADWP that due to changing market conditions and extension of the federal Business Energy Investment Tax Credit, it was requesting that the PPAs be amended to facilitate financing for the solar generating facilities, including changing Default Cure Periods, Commercial Operation Dates, Performance Security, and timing for the Exercise of the Purchase Option. In exchange for the changes to the PPAs, LADWP negotiated for a reduction in the Contract Price that provides a savings benefit of approximately \$12 million over the 25-year term of the PPAs.

### Charter Requirements

Charter Section 674(a)(1) provides that subject to approval by ordinance, the Board shall have the power to contract with the United States, or any of its agencies, any state or state agency, and any corporation, public or private, located inside or outside of the City or State of California 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. Additionally, pursuant to Charter Section 101, the Council has the power to authorize the Board to amend the agreements without further Council approval.

The draft ordinance permits the Board to amend the PPAs in the future without further approval by the City Council, provided that such amendments do not increase the costs or extend the total term of the PPAs.

CEQA

Development of solar energy on the Beacon Property (the Beacon Solar Project) was originally proposed as a private development and required a Conditional Use Permit (CUP). The Lead Agency under the California Environmental Quality Act (CEQA) was Kern County. An Environmental Impact Report (EIR) was prepared for the project in accordance with the requirements of CEQA.

On September 27, 2012, the Kern County Planning Commission certified the EIR and approved the CUP to allow construction and operation of the project. That decision was appealed to the Kern County Board of Supervisors, which denied the appeal and upheld the approval on October 30, 2012. In accordance with CEQA, LADWP is a responsible agency for this project and, as such, is required to adopt the Mitigation Measure Monitoring Program, Findings of Fact and Statement of Overriding Considerations. On May 20, 2014, the Board took these actions for the Beacon Solar Project and fulfilled its requirements as a responsible agency under CEQA. CEQA defines "project" as the whole of the action rather than each separate governmental approval. Amending the PPA, interconnection, ground lease and option agreements for the project site are part of the Beacon Solar Project and are, therefore, covered under the project approval. Consequently, further CEQA action for the approval of this ordinance by the City Council is not required.

Council Rule 38


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,

MICHAEL N. FEDER, City Attorney

By

  
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DM:JCB:pj  
Transmittal