



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 1 6 - 0 0 7 8
MAR 1 0 2016

REPORT RE:

DRAFT ORDINANCE APPROVING THE FIRST AMENDMENT TO EACH COMPETITIVE OFFER POWER PURCHASE AGREEMENT BETWEEN THE CITY OF LOS ANGELES, ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, AND THE FOLLOWING ENTITIES: SUNE LADWP 2, LLC FOR BP NO. 14-007; HECATE ENERGY FIT "A", LLC FOR BP NO. 14-009; HECATE ENERGY FIT "B", LLC FOR BP NO. 14-011; AND SUNE LADWP, LLC FOR BP NO. 14-014, FOR THE EXTENSION OF MILESTONES II AND III, FOR THE PURCHASE OF ELECTRIC ENERGY FROM IN-BASIN SOLAR POWERED GENERATION FACILITIES AS PART OF LADWP'S FEED-IN TARIFF PROGRAM; 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 the First Amendment to each Competitive Offer Power Purchase Agreement (COPPA) between the City of Los Angeles, acting by and through the Department of Water and Power (LADWP), and the following entities: SunE LADWP 2, LLC (BP No. 14-007); Hecate Energy FIT "A", LLC (BP No. 14-009); Hecate Energy FIT "B", LLC (BP No. 14-011); and SunE LADWP, LLC (BP No. 14-014) (collectively, the COPPAs) for the extension of Milestone II and Milestone III, for the purchase of electric energy from in-basin solar powered generation facilities as part of LADWP's FIT program, and the

delegation to the Board of Water and Power Commissioners limited authority to amend such agreements.

Background

On July 1, 2014, the City Council passed Ordinance No.183140, which was approved by the Mayor on July 7, 2014. The ordinance approved two types of contracts. The first type is large-scale Power Purchase Agreements associated with LADWP's Beacon site in Kern County. The second type is the COPPAs at issue. The COPPAs require the contractors to develop distributed generation facilities within the LADWP basin in proportion to the size of facilities to be developed at the Beacon site. These COPPAs make up the Department's FiT 50 program.

Specifically, SunE LADWP, LLC and SunE LADWP 2, LLC are required to develop FiT 50 facilities of 10 and 12 megawatts (MWs), respectively. Hecate Energy FiT "A", LLC and Hecate Energy FiT "B", LLC are required to develop facilities of 14 MWs each.

The COPPAs contain three milestones by which the developers must have a certain amount of their facilities in commercial operation. Initially, the first milestone was June 30, 2105. The COPPAs provided that this milestone could be moved six months, to December 31, 2015, provided that there was a delay caused by the buyer (the City acting by and through LADWP). Given that there was some uncertainty created when the Zoning Administrator determined that FiT projects need a conditional use permit (CUP), and it took some time for LADWP to put in place a master CUP for rooftop and carport FiT projects which are not in single-family, agricultural or open space zones, the first milestone was extended.

Common to all COPPAs is a development schedule comprised of the three milestones as follows:

COPPA No.	Milestone I 12/31/2015 (MW)	Milestone II 3/31/2016 (MW)	Milestone III 12/31/2016 (MW)
BP 14-007	4	4	4
BP 14-009	4	5	5
BP 14-011	4	5	5
BP 14-014	3	3	4

As indicated above, each milestone requires a certain amount of MWs to be placed into commercial operation by that date. Failure would result in liquidated damages (\$200 per kilowatt) in proportion to the facilities not developed on time, and the developer would forfeit the right to sell the remaining capacity for that milestone. If

no kilowatt(s) are installed for Milestone II, the remaining performance security will be forfeited and the developer will forfeit the right to further sell energy for all remaining capacity.

Given that Milestone I has been missed for each COPPA, LADWP will be collecting liquidated damages totaling \$3 million pursuant to the COPPAs.

LADWP believes it is more advantageous to extend Milestones II and III to increase the likelihood of project development, rather than collecting liquidated damages for missing the next scheduled milestone. The proposed draft ordinance would approve amendments to the COPPAs that would extend Milestone II to December 31, 2016, and Milestone III to February 28, 2017. The quantity of MWs that must be in commercial operation for each milestone would not change.

Because Ordinance No. 183140 delegates authority to the Board of Water and Power Commissioners to make amendments to the agreements without further City Council approval only if they are "ministerial and administrative in nature and do not increase the costs or extend the term of said agreements," Council approval is required for the proposed amendments. The proposed amendments require a discretionary act that would alter the milestone dates, which would otherwise trigger LADWP's entitlement to liquidated damages. Thus, altering the milestones cannot be characterized as ministerial in nature and might be characterized as changing the ultimate cost to LADWP if liquidated damages were otherwise collected after a Milestone II or III is missed under the existing schedule.

The amendments also provide that, in the event there are any future delays caused by LADWP, the developers' sole remedy will be an extension of Milestone III for up to three months as determined by LADWP.

CEQA Findings

In accordance with the California Environmental Quality Act (CEQA), it has been determined that the LADWP FiT Program is exempt pursuant to the General Exemption described in CEQA Guidelines Section 15061(b)(3). The General Exemption applies in situations where it can be seen that there is no possibility that the activity in question may have significant effect on the environment. LADWP has no obligation to purchase energy from participants until any applicable CEQA review has been completed and LADWP has determined, based on that review, to approve the purchase of energy from the facility.

Summary of Ordinance Provisions

The enclosed draft ordinance approves the First Amendment to each of the COPPAs, approved by the Board of Water and Power Commissioners by the adoption of Resolution No. 016 210. The amendments will extend the second and third milestones of the existing agreements.

The draft ordinance also delegates to the Board of Water and Power Commissioners authority to amend the COPPAs and associated agreements without further Council approval, provided that such amendments do not increase the costs or extend the term of such agreements.

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 William Kysella at (213) 367-5296. 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



DAVID MICHAELSON
Chief Assistant City Attorney

DM:WHK:pj
Transmittal