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CITY ATTORNEY

REPORT NO. R 18 - 0062
MAR 01 2018

REPORT RE:

DRAFT ORDINANCE APPROVING (1) THE ARP-LOYALTON BIOMASS PROJECT POWER SALES AGREEMENT, NO. BP 17-03, AND (2) THE ARP-LOYALTON BIOMASS PROJECT FISCAL AGENCY AGREEMENT, NO. BP 17-037, BY AND BETWEEN THE CITY OF LOS ANGELES, ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, AND THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY; 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 (1) the ARP-Loyalton Biomass Project Power Sales Agreement, No. BP 17-036 (PSA), and (2) the ARP-Loyalton Biomass Project Fiscal Agency Agreement, No. BP 17-037 (Fiscal Agency Agreement), both by and between the City of Los Angeles, acting by and through the Department of Water and Power (LADWP), and the Southern California Public Power Authority (SCPPA); and delegates to the Board of Water and Power Commissioners limited authority to amend the agreements. The PSA provides for LADWP's purchase of biomass energy that SCPPA acquires from ARP-Loyalton Cogen LLC. ARP-Loyalton Cogen LLC operates the subject biomass generating facility located in Sierra County, California. SCPPA will enter into a separate Power Purchase

Agreement (PPA) with ARP-Loyalton LLC, along with the Sacramento Municipal Utility District (SMUD), the Modesto Irrigation District (MID) and the Turlock Irrigation District (TID) (Project). The SCPPA's share of energy from the Project will be divided among SCPPA participating members LADWP, Riverside, Anaheim and the Imperial Irrigation District (SCPPA Participants) under individual Power Sales Agreements. The Fiscal Agency Agreement designates LADWP to serve as SCPPA's fiscal agent in the administration of SCPPA's duties, including billing and accounting services, relating to the Project.

Background

As part of its Renewable Portfolio Standard (RPS), LADWP must meet a target to supply 33% of its retail energy sales from renewable energy sources by 2020 and 50% by 2030. Senate Bill (SB) 859 was approved by the legislature and signed by the Governor in 2016. SB 859 required utilities to obtain energy from bioenergy projects meeting certain requirements relating to sustainable forestry management, including the removal of dead and dying trees from high hazard areas. Local publicly owned utilities serving more than 100,000 customers are required to procure their proportionate share of a statewide total of 125 megawatts (MW) of capacity from such bioenergy facilities subject to terms of up to five years. On March 13, 2017, SCPPA issued a request for proposals on behalf of the seven publicly owned utilities subject to AB 859, seeking a total capacity of 29 MW.

SCPPA received nine proposals that the utilities reviewed. The Project was selected because the developer offered the lowest price, including energy and transmission cost to the point of delivery. LADWP and SCPPA and the other municipal utilities negotiated the PPA with ARP-Loyalton LLC, pursuant to which ARP-Loyalton LLC will sell to SCPPA, SMUD, MID and TID 18 MW of AB 859-compliant energy from the biomass power generating facility located in Sierra County, California. SCPPA's share of the total is 11.98 MW, of which LADWP will take 8.88 MW.

The PPA between SCPPA and ARP-Loyalton LLC allows for the purchase of energy, environmental attributes and generating capacity rights for a total term of five years. The SB 859-compliant energy will be delivered to the Summit 120 kV substation, which is connected to the California Independent System Operator (CAISO) transmission system. The Project participants will sell the energy at the point of delivery, avoiding any additional transmission costs. Each participant will keep the associated environmental attributes.

Through the PSA between SCPPA and LADWP, SCPPA sells LADWP its proportionate share of the AB 859-compliant energy, environmental attributes and generating capacity rights received from the Project, and passes through to LADWP the rights, benefits and obligations provided under the PPA.

The Fiscal Agency Agreement provides for the designation of LADWP as the fiscal agent of SCPPA to provide services such as billing and accounting. SCPPA maintains a very small staff to minimize administrative and general fees charged to the projects. Based on LADWP's experience providing these services for other SCPPA projects, LADWP has agreed to provide these services on a reimbursable basis for the Project.

Charter Enabling Provisions

Charter Section 674(a)(2) provides that, subject to approval by ordinance, the Board shall have the power to contract for the purchase of electric energy or electric generating capacity. In addition, pursuant to Charter Section 101, the City Council has the power to authorize the Board to amend the agreements without further City Council approval.

CEQA Findings

In accordance with the California Environmental Quality Act (CEQA), it has been determined that PSA No. BP 17-036 for 8.9 MW of bioenergy capacity from the ARP-Loyalton Project's plant in Sierra County, California, and FAA No. BP 17-037 for fiscal agent services with SCPPA are statutorily exempt pursuant to Section 15060(c)(2) of the CEQA Guidelines. This section states that CEQA does not apply if the project will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Council Rule 38 Referral

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 William Kysella at (213) 367-5296. He or another member of this Office will be present when you consider this matter to answer questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

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Transmittal

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