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CITY ATTORNEY

REPORT NO. R 21-0308
OCT 13 2021

REPORT RE:

DRAFT ORDINANCE APPROVING THE RED CLOUD WIND PSEUDO-TIE AGREEMENT, DWP AGREEMENT NO. BP21-003, AND DELEGATING TO THE BOARD OF WATER AND POWER COMMISSIONERS AUTHORITY TO AMEND THE AGREEMENT

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 20-1217-S1

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 Red Cloud Wind Pseudo-Tie Agreement (Pseudo-Tie Agreement) by and among the City of Los Angeles, acting by and through the Department of Water and Power (LADWP); Public Service Company of New Mexico, a New Mexico corporation (PNM); and Red Cloud Wind, LLC, a Delaware limited liability company (Red Cloud), DWP No. BP 21-003. The ordinance also delegates to the Board of Water and Power Commissioners (Board) authority to amend the agreement.

Background

Southern California Public Power Authority (SCPPA), a joint powers authority formed to facilitate joint power and transmission projects for its members including LADWP, entered into the Red Cloud Power Purchase Agreement (PPA) with Red Cloud to purchase all of the energy, environmental attributes, and capacity rights produced

from the 331 megawatts (MW) wind project for a 20-year term, subject to extension in accordance with the terms of the PPA (Red Cloud Red Wind Project).

In November 2020, the Los Angeles City Council adopted Ordinance No. 186801, approving the Red Cloud Wind Project Power Sales Agreement between LADWP and SCPPA (PSA). The PSA sets forth the terms and conditions of LADWP's acquisition from SCPPA of 331 MW wind energy output, associated environmental attributes, and generating capacity rights as produced by the Red Cloud Wind Project.

The Red Cloud Wind Project is physically located in the balancing authority area of PNM and for LADWP to receive all of the environmental attributes associated with the Red Cloud Wind Project, and to allow participation of the Red Cloud Wind Project as a participating resource in the energy imbalance market, a pseudo-tie arrangement is needed to virtually remove the Red Cloud Wind Project out of PNM's balancing authority area into LADWP's balancing authority area. The Pseudo-Tie Agreement establishes the terms and conditions for the pseudo-tie arrangement among LADWP, PNM and Red Cloud. The term of the Pseudo-Tie Agreement is coterminous with the PPA and the PSA.

Charter Enabling Provisions

Charter Section 674(a)(1) provides that, subject to approval by ordinance, the Board has the power to approve contracts with the United States or any of its agencies, any state or any state agency, and any corporation, public or private, located inside or outside of the City of Los Angeles or State of California for the construction, ownership, operation, and maintenance of facilities for the generation, transformation, and transmission of electric energy that provides for a sharing of the use and benefits and of the capital charges and other obligations associated with the facilities. In addition, pursuant to Charter Section 101, the City Council has the power to authorize the Board to amend the Pseudo-Tie Agreement without further City Council approval.

CEQA Findings

The Pseudo-Tie Agreement is exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15060(c)(2). In accordance with this section, an activity is not subject to CEQA if it will not result in a direct or reasonably foreseeable indirect physical change in the environment. The approval of the Pseudo-Tie Agreement among LADWP, PNM, and Red Cloud will not result in any physical change in the environment and, therefore, is not subject to CEQA.

Council Rule 38 Referral

Pursuant to Council Rule 38, this draft ordinance has been presented to the Board of Water and Power Commissioners.

If you have any questions regarding this matter, please contact Deputy City Attorney Syndi Driscoll at (213) 367-4363. She or another member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

DM:SD:rb
Transmittal