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CITY ATTORNEY

REPORT NO. R??-0261
AUG 04 2022

REPORT RE:

DRAFT ORDINANCE APPROVING THE SOUTH SWP HYDRO POWER FERC PROJECT NO. P-2426 COST SHARING AGREEMENT FOR THE SOUTH STATE WATER PROJECT HYDROPOWER PROJECT, DWP NO. BP21-001; AND DELEGATING TO THE BOARD OF WATER AND POWER COMMISSIONERS LIMITED AUTHORITY TO AMEND THE COST SHARING AGREEMENT

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: (1) the approval of the South SWP Hydropower FERC Project No. P-2426 Cost Sharing Agreement by and between the City of Los Angeles, acting by and through the Department of Water and Power (LADWP), and the California Department of Water Resources (CDWR) as co-licensees of the South State Water Project Hydropower Power Project (SSWP) P-2426, DWP No. BP21-001 (Cost Sharing Agreement); and (2) a delegation to the Board of Water and Power Commissioners (Board) the authority to amend the Cost Sharing Agreement, provided that such amendments do not increase the cost of the agreement.

Background

Pursuant to the Federal Energy Regulatory Commission (FERC) hydroelectric power plant license, P-2426, LADWP and CDWR are co-licensees on the SSWP. The SSWP consists of the Warne Power Plant, operated and maintained exclusively by and for CDWR, and the Castaic Power Plant (CPP), operated and maintained by LADWP as

a pump-storage and used by CDWR as a water conveyance. The CPP is an essential asset in LADWP's in-basin with its hydroelectric generation capability, with an installed and licensed capacity of 1275 megawatts, and can be on-line within minutes, in comparison to a traditional steam-driven turbine generator which may require a minimum of two days to start-up. In addition to providing peaking power during the summer months, CPP's operational flexibility and rapid response capability facilitates the integration of renewable energy, such as wind and solar, promoting necessary stability and reliability to the grid serving as LADWP's critical reserve capacity and energy storage facility for storing excess renewable energy.

The P-2426 license was originally issued in 1978 and expired on January 31, 2022. After an extensive stakeholder process, involving multiple regulatory agencies and non-governmental entities, the co-licensees filed with FERC the Final License Application (FLA) to extend the term of the P-2426 license for an additional 50 years. As required by FERC, the FLA included a number of protection, mitigation and enhancement (PM&E) measures, designed to protect resources against potential impacts, mitigate any new impacts, and enhance resources affected by the continued operation of the project under the extended P-2426 license. The co-licensees are entering into the Cost Sharing Agreement to share in the cost of the PM&E measures in an equitable manner. The Cost Sharing Agreement outlines the terms for sharing the costs and responsibilities of implementing all the PM&E measures under the extended P-2426 license (New FERC License P-2426).

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 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 Cost Sharing Agreement without further City Council approval.

CEQA Findings

The Cost Sharing Agreement is exempt pursuant to California Environmental Quality Act (CEQA) Guidelines 15060(c)(3). In accordance with this section, an activity is not subject to CEQA if it does not meet the definition of a project. Section 15378(b)(4) states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment do not meet the definition of a "project" under the CEQA Guidelines.

The Cost Sharing Agreement does not constitute approval of a project pursuant to CEQA because LADWP and DWR have not and will not commit to the implementation, continued operation, and permitting of the project including the CPP under New License P-2426 or any PM&E measures that may be required by FERC and any other requirements that may be imposed under the New FERC License P-2426 until after: (i) such PM&E measures or other requirements are reviewed in accordance with the requirements of CEQA; (ii) any additional conditions, changes, or alternatives that have been identified and, where applicable, imposed pursuant to CEQA; and (iii) all required permits and approvals have been obtained in accordance with applicable laws and regulations.

Council Rule 38 Referral

Pursuant to Council Rule 38, the 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. A 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