

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 19-20, 2010

Reference No.: 2.4c.
Action Item

From: NORMA ORTEGA
Chief Financial Officer

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Subject: **REQUEST TO DIRECTLY NEGOTIATE WITH REPUBLIC CLOVERLEAF SOLAR**

RECOMMENDATION:

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) approve direct negotiations between Republic Cloverleaf Solar LLC (Republic) and the Department, for a long-term airspace development lease and revenue share operations, agreement that would permit Republic to install and maintain solar panels within several parcels of operating right of way in Santa Clara County. In return, the State of California (State) will receive an income stream from properties that would not otherwise be leasable outside of this proposed pilot project, recognize maintenance cost savings, and the goodwill associated with promoting renewable energy via the Governor's Executive Orders and Energy Action Plan and the Legislature's California Global Warming Solutions Act of 2006.

BACKGROUND

Republic was founded in 2008 as a start-up enterprise focused on developing commercial photovoltaic (PV) power generation systems on government-owned properties. Republic is a part of the Republic Family of Companies which also includes Republic Urban Properties LLC, Republic Land Development LLC and Republic Properties Corporation. The Republic Family of Companies represents a privately owned, full-service real estate investment, management and development enterprise based in suburban Washington, DC. Republic is the largest land and office leaseholder in Washington DC, housing both the FCC and FAA headquarters and manages large-scale developments within Santa Clara County.

Republic, in coordination with its partner Chevron Energy Solutions, will develop, finance, construct, own, operate and maintain a networked PV power park on Department operating right of way primarily within and adjacent to existing roadway interchanges. The power generated by this PV power park will be sold directly to Pacific Gas & Electric Company (PG&E) through a renewable energy program known as the "Standard Offer" Power Purchase Agreement (PPA) that was approved by the California Public Utilities Commission (CPUC) at its April 22, 2010 session. This program will guarantee a solar generated power purchase price of \$0.29/kWh for the term of the lease and operations agreement, which makes private development feasible. Republic is proposing a pilot project in order to explore the compatibility of such systems located within the Department's operating right of way. Republic proposes to link up to twelve locations within Santa Clara County to create up to a 20 megawatt (MW) PV power park.

The size of this proposed project is important, as it needs to be large enough to receive attention from institutional banking and tax credit investors, but small enough to fit within PG&E's new PPA program that has a maximum size of 50 MW. The location of the power park is also critical. An installation within available urban locations allows the system to provide maximum power to an established grid that will experience minimal transmission loss.

This Republic project is the first private solar installation proposal utilizing Department right of way, and at full capacity this pilot project has the potential to become the second largest PV power park in the United States, surpassed only by the 25 MW DeSoto Next Generation Solar Energy Center, completed in 2009 in the State of Florida.

When approved and constructed, this pilot project will:

- Generate almost 30 million Kilowatt hours (kWh) of power per year.
- Produce enough renewable power to supply 3,000 homes (one percent of homes in the city of San Jose).
- Employ over 100,000 fixed, ground-mounted PV panels.
- Offset 136,000 tons of carbon per year, positioning this venture for future carbon credits that could be purchased as the carbon market continues to grow in the United States.
- Create hundreds of new "cleantech" jobs as the park is constructed, maintained and operated.
- Attract millions of dollars of new investment to California.
- Establish a new revenue source for the Department through rents, profit sharing, and reduced maintenance costs using otherwise typically un-leasable operating right of way.

Existing freeway lease areas are generally located in areas of high demand; however, the great majority of operating right of way is typically un-leasable with a lack of demand due to its location and operational restrictions. This Republic pilot proposal is one of the first to propose leasing a number of properties that historically have no commercial demand and installing a networked modular solar panel system that is scalable in case future transportation demands require that certain locations be cleared for transportation projects. The proposed use will transform otherwise non-revenue generating properties into income-producing assets.

Negotiating directly with a private party to establish such a pilot project is the best option because:

- The primary long-term goal of this pilot project is for Department staff to gain the required technical knowledge so that future proposals to lease operating right of way for solar energy generation may be successfully solicited via a public Request for Proposals (RFP) process. The Department is aware that over a year ago the City of San Jose (City) circulated a RFP for a smaller scale solar installation. However, the City was forced to re-issue their RFP multiple times due to technical nuances that failed to solicit legitimate proposals.
- The feasibility of a solar installation hinges upon the owner's ability to sell the electricity generated at a high enough price to make the venture worthwhile. The new CPUC-sponsored "Standard Offer" PPA guarantees a PG&E purchase price of \$0.29/kWh. This is the highest local offer to date that will allow a private developer to attract technology partners and investors. The timeframe is very short for this new PG&E program, and imminent federal funding and tax credit deadlines make it impossible to successfully

draft and employ an RFP process that would move quickly enough to meet these deadlines.

- At this time, the Department is unaware of any other private entities interested in developing multiple locations of District 4 operating right of way. Santa Clara County recently issued an RFP soliciting proposals to install solar panels on County properties and Republic was the only entity that responded to the County RFP.
- Republic can immediately secure financing and begin construction once all necessary clearances are provided. Republic is also in a position to fully compensate the Department for all pre-construction staff review time, pay all soft and hard project costs associated with fully developing the unimproved right of way, make rental payments over the term of the lease and share in the long term project profits.

In order to explore the viability of such future solar developments within the Department's rights of way, the Department requests that it be allowed to begin direct negotiations with Republic with the goal of drafting a 25-year lease and revenue share operations agreement in order to develop a PV power park within the Department's operating right of way. The Department will immediately benefit by receiving lease payments from Republic for traditionally non-revenue producing properties. The Department will also realize annual savings on maintenance costs as Republic will become responsible for the liability and maintenance of the properties. Finally, in addition to the long-term ground lease, the parties will negotiate a revenue share program that will begin once the PV systems start returning a positive long-term cash flow.

Republic has spent six months coordinating with the Department in matters related to safety, environmental considerations, and operations. Thus far, all reviewing Divisions have preliminarily approved the concept, with a detailed review to take place upon the Commission's approval of this request to directly negotiate. Staff is confident that through these detailed reviews, the parties will identify and mitigate all safety, maintenance, and operational concerns associated with installing PV systems within the operating right of way; however, the Department will not advance this proposal if, after further review, the Department's primary transportation mission is deemed to be compromised in any way.

SUMMARY

It is requested that the Commission grant the Department permission to directly negotiate a developmental lease and revenue share operations agreement with Republic as it would be in the best interest of the Department. If approved, the Department will proceed with detailed reviews of the proposal, and negotiate the lease and operations agreement and return to the Commission for final review and action.