

Memorandum

To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: May 11-12, 2011

Reference No.: 2.4c.
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Brent Green
Chief
Division of Right of Way and
Land Surveys

Subject: **REQUEST TO CONTINUE DIRECT NEGOTIATIONS WITH REPUBLIC CLOVERLEAF SOLAR**

RECOMMENDATION:

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) extend for one year the authorization to directly negotiate with Republic Cloverleaf Solar LLC (Republic) to allow the parties to continue departmental review of the proposal and continue to negotiate terms for a developmental lease and revenue share agreement that would permit Republic to install and maintain solar panels within seven parcels of operating right of way in Santa Clara County.

BACKGROUND

May 2010 CTC Action: One Year Authorization Granted

At the May 19, 2010 meeting, the Commission voted unanimously to explore the Republic solar proposal by providing the Department a one year authorization to directly negotiate with Republic.

Memorandum of Understanding: Executed July 1, 2010

During the month after the Commission vote, the Department and Republic negotiated a Memorandum of Understanding (Memorandum) setting forth the expectations and duties of each party, thus enabling Republic to draft the required technical drawings and studies, and enabling the Department to process the extensive review of the proponent's designs and studies. The Memorandum was executed on July 1, 2010.

Proposal Summary: Pilot Project to Install Solar Panels within Department Operating Right-of-Way

Republic proposes to develop, finance, construct, own, operate and maintain a networked photovoltaic (PV) power park on the Department operating right of way, primarily within and adjacent to, existing roadway interchanges. The power generated by this PV power park will be sold to an investor or municipal owned utility through a power purchase agreement to be approved by the California Public Utilities Commission, and the power distributed to consumers via the power distribution grid in Santa Clara County.

Accomplishments since July 2010:

- **Design & Safety Reviews:** Department District and HQ Design and Traffic Safety staff have reviewed the proposed design and have provided comments regarding safety and design issues. The current solar array site plans reflect Department input regarding safety concerns, but Department may require future changes as it develops its internal policy on renewable energy installations within the operating right of way.
- **Environmental Review:** Republic has been working with Department's District 4 (D4) Environmental staff on a Mitigated Negative Declaration for California Environmental Quality Act. All required Technical Studies, which include a "Phase I Soils Study," a "Natural Environment Study," a "Historic Property Survey Report," and a "Visual Impact Assessment" (VIA) have been completed. An administrative draft report is expected to start a 30-day public review in June 2011 and the environmental process is expected to be completed by September 2011.
- **Community Outreach:** Republic and D4 staff extensively advertised and conducted two public outreach meetings in November 2010 with the Coyote Creek Neighborhood (the largest affected neighborhood) and an "overall" meeting in the City of Morgan Hill. Additionally, Republic maintains a website for the proposal: www.cloverleafsolarhighways.com that provides project information and accepts public inquiries.
- **Meetings with Local Agencies:** Republic and D4 staff met with all the affected local agencies, the cities of Morgan Hill and San Jose, Santa Clara County, and the Santa Clara Valley Transportation Authority, and letters of support for the proposed project have been received from the key local and state politicians within the proposed project limits.
- **Governor Brown:** In November 2010, Republic and D4 staff met with Governor Brown's Transition Team and Energy Advisor, Mr. Cliff Rechtschaffen who expressed the Governor's support for the proposal, as it meets numerous goals within his campaign platform, principally renewable energy produced within the local distribution grid.
- **Federal Highways Administration (FHWA):** Department staff has briefed FHWA on the Republic proposal and has provided it with the safety guidelines governing the solar panel site install design, and historic crash data for the specific sites where solar panels are proposed to be installed. FHWA is still conducting its review of the specific proposal for renewable energy installations within Department operating right of way.
- **Strategic Growth Council Grant Award:** Republic and the City of Morgan Hill were awarded a "Sustainable Communities Planning Grant" in November 2010. The grant is designed to develop a "best practice" model for greenhouse gas emission reduction strategies utilizing solar energy and will implement a community outreach program within the proposed project area to educate on the benefits of solar energy.

Power Purchase Agreement (PPA):

- **Interconnection:** On February 28, 2011, Republic applied to Pacific Gas and Electric (PG&E) through the Small Generator Interconnection process, a necessary step to demonstrate that the proposed seven interconnection points have capacity, to transmit the generated power to a utility sub-station.
- **PG&E Midsize PV Program Power Purchase Agreement Request For Offers (RFO):** On March 1, 2011, Republic applied for a PG&E Midsize PV Program PPA RFO as was presented to the Commission at its May 2010 meeting. Through this competitive reverse auction program, PG&E will procure 50 MW of PV power each year beginning this year and continuing for the next five years. The selection of the PPA recipients is expected to be announced by PG&E on June 3, 2011.
- **Republic continues to pursue a bi-lateral PPA:** The PG&E RFO Programs presume that successful applicants will execute a PG&E power purchase agreement. However, a fully negotiated PPA (referred to by PG&E as a “bi-lateral” PPA agreement) is required to provide the Department with the flexibility in terms required to best protect its transportation related interests. The PG&E standardized form PPA will not allow the Department to negotiate terms into the PPA designed to ensure transportation issues remain top priority within the right of way.

Chevron Energy Solutions: Chevron, an initial partner, is no longer involved with this proposal.

Remaining Steps:

- Circulate Negative Declaration Environmental Review document for public comment and finalize.
Responsible party: Republic and Department
Timeline: June 2011 – October 2011
- Right of Way agreement negotiations.
Responsible party: Republic and Department
Timeline: August 2011 – January 2012
- Finalize a power purchase agreement.
Responsible party: Republic together with power purchaser
Timeline: August 2011 – January 2012

The Department and Republic are attempting to negotiate draft right of way and power purchase agreements by December 2011, in order for the project to qualify for preferable federal tax treatments that expire in January 2012. Although the Department and Republic can work to meet this goal, it is not certain that the power purchase agreement negotiation can be finalized by the same date as it involves a third party that may not be as motivated to quickly conclude negotiations. However, as soon as both negotiations are completed, the Department will make an appearance before the Commission to seek approval of the negotiated terms. Hence, a one year authorization extension by the Commission is being requested.

SUMMARY

It is requested that the Commission authorize the Department to continue direct negotiations with Republic for one year to allow the Departmental technical review and environmental processes to be completed and allow Republic to negotiate a bi-lateral power purchase agreement, and the parties to negotiate a developmental lease and revenue share agreement, to be reviewed and approved by the Commission at a future meeting.