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Memorandum

To	Michael Webster Richard Morillo Daniel Hashimi		
From	Victor Hsu 	Date	April 17, 2019
Direct line	(213) 892-9326		
Email	victor.hsu@nortonrosefulbright.com		
Re	SCPPA Joint Powers Agreement		

I. QUESTION PRESENTED

In response to a letter dated February 8, 2019, addressed to the Southern California Public Power Authority ("SCPPA") from Todd M. Corbin, Utilities General Manager of the City of Riverside (the "Riverside Letter"), you have asked us whether it is necessary for SCPPA to amend its Joint Powers Agreement in order to authorize engaging in energy efficiency initiatives, load management projects, demand-side management programs and similar activities (the "activities" or "programs").

II. SUMMARY ANSWER

It is not necessary for SCPPA to amend its Joint Powers Agreement because SCPPA currently has the authority to engage in the activities and programs mentioned in the Riverside Letter and such activities and programs are a prerequisite to the manner in which SCPPA exercises its powers under the Joint Powers Act and the Public Utilities Code.

III. DISCUSSION

A. Background

In answering the question presented, we have reviewed the Riverside Letter, the Joint Powers Agreement of SCPPA dated as of November 1, 1980 (as amended, the "JPA Agreement"), the Joint Exercise of Powers Act, codified at California Government Code Sections 6500 *et seq.* (the "Joint Powers Act"), the California Public Utilities Code (the "Public Utilities Code") and relevant California case law.

Under Section 1 of the JPA Agreement, SCPPA was created as a separate public entity "for the purpose of undertaking the planning, financing, development, acquisition, construction,

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reconstruction, improvement, enlargement, betterment, operation or maintenance of one or more Projects." "Projects" is defined in Section 2 of the JPA Agreement to mean, in part, "(i) facilities for the generation or transmission of electrical energy for public or private uses and all rights, properties and improvements necessary therefor, including fuel and water facilities and resources, and buildings, structures, improvements and facilities appurtenant thereto or provided therefor together with land necessary therefor, and (ii) an ownership interest or capacity right in any facility for the generation or transmission of electric energy"

B. SCPPA's Express Powers under the JPA Agreement

Section 5 of the JPA Agreement sets forth the express powers of SCPPA. Section 5 states that SCPPA "shall have power to finance, acquire, construct, maintain and operate one or more Projects . . . and is hereby authorized and empowered, in its own name, to do or cause to be done all acts necessary for the exercise of such power" The rest of Section 5, in paragraphs (a) through (i), goes on to list several ways in which SCPPA may exercise its broad power to facilitate Projects, including broad authorization to acquire in any manner services and property (including intangible property) and to enter into contractual undertakings of virtually any kind, with any entity, including the power:

"(b) To acquire (by exercise of the power of eminent domain or otherwise), hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, or service including, without limitation, to buy, lease, construct, appropriate, contract for, invest in, and otherwise acquire, and to own, hold, maintain, equip, operate, manage, improve, develop, and deal in and with, and to sell, lease, exchange, transfer, convey and otherwise dispose of, real and personal property of every kind, tangible and intangible, commodities (including fuel and water) and services

. . .

(c) To make and enter into contracts with any Member or any other entity, public or private, with respect to the purchase, sale or transmission of electric power or energy or both, or with respect to the ownership, location, acquisition, construction, operation or disposal of any Project, or with respect to any other matters relating to any Project, on such terms and conditions as shall be determined by the Board of Directors.

. . .

(e) To make and enter into other contracts of every kind with the Members, the United States, any state or political subdivision thereof, and any individual, firm, association, partnership, corporation or any other organization of any kind.

. . .

(i) To exercise any other power permitted by the Joint Powers Act."

With respect to “contracting for renewable power,” one of the activities mentioned in the Riverside Letter, power purchase agreements (“PPAs”) for renewable energy by their nature fall squarely within the JPA Agreement’s definition of “Projects” which, as noted above, includes “an ownership interest or capacity right in any facility for the generation or transmission of electrical energy.” SCPPA’s execution, delivery and performance of PPAs for renewables is in accord with its express powers in Section 5, particularly Section 5(b) and (c) of the JPA Agreement.

In addition to contracting for renewable power, the Riverside Letter mentions energy efficiency and load management projects, as well as demand-side management resources. While these particular activities and programs are not directly related to financing, acquiring or constructing a Project, which are among the express powers under Section 5 of the JPA Agreement, Section 5 also refers to SCPPA’s power to “maintain and operate one or more Projects.” Also, the enumerated (but not exhaustive) acts which SCPPA is expressly authorized to undertake in connection with its Projects include acquiring, contracting for, developing, and dealing in and with property of every kind and any services. Under current Project structures, each Project Participant’s interest in any one or more of SCPPA Projects is one element of that Participant’s portfolio of electric energy or transmission resources, to be utilized and managed through SCPPA as part of its vertically integrated electric system. Given the role that SCPPA Projects serve in the integrated electric systems of the Participants in such Projects, the activities that may be construed as maintaining and operating such Projects can be quite broad. Likewise, the additional powers of SCPPA under paragraphs (a) through (i) of Section 5 to carry out the maintenance and operation of Projects are very broad. The activities and programs described in the Riverside Letter are consistent with customary operations of local publicly owned utilities in California, and we conclude that they fall within the purview of SCPPA’s broad express powers.

C. SCPPA’s Purpose under the JPA Agreement

In examining the language in the JPA Agreement used to describe SCPPA’s purpose as a joint powers authority, as noted above, Section 1 of the JPA Agreement states that SCPPA was created “for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, betterment, enlargement, operation or maintenance of one or more Projects.” The acts that SCPPA may undertake as an exercise of its powers in fulfilling that purpose are not necessarily limited to a single Project but may be viewed in the context of collectively serving the Projects that SCPPA may undertake as a whole.

Among the purposes listed in Section 1 are the planning and development of Projects. The activities and programs described in the Riverside Letter facilitate such purposes in several ways. Energy efficiency and load management both enhance the operation of current Projects and also assist with the planning and development of (and determining the need for and form of) future Projects. The same can be said for demand-side management and contracting for renewable power.

Other Section 1 purposes include the operation and maintenance of Projects. These mirror the express powers of SCPPA pursuant to Section 5, discussed above. Yet another stated purpose of SCPPA is the enlargement of Projects. According to Black’s Law Dictionary (10th ed. 2014), “enlarge” means “to increase in size or *extend in scope or duration*” (emphasis added). While “enlargement” of a Project commonly refers to increasing its physical size, it may also refer

to activities that increase its scope and duration. The activities and programs described in the Riverside Letter, by promoting more efficient operations, directly serve to maintain and lengthen the useful lives of Projects. Alternative energy activities and programs have the potential to expand the scope of Projects. Both are consistent with the broader meaning of "enlargement" in Section 1 of the JPA Agreement.

D. Requirements Imposed by the California Public Utilities Code

Another basis for SCPPA's authority to engage in the activities and programs mentioned in the Riverside Letter is found in the Public Utilities Code. Section 9615 of the Public Utilities Code states that "[e]ach local publicly owned electric utility, in procuring energy to serve the load of its retail end-use customers, shall first acquire all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible." Section 224.3 of the Public Utilities Code provides that a "local publicly owned electric utility" includes a "joint powers authority that includes one or more of these agencies and that owns generation or transmission facilities, or furnishes electric services over its own or its member's electric distribution system." As a joint powers authority that owns both generation and transmission facilities and also furnishes electric service, SCPPA qualifies as a "local publicly owned electric utility" under Section 224.3.

SCPPA does not have its own retail end-use customers; rather, the Members signatory to the JPA Agreement have retail end-use customers. Despite this fact, there are procedural requirements in the Joint Powers Act that tie Section 9615 of the Public Utilities Code to SCPPA. Section 6509 of the Joint Powers Act provides that a joint power authority's power, as specified in the joint powers agreement giving rise to its formation, "is subject to the restrictions upon the manner of exercising the power of one of the contracting parties, which party shall be designated by the agreement." At the end of Section 5, the JPA Agreement states that SCPPA's express powers therein are subject only to such restrictions upon the manner of exercising such powers as are imposed upon the City of Riverside, California, in the exercise of similar powers.

As a local publicly owned electric utility with retail end-use customers, the City of Riverside is effectively restricted in the manner in which it is empowered to exercise its express authority to acquire, construct, maintain and operate facilities for the generation or transmission of electrical energy, because it is mandated to first acquire energy efficiency and demand reduction resources pursuant to Section 9615 of the Public Utilities Code. Because SCPPA is subject to the restrictions upon the manner of exercising powers as are imposed upon the City of Riverside, as stated in Section 5 of the JPA Agreement and codified in Section 6509 of the Joint Powers Act, SCPPA is also restricted in the manner in which it is expressly empowered to acquire, construct, maintain and operate facilities for Projects. The Members of SCPPA are not relieved of their obligations under Section 9615 of the Public Utilities Code simply by acting through SCPPA, since SCPPA itself is also subject to such obligations. Therefore, SCPPA must first acquire all available energy efficiency and demand reduction resources that are cost effective, reliable and feasible in connection with its procurement of energy on behalf of its Members. The activities and programs described in the Riverside Letter satisfy these prerequisites.

In addition, under Section 5 of the JPA Agreement, SCPPA is authorized and empowered to do or cause to be done all acts "necessary for the exercise" of its power to finance, acquire, construct, maintain and operate one or more Projects. Because the acquisition of energy

efficiency and demand reduction resources is a prerequisite to SCPPA's exercise of its power, the acquisition of these resources is "necessary for the exercise" of SCPPA's power to acquire, construct, maintain and operate one or more Projects.

IV. CONCLUSION

The JPA Agreement currently provides SCPPA with sufficient power and authority to engage in the activities and programs described in the Riverside Letter. Therefore, it is not necessary to amend the JPA Agreement to permit SCPPA to undertake such activities and programs. SCPPA's execution, delivery and performance of PPAs for renewable power are within SCPPA'S express powers under the JPA Agreement. SCPPA's pursuit of the other activities described in the Riverside Letter is supported by the express power to maintain and operate one or more Projects provided in Section 5 of the JPA Agreement, and is in furtherance of the stated purpose of SCPPA set forth in Section 1 of the JPA Agreement.

Moreover, SCPPA is subject to the provisions of Section 9615 of the Public Utilities Code that require local publicly owned electric utilities, in procuring energy, to first acquire all available energy efficiency and demand reduction resources that are cost effective, reliable and feasible. This requirement is imposed on SCPPA by Section 6509 of the Joint Powers Act and Section 5 of the JPA Agreement, which provide that SCPPA is subject to the same restrictions upon the manner of exercising its power as the City of Riverside. As Riverside is subject to the prerequisites to acquire energy efficiency and demand reduction resources, so too is SCPPA. The activities and programs described in the Riverside Letter satisfy these prerequisites.