

K ROAD MOAPA SOLAR, LLC
Tax Abatement Hearing Transcript
Tuesday, April 18, 2013
Carson City, Nevada

Present at Hearing

Stacey Crowley, Director of the Governor's Office of Energy
Suzanne Linfante, Governor's Office of Energy
Sean Gallagher, K Road Moapa Solar
Josh Hicks, K Road Moapa Solar

On Telephone:

Mitsy Maser, Nevada State Department of Taxation

Transcript

Director Crowley:

I am Stacey Crowley, the Director of the Governor's Office of Energy. This is a hearing on the merits of an application for partial abatement of sales and use taxes originally submitted by K Road Moapa Solar, LLC, on February 5, 2013 and filed with the Office on February 19, 2013, to which we have assigned Application Number 12-1120PV. This application is for the construction and operation of a 250 MW solar facility that will be located on approximately 2,000 acres of land located in Clark County, Nevada. I will be the presiding officer for the hearing this afternoon. With me is my Program Coordinator Suzanne Linfante.

First we'll offer public comment. Is there anybody who would like to make a public comment, other than those that have expressed intent to speak on this matter? Let the record reflect that no person has sought to make a public comment in this matter at this time. We will also offer the opportunity to make a public comment at the end of the hearing.

As a preliminary matter, we have marked a packet of documents as Exhibit 1 in this matter. Exhibit 1 consists of several subparts:

Exhibit A, is the Notice of Public Hearing, dated March 27, 2013. Exhibit B, is the K. Road Moapa Solar, LLC, Pre-Application filed with the Director on November 19, 2012. Exhibit C, is the K. Road Moapa Solar, LLC, Application (Redacted) as filed with the Office of Energy on February 19, 2013. Exhibit D, is the Energy Related Tax Incentive Fiscal Note as required by NRS 701A.375-1(a) by the Budget Division of the State of Nevada Department of Administration, received by the Office of Energy on March 25, 2013. Exhibit E, is the Fiscal Impact Renewable Energy Partial Abatement of Sales and Use Tax as required by NRS 701A.375-1(b) by the Nevada Department of Taxation, received on February 28, 2013. Exhibit F, is the Pre Filed Testimony of Sean Gallagher with K. Road Moapa Solar, LLC received on April 9, 2013. Exhibit G, is the Letter of support from Clark County Board of Commissioners dated March 14, 2013. Exhibit H, is the K. Road Moapa Solar financial benefits and abatement worksheet providing examples of future financial benefit scenarios based on delivery location of taxable purchases dated April 17, 2013. I am admitting Exhibit 1 into evidence in this matter.

Would the representatives of K. Road Moapa Solar, LLC please introduce themselves with your name and title for the record?

Sean Gallagher:

Sean Gallagher, Managing Director of Government Relations for K Road.

Josh Hicks:

Attorney with Brownstein Hyatt Farber Schrek and I represent K Road.

Director Crowley:

Would you like to make an opening statement?

Sean Gallagher:

We are very pleased to be here today and thank you for the effort you put into analyzing the application and we are looking forward to going through the hearing process today and building this power plant and serving the state of Nevada.

Director Crowley:

Great. Do you intend to provide additional testimony or evidence this morning?

Josh Hicks:

We do have a few other documents. I don't know if you want to talk about this at this point in the hearing.

Director Crowley:

Yes, I need to administer an oath if anyone is going to testify with new information.

Josh Hicks:

We have a document and I think we need to clarify the numbers. The two scenarios that were put together, sub scenarios in them. These are to address the unusual situation and how do you determine financial benefit when both in the state in on tribal land. So we set out a couple different scenarios and it just depends on how it was interpreted, the capital investment and the taxes where they flowed, whether it's in the state or not in the state, or on tribal land. This is really for the cost benefit analysis of the process and you can see that it's satisfied regardless of what scenario was used. We want to put this in so that regardless of how you look at it you can see different ways that it flows - whether the taxes are flowing to the state or to the tribe. We thought this was a useful exhibit to add in. There is one issue with operational payroll that we will clarify, but that won't have an impact on the scenario.

Mr. Gallagher, you have seen scenarios one and two here. Are these to the best of your knowledge good faith and accurate representations of the calculations of the expected flows?

Director Crowley:

I will administer the oath. Do you swear or affirm, under penalty of perjury, to tell the truth, the whole truth and nothing but the truth?

Sean Gallagher:

Yes, I do. Subject to the clarification mentioned, the two scenarios show the benefit to the state against the tax abatement and they are accurate to the best of my knowledge.

Director Crowley:

I will admit this as Exhibit 2 in this matter and with those revisions, we'll have those posted. Thank you for that.

Josh Hicks:

Two other documents that you will want to mark as exhibits are the Tribal Tax Code from the Moapa Band of Paiute Indians and this is to show how the tribe treats sales taxes and consistent with Nevada Law and their tax programs are also consistent with Nevada law.

Director Crowley:

This is helpful. We'll consider this as Exhibit 3 in this matter.

Josh Hicks:

We will mark as Exhibit 4 is a letter from the department of taxation to K Road that is dated February 11, 2013. This is a letter that is also along the same lines of treating consistently the abatement program between the state program and the tribal tax rate. Since this is a letter of opinion from the department of taxation to the tax payer and we ask that this be marked confidential and not be released to the public.

Director Crowley:

This will be marked Exhibit 4 and be marked confidential.

Is there anybody else that would like to be heard in this matter?

Let the record reflect that no one has asked to be heard in this matter besides the applicant. Are there any closing remarks?

Sean Gallagher:

No, thank you very much.

Josh Hicks:

I will make one additional remark. Thank you for all of your time on this. This is just a sales and use tax abatement applicant. We may or may not follow up with property tax, but we'll let you know if that's going to happen.

Director Crowley:

Ok. We will close the evidentiary portion of this hearing closed. We appreciate your testimony.

For the purposes of the record, and based on the evidence supplied in this matter, I will now state my findings and conclusions based upon the substantial, reliable, and credible evidence presented to me in the exhibits and testimony presented this morning. As to each of the statutory requirements for this application, I make the following findings:

As to NRS 701A.360 (1), I find that the applicant intends to locate within this State a facility for the generation of Solar Photovoltaic renewable energy, thus meeting the intent of the statute.

As to NRS 701A.360(2), evidence states that the facility is not owned, operated, leased, or controlled by a government agency, thus meeting the requirement of the statute.

I find that NRS 701A.365(1)(a)(1) has been met by this renewable energy project, as the facility is expected to continue in operation in this State for a period of at least 10 years, through a Power Purchase Agreement with LA Dept of Water and Power for 25 years and is expected to continue to meet the eligibility requirements for the abatement.

As to NRS 701A.365(1)(b), the applicant has provided information and testimony that all the necessary state and local permits and licenses to construct and operate, thus meeting the requirement of the statute.

As to NRS 701A.365(1)(c), the applicant has provided testimony that no funding for facility is or will be provided by any governmental entity in this State for the acquisition, design or construction of the facility or for the acquisition of any land therefore, thus meeting the requirement of the statute.

As to NRS 701A.365(1)(d)(1), the application states that the construction of the facility will employ approximately 183 full-time employees during the second quarter of construction of which at least 30% will be Nevada residents. This meets the requirement of this statute.

As to NRS 701A.365(1)(d)(2), The application and testimony states that the total capital investment in the facility is estimated to be \$420,000,000. Because this project is located on the Moapa River Indian Reservation, the majority of the Capital Investment will be invested directly on tribal land. The applicant has made a good faith estimate of the potential percentage of investment made on tribal lands and what may occur on state or other federal land. The Applicant's worksheet, submitted as evidence in this matter, estimates scenarios of both 10% invested in the state and 5% invested in the state. The estimated Capital Investment in the state of Nevada is \$39,055,216 or \$19,527,608, respectively in each of those scenarios. The proposed Capital Investment in the State of Nevada exceeds the required \$10,000,000 capital investment, thus meeting the requirement by the statute.

As to NRS 701A.365(1)(d)(3), I find that this statute is met as the application states that the average hourly wage that will be paid by the facility to its operational employees in this State, excluding management and administrative employees, is approximately \$40.87, which is at least 110% of the average statewide hourly wage set by Department of Employment Training and Rehabilitation which is currently set at \$22.14.

As to NRS 701A.365 (1)(d)(4), I find that this statute is met as the application states that the average hourly wage that will be paid by the facility to all of its construction employees working on the facility, excluding management and administrative employees, will be approximately \$32.81, which is at least 150% of the average statewide hourly wage set by Department of Employment Training and Rehabilitation which currently equals \$30.20.

As to NRS 701A.365(1)(d)(4)(I) and (II), the application states that the health insurance provided to the construction employees on the facility allows for the coverage of the dependents of the employees and will meet or exceed the standards established by the Director, thus meeting the requirement of the statute.

As to NRS 701A.365(1)(f), I find that the benefits that will result to this State from the employment by the facility of the residents of this State and from capital investments by the facility in this State exceeds the loss of tax revenue that will result from the abatement, thus meeting the requirement of the statute. We calculated the benefits and the abatements based on the applicants good faith estimate of 5% of the capital investment coming into the state as well the sales and use tax received by the state for that investment and 100% of the Nevada construction and operational jobs benefits. I find the evidence presented in this matter shows that the benefits to the state include the following amounts. Again I am basing this on one of the scenarios.

Josh Hicks:

My only thought was since these are estimates about what the percentages are going to be, should we put the others on there too? I know you are looking at the five percent.

Director Crowley:

What I would like to do is state that the worksheet would stand to demonstrate that the benefits exceed the abatement, instead of putting all of the numbers into the record. In all cases, in the calculations that we

have made, the benefits exceed the abatement. We will let the worksheet demonstrate the various scenarios in which all demonstrate that the revenue exceeds the abatement.

Sean Gallagher:

Would you entertain an alternative finding to the effect that the record would support a finding that regardless how much of the sales tax goes to the state versus the tribe that the amount invested in the state amounts to roughly \$390 million?

Director Crowley:

I would need a determination from our Deputy Attorney General because we are looking at the scenario of which one of them shows the capital investment at \$390 million.

Suzanne Linfante:

We used the lowest possible number to demonstrate that at the lowest possible scenario the statute is met.

Josh Hicks:

It's just not entirely clear which number is the real number. Even at the lowest number, if the record could be clear on that. We need to pick a number later down the road that our options are open to go back and fix some of those numbers. Looking at it as we will use the most restrictive number out of an abundance of caution, but the other numbers we are comfortable with as well.

Director Crowley:

We can formalize that in our Order.

I will continue with the findings. As to NRS 701A.370(1)(b)(1)(III), the abatement granted by this Order will not apply during any period in which the facility is receiving another abatement or exemption from local sales and use taxes, thus meeting the requirement of the statute.

Based upon the previously mentioned findings, I conclude that the K Road Moapa Solar facility that is the subject of Application Number 12-1120PV satisfies or exceeds all of the applicable statutory requirements. Therefore, I grant K Road Moapa Solar, LLC, a partial abatement of sales and use taxes pursuant to the authority granted me in NRS 701A.300 through 701A.390.

After today's hearing, I will produce a written Findings of Fact, Conclusions of Law, and Order based upon today's hearing. Once the Order is issued, we will work with you and representatives from the Nevada Department of Taxation and appropriate representatives of your company will meet face-to-face to go over the terms and conditions of the Abatement Agreement and after that meeting, we will execute the Abatement Agreement.

Because this is the first time that we have approved a partial abatement of sales and use taxes for a project that is primarily located on tribal lands, we will need to work with the applicant and the Moapa tribe on what will be required for the annual compliance documents. We will try to describe this in the Order or through additional correspondence.

As a reminder, pursuant to NRS 701A.380, a partial abatement approved by the Director will terminate upon any determination by the Director that the facility has ceased to meet any eligibility requirements for the abatement. Are there any questions?

Would anybody like to make a public comment at this time? Let the record reflect that nobody has chosen to make public comment at this time. The hearing is concluded.