

## Legislation Details (With Text)

**File #:** 180965      **Version:** 1      **Name:**

**Type:** Bill      **Status:** ENACTED

**File created:** 11/1/2018      **In control:** Committee on Transportation and Public Utilities

**On agenda:**      **Final action:** 11/29/2018

**Title:** Authorizing the Procurement Commissioner, on behalf of the City, to enter into an agreement with the Philadelphia Energy Authority to purchase electricity and certain attributes and benefits related to the generation of such electricity from a solar energy facility, Adams Solar, LLC, for use at and in connection with City facilities, all under certain terms and conditions.

**Sponsors:** Councilmember Reynolds Brown, Councilmember Green, Councilmember Bass, Councilmember Johnson

**Indexes:** PHILADELPHIA ENERGY AUTHORITY

**Code sections:**

**Attachments:** 1. 180965 - Exhibit Set, As Amended.pdf, 2. CertifiedCopy18096501.pdf

Date	Ver.	Action By	Action	Result	Tally
12/11/2018	1	MAYOR	SIGNED		
11/29/2018	1	CITY COUNCIL	READ AND PASSED	Pass	16:0
11/15/2018	1	CITY COUNCIL	SUSPEND THE RULES OF THE COUNCIL	Pass	
11/15/2018	1	CITY COUNCIL	READ AND ORDERED PLACED ON NEXT WEEK'S SECOND READING CALENDAR		
11/15/2018	1	CITY COUNCIL	ORDERED PLACED ON THIS DAY'S FIRST READING CALENDAR		
11/14/2018	0	Committee on Transportation and Public Utilities	HEARING NOTICES SENT		
11/14/2018	0	Committee on Transportation and Public Utilities	HEARING HELD		
11/14/2018	0	Committee on Transportation and Public Utilities	AMENDED		
11/14/2018	1	Committee on Transportation and Public Utilities	REPORTED FAVORABLY, RULE SUSPENSION REQUESTED		
11/1/2018	0	CITY COUNCIL	Introduced and Referred	Pass	

Authorizing the Procurement Commissioner, on behalf of the City, to enter into an agreement with the Philadelphia Energy Authority to purchase electricity and certain attributes and benefits related to the generation of such electricity from a solar energy facility, Adams Solar, LLC, for use at and in connection with City facilities, all under certain terms and conditions.

WHEREAS, The Pennsylvania Electricity Generation Customer Choice and Competition Act made it possible for the City and all consumers of electricity to have direct access to the competitive market for the generated supply of electricity; and

WHEREAS, The City has established policy goals for increasing the percentage of City energy use from renewable sources; and

WHEREAS, The Philadelphia Energy Authority is authorized by the Municipality Authorities Act and City ordinances to enter into contracts for the supply of electricity; and

WHEREAS, The City's Office of Sustainability and the Procurement Department requested that the Authority enter into a selection process to identify a highly qualified supplier to provide electricity from renewable sources with certain attributes and benefits related to the generation of such electricity for use by City facilities with a proposed contract term of up to twenty (20) years; and

WHEREAS, Adams Solar, LLC, was selected as the Solar Electricity Seller through a competitive process which included a Request for Proposals issued on September 27, 2017; and

WHEREAS, The City's contract with the Authority would require the Authority to enter into a contract with the Solar Electricity Seller or its affiliates and undertake certain obligations, and the City will undertake certain obligations of the Authority; now, therefore

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. The Procurement Commissioner, on behalf of the City, is hereby authorized to enter into an agreement with the Philadelphia Energy Authority for the supply of solar electricity and certain attributes and benefits related to the generation of such electricity for use at City facilities, based substantially on the terms of a contract between the Authority and Adams Solar, LLC, or its affiliates, acting as the Solar Electricity Seller. The contract between the Authority and the Solar Electricity Seller shall require the Solar Electricity Seller to provide electricity from solar energy sources for use at the City's facilities in coordination with the City's licensed service provider of electricity. The contract shall be substantially consistent with the terms set forth in the document attached hereto as Exhibit "A".

SECTION 2. The City Solicitor is hereby authorized to review and to approve the agreements necessary to effectuate this Ordinance, and to impose such terms and conditions on them as the City Solicitor may deem necessary and proper to protect the interests of the City of Philadelphia and to carry out the purpose of this Ordinance.

**EXHIBIT A**  
**TERMS AND CONDITIONS OF**  
**POWER PURCHASE AGREEMENT**  
**FOR**  
**CITY OF PHILADELPHIA VIA THE PHILADELPHIA ENERGY AUTHORITY**  
**SECTION A.**

<b>Agreement</b>	This Term Sheet is intended to identify the principal terms and conditions to be included in a Power Purchase Agreement (the “ <u>Agreement</u> ”), which will set forth the commitments, conditions and obligations of the City of Philadelphia, the Philadelphia Energy Authority and other parties relating to the purchase and sale of electricity, capacity and environmental attributes.
<b>Project</b>	Adams Solar, Straban Township, Adams County, PA
<b>Seller</b>	Adams Solar LLC
<b>Buyer</b>	City of Philadelphia via the Philadelphia Energy Authority
<b>Planned Available Capacity</b>	70 MW(ac)
<b>Available Capacity</b>	Final Project size in MW(ac)
<b>Buyer’s Purchase</b>	100% of the Planned Available Capacity and, to the extent that Seller ultimately increases the size of the Project above 70 MW, Buyer will have an option to purchase the incremental power available over 70MW.
<b>Term</b>	20 years
<b>Products</b>	1) Unit-contingent, or as-available, electrical energy settled in the PECO Transmission Zone and scheduled to a PJM Subaccount managed by Buyer’s Licensed Service Provider as designated by Buyer (“Subaccount”). 2) Alternative Energy Portfolio Standard (“AEPS”) Credits, as defined in Pennsylvania Act 213 and its amendments, transferred to Buyer’s account in PJM’s Generator Attribute Tracking System (“PJM-GATS”). AEPS Credits to be Green-e certifiable. 3) Cleared Capacity settled in the MetEd Transmission zone transferred to Buyer’s Subaccount.
<b>Hourly Fixed Price</b>	A maximum price of \$44.50/MWh for each hour of the Term, composed of: Electrical Energy: \$38.00/MWh AEPS Credits: \$5.00/MWh Cleared Capacity: \$1.50/MWh during the applicable capacity Delivery Year, starting with the first PJM auction, for which the Project is eligible to participate and for which the Project clears, until termination date of the Agreement.
<b>Additional Revenue</b>	If Project qualifies for recovery of revenue requirements pursuant to PJM’s schedule named “Reactive Supply and Voltage Control from Generation or Other Sources Service” in PJM’s Tariff, Seller and Buyer will split such recovery on an equal basis.
<b>Invoicing and Payment Terms</b>	Seller shall invoice and receive payment from the Buyer’s Licensed Service Provider pursuant to a separate agreement to be executed between Buyer, Seller and Buyer’s Licensed Service Provider through monthly settlement and billing.
<b>Target Commercial Operation Date (“Target COD”)</b>	October 31, 2020

<b>Delay Damages</b>	Except if caused by Force Majeure, if COD is not achieved on or before the Target COD, for each day after Target COD until the earlier of actual COD or April 30, 2021. Seller will pay Buyer daily liquidated damages equal to Planned Available Capacity times \$50.
<b>Outside Commercial Operation Date</b>	Buyer shall have the right to terminate the agreement, with damages being limited to Seller's Credit Support, if Seller fails to reach COD by April 30, 2021.
<b>Force Majeure</b>	As defined by the Edison Electric Institute <i>Master Power Purchase &amp; Sale Agreement</i> , which shall include any customary or commercially reasonable revisions as agreed upon by Seller and Buyer.
<b>Seller's Obligations Prior to Commercial Operation</b>	Seller will diligently pursue all required permits, consents, licenses, approvals or authorizations, from any Governmental Authority, PJM and the Transmission Provider, to enable Seller to commence and complete construction of the Project and to operate the Project. Seller will provide to Buyer monthly reports that describe the status of Seller's efforts to obtain all such permits, consents, approvals or authorizations and progress toward meeting construction milestones.
<b>Production Guarantee</b>	Seller guarantees that Project will produce electrical generation amounts that are equal to or greater than 70% of the first contract year amounts of Annual Expected Quantity shown in Schedule 1, Row E (subject to changes to the final Available Capacity amount) attached to this Agreement and 85% of such amounts for the second contract year and each contract year thereafter for the remainder of the term. Seller shall pay Buyer liquidated damages equal to \$38.00/MWh plus \$5/AEPS Credit for each MWh below amounts identified in Schedule 1, Column F (subject to changes to the final Available Capacity amount).
<b>Cleared Capacity Obligations</b>	<u>Cleared Capacity</u> : a type of electricity capacity that has cleared in PJM capacity auctions from a seller to a buyer at the location of the physical resources. <u>Seasonal Quantity</u> : 29 MW per day or 50% of summer-period Cleared Capacity, whichever is higher. <u>Annual Quantity</u> : 15 MW per day or 50% of annual Cleared Capacity, whichever is higher. Seller in its sole discretion will decide how to participate in PJM auctions with respect to offer quantity, offer price and product (i.e., Seasonal or Annual). Seller shall have the obligation to provide the Buyer Cleared Capacity equal to Seasonal Quantity and Annual Quantity. To the extent that the Project has cleared capacity and under or over performs, as determined by PJM, and is assessed a penalty or credit by PJM, Buyer and Seller will split the credit or penalty on an equal basis. <u>Failure to Clear Capacity</u> : If Seller fails to clear capacity associated with the Project in any PJM auction, Seller must provide to the Buyer replacement capacity. If Seller cannot buy replacement capacity Seller will pay the Buyer liquidated damages in an amount equivalent to its value.

<p><b>Seller Credit Support</b></p>	<p>Seller shall provide the following performance assurances: A Letter of Credit (“LOC”) or , performance bond in a form reasonably satisfactory to Buyer, or cash, shall be provided within thirty (30) days of the execution of a definitive power purchase agreement in an amount of \$10,000 per MW(ac) of Planned Available Capacity before Seller’s issuance of full notice to proceed with commencement of construction of the Project (“FNTP”), with such amount to be increased to \$75,000 per MW(ac) at FNTP, and further increased to \$100,000 per MW(ac) following COD. Seller credit support in the form a LOC or performance bond shall be supplied from entities rated A-/A3 or better by S&amp;P, Moody’s or AM Best, as applicable. Seller credit support in the form a guarantee shall be supplied from entities rated BBB-/Baa3 or better by S&amp;P, Moody’s or AM Best, as applicable.</p>
<p><b>Buyer Credit Support</b></p>	<p>Buyer will not be required to provide credit support if its long-term credit rating is equivalent or greater than investment grade BBB-/Baa3.</p>
<p><b>Seller Assignment</b></p>	<p>Seller shall not assign its interest in the Agreement without consent of Buyer, not to be unreasonably withheld. Buyer’s consent shall not be required with respect to an assignment or change of control whereby the assignee or controlling entity is a Qualified Operator. A “Qualified Operator” means an operator of solar generation facilities with a minimum of 2 years’ experience in the solar energy generation and operation business that has developed and constructed or operated at least 100 MW of solar energy generation facilities and that has replaced the Seller Credit Support in the amount and form and with the terms and conditions required by Seller under the terms of the Agreement. A tax equity partner’s investment in the Project shall not be deemed an assignment, nor shall any tax equity partner’s sale of its position to one or more other tax equity investors.</p>
<p><b>Buyer Assignment</b></p>	<p>The Agreement will be assignable by the Buyer to an affiliate of Buyer if such affiliate’s long-term credit rating is equivalent or greater than investment grade BBB-/Baa3.</p>
<p><b>Change in Law and Regulation</b></p>	<p>The Agreement is subject to PJM rules and practices, and to state laws governing the definition of Renewable Energy Credits and/or Alternative Energy Portfolio credits (“Renewable Credits”). If, during the Term of the Agreement, any PJM rule or practice, or any state law governing the definition of Renewable Credits, is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation under this Agreement of a Party, the Parties agree to negotiate in good faith in an attempt to amend or clarify this Agreement to embody the Parties’ original intent regarding their respective rights and obligations under this Agreement, provided that neither Party shall have any obligation to agree to any particular amendment or clarification of this Agreement.</p>

<b>Events of Default</b>	As defined by the Edison Electric Institute <i>Master Power Purchase &amp; Sale Agreement</i> which shall include any customary or commercially reasonable revisions as agreed upon by Seller and Buyer.
<b>Governing Law</b>	Commonwealth of Pennsylvania
<b>Economic Opportunity Plan</b>	The Agreement shall be subject to an Economic Opportunity Plan (“EOP”) that will provide significant opportunities for women-, minority- and disabled person-owned businesses and workforce. Seller is committed to creating opportunities for local hiring, including women and minorities, during the construction of the project prior to COD and during the operations of the project after COD. The EOP is attached as “Section B”.

**SCHEDULE 1**

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>CONTRACT YEAR</b>	<b>FIXED ELECTRICAL ENERGY PRICE (\$/MWh)</b>	<b>ALTERNATIVE ENERGY PORTFOLIO CREDITS (\$/MWh)</b>	<b>AUCTION SPECIFIC UNFORCED CAPACITY (\$/MWh)</b>	<b>ANNUAL EXPECTED QUANTITY (MWh) OF ELECTRICAL ENERGY</b>	<b>ANNUAL PRODUCTION GUARANTEE (MWh)</b>
1	\$38.00	\$5.00	\$1.50	156,170	109,319
2	\$38.00	\$5.00	\$1.50	155,389	132,081
3	\$38.00	\$5.00	\$1.50	154,612	131,420
4	\$38.00	\$5.00	\$1.50	153,839	130,763
5	\$38.00	\$5.00	\$1.50	153,070	130,110
6	\$38.00	\$5.00	\$1.50	152,305	129,459
7	\$38.00	\$5.00	\$1.50	151,543	128,812
8	\$38.00	\$5.00	\$1.50	150,785	128,167
9	\$38.00	\$5.00	\$1.50	150,031	127,526
10	\$38.00	\$5.00	\$1.50	149,281	126,889
11	\$38.00	\$5.00	\$1.50	148,535	126,255
12	\$38.00	\$5.00	\$1.50	147,792	125,623
13	\$38.00	\$5.00	\$1.50	147,053	124,995
14	\$38.00	\$5.00	\$1.50	146,318	124,370
15	\$38.00	\$5.00	\$1.50	145,586	123,748
16	\$38.00	\$5.00	\$1.50	144,858	123,129
17	\$38.00	\$5.00	\$1.50	144,134	122,514
18	\$38.00	\$5.00	\$1.50	143,413	121,901
19	\$38.00	\$5.00	\$1.50	142,696	121,292

20	\$38.00	\$5.00	\$1.50	141,983	120,686
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