

Solar Power: Federal Court Addresses Purchase Agreement/Easement Dispute



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A United States District Court (E.D. CALIF.) (“Court”) addressed in a June 9th Memorandum and Order a request for damages related to a solar energy services agreement and easement (“Agreement”). See *Enfinity Central Val 2 Parlier LLC v. City of Parlier*, No. 2:19-cv-01607-MCE-KJN, 2020 WL 3060390, at *1 (E.D. Cal. June 9, 2020).

The issues involved the City of Parlier’s (“City”) failure to make payments to Enfinity Central Val Parlier LLC (“Enfinity”) for electricity generated by a solar power system.

The system was installed by Enfinity for the City.

Enfinity America Corporation (“Enfinity Corp.”) entered into the Agreement with the City on October 6, 2010. Pursuant to the Agreement, an electricity grid connected photovoltaic power plant would be installed with a specified total generating capacity. In exchange, the City agreed to buy the total energy output of the solar facility.

Enfinity Corp. assigned its interest in the Agreement to Enfinity in 2011. The assignment made Enfinity a successor-in-interest under the Agreement. The City was given notice of the transfer to which it consented.

A holding company held all interest in Enfinity until 2017. The holding company was sold to Silicon Ranch on August 22, 2017. The City was stated to have received notice of the transfer in October 2017.

The City stopped paying Enfinity’s energy statements in October 2018. Enfinity notified the City of its default in the manner prescribed by the Agreement.

The City justified its refusal to remit payments on the solar facility’s alleged inadequate electrical output. It further alleged Enfinity produced false invoices in violation of California’s False Claims Act.

The City also claimed Enfinity had no right to pursue a claim under the Agreement. It argued Enfinity was not a party to the Agreement. This was based on the City’s argument that it did not consent to the transfer of Enfinity’s holding company to Silicon Ranch. Further, the City prevented access to the facility by anyone other than the contractor it selected. This directly contradicted the access easement contemplated by the Agreement.

Enfinity filed a lawsuit against the City for breach of the Agreement. The alleged causes of action included:

- breach of the access easement;

- breach of the implied covenant of good faith and fair dealing;
- unjust enrichment; and
- request for declaratory relief.

The City moved to dismiss arguing Enfinity failed to state a claim for which relief can be granted.

First, the City argued Enfinity failed to comply with the provisions of the California Government Claims Act (“CGCA”). It claimed Enfinity violated the CGCA by failing to timely present the claim to it as a governmental entity, and by not allowing the City to reject its claim before filing suit.

The Court rejected that argument as borderline “frivolous.” It reasoned that Enfinity’s communication with the City’s attorney put it on notice of the nature of Enfinity’s claims before the lawsuit was filed. Further, the Court noted that Enfinity notified the City of its breach in the manner required by the Agreement.

The City also argued that Enfinity could not enforce the Agreement through Silicon Ranch. The Court found this argument “equally far-fetched.” The City argued that, under the Agreement, a sale of Enfinity without the City’s written consent was only effective under certain circumstances. Such circumstances were not deemed present in this instance.

However, the Agreement also provided:

Any direct or indirect change of control of Service Provider (whether voluntary or by operation of law) shall be deemed an assignment not requiring the prior written consent of Customer.

The Court found the City’s argument misplaced. Enfinity’s holding company was sold to Silicon Ranch as opposed to Enfinity. Enfinity remained a separate company throughout and was never sold.

Therefore, the Court reasoned the transaction was a change in control, rather than a sale. Such transaction did not require written consent under the Agreement. It noted that the City essentially conceded this point by stating the issue revolves around “the change in control” of Enfinity being valid.

Finally, the City argued that Enfinity’s claims were duplicative and superfluous. These arguments were also rejected. It reasoned the claims were sufficiently distinct because they provided for different types of liability and damages.

The Court denied the City’s motion to dismiss.

A copy of the Opinion can be downloaded [here](#).