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Solar Energy Services Agreement/Easement: U.S. District Court Addresses TRO Request Related to Alleged Breach

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A United States District Court (E.D. CALIF.) (“Court”) addressed in an April 23rd Memorandum and Order (“Order”) a request for a Temporary Restraining Order (“TRO”) related to a solar energy services agreement and easement (“Agreement”). See *Enfinity CentralVal v. City of Parlier*, No. 2:19-cv-01607-MCE-KGN.

The Agreement was entered into between Plaintiff Enfinity Central Val Parlier LLC (“Enfinity”) and Defendant City of Parlier (“Parlier”).

Enfinity’s Complaint alleged that its predecessor in interest entered into the Agreement with Parlier on October 6, 2010. Under the terms of the Agreement an electricity grid connected photovoltaic power plant would be installed with a specified total generating capacity. Further, Parlier agreed to buy the total energy output of the solar facility.

Parlier is stated to have discontinued making payments in October 2018. The stated reason for the discontinuance of payments was an allegation that the electrical output was inadequate. Enfinity responded by filing suit seeking damages for the failure to make payments.

The Agreement also granted Parlier Enfinity an easement on, over and across the site in all permitted areas (“Access Easement”). The Access Easement allowed entry as necessary to install, operate, maintain, improve and repair the solar facility.

Parlier alleged that on August 14, 2018, its agents were denied entry to inspect the solar facility for safety issues. As a result, two days after filing the Complaint for damages it asked for a TRO in regards to breach of the Access Easement. The TRO was premised on the argument that such refusal would risk both the solar facility and “lives and environment of the surrounding community.” A maintenance schedule was argued to require that the facility be inspected “to ensure none of the fast-growing grasses in the area reach a dangerous height.” This was deemed to potentially pose a risk of a fire because of loose wire connections.

The Court noted that the extraordinary remedy requested by Enfinity meant that it bore the burden of establishing the propriety of such relief through clear and convincing evidence. The Court stated the burden includes not only irreparable injury, but also a showing that such injury is imminent in nature.

In reviewing the TRO request, the Court noted that Enfinity’s agents had visually inspected the solar facility on four occasions between April and August 2019 and also more recently. The company’s agents

are stated to have observed the solar equipment and told a Parlier employee that they “would return in a few weeks to replace or repair some of the equipment.” The Court concluded that Enfinity offered no “concrete evidence that any imminent threat was present, either with regard to the equipment or the condition of any surrounding vegetation.” It further noted that:

. . . All Enfinity has presented at this point is speculation that the equipment may need urgent repair, and that vegetation might be overgrown, with no supporting facts whatsoever. That unsubstantiated speculation does not satisfy Enfinity’s burden of showing imminent irreparable harm, let alone the probability of success on the merits.

As a result, the Court denies the request for TRO.

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