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Federal inquiry centers on Gila Bend solar plant

By Ryan Randazzo
January 29, 2014

The U.S. Department of Labor and U.S. Immigration and Customs Enforcement are investigating subsidiaries of the Spanish company that took a $1.45 billion federal loan to build a massive solar power plant near Gila Bend.

The company, Abengoa, also faces complaints from more than 20 subcontractors who say they were not paid promptly for their work in building the plant. About $40 million in disputed payments is outstanding.

Abengoa officials in Spain and representatives of its Arizona subsidiaries declined to comment on the labor investigations or contractor disputes.

The Labor Department has been investigating the power plant and Abengoa subsidiary Abeinsa EPC since last year, according to a response to a public-records request from *The Arizona Republic*.

ICE began an inquiry into the company's Phoenix office this month, according to e-mails among those involved in the investigation. The e-mails were shared with *The Republic*.

The two federal agencies declined to discuss what they are investigating. The Labor Department generally is concerned with companies paying proper wages. ICE is primarily concerned with ensuring that workers are legal U.S. residents or have the legal documentation to work in this country.

It is unlikely the investigations could lead to a default on the federal loan. The Solana Generating Station was completed last year and sells electricity to Arizona Public Service Co., using the proceeds to pay off the loan. However, the Labor Department and ICE can levy fines and even criminal charges against employers.

In the "loan guarantee" programs, the federal government commits itself to paying the outstanding balance on a loan if the borrower defaults.

President Barack Obama announced in 2010 that the Federal Financing Bank would provide a $1.45 billion loan to fund the Solana plant, which is the largest of its kind, covering about 3 square miles of former farmland near Gila Bend with solar panels.

Abengoa brought about $550 million in additional capital into the plant.

Abengoa also got a $1.2 billion federal loan for a similar plant, Mojave Solar Project in California, scheduled to be completed this year.

The Solana and Mojave plants received loans through the same program that funded California-based Solyndra with a loan worth more than $500 million. Solyndra, which manufactured solar collectors, ran out of cash and shut down in 2011, laying off its more than 1,000 workers and leaving taxpayers with the debt.

More than 1,500 construction workers built Solana, mostly through subcontractors, but ICE appears to be seeking information on Abengoa's own employees. Abengoa is a global company. In addition to projects in its home country of Spain, its Teyma subsidiary has operations in Uruguay.

The Wage and Hour Division of the Department of Labor, which responded to the public-information request, also enforces the Davis Bacon Act.

The law requires contractors working on federally funded projects to pay the prevailing wages for their industry.

Construction liens

The labor investigations at the company follow millions of dollars in disputed payments to Arizona construction companies that began to surface last year, with many bills still being negotiated.

More than 20 companies have filed $40 million in construction liens on the Solana project.

Construction companies can file liens on private property in Arizona where they have worked or provided materials and have not been paid.

Liens are a legal tool that prevents any additional lending to a property until the lienholder has been satisfied. If unresolved after six months, the lienholder can file a foreclosure action on the property, although that rarely happens.

It is unclear what a foreclosure would mean for the federal loan. Energy Department officials declined to discuss the issue.

Abengoa's affiliates have purchased bonds to cover some of the contractors' claims and release the liens from the property, while some contractors have settled their disputed debts privately. Some have said they settled for much less than they anticipated being paid. The biggest claims remain unresolved.

When *The Republic* first reported on disputes with contractors in early 2013, Abengoa provided a statement saying it was working with the companies to resolve the problems quickly. Some of the disputes that began in 2012 remain unresolved, and new ones have arisen since then.

Jim Swanson, president of Kitchell Contractors Inc., a large, interstate construction company, said last year that he had never seen so many liens filed on a single project. Kitchell is among the companies arbitrating multimillion-dollar liens with Abengoa affiliates. Kitchell officials declined to comment on their negotiations.

Other claims include a $21 million lien filed in September by MMC Contractors National Inc. of Missouri. The company said Teyma USA constantly increased the scope of contracts that MMC had in building pieces of the power plant, then refused to pay for the extra work.

MMC claims to have been paid about $15 million but to have completed about $36 million worth of work on the project.

“During the course of the project, MMC’s labor increased from 55,600 estimated man-hours to a final total of 80,500 man-hours,” the company said in the lien documents.

Its workload was increased by “delays associated with Abeinsa EPC’s late and incorrect engineering information regarding piping, hangers, supports and locations of fixed equipment that MMC was to connect to,” among other issues.

MMC also said it was delayed because Abeinsa did not deliver materials on schedule and managed the project poorly, causing other contractors to block access to portions of the plant and build things out of sequence. That required altering the work schedule and unplanned movement of cranes on the site.

“MMC Contractors did perform work on several components of the project, and we are owed a significant amount of money,” said Robin Broder, vice president of marketing for MMC Corp., the parent of MMC Contractors. “We are, however, following the terms of our contract with the Teyma Abener General Partnership regarding our claim and payments for the same. To protect our interest, we have filed a lien. We also continue to have an open dialogue with Teyma in an effort to resolve all differences.”

The Solana plant

Solana is the biggest power plant of its kind in operation. It covers 3 square miles of former farmland with mirrors that reflect sunlight onto tubes of oil. The heated oil is used to make steam and spin turbines. Some of the oil transfers heat to molten salt, where heat is stored to continue making electricity after sunset, something traditional solar power plants can’t do.

APS buys the electricity generated by the plant, and Abengoa uses those proceeds to make payments on the federal loan.

Energy Department officials declined to comment on the investigations at Solana, though the Office of Inspector General confirmed it had received a letter from Sen. Jeff Flake of Arizona in May raising concerns about the project.

Flake also cited *The Republic's* investigation into Solana in April when he questioned Energy Secretary Ernest Moniz during his confirmation hearing.

"The Department of Energy's loan-guarantee program has come under increased scrutiny over the last few years for a variety of reasons — the Solyndra failure being the most cited example of the challenges presented by the program," Flake wrote to Moniz. "There are, however, other issues with the Department of Energy loan-guarantee program."

Flake also asked how Moniz would protect local contractors.

Moniz responded to Flake that, if confirmed, he would make monitoring and oversight of the program "a top priority" and that he looked forward "to getting a better understanding of the mechanics of the Loan Program Office to understand what can and should be done to protect local contractors and subcontractors."

Moniz was confirmed in May. The Energy Department did not respond to several requests for comment on Abengoa.

Flake's office declined to comment further, citing privacy issues in his communications with federal agencies and constituents.

Loans questioned

Veronique de Rugy, a senior research fellow at the Mercatus Center at George Mason University, has researched the federal loan program and criticized it for distorting the market. She said she was not surprised to hear of problems with loan recipients, though she was unaware of the contractor complaints or investigations of Abengoa.

De Rugy also writes for the *National Review* and is an adjunct scholar at the Cato Institute.

"You can at least question the kind of stewardship and carefulness that has been put into the government selection of projects, considering they gave money to this company that engages in questionable behavior," she said.

The loans are problematic in two ways, she said. They either go to companies that could not find financing through traditional arrangements, likely because banks found the projects too risky, she said. Or they go to companies that could be traditionally financed, giving the recipients an artificial advantage over their competition because of the government.

"If you are spending other people's money, you don't have the incentive to be as careful as if you are spending your own money," she said. "What we can expect is more reckless behavior than the people who are spending their own money. ... Another thing to consider is: Would this company have done this anyway, acted recklessly, and is that why a bank would not have given them money in the first place?"

Solana was announced in February 2008, but amid the recession, Abengoa officials said just months later that they could not raise capital to build the project. In 2010, Solana's loan was announced, reviving the project. In the meantime, at least one other similar solar-thermal power plant was canceled in Arizona by Lockheed Martin Corp. The U.S. defense company said when canceling the plans in 2009 that it could not finance the project as anticipated.

The federal loans for power plants are usually described as safe investments because the loans are to be paid back over time by the sale of electricity to utilities. But de Rugy said that was not a sufficient reason to make the loans.

"Maybe there is no risk of default, but a company that is helped like this by the government is likely to behave in a way less reasonable than someone who invests his own money," she said.

Other experts have defended the loan program even in the wake of Solyndra's failure, countering that a small percentage of the investments are anticipated to fail and that the loans are designed to spur new technologies that would not otherwise be able to raise capital.

"People talk about Solyndra, but (the program) funded 30 other projects, $30 billion, and the success rate has been 97 percent," said Brandon Hurlbut, a senior fellow at the Center for American Progress who previously served as a chief of staff at the Energy Department.

Hurlbut was not familiar with the investigations or contractor complaints at Abengoa, but he said that regardless of what issues arise, the company is required to repay its loan with interest, protecting taxpayers' investment.

"One of the goals was to bring private-sector dollars into the space," he said. "That is what happened. The loan-guarantee program would do the first one. Banks didn't want to lend to the first one."

He said the loan program is a success, evidenced by the multiple large-scale solar power plants now attracting private investment after the government lent money to the first ones, such as Solana. Google, Bank of America and even Warren Buffet's MidAmerican Energy Holdings Co. are investing in solar power plants now that the government has led the way, he said.

Other investments

Despite the tens of millions of dollars in disputed claims, Abengoa has continued to attract investments from the federal government. The Energy Department gave the company a $2 million grant in December to improve the manufacture and assembly of its solar plants.

Abengoa also has continued to attract outside investment. Colorado-based Liberty Interactive Corp., which is publicly traded, invested $300 million in the Solana project in October.

The federal loan may also make private investment more attractive, de Rugy said, because private investors likely feel safer investing in such projects once the government is involved, when they might not have participated otherwise.

“The company probably also got a lot of private capital as a result of the guarantee,” she said. “There is safety in a project with a guarantee.”