



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 1 3 - 0 3 4 8
DEC 0 6 2013

REPORT RE:

DRAFT ORDINANCE APPROVING (1) THE APEX POWER PROJECT POWER SALES AGREEMENT NO. BP 13-055 AND (2) THE APEX POWER PROJECT AGENCY AGREEMENT, NO. BP 13-056, BY AND BETWEEN THE CITY OF LOS ANGELES, ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, AND THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. This draft ordinance provides for the approval of the Apex Power Project Power Sales Agreement No. BP 13-055 (Power Sales Agreement) and the Apex Power Project Agency Agreement No. BP 13-056 (Agency Agreement). The parties to the agreements are the City of Los Angeles, acting by and through the Department of Water and Power (LADWP), and the Southern California Public Power Authority (SCPPA). The Power Sales Agreement provides for LADWP's purchase of electric energy from the Apex Power Project (Apex) power plant to be acquired and owned by SCPPA. SCPPA will issue bonds to finance the purchase of Apex and will provide payment on the bonds using funds received from LADWP through the Power Sales Agreement. The Agency Agreement provides for LADWP to serve as SCPPA's agent in the administration and management of Apex, and further allows for LADWP's sale of energy to SCPPA to meet Apex's existing operating obligations. The LADWP will be the sole participant in Apex.

Background

LADWP's Integrated Resource Plan (IRP) identifies the replacement of the energy lost as a result of the divestiture of its coal fueled sources of energy with a combination of energy efficiency, renewable resources (consisting of wind, solar and geothermal), as well as energy from a combined cycle, natural gas generating facility. To assist in achieving that goal, LADWP undertook a number of steps, which are outlined below.

On June 29, 2012, a Request for Proposal (RFP) for a Combined Cycle Plant was advertised on the LADWP's Real Estate website. Nineteen bidders responded; seven of them were for existing plants. All of these projects were over 500 Megawatts (MW), which is the typical size for a standard combined cycle power block.

On April 25, 2013, the LADWP's Board of Water and Power Commissioners approved Resolution No. 013 265, which authorized LADWP to participate with SCPPA for the purpose of evaluating, acquiring and purchasing the energy from an existing Combined Cycle Generating Facility. LADWP and SCPPA evaluated the proposals based on economics, size, labor, transmission, flexibility and clustering. Based on the evaluation, LADWP and SCPPA elected to pursue negotiations for the purchase of Apex.

Apex is located in unincorporated Clark County, north of Las Vegas, Nevada. Apex includes one combined cycle generating station consisting of one steam turbine generator, and two simple cycle 165 MW combustion turbine generators. Apex also includes the heat recovery equipment, air inlet filtering, closed cycle cooling system, emission control system, exhaust stack, distributed control system, and all necessary noise control equipment. The summer rating of Apex is 527 MW, but produces 500 MW during the summer high peak hours due to ambient conditions. Project capacity is 527 MW, with an estimated capacity factor of 50 percent. Purchase of 2308 Gigawatt Hours (GWh) of energy output annually will enable LADWP to meet approximately 9.02 percent of LADWP's resource requirements.

On or about October 17, 2013, SCPPA entered into an Asset Purchase Agreement to acquire Apex from Las Vegas Power Company, LLC for \$295 million, subject to entering into a Power Sales Agreement and Agency Agreement with LADWP. In reliance on the funds that LADWP will pay to SCPPA for the energy produced from Apex pursuant to the Power Sales Agreement, SCPPA will issue bonds for the purchase of Apex.

Through the Power Sales Agreement between SCPPA and LADWP, SCPPA shall make available and sell all of the energy and generating capacity rights associated with Apex and will pass through to LADWP the bond financing and operating costs for Apex.

The Agency Agreement provides for the designation of LADWP as the Project Manager to administer and manage Apex on behalf of SCPPA. SCPPA maintains a small staff to minimize administrative and general fees charged to the projects, and the largest participant of each project typically acts as SCPPA's agent for project management and administration. In this case, the initial sole participant will be LADWP. As part of administering and managing Apex on behalf of SCPPA, LADWP will also be authorized to sell energy to SCPPA, as necessary, so that SCPPA may fulfill certain energy sales obligations that will be assumed via the purchase of Apex.

CEQA Findings

In accordance with Section 15060(c)(2) of the California Environmental Quality Act (CEQA) Guidelines, an activity is not subject to CEQA if it will not result in a direct or reasonably foreseeable indirect physical change in the environment. Since this acquisition is of an existing power plant located in Nevada and no construction is needed, the purchase of energy from the existing power plant is not subject to CEQA.

Summary of Ordinance Provisions

Charter Section 647(a)(2) provides that the City Council has the power to approve contracts for the sale, purchase, exchange or pooling of electric energy or electric generating capacity.

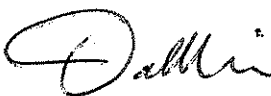
Council Rule 38 Referral

This draft ordinance has been presented to the Board of Water and Power Commissioners pursuant to Council Rule 38.

If you have any questions regarding this matter, please contact Deputy City Attorney Timothy J. Chung at (213) 367-4518. He or another member of our Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

DM:TJC:pj
Transmitta

ORDINANCE NO. _____

An ordinance approving two agreements and authorizing electric energy and capacity sales with respect to the Apex Power Project Power Sales Agreement No. BP 13-055 and the Apex Power Project Agency Agreement No. BP 013-56, both by and between the City of Los Angeles, acting by and through the Los Angeles Department of Water and Power, and the Southern California Public Power Authority.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The Apex Power Project Power Sales Agreement No. BP 13-055 and the Apex Power Project Agency Agreement No. BP 13-056, approved by the Board of Water and Power Commissioners, Resolution No. 014 115, that are on file with the City Clerk, are hereby approved.

Sec. 2. In fulfilling its duties under the Apex Power Project Agency Agreement, the Los Angeles Department of Water and Power is further authorized to sell electric energy and capacity to the Southern California Public Power Authority (SCPPA) from time to time as determined necessary, as provided in the Wholesale Marketing Energy Risk Management Policy under Resolution No. 003-309 dated June 17, 2003, as amended by Resolution No. 006-225 dated June 6, 2006, with contracts including durations not to exceed the term of the Agency Agreement, and the Board of the Department of Water and Power may delegate to its General Manager the authority to enter into such sales.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street Entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles at its meeting of _____.

HOLLY L. WOLCOTT, Interim City Clerk

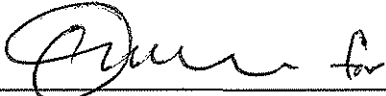
By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
TIMOTHY J. CHUNG
Deputy City Attorney

Date 12-6-2013

File No. _____