

POWER SYSTEM

JUN 04 2015

EXECUTIVE OFFICE

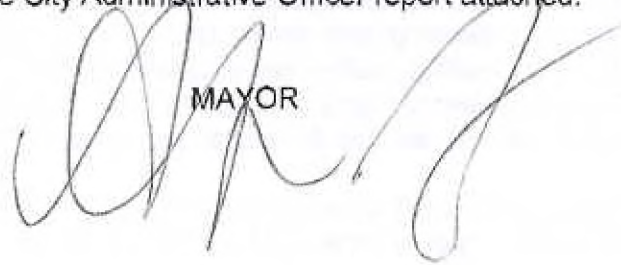
TRANSMITTAL

0220-05164-0000

TO Marcie L. Edwards, General Manager Department of Water and Power	DATE JUN 02 2015	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT Outside Los Angeles	

AUTHORIZATION OF EMINENT DOMAIN PROCEEDINGS TO ACQUIRE INTERESTS IN MINERAL RIGHTS AT THE BEACON SOLAR PROJECT

Approved and transmitted for further processing including Council consideration.
See the City Administrative Officer report attached.


MAYOR

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: June 2, 2015

CAO File No. 0220-05164-0000
Council File No.
Council District: Outside Los Angeles

To: The Mayor

From: Miguel A. Santana, City Administrative Officer *DA
BW*

Reference: Communication from the Department of Water and Power dated May 1, 2015; referred by the Mayor for report on May 12, 2015

Subject: **AUTHORIZATION OF EMINENT DOMAIN PROCEEDINGS TO ACQUIRE INTERESTS IN MINERAL RIGHTS AT THE BEACON SOLAR PROJECT**

SUMMARY

The Department of Water and Power (DWP; Department) requests approval of a proposed Ordinance authorizing a Resolution of Necessity and findings of the DWP Board of Commissioners (Board) to exercise eminent domain proceedings for the acquisition of 33 mineral rights interests located on DWP owned land at the Beacon Solar Project (BSP). A summary of the Beacon Solar Project is in the Appendix. It is anticipated that the DWP Board will consider the Resolution of Necessity on June 2, 2015.

Approval of the proposed Ordinance also authorizes the City Attorney to take all steps necessary to commence legal proceedings to acquire the mineral rights interests by eminent domain as well as others related actions. Pursuant to City Charter Section 675(d)(1), the power of condemnation shall only be exercised with the approval of the City Council. The City Attorney has approved the proposed Resolution of Necessity and Ordinance as to form and legality.

According to the City Attorney, the proposed action is in accordance with California Government Code Section 37350.5, Code of Civil Procedure Sections 1240.010 and 1240.125; Public Utilities Code Sections 10001 and 10004; and the Los Angeles City Charter Section 675(d)(1).

BACKGROUND

In support of the renewable energy goals of the Department, DWP acquired the 2,500 acre BSP located in Kern County in December 2012 from NextEra Energy, a solar developer. At the time of acquisition, NextEra Energy was in the initial stages of developing a solar generating facility and had completed certain preliminary development tasks which include obtaining entitlements and permits, completing studies, and creating preliminary engineering designs. NextEra Energy was also in the process of obtaining all mineral rights at BSP when the project was acquired by DWP. Inasmuch, the purchase agreement did not include all mineral rights at BSP.

Acquisition of the mineral rights is required to ensure uninterrupted operation of the power plant. The Department must now acquire the mineral rights at an additional cost including the legal costs of eminent domain.

In November 2014, DWP presented purchase offers with the DWP approved appraised value to the 33 affected owners of minerals rights located in the BSP. Voluntary sale agreements were accepted by 9 of the 33 owners. These 9 agreements are in escrow although they are not yet final. The Department has not been able to reach an agreement on the remaining 24 mineral rights interests. DWP asserts that the public interest and necessity require acquisition of the mineral rights to these parcels for the BSP. Therefore, DWP and the City Attorney recommend proceeding with acquisition through eminent domain.

In accordance with California Eminent Domain Law, DWP mailed notices to the 33 owners of the affected parcels informing them about the DWP Board meeting on June 2, 2015, and their right to appear and to be heard regarding the proposed Resolution of Necessity and findings listed below:

- i. Whether the public interest and necessity require the BSP.
- ii. Whether the BSP is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- iii. Whether the subject parcel(s) is/are necessary for the BSP.
- iv. Whether either the offer(s) required by Section 7267.2 of the Government Code has/have been made to the owner or owners of record, or the offer(s) has/have not been made because the owner(s) cannot be located with reasonable diligence.
- v. Whether the requisite environmental review of the BR RTP has been completed consistent with California Environmental Quality Act (CEQA).

The DWP real estate group has been managing the process for obtaining real estate rights and interests for several renewable energy projects including the Beacon Solar Project (BSP) and Barren Ridge Renewable Transmission Project (BR RTP). Nevertheless, DWP presented purchased offers to the affected mineral rights owners approximately two years after the property acquisition and over one year after contracting for the development of the sites. The proposed eminent domain process is anticipated by the DWP to be completed in approximately six months and may cause a delay in the estimated timeline for development of the BSP. If the two developers of the BSP determine that construction of the solar projects is not possible prior to the expiration of investment tax credits (ITC), there is a risk that they will not be able to obtain the construction financing necessary to complete the BSP which is considered essential for RPS compliance. DWP states that despite the possible delay, sufficient time remains for development prior to the expiration of the current ITCs for developers.

RECOMMENDATIONS

That the Mayor:

1. Approve the proposed Ordinance authorizing the Resolution of Necessity and findings of the DWP Board of Commissioners, authorizing DWP to exercise eminent domain for the acquisition of 33 mineral rights interests with a total appraised value of approximately \$112,429 for the Beacon Solar Project, located in Kern County; and
2. Return the proposed resolution to the Department for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

Approval of the proposed resolution and Ordinance authorizes a process to legally acquire 33 mineral rights interests. The total appraised value of the parcels to be acquired through this proposed process is approximately \$112,429. Sufficient funding exists within the Power Revenue Fund. The proposed resolution complies with the Department's adopted Financial Policies. There is no impact to the City's General Fund.

TIME LIMIT FOR COUNCIL ACTION

The City Attorney advises that there is no time limitation for items approved by ordinance.

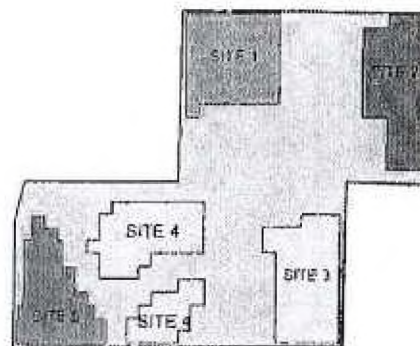
MAS:RR:06150177

APPENDIX – BEACON SOLAR PROJECT

DWP acquired the 2,500 acre Beacon property for \$31.5 million in December 2012 from developer NextEra Energy. However, the purchase agreement did not include mineral rights. Acquisition of the rights is required to ensure uninterrupted operation of the power plant. The Department must now acquire the mineral rights at an additional cost including the legal costs of eminent domain.

Additional costs for required infrastructure development include the energy collection system totaling approximately \$53.3 million resulting in a total cost of \$84.8 million for land and infrastructure.

Upon purchase, the Department envisioned dividing the Beacon property into five sites and contracting with solar developers for the construction of four sites and developing one site with DWP labor. The Beacon property was divided into five individual sites as shown in the adjacent diagram. Subsequently, the Department determined that it lacked the experienced personnel necessary to adequately complete the fifth project site prior to Renewable Portfolio Standard (RPS) compliance deadlines in 2016 and 2020. Financial considerations such as the 30 percent Federal investment tax credit also support the use of private developers and are not available to municipally owned utilities.



In 2014, DWP executed five agreements developers to construct and maintain solar facilities totaling 250 megawatts (MW) for delivery of renewable energy into the DWP transmission system (CF 14-0735, 14-0736). Furthermore, to encourage in-basin solar development, developers of the Beacon Solar Project are required to also develop a total of 50MW of solar Feed-in-Tariff inside the Los Angeles basin. The following table summarizes the five agreements:

	200 MW Beacon Solar Project				50 MW Feed-in-Tariff FIT 50 Program				Bundled Solar Transaction	
	MW Capacity	Flat Cost / MWh	Annual Cost (million)	Total Cost (million)	FIT MW Capacity	Base Price / MWh *	Annual Cost (million)	Total Cost (million)	Annual Cost (million)	Total Cost (million)
Hecate - Site 1	56 MW	\$52.61	\$7	\$176	14 MW	\$117.39	\$2.9	\$58	\$10	\$234
Hecate - Site 3	56 MW	\$51.97	\$7	\$176	14 MW	\$117.39	\$3.1	\$61	\$10	\$237
Hecate - Site 4	50 MW	\$52.61	\$5	\$150	-	-	-	-	\$5	\$150
SunEdison - Site 2	48 MW	\$58.56	\$8	\$198	12 MW	\$135.00	\$2.8	\$55	\$11	\$253
SunEdison - Site 5	40 MW	\$59.85	\$8	\$197	10 MW	\$135.00	\$2.4	\$48	\$10	\$245
TOTAL	250 MW	-	\$35	\$897	50 MW	-	\$11.2	\$222	\$46	\$1,119

* The actual cost of energy from FIT 50 will be calculated as the sum of energy delivered at each hour multiplied by the Base Price of Energy (BPE) and the Time-of-Delivery (TOD) multiplier for each particular hour.

