

MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 1 4 - 0 2 8 1

JUN 18 2014

REPORT RE:

**DRAFT ORDINANCE APPROVING POWER PURCHASE AGREEMENT
NO. BP 14-012, BETWEEN THE CITY OF LOS ANGELES, ACTING BY AND
THROUGH THE DEPARTMENT OF WATER AND POWER, AND
HECATE ENERGY BEACON #4 LLC**

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 Power Purchase Agreement (PPA), No. BP 14-012, between the City of Los Angeles, acting by and through the Department of Water and Power (LADWP), and Hecate Energy Beacon #4 LLC, and limited authority for the Board of Water and Power Commissioners (Board) to amend such agreement. The PPA includes: (1) the purchase of electric energy from a solar generating facility to be built on LADWP property near Mojave, California; (2) an option to purchase the solar facility at certain times during the term of the PPA; and (3) an interconnection agreement for the transmission of the energy.

Background

LADWP owns over 2,500 acres of real property near Mojave, California, which is called the Beacon Property. There are five different sites on the Beacon Property

planned for development of solar generating facilities that will collectively produce up to 250 MW. The Bundled Solar Project is comprised of 200 Megawatts (MW) of solar generating facilities to be developed on four of the five sites on the Beacon Property (Beacon200) combined with 50 MW under LADWP's Feed -in Tariff Program (FiT50).

The fifth site will have a 50-MW solar generating facility without a Feed -in Tariff obligation. The 50 MW solar generating facility on the fifth site of the Beacon Property is the subject matter of the attached draft Ordinance and is referred to as Beacon50. Hecate Energy Beacon #4 LLC is a special purpose entity of Hecate Energy, LLC (Hecate) for LADWP Contract No. BP 14-012.

LADWP's RPS Policy

LADWP's Renewable Portfolio Standard Policy and Enforcement Program (RSP Policy) represents the guiding principles for LADWP to incorporate renewable energy resources into its portfolio of generating assets. The RPS Policy was amended in December 2011, and then again in December 2013 to comply with regulatory requirements of the California Renewable Energy Resources Act, also referred to as Senate Bill 2 (1X) (SB2 (1X)). SB2 (1X) requires publicly owned utilities (POU's) such as LADWP to supply 25 percent of its energy from eligible renewable energy resources by 2016 and 33 percent by 2020 (RPS Compliance). Beacon50 supports LADWP's RPS Compliance.

Competitive Process

LADWP advertised a Request for Proposals (RFP) on November 8, 2013, for the Beacon50. It received 12 responsive proposals. LADWP staff evaluated the proposals based on compliance with the Los Angeles City and LADWP mandatory requirements, scope of work, management approach, technical approach, energy output, and price.

General Agreement Terms

The PPA has a 25-year term with an option for LADWP to purchase the solar facility at the end of the 7, 10, 15 and 25 year anniversaries of the Full Commercial Operating Date (COD), provided that LADWP gives its exercise notice during the six month period prior to the aforementioned time periods (Purchase Option). The exercise of the Purchase Option will require LADWP to go to its Board and the City Council for approval. The buyout price will be based on the Fair Market Value of the facility at the time of purchase, with a predetermined floor and ceiling price, as identified in detail in the Board letter, already provided to your Honorable Council. The PPA and Purchase Option require that the developer's special purpose entity obtain the consent of LADWP prior to any transaction that results in a change in control.

To expedite completion of the Bundled Solar Project on the Beacon Property, LADWP will engineer, procure, construct and maintain the infrastructure, which includes a Beacon Substation, a three-mile 230 kV transmission line connecting the Beacon Substation to LADWP's existing Barren Ridge Switching Station, a main access road, and a 34.5 kV collector system that connects each solar site to the Beacon Substation. The Interconnection Agreement allows for the solar generating facilities to connect to this infrastructure. The Ground Lease allows the developer to build the solar facility on their designated portion of the Beacon Property and includes a seven-year extension beyond the PPA term of 25 years, which enables the developer to claim certain tax credits and depreciation.

Charter Requirements

Charter Section 674(a)(1) provides that subject to approval by ordinance, the Board shall have the power to contract with the United States, or any of its agencies, any state or state agency, and any corporation, public or private, located inside or outside of the City or State of California for the construction, ownership, operation and maintenance of facilities for the generation, transformation, and transmission of electric energy. Charter Section 674(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. Additionally, pursuant to Charter Section 101, the Council has the power to authorize the Board to amend the agreements without further Council approval.

CEQA Findings

A solar project on the Beacon Property was originally proposed as a private development and required a Conditional Use Permit (CUP). Also, during the time of its proposed private development the Lead Agency under the California Environmental Quality Act (CEQA) was Kern County. An Environmental Impact Report (EIR) was prepared for the project in accordance with the requirements of CEQA.

On September 27, 2012, the Kern County Planning Commission certified the EIR and approved CUP No. 11, Map No. 152 to allow construction and operation of the solar project. That decision was appealed to the Kern County Board of Supervisors, which denied the appeal and upheld the approval on October 30, 2012. However, when the Kern County Board of Supervisors made its decision on the appeal, LADWP's acquisition of the Beacon Property had not yet been completed. Therefore, in accordance with CEQA, LADWP was required to become a Responsible Agency for the solar project. As a Responsible Agency, LADWP considered the solar project's EIR approved by Kern County, but reached its own conclusions on whether and how to approve the project. (CEQA Guidelines Section 15096(a)). As no action commenced against the approved EIR, the EIR was conclusively presumed to have complied with CEQA. (Public Resources Code Section 21167.2).

approve the project. (CEQA Guidelines Section 15096(a)). As no action commenced against the approved EIR, the EIR was conclusively presumed to have complied with CEQA. (Public Resources Code Section 21167.2).

The LADWP Board satisfied its responsibilities as a Responsible Agency under CEQA via the LADWP Board action on May 20, 2014. (CEQA Guidelines Section 15096). The LADWP Board action included consideration of the EIR prepared by Kern County and adoption of the Mitigation Monitoring and Reporting Plan, findings, and statements of overriding considerations. Under CEQA, the term "project" refers to the whole of the action, which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval. (CEQA Guidelines Section 15378). Consequently, further CEQA action for the approval of this Ordinance by the City Council is not required.

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 Jean-Claude Bertet at (213) 367-4500. He or another member of this 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:JCB:me
Transmittal

ORDINANCE NO. _____

An ordinance approving a power purchase agreement, purchase option for a solar powered generation facility, and an interconnection agreement for the purchase of electric energy between the City of Los Angeles, acting by and through the Department of Water and Power (LADWP), and Hecate Energy Beacon #4 LLC, (LADWP No. BP 14-012).

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

Section 1. Pursuant to Los Angeles City Charter Sections 674(a)(1) and (2), the City of Los Angeles hereby approves the agreement LADWP No. BP 14-012, which includes a power purchase agreement, purchase option for a solar powered generation facility, an interconnection agreement for the purchase of electric energy, and other agreements and documents attached thereto, all approved by the Board of Water and Power Commissioners by the adoption of Resolution No. 014 228, that is on file with the City Clerk.

Sec. 2. The Board of Water and Power Commissioners is authorized, without further approval by the City Council, to act on and approve all future amendments to the agreements for LADWP No. BP 14-012, provided that such amendments are ministerial and administrative in nature and do not increase the costs or extend the term of said agreements.

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  _____
JEAN-CLAUDE BERTET
Deputy City Attorney

Date JUN 18 2014 _____

File No. _____