



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 1 4 - 0 2 9 7

JUN 2 6 2014

REPORT RE:

**DRAFT ORDINANCE APPROVING
THE RE BARREN RIDGE 1 POWER PURCHASE AGREEMENT NO. BP 13-057
BETWEEN THE CITY OF LOS ANGELES, ACTING BY AND THROUGH THE
LOS ANGELES DEPARTMENT OF WATER AND POWER, AND RE
BARREN RIDGE 1 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 the RE Barren Ridge 1 Power Purchase Agreement, No. BP 13-057 (PPA), by and between the City of Los Angeles, acting by and through the Los Angeles Department of Water and Power (LADWP), and RE Barren Ridge 1 LLC (Seller), and limited authority for the Board of Water and Power Commissioners (Board) to amend such agreement. Seller is a wholly-owned subsidiary of Recurrent Energy Development Holdings, LLC, which is a wholly-owned subsidiary of Recurrent Energy, LLC. The PPA includes: (1) the purchase of electric energy and environmental attributes from a solar generating facility to be built on property near Mojave, California, in Kern County (the RE Barren Ridge 1 Solar Generation Facility); (2) an option to purchase the solar facility at certain times during the term of the PPA (Facility Purchase Option); and (3) an option to purchase the underlying land at certain times during the term of the PPA from RE Barren Ridge LandCo LLC, an affiliate of Seller (Land Purchase Option).

Background

On April 4, 2006, the Board approved Southern California Public Power Authority (SCPPA) Development Agreement No. 96125-76 under Resolution No. 006-157, which authorized LADWP to participate with other SCPPA members for the purpose of investigating potential new renewable energy resources.

LADWP's RPS Policy

LADWP's Renewable Portfolio Standard Policy and Enforcement Program (RPS 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 2013, to comply with regulatory requirements of the California Renewable Energy Resources Act, also referred to as Senate Bill 2 (1X) or SB2 (1X), which requires publicly owned utilities (POUs) such as LADWP to supply 25 percent of its energy from eligible renewable energy resources by 2016 and 33 percent by 2020 (RPS Compliance). This PPA supports LADWP's RPS Compliance.

Competitive Process

In January 2012, SCPPA issued a Request for Proposal (RFP), a competitive selection process, for the purchase and/or acquisition of renewable energy resources. SCPPA received 340 proposals from numerous firms having the capability to provide renewable energy from sources such as solar, wind, biomass, landfill gas, geothermal, hydroelectric and other sources. Of the 340 proposals received, the RE Barren Ridge 1 Solar Generation Facility was shortlisted by several SCPPA members, including LADWP.

Due to the location and limited transmission availability which would increase costs to other SCPPA participants, the other SCPPA members decided not to participate in the PPA. To limit administrative costs and centralize management functions, it was decided to redefine the PPA exclusively between LADWP and Seller.

General Agreement Terms

The PPA has a 20-year term with an option for LADWP to purchase the solar facility at the end of the 6, 10, 15 and 20-year anniversaries of the full commercial operating date, provided that LADWP gives its exercise notice during the six-month period commencing on the date that is 18 months prior to the aforementioned time periods. The PPA also independently provides LADWP the option to purchase the underlying land pursuant to the same anniversaries and timing guidelines.

The exercise of the Facility Purchase Option and/or Land Purchase Option will require LADWP to go to its Board and the City Council for approval. The respective

buyout prices will be based on the fair market value of the facility and/or land (as applicable) 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, Facility Purchase Option and Land Purchase Option require the consent of LADWP prior to any transaction that results in a change in control. The renewable energy will be delivered through LADWP's Barren Ridge Switching Station, which is directly connected to LADWP's balancing authority area.

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

To comply with the California Environmental Quality Act (CEQA), Kern County prepared an environmental impact report (EIR) evaluating and disclosing the potential environmental impacts associated with the construction and operation of the RE Barren Ridge 1 Solar Generation Facility Project and approved a notice of determination (NOD) on December 12, 2011. The NOD included mitigation measures and a mitigation measures monitoring program, which were made as conditions of approval of the project. A statement of overriding considerations was also adopted for the project by Kern County.

LADWP's action of purchasing the power from an approved project does not itself meet the definition of a project. In accordance with Section 15060 (c)(3) of the CEQA Guidelines, an activity is not subject to CEQA if it does not meet the definition of a project. Section 15378 (b)(5) states that organizational or administrative activities that will not result in direct or indirect physical changes in the environment do not meet that definition. Since the proposed LADWP action is only for authorization to purchase power from the project, but not to exercise the Facility Purchase Option or Land Purchase Option at a later date, the proposed action is not subject to CEQA.


Council Rule 38 Referral

Pursuant to Council Rule 38, this draft ordinance has been presented to the Board of Water and Power Commissioners and its comments have been incorporated or resolved with LADWP.

If you have any questions regarding this matter, please contact Deputy City Attorney Vaughn Minassian at (213) 367-5297. He or another member 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/VGM:me
Transmittal

ORDINANCE NO. _____

An ordinance approving Power Purchase Agreement, No. BP 13-057, by and between the City of Los Angeles, acting by and through the Department of Water and Power, and RE Barren Ridge 1, LLC, including the facility purchase option and land purchase option attached thereto, and delegating to the Board of Water and Power Commissioners limited authority to amend such agreements.

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

Section 1. Power Purchase Agreement, No. BP 13-057, including the facility purchase option and land purchase option attached thereto, approved by the Board of Water and Power Commissioners by the adoption of Resolution No. 014-249, that are on file with the City Clerk, are hereby approved.

Sec. 2. Pursuant to Los Angeles City Charter Sections 101, 373 and 674(a)(1)(A) and (a)(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 Power Purchase Agreement, No. BP 13-057, including the facility purchase option and land purchase option attached thereto, 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 
VAUGHN MINASSIAN
Deputy City Attorney

Date 6/26/14

File No. _____