1. Legal Requirements for PPAs
2. The Structure of PPAs
3. Advantages and Disadvantages of PPAs
4. How to Negotiate a PPA

Legal Requirements for PPAs
Legal Requirements for PPAs

- Statutory scheme for energy efficiency contracts including PPAs
  - Government Code § 4217.10 et seq.
- Selection of consultant to prepare assessment
  - Special services under Government Code § 53060
  - Competitive selection under Government Code § 4525 et seq.

Legal Requirements for PPAs

- Energy Efficiency Agreements
  - Statute provides great latitude on structuring these agreements: “greatest possible flexibility” is allowed
  - So far contracts may be let without bidding or RFP if requirements are met
  - SB 118 (Yee) would have added a public bidding requirement

Legal Requirements for PPAs

- Under the energy efficiency statutes, a District may enter into:
  - Energy service contracts;
  - Facility ground leases; and/or
  - Facility financing contracts
  
  (Gov Code § 4217.11)
Legal Requirements for PPAs

• Public hearing at a regular board meeting with two weeks notice required
• Board must determine that agreement is in the best interest of the district and make specified findings

Legal Requirements for PPAs

• Findings Required:
  ─ The anticipated cost for energy or the services provided by the conservation facility will be less than the anticipated marginal cost to the agency of energy that would have been consumed in the absence of those purchases; and
  (Gov. Code, § 4217.12)

Legal Requirements for PPAs

• Findings Required (cont.):
  ─ That the difference, if any, between the fair rental value for the real property subject to the facility ground lease and the agreed rent is anticipated to be offset by below-market energy purchases or other benefits provided under the energy service contract.
  (Gov. Code, § 4217.12)
Legal Requirements for PPAs

• Findings Required (cont.):
  ─ The funds for the repayment of the financing or the cost of design, construction, and operation of the energy conservation facility, or both, “are projected to be available from revenues resulting from sales of electricity or thermal energy from the facility or from funding that otherwise would have been used for purchase of electrical, thermal, or other energy required by the public agency in the absence of the energy conservation facility, or both.”

  (Gov. Code, § 4217.13)

Legal Requirements for PPAs

• Statute permits districts to award contracts to any entity to construct facilities that will:
  ─ Conserve energy,
  ─ Cogenerate energy, or
  ─ Be an alternative energy supply source

  (Gov. Code, § 4217.10)

The Structure of PPAs
The Structure of PPAs

District (Purchaser)
- Owner of premises on which contractor will construct solar facilities
- Lessee of solar facilities from power provider
- Purchaser of solar generated electricity from power provider
- Possible purchaser of solar facilities from power provider

Contractor
- Designs solar facilities to maximize district’s solar-generated electricity
- Obtains DSA approval of solar facilities design
- Constructs solar facilities

Power Provider
- Provides funds to contractor for construction of solar facilities
- Owns solar facilities
- Utilizes tax credits and depreciation available to private owners of solar facilities
- Operates and maintains solar facilities to ensure optimal performance and sustain value of solar facilities on an ongoing basis
- Provides ongoing reports to district to ascertain amount of solar electricity generated
The Structure of PPAs

- Assessment phase
- Contractual negotiation phase
- Project approval phase
- Design/construction phase
- Project completion
- Operational phase
- End of term/buyout of solar facilities

District pays for energy, not for facility
- Private developer constructs a facility on district property per long-term ground lease or easement
  - If district can negotiate early buy-out, then district has the potential for additional savings

Private Financing – may not require capital outlay from the district
  - District may be responsible for site improvements

Investment Tax Credit (ITC)
  - Provides a 30% tax credit for solar installations
  - Federal "bail-out" legislation extended the ITC for 8 years, to 2016
The Structure of PPAs

• District contracts with a provider that:
  – Finances,
  – Designs,
  – Installs,
  – Monitors and,
  – Maintains solar generation facilities
• District enters into ground lease or easement for provider to place solar facilities on district property

The Structure of PPAs

• District purchases power from provider
• District can buy facility at fair market value after 7 years
• District pays for facility construction, operation and maintenance in cost of energy

The Structure of PPAs

• Contracts may be let without bidding
• District may award the contract on the basis of:
  – The experience of the provider,
  – The type of technology employed,
  – The cost to the district, and
  – Any other relevant considerations
• District may use RFP/RFQ to select provider (not required)
Advantages and Disadvantages of PPAs

Pros
- No or low initial capital outlay
- Cost of facility offset by Federal Investment Tax Credit
- Pre-determined cost for electricity

Cons
- Long term commitment (20, 25, 30 years)
- Difficult to show savings (Gov Code § 4217.10 et seq.):
  - Offered terms are too long (25-35 years);
  - Escalation assumed for local utility appears to be inflated
- District does not own facility unless buyout at fair market value after 7 years
Advantages and Disadvantages of PPAs

• Cons (cont.)
  – Timing of buyout options limited
  – Price includes profit for third party financing entity (usually unknown)
  – Power providers (investors) are structuring these deals like annuities which make it more difficult/expensive for districts to purchase the systems before the end of the PPA

• Cons (cont.)
  – Values of RECs (Renewable Energy Credits) are rising but the power providers are reluctant to allow the districts ownership of these credits

• Know the Risks!
  – Price paid for energy may not always be less than what utility (i.e. Southern California Edison) charges
  – PPA allocates energy credits without knowing future value
  – Changes in technology may lead to better options before term expires
  – Can not predict fair market value of facility at time buyout is available
How to Negotiate PPAs

1. Get an independent assessment
2. Examine assumptions
3. Use district documents
4. Evaluate financial terms
5. Comply with CEQA

Get An Independent Assessment
How to Negotiate PPAs

Assessment
- Who should prepare assessment?
- Method of selection of consultant(s)
- Criteria for energy assessment

Who should prepare assessment?
- District staff
- Independent consultants with knowledge of energy services and financing
- Utilities – part of assessment and incentive program
- Vendors with a product for sale

Method of Selection of Consultant(s)
- District research options
- RFP or RFQ
- Whoever approaches the district
• What are the criteria for energy assessments?
  – District goals
  – Factors to consider

Possible District Goals:
• Reducing energy use
• Reducing energy purchase from a public utility
• Becoming "grid-neutral" within a given period of time
• Shifting operating costs to capital costs
• Obtaining predictable energy costs

Possible District Goals (cont.):
• Teaching new energy habits
• Changing an energy consumption culture
• Going off the grid
• Making $ on sale of energy or energy credits
How to Negotiate PPAs

Factors to Consider:
• Assumptions built into the energy savings hypothesis
• Past and projected changes in demographics and energy needs
• Past and current energy costs
• Board’s risk tolerance
• Projected district facility needs
• Community expectations
• Provider’s track record and reputation

Examine Assumptions

• Examine assumptions
  • Energy needs over life of PPA
  • Amount of energy to be generated
  • Increases in SCE cost of energy over term of PPA
  • Life of equipment
  • Anticipated maintenance
  • Anticipated inflation over life of PPA
Use District Documents

How to Negotiate PPAs

- Use district documents, not provider’s
  - Power purchase agreement
  - Ground lease
- Parties:
  - Provider
  - District
  - Is developer/contractor a party to either or both?

Key provisions
- Cost of energy
- Guarantee of energy quantity
- Payment or other consequences if not meet guarantee
- Term of agreement
- Buyout options
How to Negotiate PPAs

Key provisions (cont.)
- Construction terms
- Equipment warranties
- Maintenance
- Allocation of liability and risk (insurance and indemnity)

Evaluate Financial Terms

Financial terms
- May need consultant to evaluate
- Cost of energy over life of PPA compared to cost of other energy options
  - Without buyout
  - With buyout
- Cost of buyout
  - Fair market value of facility
- Look at present value of cost of energy and provider's return on investment
- Title review for any prior financings