



QUAY COUNTY, NEW MEXICO  
BOARD OF COMMISSIONERS

ORDINANCE #29

STATE OF NEW MEXICO }  
COUNTY OF QUAY } SS

I hereby certify that this instrument was filed  
for record at 4:30 o'clock P.M. on  
and v.

OCT 28 2002  
Misc 772-782  
page 104  
of the records  
of said county,

*James H. Madigan*  
County Clerk

AUTHORIZING THE ISSUANCE AND SALE OF QUAY COUNTY, NEW MEXICO, TAXABLE INDUSTRIAL REVENUE BONDS (FPL ENERGY NEW MEXICO WIND, LLC PROJECT), SERIES 2002, IN THE MAXIMUM PRINCIPAL AMOUNT OF \$141,400,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A WIND FARM FOR THE PURPOSE OF GENERATING ELECTRICITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Quay County is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the "State"); and

WHEREAS, pursuant to Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), Quay County is authorized to acquire industrial revenue projects to be located within the county, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting agriculture and industry and developing trade or other economic activity to secure and maintain a balanced and stable

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economy in the county to promote public health, welfare, safety, convenience and prosperity;  
and

WHEREAS, FPL Energy New Mexico Wind, LLC (the "Developer"), is a limited liability company organized under the laws of the State of Delaware and is a duly registered foreign limited liability company in the State of New Mexico; and

WHEREAS, the Developer requested that Quay County issue industrial revenue bonds for the purpose of providing funds to finance the acquisition, construction and equipping of a wind farm for the purpose of generating electricity for which both location approval and a certificate of convenience and necessity are not required prior to commencing construction or operation of the facility pursuant to the laws of the State; and

WHEREAS, the Developer has presented to the Quay County Commission a proposal whereby the County would (a) issue its Industrial Revenue Bonds (FPL Energy New Mexico Wind, LLC Project), Series 2002 (the "Bonds"), and (b) acquire and install supporting towers, nacelles, rotors and related equipment and easements on land to construct a wind farm and related improvements, (collectively the "Project Property") to be used by the Developer for the generation, transportation and delivery of electricity; and

WHEREAS, under the Developer's proposal, Quay County would enter into a Mortgage and Indenture in the year 2002 (the "Indenture"), among Quay County and a corporate trustee satisfactory to Quay County to be designated at a later date, as trustee (the "Trustee"), pursuant to which, together with this ordinance (the "Bond Ordinance"), the County would issue the Bonds; and

WHEREAS, under the Developer's proposal Quay County and the Developer would enter into a Lease Agreement dated in the year 2002 (the "Lease"), pursuant to which the

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Developer will lease the Project Property from Quay County and the Developer will make payments sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease and the Bond Ordinance; and

WHEREAS, Quay County is authorized to enter the Lease, Indenture, and other related documents and to issue the Bonds pursuant to the Act and the Bond Ordinance; and

WHEREAS, the Bonds in an aggregate principal amount not to exceed \$141,400,000 will be issued, sold and delivered by Quay County, in a private sale to Pacific Power Investments, LLC (the "Purchaser"), pursuant to a bond purchase agreement (the "Bond Purchase Agreement") among Quay County, the Purchaser and the Developer; and

WHEREAS, the proceeds of the Bonds shall be applied to pay the costs of the Project and to pay certain costs associated with the transaction; and

WHEREAS, the Commission has determined that it is in the best interest of Quay County to issue the Bonds and to execute and deliver the Bond Documents, defined below, and other documents related thereto; and

WHEREAS, there have been filed with the Quay County Clerk and presented to the County Commission the forms of the following documents:

1. Lease
2. Indenture
3. Bond Purchase Agreement

The Lease, Indenture and Bond Purchase Agreement are collectively referred to in the Bond Ordinance as the "Bond Documents;" and

WHEREAS, Quay County is authorized to issue the Bonds under the Act, and after having considered the Company's proposal, has concluded that it is desirable at this time to authorize the issuance of the Bonds to finance the Project and that Quay County's issuance of the bonds will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised by the Developer that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the Bonds are being sold in a private sale without participation of an underwriter; and

WHEREAS, there has been published in the Quay County Sun, a newspaper of general circulation in Quay County, public notice of the Commission's intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the Project and the amount of the Bonds to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance.

WHEREAS, the acquisition of the Project Property has been approved by the House School District.

BE IT ORDAINED BY THE COMMISSION, THE GOVERNING BODY OF QUAY COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Commission and the officials of Quay County directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

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A. General. The Commission hereby declares that it has considered as relevant information presented to it relating to the Bonds and the Project and hereby finds and determines that the issuance of the Bonds pursuant to the Bond Ordinance to provide funds for the Project is necessary and advisable and in the interest of and will promote industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

(1) The Bonds will be issued for the purpose of financing the Project.

(2) The aggregate face amount of obligations to be issued with respect to financing the Project is not to exceed \$141,400,000.

(3) The Developer of the Project Property is FPL Energy New Mexico Wind, LLC.

(4) The Project Property is located in Quay and De Baca Counties, New Mexico.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bonds in an aggregate principal amount not to exceed \$141,400,000 and the use of the proceeds of the Bonds to finance the cost of the real estate easements, equipment, development, construction and installation of the Project including payment of expenses related thereto are hereby approved and confirmed.

The sale of the Bonds at a purchase price of \$141,400,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance the Bonds shall (i) be in the form and denominations and shall be numbered and dated as set forth in the

Indenture, (ii) be payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) issued in a principal amount not to exceed \$141,400,000, bearing interest at the rates and maturing on the date set forth in the Indenture.

C. Execution. The Bonds shall be signed by the presiding officer of the Board of Commissioners of Quay County, New Mexico.

D. Interest Rate. The interest rate on the Bonds shall not exceed 12% per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The form, terms and provisions of the Bond Documents in the form on deposit in the office of the Quay County Clerk are in all respects approved, authorized and confirmed.

The presiding officer of the Board of Commissioners of Quay County is authorized to execute and deliver in the name and on behalf of Quay County, and the Quay County Clerk or Deputy County Clerk is hereby authorized to attest, as necessary, the Bond Documents and the Bonds with such changes therein as are not inconsistent with this Bond Ordinance.

The Quay County Manager and County Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents.

The officers of Quay County shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act

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to finance the costs of the Project and for carrying out other transactions as contemplated by this Ordinance, and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bonds.

Section 5. DELIVERY OF BONDS. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bonds, the Bonds shall be executed, authenticated and delivered to the Purchaser. No Bond shall be valid for any purpose until such Bond has been properly authenticated as set forth in the Indenture.

Section 6. FUNDS AND ACCOUNTS. There is established in the Indenture, and on and after the date on which the Bonds are issued there shall be maintained, the funds and accounts as set forth in the Indenture. Other funds and accounts may be established as are necessary under the Indenture.

Section 7. FINDINGS REGARDING PAYMENT OF INTEREST AND PRINCIPAL AND OTHER MATTERS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the Bonds, assuming issuance of the Bonds as of December 1, 2002, in the maximum principal amount of \$141,400,000 and bearing interest at the rate of 12%, is as follows:

<u>Year Ending</u> <u>December 31</u>	<u>Principal</u> <u>Payment</u> <u>Required in</u> <u>Such Period</u>	<u>Maximum</u> <u>Interest for</u> <u>Such Period</u>	<u>Total</u> <u>Debt</u> <u>Service</u>
2003	\$ 940,572.40	\$16,968,000.00	\$17,908,572.40
2004	\$1,053,441.09	\$16,855,131.31	\$17,908,572.40
2005	\$1,179,854.02	\$16,728,718.38	\$17,908,572.40
2006	\$1,321,436.50	\$16,587,135.90	\$17,908,572.40

<u>Year Ending December 31</u>	<u>Principal Payment Required in Such Period</u>	<u>Maximum Interest for Such Period</u>	<u>Total Debt Service</u>
2007	\$1,480,008.88	\$16,428,563.52	\$17,908,572.40
2008	\$1,657,609.95	\$16,250,962.45	\$17,908,572.40
2009	\$1,856,523.14	\$16,052,049.26	\$17,908,572.40
2010	\$2,079,305.92	\$15,829,266.48	\$17,908,572.40
2011	\$2,328,822.63	\$15,579,749.77	\$17,908,572.40
2012	\$2,608,281.34	\$15,300,291.06	\$25,583,674.85
2013	\$2,921,275.10	\$14,987,297.30	\$17,908,572.40
2014	\$3,271,828.12	\$14,636,744.28	\$17,908,572.40
2015	\$3,664,447.49	\$14,244,124.91	\$17,908,572.40
2016	\$4,104,181.19	\$13,804,391.21	\$17,908,572.40
2017	\$4,596,682.93	\$13,311,889.47	\$17,908,572.40
2018	\$5,148,284.88	\$12,760,287.52	\$17,908,572.40
2019	\$5,766,079.07	\$12,142,493.33	\$17,908,572.40
2020	\$6,458,008.56	\$11,450,563.84	\$17,908,572.40
2021	\$7,232,969.59	\$10,675,602.81	\$17,908,572.40
2022	\$8,100,925.94	\$ 9,807,646.46	\$17,908,572.40
2023	\$9,073,037.05	\$ 8,835,535.35	\$17,908,572.40
2024	\$10,161,801.49	\$7,746,770.91	\$17,908,572.40
2025	\$11,381,217.67	\$6,527,354.73	\$17,908,572.40
2026	\$12,746,963.79	\$5,161,608.61	\$17,908,572.40
2027	\$14,276,599.45	\$3,631,972.95	\$17,908,572.40
2028	\$15,989,841.81	\$1,918,781.02	\$17,908,622.83



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B. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

C. The Lease requires that the Developer maintain the Project Property in good repair and condition (excepting reasonable wear and tear) and carry proper insurance with respect to the Project Property.

D. The Lease requires the Developer to make payments sufficient to pay the principal of, premium, if any, and interest on the Bonds as principal and interest become due and to make all payments of or relating to the Project Property as they become due.

Section 8. LIMITED OBLIGATIONS. The Bonds shall be special limited obligations of Quay County, payable solely from the revenues derived from the Lease, and payable by the Developer as described in the Indenture and any other property or interest of Quay County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of Quay County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of Quay County or a charge against its general credit or taxing power. Nothing contained in the Bond Ordinance or in the Bond Documents or any other instrument shall be construed as obligating Quay County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bond, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of Quay County or against its taxing powers, nor shall the breach of any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as

incurring a pecuniary liability or a charge upon the general credit of Quay County or against its taxing power, Quay County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor and seller of the Project Property.

Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically approves the provisions of the Lease relating to indemnification which provide that the Developer shall indemnify and hold harmless Quay County and its Boards of Commissioners, officials, members, officers, employees and agents against liability to the Developer, or to any third parties that may be asserted against Quay County or its Board of Commissioners, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bonds and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Developer, except to the extent Section 56-7-1, New Mexico Statutes Annotated, 1978 Compilation, applies, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of Quay County or any member, officer, employee or agent of Quay County.

Section 10. BOND ORDINANCE IRREPEALABLE. After any of the Bonds are issued, the Bond Ordinance shall be and remain irpealable until the Bonds, including interest, are fully paid, canceled and discharged or there has been defeasance of the Bonds in accordance with the Indenture.

Section 11. REPEALER. All bylaws, orders, resolutions and ordinance, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to

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the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 12. SEVERABILITY. If any section, paragraph, clause or provision of the Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Bond Ordinance.

Section 13. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE.

This Ordinance, immediately upon its final passage and approval, shall be recorded in the Ordinance book of Quay County, kept for that purpose, and shall be there authenticated by the signature of the presiding officer of the Board of Commissioners, and by the signature of the County Clerk or any Deputy County Clerk, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in Quay County, and shall be in full force and effect thereafter in accordance with the laws of the State.

Done this 28<sup>th</sup> day of October, 2002.

ATTEST:  
  
Jeanette Maddard  
County Clerk

QUAY COUNTY BOARD OF COMMISSIONERS  
By Steve E. Madril  
Chairman

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:  
[Signature]