

Federal Utility Partnership Working Group Meeting April 20-21 in Portland, Oregon

U.S. DEPARTMENT OF
ENERGY

Energy Efficiency &
Renewable Energy



Power Purchase Agreement Update April 21, 2011

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FEMP
Federal Energy Management Program

- Power Purchase Agreement (PPA) Template
- PPA Request For Information (RFI)

- DLA Energy has an updated PPA template
 - Includes Best Value evaluation (rather than Low Price/Technically Acceptable)
 - Additional updates will be made based on the PPA RFI
 - Updated template will be posted on FEMP PPA Sample Document web site
- http://www1.eere.energy.gov/femp/financing/ppa_sampledocs.html

- Background
 - PPA issues identified based on meetings/telecons with key federal agency staff with PPA project experience
 - RFI issued on March 2, 2011
 - Responses due April 11, 2011

- The accuracy of the information from the RFI respondents has not been confirmed by DOE

- Contract length limitations
- End of Contract, Disposition of Renewable Project
- Termination for Convenience
- Site Access/Land Use Agreement Options
- Creation of Special Purpose Entities for Project Development

This presentation covers contract length & termination only.

- **Ten year PPA contract (using FAR Part 41) with long term land use agreement (LUA)**
 - Government has right of first refusal for electricity at pre-determined price at end of PPA contract
 - Contractor can sell electricity on open market if government elects not to purchase electricity
- **Ten year PPA contract, with ten year option**
 - Price could be negotiated at time of option or established in original contract
 - Must be a “true” option, requiring:
 - 1) No assumption that the option will be exercised
 - 2) No penalties if the option is not exercised
 - **NOTE:** DOE is still investigating whether this is a viable option.
- **Indefinite term with a one year termination notice**
 - Either with or without a long term LUA

- Long contract length key for financially viable projects
 - 10 year contract term raises PPA prices 25 to 65% compared to a typical 20 or 30 year PPA
- None of the proposed options were compelling as financiers would consider them to be high risk
- 10 year contract with long term LUA
 - Varying opinions on whether this is viable option
 - Market for power must exist, with buyer willing to pay more than market price due to RPS or other policy

- A 10 year contract with 10 year option would have little or no impact on PPA price relative to 10 year contract with no option
- Indefinite term with one year termination would be considered risky by most financiers
 - Inclusion of a 20 year termination value schedule (TVS) helps
 - The “indefinite” term is limited by tax regulations, as term cannot extend beyond useful life

- Suggested Alternatives from Respondents
 - Use Power Marketing Administration such as Western Area Power Administration

NOTE: DOE does not endorse the following options, as it is not clear whether they are viable from a practical or legal standpoint. Check with your contracting and legal counsel staff before proceeding.

- 20 year PPA with host termination right in year 10, triggering TVS
- Contractor has put option to sell renewable asset at price equal to net present value of revenues contractor would have recovered during a twenty-year term PPA

- Suggested Alternatives from Respondents continued

NOTE: DOE does not endorse the following options, as it is not clear whether they are viable from a practical or legal standpoint. Check with your contracting and legal counsel staff before proceeding.

- Pre-paid contract : Federal agency pays for renewable power in advance
- 10 year contract structured with option to extend contract in years 5 & 11
 - Low PPA rates for first 5 years
 - Significant PPA rate increase in year 6 unless option is exercised
 - Similar option in year 11

- Concern that unilateral right by Government to terminate, per the FAR 52.212-4(l) Termination for Convenience (T4C) clause, increases project costs and reduces project viability from investor standpoint
- Inclusion of Termination Value Schedule (TVS) reduced/eliminates risk
 - TVS must be detailed and specific
 - Must include all costs (including tax penalties for termination in first 5 or so years) necessary to make investor whole
 - Termination must be completed in reasonable timeframe
 - Consider contractor's ability to mitigate losses
- Termination ceiling does not provide sufficient assurance that investor will be made whole
 - A TVS or termination floor is preferable
 - Termination ceiling is better than no termination provision at all

Summary

- Contract length and Termination for Convenience are key industry concerns that need to be addressed for viable federal PPA projects
- Increased contract length authority is preferable to the options presented in the RFI
- Financiers need a secure revenue stream to achieve ROI requirements – through longer term PPAs, higher PPA rates, or termination/make whole provisions

Next Steps

- Conduct a more comprehensive review of the RFI responses
- A detailed RFI response summary will be presented at GovEnergy