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

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FEMP
Federal Energy Management Program

Overview

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

PPA Template

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- 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

PPA Request for Information

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

PPA Request for Information Issues

- 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.

Contract Length Limitation - Options Presented in RFI

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- **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

Key Findings - Contract Length Limitations

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- 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

Key Findings - Contract Length Limitations

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- 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

Key Findings - Contract Length Limitations

- 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

Key Findings - Contract Length Limitations

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- 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

Key Findings - Termination for Convenience

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- 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 & Next Steps

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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