Public Consultation re: Renewable Energy Supplier Agreement (PPA)
for Distributed Generators >500kW

Comments on PPA – from Penn Energy

Contact Info:
Cyrus Tingley – Penn Energy
cyrus@penngroup.net
+1-610-668-0300

We are pleased to submit to the Fair Trading Commission the following general, high-level comments on the draft Power Purchase Agreement for Distributed Generators. We are looking forward to a project-specific negotiation and discussion, at the appropriate time, with regard to our first project on Barbados, the 7 MW Cluffs Solar Farm which is currently progressing through the Town Planning permission process.

Our comments are primarily based on our project finance experience (over USD $500M in renewable assets closed), with the goal of having no need to eventually go back to the drawing board and request further PPA edits based on project lender requirements.

Penn Energy is a developer, owner and operator of high-quality renewable energy projects. We currently operate a portfolio of nearly 100 MW of utility-scale solar PV. We have been actively developing utility-scale solar projects on Barbados since early 2016 including land investment, local incorporation and engagement with island stakeholders and consultants.

The following are our comments which we hope are helpful to your review process. Please contact us with any questions or if you'd like to discuss the PPA. Additionally, we would be happy to meet with you during our next visit to Barbados.

1. **3.0 Performance Security, page 20:** In our opinion and experience, a Security Agreement that gives BL&P security over real/personal property such as land is not typical in the marketplace.

2. **4.2(b) Delay to COD, page 23:** With regard to liquidated damages (LDs) resulting from COD delay, we would suggest there be a specifically calculated amount of LDs per day delay and also that there be a grace period to allow for typical delays associated with the development process (90-180 day grace period is our preliminary suggestion).
    - Also, automatic extensions should be granted to the COD date for issues outside of Supplier control, such as permitting, interconnection, etc. Such extensions would include application of Force Majeure (FM) days.

3. **5.0 Delivery and Acceptance of Energy, page 25:** With respect to the BL&P's take-or-pay obligation and related matters, we suggest performance security on the Buyer side that is equivalent to a set amount, such as either a 6-month PPA revenue amount or the Buyer's 6-month power purchase budget.
    - **5.2(e) Acceptance of Energy, page 26:** Pursuant to prudent utility practices, such curtailment, interruption or reduction of generation or delivery should not constitute or allow for "gaming of the system" or singular impacts to a specific Supplier facility.

4. **5.3 Facility Performance, Net Output, page 27:** A weather adjustment factor should be applied to all relevant aspects of the Facility Performance - Net Output terms and conditions. This will appropriately account for resource shortfalls outside of Supplier's control.
    - Also we would suggest that the 98% threshold in 5.3(b) should be revised to 96%, with a reciprocal extension of the BL&P's proposed 102% to 104% on the Buyer's side (5.2(b)).

5. **Force Majeure:** Please confirm that Force Majeure are included under (the definition of) Extraneous Events. Currently the definition of Extraneous Events does not include reference to Force Majeure.

6. **7.2(d) Interconnection Costs, page 34:** We recommend no opportunity for the BL&P to elect to assume the interconnection (IC) costs at a problematically late stage of project development - this could interfere significantly with project financing. We suggest that this allocation is available at the point when IC costs are ultimately agreed upon and at that point it can be decided who is assuming those costs, allowing for project financing to proceed without a potentially disruptive change to that cost responsibility at a later point.

7. **9.1(d, e) Supplier Reporting, page 36:** With respect the proposed reporting requirements of Supplier, we believe that day-prior, hourly forecasting as well as same-day forecast adjustments are excessive and not in line with grid operator requirements in other mature electricity markets where we do business as an IPP. Supplier would be happy to meet with Buyer to discuss how to best cooperate such that information sharing and grid management is successful.

8. **10.2 Insurance:** We suggest general revision of the Insurance requirements including e.g. no requirement for marine cargo insurance for duration of Term. In our experience, the standard industry-leading providers will dictate much of the Insurance requirements and thus a feature like 30 days' notice per 10.2(c) might not be available – significant aspects of Insurance in this regard are outside of Supplier control.

9. **11.1 Indemnification**: We suggest the following edits to this section:
    - Addition of a carve-out provision for the exception being negligence, fault, omission, or error of Indemnitee; and
    - The specification of <u>direct</u> "losses, damages and liabilities suffered" per 11.1(a).

10. **Operating Committee, page 44 & Schedule 7:** With regard to the requirement of an Operating Committee, we assert that in order to meeting project financing requirements, Supplier would need control of said Committee (i.e. no split vote and no BL&P majority). We are of course happy to cooperate with the Buyer during development, interconnection, construction and operation but Supplier must have majority control of said Committee.
    - The Procedures as drafted in Schedule 7 could likely be an impediment to efficient project operations as well as project financing.

11. **General:** We suggest the inclusion of language/provision similar to the following, to help avoid issues and delays resulting from Supplier/Owner Financing Party requirements:

- “Notwithstanding anything to the contrary set forth herein, in the event any lender to the Owner or its Affiliates or the Independent Engineer requests changes, modifications, or amendments to the Contract Documents or the Design Documents, the Owner and Contractor shall meet to discuss such requests within two (2) Business Days of such Lender or Independent Engineer giving notification of such requests.”

12. **14.0 Default & Termination:** We appreciate that we will be able to meet with the relevant parties to discuss the PPA’s Section 14.0: Termination. By way of preliminary comments on this important Section:
    - We suggest that 14.1(b) regarding the 60% threshold be modified, included a provision for weather adjustment.
    - 14.1(c-d) should include the same full language as drafted in 14.1(e).
    - Necessary amounts of time must be allowable for a given specific remedy to take place - provided that Supplier has promptly responded to the situation and commenced to implement remedies, some of which require more time than others. The concepts detailed in 14.1(j) should extend to the other default situations referenced in this Section.
    - 14.2(a) requires significantly more time (than 5 days); as currently drafted, in our experience this would not be financeable. We would suggest 15 days’ notice and the ability to convene to strategize cure.
    - Similarly, 14.6’s termination for FM requires a significantly longer time period as a starting point, as well as the allowance of an extension if Supplier is diligently trying to fix the situation.
    - Early Termination Fee needs to be set and not performance dependent as currently drafted in 14.4(e(i-ii)).
    - We assert that in general the terms and conditions regarding the Early Termination Fee and related aspects of the PPA need discussion and revision to make the PPA financeable.