blackstone megawatt energy

November 19, 2018

Fair Trading Commission
Good Hope, Green Hill
St. Michael
BB12003
Barbados

Attention: Dr. Martha Atherley-Ikechi, Director of Utility Regulation

Re: Public Consultation Notice – Power Purchase Agreement for Distributed Generators

Dear Dr. Atherley-Ikechi,

Blackstone Megawatt Energy Services Inc. is an energy services provider in Barbados with experience developing and negotiating Power Purchase Agreements in multiple locations. We understand that a second iteration of the PPA for distributed generation above 500kW was released for comment recently. Please accept our comments below as part of the Fair Trading Commission's solicitation.

It is important to stress that a number of our comments are related to third party financing of renewable energy – and solar energy specifically. Rarely are MW-scale projects undertaken without access to third party financing so we see the satisfaction of a lender's contractual and security requirements as critical to a project's feasibility.

Should you have any questions, please do not hesitate to contact the undersigned.

Yours faithfully,

Grant McArthur
VP Renewables

cc: Michael Cadogan, Ian Sinclair: BMESI

Definitions Notes

- Qualified Assignee: what if the system being assigned is only 500 kW? Why would $7 million in net tangible assets be required? The amount seems arbitrary – and doesn't guarantee any resolution to issues. A net tangible asset amount requirement is troubling and could eliminate the best local operators who could come in and takeover / fix in the event of a default. Based on our experience, a much better qualifier is operational experience and a demonstration of the insurance plan (re: force majeure, business interruption, equipment breakdown, etc.).
    - We believe that the qualifications in 16.1 (b, iii) and (f) are more reasonable qualifiers than the definition.

Section Notes

- 4.2 (b): This may be a deal breaker for lenders: there is some probability that Supplier fails to hit the COD but more as a delay. The troubling element is an unspecified amount of 'liquidated damages'. What does this mean? What value does this amount to? It is a risk to the Supplier with no quantifiable outcome. The sole mechanism to compensate BLPC at this point should be the forfeiture of the Pre-COD Performance Security. However, all parties benefit from the COD being reached in a reasonable amount of time. Therefore, the BLPC should require updates from the Supplier at certain intervals:
    - BLPC should notify Supplier 90 days before COD of the potential for losing their COD performance security. BLPC should request a status update of the Supplier's project at this point.
    - Similar events should happen at 30 days and 15 days before COD, including photographic evidence.
    - At COD, if Commercial Operation has not been reached, Supplier should be notified that they have 30 days to complete.
    - At 30 days post-COD, if COD has not been met, Supplier will need to meet with FTC and / or BLPC to determine new schedule to reach COD or if contract modification is required or if contract will be terminated.
        - This begs the question: is the COD reasonable? re: has enough been time allocated?
    - FYI: note in 4.2 (b), there is no 3.2 (b) in this draft

- 5.2 (e): "…..which is effected pursuant to the Commercial Operations Date." Apologies if we've missed something but this doesn't seem to be a logical sentence. Is this meant to say, "which is effected <u>before</u> the Commercial Operations Date."?

- 14.2 (d) and 14.5, Early Termination Payment: we maintain that this concept is very troubling for lenders and potential RE Suppliers. An unknowable amount of the Early Termination Payment will detract from the lender perfecting its security on its loan to the Facility.
- If the Facility is in default, the lender will be the one with the greatest amount to lose and will do everything reasonably possible to rectify the default. If the default still occurs, something unforeseen will have happened and the lender should be able to salvage what it can, in good faith, to recompense its failed loan; the Early Termination Payment will detract from that.

- For these reasons, we maintain that the liquidated damages must be capped at the value of the relevant Performance Security. This is the case in other jurisdictions we have operated RE assets in, most notably Ontario.
    - Further, BLPC has a mechanism via the fuel clause adjustment to pass volatile power pricing onto its customers. If an RE default occurs, presumably BLPC would increase the power generation from its traditional assets to meet demand, and pass those costs (higher or lower than the RE generation as may be the case at the time) on to the customer base via the fuel clause adjustment until the RE Supplier (or its lender) can resume operations of the defaulted facility or until new generation is brought online.

- 15.1 (b, iii): the 20-year weather condition severity threshold means that a storm similar to 2010's Hurricane Tomas could affect the Facility's construction and not be considered a Force Majeure event. We argue this is too harsh and severe. Further, weather can have very localized effects, and may affect one location more than another even though they are geographically close to one another. We believe this paragraph should be modified by deleting (B) part, and adding that, "If a weather condition-related Force Majeure is declared by the RE Supplier, evidence of its effects on the Facility must be demonstrated."
    - Ontario's IESO has a good system in place as it pertains to Force Majeure on RE projects. Please see the link to the Force Majeure notice below as reference.
    - http://www.ieso.ca/-/media/Files/IESO/Document-Library/FIT/FIT-5/prescribed-forms/Prescribed-Form-Notice-of-Force-Majeure.docx?la=en

- 16.0: there is the definition Qualified Assignee and the word, 'assignee' which occurs in multiple instances in section 16. Are they different?
- 16.1 (d): could we see a definition for 'CAA'?
- 16.1 (h): "or (ii) with the prior consent of the BLPC, which consent may be given, withheld or conditioned once the BLPC is acting reasonably." Should this read, "or (ii) with the prior consent of the BLPC, which consent may be given, withheld or conditioned by the BLPC, acting reasonably."?
- 16.2: Is it BLPC's intention to review the Financing Documents to determine they are in a form reasonable satisfactory to BLPC. This doesn't seem reasonable. BLPC should rely on the proposed secured lender consent agreement between the Facility Lender, BLPC and the RE Supplier laying out the conditions in 16.2.
- 16.2 (b): This should be reciprocal. BLPC should have to notify the Facility Lender of an RE Supplier event of default with the same timelines.
- 16.2 (c, ii): The Facility Lender will require that it has the first and sole right to cure the RE Supplier's default.

- It would appear that Schedule 7 can be deleted