From: Allen, Meredith
Sent: 2/13/2012 9:54:30 AM
To: 'sgm@cpuc.ca.gov' (sgm@cpuc.ca.gov)
Cc:
Bcc:
Subject: CONFIDENTIAL: Solaren

CONFIDENTIAL

Scott,

Section 8.4 and Appendix XII requires Solaren to provide Project Development Security within 360 days after satisfaction of conditions precedent. In the PPA, this deadline is longer than our standard which is 30 days. Section 5.1(vii) states that failure to comply with Section 8.4 is an event of default. Section 5.2(b) provides that if seller is the defaulting party and the event of default occurs prior to the commercial operation date, the Agreement automatically terminates 30 days after the event of default. Section 5.2(a)(ii)-(v) provides for rights buyer has upon termination.

Given that Solaren did not post the required project development security on January 14, 2012, the Agreement automatically terminates on February 27th per section 5.2(b). The original automatic termination date was February 13 but that date was suspended for 2 weeks.

The Commission approved PPA provisions are below.

Thanks,
Meredith

5.1 Events of Default. An "Event of Default" shall mean,

(a) with respect to a Party that is subject to the Event of Default the occurrence of any of the following:

(vii) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement.

5.2 Early Termination Date.

(a) Declaration of Early Termination Date. Other than as provided in Section 5.2(b), if an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right (i) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date"), (ii) to accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date and collect liquidated damages ("Termination Payment"), which shall be calculated in accordance with Section 5.3 below; (iii) withhold any payments due to the Defaulting Party under this Agreement; (iv) suspend performance; and (v) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. The Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the "Settlement Amount" is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. If Seller is the Defaulting Party with respect to an Event of Default which occurs on or prior to the date on which

Project Development Security is due (as specified by Section 8.4(a)(i) or any applicable modification thereof in Appendix XII), and such Event of Default occurs solely as a consequence of Seller's inability to obtain needed financing, as demonstrated by documentary evidence provided by Seller to Buyer which is satisfactory to Buyer, such an Event of Default shall be referred to as the "Pre-PDS Financing Default". In the event of Pre-PDS Financing Default, the Termination Payment shall be zero, and Seller, its officers, directors, employees, and Affiliates shall not for a period of five years thereafter sell or facilitate the sale of energy from the Project or any components of the Project to any person or entity without the advance written consent of Buyer in Buyer's sole discretion. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

(b) Automatic Early Termination Upon Certain Seller Defaults. If Seller is the Defaulting Party with respect to an Event of Default and the Event of Default occurs prior to the Commercial Operation Date, this Agreement shall automatically terminate 30 days after the Event of Default date (the "Automatic Termination Date"). Buyer shall send Notice to Seller setting forth such Automatic Termination Date and the specific Event of Default that has occurred and shall have the rights set forth in Section 5.2(a)(ii) - (v) with respect to the Event of Default.

8.4 Performance Assurance.

(a) Project Development Security; Delivery Term Security. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows (subject to any applicable modifications to this Section 8.4(a) set forth in Appendix XII):

(i) Project Development Security pursuant to this subsection (a)(i) in the amount of $ 3,700,000 and in the form of cash or Letter of Credit from a date not later than thirty (30) days following the date on which all of the Conditions Precedent set forth in Article Eleven are either satisfied or waived until Seller posts Initial Delivery Term Security pursuant to subsection (a)(ii) below with Buyer.

Appendix XII [Note: The appendix modifies the deadline for PDS from 30 to 360 days after satisfaction of conditions precedent]

E. Modified Section 8.4(a)(i):

(i) Project Development Security pursuant to this subsection (a) (i) in the amount of $ 3,700,000 and in the form of cash or Letter of Credit from a date not later than three hundred sixty (360) days following the date on which all of the Conditions Precedent set forth in Article Eleven are either satisfied or waived until Seller posts Initial Delivery Term Security pursuant to subsection (a)(ii) below with Buyer.