

DRAFT FOR DISCUSSION

July 17, 2007

TITLE: REQUEST FOR COMMENT ON REACTIVE RFP EXEMPTION CRITERIA

SUMMARY: The Connecticut Energy Advisory Board (CEAB) issues this Request for Comment on a Straw Proposal that establishes criteria the CEAB may consider in deciding whether to exempt a project from a Reactive Request for Proposal (Reactive RFP) process pursuant to Conn. Gen. Stat. Sec. 16a-7c(b) as modified by Section 54 of Public Act 07-242, *An Act Concerning Electricity and Energy Efficiency*. The CEAB invites persons to submit written comments and recommendations on the Straw Proposal set forth in this Request.

DATES: Written comments on this Straw Proposal are due no later than [INSERT DATE]. A public hearing will be held on September [INSERT], 2007. The CEAB will adopt final criteria no later than December 1, 2007.

FILING: Persons interested in this matter are requested to submit Written Comments on the Straw Proposal by [INSERT DATE]. The CEAB requests Written Comments to be submitted in electronic and paper form. An electric copy should be sent to gdeans@cerc.com and one paper copy should be sent to:

CEAB
c/c Gretchen Deans
CERC
805 Brook Street, Bldg 4
Rocky Hill, Connecticut 06067

BRIEF HISTORY: Historically, Conn. Gen. Stat. Sec. 16a-7c(b) has required the CEAB to issue an RFP when certain energy projects initiated a certification process before the Connecticut Siting Council. Under this RFP process, referred to as a “Reactive RFP”, the CEAB solicits alternatives to the proposed project, evaluates all submitted proposals in relation to the Preferential Criteria¹ and forwards that evaluation to the Siting Council. The Reactive RFP process enables the Siting Council to consider the project and alternatives to it simultaneously in a consolidated hearing process.² Additionally, the Reactive RFP process enables the Siting Council to consider the CEAB’s analysis of the way the project and any alternatives relate to the Preferential Criteria.

¹ In brief, the CEAB’s Preferential Criteria were established pursuant to Conn. Gen. Stat. Sec. 16a-7b to support and balance energy reliability, environmental and natural resource protection, cost effectiveness and quality of life goals in the evaluation of energy projects. The Preferential Criteria provide guidelines to energy project proponents and to the CEAB in its evaluation of proposals received in RFP processes.

² See. Connecticut General Assembly House of Representatives Transcript dated May 22, 2003.

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In 2006, the CEAB was required by statute to issue Reactive RFPs in response to certain energy infrastructure proposals for which there was a low likelihood that alternatives solutions would be presented that could meet the Project's stated need. In response to those RFPs, no alternative solutions were proposed.

In 2007, the Connecticut General Assembly adopted and Governor Rell signed Public Act 07-242, *An Act Concerning Electricity and Energy Efficiency* (the Act). Section 54 of the Act provides the CEAB discretion not to issue a Reactive RFP if two-thirds of its members determine that a Reactive RFP is unnecessary for a certain project because the RFP process is not likely to result in a reasonable alternative to the proposed facility.³ In addition, the Act directs the CEAB to approve additional criteria, with the benefit of public input, for considering the circumstances in which a Reactive RFP should not be required for a specific project. Each time the CEAB decides not to issue an RFP for a specific project, it must explain its reason for that conclusion.

GOALS: In broad terms, the objectives of the RFP Exemption Criteria Straw Proposal are to:

- 1) Establish general guidelines that are technology agnostic, applicable across the range of potential projects and relevant over time to facilitate the CEAB's analysis of circumstances in which an RFP exemption may be appropriate.
- 2) Maintain the CEAB's discretion to decide on a case by case basis, informed by the facts and circumstances of each project and the market, whether to solicit alternative solutions for the Siting Council's consideration to give effect to the Reactive RFP's purpose;
- 3) Communicate to the market the kinds of circumstances in which the CEAB may exempt a project from a Reactive RFP.
- 4) Enable the CEAB to make prudent use of resources and to administer efficient processes.

DISCUSSION: The CEAB sets forth the criteria it may consider when it evaluates whether to exempt a project from a Reactive RFP process. In general, the criteria are purposefully discretionary and not formulaic: the CEAB will exercise its judgment in each case as to whether an RFP for alternative solutions is unnecessary. Additionally, the criteria are intentionally general and technology agnostic so that they will apply to any type of project and remain relevant over time as technologies emerge.

More specifically, the criteria describes scenarios in which the purpose of the Reactive RFP – to enable the Siting Council to consider a project and alternatives to it

³ Public Act 07-242 provides a separate process by which to exempt from an RFP facilities required for the reliability of electric supply to critical national defense and homeland security infrastructure.

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simultaneously together with the way they relate to the Preferential Criteria - would not be frustrated by an exemption. One consideration that could counsel the CEAB to conclude an RFP is unnecessary for a specific project is evidence that the market has already been adequately tested for alternatives. For example, if the project sponsor solicited a range of alternative solutions from the market to meet the stated need, or parts of it, it may be reasonable for the CEAB to conclude that the project sponsor's market test was adequate to establish that an RFP is unlikely to result in viable alternative solutions. In the same way, the CEAB may consider an RFP to be redundant and unnecessary if a project was selected by the Department of Public Utility Control through an RFP process that solicited a range of solutions. Similarly, the CEAB might give weight to its RFP experience in deciding whether an RFP is necessary. If a recent RFP for alternatives to the same need did not bring forward alternative solutions, the CEAB may conclude that its prior market test renders an RFP superfluous.

As a substitute for an actual market test, the CEAB might consider giving weight to a project's thorough analysis of potential alternatives in deciding whether an RFP is needed. If a project provides the CEAB with comprehensive alternative solution analysis that demonstrates to the CEAB's satisfaction that no viable, cost effective alternatives to the project exist, the CEAB may conclude that an RFP would not bring forward alternatives or result in useful analysis to benefit the Siting Council's record.

The CEAB may also consider a project's unique circumstances if the project conforms precisely to the Preferential Criteria. To illustrate, if a relatively small, low cost, environmentally benign project would, for example, lose access to federal tax credits and thus be jeopardized by any delay associated with an RFP, the CEAB may decide an RFP is unnecessary, provided the project conforms squarely to the Preferential Criteria. Similarly, if a relatively small Connecticut Class I renewable energy project that presents no quality of life adverse impacts, and otherwise compares favorably to the Preferential Criteria, establishes that it would not preclude the development of other projects with the same characteristics, the CEAB may conclude there is no need to issue an RFP for alternatives.

In these circumstances, a CEAB decision not to issue an RFP would not frustrate the central purpose of the RFP process, which is to enable the Siting Council to consider a project and alternatives simultaneously in a consolidated hearing process.

REACTIVE RFP EXEMPTION CRITERIA STRAW PROPOSAL

- A. Purpose:** The CEAB, by a vote of two-thirds of its members present and voting, may determine that a Request for Proposal is unnecessary for a specific project because the RFP process is not likely to result in a reasonable alternative to the proposed project. The purpose of the Reactive RFP Exemption Criteria is to set forth additional circumstances in which the CEAB may conclude, after considering the facts of each case, that it is unnecessary to issue a Reactive RFP.
- B. Application:** This criteria applies to those projects that submit an application for Siting Council certification, which application initiates a Request for Proposal pursuant to Conn. Gen. Stat. Sec. 16a-7c(b).
- C. Definitions**
- a. “CEAB” means the Connecticut Energy Advisory Board created pursuant to Conn. Gen. Stat. Sec. 16a-3.
 - b. “Class I renewable energy resource” means an energy resource that the Department of Public Utility Control determines to comply with Conn. Gen. Stat. Sec. 16-1(26).
 - c. “Preferential Criteria” means the infrastructure criteria guidelines adopted pursuant to Conn. Gen. Stat. Sec. 16a-7b.
 - d. “Project” means the subject of an application for Siting Council certification that initiates a Reactive RFP pursuant to Conn. Gen. Stat. Sec. 16a-7c(b).
 - e. “Reactive Request for Proposal” means an Request for Proposal issued pursuant to Conn. Gen. Stat. Sec. 16a-7c(b).

D. Exemption Criteria

The CEAB may consider, at its discretion, any of the following criteria in evaluating whether to exempt a proposed Project from a Reactive RFP:

- a. The Project provides evidence to the CEAB that it sought alternative solutions from the market in an open and transparent solicitation process to meet the stated need or parts of the stated need in the context of formulating the proposal and that no alternative solutions responded to such solicitation.
- b. The CEAB has issued an RFP for the same or materially similar facility proposed to meet the same or similar need and: 1) no alternative solution responded to such RFP; or, 2) no alternative solution came forward in response to the RFP that, in the CEAB’s judgment, favorably relate to the Preferential Criteria.
- c. The Project provides evidence to the CEAB that it has been selected by the Department of Public Utility Control following a competitive bid

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process that solicited a range of energy infrastructure solutions to meet a need recognized by the State of Connecticut.

- d. The Project provides the CEAB comprehensive alternative solution analysis, which analysis demonstrates to the CEAB's satisfaction that alternative solutions to the stated need are not technically viable; do not conform to the Preferential Criteria; and/or, are cost prohibitive.
- e. The Project provides the CEAB evidence that: 1) the Project's characteristics, such as its size and Connecticut Class I renewable energy source status, would not preclude the development of additional projects with the same characteristics; and 2) the Project materially conforms to the Preferential Criteria.
- f. The Project provides evidence to the CEAB that the time or cost associated with a Reactive RFP would jeopardize the Project's viability if the Project: 1) has a unique profile, such as, for example, a relatively small, low cost project with no environmental or quality of life impacts; 2) has exigent circumstances; and, 3) the Project materially conforms to the Preferential Criteria.
- g. Any other fact or circumstance that, in the CEAB's judgment, renders a Reactive RFP unnecessary.