

**CONNECTICUT ENERGY ADVISORY BOARD
DRAFT FINAL REACTIVE RFP EXEMPTION CRITERIA
Revision Following the October 10, 2007 Public Hearing**

SUMMARY: The Connecticut Energy Advisory Board (CEAB) is considering this Draft Final 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*.

Additions to the Revised Straw Proposal in the Discussion Section below and in the Draft Final Proposal *appear in bold italics*.

DATES: The CEAB will adopt final criteria no later than December 1, 2007.

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.

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

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.

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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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. In applying the exemption criteria to projects, the CEAB may consider that small projects with short lead times merit the presumption of exemption, whereas large projects with long lead times merit the presumption of an RFP. The purpose of these presumptions is to create proportionality between the transaction costs associated with an RFP and the benefits of an RFP process.

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 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 this circumstance, when considering whether to exempt a project from an RFP, the CEAB would weigh the extent to which the solicitation process was open and transparent and the quality of information provided by the project sponsor about the

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process to the CEAB. In the same way, the CEAB may consider an RFP to be redundant and unnecessary if, for example, a project was selected by the Department of Public Utility Control through an RFP process that solicited a range of solutions or otherwise resulted from a decision by a state agency. 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. In considering the weight to afford such alternative analysis, the CEAB would take into account the overall quality of information the project provides as well as its willingness to provide additional information the CEAB deems necessary. ***Projects seeking an exemption based on information and analysis provided by the project should submit an RFP exemption request and supporting documentation to the CEAB no later than sixty (60) days in advance of the date the Project intends to file an application for certification with the Siting Council. This will enable the CEAB to assess the analysis and request more information as necessary to inform its exemption decision. The CEAB will endeavor to work with Projects that, due to unique circumstances, consider this timeframe problematic in order to find mutually a workable alternative timeframe.***

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 has 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 an RFP for alternatives is unnecessary.

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.

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REACTIVE RFP EXEMPTION CRITERIA**

(Additions to the Revised Straw Proposal appear in *bolded italics*.)

- 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.⁴
- 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. *“Alternative solutions” means approaches to meeting the Project’s stated need through technologies and strategies other than that proposed, including, but not limited to, transmission and distribution, generation, demand side measures and any other strategy or combination of strategies.*
- b. “CEAB” means the Connecticut Energy Advisory Board created pursuant to Conn. Gen. Stat. Sec. 16a-3.
- c. “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).
- d. “Preferential Criteria” means the infrastructure criteria guidelines adopted pursuant to Conn. Gen. Stat. Sec. 16a-7b.
- e. “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).
- f. “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. In applying the following criteria, the CEAB may consider that small Projects with short lead times merit the presumption of exemption whereas large Projects with long lead times merit the presumption of an RFP. These

⁴ *The RFP Exemption Criteria are applicable to projects not otherwise exempt by state law or state agency action implemented pursuant to state law.*

presumptions will, in every case, be given weight on a case by case basis. ***For any exemption that relies on information and analysis provided by the Project, the Project should submit to the CEAB a request for an exemption and associated information and analysis at least sixty (60) days prior to its filing an application for certification with the Siting Council.***⁵

- 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. The weight afforded to such evidence will include, among other factors the CEAB deems appropriate, the extent to which the solicitation process was open and transparent and the quality of information provided to the CEAB, including its detail and comprehensiveness.
- 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 results from a procurement process administered by a state agency or was required to be constructed by state law or regulatory order. In evaluating whether to exempt such a Project from an RFP, the CEAB will consider, among other items it deems relevant, whether the underlying process solicited a range of energy infrastructure solutions to meet a need recognized by the State of Connecticut. In the event the agency solicited only one type of resource that resulted in the Project, the CEAB will consider the agency's rationale.
- 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. The weight afforded to such analysis will reflect, among other factors the CEAB deems relevant, the extent to which the analysis is detailed and comprehensive and the responsiveness of the Project sponsor to requests for further information.
- 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

⁵ *Projects in special circumstances that consider this timeframe to be overly burdensome should consult with the CEAB to determine whether alternate timeframes may be mutually workable and reasonable under the circumstances.*

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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.