Pacific Community
Communauté du Pacifique

Suva Regional Office
Private Mail Bag
Suva, Fiji
Email: spc@spc.int
Phone: +679 337 0733
Fax: +679 337 0021

SPC Headquarters
95 Promenade Roger Laroque
BP D5, 98848 Noumea Cedex
New Caledonia
Email: spc@spc.int
Phone: +687 26 20 00
Fax: +687 26 38 18

MEETING ANNOUNCEMENT

TO : Representatives of Governments and Administrations; American Samoa, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, Northern Marianas, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu and Wallis & Futuna

No. : 18/11

CC: CEOs and Directors of Energy
Office of Utility Regulators
Independent Power Producers
Power Utility CEOs and Board Members
Members of the Sustainable Energy Industry Association of the Pacific Islands
Members of the Association of Development Financing Institutions in the Pacific
Members of the Pacific Energy Oversight Group (IUCN, PIFS, PPA, SPREP & USP)

FILE : PRO 135/1/5/2

DATE : 12 March 2018

SUBJECT : **TRAINING WORKSHOP ON POWER PURCHASE AGREEMENTS: AUCKLAND, NEW ZEALAND; 28 – 31 MAY 2018**

BACKGROUND

1. In April 2017, Pacific Energy Ministers met and adopted a vision for the Pacific to be 100% on renewable energy and launched the Pacific Centre of Excellence for Renewable Energy and Energy Efficiency (PCREEE) as a vehicle for accelerating the progress towards their vision by empowering the private sector and the business community. Ministers also noted the formation of the Pacific Regulators Alliance, and the need for regulatory frameworks to create an enabling environment for Public-Private-Partnerships.

2. Pacific Islands Countries and Territories have adopted ambitious national renewable energy and energy efficiency targets and while a lot of projects have been funded through grant aid, there is a growing interests on commercial arrangements involving the private sector. A Power Purchase Agreement (PPA) is an effective tool for attracting private sector investments. It gives all parties concerned confidence of a win-win-win arrangement based on agreed terms and conditions.

3. PPAs are fairly new in the PICTs and there is only a few in operation in the region. Agencies have learnt by actually doing it and there is therefore a lot to be learnt and shared on PPAs. There is a need to urgently master the key tools, models, and lessons learnt for transforming and strengthening today's energy sector. They need to familiarize themselves with the latest models in negotiating PPAs, in designing and managing a power market with increasing number of independent power producers, as well as attracting the right mix of renewable energy sources.

OBJECTIVES OF THE WORKSHOP

4. The objectives of the workshop are to enable participants to structure successful PPAs, to manage competition in the electricity market and attract power sector investments and to provide inputs to the drafting of a PPA template for the Pacific Islands.

DATE AND VENUE OF THE WORKSHOP

5. The workshop will be held on 28 – 31 May 2018 at Auckland, NZ.

AGENDA / PROGRAMME

6. The draft agenda / programme for the workshop is attached as **Annex 1**.

PARTICIPANTS

7. The workshop would be beneficial to Energy Planners and Energy Regulators, Power Utility CEOs and Board Members, Banks / Investors, Independent Power Producers as well as Lawyers and Consultants.

   The number of participants is restricted to 22 only and participation will be on a first come first served basis.

LANGUAGE

8. The workshop will be conducted in the English language only.

TRAVEL, ACCOMMODATION AND TRAINING FEE

9. Participants are to cover their travel and accommodation costs plus a training fee of USD 500 per participant which must be paid with the registration. The workshop organizers will cover the costs of the training provider, venue and the catering.

10. The Secretariat and the organizers are happy to assist with the accommodation arrangements of the participants, if needed.

VISA REQUIREMENTS

11. Refer to link: - https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/general-information/visa-waiver-countries to view listed visa waiver countries. Pacific Island countries do require a visa to enter New Zealand. Acquiring necessary visa will be sole responsibility of the participant. Also ensure that passport has **six months or more validity** from the travel date.

INSURANCE

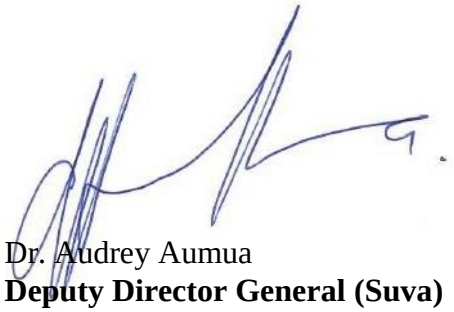
12. It should be noted that neither SPC, nor the joint organizers of this joint events, insure participants whilst traveling to or from the workshop, nor during the period of attendance and will not be responsible for any expenses arising from sickness, injury or other disability or loss of life.

CONTACT INFORMATION

13. Completed nomination forms, see **Annex 2**, should be submitted to, and further details about this workshop can be obtained from, Ms Pooja Pal and Mr Solomone Fifita as per details below and to be received by the 30th of April 2018 at the latest.

Ms Pooja Pal
Programme Assistant
Georesources and Energy Programme
Geoscience Energy and Maritime Division
Pacific Community
Suva, Fiji
Ph: +679 337 9401 or 337 0733 Ext. 35401
Email: poojap@spc.int

Mr Solomone Fifita
Manager - PCREEE
Georesources and Energy Programme
Pacific Community
Nuku'alofa, Tonga
Ph: +676 25209 or 20137
Email: solomonef@spc.int



Dr. Audrey Aumua
Deputy Director General (Suva)

Annex 1 – Draft Workshop Agenda

"Power Purchase Agreements for Renewable Energy Projects" - (Workshop) Suggested Topics / Content – to be discussed

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The primary purposes of a PPA are to clarify:

- the offtake volume and the tariff drivers of the revenue, so that the vendor can;
  - Demonstrate debt serviceability, and
  - A reasonable rate of investment return.
- the costs and constraints upon the purchaser/offtaker;
- the distribution of responsibility for the various risks that may arise during the lifetime of the project;
- the compensations that are applicable if the counterparty fails to deliver the contacted responsibilities;
- the circumstances where the arrangements can be terminated by either party.

Accordingly, for a course that is primarily devoted to the negotiation of the terms of the PPA itself, we also need to have an appreciation of how that negotiation will be influenced by:

- financiers attitude to debt serviceability in limited recourse financing structures;
- private sponsors analytical approach to project appraisal;
- legal constraints re government dealings with private sector, leasing sites, co-investing, etc
- the interface between the PPA (operating phase) and the construction agreement(s) (pre-completion);
- the interface between the PPA and the O&M agreement;
- the operation of law and the enforcement of rights

Draft Outline

Law and the Enforcement of Rights

The one thing that a PPA has in common with O&M, Construction, Site Control, and Financing Agreements is that they are all contracts. There is no point in having a contract unless we have reasonable prospects of enforcing our rights under those agreements - and this may well become an issue where the counterparties are from different jurisdictions. Also some members of Pacific Power Association operate in a common law system, whilst others inhabit a civil law system.

The differences between civil law and common law -- implications for financing and developing a power project;
If the financing is limited recourse, why litigation of disputes is unacceptable;
Alternative Dispute Resolution procedures – expert mediation, arbitration, the 1956 Convention;
The necessity of ensuring the contract involves an SPV defending and not enforcing;
Legal opinions;
Commercial structures that can be considered if legal rights uncertain of protection;
Sovereign power versus contractual rights and obligations.

Different Project Structures

Irrespective of the structure of the underlying transaction, many details 'moving parts' of the PPA will be the same, but a discussion of the various business models will be useful at an early stage.

Government leases/licenses land to private sector power plant developer who sells the power output to a government agency for retail distribution;

Government agency (or private sector entity) sells power to a dedicated offtaker (e.g. an industrial plant);
Third party ownership structure (tax investors);
Private households sell power to a utility (e.g. rooftop solar);
Each of the above implemented with Limited Recourse Financing through a Special Purpose Vehicle;

Financial Feasibility

If private sector capital is required (as opposed to grant aid or government funding), then the numbers have to 'stack up' from both the private sector company's viewpoint, and the debt financiers. The PPA effectively defines the revenue stream of the project, which in turn drives the debt serviceability and the IRR. So an overview of how project appraisal is undertaken, and an understanding of the lender perspective, is advisable. It will influence the provisions that will need to be included in the revenue-generating PPA.

Risk – and its correlation with return;
Why the Free Cash Flow is the most important line in any financial model;
Investor evaluation of project finance not used;
How project financing (i.e. limited recourse financing) works;
The difference in evaluation where project is implemented through project finance;
Errors frequently encountered in project appraisal;
Lender evaluation of debt serviceability;
Typical terms and conditions for the financing of:

- Solar;
- Wind;
- Hydro.

Debt capacity and debt sculpting;
Cash sweeps;
The implementation of a cashflow waterfall on the project SPV;
The operation of lockup covenants;
The fallacy of equity bridge financing.

Case Study – Negotiating the financing term sheet of an offshore wind project

Revenue Drivers

Before we go through the PPA itself in detail, we give special detailed consideration to the factors surrounding the volume of dispatch and the pricing arrangements – given their totally dominant importance.

Volume Component:

- Intermittency and the reserve arrangements;
- Priority dispatch arrangements;
- Take-or-pay structures;
- Flexibility elements and options;
- Weather derivatives – hedging volume risk;

Pricing Component:

- Feed-in Tariffs;
- Fixed price;
- Fixed escalators;
- Route to Market structures;
- Tolling;
- Government and regulatory support structures.

Deficiency Guarantees;
Other Influences:

- Battery and storage options, and outlook;
- Micro-grid control technology;
- Smart metering.

Case Study – A review of risks in renewable plant development to replace diesel generation in the Caribbean.

The Power Purchase Agreement

Thus represents the central focus of the course. It is proposed to do a deep dive into a Power Purchase Agreement, discussing the requirements and the flexibilities of each clause.

A profile of the project – the parties;
Term;
Conditions Subsequent;
Performance Guarantees;
SPV's construction & development obligations;
Completion testing and Third Party Verification;
Interconnection responsibilities;
Contracted Capacity & Energy;
Commissioning and Commercial Operations commencement;
Representations & Warranties;
Purchaser Covenants

- Price and payment
- Avoided Peak Demand payments;
- Liquidated damages;

Generator Covenants

- Assignments rights;
- Licences;
- Metering, measurement and verification;
- Indemnifications;

Insurances required;
Maintenance and scheduled outages;
Confidentiality;
Credit enhancements (if required);
Flexibility provisions;
Early Termination rights;
Offtaker Step-in Rights;
Force majeure provisions;
Change in Law
Severance clause;
Transfer of ownership rights, assignments, novations;
Events of Default;
Grace periods;
Disclaimers and Limitations of Liability;
Law and jurisdiction;
Dispute Resolution.

Project Implementation

The typical steps in the implementation of a renewable energy project

Location due diligence

The Request for Proposals:

- The objectives of the RFP
- A review of the terms of an RFP;

Site Lease

- Lease vs licence vs easement
- A review of the terms of a Site Agreement

SPV format – company, partnership, trust, UCV – tax implications;

Interconnection Agreement – a review of terms;

The problem of trapped cash, workarounds;

Case Study – Implementation of a Solar PV project

Project Development

Usually the highest risk component of any power generation project, irrespective of technology, is the ability to get it built and working in accordance with the base case planning. Certain performance issues can often be traced to the pre-completion phase – so this session gives an overview of the consequences of defects encountered during that initial stage of the project.

Liquidated damages – delay and performance;

Performance bonds;

Retentions;

Turnkey EPC structures;

Alternatives when turnkey EPC not available;

Variation orders and cost overruns;

Standby financing;

Completion guarantees;

Two-phase financing

Case Study – A refurbishment of a power generation plant.

Other Factors

For certain power projects, various options may be available, or considerations necessary, which will have an effect on the terms of the PPA to meet the requirements of the third parties being inducted into the process.

Dealing with political risk;

Dealing with currency exposures;

Involving Export Credit Agencies:

- The Berne Consensus rules;
- how buyer credits work.

Bond financing:

- which projects would be eligible;
- piercing the sovereign ceiling.

Financial Modelling *(sample files distributed)*:

- Valuation modelling;
- Volatility modelling;
- Modelling the construction phase;

- Modelling the operating phase.

Rescheduling or restructuring defaulting projects;

ANNEX 2 – NOMINATION FORM

PCREEE – TRAINING WORKSHOP ON POWER PURCHASE AGREEMENT [PPA]

28 – 31 MAY 2018

Name:

_____

Designation:

_____

Employer:

_____

Contact Details:

Postal Address

_____

Telephone No:

_____

Fax No:

_____

Email address:

_____

Preferred Hotel Booking (for the self-funded participants only)

☐ By SPC ☐ By Travel Agent ☐ Own Arrangement

Travel Itinerary (if available)

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Please pay training fee of USD 500 per participant to the account below:

Account Name: Pacific Community – Projects Account
Account No: 1933887
Account Type: 0150 CANBI – BUSINESS
Swift Code: ANZBTONN
Bank Address: ANZ BANK, PO Box 910, Nuku'alofa, Tonga

Areas of interest that would like to see covered in the workshop that are relevant to the proposed programme (provide as much details as possible)

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