Municipalities Playing a Leading Role in U.S. Renewable Energy Development

Dino Barajas
Akin Gump Strauss Hauer & Feld LLP

In an ever-changing, evolving global economy, renewable energy developers and investors are looking for the panacea that encourages continued economic growth and revitalizes new project development in the United States' renewable energy sector. As investor-owned utilities (IOUs) achieve required state renewable portfolio standards (RPSs) levels, their willingness to seek even more power purchase agreements (PPAs) for renewable energy projects appears to be declining. Additionally, corporate off-takers have become more discerning in who they are willing to contract with for their renewable energy off-take requirements. The combined pressures of fewer PPAs in the market and increased demands imposed by potential off-takers has made the U.S. quite a competitive renewable energy market. The present transitional market phase has created challenges for both power producers and integrators. For the U.S. to continue progress towards scalable levels of renewable energy deployment, near term solutions must be implemented during this time of market uncertainty.

The challenges in the market are compounded by a reduction in the size of contracted megawatts (MW) under available PPAs.[58] This makes cost reductions from economies of scale even more difficult. Opportunities to secure PPAs of 200 or 300 MW under a single contract are increasingly scarce and hyper-competitive. Developers and investors are now looking for opportunities to aggregate potential projects from a single energy off-taker in multiple or serial stages.

The large influx of renewable energy into power grid systems in some markets, traditionally dominated by fossil-fuel energy production, also raises issues relative to grid stability and energy storage needs. While renewable energy is fully cost competitive in many markets, these additional cost considerations can make it more challenging for new projects to garner energy off-taker attention.

Luckily, there are many paths to the market, and municipal utilities provide a pathway to harness various market forces and provide opportunities for renewable energy developers and their investors. They are in the unique position of being able to use their energy-offtake purchasing power to address the economic development needs of their constituents and communities. Unlike IOUs, which primarily focus on profitability for their investors, municipal utilities can consider other components such as community economic development commitments among selection criteria for new renewable energy providers. Such favorable conditions magnify municipal utilities' purchasing power and clout.

Economic development takes many forms. In some cases, job creation and capital investment commitments can be the objective measures by which prospective renewable energy developers may be assessed. At a time when the U.S. economy continues to stagnate and state budgets are strained, private-sector economic development programs are a method of leveraging the public sector's purchasing power and amplifying the

[58]"The Sustainable Energy in America Factbook Provides the Leading Independent Analysis and Market Intelligence for Clean Energy Sectors in the U.S." *Business Council for Sustainable Energy*, 2014. http://www.bcse.org/sustainableenergyfactbook.html.

benefits, which renewable energy brings to local communities.

Three to five years ago, IOUs dominated the market with annual requests for proposals for large-scale renewable energy projects. Now that large-scale RFPs are less common, municipalities are serving as favorable opportunities for deployment. By working with municipal utilities, renewable energy developers and their investors gain a strong creditworthy off-taker, which is extremely attractive to project finance lenders and tax equity investors.

The benefits of local job creation and capital investment by renewable energy developers also help local politicians and energy policymakers sell the benefits of renewable energy to their local constituents. These jobs are often higher paying, providing long-term benefits to the local communities, and also continue beyond the initial construction period of the renewable energy project with which they were associated.

The key for municipal utilities is a realistic economic development structure that provides flexibility to the renewable energy developer and its investors, such that the types of jobs created can evolve over time as the activities of the developer progress. Additionally, to the extent that a developer is provided with the option to select between greater job creation and capital investment interchangeably, project participants can adjust their compliance with the program requirements based on the unique characteristics of the local community in which they are trying to operate.

Job creation and capital investment requirements should also be calculated by taking into account the aggregate economic footprint of all project participants (including contractors and advisors). This would permit the benefits to ripple through numerous sectors and have a multiplying effect on the local economy.[59] The potential types of economic development goals are only limited by the creativity of local policymakers. In some cases, policymakers may elect to generate long-term future benefits within their communities by requiring that some portion of the economic development efforts be focused on education and job training. Educational programs may ensure that jobs are not simply transferred into a local community from other established labor bases in surrounding areas (with the aim of creating a temporary higher tax base during the construction phase of a project), but instead that local community constituents will have an opportunity to learn specialized technical skills that will lead to long-term, higher-paying jobs in the renewable energy sector.

The renewable energy industry has already witnessed a success story using the sliding scale economic development model: the City of San Antonio's Alamo solar projects. CPS Energy, San Antonio's municipal-owned utility, successfully tendered a RFP for a 400 MW solar project build-out, being developed in seven distinct stages as the developer, OCI Solar Power, achieves the required economic development milestones.[60] The Alamo series of projects is the largest solar development presently being built in the U.S. and serves as a model of the role that municipal utilities have in shaping the future of renewable energy development.[61] The aggregate construction costs for the investment are estimated to be US$1.2 billion, and the overall economic effect for the City of San Antonio is estimated to be US$700 million annually.

Although the entire renewable energy sector stands to benefit from economic development programs, the solar industry is in a unique position to benefit from this type of structure, given the ability of solar developers to scale-up their projects in smaller phases. The ability to aggregate smaller projects into

[59] "The Socio-economic Benefits of Solar and Wind Energy." *International Renewable Energy Agency*, 2014. http://www.irena.org/DocumentDownloads/Publications/Socioeconomic_benefits_solar_wind.pdf.
[60] "CPS Energy Works for You." San Antonio's Energy Future and You. March 22, 2014. Accessed October 31, 2014.
[61] "Texas: Alamo Energy Projects." OCI Solar Power. January 1, 2014. Accessed October 31, 2014. http://www.ocisolarpower.com/texas.html.

a larger overall offtake arrangement also preserves the purchasing power of the municipal utility and makes any request for proposals issued by it attractive to developers and investors. Project finance lenders and tax equity investors may also prefer these smaller, reproducible projects because each one is a ring-fenced, standalone project that can easily be financeable with lower overall transaction costs across multiple financings.

Additionally, having municipal utilities take a leadership role in renewable energy development will help state energy policy makers coordinate their efforts promoting RPSs with local public utility agencies. These coordinated efforts would also lead to increased benefits to a state's overall economic well-being and help coordinate public spending on a state-wide level.

The critical decision for municipal utilities is to flex their economic muscles and enhance their purchasing power. Applying the public sector's budget already earmarked for energy purchases, while requiring additional public benefits as part of the purchased good, is an important way to stretch every public dollar while promoting increased green energy production.

The future growth of the U.S. renewable energy sector will depend in part on the ability of industry participants to be creative in structuring innovative offtake arrangements. The municipal utility economic development model will helpfully be one of those alternatives.

ABOUT THE AUTHOR

This article was prepared by Dino Barajas, partner with Akin Gump Strauss Hauer & Feld LLP specializing in project finance and renewable energy transactions. Mr. Barajas has worked in the energy sector for the last 20 years. He received his J.D. from Harvard Law School. Tel: (310) 552-6613; email dbarajas@akingump.com.