

DOCKET

09-AFC-3

DATE DEC 03 2010

RECD. DEC 03 2010

Mariposa Energy Project

Corporate Guaranty example for BIO-16

Craig,

Attached is additional information relating to the requested "corporate guarantee" language. During the workshop on 11/29 Mariposa Energy indicated they would provide this to help staff evaluate the requested language change in Bio-16.

Doug Urry
CH2M HILL/Sacramento
Phone 916-286-0348
Fax 916-920-8463
Cell 916-943-6397
From: Paula Zagrecki [<mailto:p.zagrecki@dgc-us.com>]
Sent: Friday, December 03, 2010 10:50 AM
To: Urry, Doug/SAC; glw@eslawfirm.com
Cc: Y Asakura; Bo Buchynsky; Chris Curry; Tetsuji Nakagawa
Subject: Corporate Guaranty for BIO-16

Attached please find our draft corporate guaranty for BIO-16. Please forward this document and the following information onto Craig Hoffman. If Craig would like more information, please have him contact me directly.

Corporate guaranty: Corporate guaranties (also known as a parent guaranty) are a widely-accepted form of security. They can be drawn on quickly and easily, as the CEC will only need to make a written demand for payment under the guaranty for the payment to be made. They are often used as security in lieu of a cash account or letter of credit because they are more cost effective for the parent company. A cash account ties up cash that could otherwise be deployed, and a letter of credit must be backed by either a cash account or a corporate guaranty.

Diamond Generating Corporation: A key factor for determining whether a corporate guaranty provides appropriate security is the financial wherewithal of the Guarantor vis-à-vis the amount of guaranty required to be posted. In this case, BIO-16 requires security of approximately \$1.7 mm million. Diamond Generating Corporation, the parent company of Mariposa Energy, LLC, is a well-capitalized company with 22 years of experience in the independent power industry in the US. DGC has ownership in 10 operating projects across the US, with equity ownership of approximately 2,400 MW. All of its projects are under long-term contracts, with no market or fuel risk. For more information on DGC, please see: <http://www.dgc-us.com/assets4.htm>

Please let me know if any further information is required.

Paula Zagrecki
Director, Finance
Diamond Generating Corporation
333 S. Grand Avenue, Suite 1570
Los Angeles, CA 90071
ph: 213.473.0085
cell: 213.247.5867
fax: 213.620.1170
p.zagrecki@dgc-us.com

Form of Parent Guaranty
GUARANTY AGREEMENT

This **GUARANTY AGREEMENT** (the “Guaranty”) is made as of the ___ day of [Month], [Year], by **DIAMOND GENERATING CORPORATION**, a corporation duly organized and existing under the laws of the State of Delaware, U.S.A., with its head office at 333 South Grand Avenue, Suite 1570, Los Angeles, California 90071 (herein called “Guarantor”), for the benefit of the **CALIFORNIA ENERGY COMMISSION**, a California State entity, with its head office situated at [address] (herein called “CEC”). (Guarantor and CEC are individually referred to herein as a “Party” and collectively as the “Parties.”)

RECITALS:

WHEREAS, Mariposa Energy, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, with its head office situated at 333 South Grand Avenue, Suite 1570, Los Angeles, CA 90071 (herein called “Applicant”) is a wholly owned affiliate of Guarantor;

WHEREAS, Applicant has filed an Application for Certification (“AFC”) with the CEC on June 26, 2009 for the Mariposa Energy Project, a 196 MW simple-cycle natural gas-fired project located in eastern Alameda County (the “Project”);

WHEREAS, under the Certification by the CEC, the Applicant is required to fulfill certain Conditions of Certification in order to construct and operate the Project;

WHEREAS, proposed Condition of Certification BIO-16 requires Applicant to post security to ensure that an adequate level of funding is available to implement the mitigation measures described in that Condition of Certification; and

WHEREAS, Guarantor, as the parent company of Applicant, is willing to enter into this Guaranty to satisfy the requirements of Condition of Certification BIO-16.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the Parties agree as follows:

1. Guarantor unconditionally and irrevocably guarantees to the CEC that in the event of Applicant failing to provide the funding as required in Condition of Certification BIO-16, Guarantor shall promptly, but in no event later than five (5) business days, upon first demand from the CEC in writing, provide the required funding under Condition of Certification BIO-16.

2. Guarantor agrees to promptly, but in no event later than five (5) business days, make the required funding under Condition of Certification BIO-16 upon first written demand without set-off or counterclaim and without any legal formality such as protest or notice being necessary, and waives all privileges or rights which it may have as a guarantor, including any right to require CEC to claim payment or to exhaust remedies against Applicant or any other person.

3. The obligations of Guarantor hereunder shall continue in full force and effect until the earlier of the following events: (i) the requirements of Condition of Certification BIO-16 have been fulfilled, (ii) the expiry of the Certification, or (iii) eighteen (18) months after the date of Certification.

4. This Guaranty and the undertakings herein contained shall be binding upon the successors and assigns of Guarantor. No person other than CEC and Applicant as described above is intended as a beneficiary of this Guaranty nor shall any such person have any rights hereunder. CEC may not otherwise assign or otherwise transfer any of its rights or obligations hereunder.

5. This Guaranty shall be governed by and construed in accordance with the laws of the State of California, provided that any provision of such law invalidating any provision of this Guaranty or modifying the intent of the Parties as expressed in the terms of this Guaranty shall not apply.

IN WITNESS WHEREOF, the Parties have caused this Guaranty to be executed by their respective authorized representatives as of the date first written above.

DIAMOND GENERATING CORPORATION

CALIFORNIA ENERGY COMMISSION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____