

BUSINESS MEETING  
BEFORE THE  
CALIFORNIA ENERGY COMMISSION

In the Matter of: )  
)  
) Volume II  
Business Meeting )  
\_\_\_\_\_ )



BUSINESS MEETING  
CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, AUGUST 14, 2012

9:08 A.M.

Reported by:  
Kent Odell

Commissioners Present

Robert B. Weisenmiller, Chair  
Carla J. Peterman  
Andrew McAllister  
Karen Douglas

Staff Present

Michael Levy

Agenda Item

Michael Doughton 21  
Jacob Orenberg 22

**Also Present**

Interested Parties (\*on phone)

Item #

Sanjay Arora, SoloPower 21 & 22

I N D E X

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21. Consideration pursuant to Government Code section 11125.3, subd. (a)(2) as to whether there exists a need to take immediate action on item 22. below, and that the need for action came to the attention of the Energy Commission after the August 9, 2012, agenda was posted. (This item requires a two-thirds vote.)	108
22. SoloPower, Inc. Possible approval and execution of a new Intercreditor Agreement between the California Energy Commission, Bridge Bank, N.A., State of Oregon Department of Energy, MIHI, LLC (also sometimes referred to as "MacCap" or "Macquarie") and SoloPower, Inc. regarding Clean Energy Business Financing Program loan number 010-10-CEB. The proposed new Intercreditor Agreement would allow additional funds to be loaned to SoloPower, Inc. by MIHI, LLC. This item will only be considered if item 21 is approved by a two-thirds vote of the Energy Commission.	114
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P R O C E E D I N G S

AUGUST 14, 2012 9:08 a.m.

CHAIRMAN WEISENMILLER: Re-convening the August 9 Business Meeting. Let's start with the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited in unison.)

CHAIRMAN WEISENMILLER: So let's start with Item 21.

MR. DOUGHTON: Good morning, Commissioners. I'm Michael Doughton, appearing for Item 21 on today's Calendar.

And I should preface this with we're having an expedited meeting this morning because of events that came to staff's attention on August 8, one day before the last meeting of this Commission.

And we're proceeding under, if you just give me a moment I'll find the reference -

MR. LEVY: 11125.4.

MR. DOUGHTON: Thank you. And the issue is the need to take immediate action on Item 22 below on the agenda and that the need for the action came to the attention of the Energy Commission after the August 9, 2012 agenda was posted.

So staff received notice of this on August

1 8. The borrower in this case, SoloPower, represented  
2 some significant business opportunity would be forgone  
3 if some sort of action review on an intercreditor  
4 agreement did not occur by August 15. So staff and  
5 the Commission quickly put this together to allow the  
6 borrower to present its case quickly and efficiently  
7 so as not to impede any timing scale that they were  
8 on.

9 We haven't had a lot of time to go over the  
10 details of this but it is an amendment to an existing  
11 intercreditor agreement between the Commission and  
12 several other lenders to SoloPower.

13 Staff and, I believe, the representative of  
14 the company are here to explain more of the details of  
15 what is being proposed. But as I understand it's  
16 adding another lender to our existing intercreditor  
17 agreement with this borrower. And that this would  
18 permit additional lending or business opportunities  
19 that could be lost if there isn't quick action on  
20 this. So that's my understanding of the need to  
21 proceed before the normal notice period for a hearing.  
22 And I guess that's the basis for proceeding right now  
23 for Item 22. If there's any questions, I think the -  
24 my understanding is the Chief Financial Officer of  
25 SoloPower is present? So there are parties here to

1 speak to that if you have any questions. And staff is  
2 here as well.

3 MR. LEVY: Just to help frame the issue just  
4 a little bit. Before you can add an Item on to an  
5 existing Business Meeting Agenda the Commission needs  
6 to make a - by a two-thirds vote and since there are  
7 only four of you not five of you, that would be a  
8 unanimous vote in this circumstances - that there's a  
9 need for immediate action that came to the attention  
10 of the Commission after the Business Meeting agenda  
11 was published.

12 And so this came to staff's attention just  
13 last week. SoloPower came and said that they needed  
14 changes to the intercreditor agreement or else they're  
15 going to lose some significant business opportunities  
16 affecting these ARRA monies. And so staff did what we  
17 could do get this on the Agenda as soon as we can.  
18 And so that's why there's 2 agenda items here.

19 The first one is your vote by two-thirds, if  
20 you believe it is, that there's a need of immediate  
21 action. If you vote yes, that there is, then you can  
22 go on to consider whether or not to amend the contract  
23 as requested by SoloPower. If your vote is not by  
24 two-thirds in favor then the meeting is over and we  
25 can agendize this for the next Business Meeting.

1                   CHAIRMAN WEISENMILLER: Okay. Thank you.  
2 Thank you, Michael. The CFO, would you please step  
3 forward and explain to us the need for this, the  
4 action today on this, excuse me.

5                   MR. ARORA: Hello, everyone. I'm Sanjay  
6 Arora. I'm the CFO of SoloPower and really appreciate  
7 everyone's time to get together on such a short  
8 notice. And I thank the staff here because we did  
9 inform them on August 8 and didn't give them enough  
10 time.

11                   This is a loan that we've been working on  
12 for the last 4 months. And there is 4 parties  
13 involved in the loan in this integrative agreement.  
14 One being the State of Oregon, obviously the  
15 California Energy Commission, and a private bank,  
16 Bridge Bank, that we've been doing business with for  
17 the past 6 years. These parties were already part of  
18 an intercreditor agreement and this last loan is an  
19 opportunity for us to continue our expansion.

20                   And we have urgent capital needs and if this  
21 got – and if this intercreditor approval got pushed  
22 out until the next Commission meeting, which is  
23 September 12, we – there was a very good chance we  
24 would lose this loan. And in current economic  
25 conditions it's hard to get private lenders to advance

1 money to companies these days. So this was – that's  
2 what our concerns were. That if we waited this long,  
3 as explained to both the loan agent and the staff,  
4 this does not impact CEC's position and on the CEC's  
5 collateral it does not impact their lien position in  
6 any of the other collaterals of the company.

7 This lender will be behind the existing  
8 lenders and it's just a matter of adding them. And  
9 we'd really appreciate it if you guys would consider  
10 this.

11 MR. LEVY: Pardon me. Mr. Chairman, just to  
12 clarify. The merits of the agreement you can't take  
13 up until you make the preliminary vote on Item 21. So  
14 if the commenter could direct his attention to the  
15 need for the urgency.

16 CHAIRMAN WEISENMILLER: Thank you. Yeah, I  
17 think, again my – would you – the basic question we  
18 need to get on the record for this part of our  
19 discussion is just what the company would do if we  
20 weren't acting today or if we postponed action.

21 MR. ARORA: We – the loan amount is  
22 significantly higher than the CEC's loan amount. So  
23 the company would have to look into the option of  
24 actually drawing on this loan and repaying the CEC's  
25 existing loan. And this may result in us moving

1 equipment that we purchased from the – with the CEC's  
2 funds from San Jose to Portland, Oregon where the  
3 company has another facility. The equipment that CEC  
4 has provided has quite a few number of jobs associated  
5 with it that would move to Oregon.

6 CHAIRMAN WEISENMILLER: And how many jobs  
7 would that be, roughly?

8 MR. ARORA: About 50.

9 CHAIRMAN WEISENMILLER: Okay. Thank you.

10 COMMISSIONER PETERMAN: Why was this request  
11 made just last week and, specifically, getting to the  
12 issue of timing what is the next deadline that you're  
13 trying to meet that requires this meeting to happen  
14 today?

15 MR. ARORA: Basically it's the – the  
16 deadline is the actual funding, which we have all the  
17 other loan docs have been drafted and are ready for  
18 execution by the company and the creditor. So upon  
19 execution of this the company will essentially receive  
20 funds this week.

21 Our apologies for informing CEC so late.  
22 Essentially, since all these parties are involved and  
23 the new party is to be added there were quite a few  
24 negotiations going on between the private parties. We  
25 didn't want to send a draft to the CEC until we had a

1 form that was close to final so that, you know, that  
2 we don't keep modifying the document that the  
3 Commission has approved.

4 For the last two months the document had  
5 kept evolving and we were finalizing all the other  
6 documents, due diligence, to actually obtain the loan.

7 COMMISSIONER MCALLISTER: I'll move to  
8 approve Item 21.

9 COMMISSIONER DOUGLAS: Second.

10 CHAIRMAN WEISENMILLER: All those in favor?

11 (Ayes.) Item 21 passes unanimously. So now  
12 let's go on to Item 22. Jacob Orenberg.

13 MR. ORENBERG: Good morning, Chairman and  
14 Commissioners. My name is Jacob Orenberg and I am the  
15 Project Manager for the SoloPower, Inc. loan.

16 SoloPower was loaned \$4,997,169 under the  
17 Clean Energy Business Financing Program to purchase  
18 and install thin-film, solar manufacturing equipment  
19 at a San Jose, California manufacturing facility.  
20 SoloPower drew down the full loan amount and is  
21 current on all loan repayments.

22 This agenda item requests Commission consent  
23 for SoloPower to obtain additional debt as well as  
24 Commission approval of a new intercreditor agreement.

25 SoloPower seeks to obtain an additional debt

1 from a subsidiary of the Macquarie Group; however,  
2 under the terms of all Clean Energy Business Financing  
3 Program loan documents borrowers are not permitted to  
4 obtain additional debt unless the Energy Commission  
5 provides consent in writing.

6           The new intercreditor agreement primarily  
7 sets security interest priority among the parties to  
8 the agreement. It also provides blanket consent among  
9 the parties of the agreement to provide additional  
10 debt to SoloPower.

11           SoloPower requests – pardon me. SoloPower  
12 requests that the Energy Commission sign this  
13 intercreditor agreement to replace the existing  
14 intercreditor agreement. The existing intercreditor  
15 agreement was signed by the California Energy  
16 Commission, the State of Oregon Department of Energy,  
17 Bridge Bank National Association and was consented to  
18 by SoloPower.

19           The new intercreditor agreement retains  
20 these parties and adds the Macquarie Group Subsidiary  
21 known as MIHI, LLC. I believe MIHI, LLC.

22           Energy Commission staff referred this  
23 request to the Pacific Coast Regional Small Business  
24 Development Corporation, otherwise known as PCR. PCR  
25 is the financial underwriter responsible for review of

1 the SoloPower loan. PCR staff in consultation with an  
2 independent attorney reviewed the new intercreditor  
3 agreement and recommended approval in an August 10,  
4 2012 memorandum to Energy Commission Staff. In the  
5 memorandum PCR stated that the new agreement will not  
6 impact the Energy Commission's collateral and further  
7 noted that this new agreement is typical when multiple  
8 lenders are involved with the same borrower.

9 I am happy to answer any questions. And  
10 also, of course, Sanjay Arora, the Chief Financial  
11 Officer of SoloPower is also present and available to  
12 answer questions. Thank you.

13 CHAIRMAN WEISENMILLER: Thank you. Sir, do  
14 you want to describe the – now that we've gone on from  
15 the timing do you just want to repeat the rationale on  
16 why this is a good deal?

17 MR. ARORA: Thanks for approving the  
18 previous vote.

19 Essentially, as Jacob pointed out, this  
20 isn't just need for additional capital in the company  
21 as we continue expanding. And this lender is willing  
22 to give us funds against additional collateral that  
23 the company has obtained.

24 It does not impact the California Energy  
25 Commission's collateral or their position in the

1 collateral as the rest of the company. They will be  
2 behind the existing 3 creditors. But on our loan  
3 agreement we need consent of the Commission to take  
4 any loans for the company.

5 CHAIRMAN WEISENMILLER: Thank you.  
6 Commissioners, any questions or comments?

7 COMMISSIONER DOUGLAS: I wanted to just say  
8 a couple of things. First of all, appreciate you  
9 coming here and being able to answer questions and  
10 help articulate both the timing and the substantive  
11 benefits to SoloPower.

12 I was pleased to hear staff, even with the  
13 compressed timeline, had the opportunity to do its due  
14 diligence and check in with the FDC that we're working  
15 with on this program. And also to get a written  
16 recommendation from them that verifies that this new  
17 agreement would not impact the Energy Commission's  
18 loan position or collateral.

19 So, with that, I do not have any further  
20 questions. So I'll see if anybody else does.

21 COMMISSIONER MCALLISTER: Just quickly. So  
22 what's the nature of your expansion exactly? Sounds  
23 like you've got offices in Oregon and – as well as  
24 manufacturing here in California.

25 What stage company are you and sort of

1 what's your sort of growth direction?

2 MR. ARORA: With the help of the CEC's loan,  
3 we've added manufacturing equipment in San Jose. And  
4 with the help of loans from the State of Oregon we've  
5 added equipment in Portland, Oregon.

6 Both of which are operational. And we start  
7 production in the month of August. So essentially,  
8 going forward, we'll start shipping product out. So  
9 that's where we are as a company.

10 COMMISSIONER MCALLISTER: Mm-hmm.

11 MR. ARORA: Last few years, we've been in an  
12 R&D stage and very minimal production. But with the  
13 help of loans from both the states we can, and some  
14 equity from our private investors, we will start large  
15 scale manufacturing later this month.

16 COMMISSIONER MCALLISTER: What's your  
17 market? Is it large scale? Is it rooftop?

18 MR. ARORA: It's a commercial rooftop is our  
19 primary market initially. These are flexible  
20 lightweight solar panels that can go on roofs that  
21 usually will not be able to handle heavy glass panels  
22 that are currently available on the market.

23 COMMISSIONER MCALLISTER: Okay. Thanks.  
24 Yeah. I don't think I have any other questions.

25 COMMISSIONER PETERMAN: I'll just add a

1 comment. I think the ARRA program has been very  
2 important in terms of stimulating business and  
3 economic opportunity in California. And I'm pleased to  
4 hear about the jobs that you have in San Jose. And we  
5 want to facilitate those funds being used and, you  
6 know, hence why we're having this meeting today.

7           Going forward, I do hope that as you pursue  
8 additional funding that you are mindful of our timing  
9 and the need for Public Notice and our desire to  
10 incorporate and inform the public as much as possible  
11 about these decisions. And, I think, ultimately  
12 though this provision is about having the Energy  
13 Commission aware of additional loans that are being  
14 put on project and making sure that our investments  
15 still maintain their priority.

16           And so I would encourage you as well as you  
17 get more funding to think about expansion in  
18 California. Because we would like to see these  
19 projects and these jobs continue to develop here.

20           MR. ARORA: Absolutely.

21           CHAIRMAN WEISENMILLER: Yeah. No. I was  
22 just going to say, obviously as Commissioner Peterman  
23 has been working on IEPR, and I've had the opportunity  
24 to review the draft, obviously one of the things that  
25 we're both struggling with is the desire to have

1 manufacturing and jobs in California.

2           And, at the same time, we have a pretty  
3 limited repertoire of tools to really deal with in  
4 competition with other states to try to keep or  
5 maintain companies in California. Obviously, we have  
6 a lot of the intellectual capital driving these  
7 opportunities in California. A lot of the markets are  
8 California. But, at the same time, certainly as  
9 companies put – worldwide companies putting together  
10 their overall business plan we're sort of suddenly  
11 looking at states giving them no property tax for 20  
12 years, no sales tax, here's a site, here's a permit.  
13 I guess if it's in China all the financing is lined  
14 up.

15           So we came up with under ARRA, this fairly  
16 creative program, to provide some incentives to be in  
17 California. And, obviously, part of our fiduciary  
18 duties were to make sure that we had some sign off on  
19 these. So we have some degree of security. We have a  
20 loan. We have security. And the notion is to make  
21 sure that as other entities provide financing that our  
22 security is not eroded.

23           It's probably a little bit of an awkward  
24 structure to have to bring these things back to a  
25 noticed Business Meeting from time to time. There may

1 be better ways to do the review process then to drag 4  
2 of us back to the podium to say but, as Commissioner  
3 Peterman said it's good to get on the record for the  
4 public that we are, indeed, maintaining our covenant.  
5 That we're making sure that as the companies expand  
6 and all that that somehow our credit is not being  
7 eroded.

8 COMMISSIONER DOUGLAS: So, with that, I'll  
9 be pleased to move Item 22.

10 COMMISSIONER MCALLISTER: I'll second.

11 CHAIRMAN WEISENMILLER: All those in favor?

12 (Ayes.) Item 22 passes unanimously. Thank  
13 you.

14 MR. ORENBERG: Thanks.

15 CHAIRMAN WEISENMILLER: I think at this  
16 point let's adjourn this Business Meeting.

17 Actually, the question is - I thought about  
18 that and I'll ask our Chief Counsel's opinion.

19 Obviously, we're back on an emergency session to deal  
20 with an emergency item. So this is a continuation  
21 meeting but I'm still struggling with whether or not  
22 it'd be appropriate to take up a routine action such  
23 as approval of Business Meeting minutes.

24 MR. LEVY: So it's not an emergency meeting.  
25 It's a continuation of the previous meeting. It is on

1 the Agenda if you want to act on it, you can. You  
2 held it, I think, were your words at the last Business  
3 – at the commencement of this meeting. It could mean  
4 held until later on in the agenda. It could mean held  
5 to the next meeting. Or you could just save it to the  
6 next meeting too.

7 CHAIRMAN WEISENMILLER: Okay. Yeah. As  
8 long as it's clean let's take it up now and just deal  
9 with it.

10 So we have – you will – so we now have the  
11 Business Meeting minutes for July 11. Commissioner  
12 McAllister was not here so he will abstain.

13 COMMISSIONER DOUGLAS: So move approval of  
14 the July 11 Business Meeting Minutes.

15 COMMISSIONER PETERMAN: I'll second.

16 CHAIRMAN WEISENMILLER: All those in favor?

17 (Ayes.) And Commissioner McAllister  
18 abstained on that. So it's passed 3-to-0 – 3-1-to-0.

19 Okay. With that, we're adjourned.

20 (Whereupon, at 9:28 a.m., the business  
21 meeting was adjourned.)

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