How to Keep UESC Financing Costs Down Through Careful Contracting

FUPWG Seminar: Energy Lawyers and Contracting Officers Working Group

Scott Foster
Bostonia Partners LLC
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Financier Risk Evaluation

• Financiers evaluate a Federal Energy Efficiency Project across three broad risk categories:
  – Contract Risk
  – Project Risk
  – Participant Risk

• Ultimately, pricing and terms are set by comparing a Project’s overall risk and return to similar projects in the private sector.
Contract Risk

- How well/consistently documented is the Project and the arrangements with the Utility/ESCO versus FAR and the Utility Contract regulation?
  - Termination Risk
  - No Set-off
  - Multi-year Authority
  - Congressional Notification
  - Assignment to Lender
  - Absolute Certainty of Roles and Responsibilities
Project Risk

• Can the Project perform as projected over the term specified? Emphasis on:
  – Equipment Risk
  – Maintenance & Operation Risk
  – Measurement & Verification Risk
  – Useful Life versus Term Risk
  – Market/Inflation Risk
Participant Risk

• Utility/ESCO Risk
  – Experience of Utility/ESCO
  – Credit Strength of Utility/ESCO
  – Documentation

• Customer Risk
  – Closure or Termination Potential
  – Payment History
  – Acceptance Risk
Key Points to Remember

• Financier prices to “weakest non-mitigatable risk” assumed.
• Financier’s concern is repayment of their investment on-time. All actions/requests reflect increasing certainty of repayment.
• Most financiers make their return over time, **not** at funding.
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