

December 3, 2010

Ms. Leslie Seidman
Chairman
Financial Accounting Standards Board
301 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-05116

Sir David Tweedie
Chairman
International Accounting Standards Board
30 Cannon Street
London EC 4M 6XH
United Kingdom

Re: Exposure Draft, Leases, ED/2010/9

Dear Chairman Seidman and Sir David:

The Solar Energy Industries Association (SEIA) greatly appreciates your efforts to align and clarify accounting standards. We understand the high degree of effort and desire to drive improved clarity and accuracy of financial information.

SEIA is the national trade association of the U.S. solar energy industry. Through advocacy and education, SEIA is working to build a strong solar industry to power America. As the voice of the industry, SEIA works with its 1,000 member companies to make solar a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry and educating the public on the benefits of solar energy.

Our members understand the desire to align global lease accounting standards. We also feel that the current Exposure Draft, *Proposed Accounting Standards Update on Leases*, includes revisions that will not accurately reflect true economic activity, thereby adversely impacting our customers and users of financial information.

Accordingly, we respectfully request that the lease accounting proposal be reconsidered in light of the issues in this letter. We respectfully request that the Financial Accounting Standards Board (“FASB”) and International Accounting Standards Board (“IASB”) remove Power Purchase Agreements from the convergence scope.

Our specific concerns and principles are discussed below.

U.S. Solar Background

The U.S. solar market is dependent on multiple elements to enable project installations and long term energy production. Foremost among those is an economic benefit to rate payers. Solar needs to be no more expensive than existing energy to create an appealing value proposition. And our customers desire to avoid the burdens of asset ownership, management, and ultimately disposition.

Many of our members' customers sign Power Purchase Agreements ("PPA") ranging from 10 to 20 years. The PPA provides the customer with solar energy produced from a system most often located on their premises (roof or ground mounted). Energy is typically priced below current utility rates with increases over time linked to expected utility inflation. Production typically ranges from 10%-30% of a customer's total energy usage and any excess is fed into the grid. There are conditions under which a PPA could be terminated if economic benefits diverge from original expectations – for example if production drops below a pre-defined minimum, or should the customer be unable to pay.

The systems are owned by either our members or, in many cases, a tax equity investor through a sale-leaseback transaction since utilization of tax credits is a key element. The PPA gives the investor certainty of a long-term energy source which will fund their investment. At the end of the PPA term the investor is obligated to remove the system. Our customers can therefore achieve cost savings as they occur and avoid burdensome accounting, asset ownership, and record-keeping functions.

Discussion of Leasing Standards

We believe the scope of the leasing standard needs to be revised in order to give preparers a workable means of determining when a lease exists within a service arrangement and how that lease component, if one exists, should be accounted for. The existing accounting guidance, which has been carried forward into the Leases exposure draft, will no longer provide a representationally faithful depiction of transactions now that the operating lease model for lessors and lessees has been eliminated.

EITF Issue No. 01-8, *Determining Whether an Arrangement Contains a Lease*, was written to reduce diversity of practice surrounding the determination of when a transaction was a lease. The transactions that caused this issue to come to the EITF were principally energy tolling agreements that provided fixed capacity payments, and the purpose of the issue was to determine when these transactions should be considered leases and outside of the scope of EITF Issue No. 98-10, *Accounting for Contracts Involved in Energy Trading and Risk Management Activities*. When EITF 01-8 was developed, PPA's primarily involved thermal power plants with a known capacity value and related pricing. PPA's that did not include a capacity value, involved renewable energy sources and price based upon units of production were rare.

Since EITF 01-8 was issued there has been much debate over the pricing tests included in the topic. This debate increased with the growth of the renewable energy sector. In particular, some companies and auditors have interpreted the statement regarding fixed pricing very strictly, while others have allowed greater flexibility regarding time of day and escalation pricing. Since these arrangements would generally be operating leases, as the rents are often regarded as contingent, the primary purpose of the embedded lease debate related to whether the power purchase agreement should be accounted for under lease or derivative guidance or whether the entity producing power was a variable interest or voting interest entity. Given the very significant gulf between service contract and lease accounting and the fact the industry has developed since the original EITF 01-8 debates were held, we believe it is appropriate to reconsider the way embedded leases are identified.

First, we believe the pricing test should be revisited in order to distinguish with greater clarity when contracts contain pricing that is related to a service or other elements and when it is related to a lease. Second, the lease proposal should be revised to better consider the conditionality of lease payments. As it is now drafted, the exposure draft would have lessors and lessees account for fixed lease payments and variable payments that are dependent upon the production of energy in the same manner. In order to simplify and make the proposed accounting operation accurate, a distinction needs to be drawn between these arrangements. Third, we believe the question of whether the lessee has control over the underlying asset needs to be explored as does the boundary between the leasing standard and relevant consolidation literature.

Discussion of Other Issues and Adverse Consequences

In addition to the lease accounting issues listed above, other potential unintended consequences that have not been fully explored and vetted include:

- Under current accounting, a system financed through a sale-leaseback is reflected on the balance sheets of both our members and tax equity investors. The customers achieve cost savings through a reduction of energy expenses over time and view this arrangement as a service contract. The proposed accounting would place assets and liabilities for the same underlying transaction on the balance sheets of solar investors, our members, and our customers. This creates two issues:
 - 1) We believe this could lead to confusion among investors who are trying to understand ownership and obligations along the solar value chain and a potential perception of “grossing up” transactions. As our members strive for transparency and legitimacy in this emerging segment, we feel this could be highly detrimental.
 - 2) Creation of a right of use asset on a customer’s balance sheet is not meaningful to our members that are evaluating creditworthiness of lessees. We feel current FAS 13 principles coupled with additional footnote disclosure are adequate.
- Customers have told us that they are unable and unwilling to take on the additional accounting responsibilities embedded in the Exposure Draft. These include quarterly revaluations of the solar asset and liability and proper classification in financial results. Since many customers are small to mid-size businesses, or government entities like schools and municipalities, these complexities will generate a significant increase in accounting and auditing costs more than offsetting the cost savings of solar power.
- The proposed accounting also requires a levelization of expected value which would both artificially accelerate our members’ revenues and overstate our customers’ energy costs in the early years of a PPA. The inverse applies in the later years of a PPA. The result is that our members are unable to pass along the cost saving benefits of solar to our customers for the first 10 years of a PPA.

This feature may also cause our members to recognize revenue based on amounts which are difficult to estimate or with high variability. Misleading contingent gains are a potential result.

- A final issue that will adversely impact and potentially confuse the lessor's accounting is the income statement impact of the proposed accounting rule changes. Under the proposed guidance the FASB has diverged from the IASB in this regard. The FASB is proposing that all income and expenses associated with a leased asset be presented as a component of income. Therefore under this proposal in addition to lease revenue, asset depreciation, interest income on the lease receivable and potentially any asset impairment, would be recorded as a component of revenue. This would lower reported revenue for lessor entities significantly.

Two issues that arise are:

- A company following IASB's guidelines would not have depressed revenue unlike one following the FASB's proposal. Where is the convergence of accounting methodologies pertaining to the recording of lease income?
- Depreciation and interest income for property, plant and equipment doesn't impact revenue. Therefore there is no internal consistency in that regard within the same set of financial statements.

In summary, our members understand the need for improved clarity and accuracy of financial information. Our members accept evolving accounting standards impacting sale-leaseback accounting. However our customers will be unable to comply with these revisions which we feel would distort the underlying value proposition they are signing up for as a service contract. We believe inclusion of PPA's will lead to a severe reduction of solar installations in the U.S. and therefore request its removal from the convergence scope.

We welcome the opportunity to discuss this further with your staff.

Respectfully,



Rhone Resch
President and CEO
The Solar Energy Industries Association
Washington, D.C.