E.ON Climate & Renewables
Acquisition of Société Conilhac Energies S.A.S
EC&R Approval Paper

21 May 2009

Executive Summary

1. Between 2003 and 2008 the global Solar Photovoltaic energy market grew from an annual installation rate of 600MW pa to around 5,600MW, an increase of 840%, which equates to a compound annual growth rate of 55%. Based on this track and the continued cost reduction anticipated in PV technologies, EC&R believe that PV solar will follow a growth track over the coming decade similar to the growth path witnessed in wind in the last decade.
2. Currently, EC&R have a limited position in PV solar and it is essential that we learn the skills required and develop a PV asset portfolio if we are not to fall behind our competitors.
3. On 5 February 2009[1], the EC&R Investment Committee gave pre-approval to negotiate a final binding Share Sale & Purchase agreement for the acquisition of Société Conilhac Energies S.A.S. (Conilhac), a local developer of photovoltaic projects in southern France. Conilhac has been known to La SNET since 2007 as a co-development partner of PV projects in the region, and in addition to the projects developed under these agreements they have assembled a pipeline of ~600MW of PV projects at various stages of the consenting process. All these projects are likely to have an attractive IRR due to falling PV panel prices. Achieving 8-9% on certain free field projects is likely.
4. A transaction structure which protects E.ON from the risk of projects in the pipeline not securing all necessary consents required to build has been agreed with Conilhac. Under the proposal E.ON would pay an initial sum of €3m to acquire 100% of the shares of Conilhac, then pay a further amount (the "earn out fee") as the projects gain final consent, and if E.ON decides at its sole discretion to realize projects. This earn out would continue to be due until expiry of the current tariff at the end of 2012, but would be capped at €22m. This equates to an approximate cost to E.ON of ~€XXk/MW of capacity consented. On acquisition, 9MW of projects with final consent with a NPV of €10m would be inherited.
5. This is a low cost, risk managed way of securing project development options which would:
   - Provide learning and increase EC&R 2009 EBIT relative to plan.
   - Would enable EC&R to play a significant role in the European PV market at low risk due to the fact that EC&R would acquire options to build projects without being obligated to do so.
   - Provide early deal flow for the EC&R PV business, and
   - it would allow us to negotiate low cost terms for the acquisition of panels and installation by guaranteeing volume, thus improving project returns and EBIT.
6. The E.ON Climate & Renewables Investment Committee is requested to:
   - Grant **APPROVAL** for the Acquisition of Société Conilhac Energies S.A.S. on the terms described in this paper.
   - **NOTE** that the initial fee is partly in recognition of 9MW of projects which will be inherited with full planning permissions in place on the date of acquisition.

[1] E-mail from Chris Shead following Gate 1 Investment Committee Meeting on 5 February 2009

- **NOTE** that the acquisition does not require formal E.ON AG Gate 1 approval.
- **NOTE** that in undertaking this acquisition, an up-front payment to the Sellers of up to €3m will be made for which EC&R will also receive 5MW of roof-top projects in return. Whilst these have an NPV in excess of this cost (circa €7m) there is a risk that this value cannot be realized unless EC&R builds the projects or can sell them for an acceptable value. In addition, there currently exists only limited EC&R internal funding to build the significant capacity of projects that is expected from the Conilhac pipeline during 2010 and 2011.

Strategic Context

7. Between 2003 and 2008 the global Solar Photovoltaic energy market grew from 600MW installed pa to around 5,600MW, a growth of 840%, which equates to a compound annual growth rate of 55%. Whilst PV is currently one of the most expensive renewable technologies, based on the current rate of technology price reduction[2] wind parity is expected to be achieved in many countries between 2015 and 2020. On this basis, EC&R anticipates that solar energy will follow a similar growth track over the coming decade that wind experienced in the last decade. It is essential that EC&R develop capabilities and assets in this technology if it is not to fall behind its competitors in what is expected to become an important element of the renewables industry.
8. The EC&R solar energy strategy was approved by the TEC on 3rd April 2008. This highlighted that development of Photovoltaic farms should form a part of the EC&R strategy, and highlighted France as a focus country. The market in France is important for EC&R for a number of reasons:
   - E.ON already has market presence and knowledge through La SNET.
   - The market is still in its early stages of development[3], which facilitates easier market entry.
   - The tariff with a number of years before expiry[4] thus allowing EC&R to develop a critical mass of capacity in the region before the tariff expires, allowing efficient O&M.
   - Solar energy has significantly higher public acceptance than wind in France.
9. Société Conilhac Energies S.A.S. (Conilhac) is a local developer of photovoltaic projects in southern France. Conilhac has been known to La SNET since 2007 as a co-development partner of PV projects in the region, and in addition to the projects developed under these agreements they have assembled a pipeline of ~600MW] of PV projects at various stages of the consenting process. Access to this pipeline will provide EC&R with the sites from which to learn the skills and the supplier relationships required to develop an industrialised approach to PV project implementation in preparation for when the technology reaches wind parity.
10. In addition to the projects that come with the acquisition, adding Conilhac to the EC&R team would provide the following benefits:
    - Conilhac have demonstrated through the speed with which they have built their portfolio that they have the local political connections required in the region to secure both opportunities and consents.

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[2] For most of 2008, the cost of construction of a fully operational PV farm based on crystalline technology was €4.0-4.5/Wp and for First Solar thin film panels €3.5-3.8/Wp. Assisted by the financial crisis and a growing experience base of large scale projects, installation prices have fallen to around [€3.5-4.0/Wp]for crystalline and €3.3-3.5/Wp for thin film. Most industry commentators expect around €2.0/Wp by 2015, at which point energy costs will roughly be on par with wind.

[3] The Solar PV tariff was first introduced in [month year]

[4] The current tariff lasts until December 2012 for farm scale PV farms up to 10MW.

- Conilhac has a small team of 4 people who have developed some of the skills EC&R needs to learn to grow in the PV business. This will be helpful in building our team.

11.

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The Scope of the Acquisition and The Project Portfolio

12. Conilhac Energies S.A.S is a *société par actions simplifiée*, organized and existing under the laws of France. It has seven subsidiary companies[5] which have been established, primarily as a means of sharing with associates who support the development of projects and the securing of consents, usually in parts of France where Conilhac itself has limited political experience. The Conilhac company structure is shown in Appendix Two. Under the share sale and purchase agreement, the owner's of Conilhac will buy out the shares in the subsidiary companies owned by the minority shareholders and then to E.ON Energies Renouvebales all the shares in Conilhac and it's subsidiary companies.

13. The purpose of Conilhac Energies has been to develop PV projects in France and the French Overseas Territories. The largest proportion (around 80%) of the Conilhac Energies project portfolio comprises utility scale ground based projects in Continental France, which fits well with our core strategy in PV. A small proportion of the Conilhac portfolio (8%) includes large scale roof-top installations at commercial & industrial sites (250kW to 3.5MW). Whilst roof-top activity was specifically excluded from the strategy in April 2008, it is suggested that these assets are included in the acquisition for the following reasons:

    - The proportion is small compared to the total volume of free field projects.
    - Roof top in France is a highly profitable investment (~10% IRR) which can be sold to a third party.
    - In addition to the roof-top portfolio, Conilhac have developed a niche business opportunity around the installation of solar PV in conjunction with public parking lots. This is based on a patented construction trade marked as Phoebus Parc. All projects and Intellectual Property associated with this business area has been excluded from this acquisition and will be removed from Conilhac into a separate company before the acquisition closes..

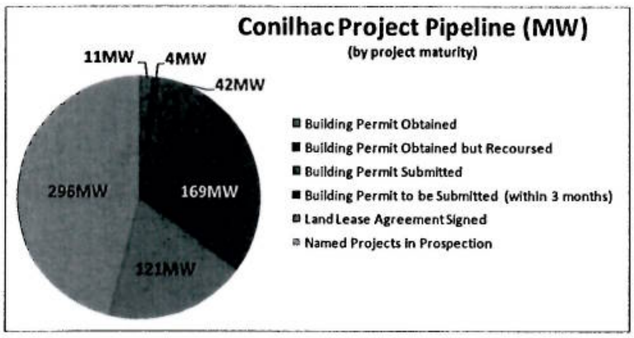
14. Conilhac have developed a project pipeline of ~600MW of named projects. The spread of these projects by project maturity and by project type are shown in Figure 1a) and 1b).

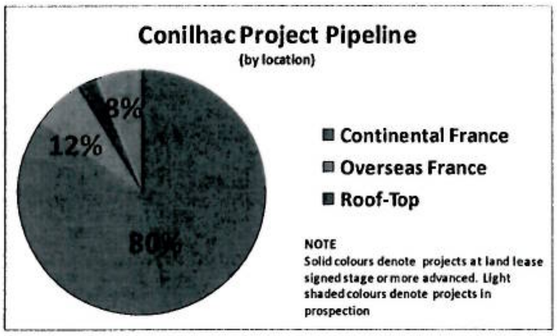
    - 80% of the capacity in the project pipeline is based on large scale ground based projects in mainland France. The remaining 20% comes from large scale ground based projects in Overseas France (Corsica, Martinique & Guyana) and roof top projects in mainland France.
    - Around 12MW of projects currently have received a building permit. These are exclusively roof-top projects. In all these cases, Conilhac must undertake the bailiff procedure to ensure the recourse period is passed without complaint.
    - One ground based project, Brigadel (4.5MW), has received a permit, but this has been recoursed due to representation from a local pressure group. Conilhac have a strategy to deal with this which could result in a ready to build Projects resolve the recourse in a matter of weeks, but in the worst case could require up to two years to resolve.

[5] MCE Energies, CCE Energies, GCE Energies, Guyane Conilhac Energies, PELCCE Energies, 2PRCE Energies and Madinergie

- A further 16MW of projects have been submitted for planning consent and a further 203MW of planning consents are due to be submitted in the next 3 months. The largest proportion of both these categories are ground based projects.

FIGURE 1 a) Conilhac project portfolio by maturity and b) by project location





- As would be expected at this early stage of the development of the industry in France, the pipeline is dominated by relatively immature projects, with 60% being at the stage of being only a named prospect or land lease signed.
- Based on the maturity of the pipeline, and the length of time required to apply for and secure a grid connection, only a small number of ground based projects (one or two) would be expected to become ready to build in 2009 and the largest proportion (around 75%) of the pipeline (by MW) will mature into projects that can be executed in 2010 and 2011. In the case of roof-top, a significant volume (up to 20MW) will become ready to build in 2009.

15. A transaction structure which protects E.ON from the risk of projects in the Conilhac pipeline not securing consent has been agreed with Conilhac. Under the proposal E.ON would pay an initial payment of €3m to acquire 100% of the shares of Conilhac. A further amount (the "earn out fee") will then be paid as the projects gain final consent. A outline description of the key terms from the Share Sale and Purchase Agreement is provided in Appendix One.

16. On paying the initial payment, in addition to acquiring the company, EC&R will also inherit around 9MW of projects with a building permit. These are listed in Table 1.

    - Brigadel is subject to recourse (as noted in 12 above)
    - The remaining 4.5 MW comprises five rooftop projects, for all of which the 2 month recourse period in which the notice must be displayed and the bailiff reports secured.

    €2m of the initial payment is paid on completion and the remaining €1m once all of these projects become ready to build projects. If projects fail to reach ready to build status they can be substituted by agreement between the Parties. If constructed, the projects in Table 1 have an NPV of around €10.0m.

17. Whilst the project NPV is significantly in excess of cost, it should be noted that value will only be secured for the €3m initial payment if the roof-top projects are built or can be sold for a price above €3m.

TABLE 1 - Initial PV Projects

	Capacity (kW)	Project Type	NPV (€k) @ WACC of 6.3%
Brigadel	4500	Ground	470
Pré de l'étoile	300	Roof-Top	866
Melito	200	Roof-Top	393
Sète CL 5, CL 8, CL 9, CL 13	2800	Roof-Top	6185
Parc d'Activités de Signes Lot 6	700	Roof-Top	1428
Balada	300	Roof-Top	590
TOTAL	8800		9932

18. Projects are classified under the SPA into one of the five categories below. A different level of earn-out would be applied to each category, with the most advanced projects at the time of the acquisition attracting the highest earn out.

    a. Projects for which the building permit has been obtained on the date of the transaction.
    b. Projects for which the building permit was submitted before the date of the transaction.
    c. Projects for which the building permit is submitted before 23 June 2009.
    d. Projects for which the building permit is submitted before 15 September 2009.
    e. Projects with the land lease secured, but the only limited work on preparation of permits.
    f. Additional prospective projects.

    Table 2 shows the earn out rates for each project category. The total earn out is capped at €22m and is only paid in full if E.ON decides at its sole discretion to realize projects.

TABLE 2- Earn Out Rates

	Continental France		France Overseas		Roof Top Projects	
	Capacity MW	Earn Out (€k/MW)	Capacity MW	Earn Out (€k/MW)	Capacity MW	Earn Out (€k/MW)
Building Permit Obtained	??	0	??		??	0
Projects with Permit Submitted	??	113	??	130	??	300
Projects with Permit Submitted by 23 June 2009	??	100	??	128	??	150
Projects with Permit Submitted before 15 September 2009	??	60	??	80	??	90
Projects where Land Lease Secured	??	23	??	32	??	
Prospective Projects	??	20	??	31	??	40

19. Should projects from the portfolio become ready to build and EC&R decide not to progress them, the Sellers can choose to buy back the project (roof-top) to build themselves or the project may be sold and the proceeds shared equally.

Acquisition Timetable

20. The timetable of the acquisition and important milestones:

- Approval by EC&R Investment Committee — 2 June 2009
- Approval by E.ON France Supervisory Board — 10 June 2009
- Signing — 11 June 2009
- Closing (dependent on Sellers) — after 11 June 2009

Financial Analysis

21. Based on the acquisition structure described, the IRR for individual projects within the Conilhac portfolio, post acquisition costs would be

- For projects in Continental France — 7.0-9.0% (in 2009) to 9.0-10.0% (in 2011)
- For projects in Overseas France — 11-12%

- Rooftop projects in Continental France 10-11%

This analysis assumes 2009 module prices based on recent tenders for Le Lauzet (with an assumed cost increase for Overseas France). Roof-top project assumptions are based on crystalline technology.

22. In addition, the project returns highlighted above could be increased by the following measures:

- Expected reductions in CAPEX of around 3.3% per year.
- The French Government recently introduced a package of economic stimulis measures which can be utilized in 2009 and 2010. Under this, all projects which go into operation during these years could benefit from accelerated depreciation. This reduces the tax charge in year 1, provided the company which holds the asset has operating profits in France which can utilize the tax losses. This tax benefit could provide up to an extra 1% on the IRR.
- Some projects developed in the Overseas territories can benefit from additional tax exemptions depending on the specific situation of the project. These benefits will only be known on a case by case basis as the project is developed.

Key Risks

23. Key risks for the acquisition are presented in the table below.

Risk	Description	Mitigation
Revenue risks	Revenue for the individual projects depend on French feed-in tariffs and green certificates, which has the following risks: i) The price for the green certificates is variable ii) The tariffs might change after 2012	i) Low risk, if it changes, it will go up since it's estimated at € 1/MWh in the financial model. No mitigation ii) The agreement only covers projects that deliver consents by 2012. After this new earn out rates will be negotiated
Project risks	The success of the acquisition depends largely on the success of the project pipeline. The success of gaining consent depends on a number of issues. i) The projects turn out to be uneconomical, e.g. the price of the land lease, grid connection, EPC contract etc., increase ii) A grid connection may not be available. iii) The building permits regime will shortly change to extend the time required to secure the permit. iv) A public opinion against PV arises which creates problems to attain building permits.	i) E.ON can stop development of uneconomical projects and in this case, the earn-out will not be paid ii) Very low risk, no mitigation iii) Several permits are already under instruction at the French administration and for roof-top it is not required. Therefore the impact is not so significant. The earn out rates allow for hurdle returns even permitting costs increase. iv) Several building permits are already under instruction at the French administration and for roof-top it is not required. This presents a low risk, but with no mitigation
Credit Risk	The initial fee of €3m could be considered a risk if i) E.ON chooses not to build the initial PV projects, or ii) The projects do not secure ready to build status.	Risk i) is a deliberate choice of EC&R, and an alternate, but significantly less certain, means of securing the value is to sell the projects. Risk ii) is considered very low and is mitigated by splitting the initial fee.
E.ON does not build the projects in the pipeline or the roof-top projects in the pipeline	If E.ON does not secure funding to develop any or many PV projects, then the value in the pipeline will not be secured and Conilhac will not secure value for their projects, which will impact on E.ON's credibility in the market and make for a very difficult relationship. A variant on this is if E.ON builds none of the roof-top projects which will be the largest proportion of the projects emerging from the pipeline in 2009.	Whilst this is not a financial risk to E.ON as no earn out will be due if projects are not built, this is a significant reputational and partner credibility risk. If we do not secure funding and build the initial roof-top projects or for the broader pipeline we will need to sell the projects to secure value and preserve our reputation in the market as a good industry partner. Selling will however not preserve our reputational risk in the marketplace as a credible developer.. Conilhac has been informed that our strategic focus in not on roof top

		projects.

Approval

24. The E.ON Climate & Renewables Investment Committee is requested to:

- Grant **APPROVAL** for the Acquisition of Société Conilhac Energies S.A.S. on the terms described in this paper.
- **NOTE** that the initial fee is partly in recognition of 7MW of projects which will be inherited with full planning permissions in place on the date of acquisition, so only €1.7m represents a pre-payment on projects to be delivered in future.
- **NOTE** that the acquisition does not require formal E.ON AG Gate 1 approval.
- **NOTE** that in undertaking this acquisition, an up-front payment to the Sellers of up to €3m will be made for which EC&R will secure mainly roof-top projects in return. Whilst these have an NPV in excess of this cost (circa €7m) there is a risk that this value cannot be realized unless EC&R builds the projects or can sell them for an acceptable value. In addition, without Project Apollo, there currently exists only limited means of funding to build the significant capacity of projects that is expected from the Conilhac pipeline during 2010 and 2011.

Approval

PRE-APPROVAL OF THE ACQUISITION OF SOCIÉTÉ CONILHAC ENERGIES S.A.R.L.

Date:

Tim Forrest
New Markets & Emerging Technologies,
E.ON Climate & Renewables

Date:

Rüdiger Rittner
E.ON Climate & Renewables Central Europe GmbH

Date:

Hervé Touati
MD JI/CDM & Emerging Technologies,
E.ON Climate & Renewables

APPENDIX 1

Summary of the Share Sale & Purchase Agreement

Parties	Purchaser: E.ON Energy Renouvebales Sellers: Valdom II, GBL Energies, New Energy Partners (Companies owned and managed by Phillip Gelin & Guillaume Tari)
Sale & Purchase	In recognition of the Purchase Price, the Sellers agree to sell to the Purchaser i) 100% of the Share Capital of Conilhac Energies SAS ii) 100% of the shares in all the subsidiaries of Conilhac Energies SAS which were formerly held by various minority shareholders
Conditions Precedent	The obligation of the Purchaser to purchase the shares is subject to the following i) None of the Group Companies having been subject to a material adverse effect ii) The acquisition by the Sellers of all the shares in the subsidiaries of Conilhac Energies iii) The consent to the change of control of Conilhac Energies of all counterparties to material contracts to which Conilhac Energies is a part iv) The termination of the Phoebus Parc trademark and associated patent licence (relating to the solar PV parking structures) v) Assignment to a company to be nominated by the Seller of the Government Loan by provided to support the development of the innovative Solar PV parking structures
Purchase Price	The Purchase Price = (the Initial Payment + the Earn Out)
Initial Payment	The Initial Payment = the Closing Purchase Price + the Balance Amount On the date of closing, the Closing Purchase Price will be paid Closing Purchase Price = €2,000,000 – the company debt on closing (€200,000) On the date when all the Initial PV projects are ready to build (or 31 Dec 2012 if later) The Balance Amount = €1,000,000 (adjusted pro-rata on MW if not all the Initial PV Projects are delivered in a ready to build state)
Initial PV Projects	On closing, the Purchaser will inherit, without paying any associated earn-out, around 8MW of PV projects for which the building permit has been received but which are not ready to build: i) Brigadel, a 4.5MW Ground Based Project in Continental France, which is subject to recourse ii) 5 Roof-Top Projects with Capacity around 5.0MW, for which the recourse process has not been rigorously followed. The Seller will work to advance the projects to a ready to build status, at which point, the Balance Amount will be paid. If the Parties agree, the Initial PV projects may be swapped for other projects in the pipeline to advance the ready to build status (except that Brigadel may not be swapped for roof-top projects)
Earn Out Process	Each time a PV project becomes ready to build, the following process will be initiated: i) The Investment Committee of E.ON Climate & Renewables must, within 6 weeks of a project becoming ready to build, decide whether to pursue the project and make an official notification to the Sellers of this decision. ii) If the Investment Committee decide to pursue the project, the earn out will become due. iii) If the Investment Committee decide not to build the project, if it is a roof-top or a prospective(???) project, the Sellers will have a right of first refusal to buy back the project at a cost which is the development cost since closing the acquisition plus 10%. The Sellers must notify the Purchaser within 20 days of their intension to buy back the project.

iv) The right of first refusal only applies if the buy back is executed by a company controlled and managed by Phillipe Gelin or Guillaume Tari, and if the project is subsequently sold within 5 years, the Net Profit will be shared equally between the Purchaser and the Seller.

v) If the project is a ground based project, or is a roof-top project over which the Sellers do not exercise the right of first refusal, the Purchaser may choose to sell the project in which case the net profit will be shared equally between the Parties.

Earn Out	For projects where the Investment Committee decides to build the project the Earn Out will be paid in two installments. i) The first installment (the Advance Amount) will be paid on the date the PTF is issued by EdF and the decision is made by E.ON to pursue the project and will be 50% of the full earn out payment if the PTF was submitted before the closing date and 66% if the PTF was submitted after the closing date. The Advance Amount will be based on the estimated project capacity of the project (MWp) multiplied by the price per MWp applicable to the category for the project ii) The second installment (the Remaining Amount) will be paid on the basis of the Earn Out calculated using the actual capacity of the project as measured in the EPC performance acceptance tests, less the Advance Amount. This payment will be paid on the Industrial Commissioning Date of the project. iii) For the avoidance of doubt, if the Purchaser chooses to pay the earn out in full based on the estimated project capacity then the Purchaser will be free to do with the project as it pleases.
Earn Out Cap	The maximum amount of Earn Out that can be paid to the Sellers under this agreement is €22m
Project Categories	All projects are classified into one of the following categories: i) Building Permit Received ii) Building Permit Submitted iii) Building Permit to be submitted shortly (by 23 June 2009) iv) Building Permit to be submitted (by 15 September 2009) v) Land Lease Secured vi) Prospective Projects A different level of earn-out payment applies to each category
Earn Out Amounts	The Earn Out Amounts are in accordance with the Table X.X above
Advisory Board	A Advisory Board comprising Philippe Gelin, Guillaume Tari and two representatives of the Purchaser will be formed following closing. One of the Purchaser's representatives will be appointed the Chairman of the Advisory Board and will also have the casting vote. The Advisory Board will have the following functions: i) To advise the Purchaser regarding the management of the project pipeline ii) To propose an annual Business Plan for Conilhac Energies & its subsidiaries iii) To consider and plan issues relating to the earn-out The Advisory Board will meet one month after closing and on a monthly basis thereafter
Business Plan	The Business Plan shall prioritise and focus development effort and expenditure on the PV projects with the with the best financial return prospects. The plan shall ensure that the projects are developed and constructed in a manner consistent with cost effective and technically optimized and standardized construction whilst taking into account specific local issues. The Purchaser is obliged to properly fund Conilhac to ensure the Business Plan is executed.
Disputes	If there is a disagreement regarding the any issues relating to the payments, the agreement provides for the appointment of an Expert (Deloitte, Paris) who will adjudicate

	on the matter
Change of Law	If there is a change in the laws applicable to PV installation (in particular the tariffs) which have a negative impact on the turnover from PV projects in France, the Parties will negotiate changes to the agreement in order to reflect the economic impact of the change
Employment Contracts	Prior to closing, the Purchaser will execute an employment contract with Philippe Gelin with the following key agree elements: .... And a services agreement with Guillaume Tari with the following key elements: ....
Representations and Warranties	The agreement includes a standard suite of representations and warranties relating to the companies being purchased and the associated projects. Any settlement sums due in relation to warranties which become due as a result of being failed can be set-off against future earn-out payments.
Non-Compete	The Sellers agree not to participate in PV development activities in France for or on behalf of anyone other than the Purchaser until after the expiry of the agreement (31 Dec 2012).