



Experts Release Draft Model Contract For Renewable Energy Credits

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Lawyers and energy experts are reviewing a long-awaited draft model contract that, once final, will facilitate a national market for trading renewable energy certificates (RECs) among buyers and sellers who now must operate in fragmented state markets. The model contract could even contribute to Senate efforts to develop a workable federal renewable portfolio standard (RPS), according to sources tracking the issue.

But before the model contract is finalized later this year, experts who are helping to shape the document will almost certainly engage in significant debate about the key issue of "product definitions," which the draft document flags as needing continuing work. The issue becomes complex because, for instance, renewable energy can avoid a wide range of emissions, including sulfur dioxide, carbon dioxide, mercury, and particulate matter, raising questions about exactly which avoided emissions are covered by a REC.

Generally, RECs represent a certification that a specific amount of electricity has been generated using wind, solar, or other renewable sources. Buyers use them either to comply with state RPS programs requiring utilities to generate a specific amount of their electricity from renewable sources, or to prove that they have "neutralized" or offset specific amounts of emissions they may have caused. While both the so-called "compliance" and "voluntary" markets for RECs are growing, market participants widely recognize the need for a standard contract to simplify and provide greater legal assurance about what is being bought and sold in cross-state REC transactions.

Seeking Comments

The co-chair of the Environmental Markets Association (EMA), [Jeremy Weinstein](#), on Aug. 16 released for comment a much-anticipated "Master Renewable Energy Certificate Purchase and Sale Agreement," which he crafted from parts contributed by project members into a single document. When final, the contract is expected to be co-sponsored by the American Bar Association's (ABA) renewable energy committee, the American Council on Renewable Energy (ACORE), and EMA, all of which had members participating in developing the model contract over the past two years.

Those three groups sponsored a Capitol Hill briefing Oct. 18, 2005, to present a draft overview of the concept, which has now been expanded to a draft "agreement" document. A meeting will be held Sept. 7 to begin taking comments on a final version.

Currently, 22 states have RPS programs with widely different elements, but all of them were established to achieve the goal of promoting electricity from wind, solar, and other clean energy sources to help states achieve environmental benefits, such as reduced greenhouse gases. At present, state programs mandate that electricity providers obtain varying percentages of their energy from renewable sources -- for example, 25 percent of New York's electricity must be from renewable sources by 2013 and 20 percent of Nevada electricity by 2015.

A federal RPS that some advocates hope for would set a national percentage. Sen. Byron Dorgan (D-ND) has led Senate efforts to develop a federal RPS proposal, but such legislation has proved extremely controversial and was kept out of the Energy Policy Act of 2005. Some Senate staff, however, are following development of the model contract.

Fragmented Markets

Representatives from ABA, ACORE, and EMA have recognized that the currently fragmented market for RECs would be greatly facilitated if buyers and sellers could trade between states and, in response to that need, have developed the model contract to achieve the goal of easy, reliable inter-state trading.

Weinstein, in a phone interview with *Inside Green Business*, describes the REC contract as "infrastructure" or "roadways" that will help buyers and sellers implement trades. "It will help cause implementation across [state] borders in a good, robust, national market," Weinstein says.

While the consolidated draft contract takes the process a large step forward, Weinstein acknowledges that controversy is likely to occur over the product definition issue. Previously, that issue had been separated from the rest of the contract to be dealt with by a subcommittee, but it is now integrated into the draft, which will be revised as a whole, though Weinstein anticipates having to hold two or more separate meetings on the product definition issue.

Product Definitions

"There are different philosophies" concerning product definition, Weinstein says. The draft stipulates that a REC "means a certificate, green tag or other indicia issued by a Certification Authority that one megawatt hour (MWh) of energy was produced by a Renewable Energy Facility. The definition goes on to specify that the REC must specify the time period in which the energy with which the REC is associated was generated, and stipulates that the REC "shall be separate from the electricity produced."

But beyond that simple definition, issues arise as to whether the REC can be broken up into several parts, which parts of the REC are property rights, whether a buyer of electricity separate from the REC has a right to claim they are creating environmental benefits, and other questions. "Why can't I say I'm buying green, even if I don't own the REC?" Weinstein asks.

Sources explain that the environmental attributes of emissions avoidance have value and can be sold separately from the electricity, unless a state disallows "unbundling," as is the case in California. RECs can -- and in the view of some attorneys should -- be sold separately from the environmental

attributes because not all REC buyers want the environmental attributes; they only want a certificate that says they own the credit for a megawatt of renewable energy generated by a facility. Whether a REC can unbundle its environmental attributes fundamentally impacts its value and therefore its marketability and the credit-trading market as a whole.

Actual Markets

Weinstein notes in the draft that “it is imperative that the products defined by this contract, and the methods proposed for defining, verifying and certifying, making representations concerning, and transferring products match actual market conditions, include the products that are actually traded in the manner in which they are traded, produce conditions fostering trading and enhance environmental markets.”

At last year’s Oct. 18 workshop, attorney Roger Feldman said that with RECs “we’re dealing with a new property right” that deals with “green things,” such as emission reductions. There is a “hornet’s nest” of issues relating to REC contracts, Feldman noted, commenting that the new Energy Policy Act of 2005 is silent on the issue and does nothing to remove “the bottlenecks to clean power development.” Feldman also commented that “some want this [REC trading] to be a carbon-trading model with RECs as a chrysalis for carbon trading.”

“I’ll rely on the free marketplace of ideas” to resolve the product definition and other issues that may arise now that the draft contract is out for comment, says Weinstein.

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