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New Model Agreement Promises to Expedite Trading of Renewable Energy Credits

A coalition of legal and industry groups has assembled a new standard-form contract that is recommended as a model to govern the purchase and sale of Renewable Energy Certificates (“RECs”), also known as “green credits” or “green tags.” The standardized agreement is an attempt to bring added certainty and predictability to the young but rapidly maturing nationwide market for green credits.

Also known as Renewable Energy Credits, RECs are an increasingly valuable commodity as states move toward the enactment of Renewable Portfolio Standard (“RPS”) quotas that require utilities to generate or purchase a minimum percentage of their power from renewable sources. With the recent addition of Minnesota, at least 23 states now have RPS laws or regulations on the books, and Congress is expected to look seriously this term at imposing a nationwide standard. One REC is created for each megawatt-hour of renewable generation; which fuel sources qualify as “renewable” depends on state law, but eligible resources generally include solar energy, wind power, biomass energy and hydropower. One credit may contain a bundle of attributes that can be valued and sold separately, such as offsets to nitrogen oxide (NOx) or sulfur dioxide (SO₂) emissions.

The Master Renewable Energy Certificate Purchase and Sale Agreement is a product of a two-year working group bringing together members of the American Council on Renewable Energy, the Environmental Markets Association and the American Bar Association’s Section on Environment, Energy and Resources. The working group set out to reduce some of the state and regional balkanization that had developed as a result of the patchwork development of REC regulations, and to create a document that could govern trades between regions and even between states with RPS programs and states without them.

Parties can use the Master Agreement to govern the initial sale of a REC by the generator as well as subsequent sales of all or part of the features of a REC, as RECs become increasingly liquid across state boundaries. The Agreement is designed to supplement, and work in combination with, standard purchase power agreements and standard agreements for the posting of collateral in connection with commodity trades.

The Master Agreement is based on the state laws of California, which has one of the nation’s oldest and most aggressive RPS programs, and of New York, which has well-developed rules governing the trading of financial instruments such as futures contracts. Parties can vary the Master Agreement to be tailored to the laws of any state and to the delivery requirements of Regional Transmission Organizations, and are encouraged to consult counsel to determine the effect of applicable laws, regulations and RTO standards.

The Agreement provides a Product Order form and accompanying Disclosure Document, which enables parties to designate which REC attributes are being conveyed to the buyer and which are retained by the seller. The default assumption, unless varied by the parties, is that the sale transfers all environmental attributes – those currently existing and those that may arise due to future changes in law or regulation. Tax benefits associated with renewable generation are presumed to remain with the seller.

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Other features of the Master Agreement include:

- Unless otherwise agreed, the buyer of a REC is assumed to bear the risk of a change in law or regulation that causes the REC to cease to qualify for recognition by regulators. However, a regulatory change that makes a REC more valuable, such as state’s enactment of a renewable portfolio standard, does not obligate the buyer to pay more or excuse the seller from delivery.
- Parties are provided alternatives to specify whether the REC will be “Unit Contingent” (meaning that failure of that facility to generate the anticipated *credits* excuses the seller from any damages) or “Generation Contingent” (meaning that failure of the specified facility to produce enough *energy* to satisfy the promised REC delivery will absolve the seller from damages).
- Parties are also given options to assign responsibility for verifying that the attributes of the REC will be recognized by the applicable regulatory authority. Options may include self-certification or verification by independent organizations such as the Center for Resource Solutions, which administers the well-known “Green-e” program.

While the standard-form contract is a valuable starting point for those interested in buying and selling RECs, it is advisable to customize the agreement to take account of the type of technology involved, the particular risk factors and risk tolerances of the players, and any unique legal or regulatory factors that may apply in the forum state of the transaction.



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