

# **WSPP**

## **Proposed Service Schedule R**

### Fall 2011 Operating Committee

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# How to Use this Document

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- At OC meeting we will present through page 8
  - Please read the proposed Service Schedule R ahead of the meeting
  - Pages 9 through end (presented at the August webinar) may be helpful background

- Growing Renewable Portfolio Standards (RPS) requires Renewable Energy Certificate (REC) liquidity
  - REC trading assists in matching renewable resources with utility needs
  - REC trading is potentially a business opportunity
- WSPP Members asked WSPP to develop a REC service schedule

- Concept presented in principle at OC in New Orleans (Heather Harrison, Arnie Podgorsky, Jeremy Weinstein)
  - Straw vote favored the effort
  - EC confirmed approval of the effort and directed development for incorporation into WSPP Agreement (versus merely an available document on the website)
- Development effort was considerable
  - Some six Contract Subcommittee meetings with strong participation; two webinars to broaden the process
  - Initially looked to EEI, ABA, WEIL drafts for conceptual background
    - WSPP participants sought more flexibility
    - and a drafting style to facilitate trader understanding

# Overview of the Schedule

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## Basic elements of the Schedule

- REC Products (several variants)
  - Unbundled (RECs alone); bundled (RECs with power) R-2.3
  - Levels of firmness (firm, resource contingent, facility as-run) R-2.3
  - Covered Environmental Attributes (All Attributes; Program Attributes) R-2.4
  - Change in Law risk allocation (changes between deal signing and delivery) R-5

# Overview of the Schedule

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- Remedies for non-performance (“LDs”, recovery of penalties and alternative compliance payments subject to an agreed cap, and more) R-9
- Delivery, acceptance, passage of title, mutual cooperation R-3
- Other provisions
  - Representations and warranties R-6
  - Revisions to confidentiality R-7
  - Revisions to Uncontrollable Force R-8
  - Housekeeping R-10

- Issues for OC discussion and resolution
  - Product Definitions
    - R-2.3.4(b) Resource Contingent Bundled Seller to notify Purchaser at least 30 minutes before the delivery hour that delivery will not occur due to unforeseen system operation conditions
    - R-2.3.6(b) Similar point for Facility As Run but wider standard
  - Change-in-Law
    - R-5.2.3 Should default be “Regulatorily Continuing” or Not Regulatorily Continuing?
    - R-5.2.4 If Seller makes requisite effort to address the Change in Law but fails, does non-performance occur (and damages awarded)?

- Issues for OC discussion and resolution (con'd)
  - Damages
    - Availability of Injunctive Relief
      - Pros
        - more teeth to induce performance
        - damages do not compensate for reputation damage
      - Cons
        - WSPP approach is to resolve disputes with formulaic damages
        - injunctions not available if damages will suffice
- Other Issues?
  - FERC Jurisdiction
- Vote

## Level 1: Product Definitions

- Firm REC/Firm Bundled REC R-2.3.1, 2.3.2
  - REC, or REC and energy (bundled), must be delivered except for Uncontrollable Force; non-performance damages available under R-9. Energy terms under Service Schedule C.
- Resource Contingent REC/Resource Contingent Bundled REC R-2.3.3, 2.3.4
  - REC, or REC and energy (bundled), must be delivered except for Uncontrollable Force, Forced Outage, Scheduled Maintenance, or Fuel Impediment (too much/too little wind, sun...) of unit in confirmation (Renewable Energy Facility (REF)). Non-production is allocated. Energy terms under Service Schedule B.

# REC Product Descriptions

- Facility As-Run REC/Facility As-Run Bundled REC R-2.3.5, 2.3.6
  - REC, or REC and Energy, must be delivered only to extent of the designated REF's energy production (there is no obligation to run); production shortages are allocated. Energy terms under Service Schedule A.
- For bundled RECs, a few modifications to Service Schedules B and A
  - B-3.8 would make Purchaser's reduction applicable to the REC requirement and require notice consistent with Regional Organization customs or obligations, and add a requirement that Seller inform Purchaser of Scheduled Maintenance R-2.3.4(b)
  - B-3.9 would tie a schedule reduction to an associated REC requirement; a Seller notification requirement of schedule changes is proposed (some favor, some do not)

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## Level 2: Defining Environmental Attributes Conveyed By the REC

- Once the REC Product is selected, the covered Environmental Attributes (EA) are defined
  - All Attributes R-2.4.1
    - Conveys all EAs of the REF or Renewable Energy Source (wind, sun, etc. source is designated, but a unit is not)
      - EAs must meet the requirements of the designed Applicable Program (a Federal, State, or voluntary program)
      - Other EAs, whether recognized now or not, also are conveyed (Seller retains no EAs)
      - All Attributes is the default, if Confirmation does not designate All Attributes or Program Attributes R-2.4

- Program Attributes R-2.4.2
  - Conveys the EAs required for the Applicable Program designated in the Confirmation
  - Seller retains all other EAs
- Designating an Applicable Program
  - For Program Attributes, an Applicable Program must be designated (the program defines the EAs conveyed)
  - For All Attributes, the Applicable Program should be designated to assure the REC covers the minimum attributes of the program
- Designating Resources
  - For All Attributes, a REF or a Renewable Energy Resource (sun, wind, etc.) must be designated (the REF or resource defines the EAs)

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## Level 3: Allocating the Risk of a Change in Law to the Designated Applicable Program R-5.2

- Change in Law Provisions Apply
  - to Changes in Law between making the deal and delivery
  - only if an Applicable Program is designated
- Options
  - “Regulatorily Continuing”- REC and EAs conform to the Applicable Program on deal date (Effective Date) and Transfer Date; Seller takes risk of Change in Law
    - Seller required to fix non-compliance (commercially reasonable efforts), subject to any agreed expenditure cap
    - If Seller cannot fix and Purchaser refuses to accept, and energy was received, Purchaser pays for energy
  - “Not Regulatorily Continuing” – REC and EAs conform to Applicable Program on deal date but not necessarily after; Purchaser takes risk of Change in Law

## Level 4: Damages; Capping Reimbursement of Penalties and Alternative Compliance Payments

- Unbundled R-9.1.1
  - Purchaser that failed to receive pays: Resale Price less Contract Price x refused Contract Quantity
  - Seller that failed to deliver pays: Replacement Price less Contract Price x undelivered Contract Quantity plus penalties and alternative compliance payments subject to limits on any penalties and compliance payments stated in the Confirmation

# Remedies: Damages

- Bundled:
  - When price is not allocated between REC/Energy R-9.1.2(a)
    - Purchaser failing to receive pays Contract Price less Resale Price x undelivered Contract Quantity, plus transmission costs incurred.
      - If Purchaser declined REC (but received energy), Purchaser pays for energy at the energy Resale Price.
      - If Purchaser declined energy (but received REC), Purchaser pays Contract Price less REC Resale Price
    - Seller failing to deliver pays Replacement Price less Contract Price x undelivered Contract Quantity, plus transmission costs incurred, plus penalties and alternative compliance payments subject to limits stated in the Confirmation.
      - If Seller delivers energy but not REC, no payment for energy is required (assumed that the energy was not green)

# Remedies: Damages

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- When price is allocated between REC and Energy R-9.1.2(b)
  - Purchaser refusing to accept REC pays Resale Price less Contract Price
  - Seller failing to deliver REC pays Replacement Price less Contract Price
  - Purchaser refusing to receive energy pays Resale Price less Contract Price
  - Seller failing to deliver energy pays Replacement Price less Contract Price
- Injunction: allowed, due to reputation concerns R-9.2

## Level 5: Other Terms

- Confirmation terms R-2-2 plus others
  - REC Product, Contract Quantity, Contract Price, Vintage (generation period) or Term of REC (generation period), Transfer Date for REC, Environmental Attributes
  - Possible allocation of price
  - Probable designation of REF or Renewable Energy Source
  - Probable designation of a Tracking System

# Delivery, Acceptance, and Title

- Delivery R-3.1.1 (Unbundled) R-3.1.2 (Bundled)
  - Transfer from Seller to Purchaser of Contract Quantity
  - Seller causes Tracking System to cause transfer, or if no Tracking System, effects transfer by delivering Attestation
- Acceptance R-3.1.2
  - Acceptance occurs upon Purchaser's written confirmation to Seller of receipt in its account via Tracking System or acceptance of Attestation; Energy upon receipt at the delivery point
- Title R-3.1.3
  - Unbundled REC: title to REC passes upon Delivery and Acceptance
  - Bundled REC: title passes upon generation of each megawatt, or if a pre-deal vintage, title passes upon Effective Date

- Seller actions R-3.3.1
  - Seller to provide information to Purchaser about energy generation for REC, initiate with Tracking System and provide it with information, expedite if Confirmation provides
- Tracking System failure to issue R-3.3.2
  - Parties provide each other with all documents and communications, cooperate to achieve issuance; if efforts fail Seller to deliver Attestation to effect Delivery
- Conveyance and Transfer R-3.4
  - As of Delivery, Acceptance, and title passage, Seller must transfer and convey all rights, title, interest in the REC, and all Reporting Rights to the covered Environmental Attributes, free and clear, etc.

# Representations and Warranties

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- Seller has title to convey, free and clear R-6.1
- The REC and Environmental Attributes conform to the REC Transaction requirements R-6.2
- If Regulatorily Continuing, REC conforms to Applicable Program as of Effective Date and Delivery; if Not Reg Continuing, then as of Effective Date only R-6.3, R-6.4
- Bundled RECs include the reps and warranties of WSPP Agreement 33. R-6.5
- Other warranties are disclaimed.

# Records; Confidentiality

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- Records to be corrected to accuracy, and payments adjusted R-7.1
- Exceptions to confidentiality R-7.2
  - Purchaser can disclose to a Governmental Authority information required to prove up the REC, provided Purchaser takes steps to preserve confidentiality

# Uncontrollable Force

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- Section 10 is conformed to include RECs R-8
- Non-production for REC due to UF is allocated in order of Firm, Resource Contingent, As-Run, among purchasers proportionately to their respective entitlements

# Other Information

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- Annex 1 is Definitions- they matter
- Annex 2 is a simple form of confirmation
- Annex 2 Exhibit 1 is a template for Attestation
- An Annex 3 is under construction - terms and phrases required under California law, to be posted for use but not included in FERC-filed service schedule

# A Recap in Building a REC

- **Level 1: Select a REC Product**
  - REC alone: firm, resource contingent, facility as-run
  - REC and energy: same choices
  - Resource Contingent and As-Run require designation of Renewable Energy Facility (Plant)
- **Level 2: Select Environmental Attributes**
  - All Attributes; Program Attributes
  - Either one, you need to designate the Applicable Program
  - Either one, you need to designate the REF or Renewable Energy Resource
- **Level 3: Allocate Change in Law Risk**
  - Regulatorily Continuing (Seller guarantees – what mean? – against Applicable Program changes between deal date and delivery) Parties can cap costs of Seller's obligation
  - Not Regulatorily Continuing (Seller guarantees compliance with Applicable Program only on deal date)

# A Recap in Building a REC

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- **Level 4: Damages**
  - Capping Reimbursement of Penalties and Alternative Compliance Payments
- **Level 5: Other terms**
  - REC Product, Contract Quantity, Contract Price, Vintage (generation period) or Term of REC (generation period), Transfer Date for REC, Environmental Attributes; possible allocation of price; designate Renewable Energy Facility or Source; designate a Tracking System

# Contact

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