

# Renewable Energy Project PPAs: Identification and Allocation of Risk

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## Overview

- Identify and Allocate Risks and Rewards between the Parties
- Consider the Role of Third-Parties, such as Lenders and Financiers
- Understand that the Project must be Financeable and Financially Successful
- These Goals Are Not Mutually Exclusive



## Project Finance Realities

- Project finance is “non-recourse”
  - The Project Developer likely is an SPE with no assets other than the Project
  - Ownership of the SPE likely will be transferred as part of the Project financing
  - Financiers will have step-in/take-over rights
- Need to carefully evaluate how contractual rights and obligations are affected



## Primary Types of Agreements

- Power Purchase Agreement
  - Sale of electrons at fixed price with payment owed upon delivery
- Net Metering Credit Sales Agreement
  - Sale of net metering credits at indexed price with payment owed upon allocation of credit
- Integration with Site Lease or Site License
- Creative drafting blurs the distinction between PPAs and NMCSAs



## Major Contractual Provisions

- Sales, Pricing and Payment
- Environmental Attribute Ownership
- Change in Law / Market Conditions
- Performance Guarantees
- Termination Rights and Remedies
- Financing and Assignment
- Financial Assurance



## Sales, Pricing and Payment

- What is being sold?
  - Electrons or net metering credits
- What is the Price?
  - Fixed or indexed
  - Is a fixed price really fixed?
- When does the payment obligation arise?
  - At the meter or upon credit to customer account?



## Environmental Attribute Ownership

- Environmental Attributes should be broadly defined to include all existing and future REC, GHG, emission offset, fuel attribute, or other green attributes
- PPA/NMCSA should clearly state that only energy and/or NMCs are being sold
- Directly or indirectly limit Buyer's ability to claim green attributes



## Change in Law or Market Conditions

- Is the Price really fixed?
- Is there a requirement to negotiate amendment, and what are the associated financial triggers and boundaries?
- Ability to terminate and damages?
- Ability to use underlying property?





## Performance Guarantees

- Outside Construction Date & LDs?
- Outside Commercial Operation Date & LDs?
- Minimum Annual Performance
  - Annual vs. Rolling Average?
  - Calculation of Cover Damages
- Right of Offset of Payments?



## Termination Rights and Remedies

- Right to Terminate
  - Failure to meet Project “milestones”
  - Extended Force Majeure
  - Change in Law
  - Default
- Remedies
  - Liquidated Damages
  - Termination Value
  - Cover Damages



## Financing and Assignment

- Assignment
  - As of Right vs. Upon Consent
  - Creditworthiness or Experience Requirements
- Financing
  - Broadly define “lender” to include all types of finance parties
  - Step-in rights
  - Obligation to cure



## Financial Assurance

- When is Financial Assurance Required?
  - Commercial Operation: Bond/LOC until COD
  - Decommission: Bond/LOC, either upon COD or at tail of PPA/NMCSA Term
  - Performance Guarantee: not typically required



Questions?

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