



GREEN LAW GROUP

CLIENT UPDATE

CONNECTICUT TO JOIN THE REST OF NEW ENGLAND ON "BANKING" OF RENEWABLE ENERGY CERTIFICATES



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Bob has spent a substantial portion of his legal career representing various energy, telecommunications and water supply clients both at the corporate level and in connection with regulatory matters before the Connecticut Department of Public Utility Control. His experience includes rate proceedings, financing applications, asset sales, and telecommunications and electric industries restructuring proceedings. A member of the firm's Green Law Group, Bob's current focus is on energy related matters. Bob also practices in the corporate and business areas.

The Connecticut Department of Public Utility Control (the "DPUC") has recently adopted amendments to its regulations in order to bring the mechanics of Connecticut's Renewable Energy Portfolio standards program into line with those of Rhode Island, Massachusetts and Maine in a manner that hopefully will help stabilize the market for Renewable Energy Certificates ("RECs") and help stimulate the construction of additional renewable energy sources in Connecticut and the rest of New England.

Like the other New England states, in order to stimulate the production of energy from renewable sources, Connecticut has for a number of years maintained Renewable Energy Portfolio standards requiring electricity suppliers (licensed Connecticut electric suppliers and electric distribution company wholesale suppliers) to obtain a minimum percentage of their retail supply from renewable energy sources.¹ Over time, the required percentage of a supplier's portfolio of renewable sources increases to 20% of its total supply.² One of the ways by which an electric supplier can demonstrate compliance has been to purchase from renewable energy generators RECs issued by the New England Power Pool Generation Information System with respect to energy

produced by renewable energy source generating units within its jurisdiction or renewable energy actually imported into the New England region from renewable energy sources.³

Currently, the DPUC's regulations generally require that electric suppliers use RECs for energy produced in the year for which they seek to demonstrate portfolio compliance.⁴ The DPUC found, however, that an excess REC supply in a particular year could quickly drive down REC prices and have a negative impact on the use of RECs to promote the construction of renewable energy sources. It also found, on the other hand, that an excess demand for RECs in a particular year could have the opposite effect and unnecessarily drive up the cost of renewable energy for ratepayers. Accordingly, the DPUC approved amendments to its regulations on August 19, 2009, which became effective on December 22, 2009, allowing for the "banking" of RECs by electric suppliers, essentially allowing the suppliers to transfer excess RECs into future years for compliance in those years and thereby smooth demand and supply volatility. The DPUC also found that the amendment to its regulations would establish the same "banking" provision, and restrictions, used in the other New England states.

The new program⁵ now provides that "banked" RECs can be used if (a) the RECs were in excess of the RECs needed for compliance in the year they were generated and have not previously been used for compliance, (b) they do not exceed 30% of the applicable requirement in the year the RECs were generated and (c) have not otherwise been, nor will be, sold, retired, claimed or represented as part of the total output or services, or used to satisfy obligations in jurisdictions other than Connecticut. The new program, together with the DPUC's decision in 2008 permitting electric distribution companies to enter into long-term contracts for the procurement of RECs,⁶ now provides the opportunity for producers of renewable energy to enter into long-term contracts with electric suppliers and directly with electric distribution companies without excess RECs in any one year having an undue depressing effect on the value of the contracts to suppliers' or distribution companies' compliance efforts. Such long-term contracts are already a potential source of more constant revenue streams for generators of renewable energy, creating greater

market certainty and hence lower market risk to investors. With the banking provisions added by the DPUC's new regulations, long-term contracts will be more attractive to Connecticut electric suppliers and electric distribution companies that need to meet renewable energy portfolio standards. In negotiating long-term energy supply contracts with suppliers and electric distribution companies, generators of renewable energy will, as was the case before the amended regulations, need to make sure that their contracts clearly indicate the extent to which the energy being sold includes the environmental attributes, including the RECs, and the extent to which the price for the energy reflects the value of the RECs.

If you have any additional questions regarding this Update or have any other Green Law needs, please contact any member of the Green Law Group.

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¹Conn. Gen. Stat. §16-245a(a).

²In 2009, Connecticut energy suppliers must demonstrate that 6% of their energy output or services is derived from Class I renewable energy sources and an additional 3% from Class I or Class II renewable energy sources. *Id.* Class I renewable energy sources include sources of energy derived from "solar power, wind power, a fuel cell, methane gas from landfills, ocean thermal power, wave or tidal power, low emission advanced renewable energy conversion technologies, a run-of-the-river hydropower facility [under certain circumstances], or a sustainable biomass facility [also under certain circumstances]." Conn. Gen. Stat. §16-1(a)(26). Class II renewable energy sources include sources of energy derived from trash-to-energy facilities, and certain run-of-the-river hydropower and biomass facilities not meeting the Class I requirements. Conn. Gen. Stat. §16-1(a)(27). By 2020, the Class I percentage is scheduled to increase to 20%.

³Conn. Gen. Stat. §16-245a(b). Suppliers can also supplement any deficiency by making payments to the Connecticut Renewable Energy Investment Fund. Conn. Gen. Stat. §16-245(k).

⁴Regulations of Connecticut State Agencies ("Regulations"), §16-245a-1(c). There are minor exceptions allowing for "borrowing" RECs generated in first quarter of a year for use in meeting a compliance deficiency for the previous year.

⁵The amendments are found primarily in a new subsection (e) of §16-245a-1 of the Regulations.

⁶DPUC Docket No. 07-06-61, DPUC Examination of Electronic Distribution Company Contracts for Renewable Energy Certificates, Final Decision dated July 30, 2008, implementing the provisions of §71 of Public Act 07-242.