

Power Purchase Agreements: Tips and Tricks Part 2

By: Daniel F. Freedman, Esq.

<http://commercialcounselor.com/>

In [Part 1](#) of this series we introduced you to Power Purchasing Agreements (PPA's), which are contracts for purchasing electricity generated by a power plant that take advantage of federal tax incentives to lower electricity costs. PPA's are used to develop and deliver energy from renewable sources.

As noted by Windustry.org, key provisions in a PPA include, among others, the following:

1. Term

PPA's are long term commitments that generally range from fifteen (15) to twenty-five (25) years. However, early termination rights may be negotiated for numerous reasons, including (a) tax credits are not available, (b) regulatory approvals or permits do not issue, (c) lack of financing or power transmission access, etc.

2. Price

Many factors impact the price of electricity in a PPA, including financing, equipment and labor costs. The contract price may also vary over time to account for various factors, including upfront capital expenses, etc. As with any contract, billing and payment procedures should be set forth in detail.

3. Curtailment

PPA's typically include provisions under which the purchaser, the supplier (transmission owner) and/or the regulatory authority overseeing the project has the right to curtail production of energy. Since PPA's generally require that the transmission owner sell all of the energy created to the purchaser, curtailment raises unique issues. As such it is crucial that parties determine in the PPA which party will bear the risk related to curtailment in each circumstance. For example, the purchaser may be required to pay for all available energy even if curtailment occurs and the amount of energy delivered is less than the full capacity of the system.

4. Interconnection

Who pays for the costs of transmission? What about upgrades to the transmission system? As a general matter, the seller under a PPA is responsible for all transmission costs and upgrades. However, it is possible to pass along some of these costs to the purchaser. Also, transmission of energy under a PPA is generally required to a specific delivery point. But energy may need to travel beyond the "delivery point" in order to reach the consumer. A complex set of federal and state laws may impact who is responsible for the costs of transmission system upgrades with respect to delivery matters.

5. Milestones

As with other project agreements (e.g. computer software development), the parties to a PPA will typically agree upon milestones that lead to the completion of the project and the start of energy delivery. Damages for failure to achieve milestones by agreed upon dates, as well as broader default provisions, must be negotiated by the parties.

6. Tax incentives

Tax incentives, such as accelerated depreciation and the Investment Tax Credit, are crucial in allowing the system owner to move forward with a PPA that makes financial sense.

Link to original article: <http://commercialcounselor.com/power-purchase-agreements-tips-and-tricks-part-2/>

For over 35 years small businesses, major corporations, public entities, individuals and insurance companies have depended on Tharpe & Howell, LLP, to deliver pragmatic, innovative, cost-effective civil litigation and transactional solutions. For more information, please contact us at (818) 473-5720 or email your request to cabusinesslawreport@tharpe-howell.com.