

Wind Power Purchase Agreements: Five Key Issues

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WIND PPAs: 5 Key Issues

1. Final PPA Pricing
2. Term and Termination
3. Curtailment
4. Transmission
5. Defaults and Remedies

1. Final PPA Pricing

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- Pricing Structure
 - Flat vs. changes over time
 - C-BED: Higher in the first 10 years to increase returns for the project
 - “Trial” and perhaps “excess” energy at lower rates

1. Final PPA Pricing

- PPA Negotiations
 - Preliminary vs. final pricing
 - Numerous factors will influence:
 - Finalizing costs, timetable, financing, etc.
 - PPA negotiations: cost and risk allocations

2. Term and Termination

2. Term and Termination

- Term
 - 15 to 25 years; 20 years most common
 - Years from commercial operation date (COD)
 - Renewal terms:
 - Should the Purchaser have the right to extend?
 - Pricing?

2. Term and Termination

- Termination
 - Defaults
 - Prior to the commercial operation date (COD)
 - Key project conditions/outs
 - Project specific
 - Examples:
 - Internal and governmental approvals and permits
 - Interconnection agreement and transmission costs
 - Financing
 - PTCs

3. Curtailment

3. Curtailment

- Curtailment overview
 - Restrictions on delivery at the point of delivery
 - Why?
 - Convenience
 - Constraints on the system
 - Emergency
 - Other
 - Who?
 - Purchaser
 - Transmission provider (MAPP, MISO) or owner
 - Risks vary with each project

3. Curtailment

- Economics of curtailment
 - Seller:
 - Lost revenue
 - Lost PTCs
 - Purchaser:
 - May be obligated to pay for energy cannot actually use

3. Curtailment

- Deemed energy
 - The wind energy that would have been delivered but for the curtailment
 - Based on real wind data
 - Price:
 - Contract rate
 - Lost PTC and Tax-gross up

3. Curtailment

- Who usually bears the risk?
 - Seller bears if curtailment due to Seller's acts
 - Purchaser if curtailment at Purchaser's discretion/convenience
 - Negotiations where curtailment ordered by transmission operator or owner
- “Take or Pay” Contract

4. Transmission

4. Transmission

- Transmission
 - Transmission is increasingly important and challenging
 - PPA negotiations while underlying transmission issues not resolved
 - Purchaser may want final price commitment before final transmission costs known

4. Transmission

- Cost allocations
 - Point of delivery is key
 - Often Seller cost to point of delivery
 - Often Purchaser cost after point of delivery
 - Project specific costs and issues
 - Negotiations on sharing or shifting transmission costs or risks
 - Costs
 - “network upgrades” or “third party impacts”

4. Transmission

- Resource Designation
 - “Network Resource”
 - Reimbursement of 50% of costs
 - “Energy Resource”
 - No reimbursement
 - May have availability constraints

5. Defaults and Remedies

5. Defaults and Remedies

- Milestones
 - Measures project progress toward COD
 - Permits
 - Turbines
 - Construction contracts
 - Start construction
 - COD

5. Defaults and Remedies

- Delay Damages
 - Liquidated damages for missed milestones
 - Interim vs. final milestones
- Seller concerns
 - Incentives without penalties
 - Delays beyond its control
 - “Catch-ups”
 - Seller’s financial exposure/credit enhancements

5. Defaults and Remedies

- Other defaults
 - Beaches
 - Cure periods (if any)
- Key remedies
 - Liquidated damages
 - Market based damages
 - Purchaser re-buy at higher prices
 - Seller re-sell at lower prices

5. Defaults and Remedies

- Damage Caps
 - For Sellers
 - Caps
 - Exceptions to caps for “bad acts”
 - Mutuality concerns for Purchaser
 - Commitment to buy for the term

5. Defaults and Remedies

- Credit Enhancements
 - Can be mutual concern
 - Purchaser long-term commitment to buy
 - Seller is a special purpose entity
 - Forms:
 - Guaranties
 - Escrows
 - Letters of credit
 - Impact on:
 - Seller pricing
 - Developer/owner vs. investor

6. Conclusions

- The PPA is more than just the price
 - Cost and risk allocations will impact the price
- Involve counsel early
- Involve the financing partner before finalize the PPA
 - Mandatory that have a “financeable” PPA
 - Differing views of different investors