
Renewable Energy Credits

Who Owns RECs from DG?

SDREO Solar Conference

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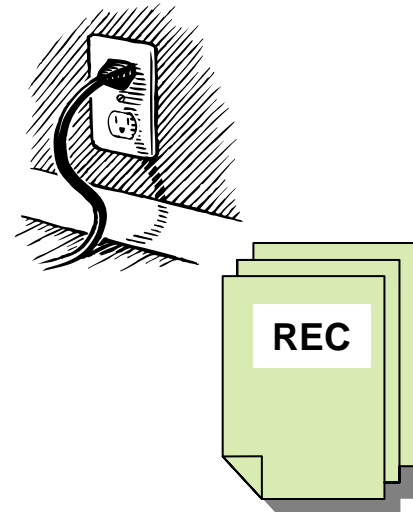
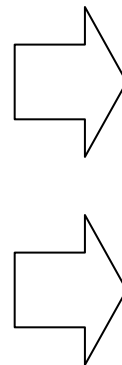
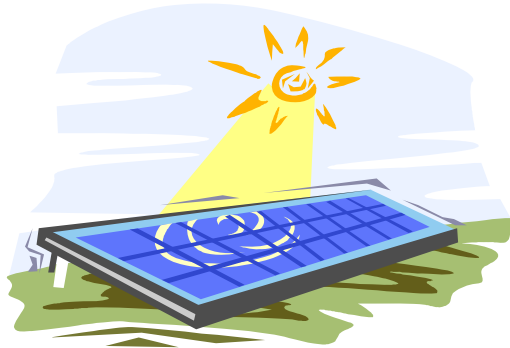
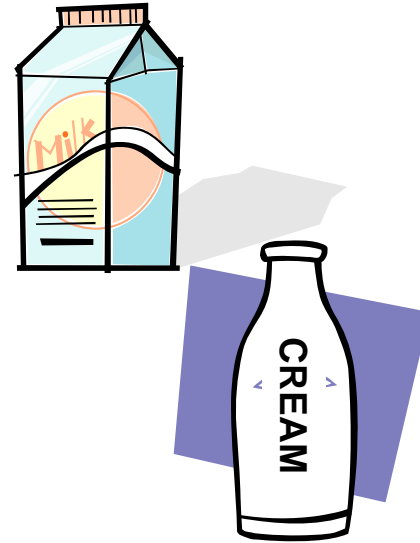
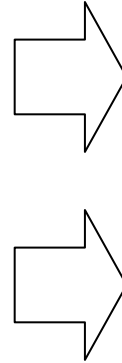
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Presentation Overview

- REC Market Overview
- REC Ownership Presumption
- Key Questions for RECs from DG
- Contract Law Concepts
- Net Metering Agreements
- Effect of Subsidies

Renewable Generator Outputs



Renewable Energy Credits (RECs)

- Renewable Generation Produces Two Goods
 - Electricity
 - “Greenness” or environmental attributes
- Renewable Energy Credits (RECs)
 - Account for, and monetize greenness
 - Voluntary market – Sell or trade RECs for green bragging rights
 - Compliance market – Means for utilities to meet RPS goals

RPS Compliance Market for RECs

- RECs for RPS Compliance in CA Today
 - RECs cannot be traded or sold separately from electricity for RPS eligibility
 - RECs must be bundled with electricity*
 - CA is Exploring Unbundled Tradable RECs
 - Utility flexibility: Combine conventional electricity and RECs to meet RPS obligations
 - Generator flexibility: Sell RECs for financing, leverage partial output to distant markets

* CPUC Decision 03-06-071

Ownership Presumption

- Presumption under CA Law
 - Generator owner also owns the RECs*
- Unless...
 - a valid contract or other means conveys RECs to another party (overcome presumption)
- Ambiguity = Market Risk/Uncertainty
 - Risk that a party will be sued for tort of trespass or conversion of another's property

* CPUC Decision 05-05-011

Questions Presented

- Key Questions Regarding RECs for DG?
 1. Pre-Existing Qualifying Facility (QF) Contracts*
 2. Net metering agreements with distributed generators (DG)
 3. The effect of ratepayer subsidies toward purchase of renewable DG

- Is there a sufficient basis to overcome presumption of generator ownership?
 - Look to contract law principles – do RECs impliedly transfer from DG to utility?

*QFs defined in federal Public Utility Regulatory Act of 1978 (PURPA),
42 U.S.C. §842a-3

Contract Law Analysis

- CA law allows two general types of implied enforceable obligations
 1. Implied-in-Fact
 2. Implied-In-Law
- Implied-in-Fact
 - Only if reflects a tacit agreement = provision necessary to implement parties' intentions
- Implied-in-Law
 - Obligation imposed on the parties by law to protect public policy interests (quasi-contract)

Net Metering Agreements

■ Implied-in-Fact

- Unlikely to be tacit agreement
 - DG owner likely does not know what RECs are
 - Is not a merchant of electricity, form agreement
 - Necessary to carry out the parties' intentions?

■ Implied-in-Law

- Balance Public Policy Interests:
 - If necessary to effect policy interests that underpin the net metering program
 - If unjust enrichment of one of the parties

Net Metering Public Policy Interests

- Purpose of Net Metering
 - First policy goal written in statute:
 - Encourage substantial private investment in renewable energy*
- Net Metering Tariffs
 - Credit to DG owner at retail tariffs
 - Ratepayers/utilities pay in excess of wholesale rate they would otherwise pay for the electricity
 - If DG owner also keeps/sells RECs, may be unjust enrichment?
- Net Metering Caps on Credits
 - Credits to DG owners capped
 - Net annual usage caps, system-wide caps
 - If utility takes RECs when capped, may be unjust enrichment of utility?

* Cal. Pub. Util. Code §2827(a)

Unjust Enrichment and Subsidies

- Ratepayer Subsidies Toward Renewable DG System Purchase
 - ERP, SGIP, new CSI - effect REC Ownership?
- Utility Perspective
 - If customer generators are subsidized, utilities should get some, or all, RECs produced
 - If customer retains REC, ratepayers would pay twice for environmental benefits (subsidy + purchase RECs)
 - Net metering tariffs should be included as a subsidy, since customers receive premium tariff (retail credit)

Ratepayer DG Subsidies

■ Generator Perspective

- Generator should retain REC
- Subsidies only cover a fraction of system costs, and will decline over time, public interest in DG pay-back
- Statute defines many benefits beside environmental, so ratepayers only “pay twice” with a fraction of subsidy (any enrichment not to level of “unjust”)
- California legislature explicit intent that public benefit charges used for subsidies convey no property interest to “Commission” *
- Net metering tariffs are highly variable, may be capped, so should not be considered a subsidy

* Cal. Pub. Res. Code §25747(c)

Current Proceeding

- CPUC Considering DG REC Ownership*
 - Should net metering tariffs be considered a subsidy?
 - Is there an objective way to calculate what portion of DG RECs are financed by ratepayer subsidies?
- Challenge
 - If attempt to divide RECs from subsidized DG between system owner and utilities...
 - A calculation must be performed, which could be subject to legal challenge (litigation risk)

* CPUC Proceeding 06-03-004

Options To Consider

- Affirmatively hold as implied-in-law that DG owners retain RECs
 - Thus, cannot convey under even explicit net metering contracts
- Do nothing
 - DG owners likely retain RECs under presumption, but can convey to utilities under contract
- Divide RECs between DG owner and utilities
 - To avoid any possible unjust enrichment of DG owner at ratepayer expense through “paying twice”
 - utility acting for ratepayer
 - Can an objective calculation method be found that will not invite excessive litigation?

Thank You

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