



GREEN LAW GROUP

NEWSLETTER

The Business of Green

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**ENERGY CREDITS PRESENT
OPPORTUNITIES IN THE MARKETPLACE**

The growing market for energy credits, both in the U. S. and internationally, may present real financial opportunities for their creation, trading and use. Energy credits basically consist of two categories: carbon credits and renewable energy credits (or RECs). While each is further defined in the respective articles that follow, a carbon credit is basically a credit tied to reduction of carbon dioxide emissions and may be traded internationally, whereas a REC is a credit tied directly to environmental attributes associated with the generation of one megawatt hour of electricity from facilities where the generation of energy is from renewable resources and avoids emissions of carbon dioxide, methane or other greenhouse gases.

INTRODUCTION TO CARBON CREDITS

Tobias Lederberg, Esq.

The Kyoto Protocol is a 1997 international treaty that became effective in 2005 and is up for renewal in 2012. It binds every developed nation, except the United States which has not ratified the treaty and therefore is not bound by it, to a cap and trade system for the six major greenhouse gasses. Each participating country agreed to emission quotas, with the intention of reducing overall emissions to 1990 levels by the end of 2012. Under the Protocol, until 2012, nations emitting less than their quota may sell emissions credits to nations exceeding their quota.

Carbon trading represents emissions trading specifically for carbon dioxide. Calculated in tons of carbon dioxide equivalent or

“tCO₂e,” carbon trading represents one way countries can meet their obligations under the Kyoto Protocol to reduce carbon emissions and thereby mitigate global warming.

The European Union Greenhouse Gas Emission Trading Scheme (EU ETS), created in conjunction with the Kyoto Protocol, is currently the world’s largest greenhouse gas emission trading system. Under the EU ETS, large emitters of carbon dioxide within the EU “installations” must monitor and annually report their CO₂ emissions. Each year they must surrender emission allowances to the government equal to their CO₂ emissions in that year. The installations may obtain the allowances for free from the government, or may purchase them from others (installations, traders, or the government.) An installation with more free allowances than it needs may sell them. The EU ETS currently covers installations in the energy and industrial sectors collectively responsible for close to half of the EU’s emissions of CO₂.

Global carbon credit trading rose to \$60 billion in 2007, from \$33 billion in 2006. Total traded volume in the global market reached 2.7 billion tons of greenhouse emissions reductions in 2007, a 64 percent jump in the same period. Nearly two-thirds of the global trading volume last year occurred on the EU ETS, with 1.6 billion tons of greenhouse emissions changing hands worth \$41 billion. In the United States, no federal law specifically governs carbon trading (although cap and trade legislation has been introduced in Congress). Several states, however, have

taken their own initiatives in this area. Rhode Island and Massachusetts are two of ten Northeastern states that plan to start trading carbon dioxide emissions credits from power plants under the Regional Greenhouse Gas Initiative. This program will officially launch on January 1, 2009 and by 2018 each state's carbon "budget" will be reduced 10% below their 2009 allowances.

INTRODUCTION TO THE EMERGING GREEN TAG (REC) MARKETPLACE

Andrew S. Rogovin, Esq.

Both energy providers and energy consumers should be aware of the potential benefits offered by the growing marketplace for RECs. The term "REC" refers to a Renewable Energy Certificate (also known as a Renewable Energy Credit or a Green Tag). A single REC, represents the right to report and register exclusive ownership of the "environmental attributes" associated with the generation of one (1) megawatt-hour of electricity from eligible facilities (i.e., facilities where the generation of energy displaces generation of energy from non-renewable resources and avoids emissions of carbon dioxide, methane and other greenhouse gases).

"Environmental attributes" generally include all environmental, power source and emission characteristics, credits, allowances, reductions, offsets and benefits associated with the generation of the energy (other than the energy itself). Production and/or investment tax credits associated with the financing or construction of a facility and tradable emission allowances issued by a governmental authority are typically not included, insofar as they are allocated on a basis other than actual generation of avoided emissions.

Because RECs may be traded, sold and used separately from the electricity itself, a marketplace has developed for RECs, allowing utilities and aggregators to sell RECs to end-users that use the RECs to comply with regulatory requirements or for marketing purposes (i.e., to demonstrate "green" or carbon-neutral operations). In order to reduce the potential for fraud in the REC marketplace, RECs can be tracked from their point of creation to their final point of use by one of

the regional tracking systems, such as WREGIS in the western states and NEPOOL GIS in New England. In addition, RECs may be verified, certified and audited by organizations such as the Center for Resource Solutions, which has established the "Green-e standards", or Environmental Resources Trust, which applies a different set of standards for its EcoPower certification program.

SALES TAX POLICIES PROVIDE POTENTIAL BENEFITS FOR SOLAR ENERGY SYSTEM PROVIDERS

Andrew S. Rogovin, Esq.

Many states have created tax credits or rebate programs designed to encourage clean energy projects, but most states have not yet enacted appropriate sales tax exemptions for clean energy projects. State policy-makers willing to support clean energy initiatives, are often unaware that their state's sales tax policies may work against their clean energy initiatives.

For example, although California has a sales tax exemption for sales of all types of power (gas, electricity, water, steam, etc.), providers of solar energy systems in California have been subject to excessive sales tax assessments relating to the installation and delivery of solar projects. The California Board of Equalization, the state agency responsible for sales tax regulation and policy recently addressed this issue by adopting a provision in the sales tax regulations covering construction contractors providing solar facilities.

The threshold question was whether a contractor installing a roof-top solar energy system comprised of PV panels, racking, wiring, boxes and inverters was actually fabricating a new product (i.e., a "solar energy system") out of component pieces, or whether he was simply installing products that he had purchased in a substantially completed condition (i.e., the PV panels, inverter, etc.) and thus the work performed by the contractor was really installation labor (not subject to sales tax) rather than fabrication of a new product (in which case sales tax liability could be based on the entire price of the completed project).

The solar industry urged the BOE to adopt a provision in the regulations that would clarify that the creation of a solar energy system by attaching solar panels to a mounting system is simply an installation for sales tax purposes, and not the manufacture or assembly of a new fixture. The final regulation that was adopted provides that “[A] charge for labor to affix solar panels purchased in a completed condition to a mounting system is not subject to tax.”

Although this change to the regulation was a step in the right direction, care must be taken in drafting solar energy system construction or installation contracts, to assure that the contract structure and language is consistent with the available sales tax exceptions. Further, solar energy providers in other states should look for opportunities to conform their contracts to specific sales tax planning opportunities, and to pressure lawmakers to adopt sales tax policies that reflect their state’s commitment to clean energy initiatives.

FEDERAL AND STATE TAX ENERGY INCENTIVES

Roy W. Gillig, Esq.

Recent federal legislative efforts promote energy efficiency and the development of renewable energy resources. These Federal tax incentives include: (i) tax credits ranging from ten to thirty percent for a company’s expenditures in the installation and use of solar technologies, fuel cells, solar hybrid lighting and microturbines, (ii) tax deductions for building owners and, in some cases, tenants, for installing equipment that reduces a building’s total energy and power cost by certain specified levels, and (iii) tax credits for electricity created from qualified sources of renewable energy. In addition, most expenditures for solar, wind, geothermal equipment, and solar hybrid lighting technologies, may be depreciated over five years.

Many states have also enacted legislation encouraging consumer and business utilization of renewable energy and the promotion of energy efficiency. For example, Massachusetts currently provides (i) corporate tax deductions for sales or royalty income received from patents deemed beneficial for

energy conservation or alternative energy development, and (ii) an immediate write-off of certain costs incurred in the installation of solar or wind powered climactic control or water heating units. Rhode Island currently provides an exemption from sales and use tax for certain renewable energy systems and equipment sold or used in the state, including solar electric systems, inverters for solar electric systems, solar thermal systems, mounting racks, ballast pans, geothermal heat pumps, and wind turbines. Connecticut currently provides sales and use tax exemptions for solar thermal and solar water heating systems. In addition, Rhode Island, Massachusetts, Connecticut and New Hampshire generally provide local property tax exemptions for renewable energy systems and equipment that promotes efficiency and alternative sources for power.

Rhode Island currently provides an exemption from sales and use tax for certain renewable energy systems and equipment sold or used in the state, including solar electric systems, inverters for solar electric systems, solar thermal systems, mounting racks, ballast pans, geothermal heat pumps, and wind turbines.

BUILDING GREEN: WHY YOU NEED TO KNOW ABOUT LEED CERTIFICATION*Daniel L. Monger, Esq.*

With the heightened concern over energy prices, global warming and in an attempt to foster more earth friendly and cost efficient building practices, a number of organizations around the world have been advocating for “greener” or “sustainable” buildings. Their advocacy has apparently gained a strong foothold in the United States, particularly with the Federal and many State and local governments. There have been a number of rating systems developed for how environmentally friendly and efficient buildings are, but the rating system that seems to have emerged as the leader and has become the standard in the US is the LEED certification system. The LEED certification system was developed by the U.S. Green Building Council (the USGBC), a non-profit organization based in Washington D.C.

The federal government and many local governments have either already adopted or are currently contemplating adopting laws and policies that require, or at least encourage, landlords, developers and contractors that do business with them to meet LEED certification standards. There currently exist LEED certification programs for only the following categories: new commercial construction and major renovation projects, existing building operation and maintenance, commercial interiors projects, core

and shell development projects, homes and neighborhood developments, and a program for new retail construction is being developed. The rating system consists of a point system for categories of performance of the project and initially certain prerequisites must be met to obtain the basic certification, followed by a number of optional points awarded for various additional categories. The rating system generally is performance based, rather than prescriptive, in an effort to encourage innovation. The cost of certification includes a basic registration fee, which is minimal, followed by the certification fee which is based upon the type and size of a project.

By following some of the guidelines included in the LEED program, projects often may achieve cost savings over their life cycle and result in healthier spaces for tenants and others to occupy. The LEED system continues to evolve and refine itself through the USGBC and forums and meetings which address a wide spectrum of interests in both public and private concerns with various design, development, and construction specialists. To the extent that the trend in adopting and implementing this certification program continues, LEED certification and the policies and goals that it reflects, will become more commonplace and may become the standard in the real estate and construction industries.

The following are members of the Green Law Group:

Laura Angelini, Associate ■
 John J. Bolton, Partner ●▼*
 Alexandra K. Callam, Of Counsel ●■
 Andrew W. Daniels, Partner ■
 Margaret D. Farrell, Partner ●⊗
 Pasco Gasbarro, Jr., Partner ■●
 Roy W. Gillig, Partner ■
 Jeffrey M. Grybowski, Partner ●◆
 Dimitry S. Herman, Partner ■◆
 W. Thomas Humphreys, Associate ●■→
 Tobias Lederberg, Partner ●■
 Robin L. Main, Partner ●■
 Diana D. McInerney, Partner ●■
 Daniel L. Monger, Partner ◆■
 Michael J. Novaria, Associate ■
 H. Peter Olsen, Partner ●■*
 Gerald J. Petros, Partner ●■
 Andrew S. Rogovin, Partner ■

■ Admitted in Massachusetts
 ● Admitted in Rhode Island
 ▲ Admitted in New Hampshire
 ◆ Admitted in Colorado
 ⊗ Admitted in Ohio
 → Admitted in Wisconsin
 ■ Admitted in Michigan
 ▼ Admitted in New Jersey
 ◆ Admitted in New York
 * Admitted in Pennsylvania

28 STATE STREET
 BOSTON, MASSACHUSETTS
 02109
 617.345.9000

50 KENNEDY PLAZA, SUITE 1500
 PROVIDENCE, RHODE ISLAND
 02903
 401.274.2000

11 SOUTH MAIN ST., SUITE 400
 CONCORD, NEW HAMPSHIRE
 03301
 603.225.4334