Who Owns Renewable Energy Certificates? Policy Options and Practice

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1. INTRODUCTION

Under the Public Utility Regulatory Policies Act (PURPA) of 1978, utilities are required to purchase the output from certain Qualifying Facilities (QFs), including renewable energy generators. PURPA requires that utilities make **avoided cost** payments to QFs for energy and capacity, but **does not mention renewable energy certificates (RECs)**.

RECs began to be recognized in the late 1990s, ***after*** many QF agreements were signed. With the introduction of renewables portfolio standards (RPS) in a number of states, those RECs may have significant value. Most pre-existing QF contracts, however, are silent as to which party – the generator or the utility – owns the RECs.

2. METHOD

We reviewed how FERC and multiple states have addressed REC ownership issues to date, focusing on the following areas in which these issues have arisen:

- Qualifying Facilities (QFs) that sell their generation under PURPA;
- Customer-owned distributed generation that benefits from state net metering rules;
- Generation facilities that receive financial incentives from state or utility funds (not covered in this poster).

Our goal was to summarize the debate and results, not to provide policy recommendations.

3. THE FERC CASE

Disputes about REC ownership under QF contracts led to a FERC case in 2003. FERC ruled that:

- Avoided cost payments by utilities to QFs ***do not*** transfer the RECs to utilities, unless the contract says otherwise
- ***It is up to the states*** to decide REC ownership in such cases based on state law, but not based on avoided cost payments

This ruling has caused confusion. Both sides continue to cite the FERC decision in support of their positions. It has also led the antagonists into state regulatory forums for resolution.

4. STATE QF REC DECISIONS

16 states have adopted positions on ownership of QF RECs :

- Most states have assigned RECs from **pre-existing QF contracts** to utilities, especially where states include existing renewables in state RPS policies.
  - Regulators appear concerned that doing otherwise would raise the cost of the RPS.
- In several states, QFs retain RECs in **new QF contracts.**
- Two states determined that QFs must be compensated for RECs.
- All but one state (NM) has addressed this issue through regulation, as opposed to through legislation (though legislation has often informed regulatory decisions).

RECs Conveyed to Power Purchaser	Proceeding in Process (←leaning→)	RECs Retained by QF Unless Otherwise Stated in Contract
CO (existing contracts) CT (existing) ME (existing) * MN (existing) ** ND (existing and new, with compensation) NJ (existing) NM (existing and new) NV (existing) TX (existing) WI (existing) **	AZ → ← CA (existing) * PA	CO (new contracts) NV (new) OR (new) RI (new) TX (new) UT (new)

* ME and CA currently count PURPA QF contracts towards RPS, without specifically requiring RECs to be transferred to the buyer.

** In MN and WI, renewable attributes appear to be conveyed with underlying energy deliveries, by default, for purpose of compliance with state RPS, but REC treatment is not stated explicitly.

5. NET METERING AND DISTRIBUTED GENERATION REC DECISIONS

RECs Associated w/ Customer Load Conveyed to Utility	RECs Associated w/ Net Excess Generation Conveyed to Utility	Proceeding in Progress (←leaning→)	RECs Retained by Customer-Generator	RECs Shared between Utility and Customer
NorthWestern Energy+	MN, ND (with compensation) NV	AZ → PA →	CA * CO MI ** MN *** ND *** NJ NM NV *** OR	MD **** DC ****

* CA may reconsider
** Although MI rejected a proposal for utility ownership, it did not affirmatively award RECs to the customer-generator
*** Customer retains only those RECs associated with customer load
**** Implementation details not yet available
\+ Although not a state, NWE, a MT utility, was the only example found of all RECs going to the utility

- Net metering is required in 40 states – REC ownership was not originally addressed in the rules/regulations establishing net metering.
  - Fewer RECs compared to QFs, but lots of net-metered projects.
  - Behind-the-meter generation is eligible to satisfy RPS in many states, and is especially important where solar or DG set-asides exist within state RPS policies.
- Where REC ownership is not explicitly addressed, most people assume that the customers that own the DG facilities own the RECs.
- 12 states and DC have looked (or are looking) at this:
  - 6 states currently award all RECs to customer-generator
  - 3 additional states award RECs associated with customer on-site use to customer and RECs from net excess generation to utility (2 of these require compensation to customer)
  - 1 state and DC share the RECs between utility and customer
  - 2 states are still in discussion
  - 1 utility claims all RECs from net-metered systems
- No state has yet given all or even a majority of RECs from DG used on site to the utility as a result of net metering rules—only MD and DC contemplate giving any of these RECs to the utility

6. CONCLUSIONS

Uncertainty about ownership limits REC marketability. RPS policies are forcing some states to address REC ownership questions. This is critical for QF contracts because the quantity and value of QF RECs is significant.

Behind-the-meter projects are also often eligible for RPS. These produce fewer RECs, but there are many such projects, and RECs can improve profitability.

The FERC ruling remains subject to differing interpretations, demanding further state clarification. Most state determinations have been made in regulatory proceedings, but some state rulings (CT, NJ) are under appeal to the courts. State legislative action may reduce appeals and uncertainty. In the longer term, the issue may diminish because there will be fewer QF contracts in the future due to changes to PURPA in the Energy Policy Act of 2005, and because new contracts will likely specify who owns the RECs.

ACKNOWLEDGMENTS

This work was funded by the Office of Electricity Delivery and Energy Reliability (Electric Markets Technical Assistance Program) of the U.S. Department of Energy under Contract No. DE-AC02-05CH11231. The authors would particularly like to thank Larry Mansueti of the Department of Energy for his support of and funding for this work.

FURTHER INFORMATION

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