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RE: Third-Party REC Bundler Issues

Electric cooperative member-consumers are increasingly solicited by “ecopreneurs¹” with unconventional products and services targeted at environmentally conscientious consumers. Along with more concrete “clean energy” merchandise (such as rooftop solar panels, fuel cells, and electric energy storage systems) a growing cadre of ecopreneurs are aggressively marketing services that combine renewable energy credits, or “RECs,” with undifferentiated, utility-supplied electric energy to offer a “100% green energy” service, often for a cost that appears nominal.

Cooperatives may receive inquiries from their member-consumers about such solicitations. The following questions and answers can help cooperatives and their member-consumers evaluate the real economic and environmental value of REC bundling arrangements. In responding to member-consumers, the cooperative should be mindful of their best interests, and should avoid making statements that are anti-competitive or defamatory, especially when the cooperative or its affiliate offers a similar or competing service or product.

¹ *Business dictionary.com* defines “ecopreneur” as an “Entrepreneur who creates and sells environmentally friendly products and services including organic food, recycling efforts, or green construction.

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REC Basics

What is a REC?

A REC represents proof that one megawatt-hour (MWh) of electricity was generated from a renewable energy resource and embodies the property rights to the environmental, social, and other non-power attributes associated with the generation, which can be sold separately from the underlying physical electricity associated with the renewable generation source.

Who regulates RECs?

While jurisdictions with renewable portfolio standards (“RPS”) regulate utility renewable tariffs and the compliance of REC purchase, generation and retirement by utilities, few if any states regulate residential retail sales of RECs by third parties.

The Federal Trade Commission’s “Green Guides” provide some guidance on what statements and claims the Commission views as appropriate and inappropriate, but monitoring and enforcement remains limited.

Who certifies RECs?

RECs are generally self-certified by generators, but there are several private associations that maintain, monitor and enforce REC standards for certification. The Center for Resource Solutions’ “Green-e” program is likely the leading program in the US market.



Bundled REC Considerations

What constitutes the “100% green energy” offered by a REC bundler?

In most cases, the bundler is not supplying electric energy at all, but only RECs, representing the unbundled environmental attributes of a renewable generating facility, the actual energy from which has been sold and distributed to someone else. A REC is a legal and commercial recognition of the right to claim the use of renewable energy, but does not describe or control the actual physical path of the electrons generated by the renewable resource.

Where are the offered RECs generated?

RECs may well be generated in areas far removed from the markets where they are offered for resale. In most circumstances, REC sales are not geographically limited by any proximity to the site where they are generated.²

When were the offered RECs generated?

While attributed to a given “vintage” year, RECs are routinely registered, traded and sold long after the electric power with which they were associated has been distributed and consumed.

How can a REC bundler claim that it is providing “100% green power”?

A consensus seems to be emerging among most market participants and regulators that using RECs as merchantable proxies for the environmental attributes of renewable energy generation is an economically efficient mechanism for buying and selling those attributes, completely separate from physical electric energy. However, not all parties and regulators have always or completely accepted this convenient economic construct. In at least one jurisdiction³, two investor-owned utilities were refused authority by their state utility commission to characterize a tariffs that bundled RECs with undifferentiated power as 100% renewable energy tariffs.

² The principle exception relates to state or regional compliance programs that may require utilities to procure a certain percentage of their RECs (usually solar RECS) from within a particular state or region. These limitations do not apply to retail sales to residential consumers.

³ See, (Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power for Approval of its Renewable Energy Tariff, 2008) and (Application of Appalachian Power Company for Approval of its Renewable Power Rider, 2008).



While sophisticated participants in complex wholesale electric power markets are becoming comfortable with the construct, most residential retail consumers need to very carefully study the fine print to understand the precise nature of the service being offered.

Are REC bundlers actually providing any electric energy?

Probably not. Solicitations from one of the most visible REC bundlers in the US market boldly promise “the freedom to choose 100% pollution-free wind energy” and the ability to “get 100% certified Wind Energy” on the front page, but on the back page carefully disclose in two sections that the “local utility continues to *provide*⁴ electricity to [the] home over the same poles and wires,” and again in a third section that “the local utility will still reliably *deliver*⁵ electricity to [the] home over the same poles and wires.”

The fuzziness of these disclosures is further undermined by a strong implication that the local utility is providing only distribution service, not power supply. This implication is buttressed by the threefold reference to the “same poles and wires,” and by a claim that the bundler “works through a regulated energy marketplace to buy renewable power from its source . . . to give you the same access.”

The carefully phrased ambiguity about power supply is clearly resolved not in the solicitation, but on the bundler’s website, buried in the “frequently asked questions” page:

Is [the bundler] an electricity supplier?

No. [The bundler] doesn’t supply electricity. We only buy 100% clean Renewable Energy Certificates to match your usage.

Are REC bundlers legally authorized to supply electric energy?

We are not aware of any bundlers that are actually offering to supply electric energy with RECs. Such a configuration would trigger state utility commission regulation in most jurisdictions, either as a utility or as a competitive retail supplier.

⁴ Emphasis added.

⁵ Emphasis added.



Can a third-party REC bundler consolidate charges for its RECs with the utility's charges for electric generation and distribution into a single bill?

In some states, yes. A leading bundler's website explains that all its customers are enrolled in automatic billing, either through a credit card or direct debit from checking, and that an "easy to read e-statement" is provided every month.

Does a member-consumer's enrollment with a REC bundler prevent a cooperative from continuing to render a bill to the member-consumer?

Often the customer will no longer receive a bill from the utility, but the logistics will vary. Presumably, the bundler is authorized by the member to direct the utility to deliver the consumer's bill to the bundler instead of directly to the consumer.

During the implementation of retail competition structures, some jurisdictions adopted or amended detailed regulations concerning the rendering of electric utility bills. Cooperatives should review relevant regulations with their legal counsel, as well as applicable provisions of their tariffs, terms and conditions, and bylaws, to determine the appropriate response to a direction from a member to remit the member's bill to a third party. Cooperatives may also wish to evaluate whether a bundler's bill is required to comply with any applicable regulations.

In addition, because the relationship of a cooperative to its member-consumers is broader than that of an investor-owned or municipal utility, cooperatives must evaluate how the communication of additional information often included in its billing (such as capital credit allocations, capital retirement credits, and mandatory notices) will continue to be communicated to members.

Who is responsible for paying the cooperative's charges for service it delivers to a member-consumer who enters into a REC bundling arrangement?

In most jurisdictions, a member's contract with a third-party REC bundling service cannot supersede state law and regulation, or the cooperative's tariffs, terms and conditions, and bylaws. Thus, the member-consumer will usually continue to be liable to the cooperative for any charges incurred on the member's account.

Cooperative member-consumers should be mindful of the financial risks of paying their electric bills to a third-party. With little or no regulatory oversight, an unscrupulous or illiquid agent could collect fees from member-consumers for several months without remitting payment to the cooperative. The cooperative has no direct contractual privity with the bundler, so a member-consumer could be caught paying the same bills twice, or worse - facing a disconnect despite having made timely payment in full to the bundler for every bill.



Unfortunately, dishonest marketers may even pose as agents for legitimate bundlers and to trick member-consumers into directing electric bill payments to illegitimate accounts. Member-consumers should verify that the agent and any bill payment accounts belong to a legitimate bundler. Member-consumers should report scams to the police, the Federal Trade Commission and their local electric cooperative.

What other alternatives does a cooperative member-consumer have to procure 100% renewable or carbon-neutral service?

Many cooperatives now offer either direct REC sales, a bundled renewable energy service or both, and member-consumers may find that the cost for such service from their not-for-profit cooperative is competitive with or even better than that offered by a for-profit ecopreneur.

In addition, cooperatives' RECs are often generated from facilities owned by or under contract to the cooperative, so the source origin is clear and the location is often in or near the cooperative's territory.

How many RECs does a cooperative member-consumer need to be “carbon-neutral” ?

As a general rule, “carbon neutral” means one REC for every 1000 kilowatt hours of electric energy consumed which, for an average US household, would mean just under 11 RECs per year. If the cooperative is not retiring any RECs to offset its generation, then a member-consumer would have to procure RECs equal to the member's entire generation. However, if a cooperative is subject to a mandatory RPS, or is voluntarily offsetting a portion of its generation, then direct procurement of fewer RECs may be sufficient.

What additional obligations does a REC bundler impose on its customers?

Member-consumers considering enrollment with a REC bundler should carefully review the contractual obligations required for enrollment. In many cases, especially where enrollment is conducted on-line, material contractual obligations are contained in the bundler's terms and conditions. Member-consumers should resist the common temptation to simply scan or “click through” acceptance of such terms and conditions without careful review.

Provisions included in one prominent bundler's terms and conditions included the following:

- Bundler has the right to change the terms (*i.e.*, the contract) and the services at any time in its sole discretion with no notice other than updating the website;
- Customers consent to the collection, use and disclosure of customer's private information;



- Customers authorize bundler to retrieve and use personal customer information, and utility usage information;
- Customer must provide bundler with customer's utility username and password and other credentials, which bundler has the right to change, but the customer remains responsible for the accuracy of the credentials;
- Bundler is authorized to debit customer's bank account;
- Bundler has no obligation to take any action respecting customer's utility account and has no liability for taking or failing to take such action, even if customer does not receive any information with respect to the account;
- Bundler makes no guarantees or warranties and has no liability for its own errors or communications, but, customer indemnifies bundler for any claims relating to customer's use of the bundler's service; and
- Customer gives up its right to sue bundler in court, and gives up its right to sue or arbitrate as part of a class, but rather all claims must be arbitrated individually in Washington, D.C., under D.C. law, no matter where the customer lives or how many customers may have been harmed.



Questions for Member-Consumers to ask REC bundlers

- *What type of resource (wind, solar, etc.) produced the RECs?*
- *Where were they generated?*
- *When were they generated (“vintage” year)?*
- *Has anyone else claimed or retired these same RECs?*
- *Who has certified the RECs?*
- *Where are the RECs registered?*
- *When and in whose name will they be retired?*
- *What is the bundler’s mark-up or profit margin on the RECs?*
- *How hard is it to terminate the bundling service?*
- *If the bundler proposes to consolidate its bill with the cooperative’s bill, how will the bundler ensure that the member-consumer receives all relevant information and notices provided on or with the cooperative bill?*
- *Will the bundler confirm that it will remit all bill payments on behalf of the consumer-member to the co-op by the due date?*