

Not all Electrons are Created Equal: the Coming of Age of Power Purchase Agreements in the Renewable Energy Industry

Gerald Arends¹

¹ *Pegasus Legal Pty Ltd, Level 19 Waterfront Place, 1 Eagle Street, Brisbane QLD 4000*

Abstract:

The origin of the renewable energy industry can be traced back to the early feed-in tariff regimes that were initially adopted with great success in countries such as Germany, Spain and Italy. A long-term viable renewable energy industry, however, needs to be based on commercial structures rather than government subsidies. Important tools reflective of commercial principles, which also allow the introduction of third-party financing, include power purchase agreements, asset leases and loan structures.

Power purchase agreements are deployed as a prime tool to attract third-party financing into renewable energy installations. If a power purchase agreement is put in place, a third party acts as power generator and attracts separate finance for the renewable generation asset. It allows the energy user to avoid the upfront cost of deployment but rather pay for the ongoing use.

The problem with this proposition is that the structure of power purchase agreements is very much reflective of the uncommercial nature of feed-in tariffs – which treated “all electrons as being equal”. They frequently do not reflect the complexity of the electricity industry in contexts such “behind-the-meter” environments, “energy precincts” and constrained grid environments – which present the most immediate and significant opportunities for renewable deployment.

The presentation will trace the practice surrounding feed-in tariffs into modern power purchase agreements and their typical “take-or-pay” structures. It will highlight some of the complexities that power purchase agreements should regularly deal with and expand on the available tools to do this without deviating from acceptable market practice.

The practical and structural issues around power purchase agreements also interlock with certain legal issues that have been given scant attention in the past. The presentation will attempt a re-assessment of the “take-or-pay” provisions in power purchase agreements and show how a fresh attempt to structuring power purchase agreements can create greater legal certainty.

Keywords: behind-the-meter, constrained grid, feed-in-tariff, power purchase agreement, renewable energy, take-or-pay.

BIOGRAPHY

Gerald Arends is a senior energy and infrastructure lawyer and a Director of Pegasus Legal, a boutique legal practice that services renewable energy clients in Australia and overseas.

Gerald is an industry leader in the renewable energy sector, with a particular focus on utility-scale and commercial-scale solar power and battery integration projects. He has experience in the solar industry both as a practising lawyer and from working within industry. He has worked on projects in more than 20 countries worldwide.

Gerald also teaches Renewable Energy Law within the LL.M. programme at the University of Queensland.