

Power Purchase Agreements In The Energy Industry

A power purchase agreement can be used to create a contract for the purchase of actual "power" as in energy. These kinds of power purchase agreements are also sometimes known as energy service agreements. If you are considering drafting this type of power purchase agreement, then there are a number of factors that you should consider. The deregulation of the power industry has led to a shift from one way of providing power to another. This may soon lead to a totally deregulated power industry, and so considering the impact of deregulation on your power purchasing is an important concern. The open market will affect more than simply prices. It may ultimately affect not only the source of the power but how power is supplied and transmitted, which in turn may have a huge effect on your business. In a typical power purchase agreement, you need to include specific elements. The parties that will be involved must be spelled out specifically. Any relevant milestones must be mentioned. How exactly the delivery of power will be handled and the details of output guarantees must be discussed. Engineering warranties are another detail to be included. The sale elements include power quantity commitment, metering, and net metering or exchange. Then, risk allocation must be addressed. This may include issues such as sovereign risk and commercial risk if dealing internationally. Commercial risk and regulatory risk as well as excuse and force majeure are important considerations. It is also essential to deal with transmission, distribution, and interconnection arrangements. There may also be tariff issues that need to be addressed. Fuel price hedging and an update mechanism may be necessary. There may also be tariff penalties for nonperformance. Performance obligations are another essential area to discuss. Operational obligations, definitions of breach, and ruminations need to be addressed, as do guarantees for payment and performance as well as assignment or delegation and dispute resolution. Because of the great knowledge and understanding of power issues required for a successful power purchase agreement, it is strongly recommended that a firm that has expertise in drafting such documents be consulted. This is probably not the best time to simply download a fill-in-the-blank type of legal document! Using online resources, such as viewing agreements from other companies can improve efficiency with amazing results. Making sure that all the bases are covered with important deals, that have large amounts of capital involved is very important. Additionally, it is important that the energy is not wasted in a time when this is a major concern which could prove disastrous from a PR standpoint.

About the Author

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