

## Is Biomass-Derived Electricity Coming Soon to a Town Near You?

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**By Bernadette M. Rappold | May 21, 2019 | The Legal Intelligencer**

Fifteen years ago, Pennsylvania adopted its Alternative Energy Portfolio Standard (AEPS), setting modest goals for investor-owned utilities and retail suppliers to include renewable power sources in their power supply mix. The goals are so modest – just 18 percent renewables by 2020-2021 (compared, for example, to neighboring Maryland’s goal of 25 percent by 2020 and New Jersey’s goal of 50 percent by 2030) – that it seems Pennsylvania utilities may have little trouble meeting the AEPS standard.

But in Pennsylvania and elsewhere, consumer demand for renewable power – along with a recent uptick in crude oil prices, abundant natural gas, and changing energy market dynamics – is driving a profound change in the nation’s electricity mix, with April 2019 marking the first time that the country derived more of its electric power from renewables than coal.

For now, hydropower and wind account for most of the nation’s renewables, with utility-scale solar in a distant third place. Biomass-derived electricity lags behind solar, but certain regulatory and marketplace changes may make it a bigger player in the future.

Although the EPA approved renewable electricity (i.e., biomass-derived electricity) under the federal Renewable Fuel Standard (RFS) in 2014 - see “Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Misfueling Mitigation Requirements,” 79 Fed.Reg. 42127 (July 18, 2014) - the agency has since failed to approve a single producer registration for renewable electricity. The EPA’s inaction is hampering growth in renewable electricity, just as the Intergovernmental Panel on Climate Change (IPCC) is raising the alarm that the world is less than two decades away from the deadline to act decisively to avert catastrophic climate change.

Enacted in 2005 with twin goals of bolstering the nation’s use of renewable fuels while increasing the nation’s energy independence and security, the RFS program (codified at 42 U.S.C. § 7545(o), with regulations at 40 CFR Part 80, subpart M) requires certain petroleum refiners and importers to blend an increasing percentage of renewable fuel, called the “Renewable Volume Obligation” (RVO), into their diesel and gasoline. Obligated parties can meet their RVOs through physical blending or through the purchase and retirement of Renewable Identification Numbers” (RINs), valuable renewable fuel credits traded on an electronic exchange.

But to generate RINs, renewable fuel producers must register with the EPA to utilize an approved renewable fuel pathway, which tracks the fuel from feedstock, through production process, to finished fuel and transportation use. Even for “ordinary” renewable fuels, like ethanol distilled from cornstarch, the EPA requires rigorous documentation of every link in that chain – in part to combat the widespread fraud that plagued the RFS program in its early years.

And therein lies the rub for renewable electricity. While fuel pathway tracking poses challenges for liquid fuels, it is even more difficult for renewable electricity, which takes no definite physical form and which is indistinguishable from its fossil-derived counterpart.

In approving renewable electricity in 2014, the EPA left many key questions unanswered: Who is the “producer” and RIN generator? Is it the entity that converts renewable biomass to electricity and uploads it to the grid? Or is it, for example, an electric vehicle (EV) manufacturer that can precisely meter how much electricity is used in transportation? What documentation is required? And how do participants prevent double-counting?

To address these questions, the agency proposed the renewables enhancement and growth support rule (REGS) rule in 2016, 81 Fed.Reg. 80828 (Nov. 16, 2016). But it languished until last month when the EPA announced on April 11 that it was reopening the comment period on certain flexible-fueling and confidential business information provisions in the new rule. This reopening suggests that the agency is prepared at last to finalize the rule.

In REGS, the agency specifically called for comments on the data requirements for renewable electricity, whether use of reasonable estimates of charging data will suffice, and who is to be designated as the “producer” for RIN generation. The agency received just 250 comments on the rule, with wide-ranging suggestions on virtually every aspect of renewable electricity. Subsequently, the agency has received several producer-specific pathway and registration petitions, and it is anyone’s guess how the agency will resolve the differences in a final rule, a rule certain to be challenged in the courts.

In the end, the marketplace, and not government, may wind up driving growth in renewable electricity to fuel the increasing number of EVs on the nation’s highways. Whether consumers will foot the bill for any increased costs – costs that RINs are meant to help defray – remains an open question.

Pennsylvanians will want to watch this space closely. The outcome of debate on these policy questions will likely produce an outsized impact on the energy mix in the Commonwealth, with its robust forests and agricultural sector auguring enhanced potential for biomass energy.

**About the Author:**

**Bernadette M. Rappold**, a shareholder at Greenberg Traurig, focuses her practice on federal and state regulatory issues related to energy and the environment.