**From:** McCullough, David, Eversheds Sutherland
**Sent:** Tuesday, June 14, 2022 9:49 AM
**Subject:** RSG Addendum Comments - Eversheds Sutherland

All,

Below are my initial comments on the NAESB RSG document.  Please let me know if I should submit this to a different individual or through a website.  Thank you, Dave

1. High Level Commentary on Substance
	1. We support the current way in which the document operates in terms of transferring RSG and environmental attributes rather than title to the RSG certificates (which is not workable for many types of Certificates).  We also like that the RSG Attestation provides support and substantiates that the contract quantity is tied to specific volumes of RSG.
2. High Level Commentary on Structure
	1. Structurally, while there are references throughout to the document being an “addendum,” at times the document appears modeled as special provisions to the NAESB rather than an addendum.  We have a preference for an addendum rather than special provisions as RSG special provisions could conflict with an individual company’s standard special provisions and cause confusion.  For instance, the provisions in Section 17 are potentially overly broad such that they don’t have much to do with RSG specifically and could conflict with existing special provisions.
3. Section 1.3 and the Transaction Confirmation reference “ECS.”
	1. ECS is not a defined term.  A definition is needed.
4. “Environmental Attributes” and “Environmental Attribute Certification”
	1. These are not defined terms, but they should be defined.
	2. We recommend that the definition of Environmental Attributes be tied to the air, water, community, etc. benefits stated on the Certificate.
5. Definition of “Responsibly Sourced Gas”
	1. We recommend that the definition incorporate the concept that because gas is fungible, the environmental attributes received will not be the ones associated with the physical gas molecules but will be those generated on RSG produced from the Facility.
6. Section 3.2 – Definition of “RSG Market Value”
	1. There is currently not a publication for RSG prices (and the market isn’t liquid in any event).  Therefore, it would be very difficult to determine market value under the current definition.  We recommend that each party be able to engage in price discovery using a sampling of recent transactions that they or others have entered into on arm’s length terms.
7. Section 16.1.1 – Disqualified RSG
	1. We don’t believe that the termination here should be an event of default as stated in the first sentence.
	2. Consider a mechanism to provide an option to replace Disqualified RSG.
8. Title Transfer
	1. The document should contain a specific statement around transfer of title to the environmental attributes to the buyer.  Currently it is implied because of the definition of RSG, but the group could consider making it more express.
9. RSG Attestation and Representations and Warranties
	1. We believe this should be issued by the Producer—not a midstream seller.  The Producer is in the best position to attest to the nature of the production of the RSG.
	2. It is unclear whether the statements in the attestation are intended to be representations and warranties.  We recommend that the Producer provide such representations and warranties to downstream purchasers to give the market certainty.
	3. The group could consider whether the Producer should indemnify downstream purchasers as third-party beneficiaries.
10. Section 16.1.2 – Further Assurances
	1. This section is potentially overbroad.  While it includes the condition “reasonably,” parties likely would not want to expend additional funds to ensure that that the producer is qualified, etc.  Additionally, there is already a provision regarding audits.  Consider revising to: “Each Party will provide the other Party ~~such~~ with commercially reasonable cooperation and ~~additional~~ documentation within the Party’s possession~~,~~ ~~certifications or other information as may be reasonably necessary to carry out the purposes of this RSG Addendum (including pursuant to any audit of this RSG Addendum and/or the RSG Transaction Confirmation by a third party) and~~ in order for title to vest in the Buyer for the conveyed Environmental Attributes associated with the purchase and sale of the RSG.”
11. RSG Confirmation (RSG Environmental Attributes)
	1. Consider revising the statements around environmental attributes in the Confirmation, such that the Environmental Attributes transferred are those stated in the Certificate.  This could avoid confusion and bifurcating of what makes “RSG” qualify as “RSG.”

Regards,
Dave