



22 June 2009

The Honorable Darrell Steinberg  
Senate President pro Tem  
California State Senate  
State Capitol – Room 205  
Sacramento, CA 95814

**RE: SB 722 – Oppose Unless Amended**

Dear Senator Steinberg,

The Renewable Energy Marketers Association (REMA) is pleased to offer the following comments with respect to SB 722 and our concern with this pending legislation.

REMA represents the collective interests of both for-profit and non-profit organizations that sell or promote renewable energy products through voluntary markets, including renewable electricity, renewable energy certificates (RECs), and on-site solar PV to individuals, companies, and institutions throughout North America. We are taking special interest in SB 722 as many of the customers of REMA rank among the Fortune 500, including several large employers in California, the leading colleges and universities in the country (many residing in California), and finally several military installations in California and elsewhere.

REMA unequivocally supports the development of legislation promoting renewable energy demand with verifiable and credible methods, and we applaud you for your leadership towards this common goal. We fully support the intent behind SB 722 to establish guidelines and policies that ensure the use of high-quality carbon offsets. However, we have particular concern that this legislation will have far-reaching and largely unanticipated negative consequences on the growing voluntary retail market for renewable energy and carbon offsets. As currently written, SB 722 will effectively deny California electricity customers the ability to make meaningful voluntary purchases to mitigate their carbon footprint. In 2008, REMA expressed these same concerns over SB 1762 in letters and conversations with you and Senator Perata's office.<sup>1</sup> We look forward to working with you Senator Steinberg to further improve SB 722.

As it relates to your bill and the REMA position, you may have seen the just released *State of the Voluntary Carbon Market 2009*<sup>2</sup> which reports that Third-party verification increased in the voluntary offset market. At least 96% of credits were third-party verified in 2008. The distribution of these credits among the leading certification programs was as follows: Voluntary Carbon Standard (48%), Gold

---

<sup>1</sup> Please see REMA's letters to Senator Perata (August 1, 2008) and Mr. Kipper (June 11, 2008)

<sup>2</sup> Report available at <http://www.ecosystemmarketplace.com/>

[www.RenewableMarketers.org](http://www.RenewableMarketers.org)

Managed by SmartPower: 1120 Connecticut Avenue, NW Suite 1040, Washington, DC 20036

3Degrees • Bonneville Environmental Foundation • Community Energy • Conservation Services Group  
Constellation NewEnergy • FPL Energy Power Marketing • Green Mountain Energy  
Renewable Choice Energy • SmartPower • Sterling Planet • SunEdison  
SunPower • Washington Gas Energy Services

Standard (12%) and the Climate Action Reserve (10%). While California's Climate Action Reserve is a highly credible program it currently serves just a fraction of the voluntary carbon market. Thus SB 722 will simply serve to limit consumer choice in the offset market rather than protect consumers.

***The Voluntary Market for Renewable Energy is Significant***

Last year, more individual and corporate customers chose to purchase renewable energy for their homes and businesses than ever before. Collectively, these "voluntary" customers accounted for 50% of all the new renewable energy purchased in the United States, directing millions of dollars into new clean energy projects and forging a path to the much needed diversified and clean energy future. This voluntary market for green power is thriving, growing between 40-60% in each of the last several years. This type of growth is not found in many other industries in today's struggling economy.

According to the National Renewable Energy Laboratory (NREL), there are some 55 marketers actively selling to small and large customers, and a dozen environmental brokers that facilitate REC transactions between buyers and sellers across the U.S. These providers are in addition to utilities that sell renewable electricity differentiated from standard electricity. Presently, there are nine utility voluntary renewable energy programs within the state of California.<sup>3</sup> Of these programs, five rank in the Top 10 for one or more categories nationwide according to NREL. There are also thousands of photovoltaic (PV) providers in the U.S. who sell PV systems and associated RECs directly to end-use customers.

The market for green power (renewable electricity and RECs sold independently of electricity) is strong and growing. In 2006, U.S. consumers made voluntary purchases of renewable energy totaling about 11.9 million MWh, and 2007 purchases totaled about 18.1 million MWh, threefold increase from three years earlier. The voluntary market grew by 37% in 2005, 41% in 2006, and 53% in 2007. The market value of these sales in 2007 is estimated to be between \$85 million and \$125 million.

Estimates from the National Renewable Energy Laboratory and the Union of Concerned Scientists also show that voluntary renewable energy demand is roughly equal to combined state RES requirements for new renewable generation. In short, voluntary purchases are driving as much new renewable energy as that mandated by compliance markets today. These findings suggest that the voluntary market for renewable energy is much more significant than most people believe.

Not everyone wants or has access to a utility-sponsored voluntary renewable energy option; many customers choose to purchase renewable power outside the utility offerings. This is particularly true for large customers. There is a large voluntary market for RECs unbundled from electricity and for on-site customer-owned renewable power driven by a commitment to renewable power development and a commitment to greenhouse gas (GHG) reduction. In this regard, many businesses and an unknown number of residential consumers buy RECs separate from electricity, or invest in on-site renewable power. California has more corporate customers of voluntary renewable energy enrolled in the U.S. EPA Green Power Partnership than any other state with the exception of Texas. Of the approximately 950 organizations that participate in the EPA's Green Power Partnership, the California-based Partners represent 113 organizations or 11.9%. (See Appendix A for examples of California-based green power purchasers.)

As SB 722 states in Section 1 Division 25.7 b, there has clearly been an increase in "advertising, sale, and transfer" of emission reduction credits. Furthermore, we sincerely agree that there should be a movement towards standards and objective measures to ensure that the purchase of credits actually results in fewer

---

<sup>3</sup> These are Anaheim Public Utilities, Burbank Water and Power, Los Angeles Department of Water and Power, PacifiCorp (Pacific Power), Palo Alto Utilities, Pasadena Water & Power, Roseville Electric, Sacramento Municipal Utility District, and Silicon Valley Power.

emissions and a cleaner environment. The voluntary renewable energy market leads all other voluntary markets in use of industry standards. Approximately 75% of voluntary renewable sales are certified and verified by Green-e Energy, an independent certification and consumer protection program operated by the non-profit Center for Resource Solutions since 1997.

While we maintain the same principles behind the intent of this bill, we believe SB 722 is likely to seriously curtail the market for renewable energy certificates and carbon offsets within California and in doing so undermine the state's own climate change mitigation goals. Given the existing and functioning voluntary market in California, we have several strong concerns with SB 722. We have outlined our concerns below, along with suggestions for how the bill can be improved.

### ***SB 722 Has the Unintended Effect of Shutting Down the Voluntary Green Power Market in California***

While the voluntary renewable energy market is not the primary target of SB 722, it is unfortunately a direct victim of the bill's far reaching negative effects. We hope this was not the intention of SB 722, yet, left unchanged, the bill would certainly eliminate the voluntary green power market in California and the hundreds of associated jobs.

A primary motivation for voluntary renewable energy purchases is to reduce the buyer's greenhouse gas footprint. Under SB 722, the ability to market this benefit—the ability of individuals, companies, government entities and non-profits to reduce electric sector GHG emissions—would be prohibited and the benefit likely eliminated. SB 722 is ambiguous regarding the treatment of renewable energy certificates the most vibrant area of today's voluntary market, and it limits emission reduction credits to those that meet at least one of the following requirements:

1. The offset is approved by the State Air Resources Board (CARB)
2. The offset complies with the protocols adopted by the California Climate Action Registry (CCAR)
3. The company selling the reduction credit discloses that the offset meets a number of conditions, including that it is verifiable and enforceable by a state, regional or local agency within the State of California.

Renewable energy certificates do not fall into any of the above three categories. Unless the bill is amended to recognize RECs as legitimate emission reductions, the largest and most well organized segment of the voluntary renewable energy market will be shut down at the expense of the consumer and the environment. If this bill is passed, businesses and consumers in California will no longer be able to purchase renewable energy products to make claims regarding offsetting their electricity emissions with renewables. This would practically eliminate the entire green power market in California, a long time leader in this vibrant voluntary market.

### ***Implementation Will Stifle the Voluntary Carbon Offset Market***

As you know, SB 722 is designed to take effect on January 1, 2011. However, the California Air Resources Board (CARB) has not sufficiently addressed the use of carbon offsets and CCAR is only in the early stages of developing protocols to complement those already existing in the market. Unfortunately, SB 722 doesn't offer guidance or a timeline to CARB, CCAR, or voluntary market participants on how to accommodate the review, vetting, and approval of all the protocols that would be necessary. The probable result is that when the bill takes effect, CARB and CCAR will not have the protocols developed to match the consumer protection and guidelines already offered by existing voluntary offset standards. As it is currently written, the bill limits consumer protection and restricts consumer choice. REMA members are supportive members of CCAR, using CCAR protocols for several

offset projects. But given the limited scope of offset protocols currently offered by CCAR, our business serving customers with high quality offsets would be seriously harmed by restricting customer choice.

***SB 722 Ignores Strong Voluntary Offset Standards That Already Exist and Serve to Protect Consumers***

By limiting the definition of an eligible offset for CARB and CCAR approved protocols SB 722 denies the majority of high-quality, internationally accepted standards such as the Gold Standard, Voluntary Carbon Standard (VCS), and Green-e Climate Standard for California consumers. These proven standards ensure offsets are real, additional, permanent, and verified. The Green-e Energy Standard for green power ensures that RECs and other renewable energy products are new, additional to RPS requirements, sourced from eligible renewable facilities, and are not sold more than once.

REMA is concerned that this bill, intended to protect consumers in the offset market, may have the ironic effect of harming consumer interests by virtually eliminating the voluntary offset and renewable energy market for California consumers. It could be years before offset standards and REC standards are approved, all at a time when California needs clean, renewable energy more than ever as it embarks on a bold new journey to mitigate climate change.

***SB 722 Legislative Language Presents Unnecessary Legal Risks and Unreasonable Environmental Hurdles for Green Power and Carbon Offset Market***

We find that the legislative language, as currently constructed (section 38703) constitutes a counterproductive hurdle for any offset project developers or renewable energy project. The far-reaching nature of this language exposes virtually all offset and renewable energy project activity to legal challenge, despite the generally accepted safeguards in use by project developers today. Existing offset and REC protocols (like Gold Standard, VCS, and Green-e) address and provide safeguards for these important economic and environmental concerns, without promoting unnecessary legal challenges.

As written, with key language open to interpretation and the creation of civil causes of action that may be brought by private parties, the bill will generate a great deal of unnecessary, spurious and unproductive litigation. And the fear of this will motivate many California companies not to make voluntary offset and renewable energy commitments. Over time, this will lead to California becoming a laggard rather than a leader in the voluntary renewable energy market, resulting in many missed opportunities to achieve meaningful emissions reductions when we most need them.

***Given REMA and Others' Concerns, We Suggest SB 722 Should:***

1. Recognize and legitimize a well-established and EPA-sanctioned product – the Renewable Energy Credit (REC) – to enhance the development of clean, renewable energy at a critical juncture in the energy portfolio needs of California and the rest of the country. The bill should endorse the sale of RECs and renewable energy products with their associated GHG emission reduction claims.
2. The bill should adopt strong existing standards that have been proven to have a high degree of environmental and stakeholder credibility in the market. REMA proposes that this legislation be revised to incorporate a list of accepted standards that can be periodically reviewed and modified by CARB, rather than putting the whole voluntary market in “standards limbo.” Furthermore, regulators should establish a process by which standards are periodically reviewed, updated, and added to the

approved list. The bill can also clearly identify approved standards for renewable energy certificates used to offset electricity-related GHG emissions that also exist in the market.

3. The bill should eliminate legislative language that generates specious and unproductive litigation, which has the potential to slow the development of meaningful emission reduction projects.

### ***Conclusions***

REMA, along with many other stakeholders, has proposed specific amendments that would clarify and strengthen SB 722. These suggestions could result in meaningful changes in the language of the bill. We are ready to work with Senator Steinberg on legislation that actually protects consumers. Unless SB 722 is amended, as it is currently written, we must state our opposition to this legislation.

REMA wholeheartedly believes consumer protection is a vital component of the voluntary market. Customers must have full faith that their purchases lead to incremental renewable energy production and meaningful reductions in carbon dioxide emissions from offsets. We believe it is essential to encourage individuals and organizations to make meaningful choices about their electricity supply by endorsing the sale of RECs in a voluntary market, and in doing so help support the transition to a cleaner energy future.

We look forward to continuing to work together with you and other leaders with whom we share many of the same goals on consumer and environmental protection. Thank you for listening to our concerns.

Respectfully Submitted,



Gabe Petlin, REMA President  
Director, Regulatory Affairs & Carbon Markets  
3Degrees  
[gpelin@3degreesinc.com](mailto:gpelin@3degreesinc.com)  
(415) 595-1679



Jonathan Edwards, REMA Director  
Vice President  
SmartPower  
[jedwards@smartpower.org](mailto:jedwards@smartpower.org)  
(202) 775-2040

*The views expressed by REMA in this regulatory filing do not necessarily represent the views of each individual member company.*

CC: Kip Lipper, Advisor to pro Tem Darrell Steinberg  
Speaker of the Assembly Karen Bass  
Gabrielle Zeps, Advisor to Assembly Speaker Karen Bass  
Senator Alex Padilla, Chair, Energy, Utilities & Communications Committee  
Assembly Member Felipe Fuentes, Chair, Utilities and Commerce Committee  
Assembly Member Nancy Skinner, Chair, Natural Resources Committee  
Senator Fran Pavley, Chair, Natural Resources and Water Committee  
Senator Joe Simitian, Chair, Environmental Quality Committee  
Assembly Member Paul Krekorian, Chair, Select Committee on Renewable Energy  
Senator Christine Kehoe, Chair, Appropriations Committee  
Assembly Member Kevin de León, Chair, Appropriations Committee