

September 18, 2009

Chairman Jeff Bingaman
Senate Committee on Energy and Natural Resources
Attention: Leon Lowery
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Bingaman,

The historic House passage of H.R. 2454, the American Clean Energy and Security Act (ACESA), was an important step toward a long-term clean energy policy to strengthen our energy security, mitigate climate change, and revive our economy. That said we have concerns that, unless certain modifications are made to the renewable electricity standard (RES) and cap-and-trade provisions of these bills, it could inadvertently undercut the thriving voluntary renewable energy market which serves to complement RES policies.

The Senate RES and the RES provisions of ACESA should be amended to 1) expressly prohibit voluntary renewable purchases by end-use customers to be simultaneously claimed by another party to satisfy RES compliance and 2) clarify federal renewable energy certificate (FREC) ownership for contracts involving unbundled RECs created prior to enactment. Without these simple non-controversial changes, individual and business purchases of renewable power will no longer be additive and serious consumer protection issues will arise.

We note that the undersigned organizations support strong energy sector measures to bolster clean energy development, in particular bold renewable portfolio standards. Moreover it is an essential principle that double counting of claims be disallowed. Either a voluntary or a compliance claim can be made for each MWh of clean energy sold, not both.

Currently, many organizations, households, government agencies, farms, other businesses, and houses of worship voluntarily purchase “green power”—renewable electricity or renewable energy certificates (RECs)—or install on-site renewable electricity generation like solar as part of their commitment to reducing their global warming footprint. The voluntary market has been an important driver of clean energy development across the United States, responsible for millions of dollars in new investment. The voluntary market grew by 62% in 2004, 37% in 2005, 41% in 2006, and 53% in 2007.

According to the National Renewable Energy Laboratory (NREL) voluntary demand for renewable energy exceeded the combined state renewable electricity standard requirements for new renewable generation in 2007, as demonstrated

by NREL data showing that voluntary purchases in 2007 totaled an estimated 18.1 million MWh.¹ If the voluntary market continues to grow at an annual rate of 40% (based on recent experience), it will reach nearly 50 million MWh by 2010. Based on the current emission rates derived from US EPA e-Grid data, 50 million MWh of additional renewable generation would result in a reduction of 39 million metric tons of CO₂.

To prevent double counting, ownership of and rights to Federal RECs should be clear. When a renewable generator has sold electricity and/or renewable energy credits, certificates or attributes associated with such generation under a contract that was entered into before the date of enactment of the federal RES, ownership of the Federal renewable electricity credits associated with such generation should vest in the party that purchased the renewable energy certificates. It's as simple as saying if a party bought a REC prior to ACESA being law they bought the rights to the FREC as well. This clarification of ownership rights to federal RECs will provide essential market certainty necessary to maintain a thriving voluntary renewable energy market.

Once the RES becomes law, contracting parties will know they must address ownership of the federal RECs, but contracts entered into prior to the date of enactment may be subject to double claims because of the wording of the RES bill. We believe that the simple clarification of ownership rights to federal RECs does not impose any undue burden upon the Federal Energy Regulatory Commission and will serve to prevent one party from claiming FRECs rightfully purchased by another party.

Unless addressed this issue would not only seriously undercut voluntary green power marketers, but could also compromise the standard's fundamental goal of increasing renewable energy deployment, since voluntary purchases have been major drivers of such growth.

The undersigned organizations look forward to working with you to achieve our mutual goals of exponentially increasing the amount of renewable energy across the country.

Thank you for consideration of our views.

Sincerely,

¹ Bird, Lori, Claire Kreycik, and Barry Friedman. "Green Power Marketing in the United States: A Status Report (11th Edition), National Renewable Energy Laboratory. October 2008: NREL/TP-6A2-44094. <http://www.nrel.gov/docs/fy09osti/44094.pdf>

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