



**Comments of the Renewable Energy Marketers Association:
The American Clean Energy Leadership Act:
Clean Energy Technology Deployment**

September 18, 2009

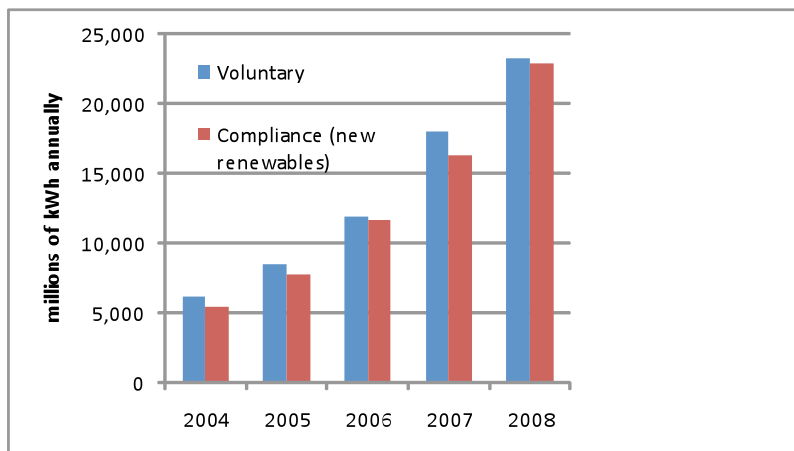
Organizational Summary

The Renewable Energy Marketers Association (REMA) is pleased to offer the following comments with respect to the treatment of the voluntary renewable energy market under the federal Renewable Electricity Standard (RES) proposed in the American Clean Energy Leadership Act. REMA's policy recommendations will maximize the continued growth of renewable energy markets by maintaining the ability of voluntary renewable energy purchases by end-use customers to create renewable energy capacity that exceeds what mandatory markets contribute alone.

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.

Title I – Clean Energy Technology Deployment

As Congress considers a national RES, REMA would like to draw attention to the important role played by voluntary renewable energy markets in encouraging the deployment of new renewable energy systems, as demonstrated in the Figure below. This market could be undercut if the national RES does not recognize the important and vibrant voluntary market.



Source: National Renewable Energy Laboratory, Green Power Markets in the United States: A Status Report (12th Edition). September 2009.

Currently, one million businesses, households, government agencies, farms, and other organizations purchase “green power”— renewable electricity or renewable energy certificates (RECs) — or install distributed renewable electricity generation as part of their voluntary commitment to reduce their electricity-related carbon footprint and help develop nationwide renewable energy capacity that exceeds what mandatory markets contribute alone. According to the U.S. Department of Energy National Renewable Energy Laboratory (NREL) retail sales of renewable energy in voluntary purchase markets totaled 24 billion kilowatt-hours (kWh) in 2008, or 0.6% of total U.S. electricity sales. Green power sales (in kWh) increased by 34% in 2008, with annual growth rates averaging 32% since 2004. The market value of these sales in 2008 is estimated to be between \$110 million and \$190 million.

Estimates from NREL and the Union of Concerned Scientists also show that voluntary renewable energy demand is slightly greater than the current 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.

To enable voluntary renewable markets to credibly function and add value, one simple principle should be upheld: either a voluntary or a compliance claim can be made for each MWh of clean energy sold, not both. Customers choose to purchase renewable energy believing that their purchase creates demand that is additional to renewable mandates.

To ensure that a voluntary market for renewable energy continues to be supported under a federal RES, REMA has several objectives:

- Prevent double-counting of voluntary purchases and mandated renewable energy
- Encourage competitive, liquid markets for renewable energy credits
- Build on what states have already done to foster renewable energy markets

To these ends, REMA recommends the following in any federal RES legislation:

1. Voluntary demand for renewable electricity or RECs should not be counted towards a federal requirement.
2. All RECs should be fully tradable separate from electricity.
3. Ownership and rights to federal RECs should be clear.
4. A Federal REC should be retired for every REC used to satisfy a state RES or to supply a voluntary renewable energy product.
5. A federal RES should rely on integration of existing REC tracking systems.

To prevent double counting, ownership of and rights to Federal RECs should be clear.

The proposed federal RES creates a new instrument called a Federal REC. 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 RECs associated with such generation should vest in the party that purchased the renewable energy credits. 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. In recent years REC purchasers have signed agreements in the belief that they are contracting for the exclusive ownership and rights to all attributes, credits and certificates, but the bill creates uncertainty, as it is now written, because it creates a new commodity that is separately tradable from the RECs already in circulation.

The ACELA addresses one of several possible contractual situations, where power purchase agreements are silent about REC ownership. Presumably this language was drafted because of the contention over RECs not assigned in PURPA contracts.

By addressing only one possible situation, the bill may actually (but unintentionally) create uncertainty about the ownership rights to Federal RECs in the other contractual situations. This could result in litigation between the parties undermine the credibility of REC markets.

Clarification of this issue will serve to prevent one party from claiming federal RECs 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.

Therefore, the proposed federal RES legislation would benefit from language that addresses the ownership of federal RECs associated with REC contracts that were entered into prior to enactment of federal RES statutes.

Current Senate ACELA text:

“(G) ensure that, with respect to a purchaser that, as of the date of enactment of this section, has a purchase agreement from a renewable energy facility placed in service, before that date, the credit associated the generation of renewable energy under the contract is issued to the purchaser of the electric energy to the extent that the contract does not already provide for the allocation of the Federal credit.”

REMA recommends the following modification to the language in the proposed Senate bill at subparagraph (c)(2)(G):

SANCTITY OF CONTRACT: CERTAIN PURPA POWER SALES CONTRACTS—

(i) When a generator has sold renewable electricity to a retail electric supplier under a contract entered into pursuant to Section 210 of the Public Utility Regulatory Policy Act of 1978 for power from a facility placed in service before the date of enactment of this section, and the contract does not provide for the determination of ownership of the Federal renewable electricity credits associated with such generation, the Secretary shall issue such Federal renewable electricity credits to the retail electric supplier for the duration of the contract.

(ii) Notwithstanding provision (i) of this subparagraph, for all contracts, regardless of whether the contract was entered into pursuant to Section 210 of the Public Utility Regulatory Policy Act of 1978, entered into prior to the date of enactment of this statute for the sale of renewable electricity and/or the aspects, claims, attributes, characteristics or benefits associated with the renewable nature of electricity generated, other than the physical electricity itself (hereinafter “Renewable Attributes”), that pursuant to their terms transfer the Renewable Attributes, the Federal renewable electricity credits associated with such generation shall transfer to the party contracted to take ownership of such Renewable

Attributes. If a party has explicitly contracted for the ownership of the Federal renewable electricity credit separately from the Renewable Attributes, the party which has explicitly contracted for ownership of the Federal renewable electricity credit shall maintain ownership of the Federal renewable electricity credits.

Do No Harm Language for the Voluntary Renewable Market

REMA encourages the inclusion of language in the appropriate place that clearly states Congress' intent to 'do no harm' to the voluntary renewable energy market and recognizes the scope and size of the voluntary market.

No provision of this Act is intended to interfere or prevent the continued growth and operation of the voluntary retail renewable energy market. Currently, over one million businesses, households, government agencies, farms, and other organizations purchase "green power"—renewable electricity or renewable energy certificates (RECs) — or install distributed renewable electricity generation as part of their voluntary commitment to reduce their electricity-related carbon footprint and help develop nationwide renewable energy capacity that exceeds what mandatory markets contribute alone. According to the U.S. Department of Energy National Renewable Energy Laboratory retail sales of renewable energy in voluntary purchase markets totaled 24 billion kilowatt-hours (kWh) in 2008, or 0.6% of total U.S. electricity sales. Green power sales (in kWh) increased by 34% in 2008, with annual growth rates averaging 32% since 2004.

Source: National Renewable Energy Laboratory, Green Power Markets in the United States: A Status Report (12th Edition). September 2009

Conclusion

REMA values the increased support for renewable energy development that a federal RES would provide. In adopting a federal RES, however, it is essential not to harm the existing and thriving voluntary renewable markets that deliver additional new renewable energy over and above what mandates deliver while lowering the cost to society of increasing clean energy deployment. Voluntary renewable energy markets offer citizens and businesses the power of choice—a fundamental value in our society – and leverage market forces to encourage clean energy technology innovation and improvement. We believe it is essential to encourage individuals and organizations to make meaningful choices about their electricity supply, and in so doing, to help address climate change, stimulate economic development, increase energy security, and support the transition to a cleaner energy future.

Respectfully Submitted,



Gabe Petlin, REMA President
Director, Regulatory Affairs & Carbon Markets
3Degrees
gpetlin@3degreesinc.com
(415) 595-1679



Jonathan Edwards, REMA Director
Vice President
SmartPower
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.

Appendix: State RES Language On Preventing Double Counting Between Voluntary Renewable Energy Markets and Compliance Markets

(underlining added for emphasis)

California

Reference: California Public Utilities Code, Section 399.16.

(2) A renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.

Colorado

Reference: 4 Code of Colorado Regulations 723-3-3659

(h) RECs shall be used for a single purpose only, and shall expire or be retired upon use for that purpose. All RECs utilized by the QRU to comply with the renewable energy standard:

- (I) May not be sold or otherwise exchanged with any other party, or in any other state or jurisdiction;
- (II) May not be included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction;
- (III) May be counted simultaneously toward compliance with a federal renewable portfolio standard and with the Renewable Energy Standard.

District of Columbia

Reference: DC PSC Chapter 29 Renewable Energy Portfolio Standard, Section 2901.1

An Electricity Supplier shall meet the Renewable Energy Portfolio Standard requirement by obtaining Renewable Energy Credits (“REC”) that equal the annual percentage requirement for electricity sold at retail or by paying the specified compliance fee. An Electricity Supplier shall not apply any surplus Renewable Energy Credits derived from voluntary purchases of energy from qualified renewable sources toward its mandatory compliance requirements.

Maine

Reference: Chapter 311 Section 5.C.

Customer Representation. If a competitive electricity provider represents to a customer that the provider is selling to the customer a portfolio of supply sources that includes more eligible or new renewable resources than is required by this Chapter, the resources used to supply the customers’ load may not be used to meet the aggregate requirements of this Chapter.

Massachusetts

Reference: 225 CMR 14.08

(1) Standard Compliance... A Retail Electricity Supplier shall demonstrate to the satisfaction of the Department that RPS Class I Renewable Generation Attributes used for compliance have not otherwise been, nor will be, sold, retired, claimed, used or represented as part of electrical energy or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

Minnesota

Reference: Minnesota PUC, Order of Aug. 13, 2004.

In meeting their renewable energy objectives, utilities shall not include generation purchased under green pricing programs established under Minn. Stat. § 169.

Montana

Reference: 69 Montana Code Annotated Ch. 3, Part 2004.

(7)(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210 (2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

Nevada

Reference: NAC 704.8879

4. If, to comply with its portfolio standard during the most recently completed compliance year, the provider acquired any kilowatt-hours from a renewable energy system that is not owned, operated or controlled by the provider, the annual report must include an attestation from the owner or operator of the renewable energy system that the energy represented by those kilowatt-hours:

(a) Has not been and will not be sold or otherwise exchanged for compensation or used for credit in any other state or jurisdiction; and

(b) Has not been and will not be included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction.

New Hampshire

Reference: New Hampshire Statutes Chapter 362-F:7

I. A certificate may be sold or otherwise exchanged by the source to which it was initially issued or by any other person or entity that acquires the certificate. A certificate may only be used once for compliance with the requirements of this chapter. It may not be used for compliance with this chapter if it has been or will be used for compliance with any similar requirements of another non-federal jurisdiction, or otherwise sold, retired, claimed, or represented as part of any other electrical energy output or sale.

New Jersey

Reference: New Jersey Administrative Code § 14:8-2.3.

(i) The same renewable energy shall not be used for more than one of the following:

1. Creation of a solar REC under N.J.A.C. 14:8-2.9;
2. Creation of a REC under N.J.A.C. 14:8-2.8 or 2.9; or
3. Creation of a REC, or of any other type of attribute or credit, under authority other than N.J.A.C. 14:8-2.9 such as another state's renewable energy standards or any voluntary clean electricity market or voluntary clean electricity program.”

New Mexico

Reference: New Mexico Administrative Code 17.9.572.10

A. Each public utility must develop a reasonable cost renewable energy portfolio. In developing its renewable energy portfolio, a public utility shall take into consideration the potential for environmental and economic benefits to New Mexico. Renewable energy resources that are in a public utility's electric energy supply portfolio on July 1, 2004 shall be counted in determining compliance with this rule. However, renewable energy sold to customers through a premium-priced renewable energy tariff shall not be counted in determining compliance with this rule.

New York

Reference: NYSERDA RFP 1037 2006

In no event shall the RPS Attributes of the generation associated with a contract with NYSERDA under this RFP be assigned by Seller to any entity other than NYSERDA. Any

assignment or application by Seller of the RPS Attributes associates with a contract with NYSEERDA to any other entity, program, or jurisdiction, whether associated with a publicly administered program or a voluntary transaction, is strictly prohibited by, and will constitute a default under, the RPS Standard Form Contract.

North Carolina

Reference: N.C. Gen. Stat. § 62-133.7.

(i) Adoption of Rules. – The Commission shall adopt rules to implement the provisions of this section. In developing rules, the Commission shall:

- (3) Ensure that energy credited toward compliance with the provisions of this section not be credited toward any other purpose, including another renewable energy portfolio standard or voluntary renewable energy purchase program in this State or any other state.

Oregon

Reference: ORS Chapter 469A.205

(2) Any qualifying electricity procured by an electric utility to provide electricity under a green power rate under subsection (1) of this section or ORS 757.603 (2)(a) may not be used by the utility to comply with the requirements of a renewable portfolio standard.

Pennsylvania

Reference: 73 P.S. § 1648.4.

If an electric distribution supplier or electric generation company provider sells electricity in any other state and is subject to renewable energy portfolio requirements in that state, they shall list any such requirement and shall indicate how it satisfied those renewable energy portfolio requirements. To prevent double-counting, the electric distribution supplier or electric generation company shall not satisfy Pennsylvania's alternative energy portfolio requirements using alternative energy used to satisfy another state's portfolio requirements or alternative energy credits already purchased by individuals, businesses or government bodies that do not have a compliance obligation under this act unless the individual, business or government body sells those credits to the electric distribution company or electric generation supplier.

Texas

Reference: Texas Utilities Code § 39.904

(m) A renewable energy credit retired for purposes other than to meet the requirements of this Subsection (c)(1) may not affect the minimum annual renewable energy requirements under Subsection (c)(1) for a retail electric provider, municipally owned utility or electric cooperative.

Washington

Reference: RCW 19.285.040

(f) In complying with the targets established in (a) of this subsection, a qualifying utility may not count:

- (i) Eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity; or
- (ii) Eligible renewable resources or renewable energy credits obtained for and used in an optional pricing program such as the program established in RCW 19.29A.090.