

# TRADABLE RENEWABLE CERTIFICATES AND EMISSIONS VALUES: THE CRS PERSPECTIVE ON BEST PRACTICES IN MARKETING

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## BACKGROUND

The Center for Resource Solutions (CRS), a non-profit organization, brings together diverse interests to implement practical resource solutions. Our national and international programs promote clean and efficient energy use, encourage sustainable economic growth, and help preserve the environment for present and future generations. [www.resource-solutions.org](http://www.resource-solutions.org)

## SUMMARY

The concurrent development of markets for emissions credits and tradable renewable certificates<sup>1</sup> (TRCs), [also known as renewable energy credits, RECs or green tags] –has created questions about the interplay of the two markets. These questions are of particular importance as 1) federal and state regulators consider expanding cap-and-trade regimes to monitor more pollutants; 2) renewable energy markets continue to grow; 3) regional TRC tracking systems are developed; and 4) select market participants express a wish to “disaggregate” emissions values from TRCs<sup>2</sup> and continue to use the TRC as a retail product. The Center for Resource Solutions (CRS) offers this summary of best practices in treating the emissions values associated with a unit of renewable energy generation. The disaggregation issues outlined below are the same for bundled renewable electricity (electricity plus TRCs) as for TRCs alone.

## WHEN THE EMISSIONS COMPONENTS OF A TRC ARE DISAGGREGATED, THE TRC IS RETIRED (HAS BEEN USED)

Some market participants may wish to disaggregate the various emissions values of a TRC and sell the resulting emissions attributes in various component pieces, such as the avoided NO<sub>x</sub>, SO<sub>x</sub>, and/or carbon values. **CRS supports this concept, so long as the disaggregation of the TRC marks the retirement (final use) of the TRC.** To make an analogy, the owner of a car may choose to sell the car, or disassemble the car and sell its parts, but cannot sell off the parts and then sell the remaining shell as a “car.” Likewise, one cannot sell the disaggregated emissions values of a TRC and also sell the TRC. Once one or more components of a TRC have been disaggregated, by definition the remaining parts cease to be a TRC. We believe this policy interpretation is consistent with the best practices

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<sup>1</sup> Tradable Renewable Certificates (TRCs) are tradable units that represent the commodity formed by unbundling the non-energy (environmental, social, and other) attributes of a unit of renewable energy from the underlying electricity.

<sup>2</sup> A TRC represents more than the environmental benefits of renewables; it is the sum of all the benefits of renewable energy, collectively known as attributes, even though markets for these attributes do not currently exist. Individual attributes may be disaggregated from the bundle, or the TRC, and sold separately. For the purposes of this paper we are considering only the environmental attributes associated with displacing energy on the grid, and not other attributes or issues related to energy production such as water rights, land rights, etc.

guidelines provided by the National Association of Attorneys General<sup>3</sup> and the Federal Trade Commission<sup>4</sup>.

TRCs are primarily used for compliance with state Renewable Portfolio Standards<sup>5</sup>. Some state RPS laws and policies reference emissions values as being a requisite part of the TRC. For example, the California Public Utilities Commission, in its order, wrote:

*“We have concerns about ‘disaggregating’ a REC, particularly at this stage. Utilities that procure renewable energy and associated environmental attributes must procure the attributes necessary to satisfy their requirements under the RPS program. A utility that in good faith purchases energy and environmental attributes should not later find out that the developer had sold to some other purchaser the attributes necessary for RPS compliance, leaving the utility in a potentially non-compliant position. Utilities need to know in advance that what they are buying will meet the requirements of the RPS program.”*<sup>6</sup>

Some state policies, including Massachusetts’ Renewable Energy Portfolio Standard Regulations, 225 CMR 14.00, specifically state that the emissions values associated with the unit of renewable electricity generation must remain bundled with the TRC in order to meet the definition of a TRC. Where such policies are in place, the sale of emissions attributes from a TRC and the use of the same TRC for RPS compliance would be prohibited and considered double counting. Separate sale of an emission value captured in a TRC would require the concurrent retirement of the TRC.

In some states that have RPS laws, the laws and policies may not be specific enough in their definitions to prohibit the sale of disaggregated emissions attributes. Because of this lack of clarity on the use of TRCs for regulatory compliance and because TRCs are a relatively new commodity, specificity on the use of disaggregated TRCs may have been overlooked during past regulatory rulemaking. Disaggregation of TRCs may not conform to the intent of the law even if it is not spelled out in the letter of the law. CRS recognizes that some state laws and policies may allow for disaggregation of attributes from a TRC for simultaneous use for different voluntary or regulatory purposes. In that case, the emissions attributes may be sold and the TRC used for another purpose such as RPS compliance. These TRCs would not qualify for Green-e certification, and should not be available for other voluntary renewable energy programs, including green pricing programs and other retail sales, or other states’ RPS programs where all attributes are required.

Since TRC markets are in their infancy, most states, do not have a specific policy on the disaggregation of TRCs and their associated emissions values. However, CRS believes that a

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<sup>3</sup> NAAG Environmental Marketing Guidelines for Electricity can be found at [http://www.naag.org/issues/pdf/Green\\_Marketing\\_guidelines.pdf](http://www.naag.org/issues/pdf/Green_Marketing_guidelines.pdf)

<sup>4</sup> FTC Guides for the Use of Environmental Marketing Claims <http://www.ftc.gov/bcp/gmrule/guides980427.htm>

<sup>5</sup> Renewables Portfolio Standards (RPS) require that a certain percentage of a utility's overall or new generating capacity or energy sales must be derived from renewable resources, *i.e.*, 1% of electric sales must be from renewable energy in the year 200x. Source: [www.dsireusa.org](http://www.dsireusa.org)

<sup>6</sup> [http://www.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/27360.htm](http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm)

lack of specific policy is not a tacit endorsement of allowing the double sale of a TRC and its associated components separately. Where definitions are not in place, CRS' concern is that selling disaggregated emissions attributes compromises the credibility of regional, national, and international TRC markets.

## THE AGGREGATED APPROACH IS BETTER FOR THE TRC AND RENEWABLE ENERGY MARKETPLACE

Some may argue that the sale of disaggregated TRCs should be allowed so long as the seller provides adequate disclosure. CRS questions whether sufficient levels of disclosure exist in this nascent market to adequately inform customers of what a disaggregated TRC represents. The strict CRS/Green-e policy disallowing disaggregated TRCs was developed by conferring with dozens of renewable energy experts<sup>7</sup>, most of whom support the notion that when TRCs are disaggregated, they cease to be TRCs. CRS and these stakeholders agreed that disaggregation creates confusion in the marketplace and increases the potential for fraud. The confusion in the marketplace would be caused by the relatively low level of consumer understanding of the intersection between TRCs and emissions values. The potential for fraud is due to the current status of emissions credit tracking systems and the lack of TRC tracking systems in all regions of the country. (See CRS Issue Brief, “The Need for Green-e Certification and Verification In an Era of Renewable Energy Tracking Systems.”)

### *The Downside of Selling Emissions Values Separately*

Selling emissions credits associated with a TRC begs the question of what types of marketing claims can be made about a TRC when its emissions values are sold separately. CRS believes that it is deceptive to market TRCs that have their emissions values removed as “green” or “environmentally friendly” power. The National Association of Attorneys General (NAAG) Environmental Marketing Guidelines for Electricity<sup>8</sup> address the issue of the limited environmental claims that can be made in this case, and questions whether adequate levels of disclosure can be made to protect consumers. The NAAG Guidelines state, “An environmental marketing claim should not be presented in a manner that overstates the environmental attribute or benefit, expressly or by implication.” The FTC concurs that “it is deceptive to misrepresent, directly or by implication, that a product, package or service offers a general environmental benefit”<sup>9</sup> which CRS believes is the case when a TRC without its attributes is sold at the retail level. It is clear that claims about emissions reductions could not be made in this case, and many purchasers of renewable energy are making their buying decisions based on emissions benefits.

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<sup>7</sup> CRS convened stakeholders in a series of meetings to establish Green-e certification criteria for TRCs. Over 100 people in total participated in the process including developers, generators, consumer advocates, and representatives of environmental groups.

<sup>8</sup> [http://www.naag.org/issues/pdf/Green\\_Marketing\\_guidelines.pdf](http://www.naag.org/issues/pdf/Green_Marketing_guidelines.pdf)

<sup>9</sup> Guides for the Use of Environmental Marketing Claims <http://www.ftc.gov/bcp/grnrule/guides980427.htm> § 260.7 Environmental marketing claims

## *Potential Legal and Regulatory Implications*

One may wonder whether the sale of disaggregated TRCs passes the “reasonable consumer” test of consumer protection. It is fair to say that reasonable consumers of renewable energy believe they are purchasing the environmental benefits of renewable energy. Willingness-to-pay surveys have shown that environmental benefits are a key driver of renewable energy purchases.<sup>10</sup> TRCs with emissions values removed do not provide these key environmental benefits, because these are the property of another party, the emissions credit owner. Fine print disclosure about the disaggregated nature of a TRC is not sufficient to protect the customer. Considering the lack of electronic tracking systems, even up-front disclosure may not be sufficient to credibly market this type of product.

Further, the marketing of disaggregated TRCs does not meet the standard definition of merchantability<sup>11</sup> and therefore calls into question the rest of the TRC market. The sale of disaggregated TRCs creates additional costs for other market participants in order to prove that their “whole” TRC is valid. TRC markets are nascent, complicated, and involve an intangible product - therefore they require confidence to succeed. The sale of disaggregated TRCs may serve to reduce consumer confidence in the market as a whole. Does a vendor selling “null” TRCs (TRCs with no emissions attributes) meet the standard of merchantability? Is there adequate benefit to the customer of the disaggregated TRC to be considered a product? CRS does not believe that disaggregated TRCs meet the merchantability standard, and therefore puts the entire market for renewable energy at risk.

## *Existence Value vs. Utility Value*

Some people may use the argument of “existence value” to support the sale of disaggregated TRCs. The existence value is the value that individuals attach to their knowledge of the existence of something without their direct use of it. For example, some people may be willing to pay to prevent oil drilling in Alaskan wilderness areas even if one never intends to visit Alaska. CRS believes that TRC purchases are not based on the existence value of the renewable, but that customers pay for the delivered benefits. In other words, when they purchase TRCs, they pay for the “utility value” rather than the existence value.

## **OWNERSHIP OF ATTRIBUTES**

This document does not provide a comprehensive discussion of how to determine the ownership of TRCs and/or TRC attributes. However, it is worth noting that this issue is the subject of debate. Typically in a “cap and trade” scheme (e.g. SO<sub>2</sub>), the renewable energy generator does not own the credits because they are not affirmatively assigned to renewable energy facility owners. Since SO<sub>2</sub> emission allowances in a cap and trade program are given to the polluters, a renewable energy generator may reduce the total emissions of a utility, but this generally will not reduce total SO<sub>2</sub> emissions, it only frees up those excess allowances

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<sup>10</sup> [http://www.eere.energy.gov/greenpower/farhar\\_26148.pdf](http://www.eere.energy.gov/greenpower/farhar_26148.pdf)

<sup>11</sup> A warranty of merchantability guarantees that goods are reasonably fit for their ordinary purpose. For example, an item sold as a “lawn mower” should be able to cut grass.

for sale or trade to other polluters. Therefore, TRC claims of SO<sub>2</sub> or similar pollution benefits in a cap-and-trade environment are problematic. CRS believes that TRC and renewable power providers should be prohibited from making explicit claims about SO<sub>2</sub> or similar cap-and-trade pollutant benefits due to renewable energy or TRC customer purchases unless SO<sub>2</sub> offsets were specifically assigned to these units of TRC and are being retired along with the TRC. Claims that TRCs or renewable generation avoids the emission of NON cap-and-trade pollutants such as particulates, mercury and CO<sub>2</sub> should be allowed.

## CONCLUSIONS

Best practices in marketing dictates that separating individual attributes of TRCs misleads TRCs customers to believe that they are purchasing something they are not. Instead, best practices ensure that consumers do not have to be energy experts to participate in TRC markets. Therefore, TRC products should 1) contain all of their underlying emissions attributes associated with the displacement of generic system power from the grid where the facility is located and 2) provide adequate information about what the customer is receiving for their payment. These best practices do not preclude marketers from disaggregating the attributes of a TRC and selling those as discrete items. However, the best practices preclude the marketer from disaggregating attributes and subsequently selling the remaining “information” as a TRC.