



CRS

center for  
resource  
solutions

July 22, 2016

Mr. Sam Wilson  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504

**RE: Comments of Center for Resource Solutions on Chapter 173-442 WAC, Clean Air Rule Draft Proposal**

Mr. Wilson:

Center for Resource Solutions (CRS) applauds the state of Washington for proposing such a comprehensive system for reducing greenhouse gas (GHG) emissions, and appreciates the opportunity to provide feedback on the Clean Air Rule (CAR) draft proposal (“Draft Proposal”).

Our comments are focused on potential interactions with existing renewable energy (RE) markets and market instruments. Overall, we strongly support the Department of Ecology’s (“Ecology”) efforts to address interactions with existing RE markets, renewable energy credits (RECs), and particularly the voluntary renewable energy (VRE) market. We feel that some clarification and minor adjustments will strengthen the CAR and help achieve stated policy objectives, including “to promote the viability of voluntary renewable energy programs in Washington.”<sup>1</sup>

Following a brief introduction to CRS, and some information on the VRE market in Washington, we have organized our comments into two primary comments followed by a short series of other comments on the Draft Proposal below.

**Intro to CRS and Green-e®**

CRS is a 501(c)(3) nonprofit organization that creates policy and market solutions to advance sustainable energy. CRS has broad expertise in RE policy design and implementation, electricity product disclosures and consumer protection, and GHG reporting and accounting. CRS administers the Green-e programs. Green-e Energy is the leading certification program for VRE products in North America. In 2014, Green-e Energy certified retail sales of 38 million megawatt-hours (MWh), representing over 1% of the total U.S. electricity mix, or enough to power nearly a third of U.S. households for a month. In 2014, there were over 836,000 retail purchasers of Green-e certified RE, including 50,000 businesses.

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<sup>1</sup> WAC 173-442-240 (2)(c)

Stakeholder-driven standards supported by rigorous verification audits and semiannual reviews of marketing materials ensure robust customer disclosure and are pillars of Green-e Certification. Through these audits and reviews, CRS is able to provide independent third-party certification of RE products. Green-e program documents, including the standards, Code of Conduct, and the annual verification report, are available at [www.green-e.org](http://www.green-e.org). CRS also has a long history of working with state agencies to design and implement policies to avoid double counting, maintain the VRE market as surplus to regulation, and support positive market interactions.

### **The Effect of Power Sector GHG Regulations on VRE Claims and the Importance of “Regulatory Surplus”**

Companies and individuals that purchase and invest in RE voluntarily do so in order to take steps beyond actions and outcomes attributable to state or federal policy. These voluntary market participants seek to go beyond what a Renewable Portfolio Standard (RPS), cap-and-trade program, or other regulation in the power sector might require and in this way make a difference with their investment. This difference is often referred to as “regulatory surplus.”

However, where RE sold into the voluntary market does not have this effect, and instead only serves to help regulated entities comply with existing regulatory requirements, this production could not be considered surplus and the motivation—the demand—for voluntary purchases may be lost.

Where voluntary demand for RE is limited, by extension, so is the overall development of RE and associated emissions reductions. Regulatory surplus is critical to sustaining clear voluntary claims and has been very helpful in Washington in sustaining voluntary investment in RE beyond what is already required.

The CAR sets emissions limits in the power sector such that RE generation reduces emissions at regulated units, but does not affect the level of allowed emissions from these units. As a result, emissions reductions at regulated units due to VRE generation are automatically accounted for under the CAR and no longer surplus to regulation. Emissions cannot exceed the limits and emissions reduced below these limits due to RE can be made up elsewhere. Instead, the effect of VRE generation in terms of GHG emissions at regulated units is to make it easier for regulated entities to comply.

To restore regulatory surplus and allow the VRE market to continue to affect GHG emissions beyond what is required by law—and to avoid potentially discouraging all voluntary actors, and specifically commercial customers, from making private investments in renewable energy in Washington—the CAR must include a mechanism that effectively lowers emissions limits to explicitly recognize emissions reductions from VRE as incremental to what would otherwise be achieved due to the CAR.

Similar mechanisms have had broad support when implemented in other states. In California, for example, over 50 organizations publically supported the inclusion of the VRE Reserve Account in the cap-and-trade program, including energy companies, project developers, environmental and public health advocates, industry associations, academic institutions, and others.<sup>2</sup>

### **The Impact of Green-e Certified VRE in Washington**

The VRE market promotes clean energy development, which in turn leads to more jobs and greater economic growth. It leverages private, non-ratepayer funding to help speed the transition to RE sources. It provides a pathway whereby the appetite for voluntary action can be channeled to clean energy development in Washington. To realize these benefits, and prevent the emissions limits in the CAR from becoming the ceiling for GHG emissions reductions from the sector instead of the floor, the CAR must adequately recognize the carbon-reduction value of VRE purchases.

Since Green-e sets the standard for the voluntary market, an allowance set-aside or similar mechanism to maintain regulatory surplus is currently required for all certified voluntary sales in regions in the U.S. with power sector emissions limits in order to meet consumer expectations. If the CAR is adopted and implemented without such a mechanism, or without an effective mechanism, Green-e may be unable to continue to certify voluntary sales of RE from Washington.

This would mean that voluntary buyers in Washington will have to get their certified RE from outside of the state in the future. In 2014, Green-e certified over 4.4 million MWh from Washington generators. This shows strong demand for certified VRE in the state. Green-e certifies the majority but not the entire VRE market, and as a result these numbers represent a conservative estimate of the size and impact of the total VRE market in Washington.

Inclusion of an effective mechanism to maintain regulatory surplus for the VRE market under the CAR in Washington would allow for this demand to be met by resources in Washington—

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<sup>2</sup> See *Joint Letter in Support for Voluntary Renewable Energy Set-Aside in the Proposed California Cap-and-Trade Program*, December 13, 2010, [http://resource-solutions.org/site/wp-content/uploads/2015/08/Voluntary-Renewable-Set-Aside\\_12-13-10.pdf](http://resource-solutions.org/site/wp-content/uploads/2015/08/Voluntary-Renewable-Set-Aside_12-13-10.pdf)

*Coalition letter to Kevin Kennedy, CARB Office of Climate Change on the issue of off-the-top treatment of voluntary renewable energy purchases*, June 7, 2010, [http://www.resource-solutions.org/pub\\_pdfs/nonprofit\\_and\\_clean\\_energy\\_coalition\\_7\\_7\\_2010.pdf](http://www.resource-solutions.org/pub_pdfs/nonprofit_and_clean_energy_coalition_7_7_2010.pdf)

*Comments of Renewable Energy markets Association (REMA) on a Western Climate Initiative (WCI) paper*, February 19, 2010, [http://www.renewablemarketers.org/pdf/file\\_111.pdf](http://www.renewablemarketers.org/pdf/file_111.pdf)

*Letter to Senator Boxer on Recommended Changes to Cap-and-Trade Design Under ACESA to Support the Voluntary Renewable Energy Market*, July 23, 2009, [http://resource-solutions.org/site/wp-content/uploads/2015/08/Senate\\_EPW\\_off\\_the\\_top\\_072309.pdf](http://resource-solutions.org/site/wp-content/uploads/2015/08/Senate_EPW_off_the_top_072309.pdf)

*Letter to Claudia Orlando, California Air Resources Board supporting off-the-top approach to voluntary renewable energy purchases in a California cap-and-trade program*, June 12, 2009, <http://resource-solutions.org/site/wp-content/uploads/2015/08/Center-for-Resource-Solutions-comment.pdf>

allowing your state the opportunity to maintain the private investment dollars that may otherwise go elsewhere—and this could prevent a loss of revenue from voluntary purchasers for Washington generation.

### **Primary Comments**

- 1. Emission Reduction Units (ERUs) should not be issued to RE that has reduced emissions at covered parties since this would represent double crediting (double counting of emissions reductions).**

The Draft Proposal allows alternative energy generation technologies located in Washington to generate ERUs.<sup>3</sup> But since emissions reductions from alternative energy generation are automatically included in mass emissions reductions at regulated units, issuance of ERUs to RE (or any other activities) that reduce emissions at regulated units would represent double crediting (double counting of emissions reductions) and these ERUs would not represent actual emissions reductions.

Since ERUs cannot be issued to RE that is used to meet the RPS or voluntary programs,<sup>4</sup> this only applies to non-RPS and non-voluntary alternative energy generation (e.g. RE that sells into system power), but nonetheless it is a policy flaw that could prevent the state from meeting its emissions reductions goals, depending on how much of this generation there is and how many ERUs are issued to alternative energy that reduces emissions at regulated units.

We recommend that generation of ERUs by alternative energy generation technologies located in Washington be disallowed, amending section WAC 173-442-160 (1) to remove the third bullet and removing section WAC 173-442-160 (5) in the Draft Proposal.

- 2. In order for ERU retirement on behalf of VRE through the proposed ERU Reserve to work to restore regulatory surplus for VRE market, the ERUs used and retired must represent emissions reductions at covered parties (regulated units).**

Though the Draft Proposal has avoided potential double counting of ERUs and RECs, or disaggregation of RECs, by requiring that RECs must be retired for ERU creation,<sup>5</sup> even without generating an ERU, avoided emissions at regulated units caused by RE that generates RECs would still be counted toward compliance in that these reduced emissions are reported by covered parties. This means that Washington RECs are not surplus to regulation (with respect to GHG emissions at regulated units) under the CAR without lowering the emissions limit for the regulated units on behalf of the VRE market.

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<sup>3</sup> See WAC 173-442-160 (5)

<sup>4</sup> WAC 173-442-160 (5)(b)

<sup>5</sup> WAC 173-442-160 (5)(b)(ii)

It is our understanding that Ecology has included in the Draft Proposal retirement of ERUs in the ERU Reserve on behalf of the VRE market specifically to address this and to restore regulatory surplus for the VRE market.<sup>6</sup> We strongly support the intention behind this mechanism.

Based on the Draft Proposal, it not clear to us that the retirement of ERUs on behalf of VRE through the ERU Reserve as currently proposed will lower the emissions at regulated units and thereby restore regulatory surplus for the VRE market. We are seeking further clarification from Ecology.

As Ecology is aware, ERUs are not allowances; they are credits. In cap-and-trade, the total emissions equal the total number of allowances. So retiring an allowance reduces the total amount of emissions, and retiring an allowance on behalf of the voluntary market therefore reduces emissions beyond the cap—resulting in regulatory surplus for the voluntary market. Retiring an ERU, on the other hand, does not necessarily lower the amount of emissions from regulated units/covered parties.

In order for retirements of ERUs on behalf of the VRE market through the ERU reserve to work as intended to protect voluntary demand for RE, the ERUs retired on behalf of VRE must be generated by lowering the allowed emissions at regulated units. Only in that case does retiring an ERU restore regulatory surplus for the VRE market.

We understand that Ecology must allocate to the reserve 2% of “a covered party’s emission reduction pathway annual decrease” and 2% of EITE covered party’s contribution.<sup>7</sup>

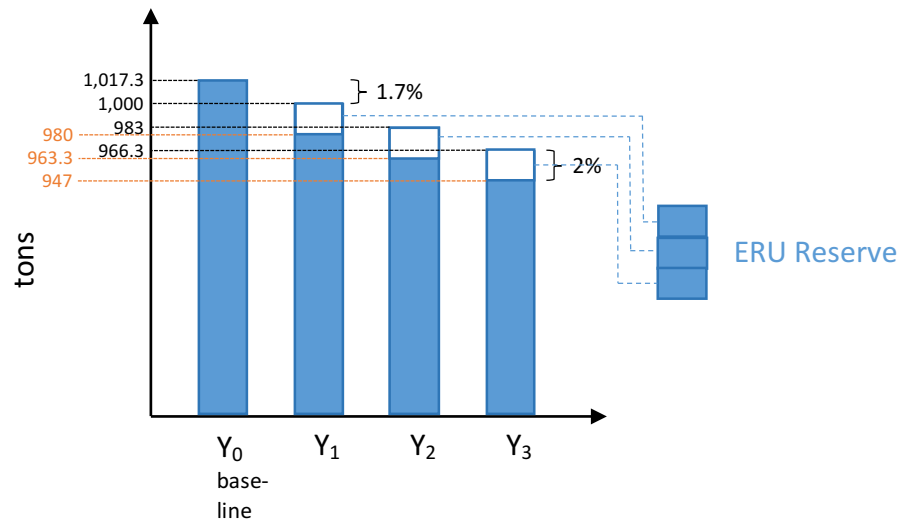
Does this mean that a covered entity’s emissions are 2% below where they would be without the Reserve? Is the emissions trajectory after the ERUs are set aside in the Reserve equal to the new emissions limit (i.e. actual emissions)? In the example shown in Figure 1 below, if a covered entity’s emissions limit is 1,000 tons in Year 1 ( $Y_1$ ) before the ERU Reserve, is that limit lowered to 980 in order to issue ERUs that are then retired for VRE? Are actual plant emissions (i.e. the regulatory target/limit) at 1,000 or 980 in  $Y_1$ ?

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<sup>6</sup> WAC 173-442-240 (2)(c) and (4)(f)

<sup>7</sup> WAC 173-442-240 (1)(a)(i)(A)

**Figure 1. Example of Covered Party's Emission Pathway with Allocation to the ERU Reserve**



If the answer to these questions is yes, then retirement of ERUs in the ERU Reserve on behalf of the VRE market will be an effective mechanism to restore regulatory surplus for the VRE market and VRE. If not, then simply retiring ERUs on behalf of VRE does not restore regulatory surplus.

Our question can be rephrased as: Does the total amount of emissions reductions calculated for the state (i.e. emissions reductions at all covered parties combined) equal real emissions reductions at covered sources plus some amount of reductions from ERUs from projects and allowances? Or are ERUs from projects and allowances in addition to the total expected/targeted emissions reductions from combined covered entities? If the latter, then retiring them does not restore regulatory surplus for the voluntary market.

If the ERUs retired on behalf of VRE as described in section WAC 173-442-240 (2)(c) of the Draft Proposal are not generated by lowering the allowed actual emissions at regulated units, we recommend that section WAC 173-442-240 (1)(a) be amended to require this.

**3. The ERU Reserve as proposed does not prevent RECs from Washington that are not used in the VRE market from potentially leaving the state and being used for compliance (e.g. for an RPS) in another state.**

Other states with programs that currently allow RE from WA to be used for compliance (e.g. Oregon RPS) may wish to disallow those RECs if their programs are in part intended to reduce emissions in their state. We recommend communicating with neighboring states that accept Washington RECs in their programs in order to make them aware that the CAR effectively counts the emissions reductions associated with Washington RECs.

## Other Comments

- 4. Notwithstanding Primary Comment 1 above, if section WAC 173-442-160 (5) in the Draft Proposal remains in the CAR, then we support sections WAC 173-442-160 (5)(b)(ii) and (5)(b)(ii)(C), which prevent potential double counting of ERUs and RECs.**

If alternative energy generation will continue to be permitted to generate ERUs, then we support that REC retirement in a tracking system is required for ERU issuance from RE<sup>8</sup> and that RECs cannot also be used or RPS or voluntary program<sup>9</sup> under the Draft Proposal.

These provisions prevent double counting of ERUs and RECs. However, the same potential for double counting could also be avoided by disallowing ERU generation from all alternative energy generation, per Primary Comment 1 above, and this would also prevent double crediting.

- 5. We also support section WAC 173-442-150 (1)(e)(i) of the Draft Proposal, though we recommend clarification of the specific language in the Draft Proposal.**

We support that ERUs from projects or programs must be additional to existing law or rule.<sup>10</sup> However, the specific language in the Draft Proposal refers to the “emissions reduction” as that which must be required by law in order to be excluded (meet non-additionality), not necessarily the activity generating the emissions reduction (e.g. RE facility or generation): “If an emission reduction is required by another statute, rule, or other legal requirement, the emission reduction cannot be used in this program.” As a result, the RPS, for example, would not necessarily exclude reductions from RE generation used to meet the RPS from generating ERUs. The RPS is not included in section WAC 173-442-150 (1)(e)(ii) among the policies that result in emissions reductions that can be used to generate ERUs.

Assuming the intent is not to allow ERUs from RPS generation (this would be consistent with section WAC 173-442-160 (5)(b) of the Draft Proposal), we recommend that the language in section WAC 173-442-150 (1)(e)(i) of the Draft Proposal be amended to refer to both emissions reductions that are required by another statute, rule, or other legal requirement as well as emissions-reducing activities that are required by another statute, rule or legal requirement.

- 6. There appears to be an error at WAC 173-442-160(5)(c), which refers to ERUs generated from conservation and retiring RECs as per WAC 173-442-170(2)(a) and (2)(b), but these sections appear to pertain only to allowances. We believe WAC 173-442-160(5)(c) should instead refer to sections WAC 173-442-160(5)(a) and WAC 173-442-160(5)(b), respectively.**

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<sup>8</sup> WAC 173-442-160 (5)(b)(ii)

<sup>9</sup> WAC 173-442-160 (5)(b) and (5)(b)(ii)(C)

<sup>10</sup> WAC 173-442-150 (1)(e)(i)

**7. We generally support sections WAC 173-442-240 (2)(c)(i) and (ii), though we recommend two minor language changes to meet the objectives of these sections and avoid unintended complications.**

Sections WAC 173-442-240 (2)(c)(i) and (ii) currently read as follows in the Draft Proposal:

(i) Ecology, in conjunction with the departments of commerce and the utilities and transportation commission, will engage stakeholders and renewable energy market experts to estimate demand for voluntary renewable energy programs serving Washington customers.

(ii) Ecology may allocate a portion of the reserve ERCs for retirement as voluntary renewable energy purchases by Washington customers consistent with the estimate in (c)(i) of this subsection, after taking into account the availability of reserve ERUs.

As written, this will not accommodate purchasers of Washington VRE that are located outside the state, whose purchases are also affected by the CAR. As a result, we recommend that “for voluntary renewable energy programs serving Washington customers” in section (i) be replaced with “for voluntary renewable energy located in Washington,” and that “by Washington customers” in section (ii) be replaced with “from Washington generators.” Otherwise, the retirement of ERUs on behalf of VRE in the ERU Reserve will only cover Washington customers buying from Washington generators, since Washington customers buying from other states do not need it, and whereas customers outside Washington buying from Washington VRE do.

Thank you very much for the opportunity to comment. We would be happy to supply any other supporting or clarifying information that would be helpful.

Sincerely,



Todd Jones  
Senior Manager, Policy and Climate Change Programs