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November 13, 2017

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Comments of Center for Resource Solutions (CRS) on the Illinois Power Agency (IPA) Long-Term Renewable Resources Procurement Plan

Mr. Bohorquez,

CRS appreciates this opportunity to submit comments in response to the IPA Long-Term Renewable Resources Procurement Plan. The intent of these comments is to provide information on industry best practices in regard to *Section 7.6.3: Marketing Claims Related to the Ownership of RECs and Community Renewable Generation Subscriptions*.

Background on CRS & 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 renewable energy policy design and implementation, electricity product disclosures and consumer protection, and greenhouse gas (GHG) reporting and accounting. CRS administers the Green-e programs. Green-e is the leading certification program for voluntary renewable electricity products in North America. For over 20 years, Green-e staff have worked with independent third-party auditors to annually verify renewable energy purchases in the voluntary market and ensure purchasers receive full environmental benefits and sole ownership of each megawatt-hour (MWh) of renewable energy they purchase. Verification procedures ensure there is no double counting between voluntary and compliance markets, and that other renewable energy or carbon policies do not claim any of the environmental benefits of certified renewable energy. In 2016, Green-e certified retail sales of over 48 million MWh, representing over 1.3% of the total U.S. electricity mix. In 2016, there were over 963,000 retail purchasers of Green-e certified renewable energy, including 53,000 businesses.

Introduction

While CRS supports the IPA's efforts to advance community solar in Illinois, the decision to allow utilities to retire the associated Renewable Energy Certificates (RECs) for Renewable Portfolio Standard (RPS) compliance raises significant issues for how these programs can be responsibly marketed and what renewable energy claims subscribers can legally make. Because subscribers will not receive the solar RECs, they will not be able to claim to be consuming solar electricity from these facilities. Even if appropriate disclosures are made, CRS believes that labelling this program as "community solar" may be inherently misleading since subscribers will not technically receive solar energy from these local projects. In these comments, we will discuss best practices for consumer protection, as well as what procedures the IPA can implement to mitigate the potential risk associated with retiring RECs from community solar projects for RPS compliance.

Background Information and Resources for Further Guidance

Because grid-connected customers who choose to purchase additional renewable energy are not physically receiving electricity from these exact sources, RECs are used to track and account for this type of consumer choice. Without RECs, there can be no verifiable purchase or consumption of renewable energy. For this reason, a customer who subscribes to a community solar program but does not receive the associated RECs is not actually purchasing or using renewable energy. If these RECs are instead retired by utilities for compliance purposes, these customers are instead subsidizing utility compliance with state regulations. In addition to CRS, the Federal Trade Commission, Environmental Protection Agency, and the Illinois Commerce Commission (ICC) have published guidance that supports the position that customers who subscribe to a community solar program should receive the associated RECs in order to claim the use of solar power generated by these projects. Below, please find relevant excerpts and links to these materials.

83 Ill. Adm. Code 412.190 (as of November 1, 2017).

Order: <https://www.icc.illinois.gov/downloads/public/edocket/455242.pdf>. Final language for Sec 412, Appendix A: <https://www.icc.illinois.gov/downloads/public/edocket/455243.pdf>.

"No RES shall state or imply in any marketing or promotional material that any electric power and energy service marketed or sold by the RES is "green", "renewable", or "environmentally friendly" or provide any description that conveys the impression that the electric power and energy service has a reduced impact on the environment, unless the RES purchases and retires the appropriate number of RECs in addition to, and over and above, the power or renewable energy credits purchased, or the alternative compliance payments made, to satisfy the renewable portfolio standard requirements applicable to RES under Section 16- 115D of the Act. Nothing in this subsection prevents an RES from stating that it complies with the Illinois Renewable Portfolio Standard if in fact it does so, but these statements must also disclose that every RES must comply with the Renewable Portfolio Standard because RPS compliance is required by law. An RES shall not identify its product as "green", "renewable", or use any other term or descriptor of like or similar meaning if it is only compliant with the RPS."

US Federal Trade Commission (FTC). (2012). Guides for the Use of Environmental Marketing Claims.

Available at: https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-use-environmental-marketing-claims-green-guides/greenguidesfrn.pdf

"260.15(a) [...] A marketer should not make unqualified renewable energy claims, directly or by implication, if fossil fuel, or electricity derived from fossil fuel, is used to manufacture any part of the advertised item or is used to power any part of the advertised service, unless the marketer has matched such non-renewable energy use with renewable energy certificates."

"260.15(d) If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy."

US Federal Trade Commission (FTC). (2015). Letter from James A. Kohm, Associate Director, Division of Enforcement, Bureau of Consumer Protection, to R. Jeffrey Behm, Esq., Sheehey, Furlong & Behm, P.C. February 5, 2015.

Available at: https://www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf

"[T]he operation of the renewable energy market relies heavily on the expectation of all market participants that these certificates have not been counted or claimed twice (i.e.,

double counted). Such double-counting can occur, for instance, through [...] renewable energy claims made by a company that already sold the RECs for its renewable generation. [...] Such double counting, in turn, not only risks deceiving consumers but also threatens the integrity of the entire REC market. By selling RECs, a company has transferred its right to characterize its electricity as renewable. Accordingly, the FTC's Green Guides advise that, if 'a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.' See 16 C.F.R. § 260.15(d)."

"In addressing these issues in the Green Guides, the Commission [...] did warn that power providers that sell null electricity to their customers, but sell RECs based on that electricity to another party, should keep in mind that their customers may mistakenly believe the electricity they purchase is renewable, when legally it is not. Accordingly, it advised such generators to exercise caution and qualify claims about their generation by disclosing that their electricity is not renewable.[1]" [1] See Statement of Basis and Purpose at 225, available at <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf>.

US Federal Trade Commission (FTC). (June 2015). Consumer Information: Solar Power for Your Home.

Available at: <https://www.consumer.ftc.gov/articles/0532-solar-power-your-home>

"You may receive other benefits from having a solar system. Depending on local net metering rules, your utility may pay you for power your system returns to the grid. You also may be able to sell or get credit for renewable energy certificates (RECs) related to the electricity your system produces. A REC is separate from the actual electricity produced; it's a certificate that proves you generated a certain amount of renewable energy. If a business, including a home business, has solar panels and sells away all the RECs, it loses the right to tell customers it's using renewable energy. That's important to keep in mind if you have a home business and want to claim you use renewable energy."

Jones, T. et. al. (2015). The Legal Basis of Renewable Energy Certificates. Center for Resource Solutions.

Available at: http://www.resource-solutions.org/pub_pdfs/The%20Legal%20Basis%20for%20RECs.pdf

US EPA recently released new materials regarding solar power use claims, available here:

<https://www.epa.gov/greenpower/solar-power-use-claims>

<https://www.epa.gov/greenpower/solar-power-use-claims-flow-chart>

<https://www.epa.gov/greenpower/guide-making-claims-about-your-solar-power-use>

<https://www.epa.gov/greenpower/us-electricity-grid-markets>

REC Arbitrage and Alternative Renewable Energy Consumption Claims

While CRS understands that the sale of these community solar RECs into the compliance market makes these projects more economically attractive, if subscribing customers do not receive the RECs from these projects, they cannot claim to be consuming the solar energy being generated by these projects. The best way to avoid consumer confusion would be to retire these RECs on their behalf, however, if this is not a viable option for this program, one alternative would be to procure and retire "replacement RECs" on their behalf, a process referred to as "REC arbitrage."

If customers are provided with replacement RECs, they would be able to make renewable energy consumption claims, but they would nevertheless be unable to make specific claims related to the facilities associated with this community solar program. Their claims would instead be determined by the type (e.g.

resource type, geographic location, etc.) of the replacement RECs. Therefore, unless the replacement RECs are from solar facilities within the immediate utility footprint, it may be misleading to market this program as “community solar.” However, replacing these RECs rather than neglecting to retire any RECs on behalf of the subscribers would allow for certain types of renewable energy usage claims and would allow this program to still be effectively marketed as a renewable energy subscription program. In this scenario, REC arbitrage should be clearly and appropriately disclosed.

Alternative Customer and Marketing Claims where RECs are not Retained or Replaced

If RECs from these community solar facilities are not replaced, then renewable energy claims for buyers and sellers would be substantially limited. If no RECs are retired on behalf of community solar subscribers, then any claims relating to renewable energy would need to be limited to statements involving supporting renewable energy production or helping Illinois meet its renewable energy goals. In this case, marketing claims would need to focus on the opportunity to provide economic support to these projects rather than the opportunity to purchase renewable energy. Below, please find sample marketing claims that might be acceptable in this scenario.

“Subscribing to this program will help support the market for solar energy in Illinois.”

“Help Illinois meet its renewable energy targets.”

“Your participation supports local community solar projects.”

CRS greatly appreciates the opportunity to comment on this draft of the IPA Long-Term Renewable Resources Procurement Plan, and we would be happy to provide any other supporting or clarifying information that would be helpful to the IPA.

Respectfully submitted,



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