



April 28, 2020

The Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

**RE: COMMENTS OF CENTER FOR RESOURCE SOLUTIONS (CRS) ON JANUARY 2020 DISCUSSION
DRAFT OF THE CLIMATE LEADERSHIP AND ENVIRONMENTAL ACTION FOR OUR NATION'S (CLEAN)
FUTURE ACT**

To Whom It May Concern:

Thank you for the opportunity to provide feedback on the January 2020 Discussion Draft of the CLEAN Future Act. CRS strongly supports comprehensive climate policy at the federal level, and we appreciate the efforts of all who were involved in preparing this Discussion Draft. Our feedback is primarily aimed at the Federal Clean Electricity Standard (CES), but we provide input and recommendations on several other sections of the draft bill text below. Our specific questions, requests for clarifications, comments, and recommendations are bulleted for ease of reference.

BACKGROUND ON CRS

CRS is a 501(c)(3) nonprofit organization that creates policy and market solutions to advance sustainable energy. Since 1997, CRS has been instrumental in the development of state, regional, and national renewable energy policies and markets. CRS has provided regular technical assistance and guidance to states, federal agencies, electricity attribute tracking systems, and market participants across the country. CRS also administers the Green-e® programs. For over 20 years, Green-e® has been the leading independent certification for voluntary renewable electricity products in North America. In 2018, Green-e® certified retail sales of over 62 million megawatt-hours (MWh), serving over 1.2 million retail purchasers of Green-e® certified renewable energy, including 61,000 businesses. More information is available at resource-solutions.org and green-e.org.

COMMENTS BY SECTION

Title I.A. National Target

This section describes an economy-wide net-zero greenhouse gas (GHG) emissions goal, but the bill text in this section only specifies planning, reporting, and accountability measures for the Federal government.

- Please provide clarification as to how measures in other sections (e.g. Federal Clean Electricity Standard, State Climate Plans) are expected to contribute to the economy-wide target.
- We recommend that additional measures for the rest of the economy be specified, in this or complementary legislation, in order to achieve the economy-wide target.

Title II.A. Federal Clean Electricity Standard (CES)

Clean Energy Credits (CECs) and Existing Renewable Energy Markets

The new CEC instrument enters a landscape of existing renewable energy markets, which operate on the basis of a different instrument, the renewable energy certificate (REC)¹. A REC represents property rights² to the fully aggregated non-power generation attributes of 1 MWh of renewable electricity generation, including the direct GHG emissions factor of the generation (e.g. zero in the case of wind and solar).³ RECs are the essential accounting and tracking tool used to allocate renewable generation to customers and to purchase green power, either to demonstrate compliance with state Renewable Portfolio Standard (RPS) programs or to meet voluntary demand for renewable energy. The use of RECs for this purpose is consistent across the U.S.⁴ In addition, certain grid regions in the U.S. are served by all-generation certificate tracking systems—including the New England Power Pool Generation Information System (NEPOOL-GIS), the PJM Generation Attribute Tracking System (PJM-GATS), and the New York Generation Attribute Tracking System (NYGATS)—which issue certificates for generation from all resource types and all electricity generation in their footprints. The certificates in these systems—Generation Information System (GIS) or Generation Attribute Tracking System (GATS) certificates—also

¹ The term renewable energy certificate (REC) is used in place of slightly different names that may be used by some state, regional, and voluntary programs (e.g. renewable energy credit), which have the same basic features described here.

² See U.S. Federal Trade Commission (FTC) (November 27, 2007). Guides for the Use of Environmental Marketing Claims; Carbon Offsets and Renewable Energy Certificates; Public Workshop. Announcement of public workshop; request for public comment. Federal Register. Vol. 72, No. 227. Pg. 66095. Footnote 9. <https://www.govinfo.gov/content/pkg/FR-2007-11-27/pdf/FR-2007-11-27.pdf>

See Jones, T. et al. (2015). The Legal Basis of Renewable Energy Certificates. Center for Resource Solutions. <https://resource-solutions.org/wp-content/uploads/2015/07/The-Legal-Basis-for-RECs.pdf>. Footnotes 12, 25, 27, 28, 32, and 34.

See U.S. Commodity Futures Trading Commission (CFTC). (August 13, 2012). Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule. Federal Register. Vol. 77, No. 156. pg. 48233-48235. <https://www.govinfo.gov/content/pkg/FR-2012-08-13/pdf/FR-2012-08-13.pdf>

³ In most state and tracking system definitions of RECs and green attributes, these GHG attributes are either explicitly included in definitions of RECs or attributes, or they are implicitly included in “all environmental benefits,” “whole certificate,” or similar inclusive language. But, slight variations in state REC or attribute definitions do not significantly affect the uniformity of the REC instrument as used across the U.S., and certainly do not affect their use in the voluntary renewable energy market.

⁴ Jones, T. (2015). The Legal Basis of Renewable Energy Certificates. Center for Resource Solutions. Available online at: <https://resource-solutions.org/wp-content/uploads/2015/07/The-Legal-Basis-for-RECs.pdf>

represent the full suite of generation attributes, including carbon emissions, in order to facilitate the most precise tracking and accounting of delivered power in their regions.

- Please clarify whether a CEC represents environmental “attributes” and/or property rights.
- If it does, there is a potential for double issuance: the same attributes of the same MWh may be issued as both CECs and RECs or other GIS or GATS certificates.

But regardless, since compliance with this Federal CES is defined in terms of qualified energy consumed by a supplier’s customers, submission of CECs for compliance represents the delivery of those MWh to and consumption of those MWh by customers.

- As a result, there is nevertheless a potential for double counting with RECs and other GIS or GATS certificates: if a REC or other GIS or GATS certificate and a CEC are both issued for the same MWh of generation and both used for a compliance or voluntary program by two different retail suppliers of electricity, both suppliers would be reporting that their customers are consuming the same MWh (or a portion of a MWh).

In addition, voluntary renewable energy—renewable generation that is purchased voluntarily by businesses and individuals to meet their own goals—has historically not been used to meet governmental targets, laws, or legal mandates. The voluntary market stands apart from and builds on compliance efforts. This separation enables the voluntary market to make an incremental difference often referred to as “regulatory surplus.” Regulatory surplus is a critical criterion for sustaining voluntary action and clear voluntary claims. Furthermore, regulatory surplus with respect to GHG emissions may be especially important for voluntary demand, since many of the companies and individuals purchasing in the voluntary market do so as part of a commitment to address climate change. Where renewable energy sold into the voluntary market does not have an effect beyond compliance, and instead only serves to help regulated entities comply with existing regulatory requirements, this changes the effectiveness of voluntary renewable energy as a climate change solution for participating companies and individuals. As such, voluntary demand for renewable energy may decline.

- Even in the case that there is no double issuance and no double counting (meaning the CEC and REC are transacted together and used by a single supplier), if the REC is used for a voluntary transaction of renewable energy and the CEC is used for compliance with the CES, then that would result in a loss of regulatory surplus for the voluntary buyer.

Double issuance and double counting would damage the effectiveness and credibility of both the CES and other compliance and voluntary programs using RECs and other GIS and GATS certificates. It means that programs are producing artifacts of flawed accounting rather than intended outcomes,

and they may lose support among electricity customers that are paying for those programs. In addition, voluntary demand for renewable energy is an important driver of renewable energy development and emissions reductions in the electricity sector. Thousands of businesses and millions of individuals in every state across the country voluntarily purchase green power, and thousands of renewable energy generators across the country supply it to them, amounting to billions of kilowatt-hours of renewable energy annually.⁵

- To avoid harming existing state and voluntary renewable energy and carbon programs, to prevent double counting, and to take advantage of efficiencies from using existing market infrastructure, we recommend that the Federal CES allow for use of RECs and other GIS and GATS certificates to identify, track, and deliver qualified energy generation for compliance, where the tracking system has been determined to meet criteria specified by the Department of Energy (DOE).

In this case, qualifying RECs and other certificates can simply be tagged in qualified existing systems. It may also strengthen existing renewable energy markets and power source disclosure programs by creating more consistent and comprehensive tracking systems, e.g. renewable-only tracking systems can consider becoming all-generation tracking systems.

Other Comments on the CES

- Please provide additional explanation as to how 100% “qualified energy”—generation with an annual carbon intensity of less than 0.82 metric tons/MWh (except for combined heat and power [CHP], waste to energy [WTE], and carbon capture and sequestration [CCS] generators)—by 2050 will necessarily achieve a “net-zero emission electricity sector.”
- To create consistency across programs and benefit from the rigor of the Green-e® program standard development process, we recommend aligning of the definition of “qualified renewable biomass” in the CES with eligible forms of biomass in the *Green-e® Renewable Energy Standard for the United States and Canada*.

⁵ See Jones, T. and Bucon, N. (October 17, 2017). Corporate and Voluntary Renewable Energy in State Greenhouse Gas Policy: An Air Regulator’s Guide. Center for Resource Solutions. Sec. 6 (pg. 23-4) and Figures 7 and 8. Available online at: <https://resource-solutions.org/wp-content/uploads/2017/10/Corporate-and-Voluntary-RE-in-State-GHG-Policy.pdf>.

Also, see: www.epa.gov/greenpower/.

For information on the amount of renewable energy purchased through the voluntary market and its relative size, see: <https://www.nrel.gov/analysis/green-power.html#:~:text=Voluntary%20Green%20Power%20Procurement,and%20move%20renewable%20energy%20forward>.

For information on recent investments in renewable energy by leading corporate buyers, see: <https://rebuyers.org/deal-tracker/>.

For information on renewable capacity additions made outside of state-mandated renewable energy requirements, see: <https://emp.lbl.gov/projects/renewables-portfolio>.

The *Green-e® Renewable Energy Standard for the United States and Canada v3.4*⁶ includes a definition of eligible biomass (see pg. 4-6) that was developed through a multi-year open stakeholder consultation process, in which industry experts, environmental advocates, and a broad group of other stakeholders actively participated.

- For determining the baseline qualified energy percentage, please provide additional explanation as to how qualified energy consumed in 2017-2019 will be demonstrated. We recommend that Sec. 203(a)(3)(B)(ii) be amended and that DOE specify the contractual requirements for demonstrating delivery of qualified energy to customers in years before CECs are issued.

Sec. 203(a)(3)(B)(ii) of the Discussion Draft states that the baseline qualified energy percentage—the MWh of qualified energy consumed by electric consumers in 2017-2019—should be calculated in the same manner that the quantity of CECs issued for the applicable type of qualified energy is determined (Sec. 205). But this would mean it is calculated based on generation of qualified energy, and MWh of specified power generated is not necessarily equivalent to MWh of specified power delivered or consumed in a particular place. Consumption of specified energy generation must be determined contractually. For example, suppliers may use RECs or other instruments to demonstrate consumption/delivery of specified renewable power to customers in these years.

- Please confirm our understanding that all behind-the-meter (BTM) generation will receive CECs, as proposed, and that there is no option to for the customer to retain the CECs associated with their BTM system or otherwise prevent them from being used for compliance.
- If this is true, then, as described above, there will no longer be a “voluntary” BTM renewable energy option for customers. Rather, BTM solar customers will simply be subsidizing compliance for utilities. This may damage voluntary demand for and private investment in BTM solar. We recommend creating a voluntary BTM option by allowing BTM customers to choose to retain their CECs and opt out of the Federal CES to create additional benefits.
- Please clarify whether voluntary participants can be “registered to participate” and whether CECs can be transferred to “other parties” that include voluntary participants.
- Please confirm our understanding that CECs are issued based on the direct emissions associated with electricity generation, rather than the lifecycle emissions associated with that generation.

⁶ See <https://www.green-e.org/docs/energy/Green-e%20Standard%20v3.4%20US.pdf>.

Per Sec. 205 (b)(6), the National Academy of Sciences will conduct a study of “lifecycle” emissions associated with biomass, WTE, and other low-carbon fuel, and the methods for determining the CEC value for those resources. It is unclear why the National Academy of Sciences is evaluating this if CECs for these resources are issued based on the direct emissions associated with electricity generation.

- Regarding a determination that a state program is stringent enough such that compliance with that program obviates compliance with the CES (per Sec. 207(c)(2)), please provide additional information on the nature of such a state program and any requirements or qualifications for the program. For example, could a state renewable energy program, e.g. a state RPS program, qualify, provided that the state can demonstrate that the program resulted in “deployment of a greater percentage of qualified energy over a 5-year period,” as required?

Title V.C. Federal Buy Clean Procurement Requirements

- Since it is not clear from the definition at Sec. 523(7), please clarify whether “embodied carbon emissions” of materials and products includes only direct emissions associated with production, or also indirect emissions (e.g. emissions associated with electricity usage) or lifecycle emissions. Or, please confirm that the scope of covered emissions will be determined during the development of the product category rule for each eligible product material, will be specified in that rule, and can vary by product material.

Title VIII.A. State Climate Plans

- Please clarify whether state climate plans, the 2030 and 2040 CO₂ and CH₄ standards for states, the national climate standard, and inventories of state emissions are intended to address emissions from sources located in each state (“source-based” plans, standards, and inventories) or emissions associated with energy consumed or sold in each state (“consumption-based” plans, standards, and inventories). This will determine the accounting requirements and procedures that will be needed and whether the accounting will affect RECs and other market instruments.

Similar to Sec. 203(a)(3)(B) on the baseline qualified energy percentage for the CES, there appears to be some conflation of source-based and consumption-based GHG accounting here as well. “Covered emissions” are defined (in Sec. 701(5)(A) of the proposed Title VII of the Clean Air Act, in Sec. 801, pg. 527, line 4 of the Discussion Draft) as CO₂ and CH₄ emitted by or attributed to “sources in a state.” This indicates a “source-based” or “production-based” account of statewide emissions—emissions from production or generation sources in the state. However, Sec. 702(a)(1) (pg. 527, line 16 of the Discussion Draft) requires that states submit inventories of “covered emissions [...] attributed to the combustion of fuels sold within such state” [emphasis added]. This can be read as: emissions attributed to sources in a state attributed to combustion of fuels sold within the state, which is confusing, but likely indicates a

“consumption-based” account of statewide emissions—the emissions delivered to or consumed in a state, which cannot be directly measured.

Thank you for your consideration of our comments. We would be happy to provide further information or answer any questions.

Sincerely,

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Todd Jones
Director, Policy