



April 2, 2024

The Honorable Kelly A. Hymes  
Administrative Law Judge  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA. 94102  
Via email: [kelly.hymes@cpuc.ca](mailto:kelly.hymes@cpuc.ca)

**CRS Response to the Proposed Decision Modifying Green Access Program Tariffs and Adopting a Community Renewable Energy Program (A.22-05-022), Agenda ID# 22419**

Dear Judge Hymes:

The Center for Resource Solutions (CRS) is a 501(c)(3) nonprofit organization that creates policy and market solutions to advance sustainable energy, and for over 25 years has provided policymakers and other stakeholders around the world with renewable energy and carbon policy analysis and technical assistance. CRS also administers the Green-e® Energy program, the leading independent certification for voluntary renewable electricity products in North America. In 2022, Green-e® certified retail renewable energy sales in California totaling nearly 17 million megawatt-hours (MWh), serving over 130,000 retail purchasers, including nearly 68,000 California businesses.

The proposed decision modifying California's Green Access Program Tariffs orders substantial changes to the existing Disadvantaged Communities Green Tariff program (DAC-GT). Specifically, page 130 of the proposed decision states, "to improve costs, this decision eliminates the requirement to retire Renewable Energy Credits and report on e-certification and the California Air Resources Board Voluntary Renewable Electricity (VRE) Reserve Account."<sup>1</sup>

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<sup>1</sup> ALJ Hymes, K. *Proposed Decision Modifying Green Access Program Tariffs and Adopting a Community Renewable Energy Program*, A.22-05-022, et. al., March 4, 2024, p.130.

In its decision establishing DAC-GT, this Commission stated explicitly that the tariff “is intended as an equity program to allow low-income customers and those in DACs to access solar distributed generation and clean energy on the same basis as other residential customers.”<sup>2</sup>

CRS has serious concerns regarding how the proposed changes to end the requirement to retire renewable energy certificates (RECs), abolish reporting RECs to the California Air Quality Board’s Voluntary Renewable Electricity Program (VREP), and eliminate Green-e® certification impact the ability of the DAC-GT program to serve its intended purpose.<sup>3</sup>

The proposed decision suggests that replacing these aspects of California’s current low-income green access programs with self-verification by program administrators might reduce costs. However, these cost savings may only be achieved by reducing the quality of clean power offered through the program, forcing low-income ratepayers to subsidize procurement of clean energy intended for the benefit of all ratepayers, and limiting access by disadvantaged communities to the same high-quality climate mitigation methods available to more privileged ratepayers. By ending retirement of RECs, abolishing VREP reporting, and eliminating Green-e® certification, moreover, the proposed decision would create a program that offers a lesser clean power product to low-income ratepayers and disadvantaged communities than what is accessible to other ratepayers, contravening the Commission’s stated purpose when creating DAC-GT.

#### Ending Retirement of Renewable Energy Certificates

RECs are the market-based mechanism for tracking renewable electricity consumption and have become the currency by which the non-power attributes of renewable generation are traded for compliance purposes and in voluntary markets. RECs provide a mechanism for disaggregating (unbundling) non-power attributes from the underlying electricity, permitting purchasers to access renewable power wherever it is most cost-effective to generate. They also

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<sup>2</sup> See California Public Utilities Commission, *Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities*, Decision 18-06-027, June 21, 2018, p.10 (emphasis added). <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M216/K789/216789285.PDF>.

<sup>3</sup> Hymes, *supra* note 1.

provide load-serving entities broader choices and greater flexibility in complying with clean energy mandates and supplying voluntary green power programs.

Eliminating REC retirement under the reformed DAC-GT makes it questionable if subscribers to the program are receiving renewable electricity at all. REC retirement is so essential to tracking and verifying clean energy consumption that it has long been a prerequisite for any RECs to be eligible for California’s renewables portfolio standard procurement requirement.<sup>4</sup> Should no less a standard be required to verify renewable electricity purchased voluntarily by low-income customers and those from disadvantaged communities?

Without the requirement to retire RECs, verification of clean power consumption and validation of the environmental benefits associated with switching to renewable electricity becomes extremely challenging—and likely cost-prohibitive—for low-income customers and disadvantaged communities.

By eliminating the requirement to retire RECs under the DAC-GT program, the proposed decision might permit RECs generated and purchased under the program to count for regulatory compliance purposes. Such an outcome not only would constitute double-counting of the environmental attributes of the renewable generation but would violate Section 399.30 paragraph C(4) of the Public Utilities Code (as amended by the Clean Energy and Pollution Reduction Act of 2015), which states that “any renewable energy credits associated with electricity credited to a participating customer [of a voluntary green pricing or shared renewable generation program] *shall not be used for compliance* with procurement requirements under this article, *shall be retired* on behalf of the participating customer, and shall not be further sold, transferred, or otherwise monetized for any purpose.”<sup>5</sup>

Applying RECs procured under the reformed DAC-GT program to the State’s renewables portfolio standard also would inadvertently create a cross-subsidy whereby low-income

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<sup>4</sup> California Public Utilities Code, §399.21(a)(7), amended October 7, 2015.  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB350](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB350).

<sup>5</sup> California Public Utility Code, § 399.30 C(4), amended October 7, 2015.  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB350](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB350).

customers underwrite procurement of renewable generation intended to benefit all ratepayers. This outcome would subvert the fundamental equity goals DAC-GT is intended to achieve.

REC retirement not only is mandated under the Public Utilities Code but is critical to making credible claims characterizing power sold under DAC-GT and to any environmental benefit derived from consumption of that power. The Federal Trade Commission (FTC) 'Green Guides' specify that products should not be marketed as renewable energy unless all portions of the product are matched with retired RECs.<sup>6</sup> This guidance makes clear that power products require REC retirement to accurately account for the portion that is claimed as renewable. The FTC guidance suggests that RECs serve a critical role not only in establishing exclusive ownership of the environmental attributes of renewable generation, but in accurately matching those attributes to load. If there is no requirement to retire RECs under DAC-GT, the FTC guidance questions whether the reformed program could be marketed as a "green" tariff at all.

Failure to retire RECs has significant implications for how subscribers may characterize their purchases as well. The U.S. Environmental Protection Agency (EPA) has declared that the ability of an entity to make renewable electricity usage claims is contingent upon its ownership of the energy attributes associated with the electricity consumed.<sup>7</sup> Because RECs represent these attributes, the EPA requires participants in its voluntary Green Power Program to prove that they have exclusive rights to the RECs associated with the electricity and have retired the associated RECs (or have had them retired on their behalf). Without retired RECs as proof of this exclusive right, low-income customers and disadvantaged communities cannot be confident in the environmental benefits of consuming power procured through the program.

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<sup>6</sup> See Federal Trade Commission, *Revised Green Guides* § 260.15 (a), 2012.

<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>.

<sup>7</sup> See U.S. Environmental Protection Agency, "Credible Claims," EPA.gov, Green Power Markets Home > Act > Credible Claims. . . , 2024. <https://www.epa.gov/green-power-markets/credible-claims>.

Subscribers to the reformed DAC-GT program participate with the reasonable expectation that they are consuming renewable electricity and have the right to claim that they are making environmentally responsible purchasing choices. By ending REC retirement, the proposed decision ruins low-income and disadvantaged customers' confidence in the environmental benefits of consuming power procured through the program and undermines their credibility in making claims to any of those benefits.

### Abolishing VREP Reporting

The California Air Resources Board's Voluntary Renewable Electricity Program (VREP) is the mechanism by which sellers of eligible voluntary renewable electricity request retirement of allowances on behalf of their customers under California's Cap-and-Trade Program. Under VREP, allowances for the emission of greenhouse gases are retired from the VREP Reserve Account based on the volume of corresponding renewable electricity procured through voluntary markets. The VREP ensures that voluntary procurement is surplus to regulation and does not unintentionally subsidize regulatory compliance or permit regulated entities to emit more than they would have absent voluntary procurements.

The proposed tariff reforms abolish the reporting of RECs to the VREP, frustrating the program's ability to achieve both its environmental and social equity goals. If RECs procured under the program are not backed out of the State's Cap-and-Trade Program, power voluntarily purchased by participating low-income customers would simply free up allowances for more carbon-intensive industries to obtain, granting them the ability to emit more CO<sub>2</sub> than regulators would permit otherwise.

RECs also convey property rights to all the non-power attributes of clean energy. A growing number of federal agencies, for example, explicitly recognize RECs as property, in which one purchaser's ownership necessarily denies ownership to any other entity.<sup>8</sup> Consequently, RECs

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<sup>8</sup> A growing number of federal agencies explicitly recognize RECs as property, in which one purchaser's ownership necessarily denies ownership to any other entity. The FTC, for example, explicitly acknowledges that, "a REC represents a property right in the technological and environmental attributes of renewable energy." See CRS, *The Legal Basis for Renewable Energy Certificates*, version 2, April 2023. <https://resource-solutions.org/wp-content/uploads/2015/07/The-Legal-Basis-for-RECs.pdf>.

applied toward meeting one entity's RPS or Clean Energy Standard requirement cannot also be claimed by another as proof of avoided emissions.

Failing to report energy procured under DAC-GT to the VREP could undermine the environmental benefits of participating in the program. This outcome, however, may not be immediately apparent to most customers. While they believe their purchase of renewable power generates fewer harmful emissions, in fact, without reporting to the VREP, their participation in DAC-GT would effectively increase the net emission of greenhouse gases by California industries.<sup>9</sup> It is reasonable to assume that most participants in voluntary green access programs believe they are avoiding greenhouse gas emissions by purchasing renewable energy.

By failing to remove allowances corresponding to the emissions reduced through voluntary procurement, however, the program would mislead participants and have the practical result of undermining their intended purpose in participating.

Moreover, through their purchase of renewable power, DAC-GT participants would be paying for emissions reductions that should be the responsibility of covered entities and which benefit all the State's ratepayers. By not reporting RECs to the VREP, therefore, the proposed decision risks creating a cross-subsidy that has the State's low-income customers and disadvantaged communities underwrite the compliance costs of some of the State's most profitable industries. Such an outcome would subvert the Commission's intent in creating the DAC-GT program.

In short, the proposed decision would sacrifice the potential reductions in carbon emissions, erode consumer confidence in the program, and risk creating an unintended cross-subsidy in exchange for unquantified cost savings based on unevidenced assertions that VREP reporting

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<sup>9</sup> Compared to the net emissions of greenhouse gases had the voluntary procurement been reported to the VREP and the corresponding volume of emissions allowances reduced from the total allowances permitted under California's Cap-and-Trade Program.

adds cost to the program's administration. In fact, reporting voluntary procurement to the VREP is free. All that is required is an application form.

### Eliminating Green-e® Certification

Green-e® Energy is the leading independent certification and verification program for renewable energy in North America. For over 25 years, the Green-e® Energy verification audit and review process has been the industry's most rigorous consumer protection program, ensuring the impact, transparency, accuracy, and integrity of renewable energy transactions. Green-e® certification is the most effective tool known for consumers and businesses to guarantee that they are reducing the environmental impact of the electricity they consume. And for the last nine years, it has been the standard the CPUC required of power offered to all ratepayers under California's green access program tariffs. Indeed, its order requiring Green-e® certification for all Green Tariff Shared Renewables programs notes that Green-e® standards are developed with broad stakeholder input, provide customers with standardized, understandable information on the attributes of the power they purchase, and provide assurance that customers are getting what they paid for—the highest-quality, most impactful renewable generation available in the market.”<sup>10</sup>

While RECs are the fundamental instrument for allocating the non-power attributes of renewable generation and retiring RECs is the primary method that U.S. markets use to track non-power attributes and establish their ownership, Green-e® certification ensures that the ownership of these attributes is exclusive and surplus to regulation, verifying that no other ratepayer—nor any government compliance program—has claimed them.<sup>11</sup>

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<sup>10</sup> California Public Utility Commission. *Decision Approving Green Tariff Shared Renewables Program for San Diego Electric Company, Pacific Gas & Electric Company, and Southern California Edison Pursuant to Senate Bill 43*, A.12-01-008 et al., January 15, 2015. <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M146/K250/146250314.PDF>.

<sup>11</sup> There is one exception to the general rule that Green-e® certified renewable generation is surplus to regulation, and that is when regulations mandate renewable generation for products that meet 100% of a consumer's load. This exception requires proof of three criteria. 1. The customer is receiving a certified electricity product for 100% of their electricity use from a Green-e® participant supplier that is an electric service provider; and 2. The mandated renewables are provided to the customer by the same electric service provider; and 3. The renewable electricity applied to a mandate and delivered to the customer meets all of the relevant Green-e® eligibility requirements in the applicable Regional Standard. If all these conditions are met, then the electric service provider may count the portion of Green-e® eligible mandated renewables toward the certified electricity product that meets 100% of the customer's electricity use. Green-e® Energy, *Green-e® Renewable Energy Standard for Canada and the U.S.*, version 4.3, 2024. <https://www.green-e.org/docs/energy/Green-e%20Standard%20US.pdf>.

Moreover, Green-e® certification performs several functions beyond simply tracking RECs to guarantee exclusive ownership, including: (1) chain-of-custody audits of the REC supply chain, (2) facility-level review of potential double claims, (3) verification of the accuracy of suppliers' marketing messages, (4) validation that the renewable energy is incremental to any government mandates for renewable energy, and (5) additional steps to address potential interactions with state policies (including carbon policies) that could limit the ability of voluntary customers to claim sole custody of attributes. No other organization is performing these tasks, nor, like the Green-e® program, has decades of experience effectively executing comprehensive exclusive ownership verification.

By eliminating Green-e® certification of RECs sold under the DAC-GT program, the proposed decision makes proving exclusive ownership of renewable attributes and associated emissions avoidance more challenging and frustrates attempts by disadvantaged communities to be confident that their actions are reducing their GHG footprints. Such an outcome contravenes the State's pursuit of aggressive GHG emissions reduction targets as well as its energy equity goals.

This reform also is inconsistent with California's movement toward greater reliance on independent, third-party verification of environmental progress, as evidenced by the State's new Climate Corporate Data Accountability Act, which requires some companies to obtain third-party verification of the GHG emissions they report.<sup>12</sup>

Finally, eliminating Green-e® certification under the reformed DAC-GT program raises some troubling energy equity concerns. When it characterized the DAC-GT program as "an equity program" intended to allow low-income customers and disadvantaged communities to access clean energy "on the same basis" as other ratepayers, the Commission was articulating a fundamental goal of energy equity: to rectify the disparities of the clean energy transition by fairly and justly distributing the benefits of energy policy, programs, and technologies.<sup>13</sup>

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<sup>12</sup> California legislature. Climate Corporate Data Accountability Act (S.B. 253), October 7, 2023. [https://leginfo.ca.gov/faces/billPdf.xhtml?bill\\_id=202320240SB253&version=20230SB25392CHP](https://leginfo.ca.gov/faces/billPdf.xhtml?bill_id=202320240SB253&version=20230SB25392CHP).

<sup>13</sup> See Terekegne, B.W., et. al. *Review of Energy Equity Metrics*, Pacific Northwest National Laboratory Report PNNL-32179, October 2021. [https://www.pnnl.gov/main/publications/external/technical\\_reports/PNNL-32179.pdf](https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-32179.pdf).



A fair distribution of clean energy benefits entails assessment of the products that are made accessible to low-income customers and those from disadvantaged communities under the State's green access programs and whether they represent a fair distribution of the benefits of solar power relative to the products accessible to other ratepayers.

For example, under PG&E's Green-e® certified Solar Choice program, all ratepayers were permitted to purchase Green-e® certified power. However, only those customers that could afford it effectively had access to the program. To address this potential inequity, PG&E developed the Green Saver program, which offered qualified low-income ratepayers a 20 percent discount on their purchase of Green-e® certified solar power. The Green Saver program effectively enhanced energy equity because it distributed the benefits of solar power equitably by providing access for low-income ratepayers and disadvantaged communities to the same quality Green-e® certified electricity as available to other ratepayers rather than an inferior product.

In contrast, "to save costs" the proposed decision eliminates Green-e® certification of a primary mechanism by which California's low-income ratepayers are to access solar power. To single out a program intended to serve low-income and disadvantaged communities and reduce the quality and utility of power offered under it creates a tiered system of green energy access: a Green-e® certified tier for the State's more affluent ratepayers and a separate, lesser tier for California's poor and disadvantaged, one that lacks independent verification, provides little assurance of exclusive ownership of non-power attributes, and limits the confidence customers have that their procurement of renewable generation under this program is effectively helping to mitigate their carbon footprints. This stratified approach to green energy access is unlikely to generate substantial cost-savings but *is* likely to subvert the equity goals the Commission intended by establishing the DAC-GT program in the first place.

### Addressing Cost Concerns

The proposed decision requires program administrators of the revised DAC-GT program to “conduct their own validation and tracking,”<sup>14</sup> but provides little guidance for how to implement this process beyond asserting that “validation and tracking by program administrators on a single website is more cost-effective...” and listing the kinds of data that should be disclosed.<sup>15</sup>

Presumably, this text of the proposed decision means more cost-effective than Green-e<sup>®</sup> Energy. But the cost of Green-e<sup>®</sup> certification is modest and, because the bulk of certification costs are flat fees spread across the entire subscribership, if the proposed restructuring of the State’s green access program tariffs successfully increase participation in DAC-GT, the per-customer cost of certification should decrease substantially.

In short, if the restructuring suggested under the proposed decision solves the problem of low subscribership, it also solves the problem of the high cost of Green-e<sup>®</sup> certification. Adopting the proposed restructuring effectively addresses utility cost concerns without having to abandon the significant benefits Green-e<sup>®</sup> certification achieves or having to create a program that offers low-income customers and those from disadvantaged communities something inferior to what is offered under green tariff programs accessible to other ratepayers.<sup>16</sup>

### Valuing Independent Verification

The Green-e<sup>®</sup> Energy Program provides independent, third-party verification that the reported program data meets specific standards. This objectivity is essential to consumer trust in the renewable energy product as well as the trust of other regulating bodies that the information supplied by regulated entities effectively demonstrates compliance with the regulations these bodies enforce. Replacing Green-e<sup>®</sup> certification with an opaque verification process performed by those who administer the program subverts the very purpose of independent verification.

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<sup>14</sup> Hymes, *supra note*, 1 at 130.

<sup>15</sup> *Ibid.*, at 159.

<sup>16</sup> It is important to note, moreover, that similar costs would arise under any minimally rigorous verification method utilizing generally accepted accounting principles, including under any minimally acceptable verification method employed by program administrators under the suggested self-verification process.

Self-verification, moreover, could prove more costly by foregoing the benefits to regulated utilities of independent review. Regular, third-party verification not only enhances the credibility of reported data, but the process itself can identify and avoid potential risks and reveal opportunities for operational improvements that can simplify processes and alert administrators when data anomalies arise, reducing the potential for error.

Where data for compliance with regulations and binding voluntary programs is required, third-party verification can demonstrate a company's due diligence and indicate that any subsequent errors identified by regulators were likely unintentional and do not justify punitive enforcement actions. In fact, CDP (formerly the Carbon Disclosure Project) has documented several case studies where independent, third-party verification identified risks, suggested operational improvements, or reduced enforcement actions in ways that generated substantial cost savings for companies and organizations.<sup>17</sup>

### Recommendations

To address the concerns outlined here, CRS recommends amending the proposed decision to clarify that RECs generated from energy sold through the reformed DAC-GT program must be retired on behalf of program participants, consistent with the Public Utilities Code and the requirement to retire RECs under the existing green access tariff programs.

Additionally, the proposed decision should either omit the text that ends reporting of RECs to the VREP and eliminates Green-e® certification of renewable energy sold to program participants or be amended to clarify that the reformed DAC-GT program will retain these requirements.

CRS is grateful for the chance to give our thoughts on the proposed decision and demonstrate the value of RECs, reporting to the VREP, and independent, third-party verification of REC

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<sup>17</sup> See Carbon Disclosure Project (CDP), *The business benefits of third-party verification of climate data: A CDP Guide*, May 17, 2023. <https://www.cdp.net/en/reports/downloads/3117>.

transactions. CRS and our team of qualified experts always stands ready to provide technical assistance, research, and policy analysis to support the CPUC in its efforts to advance sustainable energy. We appreciate your consideration of our comments

Sincerely,

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