

State of Connecticut
DEPARTMENT OF PUBLIC UTILITY CONTROL

Notice of Intent to Adopt Regulations)
DPUC Promulgation of Regulations for) Docket No. 02-04-14
Renewable Energy Portfolio Requirements and)
Customer Disclosure)

**SECOND SET OF COMMENTS OF
UNION OF CONCERNED SCIENTISTS**

September 25, 2003

Introduction

In light of the recent amendments to the Electric Restructuring Act brought about by the passage of Public Acts 03-135 and 03-221, the Union of Concerned Scientists (UCS) offers the following second set of written comments regarding the Department's proposed regulations in the above referenced docket.¹ UCS has contributed, in varying degrees, to the development of almost every State RPS in the country. UCS has participated extensively in the development of the NEPOOL Generation Information System (GIS) in its role as a member of NEPOOL, through participation on the working group and advisory committee that developed the GIS and its operating rules. In addition, UCS has participated in the development of policies and market rules throughout the region in support of an expanded role for renewable and environmentally preferable energy, including the Massachusetts RPS Advisory Group. We appreciate the opportunity to offer comments relating to both the proposed changes to the Renewable Portfolio Standard (RPS) and the introduction of rules establishing Customer Disclosure.

The passage of Public Acts 03-135 and 03-221 addressed in one form or another many of UCS's comments in this docket submitted in January of 2003. However, the following points made in our first set of comments remain relevant:

- The NEPOOL GIS should constitute the *sole* basis for verification for any RPS-eligible generation in New England or whose energy is imported to New England and the sole basis for determining disclosure label fuel source and emission characteristics.
- Disputes over title to NEPOOL GIS certificates associated with qualifying facilities under long-term contract through out the region have become the subject of several ongoing proceedings before FERC, and before the Department and other state commissions. These disputes appear likely to spill over into court as well. These continued disputes damage both the development of a market for renewable energy and the credibility and reliability of the

¹ See comments previously submitted in this docket for background on UCS.

NEPOOL GIS accounting system. Whether FERC, state commissions or the courts ultimately assert jurisdiction, it remains important that the Department participate in and contribute to a rapid resolution to these title disputes.

- Disclosure rules should accurately reflect the greenhouse gas benefits of certain renewable energy sources, e.g. those generation sources using landfill methane and other biomass fuels.

Our additional comments, necessitated by the passage of Public Acts 03-135 and 03-221, are organized as follows:

- RPS Applicability
- RPS Eligibility
- RPS Geographic Eligibility
- RPS Targets
- Accounting and Verification
- Compliance
- Disclosure
- Interaction of RPS and Disclosure with Markets for Tradable Emission Rights

Before delving into our detailed comments, we first wish to make two overall comments.

- Make regulations a self-contained document. The draft RPS regulations contain no description of critical RPS design features such as eligible resources or percentage targets, instead relying solely on references to the applicable law. In addition to the ease-of-use benefit of making the regulations a stand-alone reference, because several aspects of the high-level language in the Public Acts require further elaboration, refinement clarification or resolution (as we point out below), we believe it will be far easier to draft and implement the regulations if the language to be elaborated upon is also present.
- Technical Session. In addition, we concur with Select Energy's suggestion that a technical session is advisable to help address the many complex implementation details. UCS offers to participate in such a session, and recommends that time be allocated during such a session to address detailed definitions and clarifications, in particular as they pertain to eligibility issues.

RPS Applicability

- The RPS requirement should apply to each electricity supply *product*. The RPS design should require compliance by all obligated retail electricity suppliers at the electric product level as a percentage of energy delivered. Such an approach ensures that suppliers supply the same level of renewable energy to all customer classes. The rationale for requiring that a portion of Connecticut's electricity be generated from renewable energy sources stems from

the fact that the use of such energy sources benefits the state and society as a whole rather than merely certain utilities, customer classes or individual customers.

Accordingly, the responsibility for implementation and cost of the RPS should be spread fairly and evenly across all regions of the state and be shared by all retail market participants, including retail suppliers and all customer classes served by them. One key component of a fair and equitable distribution of responsibility is to require that the renewable targets apply to each electric supply product. Adoption of language that is consistent with the RPS in Massachusetts will also enhance the compatibility of regional RPS programs.

RPS Eligibility

- Definitions of eligible Class 1 and Class II resources as modified by the Acts require further elaboration. For the regulations to function smoothly they must send clear signals, so generators and suppliers must have a clear understanding prior to the effective date of the RPS requirement of what resources are, and are not, eligible. The process of developing these detailed eligibility definitions should include the technical session recommended above. In particular, we ask that the Department:
 - Define clearly in the regulations what “low emission advanced renewable energy conversion technologies” means;
 - Clarify what other biomass, besides gasification, would be eligible, or conversely, what if any conversion technologies would be ineligible. The definition of Class 1 biomass in the Act states that “a biomass facility, including, but not limited to a biomass gasification plant”, would be eligible. The Department should (for example), clarify whether generation of electricity from conversion of biomass to methane in anaerobic digesters is eligible;
 - Define biomass “cultivated and harvested in a sustainable manner” especially as it pertains to non-forest biomass sources. UCS has provided guidance on this topic in its first set of comments;
 - Define clearly what will constitute “a run-of-the-river hydropower facility”;
 - For hydropower, define clearly how the phrase “began operation after the effective date of this section” will be interpreted. In particular, this language is ambiguous with respect to refurbishments or repowering of dams out of operation for some period or that have temporarily ceased to operate. Without clarification, it is not clear whether eligibility would be limited to plants that *first* operated after the effective date, or whether a broader definition would apply, under which the repowering of dormant sites would be encouraged (e.g. any dam site that produced no energy for X years prior to the date of effective date of the Act, that later returns to operation, will be considered eligible);
- The Department should establish procedures for prequalification of sources as eligible under the revised Class 1 definition. The Department should look to RPS prequalification procedures established by the Massachusetts Division of Energy Resources as a useful model for providing certainty to potential investors in new renewable energy generators before investment occurs.

RPS Geographic Eligibility

- Clarify eligibility for generation whose energy and attributes purchased within New England. The Statute states that suppliers may satisfy their RPS requirement by “purchasing Class 1 or Class II renewable energy sources within the jurisdiction of the regional independent system operator”. In order to eliminate any ambiguity, the Department should implement this clause by establishing that any supplier may utilize source-specific Certificates from eligible resources issued by the NEPOOL GIS or any successor thereto. This clarification would make clear that imports of energy and generation attributes into New England that are recognized by the GIS – i.e. those purchased within New England - are eligible.
- Clarify the eligibility of generation in New York, Pennsylvania, New Jersey, Maryland, and Delaware. The Statute states that suppliers may satisfy their RPS requirement by purchasing renewable energy sources “(A)... within the jurisdiction of the regional independent system operator, or within the jurisdiction of New York, Pennsylvania, New Jersey, Maryland, and Delaware, provided the department determines such states have a renewable portfolio standard that is comparable to this section; *or* (B) by participating in a renewable energy trading program within said jurisdictions as approved by the Department of Public Utility Control.” This language is imprecise in several respects, necessitating that the Department clarify the following points:
 1. *Comparable RPS versus approved trading program.* Inclusion of the “or” between clauses (A) and (B) above has introduced some confusion that the Department must sort out in its regulations. In particular, the Department should clarify its interpretation as to whether a comparable RPS is required in all cases (as was the apparent interpretation by EMI and Ridgewood based upon their comments); or whether a comparable RPS and a REC trading program are alternatives, so that just the presence of a renewable energy trading program is sufficient (as was clearly the interpretation of Environment Northeast in their comments to the Department).
 2. *Defining a Comparable RPS.* The Department should define what characteristics an RPS would have to possess in order for it to recognize that RPS as comparable. UCS concurs with Ridgewood that the associated tracking and verification system must, at a minimum, assure no double counting, and should require a compatible GIS. It would be reasonable to require a comparable RPS to allow comparable access to Connecticut generation. We agree with Ridgewood on the need for a proceeding to establish a comparable RPS and the need for ongoing monitoring. We recommend that the Department in its regulations identify what criteria to be used to decide whether an RPS is comparable, and specify that hearings would be held to make determinations on a state’s specific program. This appears to be an ideal topic to explore in a technical session.
 3. *Define under what conditions the Department would approve a renewable energy trading program.* UCS believes that, at a minimum, such an approval should require that a compatible GIS support the renewable energy trading program, and

that each GIS recognizes and counts certificates generated within the other jurisdiction. This topic also appears to be ideal to explore in a technical session.²

- Certification of renewable generators outside of New England. We agree with Ridgewood on the need for certification for generators outside of New England to be used for compliance. We recommend use of a similar prequalification process to that adopted by Massachusetts as a requirement of non-NE generators.

RPS Targets

- The RPS requirement should be clearly stated as continuing in effect for a sufficient period to amortize investment in new renewable generation. While the Statute has refined the schedule of RPS targets, it does not specify if (or for how long) the RPS requirement will continue after January 1, 2010, the date when the last and highest specified Class 1 target must first be achieved. We recommend that the rules specify that the RPS obligation of 7% be allowed to self-sunset when renewable energy credit prices fall to zero, to allow renewable developers and retail suppliers to recover any incremental costs over a reasonable period of time, minimizing the price of renewable energy credits. This could be accomplished by inserting "and thereafter" immediately after the phrase "and by January 1, 2010" where the percentage targets are inserted in the RPS regulations. At a minimum, the RPS target should continue to apply for at least 10 years after the highest target is reached. This approach was adopted in both the Texas RPS rule and national RPS included in the Senate energy bill. Not following suit in Connecticut will undermine the investment in new renewable energy resources in the later years of the program because cost recovery would be uncertain.

Accounting and Verification

- The Department should establish mechanisms for accounting for eligible distributed generation. Additional language may be required in the RPS regulations to assure that the NEPOOL GIS can be relied upon as a mechanism for verifying distributed generation sources, now explicitly made eligible by the Statute. We encourage the Department to be as consistent as possible with the Massachusetts RPS rules (see references to "Small Generation" and "Behind-the-Meter Generation") and NEPOOL GIS Operating Rules. Doing so should obviate the need for the "Alternative Demonstration" (Section 3. Section 16-245-5 (d)) in the Department's draft regulations.

Compliance

- The Department's regulations should incorporate flexibility mechanisms necessary to minimize the cost of compliance. First, the Department should add the three-month makeup period specified in the Statute to its regulations. In addition, UCS generally supports the

² We recommend that the Department utilize the following document as a resource in guiding this discussion: Grace, Robert and R. Wisner, *Transacting Generation Attributes Across Market Boundaries - Compatible Information Systems and the Treatment of Imports and Exports*, Prepared for U. S. Department of Energy and New York State Energy Research & Development Authority, published as a Lawrence Berkeley National Laboratory report, 11/02. See: http://eetd.lbl.gov/ea/EMS/reports/51703_exsum.pdf

comments of CSG, Ridgewood, and Select Energy that both early compliance and banking, provided that if banking is permitted, reasonable limits should be placed upon the quantity that can be banked and the period of time over which RECs can be banked. If banking is permitted, the Department should take care to avoid material conflicts with disclosure. One mechanism used by Massachusetts to achieve this end is the banking of excess compliance by an obligated entity, rather than the certificates themselves. Massachusetts does not allow either banking by entities other than retail suppliers, or transfer of banked compliance from one retail supplier to another. Considering banking provisions that allow other market participants to bank, and trade those banked certificates, may add desirable flexibility to the market, so long as the implications for disclosure are rationally addressed.

- The Statute's penalty for failure to meet the target should be incorporated in the regulations, with adjustment for inflation. When the Department adds language required by the Statute to reflect the 5.5¢/kWh payment for non-compliance, we recommend that this charge be clarified to indicate that it will be adjusted annually for inflation, for two reasons. First, as inflation makes the effective cost cap lower and lower (in real terms), more suppliers and utilities will pay into the penalty fund rather than develop more renewable energy. The result is less renewable energy, less natural gas savings, and fewer economic and environmental benefits. Second, given the presence of a Massachusetts 5¢/kWh alternative compliance payment (ACP), an effective cap to the Massachusetts RPS, the legislature must have intended for the Connecticut price cap to be higher than that in Massachusetts. The logical result of a higher cap is that when supply is tight, Massachusetts retail suppliers would pay the ACP and renewable certificates would be sold to Connecticut suppliers. If the Connecticut 5.5¢ penalty is not inflation-indexed like the Massachusetts ACP, then it is unlikely that the Connecticut price cap will remain above the Massachusetts cap, conflicting with the apparent intent.
- Compliance and reporting schedules should be simplified and rationalized. We concur with the comments of CSG that the RPS compliance period and the disclosure reporting periods should be set to the calendar year, with compliance filing schedules dictated by the availability of NEPOOL GIS reports for the associated period.
- Clarify RPS exemption for suppliers using solely Class II renewables. The Statute provides for any supplier providing electric generation services solely from a Class II renewable energy sources to be exempt from compliance with the RPS. The Department must therefore incorporate language into its rules reflecting this exemption, and should make clear that the exemption only applies during calendar years in which Class II renewables constitute 100% of the supplier's delivered energy.

Disclosure

- Disclosure labels should, as best as possible, reflect regional standards in all respects. The NEPOOL GIS was established to providing a consistent basis for tracking and reporting the content and emissions of retail supply offerings throughout New England. In the presence of the GIS system, any other method for attributing attributes to retail sales will conflict with the information carried in the GIS system, and most likely result in double counting of attributes from renewable generation. For these reasons, we believe it is appropriate to rely exclusively on the GIS system as the sole basis for disclosure accounting and verification, as the Department has put forth in its draft regulations. While not stated explicitly, it is

consistent with the Department's stance on utilizing the attributes reflected by the GIS, to require disclosure on a "product" basis. The GIS system provides the functionality to sort all GIS certificates into specific "products". Other New England states with disclosure requirements mandate reporting on a product-specific basis. Disclosing content by product, rather than on the basis of a supplier's aggregate portfolio, is necessary to avoid confusion that would result if a customer buying an offering with high level of renewable energy were to receive the same label as a customer buying undifferentiated commodity supply. Therefore, we recommend that the Department clarify its rules to explicitly require disclosure on a product basis.

- Use for RPS compliance of generation located in New York, Pennsylvania, New Jersey, Maryland, or Delaware verified by means other than the NEPOOL GIS should not influence source and emission disclosure. As noted in our first set of comments, we believe disclosure should rely exclusively on the NEPOOL GIS. Depending on how the Statute is ultimately implemented, suppliers in Connecticut may be able to satisfy their RPS obligations in whole or part from generation located in these specified upwind states that is not accounted for in the NEPOOL GIS. If this occurs, then this option represents a form of financial compliance with the RPS, distinct from the regional accounting regime for tracking the content of a supply portfolio serving load in New England. This alternative mechanism raises the question of how those attributes are, or are not, to be reflected on the disclosure label. Upon the adoption of a comparable GIS combined with comparable disclosure requirements in New York, Pennsylvania, New Jersey, Maryland, or Delaware, the Department may wish to request that NEPOOL modify the GIS Operating Rules to incorporate generation used for Connecticut RPS compliance from these other states. Until such time, we believe it is advisable that the Department exclude any resources used for RPS compliance that are not evidenced by NEPOOL GIS Certificates from inclusion on the disclosure label. This may be a good topic for a technical session as well.
- The Department's regulations should require distribution of the disclosure label semi-annually. This frequency is dictated by language in the new Statute.
- The Department's regulations should explicitly require all suppliers of retail load to meet its disclosure requirements, including electric distribution companies providing standard offer, transitional standard offer, standard service or back-up electric generation service. UCS concurs with Environment Northeast that disclosure requirements should apply equally to *all* suppliers of retail load. This treatment is consistent with the scope of Public Act 03-135 Section 14 (b).

Interaction of RPS and Disclosure with Markets for Tradable Emission Rights

Both the Department's draft regulations and the Statute are silent on one issue that has become of greater relevance with the establishment of emission cap-and-trade regimes in the region. Some of the rules in New England states and elsewhere provide for set-aside allowances to be granted to renewable generators, a policy UCS wholeheartedly supports. A current example is the NO_x set-aside rules being developed by the Massachusetts Department of Environmental Protection (310 CMR 7.28). The increasing prevalence of such mechanisms raises the issue of whether generation remains eligible for an RPS *if* such allowances have been acquired and sold off. While this issue post-dates the creation of many RPS regulations (and therefore most such

regulations remain silent on this issues), some states have considered these interactions and addressed them differently. For example, the Texas RPS requires that emission rights be bundled with the “renewable” attribute, so that generators cannot sell off rights to third parties and still have their associated production be eligible for RPS compliance. In contrast, Massachusetts appears to have been purposefully silent on the issue, so that generation selling off such rights would continue to be eligible for their RPS.

Many of the programs and institutions supporting the nascent consumer “green power” market narrow eligibility to those generators that have not sold off such allowances. We include here as Attachment 1 a briefing paper prepared by UCS that addresses some of these issues.

In the future, particularly as similar programs are adopted for CO₂ trading regimes, the department should also consider the appropriate treatment of renewable generators participating in such market schemes. For example, if CO₂ emission offsets were sold to a CO₂ source such as a fossil fuel generating facility, then the disclosure reporting of gross CO₂ may be more appropriate to avoid double counting of CO₂ benefits.³

We recommend that the Department consider this issue as it drafts regulations for both RPS eligibility and disclosure.

³ For our purposes, we use the term offset here to mean a project or activity that is designed to achieve net emissions reductions at a location other than a CO₂ source such as a fossil fuel generating facility.

Attachment 1

Union of Concerned Scientists - Briefing Paper

**Ensuring the Integrity of Renewable Energy Accounting:
Making Set-Aside Emission Allowances for Renewable Energy Compatible
With the NEPOOL Generation Information System**

**Ensuring the Integrity of Renewable Energy Accounting:
Making Set-Aside Emission Allowances for Renewable Energy Compatible
With the NEPOOL Generation Information System**

May 15, 2003

Summary: The creation of set-aside allowances for renewable energy under the Massachusetts NO_x trading program creates additional value for renewable generators, allowing them to either secure additional revenues through the sale of these allowances to third parties requiring allowances, or alternatively enabling the sale of a higher value renewable energy product. With the introduction of a NO_x cap-and-trade regime, a zero-emission renewable generator cannot ordinarily claim to have reduced NO_x emissions. However, if that plant is allocated set-aside allowances and chooses not to sell them off, the generator can offer, and a customer can buy, something not otherwise available: renewable energy certificates that meet their commitment to buy renewable energy *and* also reduce NO_x emissions. In fact, the latter might have been the buyer's primary objective.

So while the introduction of the cap-and-trade set-asides create value for the renewable generator - either as NO_x allowances that can be sold, or as green power that reduces NO_x - it also introduces the potential for customers to be confused or misled. Is the buyer of a renewable energy certificate from the NEPOOL Generation Information System (GIS) buying renewable energy that will allow them claim NO_x reductions, or not? A certificate that demonstrates the additional benefit of NO_x reduction is clearly worth more than one that does not.

As noted below, studies have concluded that customers generally assume that purchasing renewable energy will have certain benefits, and that making the distinction between renewable energy with and without such benefits is far too complex for the typical customer. As a result, many of the programs and institutions supporting the nascent green power market narrow eligibility to those generators that have not sold off such allowances, and as a result require the ability to draw this distinction. In addition, some adopted or proposed renewable portfolio standards have been implemented explicitly for NO_x reduction (among other purposes), and thus have explicitly disallowed generators from eligibility that have sold off emission credits or allowances allocated to them. While this practice is not universal, other states' needs will be thwarted unless information is available to support the proposed Massachusetts program.

As a result, UCS recommends that the MA DEP provide data to NEPOOL on the allotment of set-aside allowances under this program, and work with NEPOOL to modify the GIS system operating rules and procedures to allow this distinction to be made on GIS certificates, thereby enabling the buyer to distinguish whether they are buying what they want and/or need.

Background: The Massachusetts Department of Environmental Protection (DEP) has recently proposed amendments to its NO_x Allowance Trading Program (310 CMR 7.28) that include a process for allocating allowances under the existing Public Benefit Set-Aside provisions to provide incentives for the development of Renewable Energy Projects and Energy Efficiency

Projects. Other states have implemented or may implement similar provisions in the future, both for NO_x, and for other emissions such as CO₂.

The establishment of such rules presents some indirect consequences that could, if not mitigated, confound other mechanisms for supporting renewable energy projects, as well as undermining the credibility of pre-existing systems and efforts. Typically, such emission cap-and-trade programs only allocate emission allowances to programs power plants that emit the pollutants in question, while discriminating against those generators that cause no such emissions by omitting them from the program. Second to output-based standards (with allowances allocated to plants in proportion to their output), which would put all generation on an equal footing, UCS is very supportive of emission allowance set-asides for renewables and energy efficiency. Such set-asides for the first time give credit (and the opportunity for revenue) for investments in renewables and energy efficiency that reduce NO_x, emissions directly to those who have created the benefit. However, it is critical that policymakers anticipate and address the consequences of introducing such programs to assure that renewable portfolio standards that are intended to have incremental NO_x benefits can assure that they are so, and to avoid undermining efforts on many fronts to develop consumer markets for “green power”.

The Issue: The New England Power Pool (NEPOOL) has established a Generation Information System (GIS) for tracking “generation attributes” associated with production from specific generation sources. These attributes include characteristics such as fuel source and emission characteristics. The purpose of the GIS is to enable the purchaser of a GIS certificate to lay claim to specific resource characteristics for purposes of compliance with various state “attribute laws” – including renewable portfolio standards (RPS), fuel source and emission disclosure requirements, and emission performance standards – or voluntary action to support environmentally preferable electricity sources (often referred to as green power). Some generation types emit no air pollutants, and are valued for this characteristic. If, however, such generators are awarded emission allowances *and* sell these off to third parties that use them to increase their own emissions, the buyer of an associated GIS certificate can no longer consider that generator to produce the same results or benefits as a similar generator that has *retired* rather than sold off its allowances. The GIS is currently not equipped to provide information to the buyers of GIS certificates in the event that set-aside emission allowances are awarded and sold off, rather than retired.

Why Does This Matter: Consequences and Implications: There are at least two categories of situations where sale to third parties of such set-aside emission allowances may be of consequence to the parties ultimately interested in the purchase of GIS certificates: (a) RPS administrators and (b) buyers of “green power”. This may ultimately be of interest to regulators responsible for disclosure requirements and/or emission performance standards, but those issues are more complex and are not addressed here.

RPS: Whether the sale of set-aside allowances is of consequence to the administrator of a particular state’s RPS requirement depends ultimately on the objectives of the mandate. Simply put, if an RPS mandate is established specifically with reduction of those particular pollutant emissions in mind for which set-aside allowances are awarded to zero-emission resources, then generators that sell off such allowances to emitting third parties will clearly fail to meet the mandate’s objectives. If an RPS is developed for

other purposes only, for instance for fuel diversity or price stability purposes, then the sale of such allowances to third parties is not of consequence to the RPS administrator.

Many RPS mandates are not very explicit about their purposes. It appears that Massachusetts DOER has concluded that such sale of emission allowances would not subvert the Massachusetts RPS's objectives. However, other states may have explicitly or implicitly established an RPS for the purposes of reducing emissions of pollutants for which such set-asides are being (or may be) established. Only recently has the interaction between these different policy mechanisms, and their implications, come to light. As a result, more recent efforts at establishing RPS mandates are starting to address this issue up front. For example, an RPS bill currently before the Rhode Island legislature, developed as a result of a multi-stakeholder greenhouse gas action plan effort, explicitly states in its preamble that its objectives include reductions of local air pollutant emissions as well as greenhouse gas emissions; and goes on to indicate that if otherwise eligible resources are awarded such emission allowances and sell them off to third parties instead of retiring them, then they would no longer be eligible.⁴ This issue has also been highlighted as an explicit design issue in New York's ongoing proceeding to establish an RPS.⁵ As another example, the California PUC has recently in a proposed decision in its ongoing RPS rulemaking⁶ that emission allowances must remain bundled: "*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.*" In summary, sale of such allowances may matter to some RPS administrators and their obligated entities, and not others; however, for the former group, today there is no accounting mechanism to provide the necessary information to accomplish the mandate's objectives.

Green Power: While the green power market in New England is currently small, the volume of activity will be increasing substantially over the coming months as voluntary and state-supported programs take hold or are first introduced in Massachusetts, Rhode Island and Maine. A very broad range of stakeholders has examined the issue of stripping away certain emission attributes from renewable energy sold to consumers on a voluntary basis, and come to the conclusion that (either universally, or for all but the most sophisticated customers) renewable energy sold as green power should have such set-aside allowances retired rather than sold off to third parties. For example:

- The sale of green power from renewable resources which have sold off emission allowances would clearly run afoul of the National Association of Attorneys General's Environmental Marketing Guidelines for Electricity⁷ by misleading customers as to the benefits they expect in purchasing renewable energy. Even if such sales of emission allowances or credits were clearly disclosed, several major

⁴ Rhode Island House Bill 5533 Substitute A.

⁵ Case 03-E-0188 - Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.

⁶ See Proposed Decision of ALJ Allen in "Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.", Rulemaking 01-10-024, May 20, 2003.

⁷ Environmental Marketing Guidelines for Electricity, National Association of Attorneys General, Environmental Marketing Subcommittee of the Energy Deregulation Working Group, December 1999.

studies have concluded that even a detailed disclosure of such facts, particularly for small customers, is insufficient. Specifically,

- The Center for Resource Solutions has developed a TRC Handbook for Regulators (currently in final draft). The National Association of Regulatory Utility Commissioners (NARUC) has supported its development and reviewed and commented on its contents, and has recommended it for use by regulators facing these issues. The Handbook identifies for regulators best practices on this and other issues. The handbook concludes that “most customers expect, when purchasing a renewable power product that their purchase is helping to alleviate a range of immediate and/or long-term environmental threats, even if a marketer does not expressly make such claims”. The report goes on to conclude that the disaggregation of TRCs (as the report refers to this practice) poses a significant consumer protection threat because the concept is far too complex for most customers to understand, and strongly discourages the mass marketing of products based on disaggregated TRCs.⁸ Information must be readily available to sellers of green power to distinguish whether their supply meets such criteria for credibility.
- The Center for Resource Solutions also convened a national, multi-stakeholder decision-making process to evaluate issues associated with use of certificates for these purposes and concluded in their report that the sale of green power to consumers when environmental credits are sold separately constitutes a “partial double-sale” that should not be allowed: “Actual partial double sales must be prohibited when environmental credits are provided to the generator by virtue of its generation (e.g., CO₂, ERCs, etc.). In such a case, a retail marketer, for example, should be disallowed explicitly or implicitly from marketing the CO₂ benefits of its green power product while simultaneously reselling those CO₂ credits to another party. This is a clear partial double sale of a single environmental attribute associated with renewable energy, and should not be allowed.”⁹ They go on to recommend that all such cases should be prohibited in law and discouraged in practice, that verification systems track such information, and that certificates carry (at a minimum) information on the allotment of such allowances or credits, and perhaps even their disposition.
- Likewise, the National Wind Coordinating Committee (NWCC), a consensus-based collaborative¹⁰, also convened and facilitated a national dialogue on tradable certificates. Regarding the sale of emission allowances or similar attributes, they concluded “Laws, regulations and markets should recognize that environmental attributes can be disaggregated from each other where appropriate and consistent with consumer protection guidelines and the healthy development of markets. Disaggregated environmental attributes

⁸ TRC Handbook for Regulators, National Association of Regulatory Utility Commissioners, final draft.

⁹ Summary Report on Tradable Renewable Certificates (TRC): The Potential and the Pitfalls, A Project Organized by the Center for Resource Solutions, <http://www.resource-solutions.org/CRSprograms/trec/FinalSummary.pdf>.

¹⁰ Members include representatives from electric utilities and support organizations, state legislatures, state utility commissions, consumer advocacy offices, wind equipment suppliers and developers, green power marketers, environmental organizations, agriculture and economic development organizations, and state and federal agencies.

might best be suited for environmental compliance programs. Aggregated environmental attributes might best be suited for consumer retail markets”.¹¹

- It is for these reasons that the Green-e Green Power Certification program prohibits generation from which such attributes have been stripped and sold separately from qualifying as eligible renewable generation in green power offerings that it certifies.¹²
- The major TRC marketers selling the benefits of renewable energy via TRCs – such as EAD Environmental, a Natsource subsidiary - identify an explicit benefit in their marketing materials: TRCs “support the development of environmentally preferable energy sources to fight global warming, acid rain, ground level ozone (smog)”.¹³ They could not make such claims if set-aside allowances are sold off.
- Finally, in New England there are several pre-existing programs that require demonstration that such allowances are not sold off. For instance, the Rhode Island Renewable Energy Fund has implemented a series of incentives for small customer green power marketers, which require green power marketers to attest that such allowances have not been sold off from renewables offered to RI customers. In addition, on May 9, 2003, National Grid’s Massachusetts Electric subsidiary filed with the Massachusetts DTE for approval of a Renewable Power Upgrade Service program, whose terms were developed through a multi-stakeholder negotiation. A condition of eligibility under the program is that such allowances may not be sold off.

The common thread here is that in order to identify whether an entity relying on a GIS certificate is meeting the guidelines or requirements outlined above, there must be a source of information that allows the buyer to ascertain whether a source has had such allowances allocated to it, so that they can determine the disposition of those allowances.

In summary, for the purposes of green power sales in nearly all cases, the overwhelming majority of stakeholders conclude that TRCs and emission allowances represent an alternative, rather than supplemental, revenue stream for a generator. Renewable generators can capture the higher value of TRCs in the green power market, or emission allowances and credits, but not both. They must choose, and provision of information is necessary to enable buyers to understand which choice has been made

Suggested Actions to Mitigate Consequences: At a minimum, UCS recommends that the GIS system be modified to allow information to be provided on the certificate indicating whether the unit has received set-aside allowances under the MA NO_x trading program or any other emission trading program (as this is likely to be a recurring issue in other states, and for other emissions in MA and other states). Data on which renewable projects receive such allowances should be readily available from the applicable regulator. Additionally, UCS recommend that the GIS committee consider whether generators should designate with a check-box on certificates *if* they

¹¹ Consensus NWCC Credit Trading Opportunities and Guidelines, May 2001, <http://www.nationalwind.org/workinggroups/credit/consensus.pdf>.

¹² “To be eligible, a TRC [which would include a NEPOOL GIS certificate] must contain all of the environmental attributes associated with a unit of renewable generation, to the extent possible based on current law. Where emissions credits are not assigned to a renewable generator, for example in a SO₂ cap and trade regime, the purchase of additional emissions credits is not required to qualify as a fully aggregated TRC.” Green-e TRC Certification Standard, http://www.green-e.org/pdf/trc_standard.pdf.

¹³ http://www.enviroactiondesk.com/about_ead/index.asp?s=84.

have been allocated and sold off specific types of allowances or credits, or alternatively, *if* they have arranged to retire associated set-aside allowances to assure their claim to reducing the applicable emissions.