



Union of Concerned Scientists
Citizens and Scientists for Environmental Solutions

May 16, 2005

Representative Phil King
Chairman of the Regulated Industries Committee
Texas House of Representatives
P.O. Box 2910
Austin, TX 78768-2910

Dear Representative King:

The Union of Concerned Scientists strongly supports Texas moving to expand its renewable portfolio standard. We would like to express concern, however, about Section (m) of SB 533—an act relating to the state's renewable portfolio standard (RPS), and urge you to drop this section from the bill. Section (m) states that "...the Commission shall ensure that all renewable capacity installed in this state and all renewable energy credits awarded, produced, procured, or sold in this state are counted toward the [renewable energy] goal..."

First, if enacted, this section could jeopardize the competitiveness and integrity of one of the healthiest voluntary renewable energy markets in the country. A voluntary market for renewable energy has emerged in Texas, driven by consumer demand to have new renewable energy added to the electric grid. These customers pay premiums on their electric bill to encourage renewable energy development. But under section (m), a customer's voluntary purchase would necessarily not lead to any more renewable energy generation than is already required by law, providing a strong disincentive for that voluntary purchase.

Second, section (m) would effectively allow the attributes of renewable energy, as represented by a renewable energy credit (REC), to be counted and sold twice—once to the consumer who voluntarily pays the premium and once to an electricity supplier for compliance the RPS. We believe that this practice would violate basic consumer protection standards. The National Association of Attorneys General established Green Marketing guidelines in 1999, arguing against the double counting of RECs. The guidelines state on page 4 that "if the same electricity or its attributes are sold more than once to consumers, the claim is deceptive." Section (m) would also potentially appear in conflict with the Texas Deceptive Trade Practices Act, by leading a voluntary customer to believe that they are getting all the attributes of their green power purchase, and then allowing the attributes to be sold again in the RPS RECs market.

Third, this provision would mean that the RPS would likely become a ceiling for renewable energy development in Texas rather than a floor that the voluntary market could build on. Texas would lose the additional economic development benefits that would accrue from having voluntary green purchases add to the minimum standards in the RPS.

Fourth, section (m) would shift the costs of RPS compliance disproportionately to voluntary purchasers, rather than having those costs shared by all ratepayers—who receive the environmental and other public benefits of renewable energy.

Finally, if Section (m) were enacted, green power offerings and RECs originating in Texas would no longer be able to receive certification from Green-E, a voluntary certification program for renewable electricity products that is used throughout the US. This would not only reduce confidence in green pricing within Texas, but would reduce the ability of Texas to benefit from exporting renewable energy credits to satisfy the rapidly growing demand for credits from other parts of the country.

Other states with RPS programs, including Minnesota, New York, Massachusetts, and Rhode Island, have also looked at the issue and kept the voluntary and compliance markets as additive, rather than eliminating one in favor of the other. Specifically,

- The Minnesota Public Utilities Commission in August 2004 reversed its initial order that allowed utilities to count voluntary customer purchases towards the utility's renewable energy objective and now precludes the use of voluntary purchases.¹
- The Massachusetts disclosure law addressed the issue of the interaction of the RPS and voluntary customers and decided on rules requiring that if a supplier sells a product claiming a percentage of renewable energy, the customer must receive that percentage renewable energy supply in excess of the RPS percentage.²
- The New York Public Service Commission has ordered that voluntary sales must be additive and tracked separately from the RPS sales. Detailed implementation rules are still under development.³

We strongly urge the Committee to remove Section (m) of SB533 to protect the integrity of the voluntary market for renewable energy in Texas.

Sincerely,

Steve Clemmer
Research Director, Clean Energy Program

¹ A summary of this decision from the National Renewable Energy Laboratory is at: http://www.eere.energy.gov/greenpower/news/news_template.shtml?id=969 -- and the reversal order itself is at: <http://www.puc.state.mn.us/docs/orders/04-0108.pdf>

² See "Rules Governing the Restructuring of the Electric Industry" in Massachusetts. <http://www.mass.gov/dte/cmr/220cmr1100.pdf> - 11.06 (6) (e) (2) and (3) [page 34] for consumer protection language.

³ The NY PSC order can be found at [http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/85D8CCC6A42DB86F85256F1900533518/\\$File/301.03e0188.RPS.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/85D8CCC6A42DB86F85256F1900533518/$File/301.03e0188.RPS.pdf?OpenElement). The pertinent section begins on page 24 (Establishment of the Target).