Renewable Energy Markets Association

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February 25, 2011

Sen. Phil Rockefeller
218 John A. Cherberg Building
PO Box 40423
Olympia, WA 98504-0423

RE: Renewable Energy Markets Association comments on the proposed definition and treatment of null power in the Washington State Legislature House Bill 1712 and Senate Bill 5431

Dear Sen. Rockefeller:

The Renewable Energy Markets Association (REMA) appreciates the opportunity to provide comments on the definition of null power within two pending Washington State bills, HB 1712 and SB 5431.

REMA represents the collective interests of both for-profit companies and nonprofit organizations that sell or promote the sale of renewable energy products, including renewable technology, renewable electricity, and renewable energy certificates (RECs), to individuals, companies and institutions throughout North America, including the state of Washington. We are the leading national organization focused on maintaining the integrity and continued growth of voluntary renewable energy markets, and we actively engage in proceedings at the federal and state level when policy impacts the renewable energy markets. Today, HB 1712 and SB 5413 have the potential to jeopardize existing and future renewable energy transactions.

The market for green power (renewable electricity and RECs sold independently of electricity) supports the development of new renewable energy generation nationwide. It is strong and growing: in 2009, U.S. consumers made voluntary purchases of renewable energy totaling in excess of 30 million mega-watt hours (MWh), a 17% increase over 2008 levels. Further, voluntary purchases of renewable energy have grown at an average annual rate of 41% since 2005.[1] Within the state of Washington specifically, consumer participation in green power programs saw a *near 6-fold increase* from 2002 projected through 2009[2], with over 36,700 retail customers purchasing Green-e® Energy certified renewable energy worth 800,000 MWh in 2009. These data demonstrate that the voluntary market for renewable energy is larger than many people recognize and capable of meeting continually increasing voluntary demand.

The current definition and treatment of "null power" for utility fuel mix disclosures in HB 1712 (and the related text in SB 5431) poses significant complications and untended consequences for the voluntary and compliance renewable energy markets. Null power, by definition, is the underlying electricity from a generator that has been 'unbundled' (separated) from its associated environmental attributes. It is an industry best practice to assign null power the system emissions average when the associated RECs have

1 L. Bird, J. Sumner, *Green Power Marketing in the United States: A Status Report (2009 Data)*, Golden, CO: National Renewable Energy Laboratory, pg. v, Sep. 2010, 2 Nov. 2010, http://www.renewablemarketers.org/pdf/resources/NREL_2009_VRE.pdf.
2 Washington Utility and Transportation Commission, *2009 Report to the Legislature: Investor-Owned Utilities' Green Power Programs in Washington*, Dec. 2009, http://www.wutc.wa.gov/webdocs.nsf/0/cc50a44803cc64868825768000020b76/$FILE/2009%20Green%20Power%20Report%20-%2011-30-09.pdf

been sold separately.[3] RECs not only allow for the tracking of environmental attributes from renewables, but RECs also allow individuals, businesses, and organizations to support renewable development and 'green' their energy consumption. However, the proposed set of bills threatens to jeopardize REC ownership claims by allowing null power to be disclosed as renewably-sourced even if the environmental attributes have been separated through a REC sale or by some other means.

Environmental attributes, generated from renewable sources, may only be claimed by one party. When nonpower attributes are claimed by multiple parties, double counting occurs, and the REC loses all value in both the voluntary and compliance markets. HB 1712 (and to a lesser extent SB 5431) sets the stage for double counting by permitting utilities to represent null power as coming from renewable sources such as wind, solar, and biomass. This would immediately create contractual uncertainty and put at risk the numerous existing and future contracts between Washington renewable generators (utilities or otherwise) and the power marketers that purchase their RECs.

Allowing a renewable claim on null power would negatively impact REC transactions *inside and outside* Washington, as other states' regulators could disallow Washington-sourced RECs because of the double counting. Further, registries and standards for renewably energy require that RECs abide by strict marketing and ownership claims or risk invalidation. For example, the Center for Resource Solution's Green-e® Energy program, which certifies over two-thirds of voluntary US REC purchases, could be forced to exclude Washington RECs if they are perceived as double counted. In just 2009, Washington operators generated over 1,000,000 MWh of Green-e® Energy renewable energy, increasing revenue for businesses in and out of the state. The end result would be a massive loss of revenue for Washington generators – revenue that ultimately benefits Washington businesses and rate-payers.

REMA supports the accurate disclosure of information to consumers on their purchases of electricity, both from renewable sources and those derived from fossil fuels. To reduce the risk of double counting of environmental attributes from renewable energy and improve customer disclosure, REMA recommends that legislators amend SB 5431 and HB 1712 to include accurate definitions of null power that prevent utilities from making any renewable claim on that null power. Customers who have outright purchased green power should not have their environmental claims negated by HB 1712 and SB 5431's inaccurate disclosure requirements.

The integrity of the voluntary and compliance renewable energy market should not be compromised in the name of good intentions and fuel mix disclosure legislation. State and federal entities, like the Washington Utilities and Transportation Commission and the US Federal Trade Commission,[4] have and will intercede when consumers are presented with false or misleading environmental marketing. Additionally, the National Association of Attorneys General has clearly articulated that it would be "deceptive for the marketer to represent, directly or by implication, that it uses renewable energy," when the underlying electricity—null power—has been separated from its environmental attribute (or REC).[5] The Washington legislature can indeed *both achieve accurate disclosure measures and preserve*

3 Center for Resource Solutions, *Best Practices for Green Power Purchases and Sales*, Example 5-A, pg. 9, 7 Oct. 2010, http://www.green-e.org/docs/energy/Best%20Practices%20in%20Public%20Claims.pdf

4 Federal Trade Commission, 16 CFR Part 260, Proposed, *Revised Guides for the Use of Environmental Marketing Claims* ("Green Guides"), October, 2010.

5 National Association of Attorneys General, *Environmental Marketing Guidelines for Electricity*, Dec. 1999, http://apps3.eere.energy.gov/greenpower/buying/pdfs/naag_0100.pdf

voluntary and compliance renewable energy markets through amending HB 1712 and SB 5431 to notify consumers that null generation cannot be represented as renewable energy, directly or indirectly.

Again, REMA would like to thank the Washington State Legislature for this opportunity to offer insight on the negative impact of the proposed null power definition on the state and region's renewable energy economy. Should any of the aforementioned comments or recommendations incite questions or require clarification, please contact Joseph Seymour, REMA Policy and Governmental Affairs Coordinator, at jseymour@ttcorp.com.

Sincerely,

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