



CRS

center for  
resource  
solutions

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Sam Wade  
California Air Resources Board  
1001 "I" Street  
Sacramento, CA 95814

**Comments of Center for Resource Solutions (CRS) following the November 6, 2017 Public Workshop on the California Air Resources Board (ARB) Preliminary Draft of Potential Regulatory Amendments to the Low Carbon Fuel Standard (LCFS)**

Mr. Wade,

CRS appreciates this opportunity to submit comments in response to the potential regulatory amendments to the Low Carbon Fuel Standard. The intent of these comments is to provide information on industry best practices in regard to the treatment of Renewable Energy Certificates (RECs) in the fuel pathway involving the use of renewable energy to charge electric vehicles.

**Background on CRS & Green-e®**

CRS is a 501(c)(3) nonprofit organization that creates policy and market solutions to advance sustainable energy. CRS has broad expertise in renewable energy policy design and implementation, electricity product disclosures and consumer protection, and greenhouse gas (GHG) reporting and accounting. CRS administers the Green-e programs. Green-e is the leading certification program for voluntary renewable electricity products in North America. For over 20 years, Green-e staff have worked with independent third-party auditors to annually verify renewable energy purchases in the voluntary market and ensure purchasers receive full environmental benefits and sole ownership of each megawatt-hour (MWh) of renewable energy they purchase. Verification procedures ensure there is no double counting between voluntary and compliance markets, and that other renewable energy or carbon policies do not claim any of the environmental benefits of certified renewable energy. In 2016, Green-e certified retail sales of over 48 million MWh, representing over 1.3% of the total U.S. electricity mix. In 2016, there were over 963,000 retail purchasers of Green-e certified renewable energy, including 53,000 businesses.

**Introduction & Overview:**

On p. 23 of the *Lookup Table Pathways* published on November 3, 2017, the pathway carbon intensity is listed as 0.0 g/MJ for electricity that is generated from 100 percent solar or wind and used to charge electric vehicles in California. In the case where a regulated entity earns LCFS credits from the specified use of renewable, zero-emission electricity to charge an electric vehicle, the Renewable Energy Certificates associated with each megawatt-hour (MWh) of this electricity must be properly retired in the Western Renewable Energy Generation Information System (WREGIS) so as to prevent any double counting of the environmental attributes associated with this use of renewable energy. For example, because compliance with the California Renewable Portfolio Standard (RPS) requires the retirement of RECs, double counting between RPS and LCFS requirements could occur if RECs are not retired to account for the use of renewable energy to charge electric vehicles. Below, we provide justification for the judicious retirement of RECs associated with LCFS compliance achieved through this fuel pathway. As of

the *November 6, 2017 Public Workshop*, it appeared ARB was still in the process of drafting regulatory amendments to address this specific scenario. Therefore, these comments are intended to offer general guidance and highlight key areas where accounting issues could potentially arise.

#### **Background Information & Resources for Further Guidance:**

The use of RECs to substantiate renewable energy usage and therefore prevent double counting of environmental attributes has a strong legal basis in California, notably in the California Public Utilities Code.

**CAL. PUB. UTIL. CODE § 399.12(h)(1). (2003).** Available at: <http://codes.findlaw.com/ca/public-utilities-code/puc-sect-399-12.html>

*“Renewable energy credit means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.25, that one unit of electricity was generated and delivered by an eligible renewable energy resource.”*

**CAL. PUB. UTIL. CODE § 399.21(a)(1). (2003)** Available at: <http://codes.findlaw.com/ca/public-utilities-code/puc-sect-399-21.html>

*“The commission and the Energy Commission shall ensure that the tracking system established pursuant to subdivision (c) of Section 399.25, is operational, is capable of independently verifying that electricity earning the credit is generated by an eligible renewable energy resource, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the WECC.”*

Importantly, the California Energy Commission (CEC) requires that RECs be used to substantiate RPS compliance. Therefore, if RECs are not properly retired in association with this LCFS fuel pathway, this renewable energy consumption could be counted twice toward regulatory compliance in California.

#### **California Energy Commission Guidebook: Renewables Portfolio Standard Eligibility, § VI. (2015).**

Available at: <http://www.energy.ca.gov/2015publications/CEC-300-2015-001/CEC-300-2015-001-ED8-CMF.pdf>

*“Load-serving entities (LSEs) shall report retirement of RECs for the California RPS to the Energy Commission annually on July 1 for the previous reporting year. The Energy Commission uses the retirement information to verify the claims an LSE plans to use toward its RPS procurement requirements, and to ensure that a REC is counted only once for compliance with the California RPS, for the regulatory requirements of any other state, or to satisfy any other retail, regulatory, or voluntary market claim.”*

The Federal Trade Commission (FTC) also provides guidance on the need for diligent REC retirement and the relevant implications for double counting and double claims.

#### **US Federal Trade Commission (FTC). Guides for the Use of Environmental Marketing Claims. (2012).**

Available at: [https://www.ftc.gov/sites/default/files/documents/federal\\_register\\_notices/guides-use-environmental-marketing-claims-green-guides/greenguidesfrn.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-use-environmental-marketing-claims-green-guides/greenguidesfrn.pdf)

*“260.15(a) [...] A marketer should not make unqualified renewable energy claims, directly or by implication, if fossil fuel, or electricity derived from fossil fuel, is used to manufacture any part of the advertised item or is used to power any part of the advertised service, unless the marketer has matched such non-renewable energy use with renewable energy certificates.”*

*“260.15(d) If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.”*

**US Federal Trade Commission (FTC). Letter from James A. Kohm, Associate Director, Division of Enforcement, Bureau of Consumer Protection, to R. Jeffrey Behm, Esq., Sheehey, Furlong & Behm, P.C. February 5, 2015.**

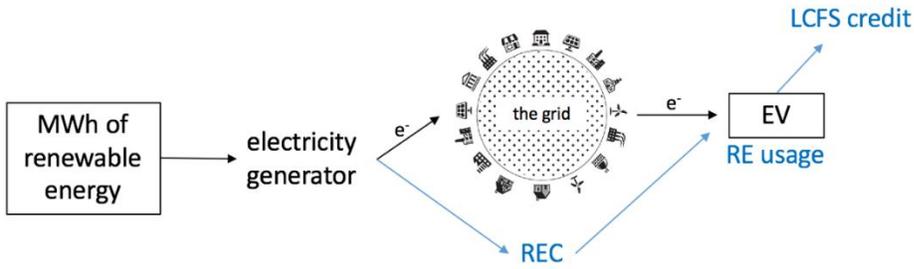
Available at: [https://www.ftc.gov/system/files/documents/public\\_statements/624571/150205gmpletter.pdf](https://www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf)

*“[T]he operation of the renewable energy market relies heavily on the expectation of all market participants that these certificates have not been counted or claimed twice (i.e., double counted). Such double-counting can occur, for instance, through [...] renewable energy claims made by a company that already sold the RECs for its renewable generation. [...] Such double counting, in turn, not only risks deceiving consumers but also threatens the integrity of the entire REC market. By selling RECs, a company has transferred its right to characterize its electricity as renewable. Accordingly, the FTC's Green Guides advise that, if 'a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.' See 16 C.F.R. § 260.15(d).”*

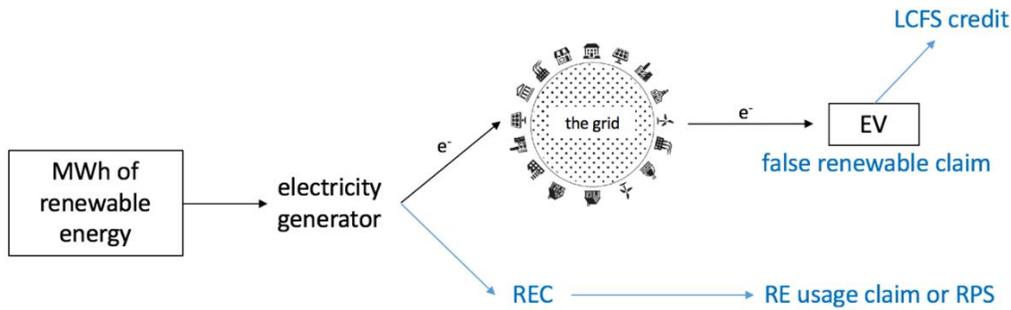
*“In addressing these issues in the Green Guides, the Commission [...] did warn that power providers that sell null electricity to their customers, but sell RECs based on that electricity to another party, should keep in mind that their customers may mistakenly believe the electricity they purchase is renewable, when legally it is not. Accordingly, it advised such generators to exercise caution and qualify claims about their generation by disclosing that their electricity is not renewable.”*

Therefore, if a charging station uses renewable energy to charge electric vehicles in California, and further intends to earn LCFS credits from the use of this electricity, then RECs must be used to substantiate this service. If the RECs associated with this renewable electricity are not properly accounted for and retired, it is entirely possible that these environmental attributes will be resold to a third party, therefore nullifying the claim of the party regulated under the LCFS to be using renewable energy to charge electric vehicles. Such RECs could be purchased and used for RPS compliance, in which case the same MWh of renewable energy would be used for compliance in two state regulatory programs, the RPS and LCFS. If RECs are not used to account for the electricity consumed at these charging stations, then the carbon intensity of this behavior should be assessed through the fuel pathway associated with charging electric vehicles with system power – even if these sites are co-located with renewable generation. Visual examples of proper versus problematic use of RECs to substantiate renewable electricity consumption claims in this context are provided below.

**Example of Proper REC Use:**



**Example of Problematic REC Use:**



**Conclusion:**

While ARB continues to draft and finalize potential regulatory amendments to the Low Carbon Fuel Standard, CRS urges that special attention be paid to the treatment of RECs in the fuel pathway addressing electric vehicle charging with 100 percent renewable energy. Whether these charging stations are co-located with renewable generation, paired with utility green tariffs, or independently matched with Renewable Energy Certificates, RECs must be used to account for this specified consumption of renewable energy. Implementing provisions to ensure this occurs will both strengthen the impact of LCFS regulation and protect the voluntary market for renewable energy in California.

Should ARB have any additional questions relating to these comments or the suggestions contained herein, CRS would be happy to provide clarifying information and/or review further draft language relevant to this fuel pathway.

Respectfully submitted,

**Noah Bucon**  
Senior Analyst, Policy and Certification Programs  
Center for Resource Solutions  
[Noah.Bucon@resource-solutions.org](mailto:Noah.Bucon@resource-solutions.org)  
415-561-2110