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**OBSERVATIONS ON STATE AND FEDERAL INTERACTIONS WITH
RESPECT TO RENEWABLE PORTFOLIO STANDARDS**

**OFFERED FOR CONSIDERATION BY
THE NORTHEAST/MID-ATLANTIC STATES' RPS COLLABORATIVE**

INTRODUCTION

Over the last two years, a regional collaborative of state RPS program managers from the Northeast and Mid-Atlantic region has been exploring how to support successful design and implementation of state RPS programs. The Collaborative has prepared the following observations regarding the appropriate interaction between any federal RPS that might be adopted by Congress and state RPS programs. These observations are based on consultations and discussions with state RPS program policy makers and administrators in the region. However, the observations do not represent the position of any particular participant in the national Collaborative. Further, these comments are not intended to either support or oppose the adoption of a federal RPS.

RPS laws have proliferated at the state level in the United States. Today, some 28 states and the District of Columbia have RPS programs, and many other states are considering adopting such standards. With many state RPS programs in the early stages of implementation, states are rapidly gaining experience and insights regarding how to ensure effective program design and success.

At the federal level, in recent years, Congress has considered a number of federal RPS proposals. To date, no proposal has been passed by both houses. However, it is likely that there will be future efforts to adopt a federal RPS program.

A future federal RPS, if enacted, could have significant effects on state RPS policies and programs. The potential effects on and interactions with state RPS policies have emerged as an issue of great concern for many states. Specifically, many state leaders want to ensure that any federal RPS does not preempt a state's prerogative to establish renewable portfolio standards that exceed any federal requirements. In addition, many states believe that the design of any federal RPS should consider the principles and best practices emerging from state RPS experience. Finally, some states are opposed to a federal RPS altogether.

SUMMARY OF OBSERVATIONS

If an RPS were to be adopted at the federal level, it could raise a number of issues with respect to interactions with existing state RPS standards. The following principles summarize the perspectives of many states on how to address these potential issues, and are designed to reinforce standards already established by individual states and further the expansion of renewable energy in the United State's electricity supply.

- 1. Given that 28 states currently have RPS policies in place, any future federal RPS policy would best optimize existing efforts to encourage the development of renewables by granting states the authority to adopt RPS standards that differ from or exceed the federal standard, so long as state RPS policies do not relieve electricity suppliers of the responsibility to satisfy federal requirements.*
- 2. Given that many states already have stringent RPS policies in place, any federal standard would be most complementary to existing policies if it provided a floor rather than a ceiling on the amount of renewable generation achieved nationally.*
- 3. It is important that states retain specific and explicit authority to determine how and under what conditions electricity suppliers may purchase, transfer, trade, or retire any renewable energy certificates (RECs) or environmental attributes associated with renewable generation used to meet a state renewable portfolio standard, in the event that a federal standard is adopted.*
- 4. It is important to maintain the integrity and value of RECs created and secured in compliance with state renewable portfolio standards; this integrity should not be lessened or compromised by any future federal RPS requirements or by activities engaged in by obligated parties to comply with any future federal RPS.*
- 5. Given that REC tracking systems have been developed and are operating in most regions of the country to facilitate compliance tracking by state RPSs, it will optimize resources and further protect the integrity of RECs if any federal RPS makes every effort to coordinate with and build upon existing state and regional certificate tracking systems to support national tracking for federal RECs.*

SUGGESTED PRINCIPLES TO GOVERN THE INTERACTION OF FEDERAL AND STATE RPS POLICIES

States should be able to set, maintain, and revise state RPS laws to establish higher mandatory targets than any established federal target.

- In order to increase the national portfolio of renewables and to optimize state and federal policy interaction, it is important that any federal RPS does not preempt a state's prerogative to establish an RPS.
- It is important that pre-existing state standards are allowed to remain in place, and that states are allowed to set standards that are higher than any federal standard or their own pre-existing standards.

- It also is important that states are able to establish requirements that exceed any federal requirement and that any federal RPS be positioned as a floor, rather than a ceiling.

Renewable energy purchases made by an obligated entity under a state RPS requirement also should count towards that electric service providers' obligation under the federal RPS, if those purchases meet the definitions and standards of the federal RPS.

- To optimize state and federal policy interaction, counting of state-required purchases in any given year against federal requirements should be limited to the amount of a supplier's federal obligation in that same year.

Compliance with federal targets should preclude the sale of RECs purchased to comply with one state's requirement (but exceeding the federal requirement for that supplier) to an energy supplier in another state to use toward federal compliance there.

- To achieve the goal of increasing renewable deployment in the nation, it is important that any federal RPS prohibit "double counting" of RECs used for complying with one state's requirements to meet federal requirements in another state.
- If such double-counting were allowed, it would undermine confidence in the REC market and raise questions about the value and integrity of renewable attributes.

RECs purchased for federal compliance should not be resold to capitalize on voluntary purchase markets.

- Such double counting of RECs would undermine confidence in the entire REC market.
- To be consistent with most existing state policies and to protect voluntary purchasers of renewables, it is important that RECs purchased for compliance with any federal requirements be permanently retired.

States should have the discretion to select which generation resources are eligible under their own standards, but only state-eligible resources that are also eligible for the federal standard should count towards the federal standard.

- States should retain the independent authority to determine which renewable energy sources should be eligible in their state RPS program.
- Due to the dispersed geographic occurrence of specific renewable resources, any federal RPS should not preclude state RPS programs from establishing tiers or separate targets or sub-requirements, as a number of states with renewable portfolio standards have done.
- State definitions of what REC attributes are required for state compliance vary substantially, and states should retain the flexibility to develop their own REC definitions.
- Resource purchases eligible under a state RPS that are not eligible under the federal RPS should not count toward compliance with the federal RPS.

Existing state and regional REC tracking systems should be used, whenever practical, to track federal RPS compliance so as to avoid duplication of effort.

- To the extent practical, REC tracking systems already in place throughout the United States (e.g., NEPOOL GIS, ERCOT, WREGIS, M-RETS, PJM GATS¹, should be used to track compliance with any federal requirement, rather than creating a separate and additional federal REC tracking system.
- The use of existing systems for issuing, tracking, and retiring RECs would reduce costs to market participants, minimize complexity, avoid confusing consumers, and minimize the chance of double counting.

State regulatory agencies should have the option to include suppliers' costs of complying with federal portfolio standards in retail rates, subject to their own reasonableness review.

- At a minimum, states should retain the authority to establish retail rates, cost recovery rules, and “prudency tests” for utility compliance with state RPS policies, even if REC purchases under these policies may also count towards compliance with a federal RPS.
- States should be allowed to develop alternative mechanisms to cover the cost of federal compliance, if needed.

SUGGESTED “BEST PRACTICES” FOR RENEWABLE PORTFOLIO STANDARDS

The evolution of state RPS programs over the past decade has resulted in the recognition of numerous principles and best practices that reflect the varying levels of success that individual states have achieved in pursuing specific objectives. The Collaborative has analyzed this state experience and summarized it for future consideration by states, as they adopt or revise renewable portfolio standards. If federal policy makers decide to craft federal RPS legislation, they also should consider incorporating these valuable state RPS lessons learned into any federal RPS policy. Specific suggestions are summarized below.

Portfolio Inclusions and Exclusions

- Fuel, technology, and vintage eligibility decisions are ideally guided by an assessment of social benefits of the particular resources and technologies, and by the needs of those resources, technologies, and projects for extra-market revenue.
- An RPS ideally includes only renewable energy resources. While nuclear and clean fossil generation that uses carbon sequestration to prevent greenhouse gas emissions may have environmental benefits, these technologies are not renewable energy resources.

¹ Listed tracking systems include the NEPOOL Generation Information System (NEPOOL GIS), Electric Reliability Council of Texas (ERCOT), Western Region Electricity Generation Information System (WREGIS), Midwest Renewable Energy Tracking System (M-RETS), PJM Generation Attribute Tracking System (PJM GATS).

Targets and Timing

- To be effective, an RPS should promote a steady, predictable, annual increase in the deployment of additional renewable energy resources over an extended period of time.
- Further, it is important to have a “ramp-up” period sufficient to bring obligated entities to the required level, at least on a straight line basis, using annual targets to facilitate progress checks.
- To provide stability, the duration of an RPS program should be clearly and definitively stated in legislation so project developers can plan for and count on future REC-related income. Once targets are reached, the targets should be maintained for an extended period to support ongoing and future renewable project development.

Utility Coverage

- An RPS is best applied to all retail loads and load-serving entities, including non-utility competitive suppliers providing electricity at retail, so that all who benefit from increased renewable energy production also bear a proportion of the costs. Exempting certain parties from “paying the costs” while enjoying the benefits of attaining RPS goals creates a free-rider problem, particularly when public funds are used to support RPS generation. Administrative consistency can be best maintained by including all suppliers.

Administration and Enforcement

- To be effective, it is important that RPS policies include clear rules for enforcement to ensure that targets are achieved and to provide confidence to renewable energy developers that obligated entities will make their required purchases.
- Alternative compliance payments (ACPs) should be considered as part of the enforcement approach for a federal RPS. The use of ACPs would offer a less punitive enforcement strategy that could increase project development if ACPs are used to support renewable energy projects.

Credits and Trading Issues

- The use of a tradable REC system has been demonstrated to create significant value as a mechanism for facilitating RPS compliance. The use of RECs can provide an accurate, verifiable record of what was produced and a fungible commodity that can be traded among suppliers. RECs also can reduce the cost of RPS compliance by lowering transmission costs while providing access to a broader and greater range of resource options. RECs further provide compliance flexibility by facilitating market trading and renewable project financing, as well as increasing market liquidity.
- RECs should be initially allocated to the renewable generator. Any RECs purchased to meet a federal RPS obligation should be “retired” upon use and no longer be available to be traded or used for any other purpose, mandatory or

voluntary, to prevent double counting (subject to the exception discussed above regarding the ability by an obligated entity to use REC purchases made under a state RPS requirement also to count towards that providers' obligation under a federal RPS, if those purchases meet the definitions and standards of the federal RPS).

- Given that there is already state-to-state variability in the definition of RECs, it would be preferable for any federal legislation to provide a simple, standard definition for RECs that can lay the foundation for well coordinated markets and policies. RECs will be fungible for national RPS compliance and support a liquid market only if they have a clear and common definition. To create liquid markets, a federal RPS should use the most universal definition of a REC, based on a unit of production, i.e. 1 MWh = 1 REC.
- To be consistent with current REC tracking practices, a federal RPS would ideally track information on the primary attributes of the generator including size, resource type, operational date, location, etc. Existing state and regional tracking systems could be expanded to track and report federal RPS compliance. Although these existing systems differ from region to region, they all have in common the responsibility to issue certificates based on verified eligible generation and to retire RECs as they are used for RPS compliance or voluntary market claims.