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# Designing a Federal RPS that Builds on State Programs: Principles and Issues for Consideration

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Webinar

June 24, 2008



# Context

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- Sen. Bingaman proposed a federal RPS in the last Congressional session that appeared to have a chance of success (a different version ultimately passed the House, but never the Senate)
- CEG/LBNL review of the Bingaman RPS proposal identified a large number of issues of concern
- Group that included LBNL, CEG, consultants, and state RPS administrators helped construct a memo (May 2007) that identified issues of concern and recommendations, and did a bill mark-up
  - did not take a position of support or opposition to the federal RPS
  - focused exclusively on issues where the federal bill might negatively impact state programs (primarily RPS, but also others)
  - state participants commented on and provided input to the resulting memo, but were not asked to “sign on” and we did not seek consensus
- As a follow-up, the CEG team prepared a response to questions from Rep. Dingell on related (but broader) issues, and advised in the design of the federal RPS that ultimately passed the House

# Presentation Outline: Emphasize Memo to Bingaman Staff, and Follow-up Work

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- Federal RPS in a broader context
- Principles for interactions of state-federal policy
- Specific issues of concern and recommendations
- Proposed next steps

*Caveat: This presentation summarizes CEG's work in this area, and does not necessarily reflect the views of DOE or LBNL*

# Range of Options for Federal Renewable Energy Targets

- Establish a federal RPS that simultaneously preempts state RPS policies
- Establish a federal RPS that also allows states to develop different and/or more stringent requirements
- Establish a nationwide RE target (e.g., 15%), and require each state to achieve 15% through a state RPS with certain minimum design features established by federal legislation, leaving other design elements to the states
- Establish a nationwide RE target (e.g., 15%), and require each state to achieve 15% through whatever means the state decides
- Require all states to create an RPS, of their own design
- Require all states to consider developing a state RPS
- Do nothing: support state policy through tax policy and other measures

**Discussion in Congress and among renewable energy advocates has largely focused on variants of the first two options (and closer to #2)**

**My presentation will also focus on just these two options**

**Some of the other options also deserve consideration, especially with the number of state RPS programs now in place**



# General Principles to Guide Interaction Between Federal RPS and State Policy

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- **Learn from State Experience:** Congress should consider state experiences and lessons learned in the design of any federal RPS
- **Do Not Preempt State Policy:** Federal RPS should serve as a floor, not a ceiling; federal RPS should not explicitly or implicitly preempt states from establishing their own different and/or more stringent RPS policies
- **Minimize Ambiguity and Complexity:** Whenever possible, effort should be taken to minimize implementation complexity, as well as legislative and regulatory ambiguity

# General Principles to Guide Interaction Between Federal RPS and State Policy

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- **Maintain a Strict Definition of RECs:** RECs should be issued strictly on the basis of one credit for each megawatt-hour of eligible renewable energy generated
- **Build on Existing Certificate Tracking Systems:** A federal RPS would ideally coordinate with and build on existing regional REC tracking systems to ensure national tracking for federal RECs and to address double-counting concerns
- **Maintain Green Power Credibility:** Consumers wishing to voluntarily purchase “green power” in excess of minimum requirements should be ensured that such voluntary demand is additional to the federal RPS

# Issue #1: Preemption, and Counting State RPS Compliance Towards the Federal RPS

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- Issue: Possibility of “express” or, more likely, “implied” preemption of state RPS policy; federal RPS design that frustrates ability of states to develop effective RPS; whether state compliance counts towards federal RPS
- Importance: This issue is of highest importance to states; legislative bills have often handled it poorly; expect this issue to be a continuing “fight”
- Recommendations:
  - Allow states to set different and/or higher state RPS targets
  - RE purchases under state RPS should “count” towards the federal RPS:
    - If underlying renewables purchased to meet state RPS are eligible under the federal RPS
    - Limited by federal RPS obligation, ensuring that more-aggressive state policies are binding
    - Any purchases to meet state RPS beyond federal target should not count towards federal RPS
  - Broad state savings clause that provides state authority to create different/more aggressive RPS programs, with no “poison pill” language, e.g., providing federal RECs based on state RPS costs or all state-RPS-eligible purchases, or allowing transfers of federal RECs used to meet state RPS
  - Second-best considered in last congressional session: allow all federally-eligible RE purchases made under state RPS to “count” towards federal RPS, but give states the authority to restrict sale of “excess” federal RECs

# Issue #2: Treatment of State Alternative Compliance Payments, Cost Caps, etc

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- Issue: Should use of ACPs or payment of penalties under state RPS “count” for compliance with or penalties towards federal RPS?
- Importance: This issue is of some importance, and legislative bills have sometimes offered ambiguous/poorly constructed text on these points
- Recommendations:
  - Diversity of state approaches means that one cannot readily distinguish between ACPs and penalties, and these mechanisms are not all based on \$/MWh denomination; result is that counting state ACPs or penalties towards federal RPS is extremely difficult
  - Best option: Do not allow any state ACP or penalty payment to count towards federal RPS; even if ACPs support renewable energy, only the RECs associated with those projects should count towards the federal RPS
  - All options that provide federal compliance credit towards state ACP/penalty payment more broadly are problematic (whether or not tied indirectly to actual renewable generation), regardless of their design, and would require careful legislative construction if pursued

# Issue #3: Renewable Energy Certificate Tracking System Integration

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- Issue: Should a single REC exist, or should parallel state and federal RECs exist separately? If the latter, should a separate and additional tracking system for federal RECs be created?
- Importance: This issue is of importance because it will affect the ability to address preemption, has the possibility of creating substantial complexity, and may create “double counting” opportunities; some recent federal RPS bills would establish a separate federal “REC” system
- Recommendations:
  - Goal should be a single, seamless REC tracking system that builds off of regional tracking systems, rather than creating a separate, dual RECs system
    - Federal government should use and coordinate existing systems, while establishing minimum functionality requirements
    - Federal government should help establish regional tracking systems where they do not otherwise exist
  - Single seamless national RECs system for federal compliance is not intended to restrict ability of states to maintain own restrictions for state RPS compliance

# Issue #3 (cont.): Renewable Energy Certificate Tracking System Integration

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- Benefits of a single REC system include:
  - 1) Simple and understandable, lower administrative costs, less complex, and less duplication of effort
  - 2) Easy to ensure that renewable purchases made under a state RPS that are eligible under the federal RPS can count towards that standard, up to the federal purchase obligation
  - 3) Easier to ensure that states are able to develop different/more aggressive RPS programs that go above and beyond the federal RPS
  - 4) Fewer opportunities for litigation over RECs ownership between generators and utilities
  - 5) Fewer opportunities for confusion about what RECs represent, and therefore fewer opportunities for “double counting”
- Dual RECs systems is workable but not ideal
  - Carefully designed state savings clause is needed in this case to ensure that states have some control over the fate of federal RECs
  - Definition of a federal REC, and distinction from a state REC, is essential

# Issues #4 - #7: Renewable Energy Certificate Definitions, Ownership, Tradability

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- **Uniform Means of Compliance:** Especially if single REC system is used, then RECs should only be provided based on MWh (1 MWh = 1 REC); any ACPs or “multipliers” can create additional compliance credit, but not actual RECs
- **National REC Definition:** States should have authority to maintain diverse definitions of the attributes contained in RECs; federal RPS REC definition is necessary, and should depend on whether single or dual REC system is used
  - If single REC system, federal RPS should include the most universal minimum REC definition as a unit of production of renewable energy (1 REC = 1 MWh), with no “derived” attributes such as emissions credits or allowances
  - If dual REC system, federal RPS should use “compliance credits” that are entirely attribute free; all claims to be purchasing renewable energy should come via state RECs
- **REC Ownership (buyer vs. seller):** Should generally be established by contract, not by legislation; for existing PURPA QF contracts in which ownership is unclear, states should be required to determine ownership by a certain date; for other contracts that are silent, it may be best to allow courts to decide ownership
- **Tradability of Unbundled RECs:** Some federal bills would disallow trading for “existing” renewables; in a single-REC system, this would disallow certain RECs purchased to meet a state RPS from qualifying to meet the federal standard; instead, all RECs used for federal RPS compliance should be tradable

# Other Issues of Concern

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- **Issue #8 - Voluntary Green Power Sales:** Voluntary renewable purchases should not count towards the federal requirements, and should instead be additional to any federal RPS
- **Issue #9 – Renewable Energy Account:** Funds generated through federal ACPs might best be: (1) allocated to states through a formulaic process (rather than through a discretionary process), (2) focused on states that are having a hard time complying with the RPS (e.g., based on ACP payments made), and (3) come with instructions for the use of such funds, with state discretion to delegate administrative responsibilities
- **Issue #10 – Cost Recovery:** States should maintain responsibility for addressing retail rate cost recovery and the prudence of compliance decisions, even for compliance with the federal RPS
- **Issue #11 – Distributed Generation:** Any REC tracking used for federal RPS should accommodate unique characteristics of DG (e.g., appropriate metering requirements, allowance for aggregation); RECs should be owned by the customer-generator, unless states have ruled otherwise

# Proposed Next Steps

## **Consider further developing principles and recommendations for the interaction between state programs and a possible future federal RPS**

- Not tied to any single federal RPS proposal
- Build off of what has already been done, and based on...
  - state best practices
  - review of multiple past federal RPS bills
  - federal climate bills that have addressed federal-state coordination
  - blue-sky thinking on different approaches to federal RE targets
- Consult with stakeholders including, most prominently, state RPS program administrators and policymakers
- Open questions: Timing? Level of stakeholder involvement? Degree to which states would formally agree with end product?