



Comments of the Business Council for Sustainable Energy  
Regarding the American Clean Energy and Security Act of 2009

May 6, 2009

Executive Summary

The Business Council for Sustainable Energy commends the release of the American Clean Energy and Security Act of 2009 (ACESA) and views the draft legislation as an important, comprehensive set of policies to address the many critical climate and energy challenges facing our nation. The Council pledges our support to work with members of the Energy and Commerce Committee to make improvements in the draft legislation as it moves through the legislative process in the coming weeks.

The Council strongly advocates passage of a suite of complementary policies to address energy and climate change goals, including adoption of a national, market-based cap-and-trade program that includes mechanisms and incentives to deploy existing clean energy sources, including wind, solar, geothermal, hydropower, natural gas, advanced batteries, biomass, fuel cells, and all investments in supply-side and demand-side energy efficiency. These cost-effective technologies represent currently available options for achieving near-term and lower-cost greenhouse gas emission reductions, as well for addressing pressing energy challenges over the next decade.

The Council also advocates for the inclusion of a robust offset program as envisioned in the ACESA. While the offsets provisions of the ACESA would contain costs and add stability to the program, more can and should be done to build upon the use of offsets in this role.

The attached memorandum outlines the Council's specific comments on the draft legislation including:

**Renewable Electricity Standard (RES)**

- The Council supports an aggressive renewable electricity standard (RES) and Congress should take an expanded view of how renewables are defined, to include new and emerging renewable technologies;
- The RES provisions of the legislation should be amended to clarify the important role of the voluntary renewable energy market;
- Consideration should be given to address state RES requirements that are higher than federal requirements, as well as to address questions over what would happen if state renewable resources are not included in the federal RES, and vice versa;

**Energy Efficiency Resource Standard (EERS)**

- The Council supports a separate and aggressive energy efficiency resource standard for utility energy efficiency that goes beyond a business as usual scenario;
- The EERS provisions should be amended to recognize and reward efficiencies already made in a number of states and regions of the country, as well as the efficiency gains made in the natural gas industry;

**Additional Energy Efficiency Provisions**

- The Council supports provisions establishing energy savings targets for buildings;
- The Council supports provisions aimed at industrial energy efficiency and supports congressional funding for critical programs;

**Greenhouse Gas Emission Reductions, Allowance Allocation Policy and Offsets**

- Allowance allocation policy should be designed to recognize and provide incentives for clean energy generation, distribution and use. Specific allowance pools or auction proceeds should be directed for this purpose;
- Allowances should be allocated directly to renewable energy generators or to renewable energy applications that displace fossil fuel use;
- Allowances should be allocated to sources of clean energy such as natural gas;
- Allowances should be allocated directly for energy efficiency;
- The Council supports the inclusion of a robust, verifiable offset program, and while the Council desires to work toward improvements to the offsets provisions, we believe that as currently drafted the offsets provisions improve upon previous legislative proposals;
- The Council recommends revisions to the offsets program to address mechanics of the program, and to recognize early actors and quality private offset credit programs;

**Renewable Energy and Energy Efficiency Tax Incentives**

- Tax incentives are an important complementary policy to encourage investment in all renewable energy technologies and energy efficiency measures;
- The Council supports including a tax title to the ACESA that addresses several needed policy changes not included in the legislation;

The Council welcomes the opportunity to provide additional, more detailed comments in each of these areas when appropriate. In addition, we would refer you to the individual comments provided by the Council's members as you consider the legislation's impacts on various industrial and commercial sectors.

*It is important to note that as a diverse business coalition, not all Council members endorse or take positions on the entire set of recommendations provided.*

***The Business Council for Sustainable Energy***

*The Council is an industry coalition that includes businesses and trade associations representing the energy efficiency, renewable energy and natural gas industries. These industries comprise a suite of currently available technology options that can strengthen domestic energy security and also reduce emissions of greenhouse gases that contribute to global climate change.*

*For over a decade the Council has represented the views of clean energy technology industries in the development of energy and climate change policy at state, regional, federal and international levels. Given its broad business representation, the Council is uniquely positioned to provide policy guidance on energy policy and the major design elements of a federal, economy-wide and market-based approach to climate change.*

*For additional information about the Council, please visit its website at [www.bcse.org](http://www.bcse.org)*



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The Business Council for Sustainable Energy (BCSE) commends the release of the American Clean Energy and Security Act of 2009 (ACESA) and views the draft legislation as an important comprehensive set of policies to address the many critical climate and energy challenges facing our nation. The Council pledges our support to work with members of the Energy and Commerce Committee to make improvements in the draft legislation as it moves through the legislative process in the coming weeks.

The Council is an industry coalition that includes businesses and trade associations representing the energy efficiency, renewable energy and natural gas industries. These industries comprise a suite of currently available technology options that can strengthen domestic energy security and also reduce emissions of greenhouse gases that contribute to global climate change.

The Council strongly advocates passage of a national, market-based cap-and-trade program that includes mechanisms and incentives to deploy existing clean energy sources, including wind, solar, geothermal, hydropower, natural gas, advanced batteries, biomass, fuel cells, and all investments in supply-side and demand-side energy efficiency. These cost-effective technologies represent currently available options for reducing greenhouse gas emissions and for addressing pressing energy challenges over the next decade. Greater use of these technologies will result in near-term and lower cost emissions reductions, and will lower the overall cost of the program.

The Council also advocates for a robust offset program as envisioned in the ACESA. While the offset provisions of the ACESA would contain costs and add stability to the program, more can and should be done to build upon the use of offsets in this role. Access to offsets will provide covered sources with flexibility that will reduce the cost of compliance without weakening the deployment signals to the market. In addition to lowering compliance costs, an offsets program promotes flexibility of choice for covered entities, and ensures that projects and activities outside of the emissions cap will have a valuable incentive to participate in the market for emissions reductions.

The Council offers the following specific comments on the discussion draft, and we welcome the opportunity to provide additional, more detailed comments in each of these areas when appropriate. In addition, we would refer you to the individual comments provided by the Council's members as you consider the legislation's impacts on various industrial and commercial sectors.

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### **Title I -- Clean Energy**

#### ***The Council supports an aggressive renewable electricity standard (RES) – Subtitle A***

The ACESA would establish a 25% mandatory renewable electricity standard (RES) by 2025 for retail electricity suppliers that sell more than 1 million megawatt hours (MWh) of electricity. The requirement can be reduced by up to one fifth provided that the retail electricity supplier is in compliance with the federal Energy Efficiency Resource Standard (EERS) in Title II, Subtitle D.

Under the ACESA retail electricity suppliers shall submit credits to the Department of Energy (DOE) for the annual percentage of the retail electric supplier's retail electric energy sold to customers, excluding hydropower other than qualified hydropower and electricity generated by combustion of municipal solid waste. The renewable electricity requirement starts at 6% in 2012 and goes up to 25% in 2025-2039.

The Council supports the aims of the ACESA to move the nation towards a clean energy economy by setting forth requirements for the generation of renewable electricity. While the Council has not taken a position on the specific percentages outlined in the legislation, a national renewable electricity standard (RES) that ensures that a growing percentage of electricity is derived from renewable energy sources would enhance the diversity of the nation's energy supply and would help the United States regain global leadership in technology development. The RES should be structured to deploy a portfolio of technologies, including distributed generation and peak generation.

Immediate deployment of existing clean energy technologies will also help mitigate impacts on consumers' energy costs. Studies show that deployment of these technologies would yield significant savings in lower electricity and natural gas bills. For example a December 2007 study by the American Council for an Energy Efficient Economy reported that consumers could experience a 1.5 percent reduction in retail electricity rates by 2025 if a Renewable Electricity Standard of 15 percent by 2015 were coupled with a cap-and-trade climate bill.<sup>1</sup>

Further a May 2008 Department of Energy report found that expanding deployment of wind energy "potentially reduces demand for fossil fuels, in turn reducing fuel prices and stabilizing electricity rates." The report estimated that a scenario whereby 20 percent of the nation's electricity generation comes from wind energy by 2020, would avoid more than 80 gigawatts of new coal capacity and reduce demand for natural gas across all industries by 11 percent.<sup>2</sup>

In addition to the positive economic impact of the renewable energy industry, aggressive, near-term, and immediate deployment of existing technologies can move the nation closer to achieving its greenhouse gas emission reduction goals while also reducing dependence on foreign energy resources.

**Congress should take an expanded view of how renewables are defined, to include new and emerging renewable technologies**

ACESA defines "renewable" to include: wind, solar, geothermal, biomass or landfill, marine or hydrokinetic (as defined by EISA 2007) and qualified hydropower generation.

Congress should recognize that the demands of meeting our nation's energy needs will not only require the deployment of existing clean energy technologies, but also careful consideration of how these technologies are defined for purposes of the renewable electricity standard. Congress should include in the RES definition, for example, verifiable direct solar renewable energy applications that displace fossil fuel use, such as daylighting, solar hot water heating and solar light pipe technology, where displacement can be measured. While these technologies do not generate electricity (as "traditional" renewable energy technologies do), they bring about electrical energy savings by using direct solar energy.

In addition, the definition of renewables should include renewable natural gas and other emerging technologies. The value of pumped storage and compressed air energy storage (CAES) should also be recognized in the renewable electricity standard.

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<sup>1</sup> Assessment of the House Renewable Electricity Standard and Expanded Clean Energy Scenarios, American Council for an Energy Efficient Economy, December 2007.

<sup>2</sup> 20% Wind Energy by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply, U.S. Department of Energy, May 2008.

**The RES provisions of the legislation should be amended to clarify the important role of the voluntary renewable energy market**

The Council is encouraged by provisions in the ACESA that recognize the important role of the voluntary renewable energy market in encouraging the deployment of new renewable energy systems. For example the Council supports provisions in the ACESA to:

- Rely on existing REC tracking systems and to integrate these existing systems;
- Foster competitive markets by allowing RECs to be fully tradable and separate from electricity.

To ensure a liquid, competitive voluntary market the Council supports the following clarifications in the draft legislation:

**Clarify that voluntary demand for renewable electricity (renewable energy certificates, or RECs) are not counted towards the federal RES requirement**

The federal RES should create a floor, not a ceiling, for demand for renewable energy. Customers are motivated to buy (and usually pay more for) environmentally preferred products, but need to be assured that their purchase will make a difference. If voluntary purchases were to be counted for compliance with a mandatory RES, then customers would no longer be willing to pay for something they would get anyway as a result of the mandate.

The draft legislation should be amended to explicitly prohibit counting voluntary green power purchases towards federal RES compliance.

**To prevent double counting, clarify the ownership of, and rights to, federal RECs**

The federal RES creates a new instrument called a federal REC. Once the ACESA becomes law, contracting parties will know they must address ownership of the federal RECs. Contracts entered into prior to the date of enactment may be subject to double claims unless the ownership of a federal REC is clarified. It is important to reinforce the principle that standard REC contracts that convey rights and claims to all credits and attributes also convey to the federal RECs, specifically for contracts that pre-date the adoption of a federal RES. For this reason, the ownership of federal RECs should be dependent on the date on the contract, not, as set forth in the draft legislation, on the date that the renewable energy facility was placed in service.

**Further analysis and consideration should be given to address state RES requirements that are higher than federal requirements. In addition, consideration should be given to address questions over what would happen if state renewable resources are not included in the federal RES, and vice versa.**

The ACESA contains provisions to protect the authority of states to adopt programs that exceed the required amount of renewable electricity under the legislation. Further analysis is required to consider the appropriate way to minimize transfers of wealth between states that have differing requirements while maximizing demand for renewable energy across the country.

As an example, obligated entities that have met a 25 percent state target and have “over complied” with a 20 percent federal requirement may decide to sell their “surplus” federal RECs to other obligated entities in other states for federal compliance. This effectively lowers the state RES from 25 percent to 20 percent and would undercut the intent of the state to adopt a higher standard.

In addition, consideration needs to be given to address the questions about what will happen if state renewable resources are not included in the federal RES, or vice versa. Issues may arise

due to the fact that the definition of what qualifies as a renewable is different in almost every state, and in the federal RES.

***BCSE supports the provisions in the ACESA to advance Smart Grid. – Subtitle E***

Subtitle E of the ACESA contains a number of provisions aimed at advancing Smart Grid technologies, including: designating Smart Grid technologies through EPA Energy Star labeling, calling for states and load-serving entities to establish demand reduction goals; authorizing rebates for smart capable appliances, and providing for Smart Grid information through the Energy Efficiency Public Information Program.

As Congress considers measures to advance Smart Grid the role of a broad range of implementers should be considered, such as states, load-serving entities, private companies and Independent Service Operators.

A smarter, more efficient transmission and distribution grid would allow a broad portfolio of technologies that are cleaner and more agile. This broader range of energy resources would improve electric power quality, and reliability, thus lowering energy costs. Congress should also further encourage the use of time-based electricity pricing, or “smart metering” technologies.

In addition, Congress should address the need for energy storage and how it relates to the deployment of renewable energy technologies. The Council encourages Congress to consider providing incentives and other mechanisms to encourage the development and deployment of new energy storage technologies, including compressed air energy storage (CAES) and pumped storage.

***The Council supports the provisions to expand renewable energy purchases by the Federal Government - Subtitle G***

Subtitle G of the ACESA authorizes the Federal Government to enter into long-term, 30-year contracts for the purchase of renewable energy (excluding energy generated from municipal solid waste). A standardized renewable energy purchase agreement is to be developed under the draft legislation.

The United States Government is the largest user of energy and the largest owner of buildings in the world. Long-term government purchases of renewable energy could help stimulate growth in the renewable energy sector, helping to bring down costs of renewable energy, and creating millions of new jobs while at the same time addressing pressing energy security concerns and greenhouse gas emission reduction goals.

**Title II - Energy Efficiency**

***The Council supports establishing energy-savings targets for buildings – Subtitle A***

The ACESA provides targets for commercial and residential building codes, including: a 30 percent improvement relative to 2004 or 2006 codes within 3 years of enactment and a 50 percent improvement after 2016. The legislation authorizes EPA to provide incentive funding to the states to implement these requirements. A building retrofit program for both commercial and residential buildings is established. National model building energy codes and standards are to be updated every 3 years. The legislation also requires building energy performance labeling.

The Council supports the provisions establishing energy-savings targets for buildings and the provisions aimed at encouraging states to adopt energy efficiency programs in the forms of codes, standards, and incentives to ensure that those targets are met. The Council believes that the provisions should include building owner incentives to support the investments needed to achieve these targets in individual buildings.

The Council also supports provisions in the legislation establishing a national energy performance building labeling program. The Council believes the program should require all buildings to have publicly accessible certificates showing the building's energy efficiency potential compared to a reference building, as well as the individual building's performance among similar buildings as determined by a national benchmarking tool.

***Congress should adopt an aggressive energy efficiency resource standard (EERS) but should amend a number of concepts in the draft legislation before final enactment – Subtitle D***

The ACESA establishes an energy efficiency resource standard (EERS) requiring that electricity and natural gas distribution companies demonstrate that customers achieve a certain level of cumulative electricity or natural gas savings. Electricity savings start at 1 percent in 2012 and increase to 15 percent by 2020. Natural gas savings start at 0.75 percent in 2012 and gradually increase to 10 percent by 2020. A penalty of 5 cents per kWh is placed on electric utilities and a penalty of 5 dollars per MMBTU is placed on natural gas utilities if they do not meet the efficiency goals.

Utilities can be an important partner in deploying energy efficiency or demand response measures and BCSE has long supported enactment of a national target requiring utilities to achieve energy savings increases through efficiency programs, combined heat and power (CHP), distribution efficiency, or purchase of such savings from others. The Council supports an aggressive energy efficiency resource standard for utility energy efficiency that goes beyond a business as usual scenario, and that is separate from the renewable electricity standard. As currently constructed, however, the Council believes a number of concepts in the draft legislation need further in-depth analysis and revision before final enactment.

Of particular note, the draft legislation does not adequately consider the efficiency gains made by a number of states and regions of the country, nor does it recognize efficiency gains made by the natural gas industry, including natural gas residential and commercial customers. These efficiency measures mean that it now takes less natural gas to serve 65 million homes than it took to serve about half that number of homes in 1970. In addition, many natural gas utilities participate in, or operate, energy efficiency programs, deploying \$500 million in efficiency measures in the year 2007 alone. The Council believes these efforts and efficiency gains should be recognized in the legislation.

At the same time, the legislation can be drafted in a way that goes beyond business as usual. Under business as usual the energy efficiency achieved under state EERS' is almost 6% nationwide. This includes: Current baselines, limited (intrastate and intra power pool) trading, and not including the savings expected from codes and standards implementation. A balanced approach can both recognize early actors, while achieving significant efficiency gains.

The Council supports amendments to the EERS provisions of the ACESA, including the following:

- The EERS provisions should be amended to recognize and reward efficiencies already made in a number of states and regions of the country, as well as the efficiency gains made in the natural gas industry;
- Utilities can influence, but do not control, the consumption of their customers, therefore a program should balance penalties and incentives;

In addition, new utility initiatives should be established to encourage investments in energy efficiency including:

- Appropriate and detailed rate design that provides transparency;
- Incentives for the deployment of energy efficient technologies;

- Verifiable measurements of energy use reductions.

***Congress should advance efficiency in the industrial sector through existing programs and new tax incentives – Subtitle E***

The ACESA directs the Department of Energy to develop industrial energy efficiency certification standards, and seeks to achieve accreditation by the American National Standards Institute (ANSI).

The Council supports measures in the ACESA to increase industrial energy efficiency. In addition, the Council believes Congress should advance efficiency in the industrial sector by supporting the Department of Energy's industrial technology development and deployment programs, the waste energy recovery incentive grant program, enhanced tax credits for combined heat and power projects, and tax credits for an American manufacturer's investments in new domestic manufacturing capacity for clean-energy technologies.

***Competition in energy savings contracting provisions should be moved early in the process – Subtitle F***

The ACESA contains provisions aimed at improving the use of energy savings performance contracts, and allows ESPCs to be used for renewable energy production at federal facilities.

ESPCs are a vital tool for federal agencies to meet their energy reduction goals and to help make 75% of federal buildings energy efficient as called for by President Obama. ESPCs allow federal agencies to upgrade facilities and install energy efficient equipment at no up-front cost to the government. The project costs are paid for by the resulting energy savings and the energy service companies guarantee the results. A true "win-win," public-private partnership. The Council strongly supports these provisions which will help improve the ESPC program and make it more flexible to install renewable energy at federal facilities.

**Add a new Title for Renewable Energy and Energy Efficiency Tax Incentives**

The ACESA contains no provisions dealing with renewable energy and energy efficiency tax incentives. The Council believes that tax policy has been an effective tool in deploying renewable energy and energy efficiency measures and we would encourage Congress to include a tax title to the ACESA that addresses several needed policy changes not included in the legislation.

Some of the tax measures the Council supports include:

- An extension of the tax credit for residential home efficiency
- A tax credit for renewable natural gas production
- Accelerated depreciation for smart meters
- Accelerated depreciation for commercial heating, ventilation, air conditioning, and refrigeration (HVACR) upgrades
- A tax credit for solar light pipe technology
- Tax parity for hydropower, marine and hydrokinetic technologies, and geothermal power
- Revisions to the production tax credit (PTC) for offshore wind and compressed energy storage to ensure that these sources do not lose the PTC when energy has been stored
- Investment tax credits (ITC) for the deployment of energy storage projects
- Tax incentives for commercial roof replacements
- ITC cash grants (incentives for higher capacity/efficient generation from renewables)
- Incentives for solar thermal commercial pool heating; and
- Expanded credits for efficient combined heat and power and waste energy recovery

### **Title III - Reducing Global Warming Pollution**

***The Council supports enactment of federal climate change legislation that will send predictable mid-term and long-term signals to capital markets about the price of carbon and will direct new investments in existing low and zero-carbon emitting generation and technologies. The stringency of the greenhouse gas emissions cap and the allowance allocation provisions, among other provisions, must be viewed as a package, however, in order to determine whether the legislation will serve the goal of immediate deployment of renewable technologies and energy efficiency, as well as other clean generating options and practices. – Part A***

The ACESA adds a new title to the Clean Air Act (Title VII) which lays out the provisions for a new global warming pollution reduction program. The goal of the program is to reduce greenhouse gas emissions to 85 percent below 2005 emission levels by 2050.

Title III Part B of the legislation designates six commonly recognized greenhouse gases – carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydro fluorocarbons, and per fluorocarbon (PFC), as well as nitrogen trifluoride (NF3), a subset of PFC. Anthropogenic gases may be designated as greenhouse gases by the EPA Administrator after undergoing a petition process.

Title III Part C of the legislation also lists the number of emission allowances for 2012-2050 and thereafter, sets out requirements for a federal greenhouse gas registry, and compliance obligations for covered entities. Alternative compliance may be satisfied by offset credits, international emission allowances, and compensatory allowances. International emission allowances are allowed from foreign governments if the foreign governments impose mandatory limits on greenhouse gases and their programs are at least as stringent as the program established under the ACESA.

The legislation also establishes a Strategic Reserve of allowances to create a price cushion should prices rise faster than anticipated.

By promoting immediate deployment of renewable energy, energy efficiency, and other clean generating options, the U.S. can achieve early greenhouse gas emission reductions while at the same time lowering the cost of compliance. In addition, deployment of renewable energy can reduce the demand for natural gas and reduce potential price increases that may result due to fuel switching.

***It is difficult to assess the impact of the draft legislation's emission targets and timetables on our sectors in the absence of knowing the allowance allocation provisions to be included in Title III Subtitle B.***

The ACESA provides no details for the distribution of allowances other than to specify that EPA shall issue rules to exchange California and Regional Greenhouse Gas Initiative (RGGI) allowances issued before the end of 2011. In addition the draft legislation specifies that to the extent auctions are conducted EPA shall hold auctions quarterly, using a single-round, sealed-bid uniform price format.

The method for which allowances are allocated under the ACESA will have a direct effect on consumers, producers, and on the profitability of different types of electric generators. It should both recognize existing clean energy investments and provide forward-looking investment signals to low-carbon energy generation, distribution and use.

Since allowances will have monetary value, entities holding the allowances could sell the allowances back into the carbon market and the resulting revenue could be used to finance new projects, or to operate existing projects. Alternatively, allowance holders could choose to sell the allowances into the voluntary market where marketers would provide them to businesses wishing

to achieve reductions above and beyond the emissions cap; finally, the allowances could be removed from the market altogether -- or retired -- in order to claim an additional environmental benefit.

The stringency of the cap and the allowance allocation provisions must be viewed holistically to determine whether the legislation will serve the goal of immediate deployment of clean energy technologies. The utility of allowance value in deploying clean energy technologies is partially dependent on the required emissions reductions. Delayed reduction requirements or minimal early reductions will limit the usefulness of allowances by keeping the price of the allowances low.

***The ACESA should ensure that the emission reduction contributions from renewable energy, energy efficiency and natural gas are recognized by directly allocating allowances for these purposes.- Subtitle B***

In previous legislative proposals, Congress has considered various options for distributing allowances to covered entities or to sell allowances through an auction, directly or indirectly. For example, allowances could be sold by the government or freely distributed to third parties that would then sell allowances through an auction.

If all, or a portion of, allowances are distributed for free, allowance value can be directed to energy efficiency, renewable energy, and natural gas, through a fuel-neutral output-based approach or the establishment of set-aside pools. An output-based allowance allocation policy would send a clear signal to the marketplace that lower carbon emitting energy options have direct, clear, consistent and bankable value.

Direct allocations provide financial benefit to clean energy projects, and can be used to leverage additional project financing. Allowance allocation policy should also provide a strong, incentive to deploy clean energy options, specifically in the early years of the program.

The revenue obtained from the sale of allowances could be used to develop clean energy projects, and could be used in obtaining additional project financing. Although it is not possible to predict the future value of an emissions allowance, project developers could reasonably forecast 1) an expected range for the price of an allowance and 2) how many MWh a clean energy project will produce.

This is generally the same process renewable energy developers undertake today when obtaining financing for a project in part based on the future value of the renewable production tax credit (PTC). Because the value of the PTC depends on the kilowatt hours (kWh) to be generated over a ten-year period, the developer is going to need to forecast how any kWh will be generated. Many projects are financed, in part, based on the anticipated future revenue stream of the PTC.

In addition, allocation policy should recognize sources of clean energy, such as natural gas, to ensure continued market benefits of fuel diversification and the environmental benefits of natural gas. Policies should be considered to encourage the direct end-use of natural gas as an efficient, low-carbon source of energy.

### **Renewable energy and clean energy set-asides**

If Congress chooses not to allocate allowances on an output-basis, specific percentages of the overall allowance pool should be set-aside for renewable energy generators and investors in energy efficiency projects. For a renewable energy set-aside, allowances should be distributed based on a set formula that is calculated from megawatt hours of production. Advance certainty regarding eligibility and the amount of the incentive is critically important to project financing. Small generators, including distributed generation, should be able to aggregate to qualify for allowances.

### **Allowances should be allocated directly for energy efficiency**

The Council strongly supports a robust and direct allocation of allowances to energy efficiency. Lowering energy demand through efficiency investments decreases the price of electricity and other fuels, and would reduce the cost of the cap-and-trade program for residential, commercial and industrial energy consumers.

The ACESA does not yet include an allowance distribution proposal but leaves open the possibility of allocating allowances to states and local distribution companies (LDCs) for the purposes of energy efficiency. While LDCs may be one tool for distributing energy efficiency services and products to consumers, the Council strongly encourages Congress to consider an allowance allocation mechanism that would foster competitive markets that provide for customer choice in selecting providers for energy efficiency services or products.

### **Auction proceeds should be directed to clean energy technology deployment**

Congress is considering a variety of potential uses for auction proceeds under a federal cap-and-trade program. To accelerate deployment and lower the compliance costs for businesses and consumers, a significant portion of auction proceeds should be directed to existing clean energy technology deployment.

The Council acknowledges that low income individuals, and other constituent groups, may need assistance to manage increased energy costs. However, we would note that the purpose of adding a carbon cost is to provide appropriate incentives to use energy more wisely. Market forces will best drive appropriate allocation of capital, both by energy companies and end-users.

The Council also strongly supports a portion of the auction revenue to finance long-term production incentive for renewable energy and to finance measures to increase energy efficiency.

### ***The Council commends the inclusion of a robust offsets program in the ACESA; however, modified and more inclusive language should be included in the draft legislation for the consideration of offset credits – Part D***

ACESA establishes an offset program whereby covered entities may increase their greenhouse gas emissions above their allowances, if they can obtain “offsetting” emission reductions at lower cost from other sources.

The Council is encouraged by the inclusion of a robust offsets program in the ACESA. While the Council desires to work toward improvements to the offsets provisions contained in the ACESA, we believe that the strong offsets provisions in the legislation as currently drafted improve upon previous legislative proposals, both in terms of simplicity and use of offsets as a cost containment measure.

The Council believes that ensuring the environmental integrity of offset credits is essential in order to meet desired emission reduction levels. Real and additional offsets must be the standard for program integrity. Independent, third-party monitoring and verification requirements are also necessary to ensure that greenhouse gas emission reductions are delivered.

More specifically, the Council would like to highlight the following of its positions related to offsets:

### **Offsets are an important complementary tool to a cap and trade program**

While entities covered under the emissions cap should undertake internal emission reduction activities, such as deploying renewable energy and energy efficiency, to the greatest extent possible, the Council believes that the ability to purchase offset credits are an important

complementary tool to help covered entities manage compliance costs, widen the scope of environmental benefits and lower economic costs for consumers.

**Offsets must be real, additional, verifiable and measurable**

The Council believes that real and additional offsets must be the standard in order to guarantee program integrity and achievement of desired emission reduction levels. The ACESA contains numerous provisions to ensure that offset projects are developed using rigorous methodologies to ensure that emission reductions provided by offset projects are real, verifiable, additional and permanent. These measures are designed to account for uncertainties associated with a specific offset project type, and will encourage the development of high quality offset projects.

**Offsets must be of high-quality, and accepted at a 1:1 ratio**

The draft legislation requires offset credits to be devalued by 20% regardless of the quality of the underlying project or the certainty of the emission reductions the project supplies. The Council believes that this devaluation or "discounting" of offset projects is unnecessary with the rigorous methodologies and verification required under the legislation. The Council believes the draft legislation should be amended to allow a covered entity to satisfy a percentage of its compliance obligation by holding one offset credit in lieu of an emission allowance. The draft legislation adequately expresses the importance of offset quality without the need to discount offset credits.

**Early action, high-quality offset projects must be included and recognized**

The legislation sets forth a number of provisions for determining whether offset projects that were developed prior to enactment of a federal cap and trade program are eligible for offset credits.

Provisions to recognize early offset projects established under state or federal law prior to 2009, essentially apply only to the California Climate Action Registry and the Regional Greenhouse Gas Initiative. Credits for offset projects that were issued by private programs, e.g. the Voluntary Carbon Standard (VCS), and the American Carbon Registry (ACR), and other voluntary programs that have rigorous, third party verification requirements are not covered under these provisions.

In addition, the draft legislation provides credit to offset projects if they were installed as of January 1, 2009.

The Council supports modified and more inclusive language to the draft legislation for the consideration of offset credit. The legislation should provide credit for offset projects developed for which a credit was issued under any regulatory or voluntary greenhouse gas emission offset program that the Administrator determines meets eligibility requirements. The objective should be to recognize and reward companies who took early action to reduce greenhouse gas emission so long as the emission reductions are additional, measurable, and verified.

Many companies, including BCSE member companies, have taken measures to eliminate or reduce greenhouse gases before there were government, or private, programs for them to utilize or join. By setting the date as January 1, 2009, those companies that acted early to reduce emissions are penalized for their efforts. These early acting companies should be recognized and rewarded for acting before they were required to do so.

The Council believes that offset projects that meet the eligibility requirements adopted by the Administrator under the legislation and that are verified by a certified third party verifier, should receive early action credit.

**Verifiable, measurable and additional offsets should eliminate the need for numeric limits of offset supply**

The Council supports a robust offset program that will provide incentives for deployment of greenhouse gas emission reduction projects and activities outside capped sectors, expand the reach of the program and minimize overall compliance costs for the economy as a whole. The Council has not endorsed a specific numeric limit for the use of offsets, but believes that offsets represent real, measurable emission reductions, and that a ton of emissions reduced from an offset project is the same as a ton of emissions reduced from covered entities.

The rigorous measurement and verification standards set forth in the legislation ensure that those emission reductions are achieved, and should eliminate the need for a strict numeric limit on offsets.

**Linking other domestic and international market-based programs is critical to program success**

Council members believe that a federal market-based approach to addressing climate change should be linked to other domestic and international market-based programs that incorporate an offset program, provided they are deemed to be of high-quality and environmental integrity. Addressing climate change is a global challenge and emission reduction activities that occur within and outside U.S. boundaries generate equally valuable environmental benefits.

**Developing the rules, accounting and oversight mechanisms of an offset program that could be incorporated in to a federal climate change regime should begin immediately to provide certainty about eligible project types**

Regulatory uncertainty is one of the largest obstacles to new investments in low-carbon and clean energy technology projects. Companies want to develop new offset projects, but are deterred by uncertainty with respect to the types of projects and methodologies that will be recognized under a future federal compliance program. Companies that expect to be regulated under a future climate change program want to begin to support offset project development by purchasing offset allowances, but want the assurance that their purchases made today will be recognized in some manner under a future federal program.

Developing the rules, accounting and oversight mechanisms of an offset program that could be incorporated in to a federal climate change regime should begin immediately. The United States could get a significant head-start on reducing greenhouse gas emissions from sectors outside of a future cap by initiating a process to formally begin designing the structure and rules of an offset program.

**Title IV – Transitioning to a Clean Energy Economy**

The Council is pleased to see provisions included in the ACESA that will assist U.S. domestic industrial and manufacturing sectors that may suffer a competitive trade disadvantage with countries that do not have comparable greenhouse gas and market regulations. The measures to offer these U.S. sectors rebates and the international allowance reserve program are positive steps, but additional clarity in the details of these measures is needed in order to provide greater near and long-term market certainty to affected industries. The Council looks forward to working with Committee staff in further exploring these provisions.

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