

Clean Heat Standard

Technical Advisory Group

Statement of the Technical Advisory Group (TAG)¹ in response to the Straw Proposal of the Staff of the Vermont Public Utility Commission on the question of initial ownership of credits created pursuant to the Affordable Heat Act (Act 18), 30 VSA §§8121ff.:

A. Background

In early April of this year, the staff of the Vermont Public Utility Commission (PUC) sought comment from the clean heat Technical and Equity Advisory Groups on a straw proposal for determining ownership of “clean heat credits” that will be created by the delivery and installation of clean heat measures pursuant to the Affordable Heat Act. After setting out the legal basis for establishing credit ownership and summarizing recommendations of interested parties and the general public, the staff document proposed the following methodology for distinguishing initial credit ownership:

- For installed clean heat measures, end-use customers are awarded all clean heat credits.
- For clean heat measures impacting multi-owner properties, the initial credit ownership will be divided amongst the customers by a pre-arranged agreement.
- For delivered measures, ownership would hinge on the question of who initiated the measure:
 - If a customer opts for the delivered measure (e.g., voluntary purchase of renewable natural gas or higher biofuel blends), the customer will initially own the credit;
 - If a fuel dealer initiates the delivery of a delivered CHM [clean heat measure] of up to 20% biofuel blend, the deliverer owns the credit;
 - If a natural gas utility initiates the delivery of a delivered CHM of up to the amount of renewable natural gas authorized in its alternative regulation plan, the utility owns the credit;
 - If fuel dealers initiate the delivery of a delivered CHM above a 20% biofuel blend, the fuel dealers must first inform the customer and confirm the heating customer’s heat equipment is able to handle the fuel blend and then the deliverer will own the credit.

The document then discusses several considerations that underpin the proposal and poses four questions for the advisory groups.

We will address each of the straw proposal’s bullet points on methodology and then take up the four questions. But we begin by explaining what we feel to be the critical prerequisite for all actions with respect to credit ownership: transparency.

B. Transparency

For the market for credits to work properly, for the objectives of the clean heat program to be most efficiently achieved, and for all affected parties—especially customers—to benefit, it is essential that all parties be fully aware, at the outset of an action, of its potential to create clean

¹ This statement, like all TAG-approved statements, represents a compromise among the TAG members and it describes the group’s current thinking on the subject. It goes without saying that, in a group consisting of stakeholders with a diverse range of interests, not every element of a document will be entirely satisfactory to every member. This can be regarded, however, as a strength of a collective statement, not a weakness.

heat credits and, with them, value (though it may be, at the time, indeterminate). This is critical for consumer protection and market efficiency; and it can be ensured by means of regular disclosure statements to customers by obligated parties. With this knowledge, consumers can make more fully informed decisions about clean heat measures and their relative costs.

This, of course, is the aim of any ownership proposal that assigns credits to consumers. However, as will be seen in the discussion below, the TAG recognizes, as does the straw proposal in at least one instance, that the *cause* of a clean heat action is relevant to the ownership question, as are certain practical considerations. How and why a credit is created (or “minted”) directly affect determinations of the credit’s ownership. It may be appropriate therefore to differentiate among the means of credit creation: installed measures; delivered fuels; regulated v. unregulated fuels; and PUC- and other government-directed programs.

For this reason, the TAG urges the PUC to develop, as part of the clean heat rulemaking, minimum disclosure requirements for contracts between incentive providers and installers and the purchasers of installed clean heat measures (homeowners, building owners, etc.). Similar disclosure should be required of deliverers of bio- and renewable fuels.

C. The Straw Proposal: Conclusions and Discussion

Here follows the TAG’s point-by-point review of the straw proposal’s criteria.

1. *For installed clean heat measures, end-use customers are awarded all clean heat credits.*

This statement is too broad for the TAG to agree with it unconditionally. First, there is the question of early action credits, i.e., those credits created before the PUC has formally implemented the credit ownership program. The TAG feels that these credits warrant different treatment. Refer to our response to Question 4, in Section D. below.

Second, there are nuances that should be accounted for. Certainly, customers who act on their own initiative, install (or contract to have installed), and pay for eligible clean heat measures are entitled to the clean heat credits that the measures create. In making their decisions, customers must be informed about the credits and the potential value that the measures will create and how that value will affect the total cost of their investments. The TAG expects that, in this process, most customers will elect to sell their credits to their chosen contractor (i.e., use the value of the credits to reduce the cost of the measure). If the market is open and efficient, similar measures should produce similar credit values, across all suppliers. Put another way, the market needs straightforward, efficient mechanisms for the monetization and transfer of credits.

And, third, if the installed measures are provided with rebates or other forms of cost reduction that are funded through state-mandated programs (e.g., PUC-directed end-use efficiency and Tier 3), then there is an argument that the credits that the measures create belong to the state (or a municipality, in the case of municipally-owned utilities that provide these services), since, in the absence of the rebate, the investments would not have been made. The TAG is not taking a position on this question at this time. We are aware that delivery agents of these programs (e.g., *Efficiency Vermont*, Vermont Gas Systems) are currently writing contracts stating that, in return for the rebate, the customers waive claims to any environmental attributes of the measures. Insofar as these provisions satisfy the transparency criterion, the TAG doesn’t find them unreasonable. (We set to the side the matter of how any funds that the sale of such credits generates should be treated. It raises questions of economic efficiency, free-ridership, and optimization of the clean heat program that go beyond the scope of our deliberations on credit ownership.)

In cases where the incentives covers 100% of the investment costs, the credits should belong to the programs that provided them, and the sale of the credits should be used for additional investments in clean heat measures.

Lastly, public dollars are currently being used to support the development of the market and workforce for clean heat measures (e.g., end-use efficiency, Tier 3, and weatherization). These activities will need additional support, if the market creates increased demand for clean heat measures. There is a question of whether these activities justify an allocation of some number of credits or some other form of public support. The TAG has not reached a conclusion on this question at this time.

2. *For clean heat measures impacting multi-owner properties, the initial credit ownership will be divided amongst the customers by a pre-arranged agreement.*

The TAG concurs, though, as above, not unconditionally. The same caveats apply. And, again, our expectation is that contractual arrangements, not only among the customers but also with the suppliers and other delivery agents, will resolve questions of credit ownership.

3. *For delivered measures, ownership would hinge on the question of who initiated the measure:*
 - a. *If a customer opts for the delivered measure (e.g., voluntary purchase of renewable natural gas or higher biofuel blends), the customer will initially own the credit.*

The TAG concurs.

- b. *If a fuel dealer initiates the delivery of a delivered CHM [clean heat measure] of up to 20% biofuel blend, the deliverer owns the credit.*

See Section 3.d., below.

- c. *If a natural gas utility initiates the delivery of a delivered CHM of up to the amount of renewable natural gas authorized in its alternative regulation plan, the utility owns the credit.*

The TAG concurs.

- d. *If fuel dealers initiate the delivery of a delivered CHM above a 20% biofuel blend, the fuel dealers must first inform the customer and confirm the heating customer's heat equipment is able to handle the fuel blend and then the deliverer will own the credit.*

It is in the interest of all parties that the market for credits operate as efficiently as possible. Given the nature of the delivered fuels market, credit formation occurs, practically speaking, when the obligated party takes delivery of the clean heat fuel. Consequently, differentiation between blends greater and less than 20% (or some other number) greatly complicates the program. It should be the role of the market to drive increasing blends at competitive prices. The TAG concludes that no matter the blend, full disclosure is necessary and the customer should give informed consent to receive a blended product. The obligated party owns the credits.

In the event that a customer requests a custom blend (presumably a larger commercial or industrial customer), then ownership of the credits created by the incremental increase in the blend will be a matter for negotiation.

D. Responses to the Straw Proposal's Four Questions

1. *Should a different methodology be applied to pipeline renewable natural gas deliveries?*

The blend of pipeline gas will be a decision of the gas distribution company, subject to PUC approval; credits minted by virtue of the default blend of the pipeline gas should be owned by

the gas company. Credits created by voluntary purchases of renewable natural gas should belong to the customer.

2. *Should all credits for installed and delivered measures be awarded to customers?*

Refer to our responses to the specific elements of the straw proposal (Section C., above). The fundamental question is one of causation: who initiated the action? Credits created by customer decisions should go to the customer. It's not our conclusion, however, that credits created by actions funded in whole or part by government programs and those created by the actions of obligated parties (or entrepreneurial intermediaries) should necessarily be treated in the same way. Rather, we think that a market characterized by the highest degree of transparency—full disclosure for consumer protection—should fairly resolve the credit ownership and value-sharing questions that arise.

3. *Should customers first evaluate and give informed consent to a deliverer-initiated use of a delivered clean heat measure, no matter the blend percentage?*

Refer to our responses to the specific elements of the straw proposal above (in particular, Section C.3.c. and d.). The question applies to both regulated (natural gas) and unregulated (fuel oil, propane, etc.) delivered fuels.

First, with respect to natural gas: Vermont Gas Systems is the sole retail provider of natural gas in Vermont. Being regulated by the PUC, it will comply with whatever rules and requirements the PUC sets for it, with respect to both customer notice and the blending of natural gas with renewable natural gas (RNG). Credits associated with RNG that is procured by VGS, blended with its fossil gas, and distributed to all customers as the basic tariffed product should be owned by VGS. Credits created by voluntary purchases by customers (most likely to be large users) will be owned by the customer, who, by means of contractual provisions, will likely sell them to VGS.

Second, with respect to unregulated heating fuels: We assume that it is a concern about the technical limitations of burners of boilers and furnaces that constrains the straw proposal's blending of biofuels with fuel oil to at most 20%. While greater proportions of biofuels will require certain equipment upgrades (e.g., changes to the burner tips) in many cases, it's not true in all cases. The market is already responding to demand for biofuels; a number of manufacturers are producing equipment that can accept blends in excess of 20%. The actual blends that obligated parties will sell will be determined in large measure by the markets for biofuels and clean heat credits. For these reasons, the TAG reached the conclusion set out in Section 3.d. Full disclosure is critical, and customers should give informed consent to the receipt of blended fuels.

4. *Whether a different methodology should be applied to clean heat credits for early action clean heat measures?*

The difficulty here is largely a practical one. Credits whose ownership (and value) has been unsure (excepting those subject to contractual provisions such as those associated with certain Tier 3 investments) have been generated since [Date], and such credits will continue to be generated until a rule goes into effect settling the question. Insofar as investment and delivered-fuel decisions appear to have been made by end-use customers without expectation of later financial benefit derived from the sale of credits, an argument can be made that a different methodology can be applied to early action measures.

Just what that methodology is seems to the TAG more a question of practical considerations than of satisfying an ideal, the first of which is establishing the creation of such credits, which

itself depends on measure characterizations yet to be decided. The second question is the degree to which *causation* (that is, who is responsible for the investment or delivery?) should determine the allocation of these credits. The clearest case offers guidance. Consider an action that was altogether customer-initiated and -financed. There appears to be little question that the credits should go to the customer; no other entity can make a credible claim to them. But it can also be seen as a matter of free-ridership and the public good. It hardly seems sensible to divert the value of those credits to actors that never had an expectation of (and who will not be harmed by *not*) receiving it, when that value can be dedicated to reducing the overall cost of the clean heat program or increasing investment in clean heat measures.

For these reasons, the TAG concludes that early action credits—i.e, those credits created between 1 January 2023 and a date established by the PUC—should be owned by those entities that installed the measures, delivered the fuels, or can otherwise establish a contractual claim to the credits.

Approved by motion and vote (11 in favor, 1 abstention), 16 May 2024.

Frederick Weston, Chair