Edison Electric
INSTITUTE

Richard F. McMahon, Jr.
Senior Vice President, Energy Supply & Finance,
and Chief ESG Officer

February 16, 2024

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street NW
Washington, DC 20581

RE: Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts, RIN 3038-AF40

Dear Mr. Kirkpatrick:

The Edison Electric Institute (EEI) appreciates the opportunity to submit comments on the U.S. Commodity Futures Trading Commission's (Commission's or CFTC's) proposed Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts (Proposed Guidance).

EEI is the association that represents all U.S. investor-owned electric companies. EEI's member companies provide electricity for nearly 250 million Americans and operate in all 50 states and the District of Columbia. The electric power industry supports more than 7 million jobs in communities across the United States. EEI's member companies invest more than $140 billion each year, on average, to make the energy grid smarter, cleaner, more dynamic, more flexible, and more secure; to diversify the nation's energy mix; and to integrate new technologies that benefit both customers and the environment.

EEI's member companies are leading a profound, long-term transformation in how electricity is generated, transmitted, and used. This clean energy transition has already resulted in significant greenhouse gas (GHG) emissions reductions, and more than 40 percent of our nation's electricity now comes from clean, carbon-free sources. EEI's member companies are committed to getting the energy they provide as clean as they can as fast as they can while keeping customer reliability and affordability front and center. Across the industry, electric companies are investing in a broad range of carbon-free technologies and approaches, with the goal of demonstrating these technologies so that they can help further reduce power sector emissions when they satisfy industry performance requirements and are affordable for customers.

202-508-5571 | rmcmahon@eei.org

701 Pennsylvania Avenue, NW | Washington, DC 20004-2696 | www.eei.org

We support the CFTC's recent efforts to review and improve voluntary carbon markets (VCMs) through its existing authorities. EEI's membership respects the CFTC's mission of promoting the integrity, resilience, and vibrancy of the U.S. derivatives market through sound regulation. We also acknowledge the importance of the CFTC's authority to protect investors from manipulation, abusive trade practices, and fraud perpetrated not only within the derivatives markets it regulates, but also such conduct that relates to any commodity transaction.[1]

Use of VCMs by EEI's Membership

Currently, few, if any, of EEI's members buy (or sell) voluntary carbon offsets or credits (i.e., voluntary carbon credits or VCCs) issued by voluntary carbon reporting programs (VCC Programs) and their registries (VCC Registry) either as part of their ongoing decarbonization efforts or as part of resource plans, which, where required, are the subject of review by state public utility commissions (PUCs).

EEI members subject to mandatory GHG reduction programs in California and under the Regional Greenhouse Gas Initiative do buy and sell emission allowances and carbon credits, including offsets, as allowed under those respective programs. Those offsets are subject to state and program regulations governing their use and crediting. Any CFTC action addressing carbon credits, including offsets, should ensure that those companies with mandatory GHG emissions reduction obligations can still use these tools for compliance. To protect against any unintended consequences, if the CFTC moves to engage in more detailed regulation of VCC, it should make clear that such efforts do not cover credits created for and used in mandatory programs or grandfather existing regimes. However, as our sector continues to decarbonize, and increases electrification, helping to decarbonize other key sectors of the economy, the related increase in electric demand may lead to higher usage of carbon offsets or credits in the future.

Renewable Energy Certificates (RECs) are Not Carbon Offsets and Already Are Subject to Rigorous Regulatory and Other Oversight

RECs and carbon offsets are fundamentally different instruments. RECs are tradeable, market-based instruments that represent and track renewable electricity generation and use. RECs are needed by electric companies for compliance with state-based renewable energy (or portfolio) standards (RES/RPS), which generally require that electric distribution companies deliver a

[1] See 1 7 U.S.C. §§ 6c(a), 9, 12(a)(5) and 15 and CFTC regulation § 180.1.

specified amount of electricity generated using renewable resources to customers. Electric companies can create or buy RECs to demonstrate compliance. A REC is created for every megawatt-hour (MWh) of electricity generated and delivered to the grid from a renewable energy (or other qualifying) resource. Established regional third-party entities verify the generation that supports the creation of RECs and manage their trading and submission for RES/RPS compliance.[2] As a result, RECs are fully accounted for, transparent, and verifiable with a high degree of market integrity.

RECs also can be purchased by other entities as tools to demonstrate that their consumption of electricity has been "matched" by renewable generation. The use of these "unbundled" RECs, which represent the environmental attributes of power generation, but have been separated from the physical delivery of electricity, is governed by certain emissions reporting regimes. When they are used to demonstrate compliance by non-electricity companies in VCMs or with reporting requirements, that use is governed by the terms of those programs.[3] However, the underlying electricity generation and associated clean energy attributes are still verified by the regional third-party entities that monitor RES/RPS compliance. Moreover, the Federal Trade Commission (FTC) has issued guidance that addresses how companies using RECs for voluntary compliance and reporting communicate about the emissions attributes of these instruments to the extent that they are making marketing claims.[4]

Carbon offsets, on the other hand, represent a ton of carbon emissions avoided or reduced. The verification, measurement, and reporting requirements for VCCs and voluntary carbon offset projects can vary from program to program. Given the clear differences between RECs and offsets, we applaud and strongly support the CFTC decision to omit RECs from this guidance and its categorization of VCCs.

CFTC's Use of Existing Authorities to Improve Utility of VCMs

We generally appreciate the approach taken by the CFTC through the release to use the tools it currently has to foster improvements to VCMs. While the CFTC does not have authority to directly supervise or subject to its regulations the *spot* VCMs, we believe the approach pursued through enforcement action as well as the

[2] See, e.g., M-RETS, https://www.mrets.org/, which is a non-profit organization that runs the platform that is used for RPS tracking and compliance in the Midwest. There are similar platforms in other regions. As discussed below, M-RETS also is used for tracking voluntary RECs purchases.

[3] See, e.g., Greenhouse Gas Protocol, Corporate Accounting and Reporting Standard, Scope 2 Guidance, https://ghgprotocol.org/scope-2-guidance.

[4] See FTC, Guides for the Use of Environmental Marketing Claims, 77 Fed. Reg. 62,122, 62,124 (Oct. 11, 2012).

Proposed Guidance will help advance the goals of maturing and improving the usefulness of these markets as well.

We support and agree with Chair Behnam and the other commissioners who have lauded the importance of standards set by the Integrity Council for Voluntary Carbon Markets (ICVCM) and their Core Carbon Principles, as well as the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) and other groups. The proliferation of these standards promotes convergence toward minimum common benchmarks across VCC Programs that will encourage more liquidity in these markets as long as the registries' benchmarks are sufficiently consistent.[5]

We therefore agree with other stakeholders who have explained that the CFTC could play a useful role in setting regulatory expectations for the standards that VCC Programs should meet, thereby driving the necessary convergence to fit-for-purpose benchmarks for VCCs. Once the VCMs evolve and adopt a more uniform and adequate set of benchmarks, challenges such as the issuance of duplicate VCCs and erroneous tracking or counting of VCCs will become more manageable, and the VCMs will be able to instill more confidence and attract more liquidity.

The CFTC Should Continue Coordinating with Other Agencies and Standard-Setting Bodies

Within the U.S. alone, EEI's members are under the jurisdiction of multiple regulatory bodies. As explained above, EEI's membership is directly regulated by state PUCs, FERC (for activities involving interstate transmission of electricity or its production inputs), as well as the EPA. In addition, as discussed above, those required to participate in mandatory state carbon trading programs are regulated by the relevant state and multi-state bodies that administer those programs. Inconsistent regulatory requirements from these different agencies affecting the same activities can frustrate the goals of those requirements; or, at minimum, create the potential for duplication, confusion, and additional costs. To avoid inconsistent requirements, close coordination of policy-making efforts is important where possible.

Similarly, we note and appreciate the work of international standard setters, such as the International Organization of Securities Commissions (IOSCO), that is intended to drive convergence of standards to improve VCMs. IOSCO recently issued a final report on developing compliance carbon markets and began a consultation process regarding the development of VCMs. EEI notes that any action taken by the CFTC before IOSCO issues a final report on VCMs could

[5] However, as noted, any effort to create consistent standards should not create compliance challenges for entities that use offsets in existing mandatory GHG emissions programs.

positively impact the work of IOSCO, but EEI encourages the CFTC to work to avoid any inconsistencies between IOSCO standards and CFTC requirements. By focusing on the CFTC's existing rules as they apply to Designated Contract Markets and their listed contracts through the Proposed Guidance, the risk of inconsistencies should be minimized.

Conclusion

The Proposed Guidance is a constructive and useful step by the CFTC toward driving standardization of higher-quality VCCs and improving the VCMs where they trade. EEI believes that finalized guidance that reflects the core policy recommendations outlined here would help achieve the goals of improving liquidity of VCMs and delivering on various market participants' goals of GHG-emissions reductions, including EEI's members. However, because our members are subject to comprehensive regulatory frameworks, they should be exempt from any additional requirements regarding CFTC's oversight of carbon offsets. EEI applauds the efforts of the CFTC and is hopeful for a constructive finalized guidance.

Thank you for your review and consideration of our comments. Please contact me (202-508-5571, rmcmahon@eei.org) if you have any questions about EEI's comments.

Respectfully submitted,

Richard F. McMahon, Jr.