



CRS

center for
resource
solutions

October 12, 2018

Glenn Blackmon
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Washington State Department of Commerce 1011 Plum Street SE
P.O. Box 42525
Olympia, WA 98504-2525

RE: Comments of Center for Resource Solutions (CRS) in response to the October 1, 2018 Second Revision to the Discussion Draft of the 2019 Bill Request for Fuel Mix Disclosure

Dear Mr. Blackmon,

CRS appreciates your consideration of our comments on the September 6, 2018 draft of the Department of Commerce's proposed fuel mix legislation for 2019, which we submitted via email on September 21, 2018. We also appreciate this opportunity to provide additional comments following the October 1, 2018 revised draft in response to your email from October 2, 2018. Specifically, you have asked for additional feedback on treatment of renewable energy certificates (RECs) that have been unbundled from the energy and used for compliance with Washington's Renewable Portfolio Standard (RPS).

To be clear, we do not see any language in the October 1 revised draft that would limit use of unbundled RECs by a retail supplier to report declared renewable energy and we generally support the proposal as written, including the new proposed Sec. 4(8) allowing additional disclosure around unbundled REC procurement by suppliers. We submit these comments in support of maintaining inclusion of unbundled RECs in response to your request for input on that specific question.

To provide the most complete and accurate disclosure to customers, unbundled procurements should be included in supplier disclosure as a part of the percentages of declared renewable energy fuel types (e.g. wind, solar, etc.) on the disclosure label. If it is deemed important and useful for consumers, additional disclosure can be provided specifying the portion of each renewable fuel category represented by unbundled procurement of RECs paired with unspecified, null, or other renewable power, as opposed to bundled procurements.

1. A customer's claim to receipt of renewable energy (and a supplier's claim to delivery of renewable energy) are the same whether the supplier procures bundled RECs and electricity from the same facility or unbundled RECs and electricity from within the same grid region.

Only the REC verifies delivery and use of specified (declared) renewable electricity; the physical electricity carries no generation attributes and means nothing for accurate renewable energy disclosure. Nothing other than proof of delivery and receipt of the fuel mix attribute, i.e. the REC, is needed for accurate disclosure of the legal allocation of renewable fuel type to customers according to Washington statute:

“Renewable energy credit’ means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.”¹

Washington’s REC definition does not specify that inclusion of these attributes requires a bundled power contract from the same facility. And Washington law does not say that only bundled power contracts convey all the attributes of generation and can be used for verifying retail product claims. It would be inappropriate for fuel mix disclosure present as much.

Unbundled RECs are the same as other RECs, as long as there is no double counting (e.g. counting null power as having renewable attributes). The “actual” sources of electricity used to serve customers can only be determined contractually and RECs are the contractual accounting instrument used in Washington to verify that a renewable energy source was used to serve customers. RECs are not merely an RPS compliance mechanism. RECs are in fact the only credible way to verify the sources of electricity used to serve customers for renewable energy.

For the same reasons, there is no difference in terms of consumer claims between bundled and unbundled renewable energy. Since there is no way to physically deliver electricity from a specified source to a particular customer on the grid, sourcing electricity and RECs from the same grid region is functionally equivalent to sourcing electricity and RECs from a single grid-connected facility for the purposes of consumer claims. In both cases the customer can claim to be powered with renewable energy, and in neither case are the electrons physically powering their home or business necessarily originating from a renewable facility. Renewable energy is, in this respect, “unbundled” at the moment the electricity is injected to the grid. As such, whether the “bundling” occurs at the wholesale level (by a generator), at the retail level (by a supplier), or indeed at the consumer level has no effect on the consumer’s claim to be receiving and using renewable electricity on the grid, which is precisely what is being communicated in fuel mix disclosure.²

To the extent that Washington has also accepted that unbundled RECs verify delivery of renewable energy under the mandate of the RPS and voluntary programs complying with RCW 19.29A.090, it is unclear why unbundled RECs would be somehow insufficient to represent a renewable source of electricity in fuel mix disclosure but not in RPS or voluntary programs recognized by the state.

Finally, by denying that unbundled RECs and system power sourced from the same North American Electric Reliability Corporation (NERC) region can be reported as renewable energy delivered by suppliers and claimed as renewable energy received by customers, fuel mix disclosure in Washington would contradict federal guidance from the U.S. Federal Trade Commission (FTC)³ and may infringe on

¹ WASH. ADMIN. CODE 480-109-060 (24)

² Fuel mix disclosure in Washington clearly intends to reflect deliveries of fuel type attributes to retail customers. See CRS’s July 28, 2017 comments on Initial Draft Legislative Proposal for Fuel Mix Disclosure for 2018, and the stakeholder workshop held on July 13, 2017.

³ See 16 C.F.R. § 260.15(a) and (d). And US Federal Trade Commission (FTC). (2012). *Guides for the Use of Environmental Marketing Claims; Final Rule*. 260.15(a) and (d).

Also see U.S. Federal Trade Commission (FTC). (2012). The Green Guides Statement of Basis and Purpose, pg. 218. Available online: <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf>

the legal rights and claims of REC owners, under Washington law⁴ and per the terms of use of REC tracking systems⁵ and bilateral contracts for power and attributes.

2. Consistency with the RPS is important to avoid customer confusion.

If Washington were to no longer allow unbundled RECs (system power + RECs) to be reported as declared renewable energy in fuel mix disclosure, there may be a discrepancy between RPS and fuel mix disclosure in terms of renewable energy percentages where unbundled RECs can be used for RPS compliance. This may be confusing and inconsistent to customers.

3. The most complete report to customers would include unbundled RECs.

The state's fuel mix disclosure program should strive for completeness and transparency of information. To that end, the most complete and accurate fuel mix disclosure reflects all procurements made by suppliers to serve retail load, including out-of-state and unbundled RECs, where unbundled RECs are a legitimate means of delivering and consuming renewable energy in the RPS and other state programs.

4. There is no need to restrict trading or make renewable energy more expensive for suppliers or customers.

Washington can set limits on the renewable energy that can be included in fuel mix disclosure and still allow trading within those limits. For example, Washington can choose to limit eligible renewable energy in fuel mix disclosure to RECs that are generated in Washington or imported bundled, i.e. that come from facilities that are directly delivering into Washington, if it wishes, and still allow for unbundled trading within that boundary. This would allow for renewable energy trading within the state, which is better for markets, long-term contracts, and provides flexibility to suppliers.

For example, a party may enter into long-term bundled contracts for more renewable energy than it needs in order to help make projects go. Where parties have bundled power contracts and don't need to deliver all of it to meet their own needs, and are oversupplied in RECs, they can sell those RECs and that delivery claim to someone else. This is still renewable energy that was directly delivered to Washington. Why does it need to stay bundled all the way through to the customer? Setting a rule for fuel mix disclosure that retail suppliers reporting renewable energy must procure it bundled would mean no trading within Washington. This may drive up the price of renewable energy.

5. There may be other consequences of not allowing unbundled RECs in fuel mix disclosure.

An approach that would no longer allow unbundled RECs to be reported as declared renewable energy may infringe on the property rights of REC owners, by denying that their RECs convey a claim to consumption of a particular fuel type. This would have direct implications for energy contracts, and

Also see US Federal Trade Commission (FTC). (2015). *Letter from James A. Kohm, Associate Director, Division of Enforcement, Bureau of Consumer Protection, to R. Jeffrey Behm, Esq., Sheehey, Furlong & Behm, P.C.* February 5, 2015. Available at:

https://www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf.

⁴ See WASH. ADMIN. CODE 480-109-060 (24).

⁵ See Western Electricity Coordinating Council, WREGIS Operating Rules (July 15, 2013). Section 2, pg. 2, 4-5. Available at: <https://www.wecc.biz/Corporate/WREGIS%20Operating%20Rules%20072013%20Final.pdf>.

many may have to go to court where their contracts say their RECs (WREGIS certificates) convey these benefits. Washington should carefully consider the potential legal consequences of fuel mix disclosure rules for transacting parties in energy markets, as well as potential damage to demand, participation, and the impact of markets and programs that rely on RECs.

6. Extra disclosure around unbundled RECs procurement can be provided without limiting its eligibility in fuel mix disclosure.

Though there is no difference between bundled and unbundled renewable energy in terms of accurate consumer and supplier claims and fuel mix disclosure, there may be other differences that may be relevant to consumers. On this basis, Washington can require or allow (as seems to have been done through the proposed addition of subsection 4(8) in the October 1 Discussion Draft) that suppliers provide additional disclosure to customers related to unbundled RECs. Alternatively, additional disclosure can be provided around the location of the renewable generators or whether they are located in-state or out-of-state (which may be more relevant to customers than the form of contract).

Disclosure related to unbundled RECs should be provided outside of the fuel-type percentages since unbundled RECs do not represent a fuel type. To avoid customer confusion, we also recommend that succinct, consistent descriptive language accompany disclosure of the portion derived from unbundled RECs, such as the following: “Renewable energy credits (RECs) are used to track ownership of clean energy generation from renewable resources such as wind, solar, hydropower and biomass. Unbundled RECs are delivered separate from your electricity.”

7. Unbundled RECs are not greenwashing.

If stakeholder concerns about unbundled RECs in fuel mix disclosure have to do instead with the impact of unbundled REC procurement on renewable energy development relative to the impact of bundled power contracts, this is a separate question from accurate fuel mix disclosure. However, if the impact of electricity procurement is also to be reflected/represented in fuel mix disclosure, there are in fact many ways to evaluate the impact of procurement, and impact is not necessarily determined entirely by procurement option. Neither is unbundled procurement inherently less impactful to renewable energy development and capacity additions than bundled procurement. There are many resources available addressing this topic, including, but not limited to the following.

- [Describing Purchaser Impact in U.S. Voluntary Renewable Energy Markets](#) from the World Resources Institute (WRI) and others, posted on the Renewable Energy Buyers Alliance (REBA) site.
- [Business Leadership in the Transition to Renewable Electricity](#) from RE100.
- The newly updated [Guide to Purchasing Green Power](#) from the U.S. Environmental Protection Agency (EPA), CRS, WRI, the U.S. Department of Energy (DOE), and the National Renewable Energy Laboratory (NREL).

Please let me know if we can provide any further information or answer any other questions.

Sincerely,



Todd Jones
Director, Policy and Climate Change Programs