



January 29, 2021

Cory Ann Wind
Oregon Department of Environmental Quality (DEQ)
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

RE: COMMENTS OF CENTER FOR RESOURCE SOLUTIONS (CRS) ON THE CLEAN FUELS PROGRAM ELECTRICITY 2021 NOTICE OF PROPOSED RULEMAKING AND DRAFT RULES

Dear Ms. Wind:

CRS appreciates this opportunity to submit comments on the Clean Fuels Program (CFP) Electricity 2021 Notice of Proposed Rulemaking (NOPR) and Draft Rules dated December 22, 2020 ("Draft Rules"). Our comments pertain to proposed requirements for renewable energy certificates (RECs) and use of offsite renewable electricity in Sec. 340-253-0470(5), proposed requirements for utility renewable electricity products in Sec. 340-253-0470(7), proposed reporting and documentation requirements for RECs in Sec. 340-253-0640(2)(d), and proposed rules for calculating incremental credits in Sec. 340-253-1020(4) in the Draft Rules.

BACKGROUND ON CRS AND GREEN-E®

CRS is a 501(c)(3) nonprofit organization that creates policy and market solutions to advance sustainable energy. CRS provides technical guidance to policymakers and regulators at different levels on renewable energy policy design, accounting, tracking and verification, market interactions, and consumer protection. CRS also administers the Green-e® programs. For over 20 years, Green-e® has been the leading independent certification for voluntary renewable electricity products in North America. In 2019, Green-e® certified retail sales of over 69 million megawatt-hours (MWh), serving over 1.6 million retail purchasers of Green-e® certified renewable energy, including over 113,000 businesses.¹

¹ See the 2020 (2019 Data) Green-e® Verification Report here for more information: <https://resource-solutions.org/g2020/>.

COMMENTS INCORPORATED BY REFERENCE

We incorporate into these comments CRS's November 5, 2020 comments on the Rulemaking Advisory Committee #3 Discussion Paper as a part of the Clean Fuels Program Electricity 2021 Rulemaking ("Nov. 5 Comments")², which include *inter alia*:

- General information about the Green-e[®] certification program;
- Information regarding the circumstances under which CFP credit generating entities would need to join the Green-e[®] program (e.g. execute the Green-e[®] Certification and Logo Use Agreement, pay certification fees, and undergo the Verification Audit) in order to demonstrate Green-e[®] certification of RECs used for the CFP; and
- Differences between the Western Renewable Energy Generation Information System (WREGIS) and the Green-e[®] program.

COMMENTS ON DECEMBER 22, 2020 DRAFT RULES

Sec. 340-253-0040(60)

- 1. Please make the following changes to Sec. 340-253-0040(60): "Green-e[®] Program" means the certification program run by ~~the~~ Center for Resource Solutions."**

Sec. 340-253-0470(5)

- 2. Please make the following changes to subsection 340-253-0470(5)(a): "[...] must be certified by ~~the~~ Green-e[®] Program, under ~~their~~the Green-e[®] Renewable Energy Standard for Canada and the United States version 3.45 or later [...]."**
- 3. Please clarify whether subsection 340-253-0470(5)(a) refers to Green-e[®] certification at the retail or wholesale level, or either.**

An entity generating CFP credits using RECs as proposed by DEQ (e.g. an electric vehicle [EV] charging station owner, utility, backstop aggregator, or automaker) can choose Green-e[®] certification of RECs at the wholesale or retail level.

For certification at the wholesale level, the Green-e[®] Program does not verify retirement of the REC. Consequently, DEQ would need to do that, and DEQ should set specific requirements for how RECs used for CFP must be tracked and retired in WREGIS, e.g. using a specific CFP retirement reason and identifying a CFP retirement year. For certification at the retail level, the Green-e[®] Program verifies end-

² Available at: <https://www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/cfpe2021m3comments.pdf> Pg. 4-11.

use retirement of the RECs. It requires that RECs be retired for Green-e® certified sales using a specific retirement protocol in WREGIS. In addition, the Green-e® Program may provide additional information to customers buying RECs that are used for the CFP, e.g. indicating that certified RECs used for the CFP are not surplus to regulations for greenhouse gases (GHGs) in the transportation sector and they are supporting compliance with state programs rather than voluntarily going above and beyond what is required.

4. CFP credit generating entities must join the Green-e® Program as participating sellers in order to sell Green-e® certified RECs or where RECs are included as a part of a residential product.

In our Nov. 5 Comments, we explained that CFP credit generating entities would not necessarily need to join the Green-e® Program in order to *buy* Green-e® certified RECs and use them for the CFP. However, some credit generating entities that aggregate EV loads and buy RECs to match with those loads for clean transportation programs in other states (e.g. California's Low Carbon Fuel Standard [LCFS]) have also *sold* RECs (e.g. excess RECs), particularly where the program's REC vintage requirements are narrow. In order to sell Green-e® certified RECs, entities must join the program as a participant, and pay certification fees, for example. Therefore, under the Draft Rules, if aggregators or other entities want the flexibility to buy RECs in excess and later sell them as Green-e® certified RECs, they would need to join as a Green-e® Program participant and incur the associated costs. Otherwise, these entities will need to be more certain about the RECs that they need and purchase RECs more carefully, and/or they may end up with RECs that they cannot resell at the same price. On the other hand, the Green-e® Program's 21-month vintage window for certified sales (incorporated into the CFP by the proposed requirement for Green-e® certification) may be wide enough to provide these aggregators with sufficient flexibility and alleviate some of the pressure.

5. The Green-e® Program can be used to verify proposed requirements at subsections 340-253-0470(5)(b) and (c).

In general, the Green-e® Program can be used to verify requirements and provide information to DEQ regarding the "placed into service" date and location of facilities generating RECs, as proposed in subsections (b) and (c), respectively. The Green-e® Program could potentially add verification procedures to do so where needed.

6. Please make the following changes to subsection 340-253-0470(5)(b): "[...] the Green-e® Standard."

7. Regarding subsections 340-253-0470(5)(a) and (b), in 2031, projects placed into service in 2016 (after 2015) will not meet the Green-e® Program's 15-year rolling new date

requirement.³ After 2031, DEQ is effectively proposing to require the Green-e® Program's new date for all projects generating RECs used for CFP.

8. We strongly recommend that DEQ explicitly disallow RECs associated with power that has been or will be imported to California, either directly or through the Western Energy Imbalance Market (EIM), for use in the CFP.

California's cap-and-trade program includes emissions associated with imported electricity. It defines imported electricity as: "electricity generated outside the state of California and delivered to serve load located inside the state of California."⁴ In addition, GHG attribution to California in EIM, "determines if [a] resource is serving load in [the] California GHG compliance area,"⁵ as opposed to load in Oregon, for example. Like the CFP, California is accounting for generation attributes delivered to load in California under this part of the cap-and-trade program. As such, it affects other load-based policies and RECs.

However, that program does not require REC retirement in California for renewable imports, to calculate emissions or determine compliance obligations.⁶ It does not use RECs to track imported renewable energy, and the California Independent System Operator (CAISO) has created a GHG attribution mechanism in the EIM for California that also does not involve RECs. As we have described previously at the EIM Regional Issues Forum (RIF),⁷ that has created a risk of double counting zero-emissions electricity that is imported to California and reported under the Mandatory Reporting Regulation (MRR). Where the RECs associated with this generation are used for the CFP, or in RPS and other programs outside of California, the same zero-emission generation may be delivered to two different states.⁸

The Green-e® Program's verification software asks participants whether RECs used outside of California are associated with generation that was imported to California for all the facilities that are located in WREGIS footprint. The program can potentially add additional verification requirements, including additional documentation or attestation around this issue. However, we have requested additional data

³ See Sec. II.E of the Green-e® Renewable Energy Standard for Canada and the United States v3.5.

⁴ Sec. 95802(a) California's Cap-and-trade Regulation.

⁵ Slide 5 of the California Independent System Operator's (CAISO's) July 15, 2020 presentation to the state of Washington's Clean Energy Transformation Act (CETA) Carbon and Electricity Markets Stakeholder Workgroup (MWG). Available here: <https://www.utc.wa.gov/layouts/15/CasesPublicWebsite/GetDocument.ashx?docID=140&year=2019&docketNumber=190760>.

⁶ See Sec. 94511(a)(4) of the Mandatory Reporting Regulation (MRR): "Imported Electricity from Specified Facilities or Units. The electric power entity must report all direct delivery of electricity as from a specified source for facilities or units in which they are a generation providing entity (GPE) or have a written power contract to procure electricity."

⁷ See recording of the June 18, 2019 EIM RIF: <https://www.youtube.com/watch?v=KhZ-OP0AluU&feature=youtu.be>, min 1:05-1:14:47.

⁸ Further explanation is provided in two letters from CRS to the California Independent Emissions Market Advisory Committee (IEMAC) dated Oct 5, 2018 and Aug 22, 2019. Available at: <https://resource-solutions.org/wp-content/uploads/2018/10/CRS-Comments-for-IEMAC-10-5-2018.pdf> and <https://resource-solutions.org/wp-content/uploads/2019/12/CRS-Letter-to-IEMAC-8-22-2019.pdf>, respectively. In these letters, CRS uses Washington's programs as an example, but the concern is equally as applicable to CFP and programs using RECs to verify delivery of renewable energy to load in Oregon.

from the California Air Resources Board (CARB) to improve Green-e® Program verification that these RECs are not double counted.

Sec. 340-253-0470(7)

- 9. We recommend better identifying which rules in Sec. 340-253-0470(7) apply to utilities using their renewable electricity products to generate CFP credits for residential EV charging with low-carbon intensity (low-CI) electricity, non-residential utility customers participating in these programs and earning credits for non-residential EV charging with low-CI electricity, or both.**

- 10. Subsection 340-253-0470(7)(b) does not require that the renewable electricity and RECs associated with utility products meet the same criteria as stand-alone RECs per Sec. 340-253-0470(5). As such, there are no REC retirement, REC vintage, project location, project new date, or other requirements for utility renewable electricity programs used for the CFP. The proposed review of pathway applications by DEQ “to determine if they result in a substantially similar environmental outcome” is generally opaque and may not provide equivalent assurances for CFP credits from this EV charging. At a minimum, we recommend including an explicit requirement to retire RECs associated with utility products and power purchase agreements used for the CFP per this section.**

Utility renewable electricity products and power purchase agreements can also be Green-e® certified, in which case Green-e® certification may be used to demonstrate compliance or equivalency with the criteria in Sec. 340-253-0470(5) and DEQ may consider making Green-e® certified utility products exempt from subsection 340-253-0470(7)(b).

- 11. It is highly likely that the Green-e® Program will adopt new rules affecting certified utility renewable electricity products used to generate incremental residential EV credits that are awarded to the utility.**

While DEQ is not proposing to require that utility renewable electricity programs must be Green-e® certified in the Draft Rules, many nevertheless are or may be, and investor-owned utility (IOU) voluntary green pricing programs have included provisions for the programs to be Green-e® certified since around 2012,⁹ per the recommendations of the Portfolio Options Committee (POC) and as approved by the Oregon Public Utility Commission (OPUC).¹⁰

⁹ See docket UM 1020, at: <https://www.oregon.gov/puc/edockets/Pages/default.aspx>.

¹⁰ The most recent approval was Order 18-183 (<https://apps.puc.state.or.us/orders/2018ords/18-183.pdf>). In March 2020, the OPUC suspended the POC per Order 20-063 (<https://apps.puc.state.or.us/orders/2020ords/20-063.pdf>). As part of this and a subsequent order (<https://apps.puc.state.or.us/orders/2020ords/20-183.pdf>), POC recommendation requirements were also suspended, and the programs were given a continuance through December 31, 2021.

The Green-e® Program cannot certify *sales* used for a state regulatory compliance program. It makes a distinction between these and RECs or renewable electricity that is used by the purchasing entity for a compliance program, such as the CFP. Sec. 340-253-0470(5) pertains to RECs that are sold to a CFP credit generating entity as a stand-alone REC product or simply retired on behalf of customers' EV charging. Alternatively, under Sec. 340-253-0470(7), credit generating entities that are the customers of a utility with a renewable electricity program or product offering may use that product (i.e. enroll in that program) in order to receive non-residential incremental EV CFP credits. They are non-residential buyers of renewable electricity (e.g. a charging station owner or EV fleet owner). In general, the Green-e® program can certify RECs and utility renewable electricity products where the buyer may be using the RECs for the CFP (even if this is a utility retiring RECs on behalf of residential EV charging) provided that it is not selling certified RECs to customers for which it receives CFP credit.¹¹

However, the Green-e® Program would treat certified renewable electricity products that are used for CFP differently if the *selling* utility or electricity supplier is the entity generating the CFP credits (e.g. the utility for residential EV charging). The program has existing rules for certified utility products that are being used for California's Low-carbon Fuel Standard (LCFS) program. These same rules will likely be applied to certified utility products used for the CFP. These rules would allow the utility to allocate a portion of product sales to the CFP, based on EV usage, provided that 1) it is a 100% renewable energy product, 2) 25% of product sales remain purely voluntary (e.g. not used for the CFP), and 3) the utility must provide additional disclosure language.¹²

Sec. 340-253-0640(2)

12. Regarding subsection 340-253-0640(2)(d)(A), we recommend that DEQ provide additional details specifying the protocol for REC retirement in WREGIS, i.e. what REC retirement for the CFP must look like in the tracking system.

This will depend in part on whether Green-e® certification at the wholesale or retail level is required. See comment no. 3 above. For example, RECs can be retired in WREGIS for Green-e® certified sales, i.e. meeting the Green-e® program's retirement requirements for retail certification. Otherwise, they can be retired for the CFP, i.e. meeting different DEQ retirement requirements. This would only be possible if Green-e® certification at the wholesale level is permitted. Both cases would meet the requirement at subsection (A), as currently written.

¹¹ The Green-e® program does not allow this for California's Low-carbon Fuel Standard (LCFS) program since RECs used for the LCFS cannot meet other requirements in the Green-e® program, namely, to use the Voluntary Renewable Energy Program (VREP) under cap-and-trade. See additional details here: <https://www.green-e.org/news/062019>.

¹² See. Sec. IV.C1.9 (pg. 16) of the *Green-e® Energy Code of Conduct for Canada and the United States v2.2*. Available: <https://www.green-e.org/docs/energy/Green-e%20Energy%20Code%20of%20Conduct.pdf>.

13. At this time, we do not anticipate significant issues associated with the requirement for quarterly reporting and REC retirement per subsection 340-253-0640(2)(d)(A) and Green-e® certification.

CFP credit generating entities may retire RECs for Green-e® certified sales and submit WREGIS reports and other supporting documentation that they have purchased and retired Green-e® certified RECs quarterly (and in advance of our annual verification) to DEQ. Credit generating entities that are participating sellers of Green-e® certified renewable energy (e.g. to residential customers) may also retire RECs on behalf of Green-e® certified sales at any time and produce tracking system documentation, while Green-e® Program verification of these sales does not occur until June 1 of the following year.

Due to the time lag between renewable electricity generation and REC issuance in WREGIS, RECs associated with renewable energy generated in the last month of a quarter will not be able to be used in the next quarter's CFP report, based on the quarterly reporting deadlines in Sec. 340-253-0630. For example, if renewable electricity is generated in September, the REC will be issued in January. The Green-e® Program requires that all sales in a given calendar year fall within a 21-month vintage window of eligibility. At this point, we do not foresee significant issues related to the Green-e® Program's annual vintage requirements and DEQ's proposed requirement for quarterly REC retirement. That is, we do not believe there are any RECs that are issued that would get "stranded"—i.e. would not fit within a quarterly reporting period and also meet our vintage requirements. However, where issues do arise, the Green-e® Program could potentially create new verification requirements to accommodate the CFP.

14. Similar to comment no. 9 above, please clarify if subsection 340-253-0640(2)(d)(B) applies to utilities using their renewable electricity products to generate CFP credits for residential EV charging with low-CI electricity, non-residential utility customers participating in these programs and earning credits for non-residential EV charging with low-CI electricity, or both.

15. Similar to comment no. 10 above, the requirements in subsection 340-253-0640(2)(d)(B) for EV chargers covered by an approved Utility Renewable Electricity Product or a power purchase agreement do not include documentation of REC retirement or any details about what REC retirement must look like in the tracking system. We recommend including an explicit requirement to retire RECs associated with utility products and power purchase agreements used for the CFP. We also recommend that DEQ provide additional details specifying what REC retirement for non-Green-e® certified programs that are used for the CFP must look like in the tracking system.

The Green-e® Program has its own requirements for Green-e® certified utility products.

16. Please make the following changes to subsection (e): “[...] from the Green-e® Program [...].”

17. In subsection 340-253-0640(2)(e), “verification report” is not a term that is used in the Green-e® Program (except to refer to CRS’s annual public report of aggregated Green-e® certification data, which would not serve the intended purpose). We interpret this to mean proof or a statement from the Green-e® Program that RECs used for the CFP were Green-e® certified, and we recommend that DEQ be more specific. We describe what the Green-e® Program can provide to DEQ annually by April 30 below.

Annually by April 30, the Green-e® Program can provide the following to DEQ for compliance with subsection (e).

1. Proof of completion of final verification for a list of certified transactions to entities using RECs for the CFP, including information regarding the generator, the quarter of generation, and the customer.

Per Sec. 340-253-0650, the annual reporting deadline for CFP is April 30 for the compliance period ending on December 31 of the previous year. Whereas the Green-e® Program’s annual verification deadline is June 1 of the year following the year of the renewable energy sale. CRS releases verification documents in January and opens its verification reporting software typically in the first week of March. This leaves less than two months for participating sellers to complete the Green-e® Program’s verification audit in time to submit a report to DEQ by April 30, and they would need to do so about a month before the Green-e® Program’s deadline.

In our experience, this is a manageable timeframe within which to complete verification, though there may be other constraints for auditors in March due to tax season. The Green-e® Program can provide notification to participants selling to CFP credit generating entities of DEQ’s reporting deadline and try to encourage them to complete verification as soon as possible once the software is available in order to meet DEQ’s April 30 deadline. Otherwise, we recommend that DEQ adjust the annual reporting deadline for incremental credit generating entities (e.g. to align with Green-e, June 1) in order to provide Green-e® Program participants with customers that are CFP credit generating entities and participants that are also credit generating entities with more time, if possible.

This would require that the Green-e® Program is able to identify which participating sellers are selling to customers using certified RECs for the CRP, and that we receive the participating seller’s permission to release customer-specific data to DEQ.

But in this case, the Green-e® Program can create a new reporting worksheet for participating sellers to list sales being used for CFP compliance. With the seller's permission, we could provide this to DEQ as confirmation of customers that were provided with Green-e® certified RECs for the CFP. It would not be necessary to identify the participating seller.

2. A validation statement from the Green-e® Program's expedited Customer Procurement Review.

The Green-e® Program has created a new expedited Certified Procurement Review option to provide pre-verification data in advance of full annual verification for individual transactions of a Green-e® certified product. While it does not replace the annual verification process for program participants, it does let those participants assure their customers that individual transactions are Green-e® certified without having to wait for the results of the annual verification. Customer Procurement Review may be helpful in assisting to get DEQ necessary information on an expedited timeline. Currently, there is a small additional administrative fee for participating sellers associated with this option. There is also a transaction size threshold of 25,000 MWh, which could potentially be waived for the CFP program.

DEQ should not accept the following for compliance with subsection (e).

1. Tracking system reports showing RECs retired for the Green-e® Program or Green-e® certified sales (e.g. with a "Green-e®" retirement reason).

For RECs certified at the retail level, a Green-e® retirement reason is necessary but not sufficient and not equivalent to Green-e® certification. For RECs certified at the wholesale level, if permitted, the Green-e® Program does not require REC retirement, and DEQ would verify retirement and would need documentation from CRS that RECs were certified at the wholesale level.

2. The Green-e® Program participant's Green-e® Program Verification Audit (or Agreed-upon Procedures) Report.

Providing the auditor's report to DEQ or making that report public is also not equivalent to Green-e® certification. Green-e® Program Staff must review and accept an auditor's report and may require additional action. The auditor's report does not show any post-audit activities, and the program regularly identifies issues with auditor reports.

Sec. 340-253-1020(4)

18. In subsection 340-253-1020(4)(a), we recommend that DEQ allow for RECs to be retired by or on behalf of credit generators and aggregators and not necessarily in retirement

subaccounts that are named for the specific credit generator or aggregator, but which otherwise indicate exclusive retirement by or on their behalf. For example, DEQ should permit RECs to be retired by a REC seller on behalf of or for the credit generator or aggregator, e.g. in the REC seller's retirement account for Green-e® certified sales.

The first sentence of subsection (a) reads, "Incremental credits for non-residential charging are generated upon the retirement of RECs that qualify under OAR 340-253-0470(5) by the credit generator, its aggregator, or the incremental aggregator." It is unclear whether this means incremental credits are generated by these entities upon retirement of RECs (i.e. these are the entities that may earn or claim incremental credits or to which they are awarded), or incremental credits are generated upon retirement of RECs by these entities, or both.

In general, per comment no. 12 above, DEQ should specify what REC retirement looks like in the tracking system (e.g. retirement by whom, in which accounts, and for what purpose or reason).

19. We recommend that DEQ compare the verification statement from the Green-e® Program per Sec 340-253-0640(2)(e) to the quarterly report and proof of REC retirement required under subsection 340-253-1020(4)(a).

There are often exceptions identified through the Green-e® Program Verification Audit that require additional REC retirements and/or other actions. In this case, the participating seller can notify the customer (CFP credit generating entity), who can in turn notify DEQ. Or, the Green-e® Program can notify DEQ, with the seller's permission. The Green-e® Program will always ensure that customers are made whole, though again, additional supply may sometimes need to be provided, which may differ from the quarterly reports submitted to DEQ.

DEQ may consider adding a provision similar to 340-253-1100(6)(b) requiring that in the event that the REC retirements reported for CFP was not verified by the Green-e® Program, the recipient of the incremental credits is responsible for acquiring and retiring sufficient RECs to ensure the environmental integrity of the program.

See comment no. 13 above regarding quarterly REC retirement and the Green-e® Program.

20. Similar to comment nos. 10 and 15 above, subsection 340-253-1020(4)(a) does not require REC retirement for incremental credits generated using Utility Renewable Electricity Product or a power purchase agreement. We recommend that DEQ include an explicit requirement for retirement of RECs associated with utility products and power purchase agreements used for the CFP, and provide additional details specifying what REC

retirement for non-Green-e® certified programs that are used for the CFP must look like in the tracking system.

The Green-e® Program has its own requirements for Green-e® certified utility products, including REC retirement. In addition, for Green-e® certified utility products used for the CFP, the Green-e® Program Verification Audit may identify exceptions and the Green-e® Program can potentially notify DEQ of these instances.

21. Similar to comment no. 20 above (as well as comment nos. 10 and 15), subsection 340-253-1020(4)(b) allows incremental credits for residential charging to be generated by a utility, its aggregator, or the incremental aggregator without REC retirement on behalf of that charging where the utility demonstrates to DEQ that EVs are being charged by customers enrolled in its Utility Renewable Electricity Products. We recommend including an explicit requirement for retirement of RECs associated with utility renewable electricity products and power purchase agreements used for the CFP.

Again, the Green-e® Program has its own requirements for Green-e® certified utility products, including REC retirement.

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

Sincerely,

_____/s/____

Todd Jones

Director, Policy