April 20, 2022

Rachel Assink
Rulemaking Lead
State of Washington Department of Ecology (WDOE)
300 Desmond Drive SE,
Lacey, WA 98503

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

Dear Rachel Assink:

CRS appreciates this opportunity to submit comments on March 15, 2022 draft of WAC Chapter 173-424, the Clean Fuel Standard ("CFS"). Our comments pertain to proposed reporting and documentation requirements for RECs and proposed rules for calculating incremental credits in WAC 173-424-SRR(3), proposed requirements for renewable energy certificates (RECs) and use of offsite renewable electricity and carbon intensity in WAC 173-424-DCIE (6), and proposed requirements for utility renewable electricity products in Sec. WAC 173-424-DCIE (8).

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 2020, Green-e® certified retail sales of nearly 90 million megawatt-hours (MWh), serving over 1.4 million retail purchasers of Green-e® certified renewable energy, including over 104,000 businesses.[1]

[1] See the 2021 (2020 Data) Green-e® Verification Report here for more information: https://resource-solutions.org/g2021/.

COMMENTS ON MARCH 15, 2022 DRAFT RULES

WAC 173-424-SRR(3)

1. **Regarding subsection WAC 173-424-SRR(3)(a)(1) we recommend that WDOE 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. 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 WDOE retirement requirements. This would only be possible if Green-e® certification at the wholesale level is permitted. Both cases would meet the requirement of subsection (a), as currently written.

2. **In subsection WAC 173-424-SRR(3)(a)(1), we recommend that WDOE 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.**

In general, per comment no. 1 above, WDOE 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).

3. **We recommend that WDOE compare the verification statement from the Green-e® Program per WAC 173-424-SRR(3)(a)(ii) to the quarterly report and proof of REC retirement required under subsection WAC 173-424-QREP(1) and WAC 173-424-SRR(3)(a)(i).**

We recommend that WDOE work with the Green-e® Program to determine the format and content of the "verification statement." 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 WDOE. Or, the Green-e® Program can notify WDOE, 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 WDOE.

WDOE may consider adding a provision similarly requiring that in the event that the REC retirements reported for CFP were 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.

4. **Please clarify whether subsection WAC 173-424-SRR(3)(a)(ii), which currently says, "Submit proof of completion of final verification or a validation statement from the Green-e Program for the RECs used in (2)(a)(i) of this section to generate incremental credits," should refer to section (3)(a)(i) instead of (2)(a)(i). If so, the requirement in section (i) that RECs be "retired in WREGIS or a recognized renewable electricity tracking system" is redundant, as tracking system use is already a requirement of the Green-e® Program for facilities over 10 MW.**

5. **Please clarify whether subsection WAC 173-424-SRR(3)(a)(ii) refers to Green-e® certification at the retail or wholesale level, or either.**

An entity generating CFP credits using RECs as proposed by WDOE (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, WDOE would need to do that, and WDOE 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-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.

6. **Regarding subsection WAC 173-424-SRR(3)(a)(1) through WAC 173-424-SRR(3)(d). Are the entities covered under (3)(b), (3)(c), and (3)(d) also required to meet the REC requirements in (3)(a)? If not, we recommend adding language to these subsections which would ensure that RECs retired by those covered entities meet the requirements under subsection (3)(a).**

WAC 173-424-DCIE (1)

7. **This subsection requires that "The carbon intensity of the electricity used in a utility service area is calculated based on the mix of resources used to generate the electricity using the most recent year fuel-mix report published by the Washington Department of Commerce under RCW 19.29A.140." Ideally, the utility CI emissions factors should represent retail emissions factors that account for market transactions and reflect attribute ownership for retail sales. In the future, these utility emissions factors should reflect**

attribute ownership for retail sales even though they are being used in this context to calculate the number of CFP credits, rather than for a retail usage claim by the charging entity.

WAC 173-424-DCIE (6)(a)

8. **Please make the following changes to subsection WAC 173-424-DCIE (6)(a): "Renewable Energy Certificates (RECs) retired in order to claim a carbon intensity other than the statewide mix or utility-specific mix must be certified by the Green-e Program under the Green-e Renewable Energy Standard for Canada and the United States version 3.5 or later, or by a certification system approved by Ecology as being substantially equivalent."**

Additional information and clarification regarding certification systems "substantially equivalent" to Green-e® mentioned in WAC 173-424-DCIE (6)(a): Differences between WREGIS and the Green-e® program.

WREGIS is not a renewable energy standard or verification program. The Green-e® program provides verification of renewable energy transactions relying, in part, on robust tracking systems like WREGIS, which use verified static and dynamic generation data to issue, track and retire serialized RECs to prevent double issuance, double transfer, and double retirement. The Green-e® program requires an annual audit of sales against the Green-e® Standard and retirement information in WREGIS, to ensure that WREGIS certificates meet the Green-e® Standard and were not double sold. WDOE could perform its own verification that the requirements above have been met, rather than relying on Green-e® certification, but WREGIS does not do this. WDOE is also not proposing to require an audit of REC sales to protect against double selling, and WREGIS also does not do this. The Green-e® program includes resource- and product-specific requirements beyond what DEQ is proposing, to provide additional quality and sustainability assurances. The Green-e® program also prevents instances of double claiming, verifying that there are no other renewable energy usage claims being made on either the RECs or underlying electricity. WREGIS also cannot be used for this.

9. **Please be aware that 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.**

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.

WAC 173-424-DCIE (6)(b)

10. **Regarding subsection WAC 173-424-DCIE (6)(b), please be aware that in 2039, projects placed into service in 2024 (after 2023) will not meet the Green-e® Program's 15-year rolling new date requirement.[2] After 2031, WDOE is effectively proposing to require the Green-e® Program's new date for all offsite renewable electricity projects generating RECs used for CFP.**

11. **The Green-e® Program can be used to verify proposed requirements at subsections 340-WAC 173-424-DCIE (6)(b) and (c).**

In general, the Green-e® Program can be used to verify requirements and provide information to WDOE 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.

12. **We strongly recommend that WDOE 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."[3] In addition, GHG attribution to California in EIM, "determines if [a] resource is serving load in [the] California GHG compliance area,"[4] as opposed to load in Washington, 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.

[2] See Sec. II.E of the Green-e® Renewable Energy Standard for Canada and the United States v3.5.
[3] Sec. 95802(a) California's Cap-and-trade Regulation.
[4] 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.

However, that program does not require REC retirement in California for renewable imports, to calculate emissions or determine compliance obligations.[5] 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),[6] 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.[7]

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

WAC 173-424-DCIE (8)

13. **WAC 173-424-DCIE (8)(a) does not require that the renewable electricity and RECs associated with utility products meet the same criteria as stand-alone RECs per WAC 173-424-DCIE (6)(a). 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 WDOE "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.**

[5] 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."
[6] See recording of the June 18, 2019 EIM RIF: https://www.youtube.com/watch?v=KhZ-QP0AluU&feature=youtu.be, min 1:05-1:14:47.
[7] 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 CETA 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 Washington.

14. **Please be aware that 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 WDOE 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 certified.

The Green-e® Program cannot certify *sales* used for a state regulatory compliance program. As noted above, 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. WAC 173-424-DCIE (6)(a) 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. WAC 173-424-DCIE (8), 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.[8]

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.[9]

15. **Subsection WAC 173-424-DCIE (8)(c) requires that "If the product is certified by the Green-e Program, proof of completion of final verification of the product must be included, or a validation statement if the product is undergoing the program's Customer Procurement Review" in the Fuel pathway reports required by this section due by June 30. We recommend that WDOE adjust the annual reporting deadline for incremental credit**

[8] 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.
[9] 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.

generating entities to August 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.

Annually, the Green-e® Program can provide the following to WDOE for compliance with subsection (c). The Green-e ® Program currently does this for the Oregon Clean Fuels Program.

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.

   The annual reporting deadline for CFP is June 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. This leaves less than one month for the Green-e® Energy team to complete the Green-e® Program's verification audit in time to submit a report to WDOE by June 30.

   In our experience, while this is *often* a manageable timeframe within which to complete verification, it is not always the case. There may be other constraints on participant's ability to submit additional supplemental documentation required to complete final verification.
   The Green-e® Program can provide notification to participants selling to CFP credit generating entities of WDOE's reporting deadline and try to encourage them to complete verification as soon as possible once the software is available in order to meet WDOE's June 30 deadline. Otherwise, we recommend that WDOE adjust the annual reporting deadline for incremental credit generating entities to August 1, as stated above.

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

   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 WDOE 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 WDOE 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 10,000 MWh, which could potentially be waived for the CFP program.

WDOE should not accept the following for compliance with subsection (e). The below are not accepted by the Oregon Clean Fuels Program and we encourage WDOE to be consistent with the Oregon CFP by also not allowing the following for compliance.

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 WDOE 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 WDOE 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.

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

Sincerely,

_____/s/_____
Lucas Grimes
Manager, Policy