September 30, 2022

Caroline Moore
Oregon Public Utility Commission (OPUC)
201 High St. SE, Suite 100
Salem, OR 97301-3398

RE: Docket UM 2225: Comments of Center for Resource Solutions on OPUC Staff's Straw Proposals on Analytical Improvements

Dear Ms. Moore,

CRS appreciates this opportunity to submit comments on the September 6, 2022 Analytical Improvements Straw Proposal Workshop Agenda, which includes Staff's Straw Proposals on Analytical Improvements (hereafter "Straw Proposal")[1]. Our comments pertain to Chapter 3 – Additional Data Transparency Straw Proposal, Topic #2: Renewable Energy Credits (RECs).

Background on CRS and the Green-e® Program

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 2021, Green-e® certified retail sales of over 110 million megawatt-hours (MWh), serving over 1.3 million retail purchasers of Green-e® certified renewable energy, including over 309,000 businesses.[2]

Comments

1. CRS generally supports including information related to RECs in Clean Energy Plans (CEPs).

[1] Available in the docket here: https://edocs.puc.state.or.us/efdocs/HAH/um2225hah123338.pdf.
[2] See the 2022 (2021 Data) Green-e® Verification Report here for more information: https://resource-solutions.org/g2022/.

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Information about the ownership or sale of RECs associated with generation from renewable resources that is included in a CEP is relevant to projected compliance and continual progress toward the reduction of greenhouse gas (GHG) emissions associated with electricity delivered to retail consumers in Oregon.

As such, it may be material to the requirement that a CEP be "in the public interest,"[3] and to whether clean energy targets are met with unique generation and purchases or those that have been double counted, as explained further below. There are "risks to the customers"[4] if delivered generation has been double counted, in that customers will not in fact be exclusively receiving nonemitting generation and its environmental benefits as intended under the law.

Furthermore, information about the sale of associated RECs is relevant to "reduction[s] of greenhouse gas emissions that [are] expected through the plan, and any related environmental or health benefits."[5] Actions included in CEPs will not "facilitate rapid reduction of greenhouse gas emissions"[6] regionally if those actions include double counting, or indeed if generation counted toward compliance with HB 2021 in Oregon may be used for compliance or sold to customers in a different state even where this does not represent double counting due to use of different compliance metrics and requirements.

Information about RECs is valuable, regardless, as noted in the Straw Proposal, "as a supplement to current RPS reporting" and to understand the interactions between this program and the RPS program, for example.

2. We recommend clarifying the Additional Data Transparency Straw Proposal language regarding RECs.

We recommend the following requirement for CEPs:

> For both generated and contracted renewable energy included in Clean Energy Plans, utilities should report the quantity of associated RECs that are expected to be retired on behalf of Oregon customer load for compliance in Oregon, retired on behalf of Oregon customer load for voluntary sales, retired on behalf of customer load in a different state (for either compliance or voluntary sales), banked for future Oregon compliance, banked for compliance in a different state, sold to a different Oregon provider, sold to an entity outside of Oregon, or banked and then sold either in-state or out-of-state in each year.

[3] Sec. 5(2) of HB 2021.
[4] Sec. 5(2)(e) of HB 2021.
[5] Sec. 5(2)(a) of HB 2021.
[6] Sec. 4(6) of HB 2021.

While this achieves the same general purpose as the language at the top of pg. 10 of the Straw Proposal, our recommended language is clearer and creates more detailed reporting categories.

3. A clear determination is needed regarding whether HB 2021 creates targets and compliance for GHG emissions associated with electricity delivered to retail consumers in Oregon, and whether retirement of the RECs associated with generation from renewable resources used for compliance with HB 2021 on behalf of Oregon retail consumers is required.

If HB 2021 creates targets and compliance for GHG emissions associated with electricity delivered to retail consumers in Oregon, then ownership and retirement of the RECs associated with generation from renewable resources included in CEPs and used for compliance on behalf of retail customers in Oregon is necessary to prevent double counting of this generation.

HB 2021 includes conflicting language referencing attributes, retail sales, and end-use retail customers, affecting whether retirement of RECs is necessary to prevent double counting of generation from renewable resources. Section 3(2) of HB 2021 states that, "Nothing in sections 1 to 15 of this 2021 Act may be construed as establishing a standard that requires a retail electricity provider to track electricity to end use retail customers." On the other hand, several sections, including Sections 1(1), 2(1), 5(3), 5(4), 8(3), 8(4)(a), refer to electricity sold or delivered to retail consumers. Section 7 refers to "attributes," which are commonly included in state and tracking system REC definitions. There are similar conflicts in ORS 468A.280 statute and implementation, referred to throughout the bill and the basis for accounting under the new program. ORS 468A.280(4)(a) refers to "electricity that is purchased, imported, sold, allocated or distributed for use in this state by an electric company." But the Department of Environmental Quality's (DEQ's) program does not currently require RECs to report the emissions from renewable energy. ORS 468A.280 is also used to calculate utility-specific emissions factors for electricity delivered to electric vehicle load in the Oregon Clean Fuels Program (CFP). Taken together, HB 2021 can be read as creating a "load-based" or "consumption-based" policy that regulates electricity sold or delivered to retail consumers.[7]

RECs were created to prevent renewable energy from being delivered or sold to multiple consumers. They represent the property rights to the fully aggregated non-power generation attributes of renewable generation,[8] e.g. GHG emissions. Each REC represents the generation attributes of one MWh

[7] See pg. 3 of CRS's Renewable Energy and Greenhouse Gas Accounting Glossary, available at: https://resource-solutions.org/document/031921/.

[8] See U.S. Federal Trade Commission (FTC) (November 27, 2007). Guides for the Use of Environmental Marketing Claims; Carbon Offsets and Renewable Energy Certificates; Public Workshop. Announcement of public workshop; request for public comment. Federal Register. Vol. 72, No. 227. Pg. 66095. Footnote 9. https://www.govinfo.gov/content/pkg/FR-2007-11-27/pdf/FR-2007-11-27.pdf

See U.S. Commodity Futures Trading Commission (CFTC). (August 13, 2012). Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule. Federal Register. Vol. 77, No. 156. pg. 48233-48235. https://www.govinfo.gov/content/pkg/FR-2012-08-13/pdf/FR-2012-08-13.pdf

See Weinstein, J. (Jan 2021). What are Renewable Energy Certificates? Futures and Derivatives Law Report, Volume 41, Issue 1. Thomson Reuters.

of renewable electricity that has been added to the grid. They are the essential accounting and tracking instrument for allocating renewable generation to load and demonstrating use and delivery of renewable energy and its environmental benefits both in Oregon[9] and across the country.

Where electric companies report that they are selling or supplying Oregon customers with zero-emissions electricity from renewable sources without the REC, the REC may be sold and used to verify delivery of the same generation to different customers and potentially a different state, as zero-emissions generation, renewable generation, or both. This results in double counting of that generation.

Section 7 of HB 2021, which states that, "for the purposes of determining compliance with sections 1 to 15 of this 2021 Act, electricity shall have the emission attributes of the underlying generating resource," may therefore require ownership and retirement of associated RECs, as defined in Oregon,[10] to prevent double counting of those attributes.

Actual or perceived double counting could:

- Result in legal challenges to contracts for power and REC purchases;
- Limit the eligibility of (i.e. limit markets for) Oregon RECs in other states, for voluntary programs, and/or for federal purchasing, and the ability of Oregon utilities to sell RECs that are not used for the Oregon RPS program, which could also affect renewable energy project development and contracting decisions;
- Affect the integrity of the Oregon RPS program, which accounts for renewable energy delivered or sold to customers using RECs, to the extent that generation is reported as delivered to load by one provider under this program while a different provider may use the associated RECs for RPS compliance, resulting in the same generation being delivered to different customers in Oregon;
- Affect the integrity of the Oregon CFP, which uses RECs to assign emissions to electricity and demonstrate use of zero-emissions power for EV charging,[11] to the extent that generation is reported as delivered to load by one provider under this program and the associated RECs are used for EV charging and CFP credit issuance for use by different customers under the CFP;
- Affect the integrity of RECs and REC-based programs more broadly; and/or
- Slow overall progress toward state and regional climate and renewable energy goals.

See Jones, T. et al. (2015). The Legal Basis of Renewable Energy Certificates. Center for Resource Solutions. https://resource-solutions.org/wp-content/uploads/2015/07/The-Legal-Basis-for-RECs.pdf. Footnotes 12, 25, 27, 28, 32, and 34.

[9] See OR. ADMIN. R. § 330-160-0015 (16). A REC is a "unique representation of the environmental, economic, and social benefits associated with the generation of electricity from renewable energy sources."

[10] See OR. ADMIN. R. § 330-160-0015 (16). Also see Western Electricity Coordinating Council, WREGIS Operating Rules (Jan 4, 2021). Section 2, pg. 10, 13. https://www.wecc.org/Administrative/WREGIS%20Operating%20Rules%202021-Final.pdf.

[11] Administrative Order No. DEQ-7-2021.

Properly accounting for RECs associated with renewable energy used for compliance with a load-based HB 2021 program would make it consistent with similar load-based programs in the West, and prevent electricity providers from using the same generation for compliance in multiple programs or states. California's load-based programs require RECs, including Power Source Disclosure (PSD) to customers, which requires RECs for GHG emissions intensity calculations,[12] and SB 100.[13] Washington State's Clean Energy Transformation Act (CETA) is a load-based clean energy standard that uses RECs for compliance.[14] If Oregon's clean energy standard assigns a zero-emissions attribute to electricity from renewable sources delivered to Oregon customers without a REC, the use of that REC for compliance with CETA may result in double counting.

Finally, any state program requiring delivery or use of specified electricity generation or generation attributes (e.g. emissions) in the state will affect participation in regional organized wholesale power markets. Not using RECs as a part of verification and compliance does not improve such a program's alignment with or friendliness toward organized wholesale markets; it only creates a risk of double counting generation. In general, regional organized market expansion and load-based state policies can coexist without double counting. In fact, inconsistent tracking and accounting requirements for state programs present a more significant problem for regional organized market expansion and efficiency. Load-based accounting should be consistent across states and should use RECs.

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

Sincerely,

_____/s/_____
Todd Jones
Director, Policy

[12] 20 CCR 1393(b)(1) and 20 CCR 1393(c)(1)(B)
[13] See Section 1(c) of SB 100. See CAL. PUB. UTIL. CODE § 454.53(a) and (b)(4)
[14] See RCW 19.405.040(1)(c).