



August 21, 2023

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

**RE: Docket UM 2273. Interested Person Comment. Comments of Center for Resource Solutions in Response to Opening Briefs and Interested Person Comments**

Dear Commissioners,

Center for Resource Solutions (CRS) appreciates this opportunity to provide additional information in response to opening briefs and interested person comments filed under this docket. We specifically address comments submitted by the Oregon Department of Energy (ODOE), the Opening Brief of the Oregon Citizens' Utility Board (CUB), and the Portland General Electric Company and PacifiCorp d/b/a Pacific Power Joint Phase 1 Opening Brief ("Joint Utilities Phase 1 Opening Brief") pertaining to renewable energy certificates (RECs).

**OREGON DEPARTMENT OF ENERGY INTERESTED PERSON COMMENTS**

We very much appreciate ODOE's comments, which are generally consistent with ours. In particular:

- "Compliance with the RPS will contribute to compliance with HB 2021, and utilities can achieve additional emissions reductions with a variety of resources and technologies that may not qualify for the RPS. However, if a utility procures a greater amount of RPS-qualifying generation to demonstrate compliance with HB 2021 than it needs to achieve compliance with its RPS, and the utility subsequently chooses to sell unbundled RECs to another entity, both the utility and the REC purchaser could claim the non-energy attributes of the electricity. While this scenario would not cause a direct conflict between the HB 2021 and RPS compliance frameworks, it could undermine the purpose and spirit of the RPS."
- "This double-counting could occur if a utility sells unbundled RECs from electricity that is treated as zero-emissions under the GHG reporting rules and used to demonstrate compliance with HB 2021. Another utility could then purchase the unbundled REC and use it to demonstrate compliance with the RPS, effectively double counting the electricity's non-energy attributes (the zero-emissions attributes under HB 2021, and the renewable attributes under the RPS)."

In the first case, double counting occurs in HB 2021 and for end use customers in Oregon if the RECs are sold off, as well as in the other program where those RECs are used, if HB 2021 is load-based. We agree with ODOE that this affects the credibility of the Renewable Portfolio Standard (RPS), even if it is not directly affected, and all renewable energy markets. In the second case, double counting occurs within the RPS as well as HB 2021 if it is load-based and REC retirement is not required.

Below we provide additional clarification and interpretation of ODOE's comments.

HB 2021 and the RPS may not be entirely separate and may interact with respect to the “mechanisms for advancing a clean energy transition,” to the extent that HB 2021 requires the reduction of GHG emissions “from [utilities’] electricity mixes.” RPS renewable energy is a part of these electricity mixes. RECs substantiate that part of the mix. Increasing nonemitting renewable electricity in the mix substantiated with RECs reduces emissions from the mix. The reverse is also true. Therefore, HB 2021 affects RECs and if RECs can be sold, there can be double counting.

Likewise, decreasing retail sales of electricity generated from fossil fuels and increasing the amount of zero-emitting renewable energy as a portion of sales are not “in contrast.” Both result in reducing the emissions associated with sales. RECs are used to verify sales of renewable energy for the latter. If reductions of sales of electricity generated from fossil fuels are made up with (in part or whole) an increase in zero or low-emitting renewable energy that generates RECs, and the RECs are sold off, that will result in a recorded reduction in emissions associated with sales, i.e. use of renewable energy for compliance, while RECs can be used by a different entity to increase their renewable energy use (e.g. RPS compliance) and reduce the emissions associated with their electricity mix using the same generation. That is double counting of the generation.

Unbundled RECs cannot be used to meet targets under HB 2021, but not “because a REC does not represent emissions reductions in from fossil fuel generation.” RECs do convey avoided emissions benefits of renewable energy, but they are not used in either the RPS, HB 2021, or customer scope 2 accounting as quantities of avoided emissions or emissions reductions. That is not how we and others are proposing they be used under HB 2021 either. Neither are we proposing that unbundled RECs be used for HB 2021 at all. We are only proposing that RECs associated with renewable energy that is used to reduce the emissions associated with electricity sales to meet HB 2021 targets not be sold off.

ODOE concludes that “RECs are an imperfect tool for tracking GHG emissions and GHG emissions reductions” based on the fact that one cannot simply purchase any RPS-eligible renewable energy (substantiated with RECs) and expect emissions associated with use and sales to decrease, because some RPS-eligible renewables are emitting. So, RPS compliance does not necessarily represent the delivery of zero-emitting electricity and does not equal HB 2021 compliance. No stakeholders in this proceeding are arguing that all RPS-eligible renewable energy or RECs should be counted as zero-emissions, and that is not what would happen if the Commission required REC retirement for HB 2021. For the renewable energy that is zero-emitting (e.g. wind and solar), RPS compliance does represent the delivery of that electricity. RECs are indeed used to track GHG emissions associated with the generation from which they are derived, and delivery of zero-emissions electricity from zero-emissions sources. Permitting utilities to sell off those RECs would double count if HB 2021 is a load-based policy.

ODOE also describes differences between the programs in terms of eligible technologies. We agree that not all RPS-eligible renewables would help meet HB 2021 targets. Again, we are only

proposing that RECs associated with generation that is used to reduce the emissions associated with electricity sales to meet HB 2021 targets not be sold off.

With respect to market-based elements, as described in our July 24, 2023 Comments in Response to Order No. 23-194 and the June 29, 2023 Commission Workshop on Renewable Energy Certificates (“July 24 Comments”), accounting for the emissions associated with electricity delivered to customers is load-based accounting, which requires the use of market data and market instruments. If HB 2021 is load-based, and regulates emissions associated with generation delivered to load, then it does indeed include market-based elements. As also described in our July 24 Comments, the DEQ program already uses market data about transactions, in addition to source emissions data, to track electricity to Oregon load and account for “emissions associated with electricity use” in Oregon.

Requiring that RECs be retired for any renewable energy used to meet HB 2021 clean energy targets would not necessarily require “statutory changes [...] to prohibit or restrict REC trading or banking activities that are currently authorized under Oregon’s RPS laws,” or that the programmatic and eligibility requirements for RPS equal those of HB 2021. It may simply change the utilities’ calculations of if and when to bank and trade RECs. The impact of programmatic differences in terms of banking is discussed further under our responses to CUB’s brief below.

ODOE generally interprets HB 2021 as a generation-based policy: “the purpose of DEQ’s program is to calculate and report economy-wide GHG emissions” and as such, “Treating null power as an unspecified market purchase under the GHG reporting rules would over-count actual emissions.” However, this is inconsistent with a DEQ program that measures “annual GHG emissions from electricity consumed in Oregon.” In that case—wherein HB 2021 is load-based—assigning emissions to null power would properly account for generation with the attributes of the residual system in the case that the renewable attributes have been transacted. Failing to do so, “would not take into account the fact that the REC or non-energy attributes were transferred or sold.” ODOE accurately observes that “the differing treatment of null power under the RPS and HB 2021 could create a potential opening to create what some might consider ‘double-counting’ the environmental attributes of renewable electricity that contributes to compliance with the state’s clean energy standards.”

## OPENING BRIEF OF THE OREGON CITIZENS’ UTILITY BOARD

We very much appreciate CUB’s engagement and perspective on these issues. However, the information presented in CUB’s opening brief regarding how RECs are used in GHG accounting programs and their relevance to HB 2021 is not accurate and should be discounted. Two of the most significant problems are: 1) CUB consistently refers to use of RECs as an “offsetting” tool representing a quantity of emissions reductions, rather than as a tool for verifying the source of delivered renewable energy and associated emissions. 2) CUB also consistently juxtaposes “emissions-based” and “REC-based” systems. Programs that use RECs may be emissions-based. We provide several examples of such programs in the West in our July 24 Comments. Like these other programs, HB 2021 can and may require tracking of both emissions and RECs.

Both of these problems have been previously addressed in comments submitted by CRS and others and previous discussions with the Commission under this and previous dockets (UM 2225). There are no stakeholders proposing that unbundled RECs be allowed for HB 2021 compliance. We are proposing that RECs associated with electricity sourced to meet the reduction target in HB 2021 not be sold off. No one is disputing that HB 2021 is emissions-based. That does not resolve the question of whether RECs are affected or must be retired to prevent double counting of emissions. The appropriate question to determine whether REC retirement is required is whether HB 2021 is a load-based or source-based emissions program.

CUB's high-level history of Oregon policy unfortunately conveys a limited understanding of the application of RECs in Oregon policy. In general, the information provided is not relevant to the issue at hand: whether REC retirement for HB 2021 is required to prevent double counting.

In the discussion of SB 1149, CUB suggests that, in the context of Oregon voluntary renewable energy programs, the Portfolio Options Committee (POC) viewed RECs as an avoided emissions or emissions reduction incentive that are only necessary where renewable energy is not the least cost option. This does not match CRS's experience with that body. In our experience, the POC was concerned with ensuring that the utilities' voluntary renewable energy purchasing options were credible, impactful and supporting beneficial renewable energy projects. RECs were used in this context again as the verification tool for voluntary programs delivering the type of renewable energy attributes to customers needed to achieve those objectives. Approval of these voluntary programs and the use of RECs for these programs was not predicated on the delivery of grid emissions reductions beyond a baseline or at any particular source. While the POC and voluntary customers may certainly have placed value on the avoided emissions associated with renewable energy and RECs used for voluntary programs, that does not mean that RECs only represent avoided emissions or that they would be used as a quantity of avoided emissions were they to be required for HB 2021 compliance.

In the discussion of SB 838 and SB 1547, CUB observes that the price of RECs does not represent the above-market cost of renewables if renewable energy is cheapest, renewable energy generation may be displacing other renewables and the avoided grid emissions (conveyed in a REC) may be zero, and emitting generation may be shifted to serve load in other states in which case new renewable energy generation may not result in regional changes to emissions even where avoided emissions are positive. These points are relevant to whether renewable energy procurement and policy, and HB 2021, depending on what its goals are, is effective at driving new renewable generation and grid decarbonization regionally. They are not relevant to the issue before the Commission: whether RECs should be retired for HB 2021 compliance. Not requiring REC retirement for HB 2021 compliance will not ensure that HB 2021 will create more clean energy regionally that will displace emissions and prevent shifting or increases of emissions outside of Oregon.

CUB implies that banking rules for RECs in the RPS present a problem for a REC retirement requirement for HB 2021 compliance. We are not suggesting that banked RECs from previous years should be able to be used for DEQ reporting or that they should be eligible for HB 2021 compliance. Neither are we suggesting that RPS banking rules be changed to match or incorporated into HB 2021. If HB 2021 sets targets for the reduction of the emissions associated

with the generation of the electricity that is delivered to Oregon customers, then both the RPS and HB 2021 regulate the generation delivered to Oregon customers and REC retirement is required for both to prevent double counting. In this case, they may yet have different rules regarding the ability to bank generation for future compliance. But if there is no banking allowed under HB 2021, then its targets (and annual DEQ reporting for compliance) must be met with current-year generation and RECs.

In the discussion of Oregon cap-and-trade bills, CUB ignores the distinction between cap-and-trade and HB 2021, particularly if HB 2021 is load-based. CUB juxtaposes emissions and RECs as if they are unrelated and represents RECs as a quantity of emissions reductions to be used in a source-based program. RECs are not used in this way, and we are not suggesting that they be. This is explained further in our July 24 Comments. Coincidentally, CUB also confuses allowance purchasing and trading with offsetting. Allowances also do not represent emissions reductions.

In the discussion of HB 2021 in this section, CUB again juxtaposes RECs and emissions. If HB 2021 sets targets for the reduction of the emissions associated with the generation of the electricity that is delivered to Oregon customers, then it regulates the delivery of clean electricity to Oregon customers and it establishes a load-based emissions program. Eliminating the emissions associated with electricity delivered to customers is verified in part by “counting” RECs associated with renewable energy generation. CUB both creates false distinctions between policies (e.g. emissions-based vs. REC-based, reporting and eliminating emissions vs. tracking emissions to load) and ignores real ones (e.g. HB 2021 vs. direct GHG regulation of emitters, i.e. “cap-and-no trade”). There are important distinctions between HB 2021 and direct regulation of in-state sectoral GHG emissions or emission sources, not the least of which is the regulated and reporting entity.

CUB’s definition and description of “a REC-based 100% clean energy system” broadly aligns with a procurement-based RPS program with unlimited unbundling. They generally describe purchasing and use of unbundled RECs for compliance, which they consistently refer to as using “offsets” or “offsetting.” Unbundled REC purchasing and use is not equivalent to offsetting. But, neither is relevant to the issue currently before the Commission. HB 2021 requires that utilities contract with nonemitting generation to meet reduction targets. We are proposing that RECs associated with that generation not be sold off.

CUB also generally conflates generation dispatched to operate at certain times in Oregon with generation purchased to serve load in Oregon. Both the DEQ program and HB 2021 measure emissions from the latter. Emissions from generation dispatched to meet Oregon load or from the sources physically electrifying locations in Oregon also cannot be directly controlled by the utilities. Utilities are not demonstrating physical delivery of electricity from a nonemitting sources to Oregon customers on the shared grid under HB 2021.

Despite its juxtaposition of an “emissions-based system” and a “load-based system,” in fact CUB’s description of “an emissions-based 100% clean energy system” does not exclude the possibility of a load-based emissions regulatory program for which REC retirement is required. Furthermore, even if the commission interprets HB 2021 as a generation-based policy, it is

nevertheless focused the generation sources from which the utility procures electricity to serve Oregon load.

Finally, the scenarios CUB presents to illustrate “how emissions-based and REC-based systems interact” are generally unconvincing with respect to its position that REC retirement should not be required for HB 2021 compliance. They make assumptions about whether example transactions produce a retail claim for customers in those states, and could in fact be examples of double counting.

The first scenario (“the utility uses the power that generates the REC”) illustrates a situation in which a single Oregon utility either produces or procures energy with RECs and has compliance obligations under both the RPS and HB 2021. As far as we are aware, there is nothing prohibiting the Commission from determining that a single utility may demonstrate both RPS and HB 2021 compliance using the same generation and REC retirements. It is not necessary that RPS and HB 2021 be incremental with respect to qualifying generation. As we explain in our July 24 Comments, there would be double counting if the same generation were used by two *different* utilities to demonstrate delivery to different Oregon customers. But in this scenario, the generation and associated RECs are being used by the same utility. CUB suggests that if REC retirement is not required for HB 2021 compliance then the RECs could be banked per RPS rules to use in a different year while the underlying generation is used for HB 2021 in the current year. In this case, the same customers are allocated the same renewable energy generation at different times, once in the year generated and once in a future year, under different programs. This means that, in a given year, the RPS percentage and the HB 2021 reported renewable energy totals, and potentially Oregon’s Electricity Resource Mix, would not align. It could be considered double counting (across programs) if generation is counted by the same party multiple times, even if in different programs. At the very least, the discrepancy between programs is confusing to customers, particularly if HB 2021 is a load-based policy. It does not support a position that RECs should not be required for HB 2021. Perhaps the opposite.

The second scenario (“the utility sells the power to a California utility”) in which Oregon generation is counted as a zero-emissions import to California under cap-and-trade and the RECs are banked for the Oregon RPS, does not appear to involve HB 2021 at all. However, we assume it is meant to illustrate how the load-based RPS and source-based cap-and-trade are complimentary and therefore how a source-based HB 2021 would be complimentary to both RPS and other source-based programs. First, this assumes that HB 2021 is sufficiently like a carbon-pricing program and would be treated similarly in the day-ahead market, which it is not and would not. But second, this scenario could represent double counting if the same Oregon generation is counted both toward the Oregon RPS (renewable energy delivered to customers in Oregon) using the RECs and for a retail claim to zero-emissions generation in California. As noted in our July 24 Comments, Washington regulators and stakeholders, including the joint utilities in the Clean Energy Transformation Act (CETA) proceeding, agreed that this *does* represent double counting and excluded associated RECs from eligibility in Washington on that basis. California’s Independent Emissions Market Advisory Committee (IEMAC) recognized this issue in its 2019 annual report.<sup>1</sup> The report cites, “mounting concerns about how low- or

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<sup>1</sup> Independent Emissions Market Advisory Committee Annual Report 2019. Pg. 16-17. Available at: [https://calepa.ca.gov/wp-content/uploads/sites/6/2020/01/Final\\_2019\\_IEMAC\\_Annual\\_Report\\_2019\\_12\\_06.a.pdf](https://calepa.ca.gov/wp-content/uploads/sites/6/2020/01/Final_2019_IEMAC_Annual_Report_2019_12_06.a.pdf)

zero-carbon renewable energy imports are tracked and managed in California’s cap-and-trade program.” It states, “if a neighboring state associates a REC with a low- or zero-carbon resource when California also counts the low- or zero-carbon resource with the associated energy delivery, there is the potential to ‘count’ (albeit using different metrics) the same low- or zero-emissions attribute twice.” Nonemitting Oregon generation used to serve load in Oregon cannot also be imported to serve California load. Null power should be assigned emissions and a compliance obligation to accurately account for the emissions associated with imported electricity. Accurately pricing imported GHG emissions would incentivize the California utility to purchase nonemitting power that is exclusively imported to California rather than either double counted Oregon generation or gas in Utah.

The third scenario (“the utility purchased power from a California utility”), in which an Oregon utility purchases power from California generation where the RECs are used for the California RPS, could represent double counting if that generation is counted toward both the California RPS (renewable energy delivered to customers in California) and the “null” power is also counted as zero-emitting in Oregon under a load-based emissions program (the same generation delivered to customers on Oregon). CUB’s argument here is about displaced emissions (avoided grid emissions), the gas plants that supposedly do not have to run in Oregon if the Oregon utility is allowed to procure and count the California generation. First, HB 2021 is not measuring avoided emissions. Second, if it was, Oregon should consider what power is purchased by the California utility in the case that the power from the California generators is sold to Oregon and balance the emissions associated with that against the avoided emissions in Oregon. Third, the Oregon utility could not meet HB 2021 targets using the gas plants in Oregon, and they could not purchase unbundled RECs to pair with the gas. So, if utilities are required to retire RECs for HB 2021, they could not use the California null power and would actually have to procure more bundled clean power. In this case, there is demand for the California generation, the RECs, from the California RPS, and incremental demand for Oregon load from HB 2021. That does not happen if Oregon does not require the RECs. Oregon should consider the avoided emissions associated with that also.

CUB concludes that HB 2021 “is an approach that requires real emission reductions and does not allow RECs to be used as offsets to eliminate those emissions.” We reiterate that RECs are not carbon offsets<sup>2</sup> or offsets of any kind. Furthermore, there are no stakeholders proposing that unbundled RECs be allowed to be used for HB 2021. We simply seek to ensure that the same generation is not sold to different parties and that emissions reductions to meet HB 2021 are real and not double counted. We believe that minimum level of consumer protection for ratepayers is aligned with CUB’s mission.

## JOINT UTILITIES PHASE 1 OPENING BRIEF

The Joint Utilities Phase 1 Opening Brief generally argues for an interpretation of HB 2021 as a generation-based policy, and on that basis dismisses concerns related to double counting.<sup>3</sup> The

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<sup>2</sup> See US EPA. (Feb 2018). *Offsets and RECs: What's the Difference?* Available at: [https://www.epa.gov/sites/default/files/2018-03/documents/gpp\\_guide\\_recs\\_offsets.pdf](https://www.epa.gov/sites/default/files/2018-03/documents/gpp_guide_recs_offsets.pdf).

<sup>3</sup> See the second, third, and fourth paragraphs on pg. 3 of the Joint Utilities Phase 1 Opening Brief. We also assume that is what is meant by the statement that “reporting actual emissions from the MWhs of electricity generated or

challenges associated with this interpretation are described in our July 24 Comments. However, the Joint Utilities also refer to “actual emissions from the generation of electricity to serve Oregon customers.” Though they present these “actual emissions” in contrast to what would be measured and regulated under “REC-based accounting systems,” the emissions from generation used to serve Oregon customers best describes what would be measured under a load-based emissions accounting framework and RECs are in fact required for accurate load-based emissions accounting, as we describe in our July 24 Comments.

The Joint Utilities state that “DEQ’s methodology for emissions accounting does not result in any claim to the underlying renewable energy: there are no renewable resources that are ‘used for compliance’ with HB 2021 under the law.” This reinforces their interpretation of HB 2021 as generation-based. But to avoid any confusion about the term “used for compliance” with HB 2021, HB 2021 sets targets for the reduction of the emissions either “associated with the electricity sold to retail electricity consumers”<sup>4</sup> or at the sources of electricity that is generated or purchased to serve Oregon load. This means that electricity that is reported and counted toward the required reduction targets is regulated and “used for compliance.” Renewable resources are most certainly used for compliance with HB 2021 to achieve required reductions of emissions from electricity serving Oregon. Compliance is measured by the emissions associated with electricity generated or used and therefore by the electricity generated or used. Emissions and fuel type cannot be separated in terms of where they occur or where they are delivered.<sup>5</sup>

The Joint Utilities also suggest that because utilities can meet obligations to reduce emissions with activities that do not involve clean generation, therefore REC retirement should not be required. RECs may not be the appropriate accounting or compliance mechanism for non-generation activities (e.g. which reduce overall load and therefore emitting generation needed to serve load). However, this has no bearing on whether RECs should be used to track the attributes (emissions) of renewable generation for which they are issued to ensure that emissions associated with those generation activities are not double counted.

Finally, the Joint Utilities also repeat some of the same misunderstandings of how RECs would be used in this context: “utilities may not reduce the emissions intensity for fossil fuel resources—or further decrease the emissions intensity for renewable resources below zero—by acquiring or retiring RECs.” Again, no stakeholders are suggesting that RECs be used in this way or that unbundled RECs be able to be used for compliance with HB 2021. Our interest in REC retirement for HB 2021 compliance is only to prevent double counting.

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purchased to serve end users in Oregon (regardless what happens to RECs from the underlying generation), cannot constitute a double-claim.” Otherwise, that statement is incorrect and directly in conflict with guidance from the U.S. Environmental Protection Agency (EPA) and Federal Trade Commission (FTC), for example. See the July 24 Interested Person Comment from the U.S. EPA.

<sup>4</sup> Sec. 1(1)(a) of HB 2021. Also see Sec. 2(1), 5(3)(a) and (b), and Sec 5(4)(a) of HB 2021.

<sup>5</sup> See our July 24 Comments and resources referenced therein for more information.

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

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Todd Jones  
Director, Policy