REC Bifurcation
Docket No. UE-110523 -- Renewable Portfolio Standard Implementation
Washington Utilities and Transportation Commission

Renewable Northwest Project
NW Energy Coalition

June 20, 2011

RE: Renewable Northwest Project and NW Energy Coalition Position on Bifurcation of Renewable Energy Credits from Their Multipliers under Chapter 19.285 RCW

Renewable Northwest Project (RNP) and the NW Energy Coalition (NWEC) appreciate the opportunity to comment on whether Washington's Energy Independence Act (the Act) (Chapter 19.285 RCW) permits bifurcation of renewable energy credits (RECs) from the multipliers associated with acquisition of distributed generation and acquisition of projects that utilized apprenticeship labor during construction.

As two of the organizations that authored the Act, and based on our review of its provisions, RNP and NWEC believe that the Act prohibits the bifurcation of RECs from their associated multipliers.

Further, a compelling policy reason supports our reading of the Act. Bifurcation of RECs from their associated multipliers would be inconsistent with policies that govern both the California RPS market and the voluntary REC market, which are the two primary markets outside this state for Washington-based RECs. Bifurcation of RECs from facilities that qualify for Washington's RPS could make the RECs less fungible, more difficult to sell, and potentially less valuable outside of Washington.

1. Background

At the Renewable Portfolio Standard (RPS) Implementation Workshop held on May 10, 2011, Avista and Puget Sound Energy (The Utilities) expressed interest in separating the additional benefits allowed under RCW 19.285.040(2)(b) and RCW 19.285.040(2)(h)(i) (collectively, "multipliers") from the associated RECs. The Utilities asked for clarification on whether it would be possible to sell to other utilities and/or use -- for their own compliance with the Act -- the multipliers and the associated RECs as distinct and fungible products. The Utilities claimed that sanctioning this activity would be in the best interest of their ratepayers, by giving utilities greater flexibility in state and regional REC markets and, thus, the potential to increase revenues from REC sales.

In response to The Utilities, RNP and NWEC raised concerns regarding the legality of this type of bifurcation under the Act. RNP and NWEC further suggested that bifurcation of RECs from their associated multipliers could have a negative impact on Washington RECs and on the integrity of the Washington RPS.

After the issue was discussed at the workshop, WUTC Staff requested that stakeholders prepare position papers that highlight arguments in favor of or against REC bifurcation.

2. The Act Indicates that a Utility Must Own the REC to Claim Any Additional Multiplier

The Act establishes two multipliers that can be used by qualifying utilities towards meeting the renewable energy targets established in RCW 19.285.040(2): a double credit for qualifying distributed generation projects,[1] and a 1.2 credit for projects that utilized apprenticeship labor during construction.[2] The Act further provides that a qualifying utility may not count towards compliance "[e]ligible renewable resources or distributed generation *where the associated renewable energy credits are owned by a separate entity*…"[3] (emphasis added). If a utility sells a REC from a project that is eligible for a multiplier, therefore, then the utility cannot sell to another purchaser or retain for itself any additional value -- because, after the REC sale, the underlying project is no longer eligible for compliance.

The Act confirms that, before a utility may claim the additional value associated with a project, it must also own the underlying REC. Similarly, it would not be possible for a utility to sell only the resource multiplier to another utility. If the other utility does not own the REC, then the other utility would not be able to use the resource for compliance.

In the case of distributed generation, the Act again provides that a utility must own (or have contracted for) the underlying REC in order to claim the two times additional value allowed under RCW 19.285.040(2)(b):

> A qualifying utility may count distributed generation at double the facility's electrical output *if* the utility: (i) Owns or has contracted for the distributed generation and the associated renewable energy credits; or (ii) has contracted to purchase the associated renewable energy credits[4] (emphasis added).

This statutory condition is unambiguous – a utility must first own or have contracted for the RECs of a distributed generation facility before it can then count that facility at double its output. In other words, the right to claim the double credit exists if and for such time as the utility possesses the underlying RECs by ownership or contract. But the utility foregoes any claim on the double credit – and thus any right to sell that credit as a separate product -- when the utility divests itself of the associated REC.

Similarly, in the case of projects that use apprenticeship labor, the Act provides for a multiplier that is associated with a specific acquired resource:

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[1] RCW 19.285.040(2)(b).
[2] RCW 19.285.040(2)(h).
[3] RCW 19.285.040(2)(f)(i).
[4] RCW 19.285.040(2)(b).

> A qualifying utility that acquires an eligible renewable resource or renewable energy credit *may count that acquisition* at one and two-tenths times its base value:
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> (A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and
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> (B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction[5] (emphasis added).

The same logic that applies to distributed generation projects applies equally to apprentice labor projects: the right to claim the 1.2 credit only exists when a utility possesses the REC or the power and REC from the associated resource. If a utility sells the underlying REC, the 1.2 credit is conveyed with it; no compliance value remains.

Finally, The Utilities cannot point to any provision in the Act that permits a utility to bifurcate a multiplier from the underlying REC and treat the two items as distinct and separable products. The lack of any such provision makes sense. Allowing for the bifurcation of RECs and associated multipliers would be difficult to track and manage and would create confusion in the marketplace. Furthermore, the Act has no provisions or exceptions that in any way contemplate the creation of a new RPS compliance instrument based on multipliers. The statute provides additional RPS value for a multiplier if, and only if the qualifying utility owns or contracts for the REC, as discussed above. It follows, then, that because the RPS statute does not allow for the creation of a new compliance instrument based on multipliers, it is not allowable for a utility to disaggregate the REC and sell only the multiplier to another entity.

3. All Non-Power Attributes Must Accompany a REC for It to Be Economically Viable in the Marketplace

California, the primary market for RECs from Pacific Northwest projects, requires that all "Green Attributes" of a project be conveyed to the buyer for purposes of RPS compliance. In Decision 08-08-028, the California Public Utility Commission (CPUC) created a standard definition of "Green Attributes" that must be included in every renewable energy purchase agreement by a California compliance entity. The definition states that "…any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants[6]" must be transferred to the purchasing entity.

Applying this definition to the issue at hand, the multipliers allowed under RCW 19.285.040(2)(h)(i) and RCW 19.285.040(2)(b) would need to be conveyed as part of the REC in order for the REC to comply with the California RPS. Any REC seller who does not convey this benefit when selling the REC for California compliance risks

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[5] RCW 19.285.040(2)(h)(i)

[6] California Public Utility Commission (CPUC). *Decision on Definition and Attributes of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard*. Decision 08-08-028, Issued August 21, 2008. Available from: http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/86954.pdf.

jeopardizing the sale and use of that REC. The definition of Green Attributes appears to include not only environmental benefits, but also social benefits, which is directly applicable to the Washington REC multipliers.

In the voluntary REC market, which is the other key market for Northwest RECs, a precedent exists that prevents multipliers from being disaggregated and claimed separately from the underlying REC. In Michigan, for example, Public Act 295 allows for "Incentive Renewable Energy Credits" (IRECs), which can be generated (in addition to the underlying RECs) by projects that use in-state labor or equipment, to count towards RPS compliance. Green-e Energy, the REC certifier for the vast majority of the voluntary market, ruled that in order for any Michigan REC to be certifiable in the voluntary market, any IRECs associated with the REC must be retired with the REC (i.e., not used for RPS compliance). Green-e Energy states that when the REC and IREC are sold separately and claimed by separate entities, "…both the electric provider and the buyer of the REC are claiming the benefits of an individual renewable MWh, [and] a double claim occurs[7]." The resulting Green-e Energy policy states: "[I]n order to prevent double counting of renewable generation sold in Green-e Energy Certified products, Green-e Energy requires that for any MWh of generation from Michigan renewable energy facilities, both RECs and a quantity of IRECs equivalent to those IRECs generated with the RECs are retired[8]."

If the UTC chose to certify the multipliers as IRECs (or whatever name the multiplier based compliance unit would take) for the purposes of trading within the Washington RPS compliance market, the amount of IRECs associated with a REC would need to be retired (i.e., not used or sold to another Washington utility for RPS compliance purposes) if a utility or any other renewable energy generator wanted to have the REC certified by Green-e Energy to sell in the voluntary market. For example, if a utility wanted to certify with Green-e Energy 1,000 RECs of wind power from a project that utilized apprentice labor, the utility would need to retire 200 IRECs in order to do so. This would prevent the utility from being able to use the 200 IRECs for RPS compliance or sell those IRECs to another Washington utility for compliance.

4. Conclusion

As detailed above, the Act does not contemplate bifurcation of RECs, and specifically disallows utilities from counting eligible renewable resources and distributed generation where the RECs are owned by a separate entity. Further, even if the Act permitted bifurcation, both the California and voluntary markets require utilities to transfer all additional benefit along with the underlying REC. Thus, a utility could not claim any additional compliance value if the underlying REC was sold outside of Washington. The main argument set forth by The Utilities, that allowing for bifurcation would save costs to ratepayers, is not possible because there would be no market available in which utilities could sell bifurcated RECs. Therefore, it is in the best interest of utilities, the

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[7] Center for Resource Solutions. *Green-e Energy National Standard Version 2.1*. February, 2011.
[8] Ibid.

Commission, and the citizens of Washington who initiated the Act to uphold its intent to associate any additional compliance benefit with the underlying resource or REC.