



June 14, 2021

Mr. Mark Johnson  
State of Washington Utilities and Transportation Commission  
621 Woodland Square Loop S.E.  
Lacey, Washington 98503

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**RE: DOCKET UE-210183. COMMENTS OF CENTER FOR RESOURCE SOLUTIONS (CRS) IN RESPONSE TO THE MAY 17, 2021 NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS (“MAY 17 NOTICE”) ON ISSUES RELATED TO DOUBLE COUNTING, MARKET PURCHASES OF ELECTRICITY AND THE INTERPRETATION OF COMPLIANCE WITH RCW 19.405.040(1)(A)**

Dear Mr. Johnson:

CRS appreciates this opportunity to submit comments in response to the May 17 Notice. We provide one general comment regarding proposed interpretations of the “use electricity” requirement followed by responses to selected questions for consideration.

**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.<sup>1</sup>

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<sup>1</sup> See the 2020 (2019 Data) Green-e® Verification Report here for more information: <https://resource-solutions.org/q2020/>.

## **GENERAL COMMENT REGARDING PROPOSALS FOR INTERPRETATION OF THE “USE ELECTRICITY” REQUIREMENT**

The addition of “one or more of” in Section 2 of the revised Joint Utility Recommendations (Attachment A) inappropriately establishes (a) through (d) as alternatives for demonstrating compliance. Proof of retirement in the Western Renewable Energy Generation Information System (WREGIS) should be required for renewable resources and nonemitting electric generation that generates renewable energy credits (RECs). And demonstration of contractual specification of acquisition and retirement of nonpower attributes (i.e. that the attributes have been contractually retired on the utility’s behalf or cannot be otherwise transacted) should be required for nonemitting resources for which RECs are not issued.

## **RESPONSES TO SELECTED QUESTIONS FOR CONSIDERATION**

Questions regarding Interpretation of the “Use Electricity” Requirement in RCW 19.405.040(1)(a)

*2b. What are the advantages or disadvantages of [the Joint Utility Recommendation (Appendix A)], especially as compared to the Climate Solutions/NW Energy Coalition approach [Appendix B] identified below?*

Please see our December 3, 2020 comments in response to the November 5, 2020 Notice of Opportunity to File Written Comments.<sup>2</sup>

*2c. Is a REC retained after the electricity is sold in the wholesale market consistent with [the Joint Utility Recommendation (Appendix A)] an “unbundled REC” for the purposes of the alternative compliance provision in RCW 19.405.040(1)(b)(ii)?*

Please see comment no. 7 in our December 3, 2020 comments in response to the November 5, 2020 Notice Opportunity to File Written Comments. The energy from owned renewable generation or bundled renewable procurements may be later sold wholesale with unspecified or “null” attributes (except where the power that is sold is imported to California)<sup>3</sup> and, in this case, the renewable energy was nevertheless *procured* bundled. After sale of the energy, the RECs retained for a credible renewable energy use claim for Washington have been “unbundled” from the power. But this is not equivalent to a situation where the utility procures RECs separately from electricity and may be different from procurement of unbundled RECs by a utility for the purposes of the alternative compliance provision in RCW 19.405.040(1)(b)(ii).

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<sup>2</sup> Available at: <https://resource-solutions.org/wp-content/uploads/2021/03/CRS-Comment-on-Nov-5-Notice-12-3-2020.pdf>

<sup>3</sup> See our response to question 5a below.

*2d. Does a REC retained after the electricity is sold in the wholesale market consistent with [the Joint Utility Recommendation (Appendix A)] meet the definition of RECs found in RCW 19.405.020(31)? If yes, does that mean they may not be used for alternative compliance established in RCW 19.405.040(1)(b)(ii)(A) or (B)?*

A REC retained after the electricity is sold in the wholesale market consistent with Appendix A(4), meaning the generation source cannot be specified in the transaction of the energy, still represents “a tradable certificate of proof of one megawatt-hour of a renewable resource,” that “includes all of the nonpower attributes associated with that one megawatt-hour of electricity,” and that can be “verified by a renewable energy credit tracking system selected by the department” (RCW 19.405.020(31)). Unbundled RECs, as defined in RCW 19.405.020(38) also appear to meet the definition of a REC at RCW 19.405.020(31). Therefore, meeting the definition at RCW 19.405.020(31) does not appear to determine whether a REC can be used for compliance with RCW 19.405.040(1)(a)(ii) or alternative compliance under 19.405.040(1)(b)(ii). However, please see our response to question 2c above, and, importantly, RECs used for compliance with RCW 19.405.040(1)(a)(ii) should not also be used for alternative compliance under 19.405.040(1)(b)(ii).

*2g. What additional details, if any, must be specified to implement [the Joint Utility Recommendation (Appendix A)] and to ensure compliance?*

Please see comment nos. 1-6 in our December 3, 2020 comments in response to the November 5, 2020 Notice Opportunity to File Written Comments.

*3b. What are the advantages or disadvantages of [the Joint CS/NWEC Utility Recommendation (Attachment B)], especially as compared to a deliverability requirement such as in the Joint Utility Recommendation?*

Please see comment nos. 1, 2, and 7-13 in our December 3, 2020 comments in response to the November 5, 2020 Notice Opportunity to File Written Comments.

*3d. What additional details, if any, must be specified to implement [the Joint CS/NWEC Utility Recommendation (Attachment B)] and to ensure compliance?*

Please see comment nos. 1, 2, and 7-13 in our December 3, 2020 comments in response to the November 5, 2020 Notice Opportunity to File Written Comments.

*4. Are there any approaches or mechanisms used in clean electricity standards in other jurisdictions that should be considered, either as a potential model for implementing RCW 19.405.040 or as a potential source of conflict with other jurisdictions?*

California’s approach to accounting for emissions from imported electricity under the state’s Mandatory Reporting Regulation (MRR) and cap-and-trade program, which is not a clean energy standard, is in conflict with Washington’s approach to accounting for “use of electricity from renewable resources and nonemitting electric generation” as a percent of a utility’s retail electric load. Please see comment no. 5 in our December 3, 2020 comments in response to the November 5, 2020 Notice Opportunity to File Written Comments. We recommend adding a requirement that utilities may not use the nonpower attributes of electricity that is imported to California for compliance with the Greenhouse gas (GHG) Neutral Standard. Renewable energy may also be double counted across the two jurisdictions where RECs associated with the power delivered to California and reported as an import under the MRR are used for Clean Energy Transformation Act (CETA) compliance under RCW 19.405.040(1)(b)(ii). This should be addressed in other rules on Unbundled RECs used as an alternative compliance option under the GHG Neutral Standard.

In addition, proposed HB 2021 in Oregon could result in an approach that conflicts with CETA’s load-based clean energy standard that uses RECs for compliance. HB 2021 may create a load-based clean energy standard that does not require RECs for compliance. 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. Alternatively, HB 2021 may create a generation-based clean energy standard, which ordinarily would not conflict. However, language in the bill referring to counting of “attributes” toward compliance may nevertheless represent a claim on the environmental attributes of the electricity and RECs that may preclude that generation from being eligible for compliance under CETA.

#### Questions regarding the Prohibition on Double Counting

*Please comment on whether the following circumstances should be considered double-counting in this context, assuming in each case that the unbundled REC (RCW 19.405.040(1)(b)) is used for compliance with CETA:*

*5a. Electricity from a renewable generating facility is delivered to a California entity and treated as a non-emitting resource for purposes of the California cap and trade program.*

This circumstance would represent double counting. 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.”<sup>4</sup> In addition, GHG attribution to California in Western Energy Imbalance Market (EIM), “determines if [a]

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<sup>4</sup> Sec. 95802(a) California’s Cap-and-trade Regulation.

resource is serving load in [the] California GHG compliance area,”<sup>5</sup> as opposed to retail load in Washington, for example. Like CETA, 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.<sup>6</sup> 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)<sup>7</sup> and in presentation to Washington’s Market Work Group (MWG)<sup>8</sup>, that has created a risk of double counting zero-emissions electricity that is imported to California and reported under the MRR. Where the RECs associated with this generation are used for CETA compliance or in RPS and other programs in outside of California, the same zero-emission generation may be delivered to two different states.<sup>9</sup>

*5b. Electricity from a renewable generating facility is used by a load serving entity in a jurisdiction with no clean electricity standard, and the entity communicates to its customers or investors that its electricity is from a renewable source.*

If the communications by the load serving entity (LSE) in question are a part of, or may be interpreted by customers to represent disclosures or information related to the generation attributes of electricity serving or delivered to retail customers, then this circumstance would represent double claiming—the same megawatt-hour (MWh) of renewable generation is being reported for compliance with a GHG neutral (renewable and nonemitting electric generation) standard for retail sales of electricity to Washington retail electric customers using the RECs while the LSE in the other jurisdiction is representing to their customers that the electricity serving its customers is renewable. Such a statement by the LSE in the other jurisdiction may also violate guidance from the U.S. Federal Trade Commission (FTC) for marketing renewable energy:

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<sup>5</sup> 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](https://www.utc.wa.gov/_layouts/15/CasesPublicWebsite/GetDocument.ashx?docID=140&year=2019&docketNumber=190760).

<sup>6</sup> 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.”

<sup>7</sup> 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.

<sup>8</sup> Recording of the Markets Workgroup’s Fourth Workshop Held on August 28, 2020 is available at: [https://pacificcorp.zoom.us/rec/share/1O9odpvoxmJlZqfw4V3zSKRiIt\\_-eaa823Qb-\\_ALzk4Be5IHpZTAXkZk1eN3AE9Z](https://pacificcorp.zoom.us/rec/share/1O9odpvoxmJlZqfw4V3zSKRiIt_-eaa823Qb-_ALzk4Be5IHpZTAXkZk1eN3AE9Z). CRS’s presentation begins at 1 hour and 10 min. Washington UTC Docket UE-190760. Presentation materials available at: <https://www.utc.wa.gov/casedocket/2019/190760/docsets>.

<sup>9</sup> 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.

“By selling RECs, a company has transferred its right to characterize its electricity as renewable. Accordingly, the FTC’s Green Guides advise that, if ‘a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.’ See 16 C.F.R. § 260.15(d). [...] [The Commission] did warn that power providers that sell null electricity to their customers, but sell RECs based on that electricity to another party, should keep in mind that their customers may mistakenly believe the electricity they purchase is renewable, when legally it is not. Accordingly, it advised such generators to exercise caution and qualify claims about their generation by disclosing that their electricity is not renewable.”<sup>10</sup>

In Washington, the REC “includes all of the nonpower attributes associated with that one megawatt-hour of electricity,”<sup>11</sup> including both fuel type and emissions profile. Statements regarding the attributes of delivered electricity cannot be made without “consuming” the REC.<sup>12</sup> CRS considers double claiming to be a form of double counting<sup>13</sup> that would violate the prohibition on double counting at RCW 19.405.040(1)(b)(ii).

*5c. Electricity from a renewable generating facility is allocated to load serving entities by an independent system operator [ISO] or regional transmission operator [RTO] outside the Western Interconnection. The renewable generation is incorporated in aggregated power source information published by the system operator.*

If the power source information that is published represents or could be interpreted to represent information about the sources or attributes of electricity delivered to retail customers, either of a specific LSE, in a state, or in that region (i.e. the geographic footprint of the ISO/RTO), then this circumstance would represent double counting. In this case, the same renewable MWh is counted toward what is used for retail sales of electricity to Washington retail electric customers using the RECs and included in electricity delivered to retail customers outside of Washington without the RECs.

*5d. Electricity from a renewable generating facility is used by a Washington utility during a compliance period under the Climate Commitment Act to offset generation that it would otherwise obtain from a natural gas-fired generating facility or imports of unspecified power.*

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<sup>10</sup> U.S. Federal Trade Commission (FTC). (February 5, 2015). Letter to Sheehey Furlong & Behm P.C. regarding Petition to Investigate Deceptive Trade Practices of Green Mountain Power Company In the Marketing of Renewable Energy to Vermont Customers. p. 3-4. [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2015/20150205\\_docket-na\\_letter.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2015/20150205_docket-na_letter.pdf)

<sup>11</sup> RCW 19.405.020(31)

<sup>12</sup> See Weinstein, J. (Jan 2021). *What are Renewable Energy Certificates?* Futures and Derivatives Law Report, Volume 41, Issue 1. Thomson Reuters.

<sup>13</sup> See <https://resource-solutions.org/wp-content/uploads/2015/07/Explanation-of-Green-e-Energy-Double-Claims-Policy.pdf>, pg. 2-3, and <https://resource-solutions.org/wp-content/uploads/2015/07/REC-Best-Practices-and-Claims.pdf>.

Cap-and-trade and other GHG regulations on the power sector will affect all renewable and zero-emitting generation that displaces regulated emitting generation. All clean generation used for compliance with CETA that displaces regulated emitting generation will lose its avoided grid emissions value. In other words, CETA will not be incremental to cap-and-trade in terms of GHG emissions reductions. Rather, it will be a complementary policy.

Renewable energy generation under GHG Regulations does not affect emissions on the grid. While renewable energy generation displaces emitting generation, the regulatory emissions limit or cap on GHGs will not change and renewable energy generation frees up (allowances) room under the cap for more emissions. There is no net change in emissions on the grid due to renewable energy. Once GHG Regulations for the power sector are put in place, RECs from renewable energy in the regulated sector carry an avoided emissions attribute of zero.

In addition, compliance entities automatically count and report all emissions and emissions reductions that occur at their facilities, including GHG reductions due to CETA generation. This means that reductions caused by CETA are automatically counted toward reductions that are required by cap-and-trade. Without reductions from CETA, the same amount of reductions must occur anyway. In this scenario, CETA can have no GHG impact beyond what is required by cap-and-trade, and furthermore, it subsidizes compliance for regulated entities under cap-and-trade.

*It is important to clarify and emphasize that this does not represent double counting.* The avoided emissions attribute in the REC is not being double counted, removed or disaggregated by production-based GHG Regulations, since there is no separate consumption claim being made and no separate instrument being issued for a delivery or consumption claim. Rather, the emissions effect of renewable energy is simply counted toward compliance and the value of the attribute (which nevertheless remains exclusive in the REC for consumption) is reduced to zero. *Cap-and-trade should not, therefore, affect the eligibility of unbundled RECs for CETA, or any RECs for CETA for that matter.*

In general, there is no conflict between RPS/CETA and cap-and-trade, or between source-based and load-based regulation in Washington. Renewable, zero-emission generation in Washington can be counted toward CETA as electricity sold to Washington customers and also counted as zero emissions generated in Washington under cap-and-trade. Similarly, renewable, zero-emissions generation located outside of Washington can be imported to Washington and counted as zero-emissions imported or serving load in the state under cap-and-trade and also counted toward the CETA as electricity delivered to Washington customers, provided the associated RECs are retired. In either case, the cap-and-trade program and the CETA are complementary with respect to GHG emissions from the power sector. For in-state renewable generation, cap-and-trade should not restrict movement of RECs at all. For imported renewable electricity, cap-and-trade should not restrict the movement of RECs within Washington. Cap-and-trade should only be concerned with RECs associated with imported

electricity because this part of the program affects load-based carbon, RPS, and voluntary renewable energy programs in other states.

However, the state may consider the effect of counting the GHG impact of renewable energy toward compliance with GHG regulations and removing avoided emissions associated with renewable energy on RPS/CETA, and consequently whether to retire allowances on behalf of CETA in order to ensure that CETA has an independent and incremental impact on statewide GHG emissions beyond cap-and-trade.

*5e. If unbundled RECs are separated from the underlying electricity from a renewable generating facility and used for compliance with CETA, are there any other circumstances in which the underlying electricity might be double counted?*

There is double counting anytime “null” power is counted or characterized as renewable or as having the generation attributes of a renewable generator for the purposes of accounting for, claiming, or reporting the sources or attributes of electricity delivered to or consumed by retail load or customers, either of a specific LSE or in a specific geographic area.

*6. How might the implementation of the Climate Commitment Act affect market purchases and their treatment under CETA?*

Imported electricity (including imports from centralized markets) reported under cap-and-trade will represent the emissions associated with the generation that is imported to serve load in the state (a state-specific consumption claim). Market purchases reported under CETA represent a portion of the emissions associated with the generation that is serving retail LSE customers in the state (a utility-specific consumption claim). As such, accounting for imported electricity from renewable resources associated with a centralized electricity market under cap-and-trade should be generally consistent with the accounting treatment of market purchases under CETA—the same emissions accounting treatment should be applied to unspecified market purchases for calculating the emissions associated with both state load and utility load. However, the treatment of imported electricity under cap-and-trade does not need to determine how that imported electricity is allocated among LSEs or delivered to customers within Washington. Compliance entities under each program may be different, in which case the sum of LSE market purchases under CETA may not match total market imports reported under cap-and-trade.

If imported electricity from renewable resources associated with a centralized electricity market is assigned zero emissions from renewable generation without the RECs, for example, then that would create further discrepancies between total market imports under cap-and-trade and the sum of LSE market purchases under CETA. It would also allow those RECs to be used outside of Washington. This would affect the compliance and voluntary program in those states, and the integrity of the REC



instrument in the region, and so it should be avoided. But it would not affect CETA since CETA requires RECs for compliance.

7. *For any circumstance described above that is identified as resulting in double-counting, please provide a recommended approach by which the operator of the renewable generating facility could demonstrate that the nonpower attributes associated with the unbundled REC are not double-counted.*

RECs associated with power that has been or will be imported to California, either directly or through the Western Energy Imbalance Market (EIM), should not be eligible for CETA. Verification should rely on information provided by the California Air Resources Board (CARB) and the California Independent System Operator (CAISO) to identify imported generation and associated RECs, and ideally these RECs should be identified in WREGIS. In addition, Commerce and UTC can ask regulated entities and generators whether RECs submitted for CETA compliance are associated with generation that was imported to California and request additional documentation or attestation around this issue.

Regarding the risk that “null” power may be counted or characterized as renewable or as having the generation attributes of a renewable generator, the state can publish information or otherwise send notification to other states regarding the quantity of unbundled RECs that have been reported under CETA and the quantity of electricity that, stripped of its RECs, cannot be considered renewable electricity and should not be counted toward any state Renewable Portfolio Standards, mandates, or disclosures of electricity delivered to customers. A potentially longer-term and more complete solution would be to help establish all-generation certificate tracking in WREGIS, including a regional residual mix that can be assigned to null power automatically.

8. *For any circumstance described above that is identified as resulting in double-counting, please provide a recommended approach by which the utility using the unbundled REC could demonstrate that the nonpower attributes associated with that REC are not double-counted.*

Please see our response to question 7 above.

#### Questions regarding the Impact of the Washington Climate Commitment Act

10. *Are there provisions in the Climate Commitment Act that should be considered in this rulemaking as the Commission and Commerce develop rules defining requirements, including appropriate specification, verification, and reporting requirements, for the following: (a) Retail electric load met with market purchases and the western energy imbalance market or other centralized market administered by a market operator for the purposes of RCW 19.405.030*

*through 19.405.050; and (b) to address the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs?*

Please see our responses to questions 5d and 6 above.

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

Sincerely,

\_\_\_\_\_/s/\_\_\_\_

Todd Jones

Director, Policy