UE-210183

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Comments of the Western Power Trading Forum

To the Washington Department of Commerce

and the Washington Utilities and Transportation Commission

on Proposed Rules on Double-Counting and Storage

December 6, 2021

Docket UE-210183: Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act

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The Western Power Trading Forum[1] (WPTF) provide these comments to the Washington Department of Commerce and the Washington Utilities and Transportation Commission (the Agencies) on the draft rules relating to double-counting and the energy storage under the Clean Energy Transformation Act (CETA).

The Commission's proposed double-counting rules for unbundled RECS are inconsistent with established standards for greenhouse gas (GHG) accounting, discriminatory and could hinder linkage of Washington's Climate Commitment Act to California's cap and trade program.

WPTF fundamentally disagrees with the Agencies' premise that nonpower attributes associated with a REC include the actual emission rate of the underlying generating resource. This interpretation is inconsistent with rules the Commission has proposed for 'primary compliance' under the CETA, where *delivery* of electricity is required to claim the actual emission attribute. It is also inconsistent with greenhouse gas (GHG) accounting principles recognized by the Western Climate Initiative in the cap-and-trade design adopted back in 2009.[1] The WCI adopted this approach to avoid the absurd outcome of having to attribute emissions to renewable resources within state cap and trade programs.

Both the California and recently-adopted Washington cap and trade programs regulate electricity delivered by instate generation and electricity importers in the way recommended by the WCI (the "first jurisdictional deliver approach"), yet the staff proposal to makes RECs associated with electricity subject to a cap-and-trade program ineligible for alternative compliance under the CETA would apply *only* to electricity subject to California's program – not electricity subject to Washington's. For instance, RECs generated by a renewable resource located within California and sold to a Washington utility would be ineligible for alternative compliance under the CETA because the generated electricity is attributed a zero-emission value under California's cap and trade program, even though that electricity has <u>not</u> been sold to another utility. But if that same resource was located within Washington state (and the electricity not sold to another utility), the associated unbundled RECs could be used for alternative compliance. This different treatment is not only blatantly discriminatory but could also have the unintended consequence of impairing linkage of Washington's cap-and-trade program to that of California - an outcome that would not be in the interest of Washington.

The Commission's proposal seems to be predicated on the definition of non-power attributes contained in RCW 19.285.030. This definition, as WPTF has previously noted, refers explicitly to *avoided* emissions – not to the actual, or direct, emissions associated with the generation of electricity. This distinction is

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[1] *" Many states with renewable portfolio standards allow RECs to be sold separately from the generated electricity. The electricity from which RECs have been separated is often referred to as "null" power. In order to prevent double counting of the zero-GHG attribute of renewable electricity in greenhouse gas (GHG) cap-and-trade programs, either the null power or the RECs should carry the zero-GHG attribute. If RECs carry the attribute, they could be bundled with electricity from other sources to negate or reduce the compliance obligation associated with the electricity. Under this approach, WCI Partner jurisdictions would then have to attribute emissions to the null power in order to maintain accurate GHG accounting; otherwise, reported emissions would be lower than actual emissions.*

The WCI Partners recommend that RECs have no role in the WCI Partner jurisdictions' mandatory GHG reporting and compliance protocols. Under this approach, the compliance obligation of first jurisdictional deliverers of electricity would be based only on the actual GHG emissions occurring as a result of generating electricity (as described in the Design Recommendations for the WCI Regional Cap-and-Trade Program). First jurisdictional deliverers with a GHG compliance obligation would not be able to use RECs to reduce their compliance obligations, and null power would not have GHG emissions attributed to it.
In "Treatment of Renewable Energy Credits in the WCI Cap and Trade Program".

A copy can be found at: https://efiling.energy.ca.gov/GetDocument.aspx?tn=229670&DocumentContentId=61088

apparent in paragraph 15(b) of RCW 19.285.030. Although that paragraph addresses treatment of solid waste, the last sentence makes it absolutely clear that avoided emissions are not the same as actual emissions: "However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity".

California's definition of a REC[2], and the attributes contained therein, is very similar to that contained RCW 19.285.030, even down to the clarification regarding solid waste. Like Washington's, California REC definition refers to "all environmental attributes" associated with the production of electricity, but California interprets these attributes as including avoided emissions only – not the actual emissions or emission rate of the resource. The actual emission rate of the resource conveys with electricity delivered from that resource, not with the REC.[3]

Rather than establish a rule that sets up a direct conflict between the CETA and cap and trade programs and potentially risk linkage of the CCA to California, the Agencies should instead determine that nonpower attributes contained in a REC do not include the actual emission or emission factor of the resource. Consistent with this approach, use of unbundled REC for alternative compliance with CETA would entail a claim to the avoided emission attribute of renewable generation. Because the avoided emission attribute has no value under a cap-and-trade, there is no risk of double-counting of the avoided emission attribute. This approach would maintain environmental integrity and align with established GHG accounting standards.

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[2] " *A REC includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, including any avoided emission of pollutants to the air, soil or water; any avoided emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, or any other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of global climate change; and the reporting rights to these avoided emissions, such as Green Tag reporting rights.*
A REC does not include any emissions reduction credit issued pursuant to § 40709 of the Health and Safety Code or any credits or payments associated with the reduction of solid waste or treatment benefits created by the utilization of biomass or biogas fuels. A REC also does not include any energy, capacity, reliability or other power attributes of the generation; any tax credits or other financial incentives in the form of credits, reductions, or allowances associated with the generation that are applicable to a state or federal income taxation obligation; any fuel-related subsidies or "tipping fees" or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits; or emission reduction credits (whether issued pursuant to § 40709 of the Health and Safety Code or any 77 Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the definition of the REC, this definition does not create any right to use those avoided emissions to comply with any GHG regulatory program. 78 Green Tag reporting rights are the right to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party and include without limitation those Green Tag reporting rights accruing under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program) that are encumbered or used by the generator for compliance with local, state, or federal operating and/or air quality permits. California Public Utilities Code section 399.12 (h) and CPUC Decision 8-08-028 at https://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/86954.pdf*"*

[3] Joint Comments of the California Air Resources Board, the California Energy Commission and the California Public Utilities Commission to the Oregon Department of Energy at https://www.oregon.gov/energy/energy-oregon/Documents/2017-Public-Comments-RECs-EIM.pdf

The Commission's proposal to regulate sales of renewable generating resources to entities other than Washington utilities is regulatory overreach.

Staff further propose that to demonstrate compliance with the standard, utilities would be required to ensure that any zero-emission resource from which the utility procures unbundled RECs for alternative compliance to comply with specific business practices for *all* sales. Many independently owned renewable resources are only partially contracted to Washington utilities -- other portions of the electricity generated may be contracted to utilities in other states or to commercial or industrial customers. These sales may be subject to renewable procurement rule in other states or structured to the specific needs and requirements of individual C&I customers. It is completely inappropriate for the Commission to attempt to regulate business practices of renewable resources for their sales to customers not subject to the CETA.

Response to Commission Questions

1. Requirements for obtaining unbundled RECs: The draft rule would require that utilities obtain unbundled RECs only from renewable generating facilities that comply with certain business practices in all transactions, regardless of whether the transaction involves a Washington utility.
a. Is it feasible to require renewable generation facilities to register and certify with the state of Washington that all of their transactions comply with the draft rules' business practices?
b. Should the Joint Agencies consider alternatives to requiring that renewable generation facilities adhere to specific business practices in order to prevent double counting?
c. Should the Joint Agencies consider an alternative in which the business practices identified in subsection (2)(a) through (c) are required only for transactions that result in the transfer of an unbundled REC to a Washington utility?
d. Is a transaction-based approach feasible? If feasible, is it necessary to ensure no double counting of non-energy attributes?
e. Would a transaction-based approach be more or less effective and enforceable than the draft rules in preventing double counting?

As explained above, the Agencies should not consider use of an unbundled REC for CETA compliance where the actual emission rate of a resource is attributed to electricity delivered into a cap and trade program to be double-counting. WPTF urges the Agencies to delete section xxx(2)(c)in its entirety. Paragraph xxx(1) should be revised as follows:

~~(1)~~ A utility may use an unbundled REC as an alternative compliance option, as provided in RCW 19.405.040(1)(b), only if the utility demonstrates that there is no double counting of any nonpower attribute associated with that REC, including avoided greenhouse gas emissions. ~~This section sets only the minimum requirements necessary to demonstrate that no double counting has occurred. The Commission may require the utility to produce other evidence or take specific actions as it determines necessary to ensure that there is no double counting of nonpower attributes.~~ Neither the actual greenhouse emissions nor greenhouse gas emission factor of the underlying resource is considered a nonpower attribute associated with a REC.

2. Business practices for transactions involving electricity delivered or claimed under greenhouse gas cap programs:
a. Sec. -XXX(2)(c) applies to transactions involving GHG cap programs outside Washington. Is it reasonable to distinguish between GHG cap programs outside Washington and Washington's own GHG cap program, the Climate Commitment Act (CCA)? Is it relevant in making this decision that the electricity and the unbundled REC are used in the same jurisdiction?

It is not only unreasonable to distinguish between the Washington cap-and-trade program, and those in other states, it is discriminatory. If the Washington and California cap-and-trade programs eventually link as intended, energy generated in, transferred between, and imported into the two states will be treated identically and allowances under both programs traded in a single, common market. The legal basis for discriminating under the CETA against resources that are located in California or sell energy into California will become even more tenuous.

As WPTF has stated previously, the points of regulation under a cap-and-trade program and the CETA are different. Cap and trade programs regulated emissions associated with electricity generation and imports; CETA regulates utility procurement. Attribution under a cap-and-trade program of the actual emissions of a resource to the electricity generated by that resource, whether located in state or imported into the state, is fundamentally different than a utility claim to having procured renewable energy. The attribution of the actual emission of a resource to electricity delivered by that resource, regardless of which cap-and-trade program the electricity is subject to, should not prevent the use of unbundled RECs from that resource being used for alternative compliance under CETA.

b. Sec. -XXX(2)(c) uses the term "GHG cap program," and the workshop discussion focused primarily on California's cap and trade program. How should the term "GHG cap program" be defined? Should the rule identify specific programs? If so, please provide an alternative term and definition.

No comment.

3. Identification of RECs associated with specified source electricity sales: Sec. -XXX(2)(a) requires the inclusion of RECs in sales of specified source electricity and requires that the RECs be from the same generating facility and have the same month/year vintage. Is this matching of RECs with electricity reasonable or is a more precise matching of RECs with electricity necessary and feasible for compliance?

No comment.

4. Double counting safeguards for retained RECs: The statutory prohibition on double counting applies to unbundled RECs retired for alternative compliance obligations. The draft rules on "use" allow retained RECs to be used in addition to electricity from renewable generation resources for primary compliance. Should the business practices preventing double counting be applied to retained RECs?If so, does draft section -ZZZ do this effectively?

WPTF considers the actual emissions of a resource to convey with electricity delivered from that resource. Because the retained RECs provisions require delivery of electricity from the underlying resource, the actual emission attribute stays with that electricity. The retained REC rules would prohibit sale to another entity of electricity associated with a retained RECs as specified electricity. These rules

are sufficient to prevent double counting of the actual emission rate of electricity associated with retained RECs; no additional provisions are needed.

WPTF notes that comments submitted by CRS on November 12th incorrectly assert that "California's accounting policy for the emissions associated with imported electricity under the Mandatory Reporting Regulation (MRR) assigns the emissions factor of the renewable resource to the imported power regardless of whether the transaction contractually specifies the generation source and even in the case that the power is explicitly sold as unspecified power." This is incorrect. California's GHG reporting rule (and Washington) assign a specified emission factor to imported power when the importer has a specified contract all the way up the contractual chain to the generating resources (i.e. the owner/operator and any intermediaries must have sold the electricity as specified), or when the importer is the owner/operator of the resource (i.e. the importer is a generation providing entity of that resource.) Thus, in the narrow circumstance where the owner/operator of a renewable resource sells that electricity to a California load-serving entity, and the owner/operator is considered the importer, that power would be treated as specified. A Washington utility can avoid this scenario for electricity generated by its own renewable resources simply by not importing that electricity directly to California (or by not allowing this electricity to be 'deemed delivered' within the energy imbalance market). If the utility has purchased electricity associated with a retained REC from a renewable owner/operator, the utility can avoid this scenario by not selling the electricity back to that owner/operator.