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RE: Docket UE-210183: Proposed Rules on Unbundled RECs and Double Counting

Avangrid Renewables appreciates the opportunity to provide comments to the Washington Utilities and Transportation Commission's (the Commission) and Department of Commerce (the Department) on the proposed rules on unbundled RECs for implementation of the Clean Energy Transformation Act (CETA).

Avangrid Renewables is an independent power producer operating wind, solar and thermal resources, developing new renewable facilities, and providing energy services in the U.S. Over 2,000 MW of the companies operating capacity is in the Northwest.

We support CETA and Washington's efforts to rapidly decarbonize the state and transition to a clean energy system. However, we are concerned that the proposed rules conflict with existing regulatory precedent and will disrupt markets and transactions for clean energy in and around the Northwest.

In these comments, we offer our primary concerns with the proposed rules, provide examples of the potential negative impacts of these rules on the commercial activities of clean energy companies in the state, and respond directly to the Commission's questions for stakeholders.

I. The proposed rules identify instances of double-counting where there is none, which will have broad consequences on renewables activity in the west

Avangrid Renewables is concerned that although the proposed rules are intended to avoid "double counting" of unbundled RECs for alternative compliance, as written they will have much broader impacts on how renewable generators can sell energy and RECs inside and outside of the state and in evolving regional markets. The proposed rules create additional barriers to the functioning of efficient and effective markets for clean energy in the west, thereby undermining the core goals of CETA. This is both a "tail wagging the dog" problem since alternative compliance is intended to be a small and temporary component of the program and a "solution in search of a problem" given there are adequate

systems in place already to avoid REC double-counting and the Commission is searching for new forms of "double-counting" where it doesn't exist.

The root of the problem is that the Commission's proposed rules conflate "RECs" with "specified emissions" and further confuse "specified emissions" with "emissions offsets." RECs and GHG accounting rules are different instruments with different purposes and programs. The designation of a specified zero-emissions rate for energy imported into another state for the purposes of measuring and compliance with a Cap and Trade program does not constitute a "claim" or "retirement" of a REC. Thus, the Commission's rules imagine and try to prevent several instances of double counting where there are none.

CETA allows use of unbundled RECs for alternative compliance provided there is no double-counting of "non-power attributes." CETA further defined RECs to mean the tradable certificate of proof of one megawatt-hour of a renewable resource and includes the associated non-power attributes. Thus, legislators intended to avoid typical "double-counting" or double claiming of a REC used for CETA compliance (e.g., use of a REC more than once, for more one purpose, or by more than one party). WREGIS, Green-e, and other government certified REC accounting programs have been designed to effectively prevent double counting. CETA further defines "Non-power attributes" to include "avoided emissions." Thus, it is reasonable to conclude that legislators interpret claiming or counting a REC associated with a particular MWh of renewable generation AND claiming the same MWh elsewhere as an "avoided emission" or offset would certainly be double-counting. However, the specification of power separated from an unbundled REC as "zero emissions" for the purpose of importing that power into California is a wholly different circumstance. There is an important difference between "avoided emissions" and "zero emissions." When one utility uses an unbundled REC for CETA compliance and another utility uses the same MWh associated with that REC for a) RPS compliance elsewhere or b) to claim a GHG offset, this is a clear instance of double-counting. But when one utility uses an unbundled REC for CETA compliance and another utility imports that MWh into California and specifies it as a zero-emissions import, this is not double counting. The second utility in this instance isn't claiming any kind of credit for compliance. On the other hand, if the Commission's rules were applied, the second utility in this instance would be forced to acquire emissions allowances for this import as if there were real emissions associated with the import when in fact there are none.

CETA intended that when a REC is stripped from the underlying MWh, there should be no other claim of a green benefit from that same MWh. It did not intend that there should be additional consequences to use of that null power after the REC is stripped. However, staff's proposed rules do just that.

II. The proposed rules directly conflict with California's rules and common policy defining RECs

Under California's RPS program, load serving entities must track RECs from certified facilities through WREGIS and must retire RECs to show compliance to California energy agencies. Separately, CARB regulations under California's Cap and Trade program require an importer of electricity from a specified generating unit to report to CARB the emissions factor of the generator for the Mandatory Reporting Rule. Responsible entities under Cap and Trade, (including in-state generators and importers) must then acquire allowances to cover emissions associated with generation. California does not accept REC

retirement as compliance for its GHG program; rather it accepts allowances or offsets. Importers must report disposition of the RECs from resources eligible under the California Renewable Portfolio Standard.[1] The reporting importer does not need to retire the RECs, only report the disposition of the RECs.[2] Thus California has clearly developed distinct regulatory pathways for tracking and capping emissions under Cap and Trade (an emissions-based program) on the one hand and tracking and retiring RECs under the RPS program. The two programs are complimentary and have similar goals but they are intentionally separate.

Further, California regulators have a very broad and detailed definition of a REC that specifically includes "any and all" benefits and sets forth a very comprehensive list with specific references to GHG Emissions.[3] Yet California regulators have provided that the zero emission report to CARB is not a claim that requires a retirement.[4] As Washington endeavors to develop a Cap and Trade program and a more stringent clean energy program under CETA, it should follow the example of California and avoid tying the treatment of a REC for CETA with the identification of a zero-emissions resource for purpose of carbon accounting. Given the definition of "nonpower attributes" in CETA discussed above, Washington regulators can certainly craft rules that prevent double-counting without re-writing and undoing the policy precedence established in California.

The proposed rules to avoid double-counting of unbundled RECs would contradict California's RPS and GHG accounting rules. For example, the proposed rules require that a generator importing into

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[1] See 17 California Code of Administrative Regulations §§95852(b)(3)(D); 95111(a)(4); 95111(g)(1)(M).

[2] §95111(g)(1)(M).

[3] The California Public Utility Commission's definition of a REC in the CPUC's *Decision On Definition And Attributes Of Renewable Energy Credits For Compliance With The California Renewables Portfolio Standard*, CPUC D.08-08-028 (Aug. 21, 2008) provides in Appendix B: "Green Attributes" means **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. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) 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 altering the Earth's climate by trapping heat in the atmosphere;1 (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser 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 at the Green Tag Purchaser's discretion, 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. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. ... 1 Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program."

[4] The California Energy Commission's (CEC) Eligibility Guidebook, 9th ed. says on p. 60, fn. 43: "Use of a REC for compliance with the California RPS does not preclude an [Load Serving Entity]'s ability to report a specified import or use the RPS adjustment in accordance with [CARB's cap and trade program]. The CEC has similar language in its 2015, 8th edition of its Eligibility Guidebook on p. 60, fn. 35.

California ensure that a REC must be retired when associated with energy that receives an assignment of a specified emissions rate by CARB. California rules do not require this. In fact, a Generation Providing Entity (GPE) importing into California often will not have a choice as to whether its generation could be "unspecified" under CARB's Mandatory Reporting Rule. If CARB has identified the source of generation from an importing GPE, it will specify it as such.[5] Therefore, a facility that wants to sell unbundled RECs in Washington but delivers the associated MWh to California may in some instances be unable to comply with Washington's proposed rules.

III. The proposed rules will have significant market and commercial impacts

We note that Washington's GHG Cap program, in combination with potentially changing rules for primary compliance with CETA in 2024, will have numerous impacts on how energy sales in the Northwest must be tracked and accounted for. For example, new systems and products must be developed to track and value energy scheduled at Mid-C that "sink" in Washington. Adding layers of confusion and complexity to the requirements surrounding unbundled RECs for the purpose of alternative compliance, which are arguably of relative minor consequence to the success of CETA and the Washington GHG Cap program together, will undoubtedly exacerbate the commercial and market impacts of the program.

The Commission in its rulemaking should acknowledge that clean energy facilities capable of generating and selling unbundled RECs in Washington may sell RECs and energy to many different counterparties in different states and under various contract arrangements. This type of sophisticated contracting and trading strategy is increasingly common in the west, supports project financing, and keeps prices for renewables affordable. The addition of new rules which add complexity and conflict with rules that may apply to the same generator in other jurisdictions would fundamentally reduce liquidity in the clean energy market. The effect will be to drive up prices, challenging the ability of the state to implement a successful program that maintains the mandated 2% rate impact.

IV. Rules should consider real-world commercial impacts and evolving regional market implications before modifying and adopting these rules

We foresee multiple instances in which the proposed rules could undermine independent power producers' existing contracts or impede the structuring of innovative and efficient contracts and energy service arrangements that support broad and rapid development of new clean energy facilities.

Before adopting the proposed rules, the Commission should consider the implications of any unbundled REC rules on various commercial arrangements, including the following:

- An Oregon wind farm sells a portion of its energy as specified power to California LSEs, as required under CARB rules for Mandatory Reporting by GPEs, but the LSEs neither claim nor retire the associated RECs. The same generator would like to sell unbundled RECs in Washington for CETA alternative compliance. *Would the proposed rules prohibit the facility from engaging in both kinds of contracts? How would limiting market options for this and similar facilities potentially impede clean energy goals?*

[5] CARB Mandatory Reporting Rule Section 95111(a)(4)

- An owner of wind facilities and other generation in the Northwest sells a portion of its energy as well as unbundled RECs to a C&I customer in Washington who wants to claim a "local" and "clean" energy supply but has no retail choice option to do so directly. This arrangement is a virtual power-purchase agreement which helps Washington increase its renewable supply at lower costs to ratepayers. The e-tags associated with the sale and delivery of the renewable energy are sourced from the wind farm. *How would e-tags function under these rules and would they connote specification regardless of whether the generator intends to sell the energy as such? Would the proposed rules require all the energy coming from the wind farm to be "specified" and thus prevent the sale of any unbundled RECs from this facility to the C&I customer? What would be the impacts to the existing long-term contract with the C&I customer and thus the financial health of the wind facility?*
- A utility in Washington has a contract to buy energy and RECs from an Oregon solar farm through a PPA. The utility determines that it is "long" on RECs and energy for a given period. A second LSE in WA is short on RECs. Due to transmission rights and constraints, the first utility cannot deliver the energy from the solar facility directly to the second, but it can sell the energy elsewhere. The first utility sells unbundled RECs to the second utility and the associated energy to the market at Mid-C. *Under the proposed rules, who is responsible for making sure all transactions from the solar facility are compliant with unbundled REC requirements? Is this transaction permissible under "retained REC" rules? Would this likely prevent the exchange of unbundled RECs between the two LSEs? And would this force the "benefits" of CETA (e.g., renewable generation and cost-savings) out of state?*
- An eligible renewable facility in Washington is an available resource in the Western Energy Imbalance Market (WEIM). The generator allows energy to be "deemed delivered" into California and this delivery through the WEIM results in the assignment of an emissions factor but not retirement of RECs, pursuant to CARB Mandatory Reporting Rules.[6] *Can the facility sell unbundled RECs in Washington? What are the consequences of the facility's having to choose whether to participate in the WEIM or the Washington REC market?*

As these examples demonstrate, the uncertainties and challenges of complying with all the proposed requirements for facilities selling unbundled RECs would likely force generators to choose between selling unbundled RECs in Washington or participating in other western or wholesale markets. This forced choice limits market liquidity and system reliability. It may also limit the direct benefits from alternative compliance to the state if Washington utilities must seek unbundled RECs from generators farther away and who face fewer clean energy and environmental requirements, which could create resource shuffling or leakage. Finally, there is a risk that the proposed rules will impair existing contracts and have impacts far beyond the Washington alternative compliance market as they fundamentally change the standard definitions and policies distinguishing between RECs and emissions accounting.

These examples and impacts become increasingly important when considering the expansion of regional markets in the west. The Western Energy Imbalance Market has contributed to improved market efficiency and system reliability for market participants since 2014. Puget Sound Energy and Seattle City and Light saved over $10 Million combined from WEIM participation in Q3 2021 alone. Bonneville Power Administration, Tacoma Power and Avista intend to join the EIM in the next two years. At the same

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[6] CARB Mandatory Reporting Rule Section 95111(g)(1)(M)

time, CAISO has initiated development of an Expanded-Day Ahead Market (EDAM) which would be available to EIM entities beginning in 2024 while multiple states across the west have expressed interest in or mandated exploration into the formation of a western RTO. An RTO with a large western footprint would offer billions in annual savings from operational and capacity savings for electric customers during as utilities transition to low and zero-carbon systems.[7] Complicated and contradictory rules across the west, such as those proposed by the Commission to address double counting, will frustrate regional cooperation and regional market development and create unnecessary barriers for how renewable developers and operators do business in and for the benefit of the state of Washington. In fact, CETA requires rule makers to consider efficient dispatch of resources in the WEIM as part of the implementation.[8] As regional markets emerge and mature, Washington should seek to harmonize its rules with others in the region to promote efficiency, emissions reductions and reliability across the region.

V. Response to Washington Utilities and Transportation Commission and Department of Commerce 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?***

No. The draft rules seem to assume that a generation facility may have only one or a limited set of contracts with offtakers. This is false. It is unreasonable to require the facility owner to be responsible for how its counterparties use and retire RECs sold from that facility. In some instances, such as when energy is resold, for facilities that must comply with import regulations in other states, or for facilities that participate in the WEIM, it may not be possible to ensure that all transactions comply with the business practices proposed.

b. ***Should the Joint Agencies consider alternatives to requiring that renewable generation facilities adhere to specific business practices in order to prevent double counting?***

Yes. The Joint agencies should require utilities to use WREGIS to track, account for, and retire RECs and it should require utilities to report use and retirement of RECs (bundled and unbundled) to the joint agencies, as appropriate, for compliance with CETA. The WREGIS system of tracking each unique REC ensures that no two parties can claim or retire the same REC, nor can one party use the same REC more than once or for more than one purpose. Every renewable resource in the west already uses WREGIS. This is sufficient to avoid double counting of both

[7] Study of Coordinated Market Options to Advance State Energy Policies, *2021,* available at: https://www.energystrat.com/new-insights-experience

[8] CETA Section 13

"bundled" and "unbundled RECs." While it is reasonable to require a renewable facility to be certified as an eligible renewable facility by a state agency and to utilize the WREGIS system for metering and tracking RECs, it is not reasonable to assign other regulatory duties related to eventual use and disposition of RECs to the facility owner, particularly given that such use and disposition may be done by an entity different from the facility owner.

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?***

While we agree that limiting the application of the proposed business practice rules to those that directly pertain to unbundle REC transactions in Washington may be helpful, as discussed above, we recommend that the Commission substantially revise and narrow the proposed rules after examining the full range of impacts from the proposed rules on customers, markets, and clean energy producers.

d. ***Is a transaction-based approach feasible? If feasible, is it necessary to ensure no double counting of non-energy attributes?***

If by "transaction-based" approach, the Joint Agencies means an approach that focuses on the contract or record of sale of unbundled RECs rather than applying rules to a facility, then yes, this approach may be more feasible.

The Joint Agencies could simply require that a renewable facility selling renewable energy and RECs in Washington state be certified by the state and established as a generating unit in WREGIS with the necessary metering and accounting practices.

e. ***Would a transaction-based approach be more or less effective and enforceable than the draft rules in preventing double counting?***

See responses to Questions (a)-(d) above. The burden of proof of compliance should be with the regulated party (the offtaker) not the generation facility.

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?

Avangrid Renewables does not object to the retained REC rules proposed as they acknowledge the need to enable utilities to sell electricity from renewable generators in wholesale markets while keeping the associated REC intact and suitable for CETA compliance. However, we are concerned that the definition of "retained REC" which is defined as "renewable and non-

emitting electricity owned or controlled by a utility where the associated electricity is sold in a wholesale sale as unspecified electricity" would unfairly differentiate between utility-owned generation as compared to independent power producer generation for the purposes of CETA compliance. If a utility can use "retained RECs" produced from a utility-owned facility for primary compliance, while selling the associated energy as unspecified, but an IPP generator can sell unbundled RECs only if it can guarantee that the underlying energy is always sold unspecified, then these rules may advantage utility-owned generation RECs over independent power producer RECs. We also note that "retained RECs" are defined based on qualifying the "electricity" whereas the unbundled REC rules are applied to a whole facility.

Although we would not recommend applying the "business practices" proposed by the Commission to retained RECs given the problems with these proposed rules identified above, the Commission should examine the proposed unequal treatment of RECs from utility-owned vs. IPP owned facilities from the combination of "retained REC" and "unbundled REC" rules. A simple solution for this particular issue might be to define "utility controlled" as "utility contracted" in the definition of a retained REC, to ensure independently owned generation can produce retained RECs.

Conclusion

Avangrid Renewables supports Washington's efforts to implement a carbon-free electric system. However, the proposed rules to avoid double-counting may have far-reaching and unintended consequences. The Commission should create rules that are feasible, simple, and conform to existing regulatory standards and systems (such as WREGIS). In the development of these and all CETA rules, the agencies should take the time needed to assess and address potential impacts on clean energy transactions and markets, both within Washington state and the broader west.

Regards,

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