

December 6, 2021

Amanda Maxwell
Executive Director and Secretary
Washington Utilities & Transportation Commission

Glenn Blackmon
Manager, Energy Policy Office
Department of Commerce

Re: Powerex Corp.'s Comments on the Joint Agencies' Draft Rules implementing certain sections of the Clean Energy Transformation Act (Docket No. UE-210183)

Dear Ms. Maxwell and Mr. Blackmon,

Powerex Corp. ("Powerex") submits the following comments on the Department of Commerce and the Washington Utilities and Transportation Commission's (together the "Joint Agencies") proposed draft rules addressing the prohibition of double counting of nonpower attributes under RCW 19.405.040 ("draft rules").

Powerex is a corporation organized under the *Business Corporations Act of British Columbia*, with its principal place of business in Vancouver, British Columbia, Canada. Powerex is the wholly-owned energy marketing subsidiary of the British Columbia Hydro and Power Authority ("BC Hydro"), a provincial Crown Corporation established by the Government of British Columbia.

Powerex appreciates the opportunity to participate in the Joint Agencies' rulemaking process and respectively submits comment intended to help the Joint Agencies develop effective compliance rules to meet the objectives of the Washington program. We look forward to working collaboratively with the Joint Agencies on this important initiative.

1. Compliance Rules with Respect to Retained Renewable Energy Credits ("RECs")

Powerex believes the treatment of "retained RECs"¹ requires a different approach than the one proposed for "unbundled RECs"². Section 1 of the draft rule *WAC 194-40-ZZZ / WAC 480-100-ZZZ Accounting for retained RECs*, states:

To claim and retire a retained REC for primary compliance, a utility must demonstrate that the retained REC was obtained from **a renewable generating facility that complies with the following business practices to prevent double counting**: [emphasis added]

In the case of retained RECs, the appropriate entity to assign the reporting and compliance obligations is not the renewable generator, but the Washington State utility. Powerex suggests placing reporting and compliance obligations on the utility is the more effective means of addressing double counting for the following reasons:

¹ As defined in the draft "use" rules issued by the Washington Utilities and Transportation Commission on October 12, 2021, in Docket UE-210183.

² As defined in RCW 19.405.020(38).

- i. The utility does not “obtain” retained RECs from renewable generating facilities. Rather, as per the Washington Utilities Transportation Commission’s draft rules on “use”, the utility **creates** a retained REC by purchasing **the energy and the associated RECs in a single transaction** (from a generator, or from a third party seller) and then by selling the associated electricity as unspecified electricity.
- ii. Only the utility procuring energy and the associated RECs together (i.e. “bundled”) knows when a retained REC is created and, thus, is the only entity that can attest that unspecified electricity was sold consistent with the regulations.

Consequently, preventing double counting in the retained REC process requires a shift of focus from the generator to the utility. In the retained REC process, in contrast to the unbundled REC process, **the utility** is the entity with the information needed to confirm that the unspecified energy was sold in a manner consistent with any rules or practices designed to prevent double counting.

Put differently, the creation of unbundled RECs and retained RECs are fundamentally different processes and the common element needed to address double counting claims for retained RECs and for unbundled RECs **is not the generator** (as proposed). Instead, the common element between the treatment of the two types of transactions should be **the entity with the knowledge that the associated unspecified electricity was sold in a manner that did not cause double counting**.

Respectfully, generators of bundled renewable energy and RECs would have difficulty adopting the business practices in WAC 194-40-ZZZ / WAC 480-100-ZZZ with respect to retained RECs. Generators can have no insight as to how the Washington State utility conducts its sales of unspecified electricity.

As discussed above, Washington Utilities do not “obtain” retained RECs, they obtain bundled energy and RECs in a single transaction and then create a retained REC. The Washington State utility is the entity with sufficient information to provide information to the Joint Agencies to ensure that there is no double counting of the non-power attributes associated with a retained REC.

2. Potential for Double Counting:

Powerex believes that, within the context of the proposed regulations, the draft rules require a narrow amendment to address the Joint Agencies’ concern regarding double counting. Specifically, *WAC 194-40-XXX / WAC 480-100-XXX Safeguards to prevent double counting of unbundled RECs*, sub-section - XXX(2)(c) states:

(c) Any REC associated with electricity delivered, reported, or claimed as a zero- emission specified source under a GHG cap program outside Washington must be:

(i) transferred with the electricity, if the REC is **required for verification** by the GHG cap program, or

(ii) retired by the renewable generating facility, if the REC is not **required for verification** by the GHG cap program. The retirement must indicate “other” as the purpose, and the REC may not be used to comply with CETA. [emphasis added]

Powerex believes that whether or not the REC is “required for verification” may be an insufficient qualification. In section § 95111 of CARB’s “Regulation for the Mandatory Reporting of Greenhouse Gas Emissions”, CARB sets out reporting requirements to support specified source deliveries under the CARB Cap and Trade program. Notably, subsection § 95111(g)(1)(M)(3), states the following with respect to providing REC serial numbers:

95111(g)(1)(M) **Provide** the primary facility name, total number of Renewable Energy Credits (RECs), the vintage year and month, and **serial numbers of the RECs** as specified below:

...

(3). RECs associated with electricity generated, directly delivered, and reported as specified imported electricity and whether or not the RECs have been placed in a retirement subaccount. **Failure to report REC serial numbers** associated with specified source imported electricity from an eligible renewable energy resource represents a nonconformance with this article and in itself **will not result in an adverse verification statement**. In such cases, **the specified source emission factors assigned by ARB must still be used to calculate emissions associated with the imported electricity**. [emphasis added]³

As stated in the rules, importers may fail to report the REC serial number associated with the specified source of imported electricity (and the status of the associated REC), and this failure to report “**will not result in an adverse verification statement**” and the compliance entity still claims “the specified source emission factors assigned by [CARB]...to calculate emissions associated with the imported electricity.” In other words, providing the REC serial number associated with the specified source of imported electricity **is always “required”** under CARB’s regulation, **but, importers may choose not to provide the REC serial number, and there could still be a claim on the specified source emission factor assigned to the renewable generator**. Therefore, the focus on the compliance obligation within the regulation should be on the act of “providing” the REC serial number.

As such, to prevent double counting of unbundled RECs associated with electricity delivered to California and claimed under CARB’s Cap and Trade program, Powerex respectfully suggests the proposed draft CETA regulation language in Section -XXX(2)(c) could be modified as per the following:

(2)(c) Any REC associated with electricity delivered, reported, or claimed as a zero- emission specified source under a GHG cap program outside Washington must be:

- (i) transferred with the electricity, if the REC **serial number** is ~~required for verification by~~ **provided to** the GHG cap program **administrator**, or
- (ii) retired by the renewable generating facility, if the REC **serial number** is not ~~required for verification by~~ **provided to** the GHG cap program **administrator**. The retirement must indicate “other” as the purpose, and the REC may not be used to comply with CETA.

Focusing on the provision of the REC serial number would align with the language in CARB’s

³ Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (2018) at pg. 111 available https://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-2018-unofficial-2019-4-3.pdf?_ga=2.156219257.359677779.1638466850-1942605486.1638466850

regulations for import transactions claimed under the Cap and Trade program.

Notably, verifying compliance with the above approach would require the Cap and Trade program administrator (in this case CARB) to share information with the Joint Agencies about the REC Serial numbers provided by importers to CARB. CARB signaled a willingness to provide transparency into reported REC serial numbers reported under MRR in the 2013 Cap and Trade Regulation Final Statement of Reasons. In describing the purposes of the REC reporting requirement, CARB noted that the reporting requirement is a transparency mechanism to avoid double-counting:

The purpose of the modified [reporting] provision is to allow for public monitoring for double counting of the zero emissions, while not requiring the REC to be retired. Reporting the REC serial number under MRR allows for the access to information that the underlying electricity for that REC was reported as zero emissions, under California's MRR. ARB staff will post the REC serial numbers on its website so that others can determine whether a REC they are considering purchasing contains all of the attributes they intend.⁴

Finally, Powerex notes the potential for double counting, like that discussed above, likely exists with other programs. In fact, the issue of double counting of the non-power attributes of renewable electricity associated with an unbundled REC extends to any program where compliance is based on the underlying fuel source of the generator.

Powerex appreciates the Joint Agencies' consideration of these comments and looks forward to working with the Joint Agencies in the further development and implementation of the draft rules.

Sincerely,

Frank Durnford
Director, Market Policy and Industry Relations

⁴ 2013 Final Statement of Reasons, Amendments to the California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanism at pg. 209 available at www.arb.ca.gov/regact/2013/capandtrade13/ctfsor.pdf