Markets and CETA Compliance Rulemaking| UE-210183
Notice of Opportunity to File Written Comments on the Draft Rules on Double Counting and Storage
by December 06, 2021

Summary of Comments

- Avangrid Renewables
- Bonneville Power Administration (BPA)
- Center for Resource Solutions (CRS)
- Climate Solutions (CS)
- Northwest & Intermountain Power Producers Coalition (NIPPC)
- Northwest Energy Coalition (NWEC)
- NRU_WPUDA_WRECA_PNGC Power (filed comments at Washington Department Commerce only)
- Powerex Corp. (Powerex)
- Public Counsel Unit of the Washington Attorney General's Office (Public Counsel)
- Joint utilities Puget Sound Energy (PSE), Avista Corporation (Avista), Pacific Power and Light (PP&L), and Public Generating Pool (PGP), collectively, the Joint IOUs
- Renewable Northwest (RNW)
- Western Power Trading Forum (WPTF)

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?

Party	Summary of Comment	Staff Response
Avangrid Renewables	No. Generation facility may have more than one off taker. Generation facility should not be held responsible for how its counterparties use and retire RECs.	Staff agrees and supports changing the rules to place the regulatory requirements on Washington utilities.
BPA	No specific response. See comments in Summary, part 5, Other comments.	
CRS	Supports requirement of business practice. Doing so will strengthen markets for renewable energy.	Staff disagrees and supports changing the rules to place the regulatory requirements on Washington utilities. Staff does not believe the rules are commercially feasible.
CS	No specific response. See comments in Summary, part 5, Other comments.	
NIPPC	No specific response. See comments in Summary, part 5, Other comments.	
NWEC	Yes, but it is inadequate to prevent double-counting. Rules need monitoring, auditing and explanation of recourse if provider refuses to certify.	Staff disagrees and supports changing the rules to place the regulatory requirements on Washington utilities. Staff does not believe the rules are commercially feasible.
NRU_WPUDA_WRECA_PNGC Power	No specific response. See comments in Summary, part 5, Other comments.	
Powerex	No direct comment. See general comments in Summary, item 5.	

Public Counsel	i. Neither feasible nor necessary. ii. Commission lacks jurisdiction over entities outside of Washington or independent power producers in the state. iii. Unreasonable for Commission to penalize Washington utility of actions of a non-jurisdictional entity. iv. Time period applies to "all of their transactions." New owners could decide to stop participating in the registration possibly causing the utility to be out-of-compliance, retroactively or on existing long-term contracts. v. Renewable generation facilities do not engage in transactions only the owner of those facilities. vi. Not necessary to prevent double counting and would raise costs for Washington ratepayers.	i. Staff agrees and supports changing the rules to place the regulatory requirements on Washington utilities. ii. Staff is concerned that this is a distinct concern with the viability of the draft rules. iii. Staff does not agree that this would necessarily happen but is concerned with the commercial viability of the requirement. iv. Staff finds this scenario unsupported by example or foreseeable circumstances that might cause a significant number of such events. Staff also notes that the Commission could allow waivers. v. Staff agrees and supports changing the draft rules to place the regulatory requirements on Washington utilities. vi. Staff agrees and supports changing the draft rules to place the regulatory requirements on Washington utilities.
Joint IOUs	i. No. The market across the Western Interconnection has too many renewable generation facilities and transactions to regulate the generation facilities. ii. The draft rules likely violate the dormant commerce clause. iii. The draft rules approach may also limit suppliers.	i. Staff agrees and supports changing the draft rules to place the regulatory requirements on Washington utilities. ii. Staff shares this concern and the risk to the rules if it is the case. Staff supports changing the draft rules to place the regulatory requirements on Washington utilities. iii. Staff shares this concern. Staff believes that rules that place the regulatory requirements on Washington utilities are less likely to limit suppliers.
RNW	iv. No concerns at this point in time but will address any should they arise.	N/a

WPFT	No direct comment. Offered a general comment – Double counting does not include using 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. Also, see general comments in Summary, part 5, Other comments.	n/a

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

Party	**Summary of Comment**	**Staff Response**
Avangrid Renewables	Yes. Utilities should be required to report use and retirement of RECs through WREGIS.	Staff agrees.
BPA	No specific response. See comments in Summary, part 5, Other comments.	
CRS	See response in 1.a.	
CS	No specific response. See comments in Summary, part 5, Other comments.	
NIPPC	i. Do not require renewable energy facilities to attest that all REC transactions related to the sale or transfer of electricity from the facility satisfy requirements in the draft rules. Doing so exceeds agency authority and could damage competitive markets. ii. Should be limited to a transaction-based approach. See proposed language page 5 of comments.	i. Staff agrees that such a requirement may exceed Commission authority. ii. Staff agrees that the draft rules should focus on the terms of the transactions.

NWEC	i. Require utilities to retire RECS that were from electricity that is used to serve retail load and claimed for compliance. Onus should be on utility not renewable generator. ii. Draft rules fail to have chain of ownership required. When a utility purchases a bundled REC and resells it there is no requirement for who, when and how the newly created unbundled REC is reported.	i. Staff agrees that retirement appropriate. ii. Staff agrees some form of verification is necessary and will examine adding requirements into the draft rules.
NRU_WPUDA_WRECA_PNGC Power	No specific response. See comments in Summary, part 5, Other comments.	
Powerex	The Compliance obligation should be on the entity with the knowledge that the associated unspecified electricity was sold in a manner that did not cause double counting.	Staff agrees.
Public Counsel	i. Yes. All RECs delivered to Washington utilities and used for CETA compliance should not be used in another jurisdiction and should be retired by the purchasing utility. ii. Proof of REC registration and retirement through WREGIS is sufficient to guarantee that double counting does not occur.	i. Staff agrees. ii. Staff does not agree. The double counting provisions in CETA are very strong. Unbundled REC can come from a wide set of jurisdictions necessitating additional restrictions.
Joint IOUs	Yes. Remove business practices and instead require specific contract provisions that protect against double counting. See also response to Notice question 1.d.	Staff agrees.
RNW	No alternatives to offer at this point in time but will follow up should concerns arise.	
WPFT	No specific response. See comments in Summary, part 5, Other comments.	

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?

Party	Summary of Comment	Staff Response
Avangrid Renewables	Narrow compliance to Washington utilities and substantially revise and narrow the proposed rules after considering their impact on customers, markets and clean energy producers.	Staff agrees.
BPA	No specific response. See comments in Summary, part 5, Other comments.	
CRS	Supports retaining business practices requirement. See response in 1.a.	Staff disagrees and supports changing the rules to place the regulatory requirements on Washington utilities. Staff does not believe this provision of the draft rules is commercially feasible.
CS	No specific response. See comments in Summary, part 5, Other comments.	
NIPPC	Should be limited to a transaction-based approach. See proposed language page 5 of comments.	Staff agrees. Staff will examine proposed language.
NWEC	Transaction specific regulation would be very difficult to track and audit and is an invitation to gaming the system.	Staff agrees.
NRU_WPUDA_WRECA_PNGC Power	No specific response. See comments in Summary, part 5, Other comments.	
Powerex	Not for unbundled RECs but for retained RECs. For retained RECs the obligations should be on the Washington utility.	Staff disagrees and supports changing the rules to place the regulatory requirements on Washington utilities. Staff does not believe this provision of the draft rules is commercially feasible.
Public Counsel	The business practices in Section (2)(a)-(c) are not practical on a transaction basis (see also comments to question 1(d). As noted in response to part (b), Public Counsel believes that proof of REC registration and retirement through WREGIS is sufficient to guarantee that double counting does not occur.	Staff agrees the burden should be shifted to the Washington regulated utilities.

Joint IOUs	i. Rules should apply to transactions that result in the transfer of unbundled REC to a Washington utility, and not business practices. Use attestations in contracts to prevent double counting. ii. Proposed revisions: 1) In subsection (2)(a) eliminate inclusion of bundled sales so the subsection only covers the sale of the underlying energy associated with the unbundled REC, 2) Subsection (2)(b) should not require a specified MWh of electricity to be matched with a specific unbundled REC, 3) Subsection (2)(c) requires matching MWh of electricity with the associated specific REC which is problematic.	i. Staff agrees. ii. Concerning comment part 1, Staff agrees that 2(a) only need condition the sale of the associated electricity. Staff does not agree with the Jt. IOUs' suggestion in comment part 2. Being able to associate a REC or NPA with the electricity that created it is necessary, under certain circumstances, to prevent double counting. Concerning comment 3, preventing double counting for the circumstances covered by Subsection (2)(c) will require matching the RECs and the electricity from which they originate.
RNW	No. Do not recommend differentiating Washington based unbundled RECs from out of state unbundled RECs.	Staff agrees.
WPFT	No specific response. See comments in Summary, part 5, Other comments. See also comment on Notice question 1.a.	

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

Party	**Summary of Comment**	**Staff Response**
Avangrid Renewables	Yes, if a transaction-based approach is focused on the contract or record of sale of unbundled RECs.	Staff agrees and will revise the draft rules to be based on a transaction-based approach.
BPA	No specific response. See comments in Summary, part 5, Other comments.	
CRS	See response in 1.a	
CS	No specific response. See comments in Summary, part 5, Other comments.	

NIPPC	Should be limited to a transaction-based approach.	Staff agrees and will revise the draft rules to be based on a transaction-based approach.
NWEC	It is not clear what is meant by transaction-based approach. We remain interested in a financial accounting approach in which RECs play a diminished role, and CETA can be better integrated with developing market mechanisms.	Staff will revise the draft rules to be based on a transaction-based approach that it intends will provide clear meaning to a "transaction-based approach."
NRU_WPUDA_WRECA_PNGC Power	No specific response. See comments in Summary, part 5, Other comments.	
Powerex	For retained RECs as utilities have knowledge of transactions but not for unbundled RECs See response to Notice Question 1.b and 1.c.	Staff disagrees. For an unbundled REC to be valid under CETA the electricity from which it was created must no longer have its REC. In a transaction-based regulatory schema there must be a reasonable means of assuring that is the case.

Public Counsel	i. Transaction based tracking is necessary and sufficient. ii. Avoided emission of greenhouse gases is not currently a known or quantifiable attribute of renewable energy that is counted or transacted in any market.	i. Staff agrees. ii. Staff does not agree with the relevance of the application of the statement to the interpretation of CETA's requirements. While avoided emission of greenhouse gases may be an operative concept in some GHG schemes, CETA is strict regarding the prohibition on the double counting of any of the nonpower attributes of a source of electricity. To avoid GHG allowance costs or regulation under California's GHG cap and trade program, a generator must represent some nonpower attribute of its electricity. For instance, a wind generation facility owner must identify the electricity it injects into the grid as originating from a wind generation facility in order not to be regulated under the California's GHG cap and trade program. This constitutes a use of the nonpower attributes under CETA regardless of the requirements under California law and regulation.

Joint IOUs	i. Yes. Contracts and the confirmations that follow the purchase of power under a contract provide for whether the REC is transferred and, if so, that the electricity is not used as a resource specific energy sale, such as into California. Contracts can be audited. ii. WREGIS cannot track what happens to the underlying electricity of an unbundled REC. iii. Between WREGIS and the contract terms there is no need to track the underlying electricity.	i. Staff agrees. Staff intends the rules to prevent double counting of electricity used in out-of-state GHG programs and the RECs associated with that electricity for CETA. ii. Staff is aware of this. iii. Staff believes there may be a misunderstanding or miss-application of the word tracking. The transaction-based approach will focus on commercial contact terms that provide private legally enforceable terms to prevent double counting.
RNW	i. If a transaction-based approach to primary compliance is used – Support the approach, but concerns about it being overly burdensome to utilities and regulators and less efficient. ii. If transaction-based approach to demonstrating alternative compliance is used– Support the approach due to alternative compliance gradually declining in relevance over time.	i. Staff supports a hybrid approach to primary compliance that utilizes transaction-based requirements and information with other complimentary regulatory requirements. ii. Staff agrees with a transaction-based approach but not necessarily on the basis RNW supplies in its comments even if the use of alternative compliance declines.
WPFT	No specific response See comment on Notice question 1.a. Also see comments in Summary, part 5, Other comments.	

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

Party	Summary of Comment	Staff Response
Avangrid Renewables	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.	Staff agrees.
BPA	No specific response. See comments in Summary, part 5, Other comments.	
CRS	See response to Notice question 1.a.	
CS	No specific response. See comments in Summary, part 5, Other comments.	
NIPPC	No specific response. See comments in Summary, part 5, Other comments and response to Notice questions 1.b-d.	
NWEC	See responses to question 1.a-d.	
NRU_WPUDA_WRECA_PNGC Power	No specific response. See comments in Summary, part 5, Other comments.	
Powerex	See comments on question 1(c) and general comments, Summary item 5, Other comments.	
Public Counsel	Supports transaction-based approach as more feasible, enforceable, and effective than the draft business practices rules.	Staff agrees.
Joint IOUs	A transaction-based approach would be more effective and enforceable because it places the onus on the utility using an unbundled REC for alternative compliance to ensure that the contract language of any contract to procure unbundled RECs prevents double counting of environmental attributes.	Staff agrees.
RNW	No comment.	
WPFT	No specific response See comment on Notice question 1.a. Also see comments in Summary, part 5, Other comments.	

2. Draft 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?

Party	Summary of Comment	Staff Response
Avangrid Renewables	See general comments in Summary, item 5, other comments.	
BPA	No specific response. See comments in Summary, part 5, Other comments.	
CRS	Yes. Accurate accounting only requires that each megawatt-hour (MWh) of generation not be delivered twice or to more than one customer. REC could be used by the same entity under different programs in the same state. Consequently, the same electricity (and associated REC) can be used for CETA, Washington RPS and the CCA.	Staff agrees that the use within the same state is not double counting.
CS	i. Expand the prohibition on counting nonpower attributes from out of state GHG cap programs to other clean energy laws. ii. Counting the same renewable electricity under CETA and the CCA is not double counting because the same utility is claiming the renewable electricity.	i. Staff believes the rules are effective in doing so as written and will maintain that effect in future drafts. ii. Staff does not support rules that define double counting under such circumstances.
NIPPC	No specific response. See comments in Summary, part 5, Other comments.	
NWEC	See response to question 2.b and general comments in Summary part 5.	
NRU_WPUDA_WRECA_PNGC Power	No specific response. See comments in Summary, part 5, Other comments.	

Powerex	i. Add clause to WAC 194-40-XXX / WAC 480-100-XXX(2)(c)(i) and (ii) that the REC need only be transferred if it is "required for verification" by the GHG cap program or retired if it is not "required for verification." ii. However, the addition of the clause "required for verification" may be insufficient. Alternative proposal: The transfer or retirement in WAC 194-40-XXX / WAC 480-100-XXX(2)(c)(i) and (ii) should be required if the REC serial number is provided to GHG cap program administrator. This provision would align with the language in CARB's regulations for import transactions. iii. 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.	i. Staff is considering different transaction-based approach that by its structure eliminate the concern Powerex raises here. ii. Staff is considering different transaction-based approach that by its structure eliminate the concern Powerex raises here. iii. Staff agrees but notes that this issue may need further clarification and discussion. This topic may also be the subject of rulemakings by other Washington state agencies, which will require coordination and possibly adjustment or amendment to these rules.

Public Counsel	i. Do not disallow RECs associated with renewable energy production in other jurisdictions such as California's cap and trade program. ii. Disallowing use of renewable power for both CETA and California cap and trade program would be costly to Washington ratepayers. iii. Nonpower attributes include avoided emissions of carbon dioxide and other greenhouse gases but such avoided emissions are unquantifiable. iv. Not count emissions from an energy source where no emissions exist and counting the REC from that energy source towards CETA compliance does not constitute double counting.	i. Staff views GHG programs of other states as counting the nonpower attributes of electricity. This topic may also be the subject of rulemakings by other Washington state agencies, which will require coordination and possibly adjustment or amendment to these rules. ii. Staff see very little in the record contributing to a conclusion that unbundled RECs will be expensive, let alone more expensive as a result of not allowing unbundled RECs from electricity used under the California GHG program. In any case, Staff's view is determined by the statute. iii. Staff agrees with the first element of Public Counsel's statement but finds the second to be beside the point that the nonpower attributes of electricity are used under the California GHG program when determining the allowances needed. iv. Staff views GHG programs of other states as counting the nonpower attributes of electricity.
Joint IOUs	Agree with the restriction on using electricity associated with unbundled RECs in GHG cap programs. However, the electricity used for CETA should also be allowed for use in Washington's CCA. If the CCA is linked to the California cap and trade having different rules for the use of electricity in the two programs will become problematic.	Staff agrees but will await the evaluation of the appropriate rules once Washington's CCA is linked to other programs.

RNW	i. Yes. Washington utilities would not be double counting nonpower attributes by assigning them to compliance demonstrations for multiple in-state programs. But double counting could arise when nonpower attributes are counted towards two different entities compliance demonstrations for different programs. ii. No, if the unbundled REC is used for compliance in Washington and the electricity is sold as unspecified and is consumed outside of California. iii. Yes, if the unbundled REC is used for compliance in Washington and the electricity is consumed in California – there are then double counting issues.	i. Staff agrees. ii. Staff agrees with this example but does not necessarily consider CETA to be this restrictive. Electricity from unbundled RECs used for CETA may be sold into California as unspecified electricity. iii. Staff believes there are not double counting issues if the electricity is sold as unspecified.
WPFT	No, it's not reasonable and it's also discriminatory. If Washington and California cap and trade programs are linked, energy generated, transferred and imported between the two states will be treated identically. Cap and trade programs regulate emissions from electricity generation and imports while CETA regulates utility procurement.	Staff disagrees. Once the programs are linked staff will revisit the rules in light of the rules linking the programs.

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.

Party	**Summary of Comment**	**Staff Response**
Avangrid Renewables	No response.	
BPA	No specific response. See comments in Summary, part 5, Other comments.	

CRS	GHG cap program should be defined to include other state GHG regulatory policies and programs (e.g., traditional command-and-control limits or standards for delivered/consumed electricity).	Staff believes using broad descriptors to include all other possible GHG regulatory programs may create uncertainty in the rules. The rules are minimum requirements.
CS	No specific response. See comments in Summary, part 5, Other comments.	
NIPPC	No specific response. See comments in Summary, part 5, Other comments.	
NWEC	Why would the draft rules limit double-counting to only certain programs? An appropriate rule would disallow any double counting of RECs associated with the "use" compliance standard.	Staff believes using broad descriptors to include all other possible GHG programs may create uncertainty in the breadth of the rules. The rules are minimum requirements.
NRU_WPUDA_WRECA_PNGC Power	No specific response. See comments in Summary, part 5, Other comments.	
Powerex	No specific response. See comments in Summary, part 5, Other comments.	
Public Counsel	1. Sees no difference between the term cap-and-trade and GHG cap. 2. Rules should define concepts and requirements rather than name specific programs.	Staff agrees and views the regulatory framework as a combination of the statute, rule, and the ongoing enforcement authority of the Commission.
Joint IOUs	Define GHG cap programs as those "that do not require retirement of RECs from renewable resources as a means of demonstrating that the resource has no emissions." Page 6. This definition encompasses California GHG cap and trade program and other jurisdictions' programs.	Staff appreciates the suggestion of a precise definition but believes a broad meaning for the term GHG cap and trade program is more effective at preventing double counting. Staff recognizes that future changes to markets and other Washington agency rulemakings may require future changes in rules for implementation of the CCA.

RNW	i. Recommend changing GHG cap program to GHG program, due to the mix of GHG programs in the region, not all of which are cap and trade. ii. Recommend Draft- XXX(2)(c) be expanded to cover more than just zero-emission resources, including biomass and certain types of geothermal. iii. Recommend expansion of considering a wholesale electricity market (i.e., EIM or EDAM). iv. Recommend the prohibition of RECs associated with specified market imports or imports that have been assigned the emissions rate of the renewable generating facility, to any entity complying with a GHG program outside of WA. v. Recommend considering potential differences in REC retirement requirements in other states.	i. Staff supports a more streamline and broad term such as "GHG program." ii. Staff supports terms about fuel use. iii. Staff believes that it is necessary to wait to develop more specific rules addressing day ahead markets once the rules of such markets are better defined. iv. Staff reads the rules as doing this. v. Staff does not believe the rules need to or are able to specify treatment or standards for the other REC retirement requirements in other states.
WPFT	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?

Party	Summary of Comment	Staff Response
Avangrid Renewables	No specific response. See comments in Summary, part 5, Other comments.	
BPA	No specific response. See comments in Summary, part 5, Other comments.	
CRS	No specific response. See comments in Summary, part 5, Other comments.	
CS	No specific response. See comments in Summary, part 5, Other comments.	

NIPPC	No specific response. See comments in Summary, part 5, Other comments.	
NWEC	It is feasible to match RECs with specified source electricity sales, but ultimately, it is electricity that is purchased and used for compliance that matters. Sales are only relevant to CETA to the extent that the electricity cannot be "used" if it is sold.	i. Staff agrees generally with the statement but does not believe the rules must proscribe a manner and method for doing so to enable the Commission to prevent double counting.
NRU_WPUDA_WRECA_PNGC Power	No specific response. See comments in Summary, part 5, Other comments.	
Powerex	No specific response. See comments in Summary, part 5, Other comments.	
Public Counsel	i. Rules should be enforced on a transaction basis not on a business practices basis. ii. The rules are sufficient for unbundled RECs. iii. For retained RECs or bundled RECs NERC e-Tag data may be necessary. iv. WREGIS allows users to upload and associate NERC e-Tags showing the source and delivery destination of energy associated with each registered REC.	i. Staff agrees. ii. Staff does not agree and will make changes to address other concerns it has. iii. Staff views e-tags as useful but does not support placing in the rules specific requirement for how e-tags must be used to demonstrate there is no double counting.
Joint IOUs	The matching of RECs with electricity on a monthly basis is technically feasible as RECs are tracked within WREGIS with vintages by month and year, but it may not be advisable for the reason given in the Joint Utilities' responses to question one. Anything more granular is not possible at this time.	Staff supports matching and agrees the matching on a monthly basis is feasible. Staff interprets the prohibition on double counting in CETA to be supreme and, if matching on a more temporal granularity is necessary to prevent, enforce or demonstrate no double counting occurred in CETA compliance then such abilities will need to be developed.
RNW	Recommend a greater level of detail in the matching requirement for RECs with their associated generation. Note the identifiers associated with a REC in the Western Renewable Energy Generation Information System.	Staff supports the use of WREGIS or its successor and greater detail in the reporting requirements for entities in the state of Washington if necessary to prevent, enforce, or demonstrate that no double counting is occurring.

WPFT	No comment.	n/a

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.3 Should the business practices preventing double counting be applied to retained RECs?4 If so, does draft section -ZZZ do this effectively?

Party	Summary of Comment	Staff Response
Avangrid Renewables	Does not support the application of business practices. Compliance obligation should be on the Washington utility. The draft rules may create a disadvantage for IPPs as they are not allowed to create retained RECs when selling off the renewable generation as unspecified.	Staff agrees.
BPA	No specific response. See comments in Summary, part 5, Other comments.	n/a
CRS	See Summary, part 5, other comments.	n/a
CS	No specific response. See comments in Summary, part 5, Other comments.	n/a
NIPPC	No specific response. See comments in Summary, part 5, Other comments.	n/a
NWEC	i. Retained RECs should not be allowed the same status as electricity use for primary compliance. Treat retained RECs as unbundled RECs. The draft rules on "use" need to be revised to conform to CETA's consumption, not procurement, standard. ii. No RECs should be allowed to be double counted.	i. Staff does not agree. In combination with the rules as a whole, Staff believes the rules will achieve the intent and requirements of CETA.
NRU_WPUDA_WRECA_PNGC Power	No specific response. See comments in Summary, part 5, Other comments.	n/a

Powerex	No specific response. See comments in Summary, part 5, Other comments.	n/a
Public Counsel	1. Business rules should not be required. 2. The utility should be required to show that it acquired and retired all such RECs, and that (as applicable) RECs from other balancing authority areas were coupled with e-Tags for delivery to the utility's service territory. 3. Rules must assure that energy associated with retained RECs that is sold into the marketplace is sold as unspecified energy. To wit, each utility must report all of its wholesale energy sales on a specified or unspecified basis. 4. For each MWh of energy sold as renewable or zero-carbon energy, the utility should be required to show that it retired one REC in addition to whatever RECs are retired for purposes of primary or secondary compliance with CETA or with Washington's Renewable Portfolio Standard.	1. Staff agrees and is revising the draft rules. 2. Staff agrees with the retirement requirement but is not yet convinced that the rules should specify the use of e-tags or how. 3. Staff agrees. Staff is examining if the reporting of just specified sales is sufficient. 4. Staff does not believe that electricity sold with any portion or part of its nonpower attribute from a utility owned, controlled, or contracted renewable energy or nonemitting generation facility should be counted for CETA compliance
Joint IOUs	Section -ZZZ is not needed. There is no risk of double counting retained RECs. Contract terms for the sale of the unspecified electricity by the utility could include representations of the nonpower attributes but should not constrain what the purchaser of that power may represent about that power. Subsection -ZZZ should not regulate out of state transactions as it is a violation of the dormant commerce clause. There is no legal requirement to prevent double counting of retained RECs.	Staff disagrees. However, staff is considering revisions and or restructurings to that section of the draft rules. It is not unreasonable for private contracts to contain what amounts to a covenant.
RNW	Supports the proposed framework with the additional protections as detailed in its November 12 comments and if the rules require utilities to use bundled RECs as the main tool for compliance and retained RECs as an as-necessary supplemental tool.	Staff agrees and will consider the November 12 comments as it revises the rules.

WPFT	The retained REC rules are sufficient to prevent double counting, no additional provisions are needed.	n/a

5. Other comments

Party	Summary of Comment	Staff Response
Avangrid Renewables	1. The draft rules conflate use of unbundled RECs for CETA compliance and the use of the associated RECs in a GHG cap program as double counting. 2. Electricity associated with unbundled RECs should not be prohibited from being used in a GHG cap program. 3. California law does not prohibit the Joint Agencies from allowing the electricity associated with an unbundled REC from being used in the California GHG cap and trade program. 4. The draft rules added complexity surrounding unbundled RECs that will exacerbate the commercial and market impacts that CETA is already requiring on commercial trading of electricity in Washington state. 5. Provides three examples of commercial arrangements and asks Joint Agencies to consider agencies' rules' impacts on such examples.	1. Staff disagrees. 2. Staff disagrees. CETA has clear and strong language against double counting. 3. Staff has considered California statute, but its primary concern is the interpretation and enforcement of the no double counting provision of CETA. 4. Staff does not agree but will continue to work to streamline the rules. 5. As Staff works to streamline the rules, Staff will consider those examples.

BPA	1. The draft rules fail to accommodate BPA's system sales. The draft rules only contain provisions for a REC created and sold from a specific renewable generation facility. 2. Commerce and UTC rules should accommodate BPA system sales of power to preference customers and surplus sales to entities in the market. Washington's Climate Commitment Act recognizes that BPA's sales are from system resources. 3. Proposes language that prevents double counting of system power purchased from BPA and provides a means for Washington utilities to demonstrate unbundled RECs are not double counted. See page 2 and 4. 4. Due to uncertainty of the structure of the current contracts expiring in 2028, BPA advises that the rules may well need to be revised. 5. There is not enough time for utilities to complete compliance reports if reports are due July 1 (see WAC 1894-40-040) and BPA reports its system mix for the previous year on June 1. 6. BPA cannot provide an attestation required by a state.	1. Staff will work with the federal power marketing agency to come up with a mutually agreeable enforcement of CETA's requirements to prevent double counting that also allows the clean energy benefits of the federal hydroelectric system to flow to Washington state ratepayers. 2. See statement in part 1. 3. Staff will closely consider the proposed language. 4. Staff will take that information under advisement. 5. Staff will consider accommodations for IOUs as necessary. 6. Staff will take this restriction of the federal agency's authority into consideration.

CRS	i. Subsection 2(a) of -ZZZ. Recommends that if the associated electricity is sold in a specified transaction, the REC may not be used for alternative compliance under CETA. However, if section (a) is a requirement for different generation and RECs from the same facilities producing unbundled RECs for CETA compliance, we recommend clarification to that effect. If so a prohibition on unbundled RECs associated with electricity that is sold in a specified transaction should be added to the rules to prevent double counting of unbundled RECs used for CETA. ii. Subsection (2)(a)-(d) is missing the transaction involving a sale or transfer of electricity without the associated RECs in which the source of electricity is not specified at all, as either renewable or unspecified. The rules should require alternative documentation be provided if no contract information is available. iii. Section (2)(c) speaks of RECs associated with electricity rather than the facility. A simple word change would conform (c) to the language in subsection (2). iv. Change subsection (c) to read: "Any REC associated with electricity delivered, reported, or claimed as a zero-emission specified source or assigned the emissions or emissions rate of the renewable generation facility under a GHG cap program outside Washington must be:" v. Unbundled RECs should not be counted for CETA compliance if the associated electricity is counted as specified source or assigned an emission rate in the EIM or EDAM for a state with a GHG program outside of Washington.	i. Staff agrees with the first statement. Staff will work to assure the draft rules are clear on the point CRS raises and assure that CRS's last concern is addressed as staff shares the principle that electricity that is sold in a specified transaction should not count as unbundled RECs for CETA compliance. ii. Staff is considering rules that require documentation that sales are either specified or unspecified. iii. Staff will consider this addition where appropriate and necessary. iv. Staff does not disagree with the intent of this language and may adapt it, at least in part. v. Staff supports rules against double counting regardless of (and agnostic to) the market structure. vi. That is not Staff's intention as part of the overall effect of the rules. vii. Staff will consider not specifying in rules the form of designation at WREGIS. viii. Staff believes the rules as a whole make this clear but will review the rules to be sure it does. ix. Staff is not in favor of writing s that require additional documentation of utility "system" sales. x. Staff agrees. Supplemental comments: i. Commercial market structures can adapt. Staff understands that

	vi. Subsection (2)(c)(i)-(ii) appear to define a situation where the REC could not be unbundled. Language change should make clear that REC from associated electricity that is sold as specified source may not be used for CETA compliance. vii. The requirement in Subsection (2)(c)(ii) to designate the retired RECs as "other" may not be compatible with other state programs. viii. WAC 194-40-ZZZ(2)(a) and WAC 480-100-ZZZ(2)(c)(i)-(ii). Language change should make clear that RECs from associated electricity that is sold as a specified source may not be used for CETA compliance. ix. WAC 480-100-ZZZ(1)(a)-(b) does not address a sale or transfer of electricity without the associated RECs in which the source of electricity is not specified at all, as either renewable or unspecified. In such a case require alternative documentation. x. Do not allow retained RECs for primary compliance where the associated electricity is sold as a specified source to a state with a GHG program. Supplemental comments: i. It may be difficult to argue that EIM sales are unspecified and to use transaction records to demonstrate that the sale was unspecified as the EIM sales are source-specific attribution. ii. The unbundled or retained REC from an EIM external resource making a sale of electricity into California and subject to the California GHG bid adder should not be allowed for CETA compliance. iii. The EDAM may have specified sales or unspecified sales. The rules will need to take that into consideration at some point.	designations similar to these are made now. ii. Staff agrees but believes the best way to accomplish such regulation is by using broader and more durable rule language. iii. Hence why Staff is not inclined to write rules designed for a specific market or market design. iv. Staff appreciates the additional information and correction to the record. v. Staff does not want the rules to have loopholes. To that purpose, it is often better to write broad rules rather than rules narrowly trying to prohibit every possible loophole.

	iv.	After additional research, including discussions with the CARB, CRS amends statements it made at the December 6 workshop to recognize that that CARB's MRR does not assign the emissions of a renewable resource to an import if the power is sold as unspecified or in fact if the source (meaning the facility name) is not identified explicitly in the contract unless the reporting entity is the GPE. If the reporting entity is the GPE, meaning it owns or operates the generating facility, the import is treated as specified regardless and in all cases.	
	v.	If there can be a circumstance where the entity reporting the import in California is the GPE and a Washington utility can nevertheless retain the REC and sell the power to California, the associated RECs should not be used for CETA, even where the source is not specified or reported as unspecified in the contract.	

CS	i. Finds business practice requirements to be clear. ii. Supports inclusion the statement that the standards in the rules are not exhaustive. iii. Has serious concerns with the treatment of storage resources and lack of incorporating line losses in the draft rules. iv. In Subsection 2(c) Joint Agencies should broaden language to include any renewable where the emission rate is specified. v. Expand the prohibition on counting nonpower attributes from out of state GHG cap programs to other clean energy laws. vi. Counting the same renewable electricity under CETA and the CCA is not double counting because the same utility is claiming the renewable electricity. vii. The double counting of retained RECs should be prevented if they are part of the final rules and legal. viii. Rules should make clear that the utility only receives compliance credit for the amount of renewable energy that actually dispatches from the storage facility to serve its load, net of other losses.	i. Staff agrees they are clear but is concerned with the ability to enforce them. ii. Staff agrees. iii. Staff does not agree that the 2030 standard requires the inclusion of line losses. iv. Staff is considering the need to make it clearer that the prohibition on double counting occurs anytime any portion of the underlying nonpower attributes are used twice for any purpose. v. Staff considers the best approach to the construction of a rule is to have broad and comprehensive language. vi. Staff agrees. Staff recognizes that the rules may have to be adapted as a result of rules adopted on the CCA. vii. Staff will take this requirement under consideration but does recognize the CETA makes few directives on the interpretation of the use of storage.

NIPPC	i. Draft rules on double counting align with draft rules on use of electricity and align with the legislative intent of CETA. ii. Do not require renewable energy facilities to attest that all REC transactions related to the sale or transfer of electricity from the facility satisfy requirements in the draft rules. It exceeds agency authority and could damage competitive markets. Should be limited to a transaction-based approach. See proposed language page 5 of comments.	i. Staff generally agrees but still considers it necessary to streamline the rules. ii. Staff agrees.

NWEC	i. Reiterates that utilities must use electricity from renewables for CETA primary compliance. ii. Compliance obligations under CETA are on Washington utilities subject to UTC and Commerce regulation. iii. The UTC does not have jurisdiction to regulate registered generators. The compliance obligation in the rules should be on Washington utilities. The requirement for registered generators to certify annually to Commerce that they comply with the business practices is not adequate and the obligation to conform business practices is unenforceable. iv. Will an entity that has purchased bundled power in the market and then sells it with all attributes still attached, also have to comply with business practices demanded of original renewable generators? v. Because the storage rules are based on the proposed use rules they create a loophole that weakens the CETA standards. For instance, the effective exemption for losses from cycling energy through a storage facility would allow renewable energy to be counted for CETA compliance that was lost in the energy storage cycle. vi. The storage rules would make sense if they were based on the use rules that required electricity to be used to service retail load. vii. The proposed rules also make the arbitrary decision that losses from storage on the utility side of a retail meter won't be considered electric load, but storage on the customer side of the meter and any losses from that will be considered	i. Staff appreciates the clarity of position. ii. Staff agrees. iii. Staff agrees. iv. Staff believes so but that is one of the overreach concerns Staff has with the draft rules' approach. v. Staff believes this issue will be consider in the process required under -650(1) and any modification to that section. vi. Staff appreciates the clarity of NWECs position. vii. Staff believes this distinction is supported by statute. viii. Staff see a distinction between retained RECs and unbundled RECs. Staff believes the combined effect of all the requirements in the rules will result in the fulfillment of the CETA requirements. ix. Staff disagrees and considers the requirements in -650(1) to be more than RPS standard. Staff will work to assure the standards in -650(1) are clearer and more thorough. x. Staff is reviewing the value of generation reporting to Commerce. Retained RECs and unbundled RECs need distinct rules.

	part of the load. The proposed rules do not distinguish between storage on the customer side that might be stand alone and charged from the grid (and therefore part of retail load) and storage that is combined with distributed solar and wind that might only be charged by the individual distributed energy system and not the grid. viii. A retained REC is an unbundled REC and does not warrant special treatment. Even if CETA does not compel the UTC to include "retained RECs" in the definition of "unbundled" RECs because a "retained REC" has not been "sold," that still does not allow utilities to rely on "retained RECs" to meet standards that demand the use of clean electricity. ix. The proposed rules recreate the RPS approach of the EIA, which was deliberately not adopted in the legislation. x. Subsection -ZZZ does not require renewable generators to register with Commerce. Subsection XXX(2)(d) and (3) should apply to -ZZZ as well. xi. When a retained REC is sold and becomes a unbundled REC which entity reports the change of status of the REC?	

NRU_WPUDA_WRECA_PNGC Power	1. While there are potential changes to BPA products after 2028 under new contracts, to the extent that BPA retains its single system mix approach, the proposed REC accounting rules may need to be adjusted to accommodate the single system mix approach. 2. Supports BPA language submitted with its comments. 3. Supports the Joint IOUs proposal to simplify the draft rules and leave some elements of compliance to contracts. BPA's proposed amendment language may need some modifications to conform to the Joint IOUs proposal on contracts.	1. Staff recognizes there may be a need to revisit the rules once BPA has revised its contract terms in 2028. 2. n/a 3. Staff would appreciate the filing of any interested party's proposal on revising BPA's proposed language.
Powerex	See comments in Summary to specific questions from notice.	n/a
Public Counsel	1. There is no market for avoided emissions as the term is used in the definition of nonpower attributes. When and if there is one the Joint Agencies can review its rules. 2. Cap-and-trade programs do not account for "avoided emissions," so there can be no double counting. 3. California does not interpret its cap and trade and RPS to be double counting the same electricity. Similarly, the CCA only counts emissions not avoided emissions. 4. The business practices in the draft rules will lead to Washington utilities paying a premium for a subset of RECs otherwise available in the market due to the additional administrative burden and any restrictive business practice applied to producers or marketers of RECs. The business practices would not cause more RECs to be produced.	1. Staff agrees with the observation but not all of the recommendations built on it. 2. Staff does not agree with the underlying construct as it is applied to the meaning of double counting as used in CETA. 3. Staff is interpreting the double counting provision in CETA and applying them to evaluate other GHG programs not applying California statute and rules to interpret CETA. 4. Staff agrees and is considering changes to approach in the current draft rules.

Joint IOUs	1. Support the rules generally. 2. Limitations on suppliers selling unbundled and bundled RECs that become retained RECs to Washington utilities may violate the commerce clause and limit the pool of available resources, hindering economic optimization. 3. The draft rules would necessitate a costly additional registration system that is avoidable with a different compliance approach. 4. Proposes eliminating registration requirements on out-of-state generators and placing requirements on Washington utilities. 5. Supports section -YYY. 6. Strike section -XXX(1) language that states the requirements in the section are "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."	1. n/a 2. Staff shares concern and will revise the draft rules. 3. Staff is re-examining the value of a Washington Department of Commerce base registration and reporting requirement. 4. Staff supports rules placing compliance requirements on Washington utilities. 5. n/a 6. Staff does not support this. CETA's prohibition on double counting is overarching and ongoing.
RNW	Generally supports Draft WAC 194-40-YYY, but notes that Draft YYY(2) may need to be revisited in the future, excluding issue of storage round-trip losses from retail electric load which may require active monitoring by the Joint Agencies. Recommend tracking the potential compliance gap that may result.	Staff takes note that this is an issue for which the rules may need revisiting in the future.

WPFT	i. States the proposed double-counting rules for unbundled RECs are inconsistent with established standards for GHG accounting and are discriminatory and may hinder linkage of Washington's Climate Commitment Act to California's cap and trade program. ii. Does not support the premise that nonpower attributes associated with a REC include the actual emission rate of the underlying generating resource. iii. The draft rules are discriminatory towards RECs subject to a cap-and-trade program as they are not eligible for CETA's alternative compliance. iv. Nonpower attributes contained in a REC do not include the actual emission or emission factor of the resource. Use of unbundled RECs for alternative compliance with CETA would entail a claim to the avoided emission attribute of renewable generation. The avoided emission attribute has no value under a cap and trade and therefore there is no risk of double-counting.	i. Staff does not agree. RECs are a creature of the state and may be regulated by the state. ii. Staff disagrees and encourages stakeholder review of the statutory definition of nonpower attribute. iii. Staff does not view the draft rules as discriminatory in any legal sense. iv. Staff disagrees and encourages stakeholder review of the statutory definition of nonpower attribute