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Via Electronic Filing

Oregon Public Utility Commission
201 High St. SE, Suite 100
Salem, OR 97301-3398

Re: Docket LC 80: Comments on Portland General Electric's Clean Energy Plan and Integrated Resource Plan

The Green Energy Institute at Lewis & Clark Law School (GEI) appreciates the opportunity to provide the following comments on Portland General Electric's (PGE or the company) combined Clean Energy Plan (CEP) and Integrated Resource Plan filed in docket LC 80.

This comment expands upon concerns regarding the treatment of renewable energy certificates (RECs) under HB 2021 raised by the Joint Environmental Parties' Response to the Motion for Reconsideration in UM 2225.[1] In this comment, GEI shares a primary concern regarding PGE's approach to RECs in the context of HB 2021: how to reconcile the company's interpretation of HB 2021 with the Federal Trade Commission's (FTC) Green Guides, which establish regulations for environmental marketing claims for renewable energy.

GEI may raise this and other concerns in other forums and dockets, but we wish to share this issue now with the hope of initiating dialogue with the company.

I. Introduction

GEI seeks to ensure that the company's CEP complies with the FTC's Green Guides so that Oregon's retail electricity consumers are not misled about the electricity delivered to them under HB 2021. Hereafter, we will refer to RECs associated with the generation attributed to the company and delivered to retail electricity consumers in compliance with HB 2021 as "associated RECs."

To address whether associated RECs must be retired under HB 2021, the PUC must first decide whether the law requires greenhouse gas emissions (GHG) accounting through a "load-based" or a "generation-based" program. Because this decision dictates whether associated RECs must be retired,[2] the determination will help the company avoid environmental marketing representations that conflict with federal laws which prohibit misleading environmental

[1] *In the Matter of Staff HB 2021 Investigation Into Clean Energy Plans*, Joint Environmental Parties' Response to Application for Rehearing or Reconsideration, UM 2225 7-14 (Jan. 11, 2023), available at https://edocs.puc.state.or.us/efdocs/HAC/um2225hac152921.pdf.

[2] Utilities must retire RECs under a load-based program. *See infra* p. 5.

marketing claims. We briefly touch on why we think the law is load-based here, but we recognize the matter will likely be resolved in UM 2273 in the near future.

More important, for purposes of providing feedback to the company, determining whether RECs must be retired will: (1) establish the types of public statements the company, as a provider of electricity, can make in the CEP regarding the delivery and use of electricity generated or procured to meet the "clean energy targets" under HB 2021 and (2) avoid confusion by retail customers as to the environmental attributes or benefits they can claim, through their utility, under HB 2021.

This comment proceeds as follows. We outline federal laws and regulations on environmental marketing claims and enforcement of the Green Guides in the context of renewable energy delivered to retail customers. Next, we briefly describe load- and generation-based programs and the types of claims the company can make when it retires or does not retire associated RECs. Then we explain why the company's CEP is problematic under the Green Guides. Finally, we note that no other state policies allow the delivery of renewable energy to retail utility load without REC retirement to meet climate goals.

II. Federal Trade Commission Act and the Green Guides

A. The Federal Trade Commission's Green Guides

In 1992, the Federal Trade Commission (FTC) recognized the growth of American consumers' interest in "environmentally friendly" products.[3] To prevent greenwashing, the FTC used its authority under Section 5 of the Federal Trade Commission Act[4] to issue the *Guides for the Use of Environmental Marketing Claims*, also known as the "Green Guides."[5] The FTC codified the Green Guides in 16 CFR Part 260.[6]

Section 5 of the Federal Trade Commission Act prohibits all persons from making "unfair or deceptive acts or practices in or affecting commerce."[7] A "claim is deceptive if it likely misleads reasonable consumers."[8] As such, the FTC based the Green Guides on "how consumers reasonably interpret claims, not on technical or scientific definitions."[9] Under the Green Guides,

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[3] *See generally Green Guides*, Fed. Trade Comm'n., https://www.ftc.gov/news-events/topics/truth-advertising/green-guides (last visited May 3, 2023);
[4] 15 USC §§ 41-58.
[5] Bruce Ratain, et. al, *What Cos. Can Expect From FTC's Green Guides Updates*, Kirkland & Ellis (Jan. 12, 2023), https://www.kirkland.com/publications/article/2023/01/what-cos-can-expect-from-ftcs-green-guides-updates.
[6] 16 CFR § 260.
[7] 15 USC § 45.
[8] The Green Guides: Statement of Basis and Purpose, Fed. Trade Comm'n., 24 https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf (last visited May 3, 2023) [hereinafter The Green Guides: Statement of Basis and Purpose].
[9] *Id.* at 218.

> A representation, omission, or practice, is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions. To determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys.
>
> Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims.[10]

Although citizens cannot enforce the Green Guides, the Federal Trade Commission may choose to "take action under the Federal Trade Commission Act if a marketer makes an environmental claim inconsistent with the [Green Guides]."[11] The Green Guides have resulted in FTC enforcement letters,[12] enforcement actions,[13] and the adoption of similar state laws.[14]

B. Enforcement of the Green Guides concerning RECs

We are particularly uneasy about an enforcement action that took place fewer than ten years ago, involving a situation akin to PGE's potential predicament. In 2015, the FTC Division of Enforcement issued a staff letter that addressed renewable energy and associated RECs claims and double counting principles under the Green Guides. Following a petition,[15] staff at the FTC Division of Enforcement sent a letter to Green Mountain Power Corporation (GMP), a vertically integrated utility in Vermont, regarding its allegedly deceptive statements to its customers about the environmental attributes of its renewable energy generation facilities.[16] At that time, GMP developed wind and solar projects and sold most of the RECs generated from its renewable energy projects to entities outside the State of Vermont.[17]

The FTC Division of Enforcement's letter documented several examples of GMP's reportedly deceptive claims, such as: "Kingdom Community Wind means clean renewable energy built in

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[10] 16 CFR § 260.2.

[11] The Green Guides: Statement of Basis and Purpose, *supra* note 8, at 218. The Federal Trade Commission has declined to define renewable energy in the Green Guides because it "lack[ed] sufficient evidence demonstrating how consumers perceive the term … to provide further general guidance." *Id.* In lieu of a definition, "[m]arketers … must substantiate all reasonable interpretations of renewable energy claims in the context presented. *Id.*

[12] *See, e.g.,* FTC Division of Enforcement Staff Letter to Green Mountain Power Corporation (Feb. 2, 2015), https://www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf [hereinafter FTC Division of Enforcement, Staff Letter to GMP].

[13] *See FTC Uses Penalty Offense Authority to Seek Largest-Ever Civil Penalty for Bogus Bamboo Marketing from Kohl's and Walmart*, Fed. Trade Comm'n. (April 8, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-uses-penalty-offense-authority-seek-largest-ever-civil-penalty-bogus-bamboo-marketing-kohls.

[14] *See, e.g.,* California Business and Professions Code § 17580.5 (Jan. 1, 2022) ("It is unlawful for a person to make an untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. For the purposes of this section, 'environmental marketing claim' shall include any claim in the [Green Guides] published by the Federal Trade Commission.").

[15] Petition to Investigate Deceptive Trade Practices of Green Mountain Power Company In the Marketing of Renewable Energy to Vermont Customers 4 (Sept.15, 2014), http://assets.law360news.com/0577000/577562/FTC%20Petition%209%2015%20%281%29.pdf [hereinafter Petition to Investigate GMP].

[16] FTC Division of Enforcement, Staff Letter to GMP, *supra* note 12.

[17] Petition to Investigate GMP, *supra* note 14 at 4.

Vermont for Vermonters" and "We have always believed that this wind resource would provide a clean, cost-effective energy resource for Vermonters, and this upgrade is helping us achieve that goal."[18] The FTC enforcement letter explained that in the petitioner's view, GMP's statements about "clean renewable energy" could mislead consumers to believe they received the environmental attributes, e.g., "clean energy" derived from a REC, when in fact, GMP sold the RECs to out-of-state third parties.[19]

The FTC letter explained that RECs are an "important tool for the renewable electricity market," and there are "two components" under the REC system: "(1) the electricity itself (i.e., "null" electricity); and (2) certificates representing the renewable attributes of that electricity."[20] Therefore, entities that purchase RECs can "characterize all or a portion of their electricity usage as "renewable," and entities selling electricity without a REC cannot characterize their electricity as having any "renewable attributes."[21] The FTC also noted that it was insufficient to provide disclosures on the company's website because not all consumers who read the "problematic claims" will review the disclosures on the website.[22]

According to the FTC, if the associated RECs are sold, then "any statement by the company that might lead consumers of that electricity to infer that the energy was produced cleanly risks double counting."[23] Double counting "not only risks deceiving consumers but also threatens the integrity of the entire REC market."[24] As such, per the FTC, when a utility sells the RECs, it has "transferred its right to characterize its electricity as renewable."[25] Quoting the Green Guides, the enforcement letter explained that if "a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy."[26]

To prevent misleading inferences, the FTC requires proper disclosure or qualification. For example, "We generate renewable energy, but sell all of it to others."[27] Variations of this example are acceptable, but reasonable customers must be able to understand that the utility did not deliver "clean" or "renewable" electricity to them.[28] Disclosures must be conspicuous and carry equal weight to the environmental claim they qualify.

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[18] FTC Division of Enforcement, Staff Letter to GMP, *supra* note 12 at 2.
[19] *Id*.
[20] *Id.* at 2-3.
[21] *Id.* at 3.
[22] *Id.* at 5-6.
[23] *Id.* at 3 (emphasis added).
[24] *Id.*
[25] *Id.* (emphasis added).
[26] *Id.* (quoting 16 CFR § 260.15(d) (emphasis added).
[27] 16 CFR. § 260.15, Example 5.
[28] The Green Guides: Statement of Basis and Purpose, Fed. Trade Comm'n., *supra* note 8 at 224.

III. Load-based and Generation-based Programs: Why it Matters

To account for GHG emission reductions as required by HB 2021, the Commission will need to determine whether HB 2021 results in a load-based or generation-based accounting program. That determination will dictate whether REC retirement is necessary and the types of environmental marketing claims the company can make. Under either program, the company must abide by the Green Guides. As noted above, we recognize the PUC will likely determine this issue through UM 2273 but we use this opportunity to convey to the company that we believe it will be difficult for the company to operate under a generation-based program in the way it would like to while meeting the requirements of the Green Guides.

A. Distinctions between load- and generation-based GHG accounting programs

A load-based program measures the emissions associated with the electricity generation that is sold to or purchased by retail customers. Under a load-based program, the generation is allocated to the load, i.e., the customers, and the program accounts for contractual and market transactions of the generation and the attributes, including environmental attributes. Compliance can either be rate-based (i.e., an emissions factor) or mass-based (i.e., emissions). When using load-based accounting, regulators must use a tracking mechanism, most commonly a REC, to account for the environmental attributes of renewable energy.[29] Consumer claims can include using "clean energy," or "buying 100% zero-emissions energy." Supplier claims include statements such as, "the emissions associated with this electricity are carbon-free" or "we deliver clean energy" and other similar claims. [30]

In contrast, generation-based accounting measures the emissions associated with electricity generated in a place, such as a geographic area, or at certain sources, such as those owned or controlled by regulated entities, used for a certain purpose, and/or otherwise defined. This group of sources does not necessarily comprise the generation attributes that are contractually allocated to load or sold and purchased by customers. Under this accounting program, the focus is on the emissions at certain generation *sources*, rather than the retail delivery or use of generation and associated emissions. No tracking mechanism is needed to allocate generation attributes to load for a generation-based program.[31] As there is no REC involved, there can be no claims of or implying delivery or use of "clean energy" or the environmental attributes (e.g., emissions profile) of "renewable energy."

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[29] Center for Resource Solutions, Guide to Electricity Sector Greenhouse Gas Emissions Totals 3 (Nov. 2022), available at https://resource-solutions.org/document/110322/.

[30] *Id.* at 18.

[31] *Id.*at 2. Under both load- and generation-based programs, the program must account for either direct or avoided emissions. Direct (or attributional emissions) emission accounting "measures the direct emissions at the point of electricity generation). In contrast, avoided emissions measures "the emissions effect or the change in emissions … at other sources on the grid resulting from electricity production or consumption, relative to a … baseline scenario." *Id.* at 1. Under HB 2021, there is likely little debate that the law measures direct emissions. It should also be noted that a tracking or allocation method may be needed to allocate generation to the utility.

We recognize that HB 2021 walks a slightly fuzzy line between a load-based and a generation-based program but find that, more than not, its provisions support a load-based program.[32] In contrast, only the compliance requirement can be viewed to support a generation-based program. Indeed, given that the Green Guides dictate how utilities can discuss renewable energy when the associated RECs are sold, we suggest the intent of the bill would be lost under a generation-based program. Regardless, it will be difficult to square the "100% Clean Energy for All" law with the required disclosures that the electricity delivered to retail customers is, in fact, not "clean energy" but "null electricity." We save further discussion of this topic for the UM 2273 docket.

However, we appreciate the company's shift in accounting program terminology when describing its interpretation of HB 2021. In its recent filing in UM 2273, the company clarified its position, stating, "RECs are not needed for and do not affect renewable generation or production claims where generation attributes are directly measured and there is no double counting between production claims." [33] The company has thus described a generation-based program. Accordingly, for a full generation-based program to exist, all sources of emissions need to be defined, including contractual and owned/operated generation, to assure the REC markets there is no double counting.[34]

The distinction we wish to clarify is that RECs are not needed for *claims regarding only the reduction of MMT of CO2e at sources or from generation or production.* However, REC tracking and retirement *is needed for consumption and delivery claims regarding "clean" and "nonemitting electricity."* The Center for Resource Solutions' *Corporate and Voluntary Renewable Energy in State Greenhouse Gas Policy: An Air Regulators' Guide*,[35] albeit a little outdated in its lingo, conveys that RECs are needed for supplier and consumer claims for "clean energy" and "zero-emissions electricity."[36]

B. The Company's CEP Under the Green Guides is Problematic and Will Mislead the Public

As discussed above, the Federal Trade Commission Act establishes that a "claim is deceptive if it likely misleads reasonable consumers."[37] Under the Green Guides, utilities operating in a load-

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[32] *See* ORS §§ 469A.400(1)(a); 469A.405(1); 469A.415(6) 469A.420(4); 469A.435(3).

[33] *In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues*, UM 2273, Reply Comments of Portland General Electric Company Regarding Initial Scoping Questions 2 (April 21, 2023), available at https://edocs.puc.state.or.us/efdocs/HAC/um2273hac141652.pdf. This contrasts with Pacific Power's maintained assertion that HB 2021 is an "emissions standard." However, we cannot find an "emissions standard" within the realm of generally accepted GHG accounting methodologies. *See In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues*, UM 2273, Comments of Pacific Power 1-2 (April 21, 2023), available at https://edocs.puc.state.or.us/efdocs/HAC/um2273hac144138.pdf.

[34] Center for Resource Solutions, Guide to Electricity Sector Greenhouse Gas Emissions Totals 9 (Nov. 2022), available at https://resource-solutions.org/document/110322/

[35] Todd Jones & Noah Bucon, *Corporate and Voluntary Renewable Energy in State Greenhouse Gas Policy: An Air Regulators' Guide*, Ctr. for Res. Sols. 8 (2017), available at https://resource-solutions.org/wp-content/uploads/2017/10/Corporate-and-Voluntary-RE-in-State-GHG-Policy.pdf

[36] *Id.*

[37] The Green Guides: Statement of Basis and Purpose, *supra* note 8, at 218.

based program (which requires the retirement of RECs) can freely market and represent publicly that they are generating or procuring "clean electricity," "nonemitting electricity," and that electricity delivered to retail customers is derived from renewable energy that generated RECs.

In contrast, utilities operating under a generation-based program and that do not retain and retire RECs associated with generated and procured renewable energy must issue a conspicuous disclosure in public statements discussing renewable energy generation. The disclosure ensures that customers do not perceive that they benefit from the benefits of "clean electricity" as those *property rights* have been sold to other parties.[38] As described in the FTC enforcement letter to GMP, which we discussed at length above, when the associated RECs are sold, "a*ny statement by the company that might lead consumers of that electricity to infer that the energy was produced cleanly risks double counting*." Selling associated RECs also risks confusing consumers regarding the benefits, i.e., the "cleanness" consumers can claim through their utility.

Given that the HB 2021 requirement for a CEP created a new paradigm for the company's engagement with the public,[39] the CEP must abide by the Green Guides. Therefore, we are concerned that retail electricity consumers are and will continue to "infer" the electricity they receive under HB 2021 clean energy targets is "clean" when legally it is not. The history of the bill and the publicizing of its passage demonstrates that likelihood. Representative Pham's floor letter and stakeholder testimony in support of HB 2021 during the passage of the bill linked HB 2021 with renewable energy and its benefits.[40] Press and advocates repeat the truth that meeting HB 2021 targets hinges, in part, on generating more renewable energy.[41] This is supported by the company's CEP.[42]

First, the company's CEP does not explain that associated RECs will be sold to third parties. Rather, the CEP's HB 2021 chapter states: "This program is based on the actual emissions associated with the power served to retail customers and does not use renewable energy certificates (RECs) to track compliance."[43] This statement is confusing since RECs are used to verify emissions associated with renewable energy served to retail customers. This statement

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[38] FTC Division of Enforcement, Staff Letter to GMP, *supra* note 12, at 3.

[39] *See* ORS § 469A.425 (requiring the Oregon electric companies to "convene a Community Benefits and Impacts Advisory Group" which "[m]embers must include representatives of environmental justice communities and low-income ratepayers and may include representatives from other affected entities within the electric company's service territory.").

[40] Rep. Khanh Pham, Floor Letter: Please join us in supporting House Bill 2021C for 100% Clean Energy For All (June 24, 2021), available at https://olis.oregonlegislature.gov/liz/2021R1/Downloads/FloorLetter/3263.

[41] *See, e.g.*, Written testimony for H.B. 2021, 81st Leg., Reg. Session (Or. 2021) from Diane Ware, supporting the bill and solar energy; Robin Bloomgarden supporting the bill and "clean energy, like wind and solar;" James Freeman, supporting the bill and the wind industry; Diante Tegtmeier, supporting the bill and solar energy; Danell Norby, supporting the bill and renewable sources such as solar and wind; Bill Harris, supporting the bill and wind and solar generation; Ann Turner supporting the bill and energy sources such as wind and solar, available at https://olis.oregonlegislature.gov/liz/2021R1/Measures/Testimony/HB2021; *see, e.g.,* Gosia Wozniacka, *Oregon's Uncertain Electric Future*, OregonLive (March 15, 2023), https://www.oregonlive.com/environment/2023/03/oregons-uncertain-electric-future.html.

[42] Portland General Electric Company, Clean Energy Plan and Integrated Resource Plan 306-09 (2023), available at https://edocs.puc.state.or.us/efdocs/HAA/lc80haa8431.pdf.

[43] *Id.* at 53.

does not properly recognize that RECs convey the attributes of renewable energy generation and are not just a compliance tool. In sum, this statement is insufficient to address the disclosure requirement under the Green Guides. A reasonable consumer would very likely believe that they were still receiving "clean" electricity and will not understand that the associated RECs will be sold to third parties, resulting in the delivery of "null" electricity.

Second, the company states in CEP section 1.5.1, "To achieve our emissions target by 2030, all the resources acquired to meet these energy and capacity needs will have to be non-emitting. Integration of these resources onto our system will enable a systematic reduction in fossil fuels serving Oregon retail load and subsequent GHG reductions."[44] This statement is problematic because it refers to meeting the company's energy needs to "serve[] Oregon retail load." Customers are likely to interpret this statement as meaning they are receiving clean electricity from the company. As the company has indicated it plans to sell associated RECs, this statement would be considered misleading under the Green Guides.

Third, Chapter 8, Resource options, establishes that the company utilized proxy resources, including onshore wind, solar photovoltaic, hybrid solar + storage, offshore wind, geothermal, and pumped-storage hydro, all of which convey to the reader that Oregon retail electricity consumers will receive the environmental attributes of these renewable resources when in fact they will not.[45]

Finally, it is hard to square the concept of a "clean energy plan" with non-REC retirement. Although the company relies on HB 2021 terms, a state law is unlikely to protect the company from a federal enforcement action regarding its marketing language, especially since PGE can control its public statements regarding renewable energy, including in the CEP. And, given the publicly available legislative history of HB 2021, the text of the law is unlikely to change consumer perception as to what constitutes "clean energy."[46] While we applaud the company for planning a path to meet HB 2021 that generates additional renewable energy, the company must not mislead retail electricity consumers about the benefits they will and will not receive under HB 2021, including in the CEP.

C. No Other State Accepts Delivery of Renewable Energy to Retail Utility Load Without RECs to Meet Climate Goals

Reconciling how to achieve the company's "clean energy targets" but delivering "null electricity" will be difficult. This is likely why (as far as we can tell) there are no generation-based climate mandates that apply to vertically integrated utilities in the nation. Rather, states that likely influenced many aspects of HB 2021 are load-based programs.[47] The only other

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[44] *Id.* at 28.

[45] *Id.* at 171-84.

[46] *See* 16 CFR § 260.1(b) ("These guides do not preempt federal, state, or local laws. Compliance with those laws, however, will not necessarily preclude Commission law enforcement action under the FTC Act.").

[47] *See* Colo. Rev. Stat. § 40-2-125.5(3)(a)(III) ("The qualifying retail utility shall retire renewable energy credits established under section [Colo. Rev. Stat.] [§] 40-2-124(1)(d), in the year generated, by any eligible energy resources used to comply with the requirements of this section."); Cal. Code Regs. tit. 20 §§ 1393(b)(1), 1393(c)(1)(B) (California's Power Source disclosure program uses RECs to track renewable generation); Wash.

regional generation-based program is a cap and trade program that regulates generators and other emission sources and is, in many other ways, vastly different and should not be compared to HB 2021.[48]

Finally, although not directly related, we feel it is worth heading off a potential argument that the company has made before: that "actual emissions" are what counts and not who can "claim the reduction."[49] We find this assertion to be disingenuous. It ignores RECs long-standing role in the states' climate laws.[50] It also ignores the fact that the company will continue operating its thermal plants for export purposes, resulting in Oregonians experiencing the health and environmental impacts from power plant emissions when they will not benefit from the electricity generated there.

IV. Conclusion

HB 2021 was not created, nor does it exist, in a vacuum. It did not and cannot override or recreate the long-established role that RECs play in "substantiat[ing] claims stemming from renewable energy use,"[51] "represent[ing] the property rights to . . . non-power attributes of renewable electricity generation,[52] the value to renewable energy markets,[53] or binding and voluntary state policies.[54] The Green Guides are based on a reasonable consumer's perception of renewable energy, and HB 2021 did not change consumer perception of what constitutes "clean energy."

Given that the FTC is willing to enforce the Green Guides when a utility makes public statements about its delivery of electricity to retail customers from renewable resources, but sells the associated RECs to third parties and does not provide proper disclosure, we hope PGE will amend its course of action.

Admin. Code §§ 194-40-410, 194-40-415, 194-40-420 (describing the requirements and use of RECs for compliance reporting for Washington's 100% clean electricity standard).

[48] *See ARB Emissions Trading Program*, Cal. Env't Prot. Agency, Air Res. Bd. (2015), https://ww2.arb.ca.gov/sites/default/files/cap-and-trade/guidance/cap_trade_overview.pdf.

[49] *See* Portland General Electric Comments on HB 2816: High Energy Use Facilities, prepared for the House Committee on Climate, Energy, and Environment (Feb. 22, 2023) (available upon request, website link no longer active).

[50] Jeremy D. Weinstein, *What Are Renewable Energy Certificates?* 41 Futures & Derivatives Law Report 1, 6 (Jan. 2021).

[51] *Id.* at 4 (quoting EPA, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule*, 80 Fed. Reg. 64662 at 64806 (Oct. 23, 2015)) (cleaned up).

[52] *Id.* (quoting *Green Power Partnership, Renewable Energy Certificates (RECs): What is a REC?*, EPA (Feb. 5, 2023), https://www.epa.gov/green-power-markets/renewable-energy-certificates-recs).

[53] *See* Tony Lenoir, *US renewable energy credit market size to double to $26 billion by 2030*, S&P Global Market Intelligence (Dec. 16, 2022), https://www.spglobal.com/marketintelligence/en/news-insights/research/us-renewable-energy-credit-market-size-to-double-to-26-billion-by-2030 (estimating the 2021 REC market to be $11.45 billion, noting the compliance market makes up 95% of the estimated value, projecting the value to double by 2030, and explaining that the western interconnect is the largest market in terms of "quantity and total value of RECs.")

[54] Jeremy D. Weinstein, *supra* note 51, at 6.

Should HB 2021–a "clean energy" law–become the first generation-based program to apply to vertically integrated utilities, it will be the only climate law of its kind (as far as we can tell), and for a good reason. REC retirement makes the electricity delivered to retail consumers "clean," and it will be difficult to explain to retail customers that "PGE procures renewable energy, but sells it to others."[55] Such disclosures would run counter to the intent of HB 2021. We hope PGE will reconsider its current assessment of the law as a generation-based program.

Thank you for the opportunity to provide these comments.

Sincerely,

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[55] *See* 16 CFR § 260.15, Example 5.