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

Re: Docket LC 80: The Green Energy Institute at Lewis & Clark Law School's Comments on Staff Report and Final Recommendations

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 (IRP). GEI provided Round 0 comments¹ and Round 1 comments² in this docket. These Round 3 comments address the same issues in the context of Commission Order No. 24-002, which concluded Phase I in UM 2273.

I. Background

The Commission opened UM 2273 to address unresolved issues regarding the implementation of HB 2021, Oregon's decarbonization law. UM 2273 was a contested case whereby the parties and interested persons filed briefs and comments, respectively. In UM 2273, the Commission was tasked with conducting a statutory interpretation analysis of HB 2021, which requires an examination of the text and context of the law and consultation of pertinent legislative history, if needed.³

In UM 2273, GEI advocated that HB 2021 was a load-based program that required the retirement of RECs not needed for RPS compliance based on the text, context, and legislative history of the law. A load-based program would provide "100% clean electricity" for all, as promised by the

¹ LC 80, GEI Comments Re: Docket LC 80: Comments on Portland General Electric's Clean Energy Plan and Integrated Resource Plan (May 4, 2023), <https://edocs.puc.state.or.us/efddocs/HAC/lc80hac153741.pdf>.

² LC 80, GEI Comments Re: Docket LC 80: Comments on Portland General Electric's Clean Energy Plan and Integrated Resource Plan (July 27, 2023) <https://edocs.puc.state.or.us/efddocs/HAC/lc80hac165737.pdf>.

³ See UM 2273, GEI Reply Brief, In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues 5 (Aug. 21, 2023), <https://edocs.puc.state.or.us/efddocs/HBC/um2273hbc15343.pdf> [hereinafter UM 2273, GEI Reply Brief].

Oregon Legislature.⁴ As RECs would be retired, Oregon retail electricity customers would have renewable energy “use” claims, similar to other states that have enacted “clean energy targets.”

In the alternative, GEI advocated the Commission determine that HB 2021 is a generation-based program that does not track RECs. GEI stated that although a generation-based program is less desirable from a climate policy perspective, HB 2021 needs to be either a load-based program or a generation-based program in order to avoid double-counting.⁵ Double counting can occur when two entities claim rights to the environmental attributes of renewable energy.⁶

The Joint Utilities (PGE and PacifiCorp) argued that HB 2021 does not require the retirement of RECs. The Joint Utilities asserted that HB 2021 is an emission-based program and need not be described as a load-based or generation-based program. In general, the Joint Utilities dismissed GEI’s concerns relating to double counting.⁷

Commission Order No. 24-002 concluded Phase I in UM 2273.⁸ In Order No. 24-002, the Commission declined to identify HB 2021 as a load-based program, stating that “the text and context of the statute point unambiguously to the conclusion that compliance with HB 2021’s emissions reduction requirements need not be demonstrated through REC retirement.”⁹ The Commission also declined to identify HB 2021 as a generation-based program.¹⁰

The Commission did address renewable energy claims. Specifically, the Commission, relying on HB 2021 § 7, stated it did “not understand statements about the underlying generating resource to undermine the integrity of RECs associated with the reported electricity or to constitute a claim to have delivered renewable energy to an end user.”¹¹ As such, PGE lacks renewable energy delivery claims to its customers, and Oregon electricity customers lack renewable energy use claims under HB 2021.

Although we are grateful that the Commission stated that HB 2021 provides no renewable energy claims, the Commission declined to identify HB 2021 as a generation-based program,

⁴ See UM 2273, GEI Reply Brief at 14.

⁵ See e.g., UM 2273, GEI Reply Brief at 2.

⁶ See e.g., UM 2273, GEI Opening Brief, In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues 6 (July 24, 2023), <https://edocs.puc.state.or.us/efdocs/HBC/um2273hbc15223.pdf>.

⁷ See UM 2273, Joint Utilities Reply Brief, In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues 2 (July 24, 2023), <https://edocs.puc.state.or.us/efdocs/HBC/um2273hbc154536.pdf>

⁸ UM 2273, In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues, Order No. 24-002 13 (Jan. 5, 2024), <https://apps.puc.state.or.us/orders/2024ords/24-002.pdf> [hereinafter UM 2273, Order No. 24-002].

⁹ UM 2273, Order No. 24-002 at 13.

¹⁰ Id. at 14.

¹¹ Id. at 15.

opening up ambiguity around double-counting or disaggregation of RECs. Specifically, the Commission left ambiguity around GHG emission claims and whether Oregon retail electricity customers can claim GHG reductions under HB 2021.

These comments address the following issues. First, we describe the need for PGE to provide clarity around GHG emission claims. Second, we discuss voluntary REC programs in the context of the Order. Third, we support the Energy Advocates' recommendation that the Commission oversees PGE's public statements about HB 2021 to avoid misleading Oregon electricity customers and facilitating a violation of the Green Guides and that the company include disclosures in its CEP.

Finally, we provide an overview of the U.S. Treasury Department's proposed rules regarding the Clean Hydrogen Hub and how these rules likely illustrate the diminishing market for RECs from generation used by the company to comply with HB 2021. We highlight the proposed rules as evidence of a trend toward using RECs to track emissions.

We raise these questions here because PGE's inaugural CEP offers the rare opportunity to apply the Commission's order to PGE's decarbonization plans, and to understand how the order will or will not impact the trajectory of PGE's projected emissions reductions and any unintended consequences.

II. Discussion

A. Does HB 2021 Compliance Affect the GHG Emissions Attributes Contained in a REC?

The Commission determined that HB 2021 was neither a load-based nor generation-based program in Order No. 24-002.¹² We appreciate the Commission clarifying that HB 2021 provides no retail renewable energy claims associated with a generation used for HB 2021 compliance.¹³

However, GEI is analyzing whether the Commission's interpretation of HB 2021 constitutes double counting with regard to GHG emission claims. There is likely uncertainty as to whether HB 2021 creates greenhouse gas (GHG) emissions reduction claims associated with the electricity delivered to Oregon's retail electricity customers.

Specifically, the Commission did not address whether Oregon retail customers have a GHG emissions claim.¹⁴ A REC owner can make GHG emissions claims indicating that his or her

¹² Id. at 1, 14.

¹³ Id. at 15.

¹⁴ Under a generation-based program, there would be no GHG emission reduction claims as generation-based programs do not track RECs.

electricity has no GHG emissions.¹⁵ Here, making such a claim could constitute double counting or disaggregation as a REC represents the environmental attributes of one MW of renewable energy generation, including the GHG emissions attribute. Should Oregon retail customers receive a GHG emission claim under HB 2021, that would result in the double counting of the environmental attributes of RECs, allowing two entities—the third-party REC buyer and Oregon retail electricity customer—to claim the GHG emissions associated with the generation, or disaggregation of the GHG emissions attribute, which would go to Oregon customers while the remaining renewable energy attributes and claims remain with the REC.

The lack of clarity arises from statements in Order 24-002. For example, in providing the definition of a REC in Oregon, the Commission stated,

RECs in Oregon are defined as including the environmental attributes associated with electricity generation, although the definition does not directly address direct or avoided GHG emissions attributes and when they are considered to be claimed. Whether and when an entity producing electricity from a non-emitting renewable resource and not retaining the RECs can report zero GHG emissions, and what impact this reporting has on the entity holding the REC, has been a complex question in Oregon and across jurisdictions.¹⁶

While states may not explicitly include the GHG emissions in a REC definition, there is no evidence that points to GHG emissions attributes being excluded from Oregon RECs. As discussed in UM 2273, RECs constitute “a unique representation of the environmental, economic, and social benefits associated with the generation of electricity from renewable energy sources that produce Qualifying Electricity. One Certificate is created in association with the generation of one MegaWatt-hour (MWh) of Qualifying Electricity.”¹⁷

Oregon’s REC definition is consistent with the Western Renewable Energy Generation Information System’s “certificate” definition. WREGIS’s definition of a REC includes *all* emissions reductions, among many other environmental attributes.¹⁸ Likewise, PGE’s standard

¹⁵ See UM 2273, CRS Comments, In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues 3-7 (July 24, 2023), <https://edocs.puc.state.or.us/efdocs/HAC/um2273hac1343.pdf>.

¹⁶ Order No. 24-022 at 8 (citing Greenhouse Gas and Clean Energy Accounting Methodology Catalog, The Brattle Group (June 2023), https://www.brattle.com/wp-content/uploads/2023/07/2023-06-27-GHG-Accounting-Catalog_v2.pdf).

¹⁷ OAR 330-160-0015(17).

¹⁸ WREGIS issues RECs for the Western grid. “Certificate: A WREGIS Certificate (also called a Renewable Energy Credit (REC)) represents all Renewable and Environmental Attributes of MWh of electricity generation from a renewable energy Generating Unit registered with WREGIS or a Certificate imported from a Compatible Tracking System and converted to a WREGIS Certificate. The WREGIS system will create exactly one Certificate per MWh of generation that occurs from a registered Generating Unit or that is imported from a Compatible Tracking System. Disaggregation of Certificates is not currently allowed within WREGIS.” WREGIS, WREGIS Operating Rules 9

RFP contract also includes “any emissions reductions” in its definition of “Environmental Attributes,” which are included in the company’s definition of a REC.¹⁹ As such, no definitions relevant to RECs produced from generation used for HB 2021 compliance indicate GHG emission reductions are excluded from the RECs that PGE generates or procures²⁰

The Order’s statement could sow confusion as to whether HB 2021 compliance disaggregates RECs generated from resources reported for compliance purposes. GEI is still assessing this concern but raises it in this forum because PGE should be aware of double-counting concerns related to RECs that it acquires on behalf of Oregon retail electricity customers.

B. Unbundled REC Sales and REC Subscription Programs

We agree with the Commission that HB 2021 could complicate existing “voluntary” REC programs. Historically, such programs allowed participants to buy RECs that support adding renewable energy generation to the grid. This generation was in addition to state regulatory efforts, such as Oregon’s RPS. This is also known as additionality or regulatory surplus. In Order No. 24-002, the Commission stated:

If an entity subject to HB 2021 compliance sells RECs not needed to comply with Oregon’s RPS, we will hold that entity responsible for being clear that it will continue reporting the underlying renewable generation as emission-free to DEQ and that such reporting will now be the foundation for HB 2021 compliance. Sellers must avoid making delivery claims properly belonging to the REC holder.²¹

(May 1, 2018),

<https://www.wecc.org/Administrative/WREGIS%20Operating%20Rules%20October%202022%20Final.pdf>.

“Renewable and Environmental Attributes: Any and all credits, benefits, emissions reductions, offsets, and allowances-howsoever titled attributable to the generation from the Generating Unit, and its avoided emission of pollutants.³ Renewable and Environmental Attributes do not include (i) any energy, capacity, reliability, or other power attributes from the Generating Unit; (ii) production tax credits associated with the construction or operation of the Generating Unit and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Unit that are applicable to a state, provincial, or federal income taxation obligation; (iii) fuel-related subsidies or ‘tipping fees’ that may be paid to the seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the Generating Unit for compliance with local, state, provincial, or federal operating and/or air quality permits.” WREGIS, WREGIS Operating Rules, 12 (May 1, 2018), <https://www.wecc.org/Administrative/WREGIS%20Operating%20Rules%20October%202022%20Final.pdf>

¹⁹ <https://edocs.puc.state.or.us/efdocs/HAQ/um2274haq15385.pdf>

²⁰ UM 2274, In the Matter of Portland General Electric Company, 2023 All-Source Request for Proposals, Request for Partial Waiver of Competitive Bidding Rules PGE’s Draft Plan (May 19, 2023), <https://edocs.puc.state.or.us/efdocs/HAQ/um2274haq15385.pdf>.

²¹ UM 2273, Order No. 24-022 at 15.

Most third-party REC buyers purchase a REC because it offers regulatory surplus *and* a renewable energy claim. These are distinct characteristics attributable to a REC. Here, the Commission will require REC sellers to inform third-party buyers that these RECs lack additionality and provide only a renewable energy claim (and possibly no GHG emissions reduction). We are concerned with a potential loophole related to the term “sellers.” Does the term “sellers” include renewable energy facilities that contract with PGE for only the sale of generation and not RECs, i.e., the RECs are unbundled? Does Order No. 24-002 extend to these renewable energy facilities that seek to sell the unbundled RECs that the generation was attributed to HB 2021 compliance?²² These are questions that are relevant to this IRP/CEP and PGE’s all-source RFP.

We understand the Commission’s statements to extend PGE’s subscription REC programs for Oregon electricity customers. As PGE stated in the Joint Utilities Response Brief in UM 2273, it operates one of the “top two REC-based voluntary renewable energy programs, by sales and customer number, in the country. Both utility’s programs are Green-e Energy Certified.” The Joint Utilities stated that with regard to the “customer voluntary REC-based programs, as valuable as they were and are to help speed the transition to a low- and no-GHG future, [the REC-based programs] do not assist in HB 2021 compliance.”²³ GEI understands this to mean that PGE’s voluntary programs will continue to provide additionality and the generation *not attributed to HB 2021 compliance*. We recommend that PGE petition DEQ and request that the agency’s reporting process allow emissions reporting to *not* count toward HB 2021 but rather support regulatory surplus to maintain the integrity of its programs.

3. Disclosures Consistent with the Green Guides are Necessary to Protect Oregon Consumers

GEI supports the Energy Advocates’ Round 3 comments which demonstrate the importance of protecting Oregon consumers from misinformation regarding HB 2021. Specifically, we support the Energy Advocates’s recommendation that the Commission oversee the utilities’ public statements about HB 2021 to avoid misleading Oregon electricity customers and facilitating a violation of the Green Guides. We also support the disclosures in the Clean Energy Plan.

4. HB 2021 Unbundled REC Market Concerns

IRPs are intended to model risks associated with different pathways to meet load. In light of that, we offer one final thought about PGE’s approach to HB 2021 compliance. We think that if the company plans to sell RECs, it puts the company at risk of missing the trend toward more careful tracking of emissions reductions, and that the market for the kind of REC PGE intends to sell

²² Id.

²³ See UM 2273, Joint Utilities Reponse Brief, In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues 13 (August 21, 2022), <https://edocs.puc.state.or.us/efdocs/HBC/um2273hbc144240.pdf>.

will diminish. For example, after the record in UM 2273 closed, but before the UM 2273 Order, the U.S. Department of Treasury issued a notice of proposed rulemaking and proposed rules regarding the Clean Hydrogen Production Tax Credit. Also known as the 45V tax credit, this hydrogen production tax credit was established by the Inflation Reduction Act.²⁴ These proposed rules demonstrate the widespread understanding that *RECs* reflect emissions reductions, not some report to DEQ.

The U.S. Department of Energy awarded the PNWH2 Hub,²⁵ \$20 million dollars in phase one and may provide up to \$1 billion dollars over several additional phases. PGE is a Hub partner with proposed projects.²⁶ To qualify for the 45V tax credit, applicants must verify electricity usage with energy attribute certificates (EACs), which include RECs. The EACs must demonstrate:

- (1) the sources of clean energy used to create the hydrogen began operation within three years of the hydrogen facilities' start date,
- (2) the energy resources come from the same region as the hydrogen producer, and
- (3) annual matching of EACs until 2028, and thereafter hourly matching of generation to hydrogen production.

The 45V tax credit requires additionality. The U.S. Department of Treasury's proposed rules and related whitepapers illustrate that (1) RECs are integral to verifying the *use* of energy from renewable energy resources and (2) RECs are a stand-in for lifecycle emissions impacts from new sources of electricity load.²⁷

In Order No. 24-002, the Commission finds a "market can exist" for HB 2021's unbundled RECs.²⁸ However, that potential market will likely shrink over time and provide less value to Oregon ratepayers due to non-conformance with nationally recognized norms and practices for RECs, led by the federal government and backed by billions of dollars.²⁹ As the market

²⁴ Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property, 88 FR 89,220 (Dec. 26, 2024) (proposed rule) (to be codified 26 CFR pt. 1) <https://www.federalregister.gov/documents/2023/12/26/2023-28359/section-45v-credit-for-production-of-clean-hydrogen-section-48a15-election-to-treat-clean-hydrogen>.

²⁵ The Hub which consists of eight different sites across Oregon, Washington, and Montana. The PNWH2 Hub, <https://pnwh2.com/pnwh2-hub> (last visited Jan. 11, 2024).

²⁶ Id.

²⁷ Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit, U.S. Dept. of Energy, https://www.energy.gov/sites/default/files/2023-12/Assessing_Lifecycle_Greenhouse_Gas_Emissions_Associated_with_Electricity_Use_for_the_Section_45V_Clean_Hydrogen_Production_Tax_Credit.pdf (last visited Jan. 9, 2024).

²⁸ UM 2273, Order No. 24-002 at 15.

²⁹ UM 2273, Order No. 24-002 at 15; Biden-Harris Administration Announces \$7 Billion For America's First Clean Hydrogen Hubs, Driving Clean Manufacturing and Delivering New Economic Opportunities Nationwide (Oct. 13, 2023), <https://www.energy.gov/articles/biden-harris-administration-announces-7-billion-americas-first-clean-hydrogen-hubs-driving>.

dwindles, it may be necessary for the company to evaluate whether selling RECs in a market is in the best interest of Oregon ratepayers. We believe it will require the Commission to evaluate whether just because it is *possible* to sell unbundled RECs to a market that it is in the public interest to do so.

Respectfully submitted this 12th day of January 2024.

/s/ Caroline Cilek, Staff Attorney

/s/ Carra Sahler, Director and Staff Attorney

Green Energy Institute at Lewis & Clark Law School