

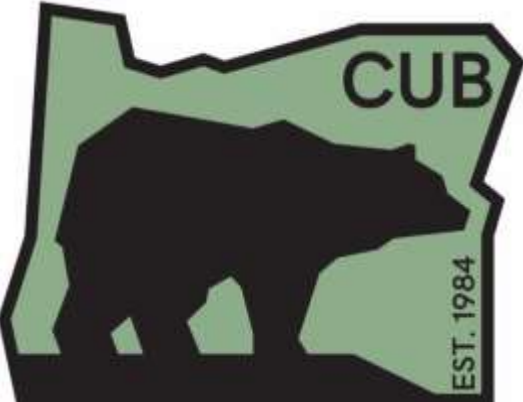
**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2273**

In the Matter of )  
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PUBLIC UTILITY COMMISSION OF )  
OREGON, )  
 )  
Investigation Into House Bill 2021 )  
Implementation Issues. )  
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**REPLY BRIEF  
OF THE  
OREGON CITIZENS' UTILITY BOARD**

August 21, 2023



**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

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| PUBLIC UTILITY COMMISSION OF       | ) |                           |
| OREGON,                            | ) | REPLY BRIEF OF THE OREGON |
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**I. INTRODUCTION**

Pursuant to the Oregon Public Utility Commission’s (PUC or Commission) Order No. 23-227, the Oregon Citizens' Utility Board (CUB) submits its Reply Brief in the above-captioned proceeding. Rather than reiterating arguments raised in our July 25, 2023 Opening Brief, CUB incorporates them here by reference.<sup>1</sup> In this Brief, CUB maintains that HB 2021 did not grant the Commission the explicit authority to require that Renewable Energy Certificates (RECs) be retired in order to demonstrate HB 2021 compliance.<sup>2</sup> However, issues raised in various parties’ Opening Briefs in Phase I of this investigation have illuminated important issues related to customer protections and optimal decarbonization policy that CUB believes warrant a closer look in a Phase II investigation in this docket, should the Commission wish to open a Phase II or otherwise address these issues in an alternate venue.<sup>3</sup>

**II. DISCUSSION**

CUB believes the Commission can and should consider what, if any, consumer protections are necessary related to electric investor-owned utilities (IOUs) representation of RECs to the public and for marketing purposes. The Commission can and should consider what,

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<sup>1</sup> CUB's Opening Brief (July 25, 2023).

<sup>2</sup> CUB's Opening Brief at 10. CUB notes that its Opening Brief included a header entitled “The Oregon Public Utility Commission does not have the authority to retire renewable energy credits [(RECs)].” CUB Opening Brief at 10. In order to clear the record, CUB provides here that this statement was meant to directly corroborate the Commission’s early finding that it does not “have discretion to interpret HB 2021 to allow [it] to insert a requirement that RECs be retired to demonstrate compliance.” OPUC Order No. 23-194 at 3. CUB agrees that HB 2021 contains no explicit language to provide the Commission authority to require REC *retirement* for its compliance purposes. However, CUB acknowledges that the Commission may have the authority to otherwise restrict regulated entities’ use of RECs generated from HB 2021 resources under its broad regulatory authority. The Commission should investigate this issue, including whether and how to address concerns about double counting of emissions claims.

<sup>3</sup> See OPUC Order No. 23-194 at 1 (“Scoping Order”) (“This proceeding sets the stage for future proceedings to be led by the Commission Staff in 2024, and complements our concurrent HB 2021 implementation activities, such as Clean Energy Plan (CEP) review in dockets LC 80 and LC 82, our proceedings addressing Electricity Service Supplier HB 2021 compliance (AR 651, UM 2024), and our related Request for Proposals dockets.”).

if any, consumer protections are necessary related to electric investor-owned utilities (IOUs) representation of RECs to the public when the utility generates RECs that are not needed for RPS compliance. Additionally, whether RECs connected resources that are non-emitting under DEQ's emissions reporting program. can or should be sold warrants further discussion, as demonstrated by the record in this proceeding related to double-counting and customer protection. Finally, this investigation has created the opportunity for a policy dialogue concerning Oregon's clean energy laws as a whole.

**A. Should the Commission find that it lacks authority to require REC retirement for resources that are reported to DEQ as non-emitting, it could examine whether it has the authority to restrict IOUs use of RECs that are not needed for RPS purposes.**

In the Scoping Order in this docket, the Commission stated “it is not clear to [the Commission] that the law gives [it] authority to restrict the use of RECs not retired for HB 2021 to avoid what such regulators and certifiers may conclude are double-counting impacts.”<sup>4</sup> Other parties have argued the Commission should and can look into whether it can and should place conditions on RECs used for HB 2021 compliance.<sup>5</sup> As noted by the Center for Resource solutions:

Where electric companies report that they are selling or supplying Oregon customers with zero-emissions electricity from renewable sources (to meet the emissions reduction requirements in HB 2021) without the REC, the REC may be sold and used to verify delivery of the same generation to different customers and potentially a different state, as zero-emissions generation, renewable generation, or both. This results in double counting of that generation.<sup>6</sup>

The Columbia River Inter-Tribal Fish Commission stated that “actual or even perceived double counting would jeopardize the efficacy of existing regulatory frameworks within the western interconnection that use RECs as measures of environmental compliance and the economic markets in which RECs are exchanged.”<sup>7</sup> And the Oregon Department of Energy commented, “ODOE's treatment of null power in the energy resource mix does not alleviate the potential for double-counting emissions attributes under the RPS and HB 2021, it does help to ensure that any double-counting that may occur will be tracked and reported through ODOE's electricity

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<sup>4</sup> Scoping Order at 4.

<sup>5</sup> See Environmental Protection Agency's Comments, 4 (July 25, 2023) (“The OPUC is determining whether the HB2021 is generation-based or load-based in focus. A load-based policy that seeks to deliver emissions free electricity to Oregon electricity consumers would best align with other states and load-based policies by requiring the retirement of EACs for generation used to meet HB2021.”); Opening Brief of Pine Gate Renewables at 2 (July 24, 2023) (“A utility that delivers clean power on behalf of ratepayers and represents that the power is emission-free for compliance purposes but does not retire a REC in relation to that MWh of production could cause problems if it offers that REC and the “cleanness” associated with it for sale after it has made such a claim in its compliance for HB2021. This may constitute a double counting situation and cause confusion in voluntary or other state REC markets.”); GEI's Opening Brief at 2 (July 24, 2023) (“Concluding that HB 2021 is a generation-based program does not clear up the double counting problem and, in fact, creates new problems to solve, including more heavily regulating utility marketing statements.”).

<sup>6</sup> Interested Person Comments of the Center for Resource Solutions, 3 (July 24, 2023).

<sup>7</sup> Opening Brief of the Columbia River Inter-Tribal Fish Commission, 5–6 (July 25, 2023).

resource mix.”<sup>8</sup> Whereas the Joint Utilities have argued that “reporting actual emissions from the MWhs of electricity generated or purchased to serve end users in Oregon (regardless what happens to RECs from the underlying generation), cannot constitute a double-claim” and that “DEQ’s methodology for emissions accounting does not result in any claim to the underlying renewable energy.”<sup>9</sup>

While CUB maintains that HB 2021 does not give the Commission explicit authority to retire RECs, it is true that no clear statutory guidance exists for how RECs that are not needed to comply with the RPS but are reported to DEQ as non-emitting should otherwise be treated. CUB argues that under the Commission’s broad and general authority to protect the public interest, to set just and reasonable rates, and to generally provide oversight of IOU prices and terms of service, as well as specific provisions within the existing Renewable Portfolio Standard (RPS), the Commission can place REC-related conditions on utilities for their compliance with Oregon-based voluntary customer programs and the RPS.<sup>10</sup> However, the authority to place conditions on RECs generated from resources that are not used for the RPS but will be used to comply with HB 2021’s future requirements is less clear since the statutory language provides no direct guidance.

RECs are an instrument that utilities accrue from utilization of customer funds. That is to say, they are a customer resource. The Commission can generally regulate how resources that are funded with customer dollars are used. However, RECs also represent the environmental attributes of the underlying generation, which link their regulation to both ODOE (for determining REC eligibility) and to DEQ (for emissions accounting).<sup>11</sup> Therefore, the Commission’s potential ability to place restrictions on RECs generated from HB 2021 resources may need to be viewed within the context of REC regulation from other Oregon agencies.

Per SB 1149, electric utilities are required to offer the option to enroll in a cost-of-service rate that is market-based, inclusive of “significant new renewable energy resources and reflects the actual costs and risks of the renewable supply resources.”<sup>12</sup> Customers also may enroll in a voluntary “green power rate” on top of the base rate to offset the emissions of the base rate. A “significant portion” of the electricity purchased or generated attributable to the funds from customers who elect the “green power rate” must come from renewable energy as defined by the RPS, including electricity provided by a third-party.<sup>13</sup>

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<sup>8</sup> Oregon Department of Energy, Interested Person Comments at 5 (July 24, 2023).

<sup>9</sup> Joint Utilities Phase I Opening Brief, 2–3 (July 24, 2023).

<sup>10</sup> See CUB’s Opening Brief at 19; ORS 469A.120 and -205(1); ORS 756.040(1–2); UM 989, *In the Matters of The Application of Portland General Electric Company for an Investigation into Least Cost Plan Plant Retirement*, Order No. 08-487 at 4 (Sept. 30, 2008) (citing *Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or App 200, 214, 534 P2d 984, rev den (1975)).

<sup>11</sup> CUB’s Opening Brief at 16–17.

<sup>12</sup> ORS 757.603; OAR 860-038-0220(6); see also UM 1020, *In the Matter of the PacificCorp, Pacific Power, Approval of Request for Proposals for Blue Sky Program Marketing and RECs, and Habitat Option Funds Administrator*, Order No. 23-252, 9 (Jul. 13, 2023).

<sup>13</sup> ORS 469A.205 (defining “qualifying electricity” in ORS 469A.010, -020).

Utilities may recover from customers, the costs of marketing the green power rate or its use of renewable energy overall.<sup>14</sup> The Commission generally prohibits recovery of institutional and promotional advertising unless the utility determines it is reasonable<sup>15</sup> and the Commission has the authority to investigate whether or not these expenses comply with the Commission’s rules on recovering promotional advertising costs.<sup>16</sup> Only prudently incurred costs associated with either rate are recoverable from customers.<sup>17</sup> Whether or not 1) customers understand what resources they are subsidizing, and 2) whether the utility’s promotion of clean energy purchases reflect actual clean energy load to customers in addition to existing programs, are at least two issues that could benefit from further investigation.

To CUB, whether the Commission can place conditions on RECs generated from resources that will be used to comply with HB 2021’s emission limits resources—which are customer resources—may be an open question that warrants further examination in this proceeding. Notably, in a 2021 Report to the Legislature on the impacts of increased RPS requirements, the PUC stated it will need to “consider the interactions and resolve potential conflicts” with RPS and HB 2021 processes and requirements.<sup>18</sup> The Commission may be able to consider placing restrictions on the electricity used for HB 2021 compliance when the REC is unbundled from the generating source, as well as place conditions around how utilities can market clean energy programs so customers can clearly understand what they are paying for.

**B. A Phase II investigation can facilitate a productive dialogue over Oregon’s clean energy laws and how to optimize existing law to achieve 100% clean energy production and consumption**

When Oregon passed its RPS laws, it did so in recognition that, to transition from fossil fuel electricity generation, we first need clean, renewable energy to provide that load. The RPS and REC system policy goal was to incentivize and support *new* renewable energy development, as evidenced by the exclusion of legacy hydro and resources built before 1995.<sup>19</sup> This was a critical step on the path to an emissions-free electricity system. In achieving this policy goal, Oregon has created the opportunity to take the next step, shifting away from using fossil fuel electricity to only using renewable energy.

Oregon’s RPS allows utilities to purchase RECs to comply with renewable energy goals of building clean energy generation sources to serve customer load. HB 2021 takes the next step

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<sup>14</sup> OAR 860-026-0010, -0015, -0020, -0022,

<sup>15</sup> OAR 860-026-0020.

<sup>16</sup> OAR 860-026-0010 (““Promotional activity” means action by an energy or large telecommunications utility or its affiliate with the objective of increasing or preventing a decrease in the quantity of the energy or large telecommunications utility’s service used by present and prospective customers...”).

<sup>17</sup> ORS 469A.120 and -205(1).

<sup>18</sup> Oregon Public Utility Commission, *SB 1547 (2016): Impact of Increased Renewable Portfolio Requirements, 2021 Report to the Oregon Legislature*, 7 (2021), (“The administration of two separate but reinforcing regulatory programs will be challenging. To implement HB 2021, the PUC will need to adapt guidelines and rules to incorporate CEPs into the existing integrated resource planning (IRP) processes, as well as consider interactions and resolve potential conflicts with the RPS processes and requirements.”), accessed on Aug. 16, 2023, at <<https://www.oregon.gov/puc/forms/Forms%20and%20Reports/2021-PUC-SB1547-Renewable-Portfolio-Standard-Report.pdf>>.

<sup>19</sup> ORS 469A.020.

and facilitates the transition to achieve a true 100% emissions-free portfolio that does not rely on offsets. Accordingly, RECs are not a tool that can be used as offsets to eliminate GHG emissions.<sup>20</sup> HB 2021 requires a showing of real emission reductions. As GEI stated in its Opening Brief “HB 2021 is a renewal of the state’s commitment to expanding renewable energy generation and providing retail customers with a 100% clean energy claim” and that those laws can and should coexist.<sup>21</sup> The question arises: *What is the best policy on emissions and RECs, and how do we get to 100% clean electricity in Oregon?*

There is a silver lining to the debate over how Oregon’s clean energy laws interact and accordingly, can create an opportunity for Oregon to sharpen its policy strategies to reach what seems to be Oregon’s ultimate policy goal of clean energy generation and consumption in Oregon. CUB sees the opportunity in Phase II of this docket to harness these implementation questions and concerns to illuminate what appears to be the core issue of all parties’ arguments.

### III. CONCLUSION

CUB maintains that HB 2021 does not grant the Commission the explicit authority to require that RECs be retired to demonstrate compliance with the law. However, policy issues related to the treatment of these RECs which are no longer needed for RPS compliance may warrant further examination in subsequent phases or proceedings. CUB encourages the Commission to examine these issues further in a Phase II proceeding, and ultimately in a rulemaking to clarify issues raised in this docket.

Dated this 21<sup>st</sup> day of August 2023.

Respectfully submitted,

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<sup>20</sup> CUB’s Opening Brief at 10–17.

<sup>21</sup> Opening Brief of the Clean Energy Institute at 15 (July 24, 2023).