



Oregon Public Utility Commission Declines to Interpret Oregon’s “100% Clean Energy for All” Law (HB 2021) as Requiring the Retirement of Renewable Energy Credits; Utilities Should Provide Disclosures

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The Oregon Public Utility Commission (“Commission”) determined that HB 2021, commonly referred to as “100% Clean Energy for All,” does not require the retirement of Renewable Energy Certificates (“RECs”) and therefore does not legally afford Oregon retail electricity customers with “clean” electricity.¹

In 2021, the Oregon Legislature passed HB 2021, which set “clean energy targets” requiring Portland General Electric (“PGE”) and Pacific Power (“utilities”) to reduce greenhouse gas emissions 80 percent below the baseline emissions level by 2030 from sources used to meet Oregon retail electricity customer needs. The utilities must then reduce greenhouse gas emissions by 90 percent below the baseline by 2035 and 100 percent below the baseline by 2040.² In addition to emissions reductions, the utilities must prepare a clean energy plan that sets a path to meet the clean energy targets.

The Oregon Department of Environmental Quality (“DEQ”) and the Commission play distinct roles in determining utility compliance with HB 2021 requirements. After establishing the baseline emission levels and setting the emission factors for sources of electricity (such as natural gas, renewable sources, coal, and nuclear energy), DEQ collects and reviews utility emission data and reports this data to the Commission.³ The Commission may “acknowledge” (utility speak for soft approval) a clean energy plan if it determines “the plan is in the public interest and consistent with the clean energy targets.”⁴

¹ UM 2273, In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues, Order No. 24-002 (Jan. 5, 2024), <https://apps.puc.state.or.us/orders/2024ords/24-002.pdf> [hereinafter UM 2273, Order No. 24-002]; see *Vote YES for 100% Clean Energy for All*, Oregon Environmental Council (March 1, 2021), <https://oeconline.org/wp-content/uploads/2021/03/OEC-100-Clean-Energy-Fact-Sheet-2021.pdf>.

² Under the law, the baseline emissions level is the average annual greenhouse gas emissions between 2010 and 2012 from electricity sold to Oregon retail electricity consumers, including new retail electricity load. ORS 469A.410(1).

³ ORS § 468A.280.

⁴ ORS § 469A.420(2).

Background and Relevant Laws and Regulations

Following a constructive year-long investigation into HB 2021 implementation,⁵ the Commission opened a subsequent investigation to examine several unresolved interpretation issues, including the treatment of RECs under HB 2021.⁶ Understanding that the Commission’s goal was to discern legislative intent, GEI asked the Commission to interpret the language of HB 2021 by examining the text and context of the law and by consulting pertinent legislative history, if needed.⁷ GEI asked the Commission to find that HB 2021 requires the retirement of RECs not needed for Oregon’s Renewable Portfolio Standard⁸ for two reasons: (1) to avoid double-counting renewable energy generation and its emissions and (2) to provide clean energy claims to Oregon retail electricity customers.

In Oregon, RECs are the “unique representation of the environmental, economic, and social benefits” associated with 1 MW of electricity from renewable energy sources, namely solar and wind energy.⁹ Double-counting RECs can occur when two entities claim rights to the same non-power attributes for regulatory compliance or voluntary purposes.¹⁰ One way double-counting can occur is when a state law requires a utility to report renewable energy generation and its associated emissions based on retail electricity sales while at the same time retiring the REC to meet an RPS obligation in a neighboring state. Such double counting results in an over-calculation of renewable energy and an under-calculation of emitting generation on the electricity grid, producing inaccurate greenhouse gas emission tracking and adverse climate policy outcomes.¹¹

⁵ HB 2021 Investigation into Clean Energy Plans Investigation Launch Announcement, Oregon Public Utility Commission (Jan. 11, 2022), <https://edocs.puc.state.or.us/efdocs/HAA/um2225haa142050.pdf>.

⁶ UM 2273, In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues, Order No. 23-059 (Feb. 23, 2023), <https://apps.puc.state.or.us/orders/2023ords/23-059.pdf>.

⁷ See UM 2273, Reply Brief of the Green Energy Institute at Lewis & Clark Law School, 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/efdocs/HBC/um2273hbc15343.pdf> [hereinafter UM 2273, GEI Reply Brief].

⁸ Oregon’s Renewable Portfolio Standard is a separate legal obligation mandating that the utilities provide electricity from renewable resources. Because HB 2021 requires the utilities to reduce greenhouse gas emissions below 100% by 2040, while Oregon’s Renewable Portfolio Standard requires the utilities to meet electricity demand from only 50% renewable energy generation by the same target year, there will be an abundance of RECs associated with non-emitting electricity that are not required to meet the Renewable Portfolio Standard.

⁹ OAR § 330-160-0015(17).

¹⁰ See generally *The Legal Basis for Renewable Energy Certificates*, Center for Resource Solutions (2023), <https://resource-solutions.org/wp-content/uploads/2015/07/The-Legal-Basis-for-RECs.pdf>; Jeremy D. Weinstein, *What Are Renewable Energy Certificates?* 41 *Futures & Derivatives Law Report* (Jan. 2021), [https://www.enviromarkets.org/resources/Documents/What%20Are%20Renewable%20Energy%20Certificates%20by%20J.%20Weinstein%20-%2041%20Fut.%20and%20Derivs.%20L.%20Rep.%20\(Jan.%202021\).pdf](https://www.enviromarkets.org/resources/Documents/What%20Are%20Renewable%20Energy%20Certificates%20by%20J.%20Weinstein%20-%2041%20Fut.%20and%20Derivs.%20L.%20Rep.%20(Jan.%202021).pdf).

¹¹ UM 2273, Opening Brief of the Green Energy Institute at Lewis & Clark Law School, In the Matter of Public Utility Commission of Oregon, Investigation Into House Bill 2021 Implementation Issues 6-8 (July 24, 2023), <https://edocs.puc.state.or.us/efdocs/HBC/um2273hbc15223.pdf> [hereinafter UM 2273, GEI Opening Brief]; see also *Double Counting*, EPA.gov (Feb. 5, 2023), <https://www.epa.gov/green-power-markets/double-counting>.

RECs are an important tracking and accounting tool to substantiate the delivery and use of renewable energy on the shared electric grid, which makes physically directing power from specified generation sources to specific customers impossible. In fact, federal guidance supports substantiation of “clean electricity” and “renewable energy” use with RECs.¹² The federal guidance derives from Section 5 of the U.S. Federal Trade Commission Act, which prohibits “unfair or deceptive acts or practices in or affecting commerce.”¹³ To apply this broad prohibition to environmental marketing claims, including renewable energy claims, the U.S. Federal Trade Commission established the Guides for the Use of Environmental Marketing Claims, also known as the Green Guides.¹⁴ Under the Green Guides, a renewable energy claim occurs when a utility states or implies that its electricity carries an environmental benefit.¹⁵ For example, if a utility advertises it delivers clean power from its Windy Range wind facility to its customers, it should retire RECs associated with that renewable energy claim on behalf of those customers.

The Commission’s Investigation into REC Retirement

To fulfill the intent of the Oregon Legislature and provide Oregon retail electricity customers with “100% Clean Energy for All,” GEI advocated in UM 2273 that HB 2021 was a “load-based program” that requires the retirement of RECs not needed for Oregon’s Renewable Portfolio Standard. GEI asserted that HB 2021 is a load-based program based on the text, context, and legislative history of the law.¹⁶ Decarbonization laws that set binding clean energy or emission reduction targets can be described as “load-based programs” when they regulate the electricity sold to retail customers, the “load.” Load-based programs require instruments, such as RECs, to track the delivery of renewable energy generation (and associated emissions) to the load.¹⁷ For example, Washington and Colorado enacted clean energy targets that require the utilities to retire RECs on behalf of their customers.¹⁸ Decarbonization programs that track renewable energy with RECs allow utilities to claim they “deliver” renewable energy and its associated emissions (deemed to be zero in Oregon)¹⁹ and retail electricity customers to claim they “use” renewable energy with its associated emissions.²⁰

¹² 16 CFR § 260.15.

¹³ 15 U.S.C. § 45.

¹⁴ 16 CFR § 260.

¹⁵ 16 CFR § 260.1(c); 16 CFR § 260.15.

¹⁶ UM 2273, GEI’s Opening Brief, *supra* note 11, at 4.

¹⁷ See *Guide to Electricity Sector Greenhouse Gas Emission Totals*, Center for Resource Solutions 2-4 (2022), <https://resource-solutions.org/document/110322/> [hereinafter *Guide to Electricity Sector Greenhouse Gas Emission Totals*].

¹⁸ Colo. Rev. Stat. § 40-2-125.5(3)(a)(III) (2019); Wash. Admin. Code § 194-40-410 (2022).

¹⁹ OAR § 340-215-0120(6)(a); see also *DEQ assigned emissions factors for use in 2023 CEP-Default Resource EFs*, DEQ, <https://www.oregon.gov/deq/ghgp/Documents/HB2021-EmissionFactors.xlsx> (last visited Feb. 1, 2024) (describing wind and solar with an emissions factor of 0).

²⁰ 16 CFR § 260.15.

In the alternative, GEI urged the Commission to determine that HB 2021 compliance does not regulate emissions associated with generation delivered to Oregon customers, but rather the emissions from defined sources the generation from which is not necessarily delivered to customers, also known as a “generation-based” program.²¹ Generation-based programs do not require RECs to track generation to load, nor do they confer clean energy or emissions reduction claims to customers.²² GEI stated that although a generation-based program is less desirable from a climate policy perspective, determining HB 2021 as either a load-based or generation-based program was necessary to avoid double-counting RECs.²³

PGE and Pacific Power (“Joint Utilities”) argued that HB 2021 does not require the retirement of RECs. The Joint Utilities asserted that HB 2021 is neither a load-based nor a generation-based program. In general, the Joint Utilities disagreed with GEI’s concerns relating to double counting under HB 2021.²⁴

The Commission Determines HB 2021 Compliance Does Not Require REC Retirement

The Commission’s Order No. 24-002 addressed the treatment of RECs under HB 2021.²⁵ In the Order, the Commission stated 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.”²⁶ The Commission relied on HB 2021 § 7 to determine compliance does not require REC retirement. HB 2021 § 7 states, “For the purposes of determining compliance with [the law], electricity shall have the emission attributes of the underlying generating resource.” Acknowledging that HB 2021 § 7 does not “address RECs directly,” the Commission stated, “it is difficult to identify a meaning or function of that sentence that is not related to RECs.”²⁷ Further, the Commission stated it “presume[d]” the Oregon Legislature was cognizant that RECs could “be unbundled from the underlying electricity” while drafting HB 2021.²⁸ Finally, the Commission declined to require REC retirement based on the broad public interest factors for clean energy plan acknowledgment because it would require the Commission to “skew [its] statutory analysis of HB 2021’s compliance requirements.”²⁹

²¹ UM 2273, GEI’s Opening Brief, *supra* note 11, at 16; *see also Guide to Electricity Sector Greenhouse Gas Emission Totals*, *supra* note 17, at 1-4, 8 (referring to generation-based programs as “source-based accounting.”).

²² UM 2273, GEI’s Opening Brief, *supra* note 11, at 5-6; *see also Guide to Electricity Sector Greenhouse Gas Emission Totals*, *supra* note 17, at 3.

²³ *See* UM 2273, GEI Reply Brief, *supra* note 7, at 2.

²⁴ *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>.

²⁵ UM 2273, Order No. 24-002, *supra* note 1, at 13.

²⁶ *Id.* at 13.

²⁷ *Id.* at 11.

²⁸ *Id.*

²⁹ *Id.* at 15-16.

The Commission declined to identify HB 2021 as either a load-based or a generation-based program, or otherwise clarify whether HB 2021 confers emissions attributes to the electricity used by customers in Oregon.³⁰ Although the Commission recognized that load-based and generation-based programs “have developed through the cooperative efforts of many entities nationally and internationally to clarify greenhouse gas emissions reporting and attribution across the public and private sectors” as well as “in the context of many differing electricity market models[,]” the Commission rejected the need to describe HB 2021 as a generation-based program.³¹ In explaining its rationale, the Commission stated it was “not confident that every emission regulatory system has clearly aligned with one or the other category,” and “state legislatures and agencies [can] adopt varied approaches to define the bounds of the regulations they are creating.”³²

HB 2021 likely represents a singular example of a decarbonization law compared to other state decarbonization policies. As far as we know, there are no other examples of power sector emission reduction programs that are neither load-based nor generation-based (nor is it clear what that would mean), or programs that are load-based and do not require RECs. As the U.S. Environmental Protection Agency explained in its comments in UM 2273, RECs have “widespread application and use to substantiate generated, delivered, and consumed power.”³³ Not using them to track renewable energy bucks industry “norms and practices.”³⁴

The Commission’s order means the utilities may sell RECs to third-party buyers. The Commission will require the utilities to inform unbundled REC buyers that they will report the underlying generation to DEQ for HB 2021 compliance.³⁵ However, as GEI explained in UM 2273, double-counting concerns remain because the Commission declined to identify HB 2021 as a generation-based program (or explicitly concluded that HB 2021 does not confer the greenhouse gas attribute of renewable energy used for compliance to Oregon customers).³⁶ To protect the integrity of REC markets and renewable energy investments, entities that certify RECs for voluntary programs and regulators in other states should forgo purchasing RECs from renewable energy sources used by PGE or Pacific Power to comply with HB 2021.³⁷ This would ensure that the REC market supports (1) regulatory surplus for voluntary purchasers of renewable energy, meaning renewable energy generation sold to voluntary purchasers is not used

³⁰ *Id.* at 14.

³¹ *Id.* at 14.

³² *Id.*

³³ UM 2273, Matt Clouse, EPA Green Power Partnership, Interested Party Comment 3 (July 24, 2023), <https://edocs.puc.state.or.us/efdocs/HAC/um2273hac9745.pdf>.

³⁴ *Id.*

³⁵ UM 2273, Order No. 24-002, *supra* note 1, at 15.

³⁶ *See e.g.*, UM 2273, GEI’s Opening Brief, *supra* note 11, at 4; UM 2273, GEI Reply Brief, *supra* note 7, at 3, 6, 10.

³⁷ The Commission could address the double-counting concerns by instituting the components of a generation-based program.

to comply with regulatory requirements, and (2) state programs that unambiguously prevent double-counting of generation and emissions. The Commission declined to address voluntary programs further, but it kept open the possibility of addressing REC-related issues as they arise.³⁸

Although the Commission's order sets the compliance requirements for HB 2021, the utilities can voluntarily address the concerns related to a lack of regulatory surplus and double-counting. Specifically, the utilities could request DEQ establish a reporting pathway that does not count retail load already being met with voluntary renewable and carbon-free energy sales as a part of HB 2021 compliance. This would provide regulatory surplus for those voluntary program participants. In addition, the utilities can voluntarily retire RECs from energy sources used to comply with HB 2021, beyond those needed for Oregon's Renewable Portfolio Standard. Retiring RECs would assuage double-counting concerns, prevent those RECs from being used by different or voluntary renewable energy customers, and provide Oregon retail electricity customers with renewable energy "use" claims.

Commission Establishes HB 2021 Does Not Provide "Clean Energy"

In its briefing, GEI asked the Commission, consistent with the Green Guides, to state that if HB 2021 is not a load-based program, then it does not provide Oregon retail electricity customers with renewable energy "use" claims.³⁹ The Commission obliged, stating that the law's text does not "constitute a claim to have delivered renewable energy to an end user."⁴⁰ However, it declined to make a determination on an end user's greenhouse gas emissions claims or the greenhouse gas attribute specifically.⁴¹ Therefore, if the RECs associated with generation used for HB 2021 compliance are sold, neither HB 2021 nor the REC would necessarily convey a clean energy claim. Accordingly, if a utility's marketing claims state or imply it delivers renewable energy or any individual attributes of renewable generation to customers to meet HB 2021's targets through words, images, or context, the company should disclose that RECs are not retired on behalf of Oregon retail electricity customers.⁴² Likewise, based on GEI's reading of Order No. 24-002, a utility should neither state nor imply that it uses renewable energy to reduce greenhouse gas emissions associated with electricity delivered to customers without proper disclosure.

The initial test of the utilities' ability to successfully thread the needle will come in PGE's updated clean energy plan. At GEI's request, along with other non-profit energy and environmental justice organizations, the Commission directed PGE to include a section in its

³⁸ UM 2273, Order No. 24-002, *supra* note 1, at 32.

³⁹ *Id.* at 15.

⁴⁰ *Id.*

⁴¹ *Id.* at 8.

⁴² 16 CFR § 260.1.

clean energy plan update informing readers about RECs and claims under HB 2021.⁴³ The Commission asked PGE to engage with stakeholders to develop a disclosure before the clean energy plan update. PGE showed a willingness to work with stakeholders.⁴⁴ Once PGE includes the disclosure in the CEP update, it will be subject to additional Commission and stakeholder review and comment.

How to Describe HB 2021

The Green Guides offer best practices for describing clean energy laws to avoid misleading electricity customers.⁴⁵ In the case of Oregon’s law, when describing HB 2021 as a “clean energy standard,” it is best practice to include a disclosure. The Green Guides provide the example, “We generate renewable energy, but sell all of it to others.”⁴⁶ Disclaimers could also explain the lack of claims under HB 2021. For example, Oregon retail electricity customers may not claim to “use” renewable energy based on HB 2021 compliance. The disclosure may lead to follow-up questions, but experts should work to ensure Oregon retail electricity customers and others understand the lack of renewable energy and greenhouse gas emission reduction claims under HB 2021.

To dive more deeply into these issues, read GEI’s [opening](#) and [reply](#) briefs.

⁴³ LC 80, PGE 2023 CEP and IRP Acknowledgment, Special Public Meeting, Video 1 at 2:16:25 (Jan. 25, 2025), https://oregonpuc.granicus.com/player/clip/1269?view_id=2&redirect=true&h=204c447788ce23d3ffef2fa8bff17368.

⁴⁴ LC 80, PGE 2023 CEP and IRP Stakeholder Feedback and Commissioner Discussion, Special Public Meeting, Video 2 at 05:00 (Jan. 18, 2024), https://oregonpuc.granicus.com/player/clip/1266?view_id=2&redirect=true&h=3a84ec02c7cd123e166170538de3c1cb.

⁴⁵ Although the Green Guides apply to marketers making environmental claims, the Green Guides can be used to avoid greenwashing state laws or regulations that require “clean energy” but do not require utilities to retire RECs on behalf of their retail customers. *See* 16 CFR § 260.1.

⁴⁶ 16 CFR § 260.15, Example 5.