



July 24, 2023

Oregon Public Utility Commission  
Nolan Moser, Chief Administrative Law Judge  
Via Electronic Filing  
[puc.filingcenter@puc.oregon.gov](mailto:puc.filingcenter@puc.oregon.gov)

RE: Interested Person Comment  
UM 2273: Investigation Into House Bill 2021 Implementation Issues  
Support for the Opening Brief by the Green Energy Institute

Dear Judge Moser and members of the Commission:

The Metro Climate Action Team is not an intervener in this docket, but was a strong supporter of HB2021, and an active participant in the Commission's proceeding leading up to this docket. We are writing in support of the Opening Brief by the Green Energy Institute at Lewis & Clark Law School.

In particular we support their conclusions that:

1. The Commission should use its authority to require the retirement of RECs because the text and context of HB 2021, in spite of some inconsistencies, demonstrate that it is a load-based program.
2. 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.
3. A load-based accounting method, which requires the retirement of RECs, is consistent with neighboring state climate laws, and is not inconsistent with wholesale electricity markets.

Section 7 of HB2021 states that "for the purposes of determining compliance with Sections 1-15, electricity shall have the emission attributes of the underlying generating resource." The Scoping Order claims that this language precludes any direct consideration of the REC that the underlying generating resource produced. However, a REC embodies the emission attributes of its generating source, and we strongly disagree with the scoping order in this regard. Because emission attributes of the electricity used to serve load under HB2021 will have been (in effect) used to meet its requirement, there is, in fact, no REC remaining to sell, except if the Commission allows it.

One of our members, Dr. Pat DeLaquil, was active in the solar energy industry in the 1980s and 90s as chair of the Thermal Power Division of the Solar Energy Industry Association. He was around when RECs were first implemented as a mechanism to grow capacity to build wind and solar plants at utility-scale and push down the learning curve, which has now been largely accomplished. So, the move by some states to an emission-based standard for electricity delivered to in-state customers – rather than the narrower REC requirement that facilitated RPS laws – provides a more comprehensive approach to decarbonization. However, this move does not change the fundamental basis of a REC as representing the environmental attributes of the electricity.



As the GEI brief explains, the Commission has the authority and obligation to require the retirement of RECs used for HB 2021 compliance. Irrespective of the accounting method used, the zero-emission attributes of the electricity used to serve load under HB2021 are exactly the same as those embodied in a REC, and therefore all RECs associated with electricity used to meet the requirements of HB 2021 have been used and should be retired.

The states of California and Washington have similar load-based programs and require the retirement of RECs associated with compliance. Indeed, the GEI Brief examines in detail **ten** separate statutory provisions, along with relevant context, which provides insight into the load-based framework the Oregon legislature created to achieve the clean energy targets.

MCAT's conclusion after reviewing the GEI Opening Brief is that, unless the Commission requires the retirement of RECs associated with HB 2021 compliance, double-counting will result – with all its associated ill effects – if utilities sell their associated RECs. In such an instance, the electricity used for HB 2021 compliance will no longer be emissions free, but will take on the emission value of null (or unspecified) electricity, which in Oregon is determined as 0.428 kg/kWh.

Furthermore, the GEI brief examines how a determination that HB 2021 is a generation-based program does not resolve the double counting concerns and poses significant risks to utilities and ratepayers from potential violations to federal and state laws intended to protect consumers, including the FTC's Green Guides and the Oregon's Unfair Trade Practices Act.

Finally, the brief examines why a load-based program does not inherently conflict with involvement in a day-ahead market and wholesale electricity markets.

Thank you for the opportunity to comment on this docket.

**Metro Climate Action Team Steering Committee:**

Brett Baylor, Rick Brown, Linda Craig, Pat DeLaquil, Dan Frye, Debby Garman, KB Mercer, Michael Mitton, Rich Peppers, Rand Schenck, Jane Stackhouse, Joe Stenger and Catherine Thomasson