



July 31, 2020

Lauren McCloy, Senior Policy Advisor, Office of Governor Jay Inslee
Chair Dave Danner, Utilities and Transportation Commission
Commissioner Ann Rendahl, Utilities and Transportation Commission
Commissioner Jay Balasbas, Utilities and Transportation Commission
Glenn Blackmon, Ph.D, Manager, Energy Policy Office, Department of Commerce

Re: Recommendations for the regulatory approach to interpreting “use” of renewable resources and nonemitting electric generation for Clean Energy Transformation Act compliance (UE-191023)

Dear Advisor McCloy, Commissioners, and Dr. Blackmon,

The joint signatories to this letter want to begin by thanking the Utilities and Transportation Commission (Commission) and Department of Commerce (Commerce) for holding a workshop on the proposed regulation addressing the “use” of renewable resources and nonemitting electric generation for Clean Energy Transformation Act (CETA) compliance. By affording stakeholders an opportunity to review and discuss the respective draft rules proposed by Commerce and the interpretation offered by Commission staff, the Commission and Commerce enabled participants in the discussion to gain a better understanding of the complexities and implications of designing an appropriate regulatory mechanism for electric utilities to demonstrate compliance with the greenhouse gas neutral standard under RCW 19.405.040. We are hopeful that the workshop discussion and a continuing dialogue will yield a uniform regulatory construct that comports with the requirements of the law, the efficient operation of markets, and the reliable, cost-effective delivery of retail electric service. With that objective in mind, we offer the supplemental information contained in this joint letter.

We collectively serve most Washington retail electric customers, and we are dedicated to establishing rule language to:

- facilitate utility compliance with CETA requirements and achievement of the state’s clean energy transformation goals;
- provide utilities with flexible tools to address renewable energy variability;
- align with current and future market systems and structures, and;
- maintain affordability for our customers.

We believe there is a way to implement the law under the statutory framework established by the Legislature that meets each of these goals.

Commerce's draft rules accurately reflect the intent and requirements of the statute by establishing a procurement-based compliance requirement that is measured over the multiyear compliance period. We believe, however, that those rules could be enhanced to more directly address concerns about doublecounting of nonpower attributes and utilities' use of resources that have been raised in the rulemaking process.

We jointly recommend rules that build upon the Commerce approach and address questions and concerns raised during the rulemaking process. We believe these recommended rules are fully within the authority and discretion of the implementing agencies to adopt and consistent with the law as adopted by the Legislature. In conjunction with our proposal, we provide a legal interpretation in support of our proposal in Appendix B. We hope that these recommendations will establish a rule that can be implemented by the end of 2020 and provide utilities with a firm foundation on which to build their planning processes for meeting the 2030 Greenhouse Gas Neutral Standard.

The Importance of Markets to Enable CETA Compliance

It is important that the eventual rule to direct how utilities "use" renewable resources and nonemitting electric generation is constructed in a manner to enable proper market function and to support utilities' access to markets for efficiency and reliability, as discussed during the July 27 workshop.

In essence, wholesale electric markets (bilateral and organized) exist to enable electric utilities to acquire the resources they need to meet customer load needs more efficiently than they could if they relied entirely on their own investments. The electricity markets across the Western Interconnection are characterized by a complex mix of bilateral contractual arrangements and organized markets. This structure continues to evolve, notably with the introduction of the Energy Imbalance Market, a multi-state organized market that currently covers real-time transactions and may expand to cover day-ahead transactions.

Electricity markets, including bilateral and organized markets, are critical for utilities to minimize resource acquisition costs and ensure least-cost operations day-to-day. Electricity markets allow utilities to:

- cost-effectively acquire sufficient supply from resources across a wide geographic footprint to meet forecasted demand;
- find purchasers for renewable energy that may otherwise be curtailed;
- manage or hedge the costs associated with known and uncertain risks; and
- achieve least-cost dispatch to meet variation in actual demand (from forecasted demand).

The importance of market structures to ensure the greater use of clean energy resources is highlighted by the Western Energy Imbalance Market's (EIM) recent announcement of more than 1.25 million MWh of reduced renewable curtailment and \$1 billion of savings to

participants.¹ The region is currently engaged in discussions to further expand those benefits by expanding the California ISO day-ahead market construct to EIM Entities. The benefits of greater market integration were highlighted in a recent Energy Strategies study for the Western Interstate Energy Board. The study found that CO₂ emissions in the Western Interconnection will increase by 43 million metric tons and that clean-energy resource penetration reaches only 49% by 2035 when the system relies solely on bilateral markets.² Thus, state compliance policies that avoid interfering with the operations of organized markets can improve environmental outcomes.

The same Energy Strategies study found that in the long-run, a lack of regional coordination significantly decreases system flexibility, increases operational costs, and increases greenhouse gas emissions and carbon risk for the state. These impacts add up to real costs for customers, and could potentially contribute to utilities unnecessarily reaching the 2% cost cap.

The recommended rules provided in Appendix A and discussed in this letter would offer a construct that aligns with market operations. This would not only have the effect of preserving ratepayer benefits associated with existing investments and participation in organized markets, but would also enable utilities to utilize the market as a tool for achieving compliance. The recommended rules would recognize the procurement of electricity and associated nonpower attributes associated with market purchases for CETA compliance, so long as certain requirements are met as discussed in the following section.

Recommendations for a Modified Regulatory Approach

The recommended rules provided in Appendix A and discussed below address stakeholder questions and concerns, such as preserving the multiyear, REC-based compliance framework based on procurement, preventing double counting, and ensuring a nexus between resources and utility use of those resources for compliance. The recommended rules also comply with and achieve the state's clean energy transformation goals, align with market systems and structures to ensure participation in current and potential future energy regional markets, provide flexibility to address renewable energy variability, and help maintain affordability for customers. We outline the five elements of our recommended rules below for your consideration.

i. Establishing a Rule by the end of 2020

We understand there is a perception that the rules should provide direction on this issue for utilities who will be developing their first clean energy implementation plans in the next year and a half. We recommend that the Commission and Commerce establish coordinated rules by the end of 2020 that provide a foundation upon which utilities can plan for compliance.

¹ Western Energy Imbalance Market Benefits Report, Second Quarter 2020: <https://www.westerneim.com/Documents/ISO-EIMBenefitsReportQ2-2020.pdf>

² Energy Strategies, Western Flexibility Assessment, Investigating the West's Changing Resource Mix and Implications for System Flexibility, Webinar Summary of Final Report, December 11, 2019 at 43-49.

CETA is a transformational policy enacted during a time of accelerated change for electricity supply in the Western Interconnect. The Legislature recognized the potential impacts of this large change by establishing the Carbon and Electricity Markets Stakeholder Workgroup and a rulemaking deadline for issues related to that workgroup in 2022. If needed, we believe stakeholders could continue the discussion and review the issue through additional joint workshops in 2020 or through the Carbon and Electricity Markets Stakeholder Workgroup. These discussions would provide valuable opportunities to allow for further discovery on the complexity of interactions between CETA compliance and carbon and electricity markets. The additional time provided by statute for this group to conduct its work could be used as an important checkpoint to update or add rules as necessary, building upon the initial rules enacted this year.

ii. Preserving the Multiyear and REC-Based Compliance Framework

The rules must clearly establish a compliance framework based on (i) the sum of a utility's renewable resources and nonemitting electric generation acquisitions over the multiyear compliance period and (ii) the sum of the utility's retail electric customer loads over the same compliance period. While other sections of the draft rules currently support this framework, we recommend the following language in this section of draft rules:

"When demonstrating compliance with RCW 19.405.040(1)(a)(ii), the utility must:

- (1) identify the renewable resources and nonemitting electric generation being used for compliance, and;*
- (2) report the associated amounts of electricity acquired by the electric utility over the multiyear compliance period."*

Additionally, the rules should clearly indicate that the verification of "use" of renewable resources and nonemitting electric generation is based on the retirement of renewable energy credits (RECs) and ownership or acquisition of the nonemitting electric generation, as directed in RCW 19.405.040. We recommend the following language to address this issue:

"The electric utility's compliance report must be supported by one or more of:

- (a) a WREGIS retirement report of renewable energy credits generated by resources for which the utility is able to show acquisition of the renewable resource electricity through ownership, control, or contract;*
- (b) for nonemitting electric generation, FERC Form 1 annual generation data for non-emitting generation or Bonneville Power Administration's fuel mix report for the appropriate compliance period; or*
- (c) Documentation as specified by the Commission or Auditor."*

iii. Requiring Procurement to comply with RCW 19.405.040(1)(a)(ii)

An approach in rules that requires utilities to procure both the electricity and its associated nonpower attributes recognizes the direction for utilities to “use electricity from renewable resources and nonemitting electric generation” and meets stakeholders’ goals of establishing a nexus between procurement of the electricity and its nonpower attributes. This approach ensures that utilities are investing in renewable resources and nonemitting electric generation, not solely the renewable attributes associated with these types of generation, and the associated generation is available for Washington load. We recommend the following language to address this issue:

“The electric utility acquired both the renewable resource and the renewable energy credit issued for such electricity through (i) ownership or control of the generating resource that generated such electricity and renewable energy credit, or (ii) acquisition of such electricity and renewable energy credit pursuant to a contract.”

iv. Ensuring Nonpower Attributes are Not Double Counted

We support the goal of establishing a transparent system that prevents the double counting of nonpower attributes. We believe the recommended rules would prohibit double counting while reducing the possibility of unintended consequences of limiting access and participation in wholesale markets that are associated with other approaches.

We understand the potential for double counting is primarily an issue associated with electricity generated by nonemitting or renewable resources and imported into another jurisdiction that counts that electricity import as containing no emissions. For example, under California’s source-based accounting framework, electricity generated by a renewable resource is considered to be non-emitting regardless of the disposition of the renewable energy credit. Our proposal would eliminate the potential for double counting and also avoid the need for a costly and technically infeasible compliance methodology.

The two situations and our proposal to eliminate the potential for double counting and avoid potential negative consequences, as follows:

- *A bilateral contract resource sold as a specified source, but the seller retains its nonpower attributes* -- Our recommended rules would consider any specified-source energy sold as ineligible for compliance with CETA by the selling utility. This restriction would prevent two jurisdictions from claiming the same clean energy for compliance purposes. If sold as specified, the California entity may consider the resource clean and emissions-free under its cap-and-trade program, but the Washington utility may not claim the associated REC for CETA compliance. If the Washington utility sells unspecified power, it has not sold any part of the nonpower attribute associated with the generation and may claim it for CETA compliance.

- *A resource that is “deemed delivered” when dispatched through the Energy Imbalance Market* – It is our understanding that the resource can choose to not be flagged as “deemed delivered to California” and thereby avoid any potential double counting of its nonpower attributes. While we believe that our proposal addresses the potential for double counting under this situation, we suggest this issue should be examined further in workshops or Market Workgroup meetings to investigate whether the proposal could be improved upon.

Below are a set of suggested provisions that we believe would create a system to prevent double counting from occurring.

“No nonpower attributes used to satisfy compliance with RCW 19.405.040(1)(a)(ii) may be doublecounted.”

“If a utility claiming a renewable resource or nonemitting electric generation as provided in subsection (1) sells or transfers ownership of the electricity in a transaction that contractually specifies the generation source, it may not use the nonpower attributes associated with that specified-source sale for compliance with RCW 19.405.040(1)(a)(ii).”

“The Commission or Auditor may periodically conduct reviews of any documentation submitted under Subsections (2) or (3) of this rule for purpose of verifying compliance with RCW 19.405.040(1)(a)(ii).”

v. Establishing Delivery Capability

We have also heard from stakeholders an interest to establish a closer nexus between resources and their use by utilities for serving load. The recommended rules fully recognize the portfolio and system approaches that utilities actually “use” to ensure that retail load is served reliably and affordably. We recommend requiring identification of specific eligible points of delivery or “footprints” to demonstrate that a utility is able to “use” that energy to ensure reliable and affordable retail load service for Washington customers.

Defining points of delivery or footprints within the transmission system creates a nexus between resources and the utility’s use of those resources for managing load and reliability, and is an implementable, affordable approach that aligns with market systems, structures, and the statutory framework established by CETA. Utilities would demonstrate compliance with this requirement as part of their demonstration of resource eligibility.

This approach recognizes the physics of the system because electric utilities cannot direct the flow of electricity generated by a nonemitting or renewable resource to any particular load. Additionally, our recommended rules are similar to Oregon’s renewable

portfolio standard. In Oregon, utilities are required to demonstrate that the electricity for which they are claiming compliance is interconnected with an electric utility's transmission system or the transmission system of the Bonneville Power Administration. In order to recognize the current state of the wholesale electricity market and structure, we recommend adjusting Oregon's language to include the footprint of an organized market.

Suggested language would include:

“Demonstration of acquisition through ownership, control or contract that documents one of the following:

i. The resource is either located within the utility's service area or balancing authority area, or;

ii. The point of delivery for each megawatt-hour of electricity associated with the renewable energy certificate is:

(1) The transmission or distribution system of an electric utility; or

(2) The transmission system of the Bonneville Power Administration; or

(3) The transmission system of any entity that is a participant in an organized market located in the Western Interconnection; or

(4) Another point of delivery designated by an electric utility for the purpose of subsequent delivery to the electric utility.”

Concluding Thoughts

As indicated at the July 27 workshop, it is particularly important for our utilities to ensure CETA implementation aligns with organized markets, preserves ratepayer benefits associated with utility investments to participate in those markets, and avoids potential stranded assets associated with an approach that is misaligned with organized markets.

Because many market transactions cannot identify which load was served by a specific resource, our proposal retains the focus on acquisition and point of delivery and will preserve the ability for utilities to participate in bilateral and organized markets. We believe there is sufficient evidence to indicate that if Washington decides to approach implementation in a way that supports regional coordination and market operations, it will achieve its clean energy goals in a faster and less costly way. This has real impacts for its greenhouse gas emissions goals and transformation of its energy resources.

A rule that consists of the recommendations above would establish a foundation that aligns with statutory requirements, provide certainty and direction for utilities drafting their clean energy implementation plans, and seemingly address stakeholder concerns -- with lower costs for Washington customers and without impeding market transactions or the necessary flexible tools utilities needed to maintain reliable service.

In closing, we offer these recommendations as a sincere effort to align with the statutory framework established in CETA and also to address stakeholder concerns that have been highlighted in recent discussions. We also provide our recommended rules in complete form in Appendix A. And, in Appendix B, we outline our legal interpretation of the statute in support of our recommended rules.

We appreciate your consideration and look forward to continuing the conversation. Please feel free to contact us if you have any questions.

Sincerely,

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APPENDIX A: PROPOSED RULE LANGUAGE

WAC 480-100-XXX / WAC 194-40-320

Use of Renewable RESOURCES and Nonemitting Electric Generation

- (1) When demonstrating compliance with RCW 19.405.040(1)(a)(ii), the utility must:
 - a. identify the renewable resources and nonemitting electric generation being used for compliance, and;
 - b. report the associated amounts of electricity acquired by the electric utility over the multiyear compliance period.”

- (2) The electric utility’s compliance report must be supported by one or more of:
 - a. A WREGIS retirement report of renewable energy credits generated by resources for which the utility also is able to show acquisition of the renewable resource electricity through ownership, control, or contract.
 - b. Demonstration of acquisition through ownership, control, or contract that documents one of the following:
 - i. The resource is either located within the utility’s service area or balancing authority area; or
 - ii. The point of delivery for each megawatt-hour of electricity associated with the renewable energy certificate is:
 1. The transmission or distribution system of an electric utility; or
 2. The transmission system of the Bonneville Power Administration; or
 3. The transmission system of any entity that is a participant in an organized market located in the Western Interconnection; or
 4. Another point of delivery designated by an electric utility for the purpose of subsequent delivery to the electric utility.
 - c. For nonemitting electric generation, FERC Form 1 annual generation data for non-emitting electric generation or Bonneville Power Administration’s fuel mix from the appropriate compliance period;
 - d. Documentation as specified by the Commission or Auditor.

- (3) The electric utility acquired both the renewable resource and the renewable energy credit issued for such electricity through (i) ownership or control of the generating resource that generated such electricity and renewable energy credit, or (ii) by acquisition of such electricity and renewable energy credit pursuant to a contract.

- (4) No nonpower attributes used to satisfy compliance with RCW 19.405.040(1)(a)(ii) may be double counted. If a utility claiming a renewable resource or nonemitting generation as provided in subsection (1) sells or transfers ownership of the electricity in a transaction that contractually specifies the generation source, it may not use the nonpower attributes associated with that specified-source sale of electricity for compliance with RCW 19.405.040(1)(a)(ii).

- (5) The Commission or Auditor may periodically conduct reviews of any documentation submitted under Subsections (2) or (3) of this rule for purposes of verifying compliance with RCW 19.405.040(1)(a)(ii).

APPENDIX B: LEGAL INTERPRETATION TO SUPPORT OUR PROPOSED APPROACH