climate solutions
accelerating the transition to our clean energy future

November 12, 2020

Mr. Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop S.E., Lacey, WA 98503
P. O. Box 47250, Olympia, Washington 98504-7250

Re: Climate Solutions comments in response to CR-102 relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act, Docket UE-191023, and In the Matter of Amending, Adopting, and Repealing WAC 480-100-238, Relating to Integrated Resource Planning, Docket UE-190698

Dear Mr. Mark Johnson,

Climate Solutions thanks you for the opportunity to submit comments and recommendations on the CR-102 issued last month on dockets UE-191023 and UE-190698, implementing the requirements of the Clean Energy Transformation Act ("CETA"). Climate Solutions is a clean energy nonprofit organization working to accelerate clean energy solutions to the climate crisis. The Northwest has emerged as a hub of climate action, and Climate Solutions is at the center of the movement as a catalyst, advocate, and campaign hub.

A clean and efficient grid serves as the foundation to deeply decarbonizing Washington's economy and achieving science-based greenhouse gas limits. We appreciate the 18 months of work undertaken by Commissioners and Staff to arrive at the draft rules under discussion here. Strong, clear, and consistent regulatory guidance to utilities is important to maintain the functionality of the law, as well as allow all stakeholders to engage in its implementation without unnecessarily facing hurdles connected with differing interpretations and approaches to compliance.

Climate Solutions is supportive of the draft rules included in the CR-102, and looks forward to continued engagement. We note a number of places where in comment responses Staff indicated future work or context will be provided, including during the adoption order. We look forward to further dialogue on the definition of "use", documentation requirements for coal elimination, advisory groups and stakeholder participation, and other topics which remain important for the successful implementation of CETA. We provide additional comments below.

Definition of "Indicator": We continue to be unclear about the definition of indicator included in the Commission's draft rules. CETA requires that a utility's resource investments deliver benefits to all customers and do so in equitable fashion, including mitigating cumulative harms born disproportionately by certain communities. To do this, it is necessary to establish the status quo as it exists in geographies served by utilities. The utility should then demonstrate how its selected investment portfolio will improve or impact these circumstances. Indicators should describe burdens born by identified communities which sometimes are and sometimes are not a function of a resource selected by a utility, either currently or in the past. Indicators should be a measurement of these differential

burdens, not a characteristic of a resource. An indicator might be work loss days due to air pollution, for example.

The definition of indicator proposed by the Commission could be consistent with this interpretation if it measures how that resource choice avoids a given harm. In this case, the indicator for reach resource would change depending on its location, ownership, and other relevant criteria, and a portfolio designed in this way could sum the total benefits accrued across the portfolio. In this scenario, the analogous indicator would be air-pollution related work loss days avoided. Provided this is consistent with the Commission's intent, this is a workable interpretation, but we believe the definition would benefit from additional clarity to reflect the variation and criteria that should be reflected in identifying custom indicator values for a wide range of resources in differing locations and ownership structures a utility may consider.

Application of upstream emissions for application of social cost of greenhouse gases: Climate Solutions is disappointed that Commission staff continues to recommend rules that do not require consideration of the full range of emissions associated with electricity generation as required by CETA. Staff correctly states that some utilities currently consider upstream emissions in their integrated resource plans, which does not explain why the rule shouldn't require them to continue to do so. Since utilities are doing so already, presumably the addition of a rule that formalizes this requirement should not meet with significant controversy.

We are also puzzled at Staff's interpretation of *AWB v Department of Ecology*, a Washington Supreme Court ruling from earlier this year that invalidated the state's Clean Air Rule. That ruling is explicit as to its coverage: "this case asks whether the Washington Clean Air Act…grants Ecology the broad authority to establish and enforce greenhouse gas emission standards for businesses and utilities that do not directly emit greenhouse gases, but whose products ultimately do." The ruling interprets only Clean Air Act authority, which the Supreme Court found does not allow the state to set an emissions standard after production of a product.

None of this is at issue here. Climate Solutions requests that the Commission require consideration of upstream emissions to comply with the Clean Energy Transformation Act, which provides separate and distinct regulatory authority from the Clean Air Act. The Supreme Court did not state in its opinion that the state lacks the authority to regulate such emissions under *any* statute, merely this specific one. The Supreme Court also interpreted the state's ability to regulate greenhouse gases ultimately emitted from products sold by businesses, not emissions produced during the creation of those products. Finally, the Court ruled on the state's authority to "establish and enforce…standards", which the application of SCGHG does not do.

In fact, the Department of Ecology appears to agree with Climate Solutions' interpretation that the ruling does not prevent them from regulating upstream emissions under a different law—the department is currently in the process of promulgating a rule that does just that as part of Greenhouse Gas Assessment for Projects ("GAP"). Just as the Department of Ecology is regulating upstream emissions of greenhouse gases under their SEPA authority, we request that the Utilities and Transportation Commission regulate upstream emissions of greenhouse gases under its CETA authority.

The Commission should provide increased clarity not just on the need to apply the SCGHG to upstream emissions, but also the way to do so, including how to identify a methane leakage rate and other considerations. The Commission should consider adopting similar requirements to the Department of Ecology in their GAP proceeding for this purpose.

Alternative incremental cost methodology: Climate Solutions is supportive of the portfolio comparison approach included in draft rules and believes this is consistent with clear direction provided in RCW 19.405.060(5) to provide a "methodology for calculating incremental cost of compliance…as compared to the cost of an alternative lowest reasonable cost portfolio of investments that are reasonably available."

However, under WAC 480-100-660(1)(c) the Commission suggests that a utility may develop an alternative approach for calculating incremental cost. Climate Solutions strongly objects to providing this authority. This opening would allow utilities to select variable and inconsistent approaches for calculating incremental cost, including evaluating a variety of methodologies and selecting an approach that yields a desired result. It would have the authority to do so, apparently, with little outside input. At an absolute minimum, any alternative approach should be compared to the one established in rule under paragraphs (a) and (b), allowing the Commission and all stakeholders to properly evaluate how the new methodology alters compliance strategies, changes obligations and other potentially unforeseen impacts.

We note also that the methodology proposed in this rule has gone through exhaustive evaluation over at least the last year. This evaluation has included multiple opportunities for stakeholder feedback, workshops, meetings, several iterations of draft rules with opportunities to comment, and multiple proposals that have been publicly made available for review by all participants. If the Commission chooses to retain this provision, any proposal by utilities should be subject to a similar thorough review that would allow stakeholders to properly evaluate its implications compared to the established methodology, offer opportunities for review and comparison between approaches, and be subject to Commission approval *before* it is applied in a CEIP context. Doing otherwise provides an opportunity for methodology shopping on the part of a utility, a setting in which a utility benefits from a clear information asymmetry that exists with the Commission and outside stakeholders.

Incremental Cost Calculation: Climate Solutions had previously proposed a different methodology for calculating the incremental cost limitation in our letter dated September 11 under this same docket. While we continue to believe that that approach closely reflects legislative direction, we do think the proposed methodology offered by the Commission and the Department is also consistent with statute. The two methodologies should be largely identical if utilities make steady investments throughout a compliance period, and will show variations in situations where a utility's investments are clustered during only a few years. In the event that a utility achieves the four-year average through a significant number of investments in the last year, for instance, it would be in keeping with the formula proposed, but would yield a much higher increase to the revenue requirement than had investments been spread out throughout the time period. For this reason, we note that the current proposed approach is more generous than our previous proposal. It is superior in that it allows less variation in terms of actual compliance spend than the previous proposal across each four-year window; our previous proposal,

however, provides more certainty around rate impacts to customers. Because either is consistent with CETA's language, we remain supportive of the approach proposed in this rule. We appreciate the Commission and Department's work on this methodology.

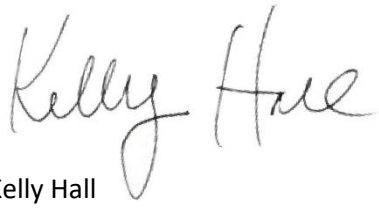
Resource Adequacy: We continue to be concerned with the lack of guidance concerning setting a resource adequacy standard, and disagree with staff's assessment that the proposed rules provide sufficient direction on this score. Resource adequacy is an off-ramp for CETA compliance, and we are concerned that the Commission's current draft provides little guidance to ensure consistency or oversight of this provision. Given that the law would require the Commission to grant an exemption to CETA's clean resource requirements for a standard set by the utility without guidance or significant oversight from the Commission or input from stakeholders, this provision as written provides a clear loophole that would allow utilities to opt out of clean energy deployment envisioned by the Legislature.

Conclusion

The proposed rules in the CR-102 offer a positive beginning for CETA implementation, though it is clear that significant areas of work remains to ensure proper and effective implementation of the law. We are grateful for the good work of the Commission, and look forward to continued engagement on the outstanding areas of discussion.

Sincerely,

Vlad Gutman-Britten
Washington Director, Climate Solutions



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