BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to consider adoption of rules to implement chapter 19.405 RCW and revisions to chapter 80.28 RCW	DOCKET UE-191023
In the Matter of Amending, Adopting, and Repealing WAC 480-100-238, Relating to Integrated Resource Planning	DOCKET UE-190698

PUBLIC COUNSEL RESPONSE TO NOVEMBER 5TH NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS

December 3, 2020

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Statutes

Federal Administrative Cases

State Regulations

I. INTRODUCTION

1. Pursuant to the Washington Utilities and Transportation Commission's ("Commission") Notice of Opportunity to File Written Comments ("Notice") of November 5, 2020, Public Counsel submits the following comments in response to the questions posed in the Commission's Notice.

II. PUBLIC COUNSEL RESPONSE

A. Notice Questions

1. Do the rules provided in Attachment A or B allow CETA to be enforced as an offset program?

a. If no, which portion of the rule language prevents CETA compliance from functioning as an offset program?

b. If yes, which portion of the rule language permits CETA compliance to function as an offset program?

2. Under RCW 19.405.040(1)(a), a utility must demonstrate its compliance with the Clean Energy Transformation Act (CETA) standard using a combination of nonemitting electric generation and electricity from renewable resources or alternative compliance options. Under RCW 19.405.040(1)(b), a utility may satisfy up to 20 percent of its compliance obligation using alternative compliance options and may invest in energy transformation projects as such an alternative until December 31, 2044. Energy transformation projects encompass a wide variety of measures and investments and can include offset programs. It is unclear from Attachment A[1] and B[2] whether the proposed rules are intended to encompass all potential means of complying with

[1] Notice of Opportunity to File Written Comments, Attachment A (henceforth "Attachment A") (Nov. 5, 2020).

[2] Notice of Opportunity to File Written Comments, Attachment B (henceforth "Attachment B") (Nov. 5, 2020).

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
(206) 389-3040

RCW 19.405.040(1), including alternative compliance options, or if the rules are not intended to govern the use of alternative compliance options and energy transformation projects.

3. Attachment A only discusses obligations under RCW 19.405.040(1)(a)(ii), but the wording of RCW 19.405.040(1)(b) refers back to subsection (1)(a), which can cause confusion unless the rules explicitly state that they do not apply to the use of alternative compliance options under subsection (1)(b). If Attachment A is construed to apply to alternative compliance options, then language in the proposed rule could prevent the use of energy transformation projects and offset programs by requiring a demonstration of the acquisition of electricity and the ownership and control of generating resources. Since energy transformation projects do not necessarily generate electricity, the proposed requirements would prevent the use of such projects to satisfy compliance obligations.

4. Attachment B appears to prevent the use of offsets and energy transformation projects that do not generate electricity on its face. Attachment B more broadly applies requirements on *all resources* used for compliance with subsection (1), which would encompass alternative compliance options. As written, the proposed rules in Attachment B would prevent the use of energy transformation projects and offset programs. Specifically, section 2 of Attachment B states the electric utility's compliance with RCW 19.405.040(1)(a) must be supported by:

> b. *For all resources used for compliance with subsection (1),* a demonstration of ownership of the electricity used for compliance. Electricity is considered owned by a utility if:
>
> > i. It was generated by a generating facility owned by the utility and not transferred, either via sale or other transaction, to another entity; or
> >
> > ii.It was acquired, in a single transaction, with the nonpower attributes of that electricity, and that electricity was not transferred to another entity, either via sale or other transaction.

Energy transformation projects, particularly offset programs, do not necessarily generate electricity. Therefore, compliance with proposed section 2 in Attachment B would not be possible for alternative compliance options that do not produce electricity.

5. If neither Attachment A or B were intended to apply to alternative compliance options, the simplest approach to addressing this issue would be to state,

> The proposed rules in WAC 480-100-XXX do not apply to programs, investments, or resources intended to satisfy the alternative compliance option under RCW 19.405.040(1)(b).

2. Do the rules in Attachment A or B allow a utility to produce renewable electricity in excess of the amount required to serve its load and use the RECs from that excess renewable electricity, sold off system, to cover periods of load in which more than 20 percent of its load is served by GHG emitting resources as a means of complying with RCW 19.405.040(1)(b)(ii)?4 For example, can a utility comply with the 80 percent requirement through buying 1000 MWh of hydroelectricity in excess of its load service needs in every hour of the day during the spring runoff and resell that power while retaining the nonpower attributes for compliance?

6. In response to the Commission's June 12, 2020, call for comments, Public Counsel agreed with Staff's preliminary interpretation of the term "use."[3] Staff's preliminary Interpretation was that "'use' means delivery to retail customers of 'bundled' renewable and nonemitting electricity."[4] Public Counsel still agrees with that interpretation. Further, Public Counsel agrees with Climate Solutions, NW Energy Coalition, and Renewable Northwest that a "rigorous definition of 'use' is important for Washington to achieve the clear aims of the Clean Energy Transformation Act (CETA), to ensure that utilities build and procure from the clean energy resources envisioned by the legislature, and to prevent double-counting that would compromise the integrity of the act."[5] The same considerations apply to the current discussion on

[3] Public Counsel Response to June 12th Notice of Opportunity to File Written Comments, at 1 (June 29, 2020) ("3rd Comments of Public Counsel").

[4] June 12, 2020 Notice of Opportunity to File Written Comments, Docket UE-191023.

[5] Comments of Climate Solutions, et al., at 1 (June 29, 2020).

"use" of electricity. The Commission should adopt this clear, rigorous definition of "use" as bundled nonemitting power to establish compliance with the 80 percent requirement during the 2030 to 2044 period.[6]

7. Attachment A and B both theoretically permit utilities to buy excess hydro power and bank unbundled RECs for the 20 percent compliance pathway,[7] as hypothesized in this question, if it is sold as unspecified power. Statute makes it clear that any unbundled RECs applied to this compliance pathway do not result in "double counting of any nonpower attributes associated with renewable energy credits within Washington or programs in other jurisdictions."[8] This explicitly requires utilities that acquire excess power for the purpose of stripping RECs to ensure that the nonpower attributes of those sales to be unspecified when they are sold to other entities on the market. Attachment B, as Climate Solutions and NW Energy Coalition jointly propose, would not allow for the nonpower attributes to be transferred through sales of excess hydro, as presented in this question. Specifically, the proposed rules indicate that electricity is "considered owned by a utility if . . . it was acquired in a single transaction, with the nonpower attributes of that electricity, and that electricity was not transferred to another entity, either via sale or other transaction."[9] Further, Attachment B would require utilities to account for "final ownership of renewable and non-emitting resources used to service retail customers," including accounting for "sales and transfers of specified emitting or *unspecified electricity*." As a result, it would be incumbent upon the utilities to document their sales of the unspecified electricity and, thus, ensure that purchasing parties do not claim the nonpower attributes along with the electricity. The clarity provided in Attachment B is necessary to be in compliance with RCW 19.405.040.

[6] RCW 19.405.040(1)(a).
[7] RCW 19.405.040(1)(b)(ii).
[8] *Ibid.*
[9] Attachment B.

8. Although the excess sales contemplated in this question are permitted under rules proposals in Attachment A and B, Public Counsel has reservations about potential outcomes for customers. After purchasing the excess hydro capacity, the utility is not guaranteed an equal price per MWh from buyers on the market. As a result, if utilities are able to sell the unspecified electricity at a loss or unable to sell it at all, ratepayers could be stuck paying for power that was not actually used by the utility to provide service. In other words, the utility would be holding ratepayers accountable for power purchases in excess of what is necessary to meet their load. On the other hand, utilities could stand to profit through arbitrage if the unspecified electricity is sold on the market for a higher price than what the utility paid for the acquisition. This is unfair profiteering off of purchases in excess of what is needed to meet retail load. If this is presented as a viable and legal option for compliance with RCW 19.405.040, ratepayers must be held harmless. This means that any losses from sales of unspecified electricity on the market are not to be borne by ratepayers and any gains should result in a credit to customers. If utilities are going to engage in these types of sales in order to gain regulatory compliance, then the risk of such transactions should be shifted from ratepayers and placed exclusively on the utility.

9. The hypothetical scenario presented in this question also points to the tension between the various regulatory and planning requirements for Washington electric utilities. The utilities are required to meet customer load through acquisitions at the lowest reasonable cost, which is presented in the Companies' Integrated Resource Plans.[10] Meanwhile, the utilities are required to have nonemitting loads under CETA and can use unbundled RECs, in part, to comply with 2030 mandates.[11] Although stripping RECs from excess hydro production and applying them to the 20 percent compliance pathway could be permissible, it is seemingly at odds with the principle of

[10] WAC 480-100-238(2)(a).
[11] RCW 19.405.040(1)(a).

utilities purchasing power sufficient to meet load requirements at the lowest reasonable cost. Additionally, even if such a scenario was the lowest cost option in the short term, relying heavily on RECs based on buying excess hydroelectricity seems distinctly at odds with reasonable, long-term planning. Specifically, if utilities rely too heavily on RECs for compliance in the short to medium terms, they may not have sufficient renewable or nonemitting generation to meet the 2045 mandate or intermediate CEIP targets.

10. Public Counsel recognizes that the scenario contemplated in this question would technically be permissible under the rules proposed in Attachments A and B, if double counting does not occur. However, given the risks outlined above, Public Counsel recommends that the Commission prohibit utilities from taking this approach or at least caution against it.

3. Attachment A states in (2)(C)(ii)(4) that the delivery of resources used for compliance may occur at "another point of delivery designated by an electric utility for the purpose of subsequent delivery to the utility [emphasis added]."

a. Does the term "purpose of subsequent delivery" mean that the electricity must be delivered to the utility, or only that it was intended to be delivered?

11. As Public Counsel did not draft Attachment A, we can only offer our interpretation of these provisions. Public Counsel believes that term "purpose of subsequent delivery" means that the electricity was intended to be delivered to the utility, but not that it was actually delivered to the utility. Use of the phrase "purpose of subsequent delivery" raises some concerns for Public Counsel. Is there a difference between a utility *intending* to supply carbon-free electricity and *actually* supplying carbon-free electricity? CETA requires the latter and we believe that utilities should fulfill the requirements of the law on the timeline proscribed in statute and rule.

b. What constitutes "delivery to the utility"?

12. In line with our supported definition of use, Public Counsel believes that delivery to the utility results when the electricity produced is received by the transmission or distribution system for a utility for use by that utility's Washington customers.

4. How will the suggested rules in Attachment A and B affect long-term portfolio planning and acquisition?

a. CETA requires that all of a utility's load be served by renewables or nonemitting resources by 2045. Do the rules in Attachment A or B support this objective? Do they allow compliance with the 2030 goal in a manner that diverges from the 2045 goal?

13. RCW 19.405.050(1) requires that by January 1, 2045, "nonemitting electric generation and electricity from renewable resources" must supply "all sales of electricity to Washington retail electric customers." RCW 19.405.040(1) requires greenhouse gas neutrality in retail sales to Washington retail electric customers by January 1, 2030. Attachment B appears to support this objective by requiring compliance with the statute as demonstrated by either a tracking mechanism or a demonstration of ownership of the electricity. However, Attachment A allows utilities to demonstrate compliance in a much wider variety of ways. Public Counsel is concerned with two of Attachment A's compliance demonstrations in particular. First, Attachment A allows utilities to demonstrate compliance with CETA by showing that a REC has a point of delivery in a "transmission system of any entity that is a participant in an organized market located in the Western Interconnection in which the electric utility is a participant."[12] Second, Attachment A allows compliance by showing that a REC has a point of delivery at "another point of delivery designated by an electric utility for the purpose of subsequent delivery

[12] *See* Attachment A, Proposed Rule Language WAC-480-100-XXX(2)(c)(ii)(3).

to the electric utility[.]"[13] It is not clear that the delivery of a REC to a market where the utility is a participant or where the REC is relayed from one utility to another means that a utility will be supplying nonemitting or renewable resources to its Washington retail load as required by CETA.

b. Do the suggested rules in Attachment A or B support a long-term resource portfolio plan that matches the production of renewable electricity with the utility's load and has sufficient transmission service between the point of injection of its planned source of renewable electricity and the utility's load to enable the renewable electricity to serve that load?

14. Attachment A's formulation of how utilities may demonstrate compliance appears to offer many ways for utilities to make market purchases of RECs. However, the purpose of CETA is to transition to a clean energy economy, including by developing renewable and nonemitting resources in Washington.[14] Public Counsel is concerned that the over-reliance on market purchases of RECs could affect the amount of renewable and nonemitting resources, as well as transmission capacity, built in the state. We have previously expressed concerns about reliance on market purchases and the impact of transmission constraints in Washington.[15] Understandably, utilities will continue to rely on market purchases in the near term, but given CETA's mandate and the purpose of the law, utilities should focus on what resources and transmission capacity might be built to achieve that mandate.

[13] *See* Attachment A, Proposed Rule Language WAC-480-100-XXX(2)(c)(ii)(4).
[14] RCW 19.405.010.
[15] *See* Initial Comments of Public Counsel, ¶¶ 11–12, *In the Matter of Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity* (Mar. 12, 2020) (Docket UE-190837).

5. Could the Energy Imbalance Market (EIM) provide a prorated share of the attributes of the resources that provided energy in a market interval to the loads that received energy in that market interval?

15. Presumably, if energy in the EIM is clearly tagged with its nonpower attributes, it could be technically possible to provide a prorated share of the attributes of the resources moving into and out of the market at a given time. Attachment A and B, however, would appear to prevent such energy from being used for CETA compliance since both proposed rules require either ownership or control of the generating resource or acquisition of the electricity and renewable energy credit from the generating resource. Additionally, Public Counsel is unsure whether the EIM could or would operate as a tracking mechanism for the underlying attributes of energy in the market absent an explicit price for those attributes.

a. If EIM loads were to receive the attributes of the generators providing energy in the market, should constraints in the dynamic transfer capacity be incorporated into the calculation of the distribution of those attributes to load? Is it possible to reflect those constraints in the distribution of attributes to locational loads?

16. Public Counsel does not have a comment in response to this question at this time.

b. If EIM loads could receive the attributes of the generators providing energy in the market, is there a means of allocating those attributes by a bid price mechanism?

17. The EIM incorporates the cost of California's greenhouse gas allowances into energy bids serving the state through a carbon adder,[16] so, presumably, the EIM could be structured to reflect a Washington-specific cost of carbon or other nonpower attributes. It is uncertain, however, how a Washington-specific carbon cost would be determined given the current status of the Clean Air Rule. Additionally, it is unclear if this question is intended to determine whether the EIM market can be used to track and account for nonemitting load given the discussion

around Attachments A and B, above, or if the question is trying to determine if the bid price can be modified to preferentially dispatch nonemitting load.

6. Energy serving load in a day-ahead market (DAM) is unspecified. If the DAM bid awards were mostly surplus hydro, would the loads receiving energy from the DAM only receive unspecified energy under the rules in Attachments A and B? Does this mean that a utility that was a net buyer from the DAM at a time of excess hydroelectric generation would only receive unspecified power?

18. Unspecified energy, by its very definition, is not traced to specific generation sources. Simply assuming that the bid awards were "mostly surplus hydro" would not appear to be specific enough under the rules in both Attachments A and B. Without resource-specific attribution in the DAM, along with documentation of the associated nonpower attributes, there is a significant risk of double counting. A utility buying from the DAM should only receive unspecified power, even if the purchase was made during a time of known excess hydroelectric generation.

7. Rules in Attachment B, part (2)(b), state that a utility must make a demonstration that the electricity used for compliance was generated by the utility or acquired by the utility with the nonpower attributes and not resold.

a. How would a utility make such a demonstration?

19. Utilities can account for all power acquisitions to meet customer load. Revenue received from sales on the market would be reflected in the Company's books. The Company would have to provide documentation of the source for all resources to meet load. For any non-utility owned generation, the nonpower attributes could be listed on the contract. Alternatively, the Company could include an attestation with the accounting for their load and sales, affirming the source of these purchases.

[16] *See Cal. Indep. System Operator Corp*., 165 FERC ¶ 61, 050 (2018) (Ord. Accepting Proposed Tariff Revisions issued Oct. 29, 2018 in Docket ER18-2341-000).

b. How would power generated and purchased by the utility be identified as sold, which documents would be used, and what process would be followed to reconcile purchases and sales?

20. Again, it would be possible to reconcile the purchases and sales engaged in by the Company, and how that compares with delivered retail load. Any contracts for sales of power would explicitly indicate whether the sales include or exclude the nonpower attributes related to generation sources.

c. How would Commission staff conduct audits under this proposal?

21. Commission Staff could review this documentation and ensure that all purchases and sales align with the actual delivered retail load. In order to meet with compliance, the Company would have to provide documentation for all of the power procured through acquisitions and sales.

8. Please explain how double counting is prevented under the suggested rules in Attachment A and B?

22. Detailed documentation or signed contracts with nonpower attributes listed would be essential to prevent double counting. Any sales of unspecified power, for example, would clearly indicate (in the sales contract) that there are no renewable or non-emitting attributes attached to the power.

III. CONCLUSION

23. Public Counsel appreciates the opportunity to provide comments on these Notice questions. We look forward to reviewing other parties' comments and participating in further discussions on these topics. If there are any questions regarding these comments, please contact Nina Suetake at nina.suetake@atg.wa.gov, Corey Dahl at corey.dahl@atg.wa.gov, or Stephanie Chase at stephanie.chase@atg.wa.gov.

Dated this 3rd day of December, 2020.

ROBERT W. FERGUSON
Attorney General

/s/
NINA SUETAKE, WSBA No. 53574
Assistant Attorney General
Public Counsel Unit
Email: Nina.Suetake@ATG.WA.GOV
Phone: (206) 389-2055