BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of	)	DOCKET UE-191023
	)	
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	COMMENTS OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS
	)	ON DRAFT CLEAN ENERGY
Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act.	)	IMPLEMENTATION PLAN RULES

I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission's ("Commission") Notice of Opportunity to File Written Comments in the above-referenced docket, the Alliance of Western Energy Consumers ("AWEC") submits these comments on the Commission's draft rules governing Clean Energy Implementation Plans ("CEIP"). AWEC appreciates the substantial effort Commission Staff has invested in this first draft of these important rules and agrees with many elements of the rules. As fully described below, however, AWEC also believes that certain of the draft rules require substantial revision to comply with the Clean Energy Transformation Act ("CETA") and the Administrative Procedure Act ("APA").

II. COMMENTS

A. Review and approval of the CEIP must be through an adjudicative proceeding

2 Proposed WAC 480-100-670 establishes an extensive public participation process in the CEIP development, which includes regular public input meetings, review of a draft CEIP

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by "all relevant advisory groups," provision of workpapers and other supporting documentation to stakeholders, and public comment. Proposed WAC 480-100-660 also establishes a process before the Commission in which "interested persons" are allowed to submit comments on the filed CEIP within 60 days and the Commission may enter an order without any requirement for a hearing or an evidentiary record.

3 If allowed to go into effect, these rules would violate CETA and the APA. As AWEC explained in its February 28, 2020 comments in response to the Commission's questions on CEIPs, "[c]onsideration of a CEIP must be performed as part of an adjudicative proceeding …."[1/] This is because RCW 19.405.060(1)(c) specifies that the Commission must approve, reject, or approve with conditions a CEIP only "after a hearing." RCW 34.05.010(1) of the APA defines an "adjudicative proceeding" as "a proceeding before an agency in which an opportunity for hearing before that agency is required by statute." Similarly, the Commission's WAC 480-07-300(1) defines an adjudicative proceeding as, among other things, "a proceeding in which an opportunity for hearing is required by statute."

4 Consequently, the Commission cannot simply receive comment from "stakeholders" and issue a written order on a CEIP. It must admit parties to the proceeding, develop an evidentiary record, and hold a hearing. For the same reasons, extensive public involvement in the CEIP before it is filed is inadvisable. The utility filing the CEIP will have the burden of proof and persuasion that its proposals are fair, just, and reasonable, and parties to the proceeding will have the opportunity to issue discovery and contest the utility's proposals, if

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[1/] AWEC Comments ¶ 8 (Feb. 28, 2020).

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necessary. It is not appropriate to allow these same parties to have extensive pre-filing input into the contents of the CEIP. The type of public involvement the draft rules contemplate is more appropriate for the Integrated Resource Plan and Clean Energy *Action* Plan processes.

5 It is critical to rectify this deficiency in the rules now because other rules related to the CEIP are potentially impacted by an adjudicative process. The clean energy compliance reports created in the rules, or evaluation of the incremental cost of compliance, for instance, may be best incorporated into the CEIP adjudicative process. However, without draft rules governing such a process, it is difficult at this time to determine whether and how such processes could best be incorporated into a potentially comprehensive adjudicative proceeding.

6 For example, the draft rules also attempt to align the timing of CEIP filings with biennial conservation plan ("BCP") filings, which are not adjudicative processes. While AWEC understands and appreciates Commission Staff's attempt to align the CEIP and BCP processes in order to achieve administrative efficiencies, because these are different types of processes (adjudicative vs. non-adjudicative), AWEC believes that Staff is attempting to align the wrong processes.

7 Instead, the Commission should consider whether and how it might align the CEIP process with the general rate case process. Because the CEIP will be an adjudicative proceeding, and with changes to the used and useful statute contained in CETA that give the Commission greater flexibility in approving rates that include plant that will be placed into service during the rate-effective period, up to four years into the future, there appears to be an opportunity to treat the CEIP as a ratemaking proceeding and align it with, or incorporate it into, a general rate case. This would also have the advantage of allowing the Commission to review

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how CEIP investments will impact the just and reasonable nature of the utility's rates overall, which will help avoid the potential for CEIP investments to become single-issue ratemaking.

8 To be clear, it is not AWEC's intent with this proposal to institute a four-year general rate case cycle for each electric utility, timed with the filing of their CEIPs. Rather, AWEC recommends that the Commission and stakeholders to this rulemaking consider options for how to leverage both processes to maximize administrative efficiency and ensure overall fair and reasonable rates, while allowing utilities the flexibility and discretion to file a general rate case if necessary to maintain their financial health. That starts with rules that apply the adjudicative process to CEIPs.

B. Clean Energy Compliance Reports

9 Proposed WAC 480-100-665(1)-(2) establishes the requirement to file a "clean energy compliance report" and the associated review process. From a review of the rules, AWEC is unclear whether this report establishes the basis for imposition of a penalty for failing to achieve the clean energy requirements in CETA under RCW 19.405.090(1). If it does, then the proposed review process, which is also limited to written comments and potentially consideration at an open meeting, appears insufficiently robust. It may be more administratively efficient and consistent with the public interest to require the utilities to include a demonstration of compliance with the previous four-year target as a component of their subsequent CEIP. This will allow an evidentiary demonstration of compliance or noncompliance that will better support the avoidance or imposition of a penalty.

10 Furthermore, proposed WAC 480-100-675(4) uses clean energy compliance reports to document the utility's actual incremental cost of compliance and, therefore, justify

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whether it is eligible to avail itself of the alternative compliance pathway provided in RCW 19.405.060(3). Again, this demonstration and evaluation would seem to require more than just a report considered at an open meeting. Incorporation into a subsequently filed CEIP may be a more robust and efficient approach.

C. Incremental cost

1. The alternative lowest reasonable cost portfolio used in calculating the incremental cost should not include the social cost of greenhouse gas.

11 Proposed WAC 480-100-675(1)(a) requires the alternative lowest reasonable cost portfolio identified for calculating the incremental cost of compliance to include the SCGHG. Additionally, WAC 480-100-675(1)(c) specifies that the alternative reasonable cost portfolio must include all statutory requirements other than the carbon neutral and carbon free standards of RCW 19.405.040(1) and .050(1).

12 RCW 19.405.060(5) states that "the methodology for calculating the incremental cost of compliance under this section" is achieved by comparison "to the cost of an alternative lowest reasonable cost portfolio of investments that are reasonably available." Meanwhile, RCW 19.405.060(3)(a) specifies that "[a]ll costs included in the determination of cost impact must be directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050." It appears that the draft rules interpret this language to mean that any requirement in CETA not specifically related to achieving the 80% or 100% carbon free requirements in RCW 19.405.040(1) and .050(1) should be excluded from the incremental cost of compliance calculation.

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13 RCW 19.405.060(3)(a), however, does not limit the consideration of costs to those that are directly attributable to each subsection (1) of RCW 19.405.040 and .050; it applies to each of these statutes as a whole. The "requirements of RCW … 19.405.050" in particular are broader than achieving 100% carbon-free electricity. Therefore the "costs … directly attributable to actions necessary to comply with the[se] requirements" are also broader. RCW 19.405.050 is a planning standard that applies to resource acquisitions today. Subsection (2) of this statute specifies that "[e]ach electric utility must incorporate subsection (1) of this section into all relevant planning and resource acquisition practices including, but not limited to: Resource planning under Chapter 19.280 RCW; [and] the construction or acquisition of property …." Further, Subsection (3) specifies that "[i]n *planning* to meet projected demand consistent with the requirements of subsection (2) of this section and RCW 19.285.040, if applicable, an electric utility must pursue all cost-effective, reliable, and feasible conservation and efficiency resources, and demand response" (emphasis added). This subsection also provides that "[i]n making new investments, an electric utility must, to the maximum extent feasible: … (c) In the acquisition of new resources constructed after May 7, 2019, rely on renewable resources and energy storage …."

14 RCW 19.280.030(3)(a), into which the requirements of RCW 19.405.050 must be incorporated following CETA's passage, now specifies that an electric utility "must incorporate the social cost of greenhouse gas emissions as a cost adder when," among other things, "[e]valuating and selecting conservation policies, programs, and targets" and "[e]valuating and selecting intermediate term and long-term resource options." This section refers to RCW

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80.28.405, which identifies the SCGHG applicable to Commission-regulated utilities "*[f]or the purposes of Chapter 288, Laws of 2019* [i.e., CETA]" (emphasis added).

15 These provisions read together indicate that adherence to the SCGHG is a component of the resource planning requirements of RCW 19.405.050. That is, "actions necessary to comply with the requirements of" this section include evaluation of resource acquisitions through incorporation of the SCGHG. Because the SCGHG is a component of the planning requirements of RCW 19.405.050, the "alternative lowest reasonable cost portfolio of investments that are reasonably available" should not include the SCGHG – that cost is "directly attributable" to the requirements of RCW 19.405.050.

2. <u>The rules should include more specificity on how a utility demonstrates that it has met the 2% incremental cost of compliance.</u>

16 Proposed WAC 480-100-675(4)(d) requires a "demonstration that the four-year average annual incremental cost … equals a two percent increase of the investor-owned utility's weather-adjusted sales revenue to customers for electric operations above the previous year." While this language reflects the statutory requirements, it leaves much unanswered. For instance, what does the "previous year" mean in the context of a four-year average annual incremental cost calculation? That is, the "previous year" relative to what? What happens if the utility projects an incremental cost of 2% in its CEIP, but the actual incremental cost exceeds 2%? Who bears those additional costs, customers or shareholders? What happens if the utility projects an incremental cost of 2% in its CEIP but the actual incremental cost is less than 2%? Is the utility deemed to be out of compliance and subject to penalties? AWEC discussed these and other questions in its February 28, 2020 comments and believes they still require resolution in

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these rules to provide greater clarity over how utilities can use the incremental cost alternative compliance pathway and how it may protect customers from excessive rate increases.[2/]

D. Interim targets

17 AWEC agrees with the draft rules' proposal to establish interim targets for meeting the standard in RCW 19.405.050 between 2030 and 2045. While it is the case, as the Commission's notice states, that RCW 19.405.060(1)(a)(ii) only identifies the standard under RCW 19.405.040, it also requires utilities to develop interim targets between 2030 and 2045. Moreover, as noted above, RCW 19.405.050 is a planning standard that applies to utility resource acquisitions today. AWEC believes a reasonable interpretation of this language applicable to interim targets, therefore, is that the Legislature intended the interim targets between 2030 and 2045 to build toward the standard in RCW 19.405.050. Otherwise it is unclear what "targets" must be achieved in these years and why they would be "interim."

18 AWEC does not agree, however, that it would be appropriate for the Commission to enforce compliance with interim targets. CETA does not establish penalties for failing to meet interim targets, so enforcing compliance would impose requirements the Legislature did not itself impose. Moreover, beginning in 2030, enforcement of interim targets would likely conflict with CETA, which only requires utilities to comply with the standard in RCW 19.405.040(1) between 2030 and 2045, no more or less. If the Commission were to enforce interim targets that were intended to make progress toward the standard in RCW 19.405.050 and, thus, were more

[2/] AWEC Comments ¶¶ 33-39.

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stringent than the standard in RCW 19.405.040, this would be tantamount to creating a new clean energy requirement the Legislature did not impose.

19 In any event, the Commission may have indirect authority to enforce interim targets. If a utility does not meet its interim targets and, as a consequence, is not compliant with the standard in RCW 19.405.040(1) by 2030 or the standard in RCW 19.405.050(1) by 2045, then it may only rely on alternative compliance through CETA's incremental cost provisions if it can demonstrate that it has "maximized investments" in renewable and carbon-free resources.[3/] Failure to meet the interim targets may be a factor the Commission could consider in determining whether a utility "maximized" its investments in these resources.

E. Inclusion of delivery system infrastructure needs in the definition of "resource need" should be limited to those infrastructure investments necessary to integrate demand-side resources

20 AWEC believes the inclusion of "delivery system infrastructure needs" in the definition of "resource need" in the draft rules is overbroad. Because this definition encompasses "any current or projected deficit to meet demand or operational requirements," the inclusion of "delivery system infrastructure needs" could be interpreted to include nearly any distribution-level upgrade or addition. CETA's requirements are ultimately related to meeting load through renewable and carbon free resources (both supply-side and demand-side). Therefore, if the Commission retains this provision in the definition of "resource need," AWEC recommends that it specify that delivery system infrastructure needs be driven by resource

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[3/] RCW 19.405.060(3)(b).

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additions, including demand-side resources and behind-the-meter generation, not simply "operational requirements" broadly speaking.

III. CONCLUSION

21 AWEC appreciates this opportunity to comment on the draft CEIP rules. AWEC commends Commission Staff on a thorough first draft of these rules but, as discussed above, disagrees with several aspects of the rules as drafted. Most substantially, the rules' failure to adhere to the requirements of the APA by ensuring an adjudicative process to evaluate CEIPs must be rectified, and doing so may impact other provisions in the draft rules and how the Commission evaluates utility compliance or noncompliance. AWEC looks forward to working with the Commission and other stakeholders on future iterations of the draft rules.

Dated this 2nd day of June, 2020.

Respectfully submitted,

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