

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Clean Energy
Implementation Plans and Compliance
with the Clean Energy Transformation Act

DOCKET UE-191023

SECOND COMMENTS OF THE
ENERGY PROJECT (CR 101)

I. INTRODUCTION

1 The Energy Project (TEP) previously filed comments in this docket on February 28, 2020 (Initial Comments). These Second Comments are filed in response to the Commission’s Notice of Opportunity To File Written Comments (Notice), issued May 5, 2020, and the accompanying discussion draft rules, as corrected May 6, 2020. The TEP Second Comments focus on equitable distribution and process issues, first providing some general observations about the rules and then responding to selected questions in the Notice.

II. SECOND COMMENTS OF THE ENERGY PROJECT

A. General Comments On The Draft Rules.

2 In many ways the Clean Energy Implementation Plan (CEIP) rulemaking is the most significant of the Commission’s rulemakings under the Clean Energy Transformation Act (CETA) to date. The CEIP filed by each utility will provide the blueprint for translating the ambitious goals and broad requirements of CETA into action. From TEP’s perspective, it is particularly important that this blueprint from the outset incorporates the equity principles of CETA, as an integral part of meeting the clean energy targets of the law.

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The Energy Project is generally supportive of the way that the discussion draft incorporates the equitable distribution requirements of RCW 19.405.040(8). These provisions are woven into the definitions, the “clean energy standards,”¹ the required elements of the “clean energy implementation plan”² and the “clean energy compliance report.”³ This approach will help ensure that equity considerations are built in to the planning and implementation process for the utilities, as well as for the Commission and stakeholders, rather than being an after-the-fact “add-on.” The draft enforcement rules in WAC 480-100-680 also provide appropriate avenues and remedies if there is a violation of the equitable distribution requirements. Additional comments regarding specific rules are addressed further below.

1. Definitions

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As we have stated in other rulemakings, TEP is generally comfortable with inclusion of CETA’s statutory definitions related to energy assistance and named communities in Commission CETA rules.⁴ The Energy Project has recommended that the definitions be consistent across different sets of rules. The Commission Notice in this docket has noted that the Integrated Resource Plan (IRP) rules and the CEIP rules are interdependent.⁵ It is reasonable that both sets of rules reflect parallel definitions.

¹ Draft WAC 480-100-650.

² Draft WAC 480-100-655, including the subsections on “specific actions,” “equitable distribution,” and the “presentation of actions and resources.”

³ Draft WAC 480-100-665(1)(d).

⁴ Definitions include “Energy assistance”; “energy assistance need”; “energy burden”; “highly impacted community”; and “vulnerable populations.”

⁵ Notice, n.2

5 Regarding the definition of “indicators,” clarity could be added by inserting the term
“evidence” into the definition. For example, the rule could be revised to read: “‘Indicator’
means a value, ~~or~~ description, or evidence that....”

6 The Energy Project supports the inclusion of a specific definition for “equitable
distribution” in the CEIP rules, with some caveats. First, while it is generally reasonable to
define the term as meaning a “fair” rather than an equal “allocation,” the definition does not state
what is being allocated. It may be helpful for clarity to state that the object of the fair allocation
is energy and non-energy benefits, and the reduction of burdens, as provided in the statute.

7 Secondly, TEP interprets the proposed definition to mean that the assessment made in the
IRP process⁶ of energy and non-energy benefits, and of reduction of burdens, is used to help
inform the “current conditions” upon which the allocation is based. While the IRP assessment
will certainly be useful, the wording of the rule may have the unintended effect of limiting the
equitable distribution analysis by tying it to a utility IRP analysis done outside the CEIP process,
perhaps at an earlier point in time tied to the two-year IRP cycle. A revision should be
considered to make clear that other assessments or input from other sources, such as the advisory
groups, can also inform the analysis of current conditions.

8 Finally, a point to consider is whether this definition of the term in the CEIP rules will be
transferable to other settings, such as the IRP rules, and whether a definition should be included
in other rule settings.

⁶ RCW 19.280.030(1)(k). This statute requires that an IRP include: “An assessment, informed by the cumulative impact analysis conducted under RCW [19.405.140](#), of: Energy and non-energy benefits and reductions of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits, costs, and risks; and energy security and risk[.]”

2. The CEIP Rule

9 While it may be implicit in the way the CEIP plan requirements are outlined in draft
WAC 480-100-655, TEP recommends that the rule incorporate a more clear and direct statement
that the filed CEIP must include a plan to “ensure that all customers are benefitting from the
transition to clean energy”.⁷ This statement could be added, for example, to subsection 6 which
addresses “Equitable Distribution.” As written, while subsection 6 requires an inventory of
named communities and benefits and burdens, as well as a plan for risk mitigation, it does not
specifically require that the CEIP include a plan to implement equitable distribution.⁸

3. The Approval Process

10 Regarding Commission procedure for CEIP review, CETA provides that the Commission
order approving, rejecting, or imposing conditions, will be entered “after a hearing.”⁹ Draft
WAC 480-100-660(2) does not include the hearing language. The Energy Project recommends
that the rule be amended to track the statutory language in this regard. It would also be helpful to
stakeholders if the rule provided information about how the Commission anticipates
implementing the hearing requirement.

11 In its Initial Comments, TEP pointed out the advantages of employing an adjudicatory
hearing for the CEIP approval process.¹⁰ The Commission has the discretion to structure an
adjudication that would be efficient and expeditious, provide for public participation in less

⁷ RCW 19.405.040(8).

⁸ Similarly, the “specific actions” provision references equitable distribution requirements in subsection (4)(e) and (f)(i) but does not require a plan as such.

⁹ RCW 19.405.060(1)(c).

¹⁰ Initial Comments, ¶ 35.

formal settings, and still allow parties the ability to gather information and present evidence in a manner that would create the most reliable record for Commission decision.

12 Given the novelty of the issues, the significance of CETA for the utilities, stakeholders and the state as a whole, the breadth of CETA's impact, and the four-year term of an approved plan, TEP has some concern whether a simple sixty-day comment period without a defined hearing process will be adequate, in particular for the initial CEIP reviews.

13 The Energy Project acknowledges, however, that the adjudication format may be seen as unnecessarily cumbersome and time consuming and may in its traditional form discourage participation by some groups and members of the public. The Commission has had a reasonably successful experience with Energy Independence Act (EIA) implementation using advisory group consultation and Open Meeting review. In some instances, EIA filings were set for adjudication after major issues were identified with the filings, in particular in the early period of EIA implementation. Should the Commission opt for an EIA-style approach for CEIP review, it should reserve the ability to set a filing for an adjudication in an appropriate case, and should in any event incorporate a hearing in the rules. The Energy Project recommends that the rule state that the CEIP hearing will either take place at an Open Meeting or pursuant to an adjudication at the Commission's discretion. The rule should state that an adjudication may be requested by an interested person or party.

4. Public Participation

14 The Energy Project appreciates the effort in the draft rules to provide for extensive involvement by the public in the planning process. The Energy Project supports the following components of the rules as important to effective public participation throughout the process: the

right to comment, advisory group participation, creation of an equity advisory group, public involvement specific to the development of indicators and activities, a filed public participation plan, annual reporting of public participation, and making available the data supporting the CEIP plan. Refinements and efficiencies to these processes, if appropriate, can be discussed as the rulemaking progresses.

15 While the rules provide that copies of the proposed CEIP be made available to the public, advisory groups, and stakeholders, there does not appear to be a specific requirement for the utility to post or otherwise provide the final approved CEIP or any approved updates to interested persons. The Energy Project recommends that the rules be amended to include this requirement. The annual progress reports and the 4-year CEIP compliance report should similarly be provided to interested stakeholders and posted on the utility website contemplated in the draft rules.¹¹ Current EIA rules, for example, require the utility to post all EIA plans and reports within 30 days of Commission approval or acknowledgement.¹²

B. The Energy Project Responses To Questions In The Notice.

1. Question 2 - Clean Energy Standards (Draft WAC 480-100-650)

16 The Energy Project supports the incorporation in the “clean energy standards” rule of the additional requirements found in the statute, including the “equitable distribution” requirements of RCW 19.405.040(8) reflected in subsection (1)(d).¹³ These additional requirements, which go beyond the emissions related standards, are integral to CETA. This is reflected in the statutory

¹¹ This could be included among the items posted on the website that would be set up under WAC 480-100-670(5)(f).

¹² WAC 480-109-120(6).

¹³ Other important elements of RCW 19.405.040(8) are incorporated in subsections (e) and (f).

language of RCW 19.405.040(8) which states that “in complying with this section [Section 4 of CETA, RCW 19.405.040], an electric utility must, consistent with the requirements of 19.280.030 and 19.405.140, ensure that all customers are benefitting from the transition to clean energy; Through the equitable distribution” of listed benefits.

17 The legislative intent adds further support to this linkage. In the first section of CETA, the Legislature expressly stated that “one way in which Washington must lead this transition [to a clean energy economy] is by transforming its energy supply, modernizing its electricity system, and *ensuring that the benefits of this transition are broadly shared throughout the state.*”¹⁴ The next section goes on to state:

It is the policy of the state to eliminate coal-fired electricity, transition the state’s electricity supply to one hundred percent carbon-neutral by 2030 [RCW 19.405.040], and one hundred percent carbon-free by 2045. *In implementing this chapter, the state must prioritize the maximization of family wage job creation, [and] seek to ensure that all customers are benefitting from the transition to a clean energy economy[.]*¹⁵

Inclusion of the “equitable distribution” components as part of the “clean energy standard,” therefore, is not only reasonable, but essential to implement the Legislature’s vision that the clean energy goals must be achieved in an equitable fashion.

**2. Question 4 - Timelines
(Draft WAC 480-100-655)**

18 The draft rules take a reasonable approach to the timelines, requiring that the first CEIP be filed by October 1, 2021, with a draft provided to the advisory group two months in advance. The Energy Project concurs with the rationale explained in the Issue Discussion in the Notice.

¹⁴ RCW 19.405.010(1)(emphasis added).

¹⁵ RCW 19.405.010(2)(emphasis added).

Synchronizing the CEIP and EIA requirements makes sense in terms of efficiency and consistency. This will ease the pressure on the time and resources of the utilities, the Commission, and stakeholders who have an interest in participating in both EIA and CEIP review.

3. Question 5 - Demonstrating progress toward meeting the clean energy standards (Draft WAC 480-100-665)

19 The draft rules, in WAC 480-100-665(1), require that the utility must file a “clean energy compliance report” every four years after the initial CEIP filing, and that the compliance report must address the requirements of draft WAC 480-100-650(1)(d)-(f), which effectively incorporates the provisions of RCW 19.405.040(8).¹⁶ The rules establish a review process for the compliance report under which the Commission will determine “whether the utility made sufficient progress toward meeting the clean energy standards.”¹⁷ As discussed above, the clean energy standards incorporate the equitable distribution requirement. Based on this framework, it appears reasonably clear that rules intend that the compliance period for RCW 19.405.040(8) is four years, rather than 2030 or 2045.

20 As discussed below in response to Question 7, however, TEP has concerns with the sufficiency of only reviewing progress toward equitable distribution goals every four years.

4. Question 7 - Compliance Reporting (Draft WAC 480-100-665)

21 The Energy Project has a general concern that the current discussion draft rules need to provide more clearly established formal opportunities for the Commission, Staff, and

¹⁶ Draft WAC 480-100-665(1)(d). The initial compliance report is due by June 1, 2026.

¹⁷ Draft WAC 480-100-665(2)(c).

stakeholders to track the progress toward equitable distribution goals. In the current draft, as just discussed, the rules provide only for a four-year compliance report and review. The draft rules do not appear to contemplate that the interim or specific targets adopted by a utility will specifically incorporate interim or specific targets for equitable distribution. The “annual clean energy progress reports” required under draft WAC 480-100-655(3) do not include reporting on equitable distribution.¹⁸

22 At one level, more frequent reporting on progress toward non-emitting and renewable resource goals makes sense in that these are arguably more susceptible to tracking through established metrics. Equitable distribution is reflected in a relatively broader set of indicators which may themselves vary from one utility to another. Notwithstanding this, it is still both feasible and desirable to report on and review progress on a regular basis during the four year period. An annual or biennial report would have several benefits, including providing an incentive for compliance efforts, keeping the Commission and stakeholders informed, and allowing course corrections if appropriate.

23 The Energy Project recommends that the rules require that an informational report on progress toward equitable distribution be included in the “annual clean energy progress reports” which would be filed on June 1. To the extent there is concern with the burden of annual reporting on this issue, equitable distribution progress should be included at a minimum every two years, in the annual reports filed June 1 in odd-numbered years.

¹⁸ The Energy Project notes that the public participation rules for the Equity Advisory Group include participation in the development of the “progress reports,” presumably a reference to the annual reports rather than the compliance report which is separately referenced. Draft WAC 480-100-670(2)(b).

24 The draft rules also currently provide for a “biennial CEIP update” which would be filed on or before November 1 of each odd-numbered year.¹⁹ The Energy Project recommends that the biennial update subsection be amended to create an opportunity to address equitable distribution issues at the same time as the other issues. This will allow the Commission and stakeholders to review progress mid-stream and to consider possible adaptive management to adjust equitable distribution aspects of the plan if appropriate. The annual or biennial equitable distribution progress reports filed on June 1 would be conveniently timed to provide a basis for this “biennial CEIP update” review.

25 The draft rules currently state that the Commission “may review clean energy compliance reports through the Commission’s open meeting process.”²⁰ The Energy Project is comfortable with the use of the Open Meeting as a forum for review of the four-year compliance report. However, because the rule is permissive, TEP believes it would be helpful to have a discussion in the rulemaking about the four-year review process and alternatives that might be anticipated to open meeting consideration, including adjudication where appropriate. It appears, for example, that an enforcement action for compliance failures could be initiated in a compliance review under draft WAC 480-100-680(2).

III. CONCLUSION

26 The Energy Project respectfully requests consideration of these issues by the Commission in this rulemaking docket. The Energy Project may have additional recommendations or

¹⁹ Draft WAC 480-100-655(13).

²⁰ Draft WAC 480-100-665(2)(b).

modifications to these proposals as the rules develop. We look forward to working with the Commission and other stakeholders as this docket moves forward.

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Respectfully submitted, June 2, 2020.