



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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May 17, 2021

**NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS ON ISSUES
RELATED TO DOUBLE COUNTING, MARKET PURCHASES OF ELECTRICITY
AND THE INTERPRETATION OF COMPLIANCE WITH RCW 19.405.040(1)(a)
(By 5 p.m., Monday, June 14, 2021)**

Re: Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act, Docket UE-210183

TO ALL INTERESTED PERSONS:

On May 3, 2021, the Washington Utilities and Transportation Commission (Commission) filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) to promulgate new rules to implement certain sections of the Clean Energy Transformation Act (CETA),¹ regarding market purchases of electricity, and centered on the implementation of Chapter 19.405 RCW. The Commission filed the CR-101 under Docket UE-210183.

Also on May 3, 2021, the Commission issued a Notice of Opportunity to file written comments on the treatment of energy storage with responses due on Wednesday, June 2, 2021.²

The Commission issues this notice to provide an opportunity to comment on the interpretation of RCW 19.405.040(1)(a) and the specification, verification, and reporting requirements for retail load met with market purchases for the purposes of compliance with RCW 19.405.030 through 19.405.050. The Commission also requests comments on how to implement the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs.

¹ E2SSB 5116, Laws of 2019, ch. 288.

² On May 13, the Commission issued a Notice changing the response date from May 31 to June 2.

BACKGROUND

RCW 19.405.130(3) requires that the Department of Commerce (Commerce) and the Commission adopt rules by June 30, 2022, defining the requirements for complying with RCW 19.405.030 through 19.405.050 with electric market purchases including those from centralized markets, and to address the prohibition of double counting of nonpower attributes under RCW 19.405.040(1)(b)(ii).

In 2020, the Commission adopted three sets of rules to begin implementing CETA's requirements.³ In Dockets UE-190698 and UE-191023 the Commission requested and received comments on the interpretation of RCW 19.405.040(1)(a) and proposals on how to enforce the statute. The Commission also conducted workshops and received comments and proposed rule language on RCW 19.405.040(1)(a), but did not adopt rules on the issue.⁴ The Commission takes notice of those comments and activities and incorporates them into the record in this proceeding.⁵

For convenience, the Commission includes as Attachment A and B to this notice the Joint Utility Recommendation and Joint CS/NWEC Recommendation, respectively, discussed below.

QUESTIONS FOR CONSIDERATION***Interpretation of the "use electricity" requirement in RCW 19.405.040(1)(a)***

The Commission and Commerce request further stakeholder input on appropriate interpretation and implementation of the requirement in RCW 19.405.040(1)(a) that utilities "use electricity from renewable resources and nonemitting electric generation in an amount equal to one hundred percent of the utility's retail electric loads" and practical approaches to specification, verification, and reporting requirements allowed under the Commission's broad enforcement authority.

As noted above, stakeholders and the agencies discussed this issue extensively in 2020 through workshops and written comments. Commerce and the Commission encourage stakeholders to reflect the expressed concerns of other stakeholders in responding to these questions and in developing revised, new, or compromise approaches.

1. Please indicate if your legal interpretation of RCW 19.405.040(1)(a) has changed since the conclusion of the Docket UE-191023. If it has, please explain how.

³ Integrated Resource Planning and Clean Energy Implementation Plans in Dockets UE-190698 & UE-191023, Purchase of Resources, Docket U-190837, and the Energy Independence Act, Docket UE-190652.

⁴ On July 27, 2020, The Commission held a joint workshop with the department of Commerce on RCW 19.405.040(1)(a). Between August 4, 2020 and August 11, 2020, the Commission received comments on RCW 19.405.040(1)(a).

⁵ On June 12, 2020, the Commission issued "UE-191023 Notice of Opportunity to Comment_Use Interpretation. On November 5, 2020, the Commission issued "UE-191023 and UE-190698 Notice of Opportunity to Comment_Use of electricity.

2. On November 5, 2020, in Docket UE-191023, Public Generating Pool, Puget Sound Energy, PacifiCorp and Avista filed a joint recommendation, Appendix A (Joint Utility Recommendation, Attachment A of this Notice) that contains proposed rules on compliance with RCW 19.405.040(1)(a). The Joint Utility Recommendation would require a utility to demonstrate acquisition of renewable or nonemitting electricity through ownership, control, or contract and to demonstrate delivery of the electricity to one of several points, including to any point on the transmission system footprint of a central market in which the utility is a participant. It would require that the electricity and associated renewable energy credits (RECs) be acquired together and would allow the RECs retained after the electricity is sold in the wholesale market to be used for compliance with RCW 19.405.040(1)(a).
 - a. What is the legal support for this approach?
 - b. What are the advantages or disadvantages of this approach, especially as compared to the Climate Solutions/NW Energy Coalition approach identified below?
 - c. Is a REC retained after the electricity is sold in the wholesale market consistent with this proposal an “unbundled REC” for the purposes of the alternative compliance provision in RCW 19.405.040(1)(b)(ii)?
 - d. Does a REC retained after the electricity is sold in the wholesale market consistent with this proposal meet the definition of RECs found in RCW 19.405.020(31)? If yes, does that mean they may not be used for alternative compliance established in RCW 19.405.040(1)(b)(ii)(A) or (B)?
 - e. Are the points of delivery included in the Joint Utility Recommendation reasonable? Would electricity delivered to each of the proposed points be available to the utility for use in serving retail customers? Should the utility also be required to have transmission capacity from the delivery point to its balancing area?
 - f. Should the agencies consider, as an addition or alternative to, the use of eligible points of delivery, a requirement that the generating facility be identified in a current deliverability study of a resource adequacy program as being available to the utility?
 - g. What additional details, if any, must be specified to implement this approach and to ensure compliance?
3. On October 27, 2020 in Docket UE-191023, Climate Solutions and NW Energy Coalition (NWEC) filed a joint recommendation, Appendix A (Joint CS/NWEC Utility Recommendation, Attachment B of this notice) that contains proposed rules on compliance with RCW 19.405.040(1)(a). This proposal requires a utility using renewable or nonemitting generation for compliance with RCW 19.405.040 to demonstrated through a tracking mechanism that the electricity was used to serve its customers’ load and that the electricity was not sold to another entity. The proposal would require a calculation,

using transaction information, of the final ownership of renewable and nonemitting generation.

- a. What is the legal support for this approach?
 - b. What are the advantages or disadvantages of this approach, especially as compared to a deliverability requirement such as in the Joint Utility Recommendation?
 - c. Can the Joint CS/NWEC Recommendation be modified to lessen the reporting burden?
 - d. What additional details, if any, must be specified to implement this approach and to ensure compliance?
4. Are there any approaches or mechanisms used in clean electricity standards in other jurisdictions that should be considered, either as a potential model for implementing RCW 19.405.040 or as a potential source of conflict with other jurisdictions?

Prohibition on double counting

5. RCW 19.405.040(1)(b)(ii) allows utilities to use unbundled RECs as an alternative compliance option “provided that there is no double counting of any nonpower attributes associated with renewable energy credits within Washington or programs in other jurisdictions.” Please comment on whether the following circumstances should be considered double-counting in this context, assuming in each case that the unbundled REC (RCW 19.405.040(1)(b) is used for compliance with CETA:
- a. Electricity from a renewable generating facility is delivered to a California entity and treated as a non-emitting resource for purposes of the California cap and trade program.
 - b. Electricity from a renewable generating facility is used by a load serving entity in a jurisdiction with no clean electricity standard, and the entity communicates to its customers or investors that its electricity is from a renewable source.
 - c. Electricity from a renewable generating facility is allocated to load serving entities by an independent system operator or regional transmission operator outside the Western Interconnection. The renewable generation is incorporated in aggregated power source information published by the system operator.
 - d. Electricity from a renewable generating facility is used by a Washington utility during a compliance period under the Climate Commitment Act to offset generation that it would otherwise obtain from a natural gas-fired generating facility or imports of unspecified power.

- e. If unbundled RECs are separated from the underlying electricity from a renewable generating facility and used for compliance with CETA, are there any other circumstances in which the underlying electricity might be double counted?
6. How might the implementation of the Climate Commitment Act affect market purchases and their treatment under CETA?⁶
7. For any circumstance described above that is identified as resulting in double-counting, please provide a recommended approach by which the operator of the renewable generating facility could demonstrate that the nonpower attributes associated with the unbundled REC are not double-counted.
8. For any circumstance described above that is identified as resulting in double-counting, please provide a recommended approach by which the utility using the unbundled REC could demonstrate that the nonpower attributes associated with that REC are not double-counted.

Markets Work Group Report

The Commission and Commerce convened the Markets Work Group under RCW 19.405.130(1)&(2). After conducting multiple presentations and workshops the Markets Work Group filed its report in Docket UE-190760 and this docket on May 17, 2021. The Commission and Commerce seek stakeholder input on how the work of the Markets Work Group best informs our rulemaking processes.

9. From your prospective as a stakeholder, what information developed by the Markets Work Group informs the Commission and Commerce rulemaking?

Impact of the Washington Climate Commitment Act

The Washington Legislature in 2021 passed the Climate Commitment Act (E2SSB 5126), which includes provisions affecting electric utilities. Section 10(1)(c) requires that the Department of Ecology adopt rules by October 1, 2026, specifying a methodology for addressing imported electricity associated with a centralized electricity market.

10. Are there provisions in the Climate Commitment Act that should be considered in this rulemaking as the Commission and Commerce develop rules defining requirements, including appropriate specification, verification, and reporting requirements, for the following: (a) Retail electric load met with market purchases and the western energy imbalance market or other centralized market administered by a market operator for the purposes of RCW 19.405.030 through 19.405.050; and (b) to address the prohibition on

⁶ Climate Commitment Act, E2SSB 5126.

double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs?

RULEMAKING TIMELINE

With the Notice of Opportunity to Comment, the Commission and Commerce issue Attachment C, a proposed schedule for the rulemaking that is subject to change as circumstances necessitate.

WRITTEN COMMENTS

The Commission gives notice of the opportunity to submit written comments no later than **5 p.m., Monday, June 14, 2021.**

Pursuant to WAC 480-07-250(3), written comments must be submitted in electronic form, specifically in searchable .pdf format (Adobe Acrobat or comparable software). As provided in WAC 480-07-140(5), those comments must be submitted via the Commission's web portal at www.utc.wa.gov/e-filing. If you are unable to submit documents via the portal, you may submit your comments by email to the Commission's Records Center at records@utc.wa.gov or by mailing or delivering an electronic copy to the Commission's Records Center on a flash drive, DVD, or compact disc that includes the filed document(s). Comment submissions should include:

- The docket number of this proceeding (Docket UE-210183).
- The commenting party's name.
- The title and date of the comment or comments.

The Commission will post on its web site all comments that are provided in electronic format. The web site is located at <http://www.utc.wa.gov/210183>.

If you are unable to file your comments electronically the Commission will accept a paper document.

FUTURE STAKEHOLDER WORKSHOPS

Stakeholders will have further opportunity for comment at future workshops. Information about the workshop schedule and other aspects of the rulemaking, including comments, will be posted on the Commission's website as it becomes available. Persons filing comments in response to this Notice will receive future communications the Commission issues in this docket. If you do not file comments but wish to receive such information you may contact the Commission's Records Center by telephone at (360) 664-1139 or by email records@utc.wa.gov and ask to be included on the mailing list for Docket UE-210183.

When contacting the Commission, please refer to Docket UE-210183 to ensure that you are placed on the appropriate service list. The Commission's mailing address is:

Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE, Lacey, WA 98503.
P.O. Box 47250
Olympia, WA 98504-7250

If you have questions regarding this rulemaking, you may contact staff lead Steve Johnson at (360) 481-1573 or at steve.johnson@utc.wa.gov.

NOTICE

If you do not want to comment now but would like to receive future information about this rulemaking, please notify the Executive Director and Secretary in one of the ways described above and ask to be included on the email distribution list for Docket UE-210183. If you do not do this, you might not receive further information about this rulemaking.



MARK L. JOHNSON
Executive Director and Secretary