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June 29, 2020

Mr. Mark Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250

Re: **Docket UE-191023, Comments on the "Use" of Electricity under the Clean Energy Transformation Act**

Dear Mr. Johnson:

Grant PUD appreciates the opportunity to provide these limited comments in response to UTC staff request for comments. Grant PUD participates in Public Generating Pool, Western Power Trading Forum (WPTF), and the Washington PUD Association who are providing comments on the development of CETA rules by Commerce and the UTC. We support their comments and provide additional comments in the attached memo.

We appreciate UTC's open engagement with stakeholders in the public review of these draft rules. We look forward to working with UTC staff on later version of these rules and on new rules that are necessary to implement CETA.

Thank you for your consideration of the same. Please remove a previous version erroneously filed with this version. Thank you.

Very truly yours,

---/S/-Cliff Sears------

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Comments by Grant PUD in response to Docket UE-191023,
Relating to the "Use" of Electricity under the Clean Energy Transformation Act

1. CETA does not establish a requirement to demonstrate delivery of electricity to load

We understand that some parties may argue that power delivered to retail customers must be GHG neutral on an annual, monthly, hourly, or perhaps even momentary basis. Such an argument might be based on the first sentence of RCW 19.405.040(1) (…"***all retail sales*** of electricity to Washington retail electric customers [must] be greenhouse gas neutral" (emphasis added)). Under this argument, a ***REC must be generated at the same time as the power is delivered*** in order for a retail sale to be GHG neutral.

However, the first sentence of RCW 19.405.040(1) cannot be read in isolation and does not impose any timing requirements because it is just the lead-in sentence for a section that establishes various compliance mechanisms. RCW 19.405.040(1)(c) and RCW 19.405.1(f) state the use of GHG neutral electricity is documented and verified only through the retirement of RECs or verification that the "utility owns the nonpower attributes of the electricity generated by the nonemitting electric generation resource." [1] Nothing in CETA establishes that a REC must be generated at the same time as the power is delivered to load.

Under the remainder of RCW 19.405.040(1), the compliance obligation is the sum of the utility's retail electric loads over each multiyear compliance period, *i.e.*, every four years starting on January 1, 2030 and ending with the final three-year compliance period from January 1, 2042 to December 31, 2044. In other words, the compliance obligation reflects the sum of the loads and the sum of the use of nonemitting electric generation and electricity from renewable resources over the multiyear compliance period. CETA's plain language, findings and intent, and legislative history support Grant PUD's position.

RCW 19.405.040(1)(a) provides:

> To achieve compliance with this standard, an electric utility must . . . use electricity from renewable resources and nonemitting electric generation ***in an amount equal to one hundred percent of the utility's retail electric loads over each multiyear compliance period***. An electric utility must achieve compliance with this standard for the following compliance periods: January 1, 2030, through December 31,

[1] RCW 19.405.040(1)(c) provides that electricity "from renewable resources ***used*** to meet the standard under (a) of this subsection must be verified by the retirement of renewable energy credits." RCW 19.405.040(1)(f). Nonemitting electric generation ***used*** to meet the [GHG neutral standard] must be generated during the compliance period and must be verified by documentation that the electric utility owns the nonpower attributes of the electricity generated by the nonemitting electric generation resource."

2033; January 1, 2034, through December 31, 2037; January 1, 2038, through December 31, 2041; and January 1, 2042, through December 31, 2044.

The phrase, "in an amount equal to," would be meaningless and superfluous unless the compliance obligation reflects the multi-year sum of the loads and the multi-year sum of the use of nonemitting electric generation and electricity from renewable resources. Further, the use of a multiyear period suggests that it is the utility's load over that period, and not some other timeframe (e.g., hourly, monthly, and annually), that must be GHG-neutral, as defined by CETA, from 2030 to 2044.

While there are provisions in CETA that focus on delivery of electricity to customers, but those terms describe the quantity or the measure of the retail load in MWhs.[2] There is no provision that clearly requires a utility to show it delivered electricity from renewable resources or nonemitting generation to customers. The same is true under regulations implementing the Energy Independence Act (EIA).[3]

A delivery requirement would be inconsistent with the four-year compliance period; a utility could deliver less than it procures in any given year as long as it procures at least 80% over each multiyear compliance period prior to 2045. For example, compliance over a four year compliance period prior to 2045 could involve the following:

Year 1: 80% renewable, 20% fossil+RECs.
Year 2: 100% renewable, 0% fossil.
Year 3: 60% renewable, 40% fossil+RECs.
Year 4: 80% renewable, 20% fossil+RECs.

In this scenario, renewables serve 80% of loads over the four-year period but not in each of the four years. This level of flexibility in CETA would not be allowed under an interpretation that requires the generation of RECs or the use of non-emitting generation at least 80% of the time the energy is delivered to load.

Further, it is not clear how a utility would reasonably demonstrate hourly compliance given the intra-hourly variability of renewable resources. The cost, complexity and lack of flexibility

[2] Retail electric load' means the amount of megawatt-hours of electricity ***delivered*** in a given calendar year ***by an electric utility to its Washington retail electric customers***."

[3] Under WAC 194-37-120(1)(c) and (d), the utility must show, "If the utility sold, exchanged, or otherwise transferred the electricity to any person other than its retail customer, the utility retained ownership of the nonpower attributes" and retired any renewable energy credits representing the non-power attributes. ***Therefore, delivery is not required under the parallel language of the EIA.***

inherent in such a requirement to match variable generation with retail load at the time of delivery is at odds with the stated goals of CETA.

When it passed CETA, the Legislature declared that the state: (i) must "provide safeguards to ensure that the achievement of [CETA's] policy does not impair the reliability of the electricity system or impose unreasonable costs on utility customers";[4] (ii) can accomplish the goals of CETA while maximizing the value of hydropower and maintaining the safety and reliability of electricity to customers at stable and affordable rates;[5] and (iii) intends to provide flexible tools to address the variability of hydropower for CETA compliance.[6]

A delivery requirement to end-users could minimize the value of hydropower and compromise a utility's ability to use flexible tools to address the variability of hydropower for CETA compliance, ultimately driving up costs to end-users. This is because, as the legislature recognized, hydropower is highly variable on an annual and seasonal basis, and its availability is also variable on an hourly basis depending on load profiles and the availability of alternative resources, such as solar and wind. Through the ability to utilize retained RECs for compliance, a utility can utilize the nonpower attributes of a resource that are produced at a time when its generation exceeds its load. This enables the utility to sell the energy generated in excess of its load, maximizing market benefits of the resource and ensuring there is no resulting compliance penalty for the utility. Absent this flexibility, the benefit of the hydropower resource would not be fully realized within the market or under the law.

2. Use of renewable and nonemitting electricity should allow for resale of surplus electricity as unspecified.

The UTC bases its interpretation of 'use' on the distinction between RCW 19.405.040(1)(a) and RCW 19.405.040(1)(b). While CETA does not define 'bundled RECs', it does define unbundled RECs as "renewable energy credit[s] that [are] ***sold, delivered, or purchased*** separately from electricity." RCW 19.405.020(38). Because CETA does not establish a delivery requirement for use of renewable or nonemitting electricity in the context of multi-year compliance period, this definition must be understood with respect to the sale or purchase of renewable electricity.

[4] RCW 19.405.010(2) (It is the intent of CETA to "ensure that the achievement of this policy does not impair the reliability of the electricity system or impose unreasonable costs on utility customers.").

[5] RCW 19.405.010(4) ("The legislature finds that Washington can accomplish the goals of chapter 288, Laws of 2019 while . . . **maximizing the value of hydropower**, our principal renewable resource; . . . maintaining safe and reliable electricity to all customers **at stable and affordable rates**[.]") (emphasis added).

[6] RCW 19.405.010(7) ("It is the intent of the legislature to provide **flexible tools** to address the variability of hydropower for compliance under chapter 288, Laws of 2019.") (emphasis added).

The Department of Commerce has proposed an interpretation of use that would require a utility to procure renewable electricity and associated RECs in a single transaction but allow the utility to sell surplus unspecified electricity. This interpretation is consistent with the CETA, as well as the practice in other states. For instance, under California's RPS program, a bundled REC is a REC that has been *purchased* with the underlying renewable generation; both Product Content Category 1 (PCC1) and Product Content Category 2 (PCC2) RECS are considered bundled.[7]

While use of nonemitting electricity will not be demonstrated through procurement and retirement of RECs, UTC could similarly prevent other entities from making claims to the same nonemitting electricity by requiring that the utility demonstrate that it owns the nonpower attributes to the electricity, as required by RCW 19.405.040(1)(f), and by prohibiting the resale of that electricity as specified.

Adoption of such an interpretation would protect the environmental integrity of the CETA by prohibiting other entities from making claims to renewable and nonemitting electricity that is used under RCW 19.405.040(1)(a). As we address in the next section, UTC can adopt procedures to document and verify that renewable and nonemitting electricity *purchased* by the utilities under RCW 19.405.040(1)(a) meets requirements, and that resale of any surplus electricity is unspecified.

CETA defines "unbundled RECs" as "renewable energy credit[s] that [are] ***sold, delivered, or purchased*** separately from electricity." RCW 19.405.020(38). Under our proposed position, utilities would not sell, deliver, or purchase RECs separately from power to satisfy their 80% GHG neutral obligation under RCW 19.405.040(1)(a). Utilities could sell surplus renewable energy as unspecified and use the RECs within the 4-year compliance period to satisfy their 80% compliance obligation under RCW 19.405.040(1)(a). This interpretation supports investment in new (wind) renewable resources by recognizing values for both RECs and energy separately while also "maximizing the value of hydropower" (RCW 19.405.010(4)) and "providing flexible tools to address the variability of hydropower" RCW 19.405.010(7).

3. The risk of double counting can be addressed by an attestation and auditing of contracts and supporting documentation

Documenting and verifying use of renewable and nonemitting electricity under RCW 19.405.040(1)(a) in accordance with this interpretation requires consideration of both the purchase of the electricity (if not owned by the utility) and any resale. For the purchase of electricity, an attestation by the utility that a) it has purchased both renewable electricity and associated RECs in a single transaction and b) that for any nonemitting electricity that it owns the nonpower attributes, plus auditing of these contracts would ensure that the electricity has been acquired correctly. For

[7] See http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/156060.PDF, at page 33

sale, utilities should also be required to attest that any renewable and nonemitting electricity used under RCW 19.405.040(1)(a) has not been resold as specified electricity. Business policies and scheduling protocols could also be developed and made part of an audit record.

The potential for double-counting of renewable and nonemitting electricity used under the CETA arises if the electricity is resold and subsequently imported into California and reported as specified electricity under that program. Under California's program, an entity that imports electricity and wishes to report that power as specified (and thus report a zero emission rate) must demonstrate that it has contractual rights to claim that electricity and its environmental attributes.[8] To facilitate the calculation of appropriate emission factors, importers are also required to register specified sources with the California Air Resources Board (CARB). These provisions in California's program could also enable utilities to provide documentation to an auditor to support their attestation that they have not resold renewable or nonemitting electricity as specified.

[8] See CARB requirements for sale of specified source power into California: https://ww3.arb.ca.gov/cc/reporting/ghg-rep/ghg-rep-power/epe-faqs-2020.pdf?_ga=2.55721387.1255858413.1593442511-1517790060.1555524141