PACIFIC POWER
A DIVISION OF PACIFICORP

825 NE Multnomah, Suite 2000
Portland, Oregon 97232

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VIA ELECTRONIC FILING

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Docket UE-191023—PacifiCorp's Comments Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act

The Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to Submit Written Comments on June 12, 2020 (Notice). In this notice, the Commission requested responses to specific questions regarding the interpretation of certain statutory language in the Clean Energy Transformation Act (CETA). PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp) respectfully submits its responses to the Commission's specific questions and comments on the interpretation of statutory language.

GENERAL COMMENTS

In its Notice, the Commission presents a statutory interpretation that is foundational to how utilities will demonstrate compliance with CETA, the cost-effectiveness of that compliance, whether expected environmental outcomes will be achieved, and whether or not utilities will be enabled to harness the benefits of current and potential future energy markets to both decarbonize the electric grid and cost-effectively comply with CETA. For the reasons articulated below, the proposed interpretation is not supported by the statutory language cited nor any other provision of CETA and should accordingly be rejected.

However, in addition to the legality of the proposed interpretation, the questions posed by the Commission raise critical policy issues associated with the ability of Washington utilities to fully participate in energy markets while also demonstrating compliance with CETA. PacifiCorp's perspective is that, if adopted, the proposed interpretation will disincentivize, or potentially prohibit participation in, current and future wholesale energy markets. As a foundational principle, the Commission's implementation of CETA should not create barriers to utility participation in energy markets. It is squarely within the scope of the Washington Markets Work Group to enable discovery and discussion regarding the challenge of ensuring compliance with CETA while also harnessing the necessary benefits of efficient energy markets to integrate high penetrations of variable renewable generation.[1] While presented as a relatively simple

[1] Under RCW 19.405.130, the Markets Work Group must examine the efficient and consistent integration of CETA and transactions with carbon and electricity markets outside of the state. *See also* Docket UE-190760 *Proposed Structure and Timeline for CETA Carbon Markets Workgroup* at 2, March 6, 2020 ("The purpose of the MWG is to help ensure that Washington receives benefits from both a lower-cost, more efficient wholesale energy market as well as a decarbonized energy supply")

interpretation of the term "use" in RCW 19.405.040(1)(a)(ii), this deceptively simple question is highly consequential. PacifiCorp therefore requests that if the Commission decides to move forward with this interpretation, that the topic be deferred until the Markets Work Group has completed its process in late 2020 to early 2021. This process can be used to inform the carbon and markets rulemaking, which is expected to commence in mid-2021.

RESPONSE TO QUESTIONS

Staff's preliminary interpretation of RCW 19.405.040(1)(a)(ii) is that "use" means delivery to retail customers of "bundled" renewable and nonemitting electricity. Staff bases its interpretation on the juxtaposition of requirements in RCW 19.405.040(1)(a) and RCW 19.405.040(1)(b). RCW 19.405.040(1)(b) allows a utility to satisfy up to twenty percent of its compliance obligation with alternative compliance options. RCW 19.405.040(1)(b)(ii) identifies unbundled renewable energy credits as an alternative compliance option, so long as the nonpower attributes associated with the renewable energy credit (REC) are not double counted. This implies that if unbundled RECs were sufficient to meet the eighty percent compliance obligation, they would not be considered "alternative" options within the law.

1. *Do you agree with Staff's preliminary interpretation? Please explain why or why not and how the term "use" should be interpreted.*

No, PacifiCorp does not agree with Staff's preliminary interpretation. There is not support in the statute to conclude that the terms "use" or "bundled" means physical delivery to retail customers. The proposed interpretation appears to rely on the assumption that a "bundled" REC means that the energy underlying the REC was physically delivered to retail customers. PacifiCorp is not aware of any other circumstance in which energy underlying a REC must demonstrably be delivered to a specific load to be considered bundled. Rather, a "bundled REC" is commonly understood to mean that the REC and underlying energy *are acquired at the same time*. While RECs assigned to a specific state or customer are generally understood to *represent* delivery to load, there is generally no attempt to actually match RECs to real-time energy flows. RECs are a nonfinancial commodity separate from energy, and although "non-color coded" energy is delivered to customers, RECs are not delivered to retail customers.

This interpretation is supported by the statutory definition of "unbundled renewable energy credit" in RCW 19.405.020(38), which means "a renewable energy credit that is *sold, delivered, or purchased* separately from electricity." (emphasis added). If the opposite of unbundled is bundled, a bundled REC would be "a renewable energy credit that is sold, delivered, *or* purchased with electricity." In the context of CETA requirements, which applies to utilities and their wholesale energy procurement, the term "delivered" in this definition refers to delivery to the grid, and not delivery to load. Under this interpretation, there remains a clear distinction between what is required under RCW 19.405.040(1)(a) and what is required under RCW 19.405.040(1)(b). Under subsection (1)(a), utilities must acquire RECs and associated energy at the same time. Under subsection (1)(b), RECs may be acquired separately from the underlying energy.

Staff's interpretation of RCW 19.405.040(1)(a)(ii) also overlooks what must actually be "used," namely "renewable resources and non-emitting electric generation in an amount equal to one hundred percent of the utility's retail electric loads over each multiyear compliance period," What matters most is that the electric utility procures a quantity of renewable or clean energy that is equal to 80 percent of its retail load over the course of the planning period. Any alternative reading of the statute, for example one that would require any matching of load and renewable or non-emitting resources, ignores this statutory construction.

In addition to legal concerns associated with Staff's preliminary interpretation, PacifiCorp has significant policy, operational, and administrative concerns if Staff moves to implement its preliminary interpretation on a granular basis. A critical aspect of PacifiCorp's current day-to-day operations and plan to decarbonize its electric grid is ongoing participation in wholesale energy markets including the energy imbalance market (EIM) and potential future extended day-ahead market (EDAM). A strict application of Staff's preliminary interpretation may prevent a utility from "counting" any energy purchased on a system basis or from an organized market structure. PacifiCorp is concerned with the imposition of methodologies that create penalties associated with bilateral system purchases or energy purchased from an organized market. Such market frameworks are necessary components of the transformation of Washington's energy supply.

PacifiCorp supports the interpretation of use as applied generally in the April 28, 2020 Washington Department of Commerce draft rules[2] such that:

> "(1) For the purposes of RCW 19.405.040(1)(a)(ii), a utility uses electricity if it generated the electricity using its own generating facility or if it acquired, in a single transaction, ownership of the electricity and the nonpower attributes of that electricity. If the source of the electricity is outside the Western Interconnection, the utility must have had the capability to provide for delivery of that electricity to the utility's distribution system.
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> (2) If a utility using electricity as provided in subsection (1) sells or transfers ownership of the electricity to any entity that is not its Washington retail customer, it may not use the nonpower attributes of that electricity for compliance with the GHG Neutral Standard unless the electricity transaction identified the electricity as unspecified electricity and the utility retained ownership of the nonpower attributes.

2. *If Staff's preliminary interpretation were memorialized in rule, how should the Commission require a utility to demonstrate that it delivered "bundled electricity" to its customers and ensure that the nonpower attributes are not double counted either within Washington programs or in other jurisdictions, as required by RCW 19.405.040(1)(b)(ii)? Please explain your position on each of the compliance options provided below:*

[2] WAC 194-40-320(1) and (2)

It is unclear from Staff's preliminary interpretation over what time period a utility would be required to demonstrate that it delivered "bundled electricity" as Staff is proposing to define that term. As noted above, RECs are commonly used to represent the renewable nature of the energy procured by utilities for delivery to retail consumers; RECs themselves are not delivered to retail customers. This attribute-based approach is most consistent with the statute and can easily be applied over the four-year compliance period. RECs and energy can be time-stamped with monthly granularity to verify that the RECs and energy were acquired at the same time and were not double-counted in accordance with 19.405.040(1)(b).

If Staff's interpretation is that "bundled electricity" must somehow match physical power flows and load service, demonstrating compliance would be highly problematic. First, outside of a very narrow set of circumstances, due to the physics of the electric grid, which resources are actually serving specific loads is not knowable. Accordingly, some proxy methodology for assigning resources to load is needed regardless of the interpretation adopted. As already stated, the attribute-based approach tied to the utility procurement is the most sensible and consistent with statutory language and requirements, historical practices, and accounting methodologies adopted in neighboring states.

> *a. The source and amount of all power injected into the bulk electric system is known and documented at the time retail load is being served. In setting the requirements for demonstrating compliance with RCW 19.405.040(1)(a), should that information and supporting documentation be required? If not, why not?*

If averaged across four-year compliance periods, the source and amount of power injected to the bulk electric system could be used to verify that the utility acquired energy and associated RECs at the same time and in a sufficient quantity to comply with RCW 19.405.040(1)(a). However, it is unclear why this information would be needed if the utility demonstrates retirement of RECs from eligible resources within required timeframes.

If Staff's preliminary interpretation is accepted and RECs only "count" if the underlying energy is demonstrably delivered to Washington retail customers, the source and amount of all power injected into the bulk electric system over a particular time period will not provide information regarding which resources served which loads. In particular for PacifiCorp, which operates a six-state system on an integrated basis, the source and amount of all power injected would not provide information regarding which resources served which loads. The amount and source of all power would not consider all hourly balancing activities as well as wholesale purchases and sales. As noted above, some proxy methodology would be required to assign specific resources to specific loads.

> *b. Is it possible to use the utility's fuel mix disclosure, as required by RCW 19.29A.060, to demonstrate compliance with Staff's preliminary interpretation of RCW 19.405.040(1)(a)? How would the Commission ensure that the nonpower attributes are not double counted?*

Similar to the answer to (a) above, the fuel mix disclosure is not directly relevant to whether or not the utility acquired a sufficient quantity of qualifying energy over the course of a four-year compliance period.

The fuel mix disclosure is made on an annual basis and includes all sources of energy and system purchases. If Staff's preliminary interpretation is accepted and RECs only "count" if the underlying energy is demonstrably delivered to Washington retail customers, the fuel mix disclosure does not identify which resources served which loads. If total generation is to be reconciled to retail load, some proxy methodology is needed to assign specific resources to specific loads.

c. If the Commission relied on utility attestation for compliance with RCW 19.405.040(1)(a), what underlying documents would the utility rely on to make that attestation?

A utility could readily attest that requisite quantity and type of qualifying energy was acquired over the four-year compliance period. To support the attestation, a utility could rely on one or a combination of the following in the amount equal to 80 percent of Washington retail sales over the four-year compliance period (or four-year interim target period, prior to 2030):

1) A WREGIS retirement report of RECs generated by resources for which the utility also is able to demonstrate ownership of the electricity, through direct ownership or a power purchase agreement;
2) And/or FERC Form 1 annual generation data for non-emitting electric generation;

If Staff's preliminary interpretation is accepted and RECs only "count" if the underlying energy is demonstrably delivered to Washington retail customers, a utility is unlikely to have sufficient information to verify which resources served which loads. If a proxy methodology is developed for assigning resources to loads, the utility could attest that the methodology was applied appropriately.

d. Do you propose another alternative? If so, please describe it and how it complies with the letter and the spirit of the Act.

As explained above, PacifiCorp generally supports Commerce's interpretation of the statutory language as a workable approach that would also have the benefit of consistency across utility business models in Washington. PacifiCorp asserts that CETA requires the acquisition of a quantity of qualifying energy over specific four-year compliance periods. The verification of the acquisition of the quantity of required procurement is verified by the creation and ultimate retirement of RECs. This interpretation is consistent with both the letter and spirit of CETA—which is to transform Washington's energy supply, modernize its electricity system, and to ensure that the benefits of the transition, such as affordability, reliability, and regional

economic competitiveness, in addition to reducing greenhouse gas emissions, are broadly and equitably shared throughout the state.[3]

Sincerely,

_____/s/____
Michael Wilding
Director, Net Power Costs and Regulatory Policy
PacifiCorp
825 NE Multnomah Street, Suite 2000
Portland, OR 97232
(503) 813-5431
michael.wilding@pacificorp.com

[3] RCW 19.405.010(1)