PUGET SOUND ENERGY

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Filed Via Web Portal

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

Re: **Dockets UE-191023: PSE Comments in Response to the Commission's Notice of Opportunity to Comment on "Use" Interpretation**

Dear Mr. Johnson:

Puget Sound Energy (PSE) submits these comments in response to the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to File Written Comments (Notice) issued on June 12, 2020. As PSE indicated in its written comments to the Department of Commerce (Commerce) on November 26, 2019 and again on June 15, 2020, the statutory interpretation question raised in the Notice gets at the heart of the substance and intent of the Clean Energy Transformation Act (CETA). How electricity is considered to be 'used' for purposes of compliance with the standard in RCW 19.405.040 will have significant impacts on utility resource plans, participation in markets, and may also have significant cost impacts for customers.

Given the market and cost implications of this statutory interpretation question, which PSE believes cannot be clearly resolved one way or another by the plain language of CETA alone, it is important that these implications be fully understood by regulators and stakeholders before any rules are developed. As such, PSE strongly recommends that this issue be taken up by the Markets Work Group (MWG) this year, with recommendations to Commerce and the Commission by the middle of 2021, to inform development of the carbon and electricity market rules that must be adopted by June 30, 2022 per RCW 19.405.130. At that time, modifications to Commerce and the Commission's CEIP rules could be made, if necessary.

If Commerce and the Commission believe it is absolutely necessary to settle this statutory interpretation question through rulemaking this year, PSE would support, at a minimum, the approach Commerce took in its draft rules. Commerce's approach allows some flexibility for how Renewable Energy Credits (RECs) may be used within a four year compliance period,

without allowing truly unbundled RECs to satisfy the eighty percent compliance obligation. Commerce's draft rules on this topic appear to strike a balance on this point that may be appropriate, *if* the Commission and Commerce are determined to adopt rules on this issue at this time. Given the complexity and number of issues in play across multiple CETA rulemakings at this time, as well as the growing time constraints being placed upon the state agencies due to employee furloughs, PSE recommends tabling this issue until the market and cost implications can be fully understood by the MWG to inform further rulemaking in this area.

Commission's Questions

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

No, PSE does not agree with Staff's preliminary interpretation of the term "use," which the Notice describes as follows:

> 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.

(Notice at 2.) Staff's interpretation could fairly be summarized as resting on the inference that electrical companies must comply with CETA through the use of "bundled" renewable and nonemitting electricity because CETA only allows the use of "unbundled RECs" for purposes of alternative compliance pursuant to RCW 19.405.040(1)(b)(ii).

PSE does not take issue with Staff's position that CETA requires utilities using renewable energy as part of their compliance with CETA to verify compliance with CETA for that renewable energy through the retirement of RECs. Indeed, RCW 19.405.040(1)(c) expressly supports this position by requiring that "[e]lectricity from renewable resources used to meet the standard under [RCW 19.405.040(1)(a)] of this subsection must be verified by the retirement of renewable energy credits." Thus, the plain language of the statute is clear that the retirement of RECs is a condition precedent for compliance with RCW 19.405.040(1).

Staff's interpretation, however, appears to interpret the definition of "unbundled renewable energy credit" in RCW 19.405.020(38) too expansively and, consequently, interpret the definition of "renewable energy credit" in RCW 19.405.020(31) too narrowly. Through this interpretation, Staff appears to suggest that a REC cannot be used for compliance under

RCW 19.405.040(1)(c) unless the REC is delivered simultaneously with the renewable and nonemitting electricity that generated the REC. This interpretation is not supported by the text of the statute and could, if followed through to its logical result, lead to an overinvestment in renewable resources, such that an electrical company has procured or contracted for renewable resources in an amount that meets its peak load because it must meet load in every hour with electricity generated by renewable resources in that same hour.

CETA defines the term "renewable energy credit" as

> a tradable certificate of proof of one megawatt-hour of a renewable resource. The certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity and the certificate is verified by a renewable energy credit tracking system selected by the department.

RCW 19.405.020(31). This definition is nearly identical to the definition of "renewable energy credit" in the Energy Independence Act:

> a tradable certificate of proof of one megawatt-hour of an eligible renewable resource. The certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity and the certificate is verified by a renewable energy credit tracking system selected by the department.

RCW 19.285.030(20). The sole difference between these two definitions is the modified "eligible" in the Energy Independence Act definition, which reflects the policy goals of that act in allowing only a certain subset of renewable resources as qualifying for compliance. Notwithstanding this nearly verbatim definition, Staff's interpretation appears to require RECs to be simultaneously delivered with the electricity that generated it for compliance with CETA when no such requirement would apply for compliance with the Energy Independence Act.

It may be that Staff's interpretation results from the following definition of "unbundled renewable energy credit" in CETA:

> a renewable energy credit that is sold, delivered, or purchased separately from electricity. All thermal renewable energy credits are considered unbundled renewable energy credits.

RCW 19.405.020(38). This definition does not suggest that any REC cannot be used for CETA compliance unless the utility retires the REC for the hour in which it was generated. A REC does not become an unbundled REC if the REC is *retained*, but the associated electricity is sold as undifferentiated electricity. Rather, a REC becomes an unbundled REC only when the REC is *sold, delivered, or purchased* separately from the associated electricity.

A REC that has been separated from the electricity generated by a renewable resource owned or controlled by the electrical company for later compliance by that electrical company has not been *sold, delivered, or purchased* and does not become an unbundled REC for purposes of CETA. The REC has been merely saved for later demonstration of compliance, and there has been no transaction involving the REC, so the REC has clearly been neither *sold* nor *purchased*. The

REC has also not been delivered as that term is commonly understood within the industry. Although CETA does not define the term "delivery" for purposes of a delivery of a REC, the term has a common understanding within the industry as a transfer of a REC between entities through a tracking system. For example, the Edison Electric Institute Renewable Energy Certificates Annex to the EEI Master Power Purchase & Sale Agreement defines the term "deliver" or "delivery" as follows:

"Delivered" or "Delivery" means the *transfer from Seller to Buyer of the Contract Quantity of the RECs Product* in accordance with the Applicable Program and recognition by any applicable Administrator, Certifier, or GIS that such transfer has completed.[1] As demonstrated by this definition, the *delivery* of a REC is merely the transfer of a REC from one entity to another. Although the vast majority of transfers of RECs from one entity to another would involve the purchase and sale of the REC, the definition of "unbundled renewable energy credit" includes the verb "deliver" as "catch-all" that would encompass any transfers between entities, including those that do not involve the purchase and sale of a REC.

In sum, Staff's interpretation is too restrictive in only allowing RECs that have not been sold, delivered, or purchased to be retired for the hour in which the electricity that created the REC was generated. CETA must allow, and does not prohibit, an electrical company that owns or controls a renewable resource to separate the REC associated with electricity generated by that renewable resource for later compliance during the four-year compliance period required by CETA.

Staff's interpretation, if adopted, would severely inhibit the ability of electrical companies to comply with CETA by requiring each electrical company to ensure that it will have sufficient electricity from renewable or nonemitting resources for each hour of each day of each year. CETA does not require this result, and the Commission should not adopt Staff's proposed interpretation because it is inconsistent with the definition of REC that is common between CETA and the Energy Independence Act and reads into the term "unbundled renewable energy credit" more than the Legislature intended.

Moreover, PSE believes that adoption of Staff's interpretation would have significant implications for the ability of utilities in Washington to demonstrate compliance with CETA and fully participate in existing and future organized wholesale markets. As such, it would be appropriate for the Commission to consult with the Markets Work Group (MWG) on this issue. The MWG was specifically designed to deal with issues such as this, added during the later stages of the legislative session, as legislators and stakeholders lacked the required specificity and expertise to wrestle with the implications of the policy on markets. RCW 19.405.130 required the Commission and Commerce to convene the MWG to examine the "[e]fficient and consistent integration of the act and transactions with carbon and electricity markets outside the

[1] Edison Electricity Institute, *Renewable Energy Certificates Annex to the EEI Master Power Purchase & Sale Agreement*, *Version 1.0 11/4/10*, available at https://www.eei.org/resourcesandmedia/Master%20Contract/EEI%20RECs%20Annex%20v1.pdf.

state…" Both the Commission and Commerce would be wise to let the MWG function as a place to discuss, deliberate, and arrive at a recommendation on this issue as envisioned in the law.

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:

As stated above, PSE does not agree with Staff's preliminary interpretation of this provision in CETA. Nothing in CETA mentions or requires the use of "bundled electricity." RCW 19.405.040(1)(c) is clear: "Electricity from renewable resources used to meet the standard under [RCW 19.405.040(1)(a)] of this subsection must be verified by the retirement of renewable energy credits." Any REC generated by a renewable resource that is owned or controlled by an electrical company would be a REC eligible for retirement and verification of compliance pursuant to RCW 19.405.040(1)(c), provided that REC was not sold, purchased, or delivered during the intervening period between its creation and retirement. PSE's responses to Question 2, below, will illustrate some of the challenges with compliance under Staff's interpretation.

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?

No. As stated above, RCW 19.405.040(1)(c) is clear: "Electricity from renewable resources used to meet the standard under [RCW 19.405.040(1)(a)] of this subsection must be verified by the retirement of renewable energy credits." Any REC generated by a renewable resource that is owned or controlled by an electrical company would be a REC eligible for retirement and verification of compliance pursuant to RCW 19.405.040(1)(c), provided that REC was not sold, purchased, or delivered during the intervening period between its creation and retirement. Nothing in CETA requires the "tracing" of generation to load for purposes of compliance. Indeed, any such requirement would hinder PSE and other utilities that currently participate in organized markets, such as the CAISO Energy Imbalance Market, and would inhibit the development of new organized markets because organized markets rely on locational marginal prices and do not match specific resources to specific loads. For example, PSE is uncertain how it could comply with a requirement like this while continuing to participate in the CAISO EIM. Imposing a strict delivery requirement, with the source and amount known at the time retail load is being served, seems counter to the purposes of CETA. It would not necessarily incent more renewable energy resources to be used in Washington or the region; it would just limit utilities'

ability to participate in a broader effort in the West to maximize renewable energy generation while minimizing cost through the efficient trading of resources.

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?

Nothing in CETA requires or suggests the use of a fuel mix disclosure to demonstrate compliance with RCW 19.405.040(1)(a). The Legislature left no ambiguity in how an electrical company demonstrates compliance with RCW 19.405.040(1)(a) for renewable resources -- compliance for those renewable resources is achieved by the retirement of RECs pursuant to RCW 19.405.040(1)(c). Any attempt by the Commission to impose an additional requirement would improperly substitute the Commission's judgment for that of the Legislature.

In order to use a utility's fuel mix disclosure report to demonstrate compliance under Staff's interpretation, the structure, content, and form of the fuel mix disclosure would need to be significantly modified to reflect the utility's fuel mix over the four-year compliance periods under CETA. Because the fuel mix disclosure report is governed by statute, these changes would need to be accomplished through legislation first. Furthermore, PSE questions the value of the fuel mix disclosure report as utilities in the state make progress towards meeting the clean energy standards under CETA.

Finally, if the Commission chose this approach towards compliance, PSE is not sure at this time how the Commission could ensure that the nonpower attributes are not double-counted, as this was not part of the proposal in this Notice. For all of these reasons, PSE does not support using fuel mix disclosure report for compliance with RCW 19.405.040(1)(a).

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?

An attestation is not necessary. RCW 19.405.040(1)(c) requires retirement of a REC to demonstrate compliance with RCW 19.405.040(1)(a), and the retirement of RECs would be clearly demonstrated by the reports of the tracking system selected by Commerce pursuant to RCW 19.405.040(1)(c). Moreover, PSE does not think a utility attestation would be a workable or sufficient approach to compliance.

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

An alternative approach is not necessary. Nothing in CETA requires the strict delivery requirements of Staff's interpretation. The "use" requirement is satisfied by compliance with RCW 19.405.040(1)(a) (i.e., by the retirement of renewable energy credits that were generated but not sold, delivered, or purchased during the four-year compliance period). As stated above, PSE strongly recommends that Commerce and the Commission table any efforts to interpret this statutory provision through rulemaking prior to the MWG deliberation of this issue. If Commerce and the Commission insist on developing rules to interpret the term "use" under RCW 91.405.040(1)(a), then PSE supports, at a minimum, the flexibility afforded by Commerce's Draft WAC 194-40-320.

PSE looks forward to further conversations with the Commission, Commerce, and stakeholders about this important policy consideration under CETA, and appreciates the opportunity to provide comments in response to this Notice. Please contact Kara Durbin at (425) 456-2377 for additional information about these comments. If you have any other questions please contact me at (425) 456-2142.

Sincerely,

/s/ Jon Piliaris

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