PUBLIC GENERATING POOL

June 29, 2020

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: Docket UE-191023, Comments on Clean Energy Transformation Act Statutory Interpretation and Compliance Structure

Dear Mr. Johnson:

The Public Generating Pool (PGP) appreciates the opportunity to provide comments to the Washington Utilities and Transportation Commission (UTC) in UE-191023, regarding the statutory framework for demonstrating the use of renewable resources and nonemitting electric generation to comply with the Clean Energy Transformation Act (CETA). These comments address the questions raised in the June 12th Notice of Opportunity to Provide Written Comments regarding the UTC Staff's (Staff) preliminary interpretation of RCW 19.405.040(1)(a)(ii) that "use" means delivery to retail customers of "bundled" renewable and nonemitting electricity.

PGP supported the passage of the Clean Energy Transformation Act as passed by the 2019 Legislature. Our support was based on the careful balance of interests included in the statutory language. Key to our support was the inclusion of a multiyear compliance framework to manage the variability of hydropower generation and other renewable resources. These comments reflect PGP's primary interests related to the implementation of CETA, as follows: Rules should (1) enable utilities to meet the law in a least-cost manner; (2) promote approaches to meeting the law that align with prudent utility practice and operations; (3) support and not distort the efficient operation of wholesale electricity markets; and (4) promote approaches that are auditable, implementable and consistent with utility practice and operation.

PGP disagrees with Staff's preliminary interpretation that, "'use' means delivery to retail customers of 'bundled' renewable and nonemitting electricity." (June 12, 2020 Notice at page 2.) PGP's analysis indicates that Staff's interpretation (1) is inconsistent with legislative intent and the statute's plain language because it would require demonstrating compliance over a time increment less than a multiyear compliance period; and (2) creates a delivery or "bundled" renewable requirement that is

not in the statute. As an alternative to Staff's interpretation, PGP's legal interpretation aligns with the April 28 draft rules in WAC 194-40-320 by the Department of Commerce (Commerce).

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

Answer: PGP disagrees with Staff's preliminary interpretation. The Staff's preliminary interpretation is inconsistent with the statute's plain language and legislative intent because there is no requirement for delivery of "bundled" renewable or nonemitting electricity generation in the statute. Such a requirement would require the demonstration of compliance over a time increment less than a multiyear compliance period.

a) "Use" is demonstrated through the retirement of Renewable Energy Credits and ownership of nonemitting nonpower attributes

"Use" is not defined in CETA. The greenhouse gas ("GHG") neutral standard directs utilities to "***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."[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." "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."[2] This language does not require utilities to prove use of GHG neutral electricity through any means other than retirement of RECs or verification that the "utility owns the nonpower attributes of the electricity generated by the nonemitting electric generation resource."[3]

The law defines "retail electric load" to mean "the amount of megawatt-hours of electricity ***delivered*** in a given calendar year by an electric utility to its Washington retail electric customers."[4] The purpose of the definition is simply to provide an input to the calculation of a utility's multi-year obligation, not to dictate how the utility must meet its obligation. Other aspects of CETA provide extensive detail on how the obligation is to be met over the multi-year compliance period -- for example, through retirement of renewable energy credits ("RECs").[5]

Moreover, under the Energy Independence Act ("EIA"), "load" is similarly defined as a sum of kilowatt hours delivered over a one-year period: "'Load' means the amount of kilowatt-hours of electricity ***delivered*** in the most recently completed year by a qualifying utility to its Washington retail

[1] RCW 19.405.040(1)(a). (emphasis added)
[2] RCW 19.405.040(1)(f). (emphasis added)
[3] RCW 19.405.040(1)(f).
[4] RCW 19.405.020(36). (emphasis added)
[5] RCW 19.405.040(1)(c).

customers."[6] Yet no delivery requirement has been imputed under the EIA. To the contrary, Commerce's rules implementing the EIA expressly recognize that a utility may use an eligible renewable resource for compliance purposes even if the associated electricity is sold. 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. Clearly, delivery is not required under the parallel language of the EIA. During legislative discussions there was no indication that this definition of load would be interpreted differently. The comments below illustrate in greater detail the difficulty and infeasibility of attempting to match resources with load. If the legislature intended to include such a significant element for compliance, it would have done so directly, and not through an indirect inference.

b) <u>CETA's plain language establishes a multiyear compliance framework and does not support delivery of a "bundled" product.</u>

The multi-year compliance framework is established in RCW 19.405.040(1)(a)(ii), as follows:

> *For the four-year compliance period beginning January 1, 2030, and for each multiyear compliance period thereafter through December 31, 2044, an electric utility must demonstrate its compliance with this standard using a combination of nonemitting electric generation and electricity from renewable resources, or alternative compliance options, as provided in this section. To achieve compliance with this standard, an electric utility must…(ii)* ***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.*** (emphasis added)

A delivery requirement would set compliance tracking at a more granular increment than the four years (or, in the case of the final compliance period, three years) that comprise the multiyear compliance periods. Utilities could be required to track compliance subhourly, hourly, monthly, or annually, and that would be contrary to the multi-year compliance period established in RCW 19.405.040(1)(a)(ii).

In RCW 19.405.040(1)(a)(ii), the phrase "in an amount equal to" would be meaningless and superfluous unless the compliance obligation reflects the multiyear sum of the use of nonemitting electric generation and electricity from renewable resources and the multiyear sum of the utility's retail electric loads.[7] If the Legislature had a delivery requirement in mind it would have used "for," or a similar term or phrase, in place of the "in an amount equal to" phrase in RCW 19.405.040(1)(a)(ii) as follows: "use electricity from renewable resources and nonemitting electric generation ***for*** one hundred percent of the utility's retail electric loads over each multiyear compliance period."

[6] RCW 19.285.030(14) (emphasis added).

[7] *Cole v. Wash. Utilities & Transp. Comm'n*, 79 Wn.2d 302, 308 (1971) ("no clause or individual words of a statute should be deemed superfluous") (citing *Kasper v. Edmonds*, 69 Wn.2d 799, 804 (1966)).

Additionally, the statute's verification provisions do not require any demonstration of delivery to end-use customers. Instead, in RCW 19.405.040(1)(c), the Legislature directed that "electricity from renewable resources used to meet the standard…must be verified by the retirement of renewable energy credits." And, in RCW 19.405.040(1)(f), the Legislature based demonstration for nonemitting electric generation on ownership, as follows: "nonemitting electric generation…must be verified by documentation that the electric utility owns the nonpower attributes of the electricity generated by the nonemitting electric generation resource."

c) The statute does not call for "bundled" renewable energy credits.

The Staff's preliminary legal interpretation rests on the notion that because a utility can use unbundled renewable energy credits for the alternative compliance option under RCW 19.405.040(1)(b), it cannot use anything other than "bundled" renewable energy credits to satisfy its obligation under RCW 19.405.040(1)(a). Despite Staff's use of quotation marks around "bundled," CETA does not define "bundled" or "bundled renewable energy credits." While CETA defines "unbundled" renewable energy credits,[8] that definition is narrow and serves to limit the circumstances under which a renewable energy credit can be used for compliance purposes if it has been "sold, delivered, or purchased separately from electricity."

Because CETA defines only "unbundled" renewable energy credits, there are only two types of renewable energy credits for CETA's purposes: renewable energy credits that meet the definition of "unbundled renewable energy credits" and renewable energy credits outside that definition. An unbundled renewable energy credit is a "renewable energy credit is sold, delivered, or purchased separately from electricity." Accordingly, any renewable energy credit that is sold, delivered, or purchased ***together with*** electricity falls outside the definition of "unbundled" renewable energy credit, which is consistent with the Commerce draft rules.

The statute provides no basis to draw distinctions among renewable energy credits outside the definition of "unbundled." Because a renewable energy credit that arises from utility-owned or utility-contracted renewable generation is not "unbundled," it has the same status for compliance purposes regardless of whether the associated megawatt-hours are transferred as unspecified electricity to a third party so long as the renewable energy credit is retained and retired.

d) The Legislature's intent in RCW 19.405.010 is consistent with a multiyear compliance framework and does not align with delivery of a "bundled" product.

The intent provisions that are most relevant to this point are listed below.

- RCW 19.405.010(2) provides that "**in implementing this chapter, the state must provide safeguards to ensure the achievement of this policy does not** impair the reliability of the electricity system or **impose unreasonable costs on utility customers**". (emphasis added)

[8] RCW 19.405.020(38) defines "unbundled renewable energy credit" as "a renewable energy credit that is sold, delivered, or purchased separately from electricity."

- Additionally, 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)
- Last, RCW 19.405.010(7): "[**i]t is the intent of the legislature to provide flexible tools to address the variability of hydropower for compliance under this act**." (emphasis added).

A multiyear compliance framework promotes this legislative intent. It establishes a least-cost approach to compliance by providing: 1) tools to maximize the value and manage the variability of hydropower and other renewable and nonemitting generation and to receive compliance recognition, and 2) an administrative approach to compliance that is relatively less burdensome than a delivery compliance approach. Under a multiyear compliance framework, the utility can utilize the nonpower attributes of a resource while ensuring the electricity is generated at its highest value period for the electric system. Absent this flexibility, the benefit of the hydropower resource would not be fully realized within the market or under the law. The multiyear compliance framework maximizes the value of hydropower and supports stable and affordable rates. A multiyear compliance framework is an essential tool to address the variability of hydropower used for compliance with CETA.

Conversely, a delivery requirement would undermine the legislative intent. A delivery requirement would reduce the value of a utility's 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 Washington end-users. A delivery requirement would reduce the efficiency of the bulk electric system because it would incent Washington utilities to follow their own load profiles rather than trading in the energy markets to optimize the use of the carbon-free assets in the market. In the same way that a region can benefit by utilizing load and resource diversity to meet its resource adequacy requirements, carbon-free assets can reach their highest level of production when they are optimized in the broader energy markets. Inefficiency in the bulk electric system results in the overbuilding of resources and additional oversupply. All of these effects would have an impact on customer rates, and a delivery requirement would be a higher-cost approach to compliance.

Last, a delivery requirement would provide no emissions benefit. In fact, this approach would reduce emissions benefit because Washington utilities would be less able to participate in a more integrated electricity grid; recent studies have shown that reduced integration actually leads to reduced emissions benefits. This point will be discussed later in these comments in greater detail.

e) <u>The legislative history demonstrates that a multiyear compliance period was contemplated and explicitly directed in statute.</u>

The original version of Senate Bill 5116 first contemplated annual compliance periods. Stakeholders, including PGP, expressed concern that the variability of renewable resources, particularly hydropower, would not be adequately and fully realized if compliance were measured on an annual basis due to the annual variability of hydropower resources. The multiyear compliance approach was developed specifically to address this concern. Thus, the Legislature incorporated the multiyear compliance period language through an amendment to the bill on April 11: "to implement multiyear compliance

periods, rather than an annual compliance requirement, beginning January 1, 2030." (See Senate Bill Report E2SSB5116 here)

QUESTION 2. If staff's interpretation were memorialized in rule, how should utilities demonstrate delivery of "bundled electricity" to customers and ensure that nonpower attributes were not double counted either within Washington programs or in other jurisdictions, as required by RCW 19.405.040(1)(b)(ii)?

Answer: PGP does not believe the delivery of "bundled electricity" concept is feasible generally for compliance with CETA or to address double counting. PGP recommends the proposed Commerce approach, which also addresses double counting.

a) Commerce draft rules appropriately address double counting.

Consistent with Commerce's draft rules, PGP's position is that utilities demonstrate the "use" of renewable resources or nonemitting electric generation by retiring renewable energy credits created from renewable resources and demonstrating ownership of nonpower attributes from nonemitting electric generation from the multiyear compliance period in an amount equal to the sum of their retail electric loads for the multiyear compliance period. The utility obtains these renewable energy credits and nonpower attributes by owning or contracting for electricity from renewable resources or nonemitting electric generation. If the utility were to sell the electricity and retain the renewable energy credits for compliance with RCW 19.405.040(1)(a), then the sale of the electricity would be required to be structured as an unspecified source sale to ensure the nonpower attributes would not be claimed by the purchaser of the electricity. Additionally, the utility could provide an attestation indicating any electricity used for compliance with RCW 19.405.040(1)(a) and subsequently resold was structured as an unspecified source sale for compliance with RCW 19.405.040(1)(a).

b) Demonstration of compliance for delivery of a "bundled" product is infeasible and would be administratively burdensome and costly.

The path from a generating resource to a specific load is an unknown that cannot be verified with certainty. Utilities have control over electricity procurement and acquisition, and the scheduling of resources into the system. Where each electron flows, however, is outside the utility's control. The "contract path" describing the contractual arrangements differ from the actual flows of electricity. This discrepancy between contract schedules and actual physical transmission system flows is commonly referred to as "contract path fiction." The contract path fiction arises because electricity does not actually follow the path described by the contract path, but instead the delivery of electrons follows the path of least resistance across all possible parallel electrical paths between the two points. As a result, actual delivery and the flow of electrons are a complex function of the operating generation resources and the electrical characteristics of the transmission system.

Further, schedules aren't used for all transactions. They are primarily used to estimate the flow on major transmission lines and to estimate the flow between balancing authority areas. Schedules aren't

used for numerous deliveries from resources to loads within Balancing Authority Areas. Moreover, many schedules are designated from a "system" rather than a specific resource.

In the normal course of business, electric system operators across the region are not required to track and do not track which generation resources' production is actually delivered to specific utilities and their consumers. Additionally, in the normal course of business, electric system operators across the region are not required to associate imports and exports between regions with specific generation resources. As a result, even after-the-fact efforts to assign production to Washington end-use customers would be very challenging and not accurate.

c) <u>A delivery requirement is incompatible with centralized electricity markets.</u>

Many regional utilities have or will be joining the Western Energy Imbalance Market (EIM), a centralized market offering 5- and 15-minute balancing services. The EIM platform has a number of benefits, but for these comments the most important to highlight are the reduction of renewable resource integration costs and reduction of renewable resource curtailment. Additionally, there is a movement to expand this type of platform to a centralized day-ahead market. The importance of market structures to ensure the greater use of clean energy resources was highlighted in a recent study by Energy Strategies,[9] showing increased renewable resource penetration and reduced greenhouse gas emissions through expanded system integration. It was found that, in the absence of enhanced regional coordination, integration, and related system investment, it may be challenging for utilities to meet state targets.

Regardless of its source, utilities are unable to track the delivery of electricity offered in a centralized market. Therefore, if there were a delivery requirement, the utility would not be able to receive compliance credit for a clean energy resource under RCW 19.405.040(1)(a) that is participating in a centralized market. If renewable energy credits associated with resources that participate in organized markets are treated as "unbundled" or invalidated simply due to the resource's participation in organized markets, Washington utilities will have a large, unnecessary disincentive to fully participate in organized markets, hampering renewable energy development and integration, and ultimately the ability of Washington utilities to meet the state's clean energy targets. And the costs to Washington utilities and their ratepayers associated with CETA compliance will increase significantly.

Utilities need a compliance structure that allows them to own or contract for electricity and associated renewable energy credits from resources participating in centralized markets, such as the EIM, and utilize the nonpower attributes for compliance with RCW 19.405.040(1)(a). PGP believes the Commerce draft rules in WAC 194-40-320 establish a framework that is generally consistent with a centralized market. PGP would also support further examination by the Markets Workgroup established by RCW 19.405.130 to determine whether additional rules, or any modification to Commerce draft rules, are needed to address centralized market purchases.

[9] Energy Strategies, Western Flexibility Assessment, Investigating the West's Changing Resource Mix and Implications for System Flexibility," December 2019.

For these reasons, we believe a delivery demonstration is fraught with problems. Thus, we recommend alignment with Commerce's draft rule, which will be further described in response to Question 2d, including providing a recommendation regarding how utilities would ensure no double counting of nonpower attributes occurs.

QUESTION 2a. 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?

Answer: While there is data to provide information about the power that is injected into the electric system, to isolate the data for a specific utility would be difficult and the benefit of this data is unclear. This data would not solve the challenges associated with matching resources to load identified previously.

QUESTION 2b: 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?

Answer: The fuel mix disclosure report includes provisions that are inconsistent with the approach to compliance identified under CETA, including the timeframe over which utilities report. While the new fuel mix methodology better recognizes the way in which the system operates than what is proposed by the Staff interpretation, the fuel mix disclosure report is an annual compliance report and would not capture the multiyear compliance framework adopted by the Legislature to maximize the value of hydropower and provide a flexible tool for compliance. As an alternative, PGP recommends the UTC consider alignment with Commerce's draft rules for demonstration of compliance.

QUESTION 2c: 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?

Answer: PGP's legal interpretation, and also Commerce's draft rule on this issue in WAC 194-40-320, indicate that a utility would comply by proving that it procured, through ownership interest or contract, both the electricity and the renewable energy credits in a single transaction. Additionally, the utility could provide an attestation indicating any electricity used for compliance with RCW 19.405.040(1)(a) and subsequently resold was structured as an unspecified source sale for compliance with RCW 19.405.040(1)(a). For nonemitting electric generation associated with Bonneville Power Administration's (BPA) system, PGP proposes that utilities would rely on attestations provided by BPA providing the total amount of generation output associated with nonemitting electric generation included in its system. The utility would utilize that information to determine its share of the nonemitting electric generation from BPA's system.

QUESTION 2d: Do you propose another alternative? If so, please describe it and how it complies with the letter and the spirit of the Act.

Answer: The draft rules proposed by the Department of Commerce in WAC 194-40-320 are consistent with PGP's legal interpretation, and comply with the letter and spirit of the Act as outlined above in these comments. We recommend that the UTC consider this approach as an alternative to Staff's preliminary interpretation and proposed approach to demonstrating use.

More specifically, below are the elements of compliance that PGP supports to align with the requirement in RCW 19.405.040(1)(a)(ii) that utilities "use" electricity from renewable resources and nonemitting electric generation in an amount equal to their load over the multiyear compliance period.

- The compliance period over which compliance is demonstrated should be the multiyear compliance periods established in by RCW 19.405.040(1)(a)(ii): "An electric utility must achieve compliance with this standard for the following compliance periods: January 1, 2030, through December 31, 2033; January 1, 2034, through December 31, 2037; January 1, 2038, through December 31, 2041, and January 1, 2042, through December 31, 2044."
- The compliance obligation or compliance target is the sum of the utility's retail electric loads over each multiyear compliance period per RCW 19.405.040(1)(a): "To achieve compliance with this standard, an electric utility must:…(ii) 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."
- The statute requires utilities to demonstrate the "use" of electricity from renewable resources by retiring renewable energy credits associated with renewable resources per RCW 19.405.040(1)(c).
- The statute requires that nonemitting electric generation "used" to meet the statute must be generated during the compliance period and verified by documentation that the utility owns the nonpower attributes of the electricity generated by the nonemitting resource per RCW 19.405.040(1)(f).
- The statute also provides direction in RCW 19.405.040 and RCW 19.405.130 that double counting of nonpower attributes should not occur as a result of compliance. In order to address this issue, if utilities were to sell electricity that was generated by a renewable resource, they should structure the sale as an unspecified resource transaction to ensure the renewable energy credits may only be used by the Washington utility for compliance. Additionally, the utility could provide an attestation indicating any electricity used for compliance with RCW 19.405.040(1)(a) and subsequently resold was structured as an unspecified source sale for compliance with RCW 19.405.040(1)(a).

The compliance demonstration associated with this approach is compatible with centralized market transactions, thus supporting the evolving market structure that will be important for the feasibility and cost-effectiveness of CETA compliance. This approach offers more compliance flexibility. It is less administratively burdensome. And, last, this approach to compliance is similar to the approach taken in other states, enabling Washington to draw on others' experience, rather than developing a new structure that has no parallels.

Conclusion

PGP appreciates the opportunity to submit these comments for your consideration. We believe this policy decision is a critical element for utility compliance with CETA, and the state's ability to meet its clean energy targets. We hope to engage in further discussions on this issue. If you should have questions, please do not hesitate to contact me.

Sincerely,

Therese Hampton, Executive Director
Public Generating Pool