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MEMO

TO: File

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DATE: July 31, 2020

RE: Compliance with the Washington Clean Energy Transformation Act

I. Introduction and Executive Summary

This memo contains our analysis regarding the compliance requirements of the Clean Energy Transformation Act ("CETA"), and the statutory provisions and legislative history that support an attribute-based approach to compliance that is measured over the multiyear compliance period.[1]

Commission Staff offered a preliminary interpretation that "use" in RCW 19.405.040(1) means delivery of "bundled" renewable and nonemitting electricity directly to retail electric loads.[2] Nothing in CETA, however, requires an electric utility to show it delivered electricity from renewable resources or nonemitting generation to customers. In fact, such a requirement would be inconsistent with the four-year compliance period and frustrate the legislative intent to provide flexible tools to address the variability of renewable resources. An electric utility's compliance obligation from 2030-2045 reflects the sum of the retail electric loads and the sum of the use of nonemitting electric generation and electricity from renewable resources over the multiyear compliance period.

As discussed below, CETA's plain language, findings and intent, and legislative history support this position. An electric utility may demonstrate compliance with CETA by using renewable energy credits ("RECs") associated with owned or contracted generating resources and nonemitting electric generation equal to the sum of their retail electric loads for each multiyear compliance period; importantly, these RECs can be distinguished from RECs that have been

[1] The Department of Commerce ("Commerce") and the Washington Utilities and Transportation Commission ("Commission" or "WUTC") have the authority to issue rules that are not inconsistent with CETA. Particularly where a statute is subject to more than one interpretation, courts defer to agencies' interpretations of the statute and the rules that flow from those interpretations.

[2] *See* Notice of Opportunity to File Written Comments dated June 12, 2020 in Docket UE-191023.

"sold, delivered or purchased separately from electricity." RECs that have been "sold, delivered or purchased separately from electricity" may only be used as an alternative compliance option. Accordingly, the draft rules proposed by PGP, Avista, PacifiCorp and Puget Sound Energy are consistent with CETA.

II. Analysis of CETA Compliance Requirements

A. Delivery

Commission Staff asserts that the language in RCW 19.405.040(1)(a)(ii) requires electric utilities to deliver nonemitting electric generation and electricity from renewable resources to retail customers to comply with the greenhouse gas neutral requirements of CETA for the period beginning January 1, 2030, and ending December 31, 2044. The plain language of CETA, however, does not support the delivery requirements asserted by Commission Staff. Indeed, a strict delivery requirement would be inconsistent with the multiyear compliance period under CETA.

1. CETA's Plain Language

RCW 19.405.040(1) generally requires retail sales by electric utilities in Washington to be greenhouse gas neutral beginning January 1, 2030. To demonstrate compliance with this requirement, RCW 19.405.040(1)(a) requires electric utilities use a combination of nonemitting electric generation and electricity from renewable resources, or alternative compliance options, for the four-year compliance period beginning January 1, 2030, and for each multiyear compliance period thereafter through December 31, 2044. To achieve compliance with this requirement, RCW 19.405.040(1)(a)(ii) requires electric 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." The use of the word "used" in RCW 19.405.040(1) does not require delivery of electricity from renewable resources and nonemitting generation to retail customers. There are three areas of the law that are central to the argument against a delivery requirement.

(a) CETA bases utility compliance on a utility's total "retail electric load," measured in megawatt-hours

First, RCW 19.405.040(1)(a)(ii), which outlines the specific requirements of the greenhouse gas neutral standard, directs electric 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." This requirement does not mention deliver, delivered, delivery, or any cognate thereof. RCW 19.405.020(36) defines the phrase "retail electric load" as "the amount of megawatt-hours of electricity delivered in a given calendar year by an electric utility to its Washington retail electric customers." Accordingly, the standard can only be met only with an amount sum of megawatt hours over a given calendar year over each multiyear compliance period. This discussion of indicates that the utility's total deliveries, aggregated on a system-wide basis ("to its Washington retail electric customers"), must be the

basis for compliance. Nothing in this standard requires a month-by-month, day-by-day, hour-by-hour, or moment-by-moment strict delivery standard, as suggested by Commission Staff.

(b) CETA bases utility compliance on a utility's total "retail electric load," measured in megawatt-hours

Second, CETA does not define the word "use" as applied in RCW 19.405.040(1)(a)(ii). RCW 19.405.040(1)(c) does, however, provide 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."[3] RCW 19.405.040(1)(f) provides that electricity from "[n]onemitting electric generation ***used*** to meet the [greenhouse gas 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." Thus, the plain language of RCW 19.405.040 requires electric utilities to demonstrate compliance with the greenhouse gas neutrality standard through the retirement of RECs or verification that the "utility owns the nonpower attributes of the electricity generated by the nonemitting electric generation resource"[4] and not a demonstration that such electricity was delivered to retail electric loads during each hour of the four-year compliance period.

CETA requires electric utilities to use electricity from renewable resources and nonemitting generation "in an amount equal to" 100% of its "retail electric loads over each multiyear compliance period."[5] 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."[6] This language is similar to the definition of "load" under the Energy Independence Act ("EIA"), which defines "load" 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 customers."[7] Notwithstanding the similarity in definition, no delivery requirement has been imputed under the EIA with respect to "loads" of electric utilities. To the contrary, Commerce's rules implementing the EIA expressly recognize that an electric 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), an electric utility must show, "If the utility sold, exchanged, or otherwise transferred the

[3] Under the recommended rules proposed, electric utilities could use retained RECs to verify the use of the renewable resources they own or have contracted for to satisfy this statutory requirement, regardless of whether some of the associated energy has been used for balancing or other purposes and not delivered to retail electric loads.

[4] RCW 19.405.040(1)(f).

[5] RCW 19.405.040(1)(a). "Fuel attribute" is not defined in Chapter 19.405 RCW. Chapter 19.29A, however, defines "fuel attribute" as "the characteristic of electricity determined by the fuel used in the generation of that electricity. For a renewable resource, the fuel attribute is included in its nonpower attributes."

[6] RCW 19.405.020(36) (emphasis added).

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

electricity to any person other than its retail customer, the utility retained ownership of the nonpower attributes" and retired any RECs representing the non-power attributes. Clearly, delivery is not required under the EIA, and there was no indication that "retail electric load" would be interpreted differently to require a delivery standard under CETA. Indeed, the Legislature directed both the Commission and Commerce to "adopt rules to streamline the implementation of [CETA] with [the EIA] to simplify compliance and avoid duplicative processes."[8] Accordingly, CETA's plain text indicates that the two statutes are linked, which should establish a presumption that they should be interpreted in tandem.

(c) A delivery standard cannot be implied from CETA's discussion of "unbundled" RECs

Commission Staff believes that a so-called "bundled" product is required to comply with the 80 percent mandate created by RCW 19.405.040(1)(a)(ii), apparently based on varying language in RCW 19.405.040(1)(a) and RCW 19.405.040(1)(b).[9] The latter section allows use of "*unbundled renewable energy credits*" as an alternative compliance option, while the former allows (among other options) use of renewable resources to meet the 80 percent compliance obligation. A utility's use of renewable resources "must be verified by retirement of *renewable energy credits*," without any qualifiers in the text. Both terms are defined in CETA.[10]

It would be reasonable to conclude that "unbundled RECs" as defined by CETA, cannot be used to meet a utility's compliance obligation contained in RCW 19.405.040(1)(a), as such an interpretation would arguably render the 20 percent alternative compliance obligation in RCW 19.405.040(1)(b) irrelevant.[11] However, that prohibition must be based on the actual definition of "unbundled," instead of a theoretical, unsupported definition of a "bundled" REC. By excluding "unbundled RECs" as a compliance option for RCW 19.405.040(1)(a), all other types of RECs must logically be included as compliance options.[12]

For CETA's purposes, the manner of the acquisition of a REC is what makes it "unbundled" – the REC must be "sold, delivered, or purchased separately from electricity" to qualify as "unbundled." In other words, if the utility generates one megawatt-hour at a renewable resource, but then retains the REC while also selling the power, the REC would not have been "sold, delivered, or purchased separately," because ownership of the REC would never have changed before being

[8] RCW 19.405.100(1).

[9] *See, e.g.* Notice of Opportunity to File Written Comments, page 2, WUTC Docket UE-191023 (June 12, 2020).

[10] RCW 19.405.020(31), (38).

[11] *See Rivard v. State*, 168 Wash. 2d 775, 783, 231 P.3d 186, 190 (2010) ("we interpret a statute to give effect to all language, so as to render no portion meaningless or superfluous").

[12] *See Washington Nat. Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cty.*, 77 Wash. 2d 94, 98, 459 P.2d 633, 636 (1969) ("specific inclusions exclude implication").

retired.[13] Therefore, it would not be "unbundled," and must be eligible to meet the 80 percent compliance obligation in RCW 19.405.040(1)(a)(ii), notwithstanding the fact that it is not directly associated with energy delivered to retail electric customers. Any other interpretation of these sections would impose a restriction on utilities' compliance options entirely unsupported by the plain text of CETA.

(d) Interpreting CETA to require delivery to retail electric customers sets an impossible and unattainable standard

In short, the plain language of CETA does not require that an electric utility demonstrate that it delivered electricity generated by renewable resources and nonemitting generation to retail electric load, and it is not clear that an electric utility could make such showing. Indeed, practical considerations suggest that such a showing would be impossible and therefore no delivery requirement was intended. First, nonpower attributes cannot be tracked directly to retail electric loads because RECs are created and tracked on an aggregate monthly basis, and not on a daily or hourly basis. The Western Renewable Energy Generation Information System ("WREGIS") classifies generating units based on capacity/production with a monthly reporting requirement for almost all classes (small generating units of 360 kW or less may report even less often).[14] In addition, electricity cannot be directly tracked from generation to retail electric load because flows (scheduled versus actual) will vary to account for the impact of the actual physical network. Although E-tags may suggest a contractual path that the electricity "should" follow, it is impossible to demonstrate that the electricity actually flowed on a particular path, with the sole exception in which generation is interconnected directly to the retail electric load and not interconnected to the grid (e.g., "behind the meter" generation). For these reasons alone, an interpretation that requires delivery to retail electric customers must be rejected, as no utility could verifiably and reliably meet that standard.

The draft rule language suggested in Appendix A to the July 31, 2020 letter from Pacific Power, Public Generating Pool, Puget Sound Energy, and Avista, as well as the draft rule regarding

[13] If a utility made such a sale of the underlying energy while retaining the REC, that sale would have to be an "unspecified" sale, separated from all nonpower attributes. CETA specifically directs both the Commission and Commerce to adopt rules that "support the objectives" of CETA, including its prohibition on double counting, while also encouraging "the efficient dispatch of the generation resources dispatched by [] markets." RCW 19.405.130(3). It would be appropriate to adopt a rule that codifies this position, such as in subsection (4) of the rules proposed by Pacific Power, Public Generating Pool, Puget Sound Energy, and Avista.

[14] WREGIS Operating Rules (May 1, 2018) at Section 9.2.1 (see https://www.wecc.org/Corporate/WREGIS%20Operating%20Rules.pdf). Nevertheless, CETA's definition of unbundled RECs implies that a REC could be delivered together with associated electricity, since an unbundled REC is one that is "sold, delivered, or purchased separately from electricity." RCW 19.405.020(38).

documentation of compliance suggested by Commerce are both consistent with CETA and does not require an impossible delivery to retail electric load requirement.[15]

There is no requirement under Commerce's draft rule that an electric utility demonstrate delivery of electricity used to comply with RCW 19.405.040 directly to retail electric load. The only documentation required is the tracking of RECs associated with the electricity, as required by RCW 19.405.050(3).

2. CETA's Purpose and Intent

The legislative findings and intent lend support to the fact that the plain language of CETA does not require delivery of electricity generated by renewable resources and nonemitting generation to retail electric load. The legislature knows how to establish a delivery requirement with clear and express language, if that were the purpose and intent of the legislature.[16] Here, the lack of any clear statutory language establishing a delivery requirement in CETA could indicate that the legislature recognized that a delivery requirement may not be appropriate under 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";[17]

(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;[18] and

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[15] Available at https://www.commerce.wa.gov/wp-content/uploads/2020/04/Discussion-draft-emissions-reporting-and-REC-procedures-2020-04-09.pdf (last visited April 17, 2020).

[16] Similar statutes from other states are clear when establishing delivery requirements. Oregon's Renewable Portfolio Standards legislation, for example, allows the use of bundled RECs if "the facility that generates the qualifying electricity for which the bundled renewable energy certificate is issued is located in the United States and within the geographic boundary of the Western Electricity Coordinating Council" and "[t]he qualifying electricity for which the bundled renewable energy certificate is issued is ***delivered*** to . . . [t]he Bonneville Power Administration[,] [t]he transmission system of an electric utility[,] [a] delivery point designated by the electric utility for the purpose of subsequent delivery to the electric utility[,] or [a] delivery point mutually agreed to by a distribution utility and an electricity service supplier for the purpose of subsequent delivery to the distribution utility serving the customer of the electricity service supplier." ORS 469A.135(1) (emphasis added). CETA does not contain any such language establishing a delivery requirement. Moreover, the Oregon statute does not require delivery to end users, but rather to a distribution utility or an upstream location on the transmission system.

[17] 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.").

[18] 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).

(iii) intends to provide flexible tools to address the variability of hydropower for CETA compliance.[19]

A delivery to retail electric loads requirement minimizes the value of renewable resources and compromise an electric utility's ability to use flexible tools to address the variability of renewable resources for CETA compliance, ultimately driving up costs to retail electric loads. This is because, as the legislature recognized, renewable energy resources are highly variable on an annual and seasonal basis and are also variable on an hourly basis depending on load profiles, weather conditions, and the availability of alternative resources. Through the ability to utilize RECs associated with utility-owned or utility-contracted resources for compliance, the electric utility can utilize the nonpower attributes of a resource that are produced at a time when the electric utility does not need the generation. This enables the electric utility to sell excess renewable energy and retain the REC, thereby maximizing market benefits of the resource and ensuring there is no resulting compliance penalty for the electric utility. Absent this flexibility, the benefit of the renewable resources would not be fully realized within the market or under the law.

3. CETA'S Legislative History

No version of CETA contained an express delivery requirement although the definition of "retail electric load" that included the word "deliver" (or any cognate thereof) from the very first version of SB 5116. The original bill defined "retail electric load" to mean "the amount of megawatt-hours of weather-adjusted electricity ***delivered*** in a given calendar year by an electric utility to its Washington retail electric customers."[20] The definition changed slightly with SSB 5116: "'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."[21] The definition did not change in the 2SSB 5116 or in the February 21, 2019 version of E2SSB 5116.[22] The April 11, 2019 House Striker expanded the definition to clarify that "retail electric load" does not include:

> (a) Megawatt-hours ***delivered*** from qualifying facilities under the federal public utility regulatory policies act of 1978, P.L. 95-617, in operation prior to the effective date of this section, provided that no entity other than the electric utility can make a claim on delivery of the megawatt-hours from those resources; or
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> (b) Megawatt-hours ***delivered*** to an electric utility's system from a renewable resource through a voluntary renewable energy purchase by a retail electric customer of the utility

[19] 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).

[20] SB 5116 § 2(29).

[21] SSB 5116, § 2(38).

[22] *See* 2SSB 5116, § 2(36); E2SSB 5116 (Feb. 21, 2019), § 2(37).

> in which the renewable energy credits associated with the megawatt-hours delivered are retired on behalf of the retail electric customer.[23]

The definition from the April 11, 2019 House Striker became law.[24] As discussed above, the EIA contains a similar definition of "load" and Commerce's implementing regulations indicate delivery is not required under the EIA.

B. Compliance Obligation

The first sentence of RCW 19.405.040(1) provides that "[i]t is the policy of the state that ***all retail sales*** of electricity to Washington retail electric customers [must] be greenhouse gas neutral" (emphasis added). But this general statement of policy 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. Under the remainder of RCW 19.405.040(1), the compliance obligation is the sum of the electric 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 retail electric 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 this position.

1. CETA's Plain Language

The plain language of RCW 19.405.040(1)(a) establishes a multiyear compliance obligation:

> 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[25] over each multiyear[26] compliance period***. 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,

[23] House Striker E2SSB 5116, § 2(36). This revision has no bearing on the issue of whether CETA requires delivery to end users because the provision simply defines total load and carves out from total load the megawatt hours for any particular year that are associated with certain renewable resources.

[24] RCW 19.405.020(36).

[25] This provision uses the plural, rather than the singular, because multiple loads count toward each multiyear compliance period. The definition of "retail electric load" in RCW 19.405.020(36) is singular: "'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." Thus "retail electric load" is an annual metric.

[26] Accordingly, the compliance obligation is a multiyear obligation, as opposed to an annual, monthly, hourly or other obligation.

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 retail electric loads and the multi-year sum of the use of nonemitting electric generation and electricity from renewable resources.[27] Further, the use of a multiyear period suggests that it is the retail electric load over that period, and not some other timeframe (e.g., hourly, monthly, and annually), that must be greenhouse gas neutral, as defined by CETA, from 2030 to 2044.

2. CETA's Findings and Intent

The legislative findings and intent also support this position. 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";[28]

(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;[29] and

(iii) intends to provide flexible tools to address the variability of hydropower for CETA compliance.[30]

The language in RCW 19.405.040(1)(a) requires the use of electricity from renewable resources and nonemitting electricity in an amount equal to 100% of the electric utility's electric retail loads over the multiyear compliance period. If the legislature intended that an electric utility had to meet CETA's target in each year of the compliance period, it would have required an electric utility to use renewable resources and nonemitting electric generation in an amount equal to 100% of its retail electric load in each year of the multiyear compliance period. But that is not what the statute says. CETA allows am electric utility to total its retail electric load over the multiyear compliance

[27] *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)).

[28] 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.").

[29] 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).

[30] 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).

period to establish the compliance target, thus giving each electric utility the flexibility needed to reach the statute's goals.

A multiyear compliance period achieves the legislature's findings and intentions. An hourly, daily, or even annual compliance period, as opposed to a multiyear compliance period, would not recognize the annual variability of renewable resources, including the hydropower system, could increase costs to utility customers, and would not provide flexible tools to address variability of renewable resources.

3. CETA's Legislative History

The legislative history provides strong support for a multiyear compliance period. The language for multiyear compliance was based on an agreed-upon proposal and explanation advanced collectively by PGP, Avista, and the environmental community that was sent to Lauren McCloy (Senior Policy Advisor for Governor Jay Inslee), on March 28, 2019. The language sent to Ms. McCloy came with the understanding that the multiyear compliance language included the following concept: "Compliance obligation is the sum of each year's load over the four years of the compliance period[.]" Indeed, that is nearly identical to the language that is in the statute.

The multiyear language first appeared in a striker by the House Committee on Appropriations on April 11, 2019.[31] The House Bill Report for E2SSB 5116 reiterated the four-year compliance period: "[t]o achieve compliance, an electric utility must: … use electricity from renewable resources and nonemitting electric generation in an amount equal to 100 percent of the utility's retail electric loads over each multiyear compliance period."[32] Moreover, the Senate Bill Report for E2SSB 5116 explained that the House Amendment "[a]mends the GHG neutral standard to implement multiyear compliance periods, rather than an annual compliance requirement, beginning January 1, 2030."[33] The multiyear compliance period language was adopted and included in the final legislation, and became law.[34]

Before Section 4 was amended to include the multiyear language, all prior versions of the bill required an electric utility to demonstrate compliance with the greenhouse gas neutral standard

[31] *See* E2SSB 5116, 66th Leg., 2019 Reg. Sess., § 4(1)(a) (April 11, 2019) (H. Comm. Approp. Amend., 5116-S2.E AMH. ENGR H2810.E) (hereinafter, "House Striker E2SSB 5116").

[32] E2SSB 5116, 66th Leg., 2019 Reg. Sess., House Bill Report at 5 (April 11, 2019), http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/House/5116-S2.E%20HBR%20APH%2019.pdf?q=20200220152010.

[33] E2SSB 5116, 66th Leg., 2019 Reg. Sess., Final Bill Report at 11 (April 11, 2019) (hereinafter, "E2SSB 5116 Final Bill Report"), http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/Senate/5116-S2.E%20SBR%20HA%2019.pdf?q=20200225110742.

[34] *See* RCW 19.405.040(1)(a) ("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.").

"each year" based on the utility's "average annual retail electric load."[35] The term "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."[36] The fact that Section 4 was amended so that the compliance period evolved from "each year" based on the utility's "average annual retail electric load" to "the four-year compliance period beginning January 1, 2020, and for each multiyear compliance period thereafter" shows that the Legislature clearly understood that a one-year compliance period was problematic, and intended to eliminate the one-year compliance period and replace it with the four-year compliance period, instead.

C. Compliance Demonstration

From 2030 to 2044, electric utilities may demonstrate compliance with CETA by using RECs associated with owned or contracted generating resources and nonemitting electric generation equal to the sum of their retail electric loads for each multiyear compliance period. As described above, electric utilities may sell power generated by their renewable resources as unspecified electricity to third parties and use the RECs associated with that power to satisfy the greenhouse gas neutral standard under RCW 19.405.040(1)(a).

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[35] *See* SB 5116, § 4(1)(a)(ii) (electric utility must "use renewable resources in an amount equal to one hundred percent of the utility's average annual retail electric load minus any nonemitting electric generation in an operation on the effective date of this section."). The language shifted slightly with SSB 5516 and remained the same until the multiyear language was added to the April 11, 2019 E2SSB 5116 version. *See* SSB 5116, 66th Leg., 2019 Reg. Sess., § 4(1)(a)(ii) (Feb. 1, 2019) (hereinafter, "SSB 5116") (electric utility must "use electricity from renewable resources and nonemitting electric generation in an amount equal to one hundred percent of the utility's average annual retail electric load."); 2SSB 5116, 66th Leg., 2019 Reg. Sess., § 4(1)(a)(ii) (Feb. 21, 2019) (hereinafter, "2SSB 5116"); E2SSB 5116, 66th Leg., 2019 Reg. Sess., § 4(1)(a)(ii) (Feb. 21, 2019) (hereinafter, "E2SSB 5116 (Feb. 21, 2019)").

[36] RCW 19.405.020(36). The definition of "retail electric load" evolved slightly during the legislative process. SB 5116 defined "retail electric load" to mean "the amount of megawatt-hours of weather-adjusted electricity delivered in a given calendar year by an electric utility to its Washington retail electric customers."). *See* SB 5116, § 2(29). SSB 5116 amended the definition and included the language now found in RCW 19.405.020(36). The definition was not further amended until April 11, 2019. At that time, the striker by the House Committee on Appropriations amended the definition, adding that "retail electric load" does not include:

> (a) Megawatt-hours delivered from qualifying facilities under the federal public utility regulatory policies act of 1978, P.L. 95-617, in operation prior to May 7, 2019, provided that no entity other than the electric utility can make a claim on delivery of the megawatt-hours from those resources; or
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> (b) Megawatt-hours delivered to an electric utility's system from a renewable resource through a voluntary renewable energy purchase by a retail electric customer of the utility in which the renewable energy credits associated with the megawatt-hours delivered are retired on behalf of the retail electric customer.

See E2SSB 5116, 66th Leg., 2019 Reg. Sess., § 2(36) (April 11, 2019) (H. Comm. Approp. Amend., 5116-S2.E AMH. ENGR H2810.E).

The operative language at RCW 19.405.040(1)(a) requires an electric utility to demonstrate compliance by "using … electricity from renewable resources," which use is verified by the retirement of RECs:

> 1) It is the policy of the state that all retail sales of electricity to Washington retail electric customers be greenhouse gas neutral by January 1, 2030.
>
> (a) 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: (i) Pursue all cost-effective, reliable, and feasible conservation and efficiency resources to reduce or manage retail electric load, using the methodology established in RCW 19.285.040, if applicable; and (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]

The definitions of "renewable resource"[37] and "nonemitting electric generation"[38] also do not refer to RECs. These definitions discuss electricity from renewable resources and nonemitting electric generation, but do not discuss the non-power, environmental attributes of renewable resources and nonemitting generation.

Two statutory provisions directly address non-power environmental attributes of renewable resources and nonemitting generation, including RECs for renewable resources: RCW 19.405.040(1)(c) and RCW 19.405.040(1)(f). These provisions elaborate upon the greenhouse gas neutral requirement and contemplate the use of RECs to verify electricity from renewable resources:

- RCW 19.405.040(1)(c) provides for the verification of use of electricity from renewable resources through retirement of RECs: "Electricity from renewable resources used to meet the [GHG-neutral] standard [from 2030–2044] must be verified by the retirement of renewable energy credits. Renewable energy credits must be tracked and retired in the tracking system selected by the department."

- RCW 19.405.040(1)(f) establishes a somewhat different approach for verification of the use of nonemitting generation: "Nonemitting electric generation used to

[37] *See* RCW 19.405.020(34) ("'Renewable resource' means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) renewable natural gas; (f) renewable hydrogen; (g) wave, ocean, or tidal power; (h) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or (i) biomass energy.").

[38] *See* RCW 19.405.020(28) ("(a) 'Nonemitting electric generation' means electricity from a generating facility or a resource that provides electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation. (b) 'Nonemitting electric generation' does not include renewable resources.")

> meet the [GHG-neutral] standard [from 2030–2044] 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."

The language in RCW 19.405.040(1)(f) could be read to suggest that for nonemitting generation, the utility must use the "generation" — *i.e.*, electricity — and the nonpower attributes, and thus arguably supports a delivery requirement for nonemitting generation. RCW 19.405.040(1)(c), on the other hand, does not require use of electricity from the electric utility's renewable resource to meet the electric utility's retail electric load; rather, it provides a mechanism to use the electricity to meet the CETA standard by retiring associated RECs. The definition of REC in CETA also does not require a utility to use a REC and the electricity from the same resource. It defines REC 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."[39] The implication of these provisions is that RECs and electricity do not need to come from the same resource. The nonpower attributes of and electricity generated by nonemitting generation, on the other hand, may have to come from the same nonemitting resource. CETA's goals of "maximizing the value of hydropower, our principal renewable resource"[40] and "provid[ing] flexible tools to address the variability of hydropower"[41] also supports this position.

Commission Staff's interpretation of the requirements of RCW 19.405.040(1) rests on the flawed premise that because an electric utility can use unbundled RECs for the alternative compliance option under RCW 19.405.040(1)(b), the electric utility cannot use anything other than so-called "bundled" RECs (a term nowhere defined or used in CETA) to satisfy the 80% obligation under RCW 19.405.040(1)(a). The authorization to use unbundled RECs to satisfy up to 20% of the greenhouse gas neutral standard under RCW 19.405.040(1)(b) (*i.e.*, alternative compliance option) could be interpreted to mean that only so-called bundled RECs — which the statute does not define, but presumably would mean RECs sold, delivered, or purchased with electricity — can be used to satisfy the remaining 80% under RCW 19.405.040(1)(a).

III. Conclusion

Nothing in CETA requires an electric utility to show it delivered electricity from renewable resources or nonemitting generation to customers. In fact, such a requirement would be inconsistent with the four-year compliance period and frustrate the legislative intent to provide flexible tools to address the variability of renewable resources. A utility's compliance obligation

[39] RCW 19.405.020(31).

[40] RCW 19.405.010(4).

[41] RCW 19.405.010(7).

from 2030-2045 reflects the sum of the retail electric 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 this position. An electric utility may demonstrate compliance with CETA by using RECs associated with owned or contracted generating resources and nonemitting electric generation equal to the sum of their retail electric loads for each multiyear compliance period; importantly, these RECs can be distinguished from RECs that have been "sold, delivered or purchased separately from electricity." RECs that have been "sold, delivered or purchased separately from electricity" may only be used as an alternative compliance option. Accordingly, the draft rules proposed by PGP, Avista, PacifiCorp and Puget Sound Energy are consistent with CETA.

Finally, this interpretation, and the draft rules proposed, are consistent with, and appropriately carries out, RCW 19.405.040(1)'s general policy direction that all "retail sales of electricity… be greenhouse gas neutral." "Retail sales of electricity" is undefined, but it could persuasively be interpreted to cover final sales to retail electric customers.[42] The term "neutral" indicates that the policy of the state is that sales of electricity to each retail electric customer not result in any new greenhouse gas emissions. RCW 19.405.040(1)(ii) subsequently establishes that this neutrality must be accomplished over the course of a four-year compliance period. This approach effectively carries out the law's mandate of neutrality beginning in 2030, and is also measurable, enforceable, and consistent with the State's policy in favor of market participation.

[42] A "retail sale" is commonly understood to mean the final delivery of electricity, subject to state jurisdiction. See, e.g. 16 USC § 824(b), Fed. Energy Regulatory Comm'n v. Elec. Power Supply Ass'n, 136 S. Ct. 760, 766 (2016). Additionally, the use of "retail sales of electricity" in RCW 19.405.040(1) also indicates that subsequent language about "use" to meet "one hundred percent of a utility's retail electric load" must mean something aside from final delivery to customers. Such a reading would mean that the Legislature used two different terms (one of which is defined) to mean the same thing, contrary to accepted methods of statutory interpretation.