August 10, 2020

Lauren McCloy, Senior Policy Advisor, Office of Jay Inslee
Chair Dave Danner, Utilities and Transportation Commission
Commissioner Ann Rendahl, Utilities and Transportation Commission
Commissioner Jay Balasbas, Utilities and Transportation Commission
Glenn Blackmon, Manager, Energy Policy Office, Department of Commerce

RE: Recommendations for the regulatory approach to interpreting "use" of renewable resources and nonemitting electric generation for Clean Energy Transformation Act compliance (UE-191023)

Dear Advisory McCloy, Commissioners and Dr. Blackmon,

The following letter is submitted jointly by the undersigned clean energy advocacy organizations in response to the draft rules proposed by the Department of Commerce (Commerce), the interpretation offered by Washington Utilities and Transportation Commission (Commission) staff, and the Joint Workshop held by both agencies on the topic of interpreting "use" for Clean Energy Transformation Act (CETA) compliance. It also responds to the letter and accompanying memorandum on this same topic submitted by the Joint Utility Signatory's (Utilities) on July 31, 2020.

The joint clean energy advocacy organizations submitting this letter share the overarching goals expressed by the utilities in their recent letter: that continuing dialogue will result in a regulatory construct that upholds the requirements of CETA, the efficient operation of markets, and the reliable, cost-effective delivery of retail electric service.

We differ, however, from the utilities in our legal interpretation of CETA and, consequently, in the necessary approach for establishing rules that uphold the intent and letter of the law. The accompanying legal memorandum outlines our joint position regarding the statutory requirements of CETA; this letter provides thoughts on the implications of this interpretation for the current rulemaking by Commerce and the Commission.

In general, we find that the Commission's interpretation as issued in the notice on June 12th is correct. Concomitantly, we find the draft rules issued by Commerce under WAC 480-100-665 (3) to be inconsistent with the statutory requirements of CETA.

The following sections outline some key points regarding CETA compliance and the interaction between the statutory requirements in Washington and organized markets in the West.

Importance of Organized Markets

The clean energy advocacy organizations whole-heartedly support the use of well-designed and effective organized wholesale electric markets in Washington and across the West. Organizationally, we have all advocated for utility participation in the Energy Imbalance Market (EIM), recognizing the financial benefits that this market brings to utility customers of participating Northwest utilities. We have also readily acknowledged that wholesale electricity markets are useful in pursing and optimizing clean energy goals. Nothing in these comments should be seen as dismissive or in contrast to our support for wholesale electric markets.

We fundamentally disagree that upholding the statutory intent of CETA will lead to an inability for Washington utilities to participate in regional markets, and, therefore, dismiss the majority of the negative impacts asserted by the utilities in their recent comments that are attributed to this concern, such as increased compliance costs.

While we acknowledge that the current structure and tracking mechanisms included in Western markets were not designed to track attribute delivery along with carbon content, this appears to be more an artifact of industry needs when these markets were designed rather than a matter of physical limitation or impossibility. Because the legislature clearly intended a robust conversion of Washington's electricity system to clean generation, and because CETA requires no compliance demonstration for well over a decade, we believe it is necessary and prudent to establish reasonable requirements for use of clean electricity as utilities, stakeholders, and the State of Washington engage with California market administrators to make adjustments over time. CETA was passed because of a recognition by the legislature that the status quo was insufficient to achieve the levels of deep decarbonization and high clean energy deployment necessary—that it requires changes in how the industry operates is the intent of the law, not a defect of it.

Market Tracking Structures

We find any discussion of the hourly or "minute-by-minute" tracking of energy to load to be a gross exaggeration or at best a distraction from a meaningful discussion of how a utility might account for resources to determine CETA compliance. What is

needed is a methodology that demonstrates that over a four-year period, a utility has used renewable resources and nonemitting electric generation to meet its retail electric load. Washington does not need to require minute-by-minute, or hourly tracking, in order to make this determination.

As previously mentioned above, we agree that current market tracking mechanisms, while set up to track very complicated California legal requirements, are not set up in a way that immediately facilitates an easy answer for CETA compliance. We do believe, based on conversations with regional market experts, that market organizers are already actively discussing and considering methods to account for market electricity transactions in a way that would facilitate easy tracking and reporting for Washington utility compliance. Other Western state requirements are also driving these discussions. And, for Washington CETA compliance, markets have 10 years to perfect, plan and implement these structures in order for utilities to utilize them for CETA compliance beginning in 2030 – in fact, they have 4 additional years before the end of the first compliance period.

The Role of Renewable Energy Credits (RECs)

After considering the intent and structure of the statute as laid out in the accompanying legal memo, we offer a distinction between CETA compliance and the role of REC retirement. The distinction between the intent and subsequent requirements of a renewable portfolio standard and a clean energy standard must be understood and taken into account in crafting rules for CETA.

Under CETA, the retirement of RECs is required to "verify" that there is no double counting between various policies and jurisdictions with regard to renewable resource attributes. In other words, when going beyond renewable portfolio standards in state policy, it should be common practice to ensure the tracking and retirement of the nonenergy attributes of a renewable resource.

This should not be confused with a demonstration under CETA regarding compliance with the clean energy standard. Nowhere in CETA does it say that the verification of "use" of renewable resources and nonemitting electric generation is based on the retirement of renewable energy credits (RECs). It is fair to suggest that the Commission develop a compliance requirement that does not rely on any type of REC (except for the explicit use of unbundled RECs for alternative compliance spelled out in RCW 19.405.040(1)(b)).

Multiyear Compliance Period

As explained in the accompanying memo, the utilities misstate the intent and purpose of the multiyear compliance period in CETA. Our organizations participated actively in the bill drafting and negotiations for CETA. Our collective recollection is that the multiyear compliance period was developed directly and solely to address the yearly variation in hydropower output experienced in our region due to temperature and precipitation variability. It was not intended to be used to alter or

adjust the requirement that renewable resources and nonemitting generation be used to serve Washington retail customers. Beyond our attestation to this purpose, the four-year compliance periods do indeed ease compliance burdens, meaning that intent language regarding the intent to provide flexibility for utilities is satisfied by this interpretation.

Objections to the Utility Recommendation

Our primary objection to the utility compliance recommendation outlined in their July 31 letter is that under that proposal, once the electricity is generated or procured in the initial transaction, the underlying electricity can be separated from the REC and sold – meaning that the electricity is not actually used to serve that utility's retail electric load. This is inconsistent with the requirements in CETA.

While we agree that the utility proposal most likely mitigates the risk that the nonenergy attributes of the energy that is sold as unspecified is not double counted, that is not the sole, or even the primary, requirement under CETA. The sale of this electricity as specified or unspecified makes no material difference to its ability to comply with CETA – neither form of sale is compliant if the underlying electricity is sold and not delivered to customers. Even the recommended step of ensuring delivery *capability* to a Washington State or a utility service territory does not make it so.

Recommendations

We urge both agencies to reject the utility proposal in favor of a rule that conforms to the intent and meaning of CETA. Ultimately, Washington needs a compliance, and associated reporting, framework that demonstrates that utilities are serving Washington customers with renewable resources and nonemitting electric generation in appropriate amounts per the 2030 and 2045 requirements in CETA. For electricity use to be compliant with the letter and spirit of CETA's statutory language, utilities should procure electricity and the non-power attributes associated with it, deliver said power to its distribution system, not resell the electricity, and then retire associated non-power attributes.

While CETA requires this compliance on a four-year basis, the clean energy organizations recommend that, at least in the near-term, utilities be required to report on an annual basis the amount of electricity serving retail load and the sources of that electricity, along with corollary REC retirement. This will allow early monitoring of the reporting construct and provide opportunity to evaluate how the construct is working, in order to provide ample opportunity both to course adjust individual utility compliance performance, and/or to identify whether the particular compliance and reporting framework is working well in the face of developing market structures and other electricity sector developments. While reporting would be annual under this proposal, compliance determinations would be made based on cumulative electricity use over full compliance periods.

This annual reporting recommendation is consistent with the draft Commission rules in WAC 480-100-665(3) which currently require annual clean energy progress reports.

For rulemaking content regarding compliance, we stand by our earlier recommendation, set forth in joint comments on June 29, 2020 (attached to this letter) to provide rule language that specifically requires demonstration of delivery of electricity from renewable resources to utilities' distribution system serving the customer of the electric utility. Our suggested rules allow the use of e-tags or other unique identifiers to make this determination.

Utilities object to this requirement based on the premise, as previously discussed, that current market structures for electricity do not easily provide opportunity for such an identifier. We agree that current markets do not, however, we contend that it is feasible to do so, and further, that given other policy developments in Western states, it seems likely that they will provide such an identifier, well before the 10 - year deadline for the first year of CETA compliance in 2030.

Another option that might have promise for rules, either on a interim basis until market structures develop or potentially longer-term, would be to account for renewable energy and nonemitting generation based on a procurement approach as the utilities have suggested, but provide a fuller picture of procurement that does not rely on RECs for demonstration of compliance (RECs would still be used for verification of renewables and to prevent double counting).

An approach of this nature would entail a more thorough annual accounting of all utility owned-generation, specified and unspecified purchases, and specified and unspecified sales. It would also require assigning an equivalent generation profile to unspecified purchases and sales. We do not offer specific rule language for this concept now because it requires more conversation among interested stakeholders, including the utilities.

Conclusion

The interpretation of "use" incorporated in Commission's June 12th notice and supported by this letter and accompanying materials is consistent with legislative intent to transform Washington's electricity system over the course of the next generation. The utilities' proposal decidedly omits any push for transformation. Any interpretation that allows utilities to continue relying on their system unchanged—dispatching the same fossil fuel units as they currently do—by pairing this generation with attributes separated from power acquired elsewhere undermines the basic purpose of CETA.

Transitioning to 100% clean electricity won't be easy—if it were, legislation wouldn't have been required—but it is doable, as demonstrated by numerous studies published by utilities, advocates, and independent organizations. We readily agree that it will require updating how we manage our electricity system and

incorporating more deeply carbon and resource tracking into our markets. This is a necessary change and we urge the agencies to incorporate it into proposed rules, knowing that over the course of the coming decade we have ample opportunities to evaluate, develop, and modify our approach to provide additional flexibility if necessary while preserving the integrity of CETA's requirements. Establishing this expectation as soon as possible will allow all stakeholders within and without Washington to work to address these requirements, improving markets and tracking to provide customers the certain knowledge that their power is indeed clean.

As a final note, we do not see utilities or other stakeholders arguing that our proposed interpretation does not apply to the 2045 requirement, only to the requirements in incorporated in RCW 19.405.040. Fundamentally this means that all stakeholders agree that accommodating this high but achievable standard will need to be done eventually. Accordingly, we must begin to build the system that CETA requires in 2045, or risk potential stranded investments that will not adequately meet loads when the later standard kicks in. Given this, we see no cause for delaying the inevitable and agreed upon improvements that CETA requires, and we stand committed to long-term collaborative work with agencies, utilities and others in ensuring successful, affordable, and efficient decarbonization of Washington's electricity supply.

Sincerely,

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