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Re: Comments of Renewable Northwest Regarding the Interpretation of “Use” of Renewable Resources and Nonemitting Electric Generation for Compliance with the Clean Energy Transformation Act, Docket UE-191023.

I. INTRODUCTION

Renewable Northwest thanks the Washington Utilities and Transportation Commission (“the Commission”) and the Department of Commerce (“the Department”) for their concerted effort to determine how best for investor-owned utilities and public utilities (as shorthand below, just “utilities”) to demonstrate compliance with the greenhouse-gas neutral standard of the Clean Energy Transformation Act (“CETA”).

On July 27, 2020, the Commission and the Department held a joint workshop to discuss their interpretations of “use” as it is applied in RCW 19.405.040(1)(a)(ii). In the workshop and in a batch of comments issued in Docket UE-191023, stakeholder feedback has been conflicted, reflecting both the complexity of this issue and the impact the final rule will have on Washington’s success achieving the greenhouse-neutral standard.

In these comments, we first revisit Commission Staff’s preliminary interpretation of the statute and explore misalignments of various provisions which may warrant a different interpretation. Renewable Northwest originally supported Staff’s interpretation in previous comments jointly filed with partner organizations; we understand that those organizations may not agree with the analysis we now offer. We then explore the potential barriers that Staff’s preliminary interpretation might pose as Washington aims to meet CETA’s nation-leading clean energy milestones, ultimately proposing a modeling effort to examine the actual logistical and financial implications of different compliance structures.

Next, we provide a response to the proposed rule language offered in a recent letter jointly filed by the Washington utilities. Finally, we offer a path forward that responds to the Commission’s,

the Department's, and stakeholders' efforts to date, encouraging regulators to revisit these rules in one to two years in order to benefit from both our proposed modeling effort and preliminary efforts by the utilities to determine a path to compliance. Renewable Northwest will continue to engage in discussions related to this issue with the goal of determining a strong framework for accomplishing greenhouse gas neutrality in Washington by 2030.

II. COMMENTS

A. The Commission's Preliminary Interpretation of "Use"¹

On June 12, 2020, UTC Staff issued a Notice of Opportunity To File Written Comments regarding how a utility may "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."² In the Notice, Staff explained:

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.

On June 29, 2020, Renewable Northwest, Climate Solutions, and NWECA submitted joint comments broadly providing that "[w]e agree with Staff's interpretation 'that "use" means delivery to retail customers of 'bundled' renewable and nonemitting electricity,' including the explanation set forth in the Notice."³

Since submitting those June 29 Joint Comments, Renewable Northwest has spent many hours discussing the "use" issue with our developer and nonprofit members, with CETA stakeholders

¹ June 12, 2020 Notice of Opportunity to File Written Comments, Utilities and Transportation Commission (Docket UE-191023) ("June 12 Notice").

² June 12 Notice at 1 (quoting RCW 19.405.040(1)(a)).

³ June 29 Comments of Climate Solutions, Northwest Energy Coalition, and Renewable Northwest at 1 ("June 29 Joint Comments").

including utilities, and with outside experts including staff of multiple organized market operators. While we continue to think that Staff’s interpretation of “use” is the most straightforward reading of RCW 19.405.040(1)(a)(ii), after much careful reflection we do not believe it is the *only* interpretation of that provision and we think it could pose barriers to effective CETA implementation. Specifically, we have come to the conclusion that requiring a demonstration of “delivery to retail customers” may not be required by RCW 19.405.040(1)(a), and that such a deliverability requirement could be problematic in practice for several reasons explored in greater detail below. It is important to emphasize that we understand Climate Solutions and NWECC may not share our views.

Beginning with CETA’s language, the word “use” appears in the law’s 2030 greenhouse-gas neutrality standard (*not* the 2045 100% clean standard), set forth at RCW 19.405.040(1). That section begins: “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.” To implement that greenhouse-gas neutrality standard, RCW 19.405.040(1)(a) provides that “[f]or 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” (emphasis added). Furthermore, “[t]o 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 question is what it means to “*use* electricity from renewable resources and nonemitting electric generation.”

The language around that “use” phrase provides guidance as to how it should be interpreted. In particular, the ultimate goal of the greenhouse-gas neutrality standard is “that all retail sales of electricity ... [must] be greenhouse gas neutral”; that goal must inform the meaning of the word “use” that follows.⁴ Nothing in the goal’s phrasing mandates a strict delivery requirement that directly aligns eligible generation and load. As the greenhouse-gas neutrality standard is a stepping stone to a more stringent 100% clean requirement, it makes sense for stakeholders and regulators to bear in mind CETA’s ultimate goal of aligning eligible generation and load, but RCW 19.405.040(1) does not *require* that result at the interim greenhouse-gas-neutral stage of implementation.⁵ Looking at RCW 19.405.040(1) as a whole, “delivery to retail customers” does not appear to be required.

⁴ RCW 19.405.040(1).

⁵ *Cf.* RCW 19.405.050(1).

Importantly, however, RCW 19.405.040(1)(a) also requires utilities to achieve compliance by “using a combination of nonemitting electric generation and electricity from renewable resources, *or* alternative compliance options, as provided in this section” (emphasis added).⁶ As unbundled renewable energy credits (“RECs”) are available as an *alternative* compliance mechanism,⁷ Renewable Northwest still maintains that something stricter than an unbundled REC is required for 80% of a utility’s compliance with the greenhouse-gas neutrality standard. Typically we would refer to this “something stricter” as a bundled REC,⁸ but that term appears to be undefined under Washington law. To that end, we continue to recommend looking to Oregon’s Renewable Portfolio Standard rules -- albeit in a different form than the June 29 Joint Comments -- to help define under what circumstances a delivery of energy bundled with RECs to a utility may appropriately demonstrate compliance with RCW 19.405.040(1).⁹

Perhaps even more importantly, the analysis presented above is both rooted in and limited to RCW 19.405.040; it does *not* bear directly on the requirements of RCW 19.405.050. On the contrary, RCW 19.405.050 contains meaningful distinctions from RCW 19.405.040. First, just as the language and policy of the greenhouse gas-neutrality standard in RCW 19.405.040 must inform the meaning of the word “use” in that section, so must the language and policy of the 100% clean standard in RCW 19.405.050 inform the meaning of “use” in that section: “It is the policy of the state that nonemitting electric generation and electricity from renewable resources supply one hundred percent of all sales of electricity to Washington retail electric customers by January 1, 2045.” Achieving 100% clean electricity -- “supply[ing] one hundred percent” clean energy to customers -- is a significantly more stringent requirement than achieving greenhouse gas neutrality. Moreover, RCW 19.405.050 does not contain the language of RCW 19.405.040(1)(a)(ii) -- “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.” As noted above, the greenhouse-gas neutrality standard is a stepping stone to a more stringent 100% clean requirement, so it makes sense not only as a matter of statutory language but also as a matter of policy that the “use” necessary to demonstrate compliance with the neutrality standard will be different than the “use” necessary to demonstrate compliance with the ultimate 100% clean standard. We strongly encourage the Commission and the Department to bear in mind these key distinctions.

In recognizing 1) that the Commission and the Department must uphold the language and intent of the statute and 2) that these agencies have significant autonomy to resolve ambiguities in the

⁶ RCW 19.405.040(1)(a).

⁷ See RCW 19.405.040(1)(b)(ii).

⁸ Indeed, this was a major focus of the June 29 Joint Comments.

⁹ See June 29 Joint Comments at 3-4 (citing OAR 330-160-0025).

statute and ensure successful implementation of CETA, we will now address the potential consequences of a strict deliverability requirement, noting again that these comments are Renewable Northwest's alone, and Climate Solutions and NWECA may not share our views.

B. Potential Barriers to Meeting the Clean Energy Standards

Renewable Northwest has been engaged with regional experts on the implications of Staff's preliminary interpretation of "use," in attempts to understand how practical it would be to require utilities to demonstrate that a time-matched bundled product was delivered to retail customers. We have identified the following potential consequences of such a compliance structure.

Devaluing Geographic Diversity of Renewable Energy

Requiring delivery to load could favor generation that is geographically nearest to the utility's load in an effort to avoid transmission rates, thus favoring utility self-build generation and undermining the geographic diversity benefit of renewable energy. Under the current energy market structure, a utility must pay to wheel energy across a transmission path that it does not control. If required to demonstrate delivery to load, a utility may be incentivized to procure renewable energy that can be injected directly into its own transmission system or a transmission path that it currently has rights to use.

Some stakeholders have suggested that the current structure of the energy markets in which Washington utilities participate should not dictate the mechanism of compliance with CETA. The argument is that under a regional transmission organization (RTO) structure, there would be no wheeling charge for delivering renewable energy to load. This is a fair point. However, even if an RTO is established by 2030, our current understanding of how RTOs operate is that states with renewable energy mandates within RTOs rely on source-based accounting and do not track delivery of energy and RECs to load. The closest analogy would be California's greenhouse gas (GHG) accounting requirements, where instead of demonstrating that the energy is delivered to load as clean, it must be delivered to the border of the state as clean, or else a GHG emissions fee is added to the cost.

Prioritizing Energy at the Expense of Capacity

Because Washington is primarily a net exporter of electricity, requiring proof of distribution-level delivery of renewable and nonemitting generation for compliance with the clean energy standards has the potential to impact the flexibility of Washington's hydroelectric

resource.¹⁰ If stringent delivery requirements strongly preference Washington-based sources of energy and capacity to meet Washington load, that result may strain Washington utilities' ability to support the region's resource adequacy needs and exacerbate the anticipated regional capacity shortfall by disadvantaging geographically diverse renewable resources with high capacity values.

Further, structuring compliance such that a utility must time-match, perhaps even hour-by-hour, the delivery of renewable and nonemitting generation to the utility's retail customers could result in several undesirable scenarios:

1. Utilities will over-build and, thus, over-generate renewable energy to ensure delivery to Washington load, which could result in increased curtailment (i.e. decreased value) of renewable energy generated in-state.
2. Utilities will over-build to ensure the shape of renewable and hydro generation can be better matched to the utilities' load shapes.
3. Utilities may need to rely more heavily on existing gas generation due to the inability to benefit from the diverse generation profiles of renewable generators across the region.
4. Under WREGIS rules, utilities may not be able to rely on storage resources to time-match depending on how strict the bundling and delivery requirements are.¹¹

While Renewable Northwest supports aggressive build outs of both renewables and storage in Washington, we believe the state will meet its clean energy goals sooner and more cost effectively if it capitalizes on the region's diverse set of resources and technologies to meet the needs of Washington consumers. This point was demonstrated in the recent Western Interstate Electricity Board Flexible Grid study, which concluded that a more flexible grid than exists is needed to meet states' clean energy mandates, and that without diverse resource selection, new energy storage and load management will not likely meet those mandates.¹² Preferring in-state procurement and establishing a strict delivery-to-load requirement would run counter to the

¹⁰ See, e.g., Washington. U.S. Energy Information Administration (Dec. 2019), available at <https://www.eia.gov/state/analysis.php?sid=WA>.

¹¹ WREGIS Operating Rule 9.3 states: "For each renewable energy resource, total MWhs of generation shall be measured at the point of interconnection to the transmission or distribution company's system or adjusted to reflect the energy delivered into either the transmission or distribution grid at the high side of the transformer." Therefore only if a storage facility is colocated with a renewable-energy facility at the high side of the transformer can the REC associated with the facility be generated at the time energy is discharged from the storage facility to the grid, resulting in a traditional bundled product.

¹² Western Flexibility Assessment: Investigating the West's Changing Resource Mix and Implications for System Flexibility (Dec. 2019), available at <https://westernenergyboard.org/wp-content/uploads/2019/12/12-10-19-ES-WIEB-Western-Flexibility-Assessment-Final-Report.pdf>.

findings of this study and Renewable Northwest's members' desire to see regional market participation by Washington utilities.

Risk of Meeting the 2% Cost Threshold

The above-mentioned consequences of a tight temporal and spatial delivery requirement, namely the potential increase in transmission costs and the overinvestment in local renewable-resource and storage procurements to aid load matching, could result in utilities hitting the 2% cost threshold fairly early in the multiyear compliance periods. Renewable Northwest has been actively advocating for a cautious approach to the incremental cost of compliance calculation, wherein a utility must maximize baseline costs in modeling and minimize the incremental cost of compliance to actual investments in clean energy. A compliance structure that potentially diminishes the market value of Washington-generated clean energy and instead over-incentivizes capital procurements to aid load matching will likely undermine a carefully tailored incremental cost of compliance.

Furthermore, and perhaps it goes without saying, the sooner and the more frequently utilities meet the 2% cost threshold for compliance, the later Washington will meet its clean energy goals and realize a meaningful reduction in greenhouse gas emissions.

C. Proposed Modeling Effort

Renewable Northwest, potentially in collaboration with other organizations, will be commissioning a modeling effort to explore the technical and financial impacts of requiring utilities to demonstrate time-matched delivery of resources to load, which to date has been considered only conceptually. We anticipate that the results of this modeling exercise will help to clarify the hypothetical concerns stakeholders have raised.

We are still developing the scope of this work, and Renewable Northwest is considering working with Washington's Markets Workgroup to determine scoping and requested outcomes, so the Workgroup stakeholders can further examine the interplay between CETA and the region's evolving markets and inform our study efforts.

D. Analysis of Proposed Solutions for Delivery Requirements

On August 4, 2020, Public Generating Pool and the Washington investor-owned utilities jointly filed a letter to the state agencies, in which the signatories to the letter recommended solutions to non-utility stakeholders' concerns regarding delivery requirements for compliance with the

greenhouse gas neutral standard under RCW 19.405.040.¹³ Appendix A of the letter includes proposed rule language addressing the use of renewable resources and nonemitting electric generation for compliance with that section’s greenhouse gas-neutrality standard, and Renewable Northwest is generally pleased with the level of compromise demonstrated in the proposal. In particular, we appreciate the utilities’ attempts to incorporate elements of the language proposed in our June 29 Joint Comments and Oregon’s RPS rules (while, again, noting that other co-signatories to those Joint Comments may not share our views). However, we have identified two meaningful opportunities to strengthen the language both to acknowledge the utilities’ intent and to address the concerns of various non-utility stakeholders.

First, Renewable Northwest believes the utilities’ proposed rule language inadvertently separates renewable energy from RECs. Specifically in (2), compliance should require both the retirement of the RECs *and* the fulfillment of the acquisition requirements outlined in (2)(b). Second, the utilities’ proposal seems to modify the point-of-delivery requirements of Oregon’s renewable portfolio standard (RPS) rules to include a broader geographic footprint, specifically in (2)(b)(ii)(3), which would allow a utility to deliver renewable resources to “[t]he transmission system of any entity that is a participant in an organized market located in the Western Interconnection....” However, this language creates unnecessary ambiguity which could allow a utility to buy a REC from a market in which that utility does not participate, with the result that the utility could not receive the associated power or even theoretically deliver that power to load. One potential fix for this issue would be to limit the market-participant delivery option only to the transmission systems of participants in markets *in which the utility also participates*.

E. Our Proposed Path Forward

Renewable Northwest acknowledges that maintaining the CETA implementation schedule and setting discrete delivery requirements for the greenhouse-gas neutral standard will aid utilities’ resource planning and procurement efforts in the near-term. For the reasons outlined in these comments, Renewable Northwest supports a greater level of flexibility in utilities’ demonstration of compliance with RCW 19.405.040(1) than would be acceptable with the Commission’s preliminary interpretation of the statute.

Renewable Northwest still maintains a distinction between unbundled RECs used for alternative compliance and the appropriate accounting mechanism for the 80% compliance requirement of RCW 19.405.040(1). For the latter, some stakeholders have advocated for an anything-but-unbundled-REC structure, while others hold that the nuance of timing the acquisition of RECs with the simultaneous acquisition of energy satisfies the 80% compliance

¹³ August 4, 2020 Joint Recommendations of Public Generating Pool, Puget Sound Energy, Pacific Power and Avista Corporation (“Joint Recommendations”).

requirement. The support for these options typically centers on the purpose of the multiyear compliance period and the potential compliance variability from one year to the next. To that end, Renewable Northwest supports the Commission's draft rule WAC 480-100-665(3), Annual Clean Energy Progress Reports, as a means of collecting annual data illustrating the total number of MWhs a utility generated or acquired by resource type, alongside the total number of RECs the utility retired. This data would help rulemakers understand how much variability actually exists amongst the years in a compliance period.

To address the lingering concern among some stakeholders that this more flexible approach to compliance may allow for resource swapping, where a utility may be able to sell electricity generated by a renewable resource and apply the corresponding RECs to an unspecified (potentially fossil-based) resource, we recommend considering alternative ways, perhaps not within the scope of this rulemaking, to address this concern. Our understanding is that given the current clean energy and GHG accounting mechanisms used throughout the United States, the only true safeguard against GHG-based electricity making its way to Washington customers is to implement a cap on emissions in the state, similar to California's approach.¹⁴ Alternatively, though also not within the scope of the current rulemaking, tracking all generation within the Western Interconnection using methods similar to those used in the Pennsylvania-New Jersey-Maryland Interconnection (PJM) could help us to understand exactly what level of renewable, nonemitting, and fossil fuel-based generation Washington customers are receiving. Finally, there may be an inherent mismatch in trying to establish greenhouse gas neutrality -- a function of emissions -- via REC accounting -- a function of energy. We encourage all stakeholders to consider additional approaches to help elucidate the greenhouse-gas consequences of utilities' resource decisions. While we acknowledge that the scope of these recommendations are beyond that of the CETA implementation rulemaking, Renewable Northwest looks forward to investigating these solutions within the Markets Workgroup.

Finally, in considering the importance of a consensus on this particular issue, we recommend that the state agencies establish in rule a revisiting of this issue in one to two years, when informative data has been collected and further analysis has been provided by the Markets Workgroup.

III. CONCLUSION

Renewable Northwest again thanks the Commission and the Department for their work to maintain the integrity of the Clean Energy Transformation Act while also considering practicality in defining the regulatory requirements for utilities' compliance with the clean

¹⁴ This approach is particularly worthy of consideration given that both the EIM and potential emergent organized markets in the west are currently administered by CAISO.

energy standards. We look forward to continued engagement in this issue and the remainder of the Clean Energy Transformation Act implementation process.

Respectfully submitted this 10th day of August, 2020,

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