

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Clean Energy  
Implementation Plans and Compliance  
with the Clean Energy Transformation Act  
And In The Matter of Amending,  
Adopting, and Repealing WAC 480-100-  
238, Related to Integrated Resource  
Planning

DOCKETS UE 190698 AND  
UE-191023

COMMENTS OF THE ENERGY  
PROJECT ON THE COMBINED  
CETA PLANNING RULES

**COMMENTS OF THE ENERGY PROJECT**

**SEPTEMBER 11, 2020**

**I. INTRODUCTION**

1           The Energy Project (TEP) previously filed comments in the Clean Energy  
Implementation Plan (CEIP) docket (UE-191023) on February 28, 2020 (Initial Comments) and  
June 2, 2020 (Second Comments). Comments were also filed in the Integrated Resource Plan  
(IRP) docket (UE-190698) on December 20, 2019. This set of comments is filed in response to  
the CR-101 (WSR 20-17-120)(August 18, 2020), the Commission’s Notice of Opportunity To  
File Written Comments (Notice), issued August 13, 2020, and the accompanying combined draft  
rules.

**II. COMMENTS ON THE COMBINED CETA PLANNING RULES**

**A. Responses To Questions In The Notice**

**1. Utility Justification and Support For Specific Actions (Q.1)**

2           Staff’s interpretation of RCW 19.405.060(1)(c) is reasonable. In order for the  
Commission to issue an order approving, rejecting, or conditioning a plan it must have a record

for decision. The burden of proof is on the utility to demonstrate that it has met the statutory requirement for the CEIP, which includes identification of specific actions under RCW 19.405.060(1)(b)(iii). In order to carry its burden, and to provide a record to support a Commission decision, the utility must provide justification and support, including for the specific actions identified. It is within the reasonable exercise of the Commission's rulemaking authority to specify the type of justification a utility must provide, in this case a business case, to support the specific action.<sup>1</sup> This is particularly appropriate in the case where there is the potential for an adjudicative proceeding (see discussion below).

## **2. Support for Public Engagement (Q.2)**

3 The Energy Project is supportive of developing some type of mechanism to provide funding support for increasing equity-related public engagement in the IRP and CEIP process. As a practical matter, without some level of support it will be difficult or impossible for individuals and organizations to have the resources to effectively participate. On the issue of Commission authority, intervenor funding for general participation in regulatory adjudication has typically had statutory support. As an alternative to an intervenor funding statute, it might be possible to consider treating financial support to advisory group participants for CETA purposes as a recoverable cost for the particular utility. Utilities today already recover their costs for advisory committee activities in rates. To the extent Commission rules, consistent with CETA, establish requirements for advisory committees participation in a utility's CETA planning and

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<sup>1</sup> The Commission's general rate case rules provide an example of the Commission's exercise of rulemaking authority to establish specific requirements for the type of documentation required to support a utility request for a Commission order. WAC 480-07-510(3)

implementation, utilities must meet those requirements. Assuming prudence requirements are met, those costs would presumably be allowable in rates. If payment of a stipend to appropriately identified individuals or organizations is necessary to meet the public participation requirements, it may be appropriate to treat those costs as recoverable costs of the utility's advisory committee activities. The Energy Project recommends that utility, stakeholder and Staff discussions continue on this issue outside of the rulemaking in an effort to craft a solution that could be implemented in time to assist participants in the CETA planning process.

## **B. General Comments On The Draft Rules**

4           These rules are integral to CETA implementation. The Clean Energy Implementation Plan and Integrated Resource Plan rules will provide the framework for translating the broad goals and important requirements of CETA into action. The Energy Project is generally supportive of the rules as proposed in the discussion draft and will not restate its prior comments except where it is appropriate to highlight an issue.

5           The Energy Project supports the modifications to the Clean Energy Transformation Standards in WAC 480-100-610, in particular the changes to subsection (4)(c), which strengthen the incorporation of the customer benefit and equitable distribution requirements in the overall implementation of clean energy transformation goals. The new draft rule also effectively links the standards to key requirements of the rules, such as the IRP portfolio analysis requirements<sup>2</sup> the Clean Energy Action Plan,<sup>3</sup> and CEIP specific actions.<sup>4</sup>

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<sup>2</sup> Draft WAC 480-100-620(10)(f).

<sup>3</sup> Draft WAC 480- 100-620(11)(c).

<sup>4</sup> Draft WAC 480-100-640(4).

## 1. Definitions

6 As we have stated in prior comments, TEP is generally comfortable with inclusion of  
CETA’s statutory definitions related to energy assistance and named communities in Commission  
CETA rules. The Energy Project has advocated that the definitions be consistent across different  
sets of rules and that is achieved here with the consolidation of the IRP and CEIP rules.

7 The Energy Project’s only recommended change, consistent with our prior comments,<sup>5</sup> is  
that “energy assistance need” be defined as the amount necessary to achieve an energy burden of  
“no greater than six percent” rather than “equal to six percent.”<sup>6</sup> While Staff has indicated that  
this definition does not interact with program design, and therefore does not constrain utility  
flexibility, TEP believes it would be helpful if the rule language clarifies the intent to allow a  
utility more range to target programs.

8 The Energy Project supports the modifications to the definition of “equitable  
distribution” in the CEIP rules.<sup>7</sup> The addition of the “burdens and benefits” language addresses  
TEP’s concern about the need to clarify the goal of the fair allocation described in the definition.  
The rule is also improved by broadening the consideration of conditions by adding reference to  
“legacy and cumulative conditons.”

9 The Energy Project also supports the addition of “equitable distribution” to the examples  
of requirements listed in the “resource need” definition.<sup>8</sup>

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<sup>5</sup> Second Comments of The Energy Project, UE-190652 (May 1, 2020), ¶ 5.

<sup>6</sup> Draft WAC 480-100-605.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

## 2. The CEIP Rules

10 The Energy Project supports the rules' incorporation of the equitable distribution requirements of RCW 19.405.040(8) into the "clean energy transformation standards,"<sup>9</sup> the required elements of the "clean energy implementation plan"<sup>10</sup> and the "clean energy compliance report."<sup>11</sup> The modifications in the latest draft in response to comments further improve the rules on this issue. This approach will help ensure that equity considerations are built in to the planning and implementation process as contemplated by CETA.

### a. The CEIP approval process

11 The Energy Project notes the new language added to WAC 480-100-645 specifying that the Commission will issue an order on the CEIP "after an open meeting or adjudicative hearing."<sup>12</sup> This additional language is helpful in advising stakeholders how the Commission anticipates implementing the statutory hearing requirement. In prior comments, TEP discussed the reasons for handling the CEIP as an adjudicative filing, expressing a preference for that approach, but recommending that at a minimum the Commission follow the Energy Independence Act (EIA)-type approach which has used open meeting review with the option of adjudication in more difficult cases.

12 In evaluating the use of the open meeting option, however, it is important to consider the

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<sup>9</sup> Draft WAC 480-100-610(4).

<sup>10</sup> Draft WAC 480-100-640, including in "specific actions," and "equitable distribution."

<sup>11</sup> Draft WAC 480-100-650(1).

application of WAC 480-07-300(1), which states:

(1) **Scope.** The rules in this subpart apply to all adjudicative proceedings described in this chapter, except to the extent of any conflict with special rules that govern general rate proceedings (subpart B of this chapter) or abbreviated adjudicative proceedings (subpart C of this chapter). *An adjudicative proceeding for purposes of this chapter is a proceeding in which an opportunity for hearing is required by statute or constitutional right or is a proceeding the commission voluntarily commences as an adjudication as defined and described in chapter 34.05 RCW.* (emphasis added)

Since CETA does contain a statutory requirement for a hearing, the rule appears to require the CEIP filing to be treated as an adjudication, such that an open meeting process might not be sufficient. This also ties in with the first question in the Notice. Requiring certain types of documentary submissions in order to justify or support a filing is consistent with the requirement of a record to support a decision in an adjudication.

**b. CEIP public participation**

13 The Energy Project appreciates that the current draft retains the earlier draft rule provisions for extensive public involvement in the planning process. The right to comment, advisory committee participation, creation of an equity advisory group, specific involvement in the development of indicators and activities, a filed public participation plan, reporting of public participation, and the provision of the data supporting the CEIP plan are all important to effective public participation throughout the process.

**c. Reporting and compliance**

14 The Energy Project has a continued concern that the current combined draft rules need to provide more clearly established formal opportunities for the Commission, Staff, and stakeholders to track the progress of the utility toward equitable distribution goals. In prior CEIP rule comments, TEP recommended at a minimum that utility reporting include reports at least

every two years on the progress toward meeting the equitable distribution requirements of CETA.<sup>12</sup>

15           This appears to be an issue as well in the most recent draft. The rules provide that specific equity reporting would only be required to occur in the four-year clean energy compliance report.<sup>13</sup> Although the new draft rules include language providing for public and advisory group input in the CEIP, the biennial update, and compliance reporting, the draft removes “progress reports” from the activities requiring public input. In addition, the “annual clean energy progress reports” provided for under draft WAC 480-100-650(3) do not expressly require the utility to report on progress toward meeting equitable distribution requirements. As a result, the utilities would not be mandated to address these issues during the development or presentation of the reports.

16           While the biennial CEIP update theoretically provides a potential opportunity for an intermediate report on progress on equity issues, there is no actual requirement for such a report, with the draft rule simply allowing a utility the option of using the biennial update to make changes to the equitable distribution plan if it wishes. On the other hand, if the utility chooses, the update can be “limited to the biennial conservation plan requirements under Chapter 480-109 WAC.”

17           With no required update on progress toward equity in either the annual reports or the biennial update, that leaves only the clean energy compliance report, filed once every four years for this to occur. The timing of the clean energy compliance report highlights the problem of

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<sup>12</sup> Second Comments of The Energy Project, UE-191023 (June 2, 2020), ¶¶ 21-24.

<sup>13</sup> Draft WAC 480-100-650(1)(c) and (d).

equity progress reporting. The first clean energy compliance report will not be due until July 1, 2026,<sup>14</sup> while the second CEIP will be filed 9 months earlier, on October 1, 2025.<sup>15</sup> If the only formally required report on progress toward equity goals is not available until mid-2026, it will not be available to help the Commission and parties address equity planning issues in the CEIP for the 2025-2029 implementation period.

18 To address this problem, The Energy Project recommends that the rules be amended to expressly provide for at least one intermediate report on progress toward equity goals during the four-year CEIP period. Either the third year annual clean energy progress report, or the biennial CEIP report would be reasonable options for scheduling this report.

### 3. Non-energy Benefits

19 Both the IRP and CEIP rules include analysis of non-energy benefits (NEBs) as an integral part of the planning process.<sup>16</sup> The Energy Project provided extensive comments on NEBs analysis and experience in other states in earlier comments in both dockets.<sup>17</sup> The Energy Project views the incorporation of NEBs in the rules as very positive and a critical component of implementing CETA's policy goals regarding equitable distribution of the benefits of the transition to clean energy. At present, cost-effectiveness analyses for distributed energy resource (DER) programs in Washington, such as low-income energy efficiency programs, contain

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<sup>14</sup> Draft WAC 480-100-650(1).

<sup>15</sup> Draft WAC 480-100-640(1).

<sup>16</sup> See, e.g., IRP rules: WAC 480-100-620(3) re IRP content and DER, WAC 480-100-620(8) assessment of NEBs, WAC 480-100-620(12) avoided costs; CEIP rules: WAC 480-100-640(3) specific targets.

<sup>17</sup> See, e.g., Initial Comments of The Energy Project, UE-190698 (December 20, 2019), ¶¶ 10-20.

inherent bias and inconsistencies because, while all costs are quantified and included, many NEBs are not captured or reflected in the analyses.<sup>18</sup>

20 A challenge for TEP and other stakeholders is that there remains substantial work to be done to ensure that NEBs associated with DER programs, such as low-income energy efficiency, are comprehensively considered and included in these analyses. For example, draft WAC 480-100-620(8) regarding economic, health, environmental burdens and benefits, requires that the IRP include an assessment of energy and nonenergy costs and benefits and reductions of burdens to vulnerable populations and highly impacted communities. The Energy Project appreciates that this language provides quite wide latitude to identify benefits, but the rule is less clear about exactly how this assessment informs the IRP and leads to specific actions. Without more substantive guidance in the rules, these analyses and assessments will be occurring on a case-by-case basis in each utility integrated resource plan, conservation potential analysis and BCP process, and CEIP process, a difficult and time, labor and resource-intensive endeavor for stakeholders.

21 It is likely not feasible to develop this type of guidance in time for inclusion in these rules. However, it would be extremely beneficial for the Commission to provide more direct guidance on this issue in the near term. The Energy Project would strongly support the Commission establishing a policy docket to allow stakeholders and Staff to work on the details

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<sup>18</sup> See, e.g., American Council for an Energy Efficient Economy (ACEEE) 2018 Summer Study on Energy Efficiency in Buildings, “Non-Energy Benefits in State Cost-Effectiveness Tests – Reducing Bias in Consideration of Energy Efficiency as a Resource,” Lisa A. Skumatz, PhD, (Skumatz Economic Research Associates, Inc. (SERA), pp. 4-1 to 4-4; National Energy Screening Project, *National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy Resource Programs (NSPM)*, August, 2020, pp. 2-5.

of NEB analysis and develop recommended guidance for Commission consideration. Ideally it would be good to begin this process early in 2021 at the latest to allow for results to be applied in planning dockets as soon as possible.

#### **4. The IRP Rules**

22 As noted above, TEP is generally supportive of the IRP rules, including the modifications contained in the latest draft. The public participation rules are a significant improvement and step forward in clarifying the role and formal avenues for public participation. The Energy Project is comfortable with the adoption of a four-year IRP cycle with two-year progress reports. However, the establishment of 2025 as the date for filing the next IRPs would appear to unduly delay resource planning. The Energy Project recommends consideration be given to establishing an earlier date.

### **III. CONCLUSION**

23 The Energy Project respectfully requests consideration of these issues by the Commission in this rulemaking docket. The Energy Project may have additional recommendations or modifications to these proposals as the rules develop. We look forward to working with the Commission and other stakeholders as this docket moves forward.