

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of	)	DOCKET UE-191023
	)	
WASHINGTON UTILITIES AND	)	COMMENTS OF THE ALLIANCE OF
TRANSPORTATION COMMISSION,	)	WESTERN ENERGY CONSUMERS
	)	
Relating to Clean Energy Implementation	)	
Plans and Compliance with the Clean	)	
Energy Transformation Act.	)	
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**I. INTRODUCTION**

1 Pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) Notice of Opportunity to File Written Comments in the above-referenced docket, the Alliance of Western Energy Consumers submits these comments.

**A. Clean Energy Implementation Plans (“CEIP”)**

1. Should the utilities include detailed information about the resource mix they plan to use to meet system reliability and resource adequacy and how each resource type contributes?

2 AWEC does not recommend that this type of information be included in CEIPs because it believes this type of information is more appropriately included in a utility’s integrated resource plan (“IRP”) and clean energy action plan. Resource adequacy is typically understood to mean the ability of supply-side and demand-side resources to meet load obligations under a range of conditions. It is a planning standard that is often effectuated through the use of reserve margins that are built into a utility’s long-range forecast of its load/resource balance. AWEC’s understanding of the interaction between the IRP/clean energy

action plan and the CEIP is that the former documents are intended to identify the utility’s need – both to meet load and to comply with the Clean Energy Transformation Act (“CETA”) – while the latter identifies the specific actions that will be taken to meet CETA requirements. The need, therefore, is informed by resource adequacy considerations and, consequently, is best addressed in the IRP/clean energy action plan context.

3                    If a CEIP strays from the needs identified in an IRP/clean energy action plan, then this may be cause to require the utility to provide additional information on how the resources proposed to be procured through the CEIP meet resource adequacy needs, but if there is consistency between the CEIP and IRP/clean energy action plan, then AWEC believes resource adequacy can be presumed.

**B.      CEIP Targets**

2.      Targets for energy efficiency, demand response, and renewable energy; interim targets.

a.      *Should the rules provide that specific targets must be defined cumulatively for each four-year period, or identified annually, within the four-year compliance period?*

4                    AWEC recommends that, for the compliance period from 2030 through 2044, the targets be defined cumulatively, rather than annually. For the compliance period beginning in 2045, the targets should be defined annually. RCW 19.405.040 specifies that, for the “carbon neutral” compliance period beginning in 2030, “an electric utility must demonstrate its compliance with this standard” “for each multiyear compliance period.” This language indicates that compliance with the carbon neutral standard is to be determined over a cumulative four-year period, rather than annually. This legislative intent is made particularly clear by comparison with the “carbon free” standard beginning in 2045, which must be demonstrated in that year “and

each year thereafter.”<sup>1/</sup> If the legislature had intended annual compliance with the carbon neutral standard, it presumably would have used the same language it uses to describe compliance with the carbon free standard.

- b. Should the Commission require utilities to identify interim targets by resource type or some other metric(s), such as percentage of sales to customers from nonemitting generation and renewable resources?*

5 AWEC recommends that interim targets be defined by percentage of sales to customers from nonemitting and renewable generation. The purpose of the interim targets is to ensure progress toward “meeting the standard under RCW 19.405.040(1) during the years prior to 2030 and between 2030 and 2045.”<sup>2/</sup> These standards are defined as the percentage of load met with renewable and nonemitting generation (80% in 2030, and 100% in 2045). In essence, AWEC views the CEIP as accomplishing two basic tasks: first, identifying the progress that must be made to meet the next interim target or compliance requirement; and second, identifying the specific actions and mix of resources – including energy efficiency, demand response, and renewable energy – that are necessary to achieve the interim target or compliance requirement. Interim targets, therefore, should not be defined by resource type because this overly prescriptive approach will likely deny a utility the flexibility to determine the least-cost means of achieving CETA’s requirements (which, again, are based on percentage of load, not resource type). This, in turn, could actually make it more likely that the cost cap provisions in CETA will be triggered (discussed in more detail below).

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<sup>1/</sup> RCW 19.405.050(1).

<sup>2/</sup> RCW 19.405.060(1)(a)(ii).

- c. *Should the Commission require that interim targets be defined cumulatively or annually for the four years prior to 2030? For the years between 2030 and 2045?*

6 Again, AWEC recommends that the interim targets be defined cumulatively for both periods. With respect to the interim period prior to 2030, there is no specific compliance obligation under CETA, so the targets should be as flexible as possible (while still driving toward ultimate compliance with the 2030 carbon neutral standard) to allow the utilities to pursue the least-cost path of compliance. For the interim period moving from the carbon neutral to carbon free standard, a four-year compliance period is appropriate for the same reasons – annual compliance with the carbon free standard does not begin until 2045, so utilities should have maximum flexibility to work toward this goal in the interim (while maintaining compliance with the carbon neutral standard over the applicable four-year period).

3. Are there circumstances in which the Commission can and should recommend, rather than require, more stringent targets?

7 AWEC has no comments on this question at this time.

4. Periodic adjustments to timelines

8 AWEC’s only comment on this topic and the sub-questions is that the party that recommends adjustment/expedition of a CEIP timeline should bear the burden to demonstrate that such adjustment/expedition will be consistent with the criteria enumerated in RCW 19.405.060(1)(c)(i)-(iv). Consideration of a CEIP must be performed as part of an adjudicative proceeding,<sup>3/</sup> and requiring any party other than the proponent for a timeline

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<sup>3/</sup> RCW 19.405.060(1)(c) (requiring the Commission to consider a CEIP “after a hearing”); WAC 480-07-300(1) (defining an adjudicative proceeding as, among other things, “a proceeding in which an opportunity for hearing is required by statute”).

adjustment/expedition to bear this burden would be inconsistent with standard practice in quasi-judicial proceedings.<sup>4/</sup>

5. What additional detail, if any, should the specific CEIP targets include beyond the statutory language?

9 AWEC believes additional clarity is needed with respect to energy efficiency and demand response that is procured from market customers. Puget Sound Energy (“PSE”) has several customers that qualify as “market customers” under RCW 19.405.020(26)(a).<sup>5/</sup> The “carbon neutral” and “carbon free” requirements in CETA apply to a utility’s “retail sales” and, therefore, exclude the loads of market customers.<sup>6/</sup> Nevertheless, PSE’s market customers participate in the utility’s conservation programs, primarily through its Schedule 258 Large Power User Self Direct program, and presumably could provide demand response to PSE as well.

10 Energy efficiency and demand response do not directly contribute to a utility’s clean energy requirements under CETA; rather, they reduce the load for which a utility has a clean energy requirement. Progress toward the carbon-neutral and carbon-free standards identified in a CEIP, therefore, could include identification of the load currently served by “brown” or unspecified power that can be reduced or avoided through energy efficiency or demand response. That is not the case, though, for market customers’ loads. Energy efficiency and demand response acquired from these customers do not reduce the load for which a utility has a compliance obligation.

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<sup>4/</sup> See, e.g., State ex rel. Arrow Transp. Co. v. Wash. Utils. & Transp. Comm’n, 60 Wn.2d 825, 830 (1962).

<sup>5/</sup> These include the customers taking service under PSE Schedule 449 and Microsoft Corp. pursuant to its Special Contract.

<sup>6/</sup> RCW 19.405.020(26)(a) defines a “market customer” as a nonresidential customer that “[p]urchases electricity from an entity or entities other than the utility with which it is directly interconnected.”

11 This raises the question of whether CETA mandates the acquisition of energy efficiency and demand response from these customers. RCW 19.405.040(1)(a) states that, “[t]o achieve compliance” with the carbon-neutral standard, a utility must pursue all cost-effective energy efficiency. Similarly, RCW 19.405.040(6) provides that, “[i]n meeting the [carbon-neutral] standard ... an electric utility must ... pursue all cost-effective, reliable, and feasible conservation ... and demand response.” Given that the language requires the acquisition of conservation and demand response for the specific purpose of achieving CETA compliance, should that language be interpreted to require a utility to pursue only all cost-effective energy efficiency and demand response associated with load for which a utility has a CETA compliance obligation? If so, then acquisition of energy efficiency and demand response from market customers would be incremental to a utility’s CETA obligations and, therefore, could represent an alternative compliance option for the utility (for instance, this energy efficiency or demand response could qualify as an “energy transformation project” if it meets all applicable criteria).

12 If, conversely, CETA is interpreted to require the acquisition of all cost-effective energy efficiency and demand response from customers connected to the utility’s distribution system, thus including market customers, how, if at all, does the utility reflect these resources from market customers in a CEIP? They do not help a utility “achieve compliance” with CETA, but are nevertheless required by CETA under this interpretation. Moreover, if this broader interpretation is correct, then there is no obvious basis to limit the requirement to acquire cost-effective energy efficiency and demand response to a utility’s distribution customers. Demand response opportunities could exist on a utility’s transmission system, or on the transmission systems of other utilities that the utility reserves capacity.

As a third alternative, the Energy Independence Act (“EIA”) separately requires the acquisition of all cost-effective energy efficiency, but has no similar requirement for demand response.<sup>7/</sup> This could be interpreted to mean that utilities have an independent obligation to acquire energy efficiency from market customers through the EIA, but no such obligation to acquire demand response, allowing demand response to qualify as incremental to a utility’s CETA obligations. AWEC supports this interpretation as the most reasonable reading of CETA. Under this reading, in its CEIP a utility would identify the amount of cost-effective energy efficiency it intends to acquire “to achieve compliance” with CETA’s requirements, which would necessarily be limited to its bundled customers (the load for which it has a compliance obligation). Energy efficiency acquired from market customers would thus be excluded from a CEIP, but the utility would still identify this conservation potential in its biennial conservation plans and acquire it pursuant to the EIA. For demand response, again the utility would identify in its CEIP the amount it intends to acquire “[i]n meeting the [carbon neutral] standard,” which would be limited to its bundled service customers. Demand response acquired from market customers could be separately included in a CEIP if the utility proposes to use this resource as an alternative method of CETA compliance.<sup>8/</sup> AWEC encourages the Commission to clarify the treatment of energy efficiency and demand response from market customers in its CEIP rules.

### **C. Public Process**

AWEC recommends that the Commission hold no public process dedicated specifically to CEIP development. This is for two reasons. First, the IRP/clean energy action

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<sup>7/</sup> RCW 19.285.040(1).

<sup>8/</sup> Further, if the utility does not use demand response from a market customer for CETA compliance, it may still have a reason to acquire this resource if it represents a lowest reasonable cost option for meeting other regulatory requirements.

plan process already has, and will continue to have, robust public involvement. Because the CEIP is to be informed by the IRP/clean energy action plan, much of what will be included in a CEIP will already be vetted through an informal public process.

15                   Second, the CEIP will be the subject of an adjudicatory proceeding and, ultimately, it is the utilities' burden to develop an implementation plan and justify it through the evidentiary process. A utility does not seek public input into the development of its rate cases, and the CEIP should be no different.

**D.     **Demonstration of Compliance with RCW 19.405.030, 040, and 050.****

10.     Should Commission rules describe the level and frequency of reporting for demonstrating compliance with RCW 19.405.030, 040, and 050?

16                   CETA requires a demonstration of compliance beginning with the four-year period ending December 31, 2033, and AWEC does not believe that additional reporting is necessary. AWEC does believe that additional information may be needed as to *how* a utility demonstrates compliance with CETA's requirements. Compliance with the EIA, for instance, is demonstrated through the retirement of renewable energy credits ("RECs"). CETA does not require REC retirement and, in any event, it would be an incomplete demonstration of compliance because non-emitting resources that are not also renewable do not generate RECs. Therefore, the Commission should clarify whether REC retirement will be necessary to demonstrate CETA compliance with respect to any renewable resources relied upon, and for other resources, how compliance will be demonstrated. For instance, will the utility be required to provide E-Tags? Alternatively, if a utility owns 50% of a generating unit, will it be presumed to have received 50% of the unit's output? These two compliance demonstrations would likely yield different results.

11. Should utilities regularly file reports on their progress toward meeting compliance metrics; does or should the frequency of the filings depend on the existence of a rate plan?

17 As noted above, AWEC does not see a strong case for regular progress reports and believes compliance with an obligation can be determined following the four-year compliance period (from 2030 to 2044, and annually thereafter), whether or not a utility is subject to a rate plan.

12. How must a utility demonstrate to the Commission that the utility has eliminated coal-fired resources from its allocation of electricity beginning in 2026?

18 AWEC believes that compliance with RCW 19.405.030 requires a utility to demonstrate that the costs and benefits of a coal-fired resource have been eliminated from its Washington rates (other than decommissioning and remediation costs). One way to do this would be to track depreciation of a coal-fired resource through a separate rate schedule, which is adjusted to \$0 beginning January 1, 2026. Portland General Electric Company has established a schedule similar to this concept for its share of Colstrip to comply with Oregon's mandate to eliminate coal by 2030.<sup>9/</sup> Similarly, prior to January 1, 2026, and with sufficient time for party review, a utility could update its power cost baseline to remove any coal-fired resources, effective January 1, 2026. This could be as simple as performing a power cost modeling run without the coal-fired resource included; however, AWEC recommends that, if a power cost update is to be performed for rates effective January 1, 2026, that it be a full power cost update and not only a selective update to remove coal-fired resources.

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<sup>9/</sup> PGE Schedule 146, available at: <https://www.portlandgeneral.com/our-company/regulatory-documents/tariff>.

13. If the Commission has four years of investment information from a utility when approving its CEIP, how often should the Commission require the utility to update the investment plans to reflect changing information; may the updates be informational filings or should they be formal filings subject to Commission approval?

19 AWEC has no comments on these questions at this time and will review the responses from other stakeholders.

**E. Deferral of Major Projects under RCW 80.28.410**

14. How should the Commission interpret “major projects” under RCW 80.28.410; what metric should the utility use to identify major projects; and how should these projects be included in the CEIP?

20 AWEC recommends the Commission determine whether a CEIP project is a “major project” on a case by case basis, considering all of the facts and circumstances associated with the specific project that a utility requests be deferred. It is not necessary for the Commission to establish a bright-line rule surrounding major CEIP major projects in order to implement the referenced statute. The Commission will be better informed with specific facts and circumstances if the Commission waits to define the term until a utility has requested that a CEIP project be deferred and/or recovered.

21 That said, some high-level guidance to utilities may be appropriate, and AWEC recommends that the Commission look to its precedent on capital deferrals in establishing a high threshold for such deferrals. The Commission has recognized that there are valid concerns associated with using deferred accounting for capital projects between rate cases. In Docket UE-140617, for example, PacifiCorp sought to defer costs associated with a fish passage project at the Merwin hydro facility. The Commission ultimately authorized recovery of operations & maintenance and depreciation expense for the Merwin Project, but denied recovery of a return on

the deferred amounts. Further, the Commission emphasized “the importance of discouraging companies from filing accounting petitions as a means to secure between-rate-case cost recovery for plant additions” and stressed that “the treatment we allow in this instance is exceptional and turns on the unusual nature of the project involved.”<sup>10/</sup>

22           Because deferrals allow for “between-rate-case cost recovery,” major projects in RCW 80.28.410 are not equivalent to major pro forma plant additions in a general rate case. In a general rate case, the Commission has historically allowed the utility to include pro forma plant additions for major projects only. Major pro forma projects in a general rate case, however, include all types of capital projects, and the term is used in this context for the purpose of determining whether the project costs are includable in revenue requirement to establish fair and reasonable rates in a rate case.

23           For this reason, different thresholds are appropriate when considering whether a project is deferrable versus considering whether a project may be included in a test period as a pro forma plant addition. In a rate case, it is necessary to select only major pro forma plant additions to maintain a cohesive test period, while allowing parties an ability to review the information prior to the date that the rates associated with the underlying plant go into effect. For CEIP major projects, the objective is to select the subset of projects that are appropriately considered outside of a rate case altogether. Considering concerns of single-issue ratemaking, the fact that capital investments are recovered over time (and, thus, the lack of a deferral results only in regulatory lag, not the inability to recover the investment at all), and other issues

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<sup>10/</sup> Docket Nos. UE-140762 et al., Order 08 ¶ 251 (Mar. 25, 2015).

associated with tracking costs outside of a rate case, it is appropriate to apply a higher threshold when considering whether a project is a major project that is deferrable under RCW 80.28.410.

24 In drafting its rules, it is also important for the Commission to recognize that RCW 80.28.410 allows an electric utility to defer major project costs in a CEIP, but is not prescriptive on whether, or how, the deferred costs are amortized in future rates. Rather, the statute says that the costs are deferred “for later consideration by the commission.” Thus, nothing in RCW 80.28.410 guarantees recovery of deferred amounts, beyond the standards that the Commission uses today when considering such deferrals.

25 Further, while RCW 80.28.410(2) identifies several categories of costs that an electric company can potentially consider in a deferral, the Commission is not limited in considering only those cost categories when determining the amount that a utility may recover. When considering whether it is appropriate for a utility to recover deferred capital costs under the statute, for example, it is permissible for the Commission to consider capital costs other than just the cost of equity identified in RCW 80.28.410(2)(a). Other costs, such as the cost of debt, accumulated deferred taxes, and any other aspect of rate base that the Commission finds to be reasonably recovered by the utility, may also be considered in the deferral.

26 Finally, when dealing with amortization of potential deferrals, AWEC recommends that the Commission consider using long amortization periods that generally match the useful life of the associated property. A utility should not be allowed to put a CEIP major project into rates, while at the same time recovering accumulated amounts over a shortened period. Dealing with both a new resource and a large deferral could produce rate shock. No

rules need to be adopted with respect to the amortization period now, however, since AWEC recommends that the Commission consider RCW 80.28.410 deferrals on a case by case basis.

15. How should costs for new resources be treated in the PCAM in light of the additional deferral allowed under RCW 80.28.410?

27 It is likely that any new CETA resource will provide energy benefits in the form of zero variable cost generation. A new solar facility, for example, may result in increased fixed costs due to depreciation expenses and rate base. The increased fixed cost, however, is offset by the benefit of the zero-cost generation. AWEC recommends against considering these costs and benefits separately while they are being deferred. Rather than tracking the fixed costs in a deferral and the energy benefits in the PCAM, AWEC recommends that energy benefits be considered as an offset to any amounts deferred under RCW 80.28.410(2)(b). This simplified approach avoids the need to modify the PCAM baseline to incorporate the power cost benefits from the new resource.

a. *Should the Commission require changes to the utilities' power cost adjustment mechanisms to match the cost of new resources with the benefits in compliance with the statute?*

28 AWEC recommends against making substantive changes to the utilities' PCAMs for purposes of implementing CETA. It is not necessary at this time for the Commission to overhaul the utilities' PCAMs as a result of CETA. The structure of the utilities' PCAMs has undergone extensive litigation and been thoroughly reviewed by the Commission. Instead, AWEC recommends the energy benefits of new CETA resources be tracked and removed from the utilities' PCAMs for reasons discussed above. This would be accomplished by adding back the energy benefits of the CEIP resource in the PCAM calculation.

- b. *During the deferral period for a new energy resource, should the Commission provide deferral within the PCAM for the difference between the hourly marginal costs of power production (or purchases) used to set the authorized power cost in effect during the deferral and the variable costs of the new energy resource not deferred?*

29 AWEC recommends that the energy benefits of the new CEIP resource be calculated based on the hourly marginal costs, using actual market prices. This amount of energy benefits would be added to actual net power costs when determining the amount of deferred power costs recoverable through the PCAM. The energy benefits would then be applied as a reduction to the RCW 80.28.410 deferral.

- c. *For a capacity resource, should the Commission provide an adjustment to the deferral within the PCAM for the lower power costs resulting from the addition of a lower heat rate generation unit to the utility's portfolio?*

30 When determining the power cost benefits of a new resource, the dispatch margins of the resource should be used to determine the energy benefits. For any given hour, the dispatch margin represents the market value of the generation, less fuel price. If the resource is a zero variable cost resource, the dispatch margin will equal the market value of the generation.

**F. Compliance, Enforcement, and Penalties**

31 AWEC has no comments on this section.

**G. Equitable Distribution of Benefits**

32 AWEC has no comments on the questions in this section.

## H. Incremental Cost of Compliance

33 Before addressing the questions in this section, AWEC believes there are foundational issues related to the statutory language used to define the incremental cost of compliance that must be addressed. RCW 19.405.060(3)(a) provides that a utility:

[M]ust be considered to be in compliance with the standards under RCW 19.405.040(1) [the carbon-neutral standard] and 19.405.050(1) [the carbon-free standard] if, over the four-year compliance period, the average annual incremental cost of meeting the standards or the interim targets established under subsection (1) of this section equals a two percent increase of the investor-owned utility’s weather adjusted sales revenue ... above the previous year, as reported by the investor-owned utility in its most recent commission basis report.

Further, RCW 19.405.060(5) provides that the Commission is to establish “the methodology for calculating the incremental cost of compliance ... as compared to the cost of an alternative lowest reasonable cost portfolio ....”

34 First, RCW 19.405.060(3)(a) specifies that a utility is considered to be in compliance with the carbon neutral and carbon free standards if the 2% cap is triggered “over the four-year compliance period.” Because this language is part of the larger section defining CEIPs, it could be interpreted that the “four-year compliance period” refers to the period covered by a CEIP. However, a CEIP is not a “compliance period”; it is simply a plan for meeting the compliance requirements. The only “four-year compliance period” is each four-year period between 2030 and 2044 during which a utility must be carbon neutral. Moreover, the 2% cap is only relevant in that a utility is deemed to be “in compliance” with the carbon neutral and carbon free standards if it reaches the cap. Those standards do not begin – and thus do not require compliance – until 2030, even though a utility must begin filing CEIPs in 2022. Under RCW 19.405.060(1)(a)(ii), each utility is responsible for proposing interim targets prior to 2030 to

build toward the carbon neutral standard. While the statutory language appears to apply the 2% cost cap to the interim targets as well, there is no apparent consequence for failing to meet an interim target. CETA imposes penalties for failure to meet the carbon neutral and carbon free standards, but not for failing to meet interim targets.<sup>11/</sup>

35           The practical implications of these uncertainties are significant. If the 2% cap establishes compliance by default with the carbon-neutral and carbon-free standards, and the interim targets are just that – “targets,” not requirements – then the most cost-effective manner of complying with CETA prior to 2030 would be for a utility to invest nothing at all toward meeting the carbon neutral standard. Indeed, it would seem to be imprudent for the utility to do anything else. Once 2030 arrives, the utility likely will not be “carbon neutral”, but it can still be “considered to be in compliance” if it invests up to the 2% cost cap from that point on, so there is no apparent economic consequence from taking no action toward CETA compliance prior to 2030.

36           Also uncertain: once the 2% cost cap does apply (whenever that is), how is it calculated? The incremental cost cap is calculated based on the “average annual incremental cost” of meeting the carbon neutral and carbon free standards over the “four-year compliance period.” Additionally, the “average annual incremental cost” over this “four-year compliance period” must be 2% above weather-adjusted sales revenue in “the previous year.” Hypotheticals illustrate the uncertainties inherent in this language.

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<sup>11/</sup> RCW 19.405.090. Further complicating this inquiry is how the 2% cost cap is applied over a “four-year compliance period” starting in 2045 when the compliance period is annual.

Assume a utility has weather-adjusted sales revenue of \$1 million in 2029. Then assume the utility's CEIP for 2030 through 2033 results in CETA investments that increase weather-adjusted sales revenue by 0% in the first two years, 10% in the third year, and 2% more in the final year. That result would be an "average annual incremental cost" of 3% over weather-adjusted sales revenue in 2029 over the four-year period 2030-2033. But is this overall 3% average increase to be compared against 2029 when the increases did not begin until 2032? If the 10% increase in 2032 is compared against 2031 (as the "previous year"), what is the "average annual incremental cost" of this 10% increase? Conversely, assume the utility invested in depreciable plant that resulted in a 10% increase to weather-adjusted sales revenue in 2030, but made no investments that resulted in an incremental cost in the final three years? If the utility includes this investment in rates but then does not adjust rates again until after 2033, this would result in an "average annual incremental cost" of over 2% over the four-year compliance period (again, relative to 2029). However, this plant would depreciate over this four-year period which, all things being equal, would reduce weather-adjusted sales revenue and, if timely reflected in rates, might bring the average annual incremental cost below 2%. Should a tracker be applied to capture this depreciation and reflect it in rates? And again, is the utility relieved of further investment over the entire four-year period, or does the cap reset again in 2031 because CETA compliance did not impact the utility's weather-adjusted sales revenue in this year relative to the "previous year"? These hypotheticals get to fundamental questions about how the Commission is to calculate the "average annual incremental cost" and what it means to compare that incremental cost to the "previous year."

38 Further complicating this inquiry is CETA’s direction in RCW 19.405.060(5) to calculate the incremental cost of compliance “as compared to the cost of an alternative lowest reasonable cost portfolio of investments that are reasonably available.” On its face, this requirement appears incompatible with the requirement in RCW 19.405.060(3)(a) to calculate the 2% incremental cost cap in comparison with the utility’s weather-adjusted sales revenue for the previous year, “as reported by the [] utility in its most recent commission basis report.” Subsection (5) of RCW 19.405.060 appears to contemplate the development of a hypothetical alternative resource portfolio (that is how Oregon has implemented substantially similar language in its renewable portfolio standard law),<sup>12/</sup> but utilities do not report hypothetical investments in their CBRs. So is 2% incremental to a utility’s actual weather-adjusted sales revenue as reported in its CBR or incremental to a hypothetical lowest reasonable cost resource portfolio? It cannot be both.

39 The Commission’s Notice does not address these issues, and AWEC believes it is imperative to try to achieve consensus from stakeholders on how the incremental cost cap in CETA should be interpreted and calculated, and clarify these issues in rules, in order to avoid future litigation.

22. Should the Commission standardize its CBR rules to be able to effectively implement the incremental cost calculation requirements in RCW 19.405.060(3)? Can the Commission allow each utility to use a different weather normalization method and still create a consistent methodology for calculating incremental cost?

40 Subject to resolution of the issues identified above, AWEC does not believe it is necessary to standardize a weather normalization methodology across the utilities to effectively

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<sup>12/</sup> OAR 860-083-0100.

calculate the incremental cost of compliance. Rather, the important thing is that a utility's weather normalization method is consistent over time. Additionally, it should be possible to develop a consistent method for calculating the incremental cost across utilities even if the utilities accomplish weather normalization differently. Again, as long as there is a consistent baseline against which to measure, a consistent methodology should have consistent results across the utilities.

23. Forecasted vs retroactive calculation of the incremental cost

- a. *Should the Commission determine the utility's incremental cost of compliance based on a forecast, at the time the utility files its Clean Energy Implementation Plan, based on actual data at the conclusion of the four-year period or through interim reporting, or a combination of these options?*

41 AWEC's understanding of the purpose of the incremental cost cap is to protect customers from excessive cost increases as a consequence of CETA compliance. As noted in the introduction to this section, CETA's language governing compliance through incremental cost is unclear in several respects, which leaves the Commission with many unanswered questions and different implementation possibilities. Thus, how the Commission implements the mechanics of the cost cap may have a direct impact on whether it makes more sense to implement the cap retroactively or on a forecast basis.

42 For example, if the 2% cost cap is calculated in relation to a utility's actual weather-adjusted sales revenue for the "previous year," then retroactive application of the cap would seem unlikely ever to protect customers. A utility could exceed the cost cap in one four-year compliance period, but because the cost cap is calculated in relation to the "previous year", the utility would not be relieved from compliance in the next four-year period because its

incremental cost in the next four-year compliance period will be calculated in relation to the weather-adjusted sales revenue from the just-completed compliance period, thus effectively resetting the cap. In other words, the goal posts would always move away from customers. The only way to effectuate a retroactive cost cap in this scenario is to have a true-up where all costs actually incurred above the 2% cap (however it is calculated) are absorbed by shareholders.

43                   Conversely, application of the cap retroactively could work (maybe) if it is calculated in relation to fictional weather-adjusted sales revenue based on what that revenue would be if the utilities had invested in a hypothetical least-cost portfolio in the absence of CETA. Under that scenario, if a utility's compliance costs are more than 2% above this alternate universe scenario, then it would be relieved of further investments until it dropped back down below the 2% cap. This interpretation, however, will require the Commission to engage in a highly speculative, uncertain, likely controversial, and potentially time-consuming exercise of determining a hypothetical resource portfolio for each utility – a hypothetical whose connection to reality becomes ever more attenuated the farther into the future it is carried.

24.     How should the Commission require a utility to demonstrate that its actions were “directly attributed and necessary” for the utility to take only to comply with CETA?

44                   AWEC recommends that two questions guide this inquiry. First, is the action required by some other source of law? For instance, the EIA requires the acquisition of all cost-effective energy efficiency. The acquisition of such energy efficiency, therefore, is not “directly attributable to actions necessary to comply” with CETA because that same action is necessary to comply with a different law (except potentially with respect to “market customers,” as explained above). Second, is the action the lowest reasonable cost? If it is, then it can be reasonably

assumed that the utility would undertake such action in the absence of CETA. Any action that meets neither of these criteria would be considered “directly attributable to actions necessary to comply” with CETA.

25. In what type of proceeding should the Commission require a utility to demonstrate that it has maximized investments in renewable resources and nonemitting electric generation? What documentation should the Commission require the utility to provide?

45 Again, the answer to this question depends to some extent on how the Commission implements the incremental cost cap. If the cap is implemented on a forecast basis, then AWEC expects the demonstration required by RCW 19.405.060(3)(b) would be made in a CEIP process. This would make sense as it is an adjudicative proceeding and, thus, parties would have the opportunity to issue discovery and challenge the utility’s demonstration, if appropriate. AWEC does not believe the Commission should prescribe the type of documentation required from the utility to demonstrate it has maximized investments in renewable and non-emitting resources. The utility will have the burden to make this demonstration and should have the flexibility to select any method it considers appropriate.

**I. Cost Information within the CEIP**

26. How should the utility address investment planning and cost recovery in its CEIP?

46 Investments in resources necessary to meet CETA’s requirements may be components of broader investments necessary to meet other statutory or regulatory requirements. When this is the case, AWEC recommends that the utility identify the overall investment category of which specific investments necessary for CETA compliance are a component, and separately identify the amount specifically related to CETA compliance. Cost recovery, to the

extent it is addressed in a CEIP, should be limited to those components of a category of investments necessary to comply with CETA.

27. How could a utility's CEIP be used to set rates prospectively? Would using a CEIP to set rates prospectively be in the public interest?

47 AWEC has generally resisted proposals for prospective rate-setting on the basis that it amounts to pre-approval of resource decisions. In the context of a CEIP, however, prospective rate-setting could make sense under certain circumstances. Specifically, if the 2% incremental cost cap is to be applied on a forecast basis, then setting rates prospectively to coincide with this forecast appears reasonable and potentially even necessary. Under this scenario, a utility's CEIP might forecast that it will need to incur investments that will result in exceedance of the cost cap; therefore, the utility would reduce those forecasted investments in the most prudent and cost-effective manner possible to bring these investment amounts below the cost cap. Rates set to recover those forecasted investments would then equal the forecast, thus ensuring that the cost cap is not exceeded or that the utility invests less than CETA requires.

48 One obvious problem with this approach is that a utility's forecast of costs is unlikely to reflect the actual costs it incurs. Utilities project the cost of a new wind plant, for instance, in their IRPs based on industry data, but this may not (and almost certainly will not) reflect the actual cost of bids submitted in response to a request for proposals. One approach to addressing this problem is to not address it at all, which is to say that risks would be shared between the utility and customers. If actual costs exceed forecasted costs included in rates, the utility would absorb the difference. If actual costs are less than forecasted costs included in rates, the utility would retain the difference.

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AWEC emphasizes that this construction would only be acceptable for investments that are specifically for CETA compliance. A CEIP should not take the place of a general rate case, and if the utility has a need for additional revenues based on non-CETA related investments, it should still be required to file a standard rate case, with any approved CETA-related investments backed out of its revenue requirement.

28. Which elements of a CEIP should a utility recover through general rate cases? Which elements of a CEIP are appropriate for a cost recovery mechanism?

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Notwithstanding the answer to the previous question, AWEC does not believe the CEIP necessarily changes utility cost recovery and is comfortable with all costs necessary for providing utility service continuing to be examined and recovered through the general rate case process. If a special cost recovery mechanism is to be considered, it should be limited to those investments that are specifically required for CETA compliance (and not otherwise required by some other source of law). Additionally, whether or not certain costs are recovered through a special cost recovery mechanism, the Commission should not lose sight of its fundamental obligation to ensure that rates are fair and reasonable *overall*. Thus, when approving cost recovery for any investment or expense, the Commission should consider a utility's revenue requirement holistically and ensure a just and reasonable end result, not review and approve each investment piecemeal.

29. Should the Commission require a utility to provide in its CEIP (a) information on program budgets related to incremental programs for compliance with CETA; (b) descriptions of, and details about, capital budgeting for all investment; or (c) both?

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Similar to the response to Question 26, AWEC recommends that, to the extent budgets for incremental programs necessary for CETA compliance are components of larger

related program budgets, the utility identify the overall program budget, and separately identify the amount budgeted specifically for CETA compliance.

## II. CONCLUSION

52 AWEC appreciates the opportunity to provide comments to inform the Commission's rulemaking governing CEIPs.

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Respectfully submitted,

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