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Jeff Killip
Executive Director and Secretary
Washington Utilities & Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: **Docket U-210590** - Related to the Commission's proceeding to develop a policy statement addressing alternatives to traditional cost of service rate making –
AWEC Comments

Dear Executive Director Killip:

The Alliance of Western Energy Consumers ("AWEC") appreciates the opportunity to submit comments in response to the Washington Utilities and Transportation Commission's ("Commission") July 3, 2025, Notice of Virtual Technical Workshop and Opportunity to Comment ("Notice"). As set forth herein, AWEC's comments are consistent with two core principles. First, it is well established that the Commission is an economic regulator¹ and any policy statements addressing performance-based regulation ("PBR") measures or goals, targets, performance incentive mechanisms ("PIMs"), and/or penalty mechanisms should be consistent with this role. And second, that the most important consideration for any PIM, and therefore any metric, is customer affordability – if the PIM or underlying metric will increase costs to customers, it should not be adopted.

AWEC acknowledges that the Commission has explicitly stated that it is not establishing PIMs in 2025 within this docket, however, because metrics are the basis for determining PIMs, AWEC recommends that any metric and associated PIM reflect these two core principles. AWEC further echoes the Commission's statements during the June 17, 2025, Workshop that this proceeding is in fact, a policy statement docket, and that the appropriate venue to establish PIMs is a formalized process such as a multi-year rate plan or petitions.²

¹ Docket Nos. UE-111048 and UG-111049 (consolidated), Order No. 04 at 4:11 (Sep. 27, 2011).

² Docket No. U-210590, June 17, 2025 Workshop Recording at 14:53-15:26 (Jun. 17, 2025) ("Workshop Recording").

Goal 4 Proposed Metric – Question 2

The proposed Goal 4 metrics should not be adopted. Metrics 27 and 28, related to air quality emissions and fleet tailpipe emissions, respectively, are subject to a complete regulatory framework under the jurisdiction of Washington State Department of Ecology (“Ecology”). Ecology is the state agency “with the authority to manage and develop...air and water resources in an orderly, efficient, and effective manner and to carry out a coordinated program of pollution control involving these and related land resources.”³ Ecology, along with other clean air agencies, “monitor and track emissions to make sure levels of outdoor air pollutants *meet federal and state air quality standards*...focus[ing] on EPA’s ‘criteria’ pollutants and other chemicals broadly known as air toxics.”⁴ In carrying out its air quality regulatory obligations, Ecology utilizes a regulatory scheme that includes permitting and reporting and has presumably already considered the policies necessary to ensure that its statutory mandates are met. Utilities, to the extent subject to regulation by Ecology, are already incentivized to comply with Ecology’s regulatory requirements. Additional reductions in air quality emissions, if necessary or in the public interest, should be determined by Ecology and not the Commission.

Additionally, for Metric 28, the practical implications of any potential PIM to meet the proposed outcome of “reduc[ing] pollution burden and pollution exposure with a focus on communities with elevated exposures to health hazards, including Highly Impacted Communities, Vulnerable Populations, and low-income customers,” are unclear. Utility vehicle tailpipe emissions are outcomes of prudent utility operations. If a utility can make its operations more efficient, thereby reducing fleet tailpipe emissions, it should already be doing so as this would also result in cost-savings to customers and reflect prudent utility practice. Further, it is unclear how reduced utility fleet tailpipe emissions would uniquely benefit Highly Impacted Communities, Vulnerable Populations, and low-income customers. Indeed, fleet replacement will likely increase costs, and therefore increase rates, for these customers along with all other utility customers.

Metric 29, related to utility electric load management success whereby a utility reduces or shifts load through load management, storage, energy efficiency, and demand response activities, are economic actions that a utility is already incentivized to engage in. Accordingly, Metric 29 is unnecessary. Metrics 30 and 31 both address greenhouse gas (“GHG”) reductions and set forth utility actions that are currently required by law. Specifically, the Clean Energy Transformation Act (“CETA”) requires Washington electric utilities to eliminate carbon emission from their energy resources by 2045,⁵ and the Climate Commitment Act (“CCA”), is a market-based approach to emissions reductions that caps allowances in the market that may be used for

³ RCW 43.21A.020.

⁴ Washington Department of Ecology, *National air quality standards*, available at: <https://ecology.wa.gov/air-climate/air-quality/air-quality-targets/air-quality-standards>.

⁵ Washington Utilities and Transportation Commission, *Clean Energy Transportation Act*, available at: <https://www.utc.wa.gov/regulated-industries/utilities/energy/conservation-and-renewable-energy-overview/clean-energy-transformation-act>.

compliance, thereby reducing greenhouse gas emissions from Washington’s largest emitting sources and industries.⁶

Finally, the challenges identified by the Commission in the Interim Policy related to Goal 4, including “a lack of clarity and agreement on what is being measured, the need for staff expertise to evaluate the environmental impacts, reliance on data reported to other agencies with direct oversight of greenhouse gas emissions, and lack of specificity regarding the purpose of incentives,”⁷ have yet to be resolved. During the June 17th Workshop the Commission stated its intention to address this topic during the September 4th Technical Conference, which AWEC does not oppose. However, AWEC cautions the Commission against adopting metrics and subsequent PIMs that are outside of the scope of its regulation and without the information required to ensure that customer affordability remains of the utmost importance.

GETs Proposed Metrics – Question 3

AWEC opposes the adoption of the proposed GETs metrics as provided in Appendix C. The concerns and rationale expressed by the Commission for not including these metrics in its August 2, 2024, Policy Statement remain relevant and unresolved.⁸

Specifically, the Commission stated that “due to a lack of time and resources to develop fully a metric through the collaborative process of this docket, we decline to include it within this policy statement.”⁹ The requisite time and resources to develop the GETs metrics have yet to take place. During the June 17, 2025, Workshop, Renewable Northwest (“RNW”) provided suggestions of experts to educate the Commission and stakeholders on issues related to GETs metrics but did not provide a specific timeline associated with any such workshop.¹⁰ The Commission stated the importance of properly scoping this issue such that a clear understanding of the term “grid modernization” is known.¹¹ Accordingly, the Commission proposed that GETs (and environmental metrics) be addressed during the September 4th Technical Conference. Accordingly, AWEC opposes the adoption of the proposed GETs metrics prior to stakeholders and the Commission coming to a consensus on the scope of this issue. Failure to do so will likely have negative unintended consequences.¹²

⁶ Washington Department of Ecology, *Climate Commitment Act*, available at: <https://ecology.wa.gov/air-climate/climate-commitment-act>.

⁷ Docket U-210590, Interim Policy Statement Addressing Performance Measures and Goals, Targets, Performance Incentives, and Penalty Mechanisms, at pp 46 (Apr. 12, 2024).

⁸ Docket U-210590, Policy Statement Addressing Initial Reported Performance Metrics, at pp 20 (Aug. 2, 2024).

⁹ *Id.*

¹⁰ Workshop Recording at 34:26; 37:26-38:25.

¹¹ *Id.* at 37:26.

¹² Regulatory Assistance Project, *Performance-Based Regulation: Considerations for Washington*, at 17 available at: <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://apiproxy.utc.wa.gov/cases/GetDocument%3FdocID%3D35%26year%3D2021%26docketNumber%3D210590&ved=2ahUKEwjcs4WtjPeOAxUVyOYEHdCyK24QFn0ECBgQAQ&usq=AOvVaw1QK60L8TA7N9kXXkdmDamz> (“Poorly designed mechanisms can lead to unintended consequences, resulting in inappropriate rewards or penalties, increase regulatory burden, and encourage gaming or manipulation.”).

Further, as noted by the Commission, “GETs are specifically identified by statute as an element in Integrated Resource Plans (IRPs), and thus CEIPs.”¹³ Accordingly, because GETs are required by law to be included in a utility’s IRP pursuant to RCW 19.280.030(1)(f), this policy statement docket is the incorrect venue to address the proposed metrics sent forth in Appendix C. Finally, if, contrary to AWEC’s recommendation the Commission does determine that GETs metrics should be adopted here, any GET a utility invests in should be cost-effective in accordance with WAC 480-100-620.

PBR Principles – Question 4:

AWEC believes that traditional economic regulation of utilities provides sufficient incentives for utilities to meet regulatory requirements and to provide safe and reliable service to customers at fair, just, reasonable and sufficient rates. As such, PIMs should be used sparingly – if at all – and should be designed conservatively to ensure that customers are not paying a premium for the utility to perform as already required by law or policy, either explicitly or implicitly. To the extent that premiums (via incentives) are paid by customers, there should be clear and quantifiable net benefits to customers. In other words, benefits should be expressed in hard cost savings to customers and be consistent with the Commission’s expertise and role as an economic regulator.

AWEC is generally not supportive of PIMs for activities that “stretch goals not already required by law,” nor does it find it appropriate that utilities should receive an incentive for meeting regulatory outcomes on an accelerated timeline, such as achieving CETA mandates on an earlier timeframe. PIMs should also not be developed or designed that add regulatory requirements onto the utility that do not otherwise have a basis in law. For example, the Commission should not attempt to convert the CCA’s market-based approach to emissions reductions into an incentive-based approach for specific emissions reduction achievements, outside a specific grant of authority from the Washington Legislature. Cap-and-Invest and CETA already provide appropriate incentives to utilities to meet regulatory requirements within the structure of these policies – layering on additional PIMs to “decarbonize, integrate renewables, and modernize the grid” is thus inappropriate. Again, utilities are already incentivized by existing law to undertake these actions.

To the extent that PIMs are established, AWEC agrees that they should minimize or avoid unintended consequences such as gaming, optimizing performance on one metric at the expense of others, regulatory burden, and uncertainty. AWEC also agrees that if PIMs are established, they should start very conservatively.

PBR Principles – Question 5:

It is critical to engage in review of existing mechanisms and cost containment strategies before establishing targets of scorecards for metrics. AWEC recommends that any PIM be based

¹³ Docket U-210590, Policy Statement Addressing Initial Reported Performance Metrics, at pp 20 (Aug. 2, 2024) citing RCW 19.280.030(1)(f).

on customer cost reductions above and beyond what results from a utility meeting its statutory obligations.

PBR Principles – Questions 6-7:

AWEC recommends that core standard be defined as any regulatory requirement applicable to a utility – imposed either by statute or regulation. AWEC agrees with Public Counsel that “PIMs should not reward utilities for actions they would have taken anyway, nor for meeting basic utility obligations. In such cases, penalty-only mechanisms may be more appropriate, serving to enforce core standards without unnecessarily increasing customer costs.”¹⁴ As previously noted, AWEC also generally opposes PIMs for going “beyond the law.” If such actions are cost-effective, the utility should be undertaking those actions as part of its prudent business practices. If such actions are not cost-effective, but deliver some other type of value, customers should not be financially responsible for an incentive in addition to costs for non-cost-effective actions.

PBR Principles – Question 8:

As set forth above, AWEC opposes any PIM that provides a utility with an incentive to take actions that are otherwise mandated by law or regulation. In such a scenario, the utility has an obligation to meet the applicable regulatory requirements and to further incentivize or reward a utility for complying with the law is senseless and undermines the work of the Legislature at cost to customers.

PBR Principles – Question 9:

Methodologies to balance utility incentives and customer benefits should be evaluated on a case-by-case basis, but it is difficult to imagine an example that would not require benefit-cost analysis at a minimum. Similar to AWEC’s response to Question 5, any policy guidance provided by the Commission should reflect the underlying principle that any PIM be based on customer cost reductions above and beyond what results from a utility meeting its statutory obligations. Accordingly, it is reasonable that in order for a utility to receive a PIM, it must be required to present sufficient evidence of incremental net benefit to customers.

Utility Cost Containment Strategies – Question 10:

AWEC does not oppose the Commission undertaking a public process regarding utility cost containment strategies during Phase 3 of this proceeding and believes that this work is necessary to ensure any policy statement adheres to lowest reasonable cost planning and affordability. AWEC does not oppose the schedule set forth by the Commission.

Earnings Test Interaction – Question 11:

PBR incentives and/or penalties should be included in the revenues used for purposes of the earnings test under RCW 80.28.425(6); such a conclusion is consistent with Washington statute and regulation. RCW 80.28.425(6) protects ratepayers against a utility earning higher

¹⁴ Docket No. U-210590, Public Counsel Comments at 4 (Jun. 6, 2025).

than .5 percent than its authorized rate of return in a multiyear rate plan. In such an instance, the utility must “defer all revenues that are in excess of .5 percent higher than the rate of return authorized by the [C]ommission for refunds to customers or another determination by the [C]ommission in a subsequent adjudicative proceeding.”¹⁵ It is illogical that a utility would skirt this statutory requirement if for example, the utility is in year two of a three-year multiyear rate plan and exceeds its authorized rate of return threshold due in any part to a PIM. In such an instance, the utility is statutorily mandated to defer the excess return for refund to customers or another determination by the Commission. To conclude otherwise would not only contradict the intent of the Legislature,¹⁶ but also fly in the face of the Commission’s general duty to regulate in the public interest.¹⁷

Return on PPAs – Question 12:

AWEC agrees with the Commission’s statement during the June 17th Workshop that the issue of return on PPAs is not appropriately within the scope of this guidance docket and should instead be addressed in RFPs,¹⁸ or general rates cases as applicable. As recognized by the Commission, “such returns [on PPAs] are not guaranteed.”¹⁹ As such, AWEC supports a case-by-case review for any request for a return on PPAs in the associated proceeding, supported by a full evidentiary record upon which the Commission may make a reasoned decision. Addressing the return on PPAs in this guidance docket may have unforeseen consequences and creates unnecessary and additional administrative burdens on stakeholders and the Commission. Notwithstanding this general position, AWEC responds to questions 13-17 below.

Return on PPAs – Question 13:

The appropriate rate of return for a PPA should be determined on a case-by-case basis and within the statutorily mandated bounds of RCW 80.28.410(2)(b), wherein a utility *may* earn a return on a PPA of “no less than the authorized cost of debt and no greater than the authorized rate of return of the electrical company, which would be multiplied by the operating expense incurred by the electrical company under the power purchase agreement.” Further, the Commission should consider the specific facts underlying the utility's request. Attempting to determine specific factors or situations that would support a specific rate of return is speculative and unsupported by the evidence required.

Return on PPAs – Question 14:

In addition to the prudence standard, AWEC recommends that the Commission analyze each request for return on PPAs under a cost/benefit analysis for customers within the context of the proceeding in which the request for a return on a PPA is made. Applying a cost/benefit analysis to any request is supported by Commission precedent. In PSE’s most recent general rate

¹⁵ RCW 80.28.425(6).

¹⁶ As part of developing the Policy Statement, the Commission must consider “lowest reasonable cost planning” and “affordability.” RCW 80.28.425(7).

¹⁷ RCW 80.01.040(3).

¹⁸ Workshop Recording at 24:33.

¹⁹ Docket Nos. UE-240004, UG-240005, and UE-230810, Order No. 09-07 at 70:202 (Jan. 15, 2025).

case, the Company proposed a return on PPAs, in addressing this issue the Commission “acknowledge[d] the incentives for utilities to build additional resources, instead of purchasing them. While companies are already obligated to acquire resources at the lowest reasonable cost, we wish to alleviate the financial disincentive for doing so through PPAs by allowing a return, as provided by statute.”²⁰

Return on PPAs – Question 15:

A utility requesting a return on a PPA retains the burden of proof to show that its actions regarding the PPA and costs incurred were prudent.²¹ It logically follows that if, contrary to AWEC’s primary recommendation, the Commission issue guidance for utilities seeking a return on PPAs and design a PIM to encourage utilities to acquire cost-effective, carbon-free resources through PPAs in this docket, AWEC recommends that the utility should have the burden of proof to demonstrate that a PIM is warranted.

Return on PPAs – Question 16:

AWEC opposes a PIM associated with PPAs as illogical and unnecessary. AWEC cannot conceive of any utility performance outcome that could or should appropriately be incentivized by earning a return on a PPA. Utilities maintain a natural incentive to identify resources that are lowest cost, considering risk based on need because procurement that does not meet these standards risks a prudence disallowance. No additional performance outcome should be incentivized.

Return on PPAs – Question 17:

It is unclear to AWEC how authorizing a return on PPAs balances encouraging utility performance outcomes while protecting customers from undue costs or risks. Again, AWEC recommends the Commission address this issue in the appropriate venue, a general rate case proceeding, wherein a complete administrative record may be established and reviewed.

Conclusion

AWEC appreciates the opportunity to offer comments and values engagement from all parties and the Commission to ensure the scope of this proceeding aligns with the Legislature’s directive and ensures that customer affordability remains the top priority.

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²⁰ Docket Nos. UE-240004, UG-240005, and UE-230810, Order No. 09-07 at 70:202 (Jan. 15, 2025).

²¹ See Docket No. UG-200264, Order 01, at 6:17 (Dec. 10, 2020) (“Any future recovery is subject to prudence review; the utility bears the burden of proving not only that the costs in question were prudently incurred, but also that it was confronted with extraordinary hardship at the time the deferral was recorded.”).

Dated this 8th day of August, 2025.

Respectfully submitted,

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