

**Small Business Economic Impact Statement (SBEIS)
Electric Integrated Resource Plan
and
Clean Energy Implementation Plan Rulemaking
Dockets UE-190698 and UE-191023 (*consolidated*)
October 14, 2020**

I. Introduction

The Washington Utilities and Transportation Commission (commission) initiated a rulemaking in November 2019, in Docket UE-190698, to consider amendments to Washington Administration Code (WAC) 480-100-238, in part, to implement certain sections of the Clean Energy Transformation Act (CETA). In January 2020, the commission initiated a rulemaking in Docket UE-191023 to promulgate new rules to implement certain sections of CETA. On August 18, 2020, the commission consolidated these two rulemaking dockets and filed a revised CR-101 with the Code Reviser due to the interrelationship of the Integrated Resource Plan (IRP) and Clean Energy Implementation Plan (CEIP) rules.

The commission requested and received two sets of comments on draft rules from stakeholders and held several workshops. The commission is preparing to publish proposed rules. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared in accordance with Chapter 19.85 RCW, or explain why an SBEIS was not prepared. The commission has prepared this SBEIS in compliance with these requirements.

II. SBEIS Requirements

The Regulatory Fairness Act, codified in Chapter 19.85 RCW, provides that an agency must conduct an SBEIS “if the proposed rule will impose more than minor costs on businesses in an industry.” RCW 19.85.030. An SBEIS is intended to assist agencies in evaluating any disproportionate impacts of the rulemaking on small businesses. A business is categorized as “small” under the Regulatory Fairness Act if the business employs 50 or fewer employees. Under RCW 19.85.040(1), agencies must determine whether there is a disproportionate impact on small businesses in the industry, and under RCW 19.85.030(2), consider means to minimize the costs imposed on small businesses.

III. SBEIS Evaluation Procedure

On August 31, 2020, the commission issued a notice to all stakeholders interested in the commission’s rulemakings in these consolidated dockets with a link to the draft rules posted on

the commission's website and providing an opportunity to respond to an SBEIS Questionnaire. The notice requested that both large and small businesses provide information about possible cost impacts of the draft rules with specific information for each rule that the business identified as causing an impact. Only Puget Sound Energy (PSE) responded to the questionnaire.

To conduct an SBEIS pursuant to the Regulatory Fairness Act, the commission must determine the cost per employee, the cost per hour of labor, or the cost per \$100 of sales revenue. Puget Sound Energy is not classified as a small business but provided its estimated costs associated with compliance for limited sections of the rule.

IV. Results of the Analysis

PSE Estimated Costs

PSE expressed concerns regarding the cost of complying with draft WAC 480-100-655 (Public participation in a clean energy implementation plan), the administrative costs associated with draft WAC 480-100-650 (Reporting and compliance), draft WAC 480-100-610 (Clean Energy Transformation Standards) and draft WAC 480-100-640 (Clean Energy Implementation Plan). This analysis will discuss the issues raised by the company in the pertinent section analysis.¹

Draft WAC 480-100-655 Public participation in a clean energy implementation plan

PSE expressed concerns that the commission's rules regarding public engagement may go beyond the statutory requirements contained in the Clean Energy Transformation Act (CETA) as described in 19.405 RCW. The company nevertheless supports a robust public engagement process, including the statutory requirement of the equity provisions contained in CETA (19.405.040(8) RCW). The estimated cost to comply with this section of rule was reporting as \$2.0 million per year, or about one percent of total CEIP implementation. In response to PSE's September 11, 2020, comments, the commission revised its rules to address this concern by removing the requirements for the utility to share a draft CEIP with its advisory group and for the utility's equity advisory group to comment on the CEIP compliance report.

Draft WAC 480-100-650 Reporting and Compliance

PSE expects an approximate increase in administrative costs of \$5.0 million per year associated with both existing and new compliance reports. While PSE finds these costs significant, it considers the expense manageable when compared to the total investment required to comply with the transition to clean energy (three to four percent of investment). While it did not accept

¹ The company's response incorrectly identifies draft WAC 480-100-660 (Incremental cost) as the rule containing the requirement for adaptive management.

the majority of PSE's recommended edits, the commission made several changes that have a minor mitigation impact on the administrative costs described by the company. These included removing the requirement in draft WAC 480-100-650(1)(j) to provide a description of how the utility maintained the safety of the system in the annual reports, and simplified the reporting requirements for indicator values in the Clean Energy Compliance Report.

Draft WAC 480-100-610 (Clean Energy Transformation Standards) and WAC 480-100-640 (Clean Energy Implementation Plan)

PSE identifies the commission's requirement to adaptively manage its portfolio of activities as the largest category of costs. PSE states that this requirement will create a "nearly continuous IRP," and approximately double the costs associated with the key assumption updates as required by the draft rule. The company did not give a specific estimate of those costs. In the proposed rules, the commission removed the adaptive management language from draft WAC 480-100-610 (Clean Energy Transformation Standards), WAC 480-100-640(11) Adaptive Management, and draft WAC 480-100-640(13) Biennial CEIP update.

Independent Commission Analysis

In the interest of a complete analysis, the commission reviewed its rules for potential impacts on small businesses as required by the Regulatory Fairness Act. The analysis revealed a limited impact on small businesses to comply with these rules because these rules reflect the statutory requirements for utility planning, investment, and reporting to transition to the clean energy. However, the analysis does acknowledge that a small business will incur costs in the utility rates that are approved by the commission related to the expenditures associated with utility compliance with the rules, per the usual ratemaking process. It is important to note that CETA includes an incremental cost of compliance option that should limit costs to approximately an annual average of a two percent cost increase as specified in RCW 19.405.060(3)(a).

Additionally, a small business may experience financial impacts if it chooses to participate in the utility planning processes, advisory groups, or the commission's formal ratemaking processes, but these are voluntary costs and are not required by the rule or statute. The costs associated with these voluntary participatory activities can vary significantly based on the extent of the involvement and decision to utilize the services of legal counsel. Further, small businesses are typically represented in commission proceedings by the Public Counsel Unit of the Washington State Attorney General's Office. Following is an analysis of the specific rules with a potential impact on small businesses as described above.

WAC 480-100-630 Public participation in an integrated resource plan

The commission proposes to strengthen the public participation requirements of the utilities in developing their IRPs. These changes also include requirements for improved data transparency and responses to stakeholder input. There is no requirement for a small business to participate in the utility IRP planning process or advisory group membership. Prior to amending this draft rule, small businesses had the same opportunity and same potential costs to participate.

WAC 480-100-640 Clean Energy Implementation Plan (CEIP)

The promulgation of this rule is a statutory requirement of CETA in RCW 19.405.060. Utilities must file a CEIP every four years, beginning in 2021, which the statute requires the commission, after a hearing, to approve, reject, or approve with conditions. The utility investments that the commission approves in a CEIP are subject to cost recovery from ratepayers through a general rate proceeding and prudence determination. These are the investments subject to the incremental cost of compliance option contained in WAC 480-100-660 as prescribed in RCW 19.405.060(3)(a) and (5). The impact to small businesses will occur as rates are approved by the commission in future general rate proceedings and are indeterminate at this time. Rates are allocated to the various customer classes after considering cost of service studies per the commission's usual practice.

Public Participation in the CEIP review process, compliance reporting, and advisory groups

The commission proposes several sections of rule that require utilities to pursue public engagement, including with existing advisory groups and a newly created equity advisory group, and various compliance reports. These sections are:

- WAC 480-100-645 Process for review of CEIP and updates,
- WAC 480-100-650 Reporting and compliance, and
- WAC 480-100-655 Public participation in a clean energy implement plan (CEIP).

As with the IRP public participation analysis above, there is no requirement for a small business to participate in these processes. If a small business were to participate, the costs incurred could vary significantly based on the level of engagement, from submitting public comments to obtaining the services of legal counsel to intervene in a formal adjudicative proceeding.

WAC 480-100-650(3)(a) Reporting and Compliance

The statute, RCW 19.403.030(1)(a), requires utilities to exclude coal-fired resources from rates, with an exception for costs associated with decommissioning and remediation, no later than December 31, 2025. To ensure utilities comply with this statute, the commission proposes a requirement for annual progress reports with an attestation that no coal-fired resources were used

to serve Washington retail load, which may include energy supplied through market purchases. In requiring this attestation, a narrow subgroup of small businesses (third-party energy brokers) may incur additional costs for short-term market purchases through higher administrative and transaction costs to ensure the contracted power does not contain energy generated by coal-fired facilities. However, any associated costs are driven by the statutory requirement to exclude coal-fired resources from rates, and therefore leaves no opportunity for the commission to mitigate the impact to third-party energy brokers.

V. Summary of Findings and Mitigation

The commission's analysis shows that the draft rules increase the cost of doing business as an electric utility in Washington state. While PSE did not provide a full analysis of each rule discussed, the public participation and compliance reporting estimates, a total of approximately \$6.0 million, is not more than minor when compared to the company's annual revenue from customers in 2019 of \$2.1 billion. Additionally, subject to a prudence review, the company may recover a significant amount of these increased costs through general rate proceedings. Finally, it is difficult to estimate the mitigation impact for the rule revisions PSE proposed and the commission accepted because the commission did not accept all of the company's proposed changes.

The commission's analysis shows that any cost incurred by small businesses in this rulemaking is either the result of implementing a statutory requirement or based on voluntary participation in a utility's IRP or CEIP public process, membership in a utility's advisory group, providing public comment on a utility plan to the commission, or intervening in a commission adjudicatory proceeding. Additionally, a utility's small business customers are represented in commission proceedings by the Public Counsel Unit of the Washington State Attorney General's Office. Therefore, the only mitigation or ability to reduce the cost impact to small businesses is through the regulatory principle of fair, just, reasonable, and sufficient rates.

VI. Conclusion

Chapter 19.85 RCW requires that an agency prepare an SBEIS to assess whether proposed rules would impose more than minor costs on businesses in an industry.

The commission has analyzed all information collected throughout the rulemaking process and concludes the proposed rules will not impose more than minor costs on electric utility companies and will not have a disproportionate impact on small business.