

**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

SECOND COMMENTS OF THE  
ENERGY PROJECT ON THE  
COMBINED CETA PLANNING  
RULES (CR 102)

**SECOND COMMENTS OF THE ENERGY PROJECT**

**NOVEMBER 12, 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. Upon consolidation of the dockets, TEP filed  
comments on September 11, 2020, in response to the CR-101 (WSR 20-17-120)(August 18,  
2020), and the accompanying combined discussion draft rules.

2           These comments are filed in response to the Notice of Opportunity To File Written  
Comments of October 14, 2020. The Energy Project is generally supportive of the proposed  
rules with a few final recommendations which are emphasized below. Our prior comments are  
incorporated by reference.

## II. COMMENTS ON THE FINAL DRAFT COMBINED CLEAN ENERGY TRANSFORMATION ACT (CETA) PLANNING RULES

### A. The Energy Project Supports Key Aspects Of The Proposed Rules

3 The Energy Project generally supports the final proposed rules, particularly noting the areas discussed below.

#### 1. Incorporation of “equitable distribution” requirements

4 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>1</sup> the required elements of the “clean energy implementation plan”<sup>2</sup> and the “clean energy compliance report.”<sup>3</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.

#### 2. Non-energy Benefits

5 Both the IRP and CEIP rules include analysis of non-energy benefits (NEBs) as an integral part of the planning process.<sup>4</sup> The Energy Project provided extensive comments on NEBs analysis and experience in other states in earlier comments in both dockets.<sup>5</sup> The Energy Project views the incorporation of NEBs in the rules as an integral 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

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<sup>1</sup> Proposed WAC 480-100-610(4)(c).

<sup>2</sup> Proposed WAC 480-100-640(4), (5), and (6).

<sup>3</sup> Proposed WAC 480-100-650(1)(d).

<sup>4</sup> *See, e.g.*, IRP rules: WAC 480-100-620(3) re IRP content and DER, WAC 480-100-620(9) assessment of NEBs, WAC 480-100-620(13) avoided costs; CEIP rules: WAC 480-100-640(3) specific targets.

<sup>5</sup> *See, e.g.*, Initial Comments of The Energy Project, UE-190698 (December 20, 2019), ¶¶ 10-20.

in Washington, such as low-income energy efficiency programs, contain inherent bias and inconsistencies because, while all costs are quantified and included, many NEBs are not captured or reflected in the analyses.<sup>6</sup> Presently, cost-effectiveness analyses for the Washington IOUs include very few, if any NEBs, generally those that are easily quantifiable and attributed to specific efficiency measures. But a growing body of research and evaluation has led many states to adopt policies to incorporate NEBs more fully within cost-effectiveness analyses.<sup>7</sup>

6 As we described in our prior set of comments, a key 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. Without more substantive guidance from the Commission, by rule or policy statement, these analyses and assessments will be occurring on a case-by-case basis in each utility integrated resource plan, conservation potential analysis, BCP, and CEIP process, a time and resource-intensive endeavor for utilities and stakeholders.

7 The Energy Project recognizes 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 of NEB analysis and develop recommended guidance for Commission

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<sup>6</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 (hereafter “SERA 2018”); National Energy Screening Project, *National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy Resource Programs (NSPM)*, August, 2020, pp. 2-5.

<sup>7</sup> SERA 2018, pp. 4-4 to 4-12.

consideration. As we stated previously, 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.

8           The Energy Project supports the inclusion of new language in Proposed WAC 480-120-640(4)(c), requiring that the CEIP include customer benefit indicators and associated weighting factors related to “energy benefits, non-energy benefits, [and] reduction of burdens.” This new language provides helpful clarification and is fully consistent with CETA statutory language.

### 3. Justification

9           Staff’s interpretation of RCW 19.405.060(1)(c) is reasonable regarding utility justification. The Energy Project therefore supports the requirement of “supporting documentation” in Proposed WAC 480-100-640(6)(f)(iii). 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.

10           It is within the reasonable exercise of the Commission’s rulemaking authority to specify the type of justification a utility must provide, such as a business case, to support the specific action.<sup>8</sup> This is particularly appropriate in the case where there is the potential for an adjudicative proceeding. Rather than

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<sup>8</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)

removing the specific reference to “business case,” The Energy Project recommends revising the rule language to say “Supporting documentation, including for example, a business case....” At a minimum, the adoption order should explain that providing a business case, if available, is an example of the preferred type of documentation.

#### 4. Public participation

11 As we stated in our most recent comments, TEP supports the rules’ inclusion of provisions for extensive public involvement in the planning process for both the IRP and CEIP. The right to comment, advisory committee participation, creation of an equity advisory group, specific involvement in the development of indicators and activities, filed public participation plans for the IRP and CEIP, reporting of public participation, and the availability of supporting data are all important to effective public participation throughout the process.<sup>9</sup> Indeed, the existing IRP rule, WAC 480-100-238(3), states that “[c]onsultations with Commission Staff and public participation are essential to the development of an effective plan.” Although this language has been removed from the current proposed rules, TEP recommends that the adoption order restate this important principle.

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<sup>9</sup> The Energy Project notes two areas where there are mismatches between IRP and CEIP rules that should preferably be harmonized. In Proposed WAC 480-100-630(2), the IRP rules require that meeting materials be provided three days in advance of the advisory group meetings. For the CEIP development process, previous draft WAC 480-100-655(3) also required advanced distribution of materials to the advisory group. The current proposed CEIP rules appear to have removed the advance distribution requirement. Proposed WAC 480-100-655(2), (3). In addition, the IRP rules in Proposed WAC 480-100-630(3) require that supporting documentation “as well as data input and files” must be available for advisory committee review. The corresponding provision in the CEIP rules, WAC 480-100-655(1)(g), requires only “supporting documentation” be made available for advisory committee review, without mention of “data input and files”.

## 5. Approval process

12 The Energy Project supports the amendment of WAC 480-100-645(2) to provide that an adjudication can be initiated on the Commission’s own motion or at the request of “any person with a substantial interest” in the CEIP filing. 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, and noted that the requirements of WAC 480-07-300(1) appear to require an adjudication in this type of proceeding. The new language is responsive to this request and TEP is supportive of the change. This also ties in with requiring submission of documentary support in order to justify or support a CEIP. This will help create the record to support a decision if a matter is set for an adjudication.

## 6. Definitions

13 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.

14 The Energy Project had supported the modifications to the definition of “equitable distribution” in the last version of the CEIP rules.<sup>10</sup> The addition of the “benefits and burdens” language addressed TEP’s concern about the need to clarify the goal of the fair allocation

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<sup>10</sup> Previous Draft WAC 480-100-605.

described in the definition. The rule was also improved by referencing “mitigation of disparities” and by broadening the consideration of current conditions to include “legacy and cumulative conditons.” The final proposed rule removes reference to migitation and to legacy and comulative conditions, while retaining the reference to disparities. Staff’s statements in the Comment Summary indicate that the adoption order will clarify that “legacy and cumulative conditions” are included in the meaning of “current conditions.”<sup>11</sup> The Energy Project finds the new language acceptable in combination with a statement in the adoption order indicating that “current conditions” includes legacy and cumulative conditions.

15           A technical modification should be made to the definition of “indicators.” The Energy Project recommends the definition be amended by adding reference to “burdens” as well as “benefits” to better reflect RCW 19.405.040(8) which includes both terms. The revised rule would read: “ ‘Indicator’ means an attribute, either quantitative or qualitative, of resources or related distribution investments associated with customer benefits or burdens described in RCW 19.405.040(8).”

16           The Energy Project continues to support the addition of “equitable distribution” to the examples of requirements listed in the “resource need” definition.<sup>12</sup>

### **B. Reporting Progress Towards Equitable Transition**

17           In its prior comments, TEP expressed two concerns regarding reporting of progress toward equitable distribution goals in the earlier draft rules. First, while rules required a utility to provide annual reports on progress toward emissions goals as well as a biennial CEIP update, the

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<sup>11</sup> Comment Summary, p. 4.

<sup>12</sup> Current Proposed WAC 480-100-605.

draft rules only expressly required a report on equitable distribution in the compliance report once every four years.<sup>13</sup> Second, the timing of the four-year report on equitable distribution is problematic. These concerns have only been partially addressed in the final proposed rules.

18 Taking the timing issue first, as we noted in prior comments, 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> The equitable distribution compliance report will thus come too late to be of use to the Commission or parties working on equity planning issues in the CEIP for the 2025-2029 implementation period. Staff has indicated that this concern is addressed by adding the word “current” to Proposed WAC 480-100-640(6), such that the CEIP must include “an assessment of current benefits and burdens on customers by location and population”<sup>16</sup>

19 The Energy Project does not believe this change is sufficiently clear to remedy the concern. Presumably, this could enable the Commission and stakeholders to then compare “current” benefits and burdens with those reported as “current” in the prior CEIP and make some assessment of progress toward equitable distribution. While this “snapshot” may be somewhat helpful, it places the burden on the Commission and non-company stakeholders to make deductions about any progress that may have occurred, rather than simply asking the utility to report changes and progress since the last CEIP. The latter is the better approach in TEP’s view.

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

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

<sup>15</sup> Proposed WAC 480-100-640(1). This cycle would repeat every four years.

<sup>16</sup> Proposed 480-100-640(6)(b)(i).



20 Staff has indicated this rule language would contemplate a review of the results of specific actions in prior implementation periods, although that is not stated in the rule language. Again, this may place the burden on non-company parties to make the initial assessment. The Energy Project recommends the following amended language to clarify this point:

21 WAC 480-100-640(6)(b)(i):

An assessment of current benefits and burdens on customers, changes in benefits and burdens since the last CEIP, including results of specific actions taken the prior CEIP implementation period consistent with the requirements in WAC 480-100-640(4)(c), and the projected impact of specific actions on the distribution of customer benefits and burdens during the implementation period.

22 Regarding TEP’s second point, the absence of intermediate equity reporting during the four-year period, Staff responds in the Comment Summary that “a utility’s reports on specific actions should give the parties a senses of the progress made regarding equitable distribution.”<sup>17</sup> It is not clear what reports are referred to here. The Energy Project does not read the annual clean energy progress reports rule<sup>18</sup> to specifically require reporting on specific action.

23 Staff also responds that “if significant changes occur during the implementation period, equity requirements can be assessed during the biennial CEIP update”<sup>19</sup> which is provided for in WAC 480-100-640(11). The proposed rule however is silent on this point, giving no guidance to utilities or stakeholders. The Energy Project suggests this be clarified by amending the third sentence of the rule to state: “The utility must file its biennial CEIP update in the same dockets as its most recently filed CEIP and include an explanation of how the update will modify targets

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<sup>17</sup> Summary of Comments matrix, p. 55.

<sup>18</sup> Proposed WAC 480-100-650(3).

<sup>19</sup> Summary of Comments matrix, p. 55.

in its CEIP or plans to meet equitable distribution requirements. “ If the Commission does not wish to make this change, The Energy Project respectfully requests that the adoption order reflect Staff’s suggested approach.

### **III. CONCLUSION**

24 The Energy Project generally supports the final Proposed Rules issued pursuant to the CR-102. However, TEP respectfully requests consideration of the limited issues raised in these comments. Addressing these few remaining important issues will, we believe, improve the final adopted rules as a framework for achieving the ultimate planning goals of CETA. The Energy Project will participate in the final phase of the rulemaking and will be in attendance at the adoption hearing to answer questions and address any issues as necessary.