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Filed via Web Portal

Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Dockets UE-191023 and UE-190698 (consolidated) – Comments of Puget Sound Energy

Dear Mr. Johnson:

Puget Sound Energy (“PSE”) respectfully submits these comments in response to the Washington Utilities and Transportation Commission’s (“Commission”) October 14, 2020 Notice of Opportunity to Provide Written Comments (“Notice”) in this proceeding. PSE appreciates the additional opportunity to provide feedback to the Commission on the proposed rules relating to Integrated Resource Plans (“IRP”), Clean Energy Implementation Plans (“CEIP”), and compliance with the provisions of the Clean Energy Transformation Act (“CETA”).

Introduction

On September 11, 2020, PSE submitted comprehensive comments and proposed revisions to the Commission’s second discussion draft rules. In those comments, PSE articulated its broad concern with the scope, substance, and direction of the draft rules. PSE’s proposed alternative rule framework also maintained the important sections of the rules, but simplified some of the proposed processes.

PSE appreciates the Commission’s work over the past month to refine the rules. This work has resulted in improvements to certain elements of the proposed rules (e.g., the removal of some

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unnecessary process elements, such as the adaptive management references in WAC 480-100-615, review of customer notices in WAC 480-100-655(3), and streamlining of WAC 490-100-665). However, the rules continue to be overly prescriptive and confusing in several key areas. And despite the progress noted above, the “collective administrative burden” of the rules remains higher than necessary, the incremental cost of compliance pathway remains complicated at best, and the scope of proposed IRP changes will be challenging to implement, for the 2021 IRP in particular.¹ Additionally, PSE’s overarching concern remains: it is likely that the rules will result in a misallocation of resources away from the real and necessary work of meeting CETA’s primary goals in favor of burdensome regulatory compliance activities – however well-intended.

PSE will not fully repeat its prior comments filed on September 11, 2020 in this docket. Instead, PSE focuses these comments on three issues: (1) the role of interim targets; (2) the current lack of clarity surrounding the incremental cost of compliance pathway; and (3) expectations for the 2021 IRP and CEIP cycle. In so doing, PSE’s goal is to highlight specific areas where challenges may arise during initial implementation periods, as well as areas where more certainty may be needed. PSE also highlights certain proposed requirements that may need to be revised or clarified again at a later date or, in a worst case scenario, lead to utility requests for exemptions or waivers—something PSE will endeavor to avoid.

At this late stage in the rulemaking process, it bears reemphasizing that PSE will have the largest compliance obligation of any utility in the state. PSE remains committed to the important overarching goals of transforming its power supply portfolio, and doing so in an equitable manner. However, success under CETA depends in large part on PSE’s ability to implement and act upon approved plans within the Commission’s proposed regulatory framework. To this end, PSE continues to view the CEIP, the corresponding Commission review and approval process, and the overarching regulatory environment as the most important elements to achieving success.

Comments

Interim Targets as Compliance Obligations vs. Progress Metrics

Section 650 of the Commission’s proposed rules continue to require that each clean energy compliance report demonstrate whether and how the utility “met its interim targets.” PSE remains concerned that the Commission has interpreted this requirement as a compliance obligation.

¹ PSE’s September 11, 2020 comments and proposed alternative rule framework contain more detailed discussion of these and other issues.

CETA clearly establishes a compliance obligation in 2030 that is subject to penalty. However, interim targets and specific targets are not compliance obligations in and of themselves, but rather an exercise in demonstrating progress. In the spirit of implementing CETA, it is ideal for utilities to move as quickly as possible to transition electric systems to carbon neutrality. Yet, by establishing mandatory compliance obligations through the interim targets, the Commission will incentivize utilities to set conservative initial targets to ensure they are reached and the utilities are not subjected to penalties. Further, this mandatory compliance posture may encourage utilities to favor the acquisition of certain available resources over potentially more economical or efficient alternative resources that may be in other stages of development, simply for purposes of achieving compliance. For compliance with the rules, including establishing interim and specific targets, the Commission already has significant authority to enforce its rules, including issuing penalties.

When interpreting the same statutory requirement, the Department of Commerce has proposed to treat interim targets only as a means for utilities to “demonstrate progress” towards the 2030 and 2045 CETA standards (i.e., they are not in themselves binding before the 2030 period). This interpretation by Commerce is in line with PSE’s interpretation of the statute. PSE also believes the differences in interpretation now created by the divergent approaches between the Commission and Commerce will add unnecessary compliance reporting complexity and result in different and unequal treatment between utilities under Commission jurisdiction and those that are not. PSE requests that the Commission reconsider this aspect of the rules, or clarify how interim targets should be set and managed by utilities over time to alleviate these concerns and potentially avoid unintended short-term acquisition incentives.

The Two Percent Incremental Cost Alternative Compliance Pathway

PSE appreciates the Commission’s continued focus on refining the interpretation of the incremental cost of compliance provision in CETA for all utilities. At this stage, PSE has two comments on this topic that highlight this topic’s complexity.

First, PSE continues to believe that components of the incremental cost alternative compliance pathway in the draft rules render it unnecessarily complex and likely unusable. Among other things it is not yet clear how the process to compare the cost of the actual CEIP portfolio to the alternative lowest reasonable cost and reasonably available portfolio at the end of the four year period will work in practice. The rules continue to require that utilities update the baseline using the portfolio optimization model. This approach has numerous flaws, including requiring the Commission to make periodic and successive determinations of what the utility “would have implemented” absent CETA. At a certain point, this academic analysis (i.e., the ongoing updates to the counterfactual of what the utility “would have implemented”) falls under its own weight

through the constant re-evaluation structure set up by the proposed rules. Moreover, although the proposed rules now limit updating of the baseline portfolio to only “material” inputs, this term is not defined in rule and creates additional uncertainty.

Second, PSE appreciates the Commission’s willingness to include in the rules an option for utilities to propose, and for the Commission to review, alternative incremental cost methodologies. PSE concurs that so long as the utility can demonstrate that an alternative method satisfies applicable statutory criteria, the Commission should have the flexibility to entertain an alternative approach. Although there may still be reservations regarding PSE’s contemplated approach, PSE believes its proposed methodology does indeed satisfy the statutory criteria. As PSE stated in its September comments, PSE’s proposed alternative method offers a simpler way to calculate the baseline and incremental costs and is supported by both Commission precedent and methods developed and vetted over many years. However, PSE recognizes that understanding this incremental cost calculation through actual calculations and associated impacts to customer rates is vital to transparently understanding the costs of CETA. Accordingly, PSE is committed to addressing questions and discussing this approach further with the Commission, Commission staff, and stakeholders to ensure that the Commission indeed has the option of considering it on the merits in the future.

Given these and other interpretive issues that remain with respect to the two percent incremental cost compliance pathway, PSE remains, at best, unsure of this provision’s viability as a compliance tool. As a result, PSE anticipates it will not be able to use the two-percent incremental cost provisions of the rule as a means of demonstrating alternative compliance as contemplated in the statute. Rather, the two percent cost calculation will serve as a general barometer or guide for PSE to use in compiling its draft CEIP, with its proposed targets and associated budgets. From there, the Commission can decide whether the resulting plan is reasonable and can make adjustments accordingly. Once approved, PSE intends to focus squarely on achieving the interim (and specific) targets at lowest reasonable cost to its customers, which may result in more or less than a two percent incremental cost.

Expectations for the 2021 IRP and CEIP cycle

In the near term, PSE is concerned about the timing of the draft and final rules in relationship to the 2021 IRP and CEIP process. PSE’s IRP is well underway, with a full draft expected in January 2021, just a couple of months away. Given that the current IRP is in-flight and these rules are not yet final or in effect, it will be difficult for this IRP to reflect all aspects of these new requirements, particularly any provision that is newly introduced as part of the CR-102 draft.

As indicated in prior comments in this docket, PSE supports the overarching provisions of RCW 19.405.040(8) codified in WAC 480-100-610(4)(c). It is clear, in the statutory language and in the draft rules, that CETA requires a more inclusive and participatory approach to utility planning. Achieving the intended outcomes will require time and work to fully engage public participation. As this body of work matures through the equity advisory group process, Commission-led equity workshops, and other means, utilities will be better positioned to identify and discuss in some detail in the CEAP and CEIP the specific actions the utility plans to take to equitably distribute benefits and reduce burdens for highly impacted communities and vulnerable populations. For the first CEAP and CEIP cycle, however, these important conversations with advisory group members, the Commission, the public, and others, are just at their beginning. PSE encourages the Commission to hold more workshops in early 2021 specifically focused on how to best implement the new equity provisions in rule, such as the development of indicators. Further guidance from the Commission in this area would be beneficial to all parties, as there are many unanswered questions as to how to pursue this work and meet the Commission's expectations.

Additionally, it is not clear what the Commission expects utilities to analyze in the newly required "maximum customer benefit scenario." This concept would benefit from more discussion and exploration through a Commission workshop. For this IRP cycle, it is very late in PSE's process to be adding a new scenario to the list, especially one that is not well understood. PSE invested considerable time earlier this year in surveying potential scenarios and sensitivities, discussing them with stakeholders, and selecting which ones would be used for the 2021 IRP. There is very little time remaining in the IRP process for PSE to work with stakeholders to develop the assumptions for this scenario and also complete the requisite analysis. PSE requests more specificity from the Commission on what is intended for this scenario, as well as the discretion to wait to pursue this scenario until the next IRP cycle.

Furthermore, it will be extremely challenging for this IRP to contain a robust equity-related assessment that is informed by the Department of Health's cumulative impact analysis when that analysis is not available even in draft form yet. Nonetheless, PSE is committed to begin discussing this equity-related assessment with stakeholders as part of the 2021 IRP, but envisions this assessment will be an iterative process that will become more robust in successive IRP cycles.

Finally, while PSE supports public participation in the IRP process, PSE notes that it already conducts an extensive public process in developing its IRP. These processes provide numerous opportunities for the public to provide input at a stage in the process where input can be meaningfully considered and affect the analysis and outcome in the IRP. In addition, the draft

IRP is being developed on a schedule that does not allow for all IRP analyses to be completed, and PSE anticipates filing a draft IRP with certain modeling components still in development. Commission staff asserted in their most recent IRP/CEIP comment matrix that there is “enough time for the utility to run one or two more analyses” after the draft IRP is filed and the public meeting is held.” This is not a realistic expectation, particularly if the Commission allows for a 30 day public comment period on the draft IRP, and holds the public meeting in mid-to-late February after the comment period closes. Under this potential timeline, this would only give PSE about a month to consider those comments and finalize its IRP by April 1, 2021. PSE’s IRP modeling work is the result of a painstakingly thorough process that takes several months or more to develop with documented stakeholder input. It is not reasonable to expect utilities to undertake significant additional analysis when those requests are made during the very late stage of finalizing the IRP.

Furthermore, PSE is concerned that stakeholders will not view the public meeting on the draft IRP as a meaningful opportunity for public comment, particularly if there is not adequate time remaining for the utility to consider and potentially make adjustments to the draft IRP based on their feedback. For all of these reasons, PSE continues to question the value in holding a Commission meeting on the draft IRP.

All of these considerations create notable challenges for the 2021 IRP cycle and the CEAP and CEIP. It will be challenging, for example, for the CEAP, which must be submitted in draft form in January of 2021, to include a robust, inclusive long-term strategy to achieve the requirements under RCW 19.405.040(8). For that strategy to be robust, there needs to be adequate time for PSE to engage in thoughtful conversations with its stakeholders about what that strategy should look like, and how it should be measured—through indicators that have yet to be developed with the equity advisory group, which has yet to be formed.

PSE wants to strike the right balance in the 2021 cycle between progress on incorporating the elements in RCW 19.405.040(8) and ensuring that the process to do so is inclusive and representative of the customer voices that need to be elevated, as was clearly intended by the statute. PSE is sensitive to approaching this work by centering equity and inclusion, rather than rushing through a utility-designed check-the-box approach.

Given that the 2021 IRP is in process and the draft is due in two months, as well as the anticipated timing for when these rules may take effect, what PSE can accomplish with respect to the equity considerations outlined in RCW 19.405.040(8) may be more modest for this first IRP cycle. Specifically, PSE may not be able to fully address the expectations outlined in WAC 480-100-620(10)(c) and (11)(g) of the rule and requests some guidance from the Commission on how manage the 2021 IRP in light of the timing issue. That being said, PSE is committed to this

work and will begin these important conversations with stakeholders at its next IRP meeting on November 16, and will reflect upon those considerations in the draft IRP to the extent possible. PSE requests that the Commission consider providing guidance to utilities regarding the 2021 IRP and CEIP cycle given the issues raised here.

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PSE appreciates the opportunity to provide comments in this rulemaking. Please contact Kara Durbin at (425) 456-2377 for additional information about these comments. If you have any other questions, please contact me at (425) 456-2142.

Sincerely,

/s/ Jon Piliaris

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