

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to consider adoption of rules to
implement chapter 19.405 RCW and revisions
to chapter 80.28 RCW

DOCKET UE-191023

In the Matter of Amending, Adopting, and
Repealing WAC 480-100-238, Relating to
Integrated Resource Planning

DOCKET UE-190698

**PUBLIC COUNSEL RESPONSE TO OCTOBER 14TH
NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS**

November 12, 2020

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I. INTRODUCTION

1. Pursuant to the Washington Utilities and Transportation Commission's ("Commission") Notice of Opportunity to File Written Comments ("Notice") of October 14, 2020, Public Counsel submits the following comments in response to the draft Integrated Resource Plan (IRP) and Clean Energy Implementation Plan (CEIP) rules. Public Counsel appreciates the thoughtfully drafted rules included with the Commission's Notice that incorporate careful consideration of stakeholder input. Public Counsel's comments focus on remaining items of concern and outstanding issues that are intended to be addressed outside of these current rules.

II. COMMENTS ON DRAFT RULES

A. CEIP Incremental Cost Calculation

2. Draft rule WAC 480-100-660(2) includes a new formula for the calculation of the threshold amount of incremental costs used to show alternative compliance with the Clean Energy Transformation Act (CETA) in accordance with RCW 19.405.060(3). The formula is adapted from the version included in the Department of Commerce's ("Commerce") draft rules.¹

The formula is as follows:

$$\text{Annual Threshold Amount} = \frac{(\text{WASR}_0 \times 2\% \times 4) + (\text{WASR}_1 \times 2\% \times 3) + (\text{WASR}_2 \times 2\% \times 2) + (\text{WASR}_3 \times 2\%)}{4}$$

This method appears to calculate an annual average threshold amount set to two percent of a utility's weather adjusted sales revenue from the previous year, with the incorporation of a compounding mechanism. Once a utility hits this threshold amount in CETA-related costs, a utility would be deemed to be in compliance with the CETA standards.

3. In support of this method, Staff states in the comment matrix,

Staff recommends the commission adopt an approach that is consistent with the Department of Commerce, and is similar to the approach advocated by PSE, Climate Solutions, and Renewable Northwest. We believe that this is consistent with the statute and the legislature’s intent. Staff believes that the calculation in the proposed rules solves Public Counsel’s concerns with the denominator.²

4. While this approach did resolve some of Public Counsel’s concerns with the previous two interpretations of the calculation methodology, Public Counsel has significant concerns with this proposed approach and does not support the draft rule as currently written.

1. CETA does not require compounding for growth or cost increases in the threshold amount.

5. PSE,³ Climate Solutions,⁴ and Renewable Northwest⁵ all recommend incremental cost calculation methodologies that incorporate the compounding of cost increases through the four-year compliance period, and the currently proposed approach appears intended to address these parties’ recommendations. Public Counsel is not convinced, however, that the statutory language in RCW 19.405.060(3)(a) necessarily requires such a result. The statute states,

An investor-owned utility must be considered to be in compliance with the standards under RCW 19.405.040(1) and 19.405.050(1) 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 to customers for electric operations above the previous year, as reported by the investor-owned utility in its most recent commission basis report. All costs included in the determination of cost impact must be directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050.⁶

¹ See Dep’t of Com., CETA Phase II CR-102, Draft WAC 194-40-230 (Oct. 21, 2020), available at <https://www.commerce.wa.gov/wp-content/uploads/2020/10/CETA-Phase-2-CR-102-and-Supporting-Documents-1.pdf>.

² Notice of Opportunity to File Written Comments (“Notice”), 2d Discussion Draft Summary of Comments Matrix (Oct. 14 2020), at 81.

³ Comments of Puget Sound Energy on Second Set of Discussion Draft Rules Relating to Clean Energy Implementation Plans and Integrated Resource Plans (Sept. 11, 2020), at 7–8.

⁴ Comments of Climate Solutions relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act (Sept. 11, 2020), at 3–5.

⁵ Comments of Renewable Northwest (Sept. 11, 2020), at 11–13.

⁶ RCW 19.405.060(3)(a).

Nothing in the plain language of this statute suggests that the CETA-related cost increases must be compounded from year to year. The phrase “equals a two percent increase of the investor-owned utility’s weather-adjusted sales revenue to customers for electric operations above the previous year,” only applies a two percent increase to revenue amount from the prior year. The statute makes it clear that year-to-year changes in the weather adjusted sales revenue (WASR) must be accounted for but does not state that the CETA-related cost increases from one year must be allowed to carry over into the following years. If the statute intended the incremental cost calculation to carry cost increases over to the next year, it could have unambiguously stated that requirement.

6. Additionally, compounding cost increases across the four-year period assumes that all CETA-related cost increases in a given year remain unchanged in the subsequent years and that the new cost increases are simply added on top of the old in the calculation of the threshold amount. While this assumption may be more likely to hold true for large capital costs that are amortized over long time periods, it would not necessarily be true for costs related to education, outreach, or smaller investments in highly localized activities. Furthermore, compounding increases in the threshold amount essentially treats the costs as if they have been included in the WASR, at least for the purposes of calculating a threshold amount. The actual costs would still be required to undergo a reasonableness review through a rate case, but this default compounding in the threshold amount appears to give these costs an inappropriate presumption of reasonableness.

2. Staff and Commerce’s proposed formula inappropriately inflates the two percent cost threshold.

7. Even if the Commission accepts the argument that the two percent increase should be carried over from year to year through the four-year period, Staff and Commerce’s formula is

flawed. The proposed methodology goes beyond carrying over the CETA-related cost increases and inappropriately inflates the total and annual average threshold amount.

8. In its draft rules, Commerce included an example calculation using its proposed formula.⁷ The table below is copied from Commerce’s draft rule. For Commission-regulated utilities, retail revenue requirement would be replaced by the WASR.

Example 1. Example calculation of Annual Threshold Amount from Department of Commerce’s draft rules

A	B	C	D	E	F	G
Year	Retail Revenue Requirement	Annual Amount from Revenue Increase Equal to 2% of Prior Year Revenue Requirement	Number of years change or increase is in effect	Threshold Amount over 4 years	Sum of Threshold Amounts	Annual Threshold Amount
0	\$100					
1	\$105	\$2.00	4	\$8.00	\$21.00	\$5.30
2	\$110	\$2.10	3	\$6.30		
3	\$115	\$2.20	2	\$4.40		
4	\$120	\$2.30	1	\$2.30		
Annual Threshold Amount as a Percentage of Average Retail Rev. Req.						4.7%

This example calculates the two percent increase in CETA-related costs for year 1 using the year 0 base revenue amount of \$100. This results in a threshold amount of \$2.00. If the compliance period was only a single year, it would mean that a utility with a revenue requirement (or WASR) of \$100 would be in compliance if they spent two additional dollars on CETA-related activities.

9. In the Commerce example, the \$2 threshold amount is then baked into the threshold calculation in each of the remaining years. This method, however, incorrectly accounts for the retail revenue requirement or WASR. Rather than focusing on just the CETA-related cost increases, it compounds the initial \$2 of CETA-related costs from that base revenue of \$100 into

⁷ See Dep’t of Com. CR-102, Draft WAC 194-40-230 (Oct. 21, 2020), available at <https://www.commerce.wa.gov/wp-content/uploads/2020/10/CETA-Phase-2-CR-102-and-Supporting-Documents-1.pdf>. Note that the \$5.30 amount in column G is rounded up from \$5.25. Public Counsel copied this amount from COMMENTS OF PUBLIC COUNSEL DOCKETS UE-191023 & UE-190698 (CONSOLIDATED)

the calculation of the threshold amount in each successive year. As a result, that initial \$100 is counted four times in the \$8 threshold amount for Year 1, three times in the \$6.30 threshold for Year 2, two times in the \$4.40 threshold for Year 3, and once in the \$2.30 threshold for Year 4. This method essentially accounts for that initial \$2 threshold from the \$100 base revenue ten times.

10. The tenfold multiplication of CETA-related costs associated with that initial base revenue incorrectly inflates the compliance threshold and significantly increases the amount utilities could spend to comply with CETA through the alternative compliance mechanism. This would result in ratepayers paying more for CETA activities than they otherwise would be required to in a given year.

11. If the Commission determines that the alternative compliance mechanism must allow utilities to carry over the CETA-related cost increases from year to year, the formula should be corrected so that the threshold amount only reflects the CETA-related cost increases or decreases from year to year and does not repetitively account for the base revenue. Example 2, below, uses the Commerce revenue amounts but only compounds the year-to-year increases in CETA-related costs.

12. The calculation in the example takes a number of factors into account. First, unlike traditional compounding interest calculations, the two percent threshold amount is not automatically added to the underlying revenue amount. Second, changes to utility revenue due to growth or non-CETA factors are assumed to be captured in the underlying WASR through rate cases and do not need to be accounted for separately.⁸ Third, CETA-related cost increases may

the table provided by Commerce rather than using the \$5.25 amount. Public Counsel also added the column letters for ease of discussion purposes or questions, if necessary.

⁸ Changes to utility revenue due to growth will be captured in the actual weather adjusted sales revenue. Any growth or non-CETA capital expenditures outside of what is already included in the WASR must first be

be added to the WASR through rate cases and do not need to be accounted for separately. Fourth, all changes to the underlying WASR, either due to CETA or external to CETA, are reflected in the threshold amount though the initial calculation of the revenue equal to a two percent increase over the previous year (column C in the example). Fifth, as discussed above, Public Counsel does not agree that all CETA-related costs increases should be carried over from year to year by default, but, for the sake of simplicity in calculating the threshold amount, the example below assumes all CETA-related cost increases carry over into the subsequent years and does not attempt to adjust the threshold amount for hypothetical reductions in CETA-related costs.

Example 2. Example calculation only compounding CETA-related cost increases

A	B	C	D	E	F	G	H
Year	Weather adjusted sales revenue	Annual Amount from Revenue Increase Equal to 2% of Prior Year Revenue Requirement	Change in 2% threshold amount, as compared to base year	Number of years change or increase is in effect	Change in Threshold Amount over 4 years (=DxE)	Sum of Threshold Amounts	Annual Average Threshold Amount (=G/4)
0	\$100	-	-	-	-		
1	\$105	\$2.00	\$2.00	4	\$8.00	\$9.00	\$2.25
2	\$110	\$2.10	\$0.10	3	\$0.30		
3	\$115	\$2.20	\$0.20	2	\$0.40		
4	\$120	\$2.30	\$0.30	1	\$0.30		

13. The key differences between Example 1 and Example 2 are the inclusion of Column D and the resulting change in the calculation of Column F. This approach allows for the cumulative cost impacts of CETA investments to be accounted for in the threshold amount but only compounds the change in threshold from year to year.

authorized by a General Rate Case (GRC). Once authorized, we would see the increase in the WASR for the next year after the rate change goes into effect. The calculation of the two percent threshold for that next year would reflect the change in the WASR. Commerce and Staff’s formula does not make the mistake of compounding cost increases due to growth or non-CETA related expenditures, but Public Counsel highlights this point in case other methods are contemplated.

3. Public Counsel Recommendation

14. As a matter of statutory interpretation, Public Counsel does not believe that the statute, on its face, requires the incremental cost calculation to compound the CETA-related cost increases in the threshold amount. If, however, the Commission interprets the statute to require the compounding of CETA-related cost increases, Public Counsel recommends that the formula be corrected to remove the inappropriate, tenfold compounding of the initial threshold calculation from year 0 to year 1. The corrected formula should only compound the changes in the threshold amount, as shown in Example 2.

B. Public Participation Generally

15. Public Counsel appreciates Staff's attention to public participation in the draft rules for the CEIP and IRP processes. As Public Counsel has previously commented, establishing a clear process for active public participation in creating CEIPs and IRPs necessitates accessibility and transparency. It is appropriate to maintain the participation requirements around communication and reporting in WAC 480-100-630 for the IRP process. Furthermore, Public Counsel appreciates continued inclusion of public participation in the CEIP process, particularly as it relates to meeting CETA's equity mandate, as described in WAC 480-100-655.

C. Equity Advisory Group Compensation

16. Public Counsel appreciates the deliberation among all stakeholders on the topic of compensation for stakeholder participation in equity advisory groups. Public Counsel maintains that the Commission has authority to require funding for participants' expertise in this particular area. Furthermore, Public Counsel agrees with Staff that this topic merits additional conversation with particular attention to funding mechanisms and design. Although the details of this issue require additional conversation among stakeholders, Public Counsel urges the inclusion of basic

requirement language in rule. Without a basic rule requiring stakeholder compensation, it will be difficult or impossible to enforce. The details of funding mechanisms and program design can be discussed with further deliberation among stakeholders and a subsequent Commission policy statement.

D. IRP Rules

17. Public Counsel believes that, in general, the draft WAC 480-100-620, -625, and -630 are well drafted and incorporate many of our earlier proposed suggestions. We believe that moving the IRP process to a four-year cycle with a two-year progress report will allow for coordination between the IRP, CEIP, and CEAP requirements. We have a few comments on specific areas of the IRP rules, however.
18. Draft WAC 480-100-620(3)(a) addresses the planning process for distributed energy resources. In earlier comments, Public Counsel suggested that the language should require, rather than strongly encourage, utilities to engage in the distributed energy resource planning process described in RCW 19.280.100.⁹ The statute lays out eight goals that a utility's planning process should accomplish¹⁰, while acknowledging that the planning process will vary from utility to utility depending on the particular characteristics of each company.¹¹ Given that the statute provides flexibility, Public Counsel believes that utilities that are engaging in distributed energy resource planning should meet the goals specified and that the draft WAC 480-100-620(3)(a) should require, rather than strongly encourage, utilities to engage in the planning process outlined in RCW 19.280.100.
19. Public Counsel earlier suggested that resource adequacy would be an important metric to

⁹ Initial Comments of Public Counsel, Docket UE-190698 (Dec. 20, 2019), ¶ 8.

¹⁰ RCW 19.280.100(2).

¹¹ RCW 19.280.100(1).

include in the two-year progress report.¹² As currently drafted, WAC 480-100-625(4) does not include resource adequacy as a component to be updated every two years. Public Counsel encourages the Commission to include it in the two-year progress report because it may become more and more important to understand available resources as more coal and natural gas plants are retired and other factors impact the market. Updating information about resource adequacy on a four-year schedule is not frequent enough. In addition, the current two-year IRP process includes a resource adequacy requirement,¹³ so utilities have previously updated this information on a two-year schedule and, as a result, will not create a new burden for reporting requirements.

E. Attestation

20. Public Counsel wishes to restate our support of including both an attestation and verification, such as a third-party data audit, to demonstrate the elimination of coal-fired resources in the annual clean energy progress reports outlined in draft WAC 480-100-650(3). As noted in our earlier comments, we support verification of each utility's attestations, including use of a third-party audit.¹⁴ We continue to support addressing this issue in the current rulemaking and look forward to future discussion on this issue, as well as contributions from the carbon markets workgroup.

III. CONCLUSION

21. Public Counsel appreciates the opportunity to provide comments on these Notice questions. We look forward to reviewing other parties' comments and participating in further discussions on these topics. If there are any questions regarding these comments, please contact

¹² Initial Comments of Public Counsel, Docket UE-190698 (Dec. 20, 2019), ¶ 3.

¹³ RCW 19.280.030(1).

¹⁴ Fourth Comments of Public Counsel (Sept. 11, 2020), ¶ 26.

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Dated this 12th day of November, 2020.

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