June 14, 2021

VIA ELECTRONIC FILING

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RE: Docket UE-210183 Rulemaking to consider adoption of Markets and Compliance Requirements for the Clean Energy Transformation Act

Washington Department of Commerce May 17 Notice of Opportunity to File Comments

The Washington Utilities and Transportation Commission (Commission) and Washington Department of Commerce (Commerce) issued a Notice of Opportunity to File Written Comments regarding adoption of Markets and Compliance Requirements for the Clean Energy Transformation Act (CETA) on May 17, 2021. On June 7, 2020, the Commission and Commerce issued a Notice of Revisions to Notice of Opportunity to File Written Comments Issued on May 17, 2021. Avista Corporation dba Avista Utilities, PacifiCorp dba Pacific Power & Light Company, Puget Sound Energy, and the Public Generating Pool (collectively, "Joint Utilities") appreciate the opportunity to provide written comments to the Commission questions 5-10 of the Notice issued on May 17, 2021, pursuant to the instructions provided in the Notice issued on June 7, 2021, in Docket UE-210183.

INTRODUCTION

As the Joint Utilities approached the questions that are the subject of this comment opportunity, we utilized several general principles to guide our responses:

- *Rules should establish prohibitions on the double counting of nonpower attributes as alternative compliance options, as is required by statute.*[1]

[1] RCW 19.405.040(1)(b)(ii).

- *Rules should align with organized markets to help transform Washington utilities' generation portfolios.*
- *Utility customers should not be subject to duplicative costs to comply with CETA and the Climate Commitment Act (CCA). These are separate and distinct programs that are complementary, with the CCA regulating emissions and CETA regulating procurement of renewable resources and non-emitting generation.*
- *Rules that provide operational flexibility and minimize costs to customers will facilitate a more rapid transformation of Washington's electricity sector.*

RESPONSES TO AGENCY QUESTIONS

5. RCW 19.405.040(1)(b)(ii) allows utilities to use unbundled RECs as an alternative compliance option "provided that there is no double counting of any nonpower attributes associated with renewable energy credits within Washington or programs in other jurisdictions." Please comment on whether the following circumstances should be considered double-counting in this context, assuming in each case that the unbundled REC (RCW 19.405.040(1)(b) is used for compliance with CETA:

a. Electricity from a renewable generating facility is delivered to a California entity and treated as a non-emitting resource for purposes of the California cap and trade program.

We understand this question to mean that the electricity from the renewable generating facility is conveyed to the California entity via a specified-source transaction. We agree that an unbundled renewable energy credit (REC) created by that generation used for CETA alternative compliance would be double counted if the associated electricity was also claimed as "clean" under the California cap-and-trade program.

The Joint Utilities maintain that the contractual terms for the sale of the electricity and associated nonpower attributes determine the treatment of the nonpower attributes and, alongside the Joint Utilities' proposed double counting protections, should be relied upon to ensure double counting is prevented.

A good example of how this works in practice is specified-source imports under the existing California cap and trade regulations. In order for the import to be reported as specified, the California Air Resources Board (CARB) requires a specified-source contract, meter data (provided by the seller) and an e-tag to substantiate the reporting entity's claims. These requirements are agreed to in the contracts between the buyers and sellers, and then are subject to audit by a third-party verifier. In addition, the Joint Utilities' proposal includes an accounting of specified sales in utility compliance reporting that would also be subject to audit by the State

Auditor or Commission. The contracts and subsequent audits provide the appropriate safeguards to prevent double counting.

b. Electricity from a renewable generating facility is used by a load serving entity in a jurisdiction with no clean electricity standard, and the entity communicates to its customers or investors that its electricity is from a renewable source.

Whether double counting occurs in this scenario is heavily dependent on the contractual terms between the load serving entity and the facility. Resource contracts clearly indicate the ownership of the nonpower attributes, and all RECs are tracked in the Western Renewable Energy Generation Information System (WREGIS). We assume in this situation the Washington utility purchased unbundled RECs and the exclusive right to claim the associated nonpower attributes, and that a REC is being transferred to the Washington utility in WREGIS. For double counting to occur in this situation, the load serving entity would be making claims not supported by a REC (because it was already transferred to the Washington utility).

Assuming these facts, this scenario would likely be governed by Federal Trade Commission rules prohibiting false or misleading marketing of electricity as renewable.[2] For purposes of CETA compliance, the utility with the CETA compliance obligation should not be harmed in its CETA compliance efforts based upon the actions of other third-parties over whom the utility has no control.

c. Electricity from a renewable generating facility is allocated to load serving entities by an independent system operator or regional transmission operator outside the Western Interconnection. The renewable generation is incorporated in aggregated power source information published by the system operator.

We understand that in this scenario the electricity from a facility is dispatched by a system operator outside the Western Interconnection and allocated to load serving entities, while separately the Washington utility has purchased an unbundled REC from that generation to utilize for alternative compliance under CETA.[3]

If a utility purchases an unbundled REC that meets the requirements of CETA, it should be able to use the unbundled REC for purposes of alternative compliance.

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[2] 16 CFR § 260.15.

[3] The premise of the scenario includes two elements that may make it highly unlikely. First, consistent with RCW 19.405.040(1)(c), Commerce chose WREGIS as the tracking system for RECs, which does not track RECs from outside the western interconnection. Second, within organized markets, generation from specific facilities is not allocated to specific load. Rather, all resources are economically dispatched to meet load across the entire market footprint. The Western Energy Imbalance Market (WEIM) uses a method called "deeming" to estimate which generation is delivered into the state of California based on a dispatch algorithm. The WEIM does not, however, allocate generation to individual load-serving entities.

d. Electricity from a renewable generating facility is used by a Washington utility during a compliance period under the Climate Commitment Act to offset generation that it would otherwise obtain from a natural gas-fired generating facility or imports of unspecified power.

The rulemaking for the CCA has not been initiated, so it is difficult to answer this question accurately. What is clear under the statute is that the compliance instruments for CETA and the CCA programs are separate and distinct.

Renewable generation is not an eligible instrument to act as an "offset" or any other form of compliance instrument under the CCA; use of renewable generation can displace the use of fossil fuel generation, thus avoiding emissions and any compliance obligation under the CCA altogether. While the programs are notably different in the manner they regulate the electric utility sector, it is understandable that a single resource might be consistent with the requirements of both programs. But, this is not double counting of nonpower attributes, as the nonpower attributes have been used to comply only with one compliance program.

The Joint Utilities recommend that the rules for implementation of the CCA and CETA avoid subjecting utility customers to compliance costs associated with both programs for the same greenhouse gas emissions, and that rules streamline compliance and reporting for both programs.

e. If unbundled RECs are separated from the underlying electricity from a renewable generating facility and used for compliance with CETA, are there any other circumstances in which the underlying electricity might be double counted?

The Joint Utilities are unaware of any other circumstances where the underlying electricity would be double counted as renewable after the REC has been separated. The Joint Utilities maintain that the contractual owner of the REC is the only entity that can make claims about the environmental attributes of electricity, which is reinforced through the rules and requirements of other programs outside of Washington State.

6. How might the implementation of the Climate Commitment Act affect market purchases and their treatment under CETA?

The CCA will embed a carbon price in electricity prices, which will provide an incentive to utilities to purchase lower-emitting or renewable resources that are available through the market. No portion of the CCA, however, is intended to have a direct impact on utilities' CETA compliance obligation.[4] The CCA limits and reduces economy-wide emissions, whereas CETA

[4] One of the few references to CETA in the CCA specifically provides that the allocation of allowances to utilities at no cost does not affect the requirements of CETA. CCA section 14(8).

determines compliance based on procuring an amount of megawatt hours of renewable or nonemitting generation equal to a utility's retail load. The two programs should be compatible and will work together to transform utilities' portfolios and reduce emissions from its operations, but should not interact or overlap when demonstrating compliance with their requirements.

This is reflected in the way the two laws lay out separate processes for determining the treatment of market purchases unique to each program.[5]

7. **For any circumstance described above that is identified as resulting in double-counting, please provide a recommended approach by which the operator of the renewable generating facility could demonstrate that the nonpower attributes associated with the unbundled REC are not double-counted.**

The only potential for double counting identified in the above questions, outside of fraudulent claims, is an issue associated with electricity generated by renewable resources and imported into another jurisdiction that counts that electricity import as emissions-free. The Joint Utilities' proposal eliminates the potential for double counting by requiring that any specified-source electricity sold into a wholesale market is not eligible for CETA compliance. This restriction prevents two jurisdictions from claiming the same clean energy for compliance purposes. For additional information, please see the above response to Question 5.

8. **For any circumstance described above that is identified as resulting in double-counting, please provide a recommended approach by which the utility using the unbundled REC could demonstrate that the nonpower attributes associated with that REC are not double counted.**

The responses noted above to Questions 5 and 7 reinforce the Joint Utilities' proposal and rely on two main control points to ensure the prevention of double counting: (1) contract terms that guide and determine the ownership and use of the REC; and (2) WREGIS, which provides a transparent system to help ensure that double counting has not occurred by tracking ownership and retiring claimed RECs and bringing transparency to REC markets. These two control points are all that is needed to prevent double counting.

9. **From your prospective as a stakeholder, what information developed by the Markets Work Group informs the Commission and Commerce rulemaking?**

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[5] The Department of Commerce and the Commission are authorized to perform rulemaking on the treatment of market purchases under CETA. RCW 19.405.130(3). The Department of Ecology in consultation with the Commerce and the Commission is authorized to perform rulemaking on the treatment of market purchases under the CCA. CCA section 10(1)(c).

The Markets Work Group report confirms the importance of wholesale electricity markets to reliably and affordably serve electric utility customers. The Markets Work Group also affirmed the general premise that organized markets help achieve lower carbon energy goals by maximizing efficient use of transmission and providing access to geographically diverse generation. The Markets Work Group developed a list of characteristics for consideration by Commerce and the Commission during rulemaking. The Joint Utilities agree with the importance of these characteristics:[6]

1) Meet the requirement of CETA to transition the state's electricity supply to 100% clean energy;
2) Create clear and accurate accounting for compliance;
3) Maintain system reliability;
4) Ensure no double counting;
5) Minimize administrative burden;
6) Maximize value of investment in renewable and clean energy;
7) Support use of the flexibility and efficiency of wholesale electricity markets including transparent and clear price signals for resources that comply with statute;
8) Coordinate with other states to align market principles where possible: price signals, transparency, consistent accounting mandates, and pricing;
9) Support cost-effective renewable energy development and integration; limiting overbuild and curtailment for resources that are used to comply with the statute; and
10) Support the most efficient use of existing transmission and optimize new build to consider clean energy policies, economics, and reliability needs.

10. Are there provisions in the Climate Commitment Act that should be considered in this rulemaking as the Commission and Commerce develop rules defining requirements, including appropriate specification, verification, and reporting requirements, for the following:

(a) Retail electric load met with market purchases and the western energy imbalance market or other centralized market administered by a market operator for the purposes of RCW 19.405.030 through 19.405.050; and

Incorporating CCA requirements into this rulemaking would be premature and perhaps entirely unnecessary. The CCA is a complex law distinct from CETA in both its compliance requirements, mechanisms, and the way it affects utilities' use of centralized markets or EIM participation. The Department of Ecology is authorized to conduct rulemaking on the treatment of market purchases under the CCA. The deadline for the rulemaking is October 2026. If there is a need to align CETA and the CCA, that work can be done in CCA-specific proceedings.

[6] Washington Clean Energy Transformation Act Carbon and Markets Issues & Alternatives List, April 7, 2021, page 9.

(b) to address the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs?

No. The provisions of CETA and the CCA were drafted to prevent double counting of non-power attributes. Resources and nonpower attributes used by utilities to demonstrate compliance with CETA do not meet the requirement of the CCA. Each program employs separate compliance instruments. Furthermore, a reduction in greenhouse gas emissions required under the CCA should under no circumstances be considered "double counting" of emissions reductions. The CCA expressly recognizes that most of Washington's electric utilities are already subject to CETA's carbon neutral and carbon-free standards and allocates them allowances at no cost to ensure that customers do not pay twice for the same emissions reductions.[7] This construct indicates that the legislature fully expected the same emissions would be accounted for under both CETA and the CCA.

CONCLUSION

The Joint Utilities appreciate the opportunity to provide comments in response to the May 17 Notice.

Sincerely,

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[7] SB 5126, section 14(1(1).