December 3, 2020

SENT VIA WEB PORTAL

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

Re: Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act, Docket UE-191023, and In the Matter of Amending, Adopting, and Repealing WAC 480-100-238, Relating to Integrated Resource Planning, Docket UE-190698

Dear Mr. Johnson,

The NW Energy Coalition ("NWEC" or "Coalition") appreciates the opportunity to submit the following comments pursuant to the Notice of Opportunity to File Written Comments dated November 5, 2020, requesting responses to questions posed by staff regarding the interpretation of the word "use" in RCW 19.405.040(1)(a). The Coalition has responded to previous requests for comments on this topic in June of this year and with Climate Solutions, submitted one of the two documents which are the subject of the staff questions.

The Coalition is an alliance of approximately 100 organizations united around energy efficiency, renewable energy, fish and wildlife preservation and restoration in the Columbia basin, low-income and consumer protections, and informed public involvement in building a clean and affordable energy future.

The Coalition is committed to developing rules that fulfill the intent and meet the standards set out in the Clean Energy Transformation Act (CETA) which intentionally transforms the electricity sector in Washington. We note that there is time for both the thoughtful development of rules as well as time to allow the markets to accommodate Washington's law. The markets are created to serve customer needs, not the other way around; we anticipate working with all parties to help evolve the markets and market practices to accommodate all the varying state needs for documentation.

1. **Do the rules provided in Attachment A or B allow CETA to be enforced as an offset program?**
    a. **If no, which portion of the rule language prevents CETA compliance from functioning as an offset program?**
    b. **If yes, which portion of the rule language permits CETA compliance to function as an offset program?**

The term "offset" is commonly used in greenhouse gas (GHG) emission reduction programs, which is not the kind of approach contained in CETA. The term "offset", as used in the question, colloquially means allowing a renewable energy credit (REC) from renewable resources to be separated from the electricity that created the REC on a MWh basis (one REC equals one MWh), then applied to either unspecified or fossil fueled electricity in order to allow that unspecified or fossil fueled electricity to qualify as "renewable". This sort of "offset" is the kind of transaction that frequently occurs in a Renewable Portfolio Standard, or RPS programs.

Neither set of proposed rules should allow CETA to be enforced as an offset program, because that would be contrary to statute. CETA was not designed to be an offset program; in intent and language CETA requires the electricity used to serve retail sales be either renewable or non-emitting. CETA states at 19.405.040(1)(a)(ii) that utilities "***use electricity from renewable resources and non-emitting electric generation*** *in an amount equal to one hundred percent of the utility's retail electric loads over each multi-year compliance period*", and again at 19.405.050(1) *It is the policy of the state that non-emitting electric generation and electricity from renewable resources supply one hundred percent of all sales of electricity to Washington retail electric customers by January 1, 2045. By January 1, 2045, and each year thereafter, each electric utility must demonstrate its compliance with this standard* ***using a combination of non-emitting electric generation and electricity from renewable resources"*** (emphasis added).

Nothing in CETA's requirements or in the statement of legislative intent suggest that allowing a utility to comply with "offsets" while providing its customers with fossil fuel generated electricity, was what the legislature intended. CETA is a transformative statute, explicitly intended to change Washington's energy supply from emitting to renewable or non-emitting. To allow for the ongoing use of fossil fueled electricity as long as a utility obtains sufficient RECs totally undermines CETA.

In the transition to a 100% renewable and non-emitting system, from 2030 through 2044 up to 20% of CETA obligation can be satisfied with a very limited number of "alternative compliance options" ("ACOs"), not "offsets". The allowable ACOs are: 1) compliance payments; 2) using eligible unbundled RECs (as long as they are not double counted); 3) investing in energy transformation projects; or 4) using electricity from a pre-1992 waste burner. All but the third are based on MWH calculations. WAC 19.504.040(1)(b)(ii) makes it clear that unbundled RECs are an ACO, not an "offset" and

can only be used for a limited amount of load/MWh for a limited period of time (until 2045).

It is fair to ask if either Attachment A or B allows actions that are not permitted under CETA.

The approach in Attachment A incorrectly treats CETA as an RPS program, requiring REC retirement for compliance and allowing RECs to function as possible "offsets". Instead of recognizing that electricity used to serve load is required for compliance with CETA, Attachment A relies on the retirement of RECs for compliance. Even if Attachment A states at (4) that nonpower attributes used to satisfy compliance may not be double counted, it still allows RECs to "offset" non-compliant electricity.

The proposed language in Attachment A (4) prohibits nonpower attributes from being "used for compliance" with 19.405.040(1)(a)(ii), if the associated energy is sold as "specified". However, Attachment A (4) is silent regarding the situation in which associated energy is sold as "unspecified". In that case, the nonpower attributes evidently could be retained and "used for compliance" with 19.405.040(1)(a)(ii) for the portion of electricity that must be bundled with RECs, by "offsetting" fossil fueled electricity. That interpretation, which we oppose, contradicts statute. (see attached memorandum "Legal Interpretation of the Clean Energy Transformation Act dated August 10, 2020).

Attachment B recognizes that compliance with 19.405.040(1)(a) or 19.405.050(1) requires the *use* of electricity from renewables and non-emitting resources to serve load per 19.405.040(1)(a), not the retirement of RECs, for compliance. The associated REC retirement verifies the electricity was used and the REC cannot be double counted 19.405.040(1)(c). Any power sold, specified or unspecified, cannot be used for compliance; logically, that electricity cannot be used to serve the retail load if it is sold or transferred. RECs separated from the associated electricity can only be used as ACOs for no more than 20 percent of load.

Attachment B(2)(c) requires the "final ownership" be calculated over the compliance period by accounting for all acquisitions *and* all sales or transfers of electricity, so the net amount between those two categories of resources is what can be claimed as was *used* to serve load per 19.405.040(1)(a). The RECs associated with the electricity ultimately claimed for compliance must be retired to verify that use. Again, any REC separated from the renewable power that created it, becomes an "unbundled" REC which can be used as an ACO per 19.405.040(10(b)(ii) up to 20 percent of the retail load, as stated above.

We also question the language at Attachment A (2)(a) that refers to RECs being generated by "either renewable or non-emitting generation". By definition in CETA, "non-emitting electric generation" does *not* include renewable resources

19.405.020(28)(b). "Renewable resource" is specifically defined at 19.405.020(34). A "renewable energy credit (REC)" means a tradable certificate of proof of one megawatt hour of a *renewable resource* per 19.405.020(31). Therefore, non-emitting electricity cannot produce RECs, but if claimed for compliance, must demonstrate via documentation that the non-power attributes were not separated from the non-emitting power.

2. **Do the rules in Attachment A or B allow a utility to produce renewable electricity in excess of the amount required to serve its load and use the RECS from that excess renewable electricity, sold off system, to cover periods of load in which more than 20 percent of its load is served by GHG emitting resources as a means of complying with RCW 19.405.040(1)(b)(ii)? For example, can a utility comply with the 80 percent requirement through buying 1000 MWh of hydroelectricity in excess of its load service needs in every hour of the day during the spring runoff and resell that power while retaining the nonpower attributes for compliance?**

   To restate the question, "Can a utility purchase or acquire renewable electricity in excess of need, resell the electricity, retain the RECs, and then later apply the retained RECs from the resold excess power to GHG emitting resources for the portion of load that exceeds 20 percent of its load"? We think the statute is clear - the answer is no; the retained RECs cannot be used to comply with 19.405.040(1)(a). Those RECs *can* be used as an alternative compliance option under 19.405.040(1)(b)(ii) to compensate for using GHG emitting electricity up to 20 percent of load, but not more, prior to 2045.

   Attachment A would allow what the statute does not. Attachment A only specifies that for compliance with 19.405.040(1)(a), the power acquired is either already located in the service area or can be delivered to a designated delivery point (2)(c) and must be acquired with its REC (3). Because Attachment A is only concerned with documenting RECs, it ignores the very plain statutory requirements that power claimed for compliance must be *used* to serve retail load. Attachment A apparently assumes mere delivery is as good as use, even if the delivered power is resold, an illogical conclusion since any power sold or transferred was clearly not used.

   In effect, this allows the retained REC, now separated from the resold excess power, to be applied to other resources acquired later, even to amounts that exceed 20 percent of retail load. The only exception occurs when the excess power is resold as *specified* power; then the associated nonpower attribute cannot be used to comply with 19.405.0040(1)(a)(ii).

   Attachment B complies with the statute by not allowing RECs from "excess" renewable power that is resold off system to "offset" GHG emitting resources because power that is resold off the system is clearly not "used" to serve retail sales; if the RECs associated with that power are retained by the utility, those unbundled RECs can only be used as

an alternative compliance option that can be used to serve up to 20 percent of load, but not beyond the 20 percent per 19.405.040(b)(ii).

This question as posed by staff raises a possible new issue regarding how customers will be billed for both the power deliberately purchased in excess of load during the spring runoff and the GHG emitting resources purchased later in the year. If the power that is purchased during spring run-off and then resold sells at a lesser price than its acquisition cost, then consumers are paying for both a part of the resold spring runoff power that they did not benefit from as well as paying for the GHG emitting power acquired later on. This potential problem is avoided by following the statutory requirement that power claimed for compliance for the 80 percent required under the 2030 standard and the 100 percent standard after 2045 actually be used to serve retail load.

3. **Attachment A states in (2)(c)(ii)(4) that the delivery of resources used for compliance may occur at "another point of delivery designated by an electric utility for the *purpose of subsequent delivery to the utility* [emphasis added]."**

3a. Does the Term "purpose of subsequent delivery" mean that the electricity must be delivered to the utility, or only that it was intended to be delivered?

Since Attachment A simply requires acquisition be demonstrated by delivery of electricity to a "designated" point, not actual *use* of the electricity, (A)(2)(c)(ii)(4) could mean both. The language apparently allows for resale of the electricity, presumably as unspecified, delivered to "another specified point" with electricity from any source then delivered at a later ("subsequent") time. Or it could allow for resale of electricity without replacement, since compliance in Attachment A relies on REC retirement, not the use of the electricity.

3b. What constitutes "delivery to the utility"?

It is not clear what is meant by that phrase as it is used in Attachment A(2)(c)(ii)(4), although it implies the *amount* of electricity that was delivered to a designated delivery point other than the utility's system may be replaced by unspecified electricity that is later delivered to the utility's transmission or distribution system.

4. **How will the suggested rules in Attachment A and B affect long-term portfolio planning and acquisition:**

4a. CETA requires that all of a utility's load be served by renewables or non-emitting resources by 2045. Do the rules in Attachment A or B support this objective? Do they allow compliance with the 2030 goal in a manner that diverges from the 2045 goal?

The intent of CETA is to transition to the actual use of renewable and non-emitting generation for all retail load in Washington by 2045, and to at least 80 percent by 2030 as an interim step to that ultimate standard. Unlike a carbon reduction program that offsets emissions through displacement or allowances, CETA requires actual generator replacement. Both the 2030 and 2045 standard require utilities "use" electricity from renewable and non-emitting resources; this transition should be largely accomplished (at least 80 percent of retail load using renewable or non-emitting electricity by 2030)

with a continuing incremental transition over the fifteen years from 2030 to 2045. Neither the pre or post 2030 transition should be delayed by "offsets".

Attachment A does not ensure that the electricity claimed for compliance by a utility is actually used to serve retail load, only that it was intended to do so via REC retirement. Under Attachment A, a utility can continue to "green up" unspecified or fossil fueled electricity until 2045 which undermines long term resource and transmission planning and acquisition. Delaying actual compliance through use of RECs will allow continued use of emitting resources, or even allow new emitting resources for a 15 to 20-year run. By promoting "offsets" the preferred smooth transition to the 2045 standard could become an expensive, relatively abrupt change just a few years out from 2045.

Since Attachment B requires the electricity claimed for compliance be used to serve retail load and not resold, it deals directly with the need *to match resource to load over each compliance period.* Not allowing offsets prevents delaying until the last minute to transition to renewable or non-emitting resources. Attachment B requires a utility to plan for the specific, gradual acquisition and use of electricity to eventually meet the 2045 standard starting now.

4b. Do the suggested rules in Attachment A or B support a long-term resource portfolio plan that matches the production of renewable electricity with the utility's load and has sufficient transmission service between the point of injection of its planned source of renewable electricity and the utility's load to enable the renewable electricity to serve that load?

The sufficiency of transmission and distribution services between "the point(s) of injection" and the utility's load *within* the utility's service area will differ across Washington and between utilities; while CETA directs the energy facility site evaluation council chair to convene a transmission corridor(s) work group to study statewide transmission needs, utilities have a responsibility to plan and implement transmission and distribution to its customers that can match renewable electricity to load in their service areas.

Matching acceptable resources to utility load will depend on an adequate transmission system. By proposing "offsets" for more than the 20 percent of load until 2045, Attachment A creates a mismatch between transmission needs now and what will be needed by 2045. Relying on "offsets" results in a distorted need for a transmission system to move fossil fueled electricity until 2045 (since RECs do not have to be carried via wires), with a precipitous switch to a system capable of efficiently delivering renewable electricity. A system delivering fossil based electricity would likely differ from the transmission system needed to deliver renewables. Delaying planning and implementation of a proper transmission system will result in extra costs to consumers.

Attachment B requires the use of renewable and non-emitting electricity to match the retail load in the first 2030 compliance period, not just suddenly in 2045. Renewable electricity will need to be delivered to the utility from its source, which will require intentional and careful transmission planning. The four-year Clean Energy Implementation Plans (CEIPs) must explicitly state which resources will be acquired and what actions taken, which is where the long-range planning for sufficient transmission planning is made concrete. That is intentional to assure a steady and flexible transition.

5. **Could the Energy Imbalance Market (EIM) provide a prorated share of the attributes of the resources that provided energy in a market interval to the loads that received energy in that market interval?**
   Since utilities provide CAISO with the source, amount and cost of the power each provides for the EIM market, it seems possible for CAISO to determine the proportional shares of power by generation resource available or transacted by some period of time, such as a month or quarter or compliance period. However, CAISO would be best able to definitively answer that specific question. If CAISO cannot currently provide that data, it should be able to propose how it can accommodate Washington's statutory requirements.

   5a. If EIM loads were to receive the attributes of the generators providing energy in the market, should constraints in the dynamic transfer capacity be incorporated into the calculation of the distribution of those attributes to load? Is it possible to reflect those constraints in the distribution of attributes to locational loads?
   "Yes" to the first question: if distribution constraints are known (and we presume they are for purposes of other market operations), then the distribution of [nonpower] attributes should reflect the impact the constraints have on the amount of electricity dispatched. We presume transparent documentation would be able to tie the attributes to the distributed electricity, and thereby reflect the constraints, but that clearly needs to be worked out in a thoughtful process.

   5b. If EIM loads could receive the attributes of the generators providing energy in the market, is there a means of allocating those attributes by a bid price mechanism?
   Not from the bid price. As we understand it, CAISO currently dispatches resources from the least expensive resource to the most expensive, but that does not reveal the source of the electricity. This would clearly have to be worked out with CAISO.

6. **Energy serving load in a day ahead market (DAM) is unspecified. If the DAM bid awards were mostly surplus hydro, would the loads receiving energy from the DAM only receive unspecified energy under the rules in Attachments A and B? Does this mean that a utility that was a net buyer from the DAM at a time of excess hydroelectric generation would only receive unspecified power?**
   Given the current construct of the market, the answers would be Yes and yes. That does not mean that answer cannot change. Until all resources are identified by

generation source and the chain of custody tracked, then the benefits of hydro and other renewables will be seriously devalued by artificial market rules. This unsatisfactory outcome might be the incentive needed for markets to evolve to tracking all resources, and some of their other characteristics (such as source or carbon content) so the benefits of renewables and non-emitting resources can be fully recognized and to prevent leakage. The markets need to accommodate the laws of each state; the states should not go through contortions to try to accommodate market structures that were originally devised to meet geographically limited needs.

7. Rules in Attachment B, part (2)(b) state that a utility must make a demonstration that the electricity used for compliance was generated by the utility or acquired by the utility with the nonpower attributes and not resold.

7a. How would a utility make such a demonstration?

Demonstrating that power was used means the power was finally used to serve retail load. We would expect a utility to be able to reference a contract or production documentation, or the documentation suggested in (2)(a). A utility might also compare the documentation to the net calculation required in (2)(c). Since compliance is required by 2030, there is some time available to work with market operators and participants to determine the best documentation to confirm electricity use.

7b. How would power generated and purchased by the utility be identified as sold, which documents would be used and what process would be followed to reconcile purchases and sales?

CETA is a transformative law – to reach its goals, some current practices are going to have to change. Just because practices might be different or seen as more challenging than what is done now, is not sufficient reason to subvert the statute. How the power sold is documented might differ between markets (the EIM currently collects information on power sold by utilities, while it appears EDAM markets treat all power as unspecified). Ideally, a tracking document, such as an e-tag, could be modified to track electricity from generation to final use, not just for renewables and non-emitting electricity, but all electricity. Sold or resold/transferred electricity/e-tags would be subtracted from the amount of purchased electricity's contracts/e-tags claimed for compliance during the compliance period and matched against documentation records.

7c. How would Commission staff conduct audits under this proposal?

To audit power usage, we have suggested that contracts, operational documentation such as revised or upgraded e-tags, or other transaction records should be used to track chain of custody to final owner. To audit retired RECs the chain of custody documentation used to verify power has been used should have some link to the related REC so that the documentation could be compared to REC retirement information from WREGIS. Similarly, documentation for non-emitting resource attributes might be compared to the chain of custody documentation required of non-emitting attributes.

8. Please explain how double counting is prevented under the suggested rules in Attachment A and B?

Attachment A (4), states that those non-power attributes used for compliance in Attachment A's "offset" approach will not be double counted. However, it could be argued that the *power* that created a retained REC might be double counted when resold.

Double counting of both nonpower attributes and electricity is prevented in Attachment B by documenting electricity that is claimed for compliance via contracts or operational documents, and the subsequent retirement of the RECs (and a demonstration the nonpower attributes of non-emitting resources were never separated (sold, transferred, or otherwise isolated) from the non-emitting sourced power. To comply with 19.405.040(1)(a) the power and the attribute must remain "bundled".

Respectfully submitted,

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