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December 3, 2020

Mr. Mark L. Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop S.E., Lacey, WA 98503
P. O. Box 47250, Olympia, Washington 98504-7250

Re: Climate Solutions comments on November 5th Notice of Opportunity to File Written Comments 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. Mark Johnson,

Climate Solutions thanks you for the opportunity to submit comments on the interpretation of the Clean Energy Transformation Act's ("CETA") "use" requirement. This comment letter is in response to the notice published on November 5th, 2020.

A clean and efficient grid serves as the foundation to deeply decarbonizing Washington's economy and achieving science-based greenhouse gas reductions. We consider this issue of interpretation to be of paramount importance in implementing the most significant climate legislation the state has adopted to date. The Legislature's direction to transform the electricity system and ensure near term progress on the path to full decarbonization is at the core of CETA's purpose. Our comments in response to the questions included in the Commission's notice are included below.

1. Do the rules provided in Attachment A or B allow CETA to be enforced as an offset program?

CETA's 2030 requirements includes two separate tranches of compliance—the first requires a utility to use renewable electricity and non-emitting generation to meet a minimum of 80% of its generation needs to serve load, and the second provides permission for offsetting generation from emitting or unspecified resources through the use of alternative compliance mechanisms, such as RECs, energy transformation projects, or other methods.

Offsets are a documentation of an avoided or sequestered emission. By acquiring or producing this avoided emission somewhere else, an entity can pair this attribute with their own existing emissions and thereby "cancel out" their emitting resources. Like offsets, the proposal in Attachment A allows for both tranches of CETA compliance to be met with nonpower attributes without attendant operational changes in how the utility serves its customers. The non-power attribute documents the displacement of a non-compliant resource somewhere else—on another utility's system. These non-power attributes that have been separated from the associated electricity are inconsistent with the requirements and clear intent of the statute.

While subsection (1) states utilities must report electricity use, subsection (2) provides the operative instructions to utilities. This section makes clear that compliance is established through the ownership



and retirement of RECs (in paragraph (a)) or the ownership of non-power attributes (in paragraph (b)). Subsection (4) clearly establishes nonpower attributes as the basis of compliance with CETA's 2030 carbon neutrality requirement in its first sentence, referring to "nonpower attributes used to satisfy compliance with RCW 19.405.040(1)(a)(ii)." The referenced paragraph in law does not speak to the use of nonpower attributes and does not allow their use as a compliance method.

Subsection (4) disallows the use of non-power attributes if electricity is sold or transferred in a resource-specific transaction. Climate Solutions' read of this proposal is that these attributes may still be separated from their electricity and later paired with other non-compliant power as an offset, as long as the sale does not specify a generation source. It is likely that the lowest cost renewables a utility may acquire would not meet the utility's real-time load shape. For example Pacific Northwest wind provides higher capacity factors at night, hydropower produces electricity in greater quantities in the spring, and solar only generates during daylight hours. While these resources at times will align with the utility's load shape, each utility's portfolio and load shape are unique, and successfully meeting 80% or more of a utility's load needs would require careful system management and very likely the acquisition of a more diverse set of clean energy resources.

Provided any excess generation is sold in an unspecified transaction, Attachment A would allow utilities to continue dispatching emitting generation during parts of the day or year when their renewable and nonemitting generation are not producing energy and pair that generation with attributes from the electricity that has been sold to another entity. This proposal, then, does not create a requirement transitioning a utility's system away from using fossil fuels, but rather incentivizes a utility to acquire the maximum amount of low-cost renewable and nonemitting generation that can be sold to another entity when the utility has excess energy. If doing so is less expensive than acquiring clean power that will actually align with the utility's load shape, for example during winter or at dusk, a utility would be able to use the nonpower attributes that have been separated from the electricity as a mechanism for compliance with the minimum 80% requirement.

Attachment B corrects this loophole by focusing compliance on the actual use and ownership of electricity being used to serve load, with nonpower attributes being used in a secondary verification function to prevent double-counting under RCW 19.405.040(1)(c) and (f). By demonstrating ownership of power claimed for compliance, Attachment B provides that customers are served with clean power as envisioned by the Legislature—electricity being used to meet the requirements of the minimum 80% clean requirement in the law is not being transferred to another entity. Under this approach, its attributes remain bundled with the electricity and cannot be paired with emitting generation.

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)?

RCW 19.405.040(1)(b) refers to the alternative compliance portion of the 2030 requirement, which is limited to 20% of a utility's total obligation over the course of a compliance period. In the event that a utility generates renewable electricity that it sells off-system in an unspecified transaction while retaining the associated RECs, those RECs may be used as alternative compliance options under both Attachments A and B. These are unbundled RECs and meet the requirements of RCW 19.405.040(1)(b)(ii). Because statute dictates that a utility must serve its customers with 80% renewable or non-emitting generation over the course of an entire compliance period, rather than at all times,



utilities would not be required to match the use of this 20% share of their compliance with specific times or the fuel mixes at those times. If the sale is specified, then those RECs would not be eligible for use with RCW 19.405.040(1)(b)(ii) because that would result in double-counting.

However, Attachments A and B are intended to interpret a utility's requirements for the portions of the 2030 compliance obligation not covered by RCW 19.405.040(1)(b)—the requirement to serve their customers with at least 80% bundled renewable or non-emitting generation. The RECs described in this question are unbundled RECs and should not be eligible for compliance for this first tranche of obligation.

As described in response to Question #1, under Attachment A, compliance is attribute-based. Because attributes are only prohibited from being used for compliance if the associated electricity has been sold or transferred in a resource-specific transaction, Attachment A would allow a utility to sell power in an unspecified transaction and continue to claim the nonpower attributes from electricity they are not using to serve load and that customers have not paid for. The *receiving* entity and its customers have paid for this electricity, while the selling utility's customers have paid for only the nonpower attributes. CETA requires the actual use of electricity from renewable and nonemitting resources, and if the nonpower attributes are not bundled with the associated electricity, this approach clearly violates the requirements of the law.

Climate Solutions believes Attachment B would prevent this scenario. Because Attachment B requires ownership of electricity and the nonpower attributes, which the language defines as electricity that was self-generated or purchased and then "not transferred, either via sale or other transaction", any off system power sales regardless of how they are specified would not meet the requirements of this proposal.

- 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]." a. 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? b. What constitutes "delivery to the utility"?**

Our interpretation of this language is that this provision would require that the electricity be delivered to the utility. However, because (2)(c)(ii)(1)-(3) do not contain this language, such delivery to a utility is not required by the overall proposal, allowing utilities to negotiate a point of delivery that they do not control and, perhaps, is more amenable to immediate resale to other entities.

In either case, given the broader context of Attachment A, this provision is decidedly unclear. Given the authority this proposal provides for a utility to immediately transfer or resell clean power to other entities, the most reasonable interpretation of line (4) is that it is to be read consistently with line (1)—delivery to the utility's transmission or distribution system.

The language in Attachment A appears to be based in language previously offered by Climate Solutions, NWECA, and Renewable NW in our joint letter dated June 29, 2020. This new proposal distorts that concept. The initial suggestion contained in that letter did not include the reselling authority provided in Attachment A and the phrase "for the purpose of subsequent delivery to the electric utility" was applied to all four points of delivery. This original approach made it clear that the purpose of this overall provision is to ensure that claimed power served customers, while providing a simpler method of

compliance demonstration than wheeling the energy to the utility's distribution system. The proposal PSE, Pacific Power, Avista, and PGP have provided moves this language and allows resale, which distorts the initial meaning. While Climate Solutions believes that Attachment A includes clear loopholes and does not comply with CETA's requirements, if the Commission does choose to adopt a version of this approach, this section would require substantial edits for clarity and consistency with the law. As a note, we understand that Renewable NW no longer shares the views expressed here, and the contents of this letter are solely on behalf of Climate Solutions.

4. a. CETA requires that all of a utility's load be served by renewables or nonemitting 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?

CETA requires that by 2045, electric utilities serve their customers with electricity that is entirely sourced from specified sources that are either renewable or non-emitting. While discussions on the post-2045 compliance requirements have not been as robust as on the 2030 obligations, our understanding is that this basic interpretation is widely shared among stakeholders and regulators. The rest of the answer to this question is written with this interpretation in mind.

Attachment B is drafted in a way that allows the same interpretation to apply in 2030 to the minimum 80% requirement as to the post-2045 100% requirement. The result is that CETA's implementation would allow utilities to pursue a steady transition from their current fuel mix to one that is entirely carbon-free over 25 years with three discreet steps encapsulated in statute in 2025, 2030 and 2045, and interim targets established through implementation planning.

Attachment A does not allow this long-term consistency, essentially requiring utilities to switch from an attribute-based compliance paradigm over the next 25 years to a generation approach similar to Attachment B after 2045. The result would be a more disjointed compliance pathway that vacillates from specific resource requirements to attribute-based and back again—a firm 2025 requirement to eliminate coal, a completely attribute-based requirement in 2030 that compels no portfolio changes, and then an abrupt end to all carbon emissions in 2045. Attachment A would allow a utility to backload its use of clean energy to serve load, placing an undue burden on ratepayers in the run-up to 2045, and allow replacing coal with a new fleet of emitting generation in the near term—assets that may need to be retired prematurely in order to comply with the 2045 requirement.

4. b. 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?

It is clear that under Attachment A a utility's near- to mid-term incentive is not to transition their system to 100% clean energy,, but to adopt a compliance strategy that focuses on the acquisition of low-cost, clean energy attributes that have been separated from the associated energy.

A full conversion to clean electricity will require renewable procurement whose generation profile contributes to electricity needs at times when the lowest cost renewables do not match the utility's load profile—for example, dusk when northwest wind has not begun producing and after solar has stopped generating, during wintertime when solar and hydro production are both low, etc. This would require

load management strategies and diverse siting of resources, which itself may entail new transmission capacity that is not required when using emitting generation sited near load. It is likely that using RECs from excess spring hydro generation already connected to transmission, wind produced at night, and mid-day solar will require less grid management, investment and system transformation than compliance through bundled resources used to serve load. Under Attachment A, nonpower attribute acquisition coupled with power sales is a likely pathway utilities would be incentivized, or even required, to opt for. This approach would delay the ‘transformation’ called for in the law by decades.

Attachment B does not allow this, instead requiring utilities to maintain ownership of the power they claim, and therefore source power at all times to match their load from the most cost-effective resources and locations. The 2030 requirement contains key flexibility provisions, including the 20% alternative compliance allowance and four-year compliance periods to accommodate hydro variability. In combination, this eases the near-term difficulty of achieving compliance while still requiring a gradual increase to total clean energy used to meet Washington’s needs.

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?

The EIM should be adapted to reflect the resource obligations that utilities face in the wide diversity of states it seeks to serve, especially as a growing share of those states adopt clean energy resource requirements. Regional organized markets can be a powerful tool for deploying new renewable resources that are highly cost-effective, but their design cannot be a method to obscure fossil fuel reliance. Markets are a means to an end—low cost, clean electricity. They are not an end in themselves.

Should the EIM adopt an attribute allocation algorithm, this approach should reflect limits imposed by the physics of the system as well as by the operational constraints of the market. In this way, a balancing authority/utility would be limited to receiving an amount of attributes consistent with the amount of energy they are acquiring from the market. Consistent with Attachment B, they should not be allowed to receive an allocation of attributes and claim clean power in excess of the amount they are able to acquire and serve load with through the market.

We believe that a bid price mechanism can be an additional way of allocating attributes within the EIM, and Climate Solutions is interested in exploring this mechanism further. Just as CAISO currently incorporates both a locational marginal price and a carbon adder for load serving entities located in California for the purpose of cap and trade compliance, a similar mechanism can be added to the EIM. This would satisfy the requirement that the attribute is acquired in a bundled fashion—in a single transaction that contains both electricity and its attribute.

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?

Under the current structure of the day-ahead market, this is likely what would happen. While we acknowledge that this is a defect of the current EDAM system, this is one that needs to be

accommodated through evolved market design. As stated above, utilities should be allowed to bid for unspecified power, if that is consistent with their legal obligations, or for a bundled product that includes an attribute adder similar to CAISO's cap and trade accommodation.

- 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. a. How would a utility make such a demonstration? b. 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? c. How would Commission staff conduct audits under this proposal?**

We look forward to engaging with the Commission and utilities on properly vetting these issues over the course of the coming years before utilities must begin tracking resources for compliance in 2030.

Climate Solutions recommends that utilities record the full generation from owned assets over the course of a year, document purchases of specified resources via contract and other supplementary information, and allocate resources to sales. The primary challenge is how to record and attribute resources to transactions in ways that allow continued documentation of clean energy ownership—system sales as they currently exist pose a challenge to properly ascertaining which resources continue to be owned by a utility. Evaluating methods to deem system sales with resource specific attributes is worth exploring, though is likely to preserve opportunities for manipulation. Identifying ways of bundling groups of resources together based on their generation characteristics—acquired unspecified, acquired/generated from emitting resources, acquired/generated as renewable/non-emitting, and combinations of the first two—would allow utilities to segregate resources needed for CETA compliance from other resources that do not need to be differentially tracked.

Stakeholders and regulators should be able to have transparency into how a utility transacts resources on the market, including which resources are sold, and the net results of those transactions. When Commission staff audits this information, the utility needs to be able to provide a more granular view of transactions, including how resources are attributed to individual sales the utility engages in.

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

Attachment A focuses on attribute-based compliance and prohibits the use of attributes if a transaction allows a receiving utility to claim generation characteristics for purchased power. In this way, it prevents the non-power attributes of renewable and non-emitting generation from being used in two places, even if it allows a utility to claim power that was actually paid for by another utility.

Attachment A under subsection (2) establishes the basis of compliance to be nonpower attributes, but under subsection (1) labels those nonpower attributes as the electricity itself. The result is that this proposed approach does create a situation where a Washington utility claims to use electricity that another utility also is able to claim—two utilities claim the same unit of power. To explain why this aberration—this impossibility—is not actually occurring, one would have to explain that Attachment A relies on an equivocation. It is not actually electricity which is being used, but an entirely separate, tradeable commodity—the non-power attribute. This does not meet the requirements of the law.



Attachment B requires similar REC-retirement or documentation of the ownership of non-power attributes. However, it also requires the continued bundling of the underlying electricity itself, so that both of these commodities—the electricity and its associated attributes—are claimed once only and by the same entity.

Conclusion

As always, we appreciate the Commission's thoughtful attention to CETA implementation. We look forward to continued dialogue on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Vlad Gutman-Britten". The signature is fluid and cursive, with a long horizontal stroke at the end.

Vlad Gutman-Britten
Washington Director, Climate Solutions

A handwritten signature in black ink, appearing to read "Kelly Hall". The signature is cursive and elegant, with a large, flowing "K" and "H".

Kelly Hall
Senior Policy Manager, Climate Solutions