UE-210183

November 12, 2021

VIA ELECTRONIC FILING

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

RE: Docket UE-210183, Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act

The Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to File Written Comments on Draft Rules (Notice) that would implement certain sections of the Clean Energy Transformation Act (CETA) on October 12, 2021. The Commission requested comment on its Notice by November 12, 2021. PacifiCorp, Avista and Puget Sound Energy (Joint Utilities) appreciate the opportunity to comment.

GENERAL COMMENTS

The Joint Utilities are generally supportive of the draft rules provided by the Commission in the Notice as they are generally consistent with CETA's compliance requirements. The draft rules also require additional reporting that will demonstrate that CETA is transforming Washington's electricity supply.

While these comments focus on areas of the rule that need changes, the Joint Utilities stress that the fundamental design of these rules is generally consistent with the intent and plain language of CETA and, at the same time, plots a reasonable course for future discussion. The Joint Utilities appreciate Staff's efforts to draft rules that meet the interests of many parties and believe that the draft rules appropriately balance the implementation of CETA with the realities of existing utility planning processes and operations.

The Commission should realign this rulemaking with the Department of Commerce's process.
At prior points in this rulemaking, the Commission and the Department of Commerce (Commerce) held a series of joint workshops and issued joint requests for comment. This approach was sensible, as core CETA compliance requirements, including resolution of the "use" issue, are identical for investor-owned and consumer-owned utilities.[1] The Joint Utilities request that the Commission ensure substantive alignment between its process and Commerce's process, jointly resolve outstanding legal issues, and issue rules that are substantively the same.

It would be illogical and concerning if two groups of utilities, subject to the same statutory standard, are governed by substantively different administrative rules with different compliance pathways. If there are substantive differences in the rules, it could create unintended market consequences, competitive advantages, and inequitable costs of compliance for utility customers. Lack of uniformity across compliance structures could also make it difficult for the implementing agencies to determine whether statutory requirements have been met at the state level and may result in general confusion over how CETA must be implemented statewide.

To be clear, the Joint Utilities do not suggest that Commerce and the Commission must issue identical rules: there are statutory differences that may justify different approaches in some areas. But where statutory requirements for investor-owned utilities and consumer-owned utilities are similar, the rules should be substantively consistent as well.

The reopener provision should be reconsidered.
The Commission should reconsider draft WAC 480-100-650(6), which requires the Commission to "commence a review of this rule" no later than September 2024. While the Joint Utilities appreciate the intent to adapt the rules as future wholesale markets evolve or other changes take place that present an opportunity to adapt CETA compliance rules, this specific date is arbitrary, and has no logical basis as the specific trigger for a reopening of the rules.

The Commission has the authority to reopen its rules at any time, for any reason. Rather than a specific date, the Joint Utilities suggest that there should be a material justification for reopening the rules, such as a change in wholesale market operations that create opportunities to improve upon or streamline the existing rules. A final rule that includes a reopener provision solely driven by a date, rather than a change in circumstances, creates an un-mitigatable risk for utility planning, and specifically, utility participation in existing wholesale power markets.

The Joint Utilities understand the importance of evolving market structures to enhance regional cooperation in a manner that aligns with the policies of Washington, and the CETA in particular. The Joint Utilities respectfully suggest that the Commission consider holding workshops at periodic intervals to assess how these rules are working, convene collaborative discussions of proactive steps to align market structures with the CETA, and assess whether it is necessary or appropriate to change the existing rules in light of new developments. These workshops will provide public opportunities to share information and insights regarding how well the existing

[1] *See, e.g.* RCW 19.405.040(1) (applying to "electric utilities").

rules are furthering the intent of the CETA and also learn about utility and stakeholder efforts to explore market opportunities that align with the law. The Commission's order adopting these rules would be an appropriate place to commit to workshops. It may be useful to hold workshops at regular intervals, perhaps at the end of each Clean Energy Implementation Plan (CEIP) period, to assess how the rules comport with practical implementation of the law.

RESPONSE TO QUESTIONS

1. **Draft WAC 480-100-650(1): The Commission intends for this language to describe a planning and acquisition standard that requires utilities to acquire resources that are well-suited to directly meet projected retail electric load without precluding the use of those resources for balancing, exchanges, or other purposes.**

    a. **Is this intent sufficiently captured and the requirement clearly established through this draft rule language?**

Draft WAC 480-100-650(1) has two subsections, (a) and (b). The Joint Utilities understand that subsection (a) is intended to require that utilities have acquired sufficient renewable and nonemitting resources to meet their retail electric load to comply with RCW 19.405.040(1) and RCW 19.405.050(1). Subsection (b) requires that utilities demonstrate certain conditions meant to ensure that the qualifying electricity is able to be delivered to retail electric load of that utility. Generally, draft WAC 480-100-650(1) provides a reasonable level of clarity to accomplish the stated intent, subject to certain minor clarifications.

WAC 480-100-650(1)(a), acquisition of renewable and nonemitting resources
The Joint Utilities support requiring utilities to demonstrate they have acquired sufficient renewable and nonemitting resources to meet their retail electric load, which CETA defines as "the amount of megawatt-hours of electricity delivered in a given calendar year by an electric utility to its Washington retail electric customers."[2] Because an "amount" is "the total number or quantity," this requirement obligates a utility to show that, over the course of a compliance period, it acquired the correct number of megawatt-hours to meet its compliance obligation.[3] This requirement is consistent with a utility's public service obligation to "furnish to all persons and corporations who may apply therefor" for service, because acquisition of sufficient resources is the foundation to meeting that obligation.[4]

The structure and position within the rules of subsection (a) indicate, appropriately, that this showing of acquisition of sufficient renewable and nonemitting resources must be made on a retrospective basis. The subsection requires that the utility show that it "*has* acquired" those resources, not that it *will* acquire them.

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[2] RCW 19.405.020(36).
[3] "Amount." *Merriam-Webster.com Dictionary*, Merriam-Webster, *available at* https://www.merriam-webster.com/dictionary/amount.
[4] RCW 80.28.110.

Draft subsection (a) reads as a general declaration of the requirement without any details on how this requirement must be met. The flexibility provided by the rules is appropriate, as there may be multiple methods to demonstrate compliance with this rule. Utilities could use a simple spreadsheet approach, which documents retail electric load compared to resource generation and acquisitions. Alternatively, a utility could use a portfolio analysis approach, under median water conditions, to show that a utility acquired electricity from renewable and nonemitting resources that could meet retail electric load.

While the Joint Utilities support subsection (a) as written, there could be other interpretations of the draft rule that would not be acceptable, nor supportable, based on the draft rule language. The Joint Utilities have had informal conversations with Staff indicating that subsection (a) might be intended to create a *planning* requirement, and that subsection (b) is the *compliance* requirement. The Joint Utilities' reading of the language does not support this interpretation and, further, the CETA's statutory compliance requirements would not allow it.[5] The Joint Utilities do not support such an interpretation of subsection (a) as a planning requirement, and instead suggest that the draft WAC 480-100 -650 focus on clear and achievable standards for compliance.

WAC 480-100-650(1)(b), demonstration of compliance
Draft WAC 480-100-650(1)(b) requires only minimal changes to fully capture the Commission's stated intent. The Joint Utilities support this section.

Some minor additions should be made to draft WAC 480-100-650(2)(d). First, language should be added addressing how utilities demonstrate alternative compliance with the 2030 standard. Second, the rules need language discussing how renewable energy credits (RECs) that are not "retained RECs" are used for compliance, consistent with RCW 19.405.040(1)(c). Third, the rules need language addressing how use of nonemitting resources, which do not generate RECs, is shown. The Joint Utilities propose this language to address these concerns, which would also eliminate the need for current draft WAC 480-100-650(2)(e).

> (#) Primary Compliance. Utilities must demonstrate use of electricity for Primary Compliance via retirement of renewable energy credits or a showing of ownership of nonenergy attributes of a nonemitting resource.
>
> a. To use a renewable energy credit, a utility must demonstrate:
> i. ownership or control of the generating resource that generated such electricity and renewable energy credit, or
> ii. acquisition of such electricity and renewable energy credit pursuant to a contract, or
> iii. that the renewable energy credit is a retained REC.
> b. To use ownership of nonenergy attributes, a utility must provide documentation of generation at each nonemitting electric generation facility.

[5] As CETA compliance is assessed on a *retrospective* basis, a *prospective* planning requirement as an element of compliance would fall outside the plain text and intent of the law.

(##) Alternative Compliance. Utilities may use alternative compliance options as described in RCW 19.4050.040(1)(b) for up to twenty percent of their compliance obligation through December 31, 2044.

c. Is it appropriate to include a reference RCW 19.405.050(1) in this requirement?

It is not necessary to include a reference to the 2045 100 percent clean energy standard specified in RCW 19.405.050(1) in draft WAC 480-100-650(1) at this time. First, the 2030 standard and 2045 standard are separate and distinct. Much, if not all of the focus to date through the various CETA rulemakings has been on the 2030 greenhouse gas neutrality standard in RCW 19.405.040. Because the standards in RCW 19.405.040 and 19.405.050 are different, it would be logical that the regulatory implementation of the statutes would be different as well. As the 2045 standard is nearly 23 years away, there is no need to determine its specific requirements immediately. Because of these two factors it is premature to include a reference to the 2045 standard within section 650(1).

2. Draft WAC 480-100-605: The draft rules include definitions that draw a distinction between a "retained" REC and the CETA definition of unbundled REC.

The Joint Utilities appreciate the inclusion of the "retained REC" concept in the draft rules. The concept is helpful because it resolves any dispute about whether electricity and an associated REC must be jointly "used" to be eligible for CETA compliance, resolving the question in favor of an interpretation that maximizes efficient resource acquisitions and allows for operational flexibility and market participation.

a. Is this distinction understandable?

Yes. RCW 19.405.020(38) defines an unbundled REC as a REC that is "sold, delivered, or purchased separately from electricity." In contrast, draft WAC 480-100-605 defines a retained REC as the "nonpower attributes of renewable and nonemitting electricity owned or controlled by a utility where the associated electricity is sold in a wholesale sale as unspecified electricity." In most RPS accounting systems, a "retained REC" would be considered a "bundled REC."[6]

b. Are there other nuances to the distinction between retained RECs and unbundled RECs that should be addressed in the rule?

No, there are no further distinctions between "retained RECs" and "unbundled RECs" that need to be addressed in the rule. However, the reference to "nonemitting electricity" in the definition of "retained REC," should be removed as RCW 19.405.020(31) provides that RECs can only be associated with renewable electricity. Further, RECs are not the compliance instrument used in RCW 19.405.040(1)(f) for nonemitting electricity.

[6] *See, e.g.* ORS 469A.005(4).

c. In order to make use of this distinction between retained RECs and unbundled RECs, utilities will have to track and differentiate these RECs.

i. Is it practicable to track retained RECs separately from unbundled RECs?

The Joint Utilities do not see major challenges to differentiating retained RECs and unbundled RECs. Fundamentally, retained RECs and unbundled RECs are distinguishable based on the manner in which they were acquired by a utility. Because an unbundled REC is "sold, delivered, or purchased separately from electricity," the utility does not own the electricity associated with the REC. The Joint Utilities frequently make unbundled REC purchases for RPS compliance and voluntary programs. These unbundled RECs can be differentiated from retained RECs through proof of ownership of the associated electricity, and can be held in a separate Western Renewable Energy Generation Information System (WREGIS) account to avoid any risk of intermingling of unbundled RECs with either retained or bundled RECs. A retained REC can only exist where proof of ownership of associated electricity has been made prior to the wholesale sale of unspecified energy. In contrast, the utility would not be able to provide such proof for an unbundled REC.

ii. Is it practicable to track retained RECS associated with unspecified electricity sales?

While the distinction between retained and unbundled RECs is straightforward, "tracking" retained RECs will be more difficult. Currently, RECs are created with monthly time stamps: this means that there is no way to say that a REC is associated with a megawatt-hour generated at any specific day or time. The best current accounting systems can do is say that a REC was generated sometime in January 2021.

Additionally, utilities making unspecified sales would need some way to determine which of their clean resources has been "sold" to determine which RECs to consider "retained." This is currently not possible. For example, PacifiCorp, Puget Sound Energy and Avista make system sales, meaning that unspecified sales are from a general pool of resources, with no unit or generation-type attribution possible. This means that it will not be possible to say with certainty that a REC from, say, PacifiCorp's TB Flats wind facility is a "retained" REC, because there's no way to determine that the specific megawatt-hour from TB Flats was sold unspecified.

These complications will necessitate more dialogue on how to define and identify retained RECs. While the draft rule's definition of "retained REC" is workable and serves a useful purpose, it does not include any discussion of "retained REC" methodology. Furthermore, while the Joint Utilities are generally supportive of the "retained" REC concept introduced in these draft rules and believe it could form part of final rules, it would also be possible to draft functioning rules without it. Because use of electricity from renewable resources is verified via retirement of a REC, this means that either (1) a REC that is associated with electricity owned by the utility can be used for compliance, or (2) a "retained REC" that *was* associated with such electricity before the sale of that electricity can be used for compliance. In other words, eliminating the "retained REC" definition would not cause any changes in the functional requirements of the rule, because the use of a "retained REC" isn't distinguishable from the other compliance methods.

If the Commission includes the retained REC concept in its final rules, it is essential that these retained RECs be eligible for primary compliance, without limitation, as no part of the plain language of the CETA would support any restriction on their use.

3. **Draft WAC 480-100-605: The draft rules include a definition of "primary compliance" to differentiate the portion of the greenhouse gas neutral standard that may not be met using unbundled RECs or other alternative compliance options. Is this definition clear?**

Yes. This definition is simple and helpful, as it concisely describes the RCW 19.405.040(1)(a) obligation that cannot be met with the alternative compliance options in RCW 19.405.040(1)(b).

4. **Draft WAC 480-100-650: The draft rules include robust requirements for hourly energy management data and information on a utility's wholesale transaction activities, as the penalties described in CETA are established based on "each megawatt-hour of electric generation used to meet load that is not electricity from a renewable resource or nonemitting electric generation," necessitating a high level of granularity in reporting. With these increased reporting requirements, the Commission aims to increase visibility into a utility's operations and to augment the data available to review a utility's performance in complying with the requirements of RCW 19.405.040 and .050 outlined in these draft rules.**

Generally, the Joint Utilities do not oppose these reporting requirements, but certain revisions would clarify their purpose and scope.

First, much, if not all, of the information requested in draft WAC 480-100-650(5) will need to be provided **confidentially**. This data is competitively sensitive. For example, hourly generation data from variable generators will provide information about the quality of different sitings. Similarly, hourly market transaction data could be leveraged by counterparties to know when utilities are typically short, which could be used to charge higher prices, ultimately raising rates for customers.

Second, data requests should be tailored to the purpose that they are intended to meet. As drafted, the rules require submission of data starting in 2023, well before CETA compliance requirements begin in 2030. There may be reasons to require submission of this information in advance of 2030, but those reasons should be discussed. Relatedly, the Joint Utilities suggest that the Commission discuss the interest that requesting this data will serve: the significant volume, technical nature, and business sensitivity of the data may make a meaningful review by any party difficult, and will additionally make providing the data burdensome for utilities. The Joint Utilities suggest further discussion of the Commission's intent to determine if those interests can be met in a way that will reduce burdens for all parties. A technical workshop to discuss these reporting requirements may be useful.

Third, the Joint Utilities request that the Commission clarify the purpose of this data. The Notice states that hourly data is necessary because "the penalties described in CETA are based on 'each

megawatt-hour of electric generation that is used to meet load that is not electricity from a renewable resource of nonemitting electric generation." This implies that the data provided under draft WAC 480-100-650(5) would be used for penalty calculation and assessment, but the draft rules do not actually say so. If the information will be used to assess a penalty, the lack of notice as to the use of the information may raise due process concerns. The Commission should clarify the purpose of this data in rule. The Joint Utilities do not agree with an interpretation of CETA's penalty provisions that would rely on this data.[7] The Joint Utilities suggest that a separate rulemaking be held to implement the penalty provisions at some point in the future.

Fourth, multijurisdictional utilities are likely to have particular challenges with reporting hourly data. The draft rules do not specify if the generation contracting, and market data reporting requirements apply only to resources that are cost-allocated to Washington, or otherwise dedicated to CETA compliance. The Joint Utilities do not have specific recommendations to address this issue at this time but suggest that it be discussed in a future stage of this rulemaking.

To address point one above regarding confidentiality, the following revisions should be made to draft WAC 480-100-650(5):

> (5) Hourly data reporting for demonstration of due diligence. Each utility must file its annual clean energy progress report based on an analysis that identifies and considers the source and characteristics of the electricity claimed to meet compliance obligations under WAC 480-100-610 and -650(1), including electricity that is purchased and sold. <u>The utility may make confidential information available by providing it to the commission pursuant to WAC 480-07-160. The utility should minimize its designation of information in the clean energy progress report as confidential.</u> The analysis and underlying data must include at least the following details…

a. Are the items in the draft rule sufficiently described?

Most items in the draft rule are sufficiently described. However, the Joint Utilities suggest that the definition of "retail sales for customers participating in a voluntary renewable energy purchase program" should be discussed in a future rulemaking, as implementation of RCW 19.405.040(36)(b). Washington utilities have a range of voluntary programs, and it would be worthwhile to discuss which programs would fall into this category.

Second, the rules require utilities to provide hourly retail sales. The Joint Utilities are generally able to provide hourly system *loads*, measured at the point of injection into the utility system, but do not have hourly retail sales, which are measured at the customer meter.

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[7] Generally, the Joint Utilities believe that CETA's penalty provisions are calculated based on the positive difference between a utility's primary compliance percentage and 80 percent, recast in megawatt hours. For example, if a utility met 79 percent of its retail electric load with renewable or nonemitting resources over the course of the four-year compliance period, the Commission would determine a number of megawatt hours equal to one percent. The utility would pay a penalty based on the product of that number and the values in RCW 19.405.090

b. Are any of the reporting requirements unnecessary to achieve the Commission's goal?

The Joint Utilities suggest further discussion regarding the Commission's goal of "increase[ing] visibility into a utility's operations and to augment the data available to review a utility's performance in complying with the requirements of RCW 19.405.040 and .050."

c. Conversely, are there additional items that the Commission should include in the expanded reporting requirements?

The Joint Utilities are unaware of any additional information that could prove useful to meeting the Commission's goals.

d. Please identify any requested data or information that are already provided to the Commission in other filings, such as general rate cases. Please identify any data or information that are likely to be challenging to identify or submit, and describe why these items would be difficult to compile.

First, filings in docket U-210151 (Inquiry into Reducing the Administrative Burden in Support of the Commission's Ongoing Inquiry into the Adequacy of the Current Regulatory Framework) may be a good source to determine if information is already provided to the Commission.

Second, there are several elements required under draft WAC 480-100-650 (5) that are currently not possible to report as drafted because utilities do not have the information to track these items on an hourly basis. Draft WAC 480-100-650(5)(a) requires utilities to report hourly data for "retail sales for customers participating in a voluntary renewable energy purchase program..." For example, sources and loads in Puget Sound Energy's current Green Direct programs are not feasible to report on an hourly basis.

Draft WAC 480-100-650(5)(c) asks for data that does not currently exist in any form, namely "documentation of any pro-rata share of electrical output identified by a centralized market operator from renewable or nonemitting generators for the shortest available market interval." Market operators, such as the California Independent System Operator, identify dispatched energy as from renewable or nonemitting generation but do not perform a pro rata allocation of specific resources to specific entities or loads. Current Mid-C WSPP Schedule C purchases and EIM transfers would not be reportable in this manner.

Lastly, providing the information requested in the draft rule will be administratively burdensome to provide. The Joint Utilities are open to further discussion regarding information that can be provided related to organized markets following a clearer understanding of the reason that the information is sought.

CONCLUSION

The Joint Utilities appreciate the opportunity to provide comments in response to the Commission's Notice.

Sincerely,

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