November 12, 2021

Filed Via Web Portal

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

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

Dear Ms. Maxwell:

The Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to File Written Comments on Draft Rules Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act on October 12, 2021 (Notice).[1]

The Public Generating Pool (PGP) is a membership organization representing large consumer-owned electric utilities, such as municipal utilities and public utility districts. PGP appreciates the multiple opportunities it has had to provide comments to the Commission in various dockets addressing the Clean Energy Transformation Act (CETA).[2] PGP looks forward to continued, collaborative discussions with the Department of Commerce (Commerce) and the Commission on CETA implementation.

Introduction

The Commission's draft rules address two aspects of CETA: reporting and compliance. PGP's comments focus only on portions of the draft rules that address compliance with statutory requirements. Because the regulatory framework for investor-owned utilities differs so significantly from the framework for consumer-owned utilities, the Commission's draft reporting rules should not apply to consumer-owned utilities. These comments will discuss the following points, and then provide brief answers to the questions posed in the Commission's Notice:

- Proposed definitions of "primary compliance" and "retained REC"
- Key differences in the regulation of investor-owned and consumer-owned utilities

[1] The Department of Commerce (Commerce) has also requested interested parties to submit comments in this docket. Commerce, *Clean Energy Transformation Act Bulletin - Oct. 25, 2021,* available at https://content.govdelivery.com/accounts/WADOC/bulletins/2f8c5fb.

[2] PGP has filed comments, for example, in Docket UE-191023 (June 29, 2020 comments address "use" and related issues; July 31, 2020 comments submitted jointly with PSE, Pacific Power and Avista also address "use" and include a legal memorandum); and Dockets UE-191023 / UE-190698 (December 3, 2020 comments address issues of compliance and "use"). PGP incorporates those comments herein by reference.

- Provisions relating to retirement of renewable energy credits (RECs)
- The interplay between compliance requirements and reporting requirements
- Impact of the 2024 review of the rule

Given that the reporting requirements and associated questions in the Commission draft rule are very specific to Commission-regulated utilities, PGP is not participating in the joint investor-owned utilities' comments in this docket. However, PGP agrees with the joint utility perspective that the Commission's proposed compliance requirements are consistent with CETA. PGP has separately submitted comments to the Commerce recommending Commerce adopt its August 14, 2020 draft rule 194-40-410 without change for consumer-owned utilities.

Definitions of Primary Compliance and Retained REC

The Commission's draft rules would add two definitions to WAC 480-100-605: "primary compliance" and "retained REC". The new definitions are each used one time, in a new subsection at proposed WAC 480-100-650(2)(e). PGP believes such definitions are not strictly necessary, however, they are consistent with Commerce's draft rule, which uses the statutory definition of unbundled REC. Both the Commission and Commerce's draft rules provide that use is demonstrated by acquisition of a renewable resource together with the REC followed by retirement of the REC.

The definition of "primary compliance" provides a straightforward distinction between the portion of a utility's obligation to comply with the 2030 standard of greenhouse gas neutrality that may be met using CETA's alternative compliance options,[3] and the balance of the obligation, which cannot.[4] PGP believes this is a helpful clarification on CETA compliance.

The definition of "retained REC" is unnecessary because CETA's statutory text establishes two types of RECs: Those that fall within the definition of "unbundled renewable energy credit" [5] and those that do not. The Commission's proposed "retained REC" concept would establish a subset within the second category of REC, those that fall outside CETA's statutory definition of "unbundled renewable energy credit."

- An "unbundled renewable energy credit" is one that is "sold, delivered, or purchased separately from electricity."[6]
- "All other RECs" would be those that were acquired *with* the electricity.
- A "retained REC" is "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."[7]

[3] RCW 19.405.040(1)(b).
[4] RCW 19.405.040(1)(a).
[5] RCW 19.405.020(38).
[6] *Id*.
[7] WAC 480-100-650.

Because the proposed "retained REC" never changes ownership before it is retired, the REC is not "sold, delivered, or purchased" and could not be an unbundled REC and, therefore, is a subset of "all other RECs" contemplated in CETA. The "retained REC" concept simply recognizes that where the utility retains the nonpower attributes of its resource and sells associated power on an unspecified basis, the REC may be used for compliance. The key compliance requirement is still based on the acquisition of both the REC and underlying energy. While the "retained REC" clarification may be consistent with CETA, the additional definition is unnecessary and could lead to confusion, especially if there were a desire to delineate "retained RECs" from "all other RECs" for compliance purposes.

Proposed new subsection WAC 480-100-650(2)(e) uses these definitions to explicitly state that "retiring retained RECs is a form of using electricity toward primary compliance."[8] This aligns with the plain language and intent of CETA's statutory restriction on the use of "unbundled" RECs, coupled with CETA's lack of restrictions on use of RECs that are not "unbundled." While RCW 19.405.040(1)(b)(ii) specifically provides that "unbundled" RECs may be used to satisfy up to twenty percent of the greenhouse gas neutral standard as alternative, not primary, compliance, RCW 19.405.040(1)(a) contains no such restriction on the use of "all other RECs" that can be used for "primary compliance."

Proposed new subsection WAC 480-100-650(2)(e) also aligns with the provision in the draft rules that "[u]sing electricity for compliance under [CETA] means that a utility has acquired renewable and nonemitting resources to meet its retail electric load[.]"[9] Retained RECs, pursuant to the definition, can only come from electricity that the utility owns or controls—that is, electricity that the utility "has acquired." This language supports PGP's statement above that the key compliance requirement is the acquisition of the REC with the electricity and, therefore, the definition of "retained REC" is not needed.

Regulatory Framework for Consumer-Owned Utilities

CETA creates similar—though not identical—requirements for consumer-owned utilities and investor-owned utilities. As consumer-owned utilities, PGP's members are not subject to the Commission's jurisdiction. While the rules implementing CETA's substantive requirements should avoid conflicting interpretations of the statute, where necessary, the two sets of rules should also recognize the different regulatory frameworks established by the Legislature.

Consumer-owned utilities are governed by independent elected bodies and do not earn profits for shareholders. Consumer-owned utilities have "full and exclusive" authority to control rates, charges and prices.[10] Consumer-owned utilities are, however, limited in their authority to what is given and necessarily implied by statute to carry out their utility purposes.[11]

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[8] Proposed WAC 480-100-650(2)(e).
[9] Proposed WAC 480-100-650(1)(a).
[10] RCW 35.92.010; RCW 54.16.040.
[11] *See, e.g., Okeson v. City of Seattle,* 150 Wn.2d 540, 78 P.3d 1279 (2003) (municipal utility cannot require its ratepayers to bear the cost of city streetlights that serve general public purposes rather than utility purposes); and *Okeson v. City of Seattle,* 159 Wn.2d 436 (2007) (absent express legislative authority, a municipal utility may not recover from ratepayers costs associated with purchasing credits to offset its own GHG emissions).

Under CETA, the elected board of a consumer-owned utility has the authority to determine the sufficiency of interim targets in a Clean Energy Implementation Plan (CEIP).[12] As such the consumer-owned utility's elected board has every interest in and ensures due diligence toward meeting targets. Part of the board's fundamental duties to their ratepayers include ensuring resource acquisitions are appropriate and cost effective for their ratepayers' needs. CETA limits Commerce's authority over consumer-owned utilities. For example, although a CEIP must be "submitted" to Commerce, CETA does not authorize Commerce to take any action regarding the submitted CEIP, such as approving or rejecting it. By contrast, RCW 19.405.060(2)(b) expressly authorizes a consumer-owned utility's governing body to adopt the CEIP, to adopt more stringent targets than those proposed by the consumer-owned utility and to periodically adjust or expedite timelines in the CEIP if the governing body can demonstrate that this can be achieved consistent with certain factors.

Given that the Commission plays a very different role from Commerce's role, the Commission might adopt CETA guidelines for investor-owned utilities that are more extensive than or different from Commerce's guidance for consumer-owned utilities. This is particularly true for reporting provisions, where the Commission may wish to build on reporting or other activities that investor-owned utilities already undertake, and consumer-owned utilities either do not have similar requirements or conduct the activities differently. The existence of these additional rules for investor owned-utilities is a natural outcome of the difference in regulatory roles of the Commission versus Commerce.

Interplay between compliance requirements and reporting requirements

While the Commission's draft rules would require investor-owned utilities to submit reports with hourly data, the statutory language of CETA does not require compliance to be on an hourly basis. As PGP and others have previously commented,[13] the plain language of CETA requires compliance on a multi-year basis, and the Commission's rules regarding hourly *reporting* should not be imputed to mean hourly *compliance*, which would violate the multi-year compliance period contained in CETA. As the title of WAC 480-100-650(5) shows, this data reporting requirement is for *due diligence* to support the annual clean energy progress report. PGP does not take a position on whether this level of information is necessary for the Commission, when overseeing CETA compliance, to confirm whether investor-owned utilities have exercised due diligence.

However, PGP's interest in this portion of the rule is to reiterate that rules which may apply to investor-owned utilities, because they are germane or related to the ways that the Commission exercises regulatory oversight over the investor-owned utilities, are not applicable to consumer-owned utilities.

Impact of the 2024 review of the rule

PGP offers that the Commission or Commerce can review and revise their rules as necessary, making the required rule review proposed in WAC 480-100-650(6) unnecessary. The Commission should avoid what

[12] RCW 19.405.060(2)(b).
[13] *See generally* comments cited in Footnote [2] above. In particular, see joint comments dated July 31, 2020 at page 4 and accompanying legal memo at pages 8-13.

might be speculative or preliminary rulemaking that may not be needed. A scheduled review so quickly after adoption of rules creates uncertainty for utilities which may delay investment in long-term contracts or new resources. We recommend that the Commission/Commerce pursue workshops to evaluate experience with the rules rather than establishing a date certain for a rulemaking review.

PGP's responses to Commission's questions

The questions posed in the Commission's Notice are set forth below (in blue), together with PGP's responses (in black).

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.

PGP has no comments on this rule, which does not address compliance and rather is considered as part of the Commission's due diligence role.

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

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

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.

Please see PGP's discussion of the new definitions above.

a. Is this distinction understandable? Yes, however, as noted, PGP does not believe the "retained REC" definition is needed.

b. Are there other nuances to the distinction between retained RECs and unbundled RECs that should be addressed in the rule? No.

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?

It is practicable to track unbundled RECs separately from all other RECS. Please see PGP's discussion regarding "retained RECs" above.

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

It is not practicable to track "retained RECs" associated with unspecified electricity sales, primarily because a utility typically balances its system using unspecified "system sales," which do not require or rely on resource-specific tracking or tagging. To implement that

level of resource-specific tracking would be technically challenging and costly for utilities and would not provide any additional information useful in determining compliance.

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. Please see PGP's discussion of the new definitions above.

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.

PGP disagrees that this high a level of granularity is required by CETA. PGP does not agree that the penalty section of CETA necessitates this level of reporting. PGP reiterates that RCW 19.405.040(1)(a)(ii) states "use electricity from renewable resources and nonemitting electric generation in an amount equal to one hundred percent of the utility's retail electric loads ***over each multiyear compliance period***." Megawatt-hours is the standard unit of measurement used in contracts and any reference to "each megawatt-hour of electric generation" in RCW 19.405.090 simply references those megawatt-hours deemed to not meet the compliance requirements in RCW 19.405.040 and .050.

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

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

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

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.

Sincerely,

Therese Hampton, Executive Director