BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act	DOCKET UE-210183

COMMENTS OF PUBLIC COUNSEL

June 14, 2021

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I. INTRODUCTION

1. On May 17, 2021, the Washington Utilities and Transportation Commission ("UTC" or "Commission") issued a Notice of Opportunity to File Written Comments (hereinafter "Notice") regarding the interpretation of the "use electricity" requirement in RCW 19.405.040(1)(a) and the prohibition on double counting in RCW 19.405.040(1)(b). The Washington Clean Energy Transformation Act ("CETA")[1] directs the UTC and the Washington Department of Commerce ("Commerce") to "adopt rules by June 30, 2022, 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 (b) to address the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs."[2]

2. The Commission modified its Notice on June 7, 2021,[3] to limit the inquiry to the second topic, *i.e.,* exploring means of preventing double counting of renewable attributes. Under the modified Notice, only comments on Questions 5 through 10 are sought.

3. Public Counsel, through and in conjunction with the work and analysis of Dr. Ezra Hausman of Ezra Hausman Consulting, provides the following comments in response to the Notice. Dr. Hausman is an expert in energy and environmental economics who has over two decades of experience with energy market issues, including market design and restructuring,

[1] Clean Energy Transformation Act, E.2d S.S.B. 5116, ch. 288, 66th Leg. (Wash. 2019) (codified at ch. 19.405 RCW).

[2] RCW 19.405.130(3).

[3] Notice Canceling Workshop on June 9, 2021; and Notice of Revisions to Notice of Opportunity to File Written Comments Issued on May 17, 2021 (June 7, 2021).

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planning, ratemaking, environmental regulation, and pricing. A copy of Dr. Hausman's *Curriculum Vitae* was provided as Attachment A to Public Counsel's comments filed in this docket on June 2, 2021.

II. GENERAL BACKGROUND

4. The Commission's Notice concerns "how to implement the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs"[4] among other matters. The prohibition on double counting is articulated in RCW 19.405.040(1)(b)(ii): a Washington electric utility may, as part of its compliance with (1)(a)(ii) and subject to certain conditions, "use[] unbundled renewable energy credits, provided that there is no double counting of any nonpower attributes associated with renewable energy credits within Washington or programs in other jurisdictions."

5. The nonpower attribute associated with a renewable energy credit (REC) is the fact that it represents a megawatt-hour ("MWh") of energy generated by a renewable resource. While it is also the case that renewable energy generation is free from carbon emissions, not all zero-emissions energy generation sources produce RECs. For example, nuclear power generation and most hydroelectric generation do not produce RECs under most renewable portfolio standard (RPS) program designs.

6. RECs were created as a way to monetize the perceived public good provided by renewable energy projects, and to overcome the economic barrier historically faced by renewable energy in competition from conventional fossil sources of generation. Because RECs represent a

[4] Notice of Opportunity to File Written Comments on Issues Related to Double Counting, Market Purchases of Electricity and the Interpretation of Compliance with RCW 19.405.040(1)(a), at 1 (May 17, 2021) (hereinafter "Notice").

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subsidy for renewable generators at ratepayer expense, it is important to prevent double counting by allowing any REC to be sold more than once. This also ensures that states efficiently realize the full benefit of their RPS programs by supporting *incremental* renewable energy at the levels set by their lawmakers.

7. Renewable and nonemitting energy contributes to reductions in greenhouse gas emissions by displacing other, carbon emitting types of generation. These "avoided emissions" benefits are denominated in units such as avoided tons of CO_2, and can only be determined with precision when and if the carbon profile[5] of the displaced energy is known.

8. In contrast, RECs, which are only produced by qualifying renewable resources,[6] are denominated in MWh of renewable energy. The number of RECs produced by a renewable resource depends solely on the amount of energy produced; it is independent of the energy sources displaced and the CO_2 emissions avoided.

9. It is not double counting to recognize the value of both the renewable MWh produced by a renewable generating resource (*i.e.,* the RECs) and also the tons of CO_2 not emitted because of the displaced generation. When a state legislature passes an RPS law, it is articulating a policy of supporting not just zero-carbon energy, but *renewable* zero-carbon energy. The fact that it places a value on one attribute does not negate the fact that the resource provides another attribute or that this other attribute may have value.[7] Attempting to prevent the counting of any other

[5] Measured, for example, in tons of CO_2 per net MWh of energy produced.

[6] As defined under RCW 19.285.030(21).

[7] This is consistent with the treatment of RECs and avoided emissions in California, as described in the presentation by Ryan Schauland and Abajh Singh of the California Air Resources Board to the Markets Work Group (MWG) on July 15, 2020 (hereinafter "Schauland and Singh"). Page 20 of this presentation states that "RPS program purpose is to encourage development of eligible renewable energy; distinct from Cap-and-Trade's role to provide market-based reductions in GHG emissions." As a result, "The reporting of zero emission renewables . . .

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"environmental" benefits from the use of renewable energy would make no more sense than ignoring the value of the energy it generates. Given the patchwork of clean energy laws governing our regional energy markets, it is also largely infeasible.

10. The greenhouse gas neutrality mandate under CETA is essentially a renewable portfolio standard, but with the inclusion of non-renewable nonemitting generation (such as existing hydropower) and certain delivery constraints. RCW 19.405.040(1)(a)(ii) mandates that the quantity of renewable and nonemitting energy used to serve a Washington utility's retail electric load—denominated in MWh—must be equal to its total retail sales averaged over each compliance period. As discussed below, the Washington Legislature has also mandated an emissions cap-and-trade system under the Climate Commitment Act, which affects significant sources of emissions within and outside of the electric sector. If the CETA requirement leads to 100 percent displacement of fossil generation in the state, that will negate the need for any Climate Commitment Act emissions permits electric generation. This would not be double counting of either attribute; it would just be a recognition of the value of renewable energy (MWh) for meeting CETA requirement, and of avoiding carbon emissions (tons of CO_2) under the Climate Commitment Act.

11. Finally, RCW 19.405.040(1)(c) states that RECs for any renewable energy used to meet the standard under CETA must be retired. This clause is necessary to ensure that 19.405.040(a)(ii) functions similar to a renewable portfolio standard in terms of preventing double counting, while allowing a broader set of resources to be used to meet the requirement.

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does not constitute a claim on the environmental attributes and does not require the retirement of the REC." Schauland and Singh, at 17.

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Had the legislature not explicitly required REC retirement, a utility could use renewable energy generation to meet the carbon neutral standard, and then sell the RECs elsewhere.

12. The tracking of RECs through the Western Renewable Energy Generation Information System (WREGIS) provides an adequate framework to ensure that the same renewable energy generation is not counted more than once, or under more than one RPS program that requires REC tracking. However, because unbundled RECs will generally represent energy that is not used to serve Washington load, the Commission seeks to understand if there are other ways the same renewable energy attributes may be double counted, and how it should respond to any such risk. Public Counsel agrees that any double counting of the renewable MWh used for compliance with CETA would be contrary to the Legislature's intent. However, Public Counsel does not believe that this precludes acknowledging or accounting for the avoided emissions of renewable energy in other jurisdictions. With that as context, Public Counsel offers the following responses to the Commissions questions.

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III. RESPONSES TO NOTICE QUESTIONS

Question 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.

13. **Response:** This scenario would not result in double counting. California has both an RPS program and a cap-and-trade program.[8] RECs may be used for compliance with California's RPS, and because they produce no emissions, the renewable energy sources that produce the RECs do not require emissions permits under the State's cap-and-trade program. The RECs are not rendered ineligible in California, even though the renewable resource that produced the RECs also contributes to compliance under the cap-and-trade program.[9] Therefore, if these RECs are *not* used for compliance purposes under California's (or any other) RPS program, Public Counsel believes that it should not be considered double counting to use them for alternative compliance in Washington under RCW 19.405.040(1)(b)(ii).

14. In any case, any other policy would likely be impractical and ineffective. Other REC markets in the Western Electricity Coordinating Council (WECC) are unlikely to impose this

[8] Known as the Global Warming Solutions Act of 2006, A.B. 32, ch. 488 (Cal. 2006).

[9] Cal. Pub. Utils. Code §§ 399.11–399.33. This was also highlighted in Schauland and Singh, at 17: "The reporting of zero emission renewables [under the California Mandatory Reporting Regulation] does not constitute a claim on the environmental attributes and does not require the retirement of the REC."

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restriction, so available California RECs would likely be allocated to jurisdictions that accept them, while non-California RECs would be allocated to Washington. This may result in additional cost for Washington ratepayers, but would not produce an environmental benefit compared to Washington just accepting California RECs.

15. On the other hand, renewable energy generation in Washington produces RECs, which must be retired in order for the generation be counted towards a utility's CETA requirement. Washington utilities may not then sell that energy as "specified" zero carbon energy into the California market for purposes of California's cap-and-trade system. Public Counsel recognizes that this may appear to represent a double standard, where California renewables may count towards both the California cap-and-trade system and as a compliance mechanism under Washington's CETA, while RECs produced by Washington renewables may not. This apparent contradiction is consistent with the distinction that at least 80 percent of the energy required under subpart (a) must be "used" in Washington, while energy represented by RECs under the alternative compliance mechanism in subpart (b) does not. Thus, the double standard is at least partly mitigated in that it applies only to the maximum of 20 percent of CETA that may be satisfied with unbundled RECs, and only prior to 2045. Further, Washington utilities will get the benefit of avoided carbon emissions under the Climate Commitment Act, in addition to counting the MWh of clean energy under CETA.

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.

16. **Response:** Public Counsel believes that this scenario would not constitute double counting, and that it should not render the RECs invalid for compliance with CETA, as long as the RECs are not used for RPS compliance purposes in another jurisdiction or voluntarily retired by the entity. If the entity in this case claimed or implied that it was causing incremental renewable energy to be produced but did not retire the RECs, its claim would be false; however, that is a matter to be resolved among that entity and its shareholders, customers, and regulators.

17. The question addresses an entity in a jurisdiction with no clean electricity standard, but a similar case could arise in Washington. After 2030, a corporation based in Washington might claim that it was "powered by 100 percent renewable energy" because it is located in Washington, even if it takes no additional action to procure clean energy. This claim would be accurate, and it would not constitute double counting. Similarly, the owner of a home with solar panels on its roof may reasonably claim to be generating renewable energy, even if the homeowner sells the RECs through WREGIS such that a utility may use them for compliance purposes. It cannot be the Commission's responsibility to evaluate all claims made by all entities, inside or outside Washington, regarding their roles in the clean energy economy. The Commission should be satisfied to ensure that specific RECs are not claimed for compliance purposes more than once.

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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.

18. **Response:** Public Counsel does not believe that this scenario would constitute double counting so long as the RECs associated with the renewable generation is not used for RPS compliance elsewhere. The system operator would be responsible for accurately reporting the power source information on the electric grid for which it has responsibility. It would be unreasonable for the Commission to require such a system operator to misrepresent the sources of power on its system based on the sale of RECs to another jurisdiction. Nor, would it be reasonable for the Commission to disallow the use of RECs solely because the renewable energy they represent has been accurately accounted for in such a report.

19. Finally, Public Counsel notes that the system operator in this scenario would be reporting an emissions rate (tons of CO_2 per MWh) and *not* MWh of renewable generation, which might be represented by RECs. Only if the RECs associated with the renewable generation were used for some compliance purpose in the other jurisdiction, would it be double counting to also allow them to be used for compliance with CETA.

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.

20. **Response:** This scenario could constitute double counting, but only if RECs are used as a compliance option under the Climate Commitment Act. This Act places a cap on the total greenhouse emissions that can be produced by certain major emitting entities in Washington. In general, covered entities must obtain permits for their greenhouse gas emissions. Just as in California, renewable and nonemitting generating plants will benefit from this law because they do not require emissions permits, but this should not preclude these same resources from contributing to the renewable and nonemitting generation mandate under CETA. However, covered entities may also meet a decreasing percentage of their compliance obligation through offsets.[10] It is unclear whether these offsets may include purchases of RECs. Section 11(9) of the Climate Commitment Act states, "The department shall maintain an account for the purpose of retiring allowances transferred by registered entities and from the voluntary renewable reserve account." Further, Section 19(2)(b)(ii) of the Climate Commitment Act states that any offsets must be "in addition to greenhouse gas emission reductions or removals otherwise required by law and other greenhouse gas emission reductions or removals that would otherwise occur."

21. Public Counsel believes that if RECs are somehow qualified for use as offsets under Section 19 of the Climate Commitment Act, it would constitute impermissible double counting

[10] Climate Commitment Act, E.2d S.S.B. 5126, 67th Leg., § 19 (Wash. 2021).

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for a utility to retire a REC as an offset under the Climate Commitment Act, and to count the same REC for compliance with CETA.

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?

22. **Response:** One such scenario would be if Washington were to be included in a regional or national trading program, such as an RPS program at a regional or national scale. The Commission would then have to determine whether the same compliance obligations used in the larger-scale program could also be used for compliance with CETA. However, that case would represent a wholesale shift in the environment for greenhouse gas regulation in Washington and beyond, and it would probably be necessary for the legislature to amend CETA accordingly.

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

23. **Response:** Section 10(1)(c) of the Climate Commitment Act states, in part, that the Department of Commerce and the Commission "shall adopt by rule a methodology for addressing imported electricity associated with a centralized electricity market." The Climate Commitment Act is concerned specifically with tons of CO_2 emitted by covered entities, including electric utilities, rather than with MWh of energy. However Commerce and the Commission count the emissions associated with market purchases of energy, it will not change the obligation under CETA to use renewable or nonemitting energy in an amount equal to 100 percent of each utility's retail load over each compliance period.

Question 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.***

24. **Response:** Public Counsel believes that, as a rule, the standard REC-tracking function of WREGIS, combined with detailed reporting by Washington's electric utilities on their procurement and disposition of RECs, is sufficient to ensure that double counting of renewable energy attributes does not occur.

Question 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.***

25. **Response:** To the extent that a utility uses unbundled RECs as an alternative compliance option, it is sufficient to show that the RECs were certified, tracked, and retired through WREGIS.

Markets Work Group Report

Question 9. ***The Commission and Commerce convened the Markets Work Group under RCW 19.405.130(1)&(2). After conducting multiple presentations and workshops the Markets Work Group filed its report in Docket UE-190760 and this docket on May 17, 2021. The Commission and Commerce seek stakeholder input on how the work of the Markets Work Group best informs our rulemaking processes. From your prospective as a stakeholder, what information developed by the Markets Work Group informs the Commission and Commerce rulemaking?***

26. **Response:** The Markets Work Group (MWG) held a series of educational workshops to establish a base of understanding among the MWG participants. Following the educational workshops, the MWG created an issues list and held a series of work sessions to examine approaches for resolving the issues. Topics included electricity markets, greenhouse gas policies, existing and proposed carbon markets, and other related topics. Specifically, the MWG sought to "provide relevant information on a range of topics including: transmission and system operations, existing bilateral electricity markets, existing and proposed centralized markets such as the energy imbalance market (EIM) and the extended day ahead market (EDAM), greenhouse gas policy implementation, and compatibility of the CETA with a cap-and-trade program such as that of California."[11] The MWG captured relevant "takeaways" from each work session and developed its "Issues & Alternatives List"[12] for consideration by the UTC and Commerce in this

[11] Washington Clean Energy Transformation Act Carbon and Electricity Markets Stakeholder Work Group Scoping Document, at 2–3, *In the Matter of Carbon and Electricity Markets Stakeholder Work Group* (March 6, 2020) (Docket UE-190760).

[12] Washington Clean Energy Transformation Act Carbon and Electricity Markets Workgroup Issues & Alternatives List (April 7, 2021); posted to both Docket UE-190760 on May 18, 2021, and UE-210183 on May 17, 2021.

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rulemaking. The purpose of the MWG was not to develop the policies that will result from this rulemaking, but rather to provide information and context for the agencies.

27. While the MWG did not reach consensus on numerous issues, it developed a robust record of the issues to be addressed in setting rules compliance under RCW 19.405.040. Public Counsel believes that this record supports an interpretation of CETA that is compatible with participating in existing markets in the West, including in the EIM and any future centrally-dispatched regional transmission organization (RTO) market. Such an interpretation relies on the specific standard under RCW 19.285.040(1)(a)(ii): that the quantity of electric energy from renewable resources and nonemitting electric generation, used by each utility over each multiyear compliance period, must equal 100 percent of that utility's retail electric load over that same period.

28. The text of CETA does not specify that the qualifying energy be produced or acquired contemporaneously with its use by Washington customers; indeed, Public Counsel believes that such a requirement would render the implementation so costly that most utilities would reach the two percent cost cap under RCW 19.405.060 and be considered in compliance without meeting the renewable and nonemitting energy standards of RCW 19.405.040(a)(ii). Under any cost effective implementation of the law, Washington renewable and nonemitting sources would generate excess energy at some times that would be exported to neighboring regions, and would be short at other times, requiring imported energy to meet high levels of demand or low levels of renewable energy output. As long as the exported energy is deemed "unspecified", this balancing of available energy with load should not interfere with the requirement that the renewable energy be "used" in Washington.

29. Any interpretation that does not allow surplus energy to be re-sold would be inefficient, uneconomic, and likely infeasible. It would also ultimately diminish the environmental benefits of the rule. At some point, Washington and the surrounding states may be able to meet their energy requirements using only renewable or nonemitting generation and advanced storage technology; but in the interim, Washington utilities must be allowed to meet the requirements of CETA in a way that does not cut them off from the regional electricity market.

30. Some members of the MWG took the position that Washington's rules for CETA compliance in 2030 and beyond need not necessarily be constrained by existing regional market constructs, but instead that they should drive the regional markets to evolve in ways that would be more compatible with CETA. Public Counsel agrees that as regional jurisdictions increasingly demand accountability for the emissions content of their energy, regional markets must evolve to accommodate those state and regional prerogatives. However, there are certain physical constraints on market design—such as the inability to physically track energy from its source to its sink, the variable and non-dispatchable nature of renewable resources, and the fact that centralized least-cost dispatch is the most efficient way to serve customers—that cannot be altered through market design. These fundamental facts do not preclude Washington from both implementing its carbon-neutral policy and enjoying the substantial benefits of participating in the regional markets, but these constraints must be respected and used to inform the implementation of the law.

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Impact of the Washington Climate Commitment Act

Question 10. ***The Washington Legislature in 2021 passed the Climate Commitment Act (E2SSB 5126), which includes provisions affecting electric utilities. Section 10(1)(c) requires that the Department of Ecology adopt rules by October 1, 2026, specifying a methodology for addressing imported electricity associated with a centralized electricity market. 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 (b) to address the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs?***

31. **Response:** See response to Question 6.

IV. CONCLUSION

32. Public Counsel appreciates the opportunity to provide these comments and looks forward to reviewing comments from other stakeholders. If you have any questions about these comments, please contact Dr. Hausman at ezra@ezrahausman.com, Sarah Laycock at sarah.laycock@atg.wa.gov, or Lisa Gafken at lisa.gafken@atg.wa.gov.

DATED this 14th day of June, 2021.

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