

**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

November 12, 2021

I. INTRODUCTION

1. Pursuant to the Washington Utilities and Transportation Commission’s (“Commission” or “UTC”) Notice of Opportunity to File Written Comments (“Notice”) dated October 12, 2021, the Public Counsel Unit of the Washington Attorney General’s Office (“Public Counsel”) files these comments related to the Commission’s draft rules on the definition of “use” under the Clean Energy Transformation Act (CETA). Public Counsel appreciates the Commission’s efforts to provide definitions under draft WAC 480-100-605 and the reporting and compliance requirements under draft WAC 480-100-650.
2. In these comments, Public Counsel first addresses the specific questions posed in the Commission’s Notice, and then provides additional comments regarding the rules on sections not specifically addressed in the Notice questions.

II. RESPONSES TO NOTICE QUESTIONS

Question 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?

3. Overall, Part VIII Planning and Implementation (incorporating WAC 480-100-600 through WAC 408-100-665) includes two elements to compliance. First, the rules contemplate prospective planning, as embodied in the Integrated Resource Plan (IRP) under WAC 480-100-620 and the Clean Energy Implementation Plan (CEIP) requirements under WAC 480-100-640.

Second, the rules contemplate retrospective validation, as embodied in the reporting and compliance requirements under WAC 480-100-650.

4. Public Counsel supports the Commission’s intent for draft WAC 480-100-650(1) as expressed in the Notice because rational management of a utility’s operations would allow it to acquire appropriate resources to meet its projected retail load and to use its resources for balancing or other prudent purposes. However, Public Counsel does not believe that the Commission’s intent is clearly reflected in draft WAC 480-100-650(1).
5. Public Counsel understands that draft WAC 480-100-650(1)(a) is intended to govern resource acquisition, while draft WAC 480-100-650(1)(b) is intended to govern validation of real-time compliance. Public Counsel believes that retrospective validation is sufficient to determine compliance, because this is the appropriate way to determine how a utility has actually produced (or acquired) and disposed of electric energy—and these are the only two ways in which a utility “uses” electricity.
6. Public Counsel agrees that resource acquisition and planning are fundamental parts of ensuring that a utility is capable of providing that electricity, but that the requirements for these functions fit more appropriately with IRP and CEIP processes as related to CETA, and are adequately determined under WAC 480-100-620 and WAC 480-100-640. Public Counsel does not believe that acquisition of resources is a component of “using electricity.” Determining compliance with the 2030 and 2045 CETA standards should focus on a retrospective review as set forth in draft WAC 480-100-650(2). Notably, draft WAC 480-100-650(1)(b) simply refers to draft WAC 480-100-650(2). Therefore, Public Counsel recommends that draft WAC 480-100-650(1) be removed in its entirety.

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

7. To the extent the Commission decides to retain draft WAC 480-100-650(1), the reference to RCW 19.405.050(1) is appropriate. The requirements established in these draft rules should apply to RCW 19.405.050(1) as well as to RCW 19.405.040(1). Generally, there may be additional requirements and considerations for the Commission regarding compliance with RCW 19.405.050(1); however, the proposed review by September 1, 2024, and any subsequent review(s), provide adequate opportunity for this consideration.

Question 2: Draft WAC 480-100-605: The draft rules include definitions that draw a distinction between a “retained” Renewable Energy Credit (REC) and the CETA definition of unbundled REC.

a. Is this distinction understandable?

8. Yes, the distinction between a retained REC and the CETA definition of unbundled REC is understandable in the draft rules. Public Counsel supports the definition of retained REC contained in draft WAC 480-100-605. Public Counsel also supports the distinction between retained RECs and unbundled RECs, which represent two distinct REC acquisition and disposition scenarios.
9. A utility will have a retained REC for each megawatt-hour (MWh) of energy purchased together with its renewable attributes in compliance with RCW 19.405.040(1), but for which the utility sold the energy as unspecified into the market. This might happen if the utility did not require all of the renewable energy it had produced or purchased to meet load in a given hour. A utility will have an unbundled REC when it acquires RECs without the MWh of associated

electricity. An unbundled REC can only be used as “alternative compliance” for CETA under RCW 19.405.040(1)(b).

10. While the distinction between retained and unbundled RECs is clear, Public Counsel suggests clarifying the definition of unbundled REC. Currently, the draft states:

“Unbundled renewable energy credit” or “unbundled REC” means a renewable energy credit that is sold, delivered, or purchased separately from the underlying electricity. All thermal renewable energy credits are considered unbundled renewable energy credits.¹

The term “thermal renewable energy credit” is undefined in the draft rules. If the Commission adopts the definition of “thermal renewable energy credit” contained in RCW 19.405.020(37), Public Counsel recommends including this definition in draft RCW 480-100-605. Public Counsel suggests the following language: “All thermal renewable energy credits, as defined in RCW 19.405.020(37), are considered unbundled renewable energy credits.”

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

11. Public Counsel believes the distinction between retained RECs and unbundled RECs is sufficiently addressed in the draft rule.

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?

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

¹ Draft Rules on ‘Use’ at 12 (Clean and Redline versions).

12. Public Counsel believes that it is practicable to track retained RECs separately from unbundled RECs. Retained RECs can be easily identified and paired with MWh of energy acquired by the utility. However, it may be impractical and unnecessary to distinguish between retained RECs, for which the associated energy is sold as unspecified to entities other than retail customers, and RECs associated with energy that is sold to utility retail customers. The draft language of WAC 480-100-650(2)(e) makes clear that retained RECs equally qualify for compliance under RCW 19.405.040(1)(a), whereas unbundled RECs would only qualify for alternative compliance under RCW 19.405.040(1)(b). It should be adequate to establish compliance for a utility to show that it acquired and retired RECs produced along with each MWh of renewable energy from qualified sources claimed for compliance, as verified by the selected tracking system.

13. While specific tracking of retained RECs associated with unspecified electricity sales may not be necessary, Public Counsel believes that the UTC should require the utility to report any sales of energy sold as *specified* to a third party. The utility should be required to document all such sales with proof that it sold the environmental attributes along with the energy and that it did not use the RECs for compliance under RCW 19.405.040(1)(a) or (b). Requiring such proof will prevent double-counting of environmental attributes.

Question 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?

14. Public Counsel proposes the following modification to the definition of “primary compliance” contained in draft WAC 480-100-605: “Primary compliance” means the portion of

the compliance obligation under RCW 19.405.040(1) that cannot be met through the use of unbundled RECs or other alternative compliance options outlined as identified in RCW 19.405.040(1)(b).

Question 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.

15. RCW 19.405.040(1)(a)(ii) states that each utility must "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." From Public Counsel’s perspective, it would be impossible to determine the specific hours or specific MWh for which a utility fell short under this compliance-period standard. Moreover, a utility may use unbundled RECs under RCW 19.405.040(1)(b), which are not directly associated with any particular hour or MWh of service for the utility. While Public Counsel believes it is reasonable and not unduly burdensome to require utilities to provide hourly data for auditing purposes, this information will not enable the Commission to establish to which hours or MWh a penalty should be applied.

16. Requiring a multiyear compliance period that is measured by aggregate renewable or nonemitting MWh, while potential penalties are based on the carbon intensity for specific MWh, creates an inherent apples-to-oranges outcome requiring Commission discretion. One possible resolution would be to allow the utility to designate which specific MWh were out of compliance. Another would be to determine an average multiplier based on all sources of energy

used by the utility that are not renewable or nonemitting. Under any resolution, because coal-based energy is disallowed entirely beginning December 31, 2025, any use of coal-based energy to serve Washington load would be subject to the maximum per-MWh penalty.

17. Currently, draft WAC 480-100-665(4)(3) states:

RCW 19.405.090. For all violations subject to the compliance, enforcement and penalty provisions of RCW 19.405.090, the commission may require the utility to pay an administrative penalty of \$100 multiplied by the applicable megawatt-hour of electric generation used to meet load that is not electricity from a renewable resource or nonemitting electric generation.

Public Counsel recommends that the language be modified as follows:

RCW 19.405.090. For all violations subject to the compliance, enforcement and penalty provisions of RCW 19.405.090, the commission may require the utility to pay an administrative penalty of \$100, multiplied by the applicable multiplier as specified in RCW 19.405.090(1)(a), multiplied by the number megawatt-hours of electric generation used to meet load that is are not electricity from a renewable resource or nonemitting electric generation. The Commission shall determine the applicable multiplier based on all MWh of electricity used by the utility to meet load during the compliance period that are not from renewable or nonemitting sources of electricity.

18. Public Counsel looks forward to reviewing the comments of other stakeholders on this topic.

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

19. Generally, yes, the items in the draft rule are sufficiently described. However, the contracting information included under draft WAC 480-100-650(5)(b) should include schedule and quantities of MWh delivered under each contract. The language should be modified as follows:

(b) Contracting information. For all sales, purchases, and exchange agreements in subsection (5)(a), including long-term power purchase agreements, agreements longer than one month in duration, and contracts for short-term power: length of

term; counter-party; quantities of MWh delivered under each contract; delivery schedule; description of source of generation, if known; and description of ownership of non-energy attributes, if any.²

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

20. Public Counsel does not view any of the requirements contained in the draft rule as being unnecessary to achieve the Commission's goal of increasing visibility into a utility's operations or to enhance the data available to measure a utility's performance in complying with RCW 19.405.040 and RCW 19.405.050. While hourly reporting requirements will not enable the Commission to establish to which specific hours or MWh a penalty should be applied, such information will be helpful in auditing compliance and will be invaluable in supporting stakeholder involvement in all CETA proceedings. Moreover, from Public Counsel's perspective, the hourly reporting requirements in the draft rules are reasonable and not unduly burdensome on the utilities.

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

21. Please see Public Counsel's response to Question 4(a) and the suggested language for draft WAC 480-100-605(5)(b). Public Counsel looks forward to reading the comments of other stakeholders on this topic.

² Draft Rules on 'Use' at 48 (Clean and Redline versions).

- 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.*

22. Public Counsel has no comment on this item and looks forward to reading the comments of other stakeholders.

III. ADDITIONAL COMMENTS

23. In reviewing the draft rules, Public Counsel developed the following comments and suggestions.

24. Draft WAC 480-100-605 includes a definition of “Distributed Energy Resource” (DER). While the definition mirrors the definition found in RCW 19.405.020(13), the definition is a nonstandard definition of DER. In general, usage DERs need not be nonemitting or renewable—just located on the distribution system.³ This term is used, but not defined, in RCW 19.280.030(2): “For an investor-owned utility, the clean energy action plan must . . . (d) identify renewable resources, nonemitting electric generation, and distributed energy resources that may be acquired and evaluate how each identified resource may be expected to contribute to meeting the utility's resource adequacy requirement . . .” The Commission should ensure that the definition of this term in the current rule does not conflict with the conventional interpretation under RCW 19.280.030.

³ N. Am. Elec. Reliability Corp., *Distributed Energy Resources, Connection Modeling and Reliability Considerations* (2017), https://www.nerc.com/comm/other/essntlrlblysrvcstskfredl/distributed_energy_resources_report.pdf.

25. Draft WAC 480-100-605 includes a definition of “Resource Need.” The definition focuses on a “projected deficit,” which is inconsistent with general usage and use of this term in the draft rule. Resource need generally refers to total need, not the deficit. In any case, Public Counsel believes this definition is unnecessary and should be removed in its entirety.

26. Draft WAC 480-100-650(2)(c) states, “The specific actions the utility took made progress toward meeting the clean energy transformation standards at the lowest reasonable cost.”⁴ Public Counsel recommends that the language be modified as follows for clarity: “~~The specific actions the~~That the utility took specific actions to meet ~~made progress toward meeting~~ the clean energy transformation standards at the lowest reasonable cost.”

27. Draft WAC 480-100-650(2)(d)(ii)(A) refers to “an electric utility.”⁵ Public Counsel believes the reference should be “the electric utility,” unless the Commission’s intention is that delivery to the transmission and distribution system of any electric utility would qualify. Using the word “the” instead of “an” clarifies that the Commission intends that the reporting utility be the entity that receives delivery on its transmission and delivery system.

28. Draft WAC 480-100-650(2)(d)(ii)(C) states, “The transmission system of any entity that is a participant in an organized market located in the Western Interconnection in which the electric utility is a participant.”⁶ Public Counsel understands that a Washington utility could *only* participate in an organized market in the Western Interconnection. To avoid confusion, Public Counsel recommends the following edit: “The transmission system of any entity that is a

⁴ Draft Rules on ‘Use’ at 41 (Clean and Redline versions).

⁵ Draft Rules on ‘Use’ at 41 (Clean and Redline versions).

⁶ Draft Rules on ‘Use’ at 42 (Clean and Redline versions).

participant in an organized electricity market ~~located in the Western Interconnection~~ in which the electric utility is a participant.”

29. Draft WAC 480-100-650(2) contains a list of items that a utility must report to demonstrate its CETA compliance, but one of the subsections is out of place. Draft WAC 480-100-650(2)(e) is not something the utility must show for compliance, but is an important statement of policy. Public Counsel recommends removing subsection (e) from subsection (2) and placing the text into a new numbered section either before or after draft subsection (2). Linguistically, the lettered sections (f) through (m) do not follow from the introductory sentence, “The report must demonstrate whether and how:”⁷

30. Although compliance with CETA’s 2030 and 2045 standards may be implied in draft WAC 480-100-650(2), Public Counsel recommends that the Commission explicitly include these two standards in the compliance rule as follows:

() Beginning with its July 1, 2034 clean energy compliance report, that the utility met its requirements under WAC 480-100-610(2) such that:

- (i) all retail sales of electricity to Washington retail electric customers be greenhouse gas neutral by January 1, 2030;
- (ii) at least 80% of all retail sales of electricity to Washington retail electric customers be supplied using primary compliance resources by January 1, 2030 and every year thereafter;

() For each clean energy compliance report submitted on or after January 1, 2045, that the utility met its requirement under WAC 480-100-610(3) that nonemitting electric generation and electricity from renewable resources supply one hundred percent of all retail sales of electricity to Washington electric customers.

31. Please see Appendix A to these comments for a proposed revised version of WAC 480-100-650(1) through (3) incorporating the changes above, including a proposed resolution to the linguistic issue.

⁷ Draft Rules on ‘Use’ at 41 (Clean and Redline versions).

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 Stephanie Chase at Stephanie.Chase@ATG.WA.GOV or Lisa Gafken at Lisa.Gafken@ATG.WA.GOV.

DATED this 12th day of November, 2021.

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