climate solutions
accelerating the transition to our clean energy future

UE-210183

October 25, 2021

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

Re: Climate Solutions comments on Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act, Docket UE-210183.

Dear Ms. Maxwell,

Climate Solutions thanks you for the opportunity to submit comments on the interpretation of the Clean Energy Transformation Act's ("CETA") "use" requirement. Climate Solutions is a clean energy nonprofit organization working to accelerate clean energy solutions to the climate crisis. The Northwest has emerged as a hub of climate action, and Climate Solutions is at the center of the movement as a catalyst, advocate, and campaign hub.

A clean and efficient grid serves as the foundation to deeply decarbonizing Washington's economy and achieving science-based greenhouse gas reductions. We consider this issue of interpretation to be of paramount importance in implementing the most significant climate clean electricity legislation the state has adopted. The Legislature's direction to transform the electricity system and ensure near-term progress on the path to full decarbonization is at the core of CETA's purpose. Unfortunately, we believe the draft proposed rules conflict with the both the intent and legal requirements of CETA, and the Commission lacks authority to adopt the rules as drafted. Our comments in response to the notice of opportunity to comment dated October 12. 2021 are below.

1. **CETA was intended to transform the electricity sector by eliminating fossil fuels from the electricity that serves Washington customers.**

The Clean Energy Transformation Act was intended to do just as its name suggests: transform the electricity sector. CETA requires that all electricity used to serve a utility's retail electric load be greenhouse gas neutral by 2030, and sourced from 100% renewable and nonemitting resources by 2045. If we flip the requirement around, this law equally requires that utilities use no more than 20% electricity from emitting resources in 2030 to serve load, and fully rely on renewable and non-emitting resources in 2045 to serve their retail load. In order to achieve the intent of the Legislature to fully eliminate fossil fuels from the electricity serving Washington customers by 2045, it is critical that rules regarding implementation do not provide a loophole to continue relying on emitting generation to serve Washington customers. Commission staff's original interpretation of "use" was correct, requiring utilities to actually *use* electricity from nonemitting and renewable resources and supply their customers

with energy from those resources. However, as currently written, draft proposed rules distributed on October 12, 2021 specifically allow for a utility to continue relying on fossil fuels in an amount greater than 20% in 2030 and 0% in 2045 by permitting an unlimited use of "retained RECs" for primary compliance.

Through a retained REC, the draft proposed rules allow a utility to sell clean energy generation in an unspecified transaction and maintain ownership of the attribute for primary compliance. This explicitly allows utilities to continue dispatching emitting generation during parts of the day or year when renewable and nonemitting generation are not producing energy and pair that generation with attributes from the electricity that has been sold to another entity. The draft proposed rules do not create an enforceable requirement to actually transition a utility's system away from using fossil fuels, but rather allow a utility to acquire the lowest-cost clean energy generation, sell the electricity to another entity, and fill in any gaps in generation with fossil fuel resources. If doing so is less expensive than acquiring clean power that actually aligns with the utility's load shape, a utility can simply pair nonpower attributes that have been separated from the electricity as a mechanism for compliance with the minimum 80% requirement. This is not transformative and does not align with the intent of the law to transition off of fossil fuels. While rules implementing CETA must consider how the law interacts with regional markets, that does not give the Commission the authority to reverse the legislature's intent.

We recognize that the new draft rules are intended to provide for a planning and procurement requirement that disallows this kind of resource procurement and gamesmanship, found in WAC 480-100-650(1)(a), but we do not believe this provision to be sufficient. Setting aside the legal requirement to *actually* use clean electricity, rather than simply plan or procure sufficient resources to potentially use clean electricity, there are substantial disconnects between this requirement and the obligation the rules place on in-period compliance. Nothing requires a utility to dispatch its system in a way that is consistent with their plans, and the opacity of those plans to any outside stakeholder (including the Commission) makes reliance on these plans an unreliable strategy for achieving the law's targets. Nothing holds the utility accountable to actually honoring the content of their plans, and while sometimes the deviations may be incidental or done to maximize grid efficiency, they can legally be much larger than that. A utility can, for example, *plan* to deploy a natural gas plant run on a renewable fuel and procure a gas plant with that intent, meeting the requirements of WAC 480-100-650(1)(a), but then later fuel that resource with fossil gas when the facility is deployed, provided that generation is paired with retained RECs. In this way, a utility complies with law according to the draft rules, but certainly not the spirit of the law. Not only should this not be allowed in the rules, but the rules incentivize it since doing so is likely to yield a financial benefit.

There are likely other examples where we would expect the procurement of a resource to substantially differ from the actual use of that resource. There is a risk of this occurring at any time when the renewable or non-emitting resource selected under the procurement requirement has a marginal dispatch cost higher than the alternatively available fossil resources. In a situation where utilities are disallowed from using retained RECs as a strategy for compliance, they are likely to identify a variety of cost-effective demand management resources, for example. This is in part the purpose of the 100%

clean transformation CETA envisions: to create new value for clean resources that drives their deployment. In real time, however, it's likely that many of these *dispatchable* clean resources would be more expensive than available fossil fuel resources that the draft rules continue to allow. This would create a perverse outcome where utilities acquire dispatchable clean capacity resources that they never actually dispatch, driving additional cost for customers but no environmental or other value. The same dynamics would apply to the parasitic load associated with carbon capture and storage resources as well. In all these examples, the electricity system is not merely being operated more efficiently without any associated increase in emissions compared to a bundled compliance requirement. Under these scenarios permitted under the Commission's draft rules, implementation increased emissions compared to a more rigorous approach.

2. RECs delivered separately from the associated electricity are limited to 20% of a utility's compliance between 2030-2044 and eliminated as a compliance mechanism in 2045.

In the 2030 greenhouse gas neutral requirement, there are two tranches of compliance. The first requires a utility to *use* renewable electricity and non-emitting generation to meet a minimum of 80% of its generation needs to serve load, and the second allows for offsetting generation from emitting or unspecified resources using alternative compliance mechanisms, which include unbundled renewable energy credits, energy transformation projects, or other methods. The law specifically allows for unbundled RECs as an *alternative compliance mechanism* for utilities to rely on in order to provide flexibility for complying with the law between 2030 and 2044 as a utility transitions to 100% clean electricity.

RCW 19.405.020 defines an "unbundled renewable energy credit" as a "renewable energy credit that is sold, delivered, or purchased separately from electricity," specifying that the REC and electricity cannot be separated. Draft rules add a new category of RECs, a "retained REC" which is defined 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." The definition specifies that the electricity associated with the nonpower attribute has been sold and separated from the attribute, falling squarely within the statutory definition of an unbundled REC. If a REC is separated from electricity and the electricity is sold to another entity, the utility is not actually *using* the electricity and the associated RECs should be considered unbundled for the purposes of compliance. The *receiving* entity and its customers have paid for the associated electricity and it is being used to serve that entity's load, while the selling utility's customers have paid for only the nonpower attributes. CETA requires the actual use of electricity from renewable and nonemitting resources, and if the nonpower attributes are not bundled with the associated electricity, this approach clearly violates the requirements of the law.

Allowing retained RECs for primary compliance allows a utility to continue relying on emitting resources by pairing a clean energy attribute that has been separated from electricity that is sold to another entity with unspecified energy or an emitting resource. The legislature was clear that clean energy attributes have a place in a utility's compliance, allowing the use of them for only 20% of compliance between

2030-2044, but the draft rules do not require this same restriction. It is of particular concern that the draft rules allow the indefinite use of retained RECs past 2045 as well.

3. **CETA compliance should be based on supplying clean energy to customers, rather than simply procuring clean energy.**

Compliance for CETA in the draft rules is established through the procurement of clean energy resources, rather than requiring the utility to actually use the electricity and clean energy attribute together as a bundled resource. A full conversion to clean electricity will require renewable procurement whose generation profile contributes to electricity needs at times when the lowest cost renewables do not match the utility's load profile—for example, dusk when northwest wind has not begun producing and after solar has stopped generating, during wintertime when solar and hydro production are both low, etc. This would require load management strategies and diverse siting of resources, which itself may entail new transmission capacity that is not required when using emitting generation sited near load. It is likely that using RECs from excess spring hydro generation already connected to transmission, wind produced at night, and mid-day solar will require less grid management, investment, and system transformation than compliance through bundled resources used to serve load. Under the draft rules, nonpower attribute acquisition coupled with power sales is a likely pathway utilities would be incentivized to opt for. This approach would delay the 'transformation' called for in the law by decades. Because we also interpret the draft rules to allow for the use of retained RECs post-2045, the draft rules would delay the transformation indefinitely.

CETA requires that utilities actually serve load with clean electricity, and rules should ensure that a utility maintain ownership of the electricity if it is considered being used to serve load. The requirement to retire RECs is a secondary verification function to prevent double-counting, and was not intended to be the primary mechanism of compliance. Rules should instead require utilities maintain ownership of the power they claim, and therefore source power at all times to match their load from the most cost-effective resources and locations. By demonstrating ownership of power claimed for compliance, utilities would actually serve their customers with clean power as envisioned by the Legislature—electricity being used to meet the requirements of the minimum 80% clean requirement in the law is not being transferred to another entity. Under this approach, the clean energy attributes would remain bundled with the associated electricity and would not be paired with emitting generation. However, nothing in the draft rules prevents a utility from relying on emitting resources to serve their customers, as long as they retain a sufficient quantity of retained RECs from resources that do not actually serve Washington customers. The 2030 requirement contains key flexibility provisions, including the 20% alternative compliance allowance and four-year compliance periods to accommodate hydro variability. These provisions were intended to ease into the long-term pathway of achieving 100% clean energy, while still requiring a gradual increase to total clean energy used to meet Washington's needs.

While the rules require matching generation and load for planning purposes, the utility does not actually have to rely on clean energy resources that actually meet their energy needs, but rather sell clean electricity in times of surplus to another entity and rely on the attribute for compliance. This is

inconsistent with the legislature's stated intent to transform Washington's energy supply to one hundred percent clean.

Unlike Washington's Renewable Portfolio Standard, CETA was specific that utilities 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," which should encompass all energy that is being used to serve customers. Contrarily, Washington's RPS requires that utilities "use eligible renewable resources *or* acquire equivalent renewable energy credits" to meet its standards" but because utilities can comply with unlimited unbundled RECs, the RPS does not actually require that electricity from renewable resources serve a utility's customers. The structure of the Energy Independence Act reinforces the interpretation that the acquisition of RECs is not equivalent to using electricity.

If the intent was for CETA to be a procurement standard, the law would have used language around "procure" or "acquire" a certain amount of energy, but instead focused on a requirement to actually serve their load. If a utility acquires 100 megawatt hours of clean energy, 25 megawatt hours of unspecified energy, and 25 megawatt hours of emitting energy to serve 100 megawatt hours of load, but sells 50 megawatt hours as unspecified, the utility still relied on and "used" the unspecified and emitting energy to serve their customers. The draft rules allow for this situation to happen in real time if it is cost-effective, even though the utility did in fact serve load with emitting resources. CETA was not written as a procurement standard, and this scenario should be prohibited in the final rules.

4. **The meaning of "use" should be interpreted to have the same meaning in the 2030 greenhouse gas neutral and 2045 100% clean standards.**

The draft rules allow for a retained REC to be used with no limitations indefinitely. Again, this allows fossil fuels to continue serving Washington customers, which was not the intent of the Legislature when requiring that utilities transition to 100% clean energy. CETA's language requiring utilities to "use" clean electricity appears in both the 2030 and 2045 standards, and the requirements should be interpreted the same. RCW 19.405.040 states that utilities 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." Similarly, RCW 19.405.050 states that utilities must demonstrate compliance "*using* a combination of nonemitting electric generation and electricity from renewable resources." In explicating this requirement, statute directs utilities to "supply one hundred percent of all sales of electricity to Washington retail electric customers" with compliant power and directs utilities to incorporate the requirement into "the provision of electricity to retail electric customers," clearly identifying the point of compliance to be on the delivery of energy to customers, not just to the utility. These two references to utilities' "use" of electricity rely on the same word, and both should be interpreted to mean that utilities actually supply clean energy to their customers.

5. **Draft rules need to penalize utilities for serving any load with emitting resources.**

A utility is subject to a penalty if it "fails to meet" the 2030 clean energy standards, which applies "for each megawatt-hour of electric generation used to meet load that is not electricity from a renewable

resource or nonemitting generation." This language is very clear that if a utility uses electricity that is not renewable or nonemitting to meet load, it must pay a penalty due to noncompliance with the law. The draft rules again allow utilities to continue serving their load with emitting resources. Should utilities rely on retained RECs paired with emitting resources for primary compliance, per statute, a penalty should be applied to each megawatt-hour of emitting generation that a utility uses to serve load. In addition, utilities must incorporate line losses into their compliance requirements, and any fossil fuels used to serve load as a result of line losses should also be penalized. Not applying a penalty would run counter to the plain language and intent of CETA.

6. **The implication of the term "meet" in WAC 480-100-650(1)(a) does not provide a clear expectation of the Commission's expectations.**

We understand from conversations with Commission staff that the intent of WAC 480-100-650(1)(a) is to provide an expansive planning and procurement requirement. As we understand it, the intent of this provision is to require a utility to plan and build, but not necessarily run their system as if retained RECs are not an eligible compliance option. Utilities must procure renewable and non-emitting resources along with all necessary transmission, ancillary services, and other requirements necessary to enable core compliance to be fully met with this compliant electricity, even if they are not ever obligated to actually do so. Our initial interpretation of the language was that the requirement in (a) pertained just to procurement of generation and not the associated necessary services and, importantly, that it was not intended to exclude the use of retained RECs in that planning and procurement. We do not interpret the provision as written to clearly require this, and while we do not support the overall approach of these rules, we request that the Commission clarify the obligations if it adopts this approach in the final rule.

Conclusion

Unfortunately, we do not believe the draft rules require utilities to serve their retail electric load with clean energy, and believe the draft rules undermine the intent of CETA. The draft rules turn CETA into a procurement standard that allows utilities to continue relying on fossil fuels, which runs counter to the intent to transform our electric system. We do not believe the rules actually require that utilities comply with the statutory language of CETA and hope the Commission will reconsider allowing the use of retained RECs as a primarily compliance option in the final rules.

Sincerely,

Kelly Hall
Senior Policy Manager
Climate Solutions

Vlad Gutman-Britten
Washington Director
Climate Solutions