November 12, 2021

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

Re: NW Energy Coalition's response to Notice of Opportunity to Comment on Docket UE-210183, Relating to Electricity Markets and Compliance with the Clean Energy Transformation Act

Ms. Maxwell,

The NW Energy Coalition ("NWEC") appreciates the opportunity to offer comments on the proposed Draft Rules under the Clean Energy Transformation Act (CETA). Our comments are largely focused on CETA's prohibition on double counting nonpower attributes, and the Commission's interpretation of CETA's requirement "to use electricity." NWEC is an alliance of more than 100 organizations united around energy efficiency, renewable energy, fish and wildlife preservation and restoration in the Columbia basin, low- income and consumer protections, and informed public involvement in building a clean and affordable energy future. NWEC staff were closely involved in the writing and passage of CETA and have participated in all related rulemaking proceedings under the statute. Since CETA's passage in 2019, NWEC has participated in market discussions with Commission staff and others, was a member of the Carbon and Electricity Markets Workgroup, and actively participated in all related workshops. Additionally, in October, 2020, NWEC with Climate Solutions submitted suggested language for the "use" rule based on a financial accounting approach.

**Legislative intent**

Through CETA, the legislature unambiguously intended to transform Washington's electric system to one in which utilities use electricity from renewable and non-emitting resources to serve their Washington customers. RCW 19.405.040(1) and RCW 19.405.050(1). CETA's one hundred percent clean standards pose a challenge that the legislature explicitly envisioned would "spur transformational change in the utility industry." RCW 19.405.010(5). Such transformational change is necessary given the gravity of the climate crisis and the short window of time we have left to take action to mitigate the worst impacts of climate change.

The Commission must give effect to the legislature's intent by adopting rules that advance Washington toward an optimal clean energy system, one that uses a broad portfolio of clean energy resources to meet customer load. The Commission's responsibility is to ultimately develop a framework for how market transactions can successfully interact with CETA in a way that aligns with, not contradicts, Washington's groundbreaking law. Unfortunately, as written,

the proposed draft rule defies clear statutory direction and disincentivizes transformational change.

**Comments on the term "use" in the proposed draft rule**

We were disappointed to see that the draft rule departs from Commission staff's preliminary interpretation of "use" and instead adopts the utilities' interpretation, which would allow utilities to rely indefinitely on fossil fuel generation for the electricity they sell to Washingtonians. As stated in our prior comments, the Commission lacks authority to adopt the utilities' interpretation of "use" because it conflicts with CETA's plain language and is contrary to legislative intent.

Commission staff's preliminary interpretation of the term "use" was correct. The definition of "use" now proposed in WAC 480-100-650(1)(a) and (b) subverts the intent of CETA and is at odds with the plain and ordinary meaning of the term. The statute requires utilities to "use" clean electricity for both the 2030 and 2045 standards. *Compare* RCW 19.405.050(1) (a utility must "demonstrate its compliance with this standard ***using*** a combination of non-emitting electric generation and ***electricity*** *from renewable resources*") (emphasis added) *with* RCW 19.405.040(1)(a) (a utility must "demonstrate its compliance with this standard ***using*** a combination of non-emitting electric generation and ***electricity*** *from renewable resources* or... alternative compliance options") (emphasis added). The proposed draft rule, however, sets up a two-part compliance scheme, first establishing a simple procurement standard and then allowing a subset of unbundled Renewable Energy Credits (RECs)—referred to as "retained RECs," which is discussed below—to qualify as a form of "using electricity." This scheme does not meet the requirements of the statute, which requires utilities not simply to show they have acquired enough electricity from compliant resources that would match their retail load, but to ***use the electricity*** to serve that load. This means not simply *offsetting* fossil or other polluting generated electricity, but actually *replacing* dirty electricity with electricity from clean, renewable and non-emitting generation. The proposed Draft Rule fails to require the clean energy that CETA mandates, allowing utilities to use fossil fuel resources to serve Washington customers indefinitely.

Utilities comply with both standards by "using" electricity from renewable or non-emitting resources. Utilities may "use" clean electricity regardless of whether they own the underlying resource – purchased electricity satisfies CETA's requirements, so long as it is from renewable or non-emitting resources and bundled with the associated non-power attributes or REC. Conversely, if a utility owns a renewable resource but does not use the ***electricity*** from that resource, it does not satisfy CETA's requirements. The legislature did not require only associated RECs to be used to meet the clean energy mandates, it required clean ***electricity*** be used to meet the mandate. The retirement of the associated REC simply prevents double counting.

*Discussion on RECs*

The proposed draft rule directly conflicts with the statute by creating a new sub-category of REC, called a "retained REC," a term that does not appear in CETA or anywhere else in Washington law. The draft rule defines a retained REC as the "non power attributes of renewable and non-emitting electricity owned or controlled by a utility where the associated electricity is sold in a wholesale sale as unspecified electricity," WAC 480-100-605. Under this definition, a retained REC is functionally the same as an unbundled REC—either a REC is bundled with the associated electricity or it is not. **No matter if bundled or unbundled, a REC cannot be used for compliance, only electricity can.**

Retiring a REC that has been separated from the associated electricity and labelling it as "using electricity" is entirely contrary to statute and reason. Nowhere does CETA, unlike the Energy Independence Act, provide that RECs (of any sort) may be used to comply with the one hundred percent clean mandates, except as part of the twenty percent alternative compliance option for the 2030 standard (RCW 19.405.040(1)(b)). Yet the Commission's proposed draft rule allows retained RECs to be used to meet *both* the 2030 and 2045 standards indefinitely and at amounts greater than 20%.

We recommend that this be remedied in the final rule by limiting the use of any unbundled RECs to eligible alternative compliance options only, as explicitly described in RCW 19.405.040(1)(b). The rule should either eliminate the use of "retained RECs," or clarify that retained RECs are unbundled RECs.

*Discussion on Procurement*

While the proposed draft rule requires utilities to plan for, invest in, or acquire enough generators or electricity that complies with the 2030 and 2045 standards in time to theoretically comply with those standards, it does not require utilities to *use that electricity* to serve the utility's retail load. Further, the rule provides no recourse in the situation that utility acquisition or investments end up failing to meet the standards established in law.

The point is that simply procuring electricity that is used elsewhere and allowing the REC to be counted towards compliance changes the unambiguous use standard of CETA into a renewable portfolio standard in practice, one in which utilities can use fossil fuel generated electricity to serve customers to meet the 2030 standards. Most egregiously, the proposed draft rule specifically allows unbundled RECs to meet the portion of the 2030 standard that specifically calls for the use of electricity whose associated RECs must be then retired. RCW 19.405.040(1)(a) and (c).

The Commission must eliminate all provisions of the draft rule that would allow a utility to rely on electricity that it has sold to meet its obligation to serve customers in Washington with clean energy. CETA means what it says: utilities must use clean energy to serve their Washington customers.

*Markets*

Overall, we are unsure why rules governing market transactions need to be detailed at this time. Transactions in the Energy Imbalance Market are small, single digit percentages of current retail loads and other regional markets are under consideration, but not yet functioning. It would make far more sense for the rules for those future markets to be developed when those markets are more clearly defined, especially since compliance is not required until 2030. We have proposed several alternative approaches for accounting for market transactions in the past. Given the available lead time before compliance is required, the Commission can settle on requirements that are both feasible and consistent with CETA's command that utilities use electricity from clean sources.

Acquiring a one hundred percent clean portfolio is undeniably more challenging than simply acquiring renewable resources without regard to whether they produce electricity when it is needed. But that is the challenge the legislature required utilities to meet over the course of the next several decades. Renewable resources are cost-effective now, and CETA's cost cap provides a backstop to protect customers. With aggressive investments in conservation and efficiency, demand response, demand side management, storage, and different renewable resources spread out geographically that peak at different times, Washington's utilities can meet this challenge – especially with the decades of lead time the statute affords.

*Data*

NWEC is supportive of the proposed draft rule's requirement for hourly data from the utilities. All the data should be in an easily accessible format available to all stakeholders. No matter what form the final rule takes, the data will be necessary to ensure the standards are being met.

**Responses to questions for consideration**

*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?*

No, the draft language requires what amounts to a **theoretical** planning and acquisition standard; it does not require a utility to actually *use the electricity* from those resources to serve its retail load, nor does it offer any recourse if the acquisitions or investments fail to meet the statutory standards. The intent of WAC 480-100-650(1)(a) should be to ensure the utilities actually meet the standards through contract, ownership or

procurement of compliant electricity that is actually used to serve load, not to try to convert CETA into a procurement standard or RPS.

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

No, it is not. By 2045 all electricity used to serve load must be from renewable and non-emitting generation. That is the ultimate intent of CETA, to have all utilities in Washington using electricity from renewable and non-emitting generation to help prevent the worst impacts of climate change and the harm fossil fueled generation inflicts on communities. Referencing 19.405.050(1) in WAC 480-100-650(1) allows RECs to substitute for clean energy, just as it improperly does for the 19.405.040(1) standard, thereby gutting the hundred percent 2045 standard, and allowing fossil fueled electricity to be used to serve load. This is entirely contradictory to statute and reduces the entire statute to a simple procurement standard that was intentionally rejected by CETA.

*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.*

*a. Is this distinction understandable?*

No. There are several problems with the definition. First, a renewable energy credit is the nonpower attributes of *renewable* electricity; a non- emitting resource is, by definition, not a renewable resource (RCW 19.405.020(28)(a) and (b). Electricity from non-emitting resources does not create a REC but does requires documentation of the non-power attributes of that electricity (RCW 19.405.040(1)(f)). The definition of retained REC treats the non-power attributes of *non-emitting* electricity as a REC, which is directly contrary to statute.

Second, electricity "owned or controlled" by the utility is really no different than any other electricity for which a utility purchases or contracts. The definition is apparently trying to establish that generation that is originally owned or controlled by a utility is different from other electricity that a utility acquires through trade, purchase or contract, and deserve special treatment. Nowhere in statute is that sort of distinction contemplated or allowed.

Third, the definition tries to answer the strained argument that the definition of "unbundled RECs" does not include RECs that are "retained," only those that are "sold, delivered or purchased separately." Defining retained RECs offers a solution to a problem that does not exist. **A retained REC is still a REC that has been separated from the associated electricity; it is an unbundled REC.** No matter if "retained" or "sold, delivered or purchased separately,**" CETA does not allow RECs of any sort as compliance, except for as part of the twenty percent alternative compliance option for the 2030 standard (RCW 19.405.040(1)(b)).**

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

It is a distinction without a difference. The definition of a retained REC should be stricken from the rule, as it is simply a REC separated from its associated electricity and therefore an unbundled REC. The term retained REC adds no clarity, is duplicative and not useful.

*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?*

*This question underlines the fallacy of creating "types of RECs". The* ***point of the statute is that RECS cannot be used for compliance****, as RECs are not the electricity that created them. Since the definition of retained RECs is nebulous, it probably will be somewhat challenging to ensure retained RECs are appropriately tracked and not double counted. Bundled RECs must be retired if the associated electricity is claimed for compliance and unbundled RECs can only be applied to compensate for fossil generated electricity used for some part of the 2030 standard's 20 percent allowance (19.405.040(2)(b)(ii)).*

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

*Given the hue and cry over how hard it is to track any REC associated with unspecified sales, we would presume tracking retained RECs would be just as challenging. They are simply an unbundled REC.*

*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?*

Why not just reference 19.405.040(1)(b)? Primary compliance implies there are other levels of compliance. It is only used twice in the rule – in the definitions and in WAC 480-100-650(2)(e), where unbundled RECs are improperly allowed to substitute for electricity. It is only of minimal use if the fiction that a REC can count for electricity is accepted.

*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 non- emitting electric generation,"[4] 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.*

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

The data requirements, with a clarification that the actual analysis and data must be *included* in the annual report, should be retained no matter what form the final rule takes. The data should also be available to stakeholders. The analysis should also include a list of RECs related to electricity claimed for compliance, to show the RECs were retired as required by statute.

Under contracting information, the language should be more clearly inclusive of "**any** and all transactions, sales, purchases, and exchange agreements and **any other type of agreements**, including but not limited to," in order to ensure there are no future questions if a new financial tool should be become available that is not in this list.

Under (c) along with documentation of any pro-rata share of electrical output identified as being from renewable or non-emitting generators, all purchases, sales and transactions of any kind through participation in an organized market should be reported on an hourly basis or the shortest available market interval if less than one hour.

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

*The Commission's goal should be to further, rather than undermine, the intent and clear standards of CETA. The Commission should not dilute the statute's core requirements to meet the legislative goal of clean electricity used to serve load, but adopt rules that advance Washington toward that goal. All the required data reporting can only help the Commission and the public understand how progress is being made towards meeting the one hundred percent clean standard.*

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

Sales from all renewable or non-emitting generation facilities owned or controlled by the utility on an hourly basis and to whom the electricity is sold.

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.*

No comment at this time.

*Conclusion*

Sadly, the Draft Rule undermines CETA by limiting it to a procurement program, which is not what the legislature intended in requiring the "transformation" of Washington's Energy supply. The Commission should endorse the clear meaning of "use", eliminate "retained RECs" and any language that allows RECs to substitute for electricity, expand the data reporting requirement in the rule, use the next several years to analyze the hourly data and then adopt rules that promote, not eviscerate, CETA.

With aggressive investments in conservation and efficiency, demand side management, storage, and different renewable resources spread out geographically that peak at different times, Washington's utilities can meet the challenge of using 100% clean electricity to supply their Washington customers – especially with the decades of lead time the statute affords. The Commission must adopt rules that require utilities to rise to this challenge, as CETA commands.

Respectfully submitted,

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