



MEMORANDUM

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FROM: Molly Tack-Hooper and Amanda Goodin, Senior Attorneys

DATE: October 8, 2021

RE: "Consistent with" in CETA

Washington's 2019 Clean Energy Transformation Act (CETA) requires electric utilities, including investor-owned utilities (IOUs), to prepare and submit four-year planning documents that show how they plan to meet CETA's transformational new clean energy and equity mandates. The Clean Energy Implementation Plans (CEIPs) that CETA requires are in addition to the planning documents that IOUs were already required to prepare on a regular basis, such as integrated resource plans (IRPs). In several places, CETA and the implementing regulations refer to IOUs' new plans needing to be "consistent with" their IRPs. Nothing in this language prevents IOUs from updating data, assumptions, and modeling made in the IRPs in their CEIPs or including additional actions in their CEIPs, beyond those that are included in their IRPs. Indeed, meeting CETA's commands necessitates this additional work; a utility's CEIPs *must* go further than the IRP where additional measures are necessary to give full effect to CETA's substantive clean energy and equity mandates.

References to aspects of a CEIP needing to be "consistent with" a utility's other planning documents appear in several places in the CETA statutes and regulations. For example, CETA requires every investor-owned utility (IOU) to adopt a clean energy implementation plan (CEIP) every four years to "[i]dentify specific actions to be taken by the investor-owned utility over the next four years, *consistent with the utility's long-range integrated resource plan and resource adequacy requirements*" that demonstrate progress toward meeting CETA's requirements of a greenhouse gas-neutral portfolio by 2030, RCW 19.405.040(1), and a greenhouse gas-free portfolio by 2045, RCW 19.405.050(1). RCW 19.405.060(1)(b)(iii) (emphasis added). Likewise, the CETA regulations specify that a CEIP must explain how the specific actions the utility will take over the implementation period "[a]re consistent with the utility's integrated resource plan[.]" WAC 480-100-640(6)(d). In addition, in planning for Washington's electricity to be greenhouse-gas neutral by 2030, CETA requires that electric utilities take equity

into consideration, “consistent with” the requirements for IRPs and CEIPs set forth in RCW 19.280.030. RCW 19.405.040(8).¹

This memorandum responds to investor-owned utilities’ erroneous interpretation of the requirement that a CEIP be “consistent with” an IOU’s IRP as meaning that a utility’s CEIP cannot go beyond the provisions and assumptions contained in its long-range integrated resource plan. The IOUs’ interpretation of “consistent with” is untenable and cannot be reconciled with the purpose, text, or structure of CETA. When the phrase “consistent with” is considered in its statutory context, it is clear that “consistent with” a utility’s IRP means compatible with and not in conflict with a utility’s IRP, rather than coextensive with a utility’s IRP.

I. UNDER CETA’S PLAIN LANGUAGE, CEIPS MUST CONTAIN ADDITIONAL ACTIONS AND UPDATED ASSUMPTIONS.

The plain meaning of CETA as a whole, along with the statutory requirements governing IRPs, makes clear that CEIPs are not limited to what a utility includes in its IRP.²

A. CEIPs Must Contain Additional Content Not Included In IRPs.

The IOUs’ interpretation of “consistent with” is untenable first and foremost because CETA imposes additional requirements and standards for CEIPs that are not applicable to IRPs. If utilities were prohibited from updating in their CEIPs the assumptions and information contained in their IRPs, this would effectively preclude them from fulfilling the requirements for a CEIP.

RCW 19.280.030 sets out the minimum requirements for an integrated resource plan. To summarize, an integrated resource plan must include, at a minimum:

- Projected customer demand for the next ten years or longer (1(a))
- Available conservation resources (1(b))
- Available generating technologies (1(c))
- Comparative evaluation of technologies w/r/t “lowest reasonable cost” (1(d))

¹ RCW 19.405.040(8) states in full: “In complying with this section, an electric utility must, consistent with the requirements of RCW 19.280.030 and 19.405.140, ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency.”

² “Plain meaning’ is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Lake v. Woodcreek Homeowners Ass’n*, 169 Wash.2d 516, 526, 243 P.3d 1283 (2010) (quoting *State v. Engel*, 166 Wash.2d 572, 578, 210 P.3d 1007 (2009)).

- Assessment of ways to address overgeneration events, if relevant (1(e))
- A ten-year forecast of generation and transmission capacity (1(f))
- Resource adequacy metrics for the IRP (1(g))
- Customer-side resources that could be installed and assessment of how they would affect utility's load and operations (1(h))
- Resource adequacy requirement and metric for implementing CETA (1(i))
- Integration of above into a long-range assessment of resources that will meet current and projected needs (1(j))
- Equity assessment of benefits to vulnerable populations and highly-impacted communities, health and environmental benefits, and energy security (1(k))
- A ten-year clean energy action plan for implementing RCW 19.405.030–050 at the lowest reasonable cost and at an acceptable resource adequacy standard (1(l))
- An analysis of how the plan accounts for:
 - o ZEV load forecast (1(m)(i))
 - o Electrification of transportation (1(m)(ii))
 - o For plans after 9/1/2023, use case forecasts (1(m)(iii))

RCW 19.280.030(1); *see also* WAC 480-100-620 (“Content of an integrated resource plan.”).

CEIPs focus on a narrower time period than IRPs—four years, in contrast to the minimum ten-year period that many components of an IRP cover—requiring utilities to engage in more granular, short-term planning in the CEIP than is required in an IRP. *Compare* RCW 19.280.030 (requirements of an integrated resource plan), *with* RCW 19.405.060 (requirements for four-year clean energy implementation plan). RCW 19.405.060 and WAC 480-100-640 set forth the requirements for an investor-owned utility's clean energy implementation plan. Unsurprisingly, the CEIP requirements are not duplicative of the IRP requirements. CEIPs are required to contain additional content that is not required to be included in the IRP, such as:

- Interim targets, informed by the utility's historic performance under median water conditions, that demonstrate how the utility will make “reasonable progress” toward meeting CETA's requirements of a greenhouse gas neutral portfolio by 2030 and a greenhouse gas-free portfolio by 2045 (WAC 480-100-640(2)(a)(i), (c)), including:
 - o Interim targets for the percentage of retail sales to be supplied by using renewable and nonemitting resources prior to 2030 and from 2030 through 2045, and disclosure of the percentage of retail sales supplied in 2020 by nonemitting and renewable sources (WAC 480-100-640 (a)(iii), (b))
 - o Interim targets consistent with the requirement to pursue all cost-effective, reliable, and feasible conservation and energy resources and demand response (WAC 480-100-640(2)(a)(iii); WAC 480-100-610(4)(a))
 - o Interim targets consistent with the requirement to protect the safety, reliability, and balancing of the electric system (WAC 480-100-640(2)(a)(iii); WAC 480-100-610(4)(b))

- Interim targets consistent with the requirement to ensure all customers are benefiting from the transition to clean energy through equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities, public health and environmental benefits and reduction of costs and risks, and energy security and resiliency (WAC 480-100-640(2)(a)(iii); WAC 480-100-610(4)(c))
- Specific targets for energy efficiency, demand response, and renewable energy, and a description of the technologies, data collection, processes, procedures, and assumptions used to develop the specific targets (WAC 480-100-640(3)(a), (b))
- Customer benefit data that identifies highly impacted communities and vulnerable populations using specific methodologies (WAC 480-100-640(4)(a), (b))
- Customer benefit indicators including indicators associated with energy benefits, nonenergy benefits, reduction of burdens, public health, environment, reduction in cost, energy security, and resiliency (WAC 480-100-640(4)(c))
- Specific actions that the utility will take over the implementation period consistent with CETA standards and based on the utility's clean energy action plan and interim and specific targets, presented in a specific, detailed table format (WAC 480-100-640(5))
- A narrative description of how the specific actions in the CEIP:
 - demonstrate progress toward meeting CETA's requirements of a greenhouse gas neutral portfolio by 2030 and a greenhouse gas-free portfolio by 2045 (WAC 480-100-640(6)(a))
 - are consistent with CETA's "reasonable progress" requirements (WAC 480-100-640(6)(b))
 - are consistent with the proposed interim and specific targets (WAC 480-100-640(6)(c))
 - are consistent with the utility's resource adequacy requirements (WAC 480-100-640(6)(e))
 - demonstrate how the utility is planning to meet CETA standards at the lowest reasonable cost, including describing and documenting the utility's methodology for identifying the lowest reasonable cost actions (WAC 480-100-640(6)(f))
- Projected incremental cost, following the calculation methodology set forth in WAC 480-100-660(4) (WAC 480-100-640(7))
- A description of public participation in the development of the CEIP, including a summary of advisory group member comments (WAC 480-100-640(8))
- A description of plans to rely on alternative compliance mechanisms (WAC 480-100-640(9))
- Additional requirements for utilities proposing to take the early action compliance credit authorized in RCW 19.405.040(11) (WAC 480-100-640(10))

WAC 480-100-640.

The IOUs' interpretation of the phrase "consistent with" would vitiate these additional CEIP requirements.³

Notably, CEIPs must contain a narrative description of how the specific actions in the CEIP are "consistent with the utility's integrated resource plan[.]" WAC 480-100-640(6)(d). This requirement to explain the relationship between actions planned in the CEIP and IRP would be meaningless if the actions identified in the CEIP had to be coextensive with the IRP.

Moreover, it makes little sense to read the CEIP requirements as being constrained by the information and assumptions in a utility's IRP when nothing in statute or regulations purports to limit the scope of what can be included in either an IRP or a CEIP. The requirements for what an IRP and CEIP must contain are merely floors, not ceilings, and plainly contemplate that it may make sense for a utility to include even more information in its IRP or CEIP. *See* RCW 19.280.030(1) ("The integrated resource plan, *at a minimum*, must include . . .") (emphasis added); WAC 480-100-640(1) (specifying requirements that "must be included in each CEIP" but not limiting what else can be included in a CEIP). Reading the "consistency" requirement to limit the actions a utility may include in its CEIP is inconsistent with this language.

B. The Dictionary Definition of "Consistent With" Supports the Conclusion that an IOU's CEIP Need Not Be Restricted to the Information and Assumptions in its IRP.

The dictionary definition of "consistent with" supports this interpretation. *See* Consistent, Definition 1(b), Dictionary, Merriam Webster, <https://www.merriam-webster.com/dictionary/consistent> (defining "consistent" as in "statements not consistent with the truth" to mean "marked by agreement: compatible—usually used with *with*"). A CEIP may go further than a utility's IRP and still be "compatible" with it. While some dictionary definitions of other forms of the word "consistent" could support a contrary interpretation, *see* Consistent, Definition 1(a), <https://www.merriam-webster.com/dictionary/consistent> (defining "consistent" as in "a consistent style in painting" to mean, among other things, "free from variation"), such an interpretation is untenable because it would create a conflict between CETA's requirements as to the contents of a CEIP and the "consistency" language.⁴

³ Statutes must be interpreted "so that all the language used is given effect, with no portion rendered meaningless or superfluous." *State v. Larson*, 184 Wash. 2d 843, 850, 365 P.3d 740, 743 (2015) (internal citation omitted).

⁴ "The 'goal is to avoid interpreting statutes to create conflicts between different provisions so that we achieve a harmonious statutory scheme.'" *Am. Legion Post #149 v. Washington State Dep't of Health*, 164 Wash. 2d 570, 585, 192 P.3d 306, 314 (2008) (quoting *Echo Bay Cmty. Ass'n v. Dep't of Natural Res.*, 139 Wash. App. 321, 327, 160 P.3d 1083 (2007), *review denied*, 163 Wash. 2d 1016, 180 P.3d 1290 (2008)).

II. CETA’S PURPOSE AND PROCESSES FOR PUBLIC INPUT AND COMMISSION REVIEW ALSO COMPEL THE CONCLUSION THAT CEIPs MAY CONTAIN ADDITIONAL ACTIONS AND UPDATED ASSUMPTIONS.

CETA’s purpose and other provisions likewise confirm that CEIPs are not limited to what a utility includes in its IRP, for several reasons.

First, reading CETA’s planning requirements as constrained by prior planning documents flies in the face of one of the central purposes of CETA, which was to require a rapid and equitable transition to clean energy.⁵ In CETA’s findings and intent section, the legislature acknowledged that “[t]he transition to one hundred percent clean energy is underway, but must happen faster than our current policies can deliver.” RCW 19.405.010(3). One of the purposes of CETA was to “spur transformational change in the utility industry.” RCW 19.405.010(4). Reading CETA’s planning provisions as limited by and coextensive with prior planning requirements would undermine this goal of fast, transformational change.

Second, the different processes for Commission review of IRPs and CEIPs undermine the IOUs’ argument that the contents of a utility’s CEIP are constrained by the scope of its IRP. While utilities’ CEIPs must be approved by the Washington Utilities and Transportation Commission,⁶ there is no analogous requirement that the Commission approve IRPs.⁷ There is no conceivable reason to believe that the legislature intended for an IRP—a planning document that is not subject to Commission approval—to constrain what goes into a CEIP—a subsequent planning document that requires Commission approval.

Third, if the Commission accepted the IOUs’ interpretation of “consistent with” as meaning that CETA planning documents cannot go beyond what is contained in an IRP, this would undermine the provisions of the CEIP rules that provide opportunities for public input. CEIPs must be made available to the public for comment. See RCW 19.405.060(1)(c) (Commission must hold hearing before approving, rejecting, or modifying a CEIP); WAC 480-100-645(1) (providing for public comment on a utility’s CEIP within sixty days of filing); WAC

⁵ In interpreting a statute, the Court’s “fundamental purpose is to ascertain and carry out the intent of the legislature.” *Quinault Indian Nation v. Imperium Terminal Servs., LLC*, 187 Wn.2d 460, 468, 387 P.3d 670 (2017). “If the statute at issue, or a related statute, incorporates a relevant statement of purpose, our reading of the statute should be consistent with that purpose.” *Matter of Adoption of T.A.W.*, 186 Wn.2d 828, 840, 383 P.3d 492 (2016).

⁶ Investor-owned utilities’ clean energy implementation plans must be submitted to the Washington Utilities and Transportation Commission for review. RCW 19.405.060(1). The Commission must consider the impact of the CEIP actions on CETA’s equity goals. RCW 19.405.060(1)(c)(3). The Commission has the authority to approve, reject, or approve with conditions a utility’s CEIP. RCW 19.405.060(1)(c).

⁷ An IOU must submit its IRP to the Commission, RCW 19.280.040(1), and IOUs must put forth a draft IRP for public comment, WAC 480-100-625(3)(a), and address public comment in the final IRP, WAC 480-100-620(17), but there is no legal requirement or process for the Commission to approve or otherwise act on IRPs.

480-100-645(2) (providing for open public meeting on a utility's CEIP and for the initiation of an adjudicative proceeding to consider the filing upon request of any person with a substantial interest in the subject matter of the CEIP).⁸ Reading CETA to require that a utility's CEIP merely duplicate its IRP would undermine the provisions of CETA designed to ensure public access to detailed utility plans and a meaningful opportunity to provide input on those plans.⁹ While IRPs are also subject to public comment,¹⁰ the fact that the Commission need not act on an IRP at all undercuts the significance of this opportunity for public input. In light of the clear legislative intent to allow meaningful public input into CEIPs, it is unreasonable to infer that the legislature also intended to allow a utility to refuse during the CETA planning process to update the assumptions and information in its IRP or that the legislature intended to prohibit utilities from including in their CEIPs additional actions not set forth in an IRP.

The fact that the legislature also explicitly prohibited legal action against an electric utility based on its IRP, *see* RCW 19.280.030(9), but did not include in CETA an analogous prohibition on legal challenges based on CEIPs, is further evidence that the legislature viewed the IRP and CEIP planning processes as carrying different weight.

Simply put, it makes no sense to infer a legislative intent for a CEIP to be constrained by the scope of an IRP given that it is CEIPs, not IRPs, that are subject to Commission approval.

III. CONCLUSION

In conclusion, in light of the text, purpose, and structure of the statutes and regulations setting out the requirements for IRPs and CEIPs, it is clear that the information, data, and scope of a utility's IRP should not limit the scope of its CEIP. Accordingly, the requirement that a utility's CEIP be "consistent with" the utility's IRP means only that the CEIP must be compatible with and not in conflict with the IRP. CETA's requirement of new, additional planning that is not already part of the IRP process can leave no doubt that a CEIP not only may but must go further than an IRP. The IOUs' interpretation of "consistent with" to mean that a CEIP cannot go beyond the scope of an IRP would eviscerate CETA's requirement for utilities to disclose their plans for implementing CETA's clean energy and equity mandates. And it would undermine the CETA procedures designed to ensure meaningful public input and Commission review of CEIPs. Because it conflicts with the plain language, legislative intent, and structure of CETA, the Commission should reject the IOUs' interpretation of the phrase "consistent with."

⁸ The Commerce rules governing consumer-owned utilities' CEIPs likewise provide for public comment and require consumer-owned utilities to summarize the public input process and describe how public comments were addressed. *See* WAC 194-40-220(1); WAC 194-40-050(2).

⁹ "Statutes should be interpreted to further, not frustrate, their intended purpose." *Bostain v. Food Exp., Inc.*, 159 Wn. 2d 700, 712, 153 P.3d 846 (2007) (internal quotations and citation omitted).

¹⁰ *See* WAC 480-100-625(3)(a) (Commission must hear public comment on draft IRP at an open meeting and accept public comments electronically); WAC 480-100-620(17) (utility must summarize public comments received during development of IRP and explain how comments were addressed in final IRP).