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

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I. INTRODUCTION

1. Pursuant to the Washington Utilities and Transportation Commission's ("Commission" or "UTC") Notice of Opportunity to File Written Comments on Draft Rules ("Notice") dated November 10, 2021, the Public Counsel Unit of the Washington Attorney General's Office ("Public Counsel") files these comments regarding the Commission's draft rules on the prohibition of double counting under the Clean Energy Transformation Act (CETA).

2. Public Counsel first addresses the specific questions posed in the Commission's Notice, and then provides additional general comments regarding issues not specifically addressed in the Notice questions.

II. RESPONSES TO NOTICE QUESTIONS

Question 1. Requirements for obtaining unbundled RECs: The draft rule would require that utilities obtain unbundled RECs only from renewable generating facilities that comply with certain business practices in all transactions, regardless of whether the transaction involves a Washington utility.

a. **Is it feasible to require renewable generation facilities to register and certify with the state of Washington that all of their transactions comply with the draft rules' business practices?**

3. Public Counsel does not believe that this requirement is either feasible or necessary. The Commission does not have jurisdiction over entities outside of Washington, or over independent power producers in the state. Nor would it be reasonable for the UTC to penalize a Washington utility for transactions of a non-jurisdictional entity that are inconsistent with CETA when the regulated utility is not a party to the transactions.

4. It is unclear what time period is implied by reference to "all of their transactions." Draft WAC 194-40-XXX / WAC 480-100-XXX(2)(d) specifies annual certification of compliance, but

as written, the rule appears to cover all transactions over the life of the facility. In the extreme case, this could imply that qualified RECs purchased in one time period could be later deemed non-compliant if the facility were to violate the rule at some later date. This could happen even, for example, if the facility changed ownership and the new owners elected not to participate in the Washington REC market.

5. Further, Public Counsel notes that *renewable generation facilities* do not engage in transactions, nor do they register or certify with states. These actions are undertaken by individuals and corporate entities that own the facilities. Any such rule would have to be more specific regarding the entity responsible for compliance, and how the entity's generating assets may be divided into "facilities." For example, could a portion of a solar array be designated as a "facility" for purposes of compliance with the Commission's rule?

6. However, as noted in our general comments below, Public Counsel does not believe that the proposed business practices rules are necessary to prevent double counting, or that they would have any material effect other than to raise costs for Washington ratepayers.

b. Should the Joint Agencies consider alternatives to requiring that renewable generation facilities adhere to specific business practices in order to prevent double counting?

7. Yes. The Joint Agencies should promulgate rules to ensure that all RECs delivered to Washington utilities for purposes of compliance with CETA are not used for compliance in any other jurisdiction, but are instead retired by the purchasing utility. Public Counsel believes that proof of registration and retirement through WREGIS is sufficient to prevent double counting.

c. Should the Joint Agencies consider an alternative in which the business practices identified in subsection (2)(a) through (c) are required only for transactions that result in the transfer of an unbundled REC to a Washington utility?

8. Public Counsel does not believe that the proposed business practices in subsections (2)(a) through (c) are applicable on a transaction basis. As noted in response to part (b), Public Counsel believes that proof of REC registration and retirement through WREGIS is sufficient to guarantee that double counting does not occur.

d. Is a transaction-based approach feasible? If feasible, is it necessary to ensure no double counting of non-energy attributes?

9. Public Counsel believes that a transaction-based approach is feasible. In fact, a transaction-based approach is currently implemented throughout the Western Electricity Coordinating Council (WECC) and beyond to avoid double counting and ensure compliance with renewable portfolio standards in numerous states. Public Counsel further believes that a transaction-based approach is both necessary and sufficient to ensure no double counting of known and quantifiable non-energy attributes. As noted in response to Question 2 and in our general comments below, avoided emission of greenhouse gases is not currently a known or quantifiable attribute of renewable energy that is counted or transacted in any market of which we are aware.

e. Would a transaction-based approach be more or less effective and enforceable than the draft rules in preventing double counting?

10. Public Counsel believes that a transaction-based approach would be more feasible, enforceable, and effective than the draft business practices rule.

Question 2. Business practices for transactions involving electricity delivered or claimed under greenhouse gas cap programs:

a. **Sec. -XXX(2)(c) applies to transactions involving GHG cap programs outside Washington. Is it reasonable to distinguish between GHG cap programs outside Washington and Washington's own GHG cap program, the Climate Commitment Act (CCA)? Is it relevant in making this decision that the electricity and the unbundled REC are used in the same jurisdiction?**

11. As stated in the Notice, "RCW 19.405.040 provides, in part, that an electric utility may use unbundled renewable energy credits, 'provided there is no double counting of any nonpower attributes associated with renewable energy credits within Washington or programs in other jurisdictions[.]'" In establishing its prohibition on double counting, CETA does not distinguish between double counting that occurs in Washington or in other jurisdictions.

12. It would be infeasible to insist that zero-carbon energy serving Washington customers in compliance with Washington's Climate Commitment Act (CCA) be treated as unspecified, and assigned a fossil emissions rate, under CETA. California allows renewable energy to be counted as zero-carbon energy for purposes of its cap-and-trade program (*i.e.*, no emissions are attributed to the energy) while allowing RECs associated with that energy to count for compliance under its renewable portfolio standard. Similarly, renewable energy sources in Washington will contribute nothing to the calculation of total emissions under the CCA, but will still be counted as renewable and emissions-free energy under CETA.

13. Public Counsel believes it would be undesirable to disallow RECs associated with renewable energy production in jurisdictions, such as California, that have cap-and-trade programs. To disallow such RECs would result in treating out-of-jurisdiction RECs differently than the treatment that will be afforded renewable energy producers in Washington, as described above. Moreover, such a disallowance would be counterproductive because it would merely increase cost to Washington ratepayers without causing any incremental renewable energy to be produced. This issue is discussed further in our general comments.

14. In Public Counsel's view, qualifying RECs from jurisdictions with cap-and-trade programs under CETA would not represent double counting. The emissions associated with renewable energy are not "counted" under a cap-and-trade program simply because there are no associated emissions to count. The associated REC for each MWh may be counted only once – either in the jurisdiction in which it is created, or in another jurisdiction if it is sold either with the energy or unbundled.

15. CETA defines "nonpower attributes" to include "avoided emissions of carbon dioxide and other greenhouse gases".[1] At the current time, however, "avoided emissions" associated with renewable energy is an unquantified attribute for which there is no market. In fact, it is impossible to determine the avoided emissions of greenhouse gases associated with any particular MWh of renewable energy generation, absent detailed and specific modeling.

16. At some time in the future it may be feasible to quantify avoided emissions associated with specific MWh of renewable energy production, and "avoided emissions" may become a tradable commodity for purposes such as carbon offsets. If so, the Joint Agencies will be required under CETA to ensure that this avoided emissions attribute is not sold separately from any REC that is used for compliance. However, cap-and-trade programs such as California's, and the CCA in Washington, do not tabulate (or "count") avoided emissions; they tabulate emissions. The fact that there are no emissions to tabulate from renewable energy production is certainly an important factor in each state's compliance strategy, but not because it is "counting" avoided

[1] RCW 19.405.020(29)(a).

emissions. To not count emissions from an energy source where no emissions exist, while counting the REC towards CETA compliance, simply does not constitute double counting.

b. Sec. -XXX(2)(c) uses the term "GHG cap program," and the workshop discussion focused primarily on California's cap-and-trade program. How should the term "GHG cap program" be defined? Should the rule identify specific programs? If so, please provide an alternative term and definition.

17. Public Counsel does not see the difference, if any, between the terms "cap-and-trade" and "GHG cap." If this term is intended to include programs in which individual entity emissions are capped but the emission rights are not tradeable, Public Counsel does not believe such a program would interfere with CETA implementation or compliance. In any event, the rule should define concepts and requirements and avoid naming specific programs. Programs change over time, and referring to specific programs may tend to render the rule stale.

Question 3. Identification of RECs associated with specified source electricity sales: Sec. -XXX(2)(a) requires the inclusion of RECs in sales of specified source electricity and requires that the RECs be from the same generating facility and have the same month/year vintage. Is this matching of RECs with electricity reasonable or is a more precise matching of RECs with electricity necessary and feasible for compliance?

18. As noted herein, Public Counsel does not believe that the draft business rules are feasible or necessary to prevent double counting, and believes that compliance should be established on a transaction basis. That being said, the attributes identified in draft Sec. -XXX(2)(a), i.e., the generating source of the associated energy and the month and year of generation, are the identifying characteristics of RECs that are maintained and reported by WREGIS. Sec. XXX in its entirety is concerned with *unbundled* RECs, in which case the information identified is sufficient. If a utility is using retained RECs or RECs associated with energy delivered to its retail customers for primary compliance, but those RECs are associated with production outside of its balancing authority area, it may also be necessary to show that there are NERC e-Tags showing delivery of the energy to a qualifying location. WREGIS allows users to upload and associate NERC e-Tags showing the source and delivery destination of energy associated with each registered REC.

Question 4. Double counting safeguards for retained RECs: The statutory prohibition on double counting applies to unbundled RECs retired for alternative compliance obligations. The draft rules on "use" allow retained RECs to be used in addition to electricity from renewable generation resources for primary compliance. Should the business practices preventing double counting be applied to retained RECs? If so, does draft section -ZZZ do this effectively?

19. Public Counsel does not believe that any such business rule is required to prevent double counting of retained RECs. Retained RECs are associated with energy purchased by the utility and delivered to its service territory, which may then be sold to retail customers or transferred to a third party as unspecified energy. The utility should be required to show that it acquired and retired all such RECs, and that (as applicable) RECs from other balancing authority areas were coupled with e-Tags for delivery to the utility's service territory.

20. On the other hand, the rules should ensure that any energy associated with retained RECs that is sold into the marketplace is sold as unspecified energy. In Public Counsel's view, the best way to ensure this is to have each utility report all of its wholesale energy sales, including whether each transaction was on a specified or unspecified basis. For each MWh of energy sold as renewable or zero-carbon energy, the utility should be required to show that it retired one REC *in addition to* whatever RECs are retired for purposes of primary or secondary compliance with CETA or with Washington's Renewable Portfolio Standard.

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III. GENERAL COMMENTS

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

Accounting for Avoided Emissions

22. CETA defines "nonpower attributes" to include "avoided emissions of carbon dioxide and other greenhouse gases" (RCW 19.405.020(29)(a)). At some time in the future, it may be feasible to calculate the marginal avoided emissions associated with a given MWh of renewable generation, and these avoided emissions could be represented by a tradeable commodity that could be used in a greenhouse gas regulation strategy.[2] These avoided emissions would be registered with the REC through WREGIS or some other tracking entity to ensure that the market for avoided emissions has integrity and prevents double counting. If this were to happen, CETA is clear that no entity could use a REC for primary or secondary compliance with CETA and also sell or apply the avoided emissions in another marketplace. Prior to CETA taking full effect in 2030, the Joint Agencies should review whether any such market exists, and ensure that clear rules are in place to prevent any such double counting.

23. Currently, no such market for "avoided emissions" exists, and this is an unquantified and generally unquantifiable attribute. It is impossible to determine the avoided emissions of greenhouse gases associated with any particular MWh of renewable energy generation, absent detailed and specific modeling.

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[2] For a detailed theoretical treatment of such a market, see, Rudkevish, Ruiz, and Carroll, "Locational Carbon Footprint and Renewable Portfolio Policies: A Theory and its Implications for the Eastern Interconnection of the US", Proceedings of the 44th Hawaii International Conference on System Sciences – 2011.

24. Some stakeholders have claimed that using energy from a renewable resource in a jurisdiction that has a cap-and-trade regime in place, and then claiming the RECs for CETA compliance, somehow constitutes accounting for "avoided emissions," and thus should be deemed double counting under CETA. However, under a cap-and-trade program, the total *emissions* from covered sources cannot exceed a certain limit. Any resource or activity that does not contribute to emissions, including generation of renewable energy, is simply not part of the equation. Cap-and-trade programs do not account for "avoided emissions," so there can be no double counting.

25. California law and emissions rules have recognized this fact, and California renewable resources generate RECs that can be used for California RPS compliance—regardless of the fact that there is a cap-and-trade system in place. California's cap-and-trade program is predicated on counting emissions from generating resources in the state and emissions associated with energy imported into the state. While the availability of renewable energy plays an important role in making it possible for California to meet its emissions goals, there is no quantification of or accounting for "avoided emissions" in this system.

26. Similarly, Washington's CCA will be predicated on counting emissions from generating resources in Washington, and emissions associated with energy imported into the state. This will not interfere with the ability of Washington utilities to meet their requirements under CETA, which is based on generating or procuring enough MWh of renewable and nonemitting generation. Nor will it represent double counting, because there will be no greenhouse gas emissions to count from resources that are compliant with CETA. The CCA, like California's cap-and-trade program, does not count "avoided" emissions.

27. If, in the future, there is a market for tradeable instruments based on avoided emissions, the Joint Agencies will be required under CETA to ensure that this avoided emissions attribute is not sold separately from any REC that is used for compliance.

REC Shuffling

28. Public Counsel previously raised the concern that any attempt to implement strict rules rendering only a subset of otherwise identical RECs suitable for CETA compliance would be counterproductive. Public Counsel believes that such a rule, including the proposed "business practices" rule in draft -XXX, would naturally lead to "REC shuffling." REC producers and marketers would reserve certain "premium" RECs for Washington customers, while selling lower-cost RECs into other markets. The cost for the "premium" RECs would inevitably be higher, reflecting the additional administrative burden and any restrictive business practice imposed on the producers or marketers of such RECs. There would also be a smaller supply of such RECs, very likely allowing their producers to demand a higher price.

29. This dynamic would not necessarily reflect nefarious or anticompetitive behavior on the part of sellers. It is instead a natural outcome of a marketplace where sellers are asked to adhere to additional requirements and restrictions if they wish to sell RECs to Washington. Such sellers will only assume these burdens if they anticipate receiving a higher price for their RECs. The more restrictive and onerous the requirements for participation, the greater the price premium Washington ratepayers would be required to shoulder.

30. At the same time, there would be no net increase in the amount of renewable generation in the region resulting from such requirements. Sellers who are willing to take on the additional burden in return for a higher price would divert their RECs and energy to Washington, while

others would avoid the additional cost by selling their RECs and energy elsewhere. In either scenario, the RECs would represent a MWh of renewable energy, could only be counted once for compliance, and would be retired once used for compliance. Public Counsel believes that the goal of CETA is to ensure that incremental renewable and nonemitting energy are produced to meet Washington customers' load, ultimately displacing fossil generation and reducing pollutant emissions including greenhouse gases. This goal can be met equally well without placing costly and ineffective restrictions on entities that sell renewable energy and RECs to Washington utilities, whether they are in Washington or in another jurisdiction.

31. Public Counsel believes it is of paramount importance to meet Washington's environmental goals in a way that achieves the desired environmental benefit *and* minimizes the burden on ratepayers. To do otherwise would unduly burden our state and its economy, and it would ultimately jeopardize successful implementation of CETA. A crucial consideration is to avoid restrictive and onerous rules and requirements that unduly burden ratepayers, but provide no additional environmental benefit.

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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 6th day of December, 2021.

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